

REMB/YES

COMMISSION DECISION

of 25.2.1993

finding that the repayment of import duties in
a particular case is justified
(request submitted by Germany)

REM 10/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,¹ as last amended by Regulation (EEC) No 3069/86,²

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties,³ and in particular Article 8 thereof,

Whereas by letter dated 11 August 1992, received by the Commission on 25 August 1992, Germany requested the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the repayment of import duties is justified in the following circumstances:

1 OJ No L 175, 12.7.1979, p. 1.

2 OJ No L 286, 9.10.1986, p. 1.

3 OJ No L 352, 13.12.1986, p. 19.

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A German firm has been importing memory chips from South Korea and Malaysia under the outward processing arrangements since the beginning of 1989. As some of these memory chips were intended for use within the Community's customs territory and others in third countries, the firm decided to place them in an authorized private bonded warehouse.

The German customs office normally responsible for the firm took the view that since the memory chips were under outward processing arrangements, they could not be placed in a private bonded warehouse because there was no economic need. This office considered that for export to third countries, the firm should use memory chips that it had manufactured under its inward processing operations (domestic production of the same memory chips).

Relying on the erroneous views of the customs office, the firm thought its only option was to allow the imported memory chips to be entered for free circulation. However, as the firm's domestically produced memory chips did not cover its requirements for exports to third countries, the firm was obliged also to use memory chips for this purpose that had previously been entered for home use after outward processing. Thus, memory chips for which an amount of DM [REDACTED] in customs duty had been paid were re-exported. The firm applied for repayment of this duty.

Whereas in accordance with Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 8 January 1993 within the framework of the Committee on Duty Free Arrangements to consider the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in special situations, other than those laid down in sections A to D of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas there were no grounds for the customs office's refusal to allow the firm to place the goods under outward processing in a bonded warehouse; whereas the refusal was notified in writing;

Whereas the memory chips made in South-East Asia had to be used for export since the firm's own production under inward processing was insufficient to meet orders from third countries;

Whereas because of the view taken by the customs office, the firm had no choice but to allow memory chips which were originally under the outward processing arrangements to be entered for home use;

Whereas a special situation therefore exists within the meaning of Article 13 of Regulation (EEC) No 1430/79; whereas there has been no deception or obvious negligence on the part of the firm;

Whereas if the firm had placed the memory chips in a bonded warehouse, as it had originally wanted to do, it would have avoided the duties in question in the first place;

Whereas it is therefore justified in this case to grant the repayment of import duties requested,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties of DM [REDACTED] requested by Germany on 11 August 1992 is hereby found to be justified.

This Decision is addressed to Germany.

Done at Brussels, 25.2.1993

For the Commission