

Commission Decision
of 1-7-1998
finding that the repayment of import duties
in a particular case is justified

(request submitted by the United Kingdom of Great Britain and Northern Ireland)

Ref. **REM: 1/98**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993² laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, and in particular Article 907 thereof,

Whereas by letter dated 24 December 1997, received by the Commission on 2 January 1998, the United Kingdom of Great Britain and Northern Ireland asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances:

¹ OJ L 302, 19.10.1992, p.1.

² OJ L 253, 11.10.1993, p.1.

In Council Regulation (EC) No 3319/94 of 22 December 1994 imposing a definitive anti-dumping duty on imports of urea ammonium nitrate solution originating in Bulgaria and Poland, exported by companies not exempted from the duty, and collecting definitively the provisional duty imposed³, a variable duty based on a minimum price of ECU 89 per tonne is set for imports of the product when these imports are directly invoiced to an unrelated importer by one of the Polish exporters or producers specifically referred to in the Regulation. In other cases, the release for free circulation of the said products incurs a specific antidumping duty.

A UK company purchased urea ammonium nitrate from one of the suppliers in Poland referred to in Regulation (EC) No 3319/94. The Polish supplier invoiced the goods to the UK company on 30 August. On 2 September 1995 the products arrived in the United Kingdom and were placed in a storage warehouse. A copy of the invoice confirms that the price charged was well above the ECU 89 per tonne laid down in the Regulation. On the same day, the United Kingdom buyer resold the products to its client in the UK (company concerned).

On 15 November 1995 the United Kingdom customs authorities asked the forwarding agent to draw up a customs declaration for the products, which were still in the storage warehouse. In the customs declaration, the customs agent erroneously declared the company concerned as the importer of the products. As this company did not hold an invoice drawn up directly by the Polish supplier, a definitive anti-dumping duty of ECU 19 per tonne was charged.

The sum of XXXXX was claimed from the company, who paid, but sought repayment under Article 239 of Regulation (EEC) No 2913/92 on the grounds that this was a special situation involving no deception or obvious negligence on its part.

Whereas the operator concerned declares that he has taken note of the submission sent to the Commission by the United Kingdom authorities and has nothing to add;

³ OJ L 350, 31.12.1994, p. 20.

Whereas in accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 7 May 1998 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 239 of Regulation (EEC) No 2913/92, import duties may be repaid or remitted in situations other than those laid down in Articles 236, 237 and 238 of the said Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the applicant;

Whereas under Regulation No 3319/94, a definitive anti-dumping duty had to be imposed on the imports in question because the products were not directly invoiced by the Polish supplier to the company concerned, which had been erroneously entered on the customs declaration as the importer of the products;

Whereas the United Kingdom authorities submit that it was a mistake by the forwarding agent that the company concerned rather than the first UK buyer had been declared as the importer of the goods into the Community; whereas the agent was acting on behalf of the company concerned and had considered it the importer because the products had been sold on to him when they entered United Kingdom territory and the storage contract had been drawn up in its name;

Whereas for imports directly invoiced by the Polish manufacturers that were investigated (one of whom was the supplier of the products in question), a minimum price of ECU 89 was considered the appropriate level to remove injury for directly invoiced exports;

Whereas in the case in question, despite the forwarding agent's mistake, Regulation (EC) No 3319/94 was not circumvented; whereas the products invoiced by a Polish supplier specifically designated in the said Regulation were sold at a price higher than the ECU 89 laid down by the Regulation and were directly invoiced to the first UK buyer, in whose name the import declaration should have been made;

Whereas these factors constitute a situation falling within Article 239 of Regulation (EEC) No 2913/92;

Whereas in the circumstances of the case in question no deception or obvious negligence may be attributed to the company concerned;

Whereas, therefore, the repayment of import duties is justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXX requested by the United Kingdom of Great Britain and Northern Ireland on 24 December 1997 is hereby found to be justified.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 1-7-1998

For the Commission