

FR

REM 14/02



EUROPEAN COMMISSION

Brussels, 17-3-2003
C(2003)796

NOT FOR PUBLICATION

COMMISSION DECISION

of 17-3-2003

finding that the remission of import duties in a particular case is justified
(Only the German language version is authentic.)

(Request submitted by Germany)

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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 Code,¹ as last amended by Regulation (EC) No 2700/2000,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 444/2000,⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19/10/1992, p. 1.

² OJ L 311, 12/12/2000, p. 17.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 68, 12/03/2002, p. 11.

Whereas:

- (1) By letter dated 13 June 2002, received by the Commission on 20 June 2002, Germany asked the Commission to decide, under Article 239 of Council Regulation (EEC) No 2913/92, whether the remission of import duties is justified in the following circumstances.
- (2) A German firm, acting as principal, completed an external Community transit document at the London customs office (United Kingdom) on 2 June 1995 to cover the carriage by road of a consignment of 10 995 000 cigarettes to Grodno (Belarus). A German customs office was given as the office of exit.
- (3) With the connivance of the driver, the lorry was hijacked by fraudsters in Germany on 6 June 1995 and the cigarettes were unloaded at a German warehouse. The operation was watched by the German customs investigation department. The person who posed as the purchaser of the cigarettes was in fact an officer of the investigation department and the warehouse had been hired by the German authorities. Nine people who took part in the fraud were arrested.
- (4) As this Community transit operation involved non-Community goods for which the transit procedure had not been discharged, customs debt was incurred under Article 203 of Regulation (EEC) No 2913/92. The competent German authorities therefore charged the business the customs duty due on the importation of the consignment of cigarettes, namely XXXX. This is the sum in respect of which the firm is seeking remission.
- (5) Pursuant to Article 905 of Regulation (EEC) No 2454/93, the firm stated that it had seen the dossier submitted to the Commission by the German authorities and had nothing to add.

- (6) 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 6 December 2002 as the Customs Code Committee (Section for Repayment) to consider the case.
- (7) Under Article 239 of Regulation (EEC) No 2913/92, import duties may be repaid or remitted in special situations other than those laid down in Articles 236, 237 and 238 of that Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (8) The Court of Justice of the European Communities has consistently taken the view that these provisions represent a general principle of equity designed to cover an exceptional situation in which a business, which would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties, might find itself compared with other operators carrying out the same activity.
- (9) In this case, it is clear from the file sent to the Commission by the German authorities that they were aware of the plan to carry out the fraud. They monitored the transport operation and the unloading of the goods with the intention of arresting the perpetrators. It was the customs authorities that had rented the warehouse and the person who posed as purchaser was in fact a customs investigation officer. The administration had not informed the firm of its suspicions that the goods were likely to be hijacked.
- (10) On 7 September 1999,⁵ the Court of Justice [ruled](#) that the demands of an investigation conducted by the national customs or police authorities may, in the absence of any deception or negligence on the part of the person liable, and where that person has not been informed that the investigation is being carried out, constitute a special situation.

⁵ Case C-61/98 *De Haan Beheer BV v Inspecteur der Invoerrechten en Accijnzen te Rotterdam* [1999] ECR I-05003.

- (11) Furthermore, the contraband cigarettes were seized and then confiscated by the competent German authorities. There is therefore no longer any risk that these cigarettes will enter the Community economy without payment of import duties. If they are not destroyed, they cannot be placed on the market unless the person releasing them for free circulation pays the import duties.
- (12) In this instance, since the cigarettes have been seized and confiscated, remitting import duties in the applicant's case would have no impact on the Community's own resources and would not, therefore, harm the Communities' financial interests.
- (13) In this case no deception or obvious negligence can be attributed to the firm concerned, as the competent German authorities confirm.
- (14) The requested remission of import duties is therefore justified in this case.

HAS DECIDED AS FOLLOWS:

Article one

The Federal Republic of Germany's application of 13 June 2002 for remission of import duty in the sum of XXXXX is justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 17-3-2003

For the Commission

Frits Bolkestein

Member of the Commission