

## COMMISSION DECISION

of 11-12-1996

finding that, in a particular case, the remission of import duties is justified in respect of a certain amount and is not justified in respect of another amount

(request submitted by Germany)

**REM 8/96**

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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,<sup>1</sup>

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,<sup>2</sup> and in particular Article 907 thereof,

Whereas by letter dated 3 June 1996, received by the Commission on 12 June 1996, Germany asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979<sup>3</sup> on the repayment or remission of import or export duties, as last amended by Regulation (EEC) No 3069/86,<sup>4</sup> whether the remission of import duties is justified in the following circumstances:

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<sup>1</sup> OJ No L 302, 19.10.1992, p.1.

<sup>2</sup> OJ No L 253, 11.10.1993, p.1.

<sup>3</sup> OJ No L 175, 12.7.1979, p.1.

<sup>4</sup> OJ No L 286, 9.10.1986, p.1.

From 6 August 1990 to 23 May 1991 a German firm imported, via Austria, a number of consignments of video recorders originating in South Korea. The 23.7% anti-dumping duty imposed on such goods by Council Regulation (EEC) No 501/89 of 27 February 1989 imposing a definitive anti-dumping duty on imports of certain video cassette recorders originating in Japan and the Republic of Korea and definitively collecting the provisional duty<sup>5</sup> was not levied because the Korean supplier had given the Community price undertakings and accordingly, under Article 1(2) of the Regulation, was exempt from the duty.

After examining the trading name of the supplier concerned, the Commission had confirmed in writing that the supplier qualified for exemption from anti-dumping duty since its trade name was considered as being covered by the one specifically mentioned in the Regulation.

Following an import audit, the competent German authorities claimed post-clearance recovery of anti-dumping duty totalling XXXXX on the grounds that the exemption only applied where goods manufactured by one of the Korean firms named in the Regulation were imported into the Community direct. Goods had actually been imported via a third country, in this case Austria, through an Austrian subsidiary of the supplier.

Citing the difficulties encountered by the competent German authorities themselves in determining whether anti-dumping duty should be collected in this case, and arguing that neither deception nor obvious negligence could be attributed to him, the declarant has applied for remission of the anti-dumping duty assessed;

Whereas the operator states that he has seen the dossier submitted to the Commission by the German authorities and has nothing to add; whereas he further sent a statement of his position to the German authorities, which forwarded it to the Commission in annex to their letter of 3 June 1996 referred to above;

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<sup>5</sup> OJ No L 57, 28.2.1989, p.55.

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 13 September 1996 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) 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 Article 1(2) of Regulation (EEC) No 501/89 stipulates that the duty specified in paragraph 1 of the same article does not apply to VCRs exported by a number of Korean firms specifically named therein;

Whereas in the case under consideration the Korean supplier in question qualified for exemption from anti-dumping duty in respect of the VCRs exported by him;

Whereas, however, exemption was granted subject to the VCRs being exported direct by the supplier to the Community;

Whereas in the case under consideration the goods had been exported via a firm in a third country and the VCRs in question could not therefore qualify for exemption; whereas accordingly, anti-dumping duty was payable;

Whereas, however, the issue of whether or not the goods had to be exported direct was a complex one, as confirmed by the hesitation shown by the competent German authorities themselves in dealing with this matter; whereas certain amounts of anti-dumping duty were first entered into the accounts and later remitted only to be finally claimed under post-clearance recovery procedure; whereas, in addition, at the request of the German authorities, the Commission was called on to specify, in a letter dated 28 December 1990, that exemption from anti-dumping duty was subject to the VCRs being exported by the supplier direct to the Community; whereas nevertheless on 30 October 1991 the competent German authorities in an internal administrative notice

stated that VCRs exported by the supplier concerned were not subject to anti-dumping duty;

Whereas it is clear from the above that the legal position was unclear to the competent German authorities;

Whereas the case in question was made even more complex by the fact that the intermediary firm in Austria was a subsidiary of the supplier, as confirmed by the German authorities, and that the declarant, by his own admission, was bound by a direct contract with the Korean supplier;

Whereas in addition on 6 September 1990 the German authorities, while carrying out checks on one of the consignments, explicitly stated on a continuation sheet annexed to the customs declaration that anti-dumping duty should not be collected; whereas, consequently, the competent national authorities are responsible for the error;

Whereas, therefore, the special circumstances of the case in question should be construed as giving rise to a situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 only from 6 September 1990;

Whereas the declarant could legitimately rely on the written statements by the German authorities on the continuation sheet annexed to the customs declaration on 6 September 1990;

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

Whereas, therefore, the remission of import duties requested is justified in this case only in respect of goods imported after 6 September 1990;

Whereas the remission of import duties is not justified in respect of goods imported before 6 September 1990,

**HAS ADOPTED THIS DECISION:**

Article 1

The remission of import duties in the sum of XXXXX requested by Germany on 3 June 1996 is hereby found to be justified.

The remission of import duties in the sum of XXXXX requested by Germany on 3 June 1996 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 11-12-1996

For the Commission