

COMMISSION DECISION
of 4-7-1994
finding that the repayment of import duties in a particular
case is justified

(request submitted by the United Kingdom)

REM 1/94

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

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, and in particular Article 907,²

Whereas by letter dated 17 December 1993, received by the Commission on 4 January 1994, the United Kingdom asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,³ as last amended by Regulation (EEC) No 3069/86⁴ whether the repayment of import duties is justified in the following circumstances:

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

³ OJ No L 175, 12.7.1979, p.1.

⁴ OJ No L 286, 9.10.1986, p.1.

Upon presentation of Form A certificates of origin a UK firm had been importing diodes from Mexico under the generalized preferences scheme (GSP) since 1989.

Following post-clearance verification enquiries, UK Customs discovered a failure to comply with the rules of origin covering the goods specified in Regulation (EEC) No 693/88⁵ since the authorized percentage of non-originating material had been exceeded. CCT (Common Customs Tariff) duties of XXXXX (corresponding to the difference between the preferential and full rates) therefore fell due and were recovered from the firm.

During this verification, UK Customs informed the Mexican authorities that they could not validly countersign certificates of origin for these goods since the percentage of originating material exceeded that authorized. The Mexican authorities asserted that the percentage was permissible and that the diodes qualified for preference.

Upon examination, there was found to be an error in the Spanish language version of OJ No L 77 containing Regulation (EEC) No 693/88, which the Mexican authorities were taking as their basis.

On 1 November 1991 UK Customs contacted the Commission to request publication of a corrigendum to the Spanish language version of OJ No L 77. A corrigendum was published on 20 February 1992.

The firm has, on the basis of Article 13 of Regulation 1430/79, applied for repayment of the additional customs duties paid on the grounds that neither the Mexican authorities nor the manufacturers knew that there was an error in the version of the origin rules that was made available to them.

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 19 May 1994 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to consider the case;

⁵ OJ No L 77, 22.03.1988

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 the error in the Spanish language version of the OJ containing Regulation (EEC) No 693/88 is a clerical error, and whereas the corrigendum thereto takes effect from the date of publication;

Whereas the certificates of origin validly issued by the Mexican authorities contained an erroneous indication of origin;

Whereas trusting in the validity or authenticity of a certificate of origin is normally no protection, since these are matters of commercial risk;

Whereas, nevertheless, that should not be the case where certificates of origin are inaccurate not because of commercial risk but because of an error which can be attributed to the Community authorities;

Whereas, therefore, the Mexican traders and the importers who had applied the rule in the "Spanish language version" should enjoy the protection afforded by official texts;

Whereas this legitimate confidence had created a special situation until such time as the Mexican authorities were informed of the error in the language version concerned;

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

Whereas, therefore, the repayment of import duties requested 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 on 17 December 1993 is hereby found to be justified.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 4-7-1994

For the Commission