

COMMISSION DECISION

of 16-12-1997

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)

Ref. **REM 9/97**

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 2913/92,² and in particular Article 907 thereof,

Whereas by letter dated 10 June 1997, received by the Commission on 24 June 1997, Germany asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979³ on the repayment or remission of import or export duties, as last amended by Regulation (EEC) No 3069/86,⁴ whether the remission 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.

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 duty⁵ 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.

By Decision C(96)3757 final of 11 December 1996 in case REM 8/96, the Commission approved the remission of import duties totalling XXXXX but refused remission of the remaining XXXX covered by the same request.

⁵ OJ No L 57, 28.2.1989, p.55.

Since he possesses new evidence relating to his request, the declarant has again asked for the balance of the duty charged to him to be remitted;

Whereas the operator states that he has seen the dossier submitted to the Commission by the German authorities and has nothing to add;

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 31 October 1997 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 were responsible for the error;

Whereas the Commission's Decision of 11 December 1996 (REM 8/96) was based on that fact and therefore concluded that the case in question should be construed as giving rise to a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 only from 6 September 1990;

Whereas the declarant has however produced, *inter alia*, a further customs declaration continuation sheet, dated 30 August 1990, on which the German authorities also stated that no anti-dumping duty should be collected;

Whereas the declarant could therefore legitimately rely on the written statements by the German authorities on the continuation sheet annexed to the customs declaration as from 30 August 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 in respect of goods imported between 30 August 1990 and 6 September 1990;

Whereas the remission of import duties is not justified in respect of goods imported before 30 August 1990,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of DM 93 188.40 requested by Germany on 10 June 1997 is hereby found to be justified.

The remission of import duties in the sum of XXXX also requested by Germany on 10 June 1997 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 16-12-1997

For the Commission