

TAXUD 840/EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16-11-2001

NOT FOR PUBLICATION

COMMISSION DECISION

of 16-11-2001

**finding that repayment of import duties is justified in a particular case and refusing
Germany authorisation under Article 908 of Commission Regulation (EEC) No 2454/93
of 2 July 1993 laying down provisions for the implementation of Regulation (EEC)**

No 2913/92

(Request submitted by the Federal Republic of Germany)

(REM 07/2001)

FR

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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 Regulation (EEC) No 2913/92,³ as last amended by
Regulation (EC) No 993/2001,⁴ 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 141, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 8 February 2001, received by the Commission on 20 February 2001, Germany asked the Commission to decide, under Article 239 of Council Regulation (EEC) No 2913/92 on the repayment or remission of import or export duties, whether repayment of duties was justified in the following circumstances:
- (2) On 25 July 1998, a German company presented an aircraft engine which it had transported from Vietnam for clearance by customs. On 26 July 1998, the aircraft engine was released to the company for temporary storage. The same day it was transported by the company's subsidiary to Hamburg but without being placed in sealed buildings, cleared through customs or placed under the transit procedure.
- (3) In Hamburg the engine was placed by simplified procedure under the inward processing procedure. When reconditioning was complete, it was presented to the relevant customs office and cleared for the T1 transit procedure (non-Community goods) and then correctly transported to Hong Kong.
- (4) Failure to comply with requirements relating to placement in temporary storage gave rise to a customs debt under Article 203 of Regulation (EEC) No 2913/92. On 17 January 2000 the German customs authorities therefore asked the person concerned to pay XXXXX.
- (5) The company paid the duty but appealed against the tax notice on 4 February 2000. On 25 April 2000 it withdrew its appeal and instead submitted an application for the repayment of duties under the second indent of Article 239(1) of Regulation (EEC) No 2913/92 in conjunction with Article 905 of Regulation (EEC) No 2454/93.

- (6) In support of the application submitted by the German authorities the company indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.
- (7) 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 28 September 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (8) Under Article 239 of Regulation (EEC) No 2913/92 import duties may be repaid or remitted in special situations resulting from circumstances in which no deception or obvious negligence may be attributed to the party concerned.
- (9) The Court of Justice of the European Communities has consistently taken the view that this provision represents a general principle of equity designed to cover a special situation in which an operator 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.
- (10) In this case the company concerned failed to comply with its obligations under the temporary storage procedure, which requires that non-Community goods be stored in sealed buildings from which they cannot be removed without the involvement of the officials responsible for customs clearance.
- (11) The company claims that it was unable to comply with the rules because the engine was too big and too heavy to be stored in the sealed buildings under the surveillance of the customs clearance office.
- (12) In the opinion of the German authorities the company nevertheless appears to have taken all measures necessary on the premises to prevent the goods being removed from its direct supervision.

- (13) These facts combined constitute a special situation within the meaning of Article 239 of the Customs Code.
- (14) The fact that this was a one-off error on the part of the person concerned and the fact that the goods were re-exported in compliance with customs export formalities are also extenuating circumstances.
- (15) In the circumstances of this case no deception or obvious negligence can be attributed to the firm concerned, as the competent German authorities confirm.
- (16) Therefore the repayment of import duties is justified in this case.
- (17) Under Article 908 of Regulation (EEC) No 2454/93, where the circumstances under consideration justify repayment or remission, the Commission may, under conditions which it determines, authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and law.
- (18) In a letter of 8 February 2001, received by the Commission on 20 February 2000, the Federal Republic of Germany requested authorisation to repay or remit duties in cases involving comparable issues of fact and law.
- (19) This case is however quite unique in terms of both fact and law. It cannot therefore serve as a reference for national decisions taken in application of an authorisation granted by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX requested by the Federal Republic of Germany on 8 February 2001 is hereby found to be justified.

Article 2

The authorisation requested by the Federal Republic of Germany in its letter of 8 February 2001 under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 is not granted.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 16-11-2001

For the Commission

Member of the Commission