

COMMISSION DECISION

of 15 June 1990

finding that the remission of import duties in a particular case is justified

(request submitted by the Federal Republic of Germany)

REM 10/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,¹ as last amended by Regulation (EEC) No 3069/86,²

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties,³ and in particular Article 8 thereof,

Whereas by letter dated 14 September 1990, received by the Commission on 30 October 1990, Germany requested the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the remission of import duties is justified in the following circumstances:

1 OJ No L 175, 12.7.1979, p.1.

2 OJ No L 286, 9.10.198, p.1.

3 OJ No L 352, 13.12.1986, p. 19.

As part of a joint venture set up with a Soviet enterprise at the end of 1987 a German firm delivered components for mobile cranes in kit form to the Soviet Union. The aim of the operation was to supply the Soviet and Comecon markets with cranes assembled from these kits. The German firm supplied all but a few of the crane components and also supervised their assembly.

The foreign exchange to pay for the components supplied by the firm was to be obtained by selling the cranes in the Comecon area. The Soviet ministry concerned put up a guarantee for the operation.

Attempts to sell the cranes revealed that completely new sales channels outside the planned Soviet economy should have been created and that selling them through existing marketing structures would be more difficult than expected. In addition, the ministry responsible for the matter when the joint venture was set up was disbanded as a result of internal Soviet developments and responsibility passed to a new ministry. Because of these unforeseen difficulties, stocks of assembled cranes rose to 50. The foreign exchange shortage that had appeared in the meantime ruled out any assistance from the Soviet authorities.

The firm was therefore faced with the choice of buying the cranes from the joint venture for sale on the free market - in contravention of the original contract - or of discontinuing production in the Soviet Union and allowing the joint venture. Against this background, it opted for purchase.

On this basis the firm imported eight cranes assembled under the joint venture and released them for free circulation in Germany in March 1990. The customs value of the cranes was DM 5 300 000, giving rise to customs duties of DM 328 600.

In a letter of 29 March 1990 the German firm explained that the cranes had for the most part been assembled from domestically produced components and, in view of the special circumstances described above, requested that the customs duties levied on the cranes imported from the Soviet Union be reduced to what would have been levied if the firm had supplied the kit as part of an outward processing operation.

On the basis of information provided by the firm, the value of the components of Community origin used for assembling the imported cranes was DM 4 742 600.

Both the crane kits and the assembled mobile cranes fall within code 8705 of the Harmonized System and are subject to a 6.2% rate of duty.

Regarding future deliveries of components for the joint venture, the firm was given authorization in April 1990 for outward processing arrangements.

Whereas in accordance with Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 18 February 1990 within the framework of the Committee on Duty Free Arrangements 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 components of Community origin were initially exported for assembly in the Soviet Union with a view to marketing the cranes in the Soviet Union or other Comecon countries; whereas the financing of the operation was assured in the form of a guarantee from the Soviet ministry concerned;

Whereas, following unforeseeable political and economic upheaval in the Soviet Union, the planned marketing of the assembled products in the Comecon countries was placed in jeopardy; whereas, in addition, as a result of the said upheaval and the appearance of a foreign exchange shortage, the guarantee issued for the payment of the components employed for the assembly was withdrawn;

Whereas in these circumstances, and in an effort to reduce financial losses as much as possible, the German firm that supplied the said components had no other choice but to buy the cranes and reimport them;

Whereas the political and economic events that had an unforeseeable effect on the operation greatly exceeded the scope of normal commercial risk; whereas, for reasons of equity, the German firm cannot be expected to bear all the financial consequences of the said political and economic events in the form of customs duties on the import of cranes for free circulation, the cranes having been assembled from components of Community origin;

Whereas the circumstances of the case in question do not imply any negligence or deception on the part of the firm concerned;

Whereas it is therefore justified in this case to grant the remission of import duties requested; whereas the amount of the said duties shall be calculated as though the components had been exported to the Soviet Union under the outward processing arrangements laid down in Regulation (EEC) No 2473/86; whereas the application of the differential taxation rules provided for therein gives rise to the repayment of customs duties amounting to D[REDACTED]

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties of DM [REDACTED] requested by the Federal Republic of Germany on 14 September 1990 is hereby found to be justified.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 15/4/91

For the Commission