

Commission Decision  
of 22-07-1998  
finding that the remission of import duties  
in a particular case is justified  
  
(request submitted by the French Republic)

Ref. **REM: 6/98**

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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<sup>1</sup> establishing the Community Customs Code,

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

Whereas by letter dated 19 January 1998, received by the Commission on 23 January 1998, the French Republic asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties is justified in the following circumstances:

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<sup>1</sup> OJ L 302, 19.10.1992, p.1

<sup>2</sup> OJ L 253, 11.10.1993, p.1

On 7 May 1996 a French company imported lighters originating in China. The lighters were declared as “pocket lighters, gas fuelled, non-refillable other than [with] flints”, tariff heading 9613 10 00 90 00 of the Combined Nomenclature, and as such were exempted from customs duties under the tariff preferences for developing countries. When the company concerned received the goods, the persons in charge noticed that the lighters were defective. The company concerned therefore informed the supplier on 10 May 1996 that it intended to return the goods. On 17 May it had the defective nature of the goods recorded by a process server.

Despite a reminder requesting the supplier to take back the goods, the consignment remained in storage until 19 June 1996, on which date the warehouse in question was destroyed by a fire.

In the course of an inspection of the company’s premises on 17 September 1996, customs investigators found that the warehouse and the goods it contained had been completely destroyed. However, two lighters were removed from the wreckage. The investigators found that they were in fact pocket lighters, gas fuelled, non-refillable with flints, falling within tariff heading 9613 10 00 10 00 of the Combined Nomenclature, for which an anti-dumping duty should have been collected.

The customs authorities therefore demanded payment of the sum of XXXXX, remission of which is requested by the company concerned.

Whereas the company concerned declares that it has taken note of the submission sent to the Commission by the French 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 7 May 1998 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 239 of Regulation (EEC) No 2913/92, import duties may be repaid or remitted in situations other than those laid down in Articles 236, 237 and 238 of the said Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the company concerned;

Whereas the goods in question were destroyed after they had been released for free circulation; whereas a customs debt of XXXX for the anti-dumping duties legally due was incurred on this release into free circulation;

Whereas the goods were in fact defective, as recorded by a process server, and were refused by the importer;

Whereas the French authorities are satisfied that the goods in question were destroyed and did not enter the Community's trade channels;

Whereas they were not, however, destroyed under the supervision of authorities empowered to certify such destruction officially;

Whereas the French authorities consider that the remission of duties would have been granted by them on the basis of Article 238 of the Customs Code if the destruction of the goods had been certified in accordance with Articles 901 and 902 of the said Regulation (EEC) No 2454/93;

Whereas the goods were destroyed before the date on which the post-clearance recovery notice was issued; whereas an importer cannot be considered bound by the procedural conditions laid down in Article 238 of Regulation (EEC) No 2913/92 and Articles 901 and 902 of Regulation (EEC) No 2454/93 if he does not reasonably expect an action for the post-clearance recovery of duties;

Whereas these factors constitute a situation falling within Article 239 of Regulation (EEC) No 2913/92;

Whereas, as confirmed by the French authorities, in the circumstances of the case in question no deception or obvious negligence may be attributed to the company concerned;

Whereas, therefore, the remission of import duties is justified in this case,

**HAS ADOPTED THIS DECISION:**

Article 1

The remission of import duties in the sum of XXXX requested by the French Republic on 19 January 1998 is hereby found to be justified.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 22-07-1998

For the Commission

