

REM/YES

1993

COMMISSION DECISION

of ... 2.2.1994

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

(request submitted by Portugal)

REM 19/93

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,<sup>1</sup>

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 thereof,<sup>2</sup>

Whereas by letter dated 28 July 1993, received by the Commission on 5 August 1993, Portugal 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,<sup>3</sup> as last amended by Regulation (EEC) No 3069/86<sup>4</sup> and incorporated into Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances:

1 OJ No L 302, 19.10.1992, p.1.

2 OJ 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.

On 15 June 1992 a ship carrying a cargo of colour televisions classified under tariff heading 8528 10 71 010 000, originating in Malaysia, arrived in Portugal. The goods were covered by a certificate of origin form A, which meant that they were eligible for preferential tariff treatment under a Generalized System of Preferences (GSP) tariff ceiling.

On 16 June 1992, workers in customs agents' offices and related services went on strike; the strike ended on 29 June and was later resumed. It was supported by all those dealing with clearance, which meant that customs clearance of goods came to a halt.

Since no goods could be cleared, on 24 June 1992 the Finance Minister published a decision allowing goods held up by the strike to be cleared simply on presentation of a commercial invoice, with the situation to be regularized later.

On 18 June, Commission Regulation (EEC) No 1549/92 of 16 June 1992<sup>5</sup> reintroduced, from 21 June 1992, the collection of the customs duties applicable to products falling within CN code 8528 10 originating in Malaysia, which qualified for the tariff preferences laid down in Council Regulation (EEC) No 3831/90 of 20 December 1990.

The declaration for free circulation was presented on 1 July 1992 and registered on 14 July 1992 and the importing firm paid Esc [REDACTED] in customs duties. The firm presented a request for repayment of the import duties under Article 13 of Regulation (EEC) No 1430/79, on the grounds that if the strike had not prevented it from clearing the goods before customs duties were reimposed, it could have qualified for preferential tariff treatment by presenting the certificate of origin form A in its possession.

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5 OJ L 164, 16.6.1992.

Whereas in accordance with Article 8 of Commission Regulation (EEC) No 3799/86<sup>6</sup> of 12 December 1986, as incorporated into Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 11 November 1993 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 clearance of goods entering the country came to a standstill because the agents who dealt with customs formalities for the overwhelming majority of imports stopped dealing with clearance;

Whereas the Minister of Finance published a decision on 24 June 1992 because it was clear that it was impractical to have customs clearance handled by other, non-accredited persons for the period; whereas the preferential tariff treatment accorded under the GSP meanwhile expired on 21 June 1992;

Whereas notice of the strike was given after the ship's departure from Rotterdam and therefore the company had no way of preventing the ship from arriving after the start of the strike;

Whereas in the 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,

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6 OJ L 352, 13.12.1986, p.19.

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of Esc [REDACTED] requested by Portugal on 28 July 1993 is hereby found to be justified.

Article 2

This Decision is addressed to Portugal.

Done at Brussels, 22.1994

For the Commission