

Commission Decision

of... *A. P. Meyer* 1990

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

(request submitted by the Federal Republic of Germany)

REM 5/90

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 of 2 July 1979 on the repayment or remission of import or export duties,³ and in particular Article 8 thereof,

Whereas, by letter dated 7 March 1990, received by the Commission on 14 March 1990, the Federal Republic of Germany requested the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the repayment of import duties is justified in the following circumstances:

1 OJ L 175, 12.7.1979, p.1.

2 OJ L 286, 9.10.1986, p.1.

3 OJ L 352, 13.12.86, p.19.

Between 16 September 1985 and 12 August 1987 an American airline with its registered place of business in Germany entered 306 visual display units for free circulation, paying DM 64 929.20 duty on them.

A number of problems came to light when the VDUs were put into use, and following numerous inspections carried out by specialist bodies the conclusion was reached on 6 December 1986 that the units had shortcomings which meant that they failed to comply with the minimum standards laid down for work with VDUs.

It was agreed with the American supplier that a standard exchange of the units would be carried out under outward processing arrangements. The units were placed under these arrangements on 15 July 1988.

On 20 October 1988, customs collected import duty on the units newly imported, in the meantime since they were not equivalent to those exported.

On 18 October 1988, the airline had requested repayment of the duty paid on entry for free circulation of the units which were later exported.

It should be noted that repayment under Article 5 of Council Regulation (EEC) No 1430/79 is impossible because the equipment was used for longer than permitted by Article 6(3)(b) of that Regulation.

Whereas, in accordance with the requirements of Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 11 June 1990 within the framework of of the Committee on Duty Free Arrangements to consider the case in question;

Whereas pursuant to Article 13(1) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in situations other than those referred to in Sections A to D of that Regulation which result from special circumstances in which no deception or obvious negligence may be attributed to the persons concerned;

Whereas such a particular situation exists in the case in question, since it was approximately fifteen months after first being imported and after many inspections by recognized specialists that the units were finally concluded to be defective, and whereas on the other hand no special circumstances justifying the repayment of import duty exist for units imported after 6 December 1986, the date on which the company was informed of the final decision that the equipment was defective;

Whereas DM [REDACTED] of import duty was paid on equipment imported before 6 December 1986;

Whereas between 6 December 1986 and 15 July 1988, the date on which the defective units were placed under outward processing arrangements (standard exchange system) for re-export to the United States, the company continued to use the equipment, which thus remained within the Community economy;

Whereas as regards economic effect, this use of the equipment, from the point at which it became clear that it was to be replaced, could be regarded as temporary importation, and whereas under these circumstances a reduction in the amount to be repaid can justifiably be made by the application *mutatis mutandis* of the rules relating to temporary importation with partial relief from import duties laid down in Council Regulation (EEC) No 3599/82,¹ for the period of use referred to above; whereas the reduction should be 3% of the import duty on the equipment per month or part thereof for the period of use established from 6 December 1986 and whereas the reduction thus calculated is DM 38 325;

Whereas the special circumstances of the case in question do not therefore imply any deception or obvious negligence on the part of the person concerned;

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

HAS ADOPTED THIS DECISION:

Article 1

The partial repayment of the import duties of DM [REDACTED] requested by the Federal Republic of Germany on 7 March 1990 is hereby found to be justified.

Article 2

This decision is addressed to the Federal Republic of Germany.

Done at Brussels, 1/8/90

For the Commission

¹ OJ L 376, 31.12.1982, p.1.