

**COMMISSION DECISION**

of 11 December 1997

finding that the remission of import duties in a particular  
case is not justified  
(request submitted by Germany)

**REM 10/97**

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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,<sup>1</sup>

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

Whereas by letter dated 26 June 1997, received by the Commission on 8 July, Germany 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.

The appropriate German authorities issued a German company (the party concerned) an authorisation for the duty-free import of men's trousers from the former USSR up to an amount of XXXX. Valid until 31 December 1995, the authorisation was issued under Council Regulation (EC) No 665/94 of 21 March 1994 on the introduction of transitional tariff measures for Bulgaria, the Czech Republic, the Slovak Republic, Hungary, Poland, Romania, Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Uzbekistan, Russia, Tajikistan, Turkmenistan, Ukraine, Croatia, Bosnia-Herzegovina, Slovenia and the former Yugoslav Republic of Macedonia, until 31 December 1994 to take account of German unification,<sup>3</sup> as extended by Council Regulation (EC) No 3258/94 of 19 December 1994.<sup>4</sup>

The German customs authorities also issued an outward processing authorisation on condition that the goods be cleared at the Chemnitz rail freight customs office.

Under this outward processing authorisation the company imported five consignments between September and December 1995. The sixth and last consignment did not arrive in Community customs territory until 30 December that year, which was a Saturday. As the goods could not be cleared through the Chemnitz office at the weekend, they were not released into free circulation until 2 January 1996, i.e. after expiry of the authorisation. However, the goods were still cleared duty-free.

Following a post-clearance investigation, the German customs authorities decided that, as the goods had been cleared through customs after 31 December 1995, the party concerned could no longer benefit from the duty-free arrangements. They therefore requested the payment of import duty on the goods concerned, i.e. XXXX.

The company's argument is that the goods had arrived in the Community on 30 December 1995 and that it had been told by the person in charge of the customs office that what counted for the purposes of the duty-free arrangements was the date when goods entered the Community. The company therefore requested remission of the duty.

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<sup>3</sup> OJ L 83, 26.3.1994, p. 1.

<sup>4</sup> OJ L 339, 29.12.1994, p. 9.

Whereas the party concerned states that it has seen the file submitted to the Commission by the German 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 31 October 1997 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 special situations, other than those laid down in Articles 236, 237 and 238 of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas the party's authorisation to import duty-free into the territory of the former German Democratic Republic certain goods from the former USSR was valid only until 31 December 1995;

Whereas the crucial date for application of the commercial policy measures is the date when a customs declaration is accepted; whereas this is a fundamental principle of customs procedure;

Whereas, by not declaring the goods until 2 January 1996 the party concerned no longer had the right to benefit from the duty-free arrangement in question; whereas therefore the amount of duty requested is due;

Whereas the statement by the customs office that the crucial date was that when goods entered Community territory is contrary to a fundamental principle of customs procedure and should have raised doubts in the party's mind;

whereas this incorrect statement by the customs office may not under any circumstances be taken as a basis for legitimate expectations on the part of the party concerned since it was not given in writing;

Whereas these factors do not constitute a situation of the kind covered by Article 239 of Regulation (EEC) No 2913/92 where no deception or obvious negligence may be attributed to the person concerned;

Whereas, therefore, the remission of import duties requested is not justified in this case,

**HAS ADOPTED THIS DECISION:**

Article 1

The remission of import duties in the sum of XXXXX requested by Germany on 26 June 1997 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 11 December 1997

For the Commission