

REMB/YES

COMMISSION DECISION
of 20-11-1996
finding that the repayment of import duties in a particular
case is justified
(request submitted by France)

REM 6/96



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,¹

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

Whereas by letter dated 15 May 1996, received by the Commission on 23 May 1996, France 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,³ as last amended by Regulation (EEC) No 3069/86,⁴ whether the repayment of import duties is justified in the following circumstances:

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No 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.

From 1990 to 1992 a French firm regularly imported spare parts for civil and military aircraft. The imported goods were released for free circulation duty-paid, but the parts intended for use on civil aircraft could in fact have been brought in duty-free under the end-use arrangements provided for by Commission Regulation (EEC) No 4142/87 of 9 December 1987 determining the conditions under which certain goods are eligible for a favourable tariff arrangement by reason of their end-use.⁵

From 1993 onwards the goods were entered for the customs warehousing procedure, on the advice of the customs authorities, and the firm applied under Article 13 of Regulation (EEC) No 1430/79 for repayment of the duty paid in respect of products imported from 1990 to 1993 intended for civil aircraft, on the grounds that it was unable to determine at the time of import which parts would be fitted to civil and which to military aircraft.

France initially asked the Commission by letter dated 4 February 1994 to decide whether the import duties could be repaid in this case under Article 13 of Regulation (EEC) No 1430/79.

The Commission rejected the claim (Decision C(94)1853 dated 18 July 1994) on the grounds that none of the conditions for entitlement to the end-use arrangements had been satisfied, and in particular that no written authorization had been obtained, and that failure to comply with legislation did not constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79. The Decision also ruled that the repetition of the mistake in connection with numerous import consignments constituted obvious negligence on the part of the firm.

The firm appealed for the Commission Decision to be cancelled, and the Court of First Instance of the European Communities, in a ruling issued on 9 November 1995 in case [T 346/94](#), duly annulled it on the grounds that it had been adopted in accordance with an administrative procedure that violated the rights of the appellant firm. In particular, the Commission had taken its decision on the basis of an incomplete dossier. The Court of First Instance ruled, however, that the conclusions stating that the repayment claim was justified were inadmissible and said that the administrative procedure should be reopened in this case.

⁵ OJ No L 387, 31.12 1987, p. 81.

The firm states that it has seen the new dossier submitted to the Commission by the French authorities and has nothing to add, and has also set out its position more fully in an additional memo to the French authorities, which has been forwarded to the Commission.

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 13 September 1996 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 Regulation (EEC) No 4142/87 determines the conditions under which certain goods are eligible for a favourable tariff treatment by reason of their end-use;

Whereas none of those conditions was fulfilled, in particular the requirement for authorization in writing; whereas such authorization cannot have retrospective effect;

Whereas failure to comply with legislation does not constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79;

Whereas new information in the dossier submitted to the Commission by France shows that the customs office concerned wrote to the firm on 12 June 1990 specifically telling it to pay import duty from 1 July 1990 and reclaim it later on parts used for civil aircraft;

Whereas this factor does constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79;

Whereas the firm might legitimately rely on statements in writing from the French customs authorities regarding repayment of customs duties;



Whereas in the special 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,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXXested by France on 15 May 1996 is hereby found to be justified.

Article 2

This Decision is addressed to France.

Done at Brussels,

For the Commission