

**EN**

**REM 06/02**

**EN**

**EN**



COMMISSION OF THE EUROPEAN COMMUNITIES,

Brussels, 7-4-2004  
C(2004)1298

NOT FOR PUBLICATION

**COMMISSION DECISION**

**Of 7-4-2004**

**finding that repayment of import duties is not justified in a particular case**

**(Only the German text is authentic.)**

**(Request submitted by Germany)  
(REM 06/02)**

FR

**COMMISSION DECISION**

**Of 7-4-2004**

**finding that repayment of import duties is not justified in a particular case**

**(Only the German text is authentic.)**

**(Request submitted by Germany)**

**(REM 06/02)**

**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> as last amended by Regulation (EC) No 2700/2000;<sup>2</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,<sup>3</sup> as last amended by Regulation (EC) No 2286/2003,<sup>4</sup>

---

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

<sup>2</sup> OJ L 311, 12.12.2000, p. 17.

<sup>3</sup> OJ L 253, 11.10.1993, p. 1.

<sup>4</sup> OJ L 343, 31.12.2003, p. 1.

Whereas:

- (1) By letter dated 18 March 2002, received by the Commission on 27 March 2002, Germany asked the Commission to decide whether the repayment of import duties was justified under Article 239 of Regulation (EEC) No 2913/92 in the following circumstances.
- (2) Under the second paragraph of Article 2 of Regulation (EC) No 1335/2003, the provisions of Article 1 of that Regulation do not apply to cases sent to the Commission before 1 August 2003. Therefore the references that follow in this Decision to Articles 905 and 907 of Regulation (EEC) No 2454/93 refer to that Regulation as last amended by Commission Regulation (EC) No 881/2003 of 21 May 2003.<sup>5</sup>
- (3) A German firm which, in 1995, had for several years held authorisations for a simplified procedure for the release of goods for free circulation and customs warehousing, routinely placed goods under the warehousing procedure upon import and only released them for free circulation when they were actually sold to a client.
- (4) The dossier sent to the Commission by the German authorities shows that from 21 to 29 December 1995 the firm released for free circulation printers and printer cartridges originating in Singapore and accompanied by a Form A origin certificate in order to qualify for a preferential rate of duties and avoid paying the higher rate which was to enter into force on 1 January 1996. However, the third-country rate of duty initially provided for under the GATT for 1997 was brought forward to 1 January 1996 under Council Regulation (EC) No 3093/95 of 22 December 1995 laying down the rates of duty to be applied by the Community resulting from negotiations under GATT Article XXIV.6 consequent upon the accession of Austria, Finland and Sweden to the European Union.<sup>6</sup> Commission Regulation (EC) No 3009/95 of 22 December 1995<sup>7</sup> incorporated the changes introduced by Regulation (EC) No 3093/95 into Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.<sup>8</sup> The third-country tariff

---

<sup>5</sup> OJ No L 134, 29.5.2003, p. 1.

<sup>6</sup> OJ No L 334, 30.12.1995, p. 1.

<sup>7</sup> OJ No L 319, 31.12.1995, p. 1.

<sup>8</sup> OJ No L 256, 7.9.1987, p. 1.

applicable from 1 January 1996 was now lower than the preferential rate applicable up to 31 December 1995.

- (5) On 11 November 1996 the firm applied to the German authorities for repayment of duties in the sum of EUR 235 498.42 (DEM 460 594.88). This is the difference between the amount paid on the basis of the preferential rate applicable up to 31 December 1995 and the amount that would have been paid if the goods had been released for free circulation after 31 December 1995. This application was rejected. The firm lodged a complaint about this decision, but the complaint was dismissed as unfounded. It then appealed against the dismissal decision. The appeal proceedings are still underway in Germany.
- (6) In support of the application submitted by the German authorities, the firm indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier those authorities had sent to the Commission. It stated its position and made comments, which were passed on to the Commission by the German authorities as an annex to their letter of 18 March 2002.
- (7) By letter of 2 August 2002 the Commission asked the German authorities for additional information. The German authorities provided that information, along with comments from the firm, by letter dated 2 October 2003, received by the Commission on 17 October 2003.
- (8) The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 3 August 2002 and 17 October 2003.
- (9) By letter dated 21 January 2004, received by the firm on 22 January 2004, the Commission notified the firm of its intention to withhold approval and explained the reasons for its decision.
- (10) By letter dated 17 February 2004, received by the Commission on 18 February 2004, the firm's lawyers stated their position regarding the Commission's objections. They argued that the firm had grounds for legitimate expectations that the situation created by Annex I to Regulation (EEC) No 2658/87, as amended by Commission Regulation

(EC) No 2448/95 of 10 October 1995,<sup>9</sup> would be maintained. They further argued that no deception could be attributed to the firm, since it had acted on the basis of Council Regulation (EC) No 3281/94 of 19 December 1994 applying a four-year scheme of generalised tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries<sup>10</sup> and Commission Regulation (EC) 2448/95.

- (11) The administrative procedure was therefore suspended in accordance with Article 907 of Regulation (EEC) No 2454/93 between 22 January 2004 and 22 February 2004.
- (12) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 25 March 2004 within the framework of the Customs Code Committee, Repayment Section.
- (13) Under Article 239 of Regulation (EEC) No 2913/92, import duties or export duties may be repaid or remitted in situations other than those referred to in Articles 236, 237, and 238 resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (14) The Court of Justice of the European Communities has consistently taken the view that this provision represents a general principle of equity designed to cover an exceptional situation in which an operator, which would not otherwise have incurred the costs associated with entry in the accounts of customs duties, might find itself compared with other operators carrying out the same activity.
- (15) The firm argues that traders had grounds for legitimate expectations regarding the situation created by Council Regulation (EC) No 3281/94 of 19 December 1994 applying a four-year scheme of generalized tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries. However, the arrangements introduced by this Regulation were altered by Regulations (EC) No 3093/95 and (EC) No 3009/95. The firm says that it planned its operations on the basis of Regulation (EC) No 3281/94, and that if it had known that the rate of duties applicable from 1 January 1996 would be lower, not higher, it would not have released the goods concerned for free circulation and so would not have had to pay the

---

<sup>9</sup> OJ No L 259, 30.10.1995, p. 1.

<sup>10</sup> OJ No L 348, 31.12.1994, p. 1.

amount of duties in question. It therefore argues that there was an infringement of the principles of legal certainty and the protection of legitimate expectations.

- (16) Legal certainty and the protection of legitimate expectations are indeed fundamental principles of Community law. However, the Courts have consistently ruled that traders cannot invoke a legitimate expectation that an existing situation which was capable of being altered by decisions taken by Community institutions within the limits of their discretionary power would be maintained.<sup>11</sup> This applies in particular to the fields of agricultural and trade policy. In the Commission's view the legislation in question falls within this domain. In this respect the circumstances of the case do not therefore constitute a special situation.
- (17) Furthermore, the Commission's proposal was already known of on 6 December 1995 (COM (1995) 604). The firm, which could also have been aware of the fact that negotiations were underway under the GATT, was in a position to find out, by consulting the relevant Official Journal (OJ C 341, 19.12.1995, p. 9), about the existence of a proposal for a Council Regulation laying down the rates of duty to be applied by the Community resulting from negotiations under GATT Article XXIV.6 consequent upon the accession of Austria, Finland and Sweden. As the firm's lawyers admitted in their letter of 14 June 2000 to the competent authorities, changes to the legislation in force could have been foreseen at that point.
- (18) The firm also argues that it should have been informed about this amendment of the legislation before the amendments entered into force, or failing that, the Community legislature should have provided for a transitional period, whereas in fact, Regulation (EC) No 3009/95 entered into force on 1 January 1996 and the Official Journal of 30 December 1995 in which the Regulation was published was not available until 8 January 1996. Equally, Council Regulation (EC) No 3093/95 of 22 December 1995, was published in the Official Journal of 31 December 1995, which only became available on 20 February 1996.
- (19) In this regard it should be pointed out that the firm decided to release its goods for free circulation between 21 and 29 December 1995. Therefore, even if Regulation (EC) No 3009/95 had been available on the day of its publication in the Official Journal, i.e.

30 December 1995, the firm's situation would not have been altered, since on that date it had already released the goods for free circulation. The same would have applied, even more so, if the date of entry into force of the Regulation had been deferred to a later date to allow traders to make appropriate arrangements.

- (20) As regards the late publication of Council Regulation (EC) No 3093/95, it cannot be disputed that it would have been preferable for the Regulation to be available before Commission Regulation (EC) No 3009/95, since one of the recitals of that Regulation refers to the Council Regulation. However, this cannot be deemed pertinent to the case in hand, since the key point here is the incorporation of the applicable rate of duties in Annex I to Council Regulation (EEC) No 2658/87, which was effected by Regulation (EC) No 3009/95.
- (21) Lastly, the firm's argument that on 1 January 1996 "legislative chaos" was created by the coexistence of texts laying down different rates of duty for the same goods cannot be considered pertinent, since on 1 January 1996 Regulation (EC) No 3009/95 amended Regulation (EC) No 2448/95.
- (22) In any event, the firm cannot be deemed to have been in an exceptional situation compared with other traders. Moreover, the fact that it chose to release for free circulation goods that had been placed under the warehousing procedure and immediately release newly imported goods for free circulation is part of normal commercial risk. This fact does not constitute a special situation.
- (23) The fact that the firm could not pass the amount of the duties it paid on to its clients cannot be considered a special situation either.
- (24) The dossier as a whole does not therefore give grounds for finding that there was a special situation within the meaning of Article 239(1) of Regulation (EEC) No 2913/92.
- (25) Nor has the Commission identified any other factors constituting a special situation. There is therefore no need to examine second condition laid down in Article 239 of Regulation (EEC) No 2913/92.

---

<sup>11</sup> Judgment of 19 November 1998, *Kingdom of Spain v. Council of the European Union*, Case C- 284/94, ECR I-7312.



(26) The repayment of import duties requested is not therefore justified,

HAS ADOPTED THIS DECISION:

*Article 1*

Repayment of import duties in the sum of EUR 235 498.42 (DEM 460 594.88) requested by Germany on 18 March 2002 is not justified.

*Article 2*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 7-4-2004

*For the Commission*

*Frits Bolkestein*

*Member of the Commission*