



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.11.1999

**COMMISSION DECISION**

**Of 08-11-1999**

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

**(Request submitted by the Federal Republic of Germany)**

**(REM 2/99)**

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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> as last amended by Regulation (EC) No 955/1999,<sup>2</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,<sup>3</sup> as last amended by Regulation (EC) No 1662/1999,<sup>4</sup> and in particular Article 907 thereof,

Whereas:

- (1) By letter dated 28 January 1999, received by the Commission on 3 February 1999, the Federal Republic of Germany 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>5</sup> as last amended by Regulation (EEC) No 1854/89,<sup>6</sup> whether the remission of import duties was justified in the following circumstances:
- (2) On 23 May 1991, the firm concerned imported into Germany a shipment of high-quality "Hilton" beef of CN code 0201 originating in Argentina.

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

<sup>2</sup> OJ L 119, 7.5.1999, p. 1.

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

<sup>4</sup> OJ L 197, 29.7.1999, p. 25.

<sup>5</sup> OJ L 175, 12.7.1979, p. 1.

<sup>6</sup> OJ L 186, 30.6.1989, p. 1.

- (3) When the meat was released for free circulation as chilled boneless cuts, among the documents attached to the customs declaration were import licences and a certificate of authenticity issued by the competent Argentinean authorities.

- (4) In accordance with Commission Regulation (EEC) No 3884/90 of 27 December 1990 laying down detailed rules for the application of the import arrangements provided for by Council Regulations (EEC) No 3840/90 and (EEC) No 3841/90 in the beef and veal sectors<sup>7</sup> and Commission Regulation (EEC) No 2352/91 of 31 July 1991 laying down detailed rules for the application of the import arrangements provided for by Council Regulation (EEC) No 2329/91 in the beef and veal sector<sup>8</sup>, the meat qualified for a tariff preference within Community tariff quotas (exemption from agricultural levies but payment of customs duties) subject to a certificate of authenticity issued by the competent Argentinean authority being attached to the customs declaration for release for free circulation. Had the certificate not been produced, an extra charge of DEM 953.12 per 100 kg would have been incurred.
- (5) The German customs office charged the goods imported by the firm concerned against the Community quota for “Hilton” beef and released them for free circulation without applying the levies.
- (6) A mission to Argentina by Community officials led to the discovery that numerous certificates of authenticity had been forged and that the preferential tariff treatment had been granted unjustifiably on numerous occasions in 1991 and 1992. In this case, the competent German authorities retroactively claimed from the firm concerned the levy due for the shipment concerned, i.e. the amount of XXXXX for which remission is requested.
- (7) According to Article 905 of Regulation (EEC) No 2454/93, the firm concerned has stated that it has seen the dossier submitted to the Commission by Germany and has made some comments, which were included in the dossier sent by Germany on 28 January 1999.
- (8) By letter dated 3 August 1999, the Commission notified the firm of its intention to withhold approval and explained the grounds for its decision.
- (9) By letter dated 13 August 1999, received by the Commission on the same date, the firm expressed its opinion on the Commission's objections. In particular, the firm stated that it was not proved that the certificate of authenticity was falsified and, on the

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<sup>7</sup> OJ L 367, 29.12.1990, p. 129.

<sup>8</sup> OJ L 214, 2.8.1991, p. 54.

basis of the [decision of the Court of Justice of 19 February 1998 in the “Eyckeler & Malt AG” case<sup>9</sup>](#), that the facts of the case constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned. Indeed, it considers that it had acted in good faith and that serious negligence, committed by the Argentinean authorities and the Commission, would go beyond the normal commercial risk of the firm and would constitute therefore a special situation in the meaning of Article 13 of Regulation (EEC) No 1430/79.

- (10) In accordance with Article 907 of Regulation (EEC) No 2454/93, the administrative procedure was suspended from 3 August 1999 to 13 August 1999.

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<sup>9</sup> Case T-42/96, [1998] ECR II-401

- (11) 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 22 October 1999 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case.
- (12) 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.
- (13) In this case, the 29 April 1994 notice of assessment from the Essen main customs office made it clear that the certificate of authenticity that had been presented on import was a forgery. The confidence that an economic operator can have in the validity of such a certificate of authenticity is not normally protected, in that it pertains to the commercial risk to importers of goods benefiting from preferential tariff treatment. Thus the fact that a certificate of authenticity has been forged does not in itself constitute special circumstances within the meaning of Article 13 of Regulation (EEC) No 1430/79. This is confirmed by Article 4(2)(c) of 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 on the repayment or remission of import or export duties<sup>10</sup>.
- (14) The fact that the German ministry abandoned its enquiry into the affairs of the firm concerned, does not constitute a factor that removes or reduces the commercial risk to the firm, nor constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79.
- (15) The system set up under Commission Regulations (EEC) Nos 3884/90 and 2352/91 to monitor the use of the "Hilton" beef quotas requires certificates of authenticity issued by the appropriate Argentinean authorities (i.e. those listed in Annex II to each Regulation) to be produced in support of import declarations. These certificates of authenticity must be duly stamped by the issuing body and signed by the person(s) authorised, and state the date and place of issue.

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<sup>10</sup> OJ L 352, 13.12.1986, p. 19.

- (16) Under Regulations (EEC) Nos 3884/90 and 2352/91 the Member States are required to notify the Commission regularly of quantities of “Hilton” beef released for free circulation, broken down by country of origin and tariff subheading.

- (17) As set out in the dossier sent to the Commission by the German authorities by its letter of 28 January 1999, the firm argues that in 1991 the Argentinean authorities empowered a second body to issue certificates of authenticity, thus creating confusion as to the respective responsibilities of the two, and also that the authorities had supplied meat traders with blank, unnumbered certificate forms. In addition, the firm concerned considers that the body in Argentina responsible for issuing certificates of authenticity did not provide all the guarantees necessary to ensuring the smooth operation of the “Hilton” beef quota and that the Argentinean authorities did not carry out sufficiently rigorous checks on exports of “Hilton” beef.
- (18) As also set out in the dossier sent to the Commission by the German authorities by its letter of 28 January 1999, the firm argues that the Commission did not fulfil its duty to carry out suitable checks to ensure application of the “Hilton” beef quota; in particular, that the Commission neglected to verify that the planning, implementation and monitoring of administrative arrangements in Argentina were such as to preclude the forgery or illicit supply of certificates of authenticity by third parties. It also argues that the Commission did not send the competent authorities in the Member States specimen signatures of representatives of the authorities licensed to issue certificates of authenticity in Argentina and did not compare data on the “Hilton” beef quotas with data on certificates of authenticity issued from the Argentinean authorities and from the competent Member State authorities, even though it was the only authority with access to all of this data. In addition, the Commission did not launch an enquiry until 1993, even though it had been in a position since 1989 to detect that the “Hilton” beef quotas had been exceeded. Finally, the firm argues that by setting up a more rigorous system of controls in 1994 (in Commission Regulation (EC) No 212/94 of 31 January 1994 laying down detailed rules for the application of the import arrangements provided for by Council Regulations (EC) No 129/94 and (EC) No 131/94 for high-quality beef and frozen buffalo meat<sup>11</sup>), the Commission was admitting that the previous system of controls had been inadequate.

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<sup>11</sup> OJ L 27, 1.2.1994, p. 38.



- (19) The arguments put forward by the firm in no way relieve it of commercial risk. Indeed, the object of the system of controls set up by Regulations (EEC) Nos 3884/90 and 2352/91 is not to protect traders against commercial risk but to check that tariff quotas are being implemented in a manner consistent with the rules relating to the common agricultural policy and the Community's own resources. In addition, the system was not designed to warn traders of fraud or protect them against it but to see that quotas are complied with. In this respect, neither the Argentinean nor the Community authorities have a duty to communicate such information to traders. Therefore the argument relying on the tightening-up of controls since then is accordingly irrelevant.
- (20) The Community rules impose no obligation on the Commission to carry out controls with a particular frequency or by a particular method, for instance by cross-checking information received. In any event it was not possible to check the information supplied by the Argentinean authorities regularly against that on the lists sent by the Member State concerned, as the said lists did not give the numbers of the certificates of authenticity under which the consignments were imported. It was not until late 1992 that the aggregate import statistics communicated by Member States revealed that the Community quotas had been exceeded, at which point the Commission immediately took precautionary measures.
- (21) Moreover, there are no grounds for claiming that the competent authorities either in Argentina or the Community failed in their supervisory duties, since the Argentinean authorities warned of the risk of forgeries in 1993 and the Commission *inter alia* expedited an investigation into imports for 1991 and 1992 with the aim of checking on the proper use of tariff quotas.
- (22) In any event the failure to exercise due supervision alleged by the firm bears no direct relation to the fraud committed by certain traders or their agents, nor is there any direct link between the existence of forged certificates of authenticity and possible shortcomings in the quota control system.

(23) Accordingly the alleged failure by the Argentinean authorities and the Commission to exercise due supervision could not have affected the system in the manner claimed and does not therefore constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79.

(24) 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 XXXXXX requested by the Federal Republic of Germany on 28 January 1999 is hereby found not to be justified.

*Article 2*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 08-11-1999

*For the Commission*

*Member of the Commission*