



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.12.1999

NOT FOR PUBLICATION

COMMISSION DECISION

Of 8.12.1999

**finding that the remission of import duties in a particular case is justified and
authorising the Federal Republic of Germany to repay or remit duties in cases involving
comparable issues of fact and of law**

(Request submitted by Germany)

(REM 5/99)

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(REM 5/99)

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 as last amended by Regulation (EC) No 955/1999;²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 1662/1999,⁴ and in particular Article 907 thereof,

Whereas:

- (1) By letter dated 4 March 1999, received by the Commission on 12 March 1999, 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.

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 119, 7.5.1999, p. 1.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 197, 29.7.1999, p. 25.

- (2) On 6 May 1988 a German firm obtained an outward processing authorisation for various textile products with a view to the manufacture of clothing. This authorisation was granted for an unlimited duration and for unlimited quantities. Processing was carried out in Poland, and the compensating products (clothing) were reimported into Germany.
- (3) At the firm's request, the scope of the authorisation was later extended to cover further goods for unprocessed goods and compensating products.
- (4) Following post-clearance checks on the firm's operations in the period 1 January 1993-31 December 1995, the competent customs authorities found that the outward processing procedure had mistakenly been used on a number of occasions for unprocessed goods and compensating products not covered by the firm's outward processing authorisation.
- (5) The German authorities therefore took the view that the outward processing operations in question had been performed without authorisation.
- (6) Arguing that a customs debt had been incurred, the authorities demanded that the firm pay import duties in the sum of XXXXXXXX; it is this sum that the firm wishes to see remitted.
- (7) In support of the request from Germany's competent authorities, the firm has stated, pursuant to Article 905 of Regulation (EEC) No 2454/93, that it has seen the dossier submitted to the Commission and has nothing to add.
- (8) 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 2 September 1999 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case.

- (9) Article 239 of Regulation (EEC) No 2913/92 allows import duties to 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.
- (10) In so far as the firm carried out outward processing operations in respect of certain unprocessed goods and compensating products not covered by its outward processing authorisation, the operations in question were unauthorised. This situation gave rise to a customs debt.
- (11) However, the firm believed that the operations in question could be carried out under its outward processing authorisation, a belief reinforced by the fact that over a period of years the competent customs authorities, which should normally have checked the different customs declarations against the content of the authorisation and realised that certain goods were not covered by the authorisation, never once contested the use of the outward processing procedure for the operations in question. Since the firm concerned is a small one, with fewer than ten employees, such a situation could reasonably lead it to believe that its operations were consistent with the rules and its authorisation.
- (12) Furthermore, the competent German authorities did not contest the technical and accounting execution of the firm's outward processing operations. Apart from the question of the goods covered by the authorisation, its exports of unprocessed goods and imports of compensating products complied with the relevant rules and were supervised by customs authorities.

- (13) The above circumstances gave rise to a legitimate expectation on the part of the firm that its operations were correct. It would therefore be unfair to enforce payment of the import duties in question.
- (14) Together these circumstances constitute a situation covered by Article 239 of Regulation (EEC) No 2913/92. Since no deception or obvious negligence may be attributed to the firm, the remission of import duties requested is justified in this case.
- (15) Where the circumstances under consideration justify repayment or remission, Article 908 of Regulation (EEC) No 2454/93 authorises the Commission, under conditions which it shall determine, to authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and of law.
- (16) By letter of 4 March 1999, received by the Commission on 12 March 1999, Germany asked for authorisation to repay or remit duties in cases involving comparable issues of fact and of law to this one,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXXX requested by Germany on 4 March 1999 is justified.

Article 2

Germany is authorised to repay or remit duties in cases involving comparable issues of fact and of law to the case cited in its request of 4 March 1999.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 8.12.1999

For the Commission

Member of the Commission