

Commission Decision

of 22-07-1998

finding that the repayment 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 the Federal Republic of Germany)

Ref. REM: 9/98

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 1993² laying down provisions for the implementation of Regulation (EEC) No 2913/92, and in particular Article 907 thereof,

Whereas by letter dated 14 January 1998, received by the Commission on 16 February 1998, the Federal Republic of Germany asked the Commission to decide, under Article 239 of the abovementioned Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances:

A Germany company acting as authorised consignor dispatched two boxes of chondroitin sulfate A + C oral (ex-fish) under CN heading 3001 under a prestamped T2 transit declaration to Finland in April 1994, in the framework of the EEC/EFTA agreement on a common transit system. The goods did not, however, have the status of Community goods.

¹ OJ No L 302, 19.10.1992, p. 1.

² OJ No L 253, 11.10.1993, p. 1.

Despite this error the goods were treated as third-country goods on arriving in Finland and were correctly cleared through customs there.

Since the goods had been incorrectly accorded the status of Community goods, the German authorities requested the firm concerned to pay import duties, as a customs debt amounting to XXXXX had been incurred, repayment of which is requested by the firm concerned;

Whereas the firm concerned states it has seen the dossier 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 7 May 1998 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 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 goods in question were erroneously covered by a prestamped T2 declaration although that they did not have the status of Community goods;

Whereas such a situation constitutes removal of goods from customs supervision under the terms of Article 865 of Regulation (EEC) No 2454/93; whereas in the case in point a customs debt amounting to DEM 420.80 was incurred pursuant to Article 203 of the abovementioned Regulation (EEC) No 2913/92;

Whereas the firm concerned contends, however, that this was the first time it had committed this kind of error;

Whereas the common transit procedure was correctly discharged in Finland and the said goods were dealt with there in accordance with their actual status;

Whereas the German authorities reaffirm that the goods in question had left Community customs territory and had not therefore entered the Community's commercial channels as

attested by a customs clearance document issued by the Turku customs office in Finland dated 26 September 1994;

Whereas these circumstances taken as a whole are such as to constitute a situation referred to in Article 239 of Regulation (EEC) No 2913/92; whereas, in the case in point, removal of the goods from customs supervision has not had any significant effect on the proper functioning of the procedures;

Whereas in the special circumstances of the case in point no deception or obvious negligence may be attributed to the firm concerned;

Whereas, therefore, the repayment of import duties requested is justified in this case;

Whereas where the circumstances and considerations justify repayment or remission, the Commission may, pursuant to Article 908 of Regulation (EEC) No 2454/93, under conditions which it shall determine, authorise a Member State to repay or remit duties in cases involving comparable issues of fact and of law;

Whereas by letter of 14 January 1998, received by the Commission on 16 February 1998, the Federal Republic of Germany requested authorisation to repay or remit duties in various cases involving comparable issues of fact and of law;

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX requested by the Federal Republic of Germany on 14 January 1998 is hereby found to be justified.

Article 2

The Federal Republic of Germany is hereby authorised to repay or remit the duties payable in cases involving issues of fact and of law which are comparable to the case which forms the subject of the request submitted by the Federal Republic of Germany on 14 January 1998.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done in Brussels, 22-07-1998

For the Commission