

COMMISSION DECISION

of 11 July 1990

finding that the remission of import duties in a particular case is justified

(request submitted by the Federal Republic of Germany on 11 January 1990)

Ref: REM 2/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES.

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,¹ as last amended by Regulation (EEC) No 3069/86,²

Having regard to 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,³ and in particular Article 8 thereof,

Whereas, by letter dated 11 January 1990, received by the Commission on 18 January 1990, the Federal Republic of Germany requested the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the remission of import duties is justified in the following circumstances:

1 OJ No L 175, 12.7.1979, p.1.

2 OJ No L 286, 9.10.1986, p.1.

3 OJ No L 352, 13.12.1986, p.19.

A check carried out on 8 March 1989 at the Helmstadt customs post on the border between the Federal Republic and the German Democratic Republic revealed that an articulated lorry registered in Poland was carrying building materials which had been loaded in the Federal Republic and were intended for the construction of a hospital in West Berlin ("cabotage" operation). Customs duties of DM [REDACTED] and import turnover tax of DM [REDACTED] are payable but have so far not been collected. Motor vehicle tax amounting to DM [REDACTED] was collected, plus an additional DM [REDACTED] as security.

The competent authorities assume that, once the transport operation had been completed, the lorry left Berlin and returned to Poland.

Whereas, in accordance with the provisions of Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all Member States met on 30 April 1990 within the framework of the Committee on Duty Free Arrangements to consider the case in question;

Whereas, in accordance with Article 13(1) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in situations other than those referred to in Sections A to D which result from special circumstances in which no negligence or deception may be attributed to the person concerned;

Whereas the case under consideration is a special case;

Whereas, in accordance with national legislation in force, use of the temporary importation arrangements applicable to road vehicles used for business purposes is restricted to transport operations beginning or ending outside the territory of the country concerned; whereas, given that the Polish lorry began and ended the transport operation within the German territory, a customs debt was incurred in accordance with current provisions;

Whereas, however, given that in the case under consideration the transport operation involved the crossing of two borders for the lorry to reach West Berlin the legal implications might be unclear to a lorry driver who is, furthermore, a national of an Eastern European country;

Whereas, in the circumstances, the consequences of a straightforward application of the customs provisions applicable to this kind of transport operation would be unfair;

Whereas in the special circumstances of the case in question no negligence or deception may be attributed to the person concerned;

Whereas it is therefore justified in this case to grant the remission of import duties requested,

HAS ADOPTED THIS DECISION:

Article 1

The remission of the import duties of DM [redacted] requested by the Federal Republic of Germany on 11 January 1990 is hereby found to be justified.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 11 July 1990

For the Commission