

COMMISSION DECISION  
of 14-11-1994  
finding that the remission of import duties in a particular  
case is not justified

(Request submitted by Germany)

**REM 16/94**

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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>

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>2</sup> and in particular Article 907 thereof,

Whereas by letter dated 2 May 1994, received by the Commission on 16 May, 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>3</sup> as last amended by Regulation (EEC) No 3069/86,<sup>4</sup> whether the repayment of import duties is justified in the following circumstances:

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<sup>1</sup> OJ No L 302, 19.10.1992, p.1.  
<sup>2</sup> OJ No L 253, 11.10.1993, p.1.  
<sup>3</sup> OJ No L 175, 12.7.1979, p.1.  
<sup>4</sup> OJ No L 286, 9.10.1986, p.1.

On 22 May 1990, 8 June 1990 and 26 June 1991, a German firm imported aluminium alloy bars from Yugoslavia, which were released for free circulation at a preferential rate of duty, within the limits of a tariff ceiling, on presentation of a EUR 1 movement certificate. The customs office admitted the goods duty free without realizing that duties had been restored from 19 May 1990 for the first two consignments and from 27 May 1991 for the third because the ceiling had been reached. The customs office failed to notify the central office responsible for monitoring quotas and ceilings, with the result that the latter office was unable to point out that the preferential rate no longer applied.

When the customs declarations were subsequently verified, it was realized that exemption had been wrongly granted and outstanding import duties totalling XXXXX were claimed.

The importer then applied for post-clearance recovery to be waived under Article 13 of Regulation (EEC) No 1430/79.

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 4 July within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas, 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;

Whereas Article 1(2) of Commission Regulation (EEC) No 3040/83 of 28 October 1983 provides that repayment or remission shall be granted only in so far as the limits laid down under the quota or ceiling have not been reached or the normal rate of duty restored at the time of submission of the application for repayment or remission; whereas custom duties had been restored by the time the application was lodged in this case;

Whereas the fact that the duties had been restored was published in OJ No L 126 of 16 May 1990 and OJ No L 129 of 24 May 1991 respectively;

Whereas the Official Journal can be relied upon against any liable person and ignorance of the provisions published therein is no defence;

Whereas the fact that the imports were occasional and accounted for only a small part of the firm's business is irrelevant;

Whereas the failure to consult the OJ cannot be regarded as a special situation;

Whereas, 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 XXXXX requested by Germany on 2 May 1994 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 14-11-1994

For the Commission