

COMMISSION DECISION

of 10.6.1993

finding that the repayment of import duties in a particular case is not justified

(request submitted by Germany)

REM 1/93

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 22 December 1992, received by the Commission on 7 January 1993, Germany asked the Commission to decide under Article 13 of Regulation (EEC) No 1430/79 whether or not the repayment 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.

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The German subsidiary of a Polish export-import company regularly imports non-ferrous metals and non-ferrous semi-finished metals falling within headings 74.07 and 74.08. Until October 1981, duties on these imports were suspended under a tariff ceiling. They were reintroduced on 21 October 1991 by Regulation (EEC) No 3039/91.⁴ The company in question imported goods before this date but was unable to produce the certificates of origin needed to qualify for preferential treatment until afterwards. The customs authorities therefore charged duties on the goods totalling DM [REDACTED]

The firm is applying for the repayment of the duties charged, in accordance with Article 13 of Regulation (EEC) No 1430/79. Since the business transaction was processed centrally by the Polish parent company in Warsaw, the subsidiary had no influence over the timing of submission of the certificates of origin. The delays were attributable mainly to the fact that the certificates of origin were not issued by the Warsaw Chamber of Commerce until after the goods had been dispatched, and only then could they be sent on to Germany. The problems facing the Polish postal system constitute an additional source of delay. All of these factors explain the late arrival of the certificates of origin at the subsidiary in Germany.

Whereas in accordance with Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 25 March 1993 within the framework of the Committee on Duty Free Arrangements to consider the case;

4 OJ No L 288, 18.10.91, p. 17.

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 referred to 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 7(2) of Directive 82/57/EEC⁵ allows product of the document justifying the application of a reduced or zero rate of duty after importation, on condition that the normal rates of duty have not since been reintroduced; whereas this provision clearly prohibits the application of the preferential regime after 21 October 1991 in the present case;

Whereas the parent company failed to make every effort to meet the requirements imposed by Community legislation; whereas the delays which occurred could have been avoided had the procedures for issuing the certificates of origin been carried out correctly in Poland;

Whereas special ties exist between the two companies, and the parent company is an international concern which should be aware of the problems associated with the export-import business;

Whereas the Polish company, knowing the situation in Poland and the constraints imposed by a tariff ceiling, took no steps to minimize the risks associated with these two factors;

Whereas, in the circumstances a special situation does not exist;

Whereas, therefore, the repayment of import duties requested is not justified in this case,

5 OJ No L 28, 5.2.82, p. 38.

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of DM [REDACTED] requested by Germany on 22 December 1992 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 30.6.1993

For the Commission