

COMMISSION DECISION

of 08-04-1997

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

(request submitted by the NETHERLANDS)

REM 23/96

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 1993 laying down
provisions for the implementation of Council Regulation (EEC) No 2913/92, and in
particular Article 907 thereof,²

Whereas by letter dated 11 October 1996, received by the Commission on 14 October
1996, the Netherlands asked the Commission to decide, under Article 239 of Regulation
(EEC) No 2913/92, whether the repayment of import duties is justified in the following
circumstances:

A Turkish-based importer ordered a consignment of 300 commercial vehicles falling
within Combined Nomenclature code 8704 2191 000 003 from a company in South
Korea. However, the vehicles were never released for free circulation in Turkey, since it

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

was clear even before they reached the country that they would not find buyers because of the recession there.

A Dutch-based company (“the operator”) then contacted the Korean manufacturer and offered to purchase the vehicles in question for import into the Netherlands. The manufacturer agreed to sell the vehicles, which had been placed under customs supervision in Turkey, direct to the operator. The operator proceeded to import the vehicles into Dutch territory on 18 July 1994 and presented a Form A certificate of origin issued retrospectively by the competent Korean authorities on 23 June 1994, under the Generalized System of Preferences (GSP).

However, the Dutch customs authorities refused to grant preferential treatment on the grounds that the goods had not been transported direct from South Korea to the Community, within the meaning of Article 75(1) of Regulation (EEC) No 2454/93, but had taken a detour via Turkish territory which had not occurred for reasons of geography or exclusively on account of transport requirements.

The operator was therefore required to pay the sum of XXXXX in import duties, which he requests be repaid. He argues that the direct transport requirement was amended, after the goods were imported, under Commission Regulation (EC) No 3254/94 of 19 December 1994,³ to include goods which crossed the territory of a third country but remained under the supervision of the country’s customs authorities and did not undergo any operation other than unloading, reloading or any operation intended to keep them in good condition;

Whereas the operator states that he has seen the dossier submitted to the Commission by the Dutch 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 10 January 1997 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

³ OJ No L 346, 31.12.1994, p.1.

Whereas in accordance with Article 239 of Regulation (EEC) No 2913/92, import duties may 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;

Whereas, at the time of the occurrence, goods originating in South Korea could only be granted the preferential treatment accorded to countries covered by the Generalized System of Preferences on condition that they were transported direct between the territories of Korea and the Community;

Whereas this condition was not met in the case in question, since the goods concerned transited Turkey; whereas, because transport via that country was not justified within the meaning of Article 75(1) of Regulation (EEC) No 2454/93, either on grounds of geography, or exclusively on account of transport requirements, preferential treatment could not be granted;

Whereas import duties to the amount of XXXXX are therefore due;

Whereas the fact that the looser provisions of Regulation (EC) No 3254/94 amending Regulation (EEC) No 2454/93 entered into force some months after the goods were imported on 18 July 1994 does not constitute a situation covered by Article 239 of Regulation (EEC) No 2913/92, insofar as those provisions are purely an expression of a change in the Community's commercial policy with regard to countries accorded the Generalized System of Preferences, which, having no retroactive force, does not call into question the policy previously implemented by the Community authorities prior to its entry into force.

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

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX requested by the Netherlands on 11 October 1996 is hereby found not to be justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 08-04-1997

For the Commission