

COMMISSION DECISION

of 19-01-1998

finding that the repayment of import duties in a particular
case is justified
(request submitted by Germany)

Ref. **REM 11/97**

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 Regulation (EEC) No 2913/92, and in
particular Article 907 thereof,²

Whereas by letter dated 2 July 1993, received by the Commission on 22 July 1997,
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,³ as last amended by Regulation (EEC) No 1854/89,⁴ whether the repayment of
import duties is justified in the following circumstances:

¹ OJ L 302, 19.10.1992, p.1 .

² OJ L 253, 11.10.1993, p.1 .

³ OJ L 175, 12.7.1979, p.1.

On 17 August 1993 a German firm, referred to hereinafter as the party concerned, acting as authorised consignor within the meaning of Article 103 of Commission Regulation (EEC) No 1214/92 of 21 April 1992 on implementing provisions and simplification measures for the Community transit procedure,⁵ as last amended by Regulation (EEC) No 3712/92,⁶ inadvertently dispatched under the internal Community transit procedure goods which did not have the status of Community goods and consequently could not be placed under this procedure.

Despite this error, the goods in question were dealt with as non-Community goods and the transit procedure was correctly discharged at the customs office of destination. They were then placed in free circulation in Switzerland.

The German authorities nevertheless collected the import duties on the grounds that a customs debt of XXXXX had been incurred, and the party concerned is requesting that this amount be repaid;

Whereas the applicant firm states that 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 31 October 1997 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;

⁴ OJ L 186, 30.6.1989, p.1.

⁵ OJ L 132, 16.5.1992, p.1.

⁶ OJ L 378, 23.12.1992, p.15.

Whereas the goods were mistakenly placed under the internal Community transit procedure although they did not have the status of Community goods;

Whereas this situation constitutes the removal of goods from customs supervision within the meaning of Article 1 of Commission Regulation (EEC) No 597/89 of 8 March 1989;⁷ whereas the result is a customs debt of XXXXX, in accordance with Article 2(1)(c) of Regulation (EEC) No 2144/87 on customs debt;⁸

Whereas the party concerned asserts that it is the first time it has made this kind of mistake;

Whereas the Community transit procedure had been correctly discharged at the customs office of destination and whereas these goods were dealt as befitted their real status;

Whereas the German authorities argue that the goods in question left the Community customs territory and so did not enter the Community's trade channels;

Whereas all these factors are such as to constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79; whereas the removal of the goods from customs supervision did not have any real impact on the correct operation of the procedure;

⁷ OJ L 65, 9.3.1989, p. 11.

⁸ OJ L 201, 22.7.1987, p.15.

Whereas in the special circumstances of the case in question no deception or obvious negligence may be attributed to the party concerned, it being largely on its initiative that the goods were dealt with as befitted their non-Community status;

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

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXX requested by Germany on 2 July 1997 is hereby found to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 19-01-1998

For the Commission