

COMMISSION DECISION  
of 18/10/1993  
finding that the repayment of import duties  
in a particular case is justified

(request submitted by Germany)

REM 18/93

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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 12 July 1993, received by the Commission on 22 July 1993, 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>, taken over by Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances:

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(1) OJ No L 302, 19.10.1992, p. 1.  
(2) OJ No L 253, 11.10.1993, p. 1.  
(3) OJ No L 175, 12.7.1979, p. 1.  
(4) OJ No L 286, 9.10.1986, p. 1.

On 19 December 1991, a German firm in Rostock applied for authorization for a limited period to import limited quantities of ammonia under the inward processing arrangements for use in the production of nitric acid, ammonium nitrate and nitroline. For internal administrative reasons, authorization of admission under inward processing arrangements was delayed until 22 January 1993.

Since the customs authorities concerned did not consider it possible to apply Article 22 of Regulation (EEC) No 2228/91<sup>(5)</sup> (i.e. to accept the declaration for admission under inward processing arrangements before the appropriate authorization had been issued), from January 1992 to November 1992 the firm entered its goods for release for free circulation since otherwise production would have come to a halt.

As a result the firm accumulated a customs debt of DM 1 864 858.30 through release of the goods for free circulation. The bulk of the imported ammonia was processed in the same way as that which the firm had planned under inward processing arrangements. DM [REDACTED] was the pro rata amount of duties payable in respect of the ammonia which was re-exported after processing, and on 10 February 1993 the firm claimed repayment of that sum under Article 13 of Regulation 1430/79.

Whereas in accordance with Article 8 of Commission Regulation (EEC) No 3799/86 of 12 December 1986<sup>(6)</sup>, taken over by Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 11 November 1993 within the framework of the Committee on Duty Free Arrangements 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;

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(5) OJ No L 210, 31.7.1991, p. 1.  
(6) OJ No L 352, 13.12.1986, p. 19.

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Whereas Article 22(2) of Regulation (EEC) No 2228/91 provides that in duly substantiated exceptional cases the customs authority may accept a declaration before an authorization has been issued provided the application has already been submitted;

Whereas the amount of time that elapsed between the lodging of the application and the issuing of the authorization is entirely due to administrative delays and is in no way attributable to negligence on the firm's part;

Whereas the customs office told the firm that the only thing it could do was to enter the necessary ammonia feedstock for free circulation, and the firm therefore had no choice but to do so;

Whereas the facts occurred shortly after German reunification; whereas the customs office where the application was lodged had no staff familiar with inward processing and the firm itself had no experience with Community rules;

Whereas an audit carried out in June 1993 recorded discharge of the precise quantity of ammonia which was re-exported following processing which corresponded to that which was intended to take place under the inward processing procedure;

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

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 DM [REDACTED] requested by Germany on 12 July 1993 is hereby found to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 21.1.1994

For the Commission