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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19-9-2001

NOT FOR PUBLICATION

**COMMISSION DECISION**

**of 19-9-2001**

**finding that remission of import duties is justified in a particular case and refusing  
Germany authorisation under Article 908 of Commission Regulation (EEC) No 2454/93  
of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No  
2913/92**

**(Request submitted by Germany)**

**(REM 01/2001)**

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**(Request submitted by Germany)**

**(REM 01/2001)**

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> as last amended by Regulation (EC) No 2700/2000,<sup>2</sup>

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<sup>3</sup>, as last amended by Regulation (EC) No 993/2001<sup>4</sup>, and in particular Article 907 thereof,

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<sup>1</sup> OJ L 302, 19.10.1992, p.1

<sup>2</sup> OJ L 311, 12.12.2000, p.17

<sup>3</sup> OJ L 253, 11.10.1993, p.1

<sup>4</sup> OJ L 141, 28.05.2001, p.1

Whereas:

- (1) By letter dated 5 December 2000, received by the Commission on 22 December 2000, 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>5</sup> as last amended by Regulation (EEC) No 1854/89,<sup>6</sup> whether repayment of duties was justified in the following circumstances:
- (2) Between February and June 1991, a German transport company acting as principal placed 75 consignments of livestock under the external Community transit procedure.
- (3) Through subsequent investigations, the competent German authorities found that the goods were not presented to the destination offices listed on the transit documents. It was later established that Belgian customs officials had indicated wrongfully on copy No 5 of the transit documents that the procedure had been discharged and had affixed the original stamp of their customs office.
- (4) Due to this failure to present the goods covered by the transit documents to the customs office of destination, a customs debt was incurred. The authorities therefore claimed import duties of XXXXXX from the company.
- (5) Arguing that it had acted in good faith and that the customs officials had actively participated in the fraud, the company asked for import duties to be remitted in this case.
- (6) In support of the application submitted by the German authorities the company indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.

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<sup>5</sup> OJ L 175, 12.07.1979, p.1.

<sup>6</sup> OJ L 186, 30.06.1989, p.1.

- (7) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 15 June 2001 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.
- (8) Under 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.
- (9) The Court of Justice of the European Communities has consistently taken the view that this provision represents a general principle of equity designed to cover a special situation in which an operator which would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties might find itself compared with other operators carrying out the same activity.
- (10) In this case the company incurred a customs debt through its failure to present the animals in question, which had been placed under the Community external transit procedure, at the destination office.
- (11) As the principal, the company is responsible to the competent authorities for the proper conduct of Community transit operations even if it is the victim of fraudulent activities by third parties. That is part of a principal's commercial risk.
- (12) It is nevertheless accepted that the deliberate and active involvement of customs officials in fraud, notably by discharging transit documents where goods have not been presented, would constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79.

- (13) The principal's liability for the proper conduct of Community transit operations cannot be expected to extend to cases in which representatives of the customs administration actively assist in committing fraud. Unless the principal is himself an accomplice to the fraud, he can legitimately expect the functioning of the administration not to be undermined by corrupt customs officials.
- (14) In this case, it is clear from the dossier submitted to the Commission by the German authorities that the competent national authorities formally found the Belgian customs officials guilty of corruption. The customs officials concerned were suspended and on 10 November 1999 were sentenced by the Court of First Instance of Eupen in Belgium.
- (15) The customs officials' active participation in the fraud meant that the company was unable to determine that the goods had not in fact arrived at the destination office.
- (16) The participation of officials with a direct interest in the operations is a particularly serious factor which fundamentally undermines the system on which Community transit is based. The effectiveness of that customs procedure depends on two factors: the responsibility of the principal for the proper conduct of the operation and the findings of the customs officials duly and properly recorded on the transit documents, on which the operator can legitimately rely.
- (17) Inasmuch as the persons who voluntarily misled the company, and placed it in a situation where it incurred a financial liability to the authorities, were themselves representatives of those authorities, payment of the customs debt would be unfair and would create flagrant legal insecurity for traders.
- (18) Taken together, these factors constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79.

- (19) In the circumstances of this case no deception or obvious negligence can be attributed to the company concerned, as the competent German authorities confirm.
- (20) Remission of import duties is therefore justified in this case.
- (21) Under Article 908 of Regulation (EEC) No 2454/93, where the circumstances under consideration justify repayment or remission, the Commission may, under conditions which it shall determine, authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and of law.
- (22) In a letter of 5 December 2000 the Federal Republic of Germany requested authorisation to repay or remit duties in cases involving comparable issues of fact and law.
- (23) However, the decision in question is extremely unusual, both in fact and in law. It cannot therefore serve as a reference for national decisions taken in application of an authorisation granted by the Commission,

HAS ADOPTED THIS DECISION:

*Article 1*

The remission of import duties in the sum of XXXXX requested by the Federal Republic of Germany on 5 December 2000 is hereby found to be justified.

*Article 2*

The authorisation requested by the Federal Republic of Germany in its letter of 5 December 2000 under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 is not granted.

*Article 3*

This Decision is addressed to Germany.

Done at Brussels, 19-9-2001

*For the Commission*

*Member of the Commission*