

COMMISSION DECISION

of 21.10.1993

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

(request submitted by Germany)

REM 20/93

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 12 August 1993, received by the Commission on 26 August 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,³ as last amended by Regulation (EEC) No 3069/86⁴, whether the repayment of import duties is justified in the following circumstances:

- 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.

In 1992, a German company imported various car parts and cars originating in Bosnia-Herzegovina, as it had for several years. For some of the declarations for free circulation, it was unable to present the EUR 1 certificates entitling the goods to preferential tariff treatment, so customs duty was charged at the usual rate. The company lodged a request for repayment of the difference between the usual rate of duty and the preferential tariff, which amounted to DM [REDACTED], under Article 13 of Regulation No 1430/79, arguing that the situation in former Yugoslavia had prevented it from producing the movement certificates required and that during the year in question, the company's subsidiary had been destroyed and all contact with its former agents lost.

Whereas in accordance with Article 8 of Commission Regulation (EEC) No 3799/86⁵ of 12 December 1986, as incorporated into 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;

Whereas Commission Regulation (EEC) No 343/92 of 22 January 1992 defines the concept of originating products and sets out methods of administrative cooperation applicable to imports into the Community of products originating in Bosnia-Herzegovina;⁶

5 OJ No L 352, 13.12.1986, p.19.

6 OJ No L 38, 14.2.1992, p. 1.

Whereas for the application of preferential tariff treatment granted by the Community to products originating in Bosnia-Herzegovina, Article 9 of that regulation states that evidence of originating status shall be provided by the EUR 1 certificate;

Whereas, in accordance with Article 10 of that regulation, it is for the competent authorities of the exporting beneficiary republic to issue certificates and to verify that it really concerns products originating in the beneficiary republic in question;

Whereas, while EUR 1 certificates were issued in the past for products apparently identical to those later imported without such a certificate, the importing Member States may not make assumptions about the conditions in which the products were actually produced and grant preferential treatment without any documentary evidence of the preferential status of each of the products;

Whereas, moreover, the EUR 1 certificates presented in the past were issued in the context of the EEC-Yugoslavia Agreement while the EUR 1 certificates required in the case in question were subject to the specific autonomous arrangements applicable to Bosnia-Herzegovina, separate from the other Republics;

Whereas, consequently, no evidence of originating status was provided and there is nothing to suggest that the products originated in areas of Bosnia under Bosnian control; whereas, therefore, there is no evidence to justify granting preferential treatment;

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 DM [REDACTED] requested by Germany on 12 August 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 21 2.1994

For the Commission