

COMMISSION DECISION

of 20-07-1998

finding that the repayment of import duties in a particular

case is justified

(request submitted by the French Republic)

Ref. **REM 12/98**

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 2913/92,² and in particular Article 907 thereof,

Whereas by letter dated 23 February 1998, received by the Commission on 5 March 1998, the French Republic 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:

On 3 September 1996 a French company, hereinafter referred to as "the party concerned", removed eighteen palettes of polyterpene resins originating in the United States of America and falling under CN heading 3911 10 00 from its type C customs warehouse without authorisation. On the same day these goods were exported to the Czech Republic using an EX1 export declaration.

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

Since the goods were removed from a customs warehouse, the party concerned should have completed an EX3 export declaration. The goods in question were thus removed from the customs warehouse procedure without completion of the necessary formalities.

The competent French authorities therefore requested payment of import duties as a customs debt amounting to XXXXX had been incurred, repayment of which is requested by the party concerned.

Whereas the party concerned has indicated that it has been informed about the dossier sent to the Commission by the French authorities, and that it 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 7 May 1998 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

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, because of an mistake by the party concerned, the goods in question left the customs warehouse where they were being stored and were exported without the customs formalities normally required having been completed;

Whereas this situation gave rise to a customs debt of XXXX under Article 204 of Regulation (EEC) No 2913/92;

Whereas Article 859 of Regulation (EEC) No 2454/93 does not apply in this case since the formalities necessary to regularise the situation could not be carried out subsequently;

Whereas, however, the French authorities point out that the goods concerned actually left Community customs territory and therefore did not enter into circulation for Community commercial channels; whereas the goods were in fact declared for import into the Czech Republic;

Whereas, moreover, the French authorities state that the party concerned normally administered his warehouse correctly;

Whereas all the facts combined constitute a situation such as described in Article 239 of Regulation 2913/92; whereas, in particular, the infringements concerned had no significant effect on the correct operation of the procedure;

Whereas the circumstances in this case do not involve either deception or obvious negligence by the party concerned; whereas, on the contrary, it was on the initiative of the party concerned that the authorities were notified of its error less than one day after it had been committed;

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 the French Republic on 23 February 1998 is hereby found to be justified.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 20-07-1998

For the Commission