

COMMISSION DECISION

of 22-7-1996

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

(request submitted by Denmark)

REM 2/96

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 14 February 1996, received by the Commission on 20 February 1996, Denmark 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> and Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances:

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<sup>1</sup> OJ No L 302, 19.10.1992, p.1.

<sup>2</sup> OJ No L 253, 11.10.1993, p.1.

<sup>3</sup> OJ No L 175, 12.07.1979, p.1.

<sup>4</sup> OJ No L 286, 09.10.1986, p.1.

In 1993 a Danish textile firm had economic outward processing operations carried out in Poland and the Czech Republic. In accordance with the rules in force, the firm had obtained the prior authorizations provided for by Council Regulation (EEC) No 636/82 of 16 March 1982 establishing economic outward processing arrangements applicable to certain textile and clothing products reimported into the Community after working or processing in certain third countries;<sup>5</sup> these served at the same time as customs authorizations for outward processing.

When, in 1993, the firm sought to extend its operations to Lithuania, Denmark's competent authorities failed to point out to the firm that the regulatory framework was different from that applying to Poland and the Czech Republic and that a customs outward processing authorization was therefore necessary, inasmuch as the prior authorization laid down in Regulation (EEC) No 632/82 was not applicable.

Thus, from 15 October 1993 to 15 July 1994, textile products were sent to Lithuania for outward processing under export declarations indicating, in box 37, that the goods were to undergo such processing. The compensating products were reimported from 10 December 1993 to 22 August 1994, with import duties being paid on the value added to the basic goods exported.

When conducting retrospective checks in 1994, the customs authorities found that the firm had sent 23 consignments for outward processing in Lithuania without customs authorization. Duties totalling XXXXX were recovered, and the firm is now claiming repayment.

Whereas the firm declares that it has taken note of the application sent by the Danish authorities to the Commission and has nothing to add to it;

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 3 June 1996 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

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<sup>5</sup> OJ No L 76, 20.3.1982, p.1.

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79, which applies to duties entered in the accounts prior to 1 January 1994, 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 Article 239 of Regulation (EEC) No 2913/92, which applies to duties entered in the accounts since 1 January 1994, provides for the repayment or remission of import duties in 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 use of the outward processing procedure is subject to the person concerned applying for and obtaining prior authorization, in accordance with Article 4 of Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system<sup>6</sup> and Articles 85 and 147 of Regulation (EEC) No 2913/92;

Whereas the firm in question had neither obtained nor applied for such authorization in respect of exports carried out between 15 October 1993 and 15 July 1994;

Whereas the customs authorities' acceptance of export declarations showing, in box 37, that the export goods were to be reimported after outward processing constitutes neither prior authorization nor even an application for such authorization;

Whereas failure to comply with rules constitutes neither a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 nor a situation covered by Article 239 of Regulation (EEC) No 2913/92;

Whereas the fact that Denmark's competent authorities did not point out to the firm the need for an authorization does not constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 or a situation covered by Article 239 of Regulation (EEC) No 2913/92 either;

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<sup>6</sup> OJ No L 212, 2.8.1986, p.1.

Whereas, moreover, the firm had already conducted outward processing operations with other non-member countries and could not be unaware that this economic procedure required prior authorization; whereas this error has to be considered obvious negligence;

Whereas, therefore, the repayment of the import duties requested is not justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXX requested by Denmark on 14 February 1996 is hereby found not to be justified.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 22-7-1996

For the Commission