

Commission Decision
of 03-03-1998
finding that remission of import duties in a particular
case is not justified

(request submitted by the Netherlands)

Ref. REM 18/97

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 1 September 1997, received by the Commission on 4 September 1997, the Netherlands 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 duties³, as last amended by Regulation (EEC) No 1854/89, ⁴ whether the remission 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 186, 30.6.1989, p. 1.

In November and December 1993, a Dutch firm drew up Community external transit documents for consignments of cigarettes bound for Morocco.

However, the goods were not presented at the customs office of destination and the stamps and signatures on the transit documents were forged. The failure to present the goods at the office of destination gave rise to a customs debt of XXXXX.

Arguing that it had acted in good faith and been the victim of fraud by organised criminal groups, the firm applied for the import duties to be remitted;

Whereas the firm has stated that it has seen the dossier submitted to the Commission by the Netherlands authorities and 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 9 January 1998 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas Article 13 of Regulation (EEC) No 1430/79 allows import duties to 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 the firm has incurred a customs debt because goods placed under the Community transit procedure were not presented at the customs office of destination;

Whereas, the firm, as principal, is responsible to the competent authorities for the proper conduct of the Community transit operations even if it is the victim of fraudulent activities by third parties; whereas such activities are one of the business risks that must be borne by the firm;

Whereas the information contained in the dossier provided by the Dutch authorities does not positively prove that any Community customs officials were involved in the fraud;

Whereas, therefore, the circumstances described above do not constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79; whereas this applies even if, as in this case, the firm has acted in good faith and taken precautions in respect of its client, notably by making authorisation of each new consignment under the Community transit procedure subject to presentation of the T1 receipt for the previous consignment;

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

HAD DECIDED AS FOLLOWS:

Article 1

The remission of import duties in the sum of XXXXXX requested by the Netherlands on 1 September 1997 is hereby found not to be justified.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 03-03-1998

For the Commission