

REM/YES

Commission Decision
of 14-02-1997
finding that the remission of import duties in a particular
case is justified

(request submitted by United Kingdom)

REM 13/96

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,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 7 October 1996, received by the Commission on 19 October 1996, the United Kingdom asked the Commission to decide - under both 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 3069/86,⁴ and Article 239 of Regulation (EEC) No 2913/92 - 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 286, 9.10.1986, p.1.

A United Kingdom operator applied for an inward processing authorization to cover the period from 25 February 1993 to 24 February 1994. The operator's application correctly stated the value and total quantity of goods involved but, by an oversight, gave only one Combined Nomenclature heading although the products to be processed are normally classified under three different eight-digit headings. In this case the heading given was 85 04 21 00 whereas headings 85 04 22 10 and 85 04 22 19 should also have been mentioned.

The national authorities responsible for examination of the economic circumstances examined the application in the light of contracts requiring the operation and other documentary evidence requested, and duly presented, in support of the application for authorization. The authorities then recommended authorization. Their examination had considered what goods were required to complete the operator's commercial contract and was not restricted to goods coming under the CN heading stated in the application for authorization.

The United Kingdom customs authorities then issued an inward processing authorization without commenting on the goods description.

During the period of validity of the authorization, the party concerned first imported the goods for the contract duty-free into the United Kingdom and then, after processing, re-exported them in the form of compensating products.

Not until they carried out an inspection on the operator's premises did the customs authorities notice that the description given for the imported goods in the inward processing authorization was incomplete. As the goods should therefore not have been cleared for duty-free import into the Community, the customs authorities demanded post-clearance payment of XXXXX, i.e. the duty whose remission the applicant is now requesting.

Whereas the operator concerned declares that he has taken note of the dossier sent to the Commission by the United Kingdom 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 10 January 1997 within the framework of the Customs Code Committee - Section for General Customs

Rules/Repayment - to examine the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79 (applicable in this instance to the goods imported before 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 in accordance with Article 239 of Regulation (EEC) No 2913/92 (applicable in this instance because the goods were imported as from 1 January 1994) import duties may be repaid or remitted in special situations (other than those laid down in Articles 236, 237 and 238 of the said Regulation) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas the eight-digit Combined Nomenclature heading given by the party concerned in the application for authorization applied to only part of the products imported for processing;

Whereas the inward processing authorization formally covered only goods for processing coming under the eight-digit heading shown in the application; whereas, therefore, the authorization did not cover the other goods for processing and a customs debt was thereby incurred;

Whereas in this instance the authorization was issued following an examination of the economic conditions which was carried out on the basis of the goods required to complete the commercial contract entered into by the party concerned and this examination was not restricted to goods coming under the CN heading stated in the application for authorization;

Whereas according to the appropriate United Kingdom authorities, the operator kept to the total value and quantity of goods stated in both the application and the authorization, the goods concerned were under customs supervision at all times and all procedures and rules on documentary evidence, subject to which the relief was granted, have been complied with; whereas, in particular, the processed goods have been exported from the Community and therefore have not been released for free circulation here.

Whereas the case under consideration may therefore be considered a special case within the meaning of Article 13 of Regulation (EEC) No 1430/79 and as the type of situation referred to in Article 239 of Regulation 2913/92;

Whereas in the special circumstances of the case in question no deception or obvious negligence may be attributed to the person concerned since the information on the Combined Nomenclature classification of import goods, which an applicant has to provide in a request for inward processing authorization, is for information only;

Whereas, therefore, the remission of import duties requested is justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by the United Kingdom on 7 October 1996 is hereby found to be justified.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 14-02-1997

For the Commission