

COMMISSION DECISION

of 19.5.1993

finding that the repayment of import duties in a particular case is justified

(request submitted by Germany)

REM : 17/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties⁽¹⁾, as last amended by Regulation (EEC) No 3069/86⁽²⁾,

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties⁽³⁾, and in particular Article 8 thereof,

Whereas, by letter dated 10 November 1992, received by the Commission on 19 November 1992, Germany requested the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the repayment of import duties is justified in the following circumstances :

(1) OJ No L 175, 12.7.1979, p. 1

(2) OJ No L 286, 9.10.1986, p. 1

(3) OJ No L 352, 13.12.1986, p. 19

In December 1991/January 1992 a German firm imported from the former Yugoslavia (Serbia) textile products for which it had previously supplied materials of EC origin. The imported goods were entered for free circulation and the firm paid customs duty amounting to DM 118,151.99.

Prior to November 1991, the firm had clothing made in Yugoslavia from materials of EC origin which it had supplied; when the clothing was reimported, the firm benefitted from preferential tariff arrangements on presentation of an EUR1 movement certificate under the EEC/Yugoslavia agreements. Since it was able to bring the goods in duty-free under the rules on the origin of goods, the firm had no reason to use the outward processing procedure.

The materials supplied for the imports in question were simply exported in the usual way before November 1991, when the EEC/Yugoslavia Agreement was still in force. However, the clothing was not reimported until after 11 November 1991, when the Community renounced the agreement with Yugoslavia by virtue of Council Regulation (EEC) No. 3300/91 of 11 November 1991⁽⁴⁾.

Since the agreement was no longer in force, the imported goods were no longer entitled to preferential tariff arrangements and CCT duties had to be paid.

After November 1991, the firm applied for an outward processing authorisation for future operations, which was granted and was used until the entry into force of the embargo against Serbia.

The firm has applied for a repayment of duty in respect of importations made in December 1991 and January 1992, corresponding to the difference between the duty paid and the duty it would have had to pay if the outward processing procedure had been used, i.e. DM [REDACTED]

(4) OJ No. L 315, 15 November 1991.

Whereas, in accordance with the requirements of Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 25 March 1993 within the framework of the Committee on Duty Free Arrangements to consider the case in question;

Whereas, in accordance with Article 13, (1), of Regulation (EEC) No 1430/79, the reimbursement or remission of import duties may be authorised in special situations other than those laid down in sections A to D of the said regulation resulting from circumstances which do not imply any negligence or deception on the part of the person concerned;

Whereas, before the EEC/Yugoslavia agreement was terminated, the firm in question had no economic reason to use the outward processing procedure for manufacturing clothing from materials of Community origin in Yugoslavia and therefore the materials to be used in the manufacture of the goods in question were simply exported;

Whereas when use of the outward processing procedure subsequently became necessary in order to benefit from preferential treatment on importation of the products, the firm obtained the required authorisation;

Whereas the German authorities possess proof that the goods exported and those reimported correspond;

Developments in the political situation in the former Yugoslavia led the Community to denounce the EEC/Yugoslavia Agreement; whereas this termination of the agreement created an exceptional situation which could not have been foreseen by the person concerned;

Whereas the special circumstances of the case in question do not therefore imply any negligence or deception on the part of the person concerned.

Whereas it is therefore justified in this case to grant the repayment of import duties requested, i.e. the amount corresponding to the difference between the duty paid and that which would have had to be paid if the outward processing procedure had been used.

HAS ADOPTED THIS DECISION :

Article 1

The repayment of the import duties of DM [REDACTED] requested by Germany on 10 November 1992 is hereby found to be justified.

Article 2

This Decision is addressed to Germany

Done at Brussels, 19.9.1993

For the Commission