

REMB/NO

COMMISSION DECISION
of 18-7-1994
finding that the repayment of import duties in a particular
case is not justified

(request submitted by France)

REM 5/94

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 July 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 Council Regulation (EEC) No 2913/92, and in particular Article 907 thereof,²

Whereas by letter dated 17 February 1994, received by the Commission on 22 February 1994, France asked the Commission to decide under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979,³ as last amended by Regulation (EEC) No 3069/86,⁴ whether the repayment 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 French company has been regularly importing unbleached viscose staple fibre originating in the former Yugoslavia since 1989. These goods have been released for free circulation exempt from customs duty on presentation of EUR 1 certificates naming Yugoslavia as the country of origin. For consignments cleared following the recognition of the Republic of Bosnia-Herzegovina, however, problems arose with the EUR 1 certificates of Bosnian origin. In order to regularize imports cleared between 14 January and 4 March 1992, the company retrospectively produced EUR 1 origin certificates for Bosnia-Herzegovina stamped by the Chamber of Commerce in Banja Luka. Customs rejected the certificates on the grounds that they should have been stamped by the Sarajevo Chamber of Commerce instead. The company then duly produced new EUR 1 certificates with the stamp of the Sarajevo Chamber of Commerce. These too were rejected by customs because the EUR 1 certificates on which the stamps had been placed were only photocopies of the originals, though the stamps themselves were valid.

In July 1992 customs requested post-clearance verification of the certificates by the Bosnian authorities. Because of the war, however, French customs received no response to the request, while the company was likewise unable to obtain fresh EUR 1 certificates stamped by the Banja Luka Chamber of Commerce. The company therefore paid the sum of XXXXX in duties, of which it is now seeking the repayment;

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 19 May 1994 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to consider the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79, 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 Council Regulation (EEC) No 3300/91 of 11 November 1991 provides for the suspension, from that date, of the EEC-Yugoslavia Agreement ⁵; whereas EUR 1 origin certificates issued for Yugoslavia since then are no longer valid when presented with imported goods;

Whereas the preferential arrangements were partly restored for four former Yugoslav republics, including Bosnia-Herzegovina, from 2 December 1991; whereas the tariff preference could therefore be granted only upon presentation of a EUR 1 origin certificate naming Bosnia-Herzegovina and stamped by the Bosnian Chamber of Commerce;

Whereas the EUR 1 certificates subsequently presented continued to name Yugoslavia as the country of origin; whereas the stamps they bore were invalid;

Whereas the war situation cannot justify the absence of any reference to the correct country of origin or the invalidity of the various certificates presented; whereas, in the absence of a certificate in good and due form, there remains a considerable risk that the goods actually originate in parts of the former Yugoslavia which the Community has excluded from the preferential arrangements; whereas, in these circumstances, there is no special situation;

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

⁵ OJ No L 315, 15.11.1991, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX requested by France on 17 February 1994 is hereby found not to be justified.

Article 2

This Decision is addressed to France.

Done at Brussels, 18-7-1994

For the Commission