

COMMISSION DECISION

of ... 5 1494

finding that the repayment of import duties in a particular

case is not justified

(request submitted by Belgium)

REM 21/93

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

Whereas by letter dated 12 November 1993, received by the Commission on 22 November 1993, Belgium 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,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.

In Antwerp on 18 August 1988, 244 cartons of men's cotton shirts imported from Mauritius were released for free circulation without payment of customs duties on production of an EUR 1 certificate. An inspection by the Commission of the European Communities revealed this EUR 1 certificate to be invalid. The fabric used had been exported to Mauritius from Switzerland accompanied by EUR 1 certificate number Z530015 dated 17 February 1988, and the preferential tariff for goods originating in ACP countries had been granted in error, since the Swiss EUR 1 certificate had not been issued within the framework of an EFTA-EC agreement. Import duties of BEF [REDACTED] were therefore due.

On 21 September 1993, the company involved conceded that tariff preferences on grounds of origin could not be granted, but requested that outward processing arrangements be applied retroactively (to 1988), and that a refund be made on the basis of Article 13 of Regulation (EEC) No 1430/79 to cover the difference between the duties paid and the duties which would be chargeable under the outward processing arrangements.

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 4 February 1994 within the framework of the Customs Code Committee 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 use of the outward processing arrangements requires prior authorization;

Whereas under the terms of Article 751(1) of Regulation (EEC) No 2454/93 the customs authorities may in duly substantiated exceptional cases issue retroactive outward processing authorizations; whereas the retroactive effect may not predate the time when the application was lodged, and whereas the declarant had made no such application;

Whereas the fabric of Swiss origin was not released for free circulation in the Community;

Whereas Article 4(2)(c) of Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Regulation (EEC) No 1430/795 stipulates that the production, even in good faith, for the purpose of securing preferential tariff treatment of goods entered for free circulation, of documents subsequently found to be forged, falsified or not valid for the purpose of securing such preferential tariff treatment is not a special situation;

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

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of BEF [REDACTED] requested by Belgium on 12 November 1993 is hereby found not to be justified.

Article 2

This Decision is addressed to Belgium.

Done at Brussels, 5 5 1994

For the Commission