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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28-5-2003  
C(2003)1709

Not for publication

**COMMISSION DECISION**

**of 28-5-2003**

**finding that remission of import duties is justified in a particular case**

**(Only the German text is authentic.)**

**(Request submitted by Germany)**

**(REM 06/2003)**

FR

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**(Request submitted by Germany)**

**(REM 06/2003)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,<sup>1</sup> as last amended by Regulation (EEC) No 1854/89,<sup>2</sup>

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,<sup>3</sup> as last amended by Regulation (EC) No 444/2002,<sup>4</sup> and in particular Article 907 thereof,

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<sup>1</sup> OJ L 175, 12.7.1979, p. 1.

<sup>2</sup> OJ L 186, 30.6.1989, p. 1.

<sup>3</sup> OJ L 253, 11.10.1993, p. 1.

<sup>4</sup> OJ L 68, 12.3.2002, p. 11.

Whereas:

- (1) By letter dated 18 October 1999, received by the Commission on 27 October 1999, Germany asked the Commission to decide, under Article 13 of Regulation (EEC) No 1430/79, whether the repayment of import duties is justified in the following circumstances:
- (2) In December 1993 a German firm asked a German customs office to clear four consignments of South American beef for free circulation; they came to a total weight of 51 843 kg and were classified in heading 0202 of the Combined Nomenclature (CN). When the goods were released for free circulation the firm produced extracts of Spanish import certificates dated 18 and 19 October 1993. These extracts had been bought through an Italian firm, which wanted the original certificates returned after use.
- (3) When the extracts were presented, the customs office authorised the release for free circulation of the consignments, against a charge of 20% duty, under the quota opened by Council Regulation (EEC) No 3392/92 of 23 November 1992 opening and providing for the administration of a Community tariff quota for meat of bovine animals, frozen, falling with CN code 0202 and products falling within CN code 0206 29 91 (1993).<sup>5</sup> The quantities cleared through customs were deducted from the respective certificates, which were then returned to the firm.
- (4) Following enquiries made by the Member States and coordinated by the Commission departments it emerged that false import certificates had been sold in several Member States. As a result of these judicial enquiries, a definitive judgment was passed in Italy regarding the false certificates, including the three extracts presented by the German firm. This is the basis on which the extracts of certificates are deemed to be false.

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<sup>5</sup> OJ L 346, 27.11.1992, p. 3.

- (5) Since the products imported into Germany were therefore not eligible for preferential treatment, the competent customs office demanded payment by the firm of the import duty due, a sum of XXXXX, remission of which is requested in this case.
- (6) In accordance with Article 905 of Regulation (EEC) No 2454/93, the firm stated that it had seen the dossier sent to the Commission by the German authorities, and added several comments which were passed on to the Commission by the German authorities in their letter of 18 October 1999.
- (7) By Decision C(2000) 2207 def. of 25 July 2000 (REM 49/99), the Commission refused this remission request on the grounds that the circumstances of this case did not constitute a special situation.
- (8) In its judgment in Case [T-329/00](#), the Court of First Instance of the European Communities annulled the above-mentioned Commission Decision of 25 July 2000 on the grounds that there were two circumstances which, in the absence of any deception or negligence on the part of the person liable for taxation, were such as to constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79: firstly, the Spanish authorities had breached their obligations under Article 28(4) of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products<sup>6</sup> in that they did not send the Commission the stamp used in 1993 for making out import certificates for the GATT quota until that stamp was no longer valid and, secondly, the Commission had failed to exercise due diligence in that it had not promptly warned the other Member States' authorities that Spanish certificates and extracts of certificates were being falsified.

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<sup>6</sup> OJ L 331, 2.12.1998, p. 1.

- (9) The Commission must follow up the annulment and review the applicability of Article 13(1) of Regulation No 1430/79 to the circumstances of this case in the light of the Court of First Instance's judgment as the periods referred to in Articles 907 and 909 of Regulation (EEC) No 2454/93 run from the date of delivery of the judgment.
- (10) 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 7 May 2003 within the framework of the Customs Code Committee (Section for Repayment) to consider the case.
- (11) 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.
- (12) The Court of Justice of the European Communities has tended to the view that Article 13 of Regulation (EEC) No 1430/79 represents a general principle of equity designed to cover an exceptional situation in which an operator might find himself compared with other operators carrying out the same activity.
- (13) In the case in point, the granting of preferential tariff treatment for the imports was subject to presentation of import certificates.
- (14) As has been pointed out, it is accepted in this case that the extracts of certificates were falsified.
- (15) Reliance on the validity of such certificates is not normally protected, as this is considered part of the importer's normal commercial risk and therefore the responsibility of the person liable for payment.

- (16) However, the Court of First Instance has in this case taken the view that the behaviour of the Spanish authorities and of the Commission rendered ineffective Article 28(4) of Regulation (EEC) No 3719/88 and Article 14a of Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters.<sup>7</sup> As a result, it was not until May or June 1994 that the other Member States' competent authorities first received the vital information they needed to detect falsified Spanish certificates and extracts of certificates, including those involved in this case, concerning the import of beef under the 1993 GATT quota and to identify the culprits. If, however, after being notified of the first falsifications in August 1993, the Commission had asked the Spanish authorities, to send it a copy of the authentic stamp, a specimen of the signature of the official authorised to sign the certificates and extracts issued for the purposes of the 1993 GATT quota and a list of all valid certificates and extracts issued for the purposes of the quota, and if the Commission had promptly sent that information to the other Member States' competent authorities, it is probable that the fraudsters would already have been identified by the time the firm purchased the extracts in question in October 1993. In any case the fact that the extracts concerned were falsified could have been detected before December 1993, when the firm incurred a customs debt.
- (17) In the light of the above, the behaviour of the Spanish authorities and the Commission has to be considered such as to constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79.
- (18) Furthermore, the circumstances of this case involve no deception or obvious negligence on the part of the firm.
- (19) Therefore the remission of import duties requested is justified in this case,

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<sup>7</sup> OJ L 144, 2.6.1981, p. 1.

HAS ADOPTED THIS DECISION:

*Article 1*

The remission of import duties in the sum of XXXXXX requested by Germany on 18 October 1999 is justified.

*Article 2*

This Decision is addressed to Germany.

Done at Brussels, 28-5-2003

*For the Commission*

Frits Bolkestein

*Member of the Commission*