

COMMISSION DECISION

of 27-04-1998

finding that the repayment of import duties in a particular case is justified and authorising the Federal Republic of Germany to repay or remit duties in cases involving comparable issues of fact and of law.

(request submitted by the Federal Republic of Germany)

REM: 27/97

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 1992¹ establishing the Community Customs Code,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993² laying down provisions for the implementation of Regulation (EEC) No 2913/92, and in particular Article 907 thereof,

Whereas by letter dated 22 October 1997, received by the Commission on 29 October 1997, the Federal Republic of Germany asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979³ on the repayment or remission of import or export duties, as last amended by Regulation (EEC) No 1854/89⁴, whether the repayment of import duties is justified in the following circumstances:

¹ OJ L 302, 19.10.1992, p.1

² OJ L 253, 11.10.1993, p.1

³ OJ L 175, 12.07.1979, p.1

⁴ OJ L 186, 30.06.1989, p.1

A German company has been importing goods from Finland since 1985, normally having the import formalities carried out by a forwarding agent. The company enters the goods for free circulation in the Community duty-free on presentation of preferential certificates.

On 13 June 1992, the forwarding agent placed 30 pallets of wooden flooring blocks (CN code 4409 20 99 0000) under the external Community transit procedure.

The goods were delivered direct to the consignee without having been presented at the customs office of destination. In the course of the enquiry proceedings the company presented to the competent customs office the undischarged transit document and three invoice origin declarations for the goods in question.

Since failure to fulfil the obligations arising from use of the Community transit system meant a customs debt was incurred, the competent customs office issued a notice of recovery for XXXXX, the amount for which repayment is now requested.

Whereas the company states that it has seen the dossier submitted to the Commission by the German 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 9 January 1998 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 goods placed under a Community transit procedure must be presented at the customs office of destination, failing which a customs debt will be incurred in accordance with Regulation No 2144/87 on customs debt⁵;

Whereas the company argues, however, that it had never before received goods not cleared through customs and it was unaware at the time that the goods had to be presented again, at the customs office of destination;

Whereas proper origin declarations were produced for the imported goods, together with the transit document;

Whereas according to the German authorities there is no doubt that the imported goods were the ones identified in the document;

Whereas these circumstances, and in particular the fact that the company actually had in its possession valid documents showing the origin of the goods in question, are such as to constitute a special situation within the meaning of Article 13 of Regulation No 1430/79; whereas a similar case occurring today would be covered by Article 900(1)(o) of Regulation No 2454/93;

Whereas in the circumstances of the case in question no deception or obvious negligence may be attributed to the party concerned;

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

⁵ OJ L 201, 22.07.1987, p.15

Whereas under Article 908 of Regulation (EEC) No 2454/93 the Commission may, if the particular situation under consideration justifies repayment or remission, and under conditions which it shall determine, authorise a Member State to repay or remit duties in cases involving comparable issues of fact and of law;

Whereas by letter dated 22 October 1997, received by the Commission on 29 October 1997, the Federal Republic of Germany asked to be authorised to repay or remit duties in various cases involving comparable issues of fact and of law;

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX requested by the Federal Republic of Germany on 22 October 1997 is hereby found to be justified.

Article 2

The Federal Republic of Germany is hereby authorised to repay or remit the duties owed in cases involving issues of fact and of law comparable to those involved in the case presented by the Federal Republic of Germany on 22 October 1997.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 27-04-1998

For the Commission

