

COMMISSION DECISION

of 28-01-1998

finding that the remission of import duties in a particular
case is not justified
(request submitted by France)

Ref.: **REM 12/97**

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 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 22 July 1997, received by the Commission on 28 July 1997, France asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission 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.

Since 1991 a French firm, hereinafter referred to as the firm concerned, has been importing from Brazil copper-alloy household articles which have been plated with silver by electrolysis. The goods were declared under heading either 73 23 or 74 18 of the Combined Nomenclature. Goods under either heading qualified for duty-free admission under the Generalised System of Preferences (GSP) on presentation of a Form A certificate of origin.

On 26 July 1994 customs queried the tariff heading used and stated that these goods should have been declared under tariff heading 71 14; goods under this heading also qualify for duty-free admission under the GSP.

From 26 July 1994 onwards, the firm concerned declared the goods under the tariff heading indicated by customs.

When a further customs check was carried out in 1996, the tariff heading declared was again queried. Customs then stated that the correct tariff heading was 74 18. Since under this heading import duties had been reintroduced from 1 January 1995 for goods originating in countries qualifying for the GSP, the French authorities subsequently charged the sum of XXXXX for imports effected in 1995 and 1996. The firm concerned is requesting that this sum be remitted;

Whereas the firm concerned states that it has seen the dossier submitted to the Commission by the French 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 31 October 1997 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 239 of Regulation (EEC) No 2913/92, import duties may be repaid or remitted in special situations, other than those laid down in Articles 236, 237 and 238 of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas it is as a result of an error by the French customs authorities that the duties were not collected; whereas the authorities repeatedly accepted the customs declarations with the wrong tariff classification and they also expressly told the firm concerned, when carrying out a check, which tariff heading should be used;

Whereas, however, where a trader has doubts about the accuracy of the tariff classification of goods he must make enquiries and obtain maximum clarification in order to check whether his doubts are justified; whereas this requirement may be considered as being met where the trader can take as a basis tariff information supplied by the customs authorities of a Member State;

Whereas in this case the firm concerned had difficulties itself in deciding on the tariff classification of the goods it was importing in that it used two different tariff headings between 1991 and 1994;

Whereas the tariff heading which was indicated by the supervising customs office on 26 July 1994 and which was then used by the firm concerned is not the result of an official classification opinion nor of an expert study by specialised national authorities; whereas it is merely the result of a position adopted by a supervising customs office, which should not give rise to legitimate expectations on the part of the firm concerned;

Whereas a diligent trader would have requested a binding tariff information from the French administration in order to avoid any difficulties, not just in August 1996 but in July 1994, and this would have protected him in the event of any queries about the tariff classification used;

Whereas the error made by the customs authorities should not be such as to constitute a situation, covered by Article 239 of Regulation (EEC) No 2913/92, in which no particular deception or negligence may be attributed to the firm concerned ;

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

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXX requested by France on 22 July 1997 is hereby found not to be justified.

Article 2

This Decision is addressed to France.

Done at Brussels, 28-01-1998

For the Commission