

COMMISSION DECISION

of 12-12-1997

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

(request submitted by Germany)

Ref. **REM 7/97**

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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,<sup>1</sup>

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92, and in particular Article 907 thereof,<sup>2</sup>

Whereas by letter dated 4 June 1997, received by the Commission on 12 June 1997, Germany 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,<sup>3</sup> as last amended by Regulation (EEC) No 3069/86,<sup>4</sup> whether the remission of import duties is justified in the following circumstances:

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<sup>1</sup> OJ No L 302, 19.10.1992, p. 1.

<sup>2</sup> OJ No L 253, 11.10.1993, p.1.

<sup>3</sup> OJ No L 175, 12.7.1979; p.1.

<sup>4</sup> OJ No L 286, 9.10.1986, p.1.

Between 25 March and 16 June 1992 a German tobacco manufacturer (hereinafter referred to as the party concerned), acting as the principal, placed a total of 57 230 000 cigarettes, divided into six consignments, under the Community transit procedure.

These goods were not presented at the customs office of destination, thereby giving rise to a customs debt of XXXXX.

Stating that he had acted in good faith and that the customs officers had actively abetted the fraud, the party concerned has requested the remission of the import duties chargeable in this case.

Whereas the party concerned states that he has seen the dossier submitted to the Commission by the German authorities and has nothing to add; whereas he further sent a statement of his position to the German authorities, which forwarded it to the Commission in annex to their letter of 4 June 1997;

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 September 1997 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 because the goods, which had been placed under the Community transit procedure, were not presented at the designated customs office of destination the party concerned incurred a customs debt;

Whereas in this instance, according to the German authorities, two customs officers working at the German-Polish border knowingly and actively participated in the fraud by

certifying, on the document provided for the purpose, that the sealed vehicles containing the goods had been presented at the customs office of destination;

Whereas because of this participation by the customs officers the party concerned was in no position to realise that the goods had not left Community territory;

Whereas, by accepting the role of principal vis-à-vis the authorities, the applicant accepted responsibility for correct completion of the Community transit operation, even if he became the victim of the fraudulent activities of organised criminals;

Whereas, however, when he assumes the risks connected with the correct completion of a transit operation a principal cannot be expected also to take on the risk of members of the customs administration themselves actively abetting a fraud; whereas a principal, who is innocent of any links with such activities, is entitled to expect that the functioning of the administration is not undermined by the activities of corrupt customs officials.

Whereas the activities of officials directly involved in the operations in question is a particularly serious factor which fundamentally undermines the system on which Community transit is based; whereas the effectiveness of that procedure depends on two factors, namely the responsibility a principal accepts for proper completion of an operation and the due and correct certification by customs officers on the appropriate transit documents that an operation has been completed, on which the applicant can legitimately rely;

Whereas it was members of the administration itself who deliberately put the party concerned in the wrong and placed him in a situation where he was financially liable to those same authorities;

Whereas it would therefore be unjust to require payment of the customs debt, particularly as this would create flagrant legal insecurity for traders;

Whereas these factors are such as to constitute a situation covered by Article 13 of Regulation (EEC) No 1430/79;

Whereas in the special circumstances of the case in question no deception or obvious negligence may be attributed to the party concerned, particularly as it was due to his cooperation that the fraudulent activities of the customs officers concerned were discovered; whereas he provided the administration with the information it needed to be able to monitor one of the consignments and catch the fraudsters in the act;

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

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by Germany on 4 June 1997 is hereby found to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 12-12-1997

For the Commission