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REM 20/98



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 1-7-1999

COMMISSION DECISION

of 1-7-1998

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

(request submitted by the Federal Republic of Germany)

(Dossier REM 20/98)

COMMISSION DECISION

of 01-07-1999

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(request submitted by the Federal Republic of Germany)

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code,¹ as last amended by Regulation (EC) No 955/1999,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 502/1999,⁴ and in particular Article 907 thereof,

Whereas by letter dated 29 September 1998, received by the Commission on 9 October 1998, the Federal Republic of Germany asked the Commission to decide, under Article 239 of Regulation 2913/92, 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 119, 7.5.1999, p. 1

³ OJ No L 253, 11.10.1993, p. 1

⁴ OJ No L 65, 12.3.1999, p. 1

On 26 June 1997 a German firm sent a generator that had been manufactured in the Republic of Croatia and released for free circulation in Germany on 7 January 1997, to Croatia for free repair under contractual guarantee.

When the generator had been repaired it was sent back to Germany. On 29 October 1997, when the generator was released for free circulation, the firm applied for exemption from import duties on the grounds that the generator should be classified as returned goods.

Since the generator had been repaired it could not, under Article 186 of Regulation (EEC) No 2913/92, be considered to have been reimported in an unaltered state. The arrangements for returned goods could not therefore be applied and a customs debt of XXXXX was therefore incurred by the firm, which paid it and is now applying for repayment;

Whereas the firm 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 25 February 1999 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 the said Regulation) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas when the generator was exported to the Republic of Croatia the firm did not hold an outward processing authorisation; whereas a customs debt was therefore incurred as a result of the generator being released again for free circulation in the European Community after its repair in Croatia;

Whereas, however, when the firm exported the generator to Croatia it informed the customs authorities that it intended to reimport it after it had been repaired; whereas “Free dispatch for repair and return after repair” was entered in box 31 of the customs declaration submitted at the time of export; whereas, moreover, code 2200, which the firm used and entered in box 37 of the customs declaration, clearly indicated that the firm planned to export the generator only temporarily;

Whereas despite these indications the competent customs authorities did not ask for an authorisation for outward processing to be submitted when the generator was exported from Germany;

Whereas if they had done so, such an authorisation would undoubtedly have been issued, as the German authorities confirm, and the generator could have benefited from the outward processing arrangements;

Whereas if the temporary export had taken place under the outward processing arrangements, under Article 152 of Regulation (EEC) No 2913/92 the generator would have benefited from total exemption from import duties when it was released for free circulation once it was established that it had been repaired free of charge under a contractual guarantee;

Whereas the German authorities consider firstly that in this case the conditions set out in Article 152 would have been fulfilled if the firm had held an outward processing authorisation and secondly that the generator released for free circulation in the European Community is indeed the same one that had previously been exported for free repair under a contractual guarantee;

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

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

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX requested by the Federal Republic of Germany on 29 September 1998 is hereby found to be justified.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 01-07-1999

*For the Commission
Member of the Commission*