

COMMISSION DECISION

of 26-1-1996

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

(request submitted by Germany)

REM 7/95

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 Regulation (EEC) No 2913/92,¹ and in particular
Article 907 thereof,

Whereas by letter dated 24 July 1995 received by the Commission on 28 July 1995, 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,¹ as last amended by
Regulation (EEC) No 3069/86,¹ whether the repayment of import duties is justified in the
following circumstances:

For some years a firm has regularly imported sterilizers from Switzerland, which have always
been admitted free of duties, under EUR1 and EUR2 preference certificates. All import
formalities were entrusted to a forwarding agent.

On 5 May 1992 a sterilizer was entered for the external Community transit procedure. The
transit document was accompanied by a copy of an invoice from the Swiss exporter bearing a
declaration and an original signature attesting to the Swiss origin of the goods and referring to
an authorization granted by the head office of the Swiss customs authority in Berne.

1 OJ No L 302, 19.10.1992, p.1.

2 OJ No L 253, 11.10.1993, p.1.

3 OJ No L 175, 12.7.1979, p.1.

4 OJ No L 286, 9.10.1986, p.1.

The goods were delivered to the firm but not presented to the customs office of destination with the result that the transit document was not discharged. On the grounds that a customs debt had been incurred due to non-compliance with obligations arising out of the use of the Community transit procedure, the relevant customs office issued a recovery order for the sum of XXXXX.

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 4 December 1995 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 entered for a Community transit procedure must be presented to the customs office of destination; whereas in case of non-presentation, a customs debt is incurred pursuant to Regulation No 2144/87 on customs debt;¹

Whereas the firm concerned claims that it was the first time that it received goods that had not been cleared and that it was unaware at the time that they had to be presented to the customs office of destination;

Whereas it also claims that it had produced a properly completed origin document for the goods concerned in support of the transit declaration and that the identity of the apparatus was clearly traceable from its serial number;

⁵ OJ No L 201, 22.07.1987, p. 15.

Whereas all these circumstances and in particular the fact that the firm in question was actually in possession of a valid document of origin pertaining to the goods concerned represent a special case within the meaning of Article 13 of Regulation No 1430/79; whereas moreover in the same circumstances today, Article 900(1)(o) of Regulation No 2454/93 would have applied;

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

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

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX requested by Germany on 24 July 1995 is hereby found to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 26-1-1996

For the Commission