

COMMISSION DECISION
of 18-7-1994
finding that the remission of import duties in a particular
case is not justified

(request submitted by Denmark)

REM 8/94

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 July 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 7 March 1994, received by the Commission on 10 March 1994, Denmark asked the Commission to decide under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979,³ as last amended by Regulation (EEC) No 3069/86,⁴ 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 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.

Between 1 March 1990 and 20 January 1992 a Danish importer cleared through customs five consignments of footwear originating in Thailand. The consignments were admitted duty-free under the Community's preferential arrangements for developing countries. The goods were accompanied by form A origin certificates. An inspection conducted at the importer's premises in late 1992 revealed that the five consignments had been imported under the wrong tariff heading - 6403 19 00 - as sports footwear with uppers of leather. As football boots with artificial leather uppers, they should have been classified under 6402 19 00. Goods of this heading were also eligible for tariff preferences at the time of import, but by the time they were discovered to have been incorrectly classified the import ceiling had been reached and duties re-established for goods of heading 6402 19 00 originating in Thailand. Customs took steps for the post-clearance recovery from the importer of XXXXX in duties.

The importer then applied for the remission of these duties.

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 19 May 1994 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 Article 1(2) of Commission Regulation (EEC) No 3040/83 of 28 October 1983⁵ provides that repayment or remission shall be granted only in so far as the limits laid down for a quota have not been reached or the normal rate of duty re-established at the time of submission of the application for repayment or remission; whereas the customs duties had in this case been re-established by the time the application had been lodged;

⁵ OJ No L 297, 29.10.1983, p. 13.

Whereas the final subparagraph of this same Article 1(2) provides that, where the reduced or zero rate of duty has not been applied owing to an error on the part of customs, repayment or remission shall be granted even if the normal duty has been re-established; whereas the acceptance pure and simple by customs of the tariff heading declared and the granting of the preferential arrangements attached to that heading cannot, however, be considered a customs error within the meaning of that subparagraph; whereas, moreover, the economic purposes of the two quotas differ and they are not interchangeable;

Whereas neither the mistaken granting of a tariff preference nor the fact that the tariff ceiling for which the goods would have been eligible on import had been reached by the time of the post-clearance realization of the correct tariff classification can be considered a special situation;

Whereas the error committed by a professional declarant in indicating the tariff heading and the repetition of this error are considered to constitute obvious negligence;

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 XXXXX requested by Denmark on 7 March 1994 is hereby found not to be justified.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 18-7-1994

For the Commission