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REM 03/06

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.1.2007
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NOT FOR PUBLICATION

COMMISSION DECISION

Of 17.1.2007

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

(Only the Danish text is authentic.)

(Request submitted by Denmark)

(REM 03/06)

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(REM 03/06)

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 Code¹, as last amended by Regulation (EC) No 1791/2006²,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92³, as last amended by Regulation (EC) No 1875/2006⁴, and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 363, 20.12.2006, p. 1.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 360, 19.12.2006, p. 64.

Whereas:

- (1) By letter dated 21 April 2006, received by the Commission on 24 April 2006, Denmark asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances:
- (2) Between 14 September and 1 December 2001 a Danish customs agent, referred to below as “the applicant”, declared fish from Norway for release for free circulation. The importers were established in a number of different Member States; the declarations were made out in the name of a Norwegian exporter (DDP contract).
- (3) At the time, imports into the Community of fish originating in Norway were eligible for preferential treatment under Protocol 9 of the Agreement on a European Economic Area (the EEA Agreement) adopted by virtue of the Decision of the Council and the Commission of 13 December 1993 on the conclusion of the Agreement on the European Economic Area between the European Communities, their Member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation⁵. Under the provisions of Protocol 4 to the EEA Agreement, fish originating in Norway was entitled to preferential tariff treatment when released for free circulation provided that it was covered by a EUR.1 movement certificate (hereinafter “EUR.1 certificate”) or an invoice declaration of origin (hereinafter “invoice declaration”).
- (4) In this instance the applicant presented, in support of its customs declarations for release for free circulation, invoice declarations drawn up by an authorised Norwegian exporter indicating that the goods were of EEA preferential origin. The Danish customs authorities accepted the declarations and granted preferential tariff treatment.
- (5) Between 5 February and 25 October 2002 the Norwegian customs authorities checked the invoice declarations issued by the exporter concerned in this case in 2000 and 2001. On the basis of the control at the exporter's subcontractors, the Norwegian customs authorities invalidated the invoice declarations issued by the exporter for the

⁵ OJ L 001, 3.1.1994, p. 1.

ten consignments in question in this case, since the subcontractors were not able to prove the origin of the goods and had informed the competent Danish authorities accordingly.

- (6) The local Danish customs authorities therefore found that the goods in question were not eligible for preferential tariff treatment and recovered ex post the import duties, amounting to DKK XXXX, for which sum repayment has been requested in this case.
- (7) In support of the application submitted by the Danish authorities the firm indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.
- (8) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to consider the case on 20 December 2006 within the framework of the Customs Code Committee (Repayment Section).
- (9) Article 239 of Regulation (EEC) No 2913/92 allows import duties to be repaid or remitted in situations other than those referred to in Articles 236, 237 and 238 of that Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the party concerned.
- (10) The Court of Justice of the European Communities has ruled that this provision represents a general principle of equity designed to cover an exceptional situation in which an operator, which would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties, might find itself compared with other operators carrying out the same activity.
- (11) In this instance, the granting of preferential tariff treatment for the imports was subject to the presentation of EUR.1 certificates or invoice declarations.
- (12) As stated above, the Norwegian exporter was unable to prove the origin of the goods for the invoice declarations relating to the customs debt of DKK XXXX.
- (13) Reliance on the validity of such declarations is not normally protected, as this is considered part of the importer's normal commercial risk and therefore the responsibility of the person liable for payment.

- (14) The Court of Justice has consistently ruled that the legitimate expectations of a trader are protected only if the competent authorities themselves gave rise to those expectations.
- (15) In this instance, the exporter stated on the invoices that the goods they covered met the conditions under which invoice declarations can be drawn up.
- (16) However, in the light of the ruling of the Court of First Instance in the *Kaufring and others / Commission* cases of 10 May 2001, the fact that the Norwegian authorities might have been misled by the exporter does not necessarily mean that the circumstances of this case could not constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (17) In any case, the fact that the exporter had confirmed on the invoices that the conditions for drawing them up had been met is not in itself proof that the competent Norwegian authorities were misled. It is necessary to ascertain whether the exporter made these declarations on the assumption that the competent authorities were acquainted with all the facts necessary to apply the rules in question and whether the authorities, despite their knowledge, raised no objection to the declarations.
- (18) In this instance, a number of failings liable to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 can be attributed to the Norwegian authorities.
- (19) Certain items of information indicate that the Norwegian authorities did not carry out adequate checks on this exporter's exports of fish to the Community during the period in question.
- (20) In particular, the authorised exporter was not given sufficient information about the kind of supporting documents it should keep for post-clearance checks on the origin of the goods.
- (21) In this context, the fact that the Norwegian authorities did not carry out checks on the authorised exporter for a number of years is one of the reasons that the situation which led to the irregularities continued for so long.

- (22) Therefore the local Norwegian authorities failed to fulfil their obligations regarding checks on fish exports to the Community by the exporter concerned. Although the shortcomings in the Norwegian authorities' local administration of the certification system for the importer's supplier do not constitute an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92, they must be deemed to constitute a special situation within the meaning of Article 239 of that Regulation, particularly in the light of the judgment of the Court of First Instance in the *Kaufring and others / Commission* cases of 10 May 2001.
- (23) The circumstances of this case therefore constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (24) As regards the second condition in Article 239 of Regulation (EEC) No 2913/92, importers received no information of any sort as to the failure of the Norwegian authorities to fulfil their obligations, nor were they alerted to the risks they might be running in importing fish from Norway.
- (25) Moreover, the information in the file sent to the Commission on 21 April 2006 shows that the party concerned committed no deception or obvious negligence.
- (26) Therefore the repayment of import duties is justified in this case.
- (27) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 authorises the Commission to determine the conditions under which the Member States may repay or remit duties in cases involving comparable issues of fact and law.
- (28) Cases involve comparable issues of fact and law where requests for repayment or remission of duties are submitted within the statutory time limits and concern imports for which the declarations for free circulation, accompanied by invoice declarations issued by authorised exporters, were drawn up by the importers themselves or their representatives up to 2 April 2002, the date on which the failings recorded were rectified. There must be no deception or obvious negligence by the parties concerned,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of DKK XXXX (EUR XXXX) referred to in the request from Denmark dated 21 April 2006 is justified.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 17.1.2007

For the Commission
László KOVÁCS
Member of the Commission