

**EN**

**REC 03/02**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.01.2003  
C(2003) 8 final.

NOT FOR PUBLICATION

**COMMISSION DECISION**

**of 14.01.2003**

**finding that it is justified to waive post-clearance entry in the accounts of import duties  
in a particular case**

(Only the French text is authentic.)

**(Request submitted by France)**

**(REC 03/02)**

FR

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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> as last amended by Regulation (EC) No 2700/2000,<sup>2</sup>

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,<sup>3</sup> as last amended by Regulation (EC) No 444/2002,<sup>4</sup> and in particular Article 873 thereof,

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<sup>1</sup> OJ L 302, 19.10.1992, p. 1.

<sup>2</sup> OJ L 311, 12.12.2000, p. 17.

<sup>3</sup> OJ L 253, 11.10.1993, p. 1.

<sup>4</sup> OJ L 68, 12.03.2002, p. 11.

Whereas:

- (1) By letter dated 11 April 2002, received by the Commission on 16 April 2002, France asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether waiving the entry in the accounts of import duties was justified in the following circumstances.
- (2) A French company has for many years imported into France a product known as “polysynlane parleam” originating in Japan.
- (3) In 1988 the company was informed in writing by the competent French authorities that they had examined the goods and concluded that they belonged in CN code 2710 00 67.
- (4) For many years the product was released for free circulation under CN code 2710 00 67, on which a 3.5% or 0% duty was payable depending on the period.
- (5) Post-clearance checks by the competent French authorities revealed that the product should actually have been classified in CN code 3902 90 90, which was subject to an ad valorem duty of first 10.7% and then 10.1%.
- (6) The competent French authorities therefore sought to recover from the company the import duties payable for the period from January 1996 to March 1998, a sum of XXXX. The company has requested that post-clearance entry in the accounts of that sum be waived.
- (7) Under Article 871 of Regulation (EEC) No 2454/93, the company stated that it had seen the dossier sent to the Commission by the French authorities and had nothing to add.

- (8) In accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 6 December 2002 within the framework of the Customs Code Committee - Repayment Section - to consider the case.
- (9) Article 220(2)(b) of Regulation (EEC) No 2913/92 requires post-clearance entry in the accounts to be waived where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities themselves that could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and observed all the provisions laid down by the legislation in force as regards the customs declaration.
- (10) The dossier sent to the Commission by the competent French authorities on 11 April 2002 shows that over a period of years the customs authorities repeatedly accepted customs declarations containing the wrong tariff classification for the goods in question and in 1988 expressly told the company, after carefully examining the goods, which tariff classification to use.
- (11) The error made by the French authorities in this case must therefore be considered an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (12) As the Court of Justice of the European Communities has consistently ruled, when determining whether the company could reasonably have detected the customs authorities' error, account must be taken of the nature of the error, the company's professional experience and the diligence shown by it.

- (13) As regards the nature of the error, the tariff information, though not binding at the time of the events in France, was given in writing and was the result of a thorough examination of the goods in question by the competent French authorities. Though a clearance professional, the company therefore had no reason to doubt the accuracy of the tariff classification used. The fact that the customs authorities repeatedly accepted the tariff classification without objection over a number of years also sustained the company's belief in its accuracy.
- (14) The fact that the competent French authorities later referred the tariff classification of the product concerned to the Customs Code Committee-Tariff and Statistical Nomenclature Section suggests that the classification of the goods could indeed pose problems of interpretation.
- (15) The circumstances in this case reveal an error on the part of the customs authorities themselves which could not have been detected by an operator acting in good faith within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (16) The company has, moreover, acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (17) Post-clearance entry of import duties in the accounts is therefore not justified in this case,

HAS ADOPTED THIS DECISION:

*Article 1*

The import duties in the sum of XXXXX which are the subject of the request from France of 11 April 2002 shall not be recovered.

*Article 2*

This decision is addressed to the French Republic.

Done at Brussels, 14.01.2003

*For the Commission*  
Frits Bolkestein  
*Member of the Commission*