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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.10.2001

NOT FOR PUBLICATION

COMMISSION DECISION

of 3.10.2001

finding that remission of import duties is justified in a particular case.

(Request submitted by Austria)

(REM 02/01)

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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,¹ as last amended by Regulation (EC) No 2700/2000,²

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 993/2001,⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 311, 12.12.2000, p. 17.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 141, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 15 December 2000, received by the Commission on 4 January 2001, Austria asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties is justified in the following circumstances.
- (2) An Austrian firm held an inward processing authorisation for the processing, into food preparations, of milk powder with a fat content not exceeding 27% by weight falling under Combined Nomenclature code 04 02 21 19.
- (3) For the purposes of checking the fat content of milk powder, the firm was required by its authorisation to take samples of the import goods (the non-Community goods covered by the procedure) and have them analysed.
- (4) In December 1999 the firm placed six consignments of milk powder under the inward processing procedure. In accordance with its authorisation, the firm had the goods' fat content analysed. It proved to be higher than 27%. However, the firm's order, like its previous orders, was for milk powder with a fat content not exceeding 27% by weight.
- (5) On learning of the outcome of the analysis, the firm immediately notified the customs authorities and asked for its inward processing authorisation to be amended to encompass milk powder with a fat content exceeding 27% by weight.
- (6) Because the firm was not authorised at that time to process such goods under its inward processing authorisation, the Austrian authorities took the view that the processing operations had been carried out without proper authorisation.

- (7) The breach of obligations under the inward processing procedure gave rise to a customs debt under Article 204 of the Community Customs Code.
- (8) The authorities thereupon demanded that the firm pay the import duties due on the six consignments of milk powder, a sum of XXXXX, for which the firm lodged a guarantee. It is this sum for which remission is requested in this case.
- (9) In support of the request submitted by the competent authorities of Austria, the firm concerned, pursuant to Article 905 of Regulation (EEC) No 2454/93, stated that it had taken note of the file sent by the Austrian authorities to the Commission and that it had nothing to add.
- (10) 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 examine the case on 15 June 2001 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.
- (11) 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 that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (12) The Court of Justice of the European Communities has consistently taken the view that this provision represents a general principle of equity designed to cover a special 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.

- (13) The dossier shows that the firm imported milk powder with a fat content exceeding 27% by weight under the inward processing procedure when its authorisation applied only to milk powder with a fat content not exceeding 27% by weight. Because the transactions in question were not covered by its authorisation, the firm incurred a customs debt.
- (14) However, the dossier presented by the Austrian authorities shows that the firm had, as always, ordered milk powder with a fat content not exceeding 27% by weight. All the accompanying documents stated that the product was milk powder with a fat content not exceeding 27% by weight of CN code 04 02 21 19. When it received the goods the firm had no reason to believe that they were not as specified in its order.
- (15) Furthermore, as soon as the firm discovered, following the analysis of the goods, that the fat content exceeded 27% by weight it notified the competent customs authorities and asked for its authorisation to be extended to cover such goods. It was granted this extension on 11 January 2001.
- (16) It should also be borne in mind that the milk powder in question was placed under the inward processing procedure, and there has therefore been no impact on the Community's own resources.
- (17) Therefore, all the circumstances taken together constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (18) The circumstances of the case (a one-off error) are such that no deception or obvious negligence may be attributed to the party concerned, as confirmed by the competent Austrian authorities. Thus, the firm complied with all the other obligations relating to its customs declaration and with the obligation under its inward processing authorisation to have goods analysed.

(19) Therefore the remission of import duties requested is justified in this case,

HAS ADOPTED THIS DECISION:

The remission of import duties in the sum of XXXX requested by Austria on 15 December 2000 is justified.

Article 2

This Decision is addressed to the Republic of Austria.

Done at Brussels, 3.10.2001

For the Commission

[...]

Member of the Commission