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REM 02/05

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10-5-2007
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NOT FOR PUBLICATION

COMMISSION DECISION

Of 10-5-2007

finding that the remission of import duties is not justified in a particular case

(Only the English text is authentic)

(Request submitted by the United Kingdom)
(REM 02/05)

FR

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(Request submitted by the United Kingdom)

(REM 02/05)

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 214/2007⁴, 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 62, 01.03.2007, p. 6.

Whereas:

- (1) By letter of 18 August 2005, received by the Commission on 25 August 2005, the United Kingdom asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties was justified in the following circumstances.
- (2) Between September 1996 and November 1997 a UK firm (hereinafter "the firm") placed consignments of cigarettes imported from Zimbabwe under the customs warehousing procedure.
- (3) At the time, products of this type originating in Zimbabwe could be imported into the Community under the preferential arrangements applicable to the African, Caribbean and Pacific countries provided for by the Fourth ACP-EC Lomé Convention⁵, as revised by the Agreement signed in Mauritius on 4 November 1995, hereinafter referred to as the "Fourth Lomé Convention"⁶. Under Article 12 of the Fourth Lomé Convention's Protocol 1 concerning the definition of the concept of "originating products" and administrative cooperation methods, products covered by a movement certificate EUR.1 (hereinafter "EUR.1 certificate") issued by Zimbabwe's competent authorities were eligible for preferential tariff treatment when released for free circulation in the Community.
- (4) In the case in point, the consignments of cigarettes were removed from the customs warehouse without the formalities for release for free circulation being carried out; the EUR.1 certificates issued by the competent authorities in Zimbabwe had not been submitted when the goods were placed under the customs warehousing procedure, but were still valid when the goods were withdrawn from customs supervision; if they had been declared for release for free circulation, the goods could have been eligible for the preferential tariff treatment provided for by the Lomé IV Convention.
- (5) During an inspection carried out on their own initiative by the UK customs authorities at the premises of the firm to verify the origin of the goods placed under the warehousing procedure by the firm, the authorities discovered that, because of an error

⁵ OJ L 229, 17.08.1991, p. 3.

⁶ OJ L 156, 29.5.1998, p. 3.

in the firm's computer system, the consignments of cigarettes in question had been removed from the warehouse without undergoing the formalities for release for free circulation (no form C88 had been completed).

- (6) It subsequently became clear that the firm's computer system was affected by a bug which prevented it from generating forms C88 when the rate of duty entered was zero.
- (7) The UK customs authorities therefore considered that as the goods had been withdrawn from custom supervision, a customs debt had been incurred, and they informed the firm of the amount (GBP XXXXXX) in December 1998; it is this sum which the firm is requesting should be remitted under Article 239 of Regulation (EEC) No 2913/92.
- (8) In support of the application submitted by the UK authorities, the firm stated that, in accordance with Article 905(3) of Regulation (EEC) No 2454/93, it had seen the file submitted by the UK authorities and had nothing to add.
- (9) The firm cited the following factors as being likely to constitute a special situation under Article 239 of Regulation (EEC) No 2913/92: it was because of a bug in the computer system that the firm was unable to fulfil its obligations; furthermore, after the customs authorities' discovery of the withdrawal of the goods from customs supervision, the firm had on its own initiative asked experts to thoroughly investigate the computer system so as to determine the cause of the irregularity, correct any bugs and calculate the amount of the customs debt; also, the case was comparable to that in Commission Decision No C(2002) 5512 of 3 January 2003 (REM 27/01); lastly, the irregularity had not had an adverse effect on the Community budget, since the goods were eligible for a zero rate of duty when released for free circulation.
- (10) By letter of 5 October 2005, the Commission asked the UK authorities for additional information. This information was provided by letter of 4 May 2006, received by the Commission on 11 May 2006. Examination of the request for remission was therefore suspended between 6 October 2005 and 11 May 2006.
- (11) By letter of 14 July 2006 the Commission returned the dossier to the UK authorities, since it considered in the light of the arguments put forward in the letters of 18 August

2005 and 4 May 2006 that those authorities were competent to decide whether the remission was justified.

- (12) Further to the Commission's letter of 14 July 2006, several emails were exchanged between the Commission and the UK authorities; copies of these were sent to the firm by letter No 11375 of 10 November 2006.
- (13) By letter of 26 October 2006, received by the Commission on the same day, the UK authorities asked the Commission to re-examine the case in accordance with Article 905 of Regulation (EEC) No 2454/93. Examination of the request for remission should therefore be deemed to have been suspended between 15 July and 26 October 2006.
- (14) By letter dated 17 January 2007, received by the firm on 18 January 2007, the Commission notified the firm of its intention to withhold approval and explained the reasons for this.
- (15) By letter of 16 February 2007, received by the Commission on the same date, the firm expressed its opinion on the Commission's objections.
- (16) In accordance with Article 907 of Regulation (EEC) No 2454/93, the period of nine months within which the Commission decision must be taken was therefore extended by one month.
- (17) 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 16 March 2007 within the framework of the Customs Code Committee - Repayment Section.
- (18) 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 person concerned.
- (19) The Court of Justice of the European Communities has consistently held that this provision represents a general principle of equity designed to cover an exceptional situation in which an operator, who would not otherwise have incurred the costs

associated with the customs duties concerned, might find itself compared with other traders carrying out the same activity.

- (20) The following points should be noted concerning the fact that a bug in the firm's computer system caused the consignments of cigarettes to be withdrawn from customs supervision, and that withdrawal gave rise to the customs debt.
- (21) The fact that the withdrawal of the cigarettes concerned was due to a bug in the firm's computer system is a very important feature of the case; however, this bug does not in itself constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (22) According to the file submitted by the UK authorities and the correspondence between those authorities and the Commission, the special situation in which the firm happened to find itself is defined in Article 900(1)(o) of Regulation (EEC) No 2454/93 as a case where a customs debt has been incurred otherwise than under Article 201 of Regulation (EEC) No 2913/92 "and the person concerned is able to produce a certificate of origin, a movement certificate, an internal Community transit document or other appropriate document showing that if the imported goods had been entered for free circulation they would have been eligible for Community treatment or preferential tariff treatment, provided the other conditions referred to in Article 890 were satisfied".
- (23) Thus, while the bug in the computer system caused the goods to be withdrawn from customs supervision and hence the customs debt to be incurred, it does not in itself constitute the special situation.
- (24) Article 900(1) of Regulation (EEC) No 2454/93 contains a list of special situations for which the customs authorities of the Member States are competent to decide themselves whether remission is justified. Under Article 899(1) of Regulation (EEC) No 2454/93, if the case submitted to the customs authorities corresponds to a situation mentioned in the list in Article 900(1), and the person concerned was not guilty of deception or obvious negligence, the customs authorities must remit or repay the import duties.

- (25) It is therefore up to the UK customs authorities to establish whether the conditions of Article 900(1)(o) are fulfilled in this case and to act accordingly.
- (26) With regard to the fact that, after the customs authorities' discovery of the irregularity which led to the customs debt being incurred, the firm asked experts on its own initiative to thoroughly investigate the system so as to determine the cause of the irregularity, correct any bugs and calculate the amount of the debt, the following points should be noted.
- (27) When the customs authorities visited the firm's premises, they asked the firm to compile a record of all withdrawals of cigarettes from customs supervision which had taken place since 23 October 1995. The customs authorities allowed the firm 28 days to compile this record and produce an adjusting declaration for release for free circulation (C88 form). In their record annexed to the letter from the UK authorities dated 4 May 2006, the local customs authorities stated that the system should be modified immediately to avoid a repeat of such irregularities and invited the firm to make proposals to that end.
- (28) This information therefore shows that it was at the request of the customs authorities that the firm had an audit of its computer system performed and identified the transactions for which no declaration for release for free circulation on leaving the customs warehousing procedure had been drawn up. No special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 can therefore result from the research carried out by the firm after the customs authorities had discovered the anomaly.
- (29) The following points should be noted concerning the comparability of this case with that which was the subject of Decision No C(2002) 5512 of 3 January 2003 (REM 27/01).
- (30) It is clear from the text of Decision No 5512 that in case REM 27/01 the situation of the person concerned was not the same as that described in Article 900(1)(o); as is clear from recital 25 to the Commission Decision, the airworthiness certificates produced by the operator were not documents such as those mentioned in Article 900(1)(o), and that Article does not refer to either preferential tariff treatment for a prescribed end-use or the tariff treatment granted under the inward processing

procedure. It is also clear from the Decision that the lack of financial impact is here only an additional factor, not enough to constitute a special situation.

- (31) In its Decision on REM 27/01, the Commission considered that the operator concerned could not rely on the existence of a special situation as referred to in Article 900(1)(o) of Regulation (EEC) No 2454/93 and that there was a special situation as a result of the conditions under which the customs debt was incurred and the fact that, normally, no customs debt would have been incurred for the goods in question. In the present case, however, the Commission considers that there could be a special situation such as the one mentioned in Article 900(1)(o) of Regulation (EEC) No 2454/93.
- (32) Therefore REM 27/01 is not comparable in fact and in law with this case and no special situation within the meaning of Article 239 of the Customs Code can be derived from a comparison of this case with REM 27/01.
- (33) It should be noted that the fact that the irregularity detected had no negative financial impact on the Community budget cannot constitute a special situation. The debt arose under Article 203 of Regulation (EEC) No 2913/92 and there is no connection between the incurrence of the debt and the existence of financial implications.
- (34) The above arguments are thus not sufficient grounds for considering that the applicant was in a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 on which the Commission would be competent to decide.
- (35) Nor has the Commission found any other argument to suggest that a special situation within the meaning of Article 239 on which the Commission would be competent to decide exists in this case.
- (36) Consequently, without prejudice to an analysis of the facts at national level in the light of Articles 900 and 890, the Commission does not consider that the first condition mentioned in Article 239 of Regulation (EEC) No 2913/92 is fulfilled.
- (37) There is therefore no need to examine whether the second condition laid down in Article 239 of Regulation (EEC) No 2913/92 is fulfilled.
- (38) The remission of import duties requested is not therefore justified,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of GBP XXXX (EUR XXXXX) requested by the UK on 18 August 2005 is not justified.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 10-5-2007

By the Commission
László KOVÁCS
Member of the Commission