REC 01/06

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 1-2-2007
C(2007)251

NOT FOR PUBLICATION

COMMISSION DECISION

Of 1-2-2007

finding that it is justified to waive post-clearance entry in the accounts of import duties in a particular case
(Only the German text is authentic)

(Request submitted by the Federal Republic of Germany)

(REC 01/06)

FR

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(Request submitted by the Federal Republic of Germany)

(REC 01/06)

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 Code[1], as last amended by Regulation (EC) No 1791/2006[2],

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[3], as last amended by Regulation (EC) No 1875/2006[4],

[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 15 May 2006, received by the Commission on 24 May 2006, the Federal Republic of Germany asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it is justified to waive post-clearance entry in the accounts in the following circumstances.

(2) Between November 1999 and February 2002 a German importer regularly imported consignments of shrimp (109 times) which were released into free circulation at various German customs offices. The firm declared the shrimp as 'frozen large shrimp (cooked, peeled, with tail on)' under subheading 0306 13 50 of the Combined Nomenclature (CN). The customs declarations were accompanied by invoices describing the goods as 'cooked, peeled (deveined) giant tiger shrimp tail on'.

(3) In May 2000 the classification of this product was discussed at German customs headquarters. It was decided that the shrimp in question should actually be classified in CN heading 1605 rather than 0306. Local customs offices were not, however, notified of this change of approach and continued to allow the goods in question to be classified in the wrong heading. The firm was first informed of its error and of the correct classification after a customs audit at its premises on 22 October 2002. On the basis of the audit the competent authorities took steps to recover EUR XXXXX in duties.

(4) The firm applied for a waiver of post-clearance recovery of these import duties, citing its good faith and the mistakes made by the competent authorities, which it could not have detected. It cited in particular the following facts constituting an error on the part of the customs authorities within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92: until 1996 it had declared the goods in question in heading 1605 then, having learned from other traders that the product could be classified in heading 0306 13 90, it applied for a binding tariff information (BTI) notice for that product; it was issued a BTI notice indicating that the partly peeled shrimp should be classified under CN code 0306 13 90 000 on 6 December 1996. It was not informed that the BTI notice was no longer valid following the entry into force of Regulation (EC) No 1734/96[5]; moreover this applied only to classification in subheadings of heading 0306 of the combined nomenclature and not to the classification of shrimp in heading 1605 rather than 0306. On 15 November 1996, i.e. before the BTI notice was issued, it applied for repayment of the import duties on imports of the same goods carried out previously on the basis that the goods should have been classified in heading 0306 1390 000 and therefore been liable for a lower rate of duty; on 10 February 1997 the competent authorities granted the repayment applied for. Finally, in 1998, the customs authorities carried out an audit on the firm; this audit covered, for 1996 and 1997, customs valuation issues and the tariff classification of the shrimp imported by the firm; however, the competent authorities did not challenge the classification of these shrimp. Moreover, in their letter of 15 May 2006, the German authorities underline that this case, while not strictly comparable, is nevertheless very similar to case REC 05/03 in which the Commission found that post-clearance entry in the accounts of import duties was not justified[6].

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5 Commission Regulation (EC) No 1734/96 of 9 September 1996 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 238, 19.9.1996, p. 1).

6 Commission Decision C(2004)2853, 27.7.2004.

(5) Under Article 871 of Regulation (EEC) No 2454/93, the firm stated that it had seen the dossier submitted by the German authorities and had nothing to add.

(6) In accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 20 December 2006 within the framework of the Customs Code Committee - Repayment Section.

(7) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, there can be no post-clearance entry in the accounts where the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

(8) 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 the expectations.

(9) In its decision on case REC 05/03, the Commission considered the competent authorities' continued acceptance of incorrect declarations for three years without expressing reservations about the classification of the product concerned and customs headquarters' failure to notify local customs offices of the change in classification resulting from the discussions held at headquarters in May 2000 were an error on the part of the customs authorities themselves such as to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92. The same conclusion should be drawn in this case.

(10) The Court of Justice of the European Communities has consistently ruled that, in determining whether the applicant could reasonably have detected the customs authorities' error, account must be taken of the nature of the error, the applicant's professional experience and the diligence it showed.

(11) The firm in question has to be considered an experienced operator.

(12) However, the Court has ruled that it is necessary to establish whether or not there was anything that might appear to indicate, even to an experienced trader, that his customs declarations were correct[7].

(13) In this case, the competent authorities accepted the firm's declarations for at least three years without contesting the classification of the product.

(14) It is also clear from the request transmitted by the German authorities on 15 May 2006 that the competent authorities had considered the products concerned to belong in the heading declared by the firm (0306) ever since 1996 and therefore accepted declarations containing the wrong tariff heading. For the same reason, the German authorities considered that the classification selected by the firm was correct even after the BTI notice of 6 December 1996 became invalid, and granted the repayment of import duties, and did not comment on the tariff classification of the shrimp imported by the firm and classed in heading 0306 during the audit carried out on the firm in 1998.

(15) In view of the above, the firm therefore had no reason to doubt the accuracy of the classification. It cannot therefore be considered negligent for not having taken further steps to check the accuracy of the classification.

(16) The request submitted by the German authorities also shows that it is accepted that the firm acted in good faith.

(17) The circumstances of the case therefore point to an error on the part of the customs authorities themselves which could not reasonably have been detected by an operator acting in good faith, within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.

(18) Moreover, the firm acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

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[7] Judgment of the Court of 1 April 1993, "Hewlett Packard France v Directeur Général des Douanes" (Case C-250/91).

(19) Post-clearance entry of import duties in the accounts is therefore not justified in this case.

(20) Under Article 875 of Regulation (EEC) No 2454/93, where the circumstances under consideration are such that the duties in question need not be entered in the accounts, the Commission may specify the conditions under which the Member States may refrain from post-clearance entry of duties in the accounts in cases involving comparable issues of fact and of law.

(21) Cases comparable in fact and in law to this one are requests to waive post-clearance entry of duties in the accounts lodged within the legal time limits in respect of imports into the Community carried out by the importer themselves or by their representative, where those import operations were carried out in circumstances comparable in fact and law to those which gave rise to this case. The traders concerned must have acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of EUR XXXXXXX which are the subject of the request from Germany of 15 May 2006 shall not be entered in the accounts.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 1-2-2007

For the Commission
László KOVÁCS
Member of the Commission