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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8-5-2001

NOT TO BE PUBLISHED

COMMISSION DECISION

of 8-5-2001

finding that repayment of import duties is justified in a particular case and refusing Germany authorisation under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92

**(Request submitted by Germany)
(REM 17/00)**

FR

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(REM 17/00)**

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 Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 2787/2000,⁴ and in particular Article 907 thereof,

WHEREAS:

- (1) By letter dated 25 July 2000, received by the Commission on 10 August 2000, Germany 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.

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 330, 27.12.2000, p.1

- (2) A German firm was granted an inward processing authorisation (suspension system) for imported hazelnuts of subheading 08 02 22 00 of the combined nomenclature, to be made into chocolate bars. The imported hazelnuts were to be stored and processed separately.
- (3) Following a post-clearance audit carried out in September 1996, the local customs authorities found that the firm had mixed the hazelnuts entered for inward processing with hazelnuts in free circulation (Community goods) when storing and processing them.
- (4) Notified of the results of the audit, the firm asked for its authorisation to be retroactively amended to allow the processing of equivalent goods.
- (5) The German authorities concerned did not accede to this request, as the Community regulations in force make no provision for retroactively amending authorisations.
- (6) In so far as the firm was not, at that time, authorised to process equivalent goods under its inward processing authorisation, the German authorities therefore considered that the processing had been carried out without authorisation.
- (7) The breach of the obligations laid down under the inward processing arrangements gave rise to a customs debt under Article 204, paragraph 1 a, of the Community Customs Code.
- (8) The aforementioned authorities therefore asked the company to pay the import duties due, i.e. a total of XXXXX, which amount was paid by the firm and in respect of which repayment has been requested.

- (9) Pursuant to Article 905 of Regulation (EEC) No 2454/93, the firm stated in support of the request from Germany's competent authorities that it had seen the dossier submitted to the Commission and set out its arguments in a document annexed to the authorities' letter to the Commission of 25 July 2000.
- (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 on 8 December 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (11) 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.
- (12) Court of Justice case law indicates that Article 239 represents a general principle of equity designed to cover an exceptional situation in which an operator might find himself compared with other operators carrying out the same activity.
- (13) The dossier shows that the firm carried out processing operations using equivalent goods, although its authorisation made no provision for the use of equivalent compensation. As a result, this authorisation was not valid for the operations concerned, and a customs debt was therefore incurred by the firm.

- (14) However, as the German authorities confirm in their letter to the Commission dated 25 July 2000, both the imported goods and the equivalent goods were Levant-quality hazelnuts of identical composition and quality from Turkey, the only difference between them being that the equivalent goods had already been placed in free circulation. The audit carried out by the competent customs authorities also demonstrated that the firm had complied with the requirements for processing equivalent goods. It has been proven that quantities of compensating products equivalent to the goods imported under the inward processing authorisation were reexported from Community customs territory. It follows that the circumstances of the case were not prejudicial to the financial interests of the European Communities. The firm thus complied with the requirements for using equivalent goods, but without having made a formal request for authorisation.
- (15) In addition, as the competent German authorities indicate in their letter to the Commission of 25 July 2000, if the firm had requested authorisation to use equivalent goods when initially applying for an inward processing authorisation, this authorisation would have been granted without any ado, since all the conditions required were satisfied.
- (16) These factors are such as to constitute a special situation covered by Article 239 of Regulation (EEC) No 2913/92.
- (17) Moreover, a supporting argument backing this up is the fact that the customs authorities accepted many customs declarations made under the inward processing arrangements, attesting to the use of equivalent goods, without contesting them in any way.
- (18) In addition, it should be noted that the firm was making an application for inward processing authorisation for the first time, and that it had little previous experience of customs procedures.
- (19) In addition, this was the first time that the firm was accused of the failures in question.

- (20) Finally, the fact that for one and a half years the competent authorities had done nothing to contest the many export declarations which the firm had submitted, attesting to the processing of equivalent goods as part of the inward processing, had given the firm grounds for legitimate expectations.
- (21) In the light of all the foregoing it may be concluded that the firm acted in good faith and that the circumstances indicate neither deception nor obvious negligence on its part.
- (22) Therefore the repayment of import duties is justified in this case.
- (23) Under Article 908 of Regulation (EEC) No 2454/93, where the circumstances under consideration justify repayment or remission, the Commission may, under conditions which it shall determine, authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and of law.
- (24) In a letter of 25 July 2000 the Federal Republic of Germany requested authorisation to repay or remit duties in cases involving comparable issues of fact and law.
- (25) However, given the type of non-compliance involved, this decision is very unusual in terms of both fact and law. It cannot therefore serve as a reference for national decisions taken in application of an authorisation granted by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX requested by the Federal Republic of Germany on 25 July 2000 is hereby found to be justified.

Article 2

The authorisation requested by the Federal Republic of Germany in its letter of 25 July 2000 under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 is not granted.

Article 3

This Decision is addressed to Germany.

Done at Brussels, 8-5-2001

For the Commission

Member of the Commission