

EN

REC 08/02



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06-08-2003
C(2003)2826

NOT FOR PUBLICATION

COMMISSION DECISION

of 06-08-2003

**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 Germany)

(REC 08/02)

FR

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(REC 08/02)

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 881/2003,⁴ and in particular Article 873 thereof,

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 311, 12.12.2000, p.17.

³ OJ No L 253, 11.10.1993, p.1.

⁴ OJ No L 134, 29.05.2003, p.1.

Whereas:

- (1) By letter dated 28 October 2002, received by the Commission on 4 November 2002, 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) In the years 1997 to 1999 a German firm imported many consignments of processed cheese in the form of cylinders weighing 10 kg net.
- (3) The cheese was declared under CN subheadings 0406 30 10, 0406 30 31 and 0406 30 39. Imports into the Community of processed cheese of CN subheading ex 0406 30 10 were eligible for a reduced rate of duty under a GATT/WTO quota by virtue of Commission Regulation (EC) No 1374/98 of 29 June 1998 laying down detailed rules for the application of the import arrangements and opening tariff quotas for milk and milk products⁵ (*from 1 July 1998*) and, prior to that, under Commission Regulation (EC) No 1600/95 of 30 June 1995⁶.
- (4) The same Regulation provided for a tariff quota, at a slightly more favourable rate of duty, for imports of processed cheese of subheading 0406 30 31 (the imports concerned had to meet the specified conditions and, in particular, be accompanied by an import licence applicable to that subheading).
- (5) Without taking account of the tariff classification declared, the customs office accepted the declarations for all the imports, since they were covered by import licences issued by the Federal Institute for Agriculture and Food (*Bundesanstalt für Landwirtschaft und Ernährung - BLE*) bearing the CN code ex 0406 30 10, and granted the reduced rate of duty of ECU 71.9 per 100 kg net under tariff quota 4592 (*processed Emmentaler of CN code ex 0406 30 10*).

⁵ OJ No L 185, 30.06.1998, p.21.

⁶ OJ No L 151, 01.07.1995, p.91.

- (6) Following a post-clearance inspection, the Munich principal customs office found that all the imported cheese was processed cheese (Emmentaler or Gruyere) in the form of cylinders weighing 10 kg, which should have been systematically classified under CN code 0406 30 31. Since quota 4592 could only be used for processed Emmentaler of CN code 0406 30 10 (*processed cheese, not grated or powdered, in the manufacture of which no cheeses other than Emmentaler, Gruyère and Appenzell have been used and which may contain as an addition Glarus herb cheese (known as Schabziger); put up for retail sale, of a fat content by weight in the dry matter not exceeding 56 %*), the customs administration issued a post-clearance recovery notice for the difference between the reduced rate of duty under the quota and the normal rate, a total of XXXXX, the amount for which the person concerned is requesting that post-clearance entry in the accounts be waived.
- (7) Pursuant to Article 871 of Regulation (EEC) No 2454/93, the firm stated that it had seen the dossier submitted to the Commission by the German 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 to examine the case on 11 June 2003 within the framework of the Customs Code Committee - Repayment Section.
- (9) 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 duties 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.
- (10) In a letter dated 14 April 2003 and received by the firm on 16 April 2003, the Commission informed the firm of its intention to reject the request for remission, and stated its reasons.

- (11) By letter dated 12 May 2003, received by the Commission on the same date, the firm stated its position regarding the Commission's objections. In particular, it maintained that the German customs authorities' error could not reasonably have been detected owing to the complexity of the rules and the persistent error on the part of the BLE. It argued that it had followed the instructions of the customs administration and the BLE. It had no reason to doubt the classification of the goods.
- (12) The dossier sent to the Commission on 28 October 2002 by the German authorities shows that the customs authorities repeatedly accepted over a number of years customs declarations misclassifying some of the goods in question and mistakenly accorded a reduced rate of duty under tariff quota 4592 for certain cheeses of CN code 0406 30 10.
- (13) Indeed the customs authorities had themselves made corrections to the tariff heading declared by the firm, on one occasion going so far as to replace a correct tariff heading with one that was incorrect.
- (14) The error made by the German 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.
- (15) As the Court of Justice of the European Communities has consistently ruled, when determining whether the firm could reasonably have detected the customs authorities' error, account must be taken of the nature of the error, the firm's professional experience and the diligence shown by it.

- (16) As regards the nature of the error, the firm followed the instructions given by the customs administration and the BLE, and both these departments repeatedly confirmed that the firm was following the right procedure. Despite its professional experience, the firm therefore had no reason to doubt the accuracy of the instructions given by these departments and the soundness of the procedure followed.
- (17) The fact that Annexes II and IV to Regulation (EC) No 1374/98 used different terms to describe the same method of putting-up for retail sale could well have made interpretation difficult for the firm.
- (18) 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.
- (19) 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.
- (20) 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 XXXXXX need not be entered in the accounts, as requested by Germany on 28 October 2002.

Article 2

This Decision is addressed to the Federal Republic of Germany .

Done at Brussels, 06-08-2003

For the Commission

Frits Bolkestein

Member of the Commission