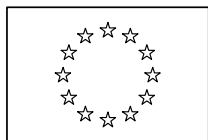


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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9-1-2009
COM(2008)8920 final

COMMISSION DECISION

Of 9-1-2009

**finding that it is justified in a particular case to repay one amount of import duties and
to remit another**

(Only the Italian text is authentic)

(Request submitted by Italy)

(REC 10/01)

FR

COMMISSION DECISION

Of 9-1-2009

**finding that it is justified in a particular case to repay one amount of import duties and
to remit another**

(Only the Italian text is authentic)

(Request submitted by Italy)

(REC 10/01)

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,

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 establishing the Community Customs Code²,

Whereas:

- (1) By letter dated 30 November 2001, received by the Commission on 12 December 2001, Italy asked the Commission to decide whether it is justified in the following circumstances to waive entry in the accounts of import duties under Article 220(2)(b) of Regulation (EEC) No 2913/92 and to grant repayment of duties under Article 239 of the same Regulation.

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 253, 11.10.1993, p. 1.

- (2) Under the second paragraph of Article 2 of Commission Regulation (EC) No 1335/2003 of 25 July 2003³, the provisions of that Regulation do not apply to cases sent to the Commission before 1 August 2003. Therefore the references that follow in this Decision to Articles 871, 873 and 875 of Regulation (EEC) No 2454/93 refer to that Regulation as last amended by Commission Regulation (EC) No 881/2003 of 21 May 2003⁴.
- (3) The dossier sent to the Commission by the Italian authorities shows that between 5 April 1995 and 20 November 1997 an Italian firm released for free circulation concentrated apple juice and pear juice of CN codes 2009 7009 and 2009 8019 declared as coming from and originating in Turkey.
- (4) Imports into the Community of this type of product qualified for preferential arrangements under the EEC-Turkey Association Agreement in accordance with Article 1 of Council Regulation (EEC) No 4115/86 of 22 December 1986 on imports into the Community of agricultural products originating in Turkey⁵. Thus, when covered by an A.TR 1 certificate issued by Turkey's competent authorities, the products in question could be imported into the Community free of customs duties.
- (5) The products were considered to originate in Turkey if they fulfilled the conditions of origin set out in Decision No 4/72 of the EEC-Turkey Association Council⁶, as last amended by Decision No 1/75⁷.
- (6) In accordance with Article 29 of Decision No 1/95⁸, Ravenna customs conducted a post-clearance documentary check on an A.TR 1 certificate (No D 141591) presented by the firm for one of the import operations concerned in this case. Turkey's

³ Commission Regulation (EC) No 1335/2003 of 25 July 2003 amending Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 187, 26.7.2003, p. 16).

⁴ OJ L 134, 29.5.2003, p. 1.

⁵ OJ L 380, 31.12.1986, p. 16.

⁶ OJ L 59, 5.3.1973 (Joint Decision annexed to Council Regulation (EEC) No 428/73 of 5 February 1973 on the application of Decisions Nos 5/72 and 4/72 of the Association Council provided for by the Agreement establishing the Association between the European Economic Community and Turkey).

⁷ OJ L 142, 4.6.1975 (Decision annexed to Council Regulation (EEC) No 1431/75 of 26 May 1975 amending Regulation (EEC) No 428/73 on the application of Decisions No 5/72 and No 4/72 of the EEC-Turkey Association Council).

⁸ Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (OJ L 35, 13.2.1996, p. 1).

competent authorities declared the certificate in question to be false by letter dated 15 May 1998.

- (7) The Italian authorities thereupon conducted post-clearance checks on 103 A.TR 1 certificates annexed by the firm to import declarations. In a series of letters, the Turkish authorities stated that 32 A.TR 1 certificates (corresponding to customs duties in the sum of XXXXXX) were inaccurate and had been neither issued nor validated by Turkish customs and that 16 certificates (corresponding to customs duties in the sum of XXXXXXXX) lodged with Ravenna customs in support of import declarations were invalid because the goods concerned did not originate in Turkey.
- (8) Since the A.TR 1 certificates presented by the firm in support of its declarations for imports into Italy were either false or invalid, the goods covered by these declarations were no longer eligible for preferential tariff treatment. The Italian customs administration therefore issued the firm with a post-clearance recovery notice for XXXXX), the total customs debt due for the import operations in question.
- (9) Citing its good faith, the mistakes made by the competent authorities which it could not have detected and failures on the part of the competent authorities, the firm applied for the import duties concerned to be waived or repaid.
- (10) Under Articles 871 and 905 of Regulation (EEC) No 2454/93, the firm concerned stated that it had seen the dossier sent to the Commission by the Italian authorities.
- (11) By letter of 3 June 2002 the Commission requested further information from the Italian authorities. The Italian authorities provided the information by letter dated 7 June 2002, received by the Commission on 10 June 2002. The administrative procedure was therefore suspended, in accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93, between 4 June and 10 June 2002.
- (12) In a letter of 25 July 2002, received by the firm on 26 July 2002, the Commission informed the firm of its intention to refuse the request and stated its reasons.
- (13) By letter dated 15 August 2002, received by the Commission on 20 August 2002, the firm stated its position on the Commission's objections.

- (14) The administrative procedure was therefore suspended, in accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93, for one month, between 26 July and 26 August 2002.
- (15) In accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 17 September 2002 within the framework of the Customs Code Committee (Repayment Section) to consider the case.
- (16) In Decision C(2002) 3950 of 18 October 2002 (REC 10/01), the Commission found that the import duties concerned had to be entered in the accounts (Article 1); it also found that repayment was justified for part of the debt (Article 3 concerning an amount of XXXXX) and not justified for another part (Article 2 concerning an amount of XXXXXX).
- (17) The firm therefore applied to the Court of First Instance of the European Communities (CFI) to annul Article 2 of the Commission decision of 18 October 2002 finding that repayment of import duties in the sum of XXXXXX was not justified. In a ruling of 6 February 2007 the CFI rejected the firm's [appeal](#)⁹.
- (18) The firm then appealed to the Court of Justice, seeking the annulment of the CFI's ruling of 6 February 2007 and the annulment of Article 2 of Commission decision C(2002) 3950 of 18 October 2002¹⁰.
- (19) In its judgment of 25 July 2008 in Case [C-204/07 P](#), the Court annulled the CFI ruling of 6 February 2007 and Article 2 of the Commission's decision C(2002) 3950 of 18 October 2002 on the grounds that the Commission was wrong to justify not repaying customs duties by finding that the facts of the case did not constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (20) The Commission must act on this annulment and re-examine in the light of the Court's judgment the applicability of Article 239 of Regulation No 2913/92 to the circumstances of the case; the time limits referred to in Articles 873 and 907 of Regulation (EEC) No 2454/93 run from the date of that judgment.

⁹ Case T-23/03 (CAS SpA).

¹⁰ Case C-204/07 P (CAS SpA).

- (21) In September 2008 the Italian authorities notified the Commission that only part of the amount of duties in question, namely XXXXX, had been paid, a security having been lodged for the remaining XXXXXX; accordingly, the repayment request concerns the amount of duties paid and a remission request has been lodged for the rest.
- (22) In accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 23 September 2008 within the framework of the Customs Code Committee (Repayment Section) to consider the case.
- (23) 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.
- (24) The Court of Justice of the European Communities has consistently taken the view that these provisions represent 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.
- (25) In paragraph 128 of its judgment, the Court found that the Commission failed in its obligations to supervise and control the proper application of the EEC-Turkey Association Agreement.
- (26) This failure on the part of the Commission constitutes, in the case in point, a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (27) As regards the second condition laid down by Article 239 of Regulation (EEC) No 2913/92, there is nothing in the dossier to suggest deception or obvious negligence on the part of the firm. The second condition of Article 239 is therefore met.
- (28) It is therefore justified to grant the requested repayment of import duties and it is also justified to grant the requested remission of import duties,

HAS ADOPTED THIS DECISION:

Article 1

1. The repayment of import duties in the sum of XXXXX concerned by part of Italy's request of 30 November 2001 is justified.
2. The remission of import duties in the sum of XXXXXX concerned by part of Italy's request of 30 November 2001 is justified.

Article 2

This decision is addressed to Italy.

Done at Brussels, 9-1-2009

For the Commission

László KOVÁCS

Member of the Commission