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REM 12/01



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.01.2002

NOT FOR PUBLICATION

COMMISSION DECISION

of 18.01.2002

finding that the repayment of import duties in a particular case is justified

**(Request submitted by Austria)
(REM 12/01)**

FR

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**(Request submitted by Austria)
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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 993/2001,⁴ and in particular Article 907 thereof,

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 141, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 9 April 2001, received by the Commission on 20 April, Austria asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances.
- (2) An Austrian firm wished to release for free circulation low-quality spelt originating in Hungary.
- (3) It therefore applied to the competent Austrian authorities for an import certificate, which was granted on 22 August 2000, under Commission Regulation (EC) No 1218/96 of 28 June 1996 on partial import duty exemption for certain cereals sector products as provided for in the Agreements between the European Community and the Republic of Poland, the Republic of Hungary, the Czech Republic, the Slovak Republic, the Republic of Bulgaria and Romania.⁵ The firm believed that the certificate entitled it to release a total of 950 tonnes of low-quality spelt originating in Hungary for free circulation at a rate of import duty 80% lower than that applicable to third countries, in accordance with Council Regulation (EC) No 3066/95 of 22 December 1995 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for the adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreements to take account of the Agreement on Agriculture concluded during the Uruguay Round Multilateral Trade Negotiations.⁶
- (4) On the basis of this import certificate the firm states that it concluded a contract with a Hungarian supplier with view to releasing the spelt for free circulation in September 2000.

⁵ OJ L 161, 29.06.1996, p. 51.

⁶ OJ L 328, 30.12.1995, p. 31.

- (5) However, at the time in question Council Regulation (EC) No 1727/2000 of 31 July 2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Hungary was in force.⁷ This Regulation, which entered into force on 7 August 2000 with retroactive effect from 1 July 2000, introduced a zero-duty quota from 1 July 2000 for medium- and high-quality common and durum wheat originating in Hungary released for free circulation in the Community. With the entry into force of Regulation (EC) No 1727/2000, the quota established by the previous Regulation (EC) No 3066/95 granting an 80% reduction in duties for imported wheat of all kinds ceased to apply. Commission Regulation (EC) No 2511/2000 of 15 November 2000 laying down detailed rules for the application of Council Regulation (EC) No 1727/2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products originating in Hungary, and amending Regulation (EC) No 1218/96 was not published until 16 November 2000.⁸
- (6) When the customs declarations were lodged on 13 and 15 September 2000 the competent customs office refused to accept the import certificate and apply the reduced rate of duties because the certificate concerned the release for free circulation of low-quality wheat. Instead it applied the third-country rate in accordance with Council Regulation (EC) No 1727/2000.
- (7) The customs office therefore demanded that the firm pay XXXXX in customs duties at the third-country rate, which the firm did. The firm is seeking the repayment of customs duties in the sum of XXXX, which represents the difference between the XXXXXXX it actually paid and the XXXXXXX it would have paid had it obtained the 80% reduction requested in its customs declarations.

⁷ OJ L 198, 04.08.2000, p. 7.

⁸ OJ L 298, 16.11.2000, p. 18.

- (8) In support of the application submitted by the competent Austrian authorities the firm indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.
- (9) 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 9 November 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (10) In accordance with Article 239 of Regulation (EEC) No 2913/92, import duties may be repaid or remitted in special situations, other than those laid down 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.
- (11) The Court of Justice of the European Communities has consistently taken the view that this provision represents a general principle of equity designed to cover an exceptional 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.
- (12) The dossier received by the Commission from the Austrian authorities shows that the firm applied for a reduced rate of duties which could not be granted on the dates on which the goods concerned were released for free circulation. The rules applicable on these dates, namely Regulation (EC) No 1727/2000, accorded a zero rate of duty only for medium- and high-quality durum and common wheat, whereas the wheat in this case was of low quality.

- (13) It should, however, be noted that the competent Austrian agricultural administration issued, on 22 August 2000, an import certificate under Commission Regulation (EC) No 1218/96 for the products in question despite their no longer being eligible for such a certificate. Though the certificate issued in this case corresponded to the goods released for free circulation, it was not actually valid.
- (14) It should also be noted that the changes in the rules shortly before the events in question were not obvious. Regulation (EC) No 1727/2000 contained no mention of the fact that it amended Regulation (EC) No 3066/95, the previous regulation. Thus, with regard to wheat originating in Hungary, the amendment was implicit: the fact that Regulation (EC) No 1727/2000 did not include low-quality wheat meant that the quota established by Regulation (EC) No 3066/95 granting an 80% reduction in duties for imported wheat of all kinds was replaced by that established by Regulation (EC) No 1727/2000, which was only for medium- and high-quality durum and common wheat. Any quota for low-quality wheat originating in Hungary was implicitly excluded. Furthermore, at the time in question Regulation (EC) No 2511/2000 laying down detailed rules for the application of Council Regulation (EC) No 1727/2000 had yet to be published in the Official Journal of the European Communities. While not invalidating Regulation (EC) No 1727/2000, this did not make the changes to the rules any easier to read. It therefore has to be concluded that the changes made by Regulation (EC) No 1727/2000 to the provisions of Regulation (EC) No 3066/95 were not obvious. Indeed, the Austrian department of agriculture itself misinterpreted the changes made. The complexity of the rules could have misled the firm in question.
- (15) Taken together, these factors are such as to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92

- (16) However, such a situation can give rise to the remission of duties only if no deception or obvious negligence may be attributed to the person concerned.
- (17) The Court of Justice of the European Communities has consistently taken the view that account must be taken, in particular, of the operator's experience and diligence when examining whether there has been obvious negligence.
- (18) The operator in this case is a one-man firm. It is therefore a very small business. Furthermore, as the Austrian authorities explain, the firm has little experience of customs and agricultural law.
- (19) Given the size of the firm, its lack of import-export experience and the fact that the change to the rules was not obvious, the firm cannot be considered to have failed to show due diligence.
- (20) Lastly, the two releases for free circulation involved in this case are isolated operations.
- (21) In the light of the above, the firm acted in good faith, and the circumstances in this case have to be considered a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 involving neither deception nor obvious negligence on the part of the person concerned.
- (22) Therefore the repayment of import duties is justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXXX requested by Austria on 9 April 2001 is justified.

Article 2

This Decision is addressed to the Republic of Austria. Only the German text is authentic.

Done at Brussels, 18.01.2002

For the Commission

Member of the Commission