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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2000

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NOT FOR PUBLICATION

COMMISSION DECISION

Of 22.12.2000

finding that remission of import duties is justified in a particular case and authorising the Federal Republic of Germany to repay or remit duty in cases involving comparable issues of fact and law

(Request submitted by Germany)

(REM 07/2000)

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(REM 07/2000)

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 955/1999,²

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 1602/2000,⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p. 1

² OJ L 119, 7.5.1999, p. 1

³ OJ L 253, 11.10.1993, p.1

⁴ OJ L 188, 26.7.2000, p. 1

Whereas:

- (1) By letter dated 28 March 2000, received by the Commission on 5 April 2000, the Federal Republic of Germany asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties is justified in the following circumstances.
- (2) A forwarding company based in Turkey (“the company”) transported a consignment of goods from Turkey to Germany in July 1996. When the goods were delivered to Apolda in Germany, the person who received the goods (“the consignee”) asked the lorry driver to carry a small quantity of goods to Chemnitz. The consignee’s lorry had broken down, so he could not transport the goods himself. The lorry driver agreed to do it for him, since it was only a small quantity of Community goods and he had been on friendly terms with the consignee for a long time. The goods were therefore carried to Chemnitz for free.
- (3) Since the lorry in question was not allowed to carry out this type of operation, transporting Community goods within German territory, the German customs authorities took the view that the lorry and the semi-trailer were no longer eligible for the arrangements on the temporary admission of means of transport, and that a customs debt had been incurred with regard to the vehicle. The authorities therefore demanded payment of import duties in the sum of XXXXX, remission of which is requested.
- (4) In support of the request submitted by the German authorities, the operator, pursuant to Article 905 of Regulation (EEC) No 2454/93, stated that he had seen the dossier submitted to the Commission by the German authorities and further stated his position in a document which was sent to the Commission as an annex to the dossier submitted by them.

- (5) 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 15 June 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (6) 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.
- (7) The Court of Justice of the European Communities has consistently ruled that Article 239 constitutes a general equitable provision intended to cover exceptional situations in which a company might find itself in comparison with other operators in the same business.
- (8) The dossier submitted to the Commission by the German authorities indicates that the latter took the view that the vehicle in question was used improperly with regard to the rules applicable to temporary admission of means of transport, as a result of which the company incurred a customs debt.
- (9) However, in this case, it behoves us to point out that there are a number of factors such as to constitute a special situation involving no deception or obvious negligence on the part of the company, within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (10) The dossier submitted by the German authorities shows that the lorry driver, an employee of the company, was simply mistaken in thinking that he could carry the goods in question for free without contravening Community customs legislation, and had no fraudulent intent. He believed that, since it was done for free, the transportation could not be deemed a commercial operation within the meaning of the rules on temporary admission of means of transport.

- (11) Moreover, it is evident that the irregularity committed by the lorry driver was an isolated incident; that the distance he drove with the goods in question within German territory was relatively short (roughly 70 km); that neither the driver nor the company benefited financially in any way from the operation, since the lorry driver did it purely as a favour and did not inform the company; that only a small quantity of goods was involved, and that, in any event, the driver's route took him to Chemnitz so that he did not have to go out of his way to deliver the goods.
- (12) These factors are such as to constitute a situation covered by Article 239 of Regulation (EEC) No 2913/92.
- (13) In the circumstances of the case in question no deception or obvious negligence may be attributed to the person concerned, as the German authorities acknowledge. The driver acted without payment, purely as a favour, and it was the consignee himself who informed the customs authorities of the operation, which shows that both of those parties acted in good faith and that they took part in the operation without being aware that they were acting improperly. Moreover, it should be pointed out that the driver had not informed the company of the operation in question and that the company had given the driver written instructions stipulating that it was forbidden to carry goods between two points situated within the Community. No obvious negligence can therefore be attributed to it.
- (14) The remission of import duties is therefore justified in this case.
- (15) Under Article 908 of Regulation (CEE) No 2454/93, where repayment or remission is justified in a particular situation, 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 law.

(16) By letter dated 28 March 2000, received by the Commission on 5 April 2000, the Federal Republic of Germany requested authorisation to repay or remit duties in various cases involving comparable issues of fact and law.

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXX requested by the Federal Republic of Germany on 28 March 2000 is hereby found to be justified.

Article 2

The Federal Republic of Germany is authorised to repay or remit import duties in cases involving issues of fact and of law comparable to those referred to in the request from the Federal Republic of Germany dated 28 March 2000.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 22.12.2000

For the Commission

Member of the Commission