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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.01.2002

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NOT FOR PUBLICATION

COMMISSION DECISION

of 15.01.2002

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

**(Request submitted by Belgium)
(REM 11/01)**

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**(Request submitted by Belgium)
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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 11 April 2001, received by the Commission on 18 April, Belgium 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) At the request of the Belgian gendarmerie a customs agent (the applicant) declared a video projector from Ecuador for release for free circulation. The applicant paid the customs duties payable on this release for free circulation.
- (3) After customs clearance the gendarmerie tracked the projector to its destination, where 7.5 kg of cocaine was found to be concealed in the projector's packaging. The consignee was arrested and all the goods seized and confiscated.
- (4) The applicant is applying for the repayment of the customs duties paid when the video projector was released for free circulation, a sum of XXXXXXXX.
- (5) In support of the application submitted by the competent Belgian authorities the applicant indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the Belgian authorities had sent to the Commission and had nothing to add.
- (6) 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.
- (7) Under 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 the said Regulation) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

- (8) 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.
- (9) The customs debt was incurred through the release for free circulation of the video projector. Because the projector was not seized until after clearance, the third indent of Article 233(c) of Regulation (EEC) No 2913/92 does not apply, meaning that the customs debt is not extinguished by the seizure and confiscation of the projector.
- (10) However, the dossier received by the Commission from the Belgian authorities shows that the applicant cleared the projector at the Belgian gendarmerie's request for the purposes of a controlled delivery operation. Straight after clearance the projector was handed over to the Belgian gendarmerie, which tracked it to its destination. The applicant acted in good faith. It did not know that the video projector would not necessarily be entering the Community economy, and it certainly knew nothing about the cocaine hidden in the projector's packaging.
- (11) Indeed the projector was seized and confiscated by the competent Belgian authorities before the consignee even took possession of the goods. The purpose of release for free circulation, namely entering the Community economy, was not therefore fulfilled in respect of the goods in question.

- (12) Furthermore, since the projector has been seized and confiscated, even if duties are repaid to the applicant, the projector is unlikely to enter the Community economy without payment of import duties. The repayment of import duties to the applicant would cause the projector to lose its Community status, in accordance with the third indent of Article 83(b) of Regulation (EEC) No 2913/92. However, by virtue of this fact and its seizure and confiscation, the projector, assuming it is not destroyed, could only be placed on the market if the import duties were paid once again by the person releasing it for free circulation the second time around. Thus, repaying import duties to the applicant in this case would have no impact on the Community's own resources and would not, therefore, harm the Communities' financial interests.
- (13) In view of the above, in so far as the applicant acted at the gendarmerie's request in the context of a controlled delivery operation and the projector was seized and confiscated before it actually entered the Community economy, the circumstances of this case must be considered to constitute a situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 involving neither deception nor obvious negligence on the part of the applicant.
- (14) The repayment of import duties is therefore justified in this case,

HAS ADOPTED THIS DECISION :

Article 1

The repayment of import duties in the sum of XXXXX requested by Belgium on 11 April 2001 is justified.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, on 15.01.2002.

For the Commission

Member of the Commission