

**REM 25/00, REM 27/00, REM 33/00, REM 35/00- EN**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29-10-2001

NOT FOR PUBLICATION

**COMMISSION DECISION**

**of 29-10-2001**

**finding that remission of import duties in a number of cases is justified and authorising the Member States to repay or remit duties in cases involving comparable issues of fact and law**

**(Requests submitted by the United Kingdom)**

**(Cases REM 25/00, REM 27/00, REM 33/00, REM 35/00)**

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code,<sup>1</sup> as last amended by Regulation (EC) No 2700/2000,<sup>2</sup>

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,<sup>3</sup> as last amended by Regulation (EC) No 993/2001,<sup>4</sup> and in particular Article 907 thereof,

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<sup>1</sup> OJ L 302, 19.10.92, p. 1

<sup>2</sup> OJ L 311, 12.12.00, p. 17

<sup>3</sup> OJ L 253, 11.10.93, p. 1

<sup>4</sup> OJ L 141, 28.05.01, p. 1

Whereas:

- (1) By letters dated 26 September (cases REM 25/00 and REM 27/00), 6 December (case REM 33/00) and 13 December 2000 (case REM 35/00), received by the Commission on 2 October, 12 December and 18 December respectively, the United Kingdom 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) UK firms imported processed tuna originating in Turkey in the periods December 1996-November 1997 (REM 25/00), February-November 1997 (REM 27/00), February 1997 (REM 33/00) and February 1998 (REM 35/00).
- (3) Imports into the Community of processed tuna originating in Turkey were eligible for preferential arrangements for fisheries products under Decision No 1/80 of the EEC-Turkey Association Council. Provided they were covered by A.TR certificates issued by the competent Turkish authorities in accordance with Decision No 5/72 of the EEC-Turkey Association Council,<sup>5</sup> the products concerned could be imported into the European Community free of duty.
- (4) 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 Council,<sup>6</sup> as last amended by Decision No 1/75.<sup>7</sup>

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<sup>5</sup> OJ L 59, 5.3.1973 (Joint Decision annexed to Council Regulation (EEC) No 428/73 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).

<sup>6</sup> OJ L 59, 5.3.1973 (Joint Decision annexed to Council Regulation (EEC) No 428/73 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).

<sup>7</sup> OJ L 142, 04.06.75 (Joint Decision annexed to Council Regulation (EEC) No 1431/75 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).

- (5) In the cases in point, the firms presented A.TR certificates issued by the competent Turkish authorities in support of their customs declarations for release for free circulation. The UK customs authorities accepted the declarations and granted preferential tariff treatment.
- (6) An investigation into the status of processed tuna imported into the Community since 1993, carried out in Turkey by the representatives of a number of Member States and the European Commission from 3 to 20 June 1996, revealed that a large proportion of the raw materials used to manufacture the products exported to the Community had been imported from third countries. Moreover, the failure to store goods of third country origin separately from those of Community or Turkish origin meant that the end product could not be deemed to originate in Turkey.
- (7) A second investigation carried out by representatives of several Member States and the European Commission in Turkey from 15 June to 3 July 1998 showed that the goods exported to the European Community in the period June 1996-June 1998 by the exporter involved in these four cases were not entitled to preferential tariff treatment.
- (8) Since the products imported into the United Kingdom were not therefore eligible for preferential tariff treatment, the UK authorities demanded payment of import duties in the sums of GBP XXXXX (REM 25/00), GBP XXXXX (REM 27/00), GBPXXXXX (REM 33/00) and GBP XXXX (REM 35/00), remission of which is requested in these cases

- (9) On 20 December 2000 a notice to importers (2000/C 366/09) was published in the Official Journal of the European Communities,<sup>8</sup> informing traders that the Commission had reason to doubt the proper application of the preferential arrangements accorded to Turkey and the validity of the proof of origin presented in the European Community in respect of tuna products of heading 1604 originating in that country. Traders were therefore warned to take all necessary precautions when using the preferential arrangements to release processed tuna for free circulation.
- (10) In support of the requests submitted by the competent UK authorities the firms stated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, they had seen the dossiers the authorities had sent to the Commission and had nothing to add.
- (11) By letter of 24 January 2001, the Commission asked the UK authorities for some additional information. This information was provided by letter dated 5 March 2001, received by the Commission on 8 March. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 25 January and 8 March 2001.
- (12) By letter of 11 June 2001, the Commission again asked the UK authorities for additional information. This information was provided by letter dated 20 August 2001, received by the Commission on 28 August 2001. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 12 June and 28 August 2001.

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<sup>8</sup> OJ C 366, 20.12.2000, p. 16.

- (13) 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 28 September 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (14) 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.
- (15) 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.
- (16) In the cases in point, the granting of preferential tariff treatment for the imports was subject to presentation of A.TR origin certificates.
- (17) As already pointed out, the 1998 Community investigation showed that the processed tuna could not be deemed to be of Turkish origin and was therefore ineligible for preferential treatment
- (18) The certificates issued by the Turkish authorities during the years in question were therefore invalid.
- (19) Reliance on the validity of such certificates is not normally protected, as this is considered part of the importer's normal commercial risk and therefore the responsibility of the person liable for payment

- (20) The Court of Justice has consistently ruled that the legitimate expectations of a trader are protected only if the competent authorities themselves gave rise to the expectation.
- (21) In this instance, the exporter declared on the certificates of origin that the goods they referred to met the conditions for obtaining the certificates.
- (22) It is plain from recent rulings of the Court of First Instance of the European Communities, however, that even if the exporter had misled the Turkish authorities that would not necessarily rule out the existence of a special situation in this case within the meaning of Regulation (EEC) No 2913/92.
- (23) In any case, the fact that the exporter confirmed on the certificates that the conditions for obtaining them had been met is not in itself proof that the competent Turkish authorities were misled. It is necessary to ascertain whether the exporter made these statements on the assumption that the competent authorities were acquainted with all the facts necessary to apply the rules in question and whether the authorities, despite their knowledge, raised no objection to the statements.
- (24) In the case in point, there is evidence to suggest that the competent Turkish authorities knew or, at the very least, should have known that the goods for which they were issuing A.TR certificates did not fulfil the conditions laid down for preferential treatment. The competent Turkish authorities can also be blamed for a number of deficiencies and liable to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.



- (25) The evidence gathered during the two Community investigations and the lack of cooperation on the part of the Turkish authorities show that the latter failed to take all due precautions to ensure the proper implementation of the provisions applicable to the exports in question.
- (26) The authorities not only refused to withdraw all but a few of the contested certificates in the wake of the investigation, they continued to issue certificates to the two exporters involved in the first investigation.
- (27) The competent Turkish authorities therefore knew or, at the very least, should have known that the products concerned did not fulfil the conditions laid down for preferential treatment. The fact that they nevertheless issued the A.TR certificates must therefore be considered a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (28) The circumstances of these cases are therefore such as to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (29) These circumstances involve neither deception nor obvious negligence on the part of the firms concerned.
- (30) The Court of Justice has ruled that the negligence of importers has to be set against the period of time during which the competent authorities persisted in their behaviour. In the cases concerned the competent Turkish authorities issued A.TR certificates for goods that did not meet the conditions for granting such certificates throughout the period 1993-98.

- (31) Nor is there evidence that the firms involved deviated from normal business practice when concluding their purchase contracts and carrying out the imports concerned, and they must therefore be absolved of any obvious negligence.
- (32) The firms concerned have therefore acted in good faith and committed no deception or obvious negligence.
- (33) Remission of import duties is therefore justified in these cases.
- (34) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 allows the Commission, under conditions that it may determine, to authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and law.
- (35) At its meeting on 28 September 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment), the group of experts composed of representatives of all the Member States provided for in Article 907 of Regulation (EEC) No 2454/93 asked that all Member States be authorised to repay or remit import duties in cases involving comparable issues of fact and law

- (36) Such authorisation may be granted to the Member States on the condition that it is used only in cases strictly comparable in fact and law to the cases in question. The authorisation should nevertheless also cover requests for repayment or remission of duties lodged within the legal time limits in respect of import operations carried out between June 1993 and the publication date of notice to importers 2000/C 366/09, where such import operations were carried out in circumstances comparable in fact and law to those which gave rise to these cases. Above all, the behaviour of the importers must involve no deception or obvious negligence,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The remission of import duties in the sum of GBP XXXX requested by the United Kingdom on 26 September 2000 (case REM 25/00) is hereby found to be justified.
2. The remission of import duties in the sum of GBP XXXX requested by the United Kingdom on 26 September 2000 (case REM 27/00) is hereby found to be justified.
3. The remission of import duties in the sum of GBP XXXX requested by the United Kingdom on 6 December 2000 (case REM 33/00) is hereby found to be justified.
4. The remission of import duties in the sum of GBP XXXX requested by the United Kingdom on 13 December 2000 (case REM 35/00) is hereby found to be justified.

*Article 2*

The Member States are hereby authorised to repay or remit import duties in cases involving issues of fact and law comparable to those described by the United Kingdom's requests of 26 September (cases REM 25/00 and 27/00), 6 December (case REM 33/00) and 13 December 2000 (case REM 35/00).

The authorisation shall cover requests for repayment or remission of duties lodged within the legal time limits in respect of import operations carried out between June 1993 and the publication date of notice to importers 2000/C 366/09, where such operations were carried out in circumstances comparable in fact and law to those which gave rise to the requests referred to in the previous subparagraph.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels, 29-10-2001

*For the Commission*

*Member of the Commission*