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**REM 15/01**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02/05/22

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NOT FOR PUBLICATION

**COMMISSION DECISION**

**of**

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

(Only the English text is authentic.)

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

**(REM 15/01)**

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## COMMISSION DECISION

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

(Only the English text is authentic.)

**(Request submitted by the United Kingdom)  
(REM 15/01)**

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 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, 19.10.1992, p. 1.

<sup>2</sup> OJ L 311, 12.12.2000, p. 17.

<sup>3</sup> OJ L 253, 11.10.1993, p. 1.

<sup>4</sup> OJ L 141, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 4 July 2001, received by the Commission on 26 July 2001, the United Kingdom asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties was justified in the following circumstances.
- (2) It must first be pointed out that the customs debt arose between 1991 and 1993. The basis for the repayment request is not therefore Article 239 of Regulation (EEC) No 2913/92 but Article 13 of Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties,<sup>5</sup> as last amended by Regulation (EEC) No 1854/89,<sup>6</sup> since that was the act applicable when the customs debt arose. However, this point concerning the legal basis in no way affects the admissibility of the request or the conditions governing repayment.
- (3) A firm established in the United Kingdom imported chocolate from Switzerland in the period 1991-July 1993.
- (4) Such imports into the Community were at that time subject to a variable component depending on the chocolate's percentage milkfat content.
- (5) Chocolate with a milkfat content of more than 6% was classified in CN heading 1806 32 under additional code 7862, on which a variable component of ECU 50.64 per 100 kg was payable. However, chocolate with a milkfat content of less than 6% was classified in CN heading 1806 32 under additional code 7202, on which the variable component was ECU 77.86 per 100 kg.

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<sup>5</sup> OJ L 175, 12.07.1979, p. 1.

<sup>6</sup> OJ L 186, 30.06.1989, p. 1.

- (6) After analysing the product the competent UK authorities concluded that its milkfat content was lower than 6%, less than the level required for the classification given by the firm in its customs declarations.
- (7) The competent UK authorities carried out their analyses in accordance with Commission Regulation (EEC) No 4154/87 of 22 December 1987 laying down the methods of analysis and other technical provisions necessary for the implementation of Regulation (EEC) No 3033/80 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products.<sup>7</sup>
- (8) On the basis of the results of the analyses and the classification error they revealed, the UK authorities concluded that the import goods should have been classified under additional code 7202 and a variable duty of ECU 77.86 per 100 kg paid. They therefore demanded that the firm pay XXXXXXXX for chocolate released for free circulation between 1991 and July 1993, a sum that the firm is seeking to have repaid.
- (9) Under Article 905 of Regulation (EEC) No 2454/93 and in support of the request made by the United Kingdom authorities, the firm concerned indicated that it had seen the dossier submitted to the Commission by the United Kingdom authorities and had nothing to add.
- (10) By letter dated 18 February 2002, received on 20 February 2002, the Commission notified the company of its intention to withhold approval and explained the grounds for its decision. By letter dated 18 March 2002, received by the Commission on the same day, the firm expressed its opinion on the Commission's objections.
- (11) The administrative procedure was suspended, in accordance with Article 907 of Regulation (EEC) No 2454/93, between 20 February and 18 March 2002.

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<sup>7</sup> OJ L 392, 31.12.1987, p. 19.

- (12) 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 7 May 2002 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (13) Under Article 13 of Regulation (EEC) No 1430/79 import duties may be repaid or remitted in special situations (other than those laid down in Sections A to D of the said Regulation) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (14) 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.
- (15) The dossier received by the Commission from the UK authorities shows that the goods released for free circulation should, under Regulation (EEC) No 4154/87, have been deemed to have a milkfat content of less than 6%, rather than the content of over 6% declared by the firm. It therefore paid a lower variable component than that actually applicable. It therefore owes import duties in the sum of XXXXXX.
- (16) However, Commission Regulation (EC) No 203/98 of 26 January 1998 amending Regulation (EEC) No 4154/87 laying down the methods of analysis and other technical provisions necessary for the application of the import procedure for goods obtained by processing agricultural products<sup>8</sup> introduced a method for calculating the milkfat content of chocolate which results in a more advantageous tariff classification for the product concerned, namely the subheading entered by the firm in its declarations for release for free circulation.

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<sup>8</sup> OJ L 21, 28.01.1998, p. 6.

- (17) This, taken with the fact that the firm itself brought the matter to the attention of the competent authorities, constitutes a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79.
- (18) However, such a situation can give rise to the repayment of duties only if no deception or obvious negligence may be attributed to the person concerned.
- (19) 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.
- (20) In this instance, the firm showed diligence by drawing the competent authorities' attention to the fact that the method laid down in Regulation (EEC) No 4154/87 did not reflect the objective characteristics of the product concerned.
- (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 13 of Regulation (EEC) No 1430/79 involving neither deception nor obvious negligence on the part of the person concerned.
- (22) 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 XXXXXX requested by the United Kingdom of Great Britain and Northern Ireland on 4 July 2001 is hereby found to be justified.

*Article 2*

This Decision is addressed to the United Kingdom.

Done at Brussels, 02/05/22

*For the Commission*

*Member of the Commission*