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**REM 12/2003**

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13-1-2005  
C (2005)6

NOT FOR PUBLICATION

**COMMISSION DECISION**

**Of 13-1-2005**

**finding that repayment of import duties is not justified in a particular case**

(Only the English text is authentic.)

**(Request submitted by the United Kingdom)**  
**(REM 12/2003)**

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**(Request submitted by the United Kingdom)**  
**(REM 12/2003)**

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 the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded,<sup>2</sup>

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,<sup>3</sup> as last amended by Regulation (EC) No 2286/2003,<sup>4</sup>

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<sup>1</sup> OJ L 302, 19.10.1992, p. 1.

<sup>2</sup> OJ L 236, 23.9.2003, p. 33.

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

<sup>4</sup> OJ L 343, 31.12.2003, p. 1.

Whereas:

- (1) By letter dated 18 July 2003, received by the Commission on 23 July 2003, the United Kingdom asked the Commission to decide whether the repayment of import duties was justified under Article 239 of Regulation (EEC) No 2913/92 in the following circumstances.
- (2) Under the second paragraph of Article 2 of Regulation (EC) No 1335/2003, the provisions of Article 1 of that Regulation do not apply to cases sent to the Commission before 1 August 2003. Therefore the references that follow in this Decision to Articles 905 and 907 of Regulation (EEC) No 2454/93 refer to that Regulation as last amended by Commission Regulation (EC) No 881/2003 of 21 May 2003.<sup>5</sup>
- (3) A UK firm imported electric pumps between October and December 1999. Upon import the pumps were placed under the inward processing procedure for repairs. In the same period the firm lodged 12 export declarations for electric pumps.
- (4) Following an audit by the competent authorities in April and May 2002, it emerged that the goods exported at the end of 1999 using the standard procedure were actually those that had been placed under the inward processing procedure. In view of this error the competent authorities considered that a debt had been incurred and asked the firm to pay XXXXX. The firm is requesting repayment of this amount under Article 239 of Regulation (EEC) No 2913/92.
- (5) In support of the application submitted by the UK authorities, the firm indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier which those authorities had sent to the Commission.
- (6) By letter of 15 December 2003, the Commission asked the UK authorities for some additional information. The UK authorities provided the information by letter dated 17 August 2004, received by the Commission on 23 August 2004. The UK authorities sent the Commission further information by e-mail on 1 December 2003 and by fax on 4 December 2003. Copies of the e-mail, fax and attachments were annexed to the Commission's letter referred to in recital (8).

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<sup>5</sup> OJ L 134, 29.5.2003, p. 1.

- (7) The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 16 December 2003 and 23 August 2004.
- (8) By letter dated 21 October 2004, received by the firm on 27 October 2004, the Commission notified the firm of its intention to withhold approval and explained the reasons for its decision.
- (9) By letter dated 19 November 2004, received by the Commission on the same date, the firm expressed its opinion on the Commission's objections.
- (10) In accordance with Article 907 of Regulation (EEC) No 2454/93, the time limit of nine months for the Commission to take a decision was therefore extended for one month.
- (11) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 1 December 2004 within the framework of the Customs Code Committee, Repayment Section.
- (12) Article 239 of Regulation (EEC) No 2913/92 allows import duties to be repaid or remitted in situations other than those referred to 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.
- (13) 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.
- (14) The firm considers that it was in a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 for the following reasons.
- (15) Firstly, it considers that the customs debt was incurred under Article 204, and not Article 203, of Regulation (EEC) No 2913/92. In support of this position it cites Public Notice 221, issued by UK customs to traders using the inward processing procedure,

Commission decision No C(1998) 2242 of 20 July 1998 (case REM 12/98) which found, for a case in which the facts were similar to this one, that the debt was incurred under Article 204 of Regulation (EEC) No 2913/92, and a draft Community customs code being drawn up by the Commission departments.

- (16) The Commission, while it still holds that the debt was incurred under Article 203 of Regulation (EEC) No 2913/92, does not consider it appropriate to enter into a debate on this matter since the facts that gave rise to the customs debt have been clearly established.
- (17) Secondly, the firm contends that the error committed resulted from a breakdown in communication between itself, which is the holder of the inward processing authorisation, and the customs agent responsible for making out the declarations and acting as direct representative of the firm.
- (18) In response to this point it should be noted that communication problems between a customs agent and its client, or the failure of a customs agent to comply with its client's instructions, are part of a trader's normal professional and commercial risks and so do not constitute a special situation under Article 239 of Regulation (EEC) No 2913/92.
- (19) Lastly, while acknowledging that the goods in question were exported without the requisite formalities, the firm cites the fact that the competent authorities have stated that they have proof that the goods were actually exported. The error therefore had no impact on the Community budget.
- (20) Regarding this point, it should be noted that the absence of a negative impact on the Community budget does not in itself constitute a special situation, but the fact that the goods really were exported, as the competent authorities specified in their request, does constitute a special situation under Article 239 of Regulation (EEC) No 2913/92.
- (21) However, such a situation can give rise to the remission of duties only if no deception or obvious negligence may be attributed to the firm concerned.
- (22) The Court of Justice has consistently taken the view that when examining whether there has been deception or obvious negligence account must be taken, in particular, of the complexity of the legislation and the operator's experience and diligence.

- (23) As regards the firm's experience, the dossier submitted to the Commission shows that it has been using the inward processing procedure since 1994 and must therefore be deemed an experienced trader.
- (24) And as for the firm's diligence, it is agreed that the export declarations were lodged in the last quarter of 1999 by a customs agent acting as a direct representative. The errors, however, were detected by the customs auditors in the course of an audit in April and May 2002. These anomalies did not therefore come to light through the firm's efforts but through the efforts of the competent authorities.
- (25) In a similar case which was the subject of decision C(1998) 2242, the Commission took the view that repayment was justified because the firm itself pointed out its error to the customs authorities within 24 hours of making it. Furthermore, the error was only committed once.
- (26) In this case the Commission takes the view that the firm's repeated error indicates a serious failure in its system for supervising inward processing transactions and so the firm must be deemed obviously negligent.
- (27) Therefore the repayment of import duties is not 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 on 18 July 2003 is not justified.

*Article 2*

This Decision is addressed to the United Kingdom.

Done at Brussels, 13-1-2005

*For the Commission*

*Laszlo KOVACS*

*Member of the Commission*