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REM 11/00



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.4.2001

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NOT FOR PUBLICATION

COMMISSION DECISION

of 2.4.2001

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

(Request submitted by the Federal Republic of Germany)

(Dossier REM 11/00)

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COMMISSION DECISION

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

(Request submitted by the Federal Republic of Germany)

(Dossier REM 11/00)

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) 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 2787/2000,⁴ 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 33, 27.12.2000, p. 1.

Whereas:

- (1) By letter dated 9 June 2000, received by the Commission on 3 July 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 German company, hereinafter referred to as the person concerned or the company, was authorised by the German customs authorities to use the outward processing procedure for manufacturing parachute components. Whenever compensating products were imported, they were transported to a customs warehouse for final assembly and packaging of the parachutes.
- (3) The German customs services ascertained in July 1995 that final assembly had been carried out while the goods were in temporary storage and not under the customs warehouse procedure.
- (4) Since the goods were in temporary storage, assembly was a prohibited form of handling under Article 52 of Regulation (EEC) No 2913/92. That provision states that goods in temporary storage may be subject only to such forms of handling as are designed to ensure their preservation in an unaltered state.
- (5) Noting that the goods in temporary storage had been subject to unauthorised forms of handling, the German authorities considered that a customs debt had been generated. The authorities then claimed the import duties from the company, i.e. XXXXXX, the sum which it is now seeking to have remitted.
- (6) Under Article 905 of Regulation (EEC) No 2454/93 and in support of the request made by the German authorities, the person concerned indicated that he had seen the dossier submitted to the Commission by the German authorities and had nothing to add.

- (7) 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 20 September 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (8) 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.
- (9) The Court of Justice of the European Communities has taken the view that the said Article 239 represents a general principle of equity designed to cover an exceptional situation in which an operator might find himself compared with other operators carrying out the same activity.
- (10) It emerges from the dossier sent by the German authorities to the Commission that the party concerned habitually carried out the forms of handling in question under a customs warehouse procedure with the authorisation of the customs authorities. It was only as a result of a number of major orders, which had to be delivered simultaneously in July 1995, that the company mistakenly carried out the forms of handling referred to when the goods were still in temporary storage and so had not yet been placed in the customs warehouse.
- (11) Furthermore, after handling, the compensating products, with one or two exceptions, were exported to countries outside the European Community. The customs authorities also ascertained that the compensating products had not been subject to any forms of handling other than those which the company could have carried out in the customs warehouse, so that there was no question of any economic injury to the European Communities.
- (12) These factors are such as to constitute a situation covered by Article 239 of Regulation (EEC) No 2913/92.
- (13) However, such a situation can give rise to the remission of duties only if no deception or obvious negligence may be attributed to the person concerned.

- (14) It should also be noted that it was the first time that the company was accused of the failures in question and that these failures were linked with the exceptional, one-off situation with which it was faced (large number of simultaneous orders) and, as indicated by the German customs authorities, the company is known to the customs services for always having fulfilled its obligations correctly.
- (15) In the light of all the foregoing it may be concluded that the company acted in good faith and that the circumstances indicate neither deception nor obvious negligence on its part. Furthermore, as confirmed by the German authorities in their letter of 9 June 2000, the company did not attempt to remove the goods from customs supervision.
- (16) The remission of import duties requested is therefore justified in this case.
- (17) Under Article 908 of Regulation (EEC) No 2454/93, where the circumstances under consideration justify repayment or remission, the Commission may, under conditions which it determines, authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and law.
- (18) By letter dated 9 June 2000, the Federal Republic of Germany requested authorisation to repay or remit duties in cases involving comparable issues of fact and law,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXXX requested by the Federal Republic of Germany on 9 June 2000 is hereby found to be justified.

Article 2

The Federal Republic of Germany is authorised to repay or remit duties in cases involving comparable issues of fact and law to the case cited in its request of 9 June 2000.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, on 2.4.2001

For the Commission

Member of the Commission