

EN

REM 23/01



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24-7-2002

NOT FOR PUBLICATION

COMMISSION DECISION

of 24-7-2002

finding that remission of import duties is justified for one amount but not for another

(only the English text is authentic)

Request submitted by the United Kingdom

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Request submitted by the United Kingdom of Great Britain and Northern Ireland

(REM 23/01)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties¹, as last amended by Regulation (EEC) No 1854/89², and in particular Article 13 thereof,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92³, as last amended by Regulation (EC) No 444/2002⁴, and in particular Article 907 thereof,

¹ OJ L 175, 12.07.1979, p. 1

² OJ L 186, 30.06.1989, p. 1

³ OJ L 253, 11.10.1993, p. 1

⁴ OJ L 68, 12.03.2002, p. 11

Whereas:

- (1) By letter dated 24 September 2001, received by the Commission on 27 September 2001, the United Kingdom asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties⁵, as last amended by Regulation (EEC) No 1854/89⁶, whether the remission of import duties was justified in the following circumstances.
- (2) Between October 1991 and August 1993 a UK firm released for free circulation colour television sets assembled in Turkey from components that had been imported into Turkey from South Korea.
- (3) Under Articles 2(1) and 3(1) of the Additional Protocol to the EEC-Turkey Association Agreement, such goods can be imported into the Community from Turkey free of normal import duties if the original components imported from other countries were released for free circulation in Turkey, or if a compensatory levy (determined by the Association Council) was collected on the goods upon export of the finished product to the Community. Under Decision No 5/72 of the Association Council on methods of administrative cooperation for implementation of Articles 2 and 3 of the Additional Protocol to the Ankara Agreement, this exemption from duties is granted on presentation of an A.TR.1 or A.TR.3 certificate duly endorsed by the competent authorities of the exporting country, in this case the Turkish authorities. However, the exemption does not extend to antidumping duties.
- (4) The imports in question were accompanied by A.TR.1 movement certificates endorsed by Turkish customs and consequently entered the Community in exemption of normal duties.

⁵ OJ L 175, 12.07.1979, p. 1.

⁶ OJ L 186, 30.06.1989, p. 1.

- (5) Checks carried out in Turkey in October and November 1993 by representatives of the European Commission and the customs authorities of a number of Member States showed that the Turkish customs authorities had not collected the compensatory levy, but had endorsed movement certificates all the same. Indeed, Turkey had never made provision in its legislation for collecting compensatory levies, a situation which continued from 1973 until 15 January 1994, the date of entry into force of Decree No 94/5168, which introduced the said compensatory levy.
- (6) The checks established that in the case in point, the certificates presented, which had been endorsed by Turkish customs, were not valid because they had been issued for television sets assembled in Turkey using third-country components which had neither been released for free circulation nor subjected to the compensatory levy. The products in question were therefore not eligible for free circulation on import into the Community.
- (7) The competent authority therefore asked the firm to pay normal customs duties of XXXXX, the amount applicable to complete television sets; remission of this amount has been requested.
- (8) The Community mission also found that raw materials and components originating in South Korea represented more than 35% of the value of the components used by the Turkish supplier for the manufacture of the television sets. In accordance with Commission Regulation (EEC) No 2632/70 of 23 December 1970 on determining the origin of radio and television receivers,⁷ finished colour television sets with such a percentage of components of South Korean origin are regarded as originating in South Korea.

⁷ OJ No L 279, 24.12.1970, p. 35.

- (9) At the time of import television sets originating in South Korea were thus liable to anti-dumping duties under Council Regulation (EEC) No 1048/90 of 25 April 1990 imposing a definitive anti-dumping duty on imports of small-screen colour television receivers originating in South Korea and collecting definitively the provisional duty.⁸ This Regulation imposed a general definitive anti-dumping duty of 19.6% on imports of small-screen colour television receivers falling within CN code ex 8528 10 71 originating in South Korea. For three of the South Korean exporters the duty rate applicable was between 10.2% and 10.5%. Council Regulation (EEC) No 2900/91 of 1 October 1991⁹ subsequently amended Regulation (EEC) No 1048/90 and reduced the general antidumping duty to 10.5%
- (10) The Commission therefore concluded that the television sets inspected during the visit - assembled in Turkey but originating in South Korea - had been liable to antidumping duty on import.
- (11) The competent authority therefore asked the firm to pay antidumping duties of XXXX on the imports; remission of this amount has also been requested.
- (12) The firm has thus requested remission of a total of XXXXX.
- (13) In the application for remission submitted together with the letter of 24 September 2001 of the UK authorities the following reasons are indicated with regard to the existence of a special situation.
- (14) The debt relating to normal customs duties arose, the firm claimed, as a result of an error on the part of the Turkish authorities, which the Commission allowed to continue and which thus gave rise to a special situation.
- (15) It also asserted that antidumping duties introduced for television sets originating in South Korea should not have been imposed on television sets imported from Turkey. Moreover, it argued, the liability to antidumping duties in question arose in unforeseeable circumstances resulting from unclear and ambiguous Community legislation, the firm having, it claimed, a legitimate expectation that no such liability would be incurred.

⁸ OJ No L 107, 27.04.1990, p. 56.

⁹ OJ No L 275, 02.10.1991, p. 24.

- (16) 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 the authorities had sent to the Commission and had nothing to add.
- (17) By letter dated 5 April 2002, received by the firm on 9 April 2002, the Commission informed the firm that it intended to accept the request for remission of the debt relating to normal customs duties and reject the request for remission of the debt relating to the antidumping duties, and stated its objections to the latter.
- (18) By letter dated 25 April 2002, received by the Commission on the same date, the firm expressed its opinion regarding the Commission's objections. It continued to maintain that the circumstances of the case constituted a special situation in which it had been guilty of neither deception nor obvious negligence. It stated that 15 of the 17 declarations concerned had been accompanied by certificates of origin issued by the Istanbul Chamber of Commerce declaring that the television sets were of Turkish origin. If the televisions were in fact South Korean, the fact that these certificates had been issued would, the firm argued, constitute an error on the part of the authorities and hence a special situation. It asserted it had had legitimate expectations that its television sets were of Turkish origin and were not therefore subject to the antidumping duties applied to television sets of South Korean origin.
- (19) The firm also argued that according to the principle of equity the collection of antidumping duties would be disproportionate, since it would be anomalous to set a rate of duty for television sets manufactured in Turkey by reference to South Korean domestic prices.
- (20) It further claimed that it had not been obviously negligent; it had no duty to check the origin of the goods, as it already held certificates of origin declaring that the television sets were of Turkish origin in the vast majority of cases.
- (21) Lastly, it stated that it had no reason to doubt the validity of the documents, or that the goods it was importing were of anything other than Turkish origin, particularly since no warnings had been issued about the possible origin irregularities affecting television sets exported from Turkey.

- (22) The administrative procedure was suspended, in accordance with Article 907 of Regulation (EEC) No 2454/93, for one month, between 9 April and 9 May 2002.
- (23) 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 12 June 2002 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (24) In accordance with Article 13(1) 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 that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (25) The Court of Justice of the European Communities has consistently taken the view that these provisions represent a general principle of equity designed to cover an exceptional situation in which an operator finds itself, compared with other operators engaged in the same business, and that in the absence of such circumstances, he would not have suffered the disadvantage caused by the post-clearance entry in the accounts.
- (26) The file sent to the Commission by the UK authorities shows that the A.TR.1 certificates issued by the Turkish authorities were not valid and that furthermore the imported television sets concerned were of South Korean origin. Consequently, the releases for free circulation of the product concerned therefore gave rise to a debt for normal customs duties and a debt for antidumping duties, for which the firm, as declarant, was liable.
- (27) As regards the debt for normal customs duties, since the request for remission was submitted the Commission has adopted decision REM 21/01 of 8 February 2002, which authorises the Member States to repay or remit import duties in cases involving issues of fact and law comparable to the case which was the subject of that decision. Decision REM 21/01 was addressed to the United Kingdom of Great Britain and Northern Ireland.

- (28) In the case now under consideration, since the imports concerned took place in the period covered by the authorisation, the issues of fact and law are comparable to those involved in decision REM 21/01 and the UK authorities consider that the firm was innocent of obvious negligence or deception in connection with the part of the debt relating to normal customs duties, the solution adopted in decision REM 21/01 should be deemed to apply to the part of the debt relating to the normal customs duties. Remission of the normal customs duties of XXXX is therefore justified.
- (29) As regards the debt for antidumping duties, it has been established that under Regulation (EEC) No 2632/70 the television sets, although assembled in Turkey, were of South Korean origin.
- (30) Following the notice of initiation in February 1988 of an antidumping proceeding concerning imports of colour television sets originating in South Korea,¹⁰ Council Regulation (EEC) No 1048/90 of 25 April 1990 imposed a definitive antidumping duty of 19.6% of the net free-at-frontier price on imports of small-screen colour television receivers falling within CN code ex 8528 10 71 originating in South Korea, as stated in Article 1(1) of the Regulation. Article 1(2) states that the duty provided for in paragraph 1 applies to small-screen colour television receivers with a diagonal screen size of more than 15.5 cm but no greater than 42 cm, whether or not combined in the same housing with a radio broadcast receiver and/or a clock. Council Regulation (EEC) No 2900/91 of 1 October 1991 amending Regulation (EEC) No 1048/90, which entered into force on 3 October 1991, subsequently reduced the rate of this definitive antidumping duty from 19.6% to 10.5%. Regulation (EEC) No 1048/90 which has been reviewed¹¹ before its date of expiry (that would otherwise have been on the 28 April 1995), was in force until 3 December 1998, the date on which Council Regulation (EC) No 2584/98 of 27 November 1998¹², by which the review was concluded, entered in turn into force.

¹⁰ OJ No C 44 of 17.02.1998, p. 2.

¹¹ OJ No C 105 of 26.04.1995, p. 2.

¹² OJ No L 324 of 2.12.1998, p. 1.

- (31) Consequently, on the basis of the information in the dossier (in particular, as regards the definition of the period relating to the antidumping debt, the letter of 25 April 2002 from the firm indicating that this period was from October 1991 to May 1993 and not August 1993), since the television sets of South Korean origin were released for free circulation between October 1991 and May 1993, they are covered by the period of application of Regulation (EEC) No 1048/90, as amended from 3 October 1991 by Regulation (EEC) No 2900/91, and are subject to the antidumping duties set in those Regulations.

- (32) The firm asserts that the antidumping measures provided for in Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community¹³ (in its version applicable at the time of the facts) target first and foremost the actual country of exportation or production. Thus in the case in point the antidumping proceedings initiated in 1988 and 1992,¹⁴ as regards South Korea, concerned only television sets manufactured in that country, while the second proceeding, which also targeted Turkey, to that extent concerned only television sets manufactured and originating in Turkey.
- (33) It also asserts that the investigations relating to television sets originating in South Korea were based on a comparison between the South Korean domestic price and the prices charged on export to the Community; the fact that they did rely on a comparison between the Turkish domestic price and the prices charged on export to the Community from Turkey as well means that those investigations did not concern television sets manufactured in Turkey even if they did originate in South Korea.
- (34) It maintains that the antidumping duties imposed following the abovementioned investigations were not intended to apply to television sets of South Korean origin assembled in and exported from Turkey.
- (35) As the import operations concerned in the case in point took place between October 1991 and May 1993, the antidumping duties applicable are laid down in Regulation (EEC) No 1048/90 as amended by Regulation (EEC) No 2900/91 and these Regulations arise from the antidumping proceeding initiated in 1988. The reference made in the context of the requesting letter of 24 September 2001 to the antidumping proceeding initiated in 1992 is therefore irrelevant, as the firm ultimately acknowledged in its letter of 25 April 2002.

¹³ OJ L 209, 2.8.1988, p. 1.

¹⁴ OJ No C 307, 25.11.1992, p. 4.

- (36) The purpose of this decision is to establish whether remission is, in equity, possible when a customs debt exists, and not whether the [debt](#) exists in the first place, which is a question to be decided by the Member State that submitted the request¹⁵.
- (37) According to the findings of the United Kingdom, the antidumping debt exists. To regard the antidumping investigation initiated in 1988 and the definitive or provisional duties introduced thereafter as concerning only television sets of South Korean origin manufactured and exported directly from South Korea would be to render the Regulations imposing the duties effectively useless. Among the criteria systematically taken into account when imposing an antidumping duty on a third-country product is not where it was consigned from but where it originates. So antidumping duties apply to goods originating in the country subject to antidumping duty, whether the products were assembled in the country of origin or elsewhere (assuming the origin does not change as a result of assembly in the other country). The general antidumping duty laid down by Regulation (EEC) No 1048/90 as amended by Regulation (EEC) No 2900/91 thus applies to all television sets originating in South Korea, whether they are exported directly from South Korea, transit another third country or are assembled in a country other than South Korea. The fact that the television sets concerned were assembled in Turkey does not therefore place the firm in an exceptional situation in comparison with that of other operators carrying out the same activity.
- (38) The firm's claim that the antidumping proceeding initiated in 1988 following the notice published in OJ C 44 of 17 February 1988 wrongly led to the imposition of antidumping duty on colour television sets originating in South Korea regardless of where they were consigned implies that the firm disputes the validity of Regulation (EEC) No 1048/90 as amended by Regulation (EEC) No 2900/91 imposing an antidumping duty following the investigation procedure.

¹⁵ See Court of First Instance, case T-205/99, Hyper, judgment of 11 July 2002.

- (39) Moreover, the firm's assertion that the principle of proportionality has not been respected, since it is unfair to apply for Korean television sets assembled in Turkey a rate of antidumping duty calculated for Korean television sets assembled in Korea, implies also that it is contesting the validity of Regulation (EEC) No 1048/90, as amended by Regulation (EEC) No 2900/91, which introduced the antidumping duty concerned.

- (40) If an economic operator considers that a Community Regulation is [invalid](#), or that duty liability arose from unclear Community legislation, it is incumbent upon him to use the legal means available to him to contest the Regulation or prevent its application to certain goods by means of an appeal against the recovery of antidumping duties¹⁶. This does not constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79.
- (41) Neither does the fact that, in the firm's opinion, the commercial operations involved in this case did not in any event constitute dumping give rise to a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79. It is up to the economic operator to use the legal means available to him at the appropriate time (e.g. by cooperating itself and by prompting its supplier to cooperate with the proceeding opened in regard to television sets originating in South Korea, or requesting that the measures imposed be re-examined) to establish that the commercial operations in question do not constitute dumping. Furthermore he can use the special procedure provided for by the basic antidumping Regulation¹⁷ for the reimbursement of antidumping duties for cases where it is shown that the dumping margin on the basis of which duties were paid has been eliminated or reduced to a level which is below the level of the duty in force¹⁸.

¹⁶ See Court of Justice, case C-26/88, Brother, ECR (1989), p. 4253.

¹⁷ Council Regulation (EC) n° 384/96 of 22 December 1995 (OJ L 56 of 6.3.96, p. 1).

¹⁸ Article 11(8) of the basic regulation referred to above; at the time of the release in free circulation of the goods, this was Article 16 of Council regulation (EEC) n° 2423/88 of 11 July 1988 (OJ L 209 of 2.8.88, p.1).

(42) As to the firm's argument that unforeseeable circumstances existed since, given the certificates of origin issued by the Istanbul Chamber of Commerce, it legitimately expected the television sets not to be liable to antidumping duties, the following points should be made. Under Article 2(1)(a) of Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt,¹⁹ the placing of goods liable to import duties, including antidumping duties, in free circulation gives rise to a customs debt. Under Article 2(1) of Council Regulation (EEC) No 1031/88 of 18 April 1988 determining the persons liable for payment of a customs debt²⁰, the person liable for payment of a customs debt is the person in whose name the declaration was made, irrespective of whether or not he is aware that the debt has been incurred. It should also be pointed out that the criterion used for the application of antidumping duties is the origin of the product which is to be established according to the rules in force in the Community. This information need not and cannot be certified by a competent authority in a third country, notably in cases where this country applies origin rules differing from those of the Community. It should be recalled that the A.TR.1 certificates do not certify the Turkish origin of the goods concerned. Their only role was to certify that the goods could be released for free circulation in the customs territory of the European Union free of normal duties. Information concerning origin must be provided to the customs authorities by means of entries in the declaration. Indicating the origin of imports is one of the declarant's obligations.

¹⁹ OJ L 201, 22.07.1987, p. 15.

²⁰ OJ No L 102, 21.4.1988, p. 5.

(43) Under Article 3(1) of Council Directive (EEC) No 79/695 of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation,²¹ the declarant is obliged to supply in his declaration the particulars necessary for the identification of the goods and the application of import duties and any other provisions governing the release of the goods for free circulation. Under Article 2(1)(k) of Commission Directive (EEC) No 82/57 of 17 December 1981 laying down certain provisions for implementing Council Directive 79/695/EEC,²² the particulars to be supplied include the country of consignment and the country of origin of the goods. The firm is therefore obliged to establish the origin of the product precisely to ensure that the particulars in the customs declaration, for the accuracy of which it is liable under Article 8(2) of Council Regulation (EEC) No 678/85 of 18 February 1985 simplifying formalities in trade in goods within the Community²³ and Article 3(2) of Council Regulation (EEC) No 717/91 of 21 March 1991 concerning the Single Administrative Document,²⁴ are correct.

²¹ OJ L 205, 13.08.1979, p. 19.

²² OJ L 208, 05.02.1982, p. 38.

²³ OJ No L 79, 21.3.1985, p.1.

²⁴ OJ L 78, 26.3.1991, p. 1.

- (44) The firm was therefore responsible for the statement of origin that it gave in its declarations. The origin of the products and their release for free circulation had the potential to give rise to the application of an antidumping duty for which the firm would then be liable. This is an objective situation which applies to all declarants. This fact is derived directly from customs legislation and the existence of the antidumping duty. Any declarant that does not himself check the origin of the products he releases for free circulation in the Community is knowingly taking the risk of having to pay antidumping duties if such duties have been set for the products concerned. Furthermore, this eventuality was even less "unforeseeable" given that the UK User Tariff, on the basis of footnote No 997 of the Taric, in the version published on 1 April 1991, stated that exemption from normal duties under the EEC-Turkey Association Agreement did not preclude the levying of antidumping duties. Furthermore the firm states in its submission that at the time of the facts Turkish manufacturers lacked the capacity to produce colour tubes. Since the colour tube is decisive for the determination of the origin it was a foreseeable risk that colour tubes originating in South Korea might be imported into Turkey and incorporated there into television sets to be exported to the Community. It cannot therefore be claimed that the origin of the goods and the antidumping duties arising therefrom were unforeseeable circumstances leading to a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79. In this context it should be noted that any other importer importing the same type of goods from Turkey was in the same situation.
- (45) As to the firm's reference, in its letter of 25 April 2002, to the existence of certificates of origin, it should be noted that this argument was never put forward in the requesting letter of 24 September 2001 or in the attached document (letter from the firm of 30 August 2001), i.e., in the dossier submitted to the Commission, and in the same attached letter the firm declared that it had seen the dossier and had nothing to add. The argument based on the issue of invalid certificates of origin by the Turkish authorities must therefore be set aside for the purposes of examining whether there was a special situation.

- (46) It should, however, also be pointed out that the fact that the Istanbul Chamber of Commerce issued certificates of origin for 15 of the 17 import operations concerned, to which the firm referred for the first time in its letter of 25 April 2002, would not constitute an error on the part of the Turkish authorities nor, therefore, a special situation, as regards the 15 declarations concerned. During the period concerned the rules of non-preferential origin applying in the European Community were those laid down in Community legislation, the relevant rules for the television sets being those laid down in Regulation (EEC) No 2632/70. These rules were set autonomously. At the time concerned Turkey did not apply the same rules of non-preferential origin as the European Union. The certificates therefore carried no weight in determining the non-preferential origin of the goods concerned under Community legislation. The question of whether an error was committed by the Turkish authorities with regard to the 15 certificates of origin referred to by the firm does not therefore arise in this case.
- (47) The dossier as a whole thus gives no grounds for finding that there was a special situation within the meaning of Article 13(1) of Regulation (EEC) No 1430/79 as regards the debt for antidumping duties.

(48) Nor has the Commission found any other factors constituting a special situation with regard to the debt for antidumping duties. The Commission has in particular analysed whether on the basis of the [judgment of the Court of First Instance of 10 May 2001](#)²⁵ there are grounds for constituting a special situation. However, the Commission has found a number of differences between the cases decided by the Court and the present case.

Among those differences which are material are:

- With regard to the antidumping duties Turkish authorities had no role to play in the issuing of documents certifying the entitlement to a favourable tariff treatment.
- Antidumping duties were excluded from the scope of the Customs Union agreement so that the Commission did not have to monitor under the terms of the agreement imports of goods subject to antidumping duties.
- The rules concerning the transitional phase of the Customs Union, the antidumping duties as well as the rules for the determination of the origin of the products have been published in the Official Journal of the Community.

(49) Under these circumstances it is not necessary to establish whether or not the firm was obviously negligent.

(50) Since there is no special situation, the remission of the antidumping duties of XXXX is not justified.

(51) 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.

(52) In its letter of 24 September 2001 the United Kingdom requested authorisation to repay or remit import duties in cases involving comparable issues of fact and law.

²⁵ Joined cases T-186/97 etc., *Kaufring and others*, ECR (2001) p. 2-1337.

- (53) As regards the debt for normal customs duties, since the request for remission was submitted, the Commission has adopted decision REM 21/01 of 8 February 2002, which authorises the Member States to repay or remit import duties in cases involving issues of fact and law comparable to the case which was the subject of decision REM 21/01. This decision was addressed to the United Kingdom, which is therefore already authorised as to repay or remit import duties under certain conditions in cases involving similar issues of fact and law as regards the debt for normal duties.

HAS ADOPTED THIS DECISION:

Article 1

The remission of normal customs duties in the sum of XXXXX accounting for part of the United Kingdom's request of 24 September 2001 is justified.

The remission of antidumping duties in the sum of XXXXX accounting for the remainder of the United Kingdom's request of 24 September 2001 is not justified.

Article 2

The Commission notes that the United Kingdom is already authorised, under decision REM 21/01 of 8 February 2002, which was addressed to it, to repay or remit import duties in cases involving similar issues of fact and law to those that were the subject of that decision. The Commission is not therefore taking a decision on the request for authorisation submitted by the United Kingdom in its letter of 24 September 2001.

Article 3

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 24-7-2002

For the Commission

Frits Bolkestein

Member of the Commission