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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.10.2000

NOT TO BE PUBLISHED

COMMISSION DECISION

Of 25.10.2000

**finding that repayment of import duties is justified in a particular case
(Request submitted by the United Kingdom of Great Britain and Northern Ireland)**

(REM 01/2000)

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

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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) No 955/1999,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 1602/2000,⁴ and in particular Article 907 thereof,

¹ OJ No L 302, 19.10.1992, p.1

² OJ No L 119, 7.5.1999, p.1

³ OJ No L 253, 11.10.1993, p.1

⁴ OJ No L 188, 26.7.2000, p.1

Whereas:

- (1) By letter dated 19 January 2000, received by the Commission on 26 January 2000, 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) On 18 August 1998 a UK firm sent a turbine that had been manufactured in the United Kingdom, and which the firm had owned since 1971, to Canada for repair under contractual guarantee.
- (3) The turbine had already been exported to Canada twice for repair or maintenance under the outward processing arrangements provided for in Article 760 of Regulation (EEC) No 2454/93. After it had been repaired the turbine was re-imported into the United Kingdom duty-free.
- (4) In August 1998 a new customs agent handled the temporary export of the machine to Canada. Since he was not familiar with the usual procedures used by the firm, he failed to declare the turbine under the outward processing arrangements.
- (5) Once it had been repaired the turbine was re-imported into the United Kingdom. On 1 March 1999, when the turbine was released for free circulation, the firm applied to benefit from the outward processing arrangements.
- (6) Since the firm did not have an outward processing authorisation it could not be granted exemption from import duties. The competent authorities therefore found that a customs debt of XXXXX had been incurred by the firm. The latter paid it and is now applying for repayment.

- (7) In support of the application submitted by the UK authorities the company 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.
- (8) 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 13 March 2000 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.
- (9) 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.
- (10) The dossier sent to the Commission by the UK authorities shows that when the turbine was exported to Canada the firm did not hold an outward processing authorisation. Since it did not hold such an authorisation a customs debt was incurred as a result of the turbine being released again for free circulation in the European Community after its repair in Canada.
- (11) However, the dossier submitted by the UK authorities also shows that the purpose of the export was clearly shown on the commercial documents accompanying the export declaration and that it was planned to export the turbine only temporarily. Moreover, if the firm had applied for an outward processing authorisation it would have been granted, as the UK authorities confirm, and the turbine could then have benefited from the outward processing arrangements. Furthermore, since the work carried out on the turbine was repair work, the outward processing authorisation would have been issued using a simplified procedure, since accepting the export declaration would, under Article 760 of Regulation (EEC) No 2454/93, have also constituted authorisation for the turbine to be placed under the outward processing arrangements.

- (12) If the temporary export had taken place under the outward processing arrangements, under Article 152 of Regulation (EEC) No 2913/92 the turbine would have benefited from total exemption from import duties when it was released for free circulation once it was established that it had been repaired free of charge under a contractual guarantee.
- (13) The UK authorities thus consider firstly, that in this case the conditions set out in Article 152 of Regulation (EEC) No 2913/92 would have been fulfilled if the firm had held an outward processing authorisation, which would have enabled it to benefit from full exemption from duties when the repaired turbine was re-imported, and, secondly, that the turbine released for free circulation in the European Community is indeed the same one as that previously exported for repair under a contractual guarantee.
- (14) Therefore all the circumstances taken together constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (15) In the circumstances of this case no deception or obvious negligence can be attributed to the firm concerned, as the competent UK authorities confirm.
- (16) Therefore the repayment of import duties requested is justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXX referred to in the request from the United Kingdom of Great Britain and Northern Ireland dated 19 January 2000 is justified.

Article 2

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

Done at Brussels, 25.10.2000

For the Commission

Member of the Commission