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REC 11/98



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.3.2000

NOT TO BE PUBLISHED

COMMISSION DECISION

Of 24.3.2000

**finding that post-clearance entry of import duties in the accounts is not justified
in a particular case**

(Request submitted by France)

(REC 11/98)

FR

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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 Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 1662/1999,⁴ and in particular Article 873 thereof,

Whereas:

¹ OJ L 302, 19.10.1992, p. 1

² OJ L 119, 7.5.1999, p. 1

³ OJ L 253, 11.10.1993, p. 1

⁴ OJ L 197, 29.7.1999, p. 25

- (1) By letter dated 22 October 1998, received by the Commission on 27 October 1998, France asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it was justified to waive entry of import duties in the accounts in the following circumstances.
- (2) A French company imported frozen herring fillets originating in Norway in the period from February 1996 to February 1998. These products were classified in code 0304 20 75 of the Combined Nomenclature.
- (3) On the basis of a notice to importers published in the French official journal of 12 January 1996 setting out the tariffs applicable to various products originating in Norway, the company paid a 1.3% customs duty throughout the period in question.
- (4) However, the rate of duty applicable throughout that period was actually 3%, as Community legislation and the computerised and microfiche versions of the tariff indicated.
- (5) The French authorities therefore claimed duties of XXXXX from the company, this being the amount they considered the company owed for imports between February 1996 and February 1998 and the amount for which waiver of entry in the accounts is being requested in this case.
- (6) Pursuant to Article 871 of Regulation (EEC) No 2454/93, the company stated that it had seen the dossier submitted to the Commission by the French authorities and had nothing to add.
- (7) By letter dated 13 April 1999, the Commission notified the company that it intended to refuse its request and explained the grounds for its objection.

- (8) By letter of 14 May 1999, received by the Commission on the same day, the company responded to that objection. It maintained its view that the circumstances justified the application of Article 220(2)(b) of Regulation (EEC) No 2913/92. It stated that the French authorities had committed an active error, not only in publishing the incorrect rate of duty in the French official journal in 1996, but also in having previously published incorrect rates of duty for the goods concerned and having refunded duties on the basis of the incorrect rate of duty which had been published in the French official journal.
- (9) In accordance with Article 873 of Regulation No (EEC) 2454/93 the administrative procedure was therefore suspended for one month.
- (10) After consulting the company, the Commission requested further information from the French authorities by letter dated 21 June 1999. This information was provided by letter dated 19 January 2000, received by the Commission on 24 January 2000. The administrative procedure was therefore suspended again, in accordance with Articles 871 and 873 of Regulation (EEC) No 2454/93, from 21 June 1999 to 24 January 2000 inclusive.
- (11) In accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 31 January 2000 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.
- (12) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, post-clearance entry in the accounts shall be waived where the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

- (13) The dossier forwarded by the French authorities shows that the rate of import duties applicable to the goods imported by the company was 3% *ad valorem* and yet they were declared for release for free circulation at a rate of 1.3% *ad valorem*. The 3% rate resulted from the application of Council Regulation (EEC) No 102/76 of 19 January 1976 (EEC) No 102/76 of 19 January 1976 on customs treatment to be applied to certain fishery products originating in Norway⁵ and Decision 94/1/ECSC, EC of the Council and Commission of 13 December 1993 on the conclusion of the Agreement on the European Economic Area between the European Communities, their Member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation,⁶ annexed to which was the Agreement on the European Economic Area, including Protocol 9 on trade in fish and other marine products. The French authorities, applying this legislation, found that the company had incurred a customs debt of XXXXX.
- (14) However, it appears that the French authorities had committed a number of errors concerning imports by the company.
- (15) Firstly, they published an incorrect rate of import duty in a notice to importers in the French official journal of 12 January 1996. They had published a rate of 1.3% instead of the actually applicable rate of 3%. This publication was not corrected throughout the period of the imports covered by this case (February 1996 to February 1998). Following a request for additional information by the Commission, the French authorities recognised that as early as 1995 the rate of duty for the products concerned published in the French official journal was incorrect, since it was given as 1.7% whereas the rate normally applicable was 3%; at that time the same error appeared in the computerised and microfiche versions of the tariff.

⁵ OJ L 20, 28.1.1976, p. 23

⁶ OJ L 1, 3.1.1994, p. 1

- (16) Secondly, over a period of two years the French authorities accepted a very large number of declarations for release for free circulation on which the incorrect rate of import duty was entered. The dossier sent to the Commission shows that more than 200 customs declarations had been submitted by the company over that period.
- (17) Thirdly, following a request for additional information by the Commission, the French authorities stated that the company had obtained a repayment of duties for an identical import carried out on 12 January 1996. The company had declared products at the rate of 1.7%, which was the rate previously published in the French official journal (and which appeared in the computerised and microfiche versions of the tariff) and which was, as stated above, incorrect. The French authorities repaid the difference between the rate of 1.7% declared by the company and the rate of 1.3% published in the French official journal in 1996. In repaying import duties for the import of 12 January 1996 the French authorities thus expressly based their decision on the incorrect rate published in the French official journal.
- (18) The errors committed by the French authorities, taken together, must therefore be considered an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (19) It remains to be verified whether the active error could reasonably have been detected by the company.

- (20) The Court of Justice of the European Communities has consistently held that a professional economic operator, such as the company in this case, whose activity consists largely of import and export operations and who already has a certain experience in the field should ensure by reading the relevant official journals, namely the Official Journals of the European Communities, that the operations it conducts comply with Community legislation. Such an operator should not therefore rely exclusively on notices to importers published in the French official journal, which are published for information purposes.
- (21) However, despite the company's professional experience, it should be noted that the French authorities committed repeated errors, particularly in publishing incorrect rates of import duties in the French official journal in 1995 and 1996, in accepting and not contesting, over a long period, a large number of customs declarations from the company in which the incorrect rate of duty was declared, and in refunding import duties for a particular operation on the basis of an incorrect rate of duties before the first of the imports being considered in this case.
- (22) Given the large number of errors committed by the French authorities, the company could not reasonably have been expected to detect them. From the time of the first imports covered by this case, it had legitimate grounds for believing that the rate, which was regularly accepted by the authorities, was correct.

- (23) The fact that the company had legitimate expectations is further borne out by the following facts. Firstly, in February 1997 after the local customs service had expressed some doubts as to the rate of duty applicable to the imports, the company indicated to the service, by showing them a copy of the text published in the French official journal, that the rate of 1.3% did indeed apply, and at this point the service ceased its investigations. Secondly, the rate applied by the company in 1995, which had already been published in the French official journal (but also in the computerised and microfiche versions of the tariff) was 1.7%, which, as already stated, was incorrect. The company was not therefore surprised to see the rate of import duty reduced to 1.3% in a notice to importers published in the French official journal on 12 January 1996.
- (24) Furthermore, the company complied with all the provisions laid down by the legislation in force as regards its customs declarations.
- (25) Post-clearance entry of import duties in the accounts is therefore not justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXX which are the subject of the request from France dated 22 October 1998 shall not be entered in the accounts.

Article 2

This Decision is addressed to the French Republic.

Done in Brussels, 24.3.2000

For the Commission

Member of the Commission