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REM 01/07

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29-8-2007
C(2007)3992

NOT FOR PUBLICATION

COMMISSION DECISION

Of 29-8-2007

finding that the remission of import duties is justified in a particular case

(Only the Latvian text is authentic)

(Request submitted by the Republic of Latvia)

(REM 01/07)

FR

COMMISSION DECISION

Of 29-8-1992

finding that the remission of import duties is justified in a particular case

(Only the Latvian text is authentic)

(Request submitted by the Republic of Latvia)

(REM 01/07)

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 Code¹, as last amended by Regulation (EC) No 1791/2006²,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92³, as last amended by Regulation (EC) No 214/2007⁴,

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 363, 20.12.2006, p. 1.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 62, 1.3.2007, p. 6.

Whereas:

- (1) By letter of 24 January, received by the Commission on 29 January 2007, the Republic of Latvia asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties was justified in the following circumstances.
- (2) In the period from 1 May 2004 to 30 April 2005 a Latvian firm imported into Latvia for release for free circulation colour television receivers originating in the Republic of Korea without paying anti-dumping duties.
- (3) In the course of a subsequent verification, the Latvian competent authorities found that the products in question had, at the time of their release for free circulation, been subject to an anti-dumping duty under Council Regulation (EC) No 1531/2002 of 14 August 2002 imposing a definitive anti-dumping duty on imports of colour television receivers originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand and terminating the proceeding regarding imports of colour television receivers originating in Singapore⁵.
- (4) The Latvian customs authorities therefore took steps for the post-clearance recovery of anti-dumping duties in the sum of XXXXXX, the amount for which the firm is seeking remission under Article 239 of Regulation (EEC) No 2913/1992 on the grounds that the lack of a Latvian version of Regulation (EC) No 1531/2002 at the time of the imports had placed it in a special situation.
- (5) The competent authorities refused remission for the amount of duties relating to imports subsequent to 21 January 2005, the date of publication of the Latvian version of Regulation (EC) No 1531/2002, and forwarded to the Commission the request concerning the amount of duties relating to imports prior to 21 January 2005, a sum of XXXXXX. The Latvian authorities stated that a failure by the Commission to fulfil its obligations had given rise to a special situation within the meaning of Article 239; the publication of translations of Community legislation is a matter for the Office for Official Publications of the European Communities, which is part of the European Commission.

⁵ OJ L 231, 29.8.2002, p. 1.

- (6) In support of the application submitted by the Latvian authorities, the firm indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier which the authorities had sent to the Commission 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 to consider the case on 29 June 2007 within the framework of the Customs Code Committee (Repayment Section).
 - (8) 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 party concerned.
 - (9) The Court of Justice of the European Communities has ruled that this provision represents a general principle of equity and that the existence of a special situation is established where it is clear from the circumstances of the case that the person liable is in an exceptional situation as compared with the 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 entry into the accounts *a posteriori* of customs duties.
 - (10) From 1 May 2004, the date of the Republic of Latvia's accession to the European Union, all Community legislation was applicable in that country. Anti-dumping duties should therefore have been collected under Regulation (EC) No 1531/2002 on imports of colour television receivers originating in, *inter alia*, the Republic of Korea; a customs debt therefore arose at the time of the imports in question.
 - (11) However, at the time of these imports, neither the firm nor the competent Latvian authorities possessed a Latvian version of the Regulation; it is established that Regulation (EC) No 1531/2002 was not published in Latvian until 21 January 2005.
 - (12) It should therefore be concluded that there was, on the part of the Commission, a failure constituting a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
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- (13) Concerning the second condition referred to in Article 239 of Regulation (EEC) No 2913/92 (absence of deception or obvious negligence), the Court of Justice of the European Communities has consistently taken the view that account must be taken, in particular, of the complexity of the law and the interested party's experience and the diligence it has shown.
- (14) The Latvian authorities considered that there was no deception on the part of the firm.
- (15) As for the firm's diligence, even though it is an experienced operator, it cannot in this case be considered to have been negligent in respect of the imports prior to 21 January 2005.
- (16) Remission of import duties is therefore justified in this case.
- (17) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 authorises the Commission to determine the conditions under which the Member States may repay or remit duties in cases involving comparable issues of fact and law.
- (18) Cases comparable in fact and law to this one are repayment or remission requests lodged within the legal time limits in respect of imports into Latvia of colour television receivers originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand prior to 21 January 2005, the date on which Regulation (EC) No 1531/2002 was published in Latvian, where those import operations were carried out in circumstances comparable in fact and law to those which gave rise to this case. There must have been no deception or obvious negligence on the part of the importers,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the amount of XXXXXX requested by the Republic of Latvia on 24 January 2007 is justified.

Article 2

This Decision is addressed to the Republic of Latvia.

Done at Brussels, 29-8-2007

*For the Commission
Laszlo KOVACS
Member of the Commission*