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EUROPEAN COMMISSION

Brussels, 11.11.2010  
C(2010) 7670 final

**COMMISSION DECISION**

**of 11.11.2010**

**finding that remission of import duties is justified in a particular case  
(REM 03/09)**

**(Only the English text is authentic)**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>1</sup>, and in particular Article 239 thereof,

Whereas:

- (1) By letter of 21 September 2009, received by the Commission on 5 October 2009, the United Kingdom asked the Commission to decide whether, under Article 239 of Regulation (EEC) No 2913/92, the remission of import duties was justified in the following circumstances.
- (2) Between 3 January 2007 and 1 May 2008, a British firm, hereafter "the applicant", submitted more than 500 customs declarations for the release for free circulation of set-top boxes incorporating a hard disk recording function (hereafter "set-top boxes").
- (3) On 8 April 2005 the UK authorities issued a Binding Tariff Information ("BTI") to the applicant for this type of set-top boxes which classified them under subheading 8528 1291). However because of a change in the numbering structure of the Harmonised System, the BTI was revoked by the UK authorities with effect from 1 January 2007. The UK authorities informed the customs agent of the applicant of this revocation by letter of 4 December 2006 with the request to inform the applicant.
- (4) A second letter on the same subject was sent to the customs agent on 29 January 2007 asking him to forward it to the applicant. However the applicant never received the letters in question.
- (5) During a meeting with the UK authorities on 26 January 2007 the applicant was informed that due to ongoing discussions regarding the classification of set-top boxes at EU level no new BTI could be issued awaiting the outcome of these discussions.
- (6) From 1 January 2007 the applicant declared the set-top boxes under subheading 8528 7113, which is correlated from former subheading 8528 1291.

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<sup>1</sup> OJ L 302, 19.10.1992, p. 1.

- (7) On 7 May 2008 Explanatory Notes were published<sup>2</sup> for subheading 8528 7113 of the Combined Nomenclature stating that "Set-top boxes which incorporate a device performing a recording or reproducing function (for example, a hard disk or DVD drive) are excluded from this subheading (subheading 8521 9000)".
- (8) These explanatory notes confirmed that the set-top boxes imported by the applicant therefore had to be classified under subheading 8521 9000 charged with a tariff rate of 13.9 % instead of 0% under subheading 8528 7113.
- (9) On 17 November 2008, the UK authorities therefore initiated proceedings for post-clearance recovery of duties. The amount concerned, as reduced on 19 November 2008, is set at XXXXXX, in respect of which the firm has requested remission under Article 239 of Regulation (EEC) No 2913/92.
- (10) In support of the request submitted by the UK authorities, the applicant, in accordance with Article 905(3) of Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>3</sup>, stated that it had seen the dossier that the UK authorities had sent to the Commission and had made comments, which were enclosed with the request sent to the Commission.
- (11) In a letter dated 31 March 2010, the Commission asked the UK authorities for additional information. The authorities replied in a letter of 4 August 2010, which the Commission received on 17 August 2010. Examination of the application for remission was therefore suspended between 1 April 2010 and 17 August 2010.
- (12) 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 XX October 2010 within the framework of the Customs Code Committee - Customs Debt and Guarantees Section.
- (13) It appears from the request addressed to the Commission by the UK authorities that remission would be justified, since, until 7 May 2008, there was uncertainty on the correct classification of the goods concerned and since the UK authorities did not object to the classification used by the applicant and did not instruct it to use any other classification.
- (14) Under Article 239 of Regulation (EEC) No 2913/92, import duties may be remitted in situations other than those referred to in Articles 236, 237 and 238 of that Regulation if they result from circumstances in which no deception or obvious negligence can be attributed to the person concerned.
- (15) The [Court of Justice](#) 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 other operators engaged in the same business and that, in the absence

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<sup>2</sup> OJ C 112 of 7.5.2008 p. 3

<sup>3</sup> OJ L 253, 11.10.1993, p. 1.

of such circumstances, he would not have suffered the disadvantage caused by the post-clearance entry in the accounts of customs duties<sup>4</sup>.

- (16) It results from the file that the UK authorities accepted more than 500 declarations where the set-top boxes in question were classified under subheading 8528 1291, subsequently 8528 7113; these declarations were submitted within 16 months, without objection. Such acceptance took place in a period where discussions were on-going at EU level on the classification of these set-top boxes.
- (17) The Commission considers the situation described above to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (18) Regarding the second condition of Article 239 of Regulation (EEC) No 2913/92, the Court has [consistently](#) ruled<sup>5</sup> that when examining whether there has been deception or obvious negligence account must be taken, in particular, of the complexity of the legislation and the operator's experience and diligence.
- (19) The dossier submitted to the Commission shows that the applicant is an experienced trader.
- (20) As to the complexity of the legislation, it should be noted that Combined Nomenclature Explanatory Notes were adopted in 2008 regarding the classification of set-top boxes. Until that date, the classification of the devices in question must therefore be considered complex.
- (21) As for the condition relating to the absence of obvious negligence on the part of the firm, the file submitted to the Commission by the UK authorities shows that, in view of the specificity of the case, which is directly related to the complexity and uncertainty of the tariff background to the operations, the applicant cannot be considered to have been obviously negligent. In addition it may be noticed that following the publication of the Explanatory Note on 7 May 2008, the applicant declared the set-top boxes he imported under heading 8521 90.
- (22) It follows from the foregoing that there was no deception or obvious negligence on the firm's part.
- (23) The remission of import duties requested is therefore justified.
- (24) 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.
- (25) Cases comparable to this one in fact and law are repayment or remission requests lodged within the legal time limits in respect of imports of set-top boxes of the same kind into the customs territory of the Community, where those imports operations were carried out in circumstances comparable in fact and law to those that gave rise to this case. The declarations for release for free circulation must have been submitted

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<sup>4</sup> Cases T-186/97, T-190/97 to T-192/97, T-211/97, T-216/97 to T-279/97, T-280/97, T-293/97 and T-147/99 *Kaufring AG v Commission* [2001] ECR II-01337

<sup>5</sup> Case C-48/98 *Firma Söhl & Söhlke v Hauptzollamt Bremen* [1999] I-07877

before 7 May 2008, the date on which Explanatory Notes for set-top boxes were published in the Official Journal. There must have been no deception or obvious negligence on the part of the importers concerned,

HAS ADOPTED THIS DECISION:

*Article 1*

The remission of the import duties amounting to XXXX requested by the United Kingdom of Great Britain and Northern Ireland on 21 September 2009 is justified.

*Article 2*

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

Done at Brussels, 11.11.2010

*For the Commission*  
*Algirdas SEMETA*  
*Member of the Commission*

