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**REC 07/03**

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26-3-2004  
C(2004)914

NOT FOR PUBLICATION

**COMMISSION DECISION**

**Of 26-3-2004**

**finding that it is justified to waive post-clearance entry in the accounts of import duties  
in a particular case**

(only the German text is authentic)

**(Request submitted by the Federal Republic of Germany)**

**(REC 07/03)**

FR

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**(Request submitted by the Federal Republic of Germany)**

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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,<sup>1</sup> as last amended by Regulation (EC) No 2700/2000,<sup>2</sup>

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,<sup>3</sup> as last amended by Regulation (EC) No 2286/2003,<sup>4</sup>

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

<sup>2</sup> OJ L 311, 12.12.2000, p. 17.

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

<sup>4</sup> OJ L 343, 31.12.2003, p.1.

Whereas:

- (1) By letter dated 24 June 2003, received by the Commission on 27 June 2003, Germany asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it is justified to waive post-clearance entry in the accounts in the following circumstances:
- (2) Under the second paragraph of Article 2 of Regulation (EC) No 1335/2003 of 25 July 2003, the provisions of that Regulation do not apply to cases sent to the Commission before 1 August 2003. Therefore the references that follow in this Decision to Articles 871 and 873 of Regulation (EEC) No 2454/93 refer to that Regulation as last amended by Commission Regulation (EC) No 881/2003 of 21 May 2003.<sup>5</sup>
- (3) For a number of years a German firm imported chocolates of CN codes 1806 9019 and 1806 9039 into Germany from the Czech Republic. The imports were goods originating in the Community which had been exported to the Czech Republic for packaging and then reimported without any change in their origin, the packaging constituting only minimal processing.
- (4) Until 1997 the firm used the outward processing procedure for the operations in question. Following the entry into force, early in 1997, of the new pan-European cumulation arrangements, the competent customs office, after consulting regional headquarters, orally informed the firm that it no longer needed to use the outward processing procedure because the goods could be imported free of duty.
- (5) The firm systematically entered the code 300 (other preferential tariff arrangements) in box 36 of the Single Administrative Document. Every customs declaration was accompanied by a EUR.1 movement certificate. The customs office accepted the declarations and applied the “EU: free” preferential rate.

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<sup>5</sup> OJ L 134, 29.5.2003, p. 1.

- (6) On 6 March 1997 the German Finance Ministry decided that preferential treatment should be given to Community goods covered by the Agreement on the European Economic Area when reimported into the Community after undergoing no more than minimal working or processing in a country of central or eastern Europe and accompanied by valid proof of origin. This decision was published in the "VSF-Nachrichten", the German administration's manual of procedures.
- (7) In October 1997 the regional finance office decided, in response to a request from the customs office concerned, that the "EU: free" rate was to be applied in such cases.
- (8) After conducting an inspection at the firm's premises covering the period 1 February 1996 to 31 January 1999, the competent authorities, in their inspection report, again confirmed that the goods could be imported free of duty.
- (9) In September 1999 German customs held a meeting to discuss the rate of duty applicable in such cases. It was decided that the third-country rate should be applied. However, the competent customs office was not notified of this decision and continued to admit the goods free of duty. It was not until May 2001 that the customs office realised that no provision had been made for a preferential duty and that the third-country rate therefore had to be applied.
- (10) The competent authorities therefore sought to recover from the firm the import duties payable for the period from January 1998 to June 2000, a sum of XXXXX. The firm has requested that post-clearance entry in the accounts of that sum be waived.
- (11) Pursuant to Article 871 of Regulation (EEC) No 2454/93, the firm stated on 19 May 2003 that it had seen the dossier submitted to the Commission by the German authorities and had nothing to add.
- (12) 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 12 February 2004 within the framework of the Customs Code Committee - Repayment Section.

- (13) Article 220(2)(b) of Regulation (EEC) No 2913/92 requires post-clearance entry in the accounts to be waived where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities themselves that could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and observed all the provisions laid down by the legislation in force as regards the customs declaration.
- (14) The dossier sent to the Commission by the German competent authorities on 24 June 2003 shows that the customs authorities for a number of years routinely applied the “EU: free” rate and expressly stated, in 1997 and 1999, that the goods could be imported free of duty (ministerial decision of 6 March 1997 published in the “VSF-Nachrichten” and the report of 7 April 1999 on a post-clearance inspection).
- (15) The error made by the German authorities in this case must therefore be considered an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (16) The Court of Justice of the European Communities has consistently ruled that in order to determine whether the customs authorities' error could reasonably have been detected by the interested party, account must be taken of the nature of the error, the experience of the firm and the diligence shown by it.
- (17) As regards the nature of the error, it is significant that the information (decision of 6 March 1997 and inspection report of 7 April 1999) was given in writing following an in-depth examination by the competent authority of the circumstances in question. The firm therefore had no reason to doubt the accuracy of the rate of duty applied. The fact that the customs authorities for a number of years routinely granted the “EU: free” preferential rate was also likely to sustain the firm's belief that the rate of duty was correct.
- (18) Moreover, the German authorities acknowledge that they orally informed the firm early in 1997 that it no longer needed to use the outward processing procedure because the goods could be reimported free of duty.

- (19) The circumstances of the case therefore point to an error on the part of the customs authorities themselves which could not reasonably have been detected by an operator acting in good faith, within the meaning of Article 220(2)(b) of Regulation (EEC) No. 2913/92.
- (20) Moreover, the firm acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (21) Post-clearance entry of the 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 Germany of 24 June 2003 shall not be recovered.

*Article 2*

This Decision is addressed to Germany.

Done at Brussels, 26-3-2004

*For the Commission  
Frits Bolkestein  
Member of the Commission*