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REM 05/2003

COMMISSION OF THE EUROPEAN COMMUNITIES,

Brussels, 4-11-2003
C(2003)4029

NOT FOR PUBLICATION

COMMISSION DECISION

Of 4-11-2003

finding in a particular case that remission of one part of the import duties is justified and remission of the other part is not justified

(only the Dutch version is authentic)

(request submitted by the Netherlands)
(REM 05/2003)

FR

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(REM 05/2003)

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 2700/2000,[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 1335/2003,[4] and in particular Article 907 thereof,

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1 OJ L 302, 19.10.1992, p.1.
2 OJ L 311, 12.12.2000, p.17.
3 OJ L 253, 11.10.1993, p.1.
4 OJ L 187, 26.7.2003, p. 16.

Whereas:

(1) By letter dated 27 January 2003, received by the Commission on 27 February 2003, the Netherlands 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) Under the second paragraph of Article 2 of Regulation (EC) No 1335/2003, 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 Regulation (EEC) No 2454/93 refer to that Regulation as last amended by Commission Regulation (EC) No 881/2003 of 21 May 2003.[5]

(3) A Dutch firm, hereinafter "the firm", has for several years held authorisations for inward processing under the suspension arrangements applicable to imports intended for use in the building of off-shore plant.

(4) Since 28 October 1994 the firm has held an inward processing authorisation endorsed with economic condition code 6106 (*comparable goods manufactured in the Community which cannot be used because they do not conform to the expressly stated requirements of the third-country purchaser of the compensating products*).

(5) On 18 April 1997 the firm requested extension of the authorisation, but for code 6201 (*operations carried out under a job processing contract with a person established in a third country. "Job processing" means any processing of import goods directly or indirectly placed at the disposal of the holder which is carried out according to specifications on behalf of a principal established in a third country, generally against payment of processing costs alone*).

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5 OJ L 134, 29.5.2003, p. 1

(6) On 12 June 1997 a new authorisation, revoking the previous one, was issued with retroactive effect from the date of the request (18 April 1997). The new authorisation also included a transitional provision to the effect that goods imported under the authorisation that had been withdrawn, and for which the inward processing procedure had not yet been completed by assignment of the goods to an authorised procedure and/or supply to other exempted persons, were deemed to have been imported under the new authorisation.

(7) In the course of an inspection carried out in 1999 and covering the period 1996 to 1998, the Dutch authorities found that economic condition 6201 had not been met. They therefore notified the firm of the amount of duties due on the imports and proceeded to the post-clearance recovery of XXXX. Of this total, XXXX relates to declarations made before 18 April 1997, the date on which the application for a new authorisation was made, and XXXXX to declarations made before 12 June 1997, the date when the new authorisation was issued.

(8) Pursuant to Article 905 of Regulation (EEC) No 2454/93, the firm stated that it had had the opportunity to see the dossier submitted to the Commission by the Dutch authorities and had nothing to add.

(9) In a letter of 12 August 2003, received by the firm on 13 August 2003, the Commission informed the firm of its intention to refuse the request for remission for part of the amount, and stated its reasons.

(10) By letter of 29 August 2003, received by the Commission on 4 September 2003, the firm stated that it was in favour of the decision the Commission intended to take on its case.

(11) In accordance with the third paragraph of Article 907 of Regulation (EEC) No 2454/93, the time limit of nine months for the Commission to take a decision was therefore extended for one month.

(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 examine the case on 7 October 2003 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.

(13) 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.

(14) The Court of Justice of the European Communities has consistently taken the view that this provision represents a general principle of equity designed to cover an exceptional situation in which an operator, which would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties, might find itself compared with other operators carrying out the same activity.

(15) Under Article 4 of Regulation (EEC) No 2454/93, the revocation of an authorisation does not affect goods which, at the moment of its entry into effect, have already been placed under a procedure by virtue of the revoked authorisation. The transitional provision in the authorisation issued on 12 June 1997 by the Dutch authorities concerning goods imported under the authorisation that had been revoked, and for which the inward processing procedure had not yet been completed, was therefore incorrect.

(16) Under Article 9 of Regulation (EEC) No 2913/92 the revocation of a decision favourable to the person concerned takes effect from the date of notification. It was therefore wrong for the new authorisation notified to the firm on 12 June 1997 to contain a provision giving it retroactive effect to 18 April 1997.

(17) From the documentation submitted by the Dutch authorities it is clear that they issued the authorisation, accepted the import declarations and discharged the inward processing procedure knowing that the purchaser of the goods was resident in the Community.

(18) Therefore, in respect of the imports carried out up to 12 June 1997, the failures of the Dutch authorities constitute a special situation within the meaning of Article 239 of the Customs Code.

(19) As regards the second condition laid down in Article 239, the Court of First Instance of the European Communities holds that, to determine whether a trader has been obviously negligent, the nature of the error and the professional experience and diligence of the trader have to be examined.[6]

(20) The firm had been importing similar products for years and must therefore be considered experienced. The authorities issued authorisations with the economic code 6106 for a number of projects, although it was clear that the purchaser was established in the Community. Where the imports effected up to 12 June 1997 are concerned, therefore, the firm does not appear to have been obviously negligent.

(21) Remission of import duties in the sum of XXXXX for the part of the debt incurred before 12 June 1997 is therefore justified in this case.

(22) Code 6201 (job processing) applied to imports effected as from 12 June 1997, the date when the new authorisation was notified. Here too, the fact that the competent authorities issued an authorisation without checking at the time the application was examined whether the condition was fulfilled can be deemed to be a failure on their part which created a special situation within the meaning of Article 239 of the Customs Code.

(23) However, in connection with imports effected as from 12 June 1997, the firm has to be considered negligent because it knew that it had not concluded a contract with a person established in a third country. The firm itself indicates that the authorisation was intended to cover forthcoming projects, but it should have known that it could therefore no longer import goods under code 6106 for current projects since, as from 12 June 1997, it was aware that the earlier authorisation had been revoked.

(24) Remission of import duties in the sum of XXXXX for the part of the debt incurred from 12 June 1997 is therefore not justified in this case,

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[6] Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, 211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99. *Kaufring AG* judgment of 10 May 2001.

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by the Netherlands on 27 January 2003 is justified; remission of the remainder of the duties in the sum of XXX not justified.

Article 2

This Decision is addressed to the Netherlands.

Done at Brussels, 4-11-2003

For the Commission
Frits Bolkestein
Member of the Commission