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**REM 28/01**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22-4-2002

NOT FOR PUBLICATION

**COMMISSION DECISION**

**of 22-4-2002**

**finding that repayment of import duties in a particular case is justified and authorising the Member States to repay or remit duties in cases involving comparable issues of fact and law**

**(Request submitted by Denmark)**

**(REM 28/01)**

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**finding that repayment of import duties in a particular case is justified and authorising  
the Member States to repay or remit duties in cases involving comparable issues of fact  
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**(Request submitted by Denmark)**

**(REM 28/01)**

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 Regulation (EEC) No 2913/92,<sup>3</sup> as last amended by Regulation (EC) No 444/2002,<sup>4</sup> and in particular Article 907 thereof,

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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 68, 12.03.2002, p. 11.

Whereas:

- (1) By letter dated 27 November 2001, received by the Commission on the same day, Denmark asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether waiving post-clearance entry in the accounts of import duties, or repayment of the duties under Article 239 of the same Regulation, was justified in the following circumstances:
- (2) In 1995 and 1996 a Danish firm imported textile products into the Community from Bangladesh.
- (3) Imports into the Community of this type of product originating in Bangladesh qualified for preferential arrangements under the Generalised System of Preferences. Under Article 77 of the version of Regulation (EEC) No 2454/93 in force at the time, products covered by a Form A certificate issued by the competent authorities in Bangladesh were eligible for preferential tariff treatment on their release for free circulation.
- (4) In the case in point, the firm presented form A certificates issued by the competent Bangladesh authorities in support of its customs declarations for release for free circulation. The Danish customs authorities accepted the declarations and granted preferential tariff treatment.
- (5) Following an investigation into the conditions under which the Bangladesh authorities issued Form A certificates of origin, carried out in Bangladesh between 13 November and 5 December 1996 by representatives of several Member States and the Commission, it was found that a very large number of the certificates issued for textiles were false or should not have been issued because the rules of origin had not been complied with.

- (6) The false certificates were listed in List A. None of those certificates are involved in this case. During the investigation it was also found that 6909 Form A certificates of origin (checked on the spot) for textile products had been wrongly issued by the Bangladesh authorities. The authorities therefore cancelled and withdrew those certificates, which were listed in "List B".
- (7) At the end of their mission, the investigators submitted other Form A certificates to the competent Bangladesh authorities for post-clearance checks. The request for a post-clearance check was confirmed by the Commission in a letter dated 2 December 1996. On 2 June 1997 a reminder was sent to the Bangladesh authorities.
- (8) In response to this reminder, on 1 October 1997 the Bangladesh authorities informed the Commission that 6309 certificates, listed in List C, had been cancelled because they had been wrongly issued. However, the Bangladesh authorities stated that they wanted to recheck 2253 of the certificates cancelled. The Bangladesh authorities provided no further information concerning specific certificates within the ten-month period provided for by Article 94(5) of Regulation (EEC) No 2454/93. The cancellation announced by letter of 1 October 1997 was therefore considered definitive.
- (9) From 20 February 1995 to 3 September 1996 the firm used 412 Form A certificates of origin which were later included in Lists B and C and were therefore withdrawn by the competent authorities in Bangladesh.

- (10) From 5 July 1996 to 25 November 1996 the firm used 33 Form A certificates of origin the authenticity of which was queried by the Danish authorities on the basis of the conclusions of the Community mission referred to above. The certificates were therefore sent by Danish customs to the competent Bangladesh authorities for post-clearance checks on 27 May 1997. After waiting six months for a response the Dutch authorities sent the Bangladesh authorities a reminder on 3 December 1997. No response having been received within the ten-month period provided for in Article 94(5) of Regulation (EEC) No 2454/93, preferential tariff treatment was withheld by virtue of that Article on grounds of reasonable doubt.
- (11) Since the textile products imported to Denmark were therefore not eligible for preferential tariff treatment, the Danish authorities then required the firm to pay import duties of XXXXXX and XXXXXXXX, totalling XXXXXX; it is for this amount that waiver of recovery, or repayment, is being requested in this case.
- (12) In support of the application submitted by the competent Danish authorities the firm indicated that, in accordance with Articles 871 and 905 of Regulation (EEC) No 2454/93, it had seen the dossier the Danish authorities had sent to the Commission and had nothing to add.
- (13) In accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 26 February 2002 within the framework of the Customs Code Committee (Repayment Section) to consider the case.

- (14) Since the duties concerned had already been paid, and in view of the [ruling of the Court of First Instance of 10 May 2002](#) on the “Turkish televisions” case,<sup>5</sup> this request should be examined first in terms of Article 239 of Regulation (EEC) No 2913/92.
- (15) Under Article 239 of Regulation (EEC) No 2913/92 import duties may be repaid or remitted in special situations other than those laid down 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.
- (16) 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.
- (17) In the case in point, the granting of preferential tariff treatment for the imports was subject to presentation of Form A origin certificates.
- (18) As stated above, the 412 certificates relating to the customs debt of XXXXX were withdrawn by the Bangladesh authorities.
- (19) Reliance on the validity of such certificates is not normally protected, as this is considered part of the importer’s normal commercial risk and therefore the responsibility of the person liable for payment

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<sup>5</sup> ‘Turkish televisions’ judgment of 10 May 2001: Joined Cases T-186/99, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/97.

- (20) The Court of Justice has consistently ruled that the legitimate expectations of a trader are protected only if the competent authorities themselves gave rise to the expectation.
- (21) In this instance, the exporters declared on the certificates of origin that the goods they referred to met the conditions for obtaining the certificates.
- (22) However, in the light of the rulings of the Court of First Instance on the “Turkish televisions” case referred to above, the fact that the Bangladesh authorities might have been misled by the exporters does not necessarily mean that the circumstances of this case could not constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (23) In any case, the fact that the exporters had confirmed on the Form A certificates that the conditions for obtaining them had been met was not in itself proof that the competent Bangladesh authorities had been misled. It is necessary to ascertain whether the exporters made these declarations on the assumption that the competent authorities were acquainted with all the facts necessary to apply the rules in question and whether the authorities, despite their knowledge, raised no objection to the declarations.
- (24) In the case in point, there is evidence to suggest that the competent Bangladesh authorities knew or, at the very least, should have known that the goods for which they were issuing Form A certificates did not fulfil the conditions laid down for preferential treatment. Furthermore, the competent Bangladesh authorities can be blamed for a number of failures of a nature such as to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.



- (25) It must be borne in mind that exports of knitted and crocheted articles to the European Union from Bangladesh had since the mid-1990s far outstripped the country's yarn-production capacity.
- (26) The competent authorities could, moreover, have gauged the quantities of imported raw materials incorporated in the finished products from the documents submitted by the exporters in support of their applications for Form A certificates of origin.
- (27) The same authorities had twice requested exemptions from the origin rules applicable to them, in 1989 and 1994. Information contained in the first request suggests that the competent Bangladesh authorities knew or should have known that the bulk of the ready-to-wear clothing exported with Form A certificates issued in Bangladesh did not satisfy the criteria for origin.
- (28) By the same token, it can be deduced from the Bangladesh government's policy of expanding the country's spinning industry and the various requests for exemptions from the rules of origin that the Bangladesh authorities knew or, at the very least, should have known that neither the country's cotton harvests nor its spinning capacities were sufficient to produce the quantities of yarn used in the manufacture of products for export.

- (29) Thus, the Bangladesh authorities knew or should have known for a number of years that third-country yarns accounted for a substantial proportion of the knitted and crocheted articles exported to the European Community on the basis of the preferential treatment accorded to products originating in GSP beneficiary countries. The fact that they issued Form A certificates for such products when they knew or should have known that they did not satisfy the conditions of origin necessary to qualify for preferential tariff treatment must therefore be considered a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92, as indicated in the Court of First Instance ruling on the “Turkish televisions” case of 10 May 2001 referred to above.
- (30) The existence of a special situation is borne out by the fact that the Bangladesh authorities subsequently withdrew a large percentage of the many Form A certificates they had issued for the products in question after carrying out post-clearance checks. Very few of the certificates issued withstood post-clearance scrutiny.
- (31) The existence of a special situation in this case is further borne out by the fact that the competent Bangladesh authorities were unable to carry out post-clearance checks on a great many of the Form A certificates that they had issued.
- (32) The circumstances of this case are therefore such as to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (33) These circumstances involve neither deception nor obvious negligence on the part of the firm concerned.

- (34) The Court of Justice has ruled that the negligence of importers has to be measured *inter alia* against the period of time during which the competent authorities persisted in their behaviour. In the case in point, the competent Bangladesh authorities issued Form A origin certificates for goods that did not qualify for such certificates for at least the three-year period (end of 1993 to 1996) covered by the investigation of 13 November to 5 December 1996.
- (35) The firm can also be absolved of any obvious negligence on the grounds that there is no evidence that it deviated from normal business practice when concluding its purchase contract and carrying out the imports concerned.
- (36) Lastly, the importers were neither informed of the Bangladesh authorities' failures nor warned of the potential risks of importing the textile products in question from Bangladesh until a Notice to importers was published in the Official Journal of the European Communities on 5 April 1997.<sup>6</sup>
- (37) The firm concerned therefore acted in good faith and committed no deception or obvious negligence.
- (38) Therefore the repayment of import duties is justified in this case.
- (39) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 allows the Commission, under conditions that it may determine, to authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and law.

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<sup>6</sup> OJ C 107, 05.04.1997, p.16.

- (40) At its meeting on 26 February 2002 within the framework of the Customs Code Committee (Repayment Section), the group of experts composed of representatives of all the Member States provided for in Article 907 of Regulation (EEC) No 2454/93 asked that all Member States be authorised to repay or remit import duties in cases involving comparable issues of fact and law.
- (41) Such authorisation may be granted to the Member States on condition that it is used only in cases strictly comparable in fact and law to the case in question. The authorisation should nevertheless also cover requests for repayment or remission of duties lodged within the legal time limits in respect of import operations carried out between 1994 and 5 April 1997, the date of publication of the *Notice to importers - Textile products imported into the Community from Bangladesh under the generalised system of preferences* (No C1997/107/05), where such import operations during that period were carried out in circumstances comparable in fact and law to those which gave rise to this case (certificates included in List B or C and certificates sent to Bangladesh by Member States for post-clearance checks for which no response was received within the legal time limits). In such cases the behaviour of the importers must involve no deception or obvious negligence,

HAS ADOPTED THIS DECISION:

*Article 1*

The repayment of import duties in the sum of XXXXXXXXX referred to in the request from Denmark dated 27 November 2001 is justified.

*Article 2*

The Member States are hereby authorised to repay or remit import duties in cases involving issues of fact and law comparable to the case referred to by the request of 27 November 2001 submitted by Denmark.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels 22-4-2002

*For the Commission*

*Member of the Commission*