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REM 07/04

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18-5-2006
C(2006)1899

NOT FOR PUBLICATION

COMMISSION DECISION

Of 18-5-2006

finding that remission of import duties is not justified in a particular case

(Only the Finnish and Swedish texts are authentic.)

**(Request submitted by Finland)
(REM 07/2004)**

FR

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Of 18-5-2006

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**(Request submitted by Finland)
(REM 07/2004)**

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 648/2005,²

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 402/2006,⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 117, 4.5.2005, p. 13.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 70, 9.3.2006, p. 35.

Whereas:

- (1) By letter dated 7 October 2004, received by the Commission on 11 October 2004, Finland 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) On 10 April and 2 May 1995 a Finnish firm acting as principal issued declarations entering two consignments of cigarettes under the external Community transit procedure. Bremerhaven in Germany was entered in the declarations as the office of destination. The Finnish authorities placed the second consignment of goods under surveillance in Finland as soon as the truck left and, by requesting assistance, for the entire transit through Sweden and Denmark; however, the surveillance was interrupted when the consignment entered German territory.
- (3) Copy 5 of the transit declaration (T1) of 10 April 1995 was not returned to the customs office of departure, and that of the declaration of 2 May 1995 was returned to the office of departure bearing a forged signature and stamp. Neither the documents nor the goods were presented at the office of destination.
- (4) As the transit operation was not discharged, a customs debt arose under Article 203 of Regulation (EEC) No 2913/92. The competent customs authorities therefore asked the firm to pay XXXXXXXXX in customs duties, for which the firm requested remission under Article 239 of Regulation (EEC) No 2913/92.
- (5) The competent Finnish authorities did not consider that the conditions laid down in Article 239 of Regulation (EEC) No 2913/92 were fulfilled and rejected the request for remission. This decision was confirmed by the relevant administrative court but the administrative appeal court found that some aspects of the case might constitute a special situation and that it should be submitted to the Commission.
- (6) In support of the application submitted by the Finnish authorities, the firm indicated that, in accordance with Article 905(3) of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission, and its comments were sent to the Commission.

- (7) In this case, the firm cites the following factors as constituting a special situation under Article 239 of Regulation (EEC) No 2913/92: when the operations were initiated the Finnish customs authorities did not require a comprehensive guarantee at a level complying with Article 361(2) of the version of Regulation (EEC) 2454/93 in force at the time; payment of the customs debt might make the firm bankrupt; the firm was the victim of a crime in which it took no part whatever; it did not transport the consignments itself but only acted as principal; the legislation was complex and had only recently come into force; the Finnish authorities were aware of the risk of fraud and had not notified the firm of that risk.
- (8) By letter of 12 January 2005 the Commission requested further information from the Finnish authorities. This information was provided by letter dated 13 October 2005, received by the Commission on 20 October 2005.
- (9) The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 13 January 2005 and 20 October 2005.
- (10) By letter dated 7 February 2006, received by the firm on 8 February 2006, the Commission notified the firm of its intention to withhold approval and explained the reasons for its decision.
- (11) By letter dated 6 March 2006, received by the Commission on the same date, the firm's lawyer expressed his opinion regarding the Commission's objections.
- (12) He reiterated that the firm had not actively participated in the fraud and suggested that the Finnish authorities had very probably had prior knowledge of the offence.
- (13) In accordance with Article 907 of Regulation (EEC) No 2454/93 the period of nine months within which the Commission decision must be taken was therefore extended by one month.
- (14) 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 24 April 2006 within the framework of the Customs Code Committee – Repayment Section.

- (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 ruled that this provision represents a general principle of equity designed to cover an exceptional situation in which a trader, 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 traders carrying out the same activity.
- (17) In this connection the fact that the firm acted in good faith, as the competent Finnish authorities confirm, does not in itself constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (18) Because the declarations lodged for the goods placed under the Community transit procedure were not discharged, the firm incurred a customs debt. As principal, the firm is responsible to the competent authorities for the proper conduct of Community transit operations even if it is the victim of fraudulent activities by third parties. Such an eventuality is part of the firm's normal commercial risk. The fact that the firm did not transport the consignments itself is not relevant. The firm is the person liable for the customs debt purely and simply in application of Articles 96 and 203 of Regulation (EEC)° No 2913/92.
- (19) As regards the level of the comprehensive guarantee for the consignments in question, reference should be made to the legislation in force at the time. Article 361(1) of Regulation (EEC) 2454/93 stipulates that the amount of the guarantee is to be set at 30% at least of the duties and other charges payable. Paragraph 2 provides that the comprehensive guarantee is to be fixed at a level equal to the full amount of duties and other charges payable when two conditions are fulfilled: the external Community transit operations concern goods that have been the subject of specific information from the Commission concerning increased risks of fraud, in particular pursuant to the provisions of Council Regulation (EEC) No 1468/81, and those operations have been the subject of a communication by the Commission to the Member States, after an

examination carried out by the Committee in accordance with Article 248 of Regulation (EEC) No 2913/92.

- (20) But while the second condition was fulfilled (see the Commission's communication published in the OJ C 49, 28.2.1995, p. 6), the first was not. As the Finnish authorities emphasised in their letter of 7 October 2004, they had not received any specific information of the type referred to in Article 361(2). There was not, therefore, any error on the part of the competent authorities in this respect, and consequently no circumstance liable to constitute a special situation.
- (21) As to the fact that payment of the duties would bankrupt the firm, the [Courts have consistently ruled](#)⁵ that it is the responsibility of professional traders, which this firm is, to take the necessary measures in the context of their contractual relations to protect themselves against the risks of post-clearance collection of duties and being unable to pass the cost of such duties on to their customers.
- (22) The complexity of the legislation cannot be held to constitute a special situation because it is an objective circumstance affecting all traders. Furthermore, according to the information supplied by the Finnish authorities, the firm has been engaged in forwarding and transit operations for a long time and may thus be considered an experienced trader and one used to applying customs rules.
- (23) The argument that the customs authorities had known that fraud was going to be committed and had not notified the firm prompts the following remarks. In bringing this argument the firm relies on the De Haan case. According to this [judgment](#) of 7 September 1999⁶ "the demands of an investigation conducted by the national authorities may, in the absence of any deception or negligence on the part of the person liable, and where that person has not been informed that the investigation is being carried out, constitute a special situation ... where the fact that the national authorities have, in the interests of the investigation, deliberately allowed offences or irregularities to be committed, thus causing the principal to incur a customs debt, places the principal in an exceptional situation in comparison with other operators engaged in the same business". However, the circumstances of this case are not comparable to that of De Haan. The Finnish authorities were unaware that any irregularity would be committed. No special measures had been taken to investigate

⁵ *Méhibas* judgment of 18 January 2000 (Case T-290/97) ECR II-00015.

⁶ *De Haan* judgment of 7 September 1999.

possible offences before the operations were carried out. The monitoring of the vehicle covered by the declaration of 2 May 1995 was thus carried out as part of normal customs surveillance because the likelihood of fraud was higher than average with cigarette consignments. But there was no specific evidence that these particular consignments were liable to fraud. Furthermore, in their letter of 13 October 2005 answering the Commission's letter of 12 January 2005, the Finnish authorities stated with reference to the transit operation of 2 May 1995 that no criminal investigation had been initiated until November 1996, a year after the event, and the head of the criminal investigations had attested that he had not asked for the transit to be supervised.

- (24) In view of the above, this case is not comparable to cases REC 08/03 or REC 13/03 where such circumstances were deemed by the Commission to have constituted a special situation. In those two cases the Community authorities had already warned the Danish authorities about fraud involving butter of Czech origin transported under the external Community transit procedure before the operations in question had started. In this case no information had been sent to the Finnish authorities by the Commission.
- (25) The case as a whole does not therefore give grounds for finding that there was a special situation within the meaning of Article 239(1) of Regulation (EEC) No 2913/92.
- (26) Nor has the Commission identified any other factors constituting a special situation. There is therefore no need to examine second condition laid down in Article 239 of Regulation (EEC) No 2913/92.
- (27) The remission of import duties requested is therefore not justified,

HAS ADOPTED THIS DECISION :

Article 1

The remission of import duties in the sum of XXXXX requested by Finland on 7 October 2004 is not justified.

Article 2

This decision is addressed to Finland.

Done at Brussels, 18-5-2006

By the Commission
László KOVÁCS
Member of the Commission