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REM 1/99



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.06.1999

COMMISSION DECISION

of 9-6-1999

finding that the remission of import duties in a particular case is justified

**(request submitted by the United Kingdom of Great Britain
and Northern Ireland)**

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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,¹ as last amended by Regulation (EC) No 955/1999,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 502/1999,⁴ and in particular Article 907 thereof,

Whereas by letter dated 16 December 1998, received by the Commission on 20 January 1999, the United Kingdom of Great Britain and Northern Ireland asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties is justified in the following circumstances:

¹ OJ No L 302, 19.10.1992, p.1 .

² OJ No L 119, 7.5.1999, p.1.

³ OJ No L 253, 11.10.1993, p.1 .

⁴ OJ No L 65, 12.3.1999, p.1.

A firm based in the United Kingdom used tariff quotas to import cheese and butter from New Zealand in the periods July 1994-December 1997 and July 1995-December 1997 respectively.

Under Commission Regulation (EEC) No 2729/81 of 14 September 1981 laying down special rules implementing the system of import and export licences and the advance fixing of refunds in respect of milk and milk products⁵ and Commission Regulation (EEC) No 1767/82 of 1 July 1982 laying down detailed rules for applying specific import levies on certain milk products,⁶ access to the tariff quota for cheese imported from New Zealand in the period July 1994-June 1995 was subject to presentation of an IMA 1 certificate issued by the competent authorities in New Zealand and an import licence issued by the competent intervention agency in the United Kingdom.

Under Commission Regulation (EC) No 1600/95 of 30 June 1995 laying down detailed rules for the application of the import arrangements and opening tariff quotas for milk and milk products,⁷ access to the tariff quotas for cheese and butter imported from New Zealand was, from 1 July 1995, subject to presentation of an IMA 1 certificate issued by the competent authorities in New Zealand and an import licence issued by the competent intervention agency in the United Kingdom.

Import licences are issued only after presentation of a valid IMA 1 certificate confirming that the butter and cheese is eligible for preferential tariff treatment. Prior to 21 April 1996 import licences were valid from the date of issue to the end of the second month following, a period subsequently extended to the end of the third month following.

⁵ OJ No L 272, 26.9.1981, p.19.

⁶ OJ No L 196, 5.7.1982, p.1.

⁷ OJ No L 151, 1.7.1995, p.12.

The firm held a simplified procedure through the customs warehouse it administered. It declared goods for release for free circulation by entering them in its records, recapitulating entries in a monthly supplementary declaration.

In practice, the firm did not apply to the intervention agency for import licences until it knew the overall quantities to be released for free circulation that month, which was usually towards the middle of the month.

The import licence and IMA 1 certificate(s) were presented to the United Kingdom customs authorities with the supplementary declaration at the end of each month.

An audit at the firm's premises by the United Kingdom customs authorities revealed that its practices meant that it could not, from the time the goods were entered in its accounts, provide the customs authorities with valid import licences for goods released in the early part of the month, though it did have such licences by the end of each month.

The customs authorities therefore found that a customs debt of XXXXX had been incurred in respect of cheese and butter released for free circulation in the period July 1994-December 1997, remission of which debt is being requested in this case.

Whereas the firm states that it has seen the dossier submitted to the Commission by the United Kingdom authorities and has nothing to add; whereas it further sent a statement of its position to the United Kingdom authorities, which forwarded it to the Commission in annex to their letter of 16 December 1998;

Whereas in accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 4 May 1999 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas, in accordance with 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;

Whereas the firm did not apply for an import licence until the total quantities to be released for free circulation that month were known, which was usually towards the middle of the month;

Whereas the firm released some consignments of cheese and butter for free circulation with preferential tariff treatment at the beginning of each month, without an import licence;

Whereas preferential tariff treatment could not be accorded without such a licence; whereas, therefore, a customs debt was incurred in respect of goods released for free circulation at the beginning of the month without an import licence;

Whereas, however, the firm did have an import licence at the end of each month, which it presented to the customs authorities with the supplementary declaration and the IMA 1 certificate or certificates;

Whereas the quantities of cheese and butter released for free circulation each month and for which preferential tariff treatment was sought tallied with the quantities on the import certificate presented at the end of the month;

Whereas the quantities of goods authorised by the tariff quotas in question were not, therefore, exceeded;

Whereas the financial interests of the European Communities were not affected in this case;

Whereas exchanges of correspondence between the firm and, respectively, the United Kingdom's customs authorities and intervention agency gave rise to a misunderstanding; whereas although the United Kingdom customs authorities consider that they were not expressly informed of the procedure used by the firm to obtain import licences, the firm interpreted various letters as confirming that its procedure for presenting import licences, which could involve a delay of several days, was correct;

Whereas the firm could, moreover, reasonably have believed that its procedure was accepted because the date of validity figured on every one of the import licences submitted in support of its customs declaration at the end of every month for a number of years;

Whereas the fact that the firm did not always have an import licence at the moment of release for free circulation constitutes a failure that had no significant effect on the operation of the preferential tariff arrangements in question because the tariff quotas were not exceeded and the quantities on the monthly supplementary declarations tallied with those on the import licences and IMA 1 certificates; whereas it therefore seems disproportionate to demand that the firm pay the import duties;

Whereas these factors are such as to constitute a situation covered by Article 239 of Regulation (EEC) No 2913/92;

Whereas in the special circumstances of the case in question no deception or obvious negligence may be attributed to the person concerned;

Whereas, therefore, the remission of import duties requested is justified in this case,

Whereas Article 908 of Regulation (EEC) No 2454/93 allows the Commission, where special circumstances warrant repayment or remission, under conditions that it may determine, to authorise a Member State to repay or remit duties in cases involving comparable issues of fact and law;

Whereas by letter dated 16 December 1998, received by the Commission on 20 January 1999, the United Kingdom of Great Britain and Northern Ireland requested such authorisation on the grounds that its inquiries were still under way and might reveal other cases involving comparable issues of fact and law;

Whereas, however, the amount of duties involved in this case and the wider issues it raises require the Commission, as the institution responsible for protecting the financial interests of the European Communities, to exercise close control over the sum; whereas the United Kingdom is not, therefore, granted the authorisation provided for in Article 908 of Regulation (EEC) No 2454/93 in this case,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by the United Kingdom of Great Britain and Northern Ireland on 16 December 1998 is hereby found to be justified.

Article 2

The United Kingdom of Great Britain and Northern Ireland is not authorised to repay or remit the duties owed in cases involving issues of fact and of law comparable to those involved in the case presented by the United Kingdom of Great Britain and Northern Ireland on 16 December 1998

Article 3

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

Done at Brussels, 9-6-1999

*For the Commission
Member of the Commission*