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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11-12-2001

NOT FOR PUBLICATION

**COMMISSION DECISION**

**of 11-12-2001**

**finding that remission of import duties is justified in a particular case and refusing  
Germany authorisation under Article 908 of Commission Regulation (EEC) No 2454/93  
of 2 July 1993 laying down provisions for the implementation of Regulation (EEC)**

**No 2913/92**

**(Request submitted by Germany)**

**(REM 32/2000)**

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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 Regulation (EEC) No 2913/92,<sup>3</sup> as last amended by  
Regulation (EC) No 993/2001,<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 141, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 3 November 2000, received by the Commission on 11 December 2000, the Federal Republic of Germany asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances:
- (2) Under the TIR procedure a lorry driver (the applicant) carried wooden panels from Vilna in Lithuania to Hanover in Germany. After customs clearance and discharge of the TIR procedure at the Hanover customs office the lorry continued its journey. It was, however, tracked by German customs investigators to its final destination. A search carried out at the destination by the competent customs officials revealed that the consignment of wooden panels, which had been declared and transported under a TIR procedure, contained undeclared cigarettes on which neither excise nor customs duties had been paid.
- (3) The German authorities therefore held the applicant, as the person who had irregularly introduced the goods, jointly and severally liable with four other persons and demanded payment of import duties on the cigarettes hidden in the lorry, a sum of DEM 38 635.78, remission of which is requested in this case.
- (4) In support of the application submitted by the competent German authorities the applicant indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, he had seen the dossier the authorities had sent the Commission and had nothing to add.

- (5) By letter of 29 March 2001 the Commission requested further information from the German authorities. This information was provided by letter dated 22 June 2001, received by the Commission on 29 June. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 30 March 2001 and 29 June 2001.
- (6) 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 9 November 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (7) 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 the said Regulation) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (8) 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.
- (9) In this case, in accordance with Article 202 of Regulation (EEC) No 2913/92, the competent German authorities held the applicant liable for the customs debt incurred through the irregular introduction of the cigarettes into the Community customs territory.

- (10) However, it appears from the dossier sent to the Commission by the German authorities that the applicant was unaware that he was carrying the cigarettes in his lorry. He was convinced that he was carrying only the wooden panels that he had declared. The cigarettes had been concealed without his knowledge and were not visible from the outside. These cigarettes could not have been detected by a visual inspection of the load.
- (11) Inquiries by the German administrative and judicial authorities show that the applicant did not take part in the fraud. He acted in good faith and was completely unaware that he was carrying cigarettes.
- (12) Furthermore, the contraband cigarettes were seized and then confiscated by the competent German authorities. There is therefore no longer any risk that these cigarettes will enter the Community economy without payment of import duties. If they are not destroyed, they cannot be placed on the market unless the person releasing them for free circulation pays the import duties.
- (13) Thus, since in this case and with respect to the driver of the vehicle the contraband cigarettes were seized and then confiscated, granting the applicant remission of import duties in this case would have no impact on the Community's own resources and would not, therefore, harm the Communities' financial interests.
- (14) In view of the above, inasmuch as the applicant has committed no fraud and has acted in good faith, and inasmuch as the cigarettes have been recovered, the circumstances of this case must be considered to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 involving neither deception nor obvious negligence on the part of the applicant.
- (15) The remission of import duties requested is therefore justified in this case.

- (16) Under Article 908 of Regulation (EEC) No 2454/93, where the circumstances under consideration justify repayment or remission, the Commission may, under conditions which it shall determine, authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and of law.
- (17) In a letter of 3 November 2000, received by the Commission on 11 December, the Federal Republic of Germany requested authorisation to repay or remit duties in other cases involving comparable issues of fact and law.
- (18) However, this decision is very unusual in terms of both fact and law. It cannot therefore serve as a reference for national decisions taken in application of an authorisation granted by the Commission,

HAS ADOPTED THIS DECISION:

*Article 1*

The remission of import duties in the sum of DEM 38 635.78 requested by the Federal Republic of Germany on 3 November 2000 is justified.

*Article 2*

The authorisation requested by Germany in its letter of 3 November 2000 under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 is not granted.

*Article 3*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 11-12-2001

*For the Commission*

*[...]*

*Member of the Commission*