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REM 52/99



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.10.2000

NOT TO BE PUBLISHED

COMMISSION DECISION

Of 4.10.2000

**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 Council Regulation
(EEC) No 2913/92**

(Request submitted by Germany)

(REM 52/99)

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(Request submitted by Germany)

(Dossier REM 52/99)

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 Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 1602/2000,⁴ and in particular Article 907 thereof,

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 188, 26.7.2000, p.1

Whereas:

- (1) By letter dated 3 December 1999, received by the Commission on 14 December 1999, Germany 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 15 May 1997 a German company was authorised by the German customs authorities to use a type D customs warehouse to store apple and cherry juices, concentrates and flavouring. These products were imported mainly from the United States and Iran. The company was initially allowed all the forms of handling listed in Annex 69 to Regulation (EEC) No 2454/93, which refers to Article 522 of the Regulation. However, in a letter dated 22 July 1997 the customs authorities restricted the forms of handling allowed to warehousing, weighing, sample taking, diluting of liquids, transfer of liquids from one vessel to another and simple transfer into containers.
- (3) On 8 July 1997 the company's warehouse was inspected by the competent customs service. In the course of that inspection it did not find any records of goods in temporary storage in the customs warehouse.
- (4) Following a new inspection begun on 4 March 1998 the customs service found that from 4 June 1997 to 13 January 1998 the company had stored not only goods meeting the conditions for being placed under the customs warehouse procedure, but also goods (cherry and apple juice concentrates of heading 2009 of the Combined Nomenclature) in temporary storage within the meaning of Article 50 of Regulation (EEC) No 2913/92. The customs service also found that the goods in temporary storage had been mixed either with each other or with goods under the customs warehousing procedure. The mixtures were then re-exported from the customs territory of the Community.

- (5) This form of handling (mixing) is forbidden for goods in temporary storage under Article 52 of Regulation (EEC) No 2913/92. Article 52 specifies that goods in temporary storage may not be subjected to forms of handling other than those designed to ensure their preservation in an unaltered state.
- (6) In this case mixing was also an unauthorised form of handling for the goods placed under the customs warehousing procedure. After 22 July 1997 this form of handling was no longer included in the list of those which the company was entitled to carry out under its customs warehousing authorisation. However, the competent German customs authorities applied Article 859 of Regulation (EEC) No 2454/93 and found that a customs debt had not been incurred for these goods since the company's failure had had no significant effect on the operation of the customs warehousing procedure.
- (7) Since they found that the goods in temporary storage had been subjected to unauthorised forms of handling, the competent German customs authorities considered that a customs debt had been incurred. The authorities therefore asked the company to pay the import duties due, a total of XXXXXX - the amount in respect of which remission has been requested.
- (8) In support of the application submitted by the competent German authorities the company indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.
- (9) By letter dated 26 July 2000, sent on 27 July 2000, the Commission notified the company of its intention to withhold approval and explained the grounds for its decision.

- (10) By letter dated 14 August 2000, received by the Commission on the same date, the company expressed its opinion on the Commission's objections. It maintained its view that the circumstances of the case constituted a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92, involving neither deception nor obvious negligence on its part. It had believed in good faith that it was entitled to carry out the operations concerned. It also said that no obvious negligence could be attributed to it since at the time of the events in question it had been inexperienced in this field. It had indeed obtained its customs warehousing authorisation only a very short time before the beginning of the period covered by the customs inspection. Finally it stressed that all the goods concerned had been re-exported and its operations had therefore had no impact on the amount of Community own resources.
- (11) The administrative procedure was therefore suspended, in accordance with Article 907 of Regulation (EEC) No 2454/93, between 27 July and 14 August 2000.
- (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 on 20 September 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (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) Court of Justice case law indicates that Article 239 represents a general principle of equity designed to cover an exceptional situation in which an operator might find himself compared with other operators carrying out the same activity.

- (15) The dossier sent to the Commission by the German authorities shows that all the goods concerned, i.e. those in temporary storage, were re-exported within the legal deadlines to non-Community countries, apart from the usual amounts lost in transfer from one vessel to another, and that the operations had therefore been without detriment to Community financial interests.
- (16) The same dossier shows that the local customs service accepted the company's customs declarations for several months without realising that they concerned unauthorised mixtures of imported goods in temporary storage and/or under the customs warehousing procedure. The German customs authorities consider that the local customs service could have found out that the goods had been subjected to unauthorised mixing on the basis of the information entered by the company on the transit documents when the goods were re-exported. This showed the imports or consignments placed under the customs warehousing procedure from which the mixed quantities had been derived. Furthermore the products had been imported into the Community in barrels and were presented for re-export in tanks, so that it was clear that quantities from different consignments had been mixed.
- (17) In any event, the operations carried out by the company could easily have been carried out under its type D customs warehousing authorisation. All it would have had to do was to place the goods under the customs warehousing procedure and apply for the list of authorised forms of handling to be extended to cover the mixing of goods. In this connection the dossier sent to the Commission by the German authorities shows that following an inspection by the customs service the company was authorised to mix goods placed under the customs warehousing procedure in subsequent operations.
- (18) Therefore all the circumstances taken together constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.

- (19) However, such a situation can give rise to the remission of duties only if no deception or obvious negligence may be attributed to the person concerned
- (20) In this case the dossier sent to the Commission by the German authorities and the letter of 14 August 2000 from the company show that the company did not make a clear distinction between goods in temporary storage and goods in customs warehousing and, therefore, its placement of the products with the status of temporary storage goods in the customs warehouse was a mistake. The company also wrongly believed that its customs warehousing authorisation authorised it to mix its goods as it did, since it was explicitly authorised to transfer goods from one vessel to another.
- (21) These errors on the part of the company were the result of professional inexperience. As the German authorities themselves stated in their letter of 3 December 1999 and as the company said in its letter of 14 August 2000, the company had little experience of customs matters. It had held its public warehousing authorisation only since 15 May 1997, less than a month before the period in which the various failures occurred and for which the remission of duties has been requested (4 June 1997 to 13 January 1998).
- (22) Also, as has been shown, the competent customs authorities made no objection when the goods were re-exported although they could have realised that the goods had been subjected to unauthorised handling. The fact that the authorities did not object led the company to believe that its operations were conducted in accordance with the regulations.

- (23) Furthermore, on 8 July 1997 the company's facilities were inspected by the competent customs service, which did not realise that some of the goods on the customs warehouse records were goods in temporary storage and had been subjected to unauthorised forms of handling. Thus even if, in practice, the aim of the inspection was only to calculate the amount of a security and check that the facilities and accounts complied with the customs warehousing authorisation, the company nevertheless had reason to conclude that its operations were in accordance with the legislation in force.
- (24) Finally it should be noticed that this is the first time the company has been charged with the failure in question in this case.
- (25) In the light of all the foregoing it may be concluded that the company acted in good faith and that the circumstances indicate neither deception nor obvious negligence on its part. Furthermore, the company did not attempt to remove the goods from customs supervision since all the goods that entered the warehouse, either as goods under the customs warehousing procedure or goods in temporary storage, were listed, without distinction, in the warehouse accounts.
- (26) Remission of import duties is therefore justified in this case.
- (27) 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.
- (28) In a letter dated 3 December 1999 the Federal Republic of Germany requested authorisation to repay or remit duties in cases involving comparable issues of fact and law.

(29) However, given the type of failure involved, 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 XXXXX requested by the Federal Republic of Germany on 3 December 1999 is justified.

Article 2

The authorisation requested by the Federal Republic of Germany in its letter of 3 December 1999 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 Germany.

Done at Brussels, 4.10.2000

For the Commission

Member of the Commission