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**REM 04/05**

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3-2-2006  
C(2006)230

NOT TO BE PUBLISHED

**COMMISSION DECISION**

**Of 3-2-2006**

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

(Only the Dutch text is authentic)

(request submitted by the Kingdom of the Netherlands)

(REM 04/2005)

FR

**COMMISSION DECISION**

**Of 3-2-2006**

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

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(request submitted by the Kingdom of the Netherlands)

**(REM 04/2005)**

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 648/2005,<sup>2</sup>

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,<sup>3</sup> as last amended by Regulation (EC) No 883/2005,<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 117, 4.5.2005, p. 13  
<sup>3</sup> OJ L 253, 11.10.1993, p. 1.  
<sup>4</sup> OJ L 148, 11.6.2005, p. 5

Whereas:

- (1) By letter dated 10 May 2000, received by the Commission on 24 May 2000, the Netherlands 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) Under the second paragraph of Article 2 of Regulation (EC) No 1335/2003 of 25 July 2003 amending Regulation (EEC) No 2454/93,<sup>5</sup> the provisions of that Regulation do not apply to cases sent to the Commission before 1 August 2003. Therefore the references that follow in this Decision to Regulation (EEC) No 2454/93 refer to that Regulation as last amended by Commission Regulation (EC) No 881/2003 of 21 May 2003.<sup>6</sup>
- (3) From January to August 1995 a Dutch firm, as principal, made out external Community transit declarations for consignments of meat to Morocco. Fourteen of these declarations were not properly discharged. In response to a request from the Dutch authorities, the Spanish authorities stated that the documents submitted to them covered transit operations that had not been presented at the office of destination and bore false stamps and signatures.
- (4) Since the transit documents in question had not been properly discharged, the Dutch authorities considered the goods to have been removed from customs supervision and, since this gave rise to a customs debt on the part of the firm in its capacity as principal, demanded that the firm pay the import duties owing.
- (5) The Dutch authorities subsequently found the conditions for remission to be met in respect of two declarations and granted remission.
- (6) The firm requested remission of the customs debt in the sum of NLGXXXX (XXXXX) for the transit operations carried out after 23 March 1995 (eight operations over the period 25 April to 7 July 1995) .

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<sup>5</sup> OJ L 187, 26.7.2003, p. 16

<sup>6</sup> OJ L 134, 29.5.2003, p. 1

- (7) In support of the request submitted by the Dutch authorities, the firm 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 that it had nothing to add.
- (8) 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 17 September 2002 within the framework of the Customs Code Committee – Repayment Section) to consider the case.
- (9) By its decision C(2002) 3633 of 7 October 2002 (REM 8/00), the Commission found that the remission of import duties requested was not justified. The Commission based its decision on its findings that, firstly, the circumstances of the case did not permit it to establish the existence of a special situation and, secondly, the information submitted did not permit it to conclude that the firm had taken the necessary measures to protect itself against the commercial risk and the firm had therefore shown obvious negligence.
- (10) By letter of 10 December 2002, the Dutch authorities notified the firm that remission had been refused.
- (11) The firm then requested the Court of First Instance of the European Communities (CFI) to overrule the Commission's decision of 7 October 2002 finding that remission was not justified.
- (12) In its judgment of 27 September 2005 in Case T-26/03 (GeoLogistics BV), the Court upheld Commission decision C(2002)3633 of 7 October 2002 insofar as the decision found that remission of import duties for the operations carried out before 12 June 1995 XXXXX was not justified. However, it overruled the findings made in the Commission decision that the circumstances of the case did not constitute a special situation as regards operations carried out on or after 12 June 1995 and that the firm had shown obvious negligence.
- (13) The Commission must draw conclusions from this partial annulment and review the applicability of Article 239 of Regulation (EEC) No 2913/92 to the declarations submitted by the firm on or after 12 June 1995 in the light of the Court's judgment.

The periods referred to in Articles 907 and 909 of Regulation (EEC) No 2454/93 run from the date of delivery of the judgment.

- (14) Under 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 21 December 2005 within the framework of the Customs Code Committee - Section for Repayment.
- (15) 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.
- (16) The Court of Justice of the European Communities has consistently held this provision to represent a general principle of equity designed to cover an exceptional situation arising from individual circumstances in which the liable party, which would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties, finds itself compared with other operators carrying out the same activity.
- (17) It should be stated from the outset that the needs of an investigation intended to identify and apprehend the perpetrators of fraud already committed or planned, or their accomplices, may be legitimate justification for deliberately withholding all or part of the facts of the investigation from the principal, even where the latter is in no way [involved in the perpetration of the fraud](#).<sup>7</sup> The national authorities may therefore legitimately allow infringements or irregularities to be committed in order to dismantle a network more effectively, identify the perpetrators and establish or consolidate proof. However, to place on the person liable the burden of the customs debt arising from the choices made in connection with the prosecution of the offences is inimical to the objective of fairness provided for in Article 239 of Regulation (EEC) No 2913/92 in that the person liable would thus be placed in an exceptional situation compared with other traders engaged in the same activity.
- (18) In the case in point, the following circumstances obtained:

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<sup>7</sup> See Court judgment of 7.9.1999 (Case C-61/98 "De Haan").

- (19) The Dutch authorities were already aware on 23 March 1995 of a case of fraud relating to an external Community transit operation for which the firm had made out the declaration and acted as principal. However the Dutch authorities only informed the firm on 9 August 1995.
- (20) It should be borne in mind here that Article 379(1) of Regulation (EEC) No 2454/93 in the version in force at the time laid down that where, as in the case in point, a consignment had not been presented at the office of destination, and the place where the offence or irregularity occurred could not be established, the customs office of departure must notify the principal of this fact “as soon as possible” and in any case before the end of the 11th month following the date of registration of the Community transit declaration. Even though this provision therefore does not set a fixed deadline for notifying the principal, the terms thereof merely stipulating that such notification must take place before the end of the eleventh month following the date of registration of the Community transit declaration, it nonetheless imposes an obligation of diligence on the national authorities in notifying the principal.
- (21) In the case at issue, the point from which the Dutch authorities could have informed the applicant of the irregularities in question must be determined. The fact is that the Rotterdam Customs Information Department (DIC) discovered the first case of fraud affecting the firm on 23 March 1995. The Haarlem Taxation Information and Investigation Department (FIOD) became aware of this matter on 31 March 1995 and the Rotterdam FIOD was notified on 18 April 1995. The FIOD was the authority responsible for investigating the irregularities in question and, if appropriate, notifying the firm. The Rotterdam FIOD began its fraud investigation on 18 April 1995 but did not inform the firm of the irregularity discovered until 9 August 1995.
- (22) Had the applicant been informed by the customs authorities of the irregularity discovered within a reasonable period of time after 18 April 1995, it could have taken the necessary measures to avoid incurring a customs debt.
- (23) The firm issued 3 external Community transit declarations on 25 April 1995 followed by 5 declarations from 12 June 1995 onwards. In its judgment on this case, the Court held that a reasonable period had to be considered to have elapsed as regards the declarations issued by the firm from 12 June 1995 onwards.

- (24) It follows from the foregoing that the conditions for the existence of a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 are met as regards the Community transit declarations issued by the firm from 12 June 1995 onwards.
- (25) These circumstances do not moreover involve any deception or obvious negligence on the part of the firm.
- (26) Remission of import duties is therefore justified as regards the operations carried out by the firm from 12 June 1995 onwards.



HAS ADOPTED THIS DECISION:

*Article 1*

The remission of import duties requested by the Netherlands on 10 May 2000 is justified for the sum of XXXXXX.

*Article 2*

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 3-2-2006

*For the Commission*

*László KOVÁCS*

*Member of the Commission*