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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6-9-2002
C(2002)3307

NOT FOR PUBLICATION

COMMISSION DECISION

Of 6-9-2002

**finding that it is justified to waive post-clearance entry in the accounts of import duties
in a particular case**

(Only the German text is authentic)

(Request submitted by Germany)

(REC 09/2001)

FR

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(REC 09/2001)

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 2700/2000,²

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 444/2002,⁴ and in particular Articles 873 and 907 thereof,

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 311, 12.12.2000, p. 17.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 68, 12.3.2002, p. 11.

Whereas:

- (1) By letter dated 3 December 2001, received by the Commission on 7 December 2001, Germany asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it was justified to waive post-clearance entry of import duties in the accounts in the following circumstances:
- (2) A German firm regularly imported video senders/receivers from Taiwan. Up to 1998 it declared the goods under heading 8543 89 90 99 of the Combined Nomenclature. The goods falling within this code were subject to a 5% *ad valorem* customs duty. Following checks at the firm, the customs authorities found, on the basis of an internal classification opinion, that the goods should be classified under heading 8525 20 99 00 at an *ad valorem* rate of duty of 6.5%. The competent customs office claimed the import duties owed on past imports as a result of the difference between the rates of 5% and 6.5%. However, a second control carried out by the customs administration following a request for a fresh classification opinion led to the conclusion that the goods should be classified under heading 8527 90 98, a heading incurring a 10.2% *ad valorem* customs duty.
- (3) The German authorities then asked the firm to pay customs duties arising from the difference between the 6.5% and 10.2% rates totalling XXXXXX.
- (4) Pleading its good faith, the error by the German authorities and the fact that it could not have detected that error, the firm asked for the post-clearance of entry in the accounts of the import duties to be waived in this case.
- (5) In support of the application submitted by the competent German authorities the firm indicated that, in accordance with Article 871 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.

- (6) In accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 7 May 2002 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (7) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, post-clearance entry in the accounts shall be waived where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities themselves which could not reasonably have been detected by the person liable for payment, that person having acted in good faith and observed all the provisions laid down by the legislation in force as regards the customs declaration.
- (8) It emerges from the letter of the German authorities to the Commission of 3 December 2001 that the customs authorities had clearly told the firm after initial on-the-spot checks and a detailed examination of the goods in question that the proper tariff classification was 8525 20 99 00. But after a second control, followed by a second classification opinion, the customs authorities decided that the goods should be classified under heading 8527 9098. The first classification opinion issued by the administration constitutes an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (9) Furthermore, as the German customs authorities mention in their letter, the error could not reasonably have been detected by the firm. They also affirm that the firm could legitimately expect to rely on the classification proposed by the customs authorities since a number of customs departments (auditors, the customs office, etc.) had accepted the first classification opinion. The firm has acted in good faith and observed all the provisions laid down by the legislation in force as regards the customs declaration.
- (10) It is therefore justified to waive post-clearance entry in the accounts of import duties in this case,

HAS ADOPTED THIS DECISION:

Article 1

Entry in the accounts of import duties in the sum of XXXXXXXX referred to in the request from the Federal Republic of Germany on 3 December 2001 is hereby waived.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 6-9-2002

For the Commission

Member of the Commission