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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3-3-2003
C(2003)653

NOT FOR PUBLICATION

COMMISSION DECISION

of 3-3-2003

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

(Only the French text is authentic)

(Request submitted by France)

(REM 12/2002)

FR

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(REM 12/2002)

THE COMMISSION OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Communities,

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 Article 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 30 May 2002, received by the Commission on 4 June 2002, France 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) In October and November 1995, a Dutch customs agent acting as principal placed four consignments of trousers destined for France under the Community external transit procedure.
- (3) When the No 5 copies of the four transit documents were not returned, the Dutch authorities carried out an investigation. They found that the goods had not been presented at the office of destination and the four T1 documents in the possession of the customs agent had been stamped with the official stamp of the office of destination by a corrupt official. Since it was found that under Article 215 of Regulation (EEC) No 2913/92 the customs debt had been incurred in France, the French authorities claimed import duties of XXXXXX from the customs agent (the principal).
- (4) The customs agent applied for remission of those duties on the grounds that it had acted in good faith and a French customs official had actively participated in the fraud.
- (5) In support of the application submitted by the French authorities the customs agent stated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier sent to the Commission by those authorities and had nothing to add.

- (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 6 December 2002 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 a special 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 the customs agent incurred a customs debt through its failure to present the consignments of trousers, which had been placed under the Community external transit procedure, at the customs office of destination.
- (10) As principal, the customs agent is responsible to the competent authorities for the proper conduct of Community transit operations even if it is the victim of fraudulent activities by third parties. That is part of the commercial risk assumed by the principal.
- (11) It is nevertheless accepted that the deliberate and active involvement of customs officials in fraud, notably by discharging transit documents where goods have not been presented, is to be considered as an error or failure of the competent authorities constituting a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.

- (12) The principal's liability for the proper conduct of Community transit operations cannot be expected to extend to cases in which representatives of the customs administration actively assist in committing fraud. Unless the principal is himself an accomplice to the fraud, he can legitimately expect the proper functioning of the administration not to be undermined by corrupt customs officials.
- (13) In this case the dossier sent to the Commission by the French authorities shows that the competent national authorities had officially established that corruption had been practised with the involvement of a French customs official. The official concerned was suspended, and found guilty in a judgment by the Paris Regional Court (*Tribunal de grande instance*) of 1 July 1999.
- (14) This active participation of a customs official in the fraud meant that the company could not realise that the goods had not arrived at the customs office of destination.
- (15) The participation in the realisation of the fraud of an official with a direct interest in the operations is a particularly serious error or failure of the competent authority, profoundly undermining the system on which Community transit is based. The effectiveness of that customs procedure depends on two factors: the responsibility of the principal for the proper conduct of the operation and the findings of the customs officials duly and properly recorded on the transit documents, on which the operator can legitimately rely.
- (16) Inasmuch as the person who voluntarily misled the customs agent, and put it in a situation where it incurred a financial liability to the authorities, was himself a representative of those authorities, payment of the customs debt would be unfair and would create flagrant legal insecurity for traders.
- (17) All these factors taken together constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.

- (18) In the circumstances of this case no deception or obvious negligence can be attributed to the customs agent, as the competent French authorities confirm.
- (19) The remission of import duties requested is therefore justified in this case.

HAS DECIDED AS FOLLOWS:

Article 1

The remission of import duties in the sum of XXXXXXXX requested by France on 30 May 2002 is justified.

Article 2

This Decision is addressed to the French Republic.

Done in Brussels, 3-3-2003

For the Commission
Frits Bolkestein
Member of the Commission