

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18-11-2002
C(2002)4454

COMMISSION DECISION

of 18-11-2002

**finding that remission of duties is justified in a particular case and refusing the
Netherlands authorisation to repay or remit duties in cases involving comparable issues
of fact and of law**

(Only the Dutch version is authentic.)

(Request submitted by the Kingdom of the Netherlands)

(REM 10/01)

FR

COMMISSION DECISION

of 18-11-2002

finding that remission of duties is justified in a particular case and refusing the Netherlands authorisation to repay or remit duties in cases involving comparable issues of fact and of law

(Only the Dutch version is authentic.)

(Request submitted by the Kingdom of the Netherlands)

(REM 10/2001)

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 establishing the Community Customs Code,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 26 March 2001, received by the Commission on 5 April 2001, the Netherlands 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) In the period 1994-1997 a customs agent established in the Netherlands declared jeans for release for free circulation on behalf of various consignees.
- (3) When the declarations were lodged the Netherlands authorities accepted the declared value in all but one case and calculated the customs duties on that basis.
- (4) Following subsequent controls the Netherlands customs authorities concluded that the customs value was incorrect (the prices were understated, so precluding the application of the transaction value and requiring the transaction value of identical or similar goods to be used instead) and corrected the declarations. After correcting the declarations the customs authorities asked the firm to pay XXXXXX, the amount for which remission was initially requested in this case.

- (5) According to the Netherlands authorities' letter of 26 March 2001, the firm argues that a special situation existed for the following reasons. As a customs agent, it was in no position to check the customs value of the goods. Customs too initially assumed the declared value to be correct, only later informing the firm that it was incorrect. The firm also argues that the competent authorities miscalculated the customs value and that the financial difficulties caused by post-clearance recovery would jeopardise its survival. In their request of 26 March 2001, the Netherlands authorities, while not endorsing the arguments made by the firm, nevertheless wonder whether the [judgment of the Court of Justice of the European Communities in Case C-61/98](#) concerns similar facts to this case and whether this case therefore constitutes a special situation.⁵ The Netherlands administration therefore decided to put the case to the Community authorities. In their letter of 26 March 2001, the Netherlands authorities explain that the firm acted in good faith, committing neither deception nor obvious negligence.
- (6) In support of the application submitted by the competent Netherlands authorities, the firm stated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission. It stated its position and made comments, which were forwarded to the Commission by the Netherlands authorities in their letter of 26 March 2001.
- (7) By letters dated 12 October 2001 and 10 April 2002 the Commission asked the Netherlands authorities for additional information. This information was provided by letters dated 15 March and 11 September 2002, received on 21 March and 16 September 2002 respectively. In accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, the administrative procedure was therefore suspended between 13 October 2001 and 21 March 2002 and between 11 April 2002 and 16 September 2002.

⁵ De Haan Beheer BV v Inspecteur der Invoerrechten en Accijnzen te Rotterdam [1999] ECR I-5003.

- (8) In its letters the Commission asked for details of the sum of the debt for which remission is finally being sought in this case, the description of the goods given by the firm in its declarations and the measures taken by the competent Netherlands authorities between the time they found out the product in question was the object of fraud and January 1997, when they notified the firm of the investigations and the debt. Information was also sought on the types of control carried out by the competent authorities when accepting the declarations concerned in this case.
- (9) In response, the Netherlands authorities explained that the final amount of customs duties for which remission is being sought in this case is XXXX. As for the description of the goods concerned in this case, the Netherlands authorities explained that they were described in most instances as denim or cotton long trousers for men or children. In the great majority of cases the declarations did not mention the quality of the product. Even when they did, that mention was confined to "top quality". The Netherlands authorities have sent the list of the types of control carried out for each of the declarations in question. It should be noted that the transactions in question were subjected to many physical inspections and document checks over the period 1994-1997.

- (10) The Netherlands authorities also provided information on the measures they took in the period 1994-1997 to investigate the fraud involved in this case. They explained that the customs information centre had begun controlling imports of such goods from the United States after receiving a mutual assistance sheet from the Community authorities in November 1994 concerning the misdeclaration of the value of Levi's jeans from the United States. At that time the firm's declarations were examined in detail. After receiving a second mutual assistance sheet concerning the same fraud, which this time mentioned that the Netherlands was also affected, requests for mutual administrative cooperation were sought from the Member States of establishment of the consignees of goods the value of which had been understated on their release for free circulation in the Netherlands.
- (11) 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 23 October 2002 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (12) 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.
- (13) The Court of Justice of the European Communities has consistently taken the view that these provisions represent 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.

- (14) In this case, customs duties on the goods released for free circulation by the firm in the period 1994-1997 were entered in the accounts at a level lower than that legally due because they were calculated on the basis of a lower customs value than they should have been. When, following a control, the competent authorities realised this, they asked the firm, which was liable for the debt as declarant, to pay the duties to be recovered.
- (15) As regards the claim that the amount of the debt sought from the firm is incorrect, it should be pointed out from the outset that this [decision](#) is intended to examine whether equity warrants remission of an existing customs debt. There can be no question here of ruling on the existence or the amount of the debt, that being a matter for the Member State submitting the request.⁶
- (16) Notwithstanding numerous physical inspections and document checks, the customs authorities responsible for clearance (in this instance a single customs office) accepted a considerable number of declarations (almost 200) in the period from late August 1994 through January 1997, objecting to only one of them. Thus four physical inspections were carried out in 1994, 41 in 1995, six in 1996 and one on the only 1997 declaration concerned by this case.

⁶ Judgment of the Court of Justice in Case T-205/99 *Hyper Srl v Commission of the European Communities*, not yet published in the European Court Reports.

- (17) Yet the products concerned in this case were always the same. They were jeans of a single brand and all came from the United States. The declared transaction values were USD 17, USD 16 or USD 10.50. On discovering the brand of the jeans during the physical inspections the competent customs authorities should have questioned the declared transaction value because the average prices of such jeans when exported between official dealers in the United States and the EU were normally higher. They did not, however, do so.
- (18) The fact that they accepted numerous declarations for almost three years without objection gave rise to a legitimate expectation on the part of the principal and constitutes an active error on the part of the authorities concerned and therefore a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (19) The fact that the authorities responsible for clearance did in one case find an error in the declared value of the goods in no way detracts from their overall error. Indeed the discovery in May 1995 that value had been misdeclared should have caused the authorities to exercise greater vigilance when examining subsequent declarations lodged by the firm for identical products. In this case, however, notwithstanding the number and amount of the declarations and the many physical inspections, over the next 20 months the customs authorities never again contested the declared value of the goods when accepting declarations.
- (20) It also appears from the evidence in the dossier that from November 1994 onwards the Netherlands authorities were kept informed by the Community authorities of a fraud in which the value of Levi's jeans imported from the United States was understated when releasing the goods for free circulation. In June 1995 further information on this fraud was sent to them in the form of a mutual assistance sheet. The sheet stated that the fraud also involved consignments destined for the Netherlands.

- (21) Following this information, as the Netherlands authorities stated in the annexes to their letter of 15 March 2002, the competent authorities launched an investigation, which included a detailed examination of past declarations by the firm involved in this case.
- (22) Thus, while another department of the Netherlands customs administration was investigating false declarations of value for goods identical to those involved in this case, including those lodged by the firm in question, the customs office responsible for clearance continued to accept, with one exception, the declarations for release for free circulation lodged by the firm in respect of that product. This tends to bear out the fact that the firm found itself in a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (23) Moreover, the circumstances of this case involve no deception or obvious negligence on the part of the firm concerned, as the competent Netherlands authorities confirm in their letter of 26 March 2001.
- (24) The circumstances in this case therefore constitute a special situation in which no deception or obvious negligence may be attributed to the firm concerned.
- (25) Remission of import duties is therefore justified in this case.
- (26) 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.
- (27) In a letter of 26 March 2001 the Netherlands requested authorisation to repay or remit duties in cases involving comparable issues of fact and law.

(28) 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 XXXXX requested by the Netherlands on 26 March 2001 is justified.

Article 2

The authorisation requested by the Netherlands in its letter of 26 March 2001 under Article 908 of Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, is not granted.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

For the Commission

[...]

Member of the Commission