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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29. I. 1991

C(91)109 final

NOT FOR PUBLICATION

Commission Decision
of 29. I. 1991
finding that the remission of import duties
in a particular case is not justified
(request submitted by the United Kingdom)
REM: 9/90

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,¹ as last amended by Regulation (EEC) No 3069/86,²

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties, and in particular Article 8 thereof,³

Whereas by letter dated 31 July 1990, received by the Commission on 7 August 1990, the United Kingdom asked the Commission to decide, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the remission of import duties was justified in the following circumstances:

1 OJ No L 175, 12.7.1979, p. 1.

2 OJ No L 286, 9.10.1986, p. 1.

3 OJ No L 352, 13.12.1986, p. 19.

A United Kingdom firm manufacturing nylon granules obtains from a US company supplies of nylon pellets derived from material sent to the US firm for processing by an exporter in the Netherlands. The imported pellets are made into granules by the British firm, for sale on the Community market.

When this trade first started in 1979, the Netherlands firm obtained from the Netherlands customs authorities an authorization to place the temporarily exported goods under the outward processing arrangements, using the triangular traffic system, to enable the compensating products to be re-imported into the United Kingdom at the differential rate. In accordance with the rules, the Netherlands firm supplied the British firm with the INF 2 information sheets endorsed by the Netherlands customs authorities, to be presented to the UK customs authorities when the compensating products were re-imported.

After operating this system satisfactorily for some years, the British firm experienced difficulty in getting the INF 2 forms from the holder of the authorization, the Netherlands firm. At the same time, it changed some of its internal administrative procedures; in the process of alteration, the correct outward processing procedures were overlooked.

The UK firm then ceased to obtain INF 2 forms from the holder of the authorization, but continued to declare compensating products for free circulation under the outward processing arrangements, with partial relief from duty.

Following an inspection by the UK customs authorities, which uncovered the irregular use of the outward processing arrangements, the UK firm calculated the exact value of the partial relief obtained, affecting approximately 70 customs declarations over three years. At the same time, it appealed against payment of the extra duty and applied for retroactive authorization to use the arrangements.

The UK customs authorities could not authorize use of the outward processing arrangements, retroactive or otherwise, under the terms of Regulations (EEC) Nos 2473/86 and 2458/87, and on 27 march 1990 issued a demand for extra duty due on materials imported between 1987 and 1989, to a total value of [REDACTED] ([REDACTED]).

The UK firm contested payment of the extra duties, arguing that because there had been no change in the type of processing since use of the arrangements was originally approved, there was no liability to pay the extra duties. The firm also supplied copies of correspondence from the Netherlands firm accepting that it had failed to renew the outward processing authorization though this was its responsibility, and copies of T2 forms relating to exports of nylon waste later reimported by the UK firm after processing.

Whereas in accordance with the requirements of Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 19 November 1990 in the Committee on Duty Free Arrangements to consider the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79 import duties may be repaid or remitted in special situations other than those referred to in Sections A to D of that Regulation, resulting from circumstances in which no deception or obvious negligence can be attributed to the person concerned;

Whereas no special situation exists in this case;

Whereas the Community outward processing rules provide that compensating products can be entered for free circulation under the arrangements by a person established in the Community other than the holder of the authorization, provided that person has the consent of the holder of the authorization and the conditions applying to the authorization are fulfilled; whereas in order to furnish the customs authorities in the Member State of re-importation with proof of such consent, the importer presents information sheet INF 2 when lodging the entry for release of the compensating products for free circulation;

Whereas information sheet INF 2 in addition contains all the other information needed for the formal discharge of the outward processing arrangements, including the data for calculation of partial relief based on differential rates, particulars of the authorization and the identification measures applied on export of the temporarily exported goods;

Whereas in this case the UK importer of compensating products obtained under the outward processing arrangements is a firm with several year's practical experience in the proper implementation of these relief arrangements; whereas it was therefore aware of the importance of information sheet INF 2, and the need to present it at the time of re-importation of the compensating products in order to ensure that the outward processing arrangements are operated correctly; whereas it is by means of this procedure that the customs authority in the Member State of re-importation can not only satisfy itself that the holder consents to importation of the products by that firm, but can also identify the proportion of temporarily exported goods contained in the re-imported compensating products;

Whereas when the UK firm first experienced difficulty obtaining the INF 2 form from the holder of the authorization, it should have contacted the said holder, with which it had commercial dealings; whereas pending the arrival of the INF 2 form the compensating products could have been put into storage in order to avoid the consequences of releasing them for free circulation without benefit of outward processing relief;

Whereas although the customs authorities were wrong to allow the compensating products to be released for free circulation under the outward processing arrangements when the entry for free circulation was not accompanied by the original INF 2, the company cannot rely on that error, particularly in view of its previous experience with proper implementation of outward processing procedures;

Whereas in the circumstances, and given that the UK importer took no steps to comply with the rules for importation of the compensating products under the outward processing arrangements until an official inspection revealed the failure to observe Community law, the firm displayed obvious negligence;

Whereas the remission of import duties requested is therefore not justified in this case,

Article 1

The remission of import duties totalling [REDACTED] requested by the United Kingdom on 31 July 1990 is hereby found not to be justified.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 29. 1. 1991

For the Commission

Ch. SCRIVENER

Member of the Commission