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**REM 16/2003**

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26-5-2004  
C(2004)1904

NOT FOR PUBLICATION

**COMMISSION DECISION**

**Of 26-5-2004**

**finding that repayment of import duties in a particular case is not justified**

(Only the Danish text is authentic)

**(Request submitted by Denmark)**

**(REM 16/2003)**

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**COMMISSION DECISION**

**Of 26-5-2004**

**finding that repayment of import duties in a particular case is not justified**

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(Request submitted by Denmark)

**(REM 16/2003)**

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 2700/2000,<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 2286/2003,<sup>4</sup>

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<sup>1</sup> OJ L 302, 19.10.1992, p. 1.

<sup>2</sup> OJ L 311, 12.12.2000, p. 17.

<sup>3</sup> OJ L 253, 11.10.1993, p. 1.

<sup>4</sup> OJ L 343, 31.12.2003, p. 1.

Whereas:

- (1) By letter dated 30 July 2003, received by the Commission on the same day, Denmark asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties was justified in the following circumstances.
- (2) Under the second paragraph of Article 2 of Commission Regulation (EC) No 1335/2003 of 25 July 2003,<sup>5</sup> the provisions of Article 1 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 Articles 905 and 907 of 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) A Danish firm imported cars from Japan between 1 January 1996 and 31 December 1998.
- (4) The cars were covered by a contract between the exporter and importer which provided the purchaser with a guarantee against any defect found in the vehicle following delivery. On 23 April 1999 the firm requested partial repayment of the sum of duties paid on import, under Article 236 of Regulation (EEC) 2913/92, to account for the cost of repairs incurred in 1996, 1997 and 1998 which were covered by the guarantee.
- (5) The Danish authorities considered that the conditions for reducing the transaction value under Article 29(1) of Regulation (EEC) 2913/92 had been met and granted partial repayment. However, they calculated the amount to be repaid by applying an average rate of duty of 4% to the parts used for repairs under the guarantee, based on the Combined Nomenclature codes for the spare parts most commonly used.

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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.

- (6) The firm felt that the calculation method used by the Danish authorities was incorrect and resulted in a smaller repayment than that actually due. In its view, the 10% rate of duty applicable to the car should be applied to the spare parts used, the result being the repayment of a larger amount of duty. It was able to prove that several other Member States calculated repayments in this manner. It therefore requested repayment of an additional sum of XXXXXXXX and took its case to the National Tax Tribunal in Denmark.
- (7) In its decision the National Tax Tribunal stated that doubts remained as to whether there was a legal basis for repayment under Article 236 of Regulation (EEC) No 2913/92; it suggested, however, that the customs authorities have the Commission examine whether the circumstances of the case constituted a special situation within the meaning of Article 239 of Regulation No 2913/92.
- (8) Commission Regulation (EC) No 444/2002 of 11 March 2002 amended Article 145 of Regulation (EEC) 2454/93 to allow a reduction in the customs value of defective goods subject to a contractual guarantee. This Regulation does not have retroactive effect.
- (9) In support of the request submitted by the Danish 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. It also made a number of observations, some forwarded to the Commission in the Danish authorities' letter of 30 July 2003 and others in the firm's letter of 1 September 2003.
- (10) By letter dated 12 March 2004, received by the firm on 16 March 2004, the Commission notified the firm, through the firm's lawyer, of its intention to withhold approval and explained the reasons for its decision.

- (11) By letter dated 30 March 2004, received by the Commission on the same date, the firm's lawyers responded to the Commission's objections. They explained that they shared the Commission's view that Article 239 of Regulation (EEC) No 2913/92 did not apply to this case. They also insisted that the repayment of duties under Article 236 of the Code was justified, though they accepted that only the national authorities were competent to decide whether repayment was due under that Article.
- (12) In accordance with 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 6 May 2004 within the framework of the Customs Code Committee, Repayment Section.
- (13) Article 239 of Regulation (EEC) No 2913/92 allows import duties to be repaid or remitted in situations other than those referred to 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.
- (14) 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 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.
- (15) In this instance the firm considers that it has been placed in a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 by the Danish administration's misinterpretation of the rules and by the Member States' divergent interpretations of these rules.

- (16) In the opinion of the Commission, and indeed of the firm's lawyers as stated in their letter of 30 March 2004, the circumstances cited above are not such as to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92. The firm contests the Danish authorities' decision to repay only part of the amount of duty paid on import and therefore the amount of the customs debt determined by those authorities. Such disputes do not fall within the scope of the procedure for remission or repayment under Article 239 of Regulation (EEC) No 2913/92. It is for the Member States, not the Commission, to determine whether a debt has been incurred and, if so, the amount of the debt. The Court of Justice has consistently taken the view that the object of Commission decisions under the procedures for waivers of post-clearance entry in the accounts or remission/repayment is not to determine whether a customs debt has been incurred and, if so, [the amount of the debt](#).<sup>7</sup> If the firm does not accept the amount of the debt as determined by the customs authorities, it must challenge it under Article 243 of Regulation (EEC) No 2913/92.
- (17) The reference to Article 145(2) and (3) of Regulation (EEC) No 2454/93 as amended by Regulation (EC) No 444/2002 also appears irrelevant. Apart from the fact that the act does not have retroactive effect, it should be noted that even before the entry into force of Regulation (EC) No 444/2002, Denmark had agreed, in the cases in question, to adjust the customs value on import and to remit or repay part of the import duties charged under Article 236 of Regulation (EC) No 2913/92.

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<sup>7</sup> See the following cases: "Sportgoods" (Case C-413/96, 24.9.1998), "Kia Motors" (Case T-195/97, 16.7.1998) and "Hyper Srl" (T-205/99, 11.7.2002).

- (18) It is true that Member States have interpreted the rules in force differently; of those which agreed to repay or remit duties, some applied to the spare parts the specific rate applicable to those parts while others applied the rate in force for the complete vehicle. However, such differences do not in themselves justify the view that the conditions laid down in Article 239 of Regulation (EC) No 2913/92 have been fulfilled. It cannot be argued that the firm was in an exceptional situation compared with other traders.
- (19) The dossier as a whole does not therefore give grounds for finding that there was a special situation within the meaning of Article 239(1) of Regulation (EEC) No 2913/92.
- (20) Nor has the Commission identified any other circumstances constituting a special situation. There is therefore no need to examine the second condition laid down in Article 239 of Regulation (EEC) No 2913/92.
- (21) The repayment of import duties requested is not therefore justified,



HAS ADOPTED THIS DECISION:

*Article 1*

Repayment of import duties in the sum of XXXXXXXX requested by Denmark on 30 July 2003 is not justified.

*Article 2*

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 26-5-2004

*For the Commission*

*Frits Bolkestein*

*Member of the Commission*