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REM 21/01



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.2.2002
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COMMISSION DECISION

of 8.2.2002

**finding that remission of import duties in a particular case is justified and authorising
the Member States to repay or remit duties in cases involving comparable issues of fact
and law**

(request submitted by the Netherlands)

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FR

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(request submitted by the Netherlands)

(REM 21/01)

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 Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 993/2001,⁴ 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 33, 28.5.2001, p.1.

Whereas:

- (1) By letter dated 28 August 2001, received by the Commission on 31 August 2001, the Netherlands asked the Commission to decide, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,⁵ as last amended by Regulation (EEC) No 1854/89,⁶ whether remission of duties was justified in the following circumstances:
- (2) Between August and November 1993, a Dutch firm imported into the Community colour televisions manufactured in Turkey from components which had been imported into Turkey from third countries.
- (3) Under Article 3(1) of the Additional Protocol to the EEC-Turkey Association Agreement,⁷ goods of this type could be imported into the Community from Turkey free of import duties if either the original components had been released for free circulation in Turkey or a compensatory levy set by the Association Council had been collected on the goods upon export of the finished product to the Community. In accordance with Decision No 5/72 of the Association Council on methods of administrative cooperation for implementation of Articles 2 and 3 of the Additional Protocol to the Ankara Agreement,⁸ relief is granted on presentation of an A.TR.1 or A.TR.3 certificate duly endorsed by the competent authorities of the exporting country, in this case the Turkish authorities.
- (4) The imports in question were accompanied by A.TR.1 movement certificates, endorsed by Turkish customs, and consequently entered the Community duty free.

⁵ OJ L 175, 12.7.1979, p.1.

⁶ OJ L 186, 30.6.1989, p.1.

⁷ OJ L 293, 29.12.1972, p. 4.

⁸ OJ L 59, 5.3.1973, p. 74.

- (5) Checks carried out in Turkey in October and November 1993 by representatives of the European Commission and the customs administrations of a number of Member States showed that the Turkish customs authorities had not collected the compensatory levy, but had endorsed movement certificates all the same. Indeed, Turkey had never made provision in its legislation for collecting compensatory levies, a situation which endured from 1973 until 15 January 1994, the date of entry into force of Decree No 94/5168⁹ which introduced the said compensatory levy.
- (6) As a result of the checks, it was ascertained that in the case in point, the certificates presented and endorsed by Turkish customs were invalid because they had been issued for television sets manufactured in Turkey using third-country components which had neither been released for free circulation nor subject to the compensatory levy. The products in question were therefore not eligible for the free circulation arrangements on import into the Community.
- (7) Duties of XXXXXX, i.e. the customs debt for complete television sets, and not simply the third-country components, were claimed from the firm. It is that amount for which remission is now requested.
- (8) Under Article 905 of Regulation (EEC) No 2454/93 and in support of the request made by the Dutch authorities, the firm indicated that it had seen the dossier submitted to the Commission by the Dutch authorities and had nothing to add.

⁹ Turkish Official Gazette No 21832, 28.1.1994.

- (9) 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 7 December 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (10) 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 laid down in sections A to D of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (11) 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.
- (12) In the case in point, the granting of preferential tariff treatment for the imports was subject to presentation of A.TR origin certificates.
- (13) As already pointed out, the 1993 Community investigation showed that the colour televisions could not be considered eligible for the free circulation arrangements.
- (14) The certificates issued by the Turkish authorities were therefore invalid.
- (15) Reliance on the validity of such certificates is not normally protected, as this is considered part of the importer's normal commercial risk and therefore the responsibility of the person liable for payment.

- (16) The Court of Justice has consistently ruled that the legitimate expectations of a trader are protected only if the competent authorities themselves gave rise to these expectations.
- (17) In this instance, the exporter declared on the certificates of origin that the goods they referred to met the conditions for obtaining the certificates.
- (18) It is plain from recent rulings of the Court of First Instance of the European Communities, however, that even if the exporters had misled the Turkish authorities that does not necessarily rule out the existence of a special situation in this case within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (19) In any case, the fact that the exporter confirmed on the certificates that the conditions for obtaining them had been met is not in itself proof that the competent Turkish authorities were misled. It is necessary to ascertain whether the exporter made these statements on the assumption that the competent authorities were acquainted with all the facts necessary to apply the rules in question and whether the authorities, despite their knowledge, raised no objection to the statements.

- (20) In a similar case to the present request for remission, the Court of First Instance of the European Communities found in its 'Turkish televisions' [judgment of 10 May 2001](#)¹⁰ that there was evidence to suggest that the competent Turkish authorities knew or, at the very least, should reasonably have known that the goods for which they were issuing A.TR certificates did not fulfil the conditions laid down for the free circulation arrangements. According to the Court, the Turkish authorities were responsible for serious deficiencies which undoubtedly contributed to the occurrence of irregularities in connection with exports of television sets from Turkey to the Community. These deficiencies give rise to doubts about the will of the Turkish authorities to ensure the proper implementation of the provisions of the Association Agreement and the Additional Protocol as regards exports of television sets from Turkey to the Community. These deficiencies are such as to constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79.
- (21) Indeed, the Court noted that, for more than 20 years, the Turkish authorities had not transposed the legislation on the compensatory levy laid down in Article 3(1) of the Additional Protocol and Decision No 2/72 of 29 December 1972. Since the legislation was not transposed, the Turkish customs authorities could not legitimately issue A.TR.1 certificates for goods, such as colour television sets, containing components from third countries which were not in free circulation in Turkey.
- (22) Secondly, the Court found that, at the material time, the Turkish authorities had introduced measures which either did not comply with the provisions of the Association Agreement or the Additional Protocol or did not allow the correct implementation of those provisions as regards the exportation of colour television sets to the Community.

¹⁰ 'Turkish televisions' judgment of 10 May 2001: Joined Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99.

- (23) The Court also found that the Turkish authorities had at the material time set up an export incentive scheme which allowed duty-free imports of components from third countries on condition that those components were included in goods subsequently exported to the Community or third countries. Since the legislation on the compensatory levy had not been transposed by the Turkish authorities, no component of third country origin imported under that scheme could be included in goods intended for the Community since the Turkish customs authorities were not able to collect the compensatory levies on such components.
- (24) The Court held that the Commission had not ensured that the application of the Association Agreement and the Additional Protocol was properly monitored. This failure had also contributed, it found, to the irregularities which had occurred regarding the exports of television sets from Turkey to the Community.
- (25) The Court also found in the above judgment that for more than 20 years the Association Council, whose main task under Article 22 of the Association Agreement is to adopt the measures necessary to ensure the smooth functioning of that agreement and compliance with it by the contracting parties, had taken no measures at all to ensure the respect by Turkey of the provisions concerning the compensatory levy.
- (26) Consequently, the serious deficiencies attributable to the contracting parties have had the effect of placing the firm in a special position in relation to other traders carrying out the same activity.
- (27) The circumstances of the case in hand are therefore such as to constitute a special situation within the meaning of Article 13(1) of Regulation (EEC) No 1430/79.
- (28) These circumstances involve neither deception nor obvious negligence on the part of the firm concerned.

- (29) The Court of Justice has ruled that the negligence of importers has to be set against the period of time during which the competent authorities persisted in their behaviour. In the case concerned, the competent Turkish authorities issued A.TR certificates for goods that did not meet the conditions for granting such certificates throughout a period of at least three years.
- (30) Furthermore, the firm involved has to be absolved of any obvious negligence since there is no evidence that it deviated from normal business practice when concluding its purchase contracts and carrying out the imports concerned.
- (31) The firm concerned has therefore acted in good faith and committed no deception or obvious negligence.
- (32) Remission of import duties is therefore justified in this case.
- (33) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 allows the Commission, under conditions that it may determine, to authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and law.
- (34) At its meeting on 7 December 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment), the group of experts composed of representatives of all the Member States provided for in Article 907 of Regulation (EEC) No 2454/93 asked that all Member States be authorised to repay or remit import duties in cases involving comparable issues of fact and law.

- (35) Such authorisation may be granted to the Member States on the condition that it is used only in cases strictly comparable in fact and law to the case in question. The authorisation should nevertheless also cover requests for repayment or remission of duties lodged within the legal time limits in respect of import operations carried out between 1991 and 15 January 1994, the date of entry into force of Decree No 94/5168, where such import operations were carried out during that period in circumstances comparable in fact and law to those which gave rise to this case. Above all, the behaviour of the importers must involve no deception or obvious negligence,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXXXXX requested by the Netherlands on 28 August 2001 is hereby found to be justified.

Article 2

The Member States are hereby authorised to repay or remit import duties in cases involving issues of fact and law comparable to the case referred to by the request of 28 August 2001 submitted by the Netherlands.

The authorisation also covers requests for repayment or remission of duties lodged within the legal time limits in respect of import operations carried out between 1991 and 15 January 1994, the date of entry into force of Decree No 94/5168, where such import operations were carried out during that period in circumstances comparable in fact and law to those which gave rise to the request referred to above.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 8.2.2002

For the Commission

Member of the Commission