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COMMISSION OF THE EUROPEAN COMMUNITIES,

Brussels, 29-6-2001

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NOT TO BE PUBLISHED

**COMMISSION DECISION**

**of 29-6-2001**

**finding that repayment of import duties is justified in a particular case**

**(Request submitted by the United Kingdom)**

**(REM 26/00)**

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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 Regulation (EEC) No 2913/92,<sup>3</sup> as last amended by Regulation (EC) No 993/2001,<sup>4</sup> and in particular Article 907 thereof,

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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 141, 28.05.2001, p.1

Whereas:

- (1) By letter dated 26 September 2000, received by the Commission on 2 October 2000, the United Kingdom 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) On 17 October 1999, a UK company imported a gas turbine from Switzerland under the inward processing arrangements. The company held an inward processing authorisation covering this type of goods. The company subsequently sent the turbine to its client, for testing and for assembly with a compressor. The client also held an inward processing authorisation.
- (3) For commercial reasons, the company's client had subcontracted the inward-processing checks for which it was responsible to its forwarding agent. The client should have sent an identifying document to its forwarding agent to enable the latter to check that the inward processing authorisation covered the goods ordered, and that those goods were accompanied by transfer documents that were fully in order. If the goods ordered were not covered by the authorisation, a request to alter the authorisation should have been made immediately.
- (4) In the case in question, the client failed to inform its forwarding agent of the order. Its inward processing authorisation did not cover the type of gas turbine involved. When the client discovered this error, it asked for its authorisation to be altered, and the competent customs administration allowed the alteration to be made.

- (5) Because the client's inward processing authorisation did not cover the gas turbine, it had been sent from the original company to the client without being covered by the client's inward processing authorisation, and this gave rise to a customs debt pursuant to Article 204 of Regulation (EEC) No 2913/92. The competent authorities therefore issued a recovery notice for XXXX. The company paid this sum, and is applying for it to be repaid.
- (6) In support of the application submitted by the UK authorities the company 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 and had nothing to add.
- (7) 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 3 April 2001 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.
- (8) 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.
- (9) The dossier sent to the Commission by the UK authorities shows that at the time the item in question (the turbine) was sent from the company to its client, the client's inward processing authorisation did not cover that item. Because there was no authorisation, a customs debt arose.

- (10) However, the dossier sent by the UK authorities also states that if the company's client had asked for its inward processing authorisation to be altered before the turbine was transferred, that alteration would have been allowed (as the UK authorities have confirmed), and the turbine could have been transferred under cover of the inward processing arrangements. It should be noted that such action was in fact allowed for subsequent orders of this type of goods.
- (11) The dossier sent by the UK authorities also points out that the commercial documents accompanying the turbine identified the latter clearly (they specify the manufacturer's and serial numbers), and that apart from the period during which it was transported between the two companies, it had remained under customs supervision throughout the transaction.
- (12) It should also be noted that since the goods were received by the client and were clearly identified, there was no effect on Community own resources.
- (13) Therefore, all the circumstances taken together constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (14) In the circumstances of this case (an isolated error which only occurred once) no deception or obvious negligence can be attributed to the company concerned, as the competent UK authorities confirm.
- (15) The repayment of import duties requested is therefore justified in this case,

HAS ADOPTED THIS DECISION:

*Article 1*

The repayment of import duties in the sum of XXXX referred to in the request from the United Kingdom dated 26 September 2000 is justified.

*Article 2*

This Decision is addressed to the United Kingdom.

Done at Brussels,

*For the Commission*

*Member of the Commission*