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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28-9-2001

NOT FOR PUBLICATION

COMMISSION DECISION

of 28-9-2001

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

(Request submitted by Germany)

(Ref. REM 29/00)

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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,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 141, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 29 September 2000, received by the Commission on 11 October 2000, the Federal Republic of Germany 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) On 9 December 1997 a German company was granted an outward processing authorisation to manufacture self-adhesive paper under CN code 4811 2100 9000. The processing was carried out by a subsidiary in South Africa. The authorisation was valid until 31 December 1998.
- (3) When exporting the paper to be used in this process, the company did not have the goods declared by a forwarding agent, as it had initially planned. Instead the company decided for business reasons to export itself the goods under the local clearance procedure, either temporarily, or in exceptional cases permanently, using export declarations endorsed with a special stamp. In so doing, it dealt with a customs office which was not mentioned in the outward processing authorisation.
- (4) However, in every case the company referred to the outward processing authorisation in box 44 of the export declaration.

- (5) After the goods had been processed, the company then reimported the self-adhesive paper. The competent customs office judged that the company was unable to provide sufficient proof that the paper used in manufacturing the self-adhesive paper had been placed under the outward processing procedure. This office therefore refused to grant preferential customs treatment to the processed goods. The company was thus obliged to sign 111 declarations releasing these goods for free circulation, and to pay the customs duties associated with these declarations, amounting to XXXX. This is the sum for which repayment is now requested.
- (6) Pursuant to Article 905 of Regulation (EEC) No 2454/93, the company stated that it had seen the dossier sent to the Commission by the German authorities. It stated its position and made comments, which were passed on to the Commission by the German authorities in their letter of 29 September 2000.
- (7) By letter of 23 March 2001 the Commission requested further information from the German authorities. This information was provided by letter dated 21 May 2001, received by the Commission on 12 June 2001. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 24 March 2001 and 12 June 2001.
- (8) 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 17 July 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (9) In accordance with 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 that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

- (10) 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 a special 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.
- (11) It is clear from the dossier which the German authorities sent to the Commission that, when the paper was temporarily exported, the company failed to place the goods under the outward processing procedure as required by the legislation in force. The company dealt with a customs office which was not mentioned in its outward processing authorisation. It also failed to make a separate and additional customs declaration to that office. As a result, the compensating goods did not qualify for preferential treatment when they were reimported. The company therefore had to release them for free circulation and pay the associated customs duties.
- (12) However, in this case, it should be noted that the company did in fact hold an outward processing authorisation for the kind of goods which it temporarily exported, as well as for the kind of goods which it subsequently reimported, namely, paper and self-adhesive paper respectively. The latter falls under CN code 48 11 21 00 90 00.
- (13) The company dealt with a customs office other than those mentioned in the outward processing authorisation when temporarily exporting the goods which were to be sent for processing. However, there would have been no objection to adding this office to the list of offices mentioned in the authorisation, had the company requested it.

- (14) Moreover, even if the company failed to make the separate and additional declaration concerning the goods which it had temporarily exported, it nevertheless attempted (as the German authorities confirm in their letter requesting repayment) to establish the link between the goods which were temporarily exported and the compensating goods imported after processing was completed, in particular by mentioning its outward processing authorisation in box 44 of the temporary export declaration.
- (15) In addition, it should be noted that, as the German authorities have stated, this link can also be established between the goods referred to in the 111 declarations of release for free circulation and the paper which was temporarily exported. Many of the details to be found in the temporary export declarations, such as the description and type of paper used, the number on the rolls of paper concerned and the numbers of the loads dispatched, thus recur on the pro forma invoices issued for the self-adhesive paper manufactured in South Africa.
- (16) Moreover, the fact that the competent customs office accepted the export declarations without comment, even though these declarations referred to an outward processing authorisation for which that office was not in fact competent, provided the company with good reason to feel confident that the way in which it was proceeding did indeed comply with the legislation in force.
- (17) Therefore, all the circumstances taken together constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (18) Moreover, in the circumstances of this case no deception or obvious negligence can be attributed to the firm concerned, as the competent German authorities confirm.
- (19) Therefore the repayment of import duties is justified in this case.

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXX requested by the Federal Republic of Germany on 29 September 2000 is hereby found to be justified.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, on 28-9-2001

For the Commission

Member of the Commission