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REM 13/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20-10-2004
C(2004)4008

NOT FOR PUBLICATION

COMMISSION DECISION

Of 20-10-2004

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

(Only the Danish text is authentic)

(Request submitted by Denmark)

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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 the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 2286/2003,⁴

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 236, 23.9.2003, p. 33.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 343, 31.12.2003, p. 1.

Whereas:

- (1) By letter dated 23 July 2003, received by the Commission on 25 July 2003, 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 2003,⁵ 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 2003.⁶
- (3) On 1 April 1997 a Danish firm imported a consignment of sandals from Bangladesh.
- (4) Products of this type originating in Bangladesh could be imported into the Community at a preferential rate under the Generalised System of Preferences (GSP). Under Article 77 of the version of Regulation (EEC) No 2454/93 in force at the time, products covered by a Form A certificate of origin issued by the competent authorities in Bangladesh were eligible for preferential tariff treatment on their release for free circulation.
- (5) In support of its customs declaration the firm presented a Form A origin certificate. The Danish customs authorities accepted the declaration and granted preferential tariff treatment.
- (6) In June 1997 the Danish authorities, having been alerted to irregularities in the issuing of certificates for articles of clothing, had doubts about the certificate's authenticity and sent it to Bangladesh for verification. Since no reply was received from the Bangladesh authorities within six months, a reminder was sent by letter of 9 January 1998. Having received no reply from the Bangladesh authorities, the Danish authorities decided that the imported sandals were no longer entitled to preferential tariff treatment and demanded payment of import duties in the sum of XXXXXX, a sum for which the firm has requested repayment.

⁵ OJ L 187, 26.7.2003, p. 16.

- (7) Appeal was made to the competent Danish court, which ruled that the customs authorities had, in light of the information available to them, rightly demanded payment of the import duty in question and further instructed that the case be submitted to the Commission to see whether the circumstances constituted a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (8) In support of the application 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 and had nothing to add.
- (9) In a letter of 20 February 2004 the Commission asked the Danish authorities for additional information. This led to an exchange of correspondence. By letter of 28 July 2004, received at the Commission the same day, the Danish authorities supplied the information requested. The procedure was therefore suspended from 21 February to 28 July 2004.
- (10) By letter dated 29 July 2004, received by the firm on 30 July 2004, the Commission notified the firm of its intention to withhold approval and explained the reasons for its decision.
- (11) By letter dated 26 August 2004, received by the Commission on the same date, the firm expressed its opinion on the Commission's objections.
- (12) In accordance with the third paragraph of Article 907 of Regulation (EEC) No 2454/93, the time limit of nine months for the Commission to take a decision was therefore extended for one month.
- (13) 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 7 September 2004 within the framework of the Customs Code Committee, Repayment Section.
- (14) Under 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

⁶ OJ L 134, 29.5.2003, p. 1.

of that Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

- (15) The Court of Justice of the European Communities has ruled 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.
- (16) The firm invokes a special situation under Article 239 of Regulation (EEC) No 2913/92 on the grounds that the Danish authorities did not interpret the rules correctly. They initiated recovery after receiving no reply to a reminder sent in follow-up to a first letter to the Bangladesh authorities. These letters were sent because the Danish authorities had doubts about the validity of the Form A origin certificate issued by the competent Bangladesh authorities. The firm argues that the Danish authorities could not invoke irregularities in the issuing of certificates for articles of clothing as grounds for doubts about certificates issued for sandals.
- (17) In the Commission's view, these factors do not constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92. The firm is using these arguments to contest both the existence of a customs debt and the Danish authorities' decision to recover the debt they had established, but such disputes are outside 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 that debt. The Court of Justice has consistently taken the view that it is not the purpose of Commission decisions under the procedures for waivers of post-clearance entry in the accounts or remission/repayment to determine whether a customs debt has been incurred or the [size of the](#) debt.⁷ According to Article 236 of Regulation (EEC) No 2913/92, these matters lie within the exclusive competence of the national authorities, whose decisions may be challenged in the national courts under Article 243 of that Regulation. The courts may submit such cases to the Court of Justice under Article 234 of the Treaty.

- (18) The firm also believes itself the victim of Bangladesh's poor postal services, arguing that the Danish authorities initiated recovery because they had received no reply to the two letters sent to the Bangladesh authorities; there was no other attempt at contact.
- (19) In the Commission's view, this argument does not show the firm to be in a special situation, which has to be understood as an exceptional situation compared with other operators carrying out the same activity, which is manifestly not the case here.
- (20) 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.
- (21) Nor has the Commission found any other factors which may constitute such a special situation. There is therefore no need to examine second condition laid down in Article 239 of Regulation (EEC) No 2913/92.
- (22) The repayment of import duties requested is not therefore justified,

⁷ 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).

HAS ADOPTED THIS DECISION:

Article 1

Repayment of import duties in the sum of XXXXXX requested by Denmark on 23 July 2003 is not justified.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 20-10-2004

For the Commission

Frits Bolkestein

Member of the Commission