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REM 25/01



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28-6-2002

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NOT FOR PUBLICATION

COMMISSION DECISION

of

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

(Only the German text is authentic)

(Request submitted by Germany)

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(REM 25/01)

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 Code¹, 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 2913/92³, as last amended by Regulation (EC) No 444/2002⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 311, 12.12.1992, p.17.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 141, 11.03.2002, p.11.

Whereas:

- (1) By letter dated 21 September 2001, received by the Commission on 1 October 2001, Germany asked the Commission to decide, under Article 239 of Council Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances.
- (2) In September 1998 a German haulage firm acting as a customs agent released for free circulation 24 consignments of ducks or duck breasts of Hungarian origin. All the customs declarations named the firm as the direct representative of the consignor and seller of the goods.
- (3) A reduced rate of duty of ECU 12.1 per 100 kg was applied to the goods. It is a condition for such a preference that the customs declarant should also be the import licence holder, as stipulated by Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products.⁵
- (4) The licences presented with the declarations were in the name of the recipients of the goods. The licence holders and the persons on behalf of whom the firm was making the declarations were therefore different. However, after checking the documents the customs authorities applied the preferential rate without expressing any objections.
- (5) After the goods were cleared the firm asked for the 24 declarations to be corrected to specify the firm as the direct representative of the recipients of the goods (who were also the licence-holders) and not the consignor.

⁵ OJ L 331, 02.12.1988, p. 1.

- (6) The customs office refused to amend the customs declarations after release of the goods under Article 65(c) of Regulation (EEC) 2913/92 on the grounds that the waiver provisions of Regulation (EEC) No 2454/93 were not met. It now regarded the firm as declarant since it had no mandate to lodge declarations on the seller's behalf.
- (7) As the firm did not have the import licence required for the preferential customs treatment accorded, the German authorities applied the normal rate of duty and requested payment of XXXXXX, the difference between the sum already collected and the full rate of duty.
- (8) In support of the request made by the competent German authorities, under Article 905 of Regulation (EEC) No 2454/93 the firm stated that it had seen the file submitted to the Commission by the German authorities and had nothing to add.
- (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 May 2002 in framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (10) In accordance with Article 239 of Regulation (EEC) No 2913/92, import duties may be repaid or remitted in situations 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 firm made import declarations on behalf of consignors who were not the holders of the import licences presented with the declarations. The preferential rate of duty was thus not applicable to the imports and the firm, considered as the declarant by the German customs authorities, is thus liable for the difference between the amount of the debt corresponding to the application of a reduced rate, and that corresponding to the application of the full rate XXXXX.
- (13) However, before importing the goods the firm had submitted a model declaration to the customs office for approval and the customs office had expressed no objections.
- (14) The customs office subsequently accepted the import declarations lodged by the firm without expressing any objections and it granted the preferential rate, although the declarations were made on behalf of the consignor who was not the holder of the licences presented.
- (15) The licences in question corresponded to the goods released for free circulation by the firm and the purchasers and recipients of the goods were the holders of the import licences.
- (16) These factors, together with the fact that it was the firm that drew the customs office's attention to the formal error it had made, are such as to constitute a special situation within the meaning of Article 239 of Regulation (EEC) 2913/92.
- (17) However, such a situation can give rise to the repayment of duties only if no deception or obvious negligence may be attributed to the person concerned.
- (18) The Court of Justice of the European Communities has consistently taken the view that account must be taken, in particular, of the operator's experience and diligence when examining whether there has been obvious negligence.

- (19) In the case in point the firm exercised proper care by requesting the customs office's approval of a model declaration before releasing imports for free circulation. It was also the firm that called customs' attention to the fact that the licence holders and the persons on behalf of whom they were making the declarations were not the same.
- (20) In the light of the above there is no evidence of deception or obvious negligence on the part of the applicant. This is also confirmed by the competent German authorities.
- (21) Repayment of the import duties requested is therefore justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXXXXX requested by Germany on 21 September 2001 is hereby found to be justified.

Article 2

This decision is addressed to Germany.

Done at Brussels, 28-6-2002

For the Commission

Member of the Commission