COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.3.2000

NOT TO BE PUBLISHED

COMMISSION DECISION

Of 7.3.2000

finding that repayment and remission of import duties are justified
(Request submitted by Denmark)
(REM 26/99)

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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 955/1999,[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 1662/1999,[4] and in particular Article 907 thereof,

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1 OJ L 302, 19.10.1992, p. 1
2 OJ L 119, 7.5.1999, p. 1
3 OJ L 253, 11.10.1993, p. 1
4 OJ L 197, 29.7.1999, p. 25

Whereas:

(1) By letter dated 10 May 1999, received by the Commission on 12 May 1999, Denmark 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] and under Article 239 of Regulation (EEC) No 2913/92, whether repayment and remission of duties were justified in the following circumstances:

(2) A Danish company bought steel products in Estonia between 1993 and 1995 and imported them into Denmark. In fact, they were products of Slovak origin, which had been sold to Ukraine, where an Estonian entrepreneur acquired them.

(3) When they were released for free circulation, the products were declared at the normal rate of the common customs tariff (hereinafter "third-country" rate), given that no preferential arrangements were applied for.

(4) Following checks by the competent Danish authorities, it was found that the third-country rate was not applicable to the goods in question and that an additional duty of 25% or 30% should be charged, depending on the products concerned. Payment of a sum of XXXXXX was therefore claimed from the company, who paid part of it (XXXXX). The company then submitted an application for repayment of the latter sum and an application for remission of the amount of duty not yet paid (XXXXX).

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5 OJ L 175, 12.7.1979, p.1.
6 OJ L 186, 30.6.1989, p.1.

(5) Pursuant to Article 905 of Regulation (EEC) No 2454/93, the company stated in support of the request from the Danish authorities that it had seen the dossier submitted to the Commission and set out its arguments in a document sent to the Commission as an annex to the dossier submitted by the authorities.

(6) By letter dated 16 December 1999, sent on 21 December 1999, the Commission notified the person concerned of its intention to withhold approval and explained the grounds for its decision.

(7) By letter of 14 January 2000, received by the Commission on the same day, the company responded to these objections. It maintained its view that the circumstances of the case made it a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 and Article 239 of Regulation (EEC) No 2913/92. It stated that a number of the import declarations had been checked in detail and that as an operator without much professional experience it could legitimately rely upon the result of the checks. It also stressed that the tariff quotas concerned had still not been exhausted and the objective of the legislation concerned of protecting the Community market had not therefore been undermined.

(8) The administrative procedure was therefore suspended, in accordance with Article 907 of Regulation (EEC) No 2454/93, between 21 December 1999 and 14 January 2000.

(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 31 January 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.

(10) Under Article 13(1) of Regulation (EEC) No 1430/79, applicable to customs debts incurred before 1 January 1994, 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) Under Article 239(1) of Regulation (EEC) No 2913/92, applicable to customs debts incurred after 1 January 1994, import duties may be repaid or remitted in 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.

(12) Article 1(1) of Decision No 1/93 of the EC-Czech Republic and Slovak Republic Joint Committee of 28 May 1993 concerning the export of certain steel products from the Slovak Republic to the Community[7] provided that for the period 1 June 1993 to 31 December 1995, imports into the Community of certain steel products (listed in Annex I) including cold-rolled sheets and hot-rolled coils, originating in the territory of Slovakia, would be subject to the import duty provided for in the Interim Agreement signed in Brussels on 16 December 1991,[8] subject to tariff quotas. That Decision entered into force on 1 June 1993.

(13) The arrangements for administering the quota were laid down in Commission Decision No 1970/93/ECSC of 19 July 1993 opening and providing for the administration of tariff quotas in respect of certain ECSC steel products originating in the Czech Republic and the Slovak Republic imported into the Community (1 June 1993 to 31 December 1995).[9]

(14) Under Article 1(2) of Decision No 1/93, imports of products referred to in Annex I of the Decision and originating in the territory of the Slovak Republic are subject to an import duty additional to the duty provided for in the Interim Agreement where the quota is exceeded, or where the import declaration is not accompanied by a movement certificate EUR 1 and an export licence in the form set out in Annex II even if the quota is not exceeded.

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7 OJ L 157, 29.6.1993, p. 59.
8 OJ L 115, 30.4.1992, p. 2.
9 OJ L 180, 23.7.1993, p. 10.

(15) Article 1(4) adds that the rules of origin to be applied are those laid down in Protocol 4 to the Interim Agreement, but that those rules apply to the territory of the Slovak Republic rather than, as provided for in the Protocol, to the territory of the Czech and Slovak Federal Republic.

(16) In this case, the goods imported into the Community, and declared as being of Slovak origin, did not fulfil the conditions set out in Article 1(2) of Decision No 1/93 for benefiting from the tariff quotas and so should have been subject to additional duty. Even if the tariff quota had not been used up, the steel products in question were accompanied by neither the EUR 1 movement certificate nor an export licence issued by the competent Slovak authorities. Moreover, no EUR 1 certificate could have been issued for such products under Protocol 4 to the Interim Agreement of 16 December 1991 since those products had been exported from Slovakia to Ukraine and then Estonia before being supplied to Denmark.

(17) However, even though they did not meet the conditions for obtaining a EUR 1 movement certificate, the products in question were products originating in the Slovak Republic. Moreover, the company itself declared them to be of Slovak origin when they were released for free circulation in Denmark.

(18) The products imported by the company between 4 June 1993 and 4 June 1995 should therefore have been subject to the additional duty provided for in Article 1(2) of Decision No 1/93 as well as the import duty provided for by the Interim Agreement.

(19) However, the dossier sent to the Commission by the Danish authorities shows that in this case the Danish customs services accepted without question 23 declarations for free circulation presented by the company from June 1993 to June 1995 although the declared third-country rate of duty was not applicable. Moreover, a number of the declarations were checked in depth without the customs authorities finding any anomalies in the duty declared. As the Danish authorities have admitted, some of the declarations concerned were checked in depth, and the check also covered the duty declared. This applies in particular to the first two import declarations dated 4 June 1993 and 12 November 1993. A number of other declarations submitted in 1994 and 1995 were also checked in depth. Equally, most of the declarations that were not checked in detail were nevertheless subjected to partial checks by the customs authorities, including, in several cases, checks on the duty declared.

(20) Since the company had declared the third country rate of duty for the Slovak steel products, although under Community legislation that rate could not be applied to this type of product, the in-depth checks carried out by the Danish customs authorities and the partial checks on the customs declarations where these concerned the applicable rate must be considered errors committed by the customs authorities since they did not show that the duty rate declared was incorrect.

(21) Moreover, the company erroneously continued to declare the 1994 third country rate for products it imported at the beginning of 1995. The local customs authorities corrected the rate themselves, replacing it with the 1995 third country rate. Yet, as has already been said, that rate was in no circumstances applicable to the products concerned. The Danish authorities therefore committed an error in this respect.

(22) These circumstances, in that they constitute active errors committed by the competent authorities of the Member State, are such as to constitute a special situation under Article 13 of Regulation (EEC) No 1430/79 or Article 239 of Regulation (EEC) No 2913/92.

(23) However, the fact that the tariff quotas in question had not yet been exhausted is not a special situation, since the documents which should have been presented in order to make use of them (the EUR 1 certificate and export licence) and to prove that the goods presented at the customs office of import effectively met the conditions for doing so, were never issued, and cannot be presented now. In addition, because of the successive sales of the products in question, they cannot in any event fulfil the conditions provided for in Article 1(4) of Decision No 1/93 and Protocol 4 to the Interim Agreement to qualify for a EUR 1 certificate.

(24) Under Article 13 of Regulation (EEC) No 1430/79 and Article 239 of Regulation (EEC) No 2913/92, a special situation can give rise to the repayment or remission of duties only if no deception or obvious negligence may be attributed to the person concerned.

(25) In this instance the dossier submitted to the Commission by the Danish authorities shows that there was no such deception or obvious negligence.

(26) At the time when the company began importing Slovak steel products in 1993 it would appear - and the Danish authorities do not contest this - that it had very little experience in importing goods from countries that were not members of the European Community.

(27) Furthermore, the legislation ruling out the application of the third country rate to imports of certain Slovak steel products, including in cases where no preferential arrangements are applied for, is relatively unusual.

(28) Further, as has already been shown, the customs authorities committed repeated errors when they checked the customs declarations concerned and when they corrected the applicable third country rate entered on certain applications.

(29) In the light of the limited professional experience of the company and the relatively unusual nature of the legislation involved, the company could not reasonably have been expected to have detected the errors since the authorities repeatedly, starting with the first imports, treated the application of the third country rate to the products concerned as correct. The company therefore had legitimate grounds for believing that the rate, which was regularly accepted by the authorities after checks, was correct.

(30) No obvious negligence can therefore be attributed to the company in this case.

(31) Therefore the repayment and remission of import duties requested are justified in this case,

HAS DECIDED AS FOLLOWS:

Article 1

1. The repayment of import duties in the sum of XXXXXX referred to in the request from Denmark dated 10 May 1999 is hereby found to be justified.

2. The remission of import duties in the sum of XXXXX referred to in the request from Denmark dated 10 May 1999 is hereby found to be justified.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 7.3.2000

For the Commission

Member of the Commission