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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.11.2000

NOT TO BE PUBLISHED

COMMISSION DECISION

Of 8.11.2000

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

(Request submitted by Belgium)

(REM 33/99)

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(REM 33/99)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities,

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 Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 1602/2000,⁴ and in particular Article 907 thereof,

¹ OJ No L 302, 19.10.1992, p.1

² OJ No L 119, 7.5.1999, p.1

³ OJ No L 253, 11.10.1993, p.1

⁴ OJ No L 188, 26.7.2000, p.1

Whereas:

- (1) By letter dated 17 June 1999, received by the Commission on 22 June 1999, the Belgian authorities 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 whether repayment of duties was justified in the following circumstances.
- (2) From January 1992 to the end of March 1993, acting through a Belgian customs agent, a German firm presented 67 declarations for the release into free circulation of lottery terminals from the USA.
- (3) On 30 March 1994 it requested partial repayment of the import duties on the grounds that it possessed binding tariff information issued on 23 December 1993 by the Munich Oberfinanzdirektion. On the basis of the BTI it indicated that the imported goods fell under tariff heading 8470 90 00 of the Combined Nomenclature (duty of 4.1% *ad valorem*) instead of CN heading 8471 91 60 (duty of 4.9% *ad valorem*).
- (4) On 25 April 1994, the Belgian customs authorities requested further supporting documents together with the original declarations to help reach a decision on the application. However, the firm did not respond.
- (5) A second repayment application was submitted by the Belgian customs agent on 23 October 1994. On 26 October 1994 the Belgian authorities requested certain additional supporting documents as well as the original declarations.

⁵ OJ No L 175, 12.7.1979, p.1

⁶ OJ No L 186, 30.6.1989, p.1

- (6) On 10 October 1995, in the absence of a reply from the applicant, the Belgian customs authorities informed the customs agent that unless a reply was received within 14 days, the application for repayment would be refused. As the authorities had still not received a reply by the deadline, they consequently deemed the application to have been withdrawn pursuant to Article 881(3) of Regulation (EEC) No 2454/93.
- (7) A third application for repayment was submitted by the Belgian customs agent on 24 March 1997, this time together with the original declarations and a list of the duties concerned.
- (8) However, this application was dismissed by the customs authority on 15 October 1997 on the grounds that it had not been submitted within the three-year time-limit laid down in Article 2(2) of Regulation (EEC) No 1430/79.
- (9) As the sum of XXXXX had been paid and could no longer be reimbursed under Article 2 of Regulation (EEC) No 1430/79, the firm applied for repayment under Article 13 of the same Regulation.
- (10) In support of the application submitted by the Belgian 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.
- (11) By letter of 10 December 1999 the Commission requested further information from the Belgian authorities. This information was provided by letter dated 7 April 2000, received by the Commission on 14 April 2000. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 10 December 1999 and 14 April 2000.
- (12) By letter dated 18 April 2000, sent on the same day, the Commission notified the firm of its intention to withhold approval and explained the grounds for its decision.

- (13) By letter dated 18 May 2000, received by the Commission on 19 May 2000, the firm expressed its opinion on the Commission's objections. It stated that the local customs office, in its letter of 26 October 1994, had asked it to produce new customs declarations for the 67 import operations and to pay the customs duties again on the basis of the 4.1% *ad valorem* rate instead of 4.9%, only after which further payment would the duties already paid be repaid. The firm said that this amounted to a double recovery of duties on the part of the Belgian authorities, which it considered an infringement of Community rules. Furthermore, it stressed that it was not in a financial position to pay the duties twice over, even temporarily, and it was therefore impossible in practice for it to obtain the repayment of excess duties paid. It therefore maintained that its position constituted a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79.
- (14) The administrative procedure was therefore suspended, in accordance with Article 907 of Regulation (EEC) No 2454/93, between 18 April and 19 May 2000.
- (15) By letter of 29 May 2000 the Commission requested further information from the Belgian authorities. This information was provided by letter dated 4 August 2000, received by the Commission on 10 August 2000. The administrative procedure was therefore suspended again, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, from 29 May 2000 to 10 August 2000 inclusive.
- (16) 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 20 September 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.

- (17) In accordance with Article 13(1) of Regulation (EEC) No 1430/79, 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.
- (18) Court of Justice case law indicates that Article 13 represents a general principle of equity designed to cover an exceptional situation in which an operator might find himself compared with other operators carrying out the same activity.
- (19) In this case the competent Belgian authorities consider that the firm would have been eligible for repayment of the import duties if it had applied, in accordance with Article 2(2) of Regulation (EEC) No 1430/79, within three years from the date on which the authority responsible for recovery entered the duties in the accounts. In this case they considered that the application for repayment submitted by the firm on 24 March 1997 was invalid because it had not been submitted within the three-year time limit. They had believed that the firm's previous application, submitted on 23 October 1994, had been withdrawn since the supporting documents necessary for repayment had not been submitted within the time limit.
- (20) Since the firm was unable to obtain the repayment it desired under Article 2(2) of Regulation (EEC) No 1430/79, it applied for repayment under Article 13 of the same Regulation.
- (21) For reasons of legal certainty, the state of the law in a given situation should not constantly be called into question.
- (22) Therefore, the fact that it is too late to submit a request for repayment of import duties under Article 2 of Regulation (EEC) No 1430/79 cannot be held to constitute a special situation within the meaning of Article 13 of Regulation (EEC) 1430/79, particularly when there was nothing to prevent the request being submitted in time.

- (23) However, the dossier sent to the Commission by the Belgian authorities on 17 June 1999 and the letter of 18 May 2000 from the firm indicate that the firm had sent an application for repayment via its representative on 23 October 1994, i.e. within the time limit set in Article 2 of Regulation (EEC) No 1430/79. Since the Belgian authorities considered that the dossier accompanying the application for repayment was incomplete at the time, and the firm did not provide the missing supporting documents within the time limit they set, they considered the application to have been withdrawn.
- (24) However, as the firm pointed out in its letter of 18 May 2000 and as the Belgian authorities confirmed in their letter of 4 August 2000 to the Commission, the reason the firm had not been able to meet all the conditions for obtaining repayment under Article 2 of Regulation (EEC) No 1430/79 was directly linked to the practical conditions set by Belgian national rules for obtaining repayment of duties not legally owed. In order to obtain repayment of the duties paid at the rate of 4.9% *ad valorem*, the firm would have had to pay the whole customs debt again (at the rate of 4.1% *ad valorem*). After it had made this second complete payment of the customs debt the firm would then have been repaid the duties initially paid at the rate of 4.9% *ad valorem*.
- (25) The firm would therefore have had to pay the duties twice to obtain the right to any repayment. In practice, it was not possible in Belgium simply to refund the difference between the amount of duties actually paid and the amount legally due.

- (26) Since the firm felt that it was not in a financial position to pay the customs debt a second time over, it did not respond to the letters from the Belgian authorities requesting the additional supporting documents needed to examine the application for repayment. Thus the practical conditions of the repayment procedure applicable in Belgium therefore in the last analysis prevented the firm from asserting its right to repayment of the amount it had overpaid within the time limit.
- (27) These circumstances constitute a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79.
- (28) As the dossier sent to the Commission by the Belgian authorities and the firm's letter of 18 May 2000 show, no deception or obvious negligence can be attributed to the firm. The firm, which is not Belgian and is not therefore familiar with the practical procedures for obtaining repayment of import duties not legally due, was informed by its customs agent in a letter of 20 December 1994 that in order to obtain the repayment it had applied for it would first have to pay the customs debt in full again. Since the procedure required by the Belgian rules is very unusual and the firm could therefore quite legitimately have doubts about its compatibility with Community rules, the firm cannot be blamed for not having been able to meet the conditions laid down by the Belgian rules within the time limit set by the Belgian authorities in their letter of 10 October 1995 and the time limit set in Article 2 of Regulation (EEC) No 1430/79, which would have allowed the duties to be repaid.
- (29) 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 XXXXX referred to in the request from Belgium dated 17 June 1999 is justified.

Article 2

This Decision is addressed to Belgium.

Done at Brussels, 8.11.2000

For the Commission
Member of the Commission