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REM 10/03

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25-11-2003
C(2003)4351

NOT FOR PUBLICATION

COMMISSION DECISION

Of 25-11-2003

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

(Only the French text is authentic)

**(Request submitted by France)
(REM 10/03)**

FR

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**(Request submitted by France)
(REM 10/03)**

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 Council Regulation (EEC) No 2913/92³ as last amended by Regulation (EC) No 1335/2003,⁴

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 C 187, 26.7.2003, p.16.

Whereas:

- (1) By letter dated 27 May 2003, received by the Commission on 2 June 2003, France 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) It must first be pointed out that the customs debt arose between January 1993 and 22 February 1994. Therefore the basis for the repayment request for the part of the debt incurred before 1 January 1994 is not Article 239 of Regulation (EEC) No 2913/92 but Article 13 of Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties,⁵ as last amended by Regulation (EEC) No 1854/89,⁶ since that was the act applicable prior to 1 January 1994. However, this in no way affects the admissibility of the request or the conditions governing repayment.
- (3) Under the second paragraph of Article 2 of Regulation (EC) No 1335/2003, the provisions 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 Regulation (EEC) No 2454/93 refer to that Regulation as last amended by Commission Regulation (EC) No 881/2003 of 21 May 2003.⁷
- (4) A firm established in France imported chocolate from Switzerland over the period from 7 January 1993 to 22 February 1994.
- (5) Such imports into the Community were at that time subject to a variable component depending on the chocolate's percentage milkfat content.
- (6) Chocolate with a milkfat content of more than 6% was classified in CN heading 1806 32 under additional code 7862, on which a variable component of ECU 41.60 per 100 kg was payable. Chocolate with a milkfat content of less than 6%, on the other hand, was classified in CN heading 1806 32 under additional code 7202, on which the variable component was ECU 63.55 per 100 kg.

⁵ OJ L 175, 12.7.1979, p.1.

⁶ OJ L 186, 30.6.1989, p.1.

⁷ OJ L 134, 29.5.2003, p. 1

- (7) After analysing the product the competent French authorities concluded that its milkfat content was 5,9% and therefore less than the level required for the classification given by the firm in its customs declarations.
- (8) The competent French authorities carried out their analyses in accordance with Commission Regulation (EEC) No 4154/87 of 22 December 1987 laying down the methods of analysis and other technical provisions necessary for the implementation of Regulation (EEC) No 3033/80 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products.⁸
- (9) On the basis of the results of the analyses and the classification error they revealed, the French authorities concluded that the import goods should have been classified under additional code 7202 and a variable component of ECU 63.55 per 100 kg should have been paid. They therefore charged the firm XXXXXX in respect of the imports released for free circulation between 7 January 1993 and 22 February 1994. The firm paid this amount and has now applied for its repayment.
- (10) In support of the application submitted by the competent French authorities the firm indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier sent to the Commission by the French authorities and had nothing to add.
- (11) 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 12 September 2003 within the framework of the Customs Code Committee (Repayment Section) to consider the case.
- (12) Under Article 13 of Regulation (EEC) No 1430/79, applicable to 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.

⁸ OJ L 392, 31.12.1987, p. 19

- (13) Under Article 239 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.
- (14) 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.
- (15) The dossier submitted to the Commission by the French authorities shows that the goods released for free circulation should, under Regulation (EEC) No 4154/87, have been deemed to have a milkfat content of less than 6%, rather than the content of over 6% declared by the firm, on which basis it paid a lower variable component than that actually applicable. It therefore became liable for import duties in the sum of XXXXXX.
- (16) However, Commission Regulation (EC) No 203/98 of 26 January 1998 amending Regulation (EEC) No 4154/87 laying down the methods of analysis and other technical provisions necessary for the application of the import procedure for goods obtained by processing agricultural products⁹ introduced a method for calculating the milkfat content of chocolate which results in a more advantageous tariff classification for the product concerned, namely the subheading entered by the firm in its declarations for release for free circulation.
- (17) This, taken with the fact that the firm itself brought the matter to the attention of the competent authorities, constitutes a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 and Article 239 of Regulation (EEC) No 2913/92.
- (18) However, such a situation can give rise to the remission of duties only if no deception or obvious negligence may be attributed to the person concerned.

⁹ OJ L 21, 28.01.1998, p. 6.

- (19) 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.
- (20) In this instance, the firm showed diligence in drawing the competent authorities' attention to the fact that the method laid down in Regulation (EEC) No 4154/87 did not reflect the objective characteristics of the product concerned.
- (21) In the light of the above, the firm acted in good faith, and the circumstances in this case must be deemed a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 and Article 239 of Regulation (EEC) No 2913/92 involving neither deception nor obvious negligence on the part of the person concerned.
- (22) Repayment of the import duties is therefore justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of XXXXXX requested by France on 27 May 2003 is justified.

Article 2

This Decision is addressed to France.

Done at Brussels, 25-11-2003

*For the Commission
Frits Bolkestein
Member of the Commission*