

REM 04/01-EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.10.2001

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Not for publication

COMMISSION DECISION

of 22.10.2001

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

**(Request submitted by the United Kingdom of Great Britain and
Northern Ireland)**

(REM 4/2001)

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(Request submitted by the United Kingdom of Great Britain and Northern Ireland)

(REM 4/2001)

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 1993³ laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, as last amended by Regulation (EC) No 993/2001,⁴ and in particular Article 907 thereof,

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 L 141, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 10 January 2001, received by the Commission on 29 January 2001, the United Kingdom of Great Britain and Northern Ireland asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties is justified in the following circumstances.
- (2) A firm established in the United Kingdom, hereinafter referred to as the firm, released rice originating in India and Pakistan for free circulation between July 1995 and December 1996.
- (3) Imports into the Community of this type of product originating in India and Pakistan qualified for a reduction in import duty in relation to the specific duty (ECU 250 per tonne for imports from India and ECU 50 per tonne for imports from Pakistan) under preferential arrangements introduced by Commission Regulation (EC) No 1573/95 of 30 June 1995 on the detailed rules for the application of Council Regulation (EEC) No 1418/76 with regard to import duties on rice⁵ and by Commission Regulation (EC) No 1503/96 of 29 July 1996 on the detailed rules for the application of Council Regulation (EC) No 3072/95 with regard to import duties on rice,⁶ as subsequently amended by Commission Regulation (EC) No 2131/96 of 6 November 1996 on the detailed rules for the application of Council Regulation (EC) No 3072/95.⁷
- (4) In accordance with the above Regulations (EC) Nos 1573/95 and 1503/96, the import duty is reduced if, when the goods are placed in free circulation, an import licence, the issue of which is subject to lodging of security, and a certificate of product authenticity are presented.

⁵ OJ L 150, 1.7.1995, p. 53.

⁶ OJ L 189, 30.07.1996, p. 71.

⁷ OJ L 285, 7.11.1996, p. 6.

- (5) At the time in question, the firm was authorised to use a simplified procedure for removal from the warehouse. Under this simplified procedure, the firm made a declaration of release for free circulation by means of an entry in its records and subsequently at the end of the month the list of declarations and all the supporting documents were presented to the customs office responsible for checking the warehouse.
- (6) Consequently in this case the import licences and certificates of authenticity were presented to the United Kingdom customs authorities with the supplementary declaration at the end of every month. The UK authorities noticed, however, that when the goods actually left the importing firm's warehouse and when the firm was entering them in its records, it was not in fact in possession of the import licences. It did nevertheless have the certificates of authenticity.
- (7) The UK authorities then found that a customs debt of XXXXXX had been incurred as a result of the release for free circulation of the rice during the period between July 1995 and 31 December 1996, the amount for which remission is being requested in this case.
- (8) In support of the request from the UK authorities, the firm indicated, under Article 905 of Regulation (EEC) No 2454/93, that it had seen the dossier submitted to the Commission by the UK 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 17 July 2001 within the 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 special 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.

- (11) The Court of Justice of the European Communities has consistently taken the view that this provision represents a general principle of equity and that a special situation exists when the facts of the case show that the debtor is in an exceptional situation compared with other operators carrying out the same activity, and would not otherwise have incurred the costs associated with post-clearance entry in the accounts of customs duties.
- (12) In this case, the granting of the reduction in customs duties was subject, at the time of release for free circulation, to the presentation of an import licence and a certificate of authenticity.
- (13) For 15 months the firm released the rice for free circulation without having an import licence at the time of release.
- (14) In the absence of the import licence, the reduction in duties could not be granted and consequently a customs debt was generated in respect of the goods released for free circulation without an import licence.
- (15) As indicated, however, by the UK authorities in the letter presenting their request, the firm did have import licences at the end of every month, and it presented these to the customs authorities in support of the supplementary customs declaration.
- (16) The quantities of rice on the monthly supplementary declarations tallied with those on the import licences and on the certificates of authenticity supplied at the end of the month, and also with the quantities actually released for free circulation.
- (17) The circumstances of this case have not proved prejudicial to the financial interests of the European Communities.

- (18) Furthermore, there was a misunderstanding between the firm and the competent administration. Although the UK customs administration considers that it had not been explicitly informed of the firm's intention to release goods for free circulation despite not yet being in possession of the required import licences, the firm interpreted the lack of comment from the relevant administration over an 18-month period as tacit acceptance of its practice and assumed the practice to be correct.
- (19) The fact that the firm did not have the import licences when the goods were released for free circulation constitutes a failure that had no significant effect on the operation of the tariff arrangements concerned, because the quantities on the monthly supplementary declarations tallied with those on the import licences and on the certificates of authenticity and so it seems disproportionate to demand that the firm pay the import duties.
- (20) These factors are such as to constitute a situation covered by Article 239 of Regulation (EEC) No 2913/92.
- (21) In the special circumstances of the case in question, as confirmed by the UK authorities, no deception or obvious negligence may be attributed to the firm.
- (22) The remission of import duties requested is therefore justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by the United Kingdom of Great Britain and Northern Ireland on 10 January 2001 is hereby found to be justified.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 22.10.2001

For the Commission
Member of the Commission