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**REM 28/00**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9-8-2001

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NOT FOR PUBLICATION

**COMMISSION DECISION**

**of 9-8-2001**

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

**(Request submitted by the United Kingdom)**

**(REM 28/00)**

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**COMMISSION DECISION**

**of 9-8-2001**

**finding that the remission of import duties in a particular case is justified  
(Request submitted by the United Kingdom)  
(REM 28/00)**

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,<sup>1</sup> as last amended by Regulation (EC) No 2700/2000,<sup>2</sup>

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,<sup>3</sup> as last amended by Regulation (EC) No 993/2001,<sup>4</sup> and in particular Article 907 thereof,

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<sup>1</sup> OJ L 302, 19.10.1992, p. 1.  
<sup>2</sup> OJ L 311, 12.12.2000, p. 17.  
<sup>3</sup> OJ L 253, 11.10.1993, p. 1.  
<sup>4</sup> OJ L 33, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 14 June 2000, received by the Commission on 10 October 2000, the United Kingdom 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) On 29 June 1995, a firm put into free circulation 319.2 tonnes of butter from New Zealand via its customs clearance agent. The import declaration was accompanied by an IMA 1 document.
- (3) The legislation applicable on the day of the release for free circulation was Council Regulation (EC) No 3232/94 of 20 December 1994 amending Regulation (EC) No 3610/93 relating to the continuing of the import of New Zealand butter into the United Kingdom on special terms.<sup>5</sup> At the time when the declaration was lodged, the reduced-levy quota at ECU 408.6/t (Council Regulation (EC) No 3232/94 of 20 December 1994) had already been exhausted and duty at the full rate of ECU 2 257.4/t was therefore applicable.
- (4) From 1 July 1995 onwards, imports into the Community of this type of product originating in New Zealand always qualified for a preferential import duty as part of a quota. Since they were covered, in accordance with Commission Regulation (EC) No 1600/95 of 30 June 1995 laying down detailed rules for the application of the import arrangements and opening tariff quotas for milk and milk products,<sup>6</sup> by an IMA 1 certificate issued by the New Zealand authorities and an import licence, it was possible to grant the preferential rate at the time of the release of the products for free circulation.

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<sup>5</sup> OJ L 338, 28.12.1994, p. 12.

<sup>6</sup> OJ L 151, 1.07.1995, p. 12.

- (5) The firm intended to release the goods for free circulation after 30 June 1995 (fax to its agent mentioning the rate of import duty corresponding to the rate of the quota for the second part of the year, presence of an IMA 1 certificate given to the agent for customs clearance), in order to qualify for the reduced levy of ECU 868.8/t under the quota opened from 1 July 1995 for New Zealand butter, as defined in Regulation (EC) No 1600/95 referred to above.
- (6) However, the goods were released for free circulation on 29 June 1995, i.e. before the opening date of the quota provided for in Regulation (EC) No 1600/95 referred to above.
- (7) The declaration of release for free circulation lodged by the firm's representative indicated the reduced rate of ECU 408.621/t, corresponding to that applicable under the quota provided for by Regulation (EC) No 3232/94 referred to above.
- (8) After checking the documents, the relevant UK customs departments accepted the declaration and the IMA 1 certificate.
- (9) In February 1996, the firm made a voluntary declaration to UK customs, stating that the quota had been exceeded during the period ending on 30 June 1995 and asking if it could pay the rate applicable under the quota for July to December 1995 (ECU 868.8/t). It then paid at that rate. The UK administration then carried out a check and noted that the reduced rate of ECU 408.621/t had been granted wrongly. It then demanded payment of the difference between the reduced rate actually paid and the standard rate applicable on 29 June 1995, i.e. an amount of XXXX, remission of which is now being requested.
- (10) Under Article 905 of Regulation (EEC) No 2454/93 and in support of the request made by the United Kingdom authorities, the firm indicated that it had seen the dossier submitted to the Commission by the United Kingdom authorities and had nothing to add.
- (11) By letter dated 5 April 2001, the Commission notified the firm of its intention to withhold approval and explained the grounds for its decision.

- (12) By letter dated 22 May 2001, received by the Commission on the same date, the firm expressed its opinion regarding the Commission's objections. It stood by its view that the circumstances constituted a special situation as referred to in Article 239 of Regulation (EEC) No 2913/92 referred to above, involving neither deception nor obvious negligence on its part. It stated that in this case there was a special situation for several reasons, including the error made by the administrative department concerned. The fact that the department, on 29 June 1995, granted a preferential rate corresponding to a quota already exhausted at the time the declaration was lodged was an error on its part and consequently constituted a special situation.
- (13) In addition, the firm considers that it was not obviously negligent.
- (14) The firm pointed out that it had always intended to place the butter in free circulation after 1 July 1995, in order to qualify for the reduced rate applicable from that date. It instructed its representative to clear the goods through customs at the rate of ECU 868.8/t. It gave its representative an IMA 1 certificate, which could not be used until 1 July 1995 onwards. The firm also stressed that the fact it had omitted to indicate to its representative the date from which release for free circulation should have taken place could not reasonably be regarded as obvious negligence on its part.
- (15) The firm stressed that it was as a result of its declaration that the irregularity was found and that the amount of duties corresponding to the reduced rate of ECU 868.8/t was paid by it.
- (16) The administrative procedure was therefore suspended in accordance with Article 907 of Regulation (EEC) No 2454/93 between 7 April and 22 May 2001.
- (17) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 15 June 2001 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.

- (18) 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.
- (19) From past judgments it would appear that the Court of Justice of the European Communities has taken the view that this provision represents a general principle of equity designed to cover an exceptional situation arising from individual circumstances in which the party liable finds itself compared with other operators carrying out the same activity ; if these circumstances had not existed, it would not have suffered injury arising from post-clearance entry in the accounts of the customs duties.
- (20) The file sent by the UK authorities to the Commission shows that in this case the party concerned requested and was wrongly granted a reduced rate of import duty, which corresponded to a quota which had already been exhausted. The firm therefore owes the difference between the amount that it actually paid following its subsequent declaration, corresponding to a rate of ECU 868.8/t, and the amount it should have paid, corresponding to the full rate of ECU 2 257.4/t, a difference of XXX.
- (21) The fact that on 29 June 1995 the customs administration concerned granted a reduced rate although this rate was for a quota already exhausted when the subsequent declaration was lodged and the fact that the IMA 1 certificate presented was not yet applicable on that date is such as to constitute an error on the part of the competent authorities and therefore an exceptional situation under Article 239 of Regulation (EEC) No 2913/92.
- (22) 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.

- (23) First of all it should be remembered that at the time of the imports concerned the Community legislation was complex. In 1995 the situation regarding butter quotas from New Zealand was unusual; quotas were divided into two periods and different rates applied to each of the two periods. The documents to be submitted in support of the customs declarations, in order for goods to qualify for the reduced rate, were different for each half of 1995.
- (24) The legislation applicable to the butter quota from New Zealand for the second half of 1995, i.e. Regulation (EC) No 1600/95 referred to above, was published on 1 July 1995 but was not available until 8 July 1995, i.e. eight days after entry into force of the legislation.
- (25) Before Regulation (EC) No 1600/95 was even published, the firm had already found out about the documents to be presented in order to qualify for the reduced rate applicable during the second six-month period of 1995. It had already obtained one of the two documents needed to qualify for the reduced rate for this period, namely an IMA 1 certificate. The second document, i.e. the import licence, could not be obtained before the publication of Regulation (EC) No 1600/95 referred to above.



- (26) The file sent by the UK authorities to the Commission contains ample indications that the firm actually wanted to release the goods for free circulation after 1 July 1995 and that the customs clearance carried out on 29 June 1995 was the consequence of a misunderstanding between the firm and its representative. Even if the firm had failed to specify to its representative the required date of release for free circulation, it had told its representative that it wanted the reduced rate of ECU 868.8 to be applied to the goods, i.e. the reduced rate applicable from 1 July 1995. The document that it had provided in support of the customs declaration, namely the IMA 1 certificate, was a document which was applicable only from 1 July 1995. Even though the vessel used to transport the butter arrived in the Community before 1 July 1995 given the fact that a consignment of cheese was also on board and had to be released for free circulation before that date, the firm had no obligation to deliver the butter to customers before 3 July 1995.
- (27) In the light of all the foregoing it may be concluded that the company acted in good faith and that the circumstances indicate neither deception nor obvious negligence on its part.
- (28) The firm, following its declaration, finally paid the reduced rate applicable in the second half of 1995, which corresponded to a quota which was not exhausted and under which the quantities available were greater than the quantity imported by the firm on 29 June 1995.
- (29) Since the firm finally paid the amount corresponding to the reduced rate applicable during the second half of 1995 and since the quota was not exhausted, remission of the duties would have no implications for the Community budget.
- (30) In the special circumstances of the case in question no deception or obvious negligence may be attributed to the firm concerned.

(31) Remission of import duties is therefore justified in this case,

HAS ADOPTED THIS DECISION:

*Article 1*

The remission of import duties in the sum of XXXX requested by the United Kingdom on 14 June 2000 is hereby found to be justified.

*Article 2*

This Decision is addressed to the United Kingdom.

Done at Brussels, 9-8-2001

*For the Commission*

*Member of the Commission*