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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17-7-2001

NOT FOR PUBLICATION

COMMISSION DECISION

of 17-7-2001

finding that repayment of import duties is justified in a particular case and authorising the Federal Republic of Germany, France and the United Kingdom to repay or remit duties in comparable cases of fact and law

(Request submitted by the Federal Republic of Germany)

(REM 30/00)

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(Request submitted by the Federal Republic of Germany)

(REM 30/00)

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,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 Regulation (EEC) No 2913/92,³ 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 of 9 October 2000, received by the Commission on 27 October 2000, Germany asked the Commission to decide under Article 13 of 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 it was justified to repay import duties in the following circumstances.
- (2) On 21 July 1992 a German firm imported into Germany from Argentina 10 355 kg of high-quality “Hilton” beef falling within CN heading 0201.
- (3) When the meat was released for free circulation, the customs declaration was supported by a certificate of authenticity issued by the competent Argentinian authorities.
- (4) In accordance with Commission Regulation (EEC) No 3743/91 of 18 December 1991 laying down detailed rules for the application of the import arrangements provided for by Council Regulations (EEC) No 3668/91 and (EEC) No 3669/91 in the beef and veal sectors,⁷ and with Commission Regulation (EEC) No 1404/92 of 27 May 1992 laying down detailed rules for the application of the import arrangements provided for by Council Regulation (EEC) No 1158/92 in the beef and veal sector,⁸ such meat was entitled to a preferential tariff under the Community tariff quota (exemption from agricultural levies but payment of import duties) as long as a certificate of authenticity issued by the competent Argentinian authorities accompanied the customs declaration for release for free circulation. If such a certificate is not produced, an additional sum of some DM 10.00 per kilo is levied.

⁵ OJ L 175, 12.07.1979, p. 1

⁶ OJ L 186, 30.06.1989, p. 1

⁷ OJ L 352, 21.12.1991, p. 36

⁸ OJ L 146, 28.05.1992, p. 50

- (5) The German customs office charged the quantity imported by the firm concerned against the Community "Hilton" quota and the meat was released for free circulation exempt from agricultural levies.
- (6) Following a Community mission in Argentina it came to light that certificates of authenticity had been forged and preferential treatment had been wrongly accorded on many occasions in 1991 and 1992. In this case the competent German customs authorities sought post-clearance recovery from the firm concerned of the levies due on the imports in question, namely XXXX, an amount the firm now wants refunded.
- (7) In support of the German authorities' request, the firm concerned, pursuant to Article 905 of Regulation (EEC) No 2454/93, stated that it had seen the dossier submitted to the Commission by the German authorities and had nothing to add.
- (8) 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 3 April 2001 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.
- (9) Under 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 the said Regulation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

- (10) In this case the assessment notice drawn up by the German authorities on 6 June 1994 showed that the certificate of authenticity presented on importation had been forged. The reliance a trader may place on the validity of such a certificate of authenticity is not usually protected in that it is part of the commercial risk run by importers of goods enjoying preferential tariff treatment. The mere circumstance of a certificate of authenticity being forged does not constitute a special circumstance within the meaning of Article 13 of Council Regulation (EEC) No 1430/79; this is confirmed by Article 4(2)(c) of Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79.⁹
- (11) However, in this case the firm does not merely argue that it presented a forged certificate in good faith for the imports in question. Its chief argument in support of its request for repayment concern the alleged serious failings of the competent Argentinian authorities and the Commission.
- (12) The system set up under Commission Regulations (EEC) Nos 3743/91 and 1404/92 to monitor the use of the “Hilton” beef quotas requires certificates of authenticity issued by the appropriate Argentinian authorities (i.e. those listed in Annex II to each Regulation) to be produced in support of import declarations. The certificates of authenticity must be duly stamped by the issuing body and signed by the person(s) authorised, and state the date and place of issue.
- (13) Under Regulations (EEC) Nos 3743/91 and 1404/92 the Member States are required to notify the Commission regularly of quantities of “Hilton” beef released for free circulation, broken down by country of origin and CN heading.

⁹ OJ L 352, 13.12.1986, p. 19

- (14) The Court of First Instance of the European Communities concluded in its judgments of 19 February 1998 ([case T-42/96](#))¹⁰ and 17 September 1998 ([case T-50/96](#))¹¹ that the Commission, in ruling on the requests for remission of duty in comparable circumstances of fact and law, had made an obvious error of assessment in deciding that the circumstances in the cases put before the Court did not constitute a particular situation of the type referred to in Article 13 of Regulation (EEC) No 1430/79.
- (15) The Court found that the forgeries of the certificates of authenticity led to the Hilton quota being substantially exceeded only because the Commission had failed in its duty to monitor the quota during 1991 and 1992. It concluded that such forgeries, which were of highly professional quality, exceeded the normal degree of commercial risk that applicants should be expected to bear.
- (16) Since this case is comparable in fact and law to those considered by the Court in the above two judgments, as confirmed by the German authorities in their letter to the Commission of 9 October 2000, and since the circumstances do not indicate any deception or obvious negligence on the part of the firm concerned, the conditions of Article 13 of Regulation (EEC) No 1430/79 must be deemed to be met.
- (17) Therefore in this case the import duties may be repaid.
- (18) Article 908 of Regulation (EEC) No 2454/93 allows the Commission, where special circumstances warrant repayment or remission, under conditions that it may determine, to authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and law.

¹⁰ ECR 1998 II-0401.

¹¹ ECR 1998 II-3773.

- (19) Germany, by letter of 9 October 2000, France, by letter of 11 May 2001 and the United Kingdom, by letter of 20 November 2000, have requested authorisation to repay or remit import duties in cases involving comparable issues of fact and of law
- (20) Such authorisation may be granted to Member States on the condition that it is used only in cases strictly comparable in fact and law to the case in question, and therefore strictly comparable in fact and law to the circumstances of the cases cited above that were the subject of the judgments of the Court of First Instance on 19 February and 17 September 1998. Above all, the behaviour of the importers must not indicate any deception or obvious negligence.

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties totalling XXXX, requested by Germany on 9 October 2000, is hereby found to be justified.

Article 2

Germany, France and the United Kingdom are authorised to repay or remit duties in cases involving comparable issues of fact and law to the case that was the subject of Germany's request of 9 October 2000.

Article 3

This Decision is addressed to Germany, France and the United Kingdom.

Done at Brussels, 17-7-2001

For the Commission

Member of the Commission