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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3-10-2002
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NOT FOR PUBLICATION

COMMISSION DECISION

of 3-10-2002

finding that in a particular case, on the one hand the request to remit import duties is not admissible for a specific amount, and on the other hand the remission is justified for another amount

(Only the English text is authentic)

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

(REM 01/2002)

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(REM 01/2002)

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 444/2002,⁴ 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 68, 12.3.2002, p. 11.

Whereas:

- (1) By letter of 21 December 2001, received by the Commission on 3 January 2002, 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 remission of import duties is justified in the following circumstances.
- (2) Between February 1998 and January 2000, three British firms imported fishery products (tuna) from Ghana. Products of this type originating in Ghana could be imported into the Community under the preferential arrangements applicable to the ACP (African, Caribbean and Pacific) countries provided for by the Fourth ACP-EC Lomé Convention, as revised by the Agreement signed in Mauritius on 4 November 1995, referred to below as the Fourth Lomé Convention. In accordance with Article 12 of the Lomé Convention's Protocol 1 concerning the definition of the concept of "originating products" and administrative cooperation methods, products covered by an EUR.1 certificate of origin issued by the relevant authorities in Ghana were eligible for preferential tariff treatment on their release for free circulation in the Community.
- (3) In the case in point, the firms presented EUR.1 certificates of origin issued by the relevant Ghanaian authorities in support of their customs declarations for release for free circulation. The British customs authorities accepted the declarations and granted preferential tariff treatment.
- (4) Following an investigation into the conditions under which the Ghanaian authorities issued EUR.1 certificates of origin, carried out in Ghana by representatives of several Member States and the Commission in February 2000, it was found that a number of fishing vessels (and vessel-owners) that had supplied tuna to the British firms' supplier did not meet the origin criteria laid down by Article 2 of Protocol 1 to the Fourth Lomé Convention and that the tuna caught by these vessels did not therefore qualify under the ACP preferential rules of origin.

- (5) On the basis of the findings from this mission, it was established that, in these cases, the firms had used EUR.1 certificates of origin that should not have been issued. Since the products imported into the United Kingdom were no longer eligible for preferential tariff treatment, the UK authorities asked the firms to pay import duties amounting to XXXXXXXX, for which remission is now requested.
- (6) The UK authorities' letter of 21 December 2001, referred to above, demonstrates that this case involves a special situation by virtue of the complexity of the preferential rules of origin for fishery products under the Fourth Lomé Convention and the difficulties concerning interpretation of certain terms used in Article 2 of Protocol 1 to the Convention. It is further claimed that, in issuing certificates of origin which later proved to be invalid, the competent authorities made an error that constitutes a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92. It is also argued, in support of the existence of a special situation, that the Commission did not inform the importers of any doubts it may have had as to the validity of the certificates issued by the Ghanaian authorities for fisheries products and that the Ghanaian authorities are still refusing to withdraw the origin certificates which the UK authorities deemed invalid following the Community investigation in 2000.
- (7) The UK authorities point out in their letter of 21 December 2001 that there was no deceit or obvious negligence on the part of the firms in question.
- (8) In support of the application submitted by the competent UK authorities the firms stated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, they had seen the dossiers the authorities had sent to the Commission. They explained their own position and added their comments, which were passed on to Commission by the UK authorities by means of the letter of 21 December 2001.

- (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 12 July 2002 within the framework of the Customs Code Committee (Section for 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 the said 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 these provisions represent a general principle of equity designed to cover a special 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.
- (12) In the case in point, the granting of preferential tariff treatment for the imports was subject to presentation of EUR.1 origin certificates issued by the relevant Ghanaian authorities.
- (13) Following the investigation into the conditions under which the Ghanaian authorities issued EUR.1 certificates of origin, carried out in Ghana by representatives of several Member States and the Commission in February 2000, the competent UK authorities viewed the certificates of origin presented when the products in question were imported as invalid because they failed to meet some of the origin criteria provided for by Article 2 of Protocol 1. More specifically, the fishing vessels that had caught the fish and the firms that owned them did not meet the conditions laid down in the third indent of Article 2(2) of the Protocol.

- (14) It should however be noted that the Ghanaian authorities signed a joint document with the Community authorities on 28 August 2002 setting out the points of agreement and disagreement between the parties following the Community investigation and its findings. In the light of additional information provided by the Ghanaian authorities, the document points out that some Ghanaian exporters (including one of the exporters concerned, Ghako Fisheries) did indeed own fishing vessels which complied with the origin criteria laid down in Article 2 of Protocol 1 to the Fourth Lomé Convention. Consequently, since the signing of the document on 28 August 2002, the Community authorities are of the view that the tuna caught by the vessels of those firms did in fact qualify for the preferential rules of origin. The relevant EUR.1 origin certificates, found to be invalid as a result of the Community investigation, are now therefore considered valid.
- (15) No customs debt was accordingly incurred in the circumstances as regards the imports of tuna from Ghako Fisheries.
- (16) There is no reason why the authorities of the United Kingdom of Great Britain and Northern Ireland should not therefore decide to apply Article 236 of Council Regulation (EEC) No 2913/92 in this case and to grant remission of the import duties accordingly on the tuna exported by Ghako Fisheries to which this request refers.
- (17) Since no customs debt was incurred on the imports of tuna from Ghako Fisheries, the part of the request for the remission of duties relating to those imports is therefore inapplicable.
- (18) As regards the part of the debt relating to imports from the other firms concerned, on which the Community authorities still believe the EUR.1 origin certificates to be invalid, the following points should be noted.

- (19) Under Article 904(c) of Regulation (EEC) No 2454/93, reliance on the validity of certificates of preferential origin is not normally protected, as this is considered part of the importer's normal commercial risk and therefore the responsibility of the person liable for payment.
- (20) However, the Court of Justice has consistently ruled that the legitimate expectations of a trader are protected if the relevant authorities themselves gave rise to the expectation. Consequently, when the authorities' error is due to inaccurate declarations from exporters, reliance on the validity of the certificates of origin is no longer protected.
- (21) In this instance, the exporters declared on the certificates of origin that the goods they referred to met the conditions for obtaining the certificates.
- (22) However, in the light of recent [rulings](#) of the Court of First Instance of the European Communities,⁵ the fact that the relevant Ghanaian authorities might have been misled by the exporters did not necessarily mean that the circumstances of the case could not constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (23) In the case in point, however, a number of factors can be considered as constituting a special situation within the meaning of Article 239 of Regulation (EEC) No 2931/92.
- (24) The fact that the relevant authorities in Ghana had been issuing certificates later shown to be invalid over a long period and the UK authorities, relying on these certificates, had been granting preferential arrangements over the same period, could have lead the firms to believe that their imports complied with the regulations.

⁵ Judgment in the “Turkish televisions” case of 10 May 2001, joined cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99 (Rec. II-1337).

- (25) Moreover, until 28 August 2002, the relevant Ghanaian authorities had refused to sign the report written after the Community investigation in 2000. Since the signature of a joint document concerning the findings of the Community investigation on 28 August 2002, the Ghanaian authorities have finally recognised that the fishing vessels belonging to three of the exporters concerned did not meet the origin criteria laid down in Article 2 of Protocol 1 to the Fourth Lomé Convention. Nevertheless, they have not as yet withdrawn the origin certificates which they issued. The Ghanaian authorities also continue to dispute the findings of the Community investigation into another of the other firms concerned and the Community authorities have since asked them to supply additional information about the shareholdings of that firm.
- (26) The above facts, i.e. the Ghanaian authorities' disputing of the findings of the investigation, the time needed to reach a partial joint position, the late communication of information by the Ghanaian authorities to enable the conclusion that some vessels did in fact meet the origin criteria and the fact that the Ghanaian authorities continue to dispute some of the investigation's findings, must make the importers doubt whether or not duties are really payable. These factors must count in the importers' favour as they acted in good faith.
- (27) The circumstances of this case are therefore such as to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (28) These circumstances involve neither deception nor obvious negligence on the part of the firms concerned.

- (29) The Court of Justice of the European Communities has ruled that, when traders have doubts as to the accuracy of the information given and statements made in a customs declaration or in documents attached to the declaration, or doubts as to whether the relevant rules have been observed, they must make enquiries and try to find out as much information as possible to establish whether their doubts are warranted or not. Otherwise, they must be deemed to have acted in an obviously negligent manner.
- (30) In this case, however, the firms had no reason to doubt that everything was in order.
- (31) The certificates of origin were issued by the Ghanaian authorities over a number of years and the UK authorities granted preferential tariff arrangements over the same period. Over time, this situation could only have reinforced the feeling that the goods were being imported in accordance with the relevant regulations. Lastly, there is nothing to suggest that the firms should have had doubts as to the validity of the certificates.
- (32) Furthermore, there is no evidence that they deviated from normal business practice when concluding their purchase contracts and carrying out the imports concerned. In accordance with the case law of the Court of First Instance of the European Communities, it is thus for the Commission to prove deception or obvious negligence on the part of the firms. In the absence of any evidence to that effect, it must be acknowledged that the firms acted in good faith.
- (33) The firms concerned must therefore be considered to have acted without obvious negligence.
- (34) Remission of import duties is therefore justified in these cases.

- (35) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 allows the Commission, 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.
- (36) The group of experts provided for by Article 907 of Regulation (EEC) No 2454/93, which met on 12 July 2002 within the framework of the Customs Code Committee (Section for Repayment) requested that all Member States be authorised to repay or remit import duties in cases involving comparable issues of fact and law.
- (37) However, this decision is very unusual in terms of both fact and law. It cannot therefore serve as a reference for national decisions taken in application of an authorisation granted by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The request for the remission of import duties submitted by the United Kingdom of Great Britain and Northern Ireland on 21 December 2001 is inapplicable as regards the debt relating to imports of tuna from Ghako Fisheries.

Article 2

The remission of import duties on the imports other than those referred to in Article 1 of this Decision which formed part of the request by the United Kingdom of Great Britain and Northern Ireland dated 21 December 2001 is justified.

Article 3

The authorisation requested by the United Kingdom of Great Britain and Northern Ireland in its letter of 21 December 2001 and by all the other Member States in the expert group provided for in Article 907 of Regulation (EEC) No 2454/93 at its meeting of 12 July 2002 within the framework of the Customs Code Committee (Section for Repayment), under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 is not granted.

Article 4

This Decision is addressed to the United Kingdom.

Done at Brussels, 3-10-2002

For the Commission
Frits Bolkestein
Member of the Commission