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REM 01/05

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5-10-2005
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NOT FOR PUBLICATION

COMMISSION DECISION

Of 5-10-2005

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

(Only the English text is authentic)

(Request submitted by the United Kingdom)

(REM 01/05)

FR

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(REM 01/05)

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 648/2005,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 883/2005,⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p. 1

² OJ L 117, 4.5.2005, p. 13.

³ OJ L 253, 11.10.1993, p. 1

⁴ OJ L 148, 11.6.2005, p. 5.

Whereas:

- (1) By letter of 24 March 2005, received by the Commission on 1 April 2005, the United Kingdom asked the Commission to decide whether remission of import duties under Article 239 of Regulation (EEC) No 2913/92 was justified in the following circumstances.
- (2) An importer established in the United Kingdom declared fish from Norway for release for free circulation on 24 August 1999.
- (3) At the time, imports into the Community of fish originating in Norway were eligible for preferential treatment under Protocol 9 of the Agreement on a European Economic Area (the EEA Agreement) adopted by virtue of the Decision of the Council and the Commission of 13 December 1993 on the conclusion of the Agreement on the European Economic Area between the European Communities, their Member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation.⁵ Under the provisions of Protocol 4 to the EEA Agreement, fish originating in Norway was entitled to preferential tariff treatment when released for free circulation provided that it was covered by a EUR.1 movement certificate (hereinafter “EUR.1 certificate”) or an invoice declaration of origin (hereinafter “invoice declaration”).
- (4) In this instance the importer presented in support of its customs declaration for release for free circulation an invoice declaration drawn up by an authorised Norwegian exporter indicating that the goods were of EEA preferential origin. The UK customs authorities accepted the declaration and granted preferential tariff treatment.
- (5) The competent Norwegian authorities then carried out a post-clearance check on the validity of the invoice declarations drawn up by the exporter. In some cases the Norwegian customs authorities found that the origin documents were valid. However, in other cases the exporter was unable to prove the origin of the goods concerned.

⁵ OJ L 1, 3.1.1994, p. 1

- (6) The UK customs authorities therefore found that the goods concerned were not eligible for preferential tariff treatment and on 28 November 2002 initiated post-clearance recovery of import duties of XXXXX for the goods imported by the importer on 24 August 1999. This is the amount for which the importer has requested remission.
- (7) In support of the request made by the competent UK authorities, under Article 905 of Regulation (EEC) No 2454/93 the importer stated that it had seen the file submitted to the Commission by the UK 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 consider the case on 13 July 2005 within the framework of the Customs Code Committee (Repayment Section).
- (9) Article 239 of Regulation (EEC) No 2913/92 allows import duties to be repaid or remitted in situations other than those referred to 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.
- (10) The Court of Justice of the European Communities has ruled 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.
- (11) In this instance, preferential tariff treatment for the import was subject to the presentation of a EUR.1 certificate or an invoice declaration.
- (12) As stated above, the Norwegian exporter was unable to prove the origin of the goods for the invoice declaration relating to the customs debt of XXXXX.
- (13) Reliance on the validity of such a declaration 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.

- (14) The Court of Justice has consistently ruled that the legitimate expectations of a trader are protected only if the competent authorities themselves gave rise to the expectations.
- (15) In this instance, the exporter stated on the invoice that the goods it covered met the conditions under which invoice declarations can be drawn up.
- (16) However, in the light of the ruling of the Court of First Instance in the "Turkish televisions" [case of 10 May 2001](#)⁶, the fact that the Norwegian authorities might have been misled by the exporter does not necessarily mean that the circumstances of this case could not constitute a special situation within the meaning of Regulation (EEC) No 2913/92.
- (17) In any case, the fact that the exporter had confirmed on the invoice that the conditions drawing it up had been met is not in itself proof that the competent Norwegian authorities were misled. It is necessary to ascertain whether the exporter made this statement on the assumption that the competent authorities were acquainted with all the facts necessary to apply the rules in question and whether the authorities, despite their knowledge, raised no objection to the statement.
- (18) In this instance, a number of failings liable to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 can also be attributed to the Norwegian authorities.
- (19) Certain items of information indicate that the local Norwegian authorities did not carry out adequate checks on this exporter's exports of fish to the Community during the period in question.
- (20) In particular, the authorised exporter was not given sufficient information about the kind of supporting documents it should keep for post-clearance checks on the origin of the goods.

⁶ 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.

- (21) In this context, the fact that the Norwegian local authorities did not carry out checks on the authorised exporter for a number of years is one of the reasons that the situation which led to the irregularities continued for so long.
- (22) Therefore the Norwegian local authorities failed to fulfil their obligations regarding checks on fish exports to the Community by the exporter concerned. Although the shortcomings in the Norwegian authorities' local administration of the certification system for the importer's supplier do not constitute an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92, they must be deemed to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92, particularly in the light of the judgment of the Court of First Instance in the "Turkish televisions" case of 10 May 2001.
- (23) Furthermore, as the UK authorities point out in their letter of 24 March 2005, the importer's supplier has already been referred to in the case which was the subject of Commission decision No C(2004) 3681 of 6 October 2004 (case REM 08/03), and in this case the Commission decided that remission was justified.
- (24) The circumstances of this case therefore constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (25) These circumstances do not involve deception or obvious negligence on the part of the applicant.
- (26) The UK authorities have also stated that the applicant is an established and experienced importer of fish products, has a good compliance record regarding customs rules, and is independent of the exporter concerned.
- (27) Lastly, importers received no information of any sort as to the failure of the Norwegian local authorities to fulfil their obligations, nor were they alerted to the risks they might be running in importing fish from Norway.
- (28) Therefore the information in the case submitted to the Commission on 24 March 2005 shows that the applicant acted in good faith and that there was no deception or obvious negligence on its part.
- (29) Remission of import duties is therefore justified in this case.

- (30) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 authorises the Commission to determine the conditions under which the Member States may repay or remit duties in cases involving comparable issues of fact and law.
- (31) Cases involve comparable issues of fact and law where requests for repayment or remission of duties are submitted within the statutory time limits and concern imports for which the declarations for free circulation, accompanied by invoice declarations issued by authorised exporters, were drawn up by the importers themselves or their representatives up to 31 August 2001, the date on which the Community informed the Norwegian authorities of the problems encountered with imports into the Community of fisheries products originating in Norway. There must be no deception or obvious negligence on the part of the importers,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by the United Kingdom on 24 March 2005 is justified.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 5-10-2005

For the Commission
László KÓVACS
Member of the Commission