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REM 18/00



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9-7-2001

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NOT FOR PUBLICATION

COMMISSION DECISION

of 9-7-2001

finding that the repayment of import duties in a particular case is not justified

(Request submitted by the Grand Duchy of Luxembourg)

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(Request submitted by the Grand Duchy of Luxembourg)**

(REM 18/00)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities,

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 31 July 2000, received by the Commission on 21 August 2000, the Grand Duchy of Luxembourg 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) For a number of years a firm has been authorised to import rayon yarn of tariff code CN 5403 10 00 00 and nylon yard of tariff codes CN 5402 10 10 00 and CN 5402 10 90 00 under the inward processing arrangements for processing into rubberised textile fabrics for pneumatic articles.
- (3) The authorisations issued to the firm have, since 1987, allowed it to use equivalent goods, defined as goods identical to the import goods, cleared through customs.
- (4) A check carried out by the Luxembourg authorities in 1999 revealed that the compensating products which the firm exported incorporated equivalent goods produced in the Community or originating in third countries other than those figuring in the authorisation and released for free circulation in Luxembourg.
- (5) The competent Luxembourg authorities found that the firm had not complied with its obligations under the inward processing arrangements and that, pursuant to Article 204(1) of the Community Customs Code, a customs debt had been incurred. On 24 August 1999, the said authorities claimed XXXXX from the firm in import duties, which it duly paid and the repayment of which it is now applying for.
- (6) In accordance with Article 905 of Regulation (EEC) No 2454/93, the firm declares that it has seen the dossier submitted to the Commission by the Luxembourg authorities and has stated its position in full in a document which was forwarded to the Commission as an annex to the letter from the Luxembourg authorities dated 31 July 2000.

- (7) By letters dated 17 January and 6 March 2001, the Commission asked the authorities of the Grand Duchy of Luxembourg for additional information. This was provided by letters dated January and March 2001, received by the Commission on 25 January and 19 March 2001 respectively. In accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, the administrative procedure was therefore suspended between 18 and 25 January 2001, and again between 7 and 19 March 2001.
- (8) By letter dated 18 April 2001, the Commission notified the firm that it intended to refuse its request and explained the grounds for its objections.
- (9) The firm, however, failed to reply to the Commission by the deadline laid down in Article 906a of Regulation (EEC) No 2454/93.
- (10) The administrative procedure was therefore suspended, in accordance with Article 907 of Regulation (EEC) No 2454/93, for one month.
- (11) 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 15 June 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (12) In accordance with Article 239 of Regulation (EEC) No 2913/92 import duties may be repaid or remitted in special situations resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (13) The Court of Justice of the European Communities has consistently taken the view that the provisions of Article 239 of Regulation (EEC) No 2913/92 represent a general principle of equity designed to cover an exceptional situation in which a declarant might find himself compared with other importers carrying out the same activity.

- (14) The dossier sent to the Commission by the Luxembourg authorities shows that they, and the company, cited a number of circumstances that they felt could, taken together or in isolation, constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92. These circumstances should therefore be examined.
- (15) In this case, it appears that the conditions laid down in the inward processing authorisations were not respected. As the holder of the authorisations, the firm was responsible for ensuring compliance with those conditions, and thus for the customs debt which might arise were they not respected. This failure to comply with the conditions laid down in the inward processing authorisations thus led the firm to incur a customs debt.
- (16) However, the fact that, in the absence of appropriate checks, the competent Luxembourg authorities did not contest the fact that goods produced in the Community or originating in third countries other than those figuring in the authorisations had for several years been used by way of equivalent compensation under the inward processing authorisations issued to the firm (whereas those same authorisations clearly barred the use of goods produced in the Community or originating in third countries other than those figuring in the authorisations), in respect of large quantities of goods, is such as to constitute an error on the part of the competent authorities (see in particular the ["Hewlett Packard" decision in case C-250/91 of 1 April 1993](#)) and also an exceptional situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.

- (17) On the other hand, the claim made by the firm that the system of equivalent compensation granted for several years by the Luxembourg customs authorities was incompatible with the economic justification for the inward processing operations cannot constitute an error on the part of the competent authorities or a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92. The applications for inward processing authorisations specified codes 6104 and 6106 as economic justification for the operations. The first of these codes (6104) indicates that recourse to inward processing is justified by the fact that goods produced in the Community cannot be used for the manufacture of goods for export as their price makes the commercial operation economically unviable. The second code (6106) indicates that recourse to inward processing is justified by the fact that goods produced in the Community cannot be used as they do not meet the requirements of the purchaser situated in a third country.
- (18) These economic justifications do not rule out the possibility of resorting to the equivalent compensation system. The economic justification codes and recourse to equivalent compensation are two totally different things. Equivalent goods, which are Community goods that may be used in processing instead of the imported goods, need not only be goods produced in the Community but can be any goods with Community status, which includes goods from third countries put into free circulation in the Community. Therefore in the case in point there is no incompatibility between the economic justification for the operations in question and the possibility of resorting to the equivalent compensation system.

- (19) Nevertheless, owing to the Luxembourg authorities' unquestioning acceptance for many years of customs operations in respect of large quantities of goods not respecting the rules on equivalent compensation laid down in the inward processing authorisations and elsewhere, the circumstances of the case in point are such as to constitute an exceptional situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (20) The firm in question is a large concern, with considerable professional experience of trading in the products concerned by this case. It would also appear from the application for repayment addressed to the Commission by the Luxembourg authorities that the firm has held inward processing authorisations of the same type since at least 1987. In view of the sums involved and the firm's familiarity with the inward processing system, it can be expected to show more care than a firm which was lacking in similar experience. The fact is that the terms of the inward processing authorisations which the firm held were clear. They stated explicitly that only *import goods cleared through customs* were acceptable for the purpose of equivalent compensation, which excluded goods produced in the Community and goods cleared through customs but imported from countries other than those listed in the authorisations. Hence the firm did not abide by the clearly-stated terms of the inward processing authorisations which it held.
- (21) Given the sums involved and the fundamental importance of the rules on equivalent compensation to the operation of the inward processing system, it could not reasonably escape the notice of an experienced operator exercising due care that the inward processing authorisations did not permit the firm to use goods produced in the Community or imported from third countries other than those provided for in the authorisations to manufacture the exported compensating products.

- (22) Furthermore, the firm had held authorisations of this type since 1987 and applied for their renewal on several occasions. Insofar as the firm knew that it was using goods produced in the Community or in third countries other than those figuring in the authorisations as equivalent goods, each application for renewal of the authorisations with use of the same economic justification codes for the operations constituted negligence on its part since it was aware that the application corresponded to neither its needs nor its practices.
- (23) Therefore, the repayment of import duties requested is not justified in this case,

HAS ADOPTED THIS DECISION :

Article 1

The repayment of import duties in the sum of XXXX requested by the Grand Duchy of Luxembourg on 31 July 2000 is hereby found not to be justified.

Article 2

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 9-7-2001

For the Commission

Member of the Commission