



Brussels, 17.2.2016
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COMMISSION DECISION

of 17.2.2016

finding that repayment of import duties is not justified in a particular case (REM 01/14)

(only the English text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹, and in particular Article 239 thereof,

Having regard to Regulation (EEC) No 2454/93 of 2 July 1993² laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,

Whereas:

- (1) By the letter of 27 March 2014, received by the Commission on 9 April 2014, the customs administration of 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 repayment of customs duties was justified in the circumstances presented below.
- (2) On 23 June 2014 the Commission has sent a letter to the UK Customs asking for missing elements from the file and for additional information. The Commission has received the answer on 13 January 2015 containing the missing information and stating that the UK Customs have no additional information to submit apart from the information already submitted to the Commission on 27 March 2014. A second request for additional information was sent by the Commission on 13 March 2015 and the answer from the UK Customs was received on 9 September 2015.
- (3) According to Article 907 of the implementing provisions of the Community Customs Code (“the Code”), the nine-month period granted to the Commission to adopt its decision was extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received the requested information.
- (4) Under Article 906a of Regulation (EEC) No 2454/93, the Commission has notified the applicant of its reasons for intending to refuse the applicant's request. Consequently, the period of nine months within which the Commission must take a decision was extended by one month.
- (5) The operator claiming the repayment of customs duties (“the applicant”) specialises in the manufacture of passenger vehicles and imports parts and components from outside the European Union (EU), for use in vehicle production. These parts are imported using customs freight simplified procedure (CFSP) and placed into the applicant's Type E (systems) based customs warehouse until required for production. The

¹ OJ L 302 19.10.1992, p. 1

² OJ L 253, 11.10.1993, p. 1.

applicant has an authorisation for inward processing (IP), CFSP, end-use and customs warehousing. The applicant's Type E warehouse authorisation requires vehicle parts removed from the warehouse, to be declared to the customs handling of imports and exports (CHIEF) system, using the appropriate customs procedure code (CPC) in order to transfer the goods to the appropriate end-use or IP procedure.

- (6) Following an audit of the applicant's CFSP system by the UK Customs in 2007, the applicant was asked to update its IT system in order to bring it in line with legal requirements. This involved an amendment to operator's 30 day reporting period to a 10 day period.
- (7) The applicant carried out the requested upgrade in 2008, during which time an interface error was made by its IT team which prevented the system from registering the new car parts numbers removed from customs warehouse into the IP and end-use procedure.
- (8) This error went unnoticed from 2008 until October/early November 2010, despite the applicant's checks on the updated system and running it concurrently with the old 30 day system for a certain period.
- (9) The applicant became aware of the system error in 2010, as a result of its staff becoming concerned of the low levels of volume, value and average duty costs being reported. Significant increases had been expected due to the introduction of the new vehicle model which came into production in August 2010. There were no new model launches in the period 2008 until the middle of 2010 – the period under consideration.
- (10) Internal investigations established that the error only impacted new parts added to the parts database after the changes to the CFSP system; existing parts were not involved. For production of existing model variants, the introduction of new parts/part numbers was only needed following changes to suppliers or changes to the technical specification of the parts. Otherwise, to comply with vehicle homologation/type approval requirements for existing variants the bill of materials remained the same.
- (11) New parts were only needed following changes to technical specifications and there were no changes to the technical specifications during 2008 to 2010 because there were no new model launches in the period from 2008 until the middle of 2010.
- (12) The applicant undertook detailed analysis of the system on its own initiative. This resulted in the discovery, identification and diagnosis of the IT system error. The applicant's own investigation confirmed that the error arose from the programming work performed at the time system amendments were introduced to support the new ten day reporting period in 2008. As a result of the system's failure to capture the parts involved, the car parts' release from the customs warehouse was not being captured and reported and, as a consequence, the warehouse removals were not being declared to CHIEF.
- (13) On 7 November 2010, the applicant informed the UK Customs that a system interface error had resulted in duty payments being missed and that an underpayment had occurred. In a further e-mail the operator provided an estimate as to the potential value (£xxxxxxx) and duty underpayment (approximately £xxxxxxx). Figures of the unpaid duties were provided by the applicant as soon as they were available in 2011.
- (14) During 2011, the operator carried out system interrogations to provide the UK Customs with the information necessary to quantify the debt and issue the C18 post clearance demands to collect the unpaid revenue.

(15) Once the UK Customs received figures for the underpayment, they issued two C18 post clearance demand notes under Article 203 of the Customs Code. This was for unlawful removal from customs control of goods liable to import duties:

– C18086700 (Inward Processing) GBP xxxxxx issued on 21/10/2011 and paid by the operator on 27/10/2011;

– C18089256 (End use) GBP xxxxxxxx issued on 23/11/2011 and paid by the operator on 04/01/2012.

The post clearance demand notes represent in total £xxxxxxx.

(16) The applicant claimed the repayment of the above-mentioned duties by letter dated 21 February 2012, under both Articles 236 and 239 of the Community Customs Code. The applicant stated that the facts of the case were similar to the ones from Commission Decision in case REM 27/01 and, therefore, repayment could be made under the provision of Article 239 of the Code.

(17) The operator's application made under the provisions of Article 236 of the Customs Code was refused by a letter dated 14 November 2012.

(18) Nevertheless, the applicant was asked to provide further information in relation to the final destination of the vehicle parts, as it was one of the considerations resulting in partial repayment under REM 27/01.

(19) Upon receiving this information, the UK Customs considered that the vehicle parts had been used under IP in the manufacture of vehicles which had been exported from United Kingdom or had been put under correct end-use and therefore there was no negative impact on the Community budget. Thus, UK Customs has forwarded the case to the Commission for decision concerning the repayment of customs duties.

Examination of the request under Article 239 of Regulation (EEC) No 2913/92

(20) Article 239 of Regulation (EC) 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 when two conditions are met:

a) a special situation exists; and

b) the situation arises from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

These conditions are cumulative³.

(21) In order to determine whether the facts in question constitute a special situation within the meaning of that provision, the Commission must balance, on the one hand, the Community interest in ensuring that the customs provisions are respected and, on the other hand, the interest of the economic operator acting in good faith not to suffer harm beyond normal commercial risk⁴.

(22) Article 239 of the Customs Code contains a general equity clause intended to cover the exceptional situation and in which it would be unfair to require the declarant to bear a loss which, in the proper course of events, he would not have incurred.

(23) Regarding the claim that the applicant is in a situation to bear a loss which, in the proper course of events, he would not have incurred, the situation cannot be

³ Case C-86/97, *Trans-Ex-Import vs. Hauptzollamt Potsdam*, 25.02.1999, paragraph 22.

⁴ Case T-330/99, *Rotermund*.

considered as “unfair”, since it has been created by the operator himself (*nemo auditur propriam turpitudinem allegans*). For a special situation to exist, it must be generated by the conduct of someone else than the operator.

- (24) An IT interface error cannot in itself generate a special situation, but is part of a normal risk an operator should bear. In the same way as presenting documents subsequently found to be falsified or inaccurate represents part of the professional and commercial risk, using IT systems subsequently found to be defective represents a normal risk for a trader.
- (25) On 7 November 2010, the applicant informed the UK Customs that a system interface error had resulted in duty payments being missed and that an underpayment had occurred. This seems in contradiction with the subsequent claim by the applicant that there was no negative impact on the EU budget.
- (26) In conclusion, the Commission finds that the condition regarding the existence of a special situation is not met.
- (27) As there is no special situation, the second condition in Article 239 does not need to be assessed. Nevertheless, a few considerations can be made regarding the existence of deception or obvious negligence.
- (28) The diligence of the operator in paying the duties as soon as the debt was communicated may represent an indication regarding the general conduct of the operator, but the diligence assessed in the context of Article 239 should be judged at the time of the events, not taking into account the conduct of the operator afterwards.
- (29) The Commission upholds the interpretation given by the UK Customs when rejecting the application of Article 236, namely that, by allowing an error to subsist for two years, the operator has proved obvious negligence. This conclusion is also relevant regarding the application of Article 239.
- (30) Therefore, the Commission also finds that the second condition under Article 239 has not been fulfilled.
- (31) Given the above, the Commission finds that the repayment under Article 239 of Council Regulation (EEC) No 2913/92 of duties in the sum of £xxxxxxx is not justified.

HAS ADOPTED THIS DECISION:

Article 1

Repayment of duties in the sum of £xxxxxxx, requested by the United Kingdom of Great Britain and Northern Ireland on 27 March 2014, is not justified.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 17.2.2016

For the Commission
Pierre MOSCOVICI
Member of the Commission

