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REM 10/00



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23-11-2001

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NOT FOR PUBLICATION

COMMISSION DECISION

of 23-11-2001

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

(request submitted by Denmark)

(REM 10/00)

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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 33, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 26 June 2000, received by the Commission on 27 June 2000, Denmark 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) A Danish company, hereinafter "the firm", manufactured foam pillows and mattresses. It used knitted fabric purchased from several suppliers in the Union, which it cut and then delivered to a subcontractor, hereinafter "the applicant". At the applicant's request, the firm certified that all the fabrics delivered were of preferential Community origin. The applicant had the fabrics made into covers at a number of workshops in Poland under its outward processing authorisation. This authorisation entitled it to a partial reduction in import duties when re-importing the compensating products. Furthermore, on the strength of the firm's declarations that all the fabrics delivered were of preferential Community origin, the applicant obtained authorisation to issue invoice declarations of preferential origin when exporting the fabrics to Poland, which it did in this case. On the basis of the certificates attesting to the fabrics' preferential origin, EUR.1 certificates attesting to the Polish origin of the compensating products were issued in Poland. From 1 November 1996 to 30 September 1999 the applicant, under the preferential arrangements between the Union and Poland (Decision No 1/97 of the Association Council⁵), used these EUR.1 certificates to obtain total exemption from duties when releasing the compensating products for free circulation. The applicant then delivered the covers to the firm which had supplied the fabrics. The firm assembled the mattresses and pillows in the covers, most of which were then exported from the Union.

⁵ OJ L 221, 11.08.1997, p. 1.

- (3) During post-clearance checks on the applicant's declarations for free circulation, the competent customs authorities found that not all the fabrics cut and delivered by the firm to the applicant were of preferential Community origin within the meaning of the agreement between the Union and Poland and that the invoice declarations of origin issued in the Union when exporting the fabrics to Poland were therefore inaccurate, meaning that the EUR.1 certificates issued in Poland for the compensating products were also inaccurate.
- (4) The competent customs department took the view that the compensating products released for free circulation did not therefore meet the conditions for obtaining preferential origin and demanded that the applicant pay, under Article 220(1) of Regulation (EEC) No 2913/92, duties in the sum of XXXXXX, for which remission is being sought in this case.
- (5) In support of the application submitted by the competent Danish authorities the applicant indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.
- (6) By letter dated 17 November 2000 the Commission asked the Danish authorities for further information. This information was provided by letter dated 16 July 2001, received by the Commission on 17 July 2001. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 18 November 2000 and 17 July 2001.
- (7) 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 28 September 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.

- (8) Under 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.
- (9) The Court of Justice of the European Communities has consistently taken the view 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.
- (10) The dossier received by the Commission from the Danish authorities shows that the applicant benefited from a total exemption from import duties when releasing the compensating products for free circulation. Some of the latter, however, were not of preferential Community origin and were therefore ineligible for total exemption from duties.
- (11) The fact that the competent customs administration, owing to a lack of proper controls, had granted the compensating products total exemption from import duties for many years (November 1996-September 1999) without the slightest objection allowed the applicant to believe that its practices were correct. This constitutes an error on the part of the said authorities and thereby a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (12) The special situation is borne out by the fact that, as the Danish authorities explain in their application of 26 June 2000, compensating products representing import duties totalling XXXXX were re-exported from the Union by the firm that supplied the fabrics and therefore had no financial impact on the Community budget.

- (13) This special situation is further borne out by the fact that the Danish customs administration could, had the applicant re-exported the compensating products itself, have remitted the import duties itself under the first indent of Article 239(1) of Regulation (EEC) No 2913/92 and Article 900(1)(e) of Regulation (EEC) No 2454/93.
- (14) Further evidence of a special situation is the fact that the applicant could, had it known that the compensating products were ineligible for preferential Community origin, have used other customs procedures to avoid releasing the compensating products for free circulation. The firm could have placed the products under a customs warehouse procedure before delivering them to the firm that supplied the fabrics. The latter could then have used the inward processing procedure to assemble the covers with the mattresses and pillows in the covers before exporting the finished products.
- (15) However, such a situation can give rise to the remission of duties only if no deception or obvious negligence may be attributed to the person concerned.
- (16) The applicant in this case was at no point the owner of the fabrics for assembly and therefore did not have access to any documents concerning their origin that the firm supplying the fabrics might have held. The firm remained the owner of the fabrics from the time they were cut until they were exported in the form of covers for mattresses and pillows.
- (17) Not being the owner of the fabrics, the applicant's only means of establishing their origin was to ask its supplier for a written declaration certifying that origin. This the applicant did. Its supplier having certified in writing that all the fabrics were of preferential Community origin, the applicant could legitimately expect all the fabrics to have preferential Community origin.

- (18) Nor can the fact that the applicant relied on that written information when applying for authorisation to issue invoice declarations of origin and using that authorisation to make out declarations be construed as obvious negligence. There is nothing to suggest that the applicant should have doubted the accuracy of the written information provided by the firm. Indeed, the customs authorities themselves relied on the information provided by the firm supplying the fabrics when they authorised the applicant to issue invoice declarations of origin for the export of the fabrics to Poland.
- (19) In the light of the above it may be concluded that the applicant acted in good faith and that the circumstances indicate neither deception nor obvious negligence on its part.
- (20) The circumstances of this case therefore constitute a special situation involving neither deception nor obvious negligence on the part of the applicant.
- (21) Remission of import duties is therefore justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXXX requested by Denmark on 26 June 2000 is hereby found to be justified.

Article 2

This Decision is addressed to Denmark.

Done at Brussels, 23-11-2001

For the Commission

Member of the Commission