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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18-7-2002

COMMISSION DECISION

of 18-7-2002

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

(Only the German text is authentic.)

(Request submitted by the Federal Republic of Germany)

REM 13/2001

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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 444/2002,⁴ and in particular Article 907 thereof,

¹ OJ L 302, 19.10.92, p. 1.

² OJ L 311, 12.12.2000, p. 17.

³ OJ L 253, 11.10.93, p. 1.

⁴ OJ L 68, 12.03.02, p. 11.

Whereas:

- (1) By letter dated 28 May 2001, received by the Commission on 7 June 2001, the Federal Republic of Germany asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the remission of import duties was justified in the following circumstances.
- (2) An aircraft belonging to a Swiss company arrived at Hamburg Airport on 21 February 2000. It was immediately towed to the repair shop of a German firm, where stripping and painting work was started at once, before the authorities were notified. The next day the German firm carrying out the works notified the competent customs department by telephone, and subsequently in writing, of the arrival of the aircraft.
- (3) Under Article 670(c) of the version of Regulation (EEC) No 2454/93 in force at the time of these events, aircraft are means of transport and as such can be considered to have been declared for the temporary importation procedure with total relief from import duties by the sole act of crossing the frontier of the customs territory of the Community in accordance with the provisions of Article 232(1)(b) and Article 233(1)(b) of the same version of the same Regulation.
- (4) Under Article 729 of the same Regulation, routine maintenance operations and repairs to means of transport which have become necessary during the journey to or within the customs territory of the Community may be carried out in the context of the temporary importation procedure. However, routine maintenance operations and necessary repairs do not include stripping and painting operations of the kind involved in this case.
- (5) Consequently, the German authorities considered that in having these works carried out in the context of the temporary importation procedure the Swiss company had failed to comply with the obligations associated with placing goods under that procedure and had thus incurred a customs debt under Article 204(1) of Regulation (EEC) No 2913/92.

- (6) They therefore asked the company to pay import duties of XXXXXX - the amount in respect of which remission has been requested.
- (7) In support of the request submitted by the competent German authorities, the company, pursuant to Article 905 of Regulation (EEC) No 2454/93, stated that it had taken note of the file sent to the Commission by the German authorities and that it had nothing to add.
- (8) By letter of 27 November 2001 the Commission requested further information from the German authorities. This information was provided by letter dated 5 April 2002, received by the Commission on 12 April 2002. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 28 November 2001 and 12 April 2002.
- (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 7 May 2002 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (10) 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 that 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 an exceptional situation in which an operator finds itself, compared with other operators engaged in the same business, and that in the absence of such circumstances, he would not have suffered the disadvantage caused by the post-clearance entry in the accounts.

- (12) The dossier sent to the Commission by the German authorities shows that the in having stripping and painting works carried out under the temporary admission procedure the company failed to comply with the obligations associated with that procedure, and so, as declarant, incurred a customs debt.
- (13) Such work should have been carried out under an inward processing authorisation. The German authorities state in their letter of 5 April 2002 that the German firm that carried out the works did in fact hold such an authorisation for carrying out such works.
- (14) It should also be noted that an aircraft is a clearly identifiable item and that the aircraft concerned was indeed re-exported once the works were completed, i.e. on 28 February 2000. There was therefore no financial impact on the Community budget.
- (15) Furthermore, this was an isolated case, which occurred only once.
- (16) Taken together, these circumstances constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (17) In the circumstances of this case no deception or obvious negligence can be attributed to the company concerned, as the competent German authorities confirmed in their letter to the Commission of 28 May 2001.
- (18) The circumstances of this case therefore constitute a special situation in which no deception or obvious negligence may be attributed to the company concerned.
- (19) 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 the Federal Republic of Germany on 28 May 2001 is justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 18-7-2002

For the Commission

[...]

Member of the Commission