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REM 4/00



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.12.2000

NOT TO BE PUBLISHED

**COMMISSION DECISION**

**Of 13.12.2000**

**finding that repayment of import duties is justified in a particular case and authorising the Federal Republic of Germany to repay or remit duties in cases involving comparable issues of fact and law**

**(Request submitted by Germany)**

**(REM 04/2000)**

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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,<sup>1</sup> as last amended by Regulation (EC) No 955/1999,<sup>2</sup>

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,<sup>3</sup> as last amended by Regulation (EC) No 1602/2000,<sup>4</sup> and in particular Article 907 thereof,

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<sup>1</sup> OJ L 302, 19.10.1992, p. 1.

<sup>2</sup> OJ L 119, 7.5.1999, p. 1.

<sup>3</sup> OJ L 253, 11.10.1993, p. 1.

<sup>4</sup> OJ L 188, 26.7.2000, p. 1.

Whereas:

- (1) By letter dated 21 February 2000, received by the Commission on 13 March 2000, the Federal Republic of Germany 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) A German company (“the company”) used the local clearance procedure in May, June, September and December 1998 and March 1999 to make supplementary declarations for free circulation relating to catalysts in powder form, consisting of a mixture of metal oxides fixed on a support of silicon dioxide, containing by weight no more than 35% of molybdenum, bismuth and iron. The catalysts were classified under code 3815 19 90 15 of the Combined Nomenclature. Duty on the goods was therefore suspended under Council Regulation (EC) No 2590/97 of 16 December 1997<sup>5</sup> and Council Regulation (EC) No 2797/98 of 17 December 1998.<sup>6</sup>
- (3) When the supplementary declaration lodged in March 1999 was checked, the local customs authorities realised that code 3815 19 90 15 only applied to catalysts for use in the manufacture of acrylonitrile. Since the company concerned had no authorisation for that particular end-use at that time, the authorities considered that the goods in question should have been classified under code 3815 19 90 90 of the Combined Nomenclature and subject to duty at a rate of 6.5% ad valorem.
- (4) The authorities therefore claimed payment of the amount of import duties owed for the period May 1998 to March 1999, i.e. a total of XXXXX - the amount for which repayment has been requested.
- (5) In support of the application submitted by the competent German authorities the company 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.

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<sup>5</sup> OJ L 355, 30.12.1997, p. 1.

<sup>6</sup> OJ L 352, 29.12.1998, p. 1.

- (6) 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 25 May 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (7) 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.
- (8) The Court of Justice of the European Communities has taken the view that the said Article 239 represents a general principle of equity designed to cover an exceptional situation in which an operator might find himself compared with other operators carrying out the same activity.
- (9) In this case, the goods in question could only be eligible for preferential tariff treatment by virtue of their particular end-use on condition that the company held an authorisation. In fact, in this case, when the goods were released for free circulation, the company did not hold the relevant authorisation. The competent German authorities therefore considered that a customs debt had been incurred, in that the products in question had not been eligible for the zero rate of import duties.
- (10) However, as the German authorities confirmed in their letter of 21 February 2000 to the Commission, checks made by the customs service showed that the products imported during the period in question were used solely for the manufacture of acrylonitrile. Consequently, while the company did not hold an authorisation for that end-use, it is nonetheless the case that, in practice, the imported products were put to an end-use that entitled them to suspension of import duties and, in view of that fact, the ultimate purpose of granting preferential tariff treatment by virtue of the end-use of the goods was fulfilled. The financial interests of the European Communities were not therefore affected in this case.

- (11) Moreover, as the competent German authorities stated in their letter of 21 February 2000 to the Commission, if the company had sought the relevant end-use authorisation at the time of the events it would have been granted, because all the conditions for granting the authorisation had been met, and the imported products would therefore have been eligible for the suspension of import duty. In addition, following the checks referred to above, the company requested the relevant authorisation in May 1999, i.e. within a year of the first imports in question, and was granted it on 7 July 1999 for operations carried out after that date.
- (12) Therefore, all the circumstances taken together constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (13) In the circumstances of this case no deception or obvious negligence can be attributed to the firm concerned, as the competent German authorities confirm. In particular, it should be noted that this was the first time that the company had been at fault in this way and that when it first imported the goods in this case, it was the first time that it had imported this type of goods from outside the Community.
- (14) Therefore the repayment of import duties is justified in this case.
- (15) Under Article 908 of Regulation (EEC) No 2454/93, where the circumstances under consideration justify repayment or remission, the Commission may, under conditions which it shall determine, authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and of law.
- (16) In a letter of 21 February 2000 the Federal Republic of Germany requested authorisation to repay or remit duties in cases involving comparable issues of fact and law.

HAS ADOPTED THIS DECISION:

*Article 1*

The repayment of import duties in the sum of XXXXXX requested by the Federal Republic of Germany on 21 February 2000 is hereby found to be justified.

*Article 2*

The Federal Republic of Germany is hereby authorised to repay or remit import duties in cases involving issues of fact and law comparable to the case referred to by the request of 21 February 2000 submitted by the Federal Republic of Germany.

*Article 3*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13.12.2000

*For the Commission*

*Member of the Commission*