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REM 01/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20-01-2005
C(2005)93

NOT FOR PUBLICATION

COMMISSION DECISION

Of 20-01-2005

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

(Only the French text is authentic.)

(Request submitted by France)

(REM 01/2004)

FR

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(REM 01/2004)

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 the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 2286/2003,⁴

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 236, 23.9.2003, p. 33.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 343, 31.12.2003, p. 1.

Whereas:

- (1) By letter dated 9 January 2004, received by the Commission on 14 January 2004, France 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) On 6, 7 and 9 July 1998 a French firm imported rice into the Community.
- (3) Commission Regulation (EC) No 703/97 of 18 April 1997 introduced a cumulative recovery system (CRS) for rice.⁵ Initially set up for the period 1 July 1997 to 30 June 1998, the system was extended to 31 December 1998 by Commission Regulation (EC) No 1470/98 of 1 July 1998.⁶ There was a period of twelve days between 30 June 1998 and the date of entry into force of Regulation (EC) No 1470/98 during which the CRS did not apply.
- (4) The competent authorities performed the checks required by the CRS on the firm's declarations of 6, 7 and 9 July 1998. After paying the import duties in the usual way, the firm was granted the special rate applicable under the CRS.
- (5) When they realised that the CRS did not in fact apply to the goods concerned, the French authorities initiated recovery of the amount in question, i.e. EUR XXXXX, the sum which the firm is seeking to have remitted under Article 239 of Regulation (EEC) No 2913/92.
- (6) In support of the application submitted by the French authorities the firm indicated that, in accordance with Article 905(3) of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.
- (7) By letter of 11 March 2004 the Commission requested further information from the French authorities. The French authorities provided the information by letter dated 19 July 2004, received by the Commission on 23 July 2004.

⁵ OJ L 104, 22.4.1997, p. 12.

⁶ OJ L 194, 10.7.1998, p. 5.

- (8) The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 12 March 2004 and 23 July 2004.
- (9) By letter dated 21 October 2004, received by the firm on 26 October 2004, the Commission notified the firm of its intention to withhold approval and explained the reasons for its decision. The firm did not reply to this letter.
- (10) In accordance with Article 907 of Regulation (EEC) No 2454/93, the time limit of nine months for the Commission to take a decision was therefore extended 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 to examine the case on 1 December 2004 within the framework of the Customs Code Committee, Repayment Section.
- (12) 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.
- (13) The Court of Justice of the European Communities has ruled 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.
- (14) The firm has claimed a special situation under Article 239 of Regulation (EEC) No 2913/92 on the grounds that the CRS was not applicable from 1 to 12 July 1998. This, it argues, is totally inconsistent with the tariff policy pursued by the Commission at the time and can only be explained by a failing on the part of the Commission, which was too late in publishing Regulation (EC) No 1470/98 extending the CRS.
- (15) The firm thereby contests the very provisions of Regulation (EC) No 1470/98. However, Article 239 of Regulation (EEC) No 2913/92 does not allow the legality of a Community regulation to be questioned; the fact that a Community regulation may be

invalid does not constitute a special situation within the meaning of that Article. It is up to traders who consider themselves to have suffered injury as a result of mistakes in Community regulations to use the legal means available to them to contest these regulations.

- (16) The legislator's purpose was to renew a trial period and this was deliberately set by Regulation (EC) No 1470/98 to start from the date of entry into force of the Regulation. This is clear both from the first recital of the Regulation and from Article 1, which states that the additional trial period applies “from the entry into force of this Regulation to 31 December 1998”. The fact that the earlier text had expired was not grounds for an automatic extension to cover the period from 30 June 1998.
- (17) The dossier as a whole does not therefore give grounds for finding that there was a special situation within the meaning of Article 239(1) of Regulation (EEC) No 2913/92.
- (18) Nor has the Commission identified any other factors constituting a special situation. There is therefore no need to examine second condition laid down in Article 239 of Regulation (EEC) No 2913/92.
- (19) The remission of import duties requested is not therefore justified,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of EUR XXXX requested by France on 9 January 2004 is not justified.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 20-01-2005

For the Commission

László KOVÁCS

Member of the Commission