

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27-12-2001

.

NOT FOR PUBLICATION

**COMMISSION DECISION**

**of 27-12-2001**

**finding that it is justified to waive post-clearance entry in the accounts of import duties**

**in a particular case**

**(Request submitted by Germany)**

**REC 03/2001**

FR

**COMMISSION DECISION**

**of 27-12-2001**

**finding that it is justified to waive post-clearance entry in the accounts of import duties**

**in a particular case**

**(Request submitted by Germany)**

**REC 03/2001**

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 2700/2000,<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 993/2001, and in particular Article 873 thereof,<sup>4</sup>

---

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

<sup>2</sup> OJ L 311, 12.12.2000, p. 17.

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

<sup>4</sup> OJ L 141, 28.05.2001, p. 1.

Whereas:

- (1) By letter dated 27 March 2001, received by the Commission on 2 April 2001, Germany asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it is justified to waive post-clearance entry in the accounts in the following circumstances:
- (2) A German firm held an outward processing authorisation. It used this authorisation to have crabs shelled in Poland, reimporting the crab meat into the Union as compensating products. The firm conducted these operations for a number of years.
- (3) During a post-clearance control at the applicant's premises relating to the period from 1 January 1996 to 31 December 1998 the competent customs administration found that the intra-Union transport costs for the compensating products had been overestimated. The firm had based its calculation on DEM 2.75/kg rather than DEM 3.00/km. It had then exercised its legal right to deduct these intra-Union transport costs from the final value of the compensating products, which was therefore lower than it should have been. As a result, the value declared when releasing the compensating products for free circulation was also lower than it should have been.
- (4) After recalculating the transport costs incurred inside the Union on the basis of DEM 3.00/km, the competent customs office claimed a total of XXXXXX in customs duties for the period from 12 March 1996 to 30 December 1998. The firm is requesting that post-clearance entry in the accounts of this sum be waived.

- (5) In support of the application submitted by the competent German authorities the firm indicated that, in accordance with Article 871 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.
- (6) In accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 9 November 2001 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (7) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, post-clearance entry in the accounts shall be waived where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities themselves which could not reasonably have been detected by the person liable for payment, that person having acted in good faith and observed all the provisions laid down by the legislation in force as regards the customs declaration.
- (8) In this case, customs duties on the compensating products released for free circulation by the firm in the period from March 1996 to December 1998 were entered in the accounts at the time the debt was generated at a level lower than that legally due because they were calculated on the basis of a lower customs value than they should have been. When, in the wake of a control, the competent authority realised this it sought to recover the difference from the firm.
- (9) It is for the competent national authorities to establish the methods for calculating the cost of transport inside and outside the Union. From the dossier sent by the German customs administration, it appears that the method for calculating transport costs within the Union was laid down by administrative circular VSF Z 5314, which stipulated a rate of DEM 3.00/km/lorry or trailer.

- (10) According to the dossier, the competent German customs office accepted the firm's declarations for release for free circulation for three years even though the compensating products were undervalued owing to an error in the calculation of transport costs incurred within the Union. At no time did the office contest the value of the products.
- (11) Furthermore, the firm had already cleared identical compensating products prior to the period in question, and the office of clearance had at that time accepted the method used by the firm to calculate transport costs within the Union, namely DEM 2.75/kg.
- (12) The customs administration had, moreover, already checked the firm's discharge of its outward processing procedure in 1995. At that time the inspector contested neither the firm's calculation of transport costs nor the resulting customs value of the compensating products.
- (13) The above circumstances show that the competent German authorities committed an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (14) It is therefore necessary to examine whether that error was such that it could not reasonably have been detected by a firm acting in good faith, notwithstanding its professional experience and exercise of due care.
- (15) According to the case-law of the Court of Justice of the European Communities, post-clearance recovery of duties must be waived where the authorities failed to contest certain points during on-the-spot checks on earlier imports and the trader had no apparent reason to doubt the accuracy of their findings, that trader having observed all the provisions laid down by the legislation in force as regards the customs declaration.

- (16) In this instance a control had taken place in 1995. On that occasion the customs authorities did not contest the method used by the firm to calculate the cost of transporting the compensating products within the Union. The firm therefore had no reason to doubt the accuracy of the control's findings.
- (17) Furthermore, as the German customs authorities explain in their request, the firm has acted in good faith and observed all the provisions laid down by the legislation in force as regards the customs declaration.
- (18) It is therefore justified to waive post-clearance entry in the accounts of import duties in this case,

HAS ADOPTED THIS DECISION:

*Article 1*

Entry in the accounts of import duties in the sum of XXXXXXXX referred to in the request from Germany of 27 March 2001 is hereby waived.

*Article 2*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 27-12-2001

*For the Commission*

·  
*Member of the Commission*