



EUROPEAN COMMISSION

Brussels, 5.8.2011  
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**COMMISSION DECISION**

**of 5.8.2011**

**finding that remission of import duties is not justified in a particular case  
(Case REM 01/2008)**

(Only the French text is authentic)

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### **finding that remission of import duties is not justified in a particular case (Case REM 01/2008)**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties<sup>1</sup>,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>2</sup>,

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 establishing the Community Customs Code<sup>3</sup>,

Whereas:

- (1) By letter dated 24 January 2008, received by the Commission on 30 January 2008, the French authorities asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether remission of import duties was justified in the following circumstances.
- (2) Between December 1992 and July 1994, a French company (hereinafter: the party concerned), acting as a customs agent on behalf of various importers, lodged 176 declarations for the release for free circulation of products from the United States, mainly pairs of jeans but also various other textile articles, and sports and leisure shoes.
- (3) The party concerned received its instructions concerning the customs clearance of the goods from a company that imported the goods in its own name or using two other companies as intermediaries. The first company provided the invoice presented in support of the customs declaration.

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<sup>1</sup> OJ L 175, 12.7.1979, pp. 1-7.

<sup>2</sup> OJ L 302, 19.10.1992, p. 1.

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

- (4) When the declarations were lodged, the French authorities accepted the declared customs value and the customs duties were calculated on the basis of that value. During a post-clearance inspection carried out by the French authorities from 1994, it was established that the declared customs value was much lower than the actual value of the goods and that customs clearance had taken place on the basis of false invoices in order to reduce the amount of the customs debt. During the inspection, the French authorities also discovered a VAT fraud and found that in some cases the goods had been declared as worn clothing under heading 6309, whereas in fact they were new Levi's jeans and T-shirts.
- (5) The French authorities therefore initiated the post-clearance recovery procedure for duties of EUR XXXX, the amount for which the party concerned is requesting remission on the grounds of a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (6) In support of the request submitted by the French authorities, and in accordance with Article 905(3) of Regulation (EEC) No 2454/93, the party concerned stated that it had seen the file which the French authorities intended to send to the Commission and had made comments, which were annexed to the request sent to the Commission.
- (7) By letter dated 3 March 2008 the Commission asked the French authorities for additional information. The French authorities were able to supply only partial information and the investigation was reopened on 1 December 2010. Examination of the request was therefore suspended between 4 March 2008 and 1 December 2010.
- (8) By letter dated 28 March 2011, received by the party concerned on 31 March 2011, the Commission notified the party concerned of its intention to withhold approval and explained the reasons for this.
- (9) By letter dated 28 April 2011, received by the Commission on the same day, the party concerned expressed its opinion on the Commission's objections.
- (10) In accordance with Article 907 of Regulation (EEC) No 2454/93, the nine-month period within which a decision has to be taken by the Commission was therefore extended by 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 consider the case on 20 June 2011 within the framework of the Customs Code Committee - Customs Debt and Guarantees Section.
- (12) According to the request sent by the French authorities to the Commission and the letter from the party concerned dated 28 April 2011, remission is justified for the following reasons:
  - (a) the party concerned is in the same situation as the applicant in Case REM 10/01, in respect of which the Commission, in Decision C(2002)4454 of 18 November 2002, decided that remission was justified;
  - (b) the French customs administration had accepted 176 customs declarations without challenging the declared customs value, even though a number of the import declarations had

been subject to a C1 or C1-2 customs inspection, which consists of a physical check of the goods;

(c) the party concerned had no reason to question the reliability of its principal because the latter had an authorisation to import free of VAT issued by the competent authorities and most of the imports were covered by the authorisation;

(d) payment of the amount in question would place the party concerned in a disastrous financial situation;

(e) the party concerned had acted in good faith, as confirmed by the Court of Appeal in Aix-en-Provence in its judgment of 27 June 2001 and by the Court of Cassation in its judgment of 22 September 2004.

(13) Since the request relates in part to imports that took place before 1 January 1994, the date of entry into force of Regulation (EEC) No 2913/92, it must be examined on the basis of Article 13 of Regulation (EEC) No 1430/79 in relation to the imports before 1 January 1994 and on the basis of Article 239 of Regulation (EEC) No 2913/92 in relation to the imports after 1 January 1994.

(14) In accordance with Article 13(1) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in special situations, other than those laid down in sections A to D of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

(15) Under Article 239 of Regulation (EEC) No 2913/92, import duties may be remitted in situations other than those referred to in Articles 236, 237 and 238 of that Regulation if they result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

(16) The Court of Justice of the European Union has consistently held that these provisions represent a general principle of equity designed to cover a special 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.

(17) It is appropriate to check in the case at issue whether the situation of the party concerned should be regarded as an exceptional situation as compared with other operators engaged in the same business.

(18) The party concerned takes the view that it is in the same situation as the applicant in Case REM 10/01.

(19) The Commission is of the opinion that the applicant's situation in Case REM 10/01 is not comparable to this case.

(20) Case REM 10/01 concerned almost 200 declarations for Levi's jeans, which were sometimes even described as "premium quality"; moreover, despite many physical checks, and even after identifying a false declaration of value, the Dutch customs authorities did not question the relevance of the transaction value stated in the declarations, even though a comparison between the declared transaction value and the explicit description of the goods would have enabled them to uncover the incorrect

value. Finally, the Dutch authorities knew that there was a fraud operating in relation to Levi's jeans from the United States and that the fraud related to an understatement of the value of goods released for free circulation.

- (21) This case differs in a number of respects. First, between December 1992 and July 1994 the party concerned submitted 176 declarations relating to different products, namely: jeans but also T-shirts, caps, boots, shoes, ties, jackets, socks.
- (22) Although the party concerned states that the customs authorities had carried out physical checks on the goods, it is not clear from the file that the checks actually took place. The fact that a declaration is selected under the C1 or C1-2 control circuit for a possible physical check does not allow the conclusion to be drawn that the physical check of the goods was actually carried out by the customs authorities. Once a declaration is selected by the customs IT system, the customs authorities may decide to carry out the physical check or to release the goods without a physical check. The mere reference to a control circuit on a declaration cannot be used to conclude that the check was actually carried out. Moreover, it should be pointed out that a simple physical check does not give a precise indication of the value of the imported goods.
- (23) Nor can it be argued that a documentary check would have revealed the false declaration of customs value by simply comparing the description of the goods with the value shown on the declaration. First, as the party concerned points out, a relatively low price may be explained by the purchase terms, for example a purchase of lots comprising various different brands of jeans. Furthermore, the argument put forward by the party concerned in its letter dated 28 April 2011 that the customs authorities were able to compare 'the declared value of "Levi's 501 jeans" with the statistical value of the product, which has been imported into Europe on a massive scale since 1947' ignores the fact that the tariff classification does not take account of the quality or the value of the goods; a simple comparison of the declared value with an average value established on the basis of overall data is not, therefore, sufficient to update a false declaration of value. The customs value is a transaction value and more substantial information than overall statistical data are required to call it into question; to that end, a detailed examination of the commercial and accounting records of the parties concerned is essential. The French authorities performed just such an examination and it revealed a system of false invoices.
- (24) The above comments obviously do not apply where the computerised customs system for selecting declarations is circumvented by false declarations of type, such as declaring the goods falsely under heading 6309 for worn clothing and other worn articles.
- (25) Lastly, it should be pointed out that unlike the situation of the Dutch authorities in Case REM 10/01, the customs authorities did not know that these transactions were part of a pattern of fraud.
- (26) In the light of the above, the Commission takes the view that this case is not comparable to REM 10/01.
- (27) With regard to the argument that the party concerned had no reason to question the reliability of its principal because the latter had an authorisation to import free of VAT

issued by the competent authorities and that 104 of the 107 import transactions were covered by that authorisation, the following should be noted.

- (28) The party concerned appears to take the view that the behaviour of the French authorities (in this case the Directorate-General for Taxation) placed it in a special situation because import VAT is calculated and collected by the customs administration in the same way as customs duties. It follows that any failure by the customs administration to comply with its obligations to check the collection of import VAT would necessarily have a direct effect on the correct inspection of collection of customs duties due on the same goods.
- (29) The Commission takes the view that the party concerned cannot invoke a possible failure by the customs administration to comply with tax legislation (in this case the rules on VAT) as constituting a special situation in relation to customs duties. The Commission cannot, therefore, take into account a possible mistake in this procedure, which in any event is unproven, for the purpose of determining whether the party concerned was placed in a special situation.
- (30) Lastly, with regard to the argument that the party concerned would be in a difficult financial situation if it had to pay the amount requested, it should be noted that the Court has held that the provisions on remission and repayment of customs duties are manifestly not intended to protect economic operators against the consequences of their clients going into liquidation and that it is for professional economic operators to adopt the necessary measures in their contractual relations to ensure that they are equipped to deal with the risk of post-clearance recovery and the fact that they cannot ask their clients to bear the cost<sup>4</sup>. These [circumstances](#) do not, therefore, constitute a special situation within the meaning of EU customs legislation.
- (31) Furthermore, the Commission has not identified any other factors likely to constitute a special situation.
- (32) If there is no special situation, it is not necessary to verify whether the second condition referred to in Article 13 of Regulation (EEC) No 1430/79 and in Article 239 of Regulation (EEC) No 2913/92 is met.
- (33) The remission of import duties requested is therefore not justified,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The remission of import duties in the sum of EUR XXXXX requested by France on 24 January 2008 is not justified.

#### *Article 2*

This decision is addressed to the French Republic.

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<sup>4</sup> Case T-290/97 *Méhibas* [2000] ECR II-15.

Done at Brussels, 5-8-2011

*For the Commission*  
*Algirdas ŠEMETA*  
*Member of the Commission*