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REM 08/03

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6-10-2004  
C(2004)3681

NOT FOR PUBLICATION

**COMMISSION DECISION**

**Of 6-10-2004**

**finding that remission of import duties is justified in a particular case and authorising  
Denmark, Germany, Italy, the Netherlands, Portugal, Sweden and the United Kingdom  
to repay or remit duties in cases involving comparable issues of fact and law**

(Only the Danish, German, Italian, English, Dutch, Portuguese and Swedish texts are  
authentic)

**(Request submitted by Denmark)**

**(REM 08/03)**

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**(Request submitted by Denmark)**

**(REM 08/03)**

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 Council Regulation (EEC) No 2913/92,<sup>3</sup> as last amended by Regulation (EC) No 444/2002,<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 311, 12.12.2000, p.17  
<sup>3</sup> OJ L 253, 11.10.1993, p.1  
<sup>4</sup> OJ L 343, 31.12.2003, p.1.

Whereas:

- (1) By letter dated 6 May 2003, received by the Commission on the same day, Denmark 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) Under the second paragraph of Article 2 of Commission Regulation (EC) No 1335/2003 of 25 July 2003<sup>5</sup> amending Regulation (EEC) No 2454/93, the provisions of that Regulation do not apply to cases sent to the Commission before 1 August 2003. Therefore the references that follow in this Decision to Regulation (EEC) No 2454/93 refer to that Regulation as last amended by Commission Regulation (EC) No 881/2003<sup>6</sup> of 21 May 2003.
- (3) Between October 1999 and November 2000 a Danish customs agent, referred to below as “the applicant”, declared fish from Norway for release for free circulation. The importers were established in a number of different Member States; the declarations were made out in the name of three Norwegian exporters (DDP contract).
- (4) At the time, imports into the Community of fish originating in Norway were eligible for preferential treatment under Protocol 9 of the Agreement on a European Economic Area (the EEA Agreement) adopted by virtue of the Decision of the Council and the Commission of 13 December 1993 on the conclusion of the Agreement on the European Economic Area between the European Communities, their Member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation.<sup>7</sup> In accordance with the provisions of Protocol 4 to the EEA Agreement, therefore, fish originating in Norway was entitled to preferential tariff treatment when released for free circulation, on condition that it was covered by an EUR.1 movement certificate (referred to below as an EUR.1 certificate) or an invoice declaration of origin (referred to below as an “invoice declaration”).

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<sup>5</sup> OJ L 187, 26.7.2003, p.16

<sup>6</sup> OJ L 134, 29.5.2003, p. 1.

<sup>7</sup> OJ L 001, 03.01.1994, p. 1

- (5) In this instance the applicant presented, in support of its customs declarations for release for free circulation, invoice declarations drawn up by authorised Norwegian exporters indicating that the goods were of EEA preferential origin. The Danish customs authorities accepted the declarations and granted preferential tariff treatment.
- (6) However, the Danish customs authorities, under Article 32 of Protocol 4 to the EEA Agreement, submitted a number of invoice declarations to the competent Norwegian authorities so that they could verify the preferential origin of the goods.
- (7) In some cases, the Norwegian customs authorities were able to confirm the validity of the origin documents. However, in other cases the Norwegian exporters were unable to prove the origin of the goods concerned.
- (8) In view of the replies given by the Norwegian authorities, the Danish customs authorities were unable to grant the goods preferential tariff treatment and therefore took steps for the post-clearance recovery of import duties for goods imported between October 1999 and November 2000, amounting to XXXXXX, for which remission is now being sought.
- (9) Pursuant to Article 905 of Regulation (EEC) No 2454/93, the applicant stated in support of the request from the competent Danish authorities that it had seen the dossier submitted to the Commission and had nothing to add.
- (10) By letters of 11 November 2003 and 13 April 2004, the Commission asked the Danish authorities for further information. The Danish authorities called on the Norwegian authorities for assistance with the information requested by letter of 11 November 2003. By letter of 6 May 2004, the Norwegian authorities sent part of the information requested direct to the Commission, asking it to safeguard the confidentiality of the enclosed documents.
- (11) By letter of 9 June 2004, received by the Commission on 11 June 2004, the Danish authorities provided the Commission with the information it had requested, apart from the documents that had been sent direct to the Commission by Norway. Attached to this letter was a letter dated 2 June 2004 from the applicant's lawyer, stating that he had not seen the complete dossier.

- (12) The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 11 November 2003 and 11 June 2004.
- (13) By letter of 1 July 2004, the Commission invited the applicant's lawyer to come and consult the documents sent by Norway, to which he had not had access. The applicant's lawyer consulted these documents at the Commission's premises on 15 and 16 July 2004.
- (14) By letter of 16 July 2004, received by the applicant's lawyer on the same day, the Commission notified the applicant, through the applicant's lawyer, of its intention to withhold approval.
- (15) By letter of 13 August 2004, received by the Commission on 13 August 2004, the applicant's lawyer stated his opinion regarding the Commission's objections. He pointed out that the case was comparable in fact and law to that which gave rise to Commission decision No C (2003) 2756 of 31 July 2003 (REC 05/00).
- (16) In accordance with Article 907 of Regulation (EEC) No 2454/93, the time limit of nine months in which the Commission must take a decision was therefore extended by one month.
- (17) 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 September 2004 within the framework of the Customs Code Committee (Repayment Section) to consider the case.
- (18) 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.
- (19) The Court of Justice of the European Communities has consistently taken the view 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.

- (20) In this instance, the granting of preferential tariff treatment for the imports was subject to the presentation of EUR.1 certificates or invoice declarations.
- (21) As stated above, the Norwegian exporters were unable to prove the origin of the goods for the invoice declarations, giving rise to a customs debt of XXXXXXXX.
- (22) Reliance on the validity of such declarations is not normally protected, as this is considered part of the importer's normal commercial risk and therefore the responsibility of the person liable for payment.
- (23) The Court of Justice has consistently ruled that the legitimate expectations of a trader are protected only if the competent authorities themselves gave rise to the expectation.
- (24) In this instance, the exporters stated on the invoices that the goods they covered met the conditions under which the invoice declarations can be drawn up.
- (25) However, in the light of the rulings of the Court of First Instance in the "Turkish televisions" case of 10 May 2001, the fact that the Norwegian authorities might have been misled by the exporters does not necessarily mean that the circumstances of this case could not constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (26) In any case, the fact that the exporters had confirmed on the invoices that the conditions for issuing them or drawing them up had been met is not in itself proof that the competent Norwegian authorities were misled. It is necessary to ascertain whether the exporters made these declarations on the assumption that the competent authorities were acquainted with all the facts necessary to apply the rules in question and whether the authorities, despite their knowledge, raised no objection to the declarations.
- (27) In this instance, the competent Norwegian authorities can also be blamed for a number of deficiencies liable to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (28) Certain pieces of information reveal that, during the period concerned, the local Norwegian authorities did not carry out sufficient checks on the exports of fish to the Community by the three exporters concerned.

- (29) In particular, the Norwegian local authorities authorised the exporters to draw up invoice declarations of origin without knowing for certain that they met the relevant conditions. Furthermore, the authorised exporters in question were not sufficiently well informed as to what kind of supporting documents they should keep for post-clearance inspections into the origin of the goods.
- (30) The fact that, for a number of years, the Norwegian local authorities did not carry out checks on the authorised exporters is one of the reasons that the situation which led to the irregularities continued for so long.
- (31) It is apparent from the above that the Norwegian local authorities failed to fulfil their obligations to check fish exports to the Community by the exporters concerned. The shortcomings in the way in which the Norwegian authorities administered the certification system for the applicant's suppliers at local level, although not constituting an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92, must be deemed to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92, particularly in the light of the judgment of the Court of First Instance in the "Turkish televisions" case of 10 May 2001, referred to above.
- (32) The circumstances of this case are therefore such as to constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (33) These circumstances do not involve deception or obvious negligence on the part of the applicant.
- (34) When the Commission wondered about possible links between the applicant and the Norwegian exporters concerned the Danish authorities stated by letter of 9 June 2004 that the applicant was not linked to these exporters. They produced a letter from the applicant's auditor to that effect.
- (35) Lastly, the importers received no information of any sort as to the failure of the Norwegian local authorities to fulfil their obligations, nor were they alerted to the risks they might be running in importing fish from Norway.
- (36) The dossier sent to the Commission on 6 May 2003 shows that the applicant acted in good faith and that there was no deception or obvious negligence on its part.



- (37) In this instance, repayment of the import duties is justified.
- (38) Where special circumstances warrant repayment or remission, Article 908 of Regulation (EEC) No 2454/93 allows the Commission, under conditions that it may determine, to authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and law.
- (39) Denmark, Germany, Italy, the Netherlands, Portugal, Sweden and the United Kingdom have requested the Commission's authorisation to repay or remit import duties in cases involving issues of fact and law comparable to the present case.
- (40) Such authorisation may be granted to the Member States concerned on condition that it is used only in cases strictly comparable in fact and law to the cases in question. The authorisation should cover requests for repayment or remission of duties submitted within the statutory time limits and relating to goods imported under declarations made by customs agents including invoice declarations drawn up by authorised exporters up to 31 August 2001, the date on which the Community informed the Norwegian authorities of the problems encountered with imports into the Community of fish originating in Norway. There must be no deception or obvious negligence on the part of the importers.

HAS ADOPTED THIS DECISION:

*Article 1*

The remission of import duties amounting to XXXXXXXXX referred to in Denmark's request of 6 May 2003 is justified.

*Article 2*

Denmark, Germany, Italy, the Netherlands, Portugal, Sweden and the United Kingdom are authorised to repay or remit import duties in cases strictly comparable in fact and law to the case at issue, referred to in Denmark's request of 6 May 2003.

The authorisation shall cover requests for repayment or remission of duties submitted within the statutory time limits and relating to goods imported under declarations made by customs agents including invoice declarations drawn up by authorised exporters up to 31 August 2001.

*Article 3*

This Decision is addressed to Denmark, Germany, Italy, the Netherlands, Portugal, Sweden and the United Kingdom.

Done at Brussels, 6-10-2004

*For the Commission*

*Frits Bolkestein*

*Member of the Commission*