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**COMMISSION IMPLEMENTING DECISION**

**of 19.9.2023**

**on repayment of import duties pursuant to Regulation (EU) No 952/2013 of the  
European Parliament and of the Council**

**(REP 03/2022)**

(Only the Spanish text is authentic)

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code<sup>1</sup>, and in particular Article 123(2), first subparagraph, thereof,

After consulting the Customs Code Committee,

Whereas:

## 1. ARTICLE BACKGROUND AND FACTS

- (1) By Commission Implementing Regulation (EU) 2019/159, the Commission imposed definitive safeguard measures against imports of certain steel products. Pursuant to Article 1(1) of that Implementing Regulation, a tariff quota was opened in relation to certain products covered by Combined Nomenclature (CN) code 7210 49 00 originating in China. That tariff quota (No 09.8821) was opened on 1 April 2022<sup>2</sup> with an initial volume of 117 372 980 net kilograms. It was exhausted on 1 April 2022 and the last corresponding allocation was made on 5 April 2022.
- (2) The economic operator submitted the temporary storage declaration No 22ES00361185003449 on 17 February 2022 for flat-rolled products of other alloy steel of a width of 600 mm or more, which fall into product number 4.B (and TARIC code 7210490080 ) under Annex IV to Implementing Regulation (EU) 2019/159.
- (3) The goods were kept in temporary storage (as defined in Article 5(17) of Regulation (EU) No 952/2013) pending the opening of the new quota for steel products on 1 April 2022.
- (4) On 1 April 2022, the economic operator submitted the import Single Administrative Document (SAD) No 22ES00361130091971 for goods to be covered by tariff quota No 09.8821 under Implementing Regulation (EU) 2019/159.

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<sup>1</sup> OJ L 269, 10.10.2013, p. 1.

<sup>2</sup> For the period from 1 April 2022 to 30 June 2022 (corresponding to the last quarter of year 1).

- (5) The SAD declaration was accepted by the Spanish customs authorities on 1 April 2022.<sup>3</sup>
- (6) On 5 April 2022, the tariff quota was partially allocated for the following quantities: 1 292 157.182, 1 067 054.47, 1 412 556.746, 254 094.127, 82 848.906 (net kilograms).
- (7) Since the quantities requested for tariff quota No 09.8821 had not been allocated in full and as a result of the exhaustion of the same quota for China, the Commission informed the Member States on 5 April 2022<sup>4</sup> that it opened the residual tariff quota No 09.8581 as of 1 April 2022 for products originating in China, in accordance with Article 1(5) of Implementing Regulation (EU) 2019/159.
- (8) Article 1(5) of Implementing Regulation (EU) 2019/159 provides that where the relevant tariff-rate quota is exhausted for one specific country, imports from that country for some product categories can be made under the remaining part of the tariff-rate quota for the same product category. This provision shall only apply during the last quarter of each year of application of the definitive tariff-rate quota, which was the case for the product category at issue (4.B).
- (9) Since the economic operator had the option of applying for the residual tariff quota No 09.8581 it requested the SAD to be amended so as to include that tariff quota, submitting for this purpose an attachment to the electronic file to the Spanish customs authorities at 17:59 on 6 April 2022.
- (10) The residual tariff quota No 09.8581 was exhausted on 1 April 2022 with the allocations made on 8 April 2022.
- (11) The Commission treated drawing requests for residual tariff quota No. 09.8581 and for customs declarations accepted on 1 April 2022 in the allocation of 8 April 2022. Thus, when the drawing request for residual tariff quota No 09.8581 (the ‘application for residual tariff quota’) was sent by the Spanish customs authorities to the Commission on 11 April 2022, the quota had already been exhausted. Therefore, the economic operator was not granted any allocation under residual tariff quota No 09.8581.
- (12) According to the Spanish customs authorities, when the application for residual tariff quota was submitted on 6 April 2022, several of the officials responsible for customs clearance were ill, including the official responsible for clearing the SAD, in which the application for residual tariff quota was included. The clearing was therefore assigned to another official. Attempting to amend the SAD, which contained a large number of items, the official encountered an error in the IT application and therefore sent the application for residual tariff quota to the Commission only on 11 April 2022, at a moment when the quota had already been exhausted and when an allocation was no longer possible.
- (13) Since the application for residual tariff quota was submitted before the quota had been allocated (8 April 2022), the application to the Spanish customs authorities was timely. However, the application for residual tariff quota was not timely sent by the Spanish customs authorities to the Commission due to a combination of administrative continuity issues and an IT problem encountered in the customs office. In fact, the

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<sup>3</sup> Annex I of the letter dated from 7 December 2022 sent by the Spanish Customs authorities to the Commission services (Reference letter indicated by the Spanish authorities: D5796322006500).

<sup>4</sup> This information was sent to the Member States via the document “TARIC progress report”, which was posted on CIRCABC, and became immediately available on 6 April 2022.

Commission received from the Spanish customs authorities several belated drawing requests, not only on 11 April 2022, but also on 12 April 2022 and on 13 April 2022.

- (14) Against this background, the economic operator cannot be held responsible for the delayed sending of the application for residual tariff quota and the resulting loss of the right to benefit from the already exhausted quota.
- (15) Finally, a quantity of zero was assigned to the economic operator under the residual tariff quota and the Spanish customs authorities issued an assessment note establishing the duties ("*Liquidación por Resultado de Despacho*" - LRD) for an amount of EUR XXX, which the economic operator paid in order to be able to release the goods.
- (16) On 18 May 2022 the economic operator lodged an application before the Spanish customs authorities for repayment of the import duty it had to pay in order to have the goods released.
- (17) In accordance with Article 116(3) point (d), of Regulation (EU) No 952/2013, where the customs authorities consider that repayment of duties should be granted on the basis of Article 119 of that Regulation, the Member State is to transmit the file to the Commission for a decision if the amount for which the person concerned may be liable in respect of one or more import or export operations equals or exceeds EUR 500 000 as a result of an error or special circumstances.
- (18) On 4 November 2022, the Spanish customs authorities forwarded to the Commission the file for repayment of customs duties on the basis of Article 116(3) point (d), of Regulation (EU) No 952/2013 and Article 98 of Commission Delegated Regulation (EU) 2015/2446<sup>5</sup>. The file was registered by the Commission services on the same date under case number REP 03/2022.
- (19) Upon receipt of additional information requested from the Spanish customs authorities, the transmitted file was deemed complete in accordance with Article 98(2) of Delegated Regulation (EU) 2015/2446 on 7 December 2022, date of formal acceptance by the Commission.
- (20) The file included a summary of the case and an analysis establishing that the conditions referred to in Article 119 of Regulation (EU) No 952/2013 are fulfilled. Enclosed in the file were the following documents:
  - a summary of the facts;
  - an application for repayment;
  - a letter from the economic operator concerned acknowledging and agreeing with the submission of the file to the Commission, and indicating that it had no further comments;
  - several annexes.

## **2. APPLICABLE LEGAL PROVISIONS**

- (21) Where an application for repayment or remission is based on the existence of a reduced or zero rate of import duty on the goods under a tariff quota and the conditions laid down in Article 117(2) of Regulation (EU) No 952/2013 are not

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<sup>5</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

fulfilled, pursuant to Article 119(2) of that Regulation the repayment or remission is to be granted when the following criteria are met:

- the reduced or zero rate of duty was not applied as a result of an error on the part of the customs authorities; and
  - the customs declaration for release for free circulation contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate.
- (22) Pursuant to Article 162 of Regulation (EU) No 952/2013, standard customs declarations are to contain all the particulars necessary for application of the provisions governing the customs procedure for which the goods are declared.
- (23) In accordance with Article 172 of Regulation (EU) No 952/2013, customs declarations complying with the conditions laid down in Article 162 and the other provisions of Chapter 2 of that Regulation, are to be accepted by the customs authorities immediately, provided that the goods to which they refer have been presented to customs.<sup>6</sup>
- (24) The declarant is, upon application, to be permitted to amend one or more of the particulars of the customs declaration after that declaration has been accepted by customs, as provided for in Article 173(1) of Regulation (EU) No 952/2013.
- (25) Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products, defined by reference to the CN codes indicated in Annex I of that Regulation, establishes the opening of a tariff quota in relation to imports into the Union of each of the product categories concerned and each of the periods specified in Annexes IV.1 and IV.2 to that Regulation.
- (26) According to Article 1(6) of Implementing Regulation (EU) 2019/159, where the relevant tariff-rate quota is exhausted or where imports of the product categories<sup>7</sup> do not benefit from the relevant tariff-rate quota, an additional duty at the rate of 25 %, applicable to the net, free-at-Union-frontier price, before duty, is to be applied on the product categories set out in Annex IV.1.
- (27) Article 3 of Implementing Regulation (EU) 2019/159 stipulates that the tariff-rate quotas, opened for the product categories referred to in Article 1(1) of that Regulation, are to be managed by the Commission and the Member States in accordance with the management system for tariff-rate quotas provided for in Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447.<sup>8</sup>
- (28) According to Article 4 of Implementing Regulation (EU) 2019/159, the Member States and the Commission are to cooperate closely to ensure compliance with that Regulation.
- (29) In Implementing Regulation (EU) 2019/159, it is also recalled that based on Union interest considerations and in order to maintain as far as possible traditional trade

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<sup>6</sup> The need to comply with this legal provision is clearly mentioned in the “*Administrative arrangement on the management of tariff quotas*” (Taxud.a.4(2016)814377-rev.1).

<sup>7</sup> This includes the goods covered by the Combined Nomenclature (CN) code 7210490080 originating in China (product number 4B), as specified in Annex IV of Implementing Regulation (EU) 2019/159.

<sup>8</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

flows, the best way of ensuring optimal use of the tariff quotas is to allocate it between the countries having a substantial interest in supplying the product concerned and, for the others, in the chronological order of the dates on which declarations of release for free circulation are accepted, as provided for in Implementing Regulation (EU) 2015/2447.

- (30) The management of tariff quotas according to Articles 49 to 54 of Implementing Regulation (EU) 2015/2447 is done in accordance with the chronological order of the dates of acceptance of customs declarations for release for free circulation, as laid down in Article 49(1) of that Regulation.
- (31) Article 50(1) of Implementing Regulation (EU) 2015/2447 stipulates that the customs authorities are to examine whether a request to benefit from a tariff quota made by the declarant in a customs declaration for release for free circulation is valid in accordance with the Union legislation opening the tariff quota.
- (32) In addition, Article 50(2) of Regulation (EU) 2015/2447 imposes on the customs authorities of the Member States the obligation to act swiftly in order to ensure the uniform management of tariff quotas<sup>9</sup>.
- (33) The treatment of customs declarations, and in particular the granting of tariff benefits, is a function exercised directly by the customs authorities of each Member State. Those authorities have the obligation to ensure the effective management of the Union tariff quota system, which functions on the basis of the ‘first-come, first-served’ principle, as provided for in Article 49(1) of Implementing Regulation (EU) 2015/2447 and underlined in points 1 and 2 of the *Administrative arrangement on the management of tariff quotas* (the ‘Administrative arrangement’)<sup>10</sup>.
- (34) The efficiency of the Union tariff quota management depends not only on the conscientious application by the Member States and the Commission of the relevant provisions of the Union legislation, but also on a close co-operation between the administrations concerned, as highlighted in point 2 of the Administrative arrangement.
- (35) In addition, in applying the provisions for the management of tariff quotas, namely Articles 49 to 54 of Implementing Regulation (EU) 2015/2447, the Member States’ customs authorities and services concerned must pay regard in particular to the fair and uniform treatment of all importers throughout the Union, as underlined in the Administrative arrangement.
- (36) In particular, with respect to the management of Union tariff quotas, the Member States’ customs authorities are responsible for checking the validity of the request made by the declarant to benefit from a tariff quota, in accordance with Article 50(2) of Implementing Regulation (EU) 2015/2447, namely to check whether:

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<sup>9</sup> According to this provision, ‘where a customs declaration for release for free circulation containing a valid request by the declarant to benefit from a tariff quota is accepted and all the supporting documents required for the granting of the tariff quota have been provided to the customs authorities, the customs authorities of the Member State concerned shall transmit that request to the Commission without delay specifying the date of acceptance of the customs declaration and the exact amount for which the request is made’.

<sup>10</sup> In the last consolidated version as agreed in the Tariff Measures section of the Customs Expert Group meeting No 3 of 12 May 2017 (ref. Taxud.a.4(2016)814377-rev.1), Ares(2017)5314845 - 31/10/2017).

- drawing requests correspond exactly to the information in the customs declaration for release for free circulation and are valid, by reference in particular to the integrated Tariff of the European Union (TARIC), the origin and the opening and closing dates of the tariff quota concerned; and
  - the certificate of origin authenticity or other supporting document required for the granting of the tariff quota has been provided to the customs authorities and is valid.
- (37) In the framework of the normal procedure for allocations, the Commission carries out its daily allocation starting at 14.00 CET each day, as explained in point 24 in the Administrative arrangement.
- (38) In accordance with Article 51(2), first subparagraph, of Implementing Regulation 2015/2447, drawing requests are regularly processed on the second working day after the date of acceptance of the customs declaration for release for free circulation in which the declarant made the request to benefit from the tariff quota, as explained in point 24 of the Administrative arrangement.
- (39) Pursuant to Article 51(2), second subparagraph, of Implementing Regulation 2015/2447, any allocation by the Commission is to take into account all unanswered requests to benefit from tariff quotas based on customs declarations accepted up to and including the second previous working day to the day of the allocation, and which the customs authorities have transmitted to the system referred to in Article 54 of that Regulation.
- (40) Moreover, for each tariff quota, the Commission is to allocate quantities on the basis of requests to benefit from that tariff quota received by it following the chronological order of the dates of acceptance of the relevant customs declarations, and to the extent that the remaining balance of the tariff quota so permits, as laid down in Article 51(3) of Implementing Regulation 2015/2447.
- (41) In addition, as indicated in point 25 of the Administrative arrangement, drawing requests communicated more than two working days after the acceptance of the customs declaration for release for free circulation are processed with priority on the day when they are received in [the Commission's] quota system, in chronological (date of acceptance) order with other requests. However, as also highlighted in the point 25 of the Administrative arrangement, Member States shall send all valid drawing requests to the Commission without delay, in accordance with Article 50(2) of Implementing Regulation 2015/2447, as highlighted in recital 32
- (42) The Court of Justice of the European Union has consistently ruled<sup>11</sup> that only errors attributable to acts of the competent authorities confer entitlement to repayment.

### **3. ASSESSMENT OF THE CASE**

- (43) In the present case, the economic operator submitted the application for residual tariff quota, by way of a request for amendment of the SAD, on 6 April 2022.
- (44) With the allocation made by the Commission on 8 of April 2022, in accordance with Article 51(2) of Regulation 2015/2447, the available residual tariff quotas were exhausted.

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<sup>11</sup> Case C-348/89, Mecanarte, paragraph 23 and Case C-409/10, Afasia Knits, paragraph 54.

- (45) Therefore, by the time the Spanish customs authorities sent the drawing requests for the residual quota (on 11 April, on 12 April 2022 and on 13 April 2022), the allocation was no longer possible.
- (46) The residual tariff quota No 09.8581, which in accordance with Article 1(5) of Implementing Regulation (EU) 2019/159 was opened since tariff quota No 09.8821 had not been allocated in full on 5 April 2022, was still available for allocation when the application for residual tariff quota was submitted to the Spanish customs authorities on 6 April 2022.
- (47) In the case at hand, the Spanish customs authorities failed to send the application for residual tariff quota to the Commission in time in line with Article 50 (2) of Implementing Regulation (EU) 2015/2447, in view of the effective drawing on the residual tariff quota..
- (48) In this case, had the Spanish customs authorities acted swiftly, by either sending the application for residual tariff quota to the Commission by 8 April 2022 before 14:00 at the latest, or had they informed the Commission that they were encountering administrative and IT problems and requested the suspension of the allocation, the economic operator would have benefited from the tariff quota. It should be taken into account that a drawing request made on a timely basis for residual tariff quota No. 09.8581, concerning the customs declarations accepted on 1 April 2022, would have been treated in the allocation of 8 April 2022.
- (49) The obligation to act swiftly and without delay may be derived also from the way the Union system on allocation of tariff quotas functions. The system works on the basis of the “first-come first-served” principle reflected in Article 49(1) of Regulation (EU) 2015/2447, which aims to ensure the fair and uniform treatment of all importers throughout the Union as recalled in point 3 of the Administrative arrangement. This requires swift action from the Member States’ customs authorities.
- (50) In view of the above, due to an error attributable to the Spanish customs authorities consisting in the late transmission of the application for residual tariff quota to the Commission, the applicant could not benefit from that quota.
- (51) The error originates from a combination of administrative circumstances related to the Spanish customs officials in charge of sending the drawing request and in an error in the national IT application encountered by the customs office required to deal with the request for quota allocation. Those circumstances led to a late submission of the drawing request by the Spanish customs authorities to the Commission and hence the loss of any benefit under the residual tariff quota for the applicant.
- (52) As a result of this error, and in parallel, the Spanish customs authorities issued the LRD, charging the economic operator the amount of EUR XXX to clear the goods covered by the SAD for release for free circulation. The economic operator was forced to pay that amount in order to comply with the obligation to place the goods under a customs procedure within 90 days, as stipulated in Article 149 of Regulation (EU) No 952/2013. In fact, in the case at hand the economic operator could not have kept the goods under temporary storage in order to wait for the next period of opening of the tariff quota in relation to the product category concerned, taking into consideration that it submitted the temporary storage declaration No 22ES00361185003449 on 17 February 2022 and the new period for the opening of the tariff quota was set to run



only from 1 July 2022 to 30 September 2022<sup>12</sup>, as indicated in the annex IV.1 and IV.2 of Implementing Regulation (EU) 2019/159.

- (53) With the request for amendment of the customs declaration lodged by the economic operator on 6 April 2022, the declaration contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate under tariff quota No 09.8581 as required in Article 119(2) of Regulation (EU) No 952/2013.
- (54) Moreover, the Spanish customs authorities have not indicated any other reason for the delay which could not be attributed to them. On the contrary, in the context of their submission of the file to the Commission they stressed that the delay in processing the application for residual tariff quota resulted from multiple administrative flaws directly attributable to them.
- (55) Furthermore, prior to 8 April 2022 the Spanish customs authorities have not transmitted to the Commission any justified concerns about problems with a timely sending of new drawing requests related to residual tariff quota No 09.8581. If the Spanish customs authorities had alerted the Commission about the problems they were experiencing, the Commission could have suspended the allocation of tariff quotas pursuant to Article 51(1), second subparagraph, of Implementing Regulation (EU) 2015/2447<sup>13</sup> and point 42 of the Administrative arrangement<sup>14</sup> or introduced a blocking period on the concerned residual quota, as provided for by point 44 of the Administrative arrangement<sup>15</sup>. This would have allowed the Spanish customs authorities more time to remedy any breakdown of its computer systems having an impact on tariff quota management and to submit new drawing requests.
- (56) Despite the alleged IT flaws affecting the national import system, the Spanish customs authorities timely submitted another 19 drawing requests for the same residual tariff quota No. 09.8581 for the allocation that took place on 8 April 2022. As a result, on that date the quantities requested under that residual quota through those 19 drawing requests were partially allocated by the Commission.
- (57) Therefore, the Commission could not have foreseen that the Spanish customs authorities were facing technical problems in their national import IT system and, on that basis, taken itself the initiative to introduce a blocking period on the residual quota or suspend the allocation of quotas. All those specific factual elements clearly demonstrate that the Spanish customs authorities failed to ensure a fair and uniform treatment of all importers and to act diligently to fulfil their obligation to safeguard the effective management of the Union tariff quota system. Such management requires the

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<sup>12</sup> According to Article 149 of Regulation No 952/2013 “*non-union goods in temporary storage shall be placed under a customs procedure or re-exported within 90 days.*”

<sup>13</sup> Article 51(1) stipulates that “*the Commission shall make allocations on working days. However, the Commission may decide not to allocate quantities on a given working day provided that the competent authorities of the Member States have been informed in advance.*”

<sup>14</sup> According to point 42 of the Administrative arrangement, “*except in cases of force majeure, the suspension of allocations in accordance with Article 51(1) of Regulation 2015/2447 does not exceed two consecutive working days, even when these days overlap two calendar weeks. An administration (Member State or DG TAXUD) is expected to take immediate steps to remedy any breakdown of its computer systems having an impact on tariff quota management.*”

<sup>15</sup> According to point 44 of the Administrative arrangement, in the interests of treating importers equally and fairly, particular tariff quotas may be blocked if the circumstances so justify. The tariff quota may then be blocked for a minimum period of ten working days starting after that the necessary data has been inserted both in the TARIC system and in the Quota system.

conscientious application by the Member States and the Commission of the relevant provisions of Union law and a close co-operation between the administrations concerned, as highlighted in point 2 of the Administrative arrangement.

- (58) In addition, there is nothing in the file indicating that the situation, which led to the notification of the customs debt, resulted from deception by the economic operator as referred to in Article 116(5) of Regulation (EU) No 952/2013.

#### **4. CONCLUSION**

- (59) The Commission therefore concludes that in the present case the failure to apply a reduced rate of duty was a result of an error on the part of the Spanish customs authorities, in the sense of Article 119(2) of Regulation (EU) No 952/2013.
- (60) In line with point 41 of the Administrative arrangement, the Spanish customs authorities requested the Commission to advise them on what benefit the economic operator would have received, had the submission of the application for residual tariff quota not been delayed. The Commission replied that the drawing requests for order number 09.8581 (sub-quota of the 09.8612) would have been treated in the allocation of 8 April 2022 and would have received 77,97466 % of the requested amount.
- (61) That means that the volume not covered by the quota being out of quota benefit would be reduced to 444 141 kg which corresponds to a customs value of EUR XXX. That amount would have been charged with the 25 % additional duty (safeguard), resulting in a customs debt of EUR XXX.
- (62) Thus, the amount to be reimbursed to the economic operator is EUR XXX. That amount is the result of a deduction of EUR XXX from the amount of EUR XXX, which was the amount paid by the economic operator to be able to clear the goods.

#### **5. CASES INVOLVING COMPARABLE ISSUES OF FACT AND OF LAW**

- (63) Article 101(3) of Delegated Regulation (EU) 2015/2446 gives the Commission the possibility to specify the conditions under which the customs authorities may repay or remit [customs] duties in cases involving comparable issues of fact and of law. Nonetheless, this case reveals a large spectrum of specificities linked to a situation in which the national customs authorities have failed to act diligently to fulfil their obligation to safeguard the effective management of the Union tariff quota system. Therefore, the Commission has decided not to avail itself of that possibility.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The repayment of import duty of EUR XXX by the Kingdom of Spain is justified.

*Article 2*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 19.9.2023

*For the Commission*

*Paolo GENTILONI*

*Member of the Commission*