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REM 3/2000



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.12.2000

NOT TO BE PUBLISHED

COMMISSION DECISION

Of 27.12.2000

**finding that remission of import duties is justified in a particular case and refusing
Germany authorisation under Article 908 of Commission Regulation (EEC) No 2454/93
of 2 July 1993 laying down provisions for the implementation of Council Regulation
(EEC) No 2913/92**

(Request submitted by Germany)

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(Request submitted by Germany)

(Dossier REM 3/2000)

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 Regulation (EC) No 955/1999,²

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 1602/2000,⁴ and in particular Article 907 thereof,

¹ OJ No L 302, 19.10.1992, p.1

² OJ No L 119, 7.5.1999, p.1

³ OJ No L 253, 11.10.1993, p.1

⁴ OJ No L 188, 26.7.2000, p.1

Whereas:

- (1) By letter dated 22 February 2000, received by the Commission on 9 March 2000, Germany 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 December 1998 a German company imported boneless lamb meat (CN code 0204 23 00) from New Zealand into the customs territory of the Community, using the local clearance procedure.
- (3) These products are covered by Article 1(a) of Council Regulation (EC) No 2467/98 of 3 November 1998 on the common organisation of the market in sheepmeat and goatmeat⁵. In accordance with Article 2 of Commission Regulation (EC) No 1439/95 of 26 June 1995 laying down detailed rules for the application of Council Regulation (EEC) No 2467/98⁶, the company presented an import licence, issued by the competent German authorities, to import lamb meat classified under CN code 0204 into the Community.
- (4) It applied for the application of the duty free arrangements under quota LK 4033 (tariff suspension under Commission Regulation (EC) No 2327/97 of 25 November 1997 opening Community tariff quotas for 1998 for sheep, goats, sheepmeat and goatmeat falling within CN codes 0104 10 30, 0104 10 80, 0104 20 10, 0104 20 90 and 0204 and derogating from Regulation (EC) No 1439/95⁷).
- (5) The import licence presented for positions 11, 13, 14 and 16 of the supplementary declaration did not suffice to cover the quantity of meat imported for these headings, which totalled 4 483.3 kg. The licence only covered a total of 3 574.6 kg. There was therefore a difference of 908.7 kg for which the company was not able to present a valid import licence.

⁵ OJ No L 312, 20.11.1998, p. 1

⁶ OJ No L 143, 27.6.1995, p. 7

⁷ OJ No L 323, 26.11.1997, p. 5

- (6) The German authorities therefore asked the company to pay the import duties due, a total of XXXXX- the amount in respect of which remission has been requested.
- (7) In support of the application submitted by the competent German authorities the company indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the authorities had sent to the Commission and had nothing to add.
- (8) By letter dated 19 October 2000, sent on 20 October 2000, the Commission notified the company of its intention to withhold approval and explained the grounds for its decision.
- (9) By letter dated 17 November 2000, received by the Commission on the same date, the company expressed its opinion on the Commission's objections. It maintained its view that the circumstances of the case constituted a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92, involving neither deception nor obvious negligence on its part. It specified that a simple miscalculation could not be regarded as an obvious negligence, especially where it had never made this type of mistake before. Admitting the existence of obvious negligence in this case would therefore be completely disproportionate compared to the aim of equity laid down by Article 239 of Regulation (EEC) N° 2913/92.
- (10) The administrative procedure was therefore suspended, in accordance with Article 907 of Regulation (EEC) No 2454/93, between 21 October and 17 November 2000.
- (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 on 8 December 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (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) Court of Justice case law indicates that Article 239 represents a general principle of equity designed to cover an exceptional situation in which an operator might find himself compared with other operators carrying out the same activity.
- (14) In this case, in order to benefit from the tariff quota at a zero rate of duty, the company should have submitted, for all the quantities imported in 1998, a certificate of origin issued by the New Zealand competent authorities, as well as an import licence, issued by the German competent authorities on presentation of the certificate of origin.
- (15) A writing error on the part of the company led to a quantity of boneless lamb meat (908.7 kg) in excess of the quantity available in 1998 on the import licence being imported at a zero rate of duty.
- (16) Without this writing error, the company would have realised in December 1998 that the quantities covered by the import licence had been exhausted. In view of the quantities still available for 1998 for the certificate of origin it had, it would have obtained the issuing by the competent German authorities, before the end of 1998, of an import licence for the additional 908.7 kg of lamb meat imported in 1998.
- (17) Since the certificate of origin was valid only for the year in question, i.e. 1998, and since the mistake was discovered by the competent authorities only in 1999, the company could not apply in 1999 for an additional import licence to cover quantities imported in 1998.
- (18) However, it should be noted that for 1998, 2 004 tonnes are still available today on the import quota of lamb meat (fresh, chilled or frozen) from New Zealand at a zero rate of duty. The quota in question in this case is therefore not still exhausted.

- (19) Since quantities are still available under the quota and since the company had for the quantities in question a valid certificate of origin at the time of import, the mistake made by it is purely formal (miscalculation). Under these conditions, granting it in this case the benefit of the quota for the 908.7 kg in question by no means calls into question the choice of commercial policy laid down by Regulation (EC) No 2327/97.
- (20) Therefore all the circumstances taken together constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (21) However, such a situation can give rise to the remission of duties only if no deception or obvious negligence may be attributed to the person concerned
- (22) In this case the file sent to the Commission by the German authorities and the letter of 17 November 2000 from the company show that the company made a simple writing error concerning the import licence and that it thought in good faith that its import licence covered the quantities in question.
- (23) Moreover, as the German customs authorities themselves state, the company is known to the customs authorities as a declarant with a consistently good record of compliance with customs rules. Finally this was the first time the company has been accused of this type of error.
- (24) In the light of all the foregoing it may be concluded that the company acted in good faith and that the circumstances indicate neither deception nor obvious negligence on its part.
- (25) Remission of import duties is therefore justified in this case.

- (26) Under Article 908 of Regulation (EEC) No 2454/93, where the circumstances under consideration justify repayment or remission, the Commission may, under conditions which it shall determine, authorise one or more Member States to repay or remit duties in cases involving comparable issues of fact and of law.
- (27) In a letter dated 22 February 2000 the Federal Republic of Germany requested authorisation to repay or remit duties in cases involving comparable issues of fact and law.
- (28) However, given the type of failure involved, this decision is very unusual in terms of both fact and law. It cannot therefore serve as a reference for national decisions taken in application of an authorisation granted by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties in the sum of XXXXX requested by the Federal Republic of Germany on 22 February 2000 is justified.

Article 2

The authorisation requested by the Federal Republic of Germany in its letter of 22 February 2000 under Article 908 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 is not granted.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 27.12.2000

For the Commission

Member of the Commission