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**REM 6/99**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.6.2000

NOT TO BE PUBLISHED

**COMMISSION DECISION**

**Of 14.6.2000**

**finding that remission of import duties is justified in a particular case**

**(Request submitted by Germany)**

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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 955/1999;<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 1662/1999,<sup>4</sup> and in particular Article 907 thereof,

Whereas,

- (1) By letter dated 5 March 1999, received by the Commission on 12 March 1999, 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.

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

<sup>2</sup> OJ L 119, 7.5.1999, p.1

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

<sup>4</sup> OJ L 197, 29.7.1999, p. 25

- (2) From 17 August 1994 a German firm held an inward processing authorisation. In practice, the goods for processing consisted of various meats (beef, chicken, turkey). The compensating products were obtained by carving, seasoning, roasting and cooking the goods to be processed.
- (3) As part of the inward processing arrangements, the firm was authorised to release up to 10% of the processed goods for free circulation under a local clearance procedure.
- (4) The remainder of the compensating products either went into customs warehousing, from which they were removed either for export or further processing, or went directly on to further processing under an authorisation held by the firm's client.
- (5) From 1 July 1996 the client in question no longer wished to take advantage of his further processing authorisation but wanted the processed goods to be delivered to him after their release for free circulation.
- (6) Subsequently, therefore, the firm released goods intended for that client into free circulation (discharge of the inward processing procedure by release for free circulation). As the quantities to be cleared through customs exceeded the amount (10%) that the firm was authorised to release for free circulation under the local processing procedure that it was using, the firm submitted customs declarations for clearance for free circulation to the competent customs office.
- (7) The customs office carried out the clearance for free circulation and mistakenly levied the import duties in accordance with the first indent of Article 122(a) of Regulation (EEC) No 2913/92, even though the compensating products concerned are not covered by the list in Annex 79 of Regulation (EEC) No 2454/93. The import duties were therefore calculated on the basis of the quantity, composition and customs value of the compensating products.

- (8) During a post-clearance investigation in September 1997 the German customs authorities discovered that the duties should have been levied in accordance with Article 121 of Regulation (EEC) No 2913/92, i.e. on the basis of the quantity, composition and customs value of the import goods.
- (9) The authorities therefore claimed payment of the amount of import duties owed for the period July 1996 to October 1997, i.e. a total of XXXXXX - the amount for which remission has been requested.
- (10) In support of the application submitted by the competent German authorities the firm 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.
- (11) By letter of 28 June 1999 the Commission requested further information from the German authorities. This information was provided by letter dated 28 September 1999, received by the Commission on 7 October 1999. The administrative procedure was therefore suspended, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, between 28 June 1999 and 7 October 1999.
- (12) By letter dated 14 January 2000, sent on 17 January 2000, the Commission notified the firm of its intention to withhold approval and explained the grounds for its decision.
- (13) By letter of 7 February 2000, received by the Commission on the same day, the firm responded to these 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 stressed that it had shown no obvious negligence since it had carried out the customs operations in close cooperation with the competent local customs authorities.

- (14) The administrative procedure was therefore suspended, in accordance with Article 907 of Regulation (EEC) No 2454/93, between 17 January and 7 February 2000.
- (15) 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 13 March 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (16) By letter of 14 March 2000 the Commission requested further information from the German authorities. This information was provided by letter dated 4 May 2000, received by the Commission on 25 May 2000. The administrative procedure was therefore suspended again, in accordance with Articles 905 and 907 of Regulation (EEC) No 2454/93, from 14 March 2000 to 25 May 2000.
- (17) 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.
- (18) The Court of Justice of the European Communities has taken the view that the said 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.
- (19) Over a period of more than a year (July 1996 - October 1997), the customs service accepted numerous customs declarations discharging the inward processing procedure by means of release for free circulation of the compensating products. As the German authorities have confirmed, the amount of import duties for each declaration was wrongly calculated by the customs office itself.

- (20) The repeated acceptance of customs declarations by the customs office and its mistake in the calculation of the amount of duties are such as to constitute an active error by the customs authorities and hence 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 repayment of remission of duties only if no deception or obvious negligence may be attributed to the person concerned. In this connection account should be taken of the nature of the mistake made by the national customs authorities, the professional experience of the person concerned and the diligence shown by that person.
- (22) In the case under consideration the firm had some professional experience of customs. Not only was it entitled to use the local clearance procedure, which is granted only to operators with some professional experience, but it had also held an inward processing authorisation since August 1994 which allowed it to enter 10% of the compensating products for free circulation under the local clearance procedure.
- (23) However, although it had been authorised since August 1994 to release compensating products for free circulation under the local processing procedure that it was using, it seems that it was not until July 1996, when its client asked it to buy the goods after they have been cleared through customs, that the firm had to release compensating products for free circulation and so needed to find out about the applicable customs rules.
- (24) Despite its professional experience the firm had doubts as to how to release goods processed under the inward processing procedure for free circulation in the Community. To eliminate these doubts it acted with due diligence by contacting customs for advice on what procedures to follow for release for free circulation under these circumstances.

- (25) Furthermore, as the German authorities have confirmed, it was the local customs authorities themselves that calculated the amount of import duties to be paid. When they carried out these calculations they knew that the items of charge on the declarations referred to compensating products and not goods for processing.
- (26) Therefore, firstly, the firm followed the advice it received from the customs authorities, regarding both the presentation of customs declarations and the entries to be made on those declarations; secondly, the customs authorities accepted a large number of incorrect declarations over a long period without contesting them and, thirdly, it was the authorities themselves, in full knowledge of the facts, that calculated the import duties to be paid on the basis of the entries on the declarations. Consequently it must be acknowledged that the firm had legitimate grounds for believing that there was nothing incorrect about its operations. Equally, despite its professional experience, it cannot be considered to have shown obvious negligence.
- (27) Post-clearance remission of import duties is therefore justified in this case,



HAS ADOPTED THIS DECISION:

*Article 1*

The remission of import duties in the sum of XXXXX requested by Germany on 5 March 1999 is hereby found to be justified.

*Article 2*

This Decision is addressed to Germany.

Done at Brussels, 14.6.2000

*For the Commission*

*Member of the Commission*