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REM 21/02



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17-10-2003
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NOT FOR PUBLICATION

COMMISSION DECISION

Of 17-10-2003

finding that repayment of import duties is justified in a particular case

(Request submitted by Denmark)

(only the Danish text is authentic)

(REM 21/02)

FR

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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,¹ as last amended by Regulation (EC) No 2700/2000,²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92³ as last amended by Regulation (EC) No 1335/2003,⁴

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 311, 12.12.2000, p. 17.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 187, 26.7.2003, p. 16.

Whereas:

- (1) By letter dated 5 December 2002, received by the Commission on the same day, Denmark asked the Commission to decide, under Article 239 of Regulation (EEC) No 2913/92, whether the repayment of import duties was justified in the following circumstances.
- (2) Under the second paragraph of Article 2 of Regulation (EC) No 1335/2003, 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 of 21 May 2003.⁵
- (3) Between 1994 and 1996 a Danish firm imported textile articles (Chapter 62 of the Combined Nomenclature) from Bangladesh.
- (4) Imports into the Community of this type of product originating in Bangladesh were eligible for preferential arrangements under the Generalised System of Preferences. This meant that under Article 77 of the version of Regulation (EEC) No 2454/93 in force at the time, products covered by a Form A certificate of origin issued by the competent authorities in Bangladesh qualified for preferential tariff treatment on their release for free circulation.
- (5) In the case in point, the firm presented form A certificates issued by the competent Bangladesh authorities in support of its customs declarations for release for free circulation. 158 certificates are involved in this case. The Danish customs authorities accepted the declarations and granted preferential tariff treatment.
- (6) Following an investigation into the conditions under which the Bangladesh authorities issued Form A certificates of origin, carried out in Bangladesh between 13 November and 5 December 1996 by representatives of several Member States and the Commission, it was found that a very large number of certificates issued for textiles should not have been issued because the rules of origin had not been complied with.
- (7) During the investigative mission it was also found that 259 form A certificates of origin for textiles, including the 158 certificates involved in this case, had indeed been

issued by the Bangladesh authorities, but the textiles had not been manufactured or exported by the companies indicated on the certificates. The Bangladesh authorities therefore cancelled and withdrew those certificates. They are listed in "List A".

- (8) Since the textile products imported to Denmark were therefore not eligible for preferential tariff treatment, the Danish authorities then required the firm to pay import duties of DKK 2 989 004, which the firm paid, and for which it is now requesting repayment in this case.
- (9) In support of the application submitted by the competent Danish authorities, the firm indicated that, in accordance with Article 905 of Regulation (EEC) No 2454/93, it had seen the dossier the Danish authorities had sent to the Commission and had nothing to add.
- (10) By letter of 15 May 2003 the Commission requested further information from the Danish authorities. They provided the information by letter dated 27 June 2003, received by the Commission on 1 July 2003.
- (11) The administrative procedure was therefore suspended, in accordance with Article 907 of Regulation (EEC) No 2454/93, between 16 May 2003 and 1 July 2003.
- (12) 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 12 September 2003 within the framework of the Customs Code Committee (repayment section) to consider the case.
- (13) Under Article 239 of Regulation (EEC) No 2913/92 import duties may be repaid or remitted in special situations (other than those laid down in Articles 236, 237 and 238 of the said Regulation) resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.
- (14) 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.

⁵ OJ L 134, 29.5.2003, p. 1.

- (15) In the case in point, the granting of preferential tariff treatment for the imports was subject to presentation of Form A origin certificates.
- (16) As already noted, the certificates concerned were withdrawn by the Bangladesh authorities.
- (17) Reliance on the validity of such certificates 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.
- (18) 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 those expectations.
- (19) In this case, the certificates were indeed issued by the competent Bangladesh authorities.
- (20) It is plain from recent rulings of the Court of First Instance of the European Communities that even if the Bangladesh authorities were misled, this does not necessarily rule out the existence of a special situation in this case within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (21) In February 1996 the Danish authorities asked the competent Bangladesh authorities to carry out post-clearance checks on ten of the certificates concerned in this case, explaining that they wished to know whether the rules of origin had been observed, and that the firm in Bangladesh was not known. In June 1996 the competent Bangladesh authorities confirmed that the ten certificates were valid and stated that the rules of the Generalised System of Preferences had indeed been observed. They had the opportunity to investigate all the necessary facts and information before confirming the validity of the certificates. Yet the same certificates were found to be invalid following the Community investigative mission.
- (22) Furthermore, during that mission one exporter declared that the certificates drawn up in the name of his company had been signed by an unauthorised person, that his company had not used the Generalised System of Preferences between 1994 and 1996, and that he did not know the Danish firm. The competent Bangladesh authorities then withdrew the certificates drawn up in the name of that exporter. Yet in 1999 they

confirmed the validity of 19 certificates (not, however, among those involved in this case) drawn up in the name of the same exporter in 1996 for goods consigned to the firm concerned in this case.

- (23) It should also be noted that other failures which would constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92 are attributable to the competent Bangladesh authorities.
- (24) Thus there is evidence that the checks conducted by the Bangladesh authorities on exports of textile products to the European Community were inadequate.
- (25) From the mid 1990s there had been a very substantial increase in exports of textile products from Bangladesh to the European Union, although the production capacity for yarn originating in Bangladesh had not increased on the same scale.
- (26) The Bangladesh authorities had also submitted two requests, in 1989 and 1994, for derogation from the rules of origin applicable to them. The first request contained information from which it could be deduced that the competent Bangladesh authorities knew or should have known that the bulk of the textile products covered by form A certificates issued in Bangladesh did not fulfil the origin criteria applicable under the Generalised System of Preferences.
- (27) By the same token, it can be deduced from the Bangladesh government's policy of expanding the country's spinning industry and the various requests for exemptions from the rules of origin that the Bangladesh authorities knew or, at the very least, should have known that neither the country's cotton harvests nor its spinning capacities were sufficient to produce the quantities of yarn used in the manufacture of products for export.
- (28) Moreover, after carrying out post-clearance checks, the Bangladesh authorities subsequently withdrew a very large proportion of the many Form A certificates they had issued for the products in question. In fact, very few of the certificates issued withstood post-clearance scrutiny.
- (29) Furthermore, the competent Bangladesh authorities were not able to check a very large number of the form A certificates of origin they had issued.

- (30) 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.
- (31) These circumstances involve neither deception nor obvious negligence on the part of the firm concerned.
- (32) In fact, the way the firm conducted its transactions with its Bangladesh suppliers demonstrates that it was particularly vigilant.
- (33) From spring 1993 onwards, every time it visited Bangladesh it checked that the form A certificates had indeed been issued by the competent authorities of that country.
- (34) It also checked that the certificates addressed to it did bear the signature of an authorised official of the departments competent to issue the certificates.
- (35) Moreover, for every order it checked with its supplier that everything was in order and that a form A certificate had been issued in accordance with the rules.
- (36) From August 1994 to 1997, it also hired staff in Bangladesh to visit its suppliers, not only to check the goods at the production and shipping stages, but also to ensure that the documents were correctly drawn up.
- (37) It must therefore be acknowledged that the firm was not obviously negligent.
- (38) The firm concerned therefore acted in good faith and committed no deception or obvious negligence.
- (39) Therefore the repayment of import duties is justified in this case,

HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of DKK 2 989 004 requested by Denmark on 5 December 2002 is justified.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done in Brussels, 17-10-2003

For the Commission
Frits Bolkestein
Member of the Commission