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REM 02/06

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2006
C(2006)6819

NOT FOR PUBLICATION

COMMISSION DECISION

Of 22.12.2006

finding that the remission of import duties is not justified in a particular case

(Only the Greek version is authentic)

(Request submitted by the Hellenic Republic)

(REM 02/2006)

FR

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(Request submitted by the Hellenic Republic)

(REM 02/2006)

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 Code¹, as last amended by Regulation (EC) No 648/2005²,

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 402/2006⁴, and in particular Article 907 thereof,

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 117, 4.5.2005, p. 13.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 70, 9.3.2006, p. 35.

Whereas:

- (1) By letter dated 22 February 2006, received by the Commission on 7 March 2006, the Hellenic Republic 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 14 July 2004, a Greek firm declared 2 447.3 tonnes of barley falling within subheading 1003 00 90 of the Combined Nomenclature (CN) for release for free circulation. At the same time, the firm requested that that quantity be drawn on tariff quota No 09.5894, opened under Council Decision 2003/286/EC of 8 April 2003⁵. This quota provided for the exemption from import duties of a quantity of 55 000 tonnes during the period 1 July 2004 to 30 June 2005.
- (3) On 14 July 2004, the tariff quota concerned was not considered as critical within the meaning of Article 308c of Regulation (EEC) No 2454/93 (a tariff quota is be considered as critical as soon as 75% of the initial volume has been used, or at the discretion of the customs authorities); the competent customs office did not ask for a security to be lodged. On 15 July 2004, the request to draw on tariff quota 09.5894 was forwarded to the competent national office for administration of the quotas, and the office forwarded the request to the Commission on the same day. On 16 July 2004, the local customs office was informed that the quantities involved could not be charged to the quota in question. Consequently, the Greek authorities demanded the payment of customs duties of EUR XXXXX, of which the firm requests the remission, claiming that the Commission and the Greek customs authorities had failed in their obligations.
- (4) In support of the application submitted by the Greek authorities the firm stated, in accordance with Article 905(3) of Regulation (EEC) No 2454/93, that it had seen the file the Greek authorities had sent and had nothing to add.

⁵ OJ L 102, 24.4.2003, p. 60. Council Decision of 8 April 2003 on the conclusion of a Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions.

- (5) The firm claimed that the alleged failings on the part of the Commission and the local authorities as regards the administration of the operations concerned possibly constituted a situation as referred to in Article 239 of Regulation (EEC) No 2913/92. It also stressed that, because of those failings, it was facing serious financial difficulties.
- (6) By letter dated 26 September 2006, received by the firm on 29 September 2006, the Commission notified the firm of its intention to withhold approval and explained the reasons for this.
- (7) By letter dated 20 October 2006, received by the Commission on 21 October 2006, the firm stated its position on the Commission's objections.
- (8) In accordance with Article 907 of Regulation (EEC) No 2454/93, the period of nine months within which the Commission decision must be taken was extended by one month.
- (9) In accordance with Article 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 27 November 2006 within the framework of the Customs Code Committee - Section for General Customs Rules.
- (10) 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.
- (11) The Court of Justice of the European Communities has consistently held that this provision represents a general principle of equity designed to cover a special situation in which an operator, that would not otherwise have incurred the costs associated with the customs duties concerned, might find itself compared with other traders carrying out the same activity.
- (12) According to the firm, the sudden exhaustion of the initial volume of the quota, although at the time the declaration concerned was submitted and accepted the Community IT system for the administration of quotas did not indicate that quota No 09.5894 was considered as critical, and the fact that the system did not show the number of applications pending or awaiting processing by the competent Commission

department constituted a failing by the Commission within the meaning of the first indent of Article 905(1), in view of the consequences for EU operators.

- (13) The procedure for managing tariff quota No 09.5894 is laid down in Article 4(1) of Decision 2003/286/EC, which stipulates that the quota is administered by the Commission in accordance with Articles 308a to 308c of Commission Regulation (EEC) No 2454/93. The procedure is based on the “first-come, first-served” principle.
- (14) As regards the allocation of quota volumes, the operative date is that when the declaration is accepted by the customs authorities (see Article 308a(1) of Regulation (EEC) No 2454/93). Thus, for a specified acceptance date, the Commission considers all drawing requests originating from the different Member States until the quota is exhausted. Any allocation must take into account all unanswered requests which relate to declarations for release for free circulation accepted up to and including the second previous day and which have been communicated to the Commission (Article 308b(2) of Regulation (EEC) No 2454/93). Therefore, for a declaration accepted on day N and for which the request for quota charging was transmitted to the Commission within the time limit, the allocation of the quantity requested may, according to the rules, take place only on day N+2.
- (15) In practice, allocation of the tariff quota is carried out on the afternoon of each Commission working day. The balance available resulting from the application of these rules thus becomes known at the end of the afternoon. Since drawing requests administered in accordance with Articles 308a to 308c are not considered before the second day after the date of acceptance of the import declarations concerned, for the majority of tariff quotas there are invariably a certain number of recent requests awaiting a response at the moment of consultation. These requests appear in the Community administration system under the heading “Total amount pending”. The requests are not monitored in real time; instead, every day the requests that have not yet been processed are collected in this system, as long as they were transmitted before 14:00. It must be stressed that there is no legal provision requiring such monitoring of requests pending.
- (16) The procedure described above guarantees equal treatment for requests from all the Member States.

- (17) In the case at hand, the quota was initially for a quantity of 55 000 tonnes. On the evening of 13 July 2004, the quantity available was 37 140.025 tonnes; declarations of drawing requests accepted on 12 July were charged to the quota on 14 July 2004; as a very large quantity was released for free circulation on 12 July and consequently charged on 14 July, on the evening of 14 July the system indicated that the quota was critical. On 15 July, following the charging of the declarations accepted on 13 July, the quota was exhausted.
- (18) Given the above description of the procedure for the administration of tariff quotas, it would appear that the legal provisions were applied correctly. The fact both that the quota was exhausted following the charging to it of declarations accepted on 13 July and that the firm could not therefore draw on the tariff quota cannot in itself constitute a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92, since no economic operator can be certain before the Commission carries out the drawing operation that it will benefit from a reduction or exemption from customs duties in connection with the quota concerned.
- (19) The Commission cannot, therefore, be held responsible for any failing which may have placed the firm in a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92.
- (20) Moreover, it should be noted that no record is kept of the “Total amount pending” for a particular quota on a particular date; as a result, it is not possible to determine the “Total amount pending” on 13 and 14 July 2004. However, it is unlikely that the absence of an indication to that effect would have placed the firm in a special situation compared with other economic operators, since all of them were in the same situation. Furthermore, the information indicated under the “Total amount pending” heading in the Community quota management system is not such as to give economic operators any certainty of benefiting from a tariff quota.
- (21) When a Member State forwards a request for reimbursement or remission to the Commission with a view to examining whether or not the Commission has been guilty of a failing that may have placed a firm in a special situation within the meaning of Article 239(2) of Regulation (EEC) 2913/92 and the amount concerned is less than EUR 500 000, the Commission has no obligation, when a failing on its part cannot be

established, to examine whether other facts may have constituted a special situation within the meaning of Article 239 of Regulation (EEC) No 2913/92. Consequently, it is the responsibility of the Greek authorities to decide whether, on the basis of the other arguments put forward by the firm, the latter can be considered to have been placed in a special situation within the meaning of Article 239 of Regulation (EEC) 2913/92.

- (22) The dossier as a whole thus gives no grounds for finding that there was a special situation within the meaning of Article 239(1) of Council Regulation (EEC) No 2913/92 as a result of a failing by the Commission.
- (23) There is therefore no need to examine whether the second condition laid down in Article 239 of Regulation (EEC) No 2913/92 has been met.
- (24) The remission of import duties requested is not therefore justified,

HAS ADOPTED THIS DECISION:

Article 1

The remission of import duties of EUR XXXXX requested by the Hellenic Republic on 22 February 2006 is not justified.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 22.12.2006

For the Commission
László KOVÁCS
Member of the Commission