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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.3.2001

NOT TO BE PUBLISHED

**COMMISSION DECISION**

**of 29.3.2001**

**finding that it is justified to waive post-clearance entry in the accounts of import duties in a particular case and authorising Belgium, Denmark, Germany, Spain, France, Luxembourg, the Netherlands and the United Kingdom to refrain from post-clearance entry in the accounts in cases involving comparable issues of fact and of law**

**(Request submitted by Belgium)**

**(REC 02/2000)**

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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 2700/2000,<sup>2</sup>

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,<sup>3</sup> as last amended by Regulation (EC) No 2787/2000,<sup>4</sup> and in particular Articles 873 and 907 thereof,

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

<sup>2</sup> OJ L 311, 12.12.2000, p. 17.

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

<sup>4</sup> OJ L 330, 27.12.2000, p. 1.

Whereas:

- (1) By letter dated 3 July 2000, received by the Commission on 7 July 2000, Belgium asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it was justified to waive post-clearance entry in the accounts in the following circumstances. In the alternative Belgium also asked whether, under Article 239 of Regulation (EEC) No 2913/92, remission of import duties was justified.
- (2) In August, November and December 1994 a Belgian firm declared textiles originating in Bangladesh for release for free circulation. The firm requested preferential tariff treatment under the Generalised System of Preferences. In support of the five customs declarations, it presented certificates of origin Form A issued by the competent Bangladeshi authorities.
- (3) The Belgian authorities decided to carry out a post-clearance check of the authenticity of the certificates of origin Form A presented. Under Article 94 of Regulation (EEC) No 2454/93, which deals with administrative cooperation with states benefiting from the Generalised System of Preferences, the Belgian authorities therefore asked the authorities in Bangladesh to verify the origin documents. On 4 April and 29 May 1995 the latter confirmed that the certificates of origin were authentic and that the criteria for conferring preferential origin had been met. The results of the checks were sent to the firm by the Belgian authorities in letters dated 2 May, 4 May and 23 August 1995.
- (4) Following an investigation into the conditions under which the Bangladeshi authorities issued certificates of origin Form A, conducted in Bangladesh by representatives of several Member States and the Commission between 13 November and 15 December 1996, it was found that a number of certificates issued for textiles were false or had been improperly issued, in violation of the rules of origin.

- (5) The Bangladeshi authorities therefore cancelled and withdrew a number of certificates, including those presented by the firm in question in support of its customs declarations in August, November and December 1994.
- (6) Since the imported goods were no longer eligible for preferential tariff treatment, the competent Belgian authorities then found that import duties amounting to BEF 1 788 754 should be entered in the accounts for the consignments imported in August, November and December 1994, and the firm requested a waiver of the entry of this sum in the accounts or, in the alternative, remission.
- (7) In support of the application submitted by the competent Belgian authorities the firm indicated that, in accordance with Articles 871 and 905 of Regulation (EEC) No 2454/93, it had seen the dossier the Belgian authorities had sent to the Commission and had nothing to add.
- (8) In accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 20 September 2000 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case.
- (9) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, post-clearance entry in the accounts shall be waived where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities themselves that could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and observed all the provisions laid down by the legislation in force as regards the customs declaration.
- (10) In the case in point, the granting of preferential tariff treatment for the imports was subject to presentation of Form A origin certificates.

- (11) Following the investigation by the representatives of several Member States and the Commission on 13 November to 15 December 1996, the competent Bangladeshi authorities established that the certificates submitted to the Belgian customs authorities were not valid and subsequently withdrew them.
- (12) Expectations as to the validity of such certificates, being part of commercial risk and hence the responsibility of the company concerned, are not normally protected.
- (13) 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 the expectation.
- (14) In this case the competent authorities in Bangladesh, at the request of the Belgian authorities, had proceeded with an official verification of the certificates in question in 1995, both as to whether they were authentic and whether the criteria for conferring preferential origin had been met.
- (15) This type of verification, carried out under the arrangements for administrative cooperation between the competent authorities of the importing Member State and the authorities competent to issue certificates of origin Form A in states eligible for the Generalised System of Preferences, takes the form of a thorough check on the certificates of origin Form A. The purpose of this check was to investigate fully both the authenticity of the document and the criteria conferring preferential origin.
- (16) The competent authorities in Bangladesh, before confirming the validity of the certificates, were in a position to examine all the relevant aspects and information. After carrying out the checks they officially confirmed that the certificates were authentic and that the origin rules had been complied with. The findings of the verifications were sent to the firm concerned by the Belgian authorities.

- (17) Consequently the competent authorities in Bangladesh committed an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92 by confirming, in the context of checks carried out under Article 94 of Regulation (EEC) No 2454/93, the validity of certificates of origin Form A for goods which did not meet the origin conditions.
- (18) The results of the checks carried out by the Bangladeshi authorities were communicated to the firm concerned by the Belgian authorities and therefore the firm could legitimately consider that the certificates of origin in question were valid. Confirmation that the certificates were valid was given in writing by the Bangladeshi and Belgian authorities and was sent to the firm concerned. This written document would therefore have quelled any doubt by the firm as to the validity of the certificates since it clearly stated that following the post-clearance verification provided for in Article 94 of Regulation (EEC) No 2454/93, the competent authorities had confirmed that the certificates were valid and that the origin rules had been complied with.
- (19) At that time, no notice asking importers to take precautions in the use of certificates of origin Form A issued by the Bangladeshi authorities for textile products had been published in the *Official Journal of the European Communities*.
- (20) The firm in question acted in good faith and could not reasonably have detected the error committed by the competent Bangladeshi authorities.
- (21) The firm observed all the provisions laid down by the rules in force as far as its customs declaration was concerned.
- (22) Entry of import duties in the accounts is therefore not justified in this case.

- (23) As entry of import duties in the accounts is not justified in this case, there is no need to examine Belgium's request that it be determined in the alternative whether or not the provisions of Article 239 of Regulation (EEC) No 2913/92 apply.
- (24) Where the circumstances under consideration are such that the duties in question need not be entered in the accounts, Article 875 of Regulation (EEC) No 2454/93 authorises the Commission, under conditions which it shall determine, to authorise one or more Member States to refrain from post-clearance entry in the accounts in cases involving comparable issues of fact and of law.
- (25) Belgium (by letter of 3 July 2000), Denmark (by letter of 11 October 2000), Germany (by letter of 21 September 2000), Spain (by letter of 14 November 2000), France (by letter of 13 December 2000), Luxembourg (by letter of 12 December 2000), the Netherlands (by letter of 25 September 2000), and the United Kingdom (by letter of 10 January 2001) asked the Commission for authorisation to refrain from post-clearance entry of import duties in the accounts in cases involving comparable issues of fact and law to this one.



(26) Such authorisation may be granted to the Member States on the condition that it is used only in cases strictly comparable in issues of fact and of law to the case in question. In particular, under Article 94 of Regulation (EEC) No 2454/93 the national authorities must have requested the Bangladeshi authorities to carry out a post-clearance verification of the certificate(s) in question. The Bangladeshi authorities must have replied in writing to the national authorities to the effect that the certificate(s) of origin checked were valid and that the origin criteria had been met. The results of the verifications must have been communicated in writing to the firms concerned. The import(s) concerned and the subsequent verifications by the Bangladeshi authorities must have taken place before 5 April 1997, the date of publication in the *Official Journal of the European Communities* of a notice informing importers of the existence of “reasonable doubts” as to the validity of the certificates of origin presented in the Community for textile products originating in Bangladesh,

HAS ADOPTED THIS DECISION:

*Article 1*

The import duties in the sum of BEF 1 788 754 which are the subject of the request by Belgium dated 3 July 2000 need not be entered in the accounts.

*Article 2*

Belgium, Denmark, Germany, Spain, France, Luxembourg, the Netherlands and the United Kingdom are authorised to refrain from post-clearance entry of import duties in the accounts in cases involving strictly comparable issues of fact and of law to the case cited in Belgium's request of 3 July 2000.

*Article 3*

This Decision is addressed to Belgium, Denmark, Germany, Spain, France, Luxembourg, the Netherlands and the United Kingdom.

Done at Brussels, 29.3.2001

*For the Commission*

*Member of the Commission*