COMMISSION REGULATION (EC) No 1335/2003

of 25 July 2003

amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

(Text with EEA relevance)

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 of the European Parliament and of the Council [2], and in particular Article 247 and Article 247a thereof,

Whereas:

(1) Articles 220(2)(b) and 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code lay down that in certain cases import or export duties shall not be subsequently entered in the accounts or may be repaid or remitted for reasons of equity.

(2) Given that under Article 8 of Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources [3] the Member States are primarily responsible for collecting traditional own resources, it should therefore primarily be up to the authorities of the Member States to decide whether or not import duties or export duties should be entered subsequently in the accounts under Article 220(2)(b) of Regulation (EEC) No 2913/92 or repaid or remitted under Article 239 of that Regulation.

(3) However, in order to ensure uniform treatment of traders and protect the financial interests of the Communities, the obligation to transmit dossiers to the Commission for a decision should remain where Member States consider that the decision should be favourable and either (a) an active error or failing on the part of the Commission is cited, or (b) the circumstances of the case are connected to Community investigations carried out under Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [4], or (c) the amount of duties involved is EUR 500 000 or more.

(4) However, there need be no such obligation to transmit the dossier if the Commission has already adopted a decision on a case comparable in fact and law, since Member States can then base their own final decision on the most recent Commission decision comparable in fact and law.

(5) Commission Regulation (EEC) No 2454/93 [5], as last amended by Regulation (EC) No 881/2003 [6], should therefore be amended accordingly.

(6) The Customs Code Committee did not hand down an opinion within the time limit set by its Chairman. The Commission therefore sent the Council a proposal on the measures concerned. As the Council did not adopt a decision before expiry of the time limit laid down in Article 6(5) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [7], it is therefore up to the Commission to adopt the said measures,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2454/93 is amended as follows:

1. Article 869 is amended as follows:

   (a) subparagraph (b) is replaced by the following:

   '(b) in cases in which they consider that the conditions laid down in Article 220(2)(b) of the Code are fulfilled, except those in which the dossier must be transmitted to the Commission pursuant to Article 871. However, where Article 871(2), second indent, is applicable, the customs authorities may not adopt a decision waiving entry in the accounts of the duties in question until the end of a procedure initiated in accordance with Articles 871 to 876.';

   (b) subparagraph (c) is deleted;

[1] OJ L 302, 19.10.1992, p. 1.
[2] OJ L 311, 12.12.2000, p. 17.
[3] OJ L 253, 7.10.2000, p. 42.
[4] OJ L 82, 22.3.1997, p. 1.
[5] OJ L 253, 11.10.1993, p. 1.
[6] OJ L 134, 29.5.2003, p. 1.
[7] OJ L 184, 17.7.1999, p. 23.

(c) the following two paragraphs are added:

'Where a request is submitted for repayment or remission under Article 236 of the Code in conjunction with Article 220(2)(b) of the Code, subparagraph (b) of the first paragraph of this Article and Articles 871 to 876 shall apply *mutatis mutandis*.

For the purposes of applying the above paragraphs the Member States shall give each other mutual assistance, particularly where an error by the customs authorities of a Member State other than the one responsible for taking the decision is concerned.'

2. Articles 870 to 872 are replaced by the following:

'*Article 870*

1. Each Member State shall hold at the disposal of the Commission a list of the cases in which the following provisions have been applied:

— Article 869(a),

— Article 236 of the Code in conjunction with Article 220(2)(b) of the Code, where no communication is required under paragraph 2,

— Article 869(b), where no communication is required under paragraph 2.

2. Each Member State shall communicate to the Commission a list of the cases in which the amount not collected from the operator concerned in respect of one or more import or export operations but in consequence of a single error is more than EUR 50 000, and the provisions of Article 236 of the Code in conjunction with Article 220(2)(b) of the Code or of Article 869(b) have been applied, giving a short summary of each case. This communication shall be forwarded during the first and third quarters of each year for all cases in which it was decided not to enter the uncollected duties in the accounts during the preceding half-year.

Article 871

1. The customs authority shall transmit the case to the Commission to be settled under the procedure laid down in Articles 872 to 876 where it considers that the conditions laid down in Article 220(2)(b) of the Code are fulfilled and:

— it considers that the Commission has committed an error within the meaning of Article 220(2)(b) of the Code,

— the circumstances of the case are related to the findings of a Community investigation carried out under Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (*) or under any other Community legislation or any agreement concluded by the Community with a country or group of countries in which provision is made for carrying out such Community investigations, or

— the amount not collected from the operator concerned in respect of one or more import or export operations but in consequence of a single error is EUR 500 000 or more.

2. However, the cases referred to in paragraph 1 shall not be transmitted where:

— the Commission has already adopted a decision under the procedure provided for in Articles 872 to 876 on a case involving comparable issues of fact and of law,

— the Commission is already considering a case involving comparable issues of fact and of law.

3. The dossier submitted to the Commission shall contain all the information required for full consideration. It shall include detailed information on the behaviour of the operator concerned, and in particular on his professional experience, good faith and diligence. This assessment shall be accompanied by all information that may demonstrate that the operator acted in good faith. The dossier shall also include a statement, signed by the applicant for repayment or remission, certifying that he has read the dossier and either stating that he has nothing to add or listing all the additional information that he considers should be included.

4. As soon as it receives the dossier the Commission shall inform the Member State concerned accordingly.

5. Should it be found that the information supplied by the Member State is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts, the Commission may request that additional information be supplied.

6. Where one of the following situations occurs the Commission shall return the dossier to the customs authority and the procedure referred to in Articles 872 to 876 shall be deemed never to have been initiated:

— the dossier shows that there is a disagreement between the customs authority that has transmitted the dossier and the person who signed the statement referred to in paragraph 3 as regards the account of the facts,

— the dossier is obviously incomplete since it contains nothing that would justify its consideration by the Commission,

— under paragraphs 1 and 2, the dossier should not be transmitted,