



EUROPEAN
COMMISSION

Brussels, 25.4.2022
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COMMISSION IMPLEMENTING DECISION

of 25.4.2022

on remission of import duties pursuant to Regulation (EU) No 952/2013 of the European Parliament and of the Council due to an error by the competent authority

(only the Portuguese text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code¹, and in particular 123(2) thereof,

After consulting the Customs Code Committee,

Whereas:

- (1) By email of 12 October 2021, registered by the Commission on 13 October 2021, Portugal transmitted a file to the Commission for decision, under Article 116(3), point (d), of Regulation (EU) No 952/2013, about whether remission of import duties is justified in a particular case pursuant to Article 119 of that Regulation.
- (2) On 1 July 2021, a company, hereinafter referred to as “the party concerned” imported steel coils classified under CN headings 72082500, 72082600, 72082700, 72083600, 72083700, 72083800 and 72083900 via the Leixões customs office. Before importation, the company requested the application of tariff-rate quota 098968 under Commission Implementing Regulation (EU) 2019/159² in the customs declarations concerned.
- (3) The Portuguese custom authorities accepted the customs declarations on that same day and consequently processed the drawing requests for the tariff-rate quota and generated the relevant requests for drawing from that tariff quota.
- (4) At 23:55 on 1 July 2021, the national IT application for tariffs which manages the tariff-rate quotas under Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code³ compiled the information on all the drawing requests.
- (5) However, a glitch in the data processing prevented the creation/formatting of the file containing the drawing requests which was to be sent to the Commission.

¹ OJ L 269, 10.10.2013, p. 1.

² Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ L 31, 1.2.2019, p. 27).

³ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

- (6) The technicians in charge of the IT application analysed the reasons that caused the anomaly as follows:

‘ - The import declarations are extracted daily from ‘STADA Importação’ for Quotas 24 hours ahead of when they are sent to Brussels.

- On 2 July 2021, one of the declarations extracted had an acceptance date with a timestamp (e.g. 30/06/2021 11:22:33).

- Since the Quota application cannot deal with timestamps, at the time of creating the file to be sent to Brussels, an unexpected error prevented the file from being created.

- The extraction of declarations from ‘STADA Importação’ and the compiling of the file usually takes place at around 23.50 and ends early the next morning. In this case, the compiling error occurred in the early hours of 3 July 2021 (Saturday) but was detected only on 5 July 2021 (Monday) early in the afternoon.’

The conclusion was as follows: *‘We confirm that a glitch occurred in the data processing, preventing the formatting of the file to be sent to Brussels with the quota information.’*

- (7) As soon as the anomaly was detected, an e-mail was sent to the Commission on 5 July 2021 at 14:10 (Lisbon time) asking: *‘Have you already made the quota allocation today? If not, can you wait half [an] hour?’*
- (8) In their reply sent at 14:40 (Lisbon time) on 5 July 2021, the Commission services indicated *“Unfortunately, the allocation already took place as we had no news from Portugal.”*
- (9) That reply made it clear that it would no longer be possible to send the drawing requests on time. However, there remained doubts as to whether the allocation had taken place after the e-mail was sent by the Portuguese authorities, and, if so, as to the reason why the Commission did not suspend the allocation until the situation had been cleared up.
- (10) Since, in the meantime, the anomaly had been corrected, the drawing requests were sent to the Commission in the afternoon of 5 July 2021. However, they were not accommodated since at the time of dispatch, the tariff quota had already been exhausted.
- (11) The quota was exhausted by the allocation for 5 July 2021, since a pro rata calculation was made between the quantity available and the number of requests across the EU pursuant to Article 51(4) of Implementing Regulation (EU) 2015/2447.
- (12) After the event, the case was analysed by the Portuguese authorities and it was concluded that the anomaly in the tariff-rate quota IT application should be considered an error on the part of the customs authorities within the meaning of Article 119(2) of Regulation (EU) No 952/2013.
- (13) For this reason, and on the basis of point 41 of the Administrative arrangement on the management of tariff quotas⁴, an e-mail was sent on 8 July 2021 to the Commission asking for information on the allocation that would have been given to the drawing requests had they been sent in time.

⁴ in the version agreed in the Tariff Measures section of the Customs Expert Group meeting No 3 of 12 May 2017 (Ares(2017)5314845 - 31/10/2017)

- (14) In its reply of 9 July 2021, the Commission stated that, in that scenario, the drawing requests would have benefitted from an allocation percentage of 42.99293 %. On that basis, and considering the data relating to each declaration, the amount at issue is EUR XXX.
- (15) Article 116(4) of Regulation (EU) No 952/2013 requires the customs authorities, subject to the rules of competence for decisions, to remit duties of their own motion where they find that the conditions laid down in Articles 117, 119 or 120 of the that Regulation.
- (16) In accordance with Article 116(3), point (d), of Regulation (EU) No 952/2013, where the customs authorities consider that remission of duties should be granted on the basis of Article 119 of that Regulation, the Member State must forward the case to the Commission for a decision if the amount for which the person liable for payment for one or more import operations is equal to or greater than EUR 500 000 as a result of an error on the part of the customs authorities themselves.
- (17) On 12 October 2021, the competent authorities of Portugal forwarded to the Commission the file for remission of customs duties on the basis of Article 116(3), point (d), and Article 116(4) of Regulation (EU) No 952/2013, together with Article 98 of Commission Delegated Regulation (EU) 2015/2446⁵.
- (18) In accordance with Article 98(2) of Delegated Regulation 2015/2446, the transmitted file included a summary of the case and an analysis establishing that the conditions referred to in Article 119 of Regulation (EU) No 952/2013 are fulfilled. The enclosed documents were:
- a report by the Portuguese authorities;
 - copies of the customs declarations concerned;
 - an excel table with the calculation of the amount to be remitted,
 - a letter from the party concerned acknowledging the submission of the file to the Commission and expressing its agreement therewith and indicating it had nothing to add.

Examination of the request under Article 119 UCC

- (19) For remission to be granted pursuant to Article 119(2) of Regulation (EU) No 952/2013 the following criteria are to be met:
- The reduced or zero rate of duty was not applied as a result of an error on the part of the customs authorities;
 - The customs declaration for release for free circulation contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate.

Error on the part of the competent customs authorities

- (20) The Court of Justice of the European Union has consistently ruled⁶ that only errors attributable to acts of the competent authorities confer entitlement to remission.

⁵ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

⁶ Judgments in *Veloserviss*, C-427/14, EU:C:2015:803, paragraph 44; *Mecanarte*, C-348/89, EU:C:1991:278, paragraphs 19 and 23, and *Agrover*, C-173/06, EU:C:2007:612, paragraph 31

- (21) In the present case, a technical problem in the national IT system occurred, which prevented the formatting of the file and subsequently prevented the timely sending of the drawing requests to the Commission.
- (22) As to the doubt of the Portuguese authorities on whether or not the allocation took place after the sending of the email by the Portuguese customs authorities, reference is made to the “Administrative arrangement on the management of tariff quotas” and its point 23:

Normal procedure for allocations

23. The Commission carries out its daily allocation starting at 14.00 hours (Brussels time) each day. However the Commission may delay the allocation until such time as any Member State with communication difficulties has effectively communicated its drawing requests.

- (23) Therefore, at the time Portugal sent the email (15:10 pm Brussels time) on 5 July 2021 it was too late to integrate the Portuguese request since the allocation was already done. It took place that day at 15:01 pm (Brussels time).
- (24) The Commission therefore concludes that in the present case, a reduced rate of duty was not applied as a result of an error on the part of the Portuguese customs authorities, in the sense of Article 119(2) of Regulation (EU) No 952/2013.

The customs declaration contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate

- (25) It is clear from the submitted file that the customs declaration of the party concerned contained all the particulars and that it was accompanied by all the documents necessary for application of the reduced or zero rate.
- (26) In addition, there is nothing in the file to indicate that the situation, which lead to the notification of the customs debt resulted from deception by the debtor (Article 116(5) of Regulation (EU) No 952/2013). For the Commission it is clear that the notification was the direct result of the error by the competent customs authorities, in which the debtor had no part.

Cases involving comparable issues of fact and of law

- (27) Article 101(3) of Delegated Regulation (EU) 2015/2446 authorises the Commission to specify the conditions under which the customs authorities may repay or remit in cases involving comparable issues of fact and of law.
- (28) Cases comparable in fact and law to this one are remission or repayment cases based on Article 119(2) of Regulation (EU) No 952/2013 where the error on the part of the customs authorities consisted of a technical error in an IT system of the Member State. Customs authorities must establish that the customs declaration for release for free circulation contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate. Moreover, customs authorities must be reassured that the situation which led to the notification of the customs debt did not result from deception by the debtor. Member States are obliged to inform the Commission of such cases pursuant to Article 121(4) UCC,

HAS ADOPTED THIS DECISION:

Article 1

The remission of duties of the sum of EUR XXX, as requested by Portugal on 12 October 2021, is justified.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 25.4.2022

For the Commission
Paolo GENTILONI
Member of the Commission