

Commission Decision  
of 12-12-1997  
finding that it is justified not to take action for  
the post-clearance recovery of import duties  
in a particular case

(request submitted by GERMANY)

**REC 2/97**

**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>

Having regard to Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,<sup>2</sup> and in particular Article 873 thereof,

Whereas by letter dated 9 June 1997 received by the Commission on 24 June 1997, Germany asked the Commission to decide, under Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties,<sup>3</sup> as last amended by Regulation (EEC) No 1854/89,<sup>4</sup> whether it is justified not to take action for the recovery of import duties in the following circumstances:

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<sup>1</sup> OJ No L 302, 19.10.1992, p.1.

<sup>2</sup> OJ No L 253, 11.10.1993, p.1.

<sup>3</sup> OJ No L 197, 3.8.1979, p.1.

<sup>4</sup> OJ No L 186, 30.6. 1989, p.1

A firm (the declarant) importing mass spectrometers and data processing systems from the United States has been declaring them separately under CN headings 9027 and 8471 respectively.

In mid-1989 the customs authorities informed the declarant of their doubts about classifying the goods separately, but on 3 November 1989 the Zollehranstalt concluded - in two opinions - that separate classification was correct, stating clearly the reasons why the products could not be classified together.

The customs office thereupon informed the declarant in November 1989 that the practice it had followed hitherto was correct and the declarant continued to classify the products separately.

When an audit of the company's activities took place in 1993, the competent authorities again expressed doubts about the classification and requested a further opinion. On 18 October 1993 the Zolltechnische Prüfungs- und Lehranstalt concluded that the two products should have been classified together as a single apparatus.

On the strength of that opinion, the German authorities issued a post-clearance recovery assessment for XXXXXX, an amount in respect of which the declarant has applied for non-recovery;

Whereas the firm in question declares that it has taken note of the dossier sent by the German authorities to the Commission and has nothing to add;

Whereas pursuant to Article 873 of Regulation (EEC) No 2454/93, a group of experts comprising representatives of all Member States met on 31 October 1997 in the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case;

Whereas in accordance with Article 5(2) of Regulation (EEC) No 1697/79, the competent authorities may refrain from taking action for the post-clearance recovery of import or export duties which were not collected as a result of an error by the competent authorities which could not reasonably have been detected by the person liable, the latter having acted in good faith and observed all the provisions laid down by the rules in force as far as its customs declaration is concerned;

Whereas import duties in the sum of XXXXXX were not collected;

Whereas the duties were not collected owing to an error on the part of the competent German authorities which repeatedly accepted customs declarations in which the goods in question were incorrectly classified and expressly told the declarant after careful examination of the two types of goods in question that they should be classified separately;

Whereas there was no reason why the declarant should doubt the correctness of the tariff classification as the results of the competent authority's detailed analysis of the goods merely confirmed the firm's view that its usual tariff classification was correct;

Whereas the declarant proceeded with the diligence necessary, whereas its good faith cannot be impugned, and whereas it could not reasonably have detected the customs authorities' error;

Whereas the declarant has observed all the provisions of the rules in force regarding its customs declaration;

Whereas it is therefore not justified in this case to recover import duties,

**HAS ADOPTED THIS DECISION:**

Article 1

1. The import duties in the sum of XXXXXX which are the subject of the request by Germany dated 9 June 1997 shall not be recovered.
- 2.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 12-12-1997

For the Commission