

COMMISSION DECISION  
of 13 July 1990  
finding that it is justified not to proceed with the  
recovery of import duties in a particular case  
(request submitted by Italy on 3 February 1990)  
Ref.: REC 1/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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>1</sup> as last amended by Regulation (EEC) No 918/83,<sup>2</sup>

Having regard to Commission Regulation (EEC) No 2380/89 of 2 August 1989 laying down provisions for the implementation of Article 5(2) of Council Regulation (EEC) No 1697/79 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> and in particular Article 6,

Whereas, by letter dated 3 February 1990, received by the Commission on 19 February 1990, Italy requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the non-recovery of import duties is justified in the following circumstances:

1 OJ No L 197, 3.8.1979, p. 1.  
2 OJ No L 105, 23.4.1983, p. 1.  
3 OJ No L 225, 3.8.1989, p. 30

On 9 February 1988, an Italian firm imported 8 containers of "Famotidine" originating in Japan, which is classified within code 2935 00 00, Taric 60, at a rate of duty of 6.6%.

In the first edition of the Taric, which came into force on 1 January 1988 following adoption of the Harmonized System and the corresponding Combined Nomenclature (CN), the product in question was classified within code 2934 10 90, Taric 20, with a rate of duty of 8% and within code 2935 00 00, Taric 60, with a rate of duty of 6.6%.

By Commission Regulation (EEC) No 2275/88 of 25 July 1988 "Famotidine" (INN) was classified within CN code 2934 10 00.

After this regulation was published, the customs office concerned required the firm in question to provide security in the sum of LIT 45 000 000, to cover the highest duties arising from the different classification of the goods.

On 9 March 1989 the firm in question requested the application of Article 5 of Regulation (EEC) No 1697/79 for the sum of LIT 35 851 820.

Whereas, in accordance with Article 6 of Regulation (EEC) No 2380/89, a group of experts composed of representatives of all the Member States met on 30 April 1990 within the framework of the Committee on Duty Free Arrangements to examine the case in question;

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

Whereas import duties amounting to LIT [REDACTED] were not levied;

Whereas this is the result of an error by the customs authorities, which accepted the tariff heading used when the goods in question were entered for free circulation;

Whereas the classification of these goods in the Common Customs Tariff gave rise to an examination at Community level by the services specializing in tariff matters; whereas, following this, the definitive tariff classification was laid down by a Commission regulation; whereas it is therefore appropriate to conclude that it was a particularly complex classification question, taking into account also the fact that the Harmonised Commodity Description and Coding System had just been introduced;

Whereas under the circumstances the error made by the customs authorities could not reasonably have been detected by the person liable;

Whereas the latter acted in good faith and observed all the provisions laid down by rules in force as far as his customs declaration is concerned;

Whereas it is consequently justified not to proceed with post-clearance recovery of import duties in this case;

HAS ADOPTED THIS DECISION:

Article 1

The import duties of LIT [REDACTED], the subject matter of the request by Italy of 3 February 1990, shall not be recovered.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 13 July 1990

For the Commission