

COMMISSION DECISION

of .08.10.1996..

finding that it is justified to take action for the post-clearance recovery
of import duties in a particular case

(request submitted by Italy)

REC 3/96

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

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down
provisions for the implementation of Council Regulation (EEC) No 2913/92,² and in
particular Article 873 thereof,

Whereas by letter dated 6 February 1996 received by the Commission on 12 April 1996, Italy
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,³ whether it is justified not to take action for the
recovery of import duties in the following circumstances:

Between the end of September 1990 and early 1991, Italian firms imported from Norway
several consignments of dried cod and cod fillets originating in that country. On presenting
EUR.1 certificates, the firms in question obtained preferential tariff treatment for these
products.

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

³ OJ No L 197, 3.8.1979, p.1.

In September 1993 the Norwegian customs authorities notified Italian customs that independent checks had shown that the Norwegian exporter was not able to prove that the products concerned were of Norwegian origin. As a result, the validity of the EUR.1 certificates used to accord preferential tariff treatment in Italy was challenged.

The Italian customs authorities therefore claimed XXXXXXXX in unpaid import duties, the recovery of which the firms concerned are asking to be waived.

Whereas the firms concerned declare that they have taken note of the dossier sent to the Commission by the Italian authorities and have nothing to add;

Whereas in accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 3 June 1996 within the framework of 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 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 the granting of preferential tariff treatment for the products in question was subject to presentation of a EUR.1 certificate;

Whereas the EUR.1 certificates presented to the customs authorities were not valid;

Whereas reliance on the validity of such certificates does not normally confer protection, being classed as commercial risk and therefore falling under the responsibility of the person liable;

Whereas neither the initial acceptance by a Member State's customs authorities of certificates subsequently shown to be invalid nor the fact that Norway's competent authorities, acting on inaccurate information from the exporter, issued EUR.1 certificates attesting that goods were of Norwegian origin constitute grounds for the person liable for duty to entertain legitimate expectations as to the validity of such certificates;

Whereas, therefore, there has been no error on the part of the customs authorities within the meaning of Article 5(2) of Regulation (EEC) No 1697/79;

Whereas the fact, put forward by Italian customs, that Norway's competent authorities reported the irregularity of the certificates in question on their own initiative, and not in response to a request from the competent authorities of the importing Member State for post-clearance document checks, is not of a nature to cast doubt on the invalidity of the EUR.1 certificates in question.

Whereas, therefore, it is justified to take action for the post-clearance recovery of import duties in this case;

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXXX which are the subject of the request by Italy received by the Commission on 2 February 1996 shall be recovered.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 08.10.1996

For the Commission