

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04. XI. 1991

c(91) 2353 final

REC/OUI

COMMISSION DECISION

of 04. XI. 1991

finding that the post-clearance recovery of import duties
in a particular case must be effected

(request submitted by the United Kingdom)

REC 5/91

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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⁽¹⁾, as last amended by Regulation (EEC) No 918/83⁽²⁾,

Having regard to Commission Regulation (EEC) No 2164/91 of 23 July 1991 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⁽³⁾, and in particular Article 6,

Whereas, by letter dated 1 May 1991 received by the Commission on 6 May 1991, the United Kingdom requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the non-recovery of import duties was justified in the following circumstances :

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- (1) OJ No L 197, 3.8.1979, p. 1
(2) OJ No L 105, 23.4.1983, p. 1
(3) OJ No L 201, 24.7.1991, p. 16

Between 20 April and 15 May 1989, a British company released six consignments of hot rolled steel plates for free circulation in the Community. The goods were of Chinese origin and classified under Combined Nomenclature Code 72084399. The British company bought these plates from a German company which had warehoused them in Antwerp and which at the time of the sale gave it some Model A origin certificates corresponding to the imported goods.

British Customs accepted these origin certificates and therefore made the plates released for free circulation eligible for a zero rate of duty provided for by the Generalized System of Preferences. They based this on information contained in the customary national tariff and incorporated in the national computerised entry processing system (DEPS).

However this information was wrong since the plates in question are excluded from the Generalised System of Preferences when they are of Chinese origin.

The error by the British administration arises from erroneous information contained in the Integrated Tariff of the European Communities (TARIC).

This information was however corrected by the Commission services on 30 November 1988 but the customary national tariff and the DEPS system were only amended in mid-1989, i.e. after the releases for free circulation in question.

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, competent authorities may not proceed to the post-clearance collection of import or export duties not collected as a result of a mistake by the competent authorities themselves and which could not reasonably have been detected by the person liable, such person having acted in good faith and observed all the requirements of the rules in force applicable to his customs declaration; whereas the cases in which these provisions may be applied shall be considered by the Commission, in accordance with Article 4 of Regulation (EEC) No 2164/91, except for situations specifically referred to in Article 2 of the same Regulation;

Whereas, in accordance with Article 6 of Regulation (EEC) No 2164/91, a group of experts composed of representatives of all the Member States met on 18 September 1991 within the framework of the Committee on Duty-Free Arrangements to examine the case in question;

Whereas the hot rolled steel plates could have benefited from a zero rate of duty under a quota opened under Order No 60.00.90 in Annex I to Directive 88/654/ECSC of 19 December 1988 applying for 1989 the generalised tariff preferences for certain steel products originating in developing countries; whereas, however, according to the same annex, the benefit of this zero rate did not apply to plates originating in China; whereas this situation had been unchanged since 1980 and appeared in every annual ECSC Decision;

Whereas Decision 88/654/ECSC was correctly published in the Official Journal of the European Communities No L 375 of 31 December 1988 (p. 125);

Whereas, moreover, the information contained in the TARIC was corrected and a corrective notice was issued on 30 November 1988; whereas this information was therefore in accordance with the rules in force several months before the releases for free circulation in question;

Whereas, therefore, the error by the British administration could reasonably have been detected by the importer;

Whereas without calling into question the latter's good faith it cannot consequently be justified not to proceed with the post-clearance recovery of import duties amounting to ECU [REDACTED]

HAS ADOPTED THIS DECISION :

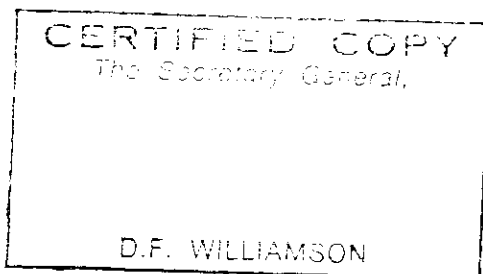
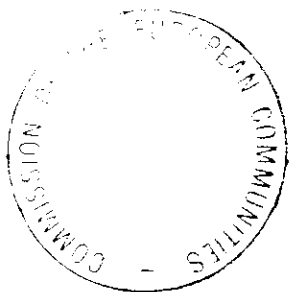
HAS ADOPTED THIS DECISION :

Article 1

The import duties of ECU [REDACTED] the subject matter of the request by the United Kingdom dated 1 May 1991 must be recovered.

Article 2

This Decision is addressed to the United Kingdom.



Done at Brussels, 04. XI. 1991

For the Commission

 SCRIVENER

Member of the Commission