

COMMISSION DECISION

of 18-03-1997

**finding, in a particular case, that it is not justified to take action for
the post-clearance recovery of some import duties and that it is justified to take action for
recovery of others**

(request submitted by France)

REC 6/96

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 19 September 1996 received by the Commission on 24 September 1996 France 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 duties³ and Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it is justified not to take action for the recovery of import duties in the following circumstances:

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.

A French company has for a number of years been importing vanilla residues originating in Canada. At first it declared these products under tariff heading 2304. In 1984, after examination by a tax office laboratory, customs contested that tariff heading, holding that the product was to be classified in tariff heading 1208 (which became 1212 on the entry into force of the Harmonized Commodity Description and Coding System nomenclature).

After further checks accompanied by analysis at the Paris tax office's laboratory in 1993, customs notified the company on 22 March 1994 that the products actually belonged in heading 0905 and that a further XXXXXX in customs duties were owed on the 32 declarations lodged between 20 March 1991 and 30 December 1993.

Despite the advice of the competent customs authorities, the company continued to declare the goods under CN code 1212. Twelve import transactions were carried out in this way, with duties totalling XXXXXX being avoided. Meanwhile the company had appealed for an opinion on the CN classification of the goods in question to France's *Commission de Conciliation et d'Expertise Douanière* (CCED), which found in its favour. However, with Regulation (EC) No 214/96 of 2 February 1996 on the classification of certain goods in the combined nomenclature, which came into force after the 12 declarations in question were made, the Commission, to which the case had been referred by the French authorities, classified the goods in CN code 0905 and thereby upheld the position of French customs.

Whereas the company in question declares that it has taken note of the dossier sent to the Commission by the French authorities and has 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 10 January 1997 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, which in this case applies to imports prior to 1 January 1994, 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, in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92, which in this case applies to imports from 1 January 1994 onwards, there is no subsequent entry in the

accounts where the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as far as his customs declaration is concerned;

Whereas, following analysis of the products by a tax office laboratory in 1984, the customs authorities expressly stated that the products in question were to be declared under tariff heading 1208, which became 1212 upon the entry into force of the Harmonized Commodity Description and Coding System; whereas this was an error on the part of the competent national authorities;

Whereas until the competent authorities realized that the correct heading was 0905, the company could legitimately rely on the tariff classification expressly recognized by French customs after the 1984 examination; whereas the company could not therefore have detected the error on the part of the competent authorities;

Whereas, however, after the results of the 1993 checks on the product, the competent customs authorities made no error, the tariff classification expressly recognized at that time being correct; whereas the French *Commission de Conciliation et d'Expertise Douanière* cannot be considered a "customs authority" within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92 in so far as its opinions, which are not binding, are not such as to give rise to any legitimate expectations on the part of the company;

Whereas it is therefore justified in this case not to take action for the post-clearance recovery of duties on imports made up to and including 30 December 1993, and to take action for the recovery of duties on subsequent imports,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXX which are the subject of the request by France dated 19 September 1996 shall not be recovered; the remaining import duties in the sum of XXXXX shall be recovered .

Article 2

This Decision is addressed to France.

Done at Brussels, 18-03-1997

For the Commission