

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22 III. 1994

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NOT FOR PUBLICATION

COMMISSION DECISION
of 22 III. 1994

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

(request submitted by the United Kingdom)

REC 7/93

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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, and in particular Article 873 thereof,²

Whereas by letter dated 17 September 1993 received by the Commission on
22 September 1993, the United Kingdom asked the Commission, under
Article 5(2) of 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 as last amended by
Regulation (EEC) No 918/83,⁴ 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.

4 OJ No L 105, 23.4.1983, p. 1.

Until April 1992 imports of pilchards into the United Kingdom had been classified under tariff heading 16 04 19 99 190 attracting customs duty of 9%, whereas they should have come under heading 16 04 13 10 010 attracting duty of 25%.

The error in the United Kingdom Tariff dated back to the United Kingdom's accession to the Community. It had been carried through to the new United Kingdom Tariff when the CCC Nomenclature was replaced by the Harmonized System.

In December 1991 the Commission pointed out the error to the United Kingdom customs administration which corrected the UK Tariff in April 1992. Post-clearance recovery of the underpaid duty for imports in the preceding three years was requested.

One importer, from whom ECU [REDACTED] had been claimed, filed an application for post-clearance recovery to be waived pursuant to Article 5(2) of Regulation (EEC) No 1697/79;

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 4 February 1994 within the framework of the Customs Code Committee;

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 fish known as pilchards are large sardines;

Whereas the Legal Notes to Chapter 16 state that fish in this Chapter are the same as those in Chapter 3; whereas Chapter 3 defines sardines as being of the species *Sardina pilchardus*;

Whereas the Combined Nomenclature Explanatory Notes state that sardines include large adult sardines known as "pilchards";

Whereas the Court of Justice of the European Communities has held that only information published in the Official Journal of the European Communities is authentic;

Whereas the Community Tariff published in the Official Journal of the European Communities was correct and the error existed solely in the United Kingdom Tariff;

Whereas, consequently, the error committed by the United Kingdom customs administration could reasonably have been detected by the person liable;

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 totalling ECU [REDACTED] which are the subject of the request by the United Kingdom of 17 September 1993 shall be recovered.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 22 III. 1994

Ch. SCRIVENER

For the Commission

CERTIFIED COPY
The Secretary General,

D.F. WILLIAMSON