

Commission Decision

of 8-11-1995

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

(request submitted by the United Kingdom)

REC 3/95

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 1992¹ establishing the
Community customs code,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993² laying down
provisions for the implementation of Council Regulation (EEC) No 2913/92, and in particular
Article 873 thereof,

Whereas by letter dated 2 May 1995, received by the Commission on 8 May 1995, the United
Kingdom asked the Commission to decide under Article 5(2) of Council Regulation (EEC) No
1697/79 of 24 July 1979³ 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, whether it is justified not to take action
for the recovery of import duties in the following circumstances:

1 OJ N° L 302, 19.10.1992, p. 1
2 OJ N° L 253, 11.10.1993, p.1.
3 OJ No L 197, 3.8.1979, p.1.

A firm imported roofing material which was declared under a heading in Chapter 40 of the Combined Nomenclature, giving rise to a 2.5% import duty. A chemical analysis was carried out on one consignment in order to verify the tariff classification of the goods in question.

Chemical analysis confirmed the tariff classification, but the importer was not informed and therefore continued to import the goods in question under the same tariff heading.

A further chemical analysis, on a different sample, a year later established that the goods did not fall within Chapter 40 of the Combined Nomenclature but Chapter 39. The earlier sample was re-tested and the chemist acknowledged that the original analysis was wrong and that the goods belonged in a heading within Chapter 39 of the Combined Nomenclature. A 12.5% import duty was therefore due.

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 2 October 1995 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment;

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 customs duties of XXXXX were not collected;

Whereas this resulted from an error on the part of the competent authorities in the United Kingdom which repeatedly accepted customs declarations with an erroneous tariff clarification of the goods in question and verified their tariff classification by chemical analysis without that classification being contested;

Whereas tariff classification of the goods in question is complex and difficult, as is shown by the erroneous result of chemical analysis carried out by the competent national authorities;

Whereas, furthermore, there was nothing to raise doubts in the mind of the importer about the accuracy of the tariff classification, in that non-communication of the results of chemical analysis could only confirm him in the view that the tariff classification being used for the goods in question was correct;

Whereas, consequently the importer displayed due diligence, and whereas his good faith cannot be doubted and he could not reasonably have detected the error on the part of the United Kingdom authorities;

Whereas the importer observed all the provisions laid down by the rules in force as far as his customs declaration was concerned;

Whereas, therefore, it is justified not 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 XXXXX which are the subject of the request by the United Kingdom dated 2 May 1995 shall not be recovered.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 8-11-1995

For the Commission