

COMMISSION DECISION

of 8-11-1995

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 4/95

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 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 2913/92,¹ 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 220(2)(b) of Regulation
(EEC) No 2913/92 whether it was 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.

In 1994 a firm imported ten consignments of floppy disks from Hong Kong. When entering the first consignment for free release, the firm declared that the goods were subject to an anti-dumping duty. Consulting the UK working tariff, the customs officer said that no anti-dumping duty was payable on the products in question. The next nine consignments were therefore entered for release without further mention of these duties. However, in November 1994, the firm again declared the anti-dumping duty. This time the customs officer admitted that the information he had provided earlier was inaccurate.

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 to examine the case;

Whereas, in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92, 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 import duties totalling XXXXX were not collected;

Whereas this was the result of an error by the United Kingdom's competent authorities inasmuch as the customs officer responsible, consulting the national working tariff, told the trader that the import goods were not subject to an anti-dumping duty;

Whereas, however, the administrative error from which the trader benefited resulted from the fact that customs, rather than applying the Community provisions published in the Official Journal of the European Communities³, consulted an inaccurate national working tariff; whereas the error could therefore reasonably have been detected;

3 OJ N° L 68, 11.03.1994, p. 5

Whereas, according to information asked for by the Commission and given by the British authorities, the trader concerned did not display the requisite diligence inasmuch as there is neither documentary nor any other form of evidence to show that he did everything reasonably possible to convince the customs officer of his error; whereas, in particular, he did not address himself to the customs officer's superiors;

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 XXXXX which are the subject of the request by the United Kingdom dated 2 May 1995 shall be recovered.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 8-11-1995

For the Commission