

COMMISSION DECISION

of 27-02-1998

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

(request submitted by Germany)

REC 4/97

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 27 August 1997, received by the Commission on 4 September 1997, Germany asked the Commission to decide, under Article 220(2)(b) of Regulation (EC) 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.

Between January 1995 and August 1996 a company imported from Japan a pharmaceutical product, ornithine aspartate, classified in subheading 2922 49 80 of the Combined Nomenclature. An *ad valorem* import duty of 6.9% was levied on consignments imported from January to March 1995 but from April 1995 the customs office allowed the goods to enter duty-free on the grounds that they should be regarded as pharmaceuticals qualifying for exemption under Annex 3 to the Combined Nomenclature.

However, while the two substances making up ornithine aspartate (ornithine and aspartic acid) are listed in Annex 3 the compound as such is not.

In August 1996 the firm was notified that contrary to what it had previously been told, compounds made up of two substances listed in Annex 3 were not themselves exempt from duty unless they too were specifically listed.

The German customs authorities consequently entered the sum of XXXXX in the accounts retrospectively; the firm is requesting that recovery of this sum be waived;

Whereas the operator states that he has seen the dossier submitted to the Commission by the German 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 9 January 1998 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92 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 observed all the provisions laid down by the rules in force as far as his customs declaration is concerned;

Whereas XXXXX of import duties was not collected;

Whereas the German authorities themselves state that failure to collect the duties was the result of an error on the part of the competent departments, in this case not only the customs office but the Cologne customs laboratory and the Ministry for Economic Affairs, which explicitly told the firm, in writing, after thorough consideration of the issue, that the pharmaceuticals it regularly imported were exempt from import duty;

Whereas the firm displayed due diligence, its good faith cannot be doubted and it could not reasonably have detected the error on the part of the competent German authorities, since only after this complex tariff question had been debated by the Customs Code Committee were the said authorities in a position to notify the firm of the Committee's position and reinstate collection of the applicable duty;

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

Whereas it is therefore 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 Germany dated 27 August 1997 shall not be recovered.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 27-02-1998

For the Commission