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REC 1/2000



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25-01-2001

NOT TO BE PUBLISHED

COMMISSION DECISION

of 25-01-2001

**finding that it is justified to waive post-clearance entry in the accounts of import duties
in a particular case**

(Request submitted by the United Kingdom of Great Britain and Northern Ireland)

(REC 1/2000)

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(Request submitted by the United Kingdom of Great Britain and Northern Ireland)

(REC 1/2000)

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 as last amended by Regulation (EC) No 2700/2000;²

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,³ as last amended by Regulation (EC) No 2787/2000,⁴ and in particular Articles 873 and 907 thereof,

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 311, 12.12.2000, p. 17.

³ OJ L 253, 11.10.1993, p. 1.

⁴ OJ L 330, 27.12.2000, p. 1.

Whereas:

- (1) By letter dated 20 April 2000, received by the Commission on 3 May 2000, the United Kingdom of Great Britain and Northern Ireland asked the Commission to decide, under Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979⁵ 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, as last amended by Regulation (EEC) No 1854/89,⁶ and under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it was justified to waive post-clearance entry in the accounts in the circumstances described below. The United Kingdom of Great Britain and Northern Ireland also asked, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,⁷ as last amended by Regulation (EEC) No 1854/89, and under Article 239 of Regulation (EEC) No 2913/92, whether, in the alternative, remission of import duties was justified in the same circumstances.

- (2) Between July 1989 and February 1995, a UK firm, hereinafter referred to as “the firm”, presented a number of import declarations for various electrical components originating in the Philippines, requesting preferential tariff treatment under the Generalised System of Preferences (hereinafter referred to as "the GSP"). For some of the operations, it attached to its customs declarations non-preferential certificates of origin. For other operations, it did not supply any certificate to support its customs declarations. In all cases, however, a zero rate of import duty was applied.

⁵ OJ L 197, 3.8.1979, p. 1.

⁶ OJ L 186, 30.6.1989, p.1.

⁷ OJ L 175, 12.7.1979, p.1.

- (3) The non-preferential certificates of origin presented demonstrated clearly that non-originating products made up about 60% of the ex-works price of the goods, but preferences can only be granted if non-originating materials represent no more than 40% of the ex-works price of the goods.
- (4) After March 1995, the firm stopped asking for GSP treatment, because changes in the GSP had brought the rate of import duty on the goods in question to 3% ad valorem.
- (5) During 1995, the firm realised that non-preferential certificates of origin had been presented to customs instead of the certificates of origin Form A usually needed for GSP treatment to be granted. It informed the competent customs authorities. After investigating the case, those customs authorities acknowledged that the non-preferential origin certificates were not valid for GSP treatment. On 29 March 1996 the UK authorities accordingly asked the firm to pay XXXXX to cover imports from 1993 to 1995. The firm is asking for post-clearance entry in the accounts to be waived and, in the alternative, for remission of that sum.
- (6) Pursuant to Articles 871 and 905 of Regulation (EEC) No 2454/93, the firm stated in support of the request from the competent UK authorities that it had seen the dossier submitted to the Commission and set out its arguments in a document annexed to the authorities' letter to the Commission of 20 April 2000.
- (7) In accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 20 September 2000 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.

- (8) Under Article 5(2) of Regulation (EEC) No 1697/79, applicable in this case to customs debts incurred before 1 January 1994, the competent authorities may refrain from taking action for the post-clearance recovery of import or export duties that 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 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 the customs declaration is concerned.
- (9) Under Article 220(2)(b) of Regulation (EEC) No 2913/92, applicable in this case to customs debts incurred after 1 January 1994, post-clearance entry in the accounts is waived where the amount of duty legally owed was not entered in the accounts as a result of an error made by the customs authorities themselves 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 the customs declaration is concerned.
- (10) In the case in question, the goods involved could only attract preferential zero-duty treatment if (a) they complied with the preferential origin conditions applicable to countries eligible under the GSP, and (b) the customs declaration was accompanied by a certificate of origin Form A issued by the competent authorities in the Philippines.
- (11) Because these goods complied with neither condition, the competent UK authorities considered that a customs debt had been incurred. They thus asked for post-clearance payment of the import duties.
- (12) In the case in question, however, the failure to take account of the applicable import duties when the import operations took place was caused by an error on the part of the UK competent authorities.

- (13) It was also largely on the advice of the UK customs authorities that the firm decided in 1989 to start requesting preferential GSP tariff treatment for its imports. Documents in the firm's possession demonstrate that the authorities were in a position as far back as that date to know that the goods did not comply with the origin conditions attached to the GSP. The documents clearly show that the percentage of non-originating materials in the imported finished product exceeded 40%.
- (14) In addition, from July 1989 to February 1995, the competent customs authorities had unquestioningly accepted the customs declarations submitted, and had granted preferential treatment even though the firm either failed altogether to provide origin certificates in support of the declarations, or only presented non-preferential origin certificates.
- (15) Over the same period of time, the competent UK authorities carried out seventeen checks on the firm. Seven of these related specifically to the granting of preferential treatment. However, at no point during these checks did the authorities notice or point out to the firm that certificates of origin Form A should have been presented, and that the certificates of origin that had been presented did not confer eligibility for preferential tariff treatment.
- (16) Similarly, both when accepting customs declarations and when inspecting the firm, the competent UK authorities entirely failed to notice that not only were the origin documents not applicable, they actually showed that the origin conditions were not fulfilled. The documents clearly indicated that the components being imported did not have the percentage of originating materials needed to be eligible for preferential tariff treatment.

- (17) During one check, carried out in February 1992, customs noticed that 72 customs declarations made by the firm with a request for preferential tariff treatment under the GSP had not been accompanied by a certificate of origin. The firm accordingly supplied customs with non-preferential certificates of origin for the operations in question. Customs accepted these with no objection.
- (18) In the light of the foregoing, the UK competent authorities made an active error within the meaning of Article 5(2) of Regulation (EEC) No 1697/79 and Article 220(2)(b) of Regulation (EEC) No 2913/92. This is because they repeatedly, over a number of years and without objection, accepted a large number of customs declarations with a request for preferential tariff treatment, even though the firm had not presented the required certificates of origin Form A to support those declarations. That active error is compounded by the fact that the competent authorities had carried out inspections of the firm without realising that the origin documents submitted were not valid.
- (19) The Court of Justice of the European Communities has consistently ruled that in order to determine whether the customs authorities' error could reasonably have been detected by the interested party, account must be taken of the nature of the error, the experience of the firm and the diligence shown by it.
- (20) Where the nature of the error is concerned, it is apparent that the numerous mistakes made by the UK competent authorities in this case are made all the more serious by the fact that despite the number of customs declarations submitted and despite the many checks they carried out, those authorities did not at any point over approximately six years notice the irregularities. Moreover, when the authorities noticed the absence of origin certificates for 72 declarations in February 1992, they were satisfied with the firm's post-clearance submission of non-preferential origin certificates. Because the errors recurred and went on for so long, the firm could legitimately believe that the operations taking place involved no irregularity whatsoever.

- (21) In addition, the dossier which the UK authorities sent the Commission indicates that before the period for which post-clearance payment of duties is being requested, customs had already granted the firm repayment of duty in a similar case. The firm also used to import goods from Malaysia, and customs considered (in the light of the firm's non-preferential certificates of origin for these imports) that preferential treatment under the GSP would be possible. Customs therefore helped the firm to make a request for repayment in March 1993, and granted that repayment in July 1993. The fact that the repayment decision was in writing would have strengthened the firm's belief that it could legitimately claim preferential tariff treatment under the GSP for its imports of components from the Philippines, on presentation of non-preferential certificates of origin.
- (22) With regard to professional experience, this is a small firm employing only eight people. It acted on the advice of the competent customs authorities, and prior to 1989, it had never imported anything under the GSP preferential tariff arrangements.
- (23) With regard to diligence, the firm seems to have tried several times to check whether it actually complied with the conditions giving entitlement to preferential tariff treatment under the GSP. What is more, it was at the firm's own initiative, not that of the UK customs administration, that the absence of certificates of origin Form A was pointed out. It was a newly arrived employee of the firm who prompted the discovery that the goods which had been imported in the past were not eligible for preferential tariff treatment under the GSP.
- (24) In the light of the foregoing, the competent UK authorities' error is not one that could reasonably have been detected by the firm.
- (25) The firm observed all the provisions laid down by the rules in force as far as its customs declaration was concerned.
- (26) Entry in the accounts of import duties is therefore not justified in this case.

- (27) As entry of import duties in the accounts is not justified in this case, there is no need to examine the UK's request that it be determined in the alternative whether or not the provisions of Article 13 of Council Regulation (EEC) No 1430/79 and Article 239 of Regulation (EEC) No 2913/92 apply,

HAS ADOPTED THIS DECISION:

Article 1

The import duty in the sum of XXXXX which is the subject of the request from the United Kingdom of Great Britain and Northern Ireland of 20 April 2000 shall not be entered in the accounts.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 25-01-2001

For the Commission

[...]

Member of the Commission