

COMMISSION DECISION

of ..21.2-1994

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

(request submitted by Italy)

REC 6/93

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 28 July 1993 received by the Commission on
24 August, Italy asked the Commission to decide under Article 5(2) of
Council 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.

From 1989 to 1990 an Italian company put blank video cassettes originating in China into free circulation. On presentation of Form A origin certificates issued by the proper Chinese authorities, customs duties on these imports were suspended under a GSP (generalized system of preferences) ceiling.

Subsequent investigation showed that the video cassettes did not satisfy the criteria for preferential treatment under the GSP. The certificates accompanying the import declarations were therefore not valid, so the authorities initiated the procedure for post-clearance recovery of the import duties from the company concerned.

The company appealed against recovery under Article 5 of Regulation (EEC) No 1697/79, on the grounds that it had acted in good faith.

Whereas, in accordance with Article 6 of Commission Regulation (EEC) No 2164/91⁵ of 23 July 1991, as incorporated into Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met on 11 November 1993 within the framework of the Committee on Duty Free Arrangements to examine the case;

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;

5 OJ No L 201, 24.7.1991, p.16.

Whereas, under Commission Regulation (EEC) No 693/88, goods covered by the preferences granted by the Community to certain developing countries are accorded preferential treatment when imported into the Community, on presentation of an origin certificate issued by the proper authorities of the country of export; whereas it is for those authorities to do whatever is necessary to verify the origin of the goods;

Whereas acceptance of such a certificate by the Member State of import cannot be considered an error on the part of its authorities; whereas in practice the authorities' initial acceptance of origin certificates does not preclude subsequent checks that may lead to the conclusion that the goods in question are not originating products;

Whereas, without impugning the importer's good faith, if the products in question are later found not to have originated in the country from which they were imported and the certificates of origin are therefore invalid, it must be assumed that the importer could have established that fact;

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 LIT [REDACTED] which are the subject of the request by Italy received by the Commission on 28 July 1993 shall be recovered.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 27, 2.1994

For the Commission