

I

COMMISSION DECISION

of 13.4.1993

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

(request submitted by Germany)

REC 4/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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,¹ as last amended by Regulation (EEC) No 918/83,²

Having regard to Commission Regulation (EEC) No 2164/91 of 23 July 1991 laying down provisions for the implementation of Article 5(2) of Council Regulation (EEC) No 1697/79 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 and in particular Article 6 thereof,

Whereas by letter dated 9 October 1992 received by the Commission on 19 October 1992, Germany asked the Commission to decide under Article 5(2) of Regulation (EEC) No 1697/79 whether it is justified not to take action for the recovery of import duties in the following circumstances:

1 OJ NO L 197, 3.8.1979, p.1.
2 OJ No L 105, 23.4.1983, p.1.
3 OJ No L 201, 24.7.1991, p.16.

In the period January to May 1989 a German company imported raw dried sliced beef (CN code 0210 2090 000) from Switzerland for free circulation. At customs clearance, customs applied to each consignment the preferential rate of 20% plus levies shown in the German user tariff, which was the rate shown at that time in the integrated Community tariff, Taric. In fact, this rate was by that time no longer valid, and the normal rate of 24% plus levies applied to Switzerland as well.

Only after the period in which these imports took place did the Commission inform the Member States, by computer print-out dated 16 May 1989, that the 20% preferential rate had expired on 31 December 1988. As a result, customs recovered a total of DM [REDACTED] post-clearance. The company then entered an appeal against that decision.

Whereas in accordance with Article 6 of Regulation (EEC) No 2164/91, a group of experts composed of representatives of all the Member States met on 8 January 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 any 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 according to a ruling of the Court of Justice, Community customs legislation published in the Official Journal of the European Communities constitutes the only substantive law in this area; whereas in the case under consideration the correct rate of customs duty (24% plus levies) had been published in the Official Journal;

Whereas the duty of 20% plus levies in the German user tariff applied by customs to clear these imports was based on an incorrect entry in Taric; whereas the error occurred in transposing the Harmonized System into the combined Nomenclature and was a direct consequence of transposition problems;

Whereas the error was not corrected and notified to the Member States until after the consignments in question had been imported; whereas it was unlikely that the error could be detected since there had previously been no correlation between the Combined Nomenclature and the Harmonized System;

Whereas the company could not, therefore, reasonably have detected the error, whereas it observed all the provisions laid down by the rules in force as far as its customs declaration was concerned and acted in good faith;

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 DM [REDACTED] which are the subject of the request by Germany received by the Commission on 9 October 1992 shall not be recovered.

Article 2

This Decision is address to Germany.

Done at Brussels, 13.4.1993

For the Commission