

REC/YES

COMMISSION DECISION

of 5-12-1994

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

(request submitted by Greece)

REC 8/94

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 2913/92,² and in particular Article 873 thereof,

Whereas by letter dated 25 May 1994, received by the Commission on 9 June 1994, Greece 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 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.

Between 24 June and 2 July 1992, a Greek cherry and grape processing plant imported 57 consignments of cherries from Bulgaria through Skydra customs office under CN code 0809 20 10 99. When the goods were cleared through customs, the customs office did not charge the countervailing levy of ECU 37.86 per 100 kg which had been imposed on imports of cherries originating in Bulgaria for the period 24 June to 1 July 1992 by Commission Regulation (EEC) 1591/92 of 22 June 1992 (OJ No L 168 of 23 June 1992).

Telex No 220643 informing administrations that Regulation (EEC) No 1591/92 would shortly be published in the OJ was sent to all Member States, including Greece, on 23 June 1992 .

When this information was passed on to the customs authorities by the Ministry of Agriculture on 2 July 1992, the procedure was initiated for the post-clearance recovery of the countervailing levy from the importer concerned, who subsequently appealed against recovery on the grounds that this levy had not been collected owing to an error on the part of the customs authorities.

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 27 September 1994 within the framework of the Customs Code Committee Section for General Customs Rules/Repayment 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;

Whereas the Commission informs the Member States by telex, prior to publication in the Official Journal, that a countervailing levy is due to be imposed; whereas this transfer of information did take place, although it was not relayed immediately to the Greek customs authorities;

Whereas, consequently, the customs office committed an error by failing to impose the countervailing levy;

Whereas Regulation (EEC) No 1591/92, which came into force on 24 June 1992, was published in the Official Journal of 23 June 1992 and was therefore available for consultation from that date;

Whereas, therefore, the error made by the Greek customs authorities could have been detected by the firm in question, which did not begin importing the goods until 24 June 1992;

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 Greece received by the Commission on 25 May 1994 shall be recovered.

Article 2

This Decision is addressed to Greece.

Done at Brussels, 5-12-1994

For the Commission