

COMMISSION DECISION

of 16.9.1991

finding that it is justified to proceed with the
recovery of import duties in a particular case

(request submitted by the United Kingdom)

Ref: REC 3/91

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 2380/89 of 2 August 1989 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 payments on goods entered for a customs procedure involving the obligation to pay such duties,³ as amended by Commission Regulation (EEC) No 946/83,⁴ and in particular Article 6 of the said Regulation No 2380/89,

Whereas by letter dated 18 April 1991 received by the Commission on the same day, the United Kingdom requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the non-recovery of import duties was justified 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 161, 26.6.1980, p.1.

4 OJ No L 104, 22.4.1983, p.15.

Under Commission Regulation (EEC) No 999/90 of 20 April 1990,⁴ which replaces Commission Regulation (EEC) No 551/85,⁵ imports of rice from the African, Caribbean and Pacific States into the Community qualify for a reduced rate of levy on condition that they are accompanied by a EUR1 movement certificate and an Advance Fixing Certificate (AFC);

Staff of local customs offices were notified through information memos from the national authorities of the conditions for application of the reduced levy. In this case the information concerning the requirement to present an AFC for ACP rice, correcting an earlier omission, was not disseminated until 26 November 1990. The mistake is attributable to misunderstandings and poor communications between both the trader and the customs authorities and between different customs offices.

The trader, formerly an engineer, took over a rice importing business without any experience of the procedures for importing goods from non-member countries. Neither the previous owner nor the various customs offices with which he had contact on a number of occasions told him that presentation of an AFC was a requirement for obtaining a reduced levy on ACP rice;

In the period from March to November 1990 the trader was allowed to remove warehoused rice for release into free circulation on payment of the ACP levy, not the full levy. Only when customs officials discovered that their dissemination of information from the central authorities had been deficient in respect of the AFC requirement did the trader present the requisite AFCs. The consequent underpayment amounts to GBP [REDACTED]

4 OJ L 101, 21.4.1990, p. 20.

5 OJ L 63, 2.3. 1985, p. 10.

The Member State submitting this case to the Commission notes that recovery of the sum in question would cause the firm to go into liquidation, with the loss of employment for all its staff;

Whereas in accordance with Article 6 of Regulation (EEC) No 2380/89, a group of experts composed of representatives of all the Member States met on 24 June 1991 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 not proceed to the post-clearance collection of import duties not collected as a result of a mistake by the competent authorities themselves that could not reasonably have been detected by the person liable, such person 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 Commission Regulation No 999/90 laying down detailed implementing rules for imports of rice originating in the African, Caribbean and Pacific (ACP) States, and the overseas countries and territories (OCT) provides for a cooperation procedure with these States so that a reduced levy is imposed on import into the Community of rice originating in the said States, countries or territories, on condition that the specific levy to be applied is fixed in advance; whereas this enables the exporting country concerned to calculate precisely the amount to be levied on the export of the rice by way of an export tax;

Whereas this procedure has been in force since 1 March 1985, the date on which Regulation (EEC) No 551/85 came into force; whereas this Regulation was replaced by Regulation (EEC) No 999/90 with effect from 1 March 1990;

Whereas customs offices made a mistake in authorizing the release of warehoused rice for free circulation on payment of a reduced levy when the relevant declaration was not accompanied by the necessary documents, in particular the AFC;

Whereas, however, this error on the part of the customs offices could reasonably be detected by the importer, since it is the responsibility of any trader to find out about the Community legislation applicable before importing goods from non-member countries; whereas this is all the more necessary in cases where the trader intends to claim a reduced levy because of the origin of the goods to be imported; whereas in these circumstances it is up to all traders to acquaint themselves with the specific procedure, the procedure in question having been published on a number of occasions in the Official Journal of the European Communities and in force for over five years;

Whereas Community rules on post-clearance recovery do not provide for consideration of an importer's precarious finances; whereas, in addition, according to the workings of the preferential arrangements in question, the firm would have had to pay a purchase price for the imported goods that included the export tax; whereas, pursuant to the aims of the system, a financial benefit should have gone to the exporting State and not the importing firm;

Whereas it is consequently justified to proceed with post-clearance recovery of import duties in this case;

HAS ADOPTED THIS DECISION:

Article 1

The import duties of GBP ██████████, which are the subject of the request by the United Kingdom of 18 April 1991, shall be recovered.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 16.9.1991

For the Commission

Ch. SCRIVENER

Member of the Commission

