

COMMISSION DECISION

of 4-7-1994

**finding that, in a particular case, it is justified not to take action
for the post-clearance recovery of import duties in respect of
a certain amount and that it is justified to take action
for recovery in respect of another amount**

(request submitted by the United Kingdom)

REC 1/94

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, and in particular Article 873 thereof,²

Whereas by letter dated 17 December 1993 received by the Commission on 4 January 1994, the United Kingdom 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.

Upon presentation of Form A certificates of origin a UK firm had been importing diodes from Mexico under the generalized preferences scheme (GSP) since 1989.

Following post-clearance verification enquiries, UK Customs discovered a failure to comply with the rules of origin covering the goods specified in Regulation (EEC) No 693/88⁴ since the authorized percentage of non-originating material had been exceeded. CET (Common External Tariff) duties therefore fell due and were claimed from the firm.

During this verification, UK Customs informed the Mexican authorities that they could not validly countersign certificates of origin for these goods since the percentage of originating material exceeded that authorized. The Mexican authorities maintained that the percentage was permissible and that the diodes qualified for preference.

Upon further examination, there was found to be an error in the Spanish language version of OJ No L 77 containing Regulation (EEC) No 693/88, which the Mexican authorities were taking as their basis.

On 1 November 1991 UK Customs contacted the Commission to request publication of a corrigendum to the Spanish version of OJ No L 77.

A corrigendum was published on 20 February 1992.

The Customs authorities demanded that the firm pay customs duties at the full rate in respect of the imports effected under the preferential scheme upon presentation of the Form A certificates of origin.

The importer then applied, on the basis of Article 5(2) of Regulation No 1697/79, that post-clearance recovery of an amount totalling XXXX should not be made in respect of the imports effected between 23 December 1989 and 24 January 1992;

⁴ OJ No L 77, 22.03.1988

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 19 May 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 error in the Spanish language version of the OJ containing Regulation (EEC) No 693/88 is a clerical error, and whereas the corrigendum thereto takes effect from the date of publication;

Whereas the certificates of origin validly issued by the Mexican authorities contained an erroneous indication of origin;

Whereas the UK customs office where the goods were released for free circulation did not know that the Spanish language version was incorrect;

Whereas the customs office was at fault in accepting the certificates of origin and in failing to levy the customs duties;

Whereas trusting in the validity or authenticity of a certificate of origin is normally no protection, since these are matters of commercial risk;

Whereas that should not, however, be the case where certificates of origin are inaccurate not because of commercial risk but because of an error which can be attributed to the Community authorities;

Whereas traders cannot be required to read and compare the different language versions of texts published in the Official Journal;

Whereas the error by the customs office in releasing the goods could not therefore reasonably have been detected by the person liable until informed by UK customs of the the mistake in the Spanish version of the Official Journal, i.e. 1 November 1991;

Whereas, therefore, there are grounds not to take action for the post-clearance recovery of import duties in respect of imports made before 1 November 1991, but action should be taken to recover duties in respect of imports after that date,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXX which are the subject of the request by the United Kingdom on 17 December 1993 shall not be recovered but the remaining import duties in the sum of XXXXX shall be recovered.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 4-7-1994

For the Commission