

Commission Decision

of 3.06.1997

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

(request submitted by Ireland)

**REC 10/96**

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**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,<sup>1</sup>

Having regard to Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92,<sup>2</sup> and in particular Articles 873 and 907 thereof,

Whereas by letter dated 3 December 1996 received by the Commission on 5 December 1996 Ireland 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<sup>3</sup> and Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it is justified not to take action for the recovery of import duties and also, under Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import duties or export duties,<sup>4</sup> as last amended by Regulation (EEC) No 3069/86,<sup>5</sup> and Article 239 of Regulation (EEC) No 2913/92, whether the remission of such duties is justified in the following circumstances:

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<sup>1</sup> OJ No L 302, 19.10.1992, p.1.

<sup>2</sup> OJ No L 253, 11.10.1993, p.1.

<sup>3</sup> OJ No L 197, 3.8.1979, p.1.

<sup>4</sup> OJ No L 175, 12.7.1979, p.1.

<sup>5</sup> OJ No L 286, 9.10.1986, p.1.

From 1991 to 1994 a firm, hereinafter referred to as the “person concerned”, imported rainwear manufactured from a combination of plastic and textile materials, declaring the goods under heading 3926 of the Combined Nomenclature, which attracted a zero rate of import duty under the Generalized System of Preferences (GSP).

This classification was accepted on several occasions by the Irish customs authorities, both by the section responsible for GSP matters and by the customs import officer dealing with the case, who had even inspected the goods to check that they had been classified correctly.

However, after further inspection, the central Tariff Classification Unit in Ireland decided in November 1993 that the goods should in fact be classified under CN heading 6210, giving rise to import duty at the rate of 14% since the fixed duty-free amount had been exhausted at the time of presentation of the individual import declarations. The person concerned was informed of this decision in June 1994.

Ireland originally asked the Commission by letter dated 26 April 1995 (a) to decide under Article 5(2) of Regulation (EEC) No 1697/79 and Article 220(2)(b) of Regulation (EEC) No 2913/92 whether it was justified to take action for the post-clearance recovery of import duties in this case and (b) to decide under Article 13 of Regulation (EEC) No 1430/79 and Article 239 of Regulation (EEC) No 2913/92 whether the duties could be remitted.

The Commission ruled, by Decision C(95)2726 of 3 November 1995 (REC 2/95) and the corrigendum sent to the Office of the Ireland’s Permanent Representative to the European Union by circular SG(95) d/3335 of 25 March 1996, that it was justified to take action for the post-clearance recovery of duties in this case and that the remission of those duties was not justified.

An appeal against this decision being made by the person concerned on 22 February 1996, the Commission, noting the ruling delivered by the Court of First Instance of the European Communities in [Case T-346/94](#), by Decision C(96)1135 of 6 May 1996, withdrew the Decision of 3 November 1995 on the grounds that the dossier referred to it had not been such as to enable it to adopt its decision in accordance with an administrative procedure which guaranteed the right of the person concerned to a hearing.

Whereas the person concerned declares he has taken note of the new dossier sent to the Commission by the Irish authorities and has nothing to add; whereas he has also stated his position in full in a dossier supplied to the Irish authorities and forwarded to the Commission;

Whereas in accordance with Articles 873 and 907 of Regulation (EEC) No 2454/93 a group of experts composed of representatives of all the Member States met on 7 March 1997 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case;

Whereas the Irish authorities based their request on Article 5(2) of Regulation (EEC) No 1697/79 and Article 220(2)(b) of Regulation (EEC) No 2913/92 and alternatively on Article 13(1) of Regulation (EEC) No 1430/79 and Article 239 of Regulation (EEC) No 2913/92; whereas it is therefore necessary to consider the applicability of all the said provisions;

Whereas in accordance with Article 5(2) of Regulation (EEC) No 1697/79, which applies here to goods imported prior to 1 January 1994, 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 which could not reasonably have been detected by the person liable, the latter for his part 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 in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92, which applies here to goods imported after 1 January 1994, there shall be no subsequent entry in the accounts where the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration;

Whereas the Irish customs authorities repeatedly accepted incorrect tariff declarations for the goods in question; whereas the said goods were physically inspected by a customs officer, who accepted that they were correctly classified;

Whereas these circumstances should be regarded as constituting an error on the part of the customs authorities;

Whereas when an economic operator is in doubt as to whether goods are classified under the correct heading, he should make thorough enquiries to find out whether these doubts are justified; whereas this requirement can be considered satisfied where the operator holds tariff information issued by the customs authorities of a Member State;

Whereas the Irish authorities themselves admit that the customs section responsible for GSP matters had expressed doubts as to the correctness of the tariff classification on a number of occasions, in

particular because of the discrepancy between the tariff heading used on the import declaration and that on the accompanying certificate of origin Form A;

Whereas these circumstances should have alerted the operator to the possibility of an incorrect tariff classification; whereas the operator did not proceed with due diligence in so far as he did not apply to the Irish authorities for tariff information, which would have removed any doubt as to the classification of the goods concerned;

Whereas, therefore, the error made by the competent authorities could have been detected by the person concerned;

Whereas it is therefore justified to take action for the post-clearance recovery of import duties in this case;

Whereas under Article 13(1) of Regulation (EEC) No 1430/79, applicable in this case to goods imported prior to 1 January 1994, import duties may be repaid or remitted in special situations other than those laid down in sections A to D of that Regulation which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

Whereas under Article 239 of Regulation (EEC) No 2319/92, applicable in this case to goods imported after 1 January 1994, import duties may be repaid or remitted in situations other than those referred to in Articles 236, 237 and 238 resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned:

Whereas the repeated acceptance of incorrect tariff declarations does not in itself constitute either a special situation within the meaning of Article 13 of Regulation (EEC) No 1430/79 or a situation covered by Article 239 of Regulation (EEC) No 2913/92;

Whereas the person concerned did not proceed with the diligence that would have enabled him to detect the error made by the competent national authorities; whereas, therefore, there was obvious negligence on his part;

Whereas, therefore, the remission of import duties requested is not justified in this case,

**HAS ADOPTED THIS DECISION:**

Article 1

**1.**

1. The import duties in the sum of XXXXX which are the subject of the request by Ireland dated 3 December 1996 shall be recovered.
2. The remission of import duties in the sum of XXXXXX requested by Ireland on 3 December 1996 is hereby found not to be justified.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 3.6.1997

For the Commission