

REC/YES

COMMISSION DECISION

of 3.5.1993

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

(request submitted by Germany)

REC 5/92

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 22 October 1992 received by the Commission on 3 November 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.

A German firm imported agricultural machinery from Poland in accordance with the relevant rules during 1991. Certificates of origin Form A were produced to customs, and the imports were granted preferential treatment at a zero rate of import duty. The certificates had been issued in respect of a considerable number of machines and were set off against tariff quotas by the customs office as and when the goods were imported.

On 30 April 1991 an administrative instruction was issued by the Finance Ministry reminding customs offices that Form A certificates could not cover more than one part-consignment and that a separate certificate referring to the specific operation was required for each part-consignment imported.

The customs office then asked the importer to regularize the situation by producing a Form A retrospectively for each part-consignment already imported. The firm was unable to provide the requisite proof of origin in five cases, and Customs took steps to recover duty in respect of these part-consignments in the sum of ~~118 250 25~~.

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 25 March 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 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 local customs office made an error in accepting certificates of origin Form A covering more than one part-consignment and setting them off against tariff quotas as and when the goods were imported;

Whereas Regulation (EEC) No 693/88⁴ on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the EEC in respect of certain products from developing countries provides in Article 7 that to benefit from tariff preferences the products in question must be accompanied by a certificate of origin Form A; whereas since this certificate constitutes the documentary evidence for the application of tariff preferences it must be issued for each operation;

Whereas according to Article 19 of the same Regulation it is for the competent governmental authority of the exporting beneficiary country to take any steps necessary to verify the origin of the products and to check the other statements on the certificates; whereas this checking is only possible if the competent authority issues a certificate for each operation in question;

Whereas the error made by the customs authorities could reasonably have been detected by the importer by a careful reading of the relevant provisions, which are published in the Official Journal;

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 ~~1.100.000~~ which are the subject of the request by Germany dated 22 October 1992 shall be recovered.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 3. 5. 1993

For the Commission