

Commission decision
of 18-7-1994
finding that it is justified not to take action for
the post-clearance recovery
of import duties in a number of particular cases

(requests submitted by France)

REC 4/94, 5/94, 6/94, 7/94

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 17 February 1994 received by the Commission on 22 February 1994, France 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 duties³ 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.

During the first half of 1993, French companies imported industrial casein from Ukraine, Kyrgyzstan, Belarus and Russia. On presentation of Form A certificates, these imports qualified for the generalized tariff preferences applicable to the new states of the former Soviet Union. At the end of April 1993 the French customs authorities realized that the authorities of the exporting countries had not sent the Commission the information needed to check the Form A certificates of origin until 29 April. This meant that the tariff preference could not be granted for goods released for home use before 29 April. The 14% customs duties not collected when the goods were released for home use were claimed from these companies, which then asked for subsequent non-recovery of these duties in accordance with Article 5 of Regulation (EEC) No 1697/79.

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 consider 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 it is laid down in Article 4 of Regulation (EEC) No 3917/92 of 21 December 1992 applying generalized tariff preferences for 1993 to the new states of the former Soviet Union⁴ that, in order to qualify, the authorities of the beneficiary countries should send to the Commission the names and addresses of the authorities authorized to issue certificates and specimen impressions of the stamps used, as part of administrative cooperation;

⁴ OJ No L 396, 31.12.1992, p.1.

Whereas it is laid down in Article 7 of Commission Regulation (EEC) No 693/88 of 4 March 1988 on the definition of the concept of originating products for purposes of the application of preferences granted by the European Community to developing countries⁵ that these tariff preferences are granted upon presentation of a Form A certificate of origin provided that the beneficiary country has sent the Commission the names and addresses of the authorities authorized to issue the certificates and the specimen impressions of the stamps used; whereas this information was not supplied by the authorities of the four countries concerned until 29 April 1993;

Whereas the French customs authorities made a mistake in granting exemption from duties on the basis of the Form A origin certificates when they did not have the information needed to check the documents;

Whereas operators are not notified of the fact that information concerning the authorities of the exporting country authorized to issue certificates and the impressions of the stamps used by these authorities are supplied to the Commission, or of when this is done;

Whereas the error by the customs authorities could not reasonably have been detected by the French companies since they had no way of knowing that the exporting country had not yet met the conditions governing the effective application of generalized tariff preferences granted by the Community for its exports;

Whereas, therefore, it is justified not to take action for the post-clearance recovery of import duties in this case;

⁵ OJ No L 77, 22.3.1988, p.1.

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of XXXXX which are the subject of the request by France received by the Commission on 17 February 1994 under reference numbers REC 4/94, REC 5/94, REC 6/94 and REC 7/94 shall not be recovered.

Article 2

This Decision is addressed to France.

Done at Brussels, 8-7-1994

For the Commission