

COMMISSION DECISION

of 7-7-1995

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

(request submitted by Belgium)

**REC 1/95**

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 of 2 July 1993 laying down  
provisions for the implementation of Council Regulation (EEC) No 2913/92,<sup>1</sup> and in  
particular Article 873 thereof,

Whereas by letter dated 5 January 1995, received by the Commission on 10 January 1995,  
Belgium 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>1</sup> whether it is justified not to take action  
for the recovery of import duties in the following circumstances:

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<sup>1</sup>10J No L 302, 19.10.1992, p.1.

<sup>2</sup>20J No L 253, 11.10.1993, p.1.

<sup>3</sup>30J No L 197, 3.8.1979, p.1.

Between 1987 and 1992, a Belgian firm imported consignments of tequila from Mexico in 200 litre casks at 55° GL under the generalized system of preferences (GSP) on presentation of Form A certificates of origin.

The goods were placed in a private warehouse in Belgium where they underwent various forms of treatment: blending and bottling in 0.70 litre bottles at 38° GL.

On release from the warehouse some of the products were released for home use in Belgium covered by the original Form A certificates. The remaining products were reconsigned to other EC Member States covered by replacement Form A certificates partly discharging the original certificates. This procedure was authorized by the Belgian customs administration, notably in correspondence with the party concerned dated 8 July 1987 and 17 February 1988.

Following post-clearance verification, the Belgian customs administration found that the relevant origin rules relating to the products concerned, as laid down in 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 tariff preferences granted by the European Economic Community in respect of certain products from the developing countries,<sup>1</sup> had not been complied with; Article 28 of the Regulation in question grants the preferential arrangements only to tequila imported into the Community in containers holding two litres or less.

The Origin Committee endorsed this position at its 212th meeting on 18 November 1992.

The firm was now liable for payment of the common external tariff duties and was requested to repay the difference between the amount legally owed and the amount already paid. It subsequently applied for no action to be taken for the recovery of the 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 30 May 1995 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case;

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<sup>1</sup>40J No L 77, 22.3.1988, p. 1.

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 competent Belgian authorities were themselves at fault in authorizing the reconsignment of the products to other Member States under cover of replacement Form A certificates;

Whereas the Form A certificates presented to the customs authorities were invalid;

Whereas reliance on the validity of an origin certificate is not normally protected since this is a matter of commercial risk;

Whereas, however, this does not apply where the competent national authorities in the Community have, by agreeing in writing to issue replacement certificates, expressly authorized use of the preferential arrangements;

Whereas the above authorization was such as to give rise to a legitimate expectation on the part of the party liable and, since the products concerned were intended for the Belgian market, to create the impression that the operations in question had been carried out in accordance with Community legislation;

Whereas the question of the eligibility of the tequila from Mexico in 200 litre casks for the relevant preferential arrangements under the Generalized System of Preferences, where it is bottled in containers of less than 2 litres in a Community customs warehouse, is a complex issue meriting discussion at a meeting of the Origin Committee;

Whereas, therefore, in the case of a complicated technical matter, traders cannot be expected to adopt a different interpretation of the rules to the one that has been given them by the competent national authorities in writing;

Whereas there can be no doubt about the good faith of the party liable, which could not reasonably have detected the Belgian authorities' error;

Whereas the party liable observed all the provisions laid down by the rules in force as far as its customs declaration was concerned;

Whereas, therefore, it is justified not 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 XXXXX which are the subject of the request by Belgium dated 5 January 1995 shall not be recovered.

Article 2

This Decision is addressed to Belgium.

Done at Brussels, 7-7-1995

For the Commission