

COMMISSION DECISION

of 12 October 1990

finding that it is justified not to proceed with the  
post-clearance recovery of import duties in a particular case

(request submitted by Spain)

Ref: REC 3/90

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,<sup>1</sup> as last amended by Regulation (EEC) No 918/83,<sup>2</sup>

Having regard to Commission Regulation (EEC) No 2380/89 of 2 August 1989 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 payments on goods entered for a customs procedure involving the obligation to pay such duties,<sup>3</sup> and in particular Article 6 thereof,

Whereas by letter dated 13 September 1990 received by the Commission on 18 September 1990, Spain requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the non-recovery of import duties was justified 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 225, 3.8.1989, p.30.

On 7 March 1989 a Spanish firm released for free circulation 10 454 kg net of Cheddar cheese falling within CN code 0406 90 21 from Australia. The Spanish firm, which had no previous experience of importing third country goods, completed the import formalities at the Mahón customs office (Palma de Mallorca, Balearic Islands) on the basis of the decision of the Directorate-General for Foreign Trade of 21 December 1988 (Official Gazette of 21 December 1988), which established import quotas for the first half of 1989 for cheeses of third country origin, with the exception of those covered by EEC-EFTA Agreements.

In accordance with the decision, the customs declaration presented to the customs office by the importing firm was accompanied by the corresponding import or advance fixing certificate laid down by the above-mentioned national provisions.

On the basis of the declaration and the other documents submitted, Mahón customs office accepted and registered the import and subsequently determined the duties, which besides the accession compensatory amount and the monetary compensatory amount also included the reduced levy, the sum due thus amounting to PTA 1 372 913.

In May 1989 the firm decided to import more Cheddar cheese from Australia. At that point Mahón customs office, unsure whether an IMA-1 certificate was required for application of the reduced levy, asked the importers to provide a security for the said products.

In a new decision dated 2 January 1990 (Official Gazette of 10 January 1990) the Directorate-General for Foreign Trade set new import quotas for cheeses originating in Third countries (other than the EFTA countries) and stated for the first time that to qualify for specific

import levies an IMA-1 certificate must be produced, in accordance with Regulation (EEC) No 1767 of 1 July 1982. On the basis of this decision, the customs office initiated the post-clearance recovery of additional import duties on the first shipment, imported in March 1989, a sum of PTA [REDACTED]

Whereas in accordance with Article 6 of Regulation (EEC) No 2380/89, a group of experts composed of representatives of all the Member States met on 18 February 1991 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 forgo the post-clearance collection of import duties not collected as a result of a mistake by the competent authorities themselves that could not reasonably have been detected by the person liable, such person 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 Mahón customs office mistakenly applied the central government's decision of 21 December 1988 when the goods were released for free circulation and thus infringed Regulation (EEC) No 1767/82 - the Community legislation covering the goods in question - which lays down special management provisions entailing presentation of an IMA-1 certificate;

Whereas examination of the case shows that the Spanish firm had no previous experience of importing such goods; whereas in trying to discover the law applicable to this operation, the Spanish firm was misled by a national decision that appeared to apply to all milk products and did not refer to the special rules for Cheddar cheese, which provide for the use of an import certificate other than that normally used for tariff quotas;

Whereas, moreover, the confusion of the firm concerned, which was carrying out this type of import operation for the first time, was compounded by the fact that the special rules applicable in this case predate the accession of Spain and Portugal to the Community;

Whereas in these circumstances the non-application of the Community rules in force could not reasonably have been detected by the person liable for payment; whereas the latter acted in good faith and observed all the provisions laid down by the rules in force concerning his customs declaration;

Whereas it is consequently justified not to proceed with post-clearance recovery of import duties in this case;

HAS ADOPTED THIS DECISION:

Article 1

The import duties of PTA [REDACTED], which are the subject of the request by Spain received by the Commission on 13 September 1990 shall not be recovered.

Article 2

This Decision is addressed to Spain.

Done at Brussels, 12 November 1991

For the Commission