

COMMISSION DECISION

of 27 June 1990

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

(request submitted by Italy)

Ref: REC 2/90

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

Having regard to Commission Regulation (EEC) No 2380/80 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,³ as amended by Commission Regulation (EEC) No 946/83,⁴ and in particular Article 6 thereof,

Whereas by letter dated 29 May 1990 received by the Commission on 19 June 1990, Italy 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 161, 26.6.1980, p.1.
 4 OJ No L 104, 22.4.1983, p.15.

An Italian firm obtained authorization from the Naples customs office on 123 February 1980 to import durum wheat from non-member countries under the inward processing arrangements for the production of durum wheat flour.

Durum wheat was imported under the inward processing arrangements on the following occasions:

15 April 1980	1 000 000 kg
21 May 1980	1 000 000 kg
4 June 1980	1 000 000 kg
14 June 1980	1 000 000 kg
21 June 1980	676 248 kg

After inward processing the firm released for free circulation 748 199 kg of secondary compensating products obtained by processing, notably coarse flour. The five declarations on these imports were accepted by the Naples customs office on 19 December 1980.

In accordance with Directive 79/608/EEC fixing standard rates of yield for certain inward processing operations, the firm declared the coarse flour under heading 23.02 A II(a) (23.02.210 NIMEXE). The Directive lays down standard rates of yield for the processing of durum wheat into macaroni, spaghetti and similar products and specifies such rates for various compensating products, including "coarse flour", for which the code 23.02 A II is indicated.

In 1981 another Italian firm released identical products into free circulation following inward processing operations. The customs office, while agreeing to application of the same tariff heading, asked the national customs authorities for their opinion on this classification.

After consideration of the matter the authorities agreed that heading 23.02 A II was correct, although they said that the goods should have been classified under subheading (b).

On 7 January 1982, however, following adoption of decisions at Community level, the authorities issued a new opinion, namely that the said secondary compensating products should have been classified under heading 11.01 A.

Whereas the Commission , in accordance with Article 6 of Regulation (EEC) No 2380/89, telexed the Italian authorities on 12 October 1990 asking for further information, notably whether action had been taken to recover the duties, and if so, on what date;

Whereas, in accordance with Article 6 of Regulation (EEC) No 1573/80, a group of experts composed of representatives of all the Member States met on 19 November 1990 within the framework of the Committee on Duty Free Arrangements to examine the case; where this meeting took place on the supposition that steps to recover the duties had indeed been initiated by the relevant authorities;

Whereas, by fax of 22 April 1991, Italy confirmed that such action had been taken on 5 September 1982 and that the time-limit laid down had thus been complied with; whereas the period within which the Commission is required to take a decision is thereby extended by six months and ten days; whereas the time-limit for a decision is 29 June 1991;

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, the competent authorities may not proceed to the post-clearance recovery of import duties not collected as a result of an error 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 import duties totalling Lit [REDACTED] have not been collected;

Whereas failure to collect the duties was due to an error on the part of the Italian authorities, which, after consideration of the matter at national level, confirmed that coarse flour should be classified under tariff heading 23.02 and not heading 11.01;

Whereas the error could not reasonably have been detected by the person liable; whereas Directive 79/608/EEC which, inter alia, lays down standard rates of yield for the processing of durum wheat into certain macaroni, spaghetti and like products does specify tariff heading ex 23.02 A II for coarse flour obtained as a compensating product from such processing; whereas, although it is not the purpose of this Directive to determine the tariff classification of goods but rather, in accordance with its Article 1, to set the standard rates of yield which should be applied to inward processing operations involving the goods listed that also produce the compensating products listed, it does nevertheless show coarse flour as falling under the tariff heading in question;

Whereas, even though such classification is contrary to the provisions of Chapter 11 of the Common Customs Tariff governing the tariff classification of such goods, traders in such circumstances had good grounds for adopting the tariff heading for the compensating product indicated in the Directive;

Whereas the firm liable acted in good faith and observed all the provisions laid down by the rules in force as far as its customs declaration was concerned;

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 Lit , which are the subject of the request by Italy received by the Commission on 29 May 1990 shall not be recovered.

Article 2

This Decision is addressed to Italy.

Done at Brussels, 27 June 1991

For the Commission