

**COMMISSION DECISION**

of 01-12-1997

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

(request submitted by Germany)

**REC 1/97**

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**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>2</sup> and in particular Article 873 thereof,

Whereas by letter dated 26 May 1997, received by the Commission on 5 June 1997, Germany 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>3</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> OJ No L 302, 19.10.1992, p. 1.

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

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

On 17 December 1992 and 14 January and 8 February 1993 a total of 42 pure-bred breeding cattle of CN code 0102 10 00 were imported into the European Community from Austria by a German cattle dealer (the declarant).

The animals were admitted free of duty on the strength of the veterinary and health certificates prescribed for pure-bred breeding cattle, which were presented on clearance.

Enquiries by the competent customs department, however, revealed that the cattle had not been entered in a herd book and should therefore have been declared under CN code 0102 90, attracting import duties totalling XXXX. According to the customs office, by declaring the animals under code 0102 10 00 the importer was relieved of the obligation to supply proof of entry in a herd book, but the actual entry requirement still applied.

The declarant appealed under Article 5(2) of Regulation (EEC) No 1697/79 against post-clearance recovery of the duty, arguing that it was impossible to tell from the applicable Community texts that cattle originating in Austria had to be entered in a herd book in order to qualify for relief when imported from Austria under code 0102 10 00;

Whereas the declarant states that he has seen the dossier submitted to the Commission by the German authorities and has nothing to add;

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 9 September 1997 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment 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 Article 2 of Commission Regulation (EEC) No 2432/92 of 7 August 1992 on imports of pure-bred breeding animals of the bovine species from third countries and the granting of export refunds thereon,<sup>4</sup> the German version of which was rectified by Commission Regulation (EEC) No 3224/92,<sup>5</sup> provides that on release for free circulation of pure-bred breeding animals falling within CN code 0102 10 00, importers must present the pedigree and breeding and health certificates of each animal to the customs authorities; whereas Article 2(3) further provides that unless an animal has been slaughtered within twelve months of import the importer must provide the customs authorities of the importing Member State, within fifteen months of release for free circulation, with proof that the animal has been entered in a herd book; whereas Article 2(5), however, waives that obligation in respect of pure-bred breeding cattle originating in and coming from Austria;

Whereas the second paragraph of Article 7 of Council Directive 77/504/EEC of 25 July 1977 on pure-bred breeding animals of the bovine species<sup>6</sup> provides that imports of such animals may not be authorised unless proof is provided that the animals are either entered or registered or eligible for entry in a herd book in the Community;

Whereas no such proof was provided in respect of the imports under consideration;

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<sup>4</sup> OJ No L 227, 11.8.1992, p. 12.

<sup>5</sup> OJ No L 320, 5.11.1992, p. 8.

<sup>6</sup> OJ No L 206, 12.8.1977, p. 8.

Whereas the customs office of importation was at fault in not requiring the declarant to provide the proof necessary to have the cattle imported as pure-bred breeding animals; whereas Commission Regulation (EEC) No 286/93 of 9 February 1993 amending Regulation (EEC) No 2342/92<sup>7</sup> in fact specifies that Article 2 of that Regulation does not affect the requirements of the second paragraph of Article 7 of Directive 77/504/EEC;

Whereas it is not clear from Article 2 of Regulation (EEC) No 2342/92 whether pure-bred breeding cattle of CN code 0102 10 00 have to be entered in a herd book or whether proof of such entry has to be provided at the time of import;

Whether the text has in any case proved difficult to apply in practice;

Whereas the Commission, aware of the need to clarify the situation, adopted Regulation (EEC) No 286/9, which deletes the reference to herd books in Article 2(3) of Regulation (EEC) No 2342/92 and states specifically that the said article is without prejudice to the application of the second paragraph of Article 7 of Directive 77/504/EEC;

Whereas there was therefore genuine uncertainty about the proper interpretation of this provision and the person liable for the duty could not reasonably have detected the customs authorities' mistake;

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

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<sup>7</sup> OJ No L 34, 10.2.1993, p. 7.

**HAS ADOPTED THIS DECISION:**

Article 1

The import duties in the sum of XXXX which are the subject of the request by Germany dated 26 May 1997 shall not be recovered.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 01-12-1997

For the Commission