

COMMISSION DECISION

of 4 July 1991

finding that it is justified to proceed with the post-clearance recovery of import duties in a particular case

(request submitted by France)

Ref: REC 1/91

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 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 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> and in particular Article 6 thereof,

Whereas by letter dated 28 January 1991 received by the Commission on 30 January 1991, France requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the recovery of import duties could be waived 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.

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A French company imported 16 consignments of knives from the United States between 9 March 1988 and 31 July 1989. The knives are made of metal, but their handles have a decorative trim of wood or some other material.

The company declared the imports for free circulation under Combined Nomenclature codes 8211 92 10 (other knives having fixed blades: handles of base metal therefor) and 8211 93 10 (knives having other than fixed blades: handles of base metal therefor) on which the import duty is 5.1%.

When verifying the declarations and examining the goods declared, the local customs service did not contest the tariff headings declared.

Only when carrying out a subsequent check on declarations made by this company did it contest these headings. The matter was referred to the tariff department of the Directorate-General of Customs and Indirect Taxation, which took the view that the knives imported by the company should have been classified under Combined Nomenclature codes 8211 92 90 and 8211 93 90, which attract an import duty of 17%.

On 6 August the company submitted a request for waiver of post-clearance recovery of import duties under Article 5(2) of Regulation (EEC) No 1697/79 on the grounds that it could not have detected the error made by customs, in particular because of the ambiguity of the terms used to define the headings in Chapter 8211; the company also pointed out that it had acted in good faith.

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 24 June 1991 within the framework of the Committee on Duty-Free Arrangements to examine the case;

Whereas under Article 5(2) of Regulation (EEC) No 1697/79, the competent authorities may waive the post-clearance recovery of import duties or export 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 complied with all the provisions laid down by the rules in force as far as his customs declaration is concerned;

Whereas the uncollected import duties total FF [REDACTED]

Whereas the local customs service was in error when, after verification and examination, it accepted the importing company's declaration of metal knives with trim of wood or other material under codes 8211 92 10 and 8211 93 10;

Whereas the error of the local customs service could, however, reasonably have been detected by the importing firm correctly applying the classification procedures laid down in the General Rules for the interpretation of the Combined Nomenclature; whereas General Rule No 1 provides that for legal purposes, classification is to be determined according to the terms of the headings and relevant section or chapter notes; whereas reading heading 8211 in conjunction with Note No 2 to Chapter 82, it is clear that parts of base metal of knives are to be classified under that heading; whereas with regard to classification at subheading level, application of General Rule No 6, in particular the last sentence to the effect that section and chapter notes also apply unless otherwise provided, put it beyond doubt that heading 8211 91 10 (handles of base metal) cannot apply to complete knives; whereas headings 8211 92 90 and 8211 93 90 ("Other") apply to complete knives irrespective of the type of handle;

Whereas the knives imported by the company in question cannot therefore be classified under the headings declared; whereas correct application of the classification rules indicates that the appropriate headings are codes 8211 92 90 (other knives having fixed blades: other) and 8211 93 90 (knives having other than fixed blades: other); whereas this interpretation is strengthened by a consideration of the Explanatory Notes to Chapter 8211 of the Harmonized System;

Whereas the tariff department of the Directorate-General of Customs and Indirect Taxation properly applied the classification rules and therefore corrected the mistaken classification initially accepted by the local customs service;

Whereas in the context of Article 5(2) the question of good faith is taken into consideration only when it is found that the error committed by the competent authorities could not reasonably have been detected by the person liable;

Whereas there are consequently no grounds to waive the post-clearance recovery of import duties in this case,

HAS ADOPTED THIS DECISION:

Article 1

The FF [REDACTED] of import duties which are the subject of France's request dated 28 January 1991 shall be recovered.

Article 2

This Decision is addressed to France.

Done at Brussels, 24 July 1991

For the Commission