

COMMISSION DECISION
of 27-02-1998
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 5/97

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,¹

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, and in particular Article 873 thereof,²

Whereas by letter dated 21 August 1997, received by the Commission on 3 September 1997, Germany asked the Commission to decide, under Article 220(2)(b) of Regulation (EC) No 2913/92, whether it is justified not to take action for the recovery of import duties in the following circumstances:

¹ OJ No L 302, 19.10.1992, p.1.

² OJ No L 253, 11.10.1993, p.1.

Between 3 July and 21 December 1995 a firm imported confectionery of CN tariff headings 1704 and 1806 from Switzerland. At the time the goods were released for free circulation the preferential amounts due on agricultural components under Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products³ were set for Switzerland by Commission Regulation (EC) No 1937/95 of 4 August 1995,⁴ covering the period 1 July-30 September 1995. This was extended until 31 December 1995 by Commission Regulation (EC) No 2312/95 of 29 September 1995.⁵

The customs office converted the amounts shown in ECU in the regulations using the monthly rate applicable under Commission Regulation (EC) No 1482/95 of 28 June 1995 determining as a transitional measure the conversion rates to be applied under the Common Customs Tariff to agricultural products and certain products obtained from the processing thereof.⁶ However, it should have used the agricultural conversion rate provided for in Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy.⁷

The German customs authorities consequently entered the sum of XXXXX in the accounts retrospectively; the firm is requesting that recovery of this sum be waived;

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

³ OJ No L 318, 20.12.1993, p. 18.

⁴ OJ No L 186, 5.8.1995, p. 11.

⁵ OJ No L 233, 30.9.1995, p. 66.

⁶ OJ No L 145, 28.6.1995, p. 43.

⁷ OJ No L 387, 31.12.1992, p. 1.

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 January 1998 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92 there is no subsequent entry in the accounts where the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part 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 the monthly conversion rate provided for in Regulation (EC) No 1482/95 was applicable only to agricultural products for which the duty was set in ecus in the Common Customs Tariff; whereas in this case the ECU amounts were set in Regulation (EC) No 1937/95 and the agricultural conversion rate should therefore have been used;

Whereas as a result, XXXXXX of import duties was not collected;

Whereas failure to collect the duties was the result of an error on the part of the competent German authorities, who applied the wrong conversion rate to amounts denominated in ECU on the strength of the opinion given by the Commission in the Management Committee on non-Annex II Goods;

Whereas the firm displayed due diligence, its good faith cannot be doubted and it could not reasonably have detected the error on the part of the German customs authorities, since this was a complex technical issue and the regulations setting the ECU amounts did not make it clear whether the agricultural conversion rate applied;

Whereas in June 1995, moreover, the Commission departments concerned issued contradictory views about which conversion rate should be used for the ECU amounts set in Community legislation such as Regulation (EC) No 1937/95;

Whereas given the ambiguity of the law on this point the firm could not have detected the mistake made by the competent German authorities;

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

Whereas it is therefore 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 Germany dated 21 August 1997 shall not be recovered.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 27-02-1998

For the Commission