

# COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28. II. 1992

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NOT FOR PUBLICATION

COMMISSION DECISION

of 28. II. 1992

finding that the post-clearance recovery of import duties  
in a particular case must be effected

(request submitted by the United Kingdom)

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Ref.: REC 8/91

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 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 2164/91 of 23 July 1991 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 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 22 August 1991, received by the Commission on 29 August 1991, the United Kingdom requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the non-recovery of import duties is justified in the following circumstances:

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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.

At the beginning of 1989 a UK company presented two declarations for release for free circulation to the Liverpool customs office for blank video tapes imported into the Community from Hong Kong under CN code 8523 13 00.

The declarations were accepted on 3 January 1989 and checked by the customs authorities on 6 January.

As the goods were entitled to preferential treatment under the GSP as part of a quota, a deposit was required to cover payment of the customs duty of 4.9%.

The declarations were processed by the computerized customs system and classified under heading RFC C 07, which indicates that entries should be checked to see if anti-dumping duties are applicable.

The Liverpool customs office therefore checked national tariff circulars and the telexes received from the central authorities. Since there was no mention of an anti-dumping duty, they did not take any special measures.

A provisional anti-dumping duty of 59.3% had, however, been imposed on the goods since the adoption of Commission Regulation (EEC) No 4062/88 of 23 December 1988,<sup>1</sup> which came into force on 25 December 1988.

It only emerged that anti-dumping duties should have been imposed on the two entries when the deposit lodged to cover payment of the customs duty was brought to account. The office of entry in the accounts sent this information to the Liverpool office on 12 June 1989.

The importer was informed of this by telephone on 30 August 1989 and the information was then confirmed by letter.

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<sup>1</sup> OJ No L 356, 24.12.1988, p. 47.

In the meantime the provisional anti-dumping duty had been changed into a definitive duty of 21.9% by Council Regulation (EEC) No 1768/89 of 22 June 1989<sup>1</sup> with effect from 25 December 1988. The sum to be recovered in anti-dumping duties therefore amounts to ECU [REDACTED],

Whereas in accordance with Article 6 of Regulation (EEC) No 2164/91, a group of experts composed of representatives of all the Member States met on 31 January within the framework of the Committee on Duty Free Arrangements to examine the case; whereas during that meeting all the documents sent by the UK authorities and the conclusions presented by the importer's counsel for the defence in a letter dated 30 September 1991 were studied;

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 a mistake by the competent authorities 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 a provisional anti-dumping duty on video cassettes originating in Hong Kong was imposed by Regulation (EEC) No 4062/88 of 23 December 1988, which came into force on 25 December 1988; whereas Regulation (EEC) No 1768/89 of 19 June 1989 replaced this with a definitive duty;

Whereas the corresponding copy of the Official Journal was received by the UK central authorities on 3 January 1989, which sent a telex to the local customs offices on 4 January 1989;

Whereas the fact that no security was requested in respect of the provisional anti-dumping duty to be collected constitutes an error by the Liverpool customs office;

<sup>1</sup> OJ No L 174, 22.6.1989, p. 1.

Whereas the anti-dumping proceeding concerning the goods imported had been initiated by opinion No 87/C 340/05 published in the Official Journal of the European Communities No C 340 of 18 December 1987; whereas in accordance with the provisions of Council Regulation (EEC) No 2176/84 of 23 July 1984, amended by Regulation (EEC) No 1761/87 of 22 June 1987, which was in turn amended by Regulation (EEC) No 2423/88 of 11 July 1988, this proceeding gave rise to a number of consultations with the economic circles involved, in particular the exporters and importers concerned and the Hong Kong authorities, all of which was reported and commented on by the press;

Whereas according to statements by staff of the importing firm, close and regular contacts were maintained with the Hong Kong exporter who, with his experience in external trade, should have been aware of the proceeding in question;

Whereas the adoption of a provisional anti-dumping duty at the outcome of the first part of the proceeding initiated by opinion No 87/C 340/05 was effected by a Regulation duly published on 24 December 1988 in the Official Journal of the European Communities; whereas the corresponding copy of the Official Journal was received by the UK central authorities on 3 January 1989, which telexed its contents to local customs offices on 4 January 1989 and updated the computerized entry system on 5 January 1989;

Whereas, for all these reasons, the error made by the Liverpool customs office in processing the two declarations for release for free circulation could therefore have been detected by the importer, who should in any case have sought the information about the possible imposition of an anti-dumping duty from the relevant UK customs departments, in the same way as had been done for the application of the GSP quota and of possible import restrictions;

Whereas it is therefore justified to proceed with post-clearance recovery of import duties in this particular case;

HAS ADOPTED THIS DECISION:

Article 1

The ECU [REDACTED] in import duties which are the subject of the request by the United Kingdom dated 22 August 1991 shall be recovered.

Article 2

This decision is addressed to the United Kingdom.

Done at Brussels, 28. II. 1992

For the Commission

**Ch. SCRIVENER**

