

CAF

COMMISSION DECISION
of 22.3.1994

finding that it is justified to take action for
the post-clearance recovery of import duties
in a particular case

(request submitted by France)

REC 8/93

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 22 September 1993 received by the Commission on
28 September 1993, France 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,³ as last amended by Regulation
(EEC) No 918/83,⁴ 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.
3 OJ No L 197, 3.8.1979, p.1.
4 OJ No L 105, 23.4.1983, p.1.

Between 12 January and 29 June 1990 a French company imported from the United States certain articles of rubber coming under tariff heading No 40 16 99 90 000 0L. Customs duties on these goods were charged at the preferential rate of 3.5% in accordance with the published national customs tariff for 1990.

During a post-clearance check on these imports the customs services realized that application of the preferential rate of 3.5% depended on certain conditions being met. As the conditions in question had not been laid down at Community level, the lower rate of duty could not be applied and the common external rate (4.4%) was therefore chargeable.

After receiving a demand for payment of the difference between the duty levied at the rate of 3.5% and the legally required duty chargeable at the 4.4% rate, i.e. ECU [REDACTED] the French company appealed against recovery under Article 5(2) of Regulation (EEC) No 1697/79.

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 4 February 1994 within the framework of the Committee on Duty Free Arrangements 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 the preferential rate of 3.5% was applicable under certain conditions; whereas entitlement to the preferential rate was dependent on these conditions being met;

Whereas the Community regulations did not lay down the conditions subject to which the lower rate might be charged; whereas the lower rate could not therefore be applied;

Whereas, if the company had inquired whether it fulfilled these conditions, it would have realised that they had not been laid down;

Whereas the company could have detected the error made by the French administration in accepting the declaration of release for free circulation and the application of a preferential rate of duty;

Whereas, therefore, it is justified to take action for the post-clearance recovery of the import duties in this case,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of ECU [REDACTED] which are the subject of the request by France received by the Commission on 22 September 1993 shall be recovered.

Article 2

This Decision is addressed to France.

Done at Brussels, 22. 3. 1994

For the Commission