

COMMISSION DECISION
of 5-7-1994
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 2/94

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 of 11 January 1994 received by the Commission on 18 January 1994, 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,³ 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.

Until July 1992 a German firm had benefited from an unrestricted outward processing authorization to import clothing from Czechoslovakia, with customs duty payable on the basis of the difference method.

The EEC-Czechoslovakia Agreement came into force on 1 March 1992.

Between 1 July 1992 and 23 September 1992 the firm's goods were admitted free of duty on the basis of Protocol No 1 to the EEC-Czechoslovakia Agreement.

It subsequently emerged that one of the conditions for exemption from duty had not been fulfilled and customs duties were charged. Exemption could be granted to firms in respect of goods covered by Regulation (EEC) No 636/82⁴ only if an authorization to use the outward processing arrangements for textiles laid down in that Regulation had been requested and obtained.

The firm applied for post-clearance recovery of duties of XXXXX not to be charged, on the basis of Article 5(2) of Regulation No 1697/79, on the grounds that it was the customs office itself which had informed it of the possibility of obtaining exemption from duty and which had granted it without demanding the requisite authorization or informing it that it was required.

It was subsequently granted this authorization.

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 19 May 1994 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case;

⁴ OJ No L 76, 20.3.1982, p.1.

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 failure to collect the duties was due to an error on the part of the customs office of importation; whereas the firm was not asked for the authorization needed for the duty-free admission of the goods involved and the duties were not collected;

Whereas the wording of Protocol No 1 to the EEC/Czechoslovakia Agreement which reads "the rates of duty applied to reimports into the Community of textile products falling within the categories listed in the Annex to Council Regulation (EEC) No 636/82 shall be eliminated on the date of entry into force of the Agreement" is such that there may be some doubt as to whether the authorization stipulated in that Regulation is needed;

Whereas Member States have interpreted this text differently;

Whereas the Commission departments are aware of the need to clarify this situation and have, on a number of occasions, informed the Member States of how this text is to be interpreted; whereas the parallel texts of the agreements later signed with Romania and Bulgaria were amended to make the meaning clearer;

Whereas the uncertainty as to the correct interpretation of the text was therefore genuine and the firm liable could not reasonably have detected the error made by the customs office;

Whereas, therefore, it is 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 received by the Commission on 11 January 1994 shall not be recovered.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 5-7-1994

For the Commission