

REC/YES

REC/NO

COMMISSION DECISION
of 6.12.1991

finding that it is justified in a particular case to proceed with the
post-clearance recovery of some import duties
and not justified to proceed with the recovery of others

(request submitted by the Netherlands)

Ref. REC 6/91

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,¹ as last amended by Regulation (EEC) No 918/83,²

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 payments on goods entered for a customs procedure involving the obligation to pay such duties,³ and in particular Article 6 of the said Regulation No 2184/91,

Whereas by letter dated 4 June 1991 received by the Commission on 10 June 1991, the Netherlands requested the Commission to decide, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the non-recovery of import duties was justified 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 201, 24.7.1991, p.16.

The Netherlands has a centralized system for the administration of the quotas and ceilings for textile products under the system of generalized preferences.

The system requires would-be importers to submit applications to their local customs offices within a very brief period at the beginning of the administrative year and the local customs offices, within the same period, to transmit these applications to the central customs authorities, which then share out the quotas or ceilings among the applicants according to economic criteria.

A Dutch importer sought to take advantage of zero-rated quotas opened for the year 1990 in respect of clothing originating in China, India and Pakistan by lodging, in the period laid down by the national authorities (27 December 1989 to 3 January 1990), 27 import declarations accompanied by applications for a share of the quota.

However, owing to an oversight by local customs, these applications were neither processed nor transmitted in time to the central customs authorities, with the result that the importer was excluded from the sharing-out of the quotas.

Had this oversight not occurred, the importer could have expected to benefit from zero-rated quotas for at least part of his imports. In view of the national criteria applied, this share would have been very small and would have represented a saving of only HFL [REDACTED] on import duties totalling HFL [REDACTED]. The outstanding balance of HFL [REDACTED] would still have been payable.

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, the competent authorities may choose not to proceed with the post-clearance recovery of import duties or export duties not collected as a result of an error by the competent authorities themselves which could not reasonably have been detected by the person liable, that 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 the cases in which these provisions can be applied are assessed by the Commission according to Article 4 of Regulation (EEC) No 2164/91, save in the situations specifically referred to in Article 2 of that Regulation;

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 18 September 1991 within the framework of the Committee on Duty Free Arrangements to examine the case;

Whereas the Netherlands' centralized administration system for quotas and ceilings is intended to share out these quotas or ceilings among importers according to economic criteria.

Whereas, according to information supplied by the Dutch authorities, the application of the aforementioned economic criteria would have led, quite independently of any error by the local customs service, to the rejection of most of the importer's applications for a quota share and a sum of HFL [REDACTED] would still have had to be paid.

Whereas the oversight of the local customs office therefore affected the collection of duties totalling only HFL [REDACTED]

Whereas, in respect of the sum of HFL [REDACTED], the failure to take account of applications for a quota share was due entirely to an error on the part of the competent authorities that could not reasonably have been detected by the person liable;

Whereas it is consequently justified to proceed with post-clearance recovery of import duties totalling HFL [REDACTED] and not with recovery of HFL [REDACTED]

HAS ADOPTED THIS DECISION:

Article 1

Of the import duties totalling HFL [REDACTED], which are the subject of the request by the Netherlands received by the Commission on 4 June 1991, HFL [REDACTED] shall be recovered; the balance of HFL [REDACTED] shall not be recovered.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 6.12.1991

For the Commission