

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03/04/1991.

C(91) 588 final

NOT FOR PUBLICATION

COMMISSION DECISION

of 03/04/1991

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

(request submitted by the United Kingdom)

(Ref : REC 4/90)

COMMISSION DECISION

of .0.3. IV. 1991

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

(request submitted by the United Kingdom)

Ref: REC 4/90

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 2380/89 of 2 August 1989 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 thereof,

(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.

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,⁽⁴⁾ as last amended by Regulation (EEC) No 3069/86,⁽⁵⁾

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties, and in particular Article 8 thereof,

Whereas by letter dated 28 September 1990 received by the Commission on 5 October 1990, the United Kingdom requested the Commission to decide whether the post-clearance recovery of import duties could be waived under Article 5(2) of Regulation (EEC) No 1697/79 and, if not, whether, pursuant to Article 13 of Regulation (EEC) No 1430/79, remission of these duties was justified in the following circumstances:

In May a UK firm ordered a consignment of paint brushes from a Chinese firm belonging to the state-trading system of the People's Republic of China. The goods, falling within CN code 9603 40 10, were ordered for delivery at Liverpool in July 1988. The managing director of the UK firm claims that before placing the order he made enquiries with a local customs office about the possibility of an anti-dumping duty being imposed and was told that there was no information at that time to suggest that imposition of an anti-dumping duty was imminent.

(4) OJ L 175, 12.7.1979, p.1.

(5) OJ No L 286, 9.10.1986, p.1.

Owing to a delay in the delivery of the goods, the managing director in September 1988 again made enquiries about anti-dumping duty, this time to a Member of the European Parliament, who in turn asked the Member of the Commission responsible: there was no reply until January 1989, by which time a definitive anti-dumping duty had been imposed.

The goods reached Liverpool on 29 September 1988 and were released for free circulation on 5 October 1988. Import duties of £1 753.03 were paid, but no anti-dumping duty was requested by customs.

Regulation (EEC) No 3052/88, which was published on 4 October 1988 and entered into force the following day, imposed a provisional anti-dumping duty of 69% on paint brushes falling within CN code 9603 40 10 manufactured or exported by the Chinese firm in question, with effect from 5 October 1988. United Kingdom Customs Headquarters had received no telex from the Commission giving advance notice of the Regulation and the Regulation itself was not received by the relevant department at Customs Headquarters until 7 October. The department was consequently unable to telex local customs offices before this day.

Commission Regulation (EEC) No 3453/88 published on 8 November 1988 imposed a provisional anti-dumping duty on all paint brushes manufactured in the People's Republic of China with effect from 5 October 1988. On 22 March 1989 Regulation (EEC) No 725/89 imposed a definitive anti-dumping duty.

It was found during an inspection carried out by Customs Headquarters in March 1989 that anti-dumping duty had not been paid when the goods were entered for release on 5 October 1988. A demand was therefore issued on 5 March 1990 for the additional charges due on this import, a sum of £ [REDACTED]

In a letter to customs dated 12 April 1990, the firm appealed against payment of the additional duties, claiming that it had made all reasonable efforts to determine before importation whether anti-dumping duty was applicable, and that had it discovered that duty was payable, it would have refused the consignment on the grounds that it had been shipped late. The goods were sold on delivery at prices based on delivered cost duty paid. The chairman of the firm later wrote to his MEP complaining about customs' demand for payment, and also applied through his legal representatives to the High Court for a judicial review of the department's decision to issue a demand. The High Court granted leave to apply for a judicial review, and the minister responsible for customs matters informed the MEP that HM Customs would put the case to the Commission.

Whereas, in accordance with Article 6 of Regulation (EEC) No 2380/89 and Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 18 February 1991 within the framework of the Committee on Duty-Free Arrangements to examine the matter;

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, the competent authorities may not proceed to the post-clearance collection of import duties not collected as a result of a mistake by the competent authorities themselves 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 on 5 October 1988, when paint brushes falling within CN code 9603 40 10 originating with the Chinese firm in question were entered for release, the customs office erred in failing to apply the 69% provisional anti-dumping duty imposed that same day by Regulation (EEC) No 3052/88;

Whereas the Regulation imposing a provisional anti-dumping duty on the products concerned was published in the Official Journal of the European Communities; whereas it has been from the moment of its entry into force the sole substantive law, directly applicable in all Member States, of which everyone is deemed to be aware; whereas it is the responsibility of any professional importer of third country goods to keep abreast of changes in the Community legislation applicable to imports of third country goods; whereas the failure to apply the Community in force could therefore reasonably have been detected by the person liable;

Whereas there is consequently no justification for waiving post-clearance recovery of import duties in this case;

Whereas Article 13(1) of Regulation (EEC) No 1430/79 provides that import duties may be repaid or remitted in situations other than those referred to in Sections A to D which result from special circumstances in which no negligence or deception may be attributed to the person concerned;

Whereas Article 5(2) of Regulation (EEC) No 1697/79 is inapplicable since the firm could have detected the error of the customs office, causes other than this error must be demonstrated if special circumstances within the meaning of Article 13 of Regulation (EEC) No 1430/79 are to be deemed to exist;

Whereas the firm's argument rests upon the fact that it tried to obtain from a number of sources information about the probability of anti-dumping measures being imposed; whereas these steps show that the firm was aware of developments in the market for such goods and already had reason to suspect that such measures might soon be imposed;

Whereas paint brushes originating in the People's Republic of China have been subject since 1986 to measures aimed at countering the injury caused by imports into the Community; whereas Council Decision 87/104/EEC of February 1987⁽⁶⁾ accepted an undertaking given by the Chinese firm in question concerning imports of paint, distemper, varnish and similar brushes; whereas, however, the Commission, finding that the Chinese firm had failed to honour its undertaking, on 1 August 1988 telexed the competent authorities in the Member States, including the United Kingdom ministry with responsibility for customs matters, informing them of its intention to repeal the undertaking and to impose a provisional anti-dumping duty as soon as possible;

Whereas the evidence shows that in September 1988 the British firm had been warned by its Chinese supplier that the imposition of anti-dumping measures was likely; whereas the firm could therefore have allowed for such measures in view of the purchase price of the goods;

Whereas there is no legitimate expectation to protect;

(6) OJ No L 46, 14.2.1987, p.45.

Whereas consequently there is no justification for granting remission of import duties in this case;

HAS ADOPTED THIS DECISION:

Article 1

1. The import duties of £ [REDACTED] which are the subject of the request by the United Kingdom dated 28 September 1990 shall be recovered.
2. The remission of import duties of £ [REDACTED] which are the subject of the request by the United Kingdom dated 28 September 1988 is not justified.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 03. IV. 1991

For the Commission

Ch. SCRIVENER

Member of the Commission