

**COMMISSION DECISION**

**of 26-03-1998**

**finding that it is justified not to take action for the post-clearance recovery of import duties in a particular case and authorising the Italian Republic not to take action for the post-clearance recovery of duties in cases involving comparable issues of fact and of law**

(request submitted by Italy)

**REC 6/97**

**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,<sup>1</sup>

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,<sup>2</sup> and in particular Article 873 thereof,

Whereas by letter dated 30 September 1997 received by the Commission on 13 October 1997 Italy 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,<sup>3</sup> as last amended by Regulation (EEC) No 1854/89,<sup>4</sup> and Article 220(2)(b) of Regulation (EEC) No 2913/92, whether it is justified not to take action for the recovery of import duties in the following circumstances:

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<sup>1</sup> OJ L 302, 19.10.1992, p.1.

<sup>2</sup> OJ L 253, 11.10.1993, p.1.

<sup>3</sup> OJ L 197, 3.8.1979, p.1.

<sup>4</sup> OJ L 186, 30.6.1989, p. 1.

An Italian firm held an outward processing authorisation for making up clothes in Hungary.

The compensating products re-imported by the firm in 1993 and 1994 were admitted duty-free on the basis of Article 2(3) of Protocol 1 to the EEC-Hungary Interim Agreement,<sup>5</sup> which deals with textiles and clothing products.

It subsequently emerged that one of the preconditions for relief had not been fulfilled. Traders were entitled to relief for textile products covered by Regulation (EEC) No 636/82<sup>6</sup> only if they had applied for and obtained the prior outward processing authorisation provided for in that Regulation, an authorisation which the firm concerned had not obtained.

The firm was therefore asked to pay import duties in the sum of XXXXX.

The firm has, however, asked for recovery to be waived on the grounds that the customs authorities had granted relief without asking it for the authorisation or informing it that such authorisation was needed.

Whereas the firm declares that it has taken note of the dossier sent to the Commission by the Italian authorities and has nothing to add.

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 9 January 1998 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment to examine the case;

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<sup>5</sup> OJ L 116, 30.4.1992, p.130.

<sup>6</sup> OJ L 76, 20.3.82, p. 1.

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, which in this case applies to imports prior to 1 January 1994, 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, in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92, which in this case applies to imports from 1 January 1994 onwards, there is no subsequent entry in the accounts where the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as far as his customs declaration is concerned;

Whereas import duties in the sum of XXXXX were not collected;

Whereas the import duties were not collected owing to an error on the part of the customs office of import, which failed to ask the firm to present the authorisation required for the goods to enjoy relief on re-importation;

Whereas Protocol 1 to the EEC-Hungary Interim Agreement, which provides that “the rates of duties applied to re-imports into the Community of textile products falling within the categories listed in the Annex to Council Regulation (EEC) No 636/82 after processing, manufacturing or working in Hungary shall be eliminated on the date of entry into force of the Agreement”, fails to make clear whether the authorisation required under that Regulation is needed;

Whereas this text has given rise to differences of interpretation in the Member States;

Whereas the Commission, aware of the need to clarify matters, has on several occasions informed Member States of how the provisions in question are to be interpreted; whereas the corresponding provisions in subsequent agreements with Romania and Bulgaria have been worded more clearly;

Whereas the uncertainty as to the correct interpretation of the text was genuine and the firm could not reasonably have detected the error on the part of the customs office;

Whereas the firm has observed all the provisions laid down by the rules in force as far as its customs declaration is concerned;

Whereas it is therefore justified in this case not to take action for the post-clearance recovery of duties;

Whereas Article 875 of Regulation (EEC) No 2454/93, provides that where it is established that the circumstances under consideration are such that the duties in question need not be entered in the accounts, the Commission, under conditions which it may determine, may authorise a Member State not to take action for the post-clearance recovery of duties in cases involving comparable issues of fact and of law;

Whereas by letter dated 30 September 1997 received by the Commission on 13 October 1997 Italy asked for authorisation not to take action for the post-clearance recovery of duties in a number of cases involving comparable issues of fact and of law,

**HAS ADOPTED THIS DECISION:**

Article 1

The import duties in the sum of XXXXX which are the subject of the request by Italy dated 30 September 1997 shall not be recovered.

Article 2

Italy is hereby authorised not to take action for the post-clearance recovery of duties payable in cases involving issues of fact and of law comparable to those described in its request of 30 September 1997.

Article 3

This Decision is addressed to Italy.

Done at Brussels, 26-03-1998

For the Commission