



Decision of the European Ombudsman on complaint 128/2004/OV against the European Commission

Decision

Case 128/2004/OV - Opened on 23/01/2004 - Decision on 02/06/2004

Strasbourg, 2 June 2004

Dear Sir,

On 23 December 2003, you made a complaint to the European Ombudsman on behalf of X, concerning the way the Commission manages customs valuation.

On 23 January 2004, I forwarded the complaint to the President of the Commission. On 18 May 2004, you informed me that you no longer wished to pursue your complaint. On 1 June 2004, you had a telephone conversation with my office.

As requested in your letter of 19 January 2004, your complaint has been dealt with confidentially.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The present complaint is made by a firm of consultants acting on behalf of company X, established in the Netherlands (hereafter "the complainant").

The complaint concerns the way in which customs valuation is managed by the European Commission. Customs valuation is a procedure applied to determine the value of imported goods for the purpose of calculating "ad valorem" customs duties.

In its Special Report n° 23/2000 (1), The European Court of Auditors indicated that the Commission had not taken appropriate action to overcome several weaknesses in the management of customs valuation and in supervising the authorities of the Member States which make up the customs union.

According to the complainant, the relevant facts of the present case are as follows:

The complainant's experience is that Community legislation is not interpreted in the same way in different Member States, such as the Netherlands and Spain. Significant amounts of customs duties, import VAT and interest for a total amount of EUR 1 646 454 covering the years 1997 to 2001 have been retroactively assessed by the Spanish customs authorities. These retroactive assessments are based on a misinterpretation by the Spanish customs authorities of the Community customs valuation rules. All cases (customs audit for the years



1997, 1998, 1999, 2000 and 2001) have been subject of disputes before the Spanish courts and are, further to appeals lodged, still pending with judgements expected in the years 2006/2007.

On 15 September 2000, the complainant wrote to the Commission requesting it to provide its interpretation of Community customs law, as it appeared that the Spanish authorities did not interpret correctly various points of the Community Customs Code (CCC). In its reply of 20 December 2000, the Commission stated that the interpretation issues raised by the complainant were a matter for the national customs authorities, and that it has no responsibility to undertake a detailed examination of very specific individual cases, this being the task of national administrations. The complainant subsequently sent various e-mails to the Commission, asking it to clarify its position. Not satisfied with the Commission's reply, the complainant wrote back pointing out that the current situation results in a different application and interpretation of applicable rules in the various Member States. In a letter of 12 December 2001, the complainant further suggested that the matter should be discussed in the Customs Code Committee (customs valuation section) as soon as possible. In its reply of 21 December 2001, the Commission rejected this idea.

On 22 January 2002, the complainant stressed that it is unacceptable that the Customs Code is interpreted differently in two Member States and it is the Commission's task to clarify the legislation and the guidelines. The complainant reiterated its request to have the issue discussed in the Customs Code Committee. However, until now the Commission has not replied to the letter of 22 January 2002.

On 23 December 2003, the complainant lodged the present complaint with the Ombudsman, making the following allegations (list of allegations on pages 8 to 10 of the complaint) and claim (on page 12 of the complaint):

1. Contrary to what it stated in its letter of 21 December 2001, the Commission has not yet published additional examples as guidelines for both customs services and economic operators;
2. The Commission failed to reply to the complainant's letter of 22 January 2002, and did not respond to the complainant's request to put its case on the agenda of the Customs Code Committee (points 2 and 4 in the complainant's list of allegations);
3. The Commission has not informed the complainant whether it has asked the Member States for information regarding the practical application of the provision on buying commissions (as indicated in its letter of 21 December 2001);
4. The Commission informed the Court of Auditors that it will act in order to overcome the different treatment of traders operating in several Member States, but it has not undertaken any action, and fails to implement the necessary Community legislation to ensure equivalent trading conditions in the Member States. In this regard, it appears from the Commission's response to the Court of Auditors that it seems to present itself as a body that lacks sufficient resources and powers (points 5 and 7 in the complainant's list of allegations);



5. There is a lack of a "database of binding valuation decisions", which explains why this case has not been dealt with adequately;

6. The Commission should take various measures to improve its management of the customs valuation, so that it is applied uniformly in all Member States.

THE INQUIRY

On 23 January 2004, the Ombudsman sent the complaint for an opinion to the Commission with a deadline of 30 April 2004. By letter of 4 May 2004, the Commission informed the Ombudsman that its services were in the process of finalising their reply on the complaint. However, on 18 May 2004, the complainant informed the Ombudsman that, considering the outcome of a meeting held on 14 May 2004 with officials from the Directorate Taxation and Customs Union (TAXUD B1) of the Commission, he no longer wished to pursue the complaint. The complainant also indicated that the Commission had been informed of this at the said meeting.

The Commission services informed the Ombudsman's services by telephone on 25 May 2004 that the complainant had informed the Commission that the complaint would not be pursued. Both services agreed that, in these circumstances, it would no longer serve any purpose for the opinion to be sent.

In a telephone conversation of 1 June 2004, the complainant informed the Ombudsman's office that he was satisfied with the position that the Commission had adopted on the matter and with its proposal to look into pending problematic issues. The complainant therefore considered that the case had been settled.

THE DECISION **1 The allegations against the Commission**

1.1 The complaint is made by a firm of consultants acting on behalf of a company established in the Netherlands (hereafter "the complainant"). The complaint concerns the way in which customs valuation is managed by the European Commission. Customs valuation is a procedure applied to determine the value of imported goods for the purpose of calculating "ad valorem" customs duties. The complainant basically alleged that the Commission had failed properly to discharge its responsibilities in relation to customs valuation thereby failing also to ensure equivalent trading conditions in the Member States. The complainant made a number of more precise allegations and claims against the Commission in this regard (2).

1.2 On 18 May 2004, the complainant informed the Ombudsman that, considering the outcomes of a meeting held on 14 May 2004 with officials from the Directorate Taxation and Customs Union (TAXUD B1) of the Commission, he no longer wished to pursue the complaint, and that the Commission had been informed of this at the said meeting. In a telephone conversation of 1 June 2004, the complainant further informed the Ombudsman's office that he was satisfied with the position that the Commission had adopted on the matter and with its proposal to look into pending problematic issues. The complainant therefore considered that the case had been settled.

2 Conclusion

It appears from the complainant's letter of 18 May 2004 and telephone conversation of 1 June 2004 that the Commission has taken steps to settle the matter and has thereby satisfied



the complainant. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ 2001 C 84/1 of 14 March 2001.

(2) The allegations and claims are: 1) Contrary to what it stated in its letter of 21 December 2001, the Commission has not yet published additional examples as guidelines for both customs services and economic operators; 2) The Commission failed to reply to the complainant's letter of 22 January 2002, and did not respond to the complainant's request to put its case on the agenda of the Customs Code Committee (points 2 and 4 in the complainant's list of allegations); 3) The Commission has not informed the complainant whether it has asked the Member States for information regarding the practical application of the provision on buying commissions (as indicated in its letter of 21 December 2001); 4) The Commission informed the Court of Auditors that it will *act* in order to overcome the different treatment of traders operating in several Member States, but it has not undertaken any action, and fails to implement the necessary Community legislation to ensure equivalent trading conditions in the Member States. In this regard, it appears from the Commission's response to the Court of Auditors that it seems to present itself as a body that lacks sufficient resources and powers (points 5 and 7 in the complainant's list of allegations); 5) There is a lack of a "database of binding valuation decisions", which explains why this case has not been dealt with adequately; and 6) The Commission should take various measures to improve its management of the customs valuation, so that it is applied uniformly in all Member States.