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**REC 16/98**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19-07-1999

Draft

**COMMISSION DECISION**

**of**

**finding that waiving post-clearance entry in the accounts of customs duties is  
justified in a particular case  
(request submitted by Denmark)**

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## COMMISSION DECISION

of 19-07-1999

**finding that waiving post-clearance entry in the accounts of customs duties is justified in a particular case (request submitted by Denmark)**

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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> as last amended by Regulation (EC) No 955/1999,<sup>2</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>3</sup> as last amended by Regulation (EC) No 502/1999,<sup>4</sup> and in particular Article 873 thereof,

Whereas by letter dated 10 December 1998 received by the Commission on 16 December 1998 Denmark asked the Commission to decide under Article 220(2)(b) of Regulation (EEC) No 2913/92 whether it was justified to waive post-clearance entry in the accounts of import duties in the following circumstances:

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<sup>1</sup> OJ No L 302, 19.10. 1992, p.1

<sup>2</sup> OJ No L 119, 7.5.1999, p. 1

<sup>3</sup> OJ No L 253, 11.10.1993, p. 1

<sup>4</sup> OJ No L 65, 12.3.1999, p. 1

From April 1994 to July 1995 a Danish importer imported various textile products with preferential tariff treatment under Decision No 1/93 of the ACP-EEC Customs Cooperation Committee of 16 April 1993 derogating from the definition of the concept of 'originating products' to take account of the special situation of Lesotho with regard to its production of certain garments.<sup>5</sup>

Following a joint investigation undertaken in Lesotho from 18 to 21 March 1997 by representatives of Lesotho, a number of Member States and the Commission of the European Communities, it was found that fourteen EUR.1 movement certificates which had been presented by the importer when the products concerned were imported into Denmark had been issued by the Lesotho authorities but had not been included in the lists of certificates sent to the Commission in accordance with Decision No 1/93.

Since the quotas had been exhausted, it was not possible to allow the importer to benefit from them retrospectively. At the request of the Commission the Lesotho authorities therefore withdrew the certificates concerned.

The Danish authorities then claimed payment of import duties totalling XXXX for products which had initially been covered by eleven of the EUR.1 movement certificates withdrawn. That is the sum to which this request for a waiver relates.

Entry in the accounts of duties on the goods covered by the three other EUR.1 certificates withdrawn was time-barred.

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<sup>5</sup> OJ No L 123, 19.5.1993, p. 32

Whereas the importer said that that he had examined the dossier submitted to the Commission by the Danish authorities and had 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 29 March 1999 within the framework of the Customs Code Committee (Section for General Customs Rules/Repayment) to consider the case;

Whereas in accordance with Article 220(2)(b) of Regulation (EEC) No 2913/92, post-clearance entry in the accounts is waived where the duties payable were not entered in the accounts owing to an error on the part of the customs authorities that could not reasonably have been detected by the person liable for payment, the latter for his part 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 import duties totalling XXX were not entered in the accounts;

Whereas the goods concerned do not qualify for favourable tariff treatment under Decision No 1/93 since the EUR.1 movement certificates have been withdrawn by the competent Lesotho authorities;

Whereas under Article 3 of Decision No 1/93 the Lesotho authorities were obliged to ensure that all certificates issued by virtue of the derogation referred to that Decision and to send the Commission quarterly statements of the quantities in respect of which movement certificates EUR.1 had been issued pursuant to the Decision, indicating the reference numbers of the certificates issued;

Whereas the Lesotho authorities issued the EUR.1 certificates concerned but did not notify the Commission of the European Communities of the quantities for which the certificates had been granted;

Whereas in the absence of such notification the goods covered by the certificates were not eligible for favourable tariff treatment under Decision No 1/93; whereas, therefore, the Lesotho authorities were obliged to withdraw the certificates;

Whereas it was therefore because of an error by the Lesotho authorities that the certificates had to be withdrawn;

Whereas the notification which the Lesotho authorities must send under Decision No 1/93 is not information brought to the attention of the importer;

Whereas the importer therefore had no means of knowing that Lesotho had not satisfied the conditions for application of the favourable tariff arrangements under Decision No 1/93;

Whereas, therefore, the good faith of the importer cannot be doubted and he could not reasonably have detected the error of the competent authorities;

Whereas the importer observed all the provisions laid down by the rules in force as far as his customs declaration were concerned;

Whereas, therefore, entry in the accounts of the import duties is not justified in this case,

HAS ADOPTED THIS DECISION:

*Article 1*

The import duties in the sum of XXXX which were the subject of Denmark's request of 10 December 1998 shall not be entered in the accounts.

*Article 2*

This Decision is addressed to Denmark.

Done at Brussels, 19-07-1999

*For the Commission  
Member of the Commission*