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REC 01/03

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21-8-2003
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NOT TO BE PUBLISHED

COMMISSION DECISION

of 21-8-2003

finding that post-clearance entry in the accounts of import duties is not justified in a particular case and authorising the Member States to waive post-clearance entry in the accounts in cases involving comparable issues of fact and of law

(Request submitted by France)
(REC 01/03)

FR

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(Request submitted by France)
(REC 01/03)

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,[1] as last amended by Regulation (EC) No 2700/2000,[2]

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92,[3] as last amended by Regulation (EC) No 1335/2003,[4] and in particular Article 873 thereof,

1 OJ L 302, 19.10.1992, p. 1
2 OJ L 311, 12.12.2000, p. 17
3 OJ L 253, 11.10.1993, p. 1
4 OJ L 187, 26.7.2003, p. 16

Whereas:

(1) By letter dated 8 January 2003, received by the Commission on 10 January 2003, France asked the Commission to decide, under Article 220(2)(b) of Regulation (EEC) No 2913/92, whether waiving the entry in the accounts of import duties was justified in the following circumstances.

(2) In 1995 and 1996 a French firm released orange juice from Israel for free circulation in France.

(3) Imports into the Community of orange juice originating in Israel were eligible for preferential treatment under the EEC-Israel Agreement.[5] Therefore, in accordance with the rules laid down in the version of Protocol No 3 to the EEC-Israel Agreement in force at the time,[6] the products qualified for preferential tariff treatment upon import into the European Community provided they were covered by a EUR.1 movement certificate (hereinafter EUR.1 certificate) issued by the competent Israeli authorities.

(4) They were considered to originate in Israel if they met the conditions of origin laid down in Protocol No 3 to the EEC-Israel Agreement.

(5) In the case in point, the firm presented EUR.1 certificates issued by the competent Israeli authorities in support of its customs declarations for release for free circulation. The certificates were not contested by customs and preferential tariff treatment was granted.

(6) Subsequently, following an investigation conducted jointly by the competent local authorities and a Community delegation made up of representatives of the Commission and some Member States, it was found that a large proportion of the raw materials used in the manufacture of the products exported to the Community had been imported from countries other than the EC Member States and Israel. The Israeli authorities recognised that the EUR.1 certificates submitted by the firm in support of its declarations for free circulation were not valid and withdrew them.

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5 OJ L 136, 28.5.1975, p. 1. (agreement annexed to Regulation (EEC) No 1274/75 of the Council of 20 may 1975 concluding the Agreement between the European Economic Community and the State of Israel).

6 OJ L 190, 29.7.1977, p.1. (protocol annexed to Council Regulation (EEC) No 1726/77 of 18 July 1977 on the application of Decision No 2/76 of the EEC-Israel Joint Committee amending Protocol No 3 of the EEC-Israel Agreement as regards the rules of origin).

(7) The French authorities therefore considered that the goods were ineligible for preferential tariff treatment and issued a post-clearance notice for recovery of EUR 175 681.03, the customs debt owed for the imports concerned, in respect of which the firm has applied for waiver of post-clearance entry in the accounts.

(8) Pursuant to Article 871 of Regulation (EEC) No 2454/93, the firm stated that it had seen the dossier submitted to the Commission by the French authorities and had nothing to add.

(9) In accordance with Article 873 of Regulation (EEC) No 2454/93, a group of experts composed of representatives of all the Member States met to examine the case on 11 June 2003 within the framework of the Customs Code Committee - Section for Repayment.

(10) Under Article 220 (2)(b) of Regulation (EEC) No 2913/92, there can be no post-clearance entry in the accounts where the amount of duties 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 regards the customs declaration.

(11) However, reliance on the validity of such certificates is not as a rule protected, as this is considered a normal commercial risk and therefore the responsibility of the person liable for payment.

(12) The Court of Justice has consistently ruled that the legitimate expectations of a trader are protected only if the competent authorities themselves gave rise to the expectation. Thus only errors attributable to the active behaviour of those authorities are grounds for granting waiver of post-clearance recovery of duties.[7]

(13) This condition cannot, then, be considered to be fulfilled where the competent authorities have been misled by inaccurate declarations submitted by the exporter, the validity of which they are not required to verify or evaluate.

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[7] *Mecanarte* judgment of 27 June 1991 (Case C-348/89) and *Faroe Seafood et al.* judgment of 14 May 1996 (joined cases C-153/94 and C-204/94).

(14) In this instance, the exporters declared on the certificates of origin that the goods they covered met the conditions for obtaining the certificates.

(15) However, as the Court has recently ruled,[8] the fact that the exporters submitted incorrect applications does not in itself preclude the possibility that the competent authorities committed an error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92. The authorities' behaviour will have to be evaluated in the broader context in which the relevant customs provisions were applied.

(16) Thus the fact that the exporters confirmed on the EUR.1 certificates that the conditions for obtaining them had been met is not in itself proof that the competent Israeli authorities were misled. It is necessary to ascertain whether the exporters made these declarations on the assumption that the competent authorities were acquainted with all the facts necessary to apply the rules in question and whether the authorities, despite this knowledge, raised no objection to the declarations.

(17) In the case in point, there is evidence to suggest that the competent Israeli authorities knew or, at the very least, should have known that the goods for which they were issuing EUR.1 certificates did not fulfil the conditions laid down for preferential treatment.

(18) There is also information confirming a shortcoming on Israel's part in the administrative cooperation provided for in the various preferential agreements, and, above all, some fundamental failings in that country's implementation of those agreements at the time concerned.

(19) The Israeli authorities therefore did commit an error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.

(20) As the Court of Justice of the European Communities has consistently ruled, when determining whether the firm could reasonably have detected the customs authorities' error, account must be taken of the nature of the error, the firm's professional experience and the diligence shown by it.

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8 *Ilumitrónica* judgment of 14 November 2002, Case C-251/00.

(21) In this case the competent Israeli authorities had for a number of years, and specifically in 1995 and 1996, issued EUR.1 certificates for goods which did not satisfy the conditions of issue. This behaviour confirmed the legitimate expectations of the firm that the certificates issued by the authorities were valid.

(22) At the time of the events, no notice had been published in the Official Journal of the European Communities advising importers to take precautions with EUR.1 certificates issued for these products by the Israeli authorities. No such notice was published until 8 November 1997.[9]

(23) Furthermore, each year the firm drew up a specification in consultation with the Israeli supplier stipulating that the goods had to be of Israeli origin. It cannot therefore be considered obviously negligent.

(24) The circumstances of the case in question therefore point to an error on the part of the customs authorities themselves which could not reasonably have been detected by an operator acting in good faith, within the meaning of Article 220 (2)(b) of Regulation (EEC) No 2913/92.

(25) Moreover, the firm acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

(26) Post-clearance entry of the import duties in the accounts in therefore not justified in this case.

(27) Under Article 875 of Regulation (EEC) No 2454/93, where the circumstances under consideration are such that the duties need not be entered in the accounts, the Commission can, under conditions which it is to determine, authorise one or more Member States to refrain from post-clearance entry of duties in the accounts in cases involving comparable issues of fact and of law.

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9 OJ C 338, 8.11.1997, p. 13

(28) At its meeting on 11 June 2003 within the framework of the Customs Code Committee (Repayment Section), the group of experts composed of representatives of all the Member States provided for in Article 873 of Regulation (EEC) No 2454/93 asked that all Member States be authorised to waive post clearance entry of import duties in the accounts in cases involving comparable issues of fact and law.

(29) Such authorisation may be granted to the Member States on condition that it is used only in cases strictly comparable in fact and law to the present case. The authorisation should nevertheless also cover requests for waiver of post-clearance entry of duties in the accounts lodged within the legal time limits in respect of import operations that were covered by EUR.1 certificates subsequently declared invalid by the competent Israeli authorities and were carried out before the date of publication of the notice to importers 97/C 338/10, where such import operations were carried out in circumstances comparable in fact and law to those which gave rise to this case. In such cases the importers must have acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration,

HAS ADOPTED THIS DECISION:

Article 1

The import duties in the sum of EUR 175 681.03 which are the subject of the request from France dated 8 January 2003 shall not be entered in the accounts.

Article 2

The Member States are authorised to refrain from post-clearance entry of import duties in the accounts in cases involving issues of fact and of law comparable to the case cited in France's request of 8 January 2003.

The authorisation shall cover requests for waiver of entry of import duties in the accounts lodged within the legal time limits in respect of import operations that were covered by EUR.1 certificates subsequently declared invalid by the competent Israeli authorities and were carried out before the publication date of notice to importers 97/C 338/10, where such operations were carried out in circumstances comparable in fact and law to those which gave rise to the requests referred to in the previous paragraph.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 21-8-2003

For the Commission
Frits Bolkestein
Member of the Commission