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REC 11/99



COMMISSION OF THE EUROPEAN COMMUNITIES,

Brussels, 25.7.2000
COM

NOT TO BE PUBLISHED

COMMISSION DECISION

Of 25.7.2000

**finding that it is justified to waive post-clearance entry in the accounts of import duties
in a particular case and authorising Italy to refrain from post-clearance entry in the
accounts in cases involving comparable issues of fact and of law**

(Request submitted by Italy)

(REC 11/99)

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(Request submitted by Italy)

(REC 11/99)

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 955/1999;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 1662/1999,⁴ and in particular Article 873 thereof,

¹ OJ L 302 of 19.10.1992, p. 1.

² OJ L 119, 7.5.1999, p. 1.

³ OJ L 253 of 11.10.1993, p. 1.

⁴ OJ L 197, 29.7.1999, p. 25.

Whereas:

- (1) By letter dated 17 November 1999, received by the Commission on 26 November 1999, Italy 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 in the following circumstances:
- (2) On 15 March 1994, an Italian firm imported into Italy a consignment of 40 500 kilograms of mushrooms in brine originating in the People's Republic of China and falling within CN code 0711 90 40.
- (3) At the time in question Council Regulation (EEC) No 1796/81 of 30 June 1981 on measures applicable to imports of mushrooms of the species *Agaricus* spp. falling within CN codes 0711 90 40, 2003 10 20 and 2003 10 30,⁵ as amended by Regulation (EEC) No 1122/92 of 28 April 1992,⁶ subjected the release for free circulation of the mushrooms in question to the collection of an additional amount. Provided, however, the annual quantities laid down in Article 3 of the Regulation were not exceeded, the products in question could be imported without payment of the additional amount. To benefit from the exemption the firm was required by Commission Regulation (EEC) No 1707/90 of 22 June 1990,⁷ as amended by Regulation (EEC) No 1123/92 of 30 April 1992,⁸ to present, when entering the goods for release for free circulation, an import certificate issued by the competent authorities in the Community together with an origin certificate issued by the competent authorities in China conforming to the specimen in Annex 13 to Regulation (EEC) No 2454/93.

⁵ OJ L 183, 4.7.1981, p. 1.

⁶ OJ L 117, 1.5.1992, p. 98.

⁷ OJ L 158, 23.6.1990, p. 34.

⁸ OJ L 117, 1.5.1992, p. 100.

- (4) In the case in point the firm presented, when entering the mushrooms for release for free circulation, an import certificate and a form A origin certificate issued by the Chinese authorities. The Genoa customs office accepted the customs declaration and granted exemption from the additional amount.
- (5) Since the form A origin certificate could not be used in place of the origin certificate provided for in Annex 13 to Regulation (EEC) No 2454/93 the competent authorities in Italy found that the additional amount provided for in Regulation (EEC) No 1796/81, in this instance the sum of XXXXX, had to be entered in the accounts for the imports in question. The firm has applied for post-clearance entry in the accounts of that sum to be waived.
- (6) Pursuant to Article 871 of Regulation (EEC) No 2454/93, the firm stated in support of the request from Italy's competent authorities that it had seen the dossier submitted to the Commission and set out its arguments in a document annexed to the authorities' letter to the Commission of 17 November 1999.
- (7) 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 13 March 2000 within the framework of the Customs Code Committee - Section for General Customs Rules/Repayment.
- (8) Article 220(2)(b) of Regulation (EEC) No 2913/92 requires post-clearance entry in the accounts to be waived where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities themselves 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 legislation in force as regards the customs declaration.

- (9) In the case in point the imported goods could only be exempted from the additional amount provided for in Regulation (EEC) No 1796/81 if the customs declaration was accompanied by an import certificate issued by the competent authorities in the Community and an origin certificate issued by the competent Chinese authorities conforming to the specimen in Annex 13 to Regulation (EEC) No 2454/93.
- (10) Owing to the refusal of the competent Chinese authorities the firm was unable to obtain the origin certificate provided for in the rules governing mushrooms of CN code 0711 90 40, receiving instead a form A origin certificate, the only origin document that the Chinese authorities were prepared to issue for such mushrooms. The two types of certificate could not, however, be considered equivalent.
- (11) Since the competent Chinese authorities systematically refused to issue the origin certificates for mushrooms of CN code 0711 90 40 provided for in Regulation (EEC) No 1707/90, the Annex to which also listed the Chinese bodies responsible for issuing them, those authorities must be considered to have committed an active error within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (12) In the case in point the error is not one that could reasonably have been detected by the firm, the latter having acted in good faith.

- (13) The rules in question were relatively complex. The regulations applicable had undergone many amendments and included many references to other customs and agricultural acts. Indeed, the recitals to Commission Regulation (EC) No 3107/94 of 19 December 1994,⁹ which repealed Regulation (EEC) No 1707/90 with effect from 1 January 1995, expressly stated that its adoption and the repeal of the previous regulation were necessary for reasons of clarity. In particular, Regulation (EEC) No 1707/90, in the form applicable at the time in question, namely the version resulting from Commission Regulations (EEC) Nos 3771/91 of 18 December 1991¹⁰ and 1123/92, specified the authorities in China competent to issue the origin certificates in question but referred readers to Commission Regulation (EEC) No 3850/89 of 15 December 1989 for the specimen origin certificate.¹¹ However, at the time of the imports in question, Regulation (EEC) No 3850/89 had been repealed, with effect from 1 January 1994, by Article 913 of Regulation (EEC) No 2454/93, the specimen origin certificate now figuring in Annex 13 to the latter Regulation.
- (14) Besides the complex nature of the rules in question, several other factors led the firm to believe quite legitimately that it was presenting the right origin certificate, so preventing it from detecting the error of the competent Chinese authorities.

⁹ OJ L 328, 20.12.1994, p. 37.

¹⁰ OJ L 356, 24.12.1991, p. 30.

¹¹ OJ L 374, 22.12.1989, p. 8.

- (15) One such factor is the express refusal of the authorities in question to issue the origin certificates provided for in Regulation (EEC) No 1707/90 despite their being supposed to know which documents to issue to exporters of mushrooms to the Community. At the time in question, as the recitals to Commission Regulation (EC) No 1849/94 of 27 July 1994 bear out,¹² the competent Chinese authorities were only issuing form A origin certificates for mushrooms of CN code 0711 90 40 and refusing to issue the origin certificates provided for in Regulation (EEC) No 1707/90.
- (16) Another factor is the acceptance by the Italian customs authorities of the origin document presented. At the time of import into Italy the local customs authorities did not contest the origin document presented even though it could not be used to obtain exemption from the additional amount for the mushrooms in question.
- (17) Lastly, the firm could legitimately believe that a form A origin certificate duly issued by the competent Chinese authorities for the import operation in question and ultimately serving the same purpose as the origin document normally required, namely to prove that the mushrooms originated in China, could be used in the case in point, especially when the competent authorities themselves considered it the only valid document.
- (18) The firm observed all the provisions laid down by the rules in force as far as its customs declaration was concerned.
- (19) Entry in the accounts of import duties is therefore not justified in this case.
- (20) Where the circumstances under consideration are such that the duties in question need not be entered in the accounts, Article 875 of Regulation (EEC) No 2454/93 authorises the Commission, under conditions which it shall determine, to authorise one or more Member States to refrain from post-clearance entry in the accounts in cases involving comparable issues of fact and of law.

¹² OJ L 192, 28.7.1994, p. 23.

(21) By letter dated 17 November 1999, received by the Commission on 26 November 1999, Italy asked for authorisation to refrain from post-clearance entry of import duties in the accounts in cases involving comparable issues of fact and of law to this one,

HAS ADOPTED THIS DECISION:

Article 1

The import duty in the sum of XXXXX which is the subject of the request from the Italian Republic of 17 November 1999 shall not be entered in the accounts.

Article 2

The Italian Republic is authorised to refrain from post-clearance entry of import duties in the accounts in cases involving comparable issues of fact and of law to the case cited in its request of 17 November 1999.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 25.7.2000

For the Commission

Member of the Commission