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EUROPEAN COMMISSION

Brussels, 21-10-2010
C(2010)7175

COMMISSION DECISION

Of 21-10-2010

**finding that it is justified to waive post-clearance entry in the accounts of import duties
in a particular case**

(REC 03/2010)

(Only the Slovak text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹, and in particular Article 220 thereof,

Whereas:

- (1) By letter dated 11 January 2010, received by the Commission on 27 January 2010, the Slovak Republic 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) Between August and September 2006 a Hungarian company imported in the Slovak Republic 36 consignments of mixtures of sugar and milk powder ("DEXTROMALT DE 35") for release into free circulation.
- (3) At the time in question, imports into the Union of this type of product originating in Croatia qualified for preferential treatment under the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part² Under Article 109 of the version of Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code in force at the time, products covered by EUR.1 movement certificates (hereafter "EUR.1 certificates") issued by the Croatian competent authorities were eligible for preferential tariff treatment on their release for free circulation.
- (4) The company presented in total 80 EUR.1 certificates with the declarations for release for free circulation. The customs authorities accepted the declarations and granted the preferential tariff treatment.
- (5) After releasing the goods for free circulation, the Slovak customs authorities requested the Croatian authorities to check the authenticity and accuracy of the EUR.1

¹ OJ L 302, 19.10.1992, p. 1.

² OJ L 026, 28.1.2005, p. 3.

certificates issued by them. The Slovak authorities learned from the Croatian customs administration's reply to its request for verification that the goods indicated in the accompanying EUR. 1 certificates did not qualify for preferential origin under Protocol 4 to the Stabilisation and Association Agreement between the European Communities and the Republic of Croatia because they were obtained by simple mixing, which, even if the products are of different kinds, is considered as insufficient working or processing to confer the status of originating products within the meaning of Article 7(m) of Protocol 4. The Croatian authorities withdrew all the EUR.1 certificates attached to the company's declarations.

- (6) The Slovak authorities therefore considered that a customs debt had been incurred for the company's imports and on 1 July 2009 notified the amount of import duty owed, totalling EUR XXXX. This is the amount for which the firm is requesting waiver of post-clearance entry in the accounts under Article 220(2)(b) of Regulation (EC) No 2913/92.
- (7) In support of this request the firm stated that, in accordance with Article 871(3) of Regulation (EEC) No 2454/93, it had seen the file the Slovak authorities had sent to the Commission and had nothing to add.
- (8) 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 24 September 2010 within the framework of the Customs Code Committee - Customs Debt and Guarantees Section.
- (9) The file sets out the following arguments suggesting that waiver of entry in the accounts or remission are justified.
- (10) The competent Croatian authorities committed an error in issuing the EUR.1 certificates.
- (11) In a notice to importers No 2002/C 152/05 of 26 June 2002,³ the Commission informed Community traders that there were grounds for doubting the proper application of the preferential arrangements for sugar of CN headings 1701 and 1702 declared upon import to originate in Croatia, among other countries. However the notice has not been published in Slovak language.
- (12) 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 themselves 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.
- (13) In the case under consideration, granting preferential tariff treatment for the imports was subject to presentation of EUR.1 certificates.
- (14) As already noted, the certificates concerned were cancelled by the Croatian authorities.

³ OJ C 152, 26.6.2002, p. 14.

- (15) Reliance on the validity of such certificates is not normally protected, as this is considered part of the importer's normal commercial risk and therefore the responsibility of the person liable for payment.
- (16) The Court of Justice of the European Union has consistently ruled that the legitimate expectations of a trader are protected only if the competent authorities themselves gave rise to the expectations.
- (17) In this instance, the exporters declared on the EUR.1 certificates that the goods they referred to met the conditions for obtaining the certificates.
- (18) However, as the [Court has ruled](#)⁴, 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 has to be evaluated in the light of the broader context in which the relevant customs provisions were applied.
- (19) Thus the fact that the exporter confirmed on the EUR.1 certificates that the conditions for obtaining them had been met is not in itself proof that the competent Croatian authorities were misled. It is necessary to ascertain whether the exporter made these statements 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 their knowledge, raised no objection to the statements.
- (20) In the case in point, there is evidence that the competent Croatian 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.
- (21) The circumstances in this case therefore reveal an error on the part of the Croatian customs authorities themselves within the meaning of Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (22) The Court of Justice has consistently ruled that, in determining whether the person concerned could reasonably have detected the customs authorities' error, account must be taken of the nature of the error, the operator's professional experience and the diligence it showed.
- (23) Even if the company may be considered to be a professional with experience of customs formalities, this factor cannot be deemed decisive in this case.
- (24) The above mentioned notice to importers of sugar of 26 June 2002 had at the moment of the imports in question not yet been published in the Official Journal of the EU in Slovak nor in Hungarian.
- (25) Lastly, as regards the diligence shown by the applicant there is nothing in the dossier to indicate that the way in which it carried out the imports in question departed from normal commercial practice.

⁴ *Ilumitrónica* judgment of 14 November 2002, Case C-251/00.

- (26) Indeed, prior to concluding the contract with the Croatian partner for the import of the goods he had contacted the customs authorities in Budapest, which had informed him that he would not have to pay customs duties in the EU as long as EUR.1 certificates were presented when the goods were released for free circulation. The company then contacted the Croatian customs authorities and was told a certificate of origin could be issued for the above goods.
- (27) It must therefore be acknowledged that the company was not obviously negligent.
- (28) It is also clear from the application that the trader complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (29) Post-clearance entry in the accounts of import duties is not therefore justified in this case.
- (30) Where special circumstances warrant waiver of entry in the accounts, Article 875 of Regulation (EEC) No 2454/93 authorises the Commission to determine the conditions under which the Member States may waive the entry in the accounts in situations involving comparable issues of fact and law.
- (31) Cases comparable in fact and law to this one are requests lodged within the legal time limits in respect of imports into Slovakia of mixtures of sugar and milk powder declared as originating in Croatia, where those import operations were carried out in circumstances comparable in fact and law to those which gave rise to this case. The operators concerned 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 XXXX which were the subject of the request by the Slovak Republic from 11 January 2010 shall not be entered in the accounts.

Article 2

This decision is addressed to the Republic of Slovakia.

Done at Brussels, 21-10-2010

For the Commission
Algirdas ŠEMETA
Member of the Commission