

EN

REC 02/06

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18-4-2007  
C(2007)1662

NOT FOR PUBLICATION

**COMMISSION DECISION**

**Of 18-4-2007**

**finding that post-clearance entry in the accounts of import duties is not justified in a particular case**

(Only the Dutch text is authentic)

**(Request submitted by the Kingdom of the Netherlands)**

**(REC 02/06)**

FR

**COMMISSION DECISION**

**Of 18-4-2007**

**finding that post-clearance entry in the accounts of import duties is not justified in a particular case**

(Only the Dutch text is authentic)

**(Request submitted by the Kingdom of the Netherlands)**

**(REC 02/06)**

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 1791/2006<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 214/2007<sup>4</sup>,

---

<sup>1</sup> OJ L 302, 19.10.1992, p. 1.

<sup>2</sup> OJ L 363, 20.12.2006, p. 1.

<sup>3</sup> OJ L 253, 11.10.1993, p. 1.

<sup>4</sup> OJ L 62, 1.3.2007, p. 6.

Whereas:

- (1) In a letter dated 12 July 2006, received by the Commission on 19 July 2006, the Netherlands asked the Commission to decide whether waiving post-clearance entry in the accounts of import duties was justified under Article 220(2)(b) of Regulation (EEC) No 2913/92 in the following circumstances.
- (2) Between 26 September and 23 December 2002 a Dutch customs agent declared 11 consignments (5 922 tonnes) of white cane sugar from the Netherlands Antilles (Curaçao) for release for free circulation.
- (3) Under Article 35 of Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (hereinafter "OCT Decision")<sup>5</sup>, products originating in the overseas countries and territories (OCTs) could at that time be imported into the Community free of import duty on presentation of an EUR.1 movement certificate or an invoice declaration issued by the exporter.
- (4) Under Article 6 of Annex III to the OCT Decision, materials originating in the Community or in the ACP States are to be considered materials originating in the OCT when incorporated into a product obtained there, provided that they have undergone working or processing going beyond that referred to in Article 5 of Annex III to the OCT Decision. In this case the imported sugar had been milled in Curaçao.
- (5) ACP/EC-OCT cumulation of origin for products falling within Chapter 17 and HS tariff headings 1806 10 30 and 1806 10 90 was authorised only from 1 February 2002 to 31 December 2007 within an annual quota of 28 000 tonnes.
- (6) The customs agent was authorised to import 6 222.222 tonnes of sugar of CN code 1701 99 10 under the above quota.
- (7) The customs agent presented EUR.1 certificates issued by the competent Curaçao authorities in support of its customs import declarations. The Dutch customs authorities accepted the declarations and granted exemption from customs duties.

---

<sup>5</sup> OJ L 314, 30.11.2001, p. 1.

- (8) Following a mission of 11 to 21 February 2004, when representatives of several Member States and the European Commission went to Curaçao to investigate the conditions under which the authorities there issued EUR.1 certificates, it was found that the sugar imported by the customs agent had been obtained from sugar imported into Curaçao and originating in South Africa. However, under Annex XIII to Protocol 1 to the Partnership agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000<sup>6</sup>, sugar originating in South Africa cannot be deemed to originate in an ACP State and so the ACP/EC-OCT cumulation of origin was not applicable.
- (9) The goods were not therefore eligible for duty-free importation into the Community. On 19 September 2005 the competent Dutch authorities notified the customs agent of duties of EURXXXXXX, the amount for which the customs agent has requested waiver of post-clearance entry in the accounts under Article 220(2)(b) of Regulation (EEC) No 2913/92.
- (10) Pursuant to Article 871 of Regulation (EEC) No 2454/93, the customs agent stated that it had seen the dossier submitted to the Commission by the Dutch authorities and had nothing to add.
- (11) 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 16 March 2007 within the framework of the Customs Code Committee - Repayment Section.
- (12) In this case, preferential tariff treatment was conditional upon presentation of EUR.1 certificates of origin issued by the competent Curaçao authorities.
- (13) However, following the Member State/Commission mission in February 2004 to investigate the conditions of issue of EUR.1 certificates by the Netherlands Antilles authorities, the competent Dutch authorities decided that the origin certificates presented upon importation of the goods concerned were not valid since the goods did not meet all the origin criteria set out in the OCT Decision.

---

<sup>6</sup> OJ L 317, 15.12.2000, p. 3.

- (14) Under Article 904(c) of Regulation (EEC) No 2454/93, reliance on the validity of certificates of preferential origin 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.
- (15) 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 those expectations. Consequently, when the authorities' error is due to inaccurate declarations by exporters, reliance on the validity of the certificates of origin is no longer protected.
- (16) In this instance, the exporters declared on the certificates of origin that the goods referred to met the conditions for obtaining the certificates.
- (17) However, it is plain from recent rulings of the Court of First Instance of the European Communities that, even if the exporters did mislead the Curaçao authorities, this would not necessarily rule out the possibility of an error attributable to the competent authorities.

- (18) According to the report on the mission referred to above, the competent Curaçao authorities issued the EUR.1 certificates on the basis of a "supplier's declaration" by a South African firm stating that the goods had been produced in South Africa and complied with the preferential origin rules between the OCTs and the European Community. The competent Curaçao authorities therefore knew that the sugar was of South African origin.
- (19) Furthermore, those authorities repeatedly confirmed that sugar originating in South Africa and processed in Curaçao was eligible to benefit from the ACP/EC-OCT cumulation of origin.
- (20) The circumstances of the case 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.
- (21) It is also clear from the request submitted by the Dutch authorities that it must be accepted that the customs agent acted in good faith.
- (22) It is further clear from that request that the customs agent complied with all the provisions laid down by the legislation in force as regards the customs declaration.
- (23) Post-clearance entry of import duties in the accounts is therefore not justified in this case.
- (24) Where special circumstances warrant waiver of post-clearance entry of duties 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 post-clearance entry of duties in the accounts in cases involving comparable issues of fact and law.

- (25) Cases comparable in fact and law to this one are requests submitted within the legal time limits to waive post-clearance entry in the accounts in respect of imports by a customs agent of sugar from Curaçao originating in South Africa where those import operations were carried out in circumstances comparable in fact and law to those which gave rise to this case. The customs agents 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 of EUR XXXXX which are the subject of the request by the Kingdom of the Netherlands of 12 July 2006 shall not be entered in the accounts.

*Article 2*

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 18-4-2007

*For the Commission*

*László KOVÁCS*

*Member of the Commission*