TC07680

CUSTOMS DUTIES – post-clearance demand – goods processed using generalised system for preferences – appellant acting as importer – import declarations submitted by appellant invalid – invalid Form A – Customs Code – whether appellant liable for payment of duty and VAT – yes – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/01573

BETWEEN

PAVLY LIMITED **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE NATSAI MANYARARA
MR NOEL BARRETT

Sitting in public at Taylor House, 88 Rosebery Avenue, London, EC1R 4QU on 20 January 2020

We heard Mr Riz Kazmi, for the Appellant, and Mr Simon Bates, Litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents. Mr Gamal Mikhael, Director of the Appellant company, did not attend the hearing.

DECISION

Introduction

1. The Appellant ("Pavly Ltd") appeals against the decision of HMRC to issue a post-clearance demand (commonly known as a 'C18'), by way of duty in the sum of £6,929.54, arising in connection with the importation of goods from Sudan between July 2015 and November 2016, for which the Appellant had successfully claimed a preferential rate of duty, pursuant to the Generalised System of Preferences ('GSP') rate of duty (0%) in Commission Regulation 2454/93/EC.

2. Post-clearance checks were carried out and the conclusion reached was that the GSP Form As submitted by the Appellant were not valid due to the stamp in the certification box not being one which was known to the European Commission. The documentation submitted by the Appellant was further found to lack the prerequisite handwritten signature of the certifying authority. This incurred a debt under Article 201 of Regulation 2913/92 (hereinafter referred to as the "Community Customs Code"), for the imports before 1 May 2016, and under Article 77 of Regulation 952/2013 (hereinafter referred to as the "Union Customs Code"), for the import after 1 May 2016. The post-clearance demand was issued on 8 August 2017. The review decision confirming the post-clearance demand is dated 24 January 2018.

3. The three consignments giving rise to the appeal in question were as follows:

Date	**Goods**	**Customs value**	**Duty rate**	**Duty payable**
15/07/15	Tahina	£5,505.69	24%	£1,321.36
15/07/15	Dried fruit	£101.83	7.7%	£7.84
15/07/15	Dried dates	£3,717.14	7.7%	£286.21
17/03/16	Drink powder	£1,082.55	5.4%	£125.37
11/11/16	Tahina	£21,621.24	24%	£5,189.09
Totals		**£32,028.45**		**£6,929.87**

4. The Appellant lodged an appeal with the Tribunal on 22 February 2018. The Tribunal's jurisdiction is confirmed by section 16 (5) of the Finance Act 1994.

Respondent's case

5. HMRC's decision can be summarised as follows:

(1) To claim the GSP preferential duty rate available for imports from Sudan, the goods need to fulfil the particular Rules of Origin and the Appellant should possess a valid preferential proof of origin (GSP Form A, Invoice Declaration). The claim to preference also needs to be made within the period of validity applicable for the proof of origin.

(2) The imports were cleared under Route 6, which means that the Appellant did not have to present any documents to clear the goods at import, but as the declarant of the imports the Appellant was obliged to retain the original GSP Form A with all supporting commercial documents. These should be retained for a minimum period of four years and supplied to HMRC when requested.

(3) GSP Form A number 777593 is invalid because it has been stamped in box 11 (certification) with a stamp (Sudan Chamber of Commerce) which has not been notified by the Sudanese authorities to the European Commission. Also, box 12 (declaration by the exporter) has not been signed by the exporter. The bottom line for the signature does not include a signature and the additional details have not been declared.

(4) GSP Form A number 274501 is invalid because it has been endorsed in box 11 with a stamp which has not been notified to the European Commission. Box 12 has, similarly not been signed and completed by the exporter.

(5) GSP Form A number 274545 was not endorsed in Box 11 by the appropriate authority. There is a stamp from the Sudan Chamber of Commerce in box 7, but this does not match the official stamps notified by the Sudanese authorities to the European Commission. Box 12 has not been signed and dated by the exporter.

(6) Overall, the Appellant has not presented valid Form A certificates with a valid stamp and signature in Box 11 of each certificate. The certificates were also invalid because they had not been signed and dated in box 12 by the exporter.

(7) Article 97n of Commission Regulation (EEC) 2454/93, as amended by Commission Regulation (EU) No. 1063/2010, states that a GSP certificate of origin Form A or invoice declaration shall be submitted to the customs authorities of the Member State in order that a preferential rate of duty can be claimed. The model of the certificate of origin Form A is set out at Annex 17 of Commission Regulation (EEC) 2454/93.

(8) Article 97l states that the GSP Form A shall be issued by the appropriate authority in the beneficiary country on a written application from the exporter, or its authorised representative, together with the supporting documents.

(9) Certificates will only be valid if they have been endorsed by the Sudanese authority with the correct stamp and are suitably signed and dated by the exporter at box 12.

(10) The GSP Form A certificates the Appellant has provided were endorsed by the Sudanese Chamber of Commerce. This is not an authority recognised by the European Commission as having been empowered to issue GSP Form A certificates of origin.

Appellant's Case

6. The Appellant's reasons for appealing against the decision can be summarised as follows:

(1) The Appellant is not liable because the error on the documents was made by one of the overseas suppliers.

(2) The director does not have the expertise, technical skills or the training to check the authenticity of the documents.

(3) These issues should have been dealt with by customs at the time when the goods were allowed into the United Kingdom.

(4) It is unfair to levy a duty assessment of this size. The Appellant does not have the financial resources to settle this totally unexpected and unforeseen liability.

Appeal hearing

7. There was no renewed application for an adjournment following previous written applications for an adjournment (on behalf of the Appellant), that had been refused. Both representatives confirmed that there were no preliminary issues and further confirmed that they were ready to proceed with the appeal hearing.

Documents

8. The following documents were provided by HMRC:

(1) Documents bundle consisting of 38 pages;

(2) Legislation bundle consisting of 70 pages.

9. At the commencement of the appeal hearing, Mr Bates submitted the following additional documents:

(1) Printout of Article 74 of Regulation 2015/2447 laying down detailed rules for implementing the provisions of Regulation (EU) No 952/2013 of the European parliament and of the Council laying down the Union Customs Code; and

(2) Printout of Article 904 of Regulation 2545/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

10. There was no Appellant's bundle. Mr Kazmi initially stated that he did not have any documents that he wished to submit to the Tribunal. He however proceeded to refer to the following documents, which had not been served, having indicated that he would be referring to them in his submissions:

(1) Letter dated 25 October 2016 from Barclays Bank plc;

(2) Certificate of Analysis from the Republic of the Sudan, Sudanese Standard & Metrology Organization, dated 11 October 2016;

(3) GSP Form A dated 19 October 2016;

(4) Certificate of Origin, Sudanese Chamber of Commerce, dated 18 October 2016;

(5) Invoice for Tahina, dated 26 September 2016;

(6) Import Health Certificate, Republic of The Sudan, Federal Ministry of Health; and

(7) Bill of Lading from the Mediterranean Shipping Company S.A. dated 19 October 2016.

11. We reminded Mr Kazmi of the need to both file and serve any documents that he wished to rely on in support of the appeal. Mr Kazmi proceeded to hand the documents up to us having indicated that he had already shown these to Mr Bates. Mr Bates did not object to the late service of the documents. We therefore admitted the documents into evidence in light of their potential relevance to the issues that were before us.

Evidence and Submissions

12. Mr Bates proceeded by opening HMRC's case and outlining the chronology of events and the applicable law. We then heard oral evidence from Officer Angela McDermott and Mr Matt Luty, on behalf of HMRC.

13. The first witness to be called was Officer McDermott. In her evidence-in-chief, Officer McDermott stated the following:

(1) The procedure adopted in relation to post clearance demands is for documents and invoices to be looked at. The stamps on any documents need to be the same as those submitted by the relevant authorities to the European Commission. The stamps provided by the Appellant bore no resemblance to the stamps submitted by the Sudanese Authorities to the European Commission.

(2) A Right To Be Heard was sent to the Appellant, informing the Appellant of what had been found and asking for an explanation. The correspondence went to the Appellant but it was dealt with by the representatives. It was explained to the Appellant that retrospective certificates could be obtained by the supplier. No retrospective certificates were provided. No other forms with the correct stamps were provided.

(3) It is the responsibility of the importer to ensure that documents are valid.

14. There was no cross-examination.

15. We then heard from Mr Matt Luty. In his evidence-in-chief, Mr Luty stated the following:

(1) The stamps that are submitted to the European Commission are not in the public domain for security reasons. They are sent to the European Commission for their records.

(2) An exporter goes to the authorities having completed the certificate. Only the green certificate is seen by UK Customs. The majority are given automatic clearance. It depends on the classification of the goods. The whole point of automatic clearance is to speed things through.

(3) The due diligence by the importer would include visiting the exporting company. The Rules or Origin require certain criteria to be met. The importer must either trust the exporter or conduct enquiries. It is open to the importer to request binding origin information.

16. Under cross-examination, Mr Luty stated the following:

(1) There is no set of stamps for the importer to compare the stamps to. It is still the responsibility of the importer to produce valid documentation.

(2) A retrospective certificate could have been obtained.

17. There was no re-examination and Mr Kazmi did not call any live evidence.

18. Following completion of the oral evidence, we heard submissions.

19. Mr Bates' submissions on behalf of HMRC can be summarised as follows:

(1) The Form As submitted by the Appellant were not valid.

(2) The legislation shows the requirements that need to be satisfied.

20. Mr Bates ultimately placed reliance on the Statement of Case and did not wish to repeat the submissions made therein.

21. After Mr Bates had completed his submissions, and almost as an afterthought, Mr Kazmi submitted that he had not received a copy of HMRC's Statement of Case, or indeed the Documents bundle. This was despite the Tribunal giving him the opportunity to raise any preliminary issues at the outset. We asked Mr Kazmi why he had not raised this at the outset and he did not respond. When asked to make submissions, Mr Kazmi then submitted that the Appellant is based in the United Kingdom and has very little knowledge about Rules and Regulations concerning documents from Sudan, before referring once again to not having

received HMRC's Statement of Case or Documents bundle. When asked if he wished to make any further submissions, Mr Kazmi said that he did not wish to make any submissions, whilst still repeating that he had not received any documents. Mr Kazmi was accompanied to the hearing by a colleague who did not address the Tribunal but could be heard telling Mr Kazmi that they could appeal the decision.

22. Despite claiming not to have received any documentation, the correspondence before the Tribunal clearly showed that Mr Kazmi had, in fact, received all of the documents. The documents before us show the following:

Correspondence

23. Prior to the date of the hearing, correspondence was exchanged between Mr Kazmi and the Tribunal. Following a request that all parties provide a list of their dates to avoid in order for the appeal to be listed for a hearing, Mr Kazmi, whose email address is clearly noted in the documents before the Tribunal as riz@spwca.com, sent an email dated 10 October 2019 to the Tribunal in the following:

> *"We refer to your letter of 19/9/2019 and would advise that there are no dates to be avoided for the Tribunal Hearing in respect of the above case as far as we are concerned."*

[My emphasis both above and below]

24. Mr Kazmi added the following, in his email dated 10 October 2019:

> *"Since the HMRC Respondent Statement of Case was issued on 23/9/2019 if we have any comments concerning its contents then we will let you have these by 11/11/2019 as we have 42 days from the 23/9/2019 to do so. We believe that we will get copies of the HMRC bundle of documents to be presented to the Tribunal Hearing in due course. We received an email from Mr Bates of the HMRC to this effect this morning."* [sic]

25. Prior to this, by a letter dated 14 August 2019 from Mr Kazmi to the Customs Review and Appeals Team, Mr Kazmi said the following:

> *"We also confirm, on behalf of our client and our firm, that we have no objection to dealing with HMRC by email in relation to the VAT and duty issues."*

26. By a further email dated 25 September 2019, Mr Kazmi said this to the Tribunal:

"Firstly, I would advise that I have now received a copy of the HMRC Statement of Case." [sic]

27. This was following an earlier email from HMRC (Mr Simon Bates) on 13 June 2019, to Mr Kazmi, attaching the Statement of Case.

28. A notice of hearing was then issued by the Tribunal on 16 October 2019, giving the date of the hearing as 20 January 2020. Despite earlier saying that there were no dates to avoid, by an email dated 23 December 2019, Mr Kazmi made a request for a postponement of the hearing listed for 20 January 2020. The reasons he gave for the request were as follows:

"The key reason for this request is because of the extreme pressure that we have to work under like all other Accountancy practices in the month of January 2020."

29. The request for a postponement was refused by Judge John Brooks. The Directions Notice refusing the application for a postponement was issued by the Tribunal on 30 December 2019. Mr Kazmi renewed the request for a postponement and further Directions were issued by Judge John Brooks on 3 January 2020, in the following terms:

"The renewed application for a postponement is REFUSED. It doesn't refer to any change in circumstances (it merely repeats the grounds of the unsuccessful application) or identify any error of law in the decision to refuse the postponement."

"As stated in refusing the previous application, although the Tribunal appreciates that January is an extremely busy time for accountants, dates to avoid were sought before the hearing was listed hereby providing the appellant and its representatives ample opportunity to indicate any inconvenient dates when it was unavailable for a hearing….."

30. The Directions Notice was, once again, sent to Mr Kazmi by email by the Tribunal via the email address that he had provided and through which he had been corresponding with the Tribunal since the middle of 2019.

31. By an email dated 3 January 2020, Mr Kazmi made the following request:

"With reference to the above Tax Tribunal case for our client Pavly Ltd listed in Taylor House for 20/1/2020 we would be grateful if you could please arrange for a telephone Hearing. This request is due to the fact that this month is extremely busy for us in view of the 31/1/2020 Tax Return submission HMRC deadlines." [sic]

32. The request for a telephone hearing was refused and Mr Kazmi was notified of this by email, on 6 January 2020, with a clear indication that the oral hearing would be proceeding on 20 January 2020.

33. Despite the correspondence referred to above, Mr Kazmi continued to suggest that he had not received any documentation, when asked if he wished to make any submissions in closing. He has suggested that no correspondence was received either from the Tribunal or HMRC. The email trail clearly contradicts this. There has been absolutely no attempt by Mr Kazmi to prepare the Appellant's case and the suggestion that the documents that were before the Tribunal had not been received by him was found to be untrue. The repeated requests for an adjournment in order to deal with tax return submission deadlines was refused in light of the earlier indication that there were no dates to avoid and there was no renewed request for an adjournment at the commencement of the appeal hearing. Mr Kazmi simply chose to hear all of the evidence and arguments advanced on behalf of HMRC before deciding that he would refer to not having received any documents.

34. The Upper Tribunal has relatively recently dealt with a situation of a similar nature in the case of *VA (Solicitor's non-compliance: counsel's duties) Sri Lanka* [2017] UKUT 00012 (IAC). That case was also in the context of failures by the Appellant's representative and whilst relating to a different Chamber, it is equally applicable to the situation that has arisen in the appeal before us, in light of the representative's failings. In *VA*, the Upper Tribunal had been repeatedly frustrated in its attempts to bring the proceedings to a conclusion as a direct result of failures by representatives. The representative in *VA* had been representing the appellant during most of the history of that appeal. This is similar to the situation before us, where Mr Kazmi was the representative who was liaising with HMRC prior to the appeal being lodged with the Tribunal and throughout these proceedings.

35. In *VA*, Mr Justice McCloskey referred to the *"disgraceful circumstances"* prevailing and he also referred to his earlier decision in *Ahmed and Others (sanctions for non-compliance)* [2016] UKUT 00562 (IAC). There, he drew attention to the default of representatives and made reference to *"egregious professional default".*

36. In the reported decision in *Shabir Ahmed and Others (sanctions for non-compliance)* [2016] UKUT 00562 (IAC), the Upper Tribunal reminded representatives that it "*will not hesitate to have recourse to the full panoply of powers at its disposal to prevent this kind of shameful event materialising"*. Those powers include the initiation of contempt of court proceedings, wasted costs orders and the publication of rulings on the Tribunal's website, with a view to ensuring that its process is not misused and in the interests of furthering the overriding objective.

37. Whilst we do not propose to take Mr Kazmi's behaviour and conduct any further on this occasion, we are satisfied that Mr Kazmi has shown a contumelious disregard for the Procedure Rules and he has further shown a willingness to actively mislead the Tribunal. Mr Kazmi attempted to suggest that he had not seen any documents despite the correspondence that was brought to his attention during the hearing (and referred to above). We are satisfied that this

was in an attempt to have an aborted hearing, having failed to indicate that there was any obstacle to the hearing proceeding at the outset. Requests for an adjournment had been refused prior to the date of the hearing and no renewed application for an adjournment was made at the commencement of the hearing before us. Mr Kazmi could not gainsay the fact that the email address shown within the correspondence brought to his attention at the end of the hearing was his email address.

38. The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (hereinafter referred to as the "Procedure Rules"), at rule 2 (overriding objective), provide, *inter alia*, that the parties must help the Tribunal to further the overriding objective and should co-operate with the Tribunal generally. The overriding objective includes the requirement to avoid delay, so far as compatible with the proper consideration of the issues. The correspondence we have considered shows that Mr Kazmi has received all correspondence from HMRC and the Tribunal to enable him to fully participate in proceedings that were listed last year. He waited until the hearing was about to conclude to raise any issues. We are satisfied that Mr Kazmi received all of the documentation that was filed and served by HMRC and we therefore proceed to determine this appeal. Mr Kazmi has chosen not to make any submissions in respect of a hearing that has now concluded.

39. We therefore proceed to give our decision on the only documentary evidence and submissions we have received. The unfortunate consequence of Mr Kazmi's conduct and decision to disengage at the conclusion of the hearing is that we have to decide the issues raised in this appeal without the benefit of any substantive submissions on behalf of the Appellant.

40. At the conclusion of the hearing, we reserved our decision, which we now give, with reasons.

Findings of fact and reasons for decision

41. This is an appeal by the Appellant against the decision to issue a post-clearance demand by way of duty, in the sum of £6,929.87. Imports from Sudan made in the Appellant's name during the period 15 July 2015 and 11 November 2016 had been declared to free circulation when the Appellant successfully claimed the GSP preferential rate of duty (0%). The facts which gave rise to the present appeal are not in dispute between the parties, save that the parties differ in view as to the outcome that we should reach as a result.

42. Having considered all of the evidence and the applicable law, we make the following findings of fact:

43. The Appellant is a limited liability company, incorporated in England. Since 2015, the Appellant has traded as an importer of wholesale food products from Sudan. Mr Gamal Mikhael has, at all material times, been a director of the company. Mr Mikhael did not attend the appeal hearing and he has not submitted a witness statement in support of this appeal.

44. Between 15 July 2015 and 11 November 2016, the Appellant imported the following consignments from MTC International FZC and National Industries Company, Sudan:

Entry number	**Goods**	**Commodity code**	**GSP Form A**
071-038631F 15/07/15	Tahina	20079997 50	777593
071-038631F 15/07/15	Dried fruit	08041000 99	777593
071-038631F 15/07/15	Dried dates	08041000 99	777593
071-040571K 17/03/16	Drink powder	22029099 90	274501
071-025682E 11/11/16	Tahina	20079997 50	274545

45. The imported goods had been declared free to circulation by the use of Customs Procedure Code 4000000, in box 37 of each customs declaration ('C88'). The goods were then admitted in to the United Kingdom at a preferential rate of customs duty.

46. On 24 March 2017, Assistant Officer Panesar, of the Tariff Preference Team, wrote to the Appellant's finance director, whilst conducting post-clearance checks, in relation to the imports from Sudan. The Appellant was asked to provide specific documents to facilitate post-clearance checks regarding the preferential origin status of the goods. The documents requested included the original GSP Form A certificates, the C88s and supporting documents, such as invoices and certificates of shipment for import entries. The schedule of import entries was enclosed within the letter from Assistant Officer Panesar. The letter was set out in the following terms:

> "In order to facilitate post clearance checks regarding the eligibility of these goods to preferential tariff treatment, I request that you present to this office, by **14TH APRIL 2017,** the following documents
>
> 1. The **ORIGINAL GREEN** EUR1/EUR-MED Movement Certificate or GSP Form A (if the invoice does not contain an invoice declaration) – **A COPY IS NOT ACCEPTABLE**
> 2. The **INVOICE**, or invoices, relating to the importation

3. The customs declaration form **C88** (import entry), incorporating the CHIEF entry acceptance advice document (E2)

4. A **CERTIFICATE OF SHIPMENT** relating to the importation:

   For goods that have been transported by air, a through airway bill from the exporting country to the UK.

   For goods that have been transported by sea, a bill of lading from the exporting country to the UK.

   For goods that have been transported by road a copy of the CMR Document should be provided.

   Where goods have been transported by rail a copy of the International Consignment Note (CIM) should be provided.

These documents should clearly show the transport route of the goods from the exporter to their arrival in the UK. If the goods have been transported by more than one method then a combination of the above documents is required."

47. The Appellant subsequently provided the documents requested.

48. Following an examination of the documents provided by the Appellant, Officer McDermott wrote to the Appellant on 4 July 2017, advising the Appellant that the claims to a preferential rate of duty were invalid. This was because the stamps included in the GSP Form A certificates (numbered 274501, 274545 and 777593) provided by the Appellant were not recognised stamps, as notified by Sudan to the European Commission. Officer McDermott added, in her letter of 4 July 2017, that the Sudanese Customs Authority provides the European Commission with specimens of the stamp and the European Commission in turn notify the relevant customs authorities of the Member States.

49. Officer McDermott thereafter expressed an intention to issue a post-clearance demand in the sum of £6,929.87. An enclosed schedule showed Officer McDermott's calculation of the debt due. The Appellant was then invited, under the Right to be Heard ('RTBH') procedure, to provide, within 30 days, any further arguments or information which could change the decision. By an email dated 24 July 2017, the Appellant's representatives, SPW (UK) LLP, appealed against the post-clearance demand. No further information was however provided.

50. On 31 July 2017, Officer McDermott indicated that she would shortly be issuing the decision letter. Thereafter, on 8 August 2017, a post-clearance demand, reference C18248188, was issued to the Appellant. By a letter dated 14 August 2017, the Appellant's representatives wrote to the Customs Review and Appeals Team, requesting a review in the following terms:

"We hereby appeal against the £6,929.87 duty shown by the case file schedule attached to your above mentioned letter, on the grounds that our client company has obtained the certificate from the supplier and as such it is clearly not their responsibility. Nor can they

be expected to check whether it is a genuine certificate because, as you would no doubt appreciate, the director of our client company does not have the expertise or indeed the technical skills (or training) to check the authenticity of the document. Perhaps you can email an extract from your rules where it is stated that trading companies, and responsible individuals on their behalf, need to possess these skills."

"We believe that in line with the spirit in which the relevant law was drafted, it cannot be the intention of HMRC to penalise UK companies with such heavy duties. This can be classified as an infringement of the equivalent of human rights for small corporates such as our client with limited resources."

[My emphasis both above and below]

51. The decision to issue a post-clearance demand was upheld on 24 January 2018, following a review by Mark Attridge, Review Officer.

52. Post-clearance decisions may be challenged before the national courts. Sections 14 (1) and (2) of the Finance Act 1994 provide for a review of a decision. Upon a review taking place, the decision may be confirmed, withdrawn or varied.

53. Section 16 (5) of the Finance Act 1994, provides, so far as is material to this appeal, that

"the burden of proof on appeal lies with HMRC….*"but it shall otherwise be for the appellant to show that the grounds on which any such appeal is brought have been established."*

Does liability to customs duty arise?

54. The European Union's Rules of Origin for the Generalised System of Preference (hereinafter referred to as "the Rules of Origin") is a system of tariff preferences granted, unilaterally, by the EU to products originating in developing countries, where duty is reduced (to nil). The Rules of Origin are the means by which the origin of goods is determined (not where they have been shipped from but where they are deemed to have been produced or manufactured) and they exist in order to ensure that the preference only goes to those for whom the GSP is intended to benefit.

55. Goods originating from some countries are therefore eligible for preferred duty treatment in accordance with preferential tariff measures adopted by the European Commission (the GSP). In the first instance, it is necessary to decide whether liability to customs duty arises in this appeal. However, submission of a Certificate of Origin Form A, issued by the competent authority of the beneficiary country, is to be provided if the products are to benefit from the

preferential rate of duty. Furthermore, products are eligible for a preferential rate of duty if they have been transported directly to the EU.

56. In order to be entitled to tariff preference, therefore, the importer must satisfy two conditions:

(1) It must have a valid/genuine Form A issued by the customs authorities in the beneficiary country; and

(2) It must satisfy the direct transport rule.

57. In the period relevant to this appeal, there were two EU Regulations sequentially in force dealing with customs duty. The first (for the period prior to May 2016) is the Regulation 2913/92/EEC (hereinafter referred to as "the Community Customs Code"). The second is Commission Regulation 952/2013 (hereinafter referred to as "the Union Customs Code"). The Union Customs Code has been implemented by Regulation 2454/93, as amended (hereinafter referred to as "the Implementing Regulation"). The Implementing Regulation provides for the subsequent verification of proofs of origin by the authorities of the exporting State, at the request of the authorities of the Importing State, and for the refusal of preferential entitlement if such verification does not bear out the declared origin of the goods in question. Such proof may also be declared invalid.

58. HMRC's case is that the Appellant has not provided valid Form As in relation to the consignments identified at paragraph 44 above. In further amplification of HMRC's case, the following observations were made after the documents submitted by the Appellant were examined:

59. In relation to entry number 071-038631F, which was covered by GSP Form A 777593, the conclusion was that the certificate was invalid because it had been stamped at box 11 ("Certification") with a stamp (Sudan Chamber of Commerce) which had not been notified to the European Commission by the Sudanese authorities. Furthermore, box 12 ("Declaration by the exporter") had not been signed by the exporter. Finally, the bottom line for the signature ("place and date, signature of authorised signatory") had not been completed.

60. In relation to entry number 071-040571K, which was covered by GSP Form A 274501, the conclusion was that the certificate was invalid because it had been endorsed, at box 11, with a stamp, which had not been notified to the European Commission. Furthermore, box 12 had not been signed and completed by the exporter.

61. Lastly, in relation to entry number 071-025682E, which was covered by GSP Form A 274645, the certificate was invalid because the certificate had not been endorsed at box 11 by the appropriate authority. Furthermore, the stamp of the Sudan Chamber of Commerce did not

match official stamps notified to the European Commission by the Sudanese authorities and box 12 had not been signed and dated by the exporter.

62. We have derived considerable benefit from hearing the oral evidence on behalf of HMRC. We have further had the benefit of seeing the GSP Form As provided by the Appellant and examined by HMRC, as these were included in the Documents bundle. The certificates clearly show, on the face of the documents, a stamp from "Sudan Chamber of Commerce". It is also correct that the certificates have not been signed and dated by the importer. We have further had the benefit of seeing examples of official Sudanese stamps supplied to the European Commission by the certifying authority in Sudan. These too were included in the Documents bundle. The Appellant did not seek to rebut the contention that the Form As were invalid, for the reasons given by HMRC.

63. We are satisfied that we can place reliance on the examples as accurately representing the official stamps from the competent authority in the beneficiary state (i.e. Sudan). We therefore find that the documents provided by the Appellant in support of the claim for a preferential rate of duty were not valid.

64. As already mentioned, Mr Kazmi did not make any oral submissions beyond saying that the Appellant is based in the United Kingdom and has very little knowledge about the Rules and Regulations relating to documents from Sudan. We have nevertheless considered the written representations made by his representatives at the time that the post-clearance demand was issued. We have however considered the request for review, dated 14 August 2017.

65. Firstly, it is argued, in the request for review, that the Appellant is not liable because the error on the documents was made by one of the overseas suppliers. Secondly, it is argued that director of the company does not have the expertise, technical skills or the training to check the authenticity of the documents. Ultimately, the argument on the Appellant's behalf is that there has been no obvious negligence on the Appellant's part. Thirdly, it is further argued that it would be unfair to levy a duty assessment of this size as the company does not have the financial resources to settle this totally unexpected and unforeseen liability. Fourthly, it is argued on the Appellant's behalf that these issues should have been dealt with by customs at the time when the goods were allowed into the United Kingdom. The Appellant's representatives ultimately submit, in the request for review, that HMRC are therefore, in part, responsible for the state of affairs that has arisen as the goods were allowed into the United Kingdom.

66. Having considered the arguments and the applicable law, we find that there is no merit in any of these arguments.

67. In relation to whether the Appellant is liable to customs duty and the further argument that the director lacks the expertise, technical skills or training to check the validity of any documents, we find that it is trite law that it is the responsibility of the traders to make the necessary arrangements in their contractual relations to guard against the risks of an action for

post- clearance payment. Article 15 of the Union Customs Code further provides that the lodging of a customs declaration shall render the person concerned responsible for the accuracy and completeness of the information given in the application and the authenticity, accuracy and validity of any document supporting the declaration.

68. In *SCI UK Ltd v Commissioners* [2002] ECT 11-2597, the Court of First Instance held that a trader who has not consulted the relevant issues of the Official Journal to ascertain the provisions of Community law applicable to his transaction will be considered negligent and will not comply with the conditions.

69. In *SCI UK Ltd,* the court further held that:

> "In that respect, it is clear that the importer is responsible both for the payment of the import duties and for the regularity of the documents presented by him to the customs authorities, and that the adverse consequences of the wrongful acts of his contracting parties cannot be borne by the Community……..Moreover, the importer may seek damages against the trader involved in the fraudulent use of the documents in question. Finally, a prudent trader aware of the rules must assess the risks inherent in the market which he is considering and accept them as normal risks. (Case C-97/95 Pascoal & Filhos [1997] ECR 1–4209, paragraphs 57 to 61)."

70. Matt Luty gave evidence under oath. He gave his evidence in a clear and straightforward manner, without equivocation. We are satisfied that we can place reliance on his oral evidence. In his oral evidence, Mr Luty stated that the due diligence by the importer would include visiting the exporting company and that the Rules or Origin require certain criteria to be met. The importer must either trust the exporter or conduct enquiries. It is open to the importer to request binding origin information.

71. Mr Mikheal (Director) did not attend the appeal hearing and he has not provided a witness statement in support of the appeal. Whilst it is argued that it is not the Appellant's responsibility to ensure that the correct documentation has been provided, we find that the Appellant assumed responsibility for the regularity of the documents presented to the customs authorities. We are not told of any efforts that the Appellant made to appraise itself of the documents and the procedures that would be required in order to satisfy the requirements of the preferential rate of duty. There is no information about any due diligence undertaken in this regard.

72. Officer McDermott also gave evidence under oath. In her oral evidence, Officer McDermott said that she explained that retrospective certificates could be obtained by the supplier. Section 3.8. of Public notice 826 provides that:

> "**3.8 Can a preference certificate be issued retrospectively**
>
> Yes. The GSP form A and form EUR2/EUR-MED can exceptionally be issued after exportation of the products to which it relates, where it was not issued at the same time

of exportation due to an error, oversight or special circumstances (such as a preferential rate of duty becoming available for the products from a retrospective date), or where a certificate which was issued at the time of exportation could not be accepted by us at the time of importation for technical reasons (because for example, it did not contain the necessary information)."

73. No retrospective certificates were however provided and no other forms with the correct stamps were provided by or on behalf of the Appellant.

74. We find that the Appellant is responsible for the documentation that has given rise to the duty. There are, however, two forms of relief that may be considered: "waiver" and "remission", on the grounds of good faith. We proceed to consider whether the Appellant may obtain relief.

Remission and Waiver

75. Article 120 of the Implementing Regulation provides for remission of duty if the Appellant can show that there is an exceptional situation/special circumstance. Article 904 (c) of the Union Customs Code (good faith) however provides that the duties shall not be remitted or repaid where the only grounds relied upon are the presentation, for the purpose of obtaining preferential tariff treatment of goods declared for free circulation, of documents subsequently found to be invalid for that purpose, even where such documents were presented in good faith. We have already found that the Form As submitted by the Appellant were invalid.

76. In *Spedition Wilhelm Rotermund GmbH v Commissioners of the European Community* [2001] ECR 11-1619, the Court of First instance held that article 905 of the Community Customs Code, as implemented by the Implementing Regulation, contained an equitable provision intended to deal with *"exceptional situations"* faced by an operator and was intended to apply, *inter alia* , where the circumstances of the trader and the administrator were such that it would be inequitable to require the trader to bear the loss which, in normal circumstances, would not have been incurred.

77. In deciding whether a 'special circumstance' existed, the Commission considered that it was necessary to balance the Community interest against the interests of the trader who had acted in good faith. In order to assess whether a trader is in an 'exceptional situation', it is necessary to consider whether he is in an exceptional situation as compared with other operators engaged in the same business.

78. In *Mehibas Dorstselaan v Commissioners* [2000] ECR 11-15 at [83], the Court of First Instance held that:

"It is settled case law that submitting documents found to be falsified or inaccurate does not of itself constitute a special circumstance justifying the remission or

repayment of import duties, even where such documents were presented in good faith (Eyckeler & Malt, *paragraph 162)*. A customs agent, by the very nature of his work, assumes liability for the payment of import duties and for the validity of the documents which he presents to the customs authorities. (*Van Gend & Loos paragraph 16*), and any loss caused by the wrongful conduct on the part of his clients cannot be borne by the Community. For that reason, it has been held that the fact that certificates of origin which were subsequently found not to be valid were delivered by the customs authorities of the countries mentioned on them does not amount to a special situation. It is one of the trade risks assumed by custom agents."

79. In *SCI UK Ltd,* the echoed this, at [58] and [59]:

> "58. Therefore, as the Commission rightly submits, the presentation of documents subsequently found to be invalid cannot of itself constitute a special situation justifying repayment of import duties even where such documents were presented in good faith…
>
> 59. "A different conclusion, namely that there was a special situation, would only be possible in the event of serious failures by the Commissioners or the customs authorities, facilitating the fraudulent use of the price undertaking documents……."

80. The ECJ in the *Llumitronica v Chefe da Dvisiao de Procedimentos Aduaneiros e Fiscais* [2002] ECR 1-10433, at [33] held that:

> "The circumstances that the declarant [on importation] acted in good faith and with care, unaware of an irregularity which prevented the collection of duties which he should have paid if that irregularity had not been committed, has no bearing on his capacity as the person liable, which results exclusively from the legal effects associated with the formality of declaration".

81. Lastly, in *Covita* [1998] ECR 1-17711, Case V-370/96, the European Court of Justice ('ECJ') set out, at [24] to [28], the conditions to be fulfilled in relation to the statutory predecessor to Article 120 (namely Article 220 (2)(b);

> "First, non-collection of the duties must have been as a result of an error made by the competent authorities themselves. In this connection, the legitimate expectation of the person liable do not attract the protection provided for in Article 220(2)(b) unless it was the competent authorities themselves which created the basis for the expectations of the person liable.
>
> Secondly, the error made by the competent authorities must be such that it could not reasonably be detected by the person liable acting in good faith, despite his professional experience and the diligence shown by him.

> Thirdly, the person liable must have complied with all the provisions laid down by the rules in force as far as his customs declaration is concerned".

82. We find that it is plain from the circumstances of this case that no special circumstance or exceptional circumstance, warranting remission, exists on the grounds of good faith, in light of the assumption of responsibility by the Appellant. In relation to the argument that these issues should have been dealt with by the customs authorities at the time when the goods were allowed into the United Kingdom, we find that the goods were cleared under Route 6, which means that the Appellant was not required to present any documents to clear the goods at import. There would not, therefore, have been an opportunity to examine any documents and no liability arises against the customs authorities in the United Kingdom.

83. We find that no errors by the competent authorities have been established by or on behalf of the Appellant. In his oral evidence, Matt Luty explained that the exporter goes to the authorities having completed the certificate. Only the green certificate is seen by UK Customs. The majority are given automatic clearance, depending on the classification of the goods. The whole point of automatic clearance is to speed things through.

Infringement of rights

84. Whilst the specific right said to have been infringed has not been identified by the Appellant's representatives, in relation to the argument that there has been an infringement of human rights, it is necessary to consider the legitimate aim in this appeal. The State is permitted to secure the payment of taxes and other contributions or penalties, pursuant to Article 1 of Protocol 1 of the European Convention on Human Rights ('ECHR'). This is compliant with Article 6 ECHR: *Air Canada v United Kingdom* (1995) 20 EHRR 150, at [61] – [63].

85. All current formulations of the proportionality test involve four elements taken from Lord Sumption's speech in *Bank Mellat v Her Majesty's Treasury (No.2)* [2014] AC 700, at [20]:

> "... the question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine: (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them."

86. The third element is now usually qualified in the manner explained by Lord Neuberger in *R (Bibi) v Secretary of State for the Home Department* [2015] 1 WLR 5055, at [85], for which Lord Reed's speech in *Bank Mellat* was cited:

> "...it has been authoritatively said that the question it involves may be better framed as was 'the limitation of the protected right ... one that it was reasonable for the legislature to impose' to achieve the legitimate aim, bearing in mind any alternative methods of achieving that aim..."

87. The purpose of Rules of Origin includes securing a balance between the needs of the customs authorities in ensuring the application of customs legislation (on the one hand) and the rights of traders to be treated fairly (on the other hand), the establishment of uniform rules and procedures within the internal market and the prevention of fraud or irregularity, which would adversely affect the general budget of the EU.

Conclusion

88. We considered all of the evidence and the law. We dismiss the appeal on the basis that the Form As submitted in relation to the consignments during the period July 2015 to November 2016 were invalid as a result of the inaccuracies and irregularities identified. The Appellant has therefore failed to show entitlement to a preferential rate of duty.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

89. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JUDGE NATSAI MANYARARA

TRIBUNAL JUDGE

RELEASE DATE: 22 APRIL 2020

APPENDIX

Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (Retained EU Legislation)

Article 74 Procedure for the issue of a certificate of origin Form A
(Article 64(1) of the Code)

1.
Certificates of origin Form A shall be issued on written application from the exporter or its representative, together with any other appropriate supporting documents proving that the products to be exported qualify for the issue of a certificate of origin Form A. Certificates of origin Form A shall be issued using the form set out in Annex 22-08.

2.
The competent authorities of beneficiary countries shall make available the certificate of origin Form A to the exporter as soon as the exportation has taken place or is ensured. However, the competent authorities of beneficiary countries may also issue a certificate of origin Form A after exportation of the products to which it relates, if:

(a) it was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or

(b) it is demonstrated to the satisfaction of the competent authorities that a certificate of origin Form A was issued but was not accepted at importation for technical reasons; or

(c) the final destination of the products concerned was determined during their transportation or storage and after possible splitting of a consignment, in accordance with Article 43 of Delegated Regulation (EU) 2015/2446.

3.
The competent authorities of beneficiary countries may issue a certificate retrospectively only after verifying that the information supplied in the exporter's application for a certificate of origin Form A issued retrospectively is in accordance with that in the corresponding export file and that a certificate of origin Form A was not issued when the products in question were

exported, except when the certificate of origin Form A was not accepted for technical reasons. The words ‘Issued retrospectively’, ‘Délivré a posteriori’ or ‘emitido a posteriori’ shall be indicated in box 4 of the certificate of origin Form A issued retrospectively.

4.
In the event of theft, loss or destruction of a certificate of origin Form A, the exporter may apply to the competent authorities which issued it for a duplicate to be made out on the basis of the export documents in their possession. The words ‘Duplicate’, ‘Duplicata’ or ‘Duplicado’, the date of issue and the serial number of the original certificate shall be indicated in box 4 of the duplicate certificate of origin Form A. The duplicate takes effect from the date of the original.

5.
For the purposes of verifying whether the product for which a certificate of origin Form A is requested complies with the relevant rules of origin, the competent governmental authorities shall be entitled to call for any documentary evidence or to carry out any check which they consider appropriate.

6.
Completion of boxes 2 and 10 of the certificate of origin Form A shall be optional. Box 12 shall bear the mention ‘Union’ or the name of one of the Member States. The date of issue of the certificate of origin Form A shall be indicated in box 11. The signature to be entered in that box, which is reserved for the competent governmental authorities issuing the certificate, as well as the signature of the exporter’s authorised signatory to be entered in box 12, shall be handwritten.

Article 110 Subsequent verification of certificates of origin Form A and invoice declarations

(Article 64(1) of the Code)

1.
Subsequent verifications of certificates of origin Form A and invoice declarations shall be carried out at random or whenever the customs authorities of the Member States have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Subsection, Subsections 3 to 9 of this Section and Subsections 2 and 3 of Title II Chapter 1 Section 2 of Delegated Regulation (EU) 2015/2446.

2.

When they make a request for subsequent verification, the customs authorities of the Member States shall return the certificate of origin Form A and the invoice, if it has been submitted, the invoice declaration, or a copy of these documents, to the competent governmental authorities in the exporting beneficiary country giving, where appropriate, the reasons for the enquiry. Any documents and information obtained suggesting that the information given on the proof of origin is incorrect shall be forwarded in support of the request for verification.

If the customs authorities of the Member States decide to suspend the granting of the tariff preferences while awaiting the results of the verification, release of the products shall be offered to the importer subject to any precautionary measures judged necessary.

3.
When a request for subsequent verification has been made, such verification shall be carried out and its results communicated to the customs authorities of the Member States within a maximum of 6 months or, in the case of requests sent to Norway or Switzerland for the purpose of verifying replacement proofs of origin made out in their territories on the basis of a certificate of origin Form A or an invoice declaration made out in a beneficiary country, within a maximum of 8 months from the date on which the request was sent. The results shall be such as to establish whether the proof of origin in question applies to the products actually exported and whether these products can be considered as products originating in the beneficiary country.

4.
In the case of certificates of origin Form A issued following bilateral cumulation, the reply shall include a copy (copies) of the movement certificate(s) EUR.1 or, where necessary, of the corresponding invoice declaration(s).

5.
If, in cases of reasonable doubt, there is no reply within the 6 months specified in paragraph 3 or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, a second communication shall be sent to the competent authorities. If after the second communication the results of the verification are not communicated to the requesting authorities within 4 months from the date on which the second communication was sent, or if these results do not allow the authenticity of the document in question or the real origin of the products to be determined, the requesting authorities shall, except in exceptional circumstances, refuse entitlement to the tariff preferences.

6.
Where the verification procedure or any other available information appears to indicate that the rules of origin are being contravened, the exporting beneficiary country shall, on its own initiative or at the request of the customs authorities of the Member States, carry out appropriate inquiries or arrange for such inquiries to be carried out with due urgency to identify and prevent such contraventions. For this purpose, the Commission or the customs authorities of the Member States may participate in the inquiries.

7.
For the purposes of the subsequent verification of certificates of origin Form A, the exporters shall keep all appropriate documents proving the originating status of the products concerned and the competent governmental authorities of the exporting beneficiary country shall keep copies of the certificates, as well as any export documents referring to them. These documents

shall be kept for at least 3 years from the end of the year in which the certificate of origin Form A was issued.

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (Retained EU Legislation)

Article 119 - Error by the competent authorities

1. In cases other than those referred to in the second subparagraph of Article 116(1) and in Articles 117, 118 and 120, an amount of import or export duty shall be repaid or remitted where, as a result of an error on the part of the competent authorities, the amount corresponding to the customs debt initially notified was lower than the amount payable, provided the following conditions are met:

(a) the debtor could not reasonably have detected that error; and

(b) the debtor was acting in good faith.

2. Where the conditions laid down in Article 117(2) are not fulfilled, repayment or remission shall be granted where failure to apply the reduced or zero rate of duty was as a result of an error on the part of the customs authorities and the customs declaration for release for free circulation contained all the particulars and was accompanied by all the documents necessary for application of the reduced or zero rate.

3. Where the preferential treatment of the goods is granted on the basis of a system of administrative cooperation involving the authorities of a country or territory outside the customs territory of the Union, the issue of a certificate by those authorities, should it prove to be incorrect, shall constitute an error which could not reasonably have been detected within the meaning of point (a) of paragraph 1.

The issue of an incorrect certificate shall not, however, constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment.

The debtor shall be considered to be in good faith if he or she can demonstrate that, during the period of the trading operations concerned, he or she has taken due care to ensure that all the conditions for the preferential treatment have been fulfilled.

The debtor may not rely on a plea of good faith if the Commission has published a notice in the Official Journal of the European Union stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country or territory.

Article 120 Equity

1.

In cases other than those referred to in the second subparagraph of Article 116(1) and in Articles 117, 118 and 119 an amount of import or export duty shall be repaid or remitted in the interest

of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor.

2.
The special circumstances referred to in paragraph 1 shall be deemed to exist where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business, and that, in the absence of such circumstances, he or she would not have suffered disadvantage by the collection of the amount of import or export duty.

Commission Regulation (EU) No 1063/2010 of 18 November 2010 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

Procedures at release for free circulation in the European Union

Article 97

1. The customs declaration for release for free circulation shall make reference to the statement on origin. The statement on origin shall be kept at the disposal of the customs authorities, which may request its submission for the verification of the declaration. Those authorities may also require a translation of the statement into the official language, or one of the official languages, of the Member State concerned.

2. Where the application of the scheme is requested by the declarant, without a statement on origin being in its possession at the time of the acceptance of the customs declaration for release for free circulation, that declaration shall be considered as being incomplete within the meaning of Article 253(1) and treated accordingly.

3. Before declaring goods for release for free circulation, the declarant shall take due care that the goods comply with the rules in this section by, in particular, checking:

(i) in the data-base referred to in Article 69(3) that the exporter is registered to make statements on origin, except where the total value of the originating products consigned does not exceed EUR 6 000, and

(ii) that the statement on origin is made out in accordance with Annex 13d.

……

Article 97b

1. The discovery of slight discrepancies between the particulars included in a statement on origin and those mentioned in the documents submitted to the customs authorities for the purpose of carrying out the formalities for importing the products shall not ipso facto render

the statement on origin null and void if it is duly established that that document does correspond to the products concerned.

2. Obvious formal errors such as typing errors on a statement on origin shall not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in that document.

3. Statements on origin which are submitted to the customs authorities of the importing country after the period of validity mentioned in Article 96 may be accepted for the purpose of applying the tariff preferences, where failure to submit these documents by the final date set is due to exceptional circumstances. In other cases of belated presentation, the customs authorities of the importing country may accept the statements on origin where the products have been presented to customs before the said final date.

……..

Procedures and methods of administrative cooperation applicable until the application of the registered exporter system

Sub-section 1

General principles

Article 97k

1. Every beneficiary country shall comply or ensure compliance with:

(a) the rules on the origin of the products being exported, laid down in Section 1;

(b) the rules for completion and issue of certificates of origin Form A, a specimen of which is set out in Annex 17;

(c) the provisions for the use of invoice declarations, a specimen of which is set out in Annex 18;

(d) the provisions concerning methods of administrative cooperation referred to in Article 97s;

(e) the provisions concerning granting of derogations referred to in Article 89.

2. The competent authorities of the beneficiary countries shall cooperate with the Commission or the Member States by, in particular:

(a) providing all necessary support in the event of a request by the Commission for the monitoring by it of the proper management of the scheme in the country concerned, including verification visits on the spot by the Commission or the customs authorities of the Member States;
(b) without prejudice to Articles 97s and 97t, verifying the originating status of products and the compliance with the other conditions laid down in this section, including visits on the spot, where requested by the Commission or the customs authorities of the Member States in the context of origin investigations.

3. Where, in a beneficiary country, a competent authority for issuing certificates of origin Form A is designated, documentary proofs of origin are verified, and certificates of origin Form A for exports to the European Union are issued, that beneficiary country shall be considered to have accepted the conditions laid down in paragraph 1.

4. When a country or territory is admitted or readmitted as a beneficiary country in respect of products referred to in Regulation (EC) No 732/2008, goods originating in that country or territory shall benefit from the generalised system of preferences on condition that they were exported from the beneficiary country or territory on or after the date referred to in Article 97s.

5. A proof of origin shall be valid for 10 months from the date of issue in the exporting country and shall be submitted within the said period to the customs authorities of the importing country.

Sub-section 2

Procedures at export in the beneficiary country

Article 97l

1. Certificates of origin Form A, a model of which is set out in Annex 17, shall be issued on written application from the exporter or its authorised representative, together with any other appropriate supporting documents proving that the products to be exported qualify for the issue of a certificate of origin Form A.

2. The certificate shall be made available to the exporter as soon as the export has taken place or is ensured. However, a certificate of origin Form A may exceptionally be issued after exportation of the products to which it relates, if:

(a) it was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or

(b) it is demonstrated to the satisfaction of the competent governmental authorities that a certificate of origin Form A was issued but was not accepted at importation for technical reasons.

3. The competent governmental authorities may issue a certificate retrospectively only after verifying that the information supplied in the exporter's application agrees with that in the corresponding export file and that a certificate of origin Form A satisfying the provisions of this section was not issued when the products in question were exported. Box 4 of certificates of origin Form A issued retrospectively must contain the endorsement »Issued retrospectively« or »Délivré à posteriori«.

4. In the event of the theft, loss or destruction of a certificate of origin Form A, the exporter may apply, to the competent governmental authorities which issued it, for a duplicate to be made out on the basis of the export documents in their possession. Box 4 of a duplicate Form A issued in this way must be endorsed with the word »Duplicate« or »Duplicata«, together with the date of issue and the serial number of the original certificate. The duplicate takes effect from the date of the original.

5. For the purposes of verifying whether the product for which a certificate of origin Form A is requested complies with the relevant rules of origin, the competent governmental authorities shall be entitled to call for any documentary evidence or to carry out any check which they consider appropriate.

6. Completion of box 2 of the certificate of origin Form A shall be optional. Box 12 shall bear the mention »European Union« or the name of one of the Member States. The date of issue of the certificate of origin Form A shall be indicated in box 11. The signature to be entered in that box, which is reserved for the competent governmental authorities issuing the certificate, as well as the signature of the exporter's authorised signatory to be entered in box 12, shall be handwritten.

……..

Sub-section 3

Procedures at release for free circulation in the European Union

Article 97n

1. Certificates of origin Form A or invoice declarations shall be submitted to the customs authorities of the Member States of importation in accordance with the procedures concerning the customs declaration.

2. Proofs of origin which are submitted to the customs authorities of the importing country after the period of validity mentioned in Article 97k (5) may be accepted for the purpose of applying the tariff preferences, where failure to submit these documents by the final date set is due to exceptional circumstances. In other cases of belated presentation, the customs authorities of the importing country may accept the proofs of origin where the products have been presented to customs before the said final date.

……..

Article 97r

1. The discovery of slight discrepancies between the statements made in the certificate of origin Form A or in an invoice declaration, and those made in the documents submitted to the customs office for the purpose of carrying out the formalities for importing the products shall not ipso facto render the certificate or declaration null and void if it is duly established that that document does correspond to the products submitted.

2. Obvious formal errors on a certificate of origin Form A, a movement certificate EUR.1 or an invoice declaration shall not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in that document.

Sub-section 4

Methods of administrative cooperation

Article 97s

1. The beneficiary countries shall inform the Commission of the names and addresses of the governmental authorities situated in their territory which are empowered to issue certificates of origin Form A, together with specimen impressions of the stamps used by those authorities, and the names and addresses of the relevant governmental authorities responsible for the control of the certificates of origin Form A and the invoice declarations.

The Commission will forward this information to the customs authorities of the Member States. When this information is communicated within the framework of an amendment of previous communications, the Commission will indicate the date of entry into use of those new stamps according to the instructions given by the competent governmental authorities of the beneficiary countries. This information is for official use; however, when goods are to be released for free circulation, the customs authorities in question may allow the importer or his duly authorised representative to consult the specimen impressions of the stamps.
Beneficiary countries which have already provided the information required under the first sub-paragraph shall not be obliged to provide it again, unless there has been a change.

2. For the purpose of Article 97k (4) the Commission will publish, in the Official Journal of the European Union (»C« series), the date on which a country or territory admitted or readmitted as a beneficiary country in respect of products referred to in Regulation (EC) No 732/2008 met the obligations set out in paragraph 1.

3. The Commission will send to the beneficiary countries specimen impressions of the stamps used by the customs authorities of the Member States for the issue of movement certificates EUR.1 upon request of the competent authorities of the beneficiary countries.

Article 97t

1. Subsequent verifications of certificates of origin Form A and invoice declarations shall be carried out at random or whenever the customs authorities of the Member States have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this section.

2. When they make a request for subsequent verification, the customs authorities of the Member States shall return the certificate of origin Form A and the invoice, if it has been submitted, the invoice declaration, or a copy of these documents, to the competent governmental authorities in the exporting beneficiary country giving, where appropriate, the reasons for the enquiry. Any documents and information obtained suggesting that the information given on the proof of origin is incorrect shall be forwarded in support of the request for verification.

If the customs authorities of the Member States decide to suspend the granting of the tariff preferences while awaiting the results of the verification, release of the products shall be offered to the importer subject to any precautionary measures judged necessary.

3. When a request for subsequent verification has been made, such verification shall be carried out and its results communicated to the customs authorities of the Member States within a maximum of six months or, in the case of requests sent to Norway, Switzerland or Turkey for the purpose of verifying replacement proofs of origin made out in their territories on the basis of a certificate of origin Form A or an invoice declaration made out in a beneficiary country, within a maximum of eight months from the date on which the request was sent. The results shall be such as to establish whether the proof of origin in question applies to the products actually exported and whether these products can be considered as products originating in the beneficiary country.

4. In the case of certificates of origin Form A issued following bilateral cumulation, the reply shall include a copy (copies) of the movement certificate(s) EUR.1 or, where necessary, of the corresponding invoice declaration(s).

5. If, in cases of reasonable doubt, there is no reply within the six months specified in paragraph 3 or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, a second communication shall be sent to the competent authorities. If after the second communication the results of the verification are not communicated to the requesting authorities within four months from the date on which the second communication was sent, or if these results do not allow the authenticity of the document in question or the real origin of the products to be determined, the requesting authorities shall, except in exceptional circumstances, refuse entitlement to the tariff preferences.

6. Where the verification procedure or any other available information appears to indicate that the rules of origin are being contravened, the exporting beneficiary country shall, on its own initiative or at the request of the customs authorities of the Member States, carry out appropriate inquiries or arrange for such inquiries to be carried out with due urgency to identify and prevent such contraventions. For this purpose, the Commission or the customs authorities of the Member States may participate in the inquiries.

7. For the purposes of the subsequent verification of certificates of origin Form A, the exporters shall keep all appropriate documents proving the originating status of the products concerned and the competent governmental authorities of the exporting beneficiary country shall keep copies of the certificates, as well as any export documents referring to them. These documents shall be kept for at least three years from the end of the year in which the certificate of origin Form A was issued.

……..

Commission 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

Article 904

Import duties shall not be repaid or remitted where the only grounds relied on in the application for repayment or remission are, as the case may be:
(a) re-export from the customs territory of the Community of goods previously entered for a customs procedure involving the obligation to pay import duties, for reasons other than those referred to in Article 237 or 238 of the Code or in Article 900 or 901, notably failure to sell;

(b) destruction, for any reason whatsoever, save in the cases expressly provided for by Community legislation, of goods entered for a customs procedure involving the obligation to pay import duties after their release by the customs authorities;
(c) presentation, for the purpose of obtaining preferential tariff treatment of goods declared for free circulation, of documents subsequently found to be forged, falsified or not valid for that purpose, even where such documents were presented in good faith.