



**TC07105**

**Appeal number: TC/2018/02037**

*CUSTOMS DUTY – rules of origin under Pan Euro Mediterranean Convention – evidence of origin of soap bars exported to Albania – was decision of HMRC reasonably arrived at – s16 Finance Act 1994*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SIAN WHOLESALE LIMITED**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER  
MAJESTY'S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE ALEKSANDER  
JULIAN SIMS**

**Sitting in public at Taylor House, London EC4 on 15 March 2019**

**Andrew Klimcke, a director of the Appellant, for the Appellant**

**Priti Patel, an officer of HMRC, for the Respondents**

## DECISION

1. This is an appeal against a review decision by HMRC issued on 6 March 2018  
5 that goods exported by the Appellant do not qualify for EU export preferential treatment.

2. HMRC were represented by Ms Patel and the Appellants, Sian Wholesale Limited, were represented by Mr Klimcke. We heard evidence from Adebowale Harrison-Obafemi, who an officer of HMRC working in HMRC's customs and  
10 international trade team, and from Mr Klimcke. A bundle of documents was submitted in evidence. Mr Klimcke also produced samples of the Dove soap bars that are the subject of the appeal.

### **The Law**

3. The European Union has free trade agreements with many countries. This  
15 includes Albania, which is a signatory to the Pan Euro Mediterranean ("PEM") Convention, which was published in the EU Official Journal L54 26/02/18. Under these agreements, goods which originate within the European Economic Area (which includes the EU) may be traded at preferential (reduced) rates of customs duties. In order to take advantage of the trade agreement, the goods in question must:

- 20 (1) Satisfy the relevant rules of origin
- (2) Satisfy the rules on direct transportation
- (3) Be presented on import with a valid preference document.

4. The rules of origin in the PEM Convention require that goods are either wholly  
25 obtained within the PEM zone, or (if not wholly obtained) must have undergone sufficient working or processing within the PEM, as defined by Article 5 of the PEM Convention. Annex II of the Convention lists the working or processing required to be carried out on non-originating materials in order for the manufactured product to have originating status.

5. The requirements for soap are set out in Chapter 34 of Annex II (which is  
30 reproduced in HMRC Public Notice 828) and are as follows:

- (1) Manufacture from materials of any heading, other than that of the product. However materials classified within the same heading may be used provided their total value does not exceed 20% of the ex-works price of the product
- (2) Manufacture in which the value of all the materials used does not exceed  
35 40% of the ex-works price of the product.

6. These two origin rules are subject to specified exceptions.

7. The fact that goods are manufactured in the EU, or are in free circulation, does not of itself prove that the goods have originating status for the purposes of the PEM Convention.

8. The preference document required for goods exported from the EU to Albania is the EUR1 certificate. Article 16(3) of the PEM Convention requires an exporter who applies for an EUR1 to be prepared to submit, at any time, all appropriate documents proving the originating status of the goods concerned. In other words, the exporter must hold evidence of the originating status of the goods when applying for the EUR1. These documents include a suppliers declaration in the form of the template included in Annexes 22-15 and 22-16 to EU Regulation 2015/2447 which confirms the origin of all the materials used in the manufacture of the product. The exporter is required to retain this evidence for at least three years under Article 28.
9. Article 32 of the PEM Convention provides that customs authorities of importing states can request verification of the originating status of products that are subject to EUR1 certificates. The request is made to the customs authority of the exporting state that issued the EUR1, who are required to undertake checks and report the results to the customs authority of the importing state.
10. An appeal against a decision made by HMRC under the PEM Convention lies to this Tribunal under s16 Finance Act 1994. Such a decision is an "ancillary matter", and under s16(4) our powers are "supervisory" only – in other words are required to determine whether the person making the decision could not have reasonably arrived at it. If we make such a determination (and only if we do so), we have a power to require HMRC to undertake a fresh decision making process in accordance with any directions that we may make.

**Background facts**

11. The background facts are that Sian Wholesale Limited ("SWL") are distributors of consumer goods. In early 2017 they exported 2474 cases of Dove soap crème bars to Albania. The shipment comprised 1732 cases of 4 bar packs and 742 cases of twin bar packs. SWL applied for an EUR1 Movement Certificate (reference S8217232) ("the Movement Certificate") which was issued retrospectively on 9 March 2017.
12. On 9 September 2017, the Directorate General of Customs of Albania wrote to HMRC requesting verification of the authenticity of the origin of the goods exported under the Movement Certificate because they had reasonable doubt as to the origin of the products. The case was allocated to Ms Harrison-Obafemi, and on 6 November 2017 she wrote to SWL requesting sight of the original Movement Certificate and all supporting documents. Not having received any response, on 7 December 2017 she wrote to SWL that in the absence of the requested evidence, the origin of the goods on the Movement Certificate could not be verified and they would not qualify for preferential treatment. SWL was invited to submit the outstanding evidence within 30 days.
13. On 14 December 2017, SWL provided the following documents to HMRC:
- (1) A "suppliers declaration" produced and signed by Georgia Muggeridge on behalf of SWL. This document authorised Anderson Harvey Lake as agent to apply for and sign EUR1 movement certificate against invoice number 70310,

and it confirmed that the goods "qualified as originating products under the provisions of the relevant preference agreements" and that the goods were "not manufactured by us but we hold proof of qualifying origin status".

(2) A copy of the Movement Certificate

5 (3) Images of a wrappers of a Dove soap bars showing the place of manufacture as Germany

(4) An image of a twin pack Dove soap bar wrapper showing the place of manufacture as Germany.

10 14. The suppliers declaration was not in the form of any of the templates in EU Regulation 2015/2447. No suppliers declaration in the form of the templates, and issued by the manufacturer of the products, was ever provided by SWL to HMRC.

15 15. On 17 January 2018, Ms Harrison-Obafemi wrote to SWL informing them that she had decided that the goods described on the Movement Certificate did not qualify for export preferences, as she had not been provided with documents enabling her to verify the origin of the goods.

16. On 26 January 2018, SWL requested a review of Ms Harrison-Obafemi's decision. Ms Harrison-Obafemi's decision was confirmed by Ornela Ngandu, the reviewing officer, and the review decision was communicated to SWL by a letter dated 6 March 2018. SWL now appeal against that decision.

## 20 **Discussion**

25 17. Since the conclusion of the review, Mr Klimcke has provided HMRC with further documents to show the origin of the Dove soap bars. These include a certificate of conformance, copies of invoices, screenshots of email correspondence, and extracts from the Nielsen Brandbank. The problem is that none of these documents evidences compliance with the rules of origin set out in Chapter 34 of Annex II to the PEM Convention.

30 18. The certificate of conformance produced by Unilever (the manufacturer of the Dove soap bars) merely confirms that the bars comply with various EU law requirements as to health and safety, packaging and labelling, and various other matters. The certificate does not address the origin of the goods. The certificate is in any event incomplete, as it is addressed to "[Customer incl. full address]" and is not signed. It appears to be a template that has not been completed. Mr Klimcke produced copies of email correspondence with Unilever, but this was with Unilever's Consumer Engagement Centre, and merely confirmed that the Dove soap bars were manufactured  
35 in Germany, and did not confirm the origin for the purposes of the PEM Convention.

40 19. Mr Klimcke referred us to paragraph 2.7 of HMRC Public Notice 828 which states that "If you are an exporter you may need to obtain suppliers declarations to prove the originating status of materials used in manufacture, or for finished products, which you buy and re-export in the same state". Mr Klimcke submitted that the use of the word "may" meant that it obtaining a suppliers declaration was optional. This is a

deliberate mis-reading of the paragraph – the point is that although HMRC have the right to require an exporter to produce a suppliers certificate, they will not always require its production.

5 20. We therefore find that the decisions made by Ms Harrison-Obafemi, and confirmed on review by Ornela Ngandu, were reasonably arrived at. We therefore dismiss the appeal.

10 21. We make one final observation, which is that the Appellant submitted additional documents to the Tribunal after the conclusion of the hearing, but before the release of this decision. We note that it is fundamental to the appeal system that parties must provide all of their evidence at the hearing of the appeal. Once the hearing has concluded, no further evidence can be submitted or considered. We have therefore not taken into account the Appellant's additional documents.

15 22. 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.

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**NICHOLAS ALEKSANDER  
TRIBUNAL JUDGE**

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**RELEASE DATE: 23 APRIL 2019**