



**AGENZIA
DELLE
DOGANE**

Roma, 5 settembre 2006

Risoluzione n. 3/D

Protocollo: 4411

Rif.:

Allegati: 1

Alle Direzioni Regionali
dell'Agenzia delle Dogane
LORO SEDI

Alle Direzioni Circostrizionali
dell'Agenzia delle Dogane
LORO SEDI

Agli Uffici Tecnici di Finanza
LORO SEDI

Agli Uffici delle dogane
LORO SEDI

e, per conoscenza:

Al Ministero delle Attività Produttive
Direz. Politica Commerciale e Gestione
Regime Scambi – Direzione Sviluppo
Produttivo
ROMA

Al Ministero delle Politiche Agricole
Direz. Politiche Comunitarie e
Internazionali
ROMA

Al Comando Generale della
Guardia di Finanza –
Ufficio Operazioni
Viale XXI Aprile, 51
00162 ROMA

Al Servizio Consultivo Ispettivo
Tributario – SE.C.I.T.
00100 ROMA

OGGETTO: Regime della trasformazione sotto controllo doganale – Istanza presentata dall'Irlanda - Trasformazione di succo di arancia concentrato in soft drink – Esame delle condizioni economiche da parte del Comitato Codice Doganale – Sez. Regimi Doganali Economici ai sensi dell'art.552 par.2 del Reg.to CEE 2454/93 – Parere favorevole.

Si fa presente che nel corso della 96^a riunione del Comitato Codice Doganale – Sezione regimi doganali economici, che si è tenuta a Bruxelles il 3 luglio u.s., è stato presentato dai Servizi della Commissione CE il documento di lavoro unito alla presente, concernente l'istanza indicata in oggetto, presentata dalla delegazione irlandese, per essere sottoposta ad esame delle condizioni economiche, ai sensi dell'art.552 par.2 del Reg.to CEE 2454/93.

Al riguardo, tenuto conto del disposto dell'art.504, par. 4 del Reg.to CEE 2454/93, si comunica l'avviso favorevole espresso dal Comitato circa l'accogliabilità dell'istanza presentata dall'Autorità doganale irlandese, potendosi per la fattispecie in oggetto ritenere soddisfatte le condizioni economiche; si fa presente che le conclusioni del Comitato non comprendono, per i casi di specie, la pubblicazione nella serie C della Gazzetta Ufficiale delle Comunità Europee.

Si evidenzia inoltre che, ai sensi della richiamata normativa comunitaria, le conclusioni del Comitato vengono prese in considerazione non soltanto dall'Autorità (irlandese) interessata, ma anche da qualsiasi altra Autorità doganale che si occupa di autorizzazioni e richieste simili. Pertanto, ove eventuali analoghe istanze – concernenti merci di importazione, attività di trasformazione e prodotti trasformati della stessa tipologia - siano presentate all'Autorità doganale italiana, le condizioni economiche dovranno intendersi del pari soddisfatte.

In particolare nel caso di specie il parere favorevole del Comitato riguarda:

- una istanza per la trasformazione di succo di arance bionde concentrato (CNC 2009 1998 99 e 2009 1199 98) proveniente dal Brasile in concentrato per soft drink (CNC 3302 1040 00). Tale autorizzazione potrà essere rilasciata per un quantitativo massimo di 10.000 tonnellate annue e con validità di anni due. La materia prima oggetto di trasformazione, il succo d'arancia, deve essere classificato nelle voci di nomenclatura combinata sopra indicate e avere le caratteristiche tecniche indicate alla pagina 5 del documento TAXUD/1602/2006 REV1 allegato alla presente (succo di arance bionde concentrato, 65° brix, con un rapporto tra brix e acido di 12.64 +/-1.41).

Per tali istanze, in deroga a quanto previsto dalla seconda parte del punto C2) della Circolare n.30/D del 28 giugno 2001, le dogane territorialmente competenti in relazione al luogo in cui saranno effettuate le operazioni di trasformazione, o la prima di tali operazioni (in caso di trasformazioni successive), saranno competenti

al rilascio della relativa autorizzazione, secondo la procedura normale (per iscritto) con utilizzo del relativo modello (allegato 67), in maniera conforme alle indicazioni del Comitato (limiti quantitativi e temporali).

Inoltre per adempiere agli obblighi di cooperazione amministrativa (art.522 DAC), delle autorizzazioni rilasciate sarà data sollecita comunicazione alla scrivente, utilizzando per l'invio dei dati ivi previsti l'apposito formulario riprodotto in appendice all'allegato 70 del citato regolamento.

Si pregano gli Uffici e le Amministrazioni in indirizzo di provvedere alla necessaria informazione degli operatori economici del settore.

Il Direttore dell'Area Centrale
Dr. Paolo Di Roma



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs Policy
Customs Procedures

Brussels, 12 June 2006

TAXUD/1602/2006 REV 1 - EN

Working paper

CUSTOMS CODE COMMITTEE

Section for Customs Procedures with Economic Impact

Processing under Customs Control (PCC)

(Processing of orange juice / examination of the economic conditions in accordance with Article 552(2) CCIP)

This document will be examined at a forthcoming meeting of the Committee.

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PROCESSING UNDER CUSTOMS CONTROL (PCC)

IMPORTATION OF FROZEN / UNFROZEN ORANGE JUICE UNDER PCC

Application by the Irish authorities to grant the importation under the PCC procedure of Blond Concentrated Orange Juice (COJ) classified within CN Codes 2009 19 98 99 and 2009 11 99 98.

Background

At the 93rd Customs Code Committee Meeting – Section Procedures with Economic Impact, which was held on 29th November 2005, the Irish Administration submitted an application to the Committee, on behalf of an Irish based soft-drinks concentrate manufacturer, for the importation from Brazil of 28,850 Kilos of Orange Juice (CN codes 2009 19 98 91 & 2009 11 99 92) under the PCC procedure.

Following discussions at that meeting, the applicant company was granted approval for the importation under PCC of 15,000 kilos of Orange Juice limited to a 6 month import period with a review of the economic conditions prior to the cessation of the 6 month period.

However, due to a typographical error on our part, document TAXUD /1516/2005, set out an incorrect quantity of Orange Juice for importation under PCC. The applicant company has now submitted a revised application, stating the correct amount, to the Committee for consideration as follows:

Application

The applicant company wishes to apply to import, under the PCC procedure, an annual volume of 10,000 tonnes of Brazilian concentrated orange juice/equivalent 65° brix (blond COJ).

CN Code	Duty Applicable
2009 19 98 99	12.2%
2009 11 99 98	15.2%

The processed product will be a Soft Drink Concentrate (mixture of odoriferous substances)	
3302 10 4000	0%

This company is a major manufacturer of soft drinks. Across its entire system, it creates (direct and indirect) employment in excess of 3,500 people in Ireland and makes a substantial contribution to the European economy through its activities. 65% of Irish production is sold to customers within the EU and 35% to customers outside the E.U.

The company must maintain the competitiveness of its manufacturing operations through effective cost management. Schemes such as PCC support the company in achieving this goal.

Juice for the company's European facilities is negotiated and sourced through a central function. Due to the distinct difference between the brix to acid content ratios of European and non European juice, the company buys blond COJ both within, and outside of the European Union. The determining factor in where juice will be procured is dictated by very specific technical specifications which are designed to satisfy required consumer taste profiles.

Where technical specifications, which are developed based on consumer taste profiles, support the use of the blond COJ that is available within the E.U., then the company procures 100% of its requirements from European processors.

Current estimates indicate that the company will take **37% of the total E.U. production of blond COJ in 2006.**

Estimated 2006 consumption by the company of E.U. blond COJ

Country of Production	% consumption by the company of blond COJ
Spain	93%
Italy	39%
Greece	17%
Overall E.U.	37%

The company is unable to utilise the remaining 63% of the European blond COJ as it has a brix to acid content ratio of 7 to 11 (with the majority of production measuring below 10). Therefore it is not technically suitable for the remainder of the products which require the use of Blond COJ with a minimum ratio of 11.23.

Whilst there are other orange varieties available within the E.U., such as blood orange, they are not suitable for use in finished products where the technical specifications demand the use of blond COJ.

Recommendation

The Irish Administration strongly recommends approval of this application based on the following:

- **the company requires blond COJ of a specific standard to ensure consistency etc of their finished product – details have been provided;**

- the data supplied shows the volumes, by country, sourced within the EU;
- the data also shows that the company already sources 37% of all EU produced Blond COJ. This is the quantity of EU produced Blond COJ that meets their specific requirements;
- it is clear that the company is sourcing as much of the specific product as is available within the EU;
- due to unavailability of an EU produced supply, the company must go outside of the EU in order to satisfy the remainder of their Blond COJ requirements;
- this is not an issue of import substitution by the company – there is simply no further or additional availability of the required product within the EU.

ADDENDUM

Further to the document submitted to the 94th Customs Code Committee meeting – Section Procedures with Economic Impact, which was held on February 15th, and a subsequent meeting held between DG AGRI, DG TAXUD, Irish Government officials and the applicant company in Brussels on March 15th, the applicant company would like to provide further information to the committee in support of its application for a renewal of its P.C.C. authorisation.

Current Situation

This application is for a renewal of the P.C.C. authorisation that the company held for 3 years to June 2005. This application does not request any changes to the conditions or quantities that existed on the previous authorisation.

Current Market Conditions

As the company has not requested any changes to the conditions of the authorisation, in granting the renewal of P.C.C., the Committee will be maintaining the market conditions that have prevailed within the E.U. blond COJ sector over the past three years.

The Company

The company has been performing processing operations in Ireland since 1975. It manufactures flavoured soft drink concentrate. Across its entire system, it supports (direct and indirect) employment in excess of 3,500 people in Ireland and makes a substantial contribution to the European economy through its activities. 65% of Irish production is sold to customers within the EU and 35% to customers outside the E.U.

The imported product and the impact upon total E.U. orange market

The application is strictly limited to the importation from Brazil of **blond concentrated orange juice (COJ), 65° brix, with a brix to acid ratio of 12.64 +/- 1.41 and a suspended pulp of not greater than 12% v/v reconstituted**. The blond COJ is imported under tariff codes 2009119998 and 2009199899.

This application has no impact or does not relate to the other segments of the E.U. orange juice industry i.e. the fresh market, the not from concentrate (NFC) market, or the production and sale of blood oranges and blood orange juice. It should be noted that production of blond COJ represents less than 13% of the overall orange production in the E.U. (Appendix 1) and therefore the granting of the renewal of P.C.C will have absolutely no impact upon 87% of the orange production in the E.U.

Processed Products

Under the P.C.C. scheme, the blond COJ is used in the manufacture of soft drink concentrate parts with odoriferous flavour, as classified under heading 3302104000. All blond COJ procured by the company is used in a manufacturing process which involves mixing blond COJ with a number of other ingredients to produce a flavour part. The physical makeup of the blond COJ has been irrevocably altered and it cannot be extracted and returned to its original physical state.

Economic conditions

Imports of finished parts from Brazil

Under its P.C.C. authorisation, the company imports blond COJ from Brazil at 0% duty rating. This COJ carries a duty rate of 12.20% (unfrozen) and 15.20% (frozen). The blond COJ is then used in processing operations in Ireland for the manufacture of concentrated flavour parts which, if imported from outside the Union, would incur an import duty rate of 0.00%.

Therefore, in the absence of P.C.C., it becomes more economically advantageous for the company to import the concentrated flavour parts from outside the Union at 0% duty rating. If this scenario were to arise, the company would probably review its manufacturing activities in Ireland. Under such a review, the Committee risks losing processing of both, juice and non-juice ingredients to competitors in Latin America. This runs contrary to the whole 'raison d'être' of the P.C.C. procedure.

The requirement to import blond COJ from Brazil

The company imports blond concentrated orange juice (COJ), 65° brix, with a brix to acid ratio of 12.64 +/-1.41 and a suspended pulp of not greater than 12% v/v reconstituted from Brazil because this specific grade of COJ is not available from E.U. producers.

The reasons the company cannot source this specific grade of COJ within the Union are as follows:-

Taste Profiles

The company develops products to satisfy consumer requirements for specific taste, aroma and appearance profiles within our beverages. These profiles differ from market to market with, for example, the requirements in the Greek market being different to requirements in the Spanish market.

One of the major technical requirements is the brix to acid ratio of the blond COJ. The level of this measurement in the required COJ is determined by the customer preference for sweetness and appearance in the company's final beverages. In order to satisfy the customer demand for a particular taste, the company is required to use only a specific grade of COJ.

In Italy and Greece, suppliers have confirmed that the average brix to acid ratio of blond COJ is between 8 and 10. Demand from our products in which the taste profiles permit the use of blond COJ with this ratio, allows the company to buy 39% of the Italian blond COJ, and 17% of the Greek blond COJ.

In the Spanish market, juice is available at a ratio between 7.53 and 14.04 which fits the company's taste profiles for goods in which it uses the imported Brazilian blond COJ. However, due to the trend among Spanish producers to leave the processing market and

move into the more profitable fresh market, the quantities available are small. The company already consumes 93% of the available Spanish blond COJ.

As no further supplies of blond COJ with the minimum ratio of 12.64 +/-1.41 exist in Europe, the company must import the balance of its blond COJ requirements from Brazil.

Adulteration of Juice

For a variety of reasons, the company technical specifications will not allow for the use of blond COJ which has been adulterated through the use of acids, sugars or any other additives to achieve the required brix to acid ratios. Firstly, the addition of such materials into the COJ seriously alters the organoleptic and aromatic profiles of the company beverages. Consequently, taste profiles would not be achieved and the appearance of our beverages would be altered. By adding such materials, the company would fail to satisfy consumer needs, and lose market share.

Furthermore, there are legal considerations which prevent the company from tampering with the Juice to Acid ratios of EU produced COJ. The addition of sugar, citric acid or other additives to juices may only be done if the juices retain their original character (see Explanatory Notes to Heading 20.09 of the Harmonized System). If the balance of the different constituents as found in COJ is changed, it may result in the loss of the COJ's original character, thus requiring a change of classification from 20.09.

Labelling

Based on the definitions in Annex I of Council Directive 2001/112/EC dated 20 December 2001 relating to fruit juices and certain similar products intended for human consumption, the addition of additives could result in the company's inability to denominate their finished beverages as "fruit juice" or "fruit juice from concentrate" on the ingredients list and on the labels. If the COJ used in the manufacture of the soft drink concentrate flavour parts does not comply with Directive 2001/112 as a result of the addition of acid, sugar or other additives, the finished beverages would be incorrectly labelled and therefore violate the provisions of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs.

In some countries the applicable soft drinks standards require the presence of fruit juice of a minimum specified grade in the final product so that these soft drinks can benefit from certain denominations such as "juice drink with x% fruit juice" and legally use pictures of fruits on the labels. If these products no longer contain what could be defined as juice according to its legal definition in the E.U., the company would be forced to take them off the market, with a huge loss in sales.

The addition of sugar to "correct" or "standardize" juices would no longer allow the company to claim "without added sugar" on final beverages, which are exclusively sweetened with intense sweeteners such as, for example, aspartame or cyclamate. These so-called light or diet drinks are an important and increasing part of the applicant's portfolio. Additionally, directive 2000/13/EC of the European Parliament and

of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs in combination with European Parliament and the Council No 95/2/EC of 20 February 1995 on food additives other than colours and sweeteners, the addition of citric acid would result in the requirement to add the words "acidifier citric acid" to the ingredients list of the soft drinks manufactured from the applicant's products. For some products such an addition would counteract their market positioning as natural or (almost) additives free. This could result in a loss of consumer interest and therefore reduction in sales.

Cost increases and competitiveness

The costs of production in Ireland are increasing considerably. The Irish facility must keep very tight controls on its cost base so as to remain competitive against the other manufacturing facilities located in lower cost economies. Systems such as P.C.C. greatly assist the Irish facility in this regard.

Brazilian blond COJ is used in the manufacture of 6% of the company's products. This percentage represents sales of 2.6 Billion litres of finished beverage. If the company is unable to benefit from P.C.C., it will result in an increase of 12% in the cost of its COJ, and a 33% increase in the annual import duty bill. This will have a major impact on the cost of its juice based products, driving a cost increase of an average of 7% across the 2.6 Billion litres of product. Such a rise in costs will erode the company's competitive position both in the marketplace, and when measured against other manufacturing facilities.

Re-assessment of Company manufacturing strategy

In the absence of a favourable decision from the committee regarding the granting of the renewal of the company's P.C.C. authorisation, the Irish facility will be weakened in its competitive position. The committee will create a situation where it becomes more economic to manufacture the concentrate flavour parts outside of the E.U., where production costs are already lower in comparison to Ireland. These processed goods could then be imported into the Union at 0% duty.

Review of current product portfolio and the existing sourcing strategy.

The company will always have a requirement to source Brazilian blond COJ because of the technical specifications that it satisfies. Without it, the company cannot satisfy its customers. However, the company also manufactures concentrate parts which are non-juice based. Any review of the competitiveness of the Irish operation will span the entire product range of juice and non-juice based products. Should processing operations be moved out of Ireland, there will be obvious knock on implications for both the existing European suppliers to the company, and the total level of employment that the Irish facility currently supports in Ireland.

The company's current E.U. blond COJ market consumption of 37%

The company imports COJ from Brazil based on technical grounds and not for economic advantage. The company will always need to purchase Brazilian blond COJ as long as its products continue to sell.

At the same time, the company is the largest sole supporter of the E.U. blond COJ market, purchasing on average 34% of the available product over the last 3 years. This 34% has been used in the processing of the company products in which a lower brix to acid ratio is allowed. In 2006 it forecasts that it will purchase 37% of the available E.U. produced blond COJ.

Estimated 2006 consumption by the company of E.U. blond COJ

Country of Production	% consumption by the company of blond COJ
Spain	93%
Italy	39%
Greece	17%
Overall E.U.	37%

Given that level of consumption, it becomes obvious that this company has a very legitimate interest and stake in the continued support, maintenance and development of the E.U. COJ industry sector. Under the current arrangements, the company fully intends to maintain that level of support. However, a review of the global manufacturing competitiveness could jeopardise that strategy.

Jobs

Under the current global manufacturing strategy, the Irish facility supports employment for 3,500 people both directly and indirectly. With soaring manufacturing costs in Ireland, the company needs to avail of any opportunity to remain competitive and schemes such as P.C.C. will help to ensure the maintenance of those jobs.

Summary

In order to satisfy the economic conditions for granting this P.C.C. renewal, the committee must be satisfied that the processing activity to be maintained in the community does not harm the community producers of similar goods. In its recent judgement on case C-11/05, the Court of Justice ruled that:-

“in the assessment of an application for authorisation for Processing under Customs Control pursuant to Article 133(e) of the Customs Code, account must be taken, not only of the market for the finished products, but also of the economic situation of the market for the raw materials used to produce those products”.

The company does not purchase Brazilian COJ for economic advantage. The company is purchasing COJ 65° brix, with a brix to acid ratio of 12.64 +/-1.41 and a suspended pulp of not greater than 12% v/v reconstituted from Brazil, because there is no equivalent blond COJ available from E.U. producers. The company has outlined the reasons why there is no equivalent available within the E.U., and the legal reasons why it cannot use an adulterated juice in place of the Brazilian COJ.

The company has demonstrated that only 13% of the E.U. orange industry is in the area of processed juice and that the market conditions that existed in that segment for the past three years will not be altered by the granting of the renewal of the company's P.C.C. authorisation. The company will actually buy 37% of the output in this segment in 2006 and it remains committed to this industry sector.

The company has outlined the role that P.C.C. plays in the maintenance of its competitive position in the context of competing against other manufacturing locations in Latin America and Asia, and has also tried to demonstrate the extensive economic impact that the company currently has upon the area in which it is located.

If the product being imported from Brazil is not available from E.U. producers, the company cannot be deemed to be harming the community producers of blond COJ. On the contrary, the company is currently the largest supporter of the E.U. blond COJ market.

It is kindly requested that the committee grants the renewal of the applicant's authorisation to import Brazilian blond COJ under P.C.C.

APPENDIX 1

Orange production in E.U.

<u>Market Type</u>	<u>2004/2005 Quantity (mt)</u>	<u>% Market</u>
Orange fruit production	4,850,000	100 %
Orange fresh fruit market	3,253,000	67%
Orange fruit to Processing	1,597,000	33%

Source: USDA

33% of all orange production goes to the processing sectors. The processing sector is further broken down as follows:

Orange Processing in E.U.

<u>Market Type</u>	<u>2004/2005 Quantity (mt)</u>	<u>% of overall Orange Market</u>	<u>% of Processing Market</u>
Italian Blood Orange NFC	511,040	10.6%	32%
Blond Orange NFC	463,130	9.6%	29%
Blond COJ	622,830	12.8%	39%
Total	1,597,000	33.0%	100%

Source: The Company's own market intelligence

Therefore, this application relates to only 39% of the volumes processed in the Union and 13% of the overall orange market in the EU. Of that section of the processing market, (i.e. blond COJ), this company anticipates that it will consume 37% of the availability in the EU in 2006.