

## Preferential trade programs to the European Market

The Netherlands Antilles, enjoys the several benefits from three special arrangements for a period of ten years since the Council Decision of July 25, 1991. This decision centers on the Association of the Overseas Countries and Territories (OCTs) with the European Community (hereafter referred to as the Community or European Union).

Based on the Community law's non-revision and equivalence principles it is expected that these advantages will be generally maintained.

Following is a summary of the EU-OCT preferential trade arrangements.

- **A. Originating Products**

Products originating in Curaçao can be imported into the European Union free of customs duties and charges, according to the Council Decision (part 3, title I, article 101, paragraph 1). In addition, these products are not subject to any quantitative restriction or measure having equivalent effect. Goods will be considered originating if they have been either wholly obtained or sufficiently worked or processed. A movement certificate EUR 1 issued will give evidence of originating status of products by the local Customs Authority (CD: annex II, title II, article 12). The term "wholly obtained" refers to the OCT's own soil or own seabed.

A few examples of product opportunities that can be exported free of duties and/or levies into the European Common Market, if produced or sufficiently processed in Curaçao are:

- Instant coffee (this process has to start at green beans).
- Leather coats (this process has to start at fashioned leather).
- Agricultural products produced in Curaçao (i.e. locally cultivated).
- Sea products if caught in Netherlands Antilles, or caught by ships with NA flags outside of NA territorial waters.
- Petroleum products with a maximum of 2 million tons, and refined petroleum products.
- Recycled copper waste.
- Assembling silk flowers so as to create a shift in the tariff category.
- Fruit juices which are encased in such a manner that indicates that they are not for immediate sale.

Products from third countries, which have been imported into Curaçao and subsequently re-exported to the European Common market without any working or processing, will be free of customs duties/levies, provided that at least an equal customs duty/levy valid in the EU be paid in Curaçao. However, there are exceptions, such as:

- products under the Common Agricultural Policy (CAP)
- products subject to quantitative restrictions
- products subject to anti-dumping duties

Products that are assembled in Curacao from third party sources will be considered processed if:

- the product obtained is classified in a different category from those in which all the non-originating materials used in its manufacture are classified ("heading shift"). The expression "heading" refers to the four-digit code used in the nomenclature of the Harmonized Commodity Description and Coding System (CD: annex II, title I, article 3, paragraph 1 with the notes in annex 1 to annex II);

- the product used is worked or processed in such a way that the heading shift requirements are met (CD: annex II, title I, article 3, paragraph 2). Depending on the product a second condition can be stipulated so that the value of materials used may not exceed a certain percentage of the final product.

### • B. Cumulation of Value Added

Complementary working or processing in Curaçao, of ACP or EU products which in other cases would be considered insufficient, will receive the status of originating products under this arrangement.

When raw materials, semi-manufactured articles or agricultural products, originating from the associated African Caribbean Pacific Ocean States (ACP) or from the European Union or other OCTs are worked or processed in Curaçao (the ACP or EU value added is aggregated to that of the OCT).

These products can then obtain originating status and be exported to the European Union free of customs duties and charges having equivalent effect (CD: annex II, title I, articles 6 and 7).

Presently, most products coming from General System of Preferences (GSP) countries confront quota restrictions, while agricultural and many textile products do not receive preferential treatment customary to products from the OCTs.

Non-originating materials of third countries may be used in the manufacture of a given product without affecting its originating status, provided their total value does not exceed 10% of the price of the final product.

Exports of agricultural products from ACP countries to the EU are also limited by levies and quantitative restrictions. Joint ventures of international manufacturers and trading companies exporting to the EU market will therefore open up clear-cut advantages (financial/quota elimination) in a number of cases. The following product groups currently show significant exports from Caribbean (ACP) countries to the EU and confront high import levies upon entry into the EU market.

Derogations

The "Originating Products" and "Cumulation" arrangements become even more attractive as processing activities in Curaçao give ACP products OCT originating status. In all cases in which the rules of origin are not fully met derogation from the Community can be requested by the OCT to obtain duty free access to the large European Common Market. If all required information is submitted correctly, the European Commission should answer within sixty (60) working days.

The derogation can entail a reduced percentage requirement of value to be added in Curaçao, while its calculation of value added may include all costs incurred from the moment the raw materials or semi-manufactured articles are imported from the ACP country. The Bureau of Economic Affairs can request derogations of the Commission of the European Union in Curaçao

### • D. Transshipment

Products not originating in the OCT which are imported into Curaçao and subsequently re-exported as such to the EU will be free of customs duties and taxes having equivalent effect, providing that at least equal customs duties/taxes valid in the Community be paid in Curaçao. Evidence of compliance with the transshipment requirement will be given by an export certificate EXP issued by the local Customs Authority (CD: annex III, article 2).

The level of the customs duties/taxes should be that which is applicable in the EU on import of the same product originating in third countries eligible for the most favored-nation clause. The aforementioned provision, however, will not apply to (CD: part 3, title I, article 101, paragraph 3):

- agricultural products listed in annex II to the Treaty.
- certain goods resulting from the processing of agricultural products falling within Council Regulation (EEC) No. 3033/80, as last amended by Regulation (EEC) No. 1436/90;
- products subject to quantitative restrictions;
- products subject to anti-dumping duties. Finally, in the list of annex 8 to annex II of the Council Decision of July 25, 1991, certain petroleum products are given, which are temporarily excluded from the scope of duty free entry of originating products into the European Union.