



Press and Information

Court of Justice of the European Union

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Judgment in Case C-506/09 P

Portugal v Transn utica – Transportes e Navega o SA

The lack of diligence on the part of the national customs authorities may give rise to a special situation justifying the remission of a customs debt

That is the case when those authorities accept an insufficient guarantee to cover the customs debt arising from a group of external Community transit operations

Any non-Community goods entering the territory of the EU must, as a rule, be cleared upon arrival. In order to prevent the EU's borders from becoming saturated and to enable clearance as close as possible to the consignee of the goods, the Customs Code of the European Union¹ allows goods to be placed under the external Community transit procedure.

Under that procedure, the goods may, under customs supervision, move from one point to another within the customs territory and be released for free circulation – in particular through the payment of import duties – only at the customs office of destination. The customs debt on importation is incurred if, while in transit, the goods are removed from customs supervision.

However, the customs debt arising from the import of the goods may be repaid or remitted where there is a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

In order to ensure payment of any customs debt which may be incurred in respect of the goods benefiting from the external Community transit procedure, the holder of the procedure (for example, the carrier) must provide a guarantee. In that connection, the customs authorities may allow comprehensive security to be provided to cover two or more operations in respect of which a customs debt has been or may be incurred. Nevertheless, where the customs authorities establish that the security provided does not ensure, or is no longer certain or sufficient to ensure, payment of the customs debt, they are to require the holder, at his option, to provide additional security or to replace the original security with a new security.

Transn utica – Transportes e Navega o, SA is a Portuguese freight transportation company. Between 14 April 1994 and 12 October 1994, the customs authorities of Xabregas (Portugal), as the customs office of departure, processed 68 transit declarations for the benefit of that company, for the movement within the EU's customs territory of 64 consignments of tobacco and 4 consignments of ethyl alcohol under the external Community transit procedure.

Once the transit procedure was concluded, a number of irregularities were detected. Consequently, the Portuguese authorities asked Transn utica to provide evidence that it had acted duly and lawfully throughout the external Community transit procedure and also demanded payment of the relevant customs debts.

As it had been unaware of those transit operations, Transn utica found that one of its employees had been acting fraudulently by signing transit declarations for smuggling operations, without the company's knowledge. The employee in question was dismissed and subsequently found guilty of repeated breach of trust. As regards Transn utica, the criminal investigation opened in respect of

¹ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

the company was closed, on the ground that it had been unaware of its employee's actions and that its representatives had had nothing to do with the fraud in question.

In November 2003, Transn utica applied for the repayment and remission of the customs debt arising from the import of the 68 consignments at issue. On 6 July 2005, the European Commission refused Transn utica's application². It found that Transn utica was not in a special situation justifying repayment and remission of the customs debt.

In October 2005, Transn utica brought an action before the General Court for the annulment of that decision. By judgment of 23 September 2009³, the General Court annulled the Commission's decision. It found that the Portuguese customs authorities had accepted an insufficient guarantee for the 68 transit declarations at issue. Thus, had they verified, at the time of issue of the declarations in question, whether the amount of the duties and other charges that might be incurred for each cargo was covered by the comprehensive guarantee provided by Transn utica, the 68 declarations could not have been issued. That lack of diligence put Transn utica in a special situation that went beyond the normal commercial risk relating to its business.

In that context, Portugal brought an appeal before the Court of Justice against the General Court's judgment.

By its judgment today, the Court of Justice dismisses the appeal and upholds the General Court's judgment annulling the Commission's decision. The Court of Justice holds that the General Court was justified in finding that the lack of diligence on the part of the Portuguese customs authorities – which rendered the monitoring procedures established by Transn utica ineffective – gave rise to a special situation justifying the remission of the customs debt.

First of all, the Court of Justice notes that action and supervision on the part of the competent national customs authorities are essential, not only at the time of the setting up of the guarantee certificate, but also each time a comprehensive guarantee, intended to effect and cover several transit operations, is used. Consequently, although the Customs Code does not create a formal obligation to monitor the adequacy of the comprehensive guarantee, **it is for the competent customs authorities to take all the necessary measures when they realise that there is a discrepancy between the amount of the guarantee provided and the total amount of the duties payable for a particular group of transit operations.**

Next, **the Court of Justice upholds the General Court's conclusion that the guarantee required by the customs authorities in the present case was inadequate.** In that connection, the Court of Justice notes that the comprehensive guarantee actually provided never covered more than 7.29% of the duties payable, whereas the amount of that guarantee ought to have covered at least 30% of the duties.

In addition, **the Court of Justice upholds the General Court's reasoning concerning the causal link between (i) the Portuguese customs authorities' lack of vigilance – which resulted in the transit operations not being subject to any of the monitoring measures laid down by the legislation applicable – and (ii) the existence of a special situation.** On that point, the Court of Justice states that, contrary to what Portugal claims, **the General Court did not ascertain that there was a causal link between the calculation error concerning the amount of the comprehensive guarantee and a debt being incurred. The General Court considered whether the facts at the origin of the dispute were likely to result in a 'special situation' justifying the remission of the customs debt.** Had the customs authorities fulfilled their obligations with regard to calculating the amount of the comprehensive guarantee to be provided, the 68 transit declarations could not have been issued and, therefore, all of the transactions, which were subsequently adjudged to be fraudulent, could never have been carried out.

² Commission Decision REM 05/2004 refusing Transn utica – Transportes e Navega o SA the reimbursement and remission of certain customs duties.

³ Case [T-385/05](#) *Transn utica – Transportes e Navega o, SA v Commission*.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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