

Case C-633/19

Request for a preliminary ruling

Date lodged:

22 August 2019

Referring court:

Rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen
(Belgium)

Date of the decision to refer:

27 March 2019

Applicants:

Federale Overheidsdienst Financiën

Openbaar Ministerie

Defendants:

Metalen Galler NV

Vollers Belgium NV

LW-Idee GmbH

[...] [administrative details]

**Rechtbank van eerste aanleg Antwerpen,
afdeling Antwerpen**

**(Antwerp Court of First Instance,
Antwerp Division)**

[...]

Judgment [Or. 2]

In the case of the **FEDERALE OVERHEIDSDIENST FINANCIËN**
(**FEDERAL PUBLIC SERVICE FINANCE**) [...],

and in the case of **THE OPENBAAR MINISTERIE** (**PUBLIC PROSECUTION SERVICE**)

V:

1) METALEN GALLER NV,

[...]

defendant, [...]

2) VOLLERS BELGIUM NV,

[...]

defendant, [...]

3) LW-IDEË GmbH,

[...]

defendant, in absentia. [**Or. 3**]

CHARGED WITH:

- directly inciting the offence, either by committing the offence, or by directly cooperating in its commission, or by any act whatsoever which provided assistance to its commission, such that the offence could not have been committed without its assistance, whether by gifts, promises, threats, abuse of authority or power, criminal intrigues, or deceptions;

- either by giving instructions to commit the offence; or by providing weapons, tools or any other means that have been used to commit the offence, knowing that they would be used for that purpose; or by helping the perpetrator or perpetrators of the offence, with their knowledge, or providing assistance in the acts which prepared, facilitated or completed the offence;

- or by participating in the fraud in any way whatsoever;

has been guilty of:

COUNT 1

The release for free circulation of fasteners originating in Indonesia instead of China on 31/03/2010 [...], resulting in the evasion of anti-dumping duties.

COUNT 2

The submission of false, incorrect or misleading documents with a view to deceiving the customs authorities on 31/03/2010 by submitting the certificate citing 'Indonesia' in the indication of origin [...].

COUNT 3

The declaration of fasteners under the wrong name [...], resulting in the evasion of import duties. **[Or. 4]**

[Table setting out the import duties (EUR 2 831.32) and anti-dumping duties (EUR 65 043.84) payable] [...] **[Or. 5]**

[...] [procedural details]

ASSESSMENT OF CRIMINAL ASPECTS

METALEN GALLER NV asks [...] that the tax claim be declared inadmissible, or at least unfounded. In the alternative, it asks that a number of questions [...] be referred to the Court of Justice of the European Union for a preliminary ruling.

The Administratie (Administration) is of the opinion that in the present case a problem could arise only in relation to Article 6(6) and (7) and Article 2(10) of Regulation 384/96. It is of the view that, as a result of the late communication of the information relating to product categories, it is not impossible that the Commission may have infringed the provisions of the basic regulation. Should the Rechtbank consider that a question should be referred to the Court of Justice for a preliminary ruling, it asks that such a question be referred in the form set out in its supplementary decisions following an interlocutory judgment. [...].

[...] [correction of a material error by the Administratie]

VOLLERS BELGIUM NV asks [...] that two questions be referred to the Court of Justice of the European Union for a preliminary ruling, the first of which corresponds to the question suggested by the Administratie.

In view of the importance of a uniform interpretation and its importance for the outcome of the case, the Rechtbank is of the opinion that, in accordance with Article 267 of the Treaty on the Functioning of the European Union, it is appropriate to refer the following questions to the Court of Justice for a preliminary ruling. **[Or. 6]**

FOR THOSE REASONS,

THE RECHTBANK,

[legal basis under national law]

[...] Refers the following questions to the Court of Justice of the European Union for a preliminary ruling in accordance with Article 267 of the Treaty on the Functioning of the European Union:

- (1) Is Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China invalid due to the infringement of Article 6(6) and (7) and Article 2(10) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community or of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community because the Commission did not give Chinese producers/exporters the opportunity, in good time, to take cognisance of the information regarding product types on the basis of which the normal value was established and/or because the Commission, in the context of the calculation of the dumping margin for the products concerned, when comparing the normal value of the products of an Indian producer with the export prices of similar Chinese products, had refused to take into account adjustments related to import duties on raw materials and indirect taxes in the analogue country, India, and to differences in production (costs)?
- (2) Is Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China invalid due to the infringement of Article 3(2) and (3) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community or of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community because, for the purposes of the assessment of injury, the Commission considered the imports from two Chinese companies which had been found not to be involved in dumping to be dumped imports? **[Or. 7]**
- (3) Is Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China invalid due to the infringement of Article 3(2), (6) and (7) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community or of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community because, in assessing whether EU industry exports contributed to the injury suffered by that industry, the Commission relied on information relating to producers who are not domestic producers?
- (4) Is Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China invalid due to the infringement of Article 19(1) and (2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not

members of the European Community or of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community because the Commission failed to ensure that the two domestic (Italian) producers provided adequate explanations as to the reasons why it was not possible to provide a summary of confidential information?

- (5) Does Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China infringe Article 6(6) and (7) and Article 2(10) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community due to the Commission's delay in communicating product information, thereby infringing the interests of Chinese producers/exporters?
- (6) Article 1(3) of Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (as amended) provides that the individual anti-dumping duty rate of 64.4% applicable to the company Ningbo Jinding Fastener Co. Ltd., Ningbo City, is conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which conforms to the requirements set out in Annex II, and that, if no such invoice is presented, the anti-dumping duty rate applicable to all other companies will apply. Can the individual anti-dumping duty rate still be granted to the declarant in good faith, in the context of an additional claim for anti-dumping duties following an Olaf investigation, if Olaf has established that the disputed fasteners are not of the indicated Indonesian origin, but were actually manufactured in China by the company Ningbo Jinding Fastener Co. Ltd., but an invoice with the required particulars for the individual anti-dumping duty cannot be submitted because it was the intention of the exporters to mislead the authorities of the Member States? **[Or. 8]**

[...]

This judgment was given and delivered by the Rechtbank van eerste aanleg Antwerpen, afdeling Antwerpen [...]

and delivered in open court on 27 March 2019 [...]