

Case C-39/20**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

27 January 2020

Referring court:

Hoge Raad der Nederlanden (Netherlands)

Date of the decision to refer:

24 January 2020

Applicant:

Staatssecretaris van Financiën

Defendant:

Jumbocarry Trading GmbH

Subject of the action in the main proceedings

The main proceedings concern a dispute between the Staatssecretaris van Financiën (State Secretary for Finance) and Jumbocarry Trading GmbH ('the interested party') relating to a request for payment of customs duties issued to the latter.

Subject and legal basis of the request for a preliminary ruling

The present request under Article 267 TFEU relates to the prescription of customs debts. More particularly, the question is whether provisions on the suspension of the period of limitation of a customs debt can be applied to a customs debt which was incurred before the date on which those provisions were declared applicable, but which is not yet time-barred as of that date.

Questions referred

1. Are Articles 103(3)(b) and 124(1)(a) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code applicable to a customs debt that was incurred before 1 May 2016 and whose period of limitation had not yet expired as of that date?
2. If the answer to the first question is in the affirmative, does the principle of legal certainty or the principle of legitimate expectations preclude that applicability?

Provisions of European Union law cited

- Article 221(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; ‘CCC’)
- Articles 22(6), 29, 103(1) and (3), 124(1)(a), and 288(2) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1; ‘UCC’)
- Article 8(1) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ 2015 L 343, p. 1; ‘DUCC’)

Brief summary of the facts and the procedure in the main proceedings

- 1 On 4 July 2013, the interested party made a declaration for release for free circulation of a consignment of porcelain goods. She accordingly indicated Bangladesh as the country of origin, on the basis of which a preferential rate of customs duty of zero per cent was applied. When the certificate of origin submitted for that purpose proved to be false, the Inspecteur van de Belastingdienst (Tax Inspector) informed the interested party in writing on 1 June 2016 of his intention to proceed with post-clearance recovery of customs duties at the normal rate of 12 per cent. In the same letter, he gave the interested party the opportunity to express her point of view on the matter within 30 days. On 18 July 2016, the customs debt in question, which had been incurred on 4 July 2013, was notified to the interested party by means of a request for payment.
- 2 The dispute before the court of second instance, the Gerechtshof Amsterdam (Court of Appeal, Amsterdam; ‘the Gerechtshof’), was whether the customs debt had already been extinguished as of 18 July 2016.

Main submissions of the parties to the main proceedings

- 3 The Gerechtshof stated at the outset that Article 124(1)(a) UCC provides that the customs debt is extinguished where the debtor can no longer be notified of the customs debt, in accordance with Article 103 UCC, that is to say, within three years from the incurrance of the customs debt. This would mean that the present customs debt was already extinguished before 18 July 2016. Article 103(3)(b) UCC, however, provides that that three-year period is to be suspended from the date on which the customs authorities communicated their intention to notify the customs debt until the end of the period within which the debtor is given the opportunity to express his or her point of view. By virtue of Article 8(1) DUCC, that period is 30 days. Applying Article 103(3)(b), the customs debt at issue would therefore not yet have been extinguished as of 18 July 2016.
- 4 According to the Gerechtshof, however, in a case such as the one at issue here, the principles of legal certainty and of legitimate expectations enshrined in EU law preclude the application of the aforementioned provisions. According to the Gerechtshof, at the time that the customs debt was incurred (4 July 2013), it was not clear and foreseeable to the interested party — in view of the date of publication of the UCC (10 October 2013) — that she could be faced with suspension of the limitation period by a 30-day period. Therefore, in the opinion of the Gerechtshof, whether the customs debt was notified to the interested party in good time should be assessed on the basis of the CCC (the predecessor of the UCC). Article 221(3) of the CCC also provided for a 3-year limitation period, but not for its suspension. For that reason, the Gerechtshof held that the customs debt had already been extinguished on 18 July 2016 due to time-barring.
- 5 The Staatssecretaris van Financiën subsequently brought an appeal in cassation before the Hoge Raad (Supreme Court). The plea is directed against the findings of the Gerechtshof set out above.

Brief summary of the reasons for the referral

- 6 According to the case-law of the Court of Justice, when determining the temporal scope of a new provision, a distinction must be drawn between procedural rules and substantive rules. Procedural rules are generally considered to apply from the day on which they enter into force. That is in contrast to substantive rules, which are usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to them. Furthermore, a new rule of law applies from the entry into force of the act by which it was introduced, and while such a rule does not apply to situations which arose and became definitive before that entry into force, it does apply immediately to the future consequences of a situation that arose when the old legal regime was in force and to new legal situations. According to Article 288(2) UCC, the provisions relevant to the present case became applicable on 1 May 2016.

- 7 It cannot be inferred beyond reasonable doubt from the case-law of the Court of Justice whether a rule providing for the suspension of the limitation period – as is the case with Article 103(3) UCC – must be regarded as a substantive rule.
- 8 In the judgment in the *Molenbergnatie* case (C-201/04, EU:C:2006:136, paragraph 41), the Court of Justice held, with regard to the applicability of the provisions of the then new CCC, that it was appropriate to apply to the facts underlying the customs debts which had occurred prior to the entry into force of the CCC, on the one hand, the substantive rules of the earlier legislation and, on the other hand, the procedural rules of the CCC. In that context, the Court of Justice then held, in relation to Article 221(3) of the CCC as it stood on 1 January 1994:
- ‘It must therefore be held that, since on expiry of the period prescribed by Article 221(3) of the Customs Code the debt is time-barred and, consequently, extinguished, that provision enacts a substantive rule.’
- 9 In so far as the three-year period for the recovery of a customs debt under the provisions of the CCC had expired on 1 May 2016, it may be inferred from the *Molenbergnatie* judgment that the debtor concerned was ultimately in a situation from which he derives certain rights and to which no new legal rules may be applied. In the present case, however, the customs debt of the interested party was not yet time-barred on 1 May 2016. In that respect, the situation of the interested party differs from the situation to which paragraph 41 of the *Molenbergnatie* judgment relates.
- 10 On the one hand, it could be argued that the suspension of the limitation period for a customs debt prevents the definitive extinguishment of a customs debt. Seen in that light, the limitation rule itself, the determination of the limitation period and the anticipated cases of suspension of that period must be regarded as a coherent set of rules. That would mean that, on 4 July 2013, as regards the coherent set of prescription rules laid down in the CDW, the interested party was ultimately in a situation from which she derives certain rights, with the result that both Article 103 and Article 124(1) UCC may not be applied to her in so far as they contain divergent legal rules. It is then irrelevant that the customs debt of the interested party was not yet time-barred on 1 May 2016.
- 11 On the other hand, it may be argued that a rule which is dependent on the expiry of a time limit must be distinguished from rules which make the expiry of that time limit dependent on a procedural act during the post-clearance recovery process. Thus, in the present case, the running of the limitation period is temporarily halted because of the obligation, laid down in Article 22(6) UCC, to give the debtor a hearing prior to the notification of the customs debt. That temporary cessation as a result of the performance of a procedural act (giving the interested party a hearing) can then be regarded as a procedural rule that is inextricably linked to Article 22(6) UCC. Because procedural rules are considered to apply from the day on which they enter into force, that would mean that

Articles 124(1)(a) and 103 UCC became immediately applicable once post-clearance recovery proceedings were initiated on or after 1 May 2016 for a customs debt that had arisen under the operation of the CCC.

- 12 In the light of the foregoing considerations, it is not possible simply to infer from the nature of Articles 124(1)(a) and 103(3) UCC whether those provisions applied on 1 May 2016 to the intended post-clearance recovery of a customs debt which arose during the operation of the CCC and which had not yet been extinguished on 1 May 2016 under the CDW due to time-barring. For that reason, the Hoge Raad is referring the first question to the Court of Justice for a preliminary ruling.
- 13 If that first question is answered in the affirmative, the question remains whether the Gerechtshof is correct in its assessment that the application of the relevant provisions of the CCU is contrary to the principles of legal certainty and legitimate expectations laid down in EU law and that they must therefore not be applied in respect of the interested party.
- 14 It could be argued that, at the time the customs debt was incurred, it was not clear and foreseeable that the customs legislation with regard to post-clearance recovery and prescription would be amended in such a way as to codify the right to be heard in all cases prior to such recovery by the customs authorities, with the consequence that the limitation period is suspended for the duration of the period provided for in Article 8(1) DUCC.
- 15 It could also be argued that, when making the customs declaration, the debtor may not assume that procedural rules will remain unchanged. In amending a procedural rule, the EU legislature must have weighed up, on the one hand, the European Union interests served by that measure and, on the other hand, the interests of an interested party not to see his or her legal position deteriorate. The assessment of this balancing of interests by the EU legislature is not a matter for the national courts, but falls within the jurisdiction of the Court of Justice. In that regard, it is important to know whether the EU legislature was entitled to attach to the new rule that a debtor must always be given the opportunity to be heard for 30 days before the recovery of a customs debt, the consequence of which may be that the limitation period would be suspended for that same period. Since the legal position of the debtor in that case is strengthened by the introduction of an absolute right to have the opportunity to express his or her opinion for 30 days, it cannot be said, in the Hoge Raad's view, that the fact that it goes hand in hand with the suspension of the limitation period by a corresponding length of time constitutes such a deterioration in the debtor's position that it justifies disapplying Article 103(3) UCC. However, because there is doubt in that regard, the Hoge Raad is referring the second question for a preliminary ruling.