



Press and Information

General Court of the European Union

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Judgment in Case T-151/20
Czech Republic v Commission

The General Court upholds in part the Czech Republic's action based on the unjust enrichment of the Commission in so far as it concerns the repayment of an amount equivalent to approximately € 726 000 that that Member State had to pay to that institution in the context of the recovery of anti-dumping duties

The cessation by the importer of its activity was capable, in the circumstances of the present case, of constituting a reason which was not imputable to the Czech Republic and which could lawfully release that Member State from its obligation to place that amount at the disposal of the European Union

In November 2007, the European Anti-Fraud Office (OLAF) carried out an inspection mission in Laos, in which a representative of the Czech customs authorities participated. The investigation concerned checks on the importation from Laos, into various EU countries, of pocket lighters between 2004 and 2007. According to the final mission report, Baide lighter Industry (LAO) Co., Ltd ('BAIDE') imported pocket lighters originating in China, but presented at customs as originating in Laos, thereby avoiding the anti-dumping duty applicable to pocket lighters of Chinese origin.

On the basis of that report's findings, which covered, inter alia, 28 cases in which pocket lighters were imported by BAIDE into the Czech Republic and released for free circulation, taking place between 2005 and 2007, the competent Czech customs authorities took measures to adjust and recover the tax in those cases. By letter of 20 January 2015, the European Commission informed the Czech Republic, in response to the latter's request to be released from the obligation to put at the Commission's disposal the amounts corresponding to the established entitlements which had proved irrecoverable, that the conditions set out in Article 17(2) of Regulation No 1150/2000¹ were not satisfied in any of the cases at issue. The Commission called on the Czech Republic to adopt, within a specified time limit, the measures necessary so that its account be credited with the amount of 53 976 340 Czech koruny (CZK).

After paying 75% of that amount into the Commission's account ('the sum at issue'), the Czech Republic brought an action before the General Court seeking an order that the Commission reimburse it the sum at issue on account of the unjust enrichment of the European Union.

The General Court has **upheld the action in so far as it concerns the repayment by the Commission of the sum of CZK 17 828 399.66** paid in respect of the European Union's own resources. In that context, it has examined, inter alia, the conditions which must be met by an action based on unjust enrichment, the cooperation between the Member States and the Commission in an investigative mission in a third country and the obligation to lodge a security for the purpose of the recovery of own resources.

Findings of the Court

¹ Article 17(2) of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities own resources (OJ 2000 L 130, p. 1) provides: 'Member States shall be released from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements which prove irrecoverable either (a) for reasons of force majeure; or (b) for other reasons which cannot be attributed to them. ...'

The Court holds, first of all, that the Czech Republic cannot establish that its claims are well founded, in an action based on the Commission's unjust enrichment, by merely refuting the arguments contained in the letter of 20 January 2015. On the contrary, it has to prove, first, that the Commission's enrichment as a result of the sum at issue being put at its disposal is not justified with regard to the obligations imposed on that Member State under EU law in the area of own resources and, secondly, that the Czech Republic's impoverishment is linked to that unjust enrichment. The Czech Republic's obligations in terms of own resources do not stem from the letter of 20 January 2015, but result directly from the legislation applicable in that field. Thus, that letter cannot constitute the framework for the dispute inasmuch as it limits the Commission's arguments seeking to challenge the fact of unjust enrichment to those contained in that letter.

Secondly, the Court takes the view that the Czech Republic cannot be required, in its action based on unjust enrichment, to establish that the entire procedure in the customs proceedings, the recovery of the claim and the transactions in relation to own resources was executed in accordance with all the rules, correctly, in due time and in compliance with the protection of the financial interests of the European Union, but that it must solely establish, in addition to its impoverishment and the corresponding enrichment, that there was no justification for such enrichment.

In addition, after observing that the Member States' cooperation with the Commission is an essential requirement for complying with the customs legislation in the European Union, the Court notes that, to that end, Community administrative and investigative cooperation missions are carried out in third countries by officials appointed for that purpose by the Member States² The information obtained in those missions may be used to enable the prosecution of transactions contrary to the customs legislation, and in legal actions or prosecutions initiated as a result. In particular, they may be invoked as evidence by the competent authorities of the Member States.³

In those circumstances, the representative of the Czech customs authority within the inspection mission was fully entitled to request from OLAF the evidence annexed to the minutes and to communicate it to the competent authorities of the Czech Republic so that those authorities could use it as evidence against BAIDE in the proceedings for recovery of the customs debt payable by that company. In the present case, **OLAF**, which had agreed to communicate to the Czech Republic the evidence collected during its investigative mission at the beginning of 2008, **communicated its report**, to which such evidence was attached, **late**. In those circumstances, the Czech Republic cannot be criticised for not being in possession of the evidence necessary for establishing the anti-dumping duty payable by BAIDE on the 28 cases of importation at issue as of the return of the inspection mission and for waiting for the communication of OLAF's report in order to establish the duties payable by that company.

Moreover, as regards the obligation to lodge a security for the purposes of the recovery of own resources, the Court observes that where the customs authorities of the Member States consider that the verification of the customs declaration may result in a higher amount of import duty becoming payable than that resulting from the particulars of the customs declaration, the release of the goods will be authorised after the lodging of a security sufficient to cover the difference between those amounts.⁴ The discretion available to those authorities, when they decide on the need to demand such a security, is limited by the principle of effectiveness,⁵ under which effective protection of the European Union's financial interests must be ensured against any fraud or any other illegal activities liable to adversely affect those interests. The scope of the principle of effectiveness, inasmuch as that principle applies to the specific obligation on the Member States to

² In accordance with Article 20(2) of Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ 1997 L 82, p. 1).

³ In accordance with Article 21(2) of Regulation No 515/97.

⁴ See the first sentence of Article 74(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), read in conjunction with Article 248 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1).

⁵ The principle of effectiveness is set out in Article 325(1) TFEU.

guarantee the effective and full collection of the European Union's own resources constituted by customs duties, cannot be determined in an abstract and fixed manner, since it depends on the characteristics of that fraud or other illegal activity, which may furthermore change over time.

In that regard, the Court finds that **the Czech Republic was required to lodge a security for the purposes of the recovery of the anti-dumping duties likely to be payable by BAIDE as of the adoption of the risk profile**, from which it was apparent, in particular, that there was a 'reasonable suspicion' of circumvention of the customs legislation, that is, as of 22 March 2006. Contrary to what was maintained by the Czech Republic, the lodging of a security for the purposes of recovering the sum at issue did not require, when the goods at issue were released, certainty that their origin was different from that declared, but only that there were indications that might result, when those goods were checked, in a higher amount of duty being determined than that resulting from the particulars of the customs declaration. In addition, the mere fact that the Laotian authorities confirmed the authenticity of the certificates of origin enclosed by BAIDE in two of the 28 cases of importation at issue could not, in any event, suffice to dispel the doubts that the Czech Republic itself had on the basis of the information communicated by OLAF having regard to all of BAIDE's imports from Laos.

Lastly, the Court takes the view that **the cessation by BAIDE of its activity, prior to the filing of OLAF's report**, which enabled the customs duties payable by BAIDE actually to be established, **could constitute a reason which was not imputable to the Czech Republic⁶ which could lawfully release that Member State from its obligation to put the sum at issue at the European Union's disposal**. However, since that Member State was required to lodge a security with regard to the sums to be recovered in respect of the anti-dumping duties payable by BAIDE as of 22 March 2006, the Court **holds that there was unjust enrichment of the European Union up to the amount of the sum at issue corresponding to the anti-dumping duties payable by BAIDE on the first twelve imports of pocket lighters, carried out before that date**.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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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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⁶ In accordance with Article 17(2)(b) of Regulation No 1150/2000.