Court of Justice of the European Union
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Press and Information

Judgment in Case C-386/08
Brita GmbH v Hauptzollamt Hamburg-Hafen

Products originating in the West Bank do not qualify for preferential customs treatment under the EC-Israel Agreement

The assertion made by the Israeli authorities that products manufactured in the occupied territories qualify for the preferential treatment granted for Israeli goods is not binding upon the customs authorities of the European Union

The European Community concluded two Euro-Mediterranean Association Agreements, first with Israel (the EC-Israel Agreement[1]) and then with the Palestinian Liberation Organisation (the EC-PLO Agreement[2]), the latter acting for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip. Those agreements provide *inter alia* that the importation into the European Union of industrial products originating in Israel or the Palestinian territories is to be exempt from customs duties and that the competent authorities of the parties are to cooperate with a view to determining the precise origin of the products receiving preferential treatment.

Brita is a German company which imports drink-makers for sparkling water, as well as accessories and syrups, all of which are produced by an Israeli supplier, Soda-Club Ltd, at a manufacturing site at Mishor Adumin in the West Bank, to the east of Jerusalem.

Brita sought to import goods supplied by Soda-Club into Germany. It informed the German customs authorities that the goods originated in Israel and, on that basis, it hoped to be granted the preferential treatment provided for under the EC-Israel Agreement. Suspecting that the products originated in the occupied territories, the German authorities asked the Israeli customs authorities to confirm that the products had not been manufactured in those territories.

Although the Israeli authorities confirmed that the goods in question originated in an area that is under their responsibility, they did not reply to the question whether the goods had been manufactured in the occupied territories. For that reason, the German authorities refused in the end to grant Brita the preferential treatment, on the ground that it could not be established conclusively that the imported goods fell within the scope of the EC-Israel Agreement.

Brita contested that decision before the courts and the Finanzgericht Hamburg (Finance Court, Hamburg) asked the Court of Justice whether the preferential treatment provided for under the EC-Israel Agreement may be granted in respect of goods which have been manufactured in the occupied Palestinian territories and which the Israeli authorities have confirmed as being of Israeli origin.

In today's judgment, the Court holds that **each of the two association agreements has its own territorial scope**: the EC-Israel Agreement applies to the territory of the State of Israel, whereas the EC-PLO Agreement applies to the territory of the West Bank and the Gaza Strip.

[1] Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, signed in Brussels on 20 November 1995 (OJ 2000 L 147, p. 3).
[2] Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, signed in Brussels on 24 February 1997 (OJ 1997 L 187, p. 3).

The Court points out that, under general international law, an obligation cannot be imposed upon a third party – such as the Palestinian Authority of the West Bank and the Gaza Strip – without its consent. As a consequence, the EC-Israel Agreement may not be interpreted in such a way as to compel the Palestinian Authorities to waive their right to exercise the competence conferred upon them by virtue of the EC-PLO Agreement and, in particular, to refrain from exercising the right to issue customs documents providing proof of origin for goods manufactured in the West Bank and the Gaza Strip.

In those circumstances, the Court holds that **products originating in the West Bank do not fall within the territorial scope of the EC-Israel Agreement and do not therefore qualify for preferential treatment under that agreement**. It follows that the German customs authorities could refuse to grant, in respect of the goods at issue, preferential treatment as provided for in that agreement, on the ground that those goods originated in the West Bank.

The Court also rejects the argument that preferential treatment ought, in any event, to be granted to Israeli manufacturers based in the occupied territories, whether under the EC-Israel Agreement or under the EC-PLO Agreement. The Court states that goods certified by the Israeli authorities as originating in Israel can receive preferential treatment only under the EC-Israel Agreement, and provided that they have been manufactured in Israel.

As regards the assertion made by the Israeli authorities that the goods in question originated in Israel, the Court points out that the origin of products is determined by the authorities of the exporting State. In fact, the authorities of the exporting State are those best placed to verify directly the facts which determine origin.

Accordingly, in cases of subsequent verification by the customs authorities of the exporting State, the customs authorities of the importing State are generally bound by the results of that verification.

However, in the present case, the subsequent verification did not concern the question whether the imported products were wholly obtained in a certain location or whether they had undergone sufficient working and processing there for them to be considered to be products originating in that location. The aim of the subsequent verification was to establish the precise place of manufacture of the imported products, for the purposes of determining whether those products fell within the territorial scope of the EC-Israel Agreement. The European Union takes the view that products obtained in locations which have been placed under Israeli administration since 1967 do not qualify for the preferential treatment provided for under that agreement.

As it is, despite a specific request from the German authorities, the Israeli authorities did not reply to the question whether the products had been manufactured in Israeli-occupied settlements in Palestinian territory. The Court notes in this respect that, under the EC-Israel Agreement, the Israeli authorities are obliged to provide sufficient information to enable the real origin of products to be determined.

Given that the Israeli authorities failed to fulfil that obligation, **the assertion made by those authorities that the products at issue qualify for the preferential treatment reserved for Israeli goods is not binding upon the German customs authorities**.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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