

Case C-187/21**Request for a preliminary ruling****Date lodged:**

25 March 2021

Referring court:

Kúria (Supreme Court, Hungary)

Date of the decision to refer:

4 February 2021

Appellant:

FAWKES Kft.

Respondent:

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Division of the National Tax and Customs Authority, Hungary)

Decision of the**Kúria (Supreme Court, Hungary)****Sitting as court of cassation**

[...] [matters of domestic procedural law]

Order

La Kúria [...] makes a reference to the Court of Justice of the European Union for a preliminary ruling on the following questions:

1. Must Article 30(2)(a) and (b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code be interpreted as meaning that only the values listed in the database created from the customs clearances of the Member State's own customs authority may and must be taken into account as the customs value?

2. If the first question is answered in the negative, is it necessary, for the purposes of determining the customs value in accordance with Article 30(2)(a) and (b), to approach the customs authorities of other Member States in order to obtain the customs value of similar goods listed in their databases, and/or is it necessary to consult a Community database and obtain the customs values listed in it?

3. May Article 30(2)(a) and (b) of Regulation No 2913/92 be interpreted as meaning that, for the purposes of determining the customs value, account may not be taken of transaction values relating to transactions performed by the applicant for customs clearance himself, even if those values have not been challenged either by the national customs authority or by the national authorities of other Member States?

4. Must the requirement of ‘at or about the same time’, laid down in Article 30(2)(a) and (b) of Regulation No 2913/92, be interpreted as meaning that it may be limited to a period of +/- 45 days before and after customs clearance?

Grounds

Provisions of EU law relied on:

Article 30 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code:

‘1. Where the customs value cannot be determined under Article 29, it is to be determined by proceeding sequentially through subparagraphs (a), (b), (c) and (d) of paragraph 2 to the first subparagraph under which it can be determined, subject to the proviso that the order of application of subparagraphs (c) and (d) shall be reversed if the declarant so requests; it is only when such value cannot be determined under a particular subparagraph that the provisions of the next subparagraph in a sequence established by virtue of this paragraph can be applied.

2. The customs values as determined under this Article shall be:

- a) the transaction value of identical goods sold for export to the Community and exported at or about the same time as the goods being valued;
- b) the transaction value of similar goods sold for export to the Community and exported at or about the same time as the goods being valued;
- c) the value based on the unit price at which the imported goods for identical or similar imported goods are sold within the Community in the greatest aggregate quantity to persons not related to the sellers;
- d) the computed value, consisting of the sum of:

- the cost or value of materials and fabrication or other processing employed in producing the imported goods;
 - an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Community;
 - the cost or value of the items listed in Article 32(1)(e).
3. Any further conditions and rules for the application of paragraph 2 above shall be determined in accordance with the committee procedure’.

Facts of the appeal in cassation and short presentation of the reasons for the request for a preliminary ruling

- 1 Following applications filed by the appellant at various points in 2012, a number of textile products from China were released for free circulation in the customs territory of the European Union. Subsequently, the customs authority took the view that the transaction value declared in accordance with Article 29 of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (‘the Customs Code’) was too low. In its opinion, identical goods could not be found and there was no way of determining a transaction value for similar goods, a value based on the unit price or a computed price. Since it was not possible to use any of the methods provided for in Article 30 of the Customs Code, the customs values were determined in accordance with the free method provided for in Article 31. In making its decision, the customs authority used data from the national database falling within a time period of +/- 45 days. No account was taken of the transaction values used by the appellant itself in previous customs clearances in Hungary and another Member State which had not been challenged by the customs authorities.
- 2 The appellant brought an administrative-law action against the second-tier authority. In its view, the customs authority should have approached the European Union bodies competent in customs matters — OLAF, TAXUD, EUROSTAT— and, after asking them for information, taken into consideration the transaction values of identical or similar goods in accordance with Article 30(2)(a) and (b) of the Customs Code. In that context, account should have been taken of the transaction values of goods cleared at the appellant’s request which had not been challenged by the national or Community customs authorities. The appellant further maintained that the period of time to be used to make that determination must be longer than +/- 45 days.
- 3 The court of first instance dismissed the administrative-law action. In the grounds of the final judgment, it held that the defendant customs authority was not obliged to collect data from the European Union and that, since a single EU database does not even exist, it had not been able to consult it (or them). The defendant was not bound by the fact that the appellant had not been the subject of an adverse ruling

in customs proceedings conducted in other EU States. The aforementioned court described as erroneous the appellant's claim that account should have been taken of its own transactions for the purposes of determining the customs value of identical or similar goods. It also held that it was correct to limit the selection from the national database to the time period of +/- 45 days.

- 4 The appellant brought an appeal in cassation before the Kúria (Supreme Court, Hungary) against the final judgment dismissing its claim. It submits that, according to the judgment of the Court of Justice of the European Union in Case C-291/15, once the transaction value has been rejected, an international comparison must be carried out in order to determine the customs value in accordance with Article 30 of the Customs Code. To this end, recourse must be had to the European Union's databases. It further states that account must be taken of the transaction value accepted by the customs authorities in connection with the appellant's own customs clearances. The period of time for identifying data relating to identical or similar goods cannot remain fixed at +/- 45 days. In the Kúria's assessment, the outcome of the proceedings from the point of view of the questions raised by the appellant is contingent upon an interpretation of EU law. Consequently, that court has decided to stay the proceedings and refer the questions set out above to the Court of Justice for a preliminary ruling.
- 5 In referring those questions for a preliminary ruling, the Kúria has taken into account the fact that Article 31 of the Customs Code is applicable only in the event that the requirements laid down in Article 30 are not met. In its administrative-law action, the appellant questioned whether the respondent customs authority took every possible and necessary measure to meet the requirements laid down in Article 30(2)(a) and (b).
- 6 In the Kúria's assessment, the national customs authority cannot refrain from asking the customs authorities of other Member States for information to determine the existence of identical or similar goods within the meaning of Article 30(2)(a) and (b). Subsequently, it must indicate in its decision the reason why it asked those authorities for information. At Member State level, there is no single body whose databases are preferred by the Customs Code or by Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. Consequently, the Kúria considers that it must be permissible under Article 30(2)(a) and (b) of the Customs Code for information to be sought from the customs authorities of the Member States.
- 7 According to the Kúria's interpretation, the rejection of the transaction values used in previous customs clearance procedures initiated by the applicant for clearance is justified by the fact that doubts have been raised specifically in relation to that applicant as to whether the transaction value can reasonably be taken to be the customs value in accordance with Article 29 of the Customs Code. Article 30 of the Customs Code is itself intended to ensure that the determination of the customs value is as objective as possible.

8 The Kúria considers that, in the light of the 90-day time limit laid down in respect of other legal matters in Regulation No 2454/93, it is acceptable for the requirement of ‘at or about the same time’ to be fixed as being a period of time of +/- 45 days.

9 [...] [matters of domestic procedural law]

Budapest, 4 February 2021.

[...]

[...] [signatures]

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