Case C-307/23

Request for a preliminary ruling

Date lodged:

17 May 2023

Referring court:

Bundesfinanzhof (Germany)

Date of the decision to refer:

17 January 2023

Applicant and appellant on a point of law:

G GmbH

Defendant and respondent in the appeal on a point of law:

Hauptzollamt H

[…]

BUNDESFINANZHOF (FEDERAL FINANCE COURT, GERMANY)

ORDER

In the proceedings

G GmbH

Applicant and appellant on a point of law

[…]

v

Hauptzollamt H

Defendant and respondent in the appeal on a point of law

concerning the post-clearance recovery of import duties,

the Seventh Chamber

has decided as follows at the sitting on 17 January 2023:

O p e r a t i v e P a r t

1. The following question is referred to the Court of Justice of the European Union for a preliminary ruling:

Must the cost of production, in the customs territory of the European Union, of printing templates for labels be added to the transaction value under Article 32(1)(a)(ii) or Article 32(1)(b)(iv) of [Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code] if the buyer established in the customs territory of the European Union makes the printing templates available free of charge in electronic form to the suppliers in the third country?

2. The proceedings are stayed pending a ruling by the Court of Justice of the European Union on the question referred for a preliminary ruling.

G r o u n d s

I.

1 The applicant and appellant on a point of law (‘the applicant’) was the owner of a type D customs warehouse. It prepared preserved foodstuffs in cans, which had been imported from third countries by another company (‘the buyer’), for the customs warehousing procedure and subsequently (from 12 December 2012 to 30 May 2013) released them for free circulation under the local clearance procedure. The cans were provided with adhesive paper labels that the suppliers had produced in the third country by means of printing templates that had been made available to them electronically and free of charge by the buyer. The printing templates were produced by various design studios in the Federal Republic of Germany (‘Germany’) on behalf of and at the expense of the buyer. The customs value declarations specified only the amount that the buyer had to pay in accordance with the sales contracts concluded with the producers in the third countries, including the costs for the retail packing and for the printing of the paper labels stuck onto the packing, but excluding the cost of the printing templates.

2 By way of an import duty notice dated 20 February 2014, the defendant and respondent in the appeal on a point of law (the Hauptzollamt (Principal Customs Office); ‘the HZA’) subsequently recovered customs duties from the applicant. The HZA was of the opinion that proportional costs for design drafts and/or printing templates for the adhesive labels should have been included in the customs value. The objection procedure and the action were unsuccessful.

3 The Finanzgericht (Finance Court, Germany) ruled that the cost of producing the printing templates should have been taken into account when determining the customs value pursuant to Article 32(1)(a)(ii) of [Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ('the Customs Code')]. The cans were containers because they were not only suitable for transporting the goods but also for storing and marketing them and were customary for packing such goods. The labels on which the contents of the cans were described and advertised were also part of those containers. The labels formed an inseparable unit with the cans and as such were not comparable with hangtags (tags on which the price of the goods and other goods-related information are indicated and which are attached to the goods by a tie) or photo inserts, which were not to be classified as containers. A privileged treatment of intellectual services developed in the European Union in accordance with Article 32(1)(b)(iv) of the Customs Code was not possible in the present case.

4 The applicant appealed against that judgment. In its opinion, there is no legal basis for considering the labels and the containers to form a unit. Article 32(1)(a)(ii) of the Customs Code was not applicable because that provision only speaks of a container being one with a product, but not of an information label affixed to a container being one with the latter. In addition, the cost of producing the printing templates was not a cost 'of' containers, as required by the wording of Article 32(1)(a)(ii) of the Customs Code. Moreover, General rule for the interpretation of the Combined Nomenclature ('general rule') 5(b) did not contain any provisions on determining customs values. The labels were comparable with hangtags because they were also firmly attached to the product at the time of importation and could not be reused. The connection between the cans and the labels was perfectly separable, even if the labels were destroyed during separation.

5 According to the applicant, design services fall under Article 32(1)(b)(iv) of the Customs Code and should therefore not be added to the transaction value because intellectual supplies are treated more favourably if they are provided within the European Union. A classification of packing designs according to the opinion of the Finance Court would lead to contradictions in value if a uniform design were used for different purposes.

II.

6 The Chamber stays the proceedings in the appeal on a point of law pending before it […] [procedural provisions] and refers the following question to the Court of Justice of the European Union ('the CJEU') for a preliminary ruling pursuant to Article 267 of the Treaty on the Functioning of the European Union:

Must the cost of production, in the customs territory of the European Union, of printing templates for labels be added to the transaction value under Article 32(1)(a)(ii) or Article 32(1)(b)(iv) of the Customs Code if the buyer established in the customs territory of the European Union makes the printing

templates available free of charge in electronic form to the suppliers in the third country?

III.

7 The Chamber is of the opinion that the resolution of the dispute hinges on the provisions of customs valuation law under the Customs Code. There are doubts about the interpretation of the Customs Code that are material to the decision in the case:

8 <u>Applicable European Union law:</u>

9 Article 29 of the Customs Code:

(1) The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted, where necessary, in accordance with Articles 32 and 33, provided (…)

(2) (…)

(3) (a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller. (…)

10 Article 32 of the Customs Code:

(1) In determining the customs value under Article 29, there shall be added to the price actually paid or payable for the imported goods:

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) (…)

(ii) the cost of containers which are treated as being one, for customs purposes, with the goods in question;

(iii) (…)

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) (…)

(ii) (…)

(iii) (…)

(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Community and necessary for the production of the imported goods;

(c) (…)

11 Article 154 of [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 ('the Implementing Regulation')]:

Where containers referred to in Article 32 (1) (a) (ii) of the Code are to be the subject of repeated importations, their cost shall, at the request of the declarant, be apportioned, as appropriate, in accordance with generally accepted accounting principles.

12 Article 155 of the Implementing Regulation:

For the purposes of Article 32(1) (b) (iv) of the Code, the cost of research and preliminary design sketches is not to be included in the customs value.

13 Article 156a(1) of the Implementing Regulation:

The customs authorities may, at the request of the person concerned, authorise

– by derogation from Article 32 (2) of the Code, certain elements which are to be added to the price actually paid or payable, although not quantifiable at the time of incurrence of the customs debt,

– (…)

to be determined on the basis of appropriate and specific criteria. (…)

14 General rule 5:

In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) camera cases, musical instrument cases, gun cases, drawing-instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character.

(b) subject to the provisions of rule 5(a), packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

15 Footnote 1 to general rule 5:

The terms ‘packing materials’ and ‘packing containers’ mean any external or internal containers, holders, wrappings or supports other than transport devices (for example, transport containers), tarpaulins, tackle or ancillary transport equipment. The term ‘packing containers’ does not cover the containers referred to in general rule 5(a).

16 Explanatory Notes to the Harmonised System (ENHS) 02.0 and 04.0 on general rule 5(a):

(I) This Rule shall be taken to cover only those containers which: 02.0
(…)
(2) are suitable for long-term use, i.e. they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (during transport or storage, for example). These criteria enable them to be distinguished from simple packings. 04.0

IV.

17 The Chamber has doubts as to how the present case should be appraised under EU law. It is a question of whether the cost of the printing templates for labels produced in Germany is to be taken into account as a cost that increases the customs value under Article 32(1)(a)(ii) of the Customs Code or whether that cost may be included in the customs value only under the conditions of Article 32(1)(b)(iv) of the Customs Code, with the result that the cost cannot be added to the transaction value in the present case. In that context, the interpretation of the term ‘container’ and the relationship between the aforementioned provisions are of particular importance.

18 1. Article 29 et seq. of the Customs Code are decisive for the determination of the customs value in the present case, because the customs duty arose through the entry in the applicant’s accounts in the period from 12 December 2012 to 30 May 2013 (Article 201(2) of the Customs Code in conjunction with Article 76(1)(c) and Article 76(3) of the Customs Code). The customs valuation methods are provisions of substantive customs law that remain applicable to situations that arose before the entry into force of [Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (‘the Union Customs Code’)] (see CJEU judgment of 9 March 2006, *Beemsterboer Coldstore Services*, C-293/04, EU:C:2006:162,

paragraph 19 et seq., […] [reference in legal journal]; see also judgments of the Chamber of 19/10/2021 – VII R 27/19, BFH/NV 2022, 628, […] [reference in legal journal], and of 1/12/1998 – VII R 147/97, BFHE 187, 362, […] [reference in legal journal]). However, the legal question to be clarified also arises under the Union Customs Code, since Article 32(1)(a)(ii) of the Customs Code has been incorporated essentially unchanged into Article 71(1)(a)(ii) of the Union Customs Code and Article 32(1)(b)(iv) of the Customs Code has even been incorporated into Article 71(1)(b)(iv) of the Union Customs Code with the same wording.

19 (a) When determining the customs value, the transaction value method under Article 29 of the Customs Code is to be applied primarily – and thus also in the present case. According to Article 29(1) of the Customs Code, the customs value of imported goods is, in principle, the transaction value, in other words the price actually paid or payable for the goods when they are sold for export to the customs territory of the European Union, adjusted where necessary by additions in accordance with Article 32 of the Customs Code and non-inclusion of the deductions referred to in Article 33 of the Customs Code.

20 According to the first sentence of Article 29(3)(a) of the Customs Code, the price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller.

21 In summary, the purpose of customs valuation is to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values. The customs value must therefore reflect the real economic value of imported goods and take into account all of the elements of those goods that have economic value. Thus, although, as a general rule, the price actually paid or payable for the goods forms the basis for calculating the customs value, that price is a factor that potentially must be adjusted where necessary in order to avoid the setting of an arbitrary or fictitious customs value (CJEU judgment of 10 September 2020, *BMW*, C-509/19, EU:C:2020:694, paragraph 13 and the case-law cited, […] [reference in legal journal], to Articles 70(1) and 71(1) of the Union Customs Code).

22 (b) Article 32 of the Customs Code contains a list of various costs and values which must be added to the price actually paid or payable for the imported goods. The present Chamber considers that list to be exhaustive, which is why additions to the transaction value that go beyond it are not permissible (see also submissions on C-340/93, EU:C:1994:177, paragraph 17, on Article 8 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes – 'Regulation No 1224/80' – (Official Journal of the European Communities – OJ 1980 L 134, p. 1); CJEU judgment of 28 March 1990, *Malt*, C-219/88, EU:C:1990:146, paragraph 11, on Article 8 of Regulation No 1224/80; see also judgment of the Chamber of 24/1/1995 – VII R 79/94, BFH/NV 1995, 895, also on Article 8 of Regulation No 1224/80).

23 (aa) According to Article 32(1)(a)(ii) of the Customs Code, the cost of containers, which are treated as being one with the goods in question for customs purposes, is to be added to the price actually paid or payable for the imported goods. The provision makes no distinction between services provided within the Community and those provided outside the Community. The Customs Code does not contain a definition of the term 'container'. In particular, it is unclear whether the cost of producing printing templates for labels, which in turn are affixed to the actual containers (for example food cans), also falls under the term 'container' and is thus to be added to the transaction value pursuant to Article 32(1)(a)(ii) of the Customs Code.

24 (1) The wording of Article 32(1)(a)(ii) of the Customs Code ('containers', 'Umschließungen' in German, or 'contenants' in French) indicates that the term containers refers to receptacles that hold or enclose the goods. This is also supported by the separate mention of the cost of packing in Article 32(1)(a)(iii) of the Customs Code.

25 (2) The further requirement that the containers must be treated as being one with the goods in question for customs purposes allows the use of general rule 5(a) for containers and general rule 5(b) for packing […] [citation of legal literature], without clarifying the scope of the term 'container'.

26 Containers (general rule 5(a)) are therefore specially shaped or fitted to contain a specific article or set of articles and are suitable for long-term use (see also ENHS 0[2].0 and 04.0 on general rule 5(a)). According to footnote 1 to general rule 5(b), the terms 'packing materials' and 'packing containers' mean any external or internal containers, holders, wrappings or supports other than transport devices (for example, transport containers), tarpaulins, tackle or ancillary transport equipment. Accordingly, the customs tariff distinguishes between containers and packing. ENHS 16.0 on general rule 5(b) provides the additional information that the latter refers to packing materials and packing containers of a kind normally used for packing the goods to which they relate.

27 However, the application of general rule 5 does not lead to an unambiguous result with regard to the interpretation of the term 'container' within the meaning of Article 32(1)(a)(ii) of the Customs Code. After all, while customs tariff law distinguishes between specially designed containers suitable for long-term use and (other) customary packing, Article 32(1)(a) of the Customs Code differentiates between containers (point (ii)) and packing (point (iii)). In that respect, the terminology already differs. Moreover, there are also differences in content in that containers within the meaning of Article 32(1)(a)(ii) of the Customs Code do not necessarily have to be intended for long-term use.

28 (3) The referring court considers that the cans used in the present case are containers within the meaning of Article 32(1)(a)(ii) of the Customs Code. Labels affixed to cans in the third country are also likely to be covered by that provision because they are firmly attached to the cans and are unlikely to be removed from

them without damage. In accordance with that view, the applicant included the cost of printing the labels in the customs value.

29 However, whether the addition of costs as referred to in Article 32(1)(a)(ii) of the Customs Code can be interpreted so broadly that it also covers the cost of production of printing templates for the labels to be affixed to the imported goods in the third country is unclear and requires clarification by the CJEU.

30 (bb) Moreover, the relationship between Article 32(1)(a)(ii) and Article 32(1)(b)(iv) of the Customs Code and the delimitation of containers and/or packing and the supplies referred to in Article 32(1)(b)(iv) of the Customs Code is unclear. According to that provision, the value, apportioned as appropriate, of the engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Community and necessary for the production of the imported goods is to be added to the transaction value where these are supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable. However, costs for research and preliminary designs are not included in the customs value pursuant to Article 155 of the Implementing Regulation.

31 (1) With the introductory wording ‘goods and services’, the EU legislature chose a broad wording for Article 32(1)(b)(iv) of the Customs Code, so that the scope of application of that provision is not limited to tangible goods, and intangible goods may also be covered (see CJEU judgment in *BMW*, EU:C:2020:694, paragraphs 17 and 19, […] [reference in legal journal]). Thus, the value of the electronic printing templates for labels could also be considered to fall under (intangible) goods within the meaning of that provision.

32 (2) It is precisely the broad wording of Article 32(1)(b) of the Customs Code compared with Article 32(1)(a) of the Customs Code that leads to the question whether Article 32(1)(b) of the Customs Code is to be applied with priority when determining the customs valuation of intellectual property. The referring court considers it reasonable to interpret Article 32(1)(b) of the Customs Code as containing a specific rule of principle for intellectual supplies, even if that is not sufficiently clear from the actual wording and structure of the provision. In that respect, it must also be clarified whether, in the case of the customs valuation of intangible goods – in the present case, the creation of printing templates by design studios – the application of Article 32(1)(a)(ii) of the Customs Code is excluded for that reason alone. That question is relevant to the dispute because the printing templates were produced in Germany and their value would therefore not increase the customs value if Article 32(1)(b)(iv) of the Customs Code were applied, because according to that provision only intellectual supplies produced outside the Community are to be included in the customs value.

33 (3) Lastly, in connection with Article 32(1)(b)(iv) of the Customs Code, the question remains as to what is meant by the ‘imported goods’. The correction of

the customs value under that provision relates only to the value of goods and services of the engineering, development, artwork, design work, and plans and sketches necessary for the production of the goods. In the present case, the goods could be the articles presented at importation as a whole, in other words the cans with the attached labels and contents, or only the foodstuffs, which is again supported by the fact that the cans actually constitute containers within the meaning of Article 32(1)(a)(ii) of the Customs Code.

34 (cc) Owing to the doubts about the interpretation of Article 32(1)(a)(ii) and Article 32(1)(b)(iv) of the Customs Code, it is not possible clearly to assess in the present case whether the cost of production of the printing templates is to be included in the cost of packing and thus added to the transaction value or whether the value of the printing templates, as intellectual supplies, is not to be taken into account as a value that increases the customs value, because those printing templates were produced in the European Union.

35 The view of the authorities that Article 32(1)(a)(ii) of the Customs Code should apply in the present case is supported by the fact that the labels could not have been produced without the printing templates and that they were therefore ultimately incorporated into the goods as they were declared for free circulation. The close connection of the labels with the cans also supports the view of the authorities. Ultimately, the significance of the printing templates also stems from the fact that the labels contain information on the contents of the cans. The inclusion of the cost of the printing templates thus reflects the real economic value of the imported goods (see CJEU judgment of 20 December 2017, *Hamamatsu Photonics Deutschland*, C-529/16, EU:C:2017:984, paragraph 24 and the case-law cited, […] [reference in legal journal]). In particular, adjustments (in the form of additions in the present case) also serve to prevent the determination of an arbitrary or fictitious customs value (see CJEU judgment in *Hamamatsu Photonics Deutschland*, EU:C:2017:984, paragraph 27 and the case-law cited, […] [reference in legal journal]; see also CJEU judgment in *BMW*, EU:C:2020:694, paragraph 13 and the case-law cited, […] [reference in legal journal], regarding Articles 70(1) and 71(1) of the Union Customs Code).

36 However, the arguments of the applicant, which submits that the printing templates should be treated as intellectual supplies for the purposes of Article 32(1)(b)(iv) of the Customs Code, cannot be dismissed out of hand. Thus, printing templates or similar intellectual services are not mentioned either in Article 32(1)(a) of the Customs Code or in general rule 5. If the list in Article 32 of the Customs Code is exhaustive, as the referring court assumes, that militates against adding the cost of the printing templates to the customs value. In addition, the question arises as to why intellectual supplies provided in the customs territory of the European Union would not be included in the customs value according to the broadly formulated Article 32(1)(b) of the Customs Code, but would be included according to the more narrowly formulated Article 32(1)(a) of the Customs Code if they were considered to be part of the containers. As mentioned above, Article 32(1)(b)(iv) of the Customs Code could, as a more specific

provision, exclude the application of Article 32(1)(a)(ii) of the Customs Code with regard to intellectual supplies. Furthermore, the referring court sees a risk of contradiction if a printing template is used for different labels that are attached to the container or the goods in different ways. Thus, it does not make sense to consider printing templates to be part of the container if the label is affixed to the container, but to adopt the opposite view if the label is attached to the goods only by a tie, as is the case with hangtags. In any event, the present Chamber has so far not regarded hangtags as containers (see order of the Chamber of 18/12/2013 – VII B 107/12, BFH/NV 2014, 1107).

37 Furthermore, the referring court wishes to point out a problem that could arise independently of the present dispute, and which should be taken into account when interpreting the aforementioned customs valuation provisions. If the cost of producing the printing templates is to be taken into account as a cost that increases the customs value, the question arises as to how the cost would be apportioned to the imports if the printing templates were to be produced once, but the goods were to be imported over a longer period of time. Article 32 of the Customs Code does not lay down any requirements in that respect. Article 154 of the Implementing Regulation, according to which the cost of containers can be apportioned according to generally accepted accounting rules in the case of repeated use, governs a different case and is not applicable to printing templates, at least not directly. Article 156a of the Implementing Regulation does not offer a satisfactory solution for this case either, because the determination of special criteria to determine surcharges and discounts requires, by way of derogation from Article 32(2) of the Customs Code, an application by the trader and thus an examination prior to importation as well as a corresponding approval by the customs authority.

38 2. The legal question described under heading II has not yet been ruled on by the CJEU and cannot be answered satisfactorily on the basis of the existing case-law of the CJEU on customs valuation law.

39 (a) In connection with the interpretation of the last sentence of paragraph 2 of Section C of Title I of Part I of the Annex to Article 1 of Council Regulation (EEC) No 950/68 of 28 June 1968 on the Common Customs Tariff (OJ 1968 L 172, p. 1), the CJEU, in its judgment of 5 October 1988, *Schmid*, C-357/87 (EU:C:1988:478, […] [reference in collection]) interpreted the term ‘packings’ as referring to containers which are suitable not only for transporting the products in question but also for storing and marketing them. Furthermore, the CJEU upheld the addition of compensation payments for containers not returned to the seller in another country pursuant to Article 8(1)(a) of Regulation No 1224/80. It can be inferred from that decision that the CJEU interprets the term ‘container’ rather broadly. However, the CJEU had no reason to distinguish between the actual containers of the goods (bottles and barrels) and any labels or intellectual supplies that had been used to produce the labels.

40 (b) Furthermore, the CJEU has addressed Article 32(1)(b) of the Customs Code and the corresponding predecessor provision on several occasions.

41 (aa) Thus, in the judgment of 7 March 1991, *BayWa*, C-116/89 (EU:C:1991:104, […] [reference in legal journal]), it ruled that licence fees in respect of the propagation of basic seed were to be added to the customs value of the harvested seed produced from it in accordance with Article 8(1)(b)(i) of Regulation No 1224/80. In that context, the CJEU clarified that there is no general principle according to which services rendered and goods produced in the customs territory of the Community are to be excluded from the customs value. However, that ruling was made in respect of Article 8(1)(b)(i) of Regulation No 1224/80 – the predecessor provision to Article 32(1)(b)(i) of the Customs Code.

42 (bb) The CJEU judgment of 9 March 2017, *GE Healthcare*, C-173/15 (EU:C:2017:195, […] [reference in legal journal]) does not help in the interpretation of Article 32(1)(a)(ii) of the Customs Code either, because in that case the CJEU had to deal with royalties which – unlike the intellectual preparatory work provided through the production of the printing templates in the present case – are expressly governed by Article 32(1)(c) of the Customs Code.

43 (cc) Lastly, in its judgment in *BMW* (EU:C:2020:694, paragraph 18, […] [reference in legal journal]) the CJEU ruled that intangible goods such as software are also covered by the addition of VAT under Article 32(1)(b) of the Customs Code or Article 71(1)(b) of the Union Customs Code. The relationship between that provision and the more narrowly formulated Article 32(1)(a) of the Customs Code, however, was not the subject of that decision. Nor can any conclusions be drawn from that ruling as to whether containers can also cover intellectual preparatory work. In addition, that case concerned software by means of which functionality tests of control units for vehicles were to be carried out. The software in question was thus related to the imported product as such.

44 3. Furthermore, the present Chamber has not previously dealt with the customs treatment of printing templates for labels.

45 In its judgment of 30/1/1990 – VII R 41/87 (BFH/NV 1990, 679), the present Chamber ruled that printing costs for labels produced in a third country and added to the goods are part of the customs value, which is not in dispute in the present case. Any cost incurred in the customs territory of the European Union for the production of printing templates was not at issue in the proceedings at that time.

46 As explained […] [page reference of original formatting] [above in paragraph 36, *in fine*], the Chamber further decided in its decision in BFH/NV 2014, 1107 that hangtags are not containers within the meaning of Article 32(1)(a)(ii) of the Customs Code. Again, electronic printing templates were not the subject of the decision.

47 Moreover, the referring court has ruled in connection with Article 32(1)(b)(iv) of the Customs Code that the embodied intellectual service made available for the

production of the imported goods crystallises the entire development process, including all mistakes made. The value of those goods for customs purposes thus includes all costs incurred in the course of that process (see judgment of the Chamber in BFHE 187, 362, […] [reference in legal journal]). However, that decision of the Chamber on the customs valuation of sample collections is of no further assistance with regard to the present case.

48 4. For the sake of completeness, the referring court adds that, in its view, no other additions are applicable in the present case.

49 Article 32(1)(a)(iii) of the Customs Code, concerning the cost of packing, is not applicable because the labels in the present case were affixed to the canned goods and were thus customs-cleared together with them. The labels should therefore be treated as being one with the goods for customs duty purposes.

50 Article 32(1)(b)(i) of the Customs Code refers only to components incorporated in the imported goods and not also to containers or packing. However, the labels on the cans, including the electronic printing templates used to produce the labels, do not form part of the goods (foodstuffs) as such, but are at most part of the container. The printing templates for labels also do not serve to produce the imported goods.