

Case C-348/24

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:

9 May 2024

Referring court:

Tribunal Supremo – Sala de lo Contencioso-Administrativo (Spain)

Date of the decision to refer:

12 April 2024

Appellant:

Compañía de Distribución Integral Logista, S. A.

Respondent:

Administración General del Estado

Subject matter of the main proceedings

Appeal on a point of law brought by a distribution company against the Administración General del Estado (General State Administration) – Assessment notices from the Agencia Estatal de la Administración Tributaria (State Agency for Tax Administration; ‘Taxation Agency’) – Records of non-compliance – Customs value of goods under a customs warehousing arrangement – Loss of tariff preferences applied at the time of release for free circulation – Certificate of origin of goods submitted out of time

Subject matter and legal basis of the request for a preliminary ruling

Request for a preliminary ruling on interpretation – Article 267 TFEU – Determination of the customs value of imported goods under a customs warehousing arrangement – Point in time to be taken into account for the purposes

of that valuation – Regulation (EEC) No 2913/92 – Articles 29(1), 76(1)(c), 112(3) and 214 – Regulation (EEC) No 2454/93 – Successive sales – Article 147 – Validity of proofs of origin of goods subject to certain special arrangements – Articles 97k(5), 97n, 97t(7), and 118 – Period of two years from the date of issue or establishment of proofs of origin exceeded where partial releases have been made within that period

Questions referred for a preliminary ruling

1. In relation to the customs value, is Article 29 CCC to be interpreted as laying down only the method for determining the customs value – the transaction value, without prejudice to any upward or downward adjustments that should be made – but not as stipulating the time when that valuation should be carried out?

2. In view of the fact that, in accordance with the case-law of the Court of Justice, for the purposes of Article 29 CCC the method for determining the customs value on the basis of the transaction value of goods applies where the goods were sold for export to the European Union, is Article 29 CCC, in conjunction with Articles 112(3) CCC and 214 CCC, to be interpreted as meaning that the placing of goods in a customs warehouse using the simplified procedure laid down in Article 76(1)(c) CCC entails or permits the presumption that the goods were sold for export to the European Union? Is the answer to the previous question affected in any way where the goods are released for free circulation after the transfer effected while they were in the customs warehouse?

3. If the answers to those two questions are in the negative, taking into account the fact that the *customs warehousing arrangement*, as a suspensive arrangement, does not determine when the customs debt arises, in so far as it arises when the goods are released for free circulation, must Articles 29 CCC, 112(3) CCC and 214 CCC nevertheless be interpreted as meaning that the temporal reference for quantifying the customs value is the time when the goods are placed under the customs warehousing arrangement? Alternatively, must those provisions be interpreted as meaning that the customs value is to be calculated at the time when the goods are released for free circulation, that is, when the customs debt arises, even though those goods were previously placed in a customs warehouse?

4. In the case of the rules on successive sales, is it possible to interpret Article 147 CCCIP as meaning that, where goods are brought into a customs warehouse, that is sufficient to allow the presumption that the sale which preceded the last sale before the goods were brought into the customs territory was made with a view to export to the European Union?

5. In relation to certificates of origin, are Articles 118 and 97k CCCIP to be interpreted as meaning that the submission outside the two-year period of proof that the goods were released for free circulation leads to the loss of application of tariff concessions based on preferential origin, despite the fact that the certificate of origin on which the application for the tariff preference is based was used in

previous partial releases for free circulation of imports which took place within that two-year period?

Provisions of European Union law relied on

Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ('CCC'), Articles 29, 76(1)(c), 84, 98, 201, 112(3) and 214.

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, Articles 95, 97k, 97n, 97t and 118 and, as amended by Commission Regulation (EC) No 1762/95 of 19 July 1995, Article 147 ('CCCIP').

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ('UCC'), Article 70.

Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, Articles 128 and 347.

Application in the European Union of the provisions concerning the validity of proofs of origin concerning goods placed under some special procedures – European Union Guidelines

Compendium of Customs Valuation texts of the Customs Code Committee (Customs Valuation section) (TAXUD/800/2002), Commentary 7.

Explanatory note 1.1 of the Customs Valuation Technical Committee.

Judgment of the Court of Justice of 12 December 2013, *Christodoulou and Others* (C-116/12, EU:C:2013:825, paragraph 40).

Judgments of the Court of Justice of 16 November 2006, *Compaq Computer International Corporation* (C-306/04, EU:C:2006:716, paragraph 30), of 20 December 2017, *Hamamatsu Photonics Deutschland* (C-529/16, EU:C:2017:984, paragraph 24), and of 20 June 2019, *Oribalt Rīga* (C-1/18, EU:C:2019:519, paragraph 22).

Judgment of the Court of Justice of the European Union of 9 November 2017, *LS Customs Services* (C-46/16, EU:C:2017:839).

Judgments of 6 June 1990, *Unifert* (C-11/89, EU:C:1990:237, paragraph 11), and of 28 February 2008, *Carboni e derivati* (C-263/06, EU:C:2008:128, paragraph 28).

Provisions of national law relied on

Judgment of the Sala de lo Contencioso-Administrativo (Chamber for Contentious Administrative Proceedings) of the Audiencia Nacional (National High Court, Spain) of 25 September 2017 (case 520/2016, ES:AN:2017:3708).

Succinct presentation of the facts and procedure in the main proceedings

- 1 Corporación Habanos (CH) sold cigars to Altadis (first transfer) and took charge of transporting the product from Cuba to the customs warehouse in Agoncillo (La Rioja, Spain), where Logista, a distribution company, placed the goods into the warehouse as the consignee.
- 2 The cigars from Cuba which were stored in the Agoncillo customs warehouse under the customs warehousing arrangement had different destinations. Altadis sold some of the goods to Logista, which, in turn, sold some of the goods in Ceuta and Melilla, areas outside the Union Customs Territory ('UCT') and others to tobaccoists. As regards the goods that were sold to tobaccoists (which are the goods at issue in the proceedings), Logista placed those goods in the customs warehouse as the consignee and Altadis retained ownership until Logista agreed the sale of the goods with the tobaccoists, at which point Altadis transferred ownership to Logista (second transfer) which released the goods for free circulation so that they could be sold and subsequently supplied to the tobaccoists.
- 3 The Taxation Agency opened a number of records of non-compliance against Logista under the heading 'Community External Tariff', in respect of the financial years 2012 to 2015, on the basis of different grounds.
- 4 Firstly, the adjustment was based on the fact that the customs value, which had been declared and related to the sale of Cuban cigars by CH to Altadis, did not comply with the conditions laid down for the application of the successive sales arrangements laid down in Article 147 CCCIP. The Taxation Agency took the view that the first sale (by CH to Altadis), which took place before the goods entered the customs warehouse, had not been concluded for export to the UCT, and therefore it considered that the value to be taken as the customs value was the value corresponding to the sale which actually produced the import of the goods into the European Union, which was the sale by Altadis to the appellant undertaking Logista.
- 5 The other ground for the adjustment was that the Taxation Agency took the view that the imported goods (tobacco) from Cuba were not eligible for the tariff preferences applied at the time of their release for free circulation because two years had elapsed since the certificate of origin was issued.
- 6 On 16 and 19 January 2015 (2012 financial year), 19 June 2015 (2013 financial year), 30 November 2016 (2014 financial year) and 4 January 2018 (2015

financial year), the assessment decisions under the heading ‘Community External Tariff’ were adopted, confirming the Taxation Agency’s proposals on all points.

- 7 Economic administrative complaints were lodged with the Tribunal Económico-Administrativo Central (Central Tax Tribunal, Spain), which, by judgment of 25 October 2018, dismissed the pleas put forward against the adjustment under the heading ‘Community External Tariff’.
- 8 Logista brought a contentious administrative action before the Chamber for Contentious Administrative Proceedings of the Audiencia Nacional (National High Court) against the judgment of the Tribunal Económico-Administrativo Central (Central Tax Tribunal); that action was dismissed by judgment of 9 June 2021, against which an appeal on a point of law was lodged with the Chamber for Contentious Administrative Proceedings of the Tribunal Supremo (Supreme Court, Spain), the referring court.

Essential arguments of the parties in the main proceedings

- 9 As regards the time of valuation of the goods and, if the goods are in a customs warehouse, whether or not it is necessary to prove that the purpose of the sale was export to the UCT, Logista submits that:
 - (i) The customs value to be taken into account at the time of release for free circulation must be the value of the goods at the time when they were placed under the customs warehousing arrangement, in other words the value recorded at the time of the first transfer, that is the value of the sale by CH to Altadis, the only transaction which had taken place at that time. In support of that assertion, Logista relies on Article 112 CCC, in accordance with which the value of the goods must be set at the time when the goods enter the customs warehouse, even if the customs debt arises later when the goods are released for free circulation.
 - (ii) Article 112 is applicable to situations in which goods enter customs warehouses situated in the UCT, operating under the simplified procedure referred to in Article 76(1)(c) of the CCC, which displaces Article 29 CCC because it is a special rule.
 - (iii) On the basis of the above interpretation, Logista claims that the subsequent destination of the goods is irrelevant, since the entry of the goods into a customs warehouse is enough to conclude that the goods were sold for export to the UCT. In Logista’s submission, that follows from Article 147 of Regulation (EEC) No 2454/93 and point 3.1 of Commentary 7 of the Customs Code Committee (Customs Valuation section) (TAXUD/800/2002).
 - (iv) Therefore, the debate concerning whether or not the sale by CH to Altadis was concluded for the purposes of export to the UCT is not relevant since, at the time of valuation, the only transaction which had taken place was that between

CH and Altadis, and it is not necessary to apply the rules on successive sales laid down in Article 147 CCCIP.

(v) In the alternative, if Article 147 CCCIP is applicable because it is deemed that the customs value must be determined by reference to the time of release for free circulation and not the time when the goods entered the customs warehouse and, therefore, it is deemed that two transactions took place (the first between CH and Altadis and the second between Altadis and Logista), the transaction which must be taken into account in that situation is that between CH and Altadis, because, as Logista is the operator with exclusive rights to distribute the cigars in the European market, the price is that set in the first sale by CH to Altadis, since that is the price of export to the UCT.

10 For its part, the Administración del Estado states, in essence, that:

(i) Article 29 CCC merely lays down the method for determination of the customs value – the transaction value – but does not stipulate the time when that valuation must be carried out.

(ii) The method for determination of the customs value requires, for the purposes of application of the transaction value basis method, that there must be a sale for export, which has not been established in relation to the first transaction (between CH and Altadis). The Administración del Estado refers in that connection to Article 147 CCCIP.

(iii) Where goods enter a customs warehouse situated in the territory of the Union, that does not mean that those goods are intended for export to the UCT and not all the goods which CH sells to Altadis are intended for export to the UCT.

11 With regard to the proofs of origin of the goods, on the basis of its interpretation of Articles 95, 97 and 118 CCCIP, Logista argues that those provisions do not require that all goods under the same quota and having the same origin are to be released for free circulation within two years of the issue of the certificates of origin which cover them but that that obligation will be fulfilled provided that there are partial releases of the goods within the two-year period. The Administración del Estado, for its part, argues that each partial release of goods under a particular quota is separate and, consequently, must be accompanied by its own certificate.

Succinct presentation of the reasoning in the request for a preliminary ruling

12 The Tribunal Supremo (Supreme Court) requires an interpretation of certain provisions of the CCC and the CCCIP in order to determine whether assessment notices issued under the heading External Tariff are lawful.

13 The underlying dispute requires, on the one hand, an explanation of how to determine the customs value of imported goods placed under customs

warehousing arrangements and subsequently released for free circulation under the simplified clearance procedure laid down in Article 76 CCC. In particular, the Tribunal Supremo (Supreme Court) is uncertain about the systematic interpretation of Articles 29(1), 76(1)(c), 112(3) and 214 CCC, and of Article 147 CCCIP.

- 14 On the other hand, it is necessary to determine the validity of proofs of origin of goods subject to certain special arrangements, following the expiry of the two-year period from the date of issue or establishment of those proofs, where partial releases have taken place within that period. For those purposes, the Tribunal Supremo (Supreme Court) has questions concerning the interpretation of Articles 97k(5), 97n, 97t(7) and 118 CCCIP, in conjunction with Article 108(1) CCC and the European Union Guidelines ‘Application in the European Union of the provisions concerning the validity of proofs of origin concerning goods placed under some special procedures’.
- 15 As regards, firstly, the determination of the customs value, a number of issues arise which are set out below. Article 29 CCC states that the customs value is to be the transaction value, *when goods are sold for export to the customs territory of the Community*, which raises the question whether Article 29 CCC is intended only to establish the method for determination of the customs value – the transaction value – or whether it refers also to the point in time which must be taken into account for the purposes of carrying out that valuation.
- 16 In that connection, Explanatory Note 1.1 of the Customs Valuation Technical Committee states that the words ‘when sold for export’ in Article 29 CCC should not be construed ‘as indicating the point in time to be taken into consideration for the purpose of determining the validity of the price’ [free translation], and instead merely indicates that the relevant price for the purposes of the valuation is that agreed in a sale for export. However, bearing in mind the fact that, in the present proceedings, the goods were placed in a customs warehouse and, therefore, a suspensive arrangement, the question arises as to whether the method for determining the customs value for the purposes of Article 29, on the basis of the transaction value, applies solely to situations in which the goods were sold for export to the Union.
- 17 Likewise, the appellant’s arguments concerning the interpretation of Articles 112(3) CCC and 214 CCC, in conjunction with Article 29 CCC, raise questions regarding whether the customs value of goods brought into a warehouse must be calculated at the time when they are placed under the customs warehousing arrangement and not the time when they are released for free circulation.
- 18 If the view is taken that, for the purpose of determining the customs value, regard must be had to the time of release for free circulation, the question then arises as to what effect the successive sales arrangements in Article 147 CCCIP have on the setting of the customs value, in particular, whether it is necessary for the earlier

sale – which must be taken into account in order to set the customs value – was made for export, and if it is necessary for the sale to have been for export, whether that condition is assumed to apply when the goods are in a warehouse.

- 19 In the opinion of the Tribunal Supremo (Supreme Court), those matters cannot be clearly inferred from the case-law of the Court of Justice. The judgment of 9 November 2017, *LS Customs Services* (C-46/16, EU:C:2017:839), interpreted Article 29 CCC and stated, at paragraph 27, that the transaction value must be equal to a price for export to the European Union. It must therefore be agreed, at the time of sale, that the goods originating in a third country will be transported into the customs territory of the European Union (see, also, judgments of 6 June 1990, *Unifert* ('judgment in *Unifert*'), C-11/89, EU:C:1990:237, paragraph 11, and of 28 February 2008, *Carboni e derivati* ('judgment in *Carboni*'), C-263/06, EU:C:2008:128, paragraph 28). That judgment also stated that only a price relating to goods destined for the territory of the European Union may be used for the customs valuation provided for in Article 29 CCC (paragraph 28), and that it would run counter to the objective of the EU rules on customs valuation to accept a sales price for export to a third country as the transaction value within the meaning of Article 29 CCC (paragraph 29).
- 20 However, it is not possible to infer in general from the judgment in *Unifert* (C-11/89, EU:C:1990:237) criteria for determining when sales were carried out for export to the Union. In addition, that judgment emphasised that the fact that the goods which are the subject of a sale are declared for free circulation in the Community is to be regarded as adequate indication that they were sold for export to the customs territory of the Community (paragraph 13), a matter also referred to in Article 147(1) CCCIP and which may be applicable, if appropriate, to the instant case.
- 21 On the other hand, the judgment in *Carboni* (C-263/06, EU:C:2008:128), despite stressing that, for the purposes of Article 29(1) CCC, it must be agreed, at the time of sale, that the goods originating in a non-member country will be transported into the customs territory of the Community, did not address the issues relating to the customs value or the customs warehouse.
- 22 For the purposes of the interpretation of Article 147 CCCIP, it should also be noted that Article 128 of Implementing Regulation (EU) 2015/2447, applicable since 1 May 2016, does not refer to any earlier sale and instead provides that the value is to be determined on the basis of the sale. However, Article 347 of Implementing Regulation (EU) 2015/2447 includes a transitional provision in accordance with which, until 31 December 2017, the transaction value may be determined on the basis of an earlier sale where a prior contract exists. In the context of the temporal application of Article 147 CCCIP, it is necessary to examine, therefore, whether, based on the judgment of the Court of Justice in *Unifert* (in particular, paragraph 21 thereof), in the case of successive sales of goods, the importer (who releases the goods for free circulation) may choose any

of the prices actually paid or payable for the purposes of determining the transaction value.

- 23 Secondly, as regards the validity of the proofs of origin, the import of certain products, including manufactured tobacco products, is subject to customs duties which must be paid when the goods are released for free circulation in the UCT.
- 24 Where goods come from certain countries, whose exports it is intended to facilitate, provision is made for the application of certain tariff concessions and, in order to establish that the goods actually come from a preferential origin, the customs authorities require presentation of a certificate of origin within the prescribed periods.
- 25 In that respect, in response to the Administration's argument that presentation of that certificate outside the two-year time limit leads to the loss of tariff concessions based on preferential origin, the appellant counters that, provided that there were partial releases of the goods during that two-year period, the concessions are not lost.
- 26 The different interpretations put forward by the parties and the existence of a precedent, accepted by the Customs Authority, in the judgment of the Chamber for Contentious Administrative Proceedings of the Audiencia Nacional (National High Court) of 25 September 2017, case 520/2016 (ES:AN:2017:3708) create a reasonable doubt concerning the loss of the preferential arrangements as a result of the presentation of certificates of origin outside the two-year limit, despite the fact that, within that period, those certificates covered partial releases of goods under the same quota.