

JUDGMENT OF THE COURT (Tenth Chamber)

11 May 2017 (*)

(Reference for a preliminary ruling — Customs union — Regulation (EEC)
No 2913/92 — Community Customs Code — Article 32(1)(e)(i) — Customs value —
Transaction value — Determination — Concept of 'cost of transport')

In Case C-59/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der
Nederlanden (Supreme Court of the Netherlands), made by decision of 29 January 2016,
received at the Court on 3 February 2016, in the proceedings

The Shirtmakers BV

v

Staatssecretaris van Financiën,

THE COURT (Tenth Chamber),

composed of M. Berger, President of the Chamber, A. Borg Barthet (Rapporteur) and
F. Biltgen,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- The Shirtmakers BV, by B.J.B. Boersma, adviseur,
- the Netherlands Government, by C.S. Schillemans and M.K. Bulterman, acting as
Agents,
- the European Commission, by L. Grønfeldt and F. Wilman, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an
Opinion,

gives the following

Judgment

- 1 The present request for a preliminary ruling concerns the interpretation of
Article 32(1)(e)(i) of Council Regulation (EEC) No 2913/92 of 12 October 1992
establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Customs Code').
- 2 The request has been made in proceedings between The Shirtmakers BV and the
Staatssecretaris van Financiën (State Secretary for Finance, Netherlands) concerning a
request for payment of additional customs duties sent by the latter to The Shirtmakers

pursuant to Article 32(1)(e)(i) of the Customs Code on the ground that the supplement charged by the forwarding agent ought to have been included in the cost of transport.

Legal context

European Union law

3 Article 29(1) of the Customs Code provides:

'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 ...'

4 Article 32(1) of that code states:

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

...

- (e) (i) the cost of transport and insurance of the imported goods, and
- (ii) loading and handling charges associated with the transport of the imported goods

to the place of introduction into the customs territory of the Community.'

Netherlands law

5 Article 8:20 of the Burgerlijk Wetboek (Civil Code) provides that a contract for the carriage of goods is a contract under which one of the parties (the carrier) undertakes towards the other party (the consignor) to transport goods.

6 Under Article 8:60 of that Civil Code, a freight forwarding contract is a contract under which one of the parties (the forwarding agent) undertakes towards the other contracting party (the principal) to conclude with a carrier, on the principal's behalf, one or more contracts of carriage in respect of goods to be made available by that other contracting party, or to include a clause to that effect on behalf of that contracting party in one or more such contracts of carriage.

The dispute in the main proceedings and the question referred for a preliminary ruling

7 The Shirtmakers imports textile goods from Asia. During the period from 1 January 2007 to 30 June 2009, declarations for release for free circulation of textile goods were made on several occasions in the name of and for the account of The Shirtmakers.

8 The Shirtmakers had recourse to the services of Fracht FWO BV ('Fracht') with a view to having the textile goods transported to the European Union, their storage in the Netherlands and completion of the necessary import formalities. In order to carry out the transport of those goods to the customs territory of the European Union, Fracht concluded contracts in its own name with various transport companies. Fracht issued to The Shirtmakers invoices featuring the amounts which Fracht has been charged for the actual transport, plus its own costs and profit margin, without drawing any distinction between those different amounts.

9 The customs agents who made the customs declarations for the account of The Shirtmakers took into account, in order to determine the customs value, the price

actually paid or payable for the textile goods, increased by the costs invoiced by the transport companies for the actual transport of those goods.

- 10 Following an inspection of The Shirtmakers' accounts after the textile goods had been imported, the Inspector of the Netherlands tax authority took the position that the customs value had been set too low. In his view, based on Article 32(1)(e)(i) of the Customs Code, the amounts which Fracht itself had charged to The Shirtmakers ought to have been added to the purchase price. For that reason, the Inspector sought payment from The Shirtmakers of the additional customs duties which he considered to be due.
- 11 The Shirtmakers brought proceedings before the Rechtbank te Haarlem (District Court, Haarlem, Netherlands) concerning the requests for payment of customs duties which had been addressed to it. Following the dismissal of its action, it appealed to the Gerechtshof Amsterdam (Regional Court of Appeal, Amsterdam, Netherlands).
- 12 The Gerechtshof Amsterdam (Court of Appeal, Amsterdam), referring to paragraph 30 of the judgment of 6 June 1990, Unifert (C-11/89, EU:C:1990:237), took the view that the 'cost of transport' in Article 32(1)(e)(i) of the Customs Code includes all the costs, whether they are main or incidental costs, incurred in connection with the movement of the goods, and it therefore rejected The Shirtmakers' contention that the amounts relating to Fracht's involvement, which were included in the amounts invoiced to The Shirtmakers, do not constitute costs of transport within the meaning of that provision.
- 13 Hearing the appeal brought against the decision of the Gerechtshof Amsterdam (Court of Appeal, Amsterdam), the referring court notes that Article 32(1)(e) of the Customs Code is based on Article 8 of the Agreement on Implementation of Article VII of the 1994 General Agreement on Tariffs and Trade (OJ 1994 L 336, p. 119). The referring court notes that the actual carriers transferred the textile goods by air or by sea to the customs territory of the European Union in return for the payment of certain amounts by Fracht, which then invoiced those amounts to The Shirtmakers and added fees for its own involvement without, however, expressly distinguishing between the costs charged to it by the actual carriers and the fees for its own involvement.
- 14 The referring court is therefore unsure whether the concept of 'cost of transport', within the meaning of Article 32(1)(e)(i) of the Customs Code, covers solely the amounts charged for the actual transport of the goods or whether that concept also covers the amounts charged by intermediaries as payment for their involvement in organising the actual transport.
- 15 The referring court takes the view that the costs of transport of the imported goods by sea, land or air are costs which are inherent in the actual transport of those goods, that is to say, which are necessarily particular to that transport. Those costs can be distinguished from the costs of transactions which, although connected with the actual performance of the transport, are not indispensable. That view, the referring court finds, is supported by the Compendium of Customs Valuation Texts (TAXUD/800/2002-EN) drawn up by the Customs Code Committee, according to which a fee of 5% of the transport costs received by the airline which carried out the transport, for services relating to the recovery of costs from the consignee, which it supplied, is not covered by Article 32(1)(e) of the Customs Code.
- 16 However, where the importer has recourse, for the actual transport, to the services of an intermediary, which charges fees in that regard, it could be argued, according to the referring court, that the obvious connection with the actual transport requires that all such amounts charged be classified as costs of transport, with the result that those amounts should be added to the purchase price of the imported goods.
- 17 The referring court also takes the view that, in order to determine whether the amount charged by the provider of the transport services must be taken into account in determining the customs value, a distinction should be made according to the contract which was concluded by the importer. Accordingly, in the context of a contract for the

carriage of goods within the meaning of Article 8:20 of the Civil Code, such a service provider may undertake to the buyer to transport goods to the territory of the European Union, without the buyer knowing whether that transport will be carried out by that service provider or by another operator. In that case, according to the referring court, the entirety of the amounts charged to the buyer by the service provider should be classified as costs of transport and should be added to the purchase price of the imported goods. By contrast, in the case of a freight forwarding contract within the meaning of Article 8:60 of the Civil Code, under which the service provider undertakes to act as an intermediary or to organise the transport, fees in payment for that activity may not constitute a 'cost of transport' within the meaning of Article 32(1)(e)(i) of the Customs Code.

- 18 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Should Article 32(1)(e)(i) of the Customs Code be interpreted as meaning that the term "cost of transport" should be understood to mean the amounts charged by the actual carriers of the imported goods, even where those carriers have not charged those amounts directly to the buyer of the imported goods but to another operator who has concluded the contracts of carriage with the actual carriers on behalf of the buyer of the imported goods, and who has charged the buyer higher amounts in connection with his efforts in arranging the transport?'

Consideration of the question referred

- 19 By its question, the referring court asks, in essence, whether Article 32(1)(e)(i) of the Customs Code must be interpreted as meaning that the concept of 'cost of transport', within the meaning of that provision, includes the supplement charged by the forwarding agent to the importer, corresponding to that agent's profit margin and costs, in respect of the service which it provided in organising the transport of the imported goods to the customs territory of the European Union.
- 20 First of all, it must be noted that the concept of 'cost of transport' is not defined by the Customs Code and that that code makes no reference to the law of the Member States for the purpose of determining the meaning and scope of that concept.
- 21 In that regard, it must, first of all, be noted that the Court has consistently held that it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question (judgments of 3 September 2014, *Deckmyn and Vrijheidsfonds*, C-201/13, EU:C:2014:2132, paragraph 14, and of 12 December 2013, *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 34 and the case-law cited).
- 22 Consequently, the concept of 'cost of transport' in Article 32(1)(e)(i) of the Customs Code must, first, be regarded as an autonomous concept of EU law, and, second, be interpreted in the light of the objective pursued by the legislation at issue and of the context in which that article features.
- 23 Next, it must be pointed out that in the judgment of 6 June 1990, *Unifert* (C-11/89, EU:C:1990:237), the Court interpreted that concept in Article 8(1)(e)(i) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (OJ 1980 L 134, p. 1), the wording of which has been incorporated in Article 32(1)(e)(i) of the Customs Code.
- 24 In paragraph 30 of that judgment, the Court of Justice expressed the view that 'the term "cost of transport" must be interpreted as including all the costs, whether they are

main or incidental costs, incurred in connection with moving the goods to the customs territory of the [European Union]'. It also held that 'demurrage charges, which consist in compensation provided for in the shipping contract to compensate the shipowner for any delays arising during the loading of the vessel, must be considered to be covered by the term "cost of transport"'.

- 25 As the Netherlands Government and the European Commission maintain, it follows, first, from paragraph 30 of the judgment of 6 June 1990, Unifert (C-11/89, EU:C:1990:237) and, in particular, from the Court's use of the words 'all' and 'main or incidental', that the concept of 'cost of transport' must be interpreted broadly. Second, the decisive criterion for costs to be capable of being regarded as coming within the term 'cost of transport' within the meaning of Article 32(1)(e)(i) of the Customs Code is that they are connected with the movement of goods to the customs territory of the European Union, irrespective of whether those costs are inherent in or necessary for the actual transport of those goods.
- 26 Consequently, the 'cost of transport' within the meaning of that provision is not necessarily limited to the amounts charged by the carriers which themselves carry out the transport of the imported goods. Amounts charged by other service providers, such as a forwarding agent, may constitute costs of that kind if they are connected with the movement of the goods to the customs territory of the European Union.
- 27 In so far as, in the case in the main proceedings, the supplement charged by the forwarding agent to The Shirtmakers corresponds to costs incurred by that agent in organising the transport of goods to the customs territory of the European Union as well as its profit margin, that supplement must be regarded as being connected with the movement of those goods to the customs territory of the European Union. Those costs therefore constitute costs of transport for the purposes of Article 32(1)(e)(i) of the Customs Code.
- 28 Finally, such an interpretation is consistent with the objectives pursued by the European Union's customs valuation rules. According to the settled case-law of the Court, the objective of that legislation 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 an imported product and take into account all of the elements of that product that have economic value (judgment of 19 March 2009, Mitsui & Co. Deutschland, C-256/07, EU:C:2009:167, paragraph 20 and the case-law cited).
- 29 Moreover, contrary to what the referring court appears to suggest, the concept of 'cost of transport' within the meaning of Article 32(1)(e)(i) of the Customs Code cannot depend on the category of contract, as defined by national law, to which the contract at issue, concluded between the importer and the forwarding agent, belongs, in so far as that concept is an autonomous concept of EU law.
- 30 In addition, Conclusion 8 of the Compendium of Customs Valuation Texts (TAXUD/800/2002-EN), to which the referring court refers, is not such as to call into question the finding made in paragraph 24 of the present judgment. The situation to which that conclusion relates concerns a specific form of service, namely the recovery of the costs of transport, which is not at issue in the main proceedings in the present case.
- 31 In the light of the foregoing considerations, the answer to the question raised by the referring court is that Article 32(1)(e)(i) of the Customs Code must be interpreted as meaning that the concept of 'cost of transport', within the meaning of that provision, includes the supplement charged by the forwarding agent to the importer, corresponding to that agent's profit margin and costs, in respect of the service which it provided in organising the transport of the imported goods to the customs territory of the European Union.

- 32 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

Article 32(1)(e)(i) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that the concept of 'cost of transport', within the meaning of that provision, includes the supplement charged by the forwarding agent to the importer, corresponding to that agent's profit margin and costs, in respect of the service which it provided in organising the transport of the imported goods to the customs territory of the European Union.