

JUDGMENT OF THE COURT (Sixth Chamber)

16 June 2016 (\*)

(Reference for a preliminary ruling — Customs union — Common Customs Tariff — Value for customs purposes — Determination of the Customs value — Transaction value — Price actually paid — Doubts based on the veracity of the declared price — Declared price lower than the price paid in respect of other transactions relating to similar goods)

In Case C-291/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Zalaegerszegi közigazgatási és munkaügyi bíróság (administrative and labour court, Zalaegerszeg, Hungary), made by decision of 21 May 2015, received at the Court on 15 June 2015, in the proceedings

EURO 2004. Hungary Kft.

v

Nemzeti Adó- és Vámhivatal Nyugat-dunántúli Regionális Vám- és Pénzügyi Főigazgatósága,

THE COURT (Sixth Chamber),

composed of A. Arabadjiev, President of the Chamber, S. Rodin and E. Regan (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Hungarian Government, by M.Z. Fehér and G. Koós, acting as Agents,
- the Spanish Government, by A. Gavela Llopis, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Albenzio, avvocato dello Stato,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Portuguese Government, by L. Inez Fernandes, N. Vitorino and M. Rebelo, acting as Agents,
- the European Commission, by L. Havas and L. Grønfeldt, acting as Agents,

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

gives the following

## Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 181a 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 (OJ 1993 L 253, p. 1, and corrigenda OJ 1994 L 268 p. 32 and OJ 1996 L 180 p. 34), as amended by Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ 2000 L 346 p. 1) ('the Implementing Regulation').
- 2 The reference has been made in proceedings between EURO 2004. Hungary Kft. and Nemzeti Adó- és Vámhivatal Nyugat-dunántúli Regionális Vám- és Pénzügyi Főigazgatósága (Regional Customs and Tax Directorate of Western Transdanubia, forming part of the National Tax and Customs Authority, Hungary) ('the Regional Customs Authority') concerning an action for annulment of a decision rectifying the customs value of goods imported by that company and imposing on it a tax adjustment in respect of import duties and value added tax (VAT).

### Legal context

#### The Customs Code

- 3 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1), (the 'Customs Code') provides as follows in Article 29(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:

- (a) that there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:
    - are imposed or required by a law or by the public authorities in the Community,
    - limit the geographical area in which the goods may be resold,or
    - do not substantially affect the value of the goods;
  - (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
  - (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 32;
- and
- (d) that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes under paragraph 2.'

- 4 Article 30(1) and (2) of the Customs Code provide:

'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 ...

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

...

(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;

...'

5 Article 78 of the Customs Code reads as follows:

'1. The customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods.

2. The customs authorities may, after releasing the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes. Those authorities may also examine the goods where it is still possible for them to be produced.

3. Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities shall, in accordance with any provisions laid down, take the measures necessary to regularise the situation, taking account of the new information available to them.'

The Implementing Regulation

6 Article 151 of the Implementing Regulation provides:

'1. In applying Article 30(2)(b) of the [Customs] Code (the transaction value of similar goods), the customs value shall be determined by reference to the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

...

5. For the purposes of this Article, the transaction value of similar imported goods means a customs value previously determined under Article 29 of the [Customs] Code, adjusted as provided for in paragraphs 1 (b) and 2 of this Article.'

7 Article 178(4) of that regulation states that:

'The lodging with a customs office of a declaration required by paragraph 1 shall, without prejudice to the possible application of penal provisions, be equivalent to the engagement of responsibility by the person referred to in paragraph 2 in respect of:

– the accuracy and completeness of the particulars given in the declaration,

- the authenticity of the documents produced in support of these particulars, and
- and
- the supply of any additional information or document necessary to establish the customs value of the goods.’

8 Article 181a of the implementing regulation provides:

‘1. The customs authorities need not determine the customs valuation of imported goods on the basis of the transaction value method if, in accordance with the procedure set out in paragraph 2, they are not satisfied, on the basis of reasonable doubts, that the declared value represents the total amount paid or payable as referred to in Article 29 of the [Customs] Code.

2. Where the customs authorities have the doubts described in paragraph 1 they may ask for additional information in accordance with Article 178(4). If those doubts continue, the customs authorities must, before reaching a final decision, notify the person concerned, in writing if requested, of the grounds for those doubts and provide him with a reasonable opportunity to respond. A final decision and the grounds therefor must be communicated in writing to the person concerned.’

9 The Implementing Regulation contains an Annex 23, entitled ‘Interpretative Notes on Customs Value’. Point 1 of the notes to that annex concerning Article 30(2)(a) and (b) of the Customs Code provides as follows:

‘In applying these provisions, the customs authorities shall, where possible, use a sale of identical or similar goods, as appropriate, at the same commercial level and in substantially the same quantity as the goods being valued. Where no such sale is found, a sale of identical or similar goods, as appropriate, that takes place under any one of the following three conditions may be used:

...’

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

10 On 4 March 2014, EURO 2004. Hungary, a company with its registered office in Hungary, initiated, by means of an electronic customs declaration, before the Nemzeti Adó- és Vámhivatal Zala Megyei Vám- és Pénzügy ri Igazgatósága (the Customs and Tax Directorate for the County of Zala forming part of the National Treasury and Customs Authority) (‘the County Customs Authority’), through its customs representative, a procedure for the release for free circulation of various goods coming from the People’s Republic of China with a gross weight of 13 000 kg. Having released the goods for free circulation after a partial physical inspection, that authority subsequently decided to undertake a post-clearance examination of that declaration under Article 78 of the Customs Code.

11 The County Customs Authority, by decision of 12 June 2014, concluded the post-clearance examination of that declaration and, rejecting the customs value of HUF 2 589 926 (Hungarian forints; approximately EUR 8 288) stated in the customs declaration, it fixed the final customs value of the imported goods at HUF 3 023 938 (approximately EUR 9 676). As a result of those amendments, the County Customs Authority ordered EURO 2004. Hungary to pay HUF 12 970 (approximately EUR 41) in customs duties and HUF 47 784 (approximately EUR 153) in VAT.

12 It is apparent from the statement of reasons for the decision of 12 June 2014 that in the declaration the customs value of the goods was calculated on the basis of the transaction value in accordance with Article 29 of the Customs Code, that the restrictions and conditions laid down in Article 29(1)(a) to (c) of that code were not applicable to

the goods and that there was no link between the parties as referred to in Article 29(1)(d) of that code.

- 13 It is apparent from the file submitted to the Court that the County Customs Authority compared the commercial invoice which had been submitted to it with the importer's accounting records and proofs of payment and with the bank certificate produced and found that the amount indicated in those documents corresponded to the content of the customs declaration. Nevertheless, taking the view that the customs values of the imported goods by net kilo corresponded to a price charged that was exceptionally low in relation to the statistical average values for comparable goods, that authority questioned the accuracy of the customs values of the goods described as 'cotton oven gloves' with a net weight of 150 kg and 'microfiber floor cloths' with a net weight of 24 kg.
- 14 The County Customs Authority asked EURO 2004. Hungary to demonstrate that the customs value of the goods concerned was correct, but it is apparent from the documents before the Court that that company has not submitted any further evidence and merely stated that it had paid the amount stated on the invoice to its Chinese partner.
- 15 As the County Customs Authority still had doubts as to whether that value was correct, using statistical data, it analysed the unit price at which the types of goods at issue were sold to Hungarian importers and determined their customs value in accordance with the 'transaction value of similar goods' referred to in Article 30(2)(b) of the Customs Code.
- 16 The Regional Customs Authority hearing EURO 2004. Hungary's administrative action confirmed the decision of the County Customs Authority of 12 June 2014, holding that the latter was adopted correctly in the context of the procedure laid down in Article 181a of the Implementing Regulation, that the County Customs Authority's doubts, concerning the validity of the declared value of the goods at issue were reasonable and that the determination of the customs value of those goods was based on up-to-date statistics.
- 17 EURO 2004. Hungary brought an administrative law action before the referring court against the decision of the Regional Customs Authority. According to that company, the County Customs Authority did not accept the customs value declared for the goods at issue only because it had been able to purchase the goods at a lower price, thanks solely to its good business relations, which cannot serve as a basis to call that value into question.
- 18 The Regional Customs Authority maintained the line of argument on which its decision was based, arguing that EURO 2004. Hungary had not explained why the price of the goods at issue was unreasonably low in relation to the comparable statistical values.
- 19 The referring court takes the view that an interpretation of Article 181a of the Implementing Regulation is necessary to resolve the question whether a customs authority can, on the basis of that provision, in order to determine the customs value of imported goods, dispense with the application of the method based on the transaction value of those goods.
- 20 In that regard, the referring court takes the view that the consideration of the transaction value of those goods is the principal method, applicable as a general rule for the determination of the customs value of imported goods. If the authenticity of the documents submitted as evidence of the transaction value of the imported goods and the real purpose of the operation are not otherwise open to doubt and if there is no specific reason not to take into account the transaction value of those goods, the customs authorities are obliged to accept as the customs valuation of those goods their certified transaction value, given that that practice excludes the use of arbitrary customs values allowing the customs system to operate in a neutral fashion. The referring court takes the view that that interpretation follows from the conclusions in paragraphs 52 to 60 of the judgment of 28 February 2008 in *Carboni e derivati*(C-263/06,

EU:C:2008:128), with the proviso, however, that the facts of the case that gave rise to that judgment differ considerably from those of the present case and that judgment does not examine the possible basis for the doubts referred to in Article 181a of the Implementing Regulation.

- 21 In those circumstances, the Zalaegerszegi közigazgatási és munkaügyi bíróság (administrative and labour court, Zalaegerszegi, Hungary) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 181a of Commission Regulation (EEC) No 2454/93 of 2 July 1993 be interpreted as precluding a practice of a Member State whereby the customs value is determined on the basis of the “transaction value of similar goods” if it is considered that the declared transaction value, in comparison with the statistical average of the purchase prices verified in the context of the importation of similar goods, is unreasonably low and, consequently, incorrect, despite the fact that the customs authority does not refute or call into question the authenticity of the invoice or the bank transfer certificate produced in order to establish the price actually paid for the imported goods, without the importer having submitted additional evidence to demonstrate the transaction value?’

#### Consideration of the question referred

- 22 By its question, the referring court asks, in essence, whether Article 181a of the Implementing Regulation must be interpreted as precluding a customs authority practice, such as that at issue in the main proceedings, whereby the customs value of the imported goods is determined on the basis of the transaction value of similar goods, the method appearing at Article 30 of the Customs Code, where the declared transaction value is considered to be unreasonably low in comparison with the statistical average of the purchase prices verified in the context of the importation of similar goods and despite the fact that the customs authority does not refute or call into question the authenticity of the invoice or the bank transfer certificate produced in order to establish the price actually paid for the imported goods, without the importer having submitted, in response to a request to that effect from the customs authority, additional evidence to demonstrate the accuracy of the declared transaction value.
- 23 It should first be pointed out that, according to settled case-law, the objective of the EU legislation on customs valuation is to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values (judgment of 15 July 2010 in *Gaston Schul*, C-354/09, EU:C:2010:439, paragraph 27 and the case-law cited).
- 24 In particular, as is apparent from paragraph 38 of the judgment of 12 December 2013 in *Christodoulou and Others* (C-116/12, EU:C:2013:825), by virtue of Article 29 of the Customs Code, the customs value of imported goods is the transaction value, that is to say, 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, in accordance with Articles 32 and 33 of that code.
- 25 In that regard the Court has held that, if 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 (see, to that effect, judgment of 12 December 2013 in *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 39 and the case-law cited).
- 26 The transaction value must reflect the real economic value of imported goods and take into account all the elements of those goods that have economic value (judgment of 12 December 2013 in *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 40 and the case-law cited).

- 27 However, where the customs value cannot be determined by the transaction value of the imported goods in accordance with Article 29 of the Customs Code, the customs valuation is to be carried out in accordance with the provisions of Article 30 of that code by applying sequentially the methods laid down in subparagraphs (a) to (d) of paragraph 2 of that article (judgment of 12 December 2013 in *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 41).
- 28 If it is no longer possible to determine the customs value of the imported goods on the basis of Article 30 of the Customs Code, the customs valuation is to be carried out in accordance with the provisions under Article 31 (judgment of 12 December 2013 in *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 42).
- 29 Consequently, it is clear, both from the wording of Articles 29 to 31 of the Customs Code and from the order in which the criteria for determining the customs value must be applied pursuant to those articles, that those provisions are subordinately linked to each other. Thus, when the customs value cannot be determined by applying a given provision, only then is it appropriate to refer to the provision which comes immediately after it in the established order (judgment of 12 December 2013 in *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 43).
- 30 Since, for the purposes of the customs valuation, priority is to be given to the transaction value in accordance with Article 29 of the Customs Code, that method of determining the customs value is assumed to be the most appropriate and the most frequently used (judgment of 12 December 2013 in *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 44).
- 31 As regards, first, what powers the customs authorities have where a declaration submitted to them gives rise to doubts, Article 181a of the Implementing Regulation provides that the customs authorities need not necessarily determine the customs valuation of imported goods on the basis of the transaction value method if they are not satisfied, on the basis of reasonable doubts, that the declared value represents the total amount paid or payable. They may, therefore, refuse to accept the declared price if those doubts continue after they have asked for additional information or documents and have provided the person concerned with a reasonable opportunity to respond to the grounds for those doubts (see, to that effect, judgment of 28 February 2008 in *Carboni e derivati*, C-263/06, EU:C:2008:128, paragraph 52).
- 32 Secondly, the Court has previously held that in respect of the value which must be substituted for the transaction value, Article 181a of the implementing regulation merely states that the customs authorities ‘need not determine the customs valuation ... on the basis of the transaction value method’ but does not specify what other value is to be substituted for the transaction value in such a case (judgment of 28 February 2008 in *Carboni e derivati*, C263/06, EU:C:2008:128, paragraph 55).
- 33 Pursuant to Articles 30 and 31 of the Customs Code, where the customs value of the imported goods cannot be determined under Article 29 of the Code, it is to be determined by application, first, of Article 30 and, second, of Article 31 (see, to that effect, judgment of 28 February 2008 in *Carboni e derivati*, C-263/06, EU:C:2008:128, paragraph 56).
- 34 Moreover, as regards in particular the application of the abovementioned Article 30, it follows from point 1 of the notes to Article 30(2)(a) and (b) of the Customs Code, set out in Annex 23 to the Implementing Regulation, that the customs authorities are, where possible, to use a sale of identical or similar goods, as appropriate, at the same commercial level and in substantially the same quantity as the goods being valued.
- 35 It follows that the customs authorities can, for the purposes of determining the customs value, disregard the declared price of imported goods and use secondary methods to determine the customs value of imported goods, as laid down in Articles 30 and 31 of the Customs Code and, in particular, the sale price of similar goods, if their doubts concerning the transaction value of those goods persist after they have asked for



additional information or documents and have provided the person concerned with a reasonable opportunity to respond to the grounds for those doubts.

- 36 However, it is for the referring court, which alone has direct knowledge of the dispute before it, to determine whether the doubts of the customs authority before the court in the main proceedings were valid in order to have recourse to the abovementioned secondary methods and whether that authority gave the person concerned a reasonable opportunity to make his views known in respect of the grounds on which those doubts were based.
- 37 In order to provide a helpful answer to the referring court, it is necessary to add the following observations concerning the information which the Court has concerning the dispute in the main proceedings.
- 38 In the first place, concerning in particular the validity of the doubts at issue, it should be noted that it is apparent from the file submitted to the Court that, in the case in the main proceedings, the customs authority involved considered that the declared transaction value of the imported goods was exceptionally low in relation to the statistical mean value on importation of comparable goods. In the present case, as the European Commission states, it appears that as regards certain goods at issue in the main proceedings the declared price was more than 50% lower than the statistical mean value.
- 39 In those circumstances, a difference in price, such as that established, appears sufficient to substantiate the customs authority's doubts and its rejection of the declared customs value of the goods at issue.
- 40 Furthermore, it is common ground that, in the case in the main proceedings, the doubts which led the customs authority to apply Article 181a of the Implementing Regulation did not relate to the authenticity of the commercial invoice but the accuracy of the customs value of the imported goods.
- 41 It should be observed that, for the purposes of the application of Article 181a of the Implementing Regulation, the authenticity of the documents showing the transaction value of the imported goods is not the determining factor but is one of the factors which the customs authorities must take into account. Those authorities may have doubts, despite the authenticity of those documents, as to the accuracy of the customs value of the imported goods (see, to that effect, judgment of 28 February 2008 in *Carboni e derivati*, C-263/06, EU:C:2008:128, paragraph 64).
- 42 In the second place, with regard to the question whether the customs authority involved in the main proceedings gave the person concerned a reasonable opportunity to respond to the grounds for those doubts, it is apparent from the material in the file before the Court that the County Customs Authority asked EURO 2004. Hungary to prove the accuracy of the customs value of the imported goods. In those circumstances, it must be held that that authority gave that company a reasonable opportunity to respond to those doubts.
- 43 However, it is apparent from the documents before the Court that, in response to the customs authorities, that company did not present new evidence and declared that it had paid to the other contracting party the value shown on the invoice.
- 44 It follows from all the foregoing considerations that the answer to the question referred is that Article 181a of the Implementing Regulation must be interpreted as not precluding a customs authority practice, such as that at issue in the main proceedings, whereby the customs value of the imported goods is determined on the basis of the transaction value of similar goods, the method appearing at Article 30 of the Customs Code, where the declared transaction value is considered to be unreasonably low in comparison with the statistical average of the purchase prices verified in the context of the importation of similar goods and despite the fact that the customs authority does not refute or call into question the authenticity of the invoice or the bank transfer



certificate produced in order to establish the price actually paid for the imported goods, without the importer having submitted, in response to a request to that effect from the customs authority, additional evidence to demonstrate the accuracy of the declared transaction value of those goods.

#### Costs

- 45 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 (Sixth Chamber) hereby rules:

Article 181a 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, as amended by Commission Regulation No 3254/94 of 19 December 1994, must be interpreted as not precluding a customs authority practice, such as that at issue in the main proceedings, whereby the customs value of imported goods is determined on the basis of the transaction value of similar goods, the method in Article 30 of Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, where the declared transaction value is considered to be unreasonably low in comparison with the statistical average of the purchase prices verified in the context of the importation of similar goods and despite the fact that the customs authority does not refute or call into question the authenticity of the invoice or the bank transfer certificate produced in order to establish the price actually paid for the imported goods, without the importer having submitted, in response to a request to that effect from the customs authority, additional evidence to demonstrate the accuracy of the declared transaction value of those goods.