JUDGMENT OF THE COURT (Third Chamber)
12 June 1986 *

In Case 183/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof [Federal Finance Court] for a preliminary ruling in the proceedings pending before that court between

Hauptzollamt [Principal Customs Office] **Itzehoe**

defendant and appellant,

and

H. J. Repenning GmbH, Kaltenkirchen

plaintiff and respondent,

on the interpretation of Council Regulation No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980, L 134, p. 1),

THE COURT (Third Chamber)

composed of: U. Everling, President of the Chamber, Y. Galmot and J. C. Moitinho de Almeida, Judges,

Advocate General: J. Mischo
Registrar: K. Riechenberg, acting as Administrator

after considering the observations submitted on behalf of

H. J. Repenning GmbH, the plaintiff in the main proceedings, by Mr Landry, Rechtsanwalt, Hamburg,

the Commission of the European Communities, by its Legal Adviser, Jörn Sack,

after hearing the opinion of the Advocate General delivered at the sitting on 24 April 1986,

* Language of the Case: German.

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 7 May 1985, which was received at the Court on 11 June 1985, the Bundesfinanzhof referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Council Regulation No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980, L 134, p. 1).

2 That question was raised in the course of proceedings between the Hauptzollamt Itzehoe and H. J. Repenning GmbH concerning the value for customs purposes of a consignment of frozen beef imported by Repenning to the Federal Republic of Germany from Argentina.

3 By a decision of 30 December 1980 the Hauptzollamt fixed the customs value of the imported goods, in accordance with the plaintiff's declarations, on the basis of the invoice price and the cost of transport and insurance. The total amount of duty payable was DM 117 210.46. The goods had, however, been damaged by thawing which, according to the experts consulted, had occurred during loading in the Argentinian port and had reduced the value of the whole shipment by 17%.

4 On 19 January 1981 Repenning submitted an appeal to the Hauptzollamt against its decision of 30 December 1980, on the ground that that decision did not take into account the diminution in value of 17%.

5 On the rejection of the appeal by the Hauptzollamt the matter went before the Finanzgericht [Finance Court], which upheld Repenning's claim on the ground that the transaction value of goods, on which their customs value is based in accordance with Article 3 (1) of Council Regulation No 1224/80, must be assessed at the time of importation. If, therefore, goods depreciate between their dispatch

and their arrival in the Community, that fact must be taken into account, as required by the second sentence of Article 4 of Commission Regulation No 1495/80 of 11 June 1980 implementing certain provisions of Articles 1, 3 and 8 of Council Regulation No 1224/80 (Official Journal 1980, L 154, p. 14), as amended by Commission Regulation No 1580/81 of 12 June 1981 (Official Journal 1981, L 154, p. 36).

6 The Hauptzollamt appealed against that decision to the Bundesfinanzhof. It did not dispute the fact that the goods imported by Repenning had diminished in value, but argued that

(i) under Article 3 (1) of Council Regulation No 1224/80, the transaction value is the 'price actually paid' for goods sold for export to the customs territory of the Community;

(ii) the taking into account of the deterioration of imported goods was provided for only by Commission Regulation No 1580/81, which came into force on 16 June 1981 and is therefore not applicable to the circumstances of this case.

7 The Bundesfinanzhof therefore decided to refer the following question to the Court for a preliminary ruling:

'Does the transaction value, as referred to in Article 3 (1) of Regulation No 1224/80, include the full amount of the price actually paid where the goods, bought free of defects, have deteriorated and thus diminished in value before the relevant valuation date, in circumstances giving rise to the indemnification of the buyer under his transport insurance but not to the refund of any part of the purchase price by the seller?'

8 According to *Repenning*, which adopts in similar terms the position of the Finanzgericht, the concept of transaction value for the purposes of Article 3 of Council Regulation No 1224/80 cannot be applied strictly but must be determined in accordance with the state in which the goods are imported, as is confirmed by Article 4 of Commission Regulation No 1580/81 of 12 June 1981.

9 The *Commission*, on the other hand, considers that where the state of the goods on arrival in the Community does not correspond to the state in which they were

sold in the exporting country the customs value cannot be determined on the basis of Article 3 (1) of Council Regulation No 1224/80. That article follows the exact words of Article 1 of the Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (Official Journal 1980, L 71, p. 107), and the Community has undertaken to ensure that its regulations on customs value are in accordance with the provisions of that agreement. By an explanatory note issued in March 1982, the Technical Committee on Customs Valuation, established under Article 18 of that agreement, stated that Article 1 of the agreement could not be applied where all the goods delivered were damaged before customs clearance. The customs value must therefore be determined in accordance with the procedure set out in paragraphs (2) or (3) of Article 2 of Council Regulation No 1224/80.

10 The Court would point out that, under Article 2 (1) of Council Regulation No 1224/80, the customs value of imported goods must be determined under Article 3 whenever the conditions prescribed in that article are fulfilled.

11 Article 3 (1) of Council Regulation No 1224/80 provides that 'the customs value of imported goods determined under this article 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 in accordance with Article 8 . . .', provided that the transaction does not fall within subparagraphs (a) to (d).

12 First of all, it apears from the order of the national court and from the wording of the question submitted that Article 3 (1) of Council Regulation No 1224/80 is not inapplicable in the main proceedings on any of the four grounds enumerated in subparagraphs (a) to (d).

13 Furthermore, it appears from Annex II to the Agreement on implementation of Article VII of the GATT that the explanatory notes issued by the Technical Committee on Customs Valuation are purely consultative in nature, and the Commission has not shown that Article 1 of that agreement has been interpreted in a uniform manner in accordance with the explanatory note of March 1982, a note which, moreover, was issued subsequent to the importation at issue in the main

proceedings. The argument put forward by the Commission to show that Article 3 (1) of Council Regulation No 1224/80 is inapplicable, cannot, therefore, be accepted. It is thus necessary to define the scope of that provision.

14 It should be recalled that, according to the sixth recital in the preamble, Council Regulation No 1224/80 is intended to establish a fair, uniform and neutral system of customs valuation excluding the use of arbitrary or fictitious customs values.

15 Furthermore, the meaning of the term 'the price actually paid or payable' in Article 3 (1) of Regulation No 1224/80 has been further defined by Article 4 of Commission Regulation No 1495/80 of 11 June 1980, according to which:

'Where goods declared for free circulation in the customs territory of the Community are part of a larger quantity of the same goods purchased in one transaction, the price actually paid or payable for the purposes of Article 3 (1) of Regulation (EEC) No 1224/80 shall be that price represented by the proportion of the total price which the quantity so declared bears to the total quantity purchased.'

16 It follows from those considerations that the price actually paid or payable, on which the transaction value is based according to Article 3 (1) of Council Regulation No 1224/80, must be adjusted where that is necessary in order to avoid the setting of an arbitrary or fictitious customs value.

17 Under Article 4 of Commission Regulation No 1495/80, such an adjustment must be made where the price actually paid or payable relates to a quantity of goods purchased which is greater than the quantity declared.

18 For the same reasons, where the goods to be valued were bought free of defect but have been damaged before their release for free circulation the price actually paid or payable must be reduced in proportion to the damage suffered. That, moreover, is the solution expressly adopted by Commission Regulation No 1580/81, which came into force on 16 June 1981, subsequent to the importation at issue in the main proceedings.

19 The answer to the question submitted by the Bundesfinanzhof must therefore be that Article 3 (1) of Council Regulation No 1224/80 is to be interpreted as meaning that where goods bought free of defects are damaged before being released for free circulation the price actually paid or payable, on which the transaction value is based, must be reduced in proportion to the damage suffered.

Costs

20 The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Bundesfinanzhof by an order of 7 May 1985, hereby rules:

Article 3 (1) of Council Regulation No 1224/80 must be interpreted as meaning that where goods bought free of defects are damaged before being released for free circulation the price actually paid or payable, on which the transaction value is based, must be reduced in proportion to the damage suffered.

Everling Galmot Moitinho de Almeida

Delivered in open court in Luxembourg on 12 June 1986.

P. Heim
Registrar

U. Everling
President of the Third Chamber