Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

3 June 2021 *

(Reference for a preliminary ruling – Regulation (EU) No 952/2013 – Union Customs Code – First subparagraph of Article 22(6), read in conjunction with Article 29 – Communication of the grounds to the person concerned before taking a decision which would adversely affect that person – Article 103(1) and Article 103(3)(b) – Limitation of the customs debt – Period for notification of the customs debt – Suspension of the period – Article 124(1)(a) – Extinguishment of the customs debt where it is time-barred – Temporal application of the provision governing the grounds for suspension – Principles of legal certainty and protection of legitimate expectations)

In Case C-39/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 24 January 2020, received at the Court on 27 January 2020, in the proceedings

Staatssecretaris van Financiën

v

Jumbocarry Trading GmbH,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, M. Ilešič (Rapporteur), E. Juhász, C. Lycourgos and I. Jarukaitis, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Jumbocarry Trading GmbH, by C.H. Bouwmeester and E.M. Van Doornik, belastingadviseurs,

– the Netherlands Government, by M.K. Bulterman and J.M. Hoogveld, acting as Agents,

* Language of the case: Dutch.

– the European Parliament, by R. van de Westelaken and M. Peternel, acting as Agents,

– the Council of the European Union, by A. Sikora-Kalėda and S. Emmerechts, acting as Agents,

– the European Commission, by W. Roels and F. Clotuche-Duvieusart, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 February 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 103(3)(b) and Article 124(1)(a) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1, and corrigendum OJ 2013 L 287, p. 90) ('the Union Customs Code').

2 The request has been made in proceedings between the Staatssecretaris van Financiën (State Secretary for Finance, Netherlands) and Jumbocarry Trading GmbH ('Jumbocarry') concerning a request for payment of customs duties on a consignment of goods imported into the European Union which was found not to qualify for a preferential rate of customs duty of 0%.

Legal context

The Community Customs Code

3 Article 221 of 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 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17) ('the Community Customs Code'), provided:

'1. As soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with appropriate procedures.

…

3. Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. This period shall be suspended from the time an appeal within the meaning of Article 243 is lodged, for the duration of the appeal proceedings.'

4 The first subparagraph of Article 243(1) of that code stated:

'Any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.'

The Union Customs Code

5 The Union Customs Code, which entered into force on 30 October 2013 in accordance with Article 287 thereof, repealed the Community Customs Code. However, a large number of its provisions, in particular Articles 22, 29, 103, 104 and 124 thereof, became applicable, pursuant to Article 288(2) thereof, only as from 1 May 2016.

6 Article 22 of the Union Customs Code, entitled 'Decisions taken upon application', states, in the first subparagraph of paragraph 6 thereof:

'Before taking a decision which would adversely affect the applicant, the customs authorities shall communicate the grounds on which they intend to base their decision to the applicant, who shall be given the opportunity to express his or her point of view within a period prescribed from the date on which he or she receives that communication or is deemed to have received it. Following the expiry of that period, the applicant shall be notified, in the appropriate form, of the decision.'

7 Article 29 of that code, entitled 'Decisions taken without prior application', provides:

'Except when a customs authority acts as a judicial authority, Article 22(4), (5), (6) and (7), Article 23(3) and Articles 26, 27 and 28 shall also apply to decisions taken by the customs authorities without prior application by the person concerned.'

8 Article 103 of that code, entitled 'Limitation of the customs debt', provides, in paragraphs 1 to 3 thereof:

'1. No customs debt shall be notified to the debtor after the expiry of a period of three years from the date on which the customs debt was incurred.

2. Where the customs debt is incurred as the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the three-year period laid down in paragraph 1 shall be extended to a period of a minimum of five years and a maximum of 10 years in accordance with national law.

3. The periods laid down in paragraphs 1 and 2 shall be suspended where:

(a) an appeal is lodged in accordance with Article 44; such suspension shall apply from the date on which the appeal is lodged and shall last for the duration of the appeal proceedings; or

(b) the customs authorities communicate to the debtor, in accordance with Article 22(6), the grounds on which they intend to notify the customs debt; such suspension shall apply from the date of that communication until the end of the period within which the debtor is given the opportunity to express his or her point of view.'

9 Article 104 of the Union Customs Code, entitled 'Entry in the accounts', provides, in paragraph 2 thereof:

'The customs authorities referred to in Article [103] shall enter in their accounts, in accordance with the national legislation, the amount of import or export duty payable as determined in accordance with that Article.'

10 Article 124 of that code, entitled 'Extinguishment', provides, in paragraph 1 thereof:

'Without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export shall be extinguished in any of the following ways:

(a) where the debtor can no longer be notified of the customs debt, in accordance with Article 103;

…'

Delegated Regulation (EU) 2015/2446

11 Article 8 of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation No 952/2013 as regards detailed rules concerning certain provisions of the Union Customs Code (OJ 2015 L 343, p. 1), entitled 'Period for the right to be heard', relating to Article 22(6) of the Union Customs Code, provides, in paragraph 1 thereof:

'The period for the applicant to express his point of view before a decision which would adversely affect him is taken shall be 30 days.'

12 In accordance with Article 256 thereof, that delegated regulation, which entered into force on 18 January 2016, became applicable as from 1 May 2016.

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

13 On 4 July 2013, Jumbocarry submitted a declaration for release for free circulation of a consignment of porcelain goods indicating Bangladesh as the country of origin. In accordance with the rules in force at the time, those goods were released for free circulation subject to a preferential rate of customs duty of 0%.

14 Following checks which established that the certificate of origin was false, the competent customs authority, by letter of 1 June 2016, in accordance with the first subparagraph of Article 22(6) of the Union Customs Code, communicated to Jumbocarry that a customs debt at the standard rate of 12% had been incurred and that it intended to recover the corresponding customs duties. In the same letter, it stated that Jumbocarry had, under Article 8 of Delegated Regulation 2015/2446, a period of 30 days to express its point of view on the matter.

15 On 18 July 2016, Jumbocarry was notified, by means of a request for payment, of the customs debt that had been incurred on 4 July 2013.

16 Taking the view that the customs debt was time-barred on the date on which it had been notified of the request for payment, Jumbocarry lodged an objection to the request for payment and subsequently, the competent customs authority having upheld its objection only in part, brought an action before the Rechtbank Noord-Holland (District Court, North Holland, Netherlands). After that court upheld the action and its decision was confirmed by a judgment of

27 February 2018 of the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, Netherlands), the State Secretary for Finance lodged an appeal on a point of law with the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

17 The referring court has doubts as regards the temporal effects of the introduction of Article 22(6) of the Union Customs Code, read in conjunction with Article 29 and Article 104(2) thereof, and of Article 124(1)(a) of that code, read in conjunction with Article 103(3) thereof, and is uncertain, in particular, whether the dispute in the main proceedings falls within the scope of those provisions.

18 In that regard, the referring court states that those provisions, which provide for, inter alia, the suspension of the limitation period in the event of communication of the grounds, were not in force at the time when the customs debt at issue in the main proceedings was incurred, and adds that the legal regime in force at the time, resulting from the Community Customs Code, did not provide for such a suspension. According to that court, it is true that the fact that, at the date on which the new legal rules became applicable, namely 1 May 2016, the customs debt at issue in the main proceedings was not yet time-barred could prove relevant for the purpose of addressing those uncertainties. Nevertheless, it states that the application of that new regime in the case in the main proceedings could be contrary to the principles of legal certainty and protection of legitimate expectations.

19 According to the referring court, it cannot be inferred from the case-law of the Court beyond reasonable doubt whether a provision which, like Article 103(3) of the Union Customs Code, provides for the suspension of a limitation period must be regarded as a substantive rule or as a procedural rule. Should it constitute a substantive rule, that court considers that Article 221(3) of the Community Customs Code remains applicable to a customs debt incurred before 1 May 2016, with the result that such a debt is time-barred on expiry of a period of three years from its incurrence.

20 Furthermore, in that court's view, it is possible to argue that the application of Article 22(6) of the Union Customs Code to recovery proceedings initiated after 1 May 2016 is independent of the rules on limitation of the customs debt. It states that, although the customs authorities have been required, since 1 May 2016, to comply with Article 22(6) of that code in all cases of recovery, according to that point of view, that should not necessarily mean that Article 103(3)(b) of the Union Customs Code applies in all cases. As a result, in the present case, since the customs authorities had to comply with Article 22(6) of that code and Article 103(3) of the code was not applicable, the competent customs authority could no longer notify the customs debt on 18 July 2016.

21 On the other hand, the referring court states that it may also be argued that the purpose of introducing Article 103(3) of the Union Customs Code was to render Article 22(6), Article 103(3)(b), Article 104(2) and Article 124(1)(a) of that code, in view of the connection between them, applicable on the same date, namely 1 May 2016. Thus, from that date, under Article 104(2) of that code, the customs authorities which enter in the accounts amounts of duty corresponding to a customs debt should apply Article 103 of the same code.

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

'(1) Are Articles 103(3)(b) and 124(1)(a) of [the Union Customs Code] applicable to a customs debt that was incurred before 1 May 2016 and whose period of limitation had not yet expired as of that date?

(2) If the answer to the first question is in the affirmative, does the principle of legal certainty or the principle of legitimate expectations preclude that applicability?'

Consideration of the questions referred

23 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 103(3)(b) and Article 124(1)(a) of the Union Customs Code, read in the light of the principles of legal certainty and protection of legitimate expectations, must be interpreted as applying to a customs debt incurred before 1 May 2016 and not yet time-barred at that date.

24 As a preliminary point, it is apparent from the order for reference that the customs debt at issue in the main proceedings was incurred on 4 July 2013, the date on which Jumbocarry submitted, for the purposes of the release for free circulation of a consignment of goods, a certificate of origin that subsequently proved to be false.

25 In that context, the competent customs authority, first of all, pursuant to the combined provisions of Article 22(6) and Article 29 of the Union Customs Code, communicated to Jumbocarry the grounds on which it was intending to send it a request for payment and gave Jumbocarry the opportunity to express its point of view within the 30-day period provided for in Article 8 of Delegated Regulation 2015/2446. That communication was made on 1 June 2016, that is to say, after the repeal, on 1 May 2016, of the Community Customs Code by the Union Customs Code, but, in any event, before the expiry, on 4 July 2016, of the three-year limitation period laid down in Article 221(3) of the Community Customs Code.

26 Next, the competent customs authority notified the customs debt on 18 July 2016, relying on the fact that, in accordance with Article 103(3)(b) of the Union Customs Code, the communication referred to in Article 22(6) of that code had had the effect of suspending the three-year limitation period until the expiry of the period granted to Jumbocarry to allow it to express its point of view.

27 The referring court is uncertain whether Article 103(3)(b) of the Union Customs Code was designed to apply in the present case and, if so, whether the suspension of the limitation period was compatible with the principles of legal certainty and protection of legitimate expectations, in so far as the Community Customs Code, which was in force at the time when the customs debt at issue in the main proceedings was incurred, did not provide for such a suspension of the limitation period.

28 In that regard, it should be recalled at the outset that, according to settled case-law, procedural rules are generally taken to apply from the date on which they enter into force, unlike substantive rules, which are usually interpreted as applying to situations existing before their entry into force

only in so far as it follows clearly from their terms, their objectives or their general scheme that such an effect must be given to them (judgment of 7 November 2018, *O'Brien*, C-432/17, EU:C:2018:879, paragraph 26 and the case-law cited).

29 It is important to add that a new legal rule applies from the entry into force of the act introducing it, and that, while it does not apply to legal situations that arose and became definitive prior to that entry into force, it does apply immediately to the future effects of a situation which arose under the old law, and to new legal situations. The position is otherwise, subject to the principle of the non-retroactivity of legal acts, only if the new rule is accompanied by special provisions which specifically lay down its conditions of temporal application (judgment of 7 November 2018, *O'Brien*, C-432/17, EU:C:2018:879, paragraph 27 and the case-law cited).

30 In the first place, as regards the obligation of prior communication now laid down in Article 29 of the Union Customs Code, read in conjunction with Article 22(6) thereof, it must be stated that it constitutes a procedural rule implementing the right of the person concerned to be heard before a decision adversely affecting him or her is adopted.

31 According to settled case-law, observance of the rights of the defence is a fundamental principle of EU law, of which the right to be heard in all proceedings is an integral part. In accordance with that principle, which applies where the authorities are minded to adopt a measure which will adversely affect an individual, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision (judgment of 20 December 2017, *Prequ' Italia*, C-276/16, EU:C:2017:1010, paragraphs 45 and 46 and the case-law cited).

32 Furthermore, the Court has previously held that the detailed arrangements for communicating the amount of duty to the debtor, for the purposes of interrupting the limitation period, are laid down by procedural rules (see, to that effect, judgment of 10 July 2019, *CEVA Freight Holland*, C-249/18, EU:C:2019:587, paragraph 46).

33 It must therefore be held that, as from 1 May 2016, the date of entry into force of Article 22(6) and Article 29 of the Union Customs Code, the competent authorities of the Member States were required to comply with the obligation of prior communication laid down by those provisions, which was the case in the case in the main proceedings.

34 In the second place, as regards the suspension of the three-year limitation period provided for in Article 103(3)(b) of the Union Customs Code, it must be recalled that the effect of that provision, in the event of communication of the grounds pursuant to Article 22(6) of that code, is to extend the limitation period by a length of time corresponding to the period granted to the debtor to enable him or her to express his or her point of view, that period being 30 days, in accordance with Article 8(1) of Delegated Regulation 2015/2446.

35 In that regard, it should be recalled that the Court has found that, by providing that a customs debt was time-barred on expiry of the three-year period prescribed by that provision, Article 221(3) of the Community Customs Code enacted a substantive rule (see, to that effect, judgment of 23 February 2006, *Molenbergnatie*, C-201/04, EU:C:2006:136, paragraph 41). Such a finding can be transposed to Article 103(1) of the Union Customs Code, in so far as the wording and scope of that latter provision are essentially identical to those of the former provision.

Similarly, Article 103(3)(b) of that code, which provides for the extension of the limitation period applicable to a customs debt in the event of communication of the grounds as referred to in Article 22(6) of that code, must also be regarded as enacting a substantive rule.

36 Consequently, as is apparent from the case-law cited in paragraphs 28 and 29 above, Article 103(3)(b) of the Union Customs Code cannot be applied to legal situations that arose and became definitive under the Community Customs Code, unless it is clear from the terms, objectives or general scheme of the Union Customs Code that it had to apply immediately to such situations.

37 In the present case, it is apparent from paragraph 25 above that, at the date on which Article 103(3)(b) of the Union Customs Code became applicable, namely 1 May 2016, the customs debt at issue in the main proceedings was not yet either time-barred or extinguished.

38 Therefore, it must be held that, at that date, Jumbocarry's legal situation as regards the limitation of its customs debt had not become definitive, notwithstanding the fact that that debt has been incurred under the Community Customs Code.

39 Consequently, Article 103(3)(b) of the Union Customs Code was capable of applying to the future effects of Jumbocarry's situation; the limitation and extinguishment of its customs debt are such future effects.

40 Furthermore, as regards the relationship between Article 22(6) of the Union Customs Code, read in conjunction with Article 29 thereof, and Article 103(3) of that code, it must be added that those procedural and substantive rules form an indivisible whole, the individual elements of which cannot be considered in isolation with regard to their temporal effect. It is important to achieve a consistent and uniform application of the EU legislation in the field of customs (see, by analogy, judgment of 26 March 2015, *Commission* v *Moravia Gas Storage*, C-596/13 P, EU:C:2015:203, paragraph 36 and the case-law cited).

41 In that regard, the intention of the EU legislature was simultaneously to establish, in Article 22(6) of the Union Customs Code, read in conjunction with Article 29 thereof, an obligation of prior communication and to provide, in Article 103(3)(b) of that code, for the suspension of the limitation period resulting from that communication.

42 As the European Parliament and the Council of the European Union observe, in essence, the simultaneous application of those provisions has sought to strike a balance between two objectives, namely, on the one hand, the protection of the financial interests of the European Union and, on the other, the protection of the debtor with regard to his or her rights of defence.

43 Thus, it is apparent from the report on the proposal for a regulation of the European Parliament and of the Council establishing the Union Customs Code (Committee on the Internal Market and Consumer Protection of the European Parliament, session document of 26 February 2013, A7-0006/2013, p. 46, amendment 62), which was the origin of the Union Customs Code, that Article 103(3)(b) of that code was added following an amendment by the Parliament which stated that 'the need for [that] adjustment [was] the protection of financial interests of both the traditional own resources and the national resources when their recovery is at stake'. That document emphasised in particular that such a situation 'could occur in cases where the Right to Be Heard procedure has to be implemented very close (in terms of time) to the expiry of the periods where the customs debt can be notified'.

44 It thus appears that the EU legislature intended, inter alia, to cover, in adopting the suspension rule referred to in Article 103(3)(b) of the Union Customs Code, situations such as the one at issue in the main proceedings.

45 Furthermore, it is common ground that that provision is not accompanied by any special provision which would otherwise lay down its conditions of temporal application, for the purposes of the case-law cited in paragraph 29 of the present judgment.

46 As regards, lastly, the principle of legal certainty, the Court has previously stated that it is as a rule open to the Member States to extend limitation periods where the acts in question have never become subject to limitation (see, to that effect, judgment of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 73 and the case-law cited).

47 It cannot therefore be considered that the application of a rule suspending the limitation period applicable to a customs debt, such as that laid down in Article 103(3)(b) of the Union Customs Code, together with the procedural rules set out in Article 22(6) of that code, read in conjunction with Article 29 thereof, infringes the principles of legal certainty and protection of legitimate expectations.

48 It is true that, in accordance with the Court's settled case-law, the principle of legal certainty, the corollary of which is the principle of the protection of legitimate expectations, requires that rules of law be clear and precise and that the application of those rules be predictable for individuals, especially where they may have negative consequences for individuals and undertakings. In particular, that principle requires that legislation enables those concerned to know precisely the extent of the obligations which are imposed on them, and that those persons are able to ascertain unequivocally what their rights and obligations are and take steps accordingly (judgment of 15 April 2021, *Federazione nazionale delle imprese elettrotecniche ed elettroniche (Anie) and Others*, C-798/18 and C-799/18, EU:C:2021:280, paragraph 41 and the case-law cited).

49 However, as the Advocate General observed in point 91 of his Opinion, the express introduction of a rule suspending the limitation period under Article 103(3)(b) of the Union Customs Code did not in fact bring about a change in relation to the previous legislative position, but rather met the need to lend certainty to an obligation incumbent on the administrative authorities which was already present under the Community Customs Code, in accordance with the case-law of the Court cited in paragraph 31 of the present judgment.

50 In any event, as the Advocate General also observed in point 88 of his Opinion, neither the principle of legal certainty nor the principle of the protection of legitimate expectations, invoked by the referring court, entails an obligation to maintain the legal order unchanged over time. Economic operators are not justified in having a legitimate expectation that an existing situation which is capable of being altered by the EU institutions in the exercise of their discretionary power will be maintained (judgment of 26 June 2012, *Poland* v *Commission*, C-335/09 P, EU:C:2012:385, paragraph 180 and the case-law cited).

51 In the light of all the foregoing considerations, the answer to the questions referred is that Article 103(3)(b) and Article 124(1)(a) of the Union Customs Code, read in the light of the principles of legal certainty and protection of legitimate expectations, must be interpreted as applying to a customs debt incurred before 1 May 2016 and not yet time-barred at that date.

Costs

52 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 (Fifth Chamber) hereby rules:

Article 103(3)(b) and Article 124(1)(a) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, read in the light of the principles of legal certainty and protection of legitimate expectations, must be interpreted as applying to a customs debt incurred before 1 May 2016 and not yet time-barred at that date.

[Signatures]