Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

9 June 2022 *

(Reference for a preliminary ruling – Customs union – Community Customs Code – Regulation (EEC) No 2913/92 – Article 29 – Determination of the customs value – Transaction value – Article 29(1)(d) – Concept of 'related persons' – Article 31 – Account taken of information derived from a national database for the purpose of determining the customs value – Regulation (EEC) No 2454/93 – Article 143(1)(b), (e) and (f) – Situations in which persons are deemed to be related – Article 181a – Doubts based on the veracity of the price declared)

In Case C-599/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 3 November 2020, received at the Court on 13 November 2020, in the proceedings

'Baltic Master' UAB

v

Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos,

interested party:

Vilniaus teritorinė muitinė,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, J. Passer, F. Biltgen, N. Wahl (Rapporteur) and M.L. Arastey Sahún, Judges,

Advocate General: N. Emiliou,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 17 November 2021,

after considering the observations submitted on behalf of:

– 'Baltic Master' UAB, by D. Aukštuolytė, advokatė,

* Language of the case: Lithuanian.

– the Lithuanian Government, by K. Dieninis, S. Grigonis and V. Kazlauskaitė-Švenčionienė, acting as Agents,

– the Czech Government, by O. Serdula, M. Smolek and J. Vláčil, acting as Agents,

– the Estonian Government, by N. Grünberg, acting as Agent,

– the Spanish Government, by J. Rodríguez de la Rúa Puig, acting as Agent,

– the French Government, by G. Bain, A.-L. Desjonquères, D. Dubois and C. Mosser, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and A. Hanje, acting as Agents,

– the European Commission, by F. Clotuche-Duvieusart and J. Jokubauskaitė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 January 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 29(1)(d) and of Article 31(1) 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 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1) ('the Community Customs Code'), and of Article 143(b), (e) and (f) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 46/1999 of 8 January 1999 (OJ 1999 L 10, p. 1) ('the Implementing Regulation').

2 The request has been made in proceedings between 'Baltic Master' UAB and the Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos (Customs Department attached to the Ministry of Finance of the Republic of Lithuania) concerning the determination of the customs value of certain imported goods.

Legal context

The Community Customs Code

3 Article 29(1) and (2) of the Community Customs Code provides:

'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:

…

(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.

2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related shall not in itself be sufficient grounds for regarding the transaction value as unacceptable. Where necessary, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the declarant or otherwise, the customs authorities have grounds for considering that the relationship influenced the price, they shall communicate their grounds to the declarant and he shall be given a reasonable opportunity to respond. If the declarant so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with paragraph 1 wherever the declarant demonstrates that such value closely approximates to one of the following occurring at or about the same time:
(i) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to the Community;
(ii) the customs value of identical or similar goods, as determined under Article 30(2)(c);
(iii) the customs value of identical or similar goods, as determined under Article 30(2)(d).

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 32 and costs incurred by the seller in sales in which he and the buyer are not related and where such costs are not incurred by the seller in sales in which he and the buyer are related.

(c) The tests set forth in subparagraph (b) are to be used at the initiative of the declarant and only for comparison purposes. Substitute values may not be established under the said subparagraph.'

4 Article 30 of that regulation provides:

'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 to the first subparagraph under which it can be determined, subject to the proviso that the order of application of subparagraphs (c) and (d) shall be reversed if the declarant so requests; it is only when such value cannot be determined under a particular subparagraph that the provisions of the next subparagraph in a sequence established by virtue of this paragraph can be applied.

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

(a) the transaction value of identical goods sold for export to the Community and exported at or about the same time as the goods being valued;

(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;

(c) the value based on the unit price at which the imported goods for identical or similar imported goods are sold within the Community in the greatest aggregate quantity to persons not related to the sellers;

(d) the computed value, consisting of the sum of:

– the cost or value of materials and fabrication or other processing employed in producing the imported goods,

– an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Community,

– the cost or value of the items referred to in Article 32(1)(e).

3. Any further conditions and rules for the application of paragraph 2 above shall be determined in accordance with the committee procedure.'

5 Article 31 of that code provides:

'1. Where the customs value of imported goods cannot be determined under Articles 29 or 30, it shall be determined, on the basis of data available in the Community, using reasonable means consistent with the principles and general provisions of:

– the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade of 1994,

– Article VII of the General Agreement on Tariffs and Trade of 1994,

– the provisions of this chapter.

2. No customs value shall be determined under paragraph 1 on the basis of:

(a) the selling price in the Community of goods produced in the Community;

(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;

(c) the price of goods on the domestic market of the country of exportation;

(d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with Article 30(2)(d);

(e) prices for export to a country not forming part of the customs territory of the Community;

(f) minimum customs values; or

(g) arbitrary or fictitious values.'

The Implementing Regulation

6 Article 142(1)(d) of the Implementing Regulation states:

‘For the purposes of this title:

…

(d) “similar goods” means goods produced in the same country which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable; the quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.’

7 Article 143(1)(b), (e) and (f) of that regulation provides:

‘For the purposes of Title II, Chapter 3 of the Code and of this Title, persons shall be deemed to be related only if:

…

(b) they are legally recognised partners in business;

…

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person.’

8 Article 181a of that 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 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 shall be communicated in writing to the person concerned.’

9 Annex 23 to the Implementing Regulation, entitled 'Interpretative notes on customs value', contains, inter alia, the interpretative notes with regard to Article 29(2) and (3) and Article 31(1) of the Community Customs Code and Article 143(1)(e) of that regulation:

Article 29(2)	1. Paragraphs 2(a) and (b) provide different means of establishing the acceptability of a transaction value. 2. Paragraph 2(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs authorities have no doubts about the acceptability of the price, it should be accepted without requesting further information from the declarant. For example, the customs authorities may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price. 3. Where the customs authorities are unable to accept the transaction value without further inquiry, they should give the declarant an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale, in this context, the customs authorities should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organise their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 143 of this Regulation, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realised over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced. 4. Paragraph 2(b) provides an opportunity for the declarant to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs authorities and is therefore acceptable under the provisions of Article 29. Where a test under paragraph 2(b) is met, it is not necessary to examine the question of influence under paragraph 2(a). If the customs authorities already have sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2(b) has been met, there is no reason for them to require the declarant to demonstrate that the test can be met.
Article 29(2)(b)	A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in Article 29(2)(b).

…	…
Article 31(1)	1. Customs values determined under the provisions of Article 31(1) should, to the greatest extent possible, be based on previously determined customs values. 2. The methods of valuation to be employed under Article 31(1) should be those laid down in Articles 29 and 30(2), but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 31(1). 3. Some examples of reasonable flexibility are as follows: … (b) *similar goods* – the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 30(2)(c) and (d) could be used; …
…	…
Article 143(1)(e)	One person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.'

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

10 Between 2009 and 2012, Baltic Master imported into Lithuania various quantities of goods originating from Malaysia, which it had purchased from Gus Group ('the seller'). In the customs declarations, those goods were presented as 'parts of air-conditioning machines'. Those declarations referred to only one TARIC code, together with the total weight of those goods in kilograms. In those declarations, Baltic Master indicated as the customs value the transaction value of those goods, that is to say, the price indicated on their purchase invoices.

11 Following an inspection of those imports by the Vilniaus teritorinė muitinė (Vilnius Regional Customs Authority, Lithuania), that customs authority drew up a report in which it explained that it had refused to take account of the transaction value indicated in 23 import declarations, on the ground that, owing to the nature of the business relations which Baltic Master had with the seller, those undertakings had to be regarded as being related persons, within the meaning of Article 29(1)(d) of the Community Customs Code, and that it was impossible to determine the customs value of the goods at issue on the basis of Articles 29 and 30 of that code. In that report, that authority established a customs value in accordance with Article 31 of that code, referring to the data available in the national authorities' customs information system for determining the value of goods for customs purposes.

12 Baltic Master challenged that report before the Customs Department attached to the Ministry of Finance of the Republic of Lithuania, which confirmed that report by decision of 31 March 2014.

13 Baltic Master appealed against that decision before the Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės (Tax Disputes Commission attached to the Government of the Republic of Lithuania). On 2 July 2014, the latter confirmed that decision but exempted Baltic Master from paying default interest.

14 Baltic Master subsequently brought an action before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania), in which it requested that a request for a preliminary ruling be made to the Court of Justice concerning the interpretation of Articles 29, 30 and 31 of the Community Customs Code and of Article 143 of the Implementing Regulation. By judgment of 5 January 2015, that court dismissed that action, taking the view that no interpretation of EU law was required.

15 Hearing an appeal against that judgment, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), the referring court, upheld that judgment by a judgment of 22 March 2016.

16 Following the judgment of the ECtHR of 16 April 2019, *Baltic Master LTD. v. Lithuania* (CE:ECHR:2019:0416JUD005509216), in which that court, seised of an appeal brought by Baltic Master against the Republic of Lithuania, found that there had been an infringement of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, on account of the inadequacy of the reasoning for the Lithuanian courts' refusal to refer a request for a preliminary ruling to the Court of Justice, the referring court granted an application for the proceedings brought by Baltic Master to be reopened.

17 According to the referring court, the file before it contains no document substantiating the existence of a relationship, for the purposes of Article 143(1) of the Implementing Regulation, between the seller and Baltic Master. There is no information which would permit the inference that those undertakings are legally recognised partners in business, within the meaning of Article 143(1)(b) of that regulation, or that there is a direct or indirect relationship of control, as referred to in Article 143(1)(e) and (f).

18 However, the referring court notes that it is established that, first, the seller and Baltic Master are linked by a long-term commercial relationship, second, the goods were supplied without a contract of sale defining delivery, payment, return of the goods and other conditions specific to such transactions, third, the goods were delivered without any advance payment and despite the fact that Baltic Master still owed significant amounts to the seller in respect of previous deliveries, fourth, no provision was made for enforcement or risk-mitigation measures notwithstanding the particularly high value of the transactions at issue, fifth, there is no evidence to suggest that the seller monitored the proper implementation of payments due and performance of other obligations and, lastly, sixth, cases were identified in which Baltic Master's employees acted on behalf of the seller under an authorisation and used its corporate stamp.

19 The factors listed in the preceding paragraph suggest that there is a particularly close relationship between Baltic Master and the seller, as a result of which the transactions at issue were executed under conditions that are not characteristic of the ordinary course of business and there is no objective factor capable of justifying the economic logic of those transactions. Such conduct corresponds to conduct in situations in which one of the parties controls the other or where both parties are controlled by a third party.

20 The referring court therefore takes the view that those facts are capable of indicating that there was de facto control, and that the parties to the transaction could be regarded as being related persons under Article 143(1)(e) or (f) of the Implementing Regulation. That court adds that, on the basis of those facts, the Vilnius Regional Customs Authority regarded Baltic Master and the seller as being related persons, in accordance with Article 143(1)(b) of that regulation, that is to

say, persons who are recognised as partners, but is unsure whether such a classification is well founded in the light of the wording of the latter provision, which refers to persons who are legally recognised as partners.

21 Furthermore, that court is uncertain whether it is possible to use the method for determining the customs value laid down in Article 31(1) of the Community Customs Code, in a situation such as that in the main proceedings, where, for that purpose, the customs authorities use information contained in a national database relating to only a single import of goods which, although ascribed to the same TARIC code and originating from the same source, cannot be regarded as similar within the meaning of Article 142(1)(d) of the Implementing Regulation.

22 In those circumstances, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 29(1)(d) of [the Community Customs Code] and Article 143[(1)](b), (e) or (f) of the [Implementing Regulation] be interpreted as meaning that the buyer and the seller are deemed to be related persons in cases where, as in the present case, in the absence of documents (official data) proving business partnership or control, the circumstances surrounding the conclusion of transactions are, however, on the basis of objective evidence, characteristic, not of the performance of economic activities under normal conditions, but rather of cases in which[, first,] there are particularly close business relations based on a high level of mutual trust between the parties to the transaction, or[, second,] one party to the transaction controls the other or both parties to the transaction are controlled by a third party?

(2) Must Article 31(1) of [the Community Customs Code] be interpreted as prohibiting determination of the customs value on the basis of information contained in a national database relating to one customs value of goods which have the same origin and which, although not similar, within the meaning of Article 142(1)(d) of [the Implementing Regulation], are ascribed to the same TARIC [code]?’

Consideration of the questions referred

The first question

23 By its first question, the referring court asks, in essence, whether Article 29(1)(d) of the Community Customs Code and Article 143(1)(b), (e) and (f) of the Implementing Regulation must be interpreted as meaning that the buyer and the seller must be deemed to be related, in a situation in which there is no document which makes it possible to establish such a relationship, but in which the circumstances surrounding the conclusion of the transactions at issue, substantiated by objective elements, may be regarded as demonstrating the existence of de facto control.

24 First of all, it should be recalled that the objective of EU law on customs valuation is to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values. The customs value must thus reflect the real economic value of an imported good and take into account all of the elements of that good that have economic value (judgment of 20 June 2019, *Oribalt Rīga*, C-1/18, EU:C:2019:519, paragraph 22 and the case-law cited).

25 In particular, by virtue of Article 29 of the Community 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, in particular, with Article 32 of that code (judgment of 19 November 2020, *5th AVENUE Products Trading*, C-775/19, EU:C:2020:948, paragraph 23 and the case-law cited).

26 As the Court has already stated, the customs value must be determined primarily according to the 'transaction value' method of the imported goods. That method of determining the customs value is thus assumed to be the most appropriate and the most frequently used (judgment of 19 November 2020, *5th AVENUE Products Trading*, C-775/19, EU:C:2020:948, paragraph 24 and the case-law cited).

27 As a general rule, the price actually paid or payable for the goods therefore forms the basis for calculating the customs value, even if 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 (judgment of 20 June 2019, *Oribalt Rīga*, C-1/18, EU:C:2019:519, paragraph 23 and the case-law cited).

28 That said, Article 29(1)(d) of the Community Customs Code allows for the transaction value of imported goods to be disregarded where two cumulative conditions are met, namely, first, that the buyer and the seller are related, within the meaning of that code, and, second, that that transaction value is not acceptable for the purposes of determining the customs value.

29 In accordance with Article 143(1) of the Implementing Regulation, persons may be regarded as being related only if they fall within one of the situations exhaustively listed in that provision. Thus, according to Article 143(1)(b), persons who are legally recognised partners are deemed to be related. The same applies, under Article 143(1)(e) and (f), where one person directly or indirectly controls the other or where both are directly or indirectly controlled by a third person.

30 In the first place, the argument put forward, in essence, by the Member States and by the European Commission in their respective observations, that the wording of Article 143(1) of the Implementing Regulation should be disregarded because a strict interpretation of that provision would be liable to undermine the effectiveness of Article 29(1)(d) of the Community Customs Code and affect the capacity of the customs authorities to disregard a transaction value, cannot be accepted.

31 It should be noted, first, that that argument disregards not only the exhaustive nature of the situations listed in Article 143(1) of the Implementing Regulation, but also the objective pursued by that provision and by Article 29 of the Community Customs Code. As follows from the case-law referred to in paragraphs 24 to 26 of the present judgment, the transaction value method of the imported goods constitutes the method which must be applied first in order to determine their customs value. Provisions which permit a departure from that method must therefore, as derogations from that principle, be interpreted strictly.

32 Second, there is no basis for the claim that the customs authorities' capacity to disregard an inappropriate transaction value is likely to be affected as a result of a strict interpretation of Article 143(1) of the Implementing Regulation.

33 First of all, in accordance with its very wording, Article 143(1) of the Implementing Regulation covers a series of situations in which the customs authorities may regard the seller and the buyer as being related and in which they may therefore, where appropriate, disregard the transaction value referred to in Article 29(1) of the Community Customs Code.

34 Next, as the Commission emphasised at the hearing, Article 181a of the Implementing Regulation, which was introduced following the amendment of that regulation by Commission Regulation (EC) No 3254/94 of 19 December 1994, amending Regulation 2454/93 (OJ 1994 L 346, p. 1), permits the customs authorities to disregard the transaction value for the purposes of determining the customs value where those authorities take the view that the declared value does not reflect the real economic value of the imported goods, regardless of whether there is a relationship between Baltic Master and the seller (see, to that effect, judgments of 28 February 2008, *Carboni e derivati*, C-263/06, EU:C:2008:128, paragraph 52, and of 16 June 2016, *EURO 2004. Hungary*, C-291/15, EU:C:2016:455, paragraph 31).

35 In the second place, as regards the relationship between persons on account of being recognised partners in business, referred to in Article 143(1)(b) of the Implementing Regulation, it should be noted that the very wording of that provision excludes any de facto business relationship.

36 As the Advocate General noted in points 42 and 43 of his Opinion, that provision, which refers to persons that are 'legally recognised partners in business', requires, for the purposes of establishing the existence of a relationship, that the conditions laid down by the national provisions concerning recognised partners are satisfied, thus excluding any business relationship that is not legally recognised.

37 In the third place, as regards persons deemed to be related, according to Article 143(1)(e) and (f) of the Implementing Regulation, where one of those persons directly or indirectly controls the other, or where both are directly or indirectly controlled by a third person, it is important, as confirmed by the interpretative note on customs value concerning Article 143(1)(e), set out in Annex 23 to that regulation, to distinguish between, on the one hand, *de jure* control, and on the other, de facto control.

38 First, as regards the existence of *de jure* control, it is apparent from the information set out in paragraph 18 of the present judgment that there is no document which permits the inference that there is a direct or indirect relationship of *de jure* control, as referred to in Article 143(1)(e) and (f). *De jure* control therefore appears to be excluded in the dispute in the main proceedings, which it is for the referring court to ascertain.

39 Second, as regards the existence of de facto control, it follows from the interpretative note referred to in paragraph 37 of the present judgment that one person is to be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter (see, to that effect, judgment of 9 July 2020, *Direktor na Teritorialna direktsiya Yugozapadna Agentsiya 'Mitnitsi'*, C-76/19, EU:C:2020:543, paragraph 67).

40 The facts set out in paragraph 18 of the present judgment appear to demonstrate a close relationship of trust between the seller and Baltic Master but do not appear to support the conclusion that such a position of constraint or direction exists, which it is, however, for the referring court to confirm.

41 If, following those checks, the referring court were to conclude that, in the present case, the buyer and the seller are not related within the meaning of Article 29(1)(d) of the Community Customs Code, it would follow that the customs value of the imported goods had, in principle, to be determined on the basis of their transaction value and not on the basis of another method of valuation, such as that referred to in Article 31(1) of that code.

42 In the light of all of the foregoing considerations, the answer to the first question is that Article 29(1)(d) of the Community Customs Code and Article 143(1)(b), (e) and (f) of the Implementing Regulation must be interpreted as meaning that:

– the buyer and the seller may not be deemed to be legally recognised partners or to be related on account of a direct or indirect relationship of *de jure* control in a situation in which no document exists which makes it possible to establish such a relationship;

– the buyer and the seller may be deemed to be related on account of a direct or indirect relationship of de facto control in a situation in which the circumstances surrounding the conclusion of the transactions at issue, substantiated by objective elements, may be regarded as demonstrating not only that there is a close relationship of trust between that buyer and that seller, but that one of them is in a position to exercise constraint or direction over the other or that a third party is in a position to exercise such constraint or direction over them.

The second question

43 By its second question, the referring court asks, in essence, whether Article 31(1) of the Community Customs Code must be interpreted as precluding the determination of the customs value of imported goods, where it could not be determined in accordance with Articles 29 and 30 of that code, on the basis of information contained in a national database relating to a customs value of goods which have the same origin and which, although not 'similar', within the meaning of Article 142(1)(d) of the Implementing Regulation, are ascribed to the same TARIC code.

44 As a preliminary point, it must be observed that, as is apparent from paragraph 41 of the present judgment, the second question arises only if, following the checks which it is required to carry out in the light of the response to the first question, the referring court was bound to conclude that the customs authorities were entitled to reject the transaction value for the determination of the customs value of the goods concerned, on the ground that, in this case, the buyer and the seller are related within the meaning of Article 29(1)(d) of the Community Customs Code and that the transaction value is not acceptable for customs purposes under Article 29(2) of that code. If the referring court were to reach the opposite conclusion that the customs value of those goods had to be determined on the basis of their transaction value under Article 29 of the code, that customs value could not be determined on the basis of Article 31(1) of that code, with the result that the second question, which concerns the interpretation of that provision, would be devoid of purpose.

45 In that context, it must be borne in mind that it is clear, both from the wording of Articles 29 to 31 of the Community 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 16 June 2016, *EURO 2004. Hungary*, C-291/15, EU:C:2016:455, paragraph 29).

46 As regards, in particular, Article 30(2) of the Community Customs Code, it appears from the documents before the Court that the competent customs authorities were not entitled to use the methods for determining the customs value laid down in that provision, since Baltic Master decided to present the imported goods succinctly in the customs declarations, by confining itself to providing information concerning the TARIC code of those goods and their total weight, which it is nevertheless for the referring court to ascertain. In that regard, it will be for that court to take account of any information submitted by Baltic Master to those authorities for the purposes of applying either Article 29(2) of the Community Customs Code, read in the light of the interpretative note on customs value concerning Article 29(2), set out in Annex 23 to the Implementing Regulation, or Article 181a of that regulation.

47 Next, it should be pointed out that, in accordance with the wording of Article 31(1) of the Community Customs Code, where the customs value of imported goods cannot be determined under Articles 29 and 30 of that code, it is to be determined, on the basis of data available in the European Union, using reasonable means consistent with the principles and general provisions of the international agreements and the provisions of Chapter 3 of that code.

48 Finally, point 1 of the interpretative note on customs value concerning Article 31(1) of the Community Customs Code, set out in Annex 23 to the Implementing Regulation, states first of all that the customs values determined under that provision should, to the greatest extent possible, be based on previously determined customs values. Point 2 of that note then points out that the methods of valuation to be employed under that provision should be those laid down in Articles 29 to 30(2) of that code, but that a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 31 of that code.

49 It is apparent from the information provided by the referring court, first, that Baltic Master described the imported goods at issue in its customs declarations as ‘parts of air-conditioning machines’, classifying them under a single TARIC code and stating the total weight of those goods in kilograms. Second, according to that information, the customs authority in question disregarded the transaction value declared by Baltic Master and determined the customs value of those goods in accordance with Article 31(1) of the Community Customs Code, using data contained in a national database relating to goods imported by another importer in 2010, that is to say, the year following that of the first importation at issue in the main proceedings, declared under the same TARIC code and originating from the same manufacturer.

50 In the present case, the TARIC code used comprises a disparate collection of parts of air-conditioning machines, such as plastic panels for motor machines, metal rings, pipes, transmission cables, switches, pressure sensors, devices for distribution by ventilators in building floors and electronic circuits.

51 Thus, the referring court is uncertain whether, in view of the heterogeneity of the parts ascribed to that TARIC code and the absence of a detailed description of the imported goods, a determination of the customs value of those imported goods under Article 31(1) of the Community Customs Code on the basis of the transaction value of similar goods is possible in the dispute before it, whereas the term ‘similar goods’, defined in Article 142(1)(d) of the Implementing Regulation, presupposes a homogeneity of the imported goods, which is difficult to reconcile with the range of goods classified under that TARIC code.

52 In that regard, it should be noted that the definition of that term in Article 142(1)(d) relates to the determination of the customs value under Article 30(2)(b) of the Community Customs Code. While it is apparent from point 2 of the interpretative note, referred to in paragraph 48 above, that the valuation methods to be used under Article 31 of that code should be those defined in Articles 29 and 30(2) thereof, that point of the note states that those methods must be applied with reasonable flexibility, in particular as regards the assessment of the term 'similar goods'.

53 In the circumstances of this case, it cannot be considered unreasonable for the customs authorities – after they have disregarded, in accordance with the relevant provisions of the Community Customs Code, the transaction value of imported goods for the purposes of determining their customs value – to rely, in the course of a subsequent verification, on information submitted by the declarant, namely the weight of those goods and the TARIC code to which they belong. In the present case, it must be recalled that that code is based on a system of declarations, with the aim of keeping customs formalities and controls to a minimum while preventing fraud or irregularities that could harm the EU budget (judgment of 9 July 2020, *Unipack*, C-391/19, EU:C:2020:547, paragraph 22).

54 Therefore, taking into account, first of all, the need to establish a customs value in the event that an undertaking does not provide sufficiently accurate or reliable information concerning the customs value of the goods concerned, and subsequently, the due care which customs authorities must exercise when applying each of the successive methods of determining the customs value (see, to that effect, judgment of 9 November 2017, *LS Customs Services*, C-46/16, EU:C:2017:839, paragraph 52) and, lastly, the 'reasonable flexibility' with which those methods must be applied in accordance with point 2 of the interpretative note, referred to in paragraphs 48 and 52 of this judgment, it must be accepted that the data contained in a national database relating to goods ascribed to the same TARIC code and originating from the same seller as the goods concerned, constitute 'data available in the [European Union]', within the meaning of Article 31(1) of the Community Customs Code, which may be used as a basis for the purposes of determining the customs value of the goods concerned.

55 Reference to such data constitutes a means of determining a customs value which is both 'reasonable' within the meaning of Article 31(1) and consistent with the principles and general provisions of the international agreements and the provisions referred to in Article 31(1) (see, to that effect, judgment of 9 March 2017, *GE Healthcare*, C-173/15, EU:C:2017:195, paragraph 81).

56 In the light of all of the foregoing considerations, the answer to the second question is that Article 31(1) of the Community Customs Code must be interpreted as not precluding the determination of the customs value of imported goods, where it could not be determined in accordance with Articles 29 and 30 of that code, on the basis of information contained in a national database relating to a customs value of goods which have the same origin and which, although not 'similar' within the meaning of Article 142(1)(d) of the Implementing Regulation, are ascribed to the same TARIC code.

Costs

57 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 (Second Chamber) hereby rules:

1. **Article 29(1)(d) of Council Regulation (EEC) 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, and Article 143(1)(b), (e) and (f) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, as amended by Commission Regulation (EC) No 46/1999 of 8 January 1999, must be interpreted as meaning that:**

   – **the buyer and the seller may not be deemed to be legally recognised partners or to be related on account of a direct or indirect relationship of *de jure* control in a situation in which no document exists which makes it possible to establish such a relationship;**

   – **the buyer and the seller may be deemed to be related on account of a direct or indirect relationship of de facto control in a situation in which the circumstances surrounding the conclusion of the transactions at issue, substantiated by objective elements, may be regarded as demonstrating not only that there is a close relationship of trust between that buyer and that seller, but that one of them is in a position to exercise constraint or direction over the other or that a third party is in a position to exercise such constraint or direction over them.**

2. **Article 31(1) of Regulation No 2913/92, as amended by Regulation No 82/97, must be interpreted as not prohibiting the determination of the customs value of imported goods, where it could not be determined in accordance with Articles 29 and 30 of that code, on the basis of information contained in a national database relating to a customs value of goods which have the same origin and which, although not 'similar' within the meaning of Article 142(1)(d) of Regulation No 2454/93, as amended by Regulation No 46/1999, are ascribed to the same TARIC code.**

[Signatures]