In Case 231/81

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

HAUPTZOLLAMT [Principal Customs Office] WÜRZBURG

and

H. WEIDENMANN GMBH & CO.

Intervener: BUNDESMINISTER DER FINANZEN [Federal Minister of Finance]

on the interpretation of Regulation (EEC) No 3004/75 of the Council of 17 November 1975 opening preferential tariffs for certain textile products originating in developing countries (Official Journal L 310, p. 24) and Council Regulation (EEC) No 3022/76 of 13 December 1976 opening, allocating and providing for the administration of Community tariff preferences for textile products originating in developing countries and territories (Official Journal L 349, p. 69),

THE COURT (Third Chamber)

composed of: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

On 20 December 1976 the plaintiff in the main action and respondent in the appeal (hereinafter referred to as "the plaintiff"), Hellmuth Weidenmann GmbH & Co. of 3 Kolpingstraße, Aschaffenburg, entered for home use 41 bales of worsted yarn fabric falling within subheading 53.11 B II of the Common Customs Tariff which it had imported from Argentina. In the customs declaration accordingly it gave Argentina as the country of origin. It also undertook to produce the certificate of origin at a later date. The Hauptzollamt therefore issued a provisional assessment to duty dated 21 December 1976 charging only import turnover tax on the consignment; at the same time it requested the plaintiff to produce the certificate of origin no later than 15 January 1977. The plaintiff did not send the certificate until 2 February 1977, however.

On 3 February 1977, therefore, the Hauptzollamt issued a corrective notice claiming DM 5 840·99, being customs duty at the rate of 18% as provided for by the Common Customs Tariff, on the ground that by virtue of Direction C of the German Gebrauchszolltarif [Working Tariff] a preferential duty could not be granted after 15 January 1977.

On appeal by the plaintiff the Finanzgericht München [Finance Court, Munich] annulled the corrective notice by a judgment of 21 February 1979. In the statement of the grounds on which its decision was based the court stated that the imported goods were exempt from customs duty pursuant to Article 1 (1) and (2) of Regulation (EEC) No 3004/75 and the conditions for suspension of customs duty were met. The court was of the opinion that Article 3 (2) of Regulation No 3004/75 indicated that the certificate of origin might be presented even *ex post facto,* as was borne out by the second paragraph of Article 11 of Regulation (EEC) No 3214/75 of the Commission of 3 December 1975 on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the European Economic Community in respect of certain products from developing countries (Official Journal L 323, p. 1). It considered further that as a matter of law the application of the suspension of customs duties not be restricted by Direction C of the German Gebrauchszolltarif.

The Hauptzollamt Würzburg lodged an appeal on a point of law [Revision] principally on the ground that grant of a preferential tariff was not justified if all the requirements of Regulation No 3004/75 were not fulfilled within the period during which it was in force. That rule is based on the fact that "it is possible to check the ceilings and maximum amounts only if at the time the volume of imports is ascertained no changes having retroactive effect might still occur".

Moreover, it would not in the opinion of the Hauptzollamt have been possible for the imports to be charged against the ceilings obtaining in the following period of preferential treatment since Regulation No 3022/76 which was applicable for 1977 did not cover imports already effected in 1976.

The plaintiff alleges that the appeal is based solely on the argument that the time-limit for producing the certificates of origin, fixed in Direction C as being 15 January 1977, "is a provision of substantive law and therefore constitutes an absolute time-bar". That argument is irrelevant, however, because no agreement has been reached at Community level on the fixing of an absolute time-limit for producing the certificate of origin and therefore rules of that nature cannot have the force of substantive law.

In any case if, contrary to its view, there was no entitlement to exemption from duty under Regulation No 3004/75, there would be such entitlement under Regulation No 3022/76. The plaintiff maintains that the meaning and purpose of both regulations is to increase within the appropriate limits the volume of imports from developing countries; to restrict their scope "by petty bureaucracy and formalism would be to frustrate supra-national endeavours".

The Federal Minister of Finance intervened in the proceedings to propose that a preliminary ruling be obtained from the Court of Justice.

The Bundesfinanzhof considers that the effect of Article 3 (1) of Regulation No 3004/75 is that if one of the conditions has not been fulfilled the imports may not be charged as permitted in that article and therefore there can be no suspension of customs duty.

Nevertheless, it is of the opinion that consideration should be given to whether those conditions must be fulfilled during the period when customs duties are suspended pursuant to Article 1 (1) of Regulation No 3004/75, or whether the certificate of origin may be produced even after that period has expired.

It therefore decided by an order of 10 July 1981 to stay the proceedings and request a preliminary ruling from the Court of Justice on the following questions:

"1. Is it possible for the suspension of customs duties pursuant to Article 1 of Regulation (EEC) No 3004/75 to apply in the case of goods which were in fact imported, presented and entered for home use in 1976 but for which the certificate of origin was not produced until February 1977?

2. If the answer to Question 1 is in the affirmative: Is that also the case if production of the certificate of origin in 1977 was permissible, but only earlier — on or before 15 January 1977?

3. If the answer to Question 1 is in the negative: Is it possible for the suspension of customs duties pursuant to Article 1 of Regulation (EEC) No 3022/76 to apply in the case of goods which were in fact imported, presented and entered for home use in 1976 but for which the certificate of origin was produced in 1977?"

The order containing the reference was lodged at the Court Registry on 10 August 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the Commission of the European Communities, represented by its Legal Adviser, P. Gilsdorf, acting as Agent, assisted by J. Grünwald, a member of the Commission's Legal Department.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided by an order dated 20 January 1982 to assign

the case to the Third Chamber pursuant to Article 95 of the Rules of Procedure and to open the oral procedure without any preparatory inquiry.

II — Observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The *Commission* submits, first, that Regulation No 3004/75 contains no express provisions concerning late production of certificates of origin. It argues that their absence may not be considered as either prohibiting or authorizing late production of the certificate. However, the wording of Article 3 (2) and the general aim of the regulation would seem to imply that "within limits, late production of the certificate of origin is lawful under the regulation". A rule to that effect would constitute an implementing measure, however, which it is for the Commission to adopt in accordance with Article 4 (1) of Regulation No 3004/75. Moreover, if there are no Community provisions concerning late production of certificates of origin such procedural problems must be reserved to national legislation.

Provisions governing the implementation of Regulation No 3004/75 have been adopted, however, in Regulation (EEC) No 3214/75 of the Commission. Article 7 of the regulation lays down specifically the duration of the validity of the certificate of origin as far as tariff preferences are concerned by stating that the certificates may be produced "to the Community customs office at which the goods are presented, within five months of the date of issue by the responsible governmental authority of the exporting beneficiary country", it being possible to extend the period to 10 months. The effect of that provision is that a certificate of origin which is produced after importation must be taken into consideration for as long as the period mentioned above continues to run, for in the absence of an express and unambiguous provision in Regulation No 3214/75 concerning any restriction on the duration of the validity of the certificate of origin whereby the latter ceases to be valid after the importation has been effected "no restrictive interpretation of the provision may be countenanced in view of the certificate-holder's legitimate expectation that he may rely on the provisions of Article 7".

As a result, the customs office in which the formalities are completed is at liberty pursuant to the second paragraph of Article 11 of Regulation No 3214/75 to decide whether or not it will take the certificate of origin into consideration after expiry of the period laid down for production thereof contained in Article 7 of Regulation No 3214/75.

However, in view of the fact that national provisions reducing the duration of the validity of the certificate of origin laid down in Article 7 of Regulation No 3214/75 would be inapplicable on the ground that they contravene the provisions of that article, the Commission submits that "certificates of origin may be produced even after the products have been presented to customs and declared for entry for home use at any time before expiry of the period within which they must be produced according to Article 7 of Regulation No 3214/75 and prior to the date on which the charging of duty is re-introduced pursuant to Article 3 (2) of Regulation No 3004/75".

The Commission considers that such a conclusion is not affected by the argument advanced by the Hauptzollamt before the Bundesfinanzhof to the effect, on the one hand, that Article 7 was not intended to resolve the special problem of late production of the certificate of origin and, on the other hand, that the time-limit for production mentioned therein may be considered on mainly

practical grounds to be too generous in certain cases of late production.

The decisive criterion for determining the correct interpretation and application of Article 7 is in fact, the Commission submits, "the objectively explanatory nature of the provision". The wording of the article does not indicate that the certificate of origin remains valid only until the goods are declared to customs and the allowance under Community law of a uniform minimum time-limit for production in accordance with the terms of Article 7 would be compatible with the interests of legal certainty.

In addition it should be possible to produce a certificate of origin *ex post facto* within the period laid down by Article 7 even when that period expires after the end of the period of preferential treatment — 31 December 1976 in this case — since that date merely indicates the last date for declaring products which are to be placed in free circulation. There is "neither a legal obligation nor a practical need to require all the customs procedures initiated under the preferential scheme to be terminated on 31 December, which would moreover be impossible in practice in every case where the declaration of entry for home use is made only on the last day of December".

Consequently *ex post facto* production of certificates of origin is permissible even after expiry of the period of preferential treatment provided that the charging of customs duty has not been re-introduced by that date, irrespective of whether or not the ceilings have been reached at the Community level by the end of the year.

Finally, as to whether a certificate of origin produced *ex post facto* may be taken into consideration even when it might have been produced earlier, the Commission notes that "the mere fact that the certificate of origin might have been produced earlier does not have the effect of reducing its period of validity". Once that period of validity has expired, however, the customs authorities concerned in the matter may decide whether or not to accept such a certificate.

By way of an alternative the Commission considers the third question in the reference.

It submits the for Regulation No 3022/76 to be of application the goods in question must have been imported into the Community in the course of 1977. In view of the fact that in this instance the declaration for release into free circulation was made in 1976, whether or not the importation may be charged against 1977 depends on whether, if the declaration for release into free circulation is incomplete, the relevant date for tariff purposes is the date of that declaration or a subsequent date.

At the time in question that problem had not been resolved by Community law and was therefore governed by the laws of the Member States. Howsoever that may be, the Commission considers that the objections raised on the subject by the Bundesfinanzhof to the effect that charging the importation against 1977 would discriminate against importers who fulfilled all the conditions for exemption from customs duties in 1977 are unfounded because a preferential scheme of that nature is not designed to procure advantages for importers but to encourage trade with the countries in which the goods in question originated.

In any case the question concerning the date of an incomplete declaration has been settled in the meantime by Article 6 (3) of Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for

free circulation (Official Journal L 205, p. 19) which provides that such a declaration may be replaced by a subsequent one. In that case the operative date for the fixing of the import duties is "the date of acceptance of the incomplete entry".

Accordingly, the Commission suggests that the replies to the questions which have been raised be as follows:

"1. The suspension of customs duties pursuant to Article 1 of Regulation (EEC) No 3004/75 may apply in the case of goods which were imported, presented to customs and declared for release into free circulation in 1976, but in respect of which the certificate of origin was produced in February 1977, provided that the time-limit for production of the certificate laid down in Article 7 of Regulation (EEC) No 3214/75 had not passed when the certificate was produced. That applies irrespective of whether or not the certificate of origin might have been produced at an earlier date.

2. If the period within which the certificate must be produced pursuant to Article 7 of Regulation (EEC) No 3214/75 had already expired when the certificate of origin was produced the decision whether or not to take account of the certificate of origin under the second paragraph of Article 11 of that regulation is a matter for the customs authorities concerned."

III — Oral procedure

At the sitting on 11 March 1982 the Commission of the European Communities, represented by J. Grunwald, acting as Agent, presented oral argument and replied to questions put by the Court.

The Advocate General delivered his opinion at the sitting on 29 April 1982.

Decision

1 By an order of 10 July 1981 which was received at the Court on 10 August 1981 the Bundesfinanzhof [Federal Finance Court] referred to the Court of Justice for a preliminary ruling under Article 177 of the Treaty three questions concerning the interpretation of Regulation (EEC) No 3004/75 of the Council of 17 November 1975 opening preferential tariffs for certain textile products originating in developing countries (Official Journal L 310, p. 24) and Council Regulation (EEC) No 3022/76 of 13 December 1976 opening, allocating and providing for the administration of Community tariff references for textile products originating in developing countries and territories (Official Journal L 349, p. 69).

2 The request for an interpretation was made in the course of an action between Hellmuth Weidenmann GmbH & Co., who had imported bales of worsted yarn fabric from Argentina, and the Hauptzollamt [Principal

Customs Office] Würzburg concerning the latter's refusal to exempt the imported goods from customs duties pursuant to the regulations referred to above.

3 According to the Hauptzollamt Weidenmann did not produce the certificate of origin for the goods until 2 February 1977, although they were imported on 20 December 1976 and the customs authorities had requested that the certificate of origin be produced by 15 January 1977 pursuant to Direction C of the German Gebrauchszolltarif [Working Tariff], according to which a preferential duty may not be granted unless a certificate of origin has been produced prior to that date.

4 Regulation No 3004/75 provided for the suspension of customs duties on some products originating in certain countries from 1 January to 31 December 1976. Since the importation in question met the conditions laid down in that regulation the question arose whether it was within the maximum amount for which customs duties were suspended and whether it fell within the period during which a quantity of goods could be imported free of duty. Article 3 (1) of Regulation No 3004/75 provided that in order to determine when the maximum amount had been reached: "Imports of the products in question shall be actually charged against the Community ceilings and maximum amounts as and when the products are entered for home use and provided that they are accompanied by a certificate of origin." Article 3 (2) stipulated that: "Goods may be charged against a ceiling or maximum amount only if the certificate of origin ... is presented before the date on which the levying of duties is re-introduced."

5 That is the legal background to the dispute submitted in the last instance to the Bundesfinanzhof, which decided to refer to the Court for a preliminary ruling the following three questions:

"1. Is it possible for the suspension of customs duties pursuant to Article 1 of Regulation (EEC) No 3004/75 to apply in the case of goods which were in fact imported, presented and entered for home use in 1976 but for which the certificate of origin was not produced until February 1977?

2. If the answer to Question 1 is in the affirmative: Is that also the case if production of the certificate of origin in 1977 was permissible, but only earlier — on or before 15 January 1977?

3. If the answer to Question 1 is in the negative: Is it possible for the suspension of customs duties pursuant to Article 1 of Regulation (EEC) No 3022/76 to apply in the case of goods which were in fact imported, presented and entered for home use in 1976 but for which the certificate of origin was produced in 1977?"

First question

6 The first question raised by the Bundesfinanzhof asks the Court whether, the regulations being silent on the subject, a certificate of origin presented after goods eligible for the preferential tariffs introduced by the Community have been imported, presented and entered for home use in 1976 may be taken into account as regards the customs duties suspended from 1 January to 31 December 1976 by Regulation No 3004/75 if the certificate was not produced until February 1977.

7 The system of tariff preferences granted by the Community which was introduced by the above-mentioned regulation is one of the measures adopted by the Community as part of the trade policy of development aid agreed upon by the United Nations Conference on Trade and Development for the adoption of a policy of development cooperation on a world-wide scale comprising in particular the improvement of tariff preferences with the aim of achieving a steady increase in imports of manufactured products from developing countries.

8 Considered in that context, the system of tariff preferences, whilst it may involve the requirement of a certificate of origin in order to justify the application of preferential rates, must not be understood as authorizing excessively restrictive administrative measures in the actual machinery for checking the origin of the goods.

9 The way in which Regulation No 3004/75 was drafted reflects that concern. The wording of Article 3 (1) of Regulation No 3004/75 does not indicate whether the certificate of origin must be produced at the same time as the goods are declared for customs purposes, but paragraph 2 of the same article

shows that the two need not coincide, for it states that: "Goods may be charged against a ceiling ... only if the certificate of origin is presented before the date on which the levying of duties is reintroduced." In the light of those provisions and the aims described above, it may be concluded that the certificate may be presented after the goods have been entered for customs purposes, provided that it is presented before the levying of duties is reintroduced.

10 As far as the time-limit for producing the certificate of origin is concerned, reference must be made, since Regulation No 3004/75 is silent on the point, to the supplementary rules contained in Regulation (EEC) No 3214/75 of the Commission of 3 December 1975 (Official Journal L 323, p. 1). The combined provisions of Articles 7 and 11 of that regulation indicate that the certificate of origin:

(i) is normally valid for a period of five months after the date of issue by the responsible government authority of the exporting beneficiary country;

(ii) is valid for up to 10 months when the products pass through the territory of one or more countries in accordance with the provisions of Article 5 (1) (b);

(iii) may be presented only within its period of validity, save in the case of *force majeure* or in exceptional circumstances;

(iv) may, apart from those two exceptions, be accepted by the competent customs authorities where the products have been presented to them before the expiry of the certificate's validity.

11 Those considerations, which are principally concerned with the certificate's period of validity, are not sufficient to answer the precise question raised by the national court. They do show, however, that the certificate of origin may properly be produced within a period extending several months after importation has been effected, thus entitling traders to believe that they may produce any certificate for as long as it remains valid as described above.

12 In the absence of any express provision to the contrary an importer might not be denied the right to produce a valid certificate after the expiry of the

period during which Regulation No 3004/75 was in force provided that the certificate related to a transaction effected during that time. If the Commission did not reintroduce the duties in the year in question production of the certificate *ex post facto* in the early months of the following year could not, any more than subsequent production in the same year, prejudice the effectiveness of the regulation, *a fortiori* as the goods might be charged against a ceiling as soon as they were entered for home use. Such reasoning is justified in the present instance by the fact that the ceilings were not declared to have been reached in 1976 and that the suspension of duties continued into 1977 without interruption or alteration.

13 The reply to be given to the national court is therefore that the suspension of customs duties pursuant to Article 1 of Regulation (EEC) No 3004/75 of the Council might apply in the case of goods which were imported, presented and entered for home use in 1976 even though the certificate of origin was produced after that regulation ceased to apply, provided that the certificate was valid and was produced in accordance with the conditions laid down in Articles 7 and 11 of Regulation No 3214/75 of the Commission.

Second question

14 In view of the reply given to the first question the reply to the second question must be that since the validity of a certificate of origin is a matter of fact the certificate must be accepted if it satisfies Community requirements such as those described above, notwithstanding any requirement which the national customs authorities have thought it necessary to impose unilaterally. Article 4 (1) of Regulation No 3004/75 provides, in fact, that it is for the Commission, in close cooperation with the Member States, to take all necessary measures to ensure that the regulation is applied. Since the Community regulations are complete in themselves it is not necessary to have recourse to any national rules adopted unilaterally which are intended to govern the way in which they are to be implemented.

Third question

15 Since the reply to the first question is in the affirmative it is not necessary to reply to the third question.

Costs

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

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Bundesfinanzhof, hereby rules:

1. **The suspension of customs duties pursuant to Article 1 of Regulation (EEC) No 3004/75 of the Council might apply in the case of goods which were imported, presented and entered for home use in 1976 even though the certificate of origin was produced after that regulation ceased to apply, provided that the certificate was valid and that it was produced in accordance with the conditions laid down in Articles 7 and 11 of Regulation No 3214/75 of the Commission.**

2. **A valid certificate of origin must be accepted notwithstanding any requirement which the national customs authorities have thought it necessary to impose unilaterally.**

Touffait Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 10 June 1982.

J. A. Pompe
Deputy Registrar

A. Touffait
President of the Third Chamber