Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

7 April 2016*

(Reference for a preliminary ruling — Customs Union and Common Customs Tariff — Community Customs Code — Tariff Preferences — Regulation (EEC) No 2454/93 — Article 74(1) — Products originating from a beneficiary country — Transport — Consignments composed of a mixture of crude palm kernel oil originating in several countries benefiting from the same preferential treatment)

In Case C-294/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), made by decision of 8 May 2014, received at the Court on 16 June 2014, in the proceedings

ADM Hamburg AG

v

Hauptzollamt Hamburg-Stadt,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan, A. Prechal and K. Jürimäe, Judges,

Advocate General: N. Wahl,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 11 June 2015,

after considering the observations submitted on behalf of:

— ADM Hamburg AG, by H.-J. Prieß and R. Stein, Rechtsanwälte,

— the Hauptzollamt Hamburg-Stadt, by J. Thaler, acting as Agent,

— the European Commission, by L. Groenfeldt and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 September 2015,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 74 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EU) No 1063/2010 of 18 November 2010 (OJ 2010 L 307, p. 1) ('Regulation No 2454/93').

2 The request has been made in proceedings between ADM Hamburg AG ('ADM Hamburg') and Hauptzollamt Hamburg-Stadt (Principal Customs Office of the City of Hamburg) ('the Customs Office') regarding the legality of an import duty notice concerning consignments of crude palm kernel oil.

Legal context

Regulation No 2454/93

3 Article 72 of Regulation No 2454/93 provides:

'The following products shall be considered as originating in a beneficiary country:

(a) products wholly obtained in that country within the meaning of Article 75;

(b) products obtained in that country incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing within the meaning of Article 76.'

4 Article 74(1) and (2) of that regulation provides:

'1. The products declared for release for free circulation in the European Union shall be the same products as exported from the beneficiary country in which they are considered to originate. They shall not have been altered, transformed in any way or subjected to operations other than operations to preserve them in good condition, prior to being declared for release for free circulation. Storage of products or consignments and splitting of consignments may take place when carried out under the responsibility of the exporter or of a subsequent holder of the goods and the products remain under customs supervision in the country or countries of transit.

2. Compliance with paragraph 1 shall be considered as satisfied unless the customs authorities have reason to believe the contrary; in such cases, the customs authorities may request the declarant to provide evidence of compliance, which may be given by any means, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages or any evidence related to the goods themselves.'

5 Article 97l(1) and (2) of that regulation is worded as follows:

'1. Certificates of origin Form A, a model of which is set out in Annex 17, shall be issued on written application from the exporter or its authorised representative, together with any other appropriate supporting documents proving that the products to be exported qualify for the issue of a certificate of origin Form A.

2. The certificate shall be made available to the exporter as soon as the export has taken place or is ensured. However, a certificate of origin Form A may exceptionally be issued after exportation of the products to which it relates, if:

(a) it was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or

(b) it is demonstrated to the satisfaction of the competent governmental authorities that a certificate of origin Form A was issued but was not accepted at importation for technical reasons.'

6 Article 97n (1) of that same regulation states:

'Certificates of origin Form A or invoice declarations shall be submitted to the customs authorities of the Member States of importation in accordance with the procedures concerning the customs declaration.'

Regulation (EC) No 732/2008

7 Recitals 6 and 9 of Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007 (OJ 2007 L 211, p.1) are worded as follows:

'(6) The general arrangement should be granted to all those beneficiary countries which are not classified by the World Bank as high-income countries and which are not sufficiently diversified in their exports.

...

(9) These preferences should be designed to promote further economic growth and, thereby, to respond positively to the need for sustainable development. Under this arrangement, the *ad valorem* tariffs should therefore be suspended for the beneficiary countries concerned, as well as the specific duties, unless combined with an *ad valorem* duty.'

8 Article 5(1) and (2) of that regulation provides:

'1. The tariff preferences provided shall apply to imports of products included in the arrangement enjoyed by the beneficiary country in which they originate.

2. For the purposes of the arrangements referred to in Article 1(2), the rules of origin concerning the definition of the concept of originating products, the procedures and the methods of administrative cooperation related thereto, shall be those laid down in Regulation [No 2454/93].'

Regulation No 1063/2010

9 Regulation No 1063/2010 consolidated the provisions of Regulation No 2454/93 relevant to the dispute in the main proceedings.

10 Recitals 3 and 16 of Regulation No 1063/2010 are worded as follows:

'(3) In the context of the Doha Development Agenda, the need to ensure a better integration of developing countries into the world economy has been recognised, in particular through improved access to the markets of developed countries.

For that purpose, the rules of preferential origin should be simplified and, where appropriate, made less stringent, so that products originating in beneficiary countries can actually benefit from the preferences granted.

...

(16) ...

The current rules require evidence of direct transport to the European Union which is frequently difficult to obtain. Due to that requirement, some goods which are accompanied by a valid proof of origin cannot actually benefit from preference. It is therefore appropriate to introduce a new, simpler and more flexible rule which focuses on the aim that goods presented to customs upon declaration for release for free circulation in the European Union are the same ones that left the beneficiary country of export and have not been altered or transformed in any way en route.'

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

11 On 11 August 2011, ADM Hamburg imported a number of consignments of crude palm kernel oil from Ecuador, Colombia, Costa Rica and Panama to Germany for release for free circulation in the European Union. Those four countries, which have the status of developing countries benefiting from the generalised system of preferences granted by the EU under its scheme of generalised preferential tariffs introduced by Regulation No 732/2008 ('the relevant GSP countries'), issued certificates of origin Form A in respect of those various consignments.

12 During its transport to the European Union, the palm kernel oil was loaded in different tanks on a cargo vessel. In three of those tanks consignments originating respectively from three of the relevant GSP countries were loaded and transported separately. In a fourth tank, ADM Hamburg mixed the oil from different consignments coming from each of the four relevant GSP countries.

13 On arrival of the goods in Germany, ADM Hamburg presented the certificates of origin Form A, requesting in respect of the whole palm kernel oil shipment the application of a preferential customs treatment under the scheme of generalised tariff preferences.

14 By notice of 8 December 2011, the Customs Office fixed the import duties without granting preferential treatment for the part of the consignment consisting of a mix of oils stored in the fourth tank and decided to impose, on that part of the consignment, import duties calculated at the full rate.

15 Following the rejection of its administrative complaint, ADM Hamburg brought an action before the Finanzgericht Hamburg (Finance Court, Hamburg) in which it requested the annulment of the import duty notice of 8 December 2011.

16 In support of its action, ADM Hamburg contends, inter alia, that the common storage of oils for transport purposes is origin-neutral, whereas the Customs Office takes the view that preferential customs treatment can be granted only to products in respect of which an absence of alteration is established; that has not been established in the present case.

17 In those circumstances, the Finanzgericht Hamburg (Finance Court, Hamburg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the factual condition laid down in the first sentence of Article 74(1) of [Regulation No 2454/93], whereby the products declared for release for free circulation in the European Union must be the same products as exported from the beneficiary country in which they are considered to originate, fulfilled in a case such as the present case, where several consignments of crude palm kernel oil are

exported from different GSP exporting countries, in which they are considered to originate, and imported into the European Union not as physically separate consignments, but are all exported after being poured into the same tank of the cargo vessel and imported as a mixture in that tank into the European Union, such that it can be ruled out that other products (not enjoying preferential treatment) have been put into the tank of the cargo vessel during the time the products were being transported until they were released for free circulation?'

Consideration of the question referred

18 By its question the referring court asks, in essence, whether Article 74(1) of Regulation No 2454/93 must be interpreted as meaning that in a situation, such as that at issue in the main proceedings, where valid certificates of origin have been presented, the preferential origin, within the meaning of the scheme of generalised tariff preferences established by Regulation No 732/2008, of consignments of crude palm kernel oil may be recognised even when those goods have been mixed in the tank of a ship during their transport to the EU, in circumstances where it may be ruled out that other products, in particular products which do not benefit from any preferential scheme, have been added to that tank.

19 Article 74(1) of Regulation 2454/93 requires, inter alia, first, that the products declared for release for free circulation in the European Union be those that have been exported from the beneficiary country in which they are considered to originate and, secondly, that they have not undergone any alteration or transformation nor been subjected to operations other than those necessary to preserve them in good condition, prior to being declared for release for free circulation.

20 In that regard, it must be observed that, according to the order for reference, the products at issue in the main proceedings are completely interchangeable and present the same characteristics. Therefore, the mixing of those products during transport does not alter their substance.

21 Furthermore, it is not disputed that the consignments of crude palm kernel oil at issue in the main proceedings each benefit from a valid certificate of preferential origin. Therefore, those consignments fall, in principle, within the same tariff arrangement.

22 Moreover, it follows from the findings made by the referring court that it can be ruled out that other products subject to a different tariff arrangement might have been added, in the fourth tank of the cargo vessel, to the mixture of oils originating from the various consignments from each of the four relevant GSP countries.

23 Therefore, the mixing of products with characteristics such as those of the consignments of crude palm kernel oil at issue in a tank of a vessel at the time of transport to the European Union cannot, in itself, result in those products not being those which have been exported from the beneficiary country from which they are considered to originate.

24 For that reason, in order to determine whether the requirements laid down in Article 74(1) of Regulation No 2454/93 are satisfied, it is necessary to ascertain whether the mixing of products with characteristics such as those of the consignments of crude palm oil at issue in the main proceedings constitutes an alteration, a transformation or an operation within the meaning of that provision.

25 In that regard, it must be held that the reading alone of the second sentence of that provision does not allow the meaning of the terms 'alteration', 'transformation' and 'operation' to be determined with certainty.

26 Furthermore, it must be stated that Regulation No 2454/93 does not define those terms.

27 It should be noted that, where the wording of a provision of EU law is unclear, account should be taken of the context of that provision and of its objectives (judgment in *PPG and SNF* v *ECHA*, C-625/11 P, EU:C:2013:594, paragraph 34 and the case-law cited).

28 As noted by the Advocate General in points 24 to 25 of his Opinion, Article 74 of Regulation No 2454/93 appears in Chapter 2, Title IV, Part I of that regulation which concerns preferential origin. More specifically, that provision constitutes a part of sub-section 2 of Section 1 which deals with the definition of the concept of 'originating products', namely products originating in a GSP country.

29 Therefore, in the light of the wording and the context of that provision, it must be held that its main purpose is to help to ensure that products which are declared for release for free circulation are indeed products originating in a GSP country and not a third country.

30 In those circumstances, the creation of a mixture of several products originating in GSP countries, at the time of transport, which does not alter the substance of those products and which does not create uncertainty as to the origin of those products, cannot be classified as an alteration, transformation or operation precluding the origin of those products from being recognised in the framework established, inter alia, by Article 74(1) of Regulation No 2454/93.

31 Furthermore, it is apparent from recitals 3 and 16 of Regulation No 1063/2010 that the reform of the generalised system of preferences provided for in that regulation is intended to simplify the rules of preferential origin and, if necessary, to relax them so that products originating in beneficiary countries may indeed benefit from the preferences granted.

32 As regards, more specifically, Article 74 of Regulation No 2454/93, it follows from recital 16 of Regulation No 1063/2010 that the latter regulation seeks to establish, in Regulation No 2454/93, a new rule which is simpler and more flexible replacing the earlier rule the application of which had the consequence that certain products accompanied by proof of origin in the prescribed form were excluded from the preferential tariff arrangements.

33 Moreover, as recital 9 of Regulation No 732/2008 states, the purpose of preferential arrangements, such as the generalised system of preferences laid down in that regulation, is to encourage economic growth and to respond positively to the need for sustainable development.

34 In those circumstances, Article 74(1) of Regulation No 2454/93 cannot be interpreted as precluding the recognition of the origin of products, such as those at issue in the main proceedings, on the sole basis that they have been mixed together, where that mixing has not prevented the competent authorities from ensuring that the exported products were indeed all from a GSP country of origin.

35 Having regard to all the foregoing considerations, the answer to the question referred is that Article 74(1) of Regulation No 2454/93 must be interpreted as meaning that in a situation, such as that at issue in the main proceedings, where valid certificates of origin have been presented, the preferential origin, within the meaning of the generalised system of preferences established by Regulation No 732/2008, of consignments of crude palm kernel oil may be recognised even where those products have been mixed in the tank of a vessel at the time of transport to the European Union in circumstances where it is possible to rule out that other products, in particular products not benefiting from any preferential treatment, have been added to that tank.

Costs

36 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 (Fourth Chamber) hereby rules:

Article 74(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 1063/2010 of 18 November 2010, must be interpreted as meaning that in a situation, such as that at issue in the main proceedings, where valid certificates of origin have been presented, the preferential origin, within the meaning of the generalised system of preferences established by Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007, of consignments of crude palm kernel oil may be recognised even where those products have been mixed in the tank of a vessel at the time of their transport to the European Union in circumstances where it is possible to rule out that other products, in particular products not benefiting from any preferential treatment, have been added to that tank.

[Signatures]