JUDGMENT OF THE COURT
OF 11 DECEMBER 1973 [1]

Carlheinz Lensing Kaffee-Tee-Import KG v Hauptzollamt Berlin-Packhof (preliminary ruling requested by the Finanzgericht Berlin)

Case 147/73

Summary

Overseas countries and territories — Association — Guinea — Non-associated country — Imports — No freedom from duty
(Article 131 EEC Treaty)

Article 131 EEC Treaty, in conjunction with Annex IV and the Convention of Association of 29 July 1969 between the European Economic Community and the African and Malagasy States, must be interpreted to mean that imports from Guinea were not in 1971 to be treated as coming from a State or territory associated with the EEC and ought not to benefit from freedom from duty in the Member States under this head.

In Case 147/73

Reference to the Court under Article 177 of the EEC Treaty by the Berlin Finanzgericht for a preliminary ruling in the action pending before that court between

CARLHEINZ LENSING KAFFEE-TEE-IMPORT KG, Berlin,

and

HAUPTZOLLAMT BERLIN-PACKHOF,

on the interpretation of Article 131 EEC Treaty, in conjunction with Annex IV and the Convention of Association of 29 July 1969 between the EEC and the African and Malagasy States associated with the Community (OJ L 282, 28. 12. 1970, p. 1),

1 — Language of the Case: German.

THE COURT

composed of: R. Lecourt, President, M. Sørensen (Rapporteur), President of Chamber, R. Monaco, J. Mertens de Wilmars, P. Pescatore, C. Ó Dálaigh and A. J. Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

The facts of the case, the subject matter of the request and the views of the parties may be summarized as follows:

I — Facts and procedure

1. In May 1971 the plaintiff in the main action imported 100 sacks of raw coffee from Africa. The plaintiff claimed exemption from customs duty under the Common Customs Tariff, stating that the coffee came from the Republic of Guinea and by reason of this fact came under the scheme provided for by the Convention of Association with the African and Malagasy States. It produced a certificate certifying that the coffee came from Guinea and referred to a decree of the Federal Minister of Finance of 28 December 1966 which reads as follows: 'In the case of imports from the Republic of Guinea the preferences under the EEC Treaty are to be granted for the time being . . .'.

The customs office, having at first acceded to the request, claimed, some months later, the payment of 1 391 DM customs duty on the ground that the coffee did not come from Guinea but probably from Cameroon (and the rules concerning certificates of origin had not been observed if the coffee was in fact of Cameroon origin).

2. The plaintiff disputed this decision, which was confirmed by the Hauptzollamt Berlin-Packhof, and took the matter to the Finanzgericht Berlin. By order dated 4 June 1973, the latter decided to stay the proceedings and to request the Court under Article 177 of the EEC Treaty to give a preliminary ruling on the following question:

'Is Article 131 EEC Treaty, in conjunction with Annex IV and the Convention of Association of 29 July 1969 between the European Economic Community and the African and Malagasy States associated with the Community, to be interpreted to mean that imports of coffee from Guinea into the Federal Republic of Germany including West Berlin were still to be treated in 1971 as imports originating in the Associated States, i.e. as free of duty in appropriate cases?'

It appears from the grounds of the order for a preliminary ruling by the Finanzgericht that the latter considered it necessary to submit this question for the Court's decision because the outcome of

the proceedings could depend on the question whether Guinean coffee can still be imported duty free into the Federal Republic of Germany after Guinea's declaration of independence of 2 October 1958 or whether the grant of freedom from duty after the declaration of independence is to be regarded as an infringement of Community law.

The Finanzgericht further declares:

'The propositions of the parties, to be deduced from their pleadings, that it should simply be assumed that the continuing freedom from duty for such coffee imports from Guinea in 1971 was granted in infringement of Community law is not a justifiable interpretation of Community law. Community law, which is not to be confused with international or national law, is a law of direct effect in the Federal Republic . . .'

3. The Order of the Finanzgericht was registered at the Court Registry on 26 June 1973.

The Commission of the European Communities, represented by its Legal Adviser Friedrich Wilhelm Albrecht, and the plaintiff in the main action represented by Gabrielle Rauschning of the Hamburg Bar, submitted their written observations in accordance with the provisions of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC on 13 September 1973 and 12 September 1973 respectively.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to proceed without any preparatory inquiries.

II — Observations submitted to the Court

The *Commission of the European Communities* states first of all that it is the customs duty of the Common Customs Tariff for coffee which is applicable in respect of all third countries in so far as Community legislation does not provide special preferential rights. None of the preferential schemes applied as from 1 January 1971 is applicable in respect of Guinea. Such schemes include in particular the preferential scheme provided by the Convention of Association between the European Economic Community and the African and Malagasy States associated with the Community (hereinafter called 'Convention of Association (1969)') and by the Council Decision of 29 September 1970 relating to the Association of the Overseas Countries and Territories with the EEC (OJ L 282, 28. 12. 1970, p. 83) (hereinafter called 'Association Decision (1970)').

As to the evolution of the association of countries and territories referred to in Annex IV of the EEC Treaty, the Commission reminds the Court that Article 227 (3) of the Treaty provides that 'the special arrangements for association set out in Part Four of this Treaty shall apply to the Overseas Countries and Territories (hereinafter called OSCT) listed in Annex IV to this Treaty', and that Guinea is included in Annex IV among the OSCT. It sets out the rules concerning the OSCT contained in Part Four of the Treaty and in the Implementing Convention on the Association of the OSCT with the Community, provided for by Article 136 of the Treaty and annexed to the Treaty. It states that, since the Implementing Convention was applicable only for an initial period of 5 years, it was necessary to replace it on the expiration of this period by new provisions. Since while the Convention was in force a series of OSCT, including Guinea, had obtained their independence, the Community opened negotiations with 18 of these countries which terminated in the Convention of Association between the EEC and the African and Malagasy States associated with the Community. This Convention came into force on 1 June 1964. Guinea did not take part in the negotiations and did not become a party to the Convention. For countries which did not become independent the Council fixed, by Decision dated 25

February 1964, new provisions of association. As from 1 January 1971 this Convention and Decision had been replaced by the Convention of Association (1969) and the Association Decision (1970) mentioned above.

In the Commission's opinion the fact that Guinea is not a contracting party to the Convention of Association (1969) and does not come within the terms of the Association Decision (1970) does not suffice to answer the question put, for Guinea is included in the list in Annex IV and Part Four of the Treaty has not been limited in point of time.

The Commission states that the fact that Guinea is still included in Annex IV does not in itself permit conclusions to be drawn, since the Annex has not been brought up to date, save for the inclusion of the Netherlands Antilles. In the Commission's opinion it is necessary, on the contrary, to enquire whether, and to what extent, the provisions of Part Four of the Treaty are still applicable. It points out that, as regards the States which have become independent, opinions vary. In its opinion, it is irrelevant to discuss these various opinions because even if Part Four continues to be applicable in whole or in part after independence this would not imply that Guinea had any status of association with the Community in 1971. It could be conceded that Part Four continues to be applicable in the sense that association on the basis of Articles 131 et seq. comes under the objectives of the Treaty, even after the independence of the countries and territories referred to in Annex IV, but the conclusion could only be that these countries and territories have the possibility of being associated and not that they are in fact associated.

Finally the Commission enquires what has been maintained of the concrete provisions of the original association. If it were conceded that Part Four of the Treaty was applicable to Guinea after the coming into force of the Convention of Association of 1963, it would not however follow that there would be any association tie involving a preferential scheme. Part Four — uncompleted by an Implementing Convention — could not be regarded as an enforceable system of association.

One might be tempted to claim that the transitional provisions of Article 14 of the Implementing Convention are still applicable to Guinea to complete Part Four of the Treaty. This Article, providing for a standstill, relates to the period from the date of expiry of the Convention to the adoption of provisions for a further period. But in the Commission's opinion it follows from the character of the transitional provisions that they could no longer be applicable if a new agreement were not envisaged.

Further, the Commission states that an association with an independent state supposes a certain reciprocity. Since independence Guinea has no longer in any way participated in the life of the association which has its origin in Part Four. It follows in the opinion of the Commission that the association connexion existing in 1958 has been broken or at least that its application has been suspended.

It considers lastly that even the rules relating to State succession, in particular in the context of decolonization, do not permit any other conclusion. And it concludes that no provision of Community law could be interpreted to mean that in 1971 goods originating in Guinea should be treated on import into Germany as products coming under the scheme provided for by the Convention of Association (1969).

The *plaintiff* recognizes that the objective legal position forces it to acknowlegde that in its opinion the question put by the Finanzgericht must receive a negative reply — and this even though the plaintiff has an interest in an affirmative reply. By not ratifying the French constitution of 14 October 1959, thus putting an end to its privileged relationship with France, Guinea has lost the advantage of the preferential scheme

which was based on the special relationship of Guinea with France. The conditions of an association founded on the provisions of the Treaty itself had by the same token disappeared. In the plaintiff's opinion there was no authority contained in the text of the Treaty or emanating from the Council or the Commission authorizing the German or French Governments to continue to admit imports coming from Guinea free of duty.

The plaintiff gives it to be understood that it is by other submissions that it is attacking the disputed decision before the Finanzgericht. In its view there are grounds for saying that by renouncing, in a general way and for a decade, customs duties on imports from Guinea, the Federal Minister of Finance has created a situation of confidence prohibiting him from retroactively exacting customs duties on imports which had been made in the past. To this effect, in a letter of 17 May 1972 to the German Coffee-Association, the Minister expressly declared that he accepted that, 'in the event of the preferential scheme with Guinea being abrogated, imports already effected would not be retroactively taxed.'

The oral observations of the Commission were heard on 24 October 1973 and the Advocate-General delivered his opinion at the hearing on 27 November 1973.

Grounds of judgment

1 By order of 4 June 1973, filed at the Court on 26 June 1973, the Berlin Finanzgericht referred the following question to the Court for a preliminary ruling under Article 177 of the Treaty:

'Is Article 131 EEC Treaty, in conjunction with Annex IV and the Convention of Association of 29 July 1969 between the European Economic Community and the African and Malagasy States associated with the Community, to be interpreted to mean that imports of coffee from Guinea into the Federal Republic of Germany including West Berlin were still to be treated in 1971 as imports originating in the Associated States, i.e. as free of duty in appropriate cases.'

2 Article 131 provides that the Member States agree to associate with the Community the non-European countries and territories which have special relations with certain of them.

These countries and territories are listed in Annex IV to the Treaty.

This list, in the version which dates from the signing of the Treaty on 25 March 1957, refers, *inter alia,* to 'Guinea' as belonging to 'French West Africa'.

Guinea became independent in 1958.

The Implementing Convention on the Association, annexed to the EEC Treaty, as provided in Article 136, expired at the end of 1962.

3 The system of association with 18 of the States which had become independent in the meantime was governed by the 'the Convention of Association between the European Economic Community and the African and Malagasy States associated with the Community' signed at Yaoundé on 20 July 1963 and renewed by the Convention of 29 July 1969.

The Republic of Guinea did not participate in the negotiations leading to the conclusion of this Convention and did not become a contracting party.

Guinea is not among the countries and territories affected by the Decisions taken by the Council on 25 February 1964 and 29 September 1970 on the basis of Article 136 of the Treaty concerning the Association of the Overseas Countries and Territories with the EEC (OJ 11 June 1964, p. 1472 and OJ L 282/73 of 28 December 1970).

4 Consequently imports coming from Guinea were not in 1971 to be regarded as coming from a State or territory associated with the EEC and ought not to benefit from freedom from duty in Member States under this head.

Costs

5 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable and as these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Articles 131, 136 and 177;
Having regard to the Implementing Convention on the Association of the Overseas Countries and Territories with the Community, annexed to the EEC Treaty;
Having regard to the Convention of Association between the European Economic Community and the African and Malagasy States associated with the Community signed at Yaoundé on 20 July 1963 and renewed by the Convention of 29 July 1969;
Having regard to the Council Decisions of 25 February 1964 and 29 September 1970 concerning the Association of the Overseas Countries and Territories with the EEC;
Having regard to the Protocol on the Statute on the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the question referred to it by the Berlin Finanzgericht by Order of 4 June 1973, hereby rules:

Article 131 EEC Treaty, in conjunction with Annex IV and the Convention of Association of 29 July 1969 between the European Economic Community and the African and Malagasy States, must be interpreted to mean that imports from Guinea were not in 1971 to be treated as coming from a State or territory associated with the EEC and ought not to benefit from freedom from duty in the Member States under this head.

Lecourt Sørensen Monaco

Mertens de Wilmars Pescatore Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 11 December 1973

A. Van Houtte
Registrar

R. Lecourt
President