JUDGMENT OF THE COURT (First Chamber)
28 March 1990 *

In Case C-219/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof (Federal Finance Court) for a preliminary ruling in the proceedings pending before that court between

Malt GmbH

and

Hauptzollamt (Principal Customs Office) **Düsseldorf**

on the interpretation of Article 3 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980, L 134, p. 1),

THE COURT (First Chamber)

composed of: Sir Gordon Slynn, President of Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: G. Tesauro
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of

Malt GmbH, by D. Ehle, Rechtsanwalt, Cologne,

* Language of the case: German.

the Commission of the European Communities, by J. Sack, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 28 June 1989,

after hearing the Opinion of the Advocate General at the sitting on 12 October 1989,

gives the following

Judgment

1 By order of 26 May 1988, received at the Court on 3 August 1988, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Council Regulation (EEC) No 1224/80 of 28 May 1980 (Official Journal 1980, L 134, p. 1) on the valuation of goods for customs purposes.

2 Those questions were raised in proceedings between Malt GmbH and the Hauptzollamt Düsseldorf as a result of the latter's decision to include in the customs value of a consignment of beef the costs involved in the acquisition in the Argentinian Republic of certificates of authenticity relating to it. The certificates were needed to enable the meat to be imported free from levy under the Community tariff quota opened by Council Regulation (EEC) No 217/81 of 20 January 1981 (Official Journal 1981, L 38, p. 1) for high quality, fresh, chilled or frozen beef and veal falling within the subheading 02.01 A II (a) and 02.01 A II (b) of the Common Customs Tariff.

3 According to Article 2(1) of Commission Regulation (EEC) No 263/81 of 21 January 1981 laying down detailed rules for the application of the import arrangements provided for by Regulations (EEC) Nos 217/81 and 218/81 in the beef and veal sector (Official Journal 1981, L 27, p. 52), the total suspension of the import levy for the meat referred to in Regulation No 217/81 is subject to the presentation of a certificate of authenticity. The certificate, the form of which is set out in the annex to Regulation No 263/81, is issued by the exporting country

and certifies that the meat in question complies with the specifications in Article 1 of Regulation No 1224/80.

4 According to Section V(ii) of the arrangement concerning beef between the Argentinian Republic and the Community (Official Journal 1980, L 71, p. 168) the Argentinian authorities have complete freedom in establishing the procedure for the issue of certificates of authenticity provided that all the guarantees in relation to the goods are given. In that respect every approved exporting slaughterhouse is granted a quota entitling it to issue certificates of authenticity. Slaughterhouses are not allowed to transfer quotas or the certificates relating to them directly. However, indirect transfer is possible: slaughterhouses which need to slaughter animals but have no more quotas have the animals slaughtered in other undertakings which still have quotas and thus issue the certificates of authenticity.

5 When the meat supplied is accompanied by a certificate of authenticity and can therefore be imported into the Community free of levy the purchaser must pay an additional amount over and above the price agreed for the meat, to the slaughterhouse which issued the certificate.

6 In October 1981 Malt put into free circulation beef originating in the Argentinian Republic. In its customs declaration it declared as the customs value the invoiced price of the goods less the additional amount paid for the certificates of authenticity. The Hauptzollamt however levied as customs duties a sum calculated on the basis of the purchase price of the meat and the additional amounts relating to the certificates of authenticity.

7 After the administrative complaint had been rejected and the action brought against the decision of rejection before the Finanzgericht had failed, Malt brought an appeal on a point of law before the Bundesfinanzhof which referred the following questions to the Court for a preliminary ruling:

'(1) Is Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980, L 134, p. 1), and in particular Article 3(1) and (3)(a), to be interpreted as meaning that, in

assessing the value of Argentinian beef which entered into free circulation without payment of a levy in 1981 in the framework of a Community tariff quota, the amounts paid to the seller in addition to the price of the goods for the certificates of authenticity needed for recourse to the quota rules must be included in the price actually paid or payable (the transaction value)?

(2) If the answer to Question 1 is in the affirmative:

is the abovementioned regulation, in particular Article 3(4)(b), to be interpreted as meaning that the amounts paid for the certificates must for purposes of customs valuation be treated as taxes payable in the Community by reason of the importation?

(3) If the answer to Question 2 is in the affirmative:

is the abovementioned regulation, in particular Article 3(4), to be interpreted as meaning that the requirement that such charges must be distinguished from the price actually paid or payable for the imported goods is satisfied even if the invoice states the total amount paid for the goods and for the certificates (No 1) but makes clear the amounts paid for the certificates?'

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

9 It should first be observed that the first subparagraph of Article 3(1) of Regulation No 1224/80 provides as follows:

'The customs value of imported goods determined under this article 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 in accordance with Article 8 . . . '

10 Furthermore, the first sentence of Article 3(3)(a) of Regulation No 1224/80, as amended by Council Regulation (EEC) No 3193/80 of 8 December 1980 (Official Journal 1980, L 333, p. 1), provides:

'The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to a third party to satisfy an obligation of the seller. The payment need not necessarily take the form of a transfer of money.'

11 It should further be noted that Article 8 of Regulation No 1224/80, to which Article 3(1) refers, contains an exhaustive list of the ancillary costs which must be added to the price actually paid or payable for the purpose of determining the customs value. Since the costs of acquiring certificates of authenticity are not included, it follows that such costs can be taken into account for the purpose of determining the customs value only if they are regarded as an integral part of the price of the goods.

12 In reliance in particular on the judgment of the Court of 9 February 1984 in Case 7/83 *Ospig* v *Hauptzollamt Bremen-Ost* [1984] ECR 609, Malt maintains that the additional amount relating to the certificate of authenticity is not part of the price paid or payable 'for the imported goods'. In that judgment the Court held that quota charges invoiced in a non-member country relating to the acquisition of export quotas for textiles were not an integral part of the customs value.

13 It is necessary however to stress that the certificates of authenticity required for the importation of beef of high quality are appreciably different from export licences for textiles. The latter are not connected with a specific contract of sale but with a specific class of goods and may be sold independently of the goods, in which case the price payable represents consideration for the right to export which is independent of the price payable for the goods.

14 Under the system of importation applicable to beef of high quality the certificate of authenticity and the goods are, on the other hand, inseparably connected. The function of the certificate is to certify that the goods comply with the specifications

laid down in Article 1 of Regulation No 263/81. Since those specifications concern the state of the beef cattle the certificate cannot be issued without examination of the cattle by the slaughterhouse which issues the certificate. Contrary to what happens under the system for quotas applicable to textiles, certificates of authenticity cannot lawfully be traded separate from the goods to which they relate. Even in the case of an indirect transfer of quotas between slaughterhouses, the certificate of authenticity and the information contained in it relate to very specific goods.

15 It follows that the costs of the acquisition of certificates of authenticity must be regarded as an integral part of the 'price paid or payable for the goods' and therefore of the customs value.

16 That conclusion moreover is in accordance with the one stated in Opinion No 15 of the Customs Valuation Committee set up by Article 17 of Regulation No 1224/80 to which the Commission submitted the present case. According to that Opinion 'the amount invoiced for the certificate of authenticity . . . is included in the customs value'.

17 The answer to the first question put by the Bundesfinanzhof must therefore be that Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes and, in particular Article 3(1) and (3) thereof, is to be interpreted as meaning that, in assessing the value of imported Argentinian beef for the purposes of Council Regulation (EEC) No 217/81 of 20 January 1981, opening a Community tariff quota for high-quality, fresh, chilled or frozen beef and veal falling within subheading 02.01 A II (a) and 02.01 A II (b) of the Common Customs Tariff, the amounts paid to the seller in addition to the price of the goods for the certificates of authenticity needed for recourse to the quota rules must be regarded as an integral part of the value for customs purposes.

The second question

18 Article 3(4)(b) of Regulation No 1224/80 states that the customs value does not include customs duties and other taxes payable in the Community by reason of the

importation or sale of the goods provided that they are distinguished from the price actually paid or payable for the imported goods.

19 Malt alleges that the additional amounts paid for the certificates of authenticity represent the substantial equivalent of the levies which the Community waive under the tariff quota. Such amounts thus constitute taxes within the meaning of Article 3(4)(b) of Regulation No 1224/80 even if they have to be paid in a non-member country.

20 It should be observed, however, that Article 3(4) concerns only 'taxes payable in the Community'. The costs of the certificates of authenticity, as an integral part of the price payable for the goods, are paid to the Argentinian slaughterhouse which issues the certificate. Such costs cannot therefore be regarded as 'taxes payable in the Community' which by their nature are collected by the competent authorities of the Member States.

21 The answer to the second question must therefore be that Article 3(4) of Regulation No 1224/80 is to be interpreted as meaning that the amounts paid for certificates of authenticity must not be regarded as taxes paid in the Community by reason of the importation.

The third question

22 In view of the answer given to the second question the third question does not call for an answer.

Costs

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

On those grounds,

THE COURT (First Chamber),

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

(1) **Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, in particular Article 3(1) and (3) thereof, is to be interpreted as meaning that, in assessing the value of imported Argentinian beef for the purposes of Council Regulation (EEC) No 217/81 of 20 January 1981, opening a Community tariff quota for high-quality, fresh, chilled or frozen beef and veal falling within subheading 02.01 A II (a) and 02.01 A II (b) of the Common Customs Tariff, the amounts paid to the seller in addition to the price of the goods for the certificates of authenticity needed for recourse to the quota rules must be regarded as an integral part of the value for customs purposes.**

(2) **Article 3(4) of Regulation No 1224/80 is to be interpreted as meaning that the amounts paid for certificates of authenticity must not be regarded as taxes paid in the Community by reason of the importation.**

Slynn Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 28 March 1990.

J.-G. Giraud
Registrar

G. Slynn
President of the First Chamber