REPORT FOR THE HEARING
delivered in Case C-219/88 *

I — Facts and procedure

1. *The relevant legislation and the facts in the main action*

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) provides:

'1. 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 . . .

. . .

3. (a) 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 . . .

. . .

4. The customs value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

(a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

(b) customs duties and other taxes payable in the Community by reason of the importation or sale of the goods.'

Article 8 lists a certain number of additions to the price actually paid or payable.

Article 8(3) provides: 'No addition shall be made to the price actually paid or payable in determining the customs value except as provided in this article'.

Article 17 establishes a Customs Valuation Committee consisting of representatives of the Member States, with a representative of the Commission as chairman.

In October 1981 the plaintiff imported into the Community Argentinian beef free from any levy as part of the Community tariff quota which Council Regulation (EEC) No 217/81 (Official Journal 1981, L 38. p. 1) opened in respect of beef and veal of high quality. In order to benefit from the exemption it had to produce a certificate of authenticity for the imported meat in accordance with the provisions of

* Language of the case: German.

Commission Regulation (EEC) No 263/81 (Official Journal 1981, L 27, p. 52), Article 4(1) of which provides:

'1. A certificate of authenticity shall be valid only if it is duly completed and endorsed, in accordance with the instruction in Annexes I and II, by one of the issuing authorities listed in Annex II.'

On the occasion of the importations in question the plaintiff declared the invoiced price as the customs value without including the costs connected with obtaining the certificates of authenticity.

The defendant added those costs to the price for the purposes of calculating the customs value and the corresponding duties of the customs tariff.

The plaintiff lodged an administrative complaint and then brought an action both of which were unsuccessful. It appealed to the Bundesfinanzhof (Federal Finance Court) on a point of law claiming in particular that the costs connected with the certificate were not part of the purchase price of the goods which had been negotiated previously and separately. It further cited the judgment of the Court of 9 February 1984 in Case 7/83 *Ospig Textilgesellschaft KG W. Ahlers* v *Hauptzollamt Bremen-Ost* [1984] ECR 609, in which the Court held as follows:

'Quota charges relating to the acquisition of export quotas do not form an integral part of the value for customs purposes of goods imported into the Community within the meaning of the provisions of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, as amended by Council Regulation (EEC) No 3193/80 of 8 December 1980.'

The defendant cited the final Opinion No 15 of the Customs Valuation Committee which, when confronted with the same question as that which was the subject of the appeal, took the view that the amount required for the certificate of authenticity must be regarded as part of the price.

2. *The view taken by the national court*

In view of the judgment in the *Ospig* case the national court is not convinced that the said committee correctly interpreted the applicable Community law in its final opinion. According to the principles laid down by the Court of Justice, the amounts paid under the quota rules might also not be taken into account in assessing the customs value even though the certificates of authenticity relate to the imported goods, and are not traded separately, and the amounts paid for them are not confined to the reimbursement of expenses.

The Bundesfinanzhof also observes that the question would not arise if no payment had been required for the certificates and that could lead in other cases to an arbitrary or fictitious value. It considers that it is also necessary to envisage the case where a certificate is acquired by another slaughterhouse.

In the view of the Bundesfinanzhof, if the amounts in question are to be regarded as part of the transaction value, other questions of interpretation, albeit less difficult, arise. The amounts do not come within the definition of 'customs duties and other taxes' contained in Article 3(4)(b) of Regulation No 1224/80 although the plaintiff describes them as 'indirect levies'.

If Article 3(4)(b) were to apply, however, it would be necessary to ensure that the requirement that the duties should be separate from the price is complied with since the invoices mentioned a total sum while giving a breakdown of the amounts of which it was composed.

There is no legal foundation in the plaintiff's argument to the effect that if the amounts in question were to be part of the transaction value an equivalent deduction would have to be made since those amounts constitute subsidies. Article 8 of Regulation No 1224/80 refers only to additions to the price and does not mention any supplement in respect of costs of certificates. Such a supplement is therefore prohibited under Article 8(3). The whole issue relates to the determination of the price.

3. *Questions referred to the Court for a preliminary ruling*

On those grounds the Bundesfinanzhof, by order of 26 May 1988, 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 rule 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?'

4. *The procedure before the Court of Justice*

The order making the reference was received at the Court Registry on 3 August 1988.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were lodged on 17 October 1988 by Malt GmbH, represented by D. Ehle, Rechtsanwalt, Cologne, and on 19 October 1988 by the Commission of the European Communities, represented by J. Sack, Legal Adviser, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted to the Court

The plaintiff states that the certificates are issued and distributed among exporting slaughterhouses by the national authorities of the non-member countries concerned in accordance with the distribution procedures which they adopt.

Unlike the position in other countries, the Argentinian slaughterhouses are granted a quota which they are not authorized to transfer directly to other slaughterhouses. However, indirect transfers are practised in that a slaughterhouse which has cattle available for slaughter but has exhausted its quota will entrust the slaughter to another slaughterhouse which has available quotas. The latter will at the same time forward the certificate of authenticity and claim payment of the amount relating thereto.

When the slaughterhouses to which the plaintiff normally applies have no more quota available it seeks other slaughterhouses through a local agency. The supplementary amount payable for the certificate which allows the plaintiff to import the meat free from levy is always the subject of seperate negotiations.

The plaintiff attaches particular importance to the sixth recital in the preamble to Regulation No 1224/80 according to which its objective is 'to foster world trade by introducing a fair, uniform and neutral system of customs valuation excluding the use of arbitrary or fictitious customs values'.

The opinion of the Customs Valuation Committee is based on the view that the certificate cannot be treated separately from the goods and has no independent value.

That, however, is not the case. After negotiating the price of the meat, the parties discuss the question whether the goods must be delivered with or without a certificate.

It may happen that the meat is exported without a certificate, for example when it will be imported frozen in order to benefit from the general tariff quota for frozen meat or when the quotas are exhausted, but the purchaser is still bound to supply certain customers with meat.

If, on the other hand, it is decided to buy the goods with the certificate, the parties must agree on the additional amount to be paid. The amount is generally less than the levy in force in order to enable the buyer to make some profit out of the transaction. The additional amount is sometimes invoiced with the price of the meat and sometimes separately, especially when the quotas and certificates are acquired by other undertakings, for example, an intermediate agency. (The plaintiff annexes such an invoice to its observations.)

The plaintiff considers that on the basis of this account of the facts the additional amount is not part of the price. There is a market price for the meat which does not depend on the question whether the goods are going to be imported free of levy. The transaction value cannot include the price

paid for goods or services other than those listed in Article 8 of Regulation No 1224/80, which does not include amounts paid for certificates of authenticity. The additional amount is paid on the handing over of the certificate which enables the buyer to import free of levy and is negotiated separately. Its theoretical value is the amount of the Community levy, although the latter is fixed at a dissuasive level.

For the exporting slaughterhouse the supplementary amount represents a subsidy which partly compensates the losses suffered by Argentinian slaughterhouses by reason of the introduction of Community levies.

The supplementary amounts are thus at most expenses and as such cannot be included in the price paid or payable. They are not mentioned in the exhaustive list contained in Article 8 (see also paragraph 12 of the grounds of the judgment in the *Ospig* case).

As in the *Ospig* case, in which the Court stated that the costs of quotas for textiles were not part of the customs value within the meaning of the regulation, the objective of the rules under which the imports in question were effected is different from that pursued by the regulation in relation to customs value. The *Ospig* case was concerned with a restriction on imports. The present case is concerned with Community rules providing for a tariff quota subject to the grant of certificates. The aim of those rules is to ensure, within the framework of GATT, that specific quantities of meat may be sold free of the Community levy.

Regulation No 1224/80 must be interpreted without reference to those rules.

The plaintiff, adapting other arguments put forward in the *Ospig* case, also states that the certificates are not related to a contract for the sale of specific goods, that their cost is independent of the value of the meat, that the costs may be paid to a third party with no connection with the seller (for example, an intermediate agency) and that the costs arise from a commercial policy of the Community.

According to the case-law of the Court the sixth recital in the preamble to Regulation No 1224/80 is of special importance for the interpretation of Article 3 in particular (see the judgments in the *Ospig* case and in Case 65/85 *Hauptzollamt Hamburg-Ericus* v *Van Houten International GmbH* [1986] ECR 447, paragraph 14).

The inclusion of a supplementary amount in the customs value infringes the requirement of a fair, uniform and neutral system of customs valuation. The transaction value has its basis in the contract for the sale of the goods. Acquisition of the right to import free of levy is, on the other hand, independent of the value of the goods and its inclusion would adversely affect the neutrality of the system of customs value. That is so because the amount in fact constitutes a subsidy. The arbitrary nature of such a customs valuation is obvious when the supplementary amount is invoiced not by the seller of the goods but by a third party.

The plaintiff proposes that the Court should answer the first question as follows:

"The provisions of Article 3(1) and (3)(a) of Regulation (EEC) No 1224/80 must be interpreted as meaning that the amounts

paid in addition to the price of the goods for certificates of authenticity required for the purpose of applying the quota rules are not an integral part of the customs value (transaction value) of the goods imported into the Community.'

As regards the second question, the plaintiff considers that the supplementary amounts constitute the substantive equivalent of the levies which the Community has waived and thus constitute taxes the payment of which has been passed by the Community on to Argentina. They are moreover paid in the Community for the benefit of the seller as soon as the meat has been put into free circulation. Article 3(4)(b) of Regulation No 1224/80 does not specify whether the tax must be paid to the national authorities be they the customs or others.

The plaintiff therefore proposes the following reply to the second question:

'The provisions of Article 3(4)(b) of Regulation (EEC) No 1224/80 must be interpreted as meaning that amounts paid for certificates of authenticity in connection with quotas must be regarded, in determining the customs value of goods, as taxes payable by reason of importation.'

With regard to the third question the plaintiff agrees with the Bundesfinanzhof on the question whether the supplementary amount is separate from the price paid or payable. The different items are separately shown on the invoice. That is in accordance with the case-law of the Bundesfinanzhof in relation to freight charges.

The plaintiff suggests the following answer to the third question:

'The requirement that charges should be distinguished from the price for the purposes of Article 3(4) of Regulation (EEC) No 1224/80 is satisfied where the invoice shows a total sum for the goods and the amount paid for the quotas/certificates of authenticity from which the various items of costs are apparent.'

The Commission states that it is necessary to start, as the Court did in the judgment in the *Ospig* case, with Article 3 of Regulation No 1224/80, and in particular Article 3(3), from which it is clear that it is necessary to take account of the total sum paid or payable by the buyer to the seller for the latter's benefit for the imported goods.

In the Commission's view that provision clearly shows that the costs relating to the certificate of authenticity must be included in the customs value, since the latter document is very different from the export licence required under the system applicable to textiles.

The latter, which is issued by the exporting country, relates not to particular articles but to a particular class (for example, shirts originating in Hong Kong). The goods and the licence may be obtained separately and even by different persons. It may also happen that they are obtained simultaneously from the seller as in the *Ospig* case.

On the other hand, for the importation of beef of high quality, the acquisition of the goods and the certificate cannot be separated since the latter relates to very specific goods, as is clear from the

provisions of Regulation No 263/81. The wording of the certificate as laid down in the regulation ('I hereby certify that the beef described in this certificate complies with the specification shown overleaf') clearly shows that it is impossible for a certificate to be issued without the cattle intended for the slaughterhouse having been examined in order to verify that the information certified with regards their rearing, feed and so forth is correct.

Since, therefore, the certificate relates to goods with which it is inseparably connected, the costs relating thereto should be regarded as an integral part of the sale price and the transaction value: the amounts paid for the certificate represent, in the Commission's view, payments for the goods even if they are separately mentioned in the invoice.

In conclusion, the Commission thinks it is unnecessary to consider whether Article 8 of Regulation No 1224/80 may allow the costs to be included in the customs value.

With regard to the second question the Commission considers that it is clear from the wording of Article 3(4)(b) that since the costs relating to the certificate are not incurred in the Community but in the exporting country the said provision does not apply.

In consequence, the question whether the expenses come within the definition of tax within the meaning of Article 3(4)(b) does not arise.

In view of the answer in the negative to the second question it is not necessary to consider the third.

The Commission therefore proposes that the Court should answer the questions referred to it for a preliminary ruling as follows:

'(1) Article 3(1) and (3) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes must be interpreted as meaning that, in assessing the value of Argentinian beef which was imported in 1981 under 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 sellers, 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.

(2) Article 3(4)(b) of the regulation on the valuation of goods for customs purposes cannot be interpreted as meaning that the amounts paid for the certificates must be treated as taxes payable in the Community by reason of the importation.'

III — Answer to the question put by the Court

The Court asked the Commission to state whether in its opinion the procedure followed in Argentina for the grant of certificates of authenticity complied with the provisions of Regulation No 263/81. The Commission replied in the affirmative.

In its opinion the arrangement concerning beef between the Argentinian Republic and the Community (Official Journal L 171, 17.3.1980, p. 169) leaves the Argentinian authorities complete freedom in relation to the procedure for the issue of certificates of authenticity, provided that all the guarantees are given that the goods and the certificates agree. In that respect the Commission refers also to Article 5 of Regulation No 263/81 and to the third recital in the preamble.

The system of transfers of quotas described by the plaintiff in its observations is not ruled out; on the contrary, it is in accordance with the objectives fixed by the importation systems. Since it is a commercial concession granted by the Community to Argentina and not a preferential system reserved to Community undertakings, the allocation of the quantities exported and the determination of the prices is of no concern to the Community, provided that the issue of certificates is done correctly.

The Commission adds that whatever may be the procedures for acquisition of the certificates of authenticity, the goods and the certificate constitute a whole and cannot be separated; they are supplied together by the exporting undertaking to the Community buyer and in consequence both the price of the goods and the costs for obtaining the certificate must be included in the customs value.

G. Slynn
Judge-Rapporteur