# JUDGMENT OF THE COURT (Fourth Chamber)
10 December 1985 *

In Case 290/84

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

**Hauptzollamt** [Principal Customs Office] **Schweinfurt**

and

**Mainfrucht Obstverwertung GmbH**

on the interpretation of Articles 3 and 15 of Council Regulation No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal, L 134, p. 1),

THE COURT (Fourth Chamber),

composed of: K. Bahlmann (President of Chamber), G. Bosco, T. Koopmans, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: C. O. Lenz
Registrar: P. Heim

after considering the observations submitted on behalf of:

Mainfrucht, the respondent in the main proceedings, by H. Nehm, Rechtsanwalt, during the written procedure and Mr Schiller, Rechtsanwalt, at the oral procedure,

the Commission of the European Communities, by P. Kalbe, Legal Adviser, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 12 November 1985,

gives the following

* Language of the Case: German.

# JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

## Decision

1 By an order of 30 October 1984, which was received at the Court on 3 December 1984, the Bundesfinanzhof submitted to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Articles 3 and 15 of Council Regulation No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes.

2 The questions were raised in proceedings between Mainfrucht Obstverwertung GmbH and the Hauptzollamt Schweinfurt (hereinafter referred to as 'the Customs Office'), supported by the Federal Minister for Finance.

3 Between July and September 1980, Mainfrucht imported from Bulgaria into the Federal Republic of Germany some consignments of precooled morello cherries and frozen raspberries. For each consignment, the suppliers issued two invoices to Mainfrucht, one covering the price of the goods supplied and the transport costs as far as the German frontier and the other covering only the transport costs from the German frontier to Mainfrucht's headquarters at Gochsheim (Bavaria).

4 The dispute between Mainfrucht and the Customs Office concerns the valuation of the goods in question for customs purposes under Regulation No 1224/80.

5 Article 3 (1) of that regulation 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, ...'.

6 Article 3 (3) (a), as amended by Article 1 of Council Regulation No 3193/80 of 8 December 1980 (Official Journal L 333, p. 1), provides as follows:

'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 the seller or by the buyer to a third party to satisfy an obligation of the seller . . . '.

7 Article 8 (1) provides:

'In determining the customs value under Article 3, there shall be added to the price actually paid or payable for the imported goods:

...

(e) (i) the cost of transport and insurance of the imported goods, and

(ii) loading and handling charges associated with the transport of the imported goods

to the place of introduction of the goods into the customs territory of the Community.'

8 Article 15 is also relevant. It provides as follows:

'1. The customs value of imported goods shall not include the cost of transport after importation into the customs territory of the Community provided that such cost is distinguished from the price actually paid or payable for the imported goods.

2. (a) Where goods are carried by the same means of transport to a point beyond the place of introduction into the customs territory of the Community, transport costs shall be assessed in proportion to the distance covered outside and inside the customs territory of the Community, unless evidence is produced to the customs authorities to show the costs that would have been incurred under a general compulsory schedule of freight rates for the carriage of the goods to the place of introduction into the customs territory of the Community.

9 In this case, the Customs Office takes the view that the transport costs from the German frontier to Gochsheim (the place of destination within Community territory) constitute an integral part of the transaction value within the meaning of Article 3 (1), cited above. Moreover, no deduction of intra-Community transport costs under Article 15 (1) is possible, in its view, because even though they appear in a separate invoice, those costs are not verifiable inasmuch as Mainfrucht is unable to produce documents relating to the complete transport operation from Bulgaria to Gochsheim.

10 The court of first instance, the Finanzgericht München [Finance Court, Munich] did not accept the Customs Office's argument and took the view that the intra-Community transport costs incurred by Mainfrucht should not be taken into account in calculating the customs value.

11 The Customs Office appealed against the Finanzgericht's judgment to the Bundesfinanzhof which, by an order of 30 October 1984, stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. (a) Where a local purchaser has paid a foreign supplier, in addition to the price of the goods, an amount in respect of 'intra-Community transport costs' on the basis of a separate invoice, does the transaction value within the meaning of Article 3 (1) of Council Regulation (EEC) No 1224/80 include both amounts?

(b) If so, must that amount be adjusted pursuant to Article 15 of Regulation No 1224/80 in order to be taken as the customs value of the goods?

2. If those questions are answered in the affirmative:

(a) Is Article 15 (2) (a) of Regulation No 1224/80 applicable where the person concerned declares transport costs covering transport within the Community alone?

(b) If Question (a) is answered in the affirmative:

In the case of through transport as referred to in Article 15 (2) (a) of Regulation No 1224/80, is the deduction, in assessing the customs value of goods, of transport costs calculated to have been incurred within the Community conditional upon production by the person concerned of a separate figure for the total cost of through transport in accordance with Article 15 (1) of the regulation?

If so, is that condition met where the person concerned gives separate figures for those transport costs, or must he provide proof of the actual costs incurred for the through transport by presenting verifiable documentary evidence? If such proof is necessary, what requirements must it satisfy? May customs authorities waive such proof where the person concerned is unable to provide it by reason of the conduct of his supplier?'

12 Mainfrucht and the Commission of the European Communities submitted written observations on those questions under Article 20 of the Statute of the Court of Justice.

13 The Court asked the Federal Minister for Finance, the intervener in the main proceedings, to reply to certain questions in accordance with the terms of the first paragraph of Article 21 of the abovementioned Statute. The Ministry provided those replies within the prescribed time-limit.

**Question 1 (a)**

14 As regards Question 1 (a), the Bundesfinanzhof expresses the view in its order for reference that it must be deduced from Article 3 (3) (a) of Regulation No 1224/80, as amended by Article 1 of Regulation No 3193/80, that the cost of transport within the Community must be included in the transaction value referred to in Article 3 (1).

15 In Mainfrucht's view, the question calls for a negative reply, for reasons connected with the wording of Article 3 (1) of Regulation No 1224/80, the origin and background to that provision and the overall scheme of the regulation.

16 As regards the wording of the provision, Mainfrucht states that intra-Community transport costs are paid not for the imported goods but for their transport, even where they are paid to the supplier of the goods. Moreover, those costs are paid for carriage within the Community and not for exportation to the customs

territory of the Community. It is also apparent from the wording of Article 3 that only the cost of transport to the place of introduction into the customs territory of the Community is to be added, under Article 8 (1) (e) (i), to the value for customs purposes. *A contrario*, the intra-Community transport costs must not be included in that valuation.

17 As regards the origin of and background to Regulation No 1224/80, and in particular Article 3 thereof, Mainfrucht states that, as is apparent from the recitals to the said regulation, the regulation was adopted for the purpose of incorporating into Community law the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) (see Council Decision 8/271/EEC of 10 December 1979, Official Journal 1980, L 71, p. 1, and in particular the text of the above agreement, at p. 107), Article 8 (2) of which provides:

'In framing its legislation, each Party shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

(a) the cost of transport of the imported goods to the port or place of importation;

(b) ...'.

18 From that provision Mainfrucht infers that the Community was not empowered, under the abovementioned agreement, to adopt provisions requiring the inclusion of intra-Community transport costs in the customs value.

19 That interpretation is, according to Mainfrucht, confirmed by the scheme of Article 3 and that of Regulation No 1224/80 as a whole. Nowhere in Article 3 is it stated that intra-Community transport costs are included in the transaction value, reference being made only to Article 8, which concerns the costs of transport outside the Community. As regards Article 3 (3), that provision states that the price actually paid or to be paid is 'the total payment made or to be made ... for the imported goods', which in no way implies that the cost of transport within the Community, if paid by the buyer to the seller, must be included in that price.

20 In Mainfrucht's view, the opposite conclusion cannot be drawn from Article 15; on the contrary, it must be inferred from that provision that the cost of transport within the Community is not included in the customs value, either where it is shown separately (paragraph 1) or where the overall transport costs have to be apportioned (paragraph 2).

21 The Commission agrees in essence with the opinions expressed by Mainfrucht.

22 It should be noted that, as Mainfrucht and the Commission have rightly pointed out, it is clear from the very terms of the relevant provisions of Regulation No 1224/80 as well as from their context that intra-Community transport costs are in principle not included in the transaction value referred to in Article 3, and therefore are also not included in the customs value.

23 By laying down the principle that the transaction value is 'the price actually paid or payable for the goods when sold for export to the customs territory of the Community', Article 3 (1) indicates that that price may be adjusted only in accordance with Article 8.

24 Since, as far as transport costs are concerned, Article 8 merely provides that only the cost of transport 'to the place of introduction of the goods into the customs territory of the Community' is to be added to the price actually paid or payable, it follows that the cost of transport from the place of introduction into the customs territory of the Community to the place of destination within that territory is not to be added to the price in question and therefore is not part of the customs value.

25 The existence of a principle excluding intra-Community transport costs from the customs value is also confirmed by the terms of Article 15. Article 15 (1) merely provides that such costs are not to be included in the customs value unless they are 'distinguished' from the price actually paid or payable.

26 Article 15 (2) deals with the case in which intra-Community transport costs are not distinguished and lays down the methods for deducting them from the price paid or payable.

27 That interpretation of the relevant provisions of Regulation No 1224/80 accords with both the origin and background to that regulation and its overall scheme.

28 With regard to the first aspect, it is sufficient to refer to the arguments on that subject presented by Mainfrucht and summarized above.

29 It may be seen from the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) and in particular Article 8 (2) thereof that the parties to that agreement tended towards the view that the cost of transport beyond the port or place of importation should not be included in the customs value.

30 The purpose of Regulation No 1224/80, like that of Regulation No 803/68 of the Council of 27 June 1968 (Official Journal, English Special Edition 1968 (I), p. 170) which preceded it, is, according to the sixth recital in the preamble, 'to ensure uniform application of the Common Customs Tariff and equal treatment of Community importers'.

31 It would not be consistent with that objective to interpret Regulation No 1224/80 as meaning that intra-Community transport costs were to be included in the customs value.

32 If they were to be included, the customs value would depend on the distance between the place of introduction of the goods into the customs territory of the Community and the place of destination within that territory, with the consequence that the customs duties levied in respect of the same goods imported into the Community through the same customs office would be of a different amount according to how far the place of destination of the goods was from that customs office. Because such a result entails unequal treatment of imports notwithstanding the fact that the import transactions carried out were identical, it cannot be accepted.

33 The reply to the first question raised by the national court must therefore be that intra-Community transport costs paid by the importer on the basis of a separate invoice are not part of the transaction value referred to in Article 3 (1) of Regulation No 1224/80.

34 However, that reply does not mean that the competent customs authorities may not, if the circumstances warrant it, check the invoice relating to the costs in question in order to verify that the costs which have been invoiced are not fictitious.

35 As the sixth recital in the preamble to Regulation No 1224/80 expressly states, the objective of that regulation 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'.

36 That objective would be compromised if an importer was permitted to reduce the value of goods at will by having his supplier invoice part of the price paid or payable as intra-Community transport costs.

37 The reply to Question 1 (a) submitted by the national court must therefore be that where a local buyer has paid a foreign supplier, in addition to the price of the goods, an amount in respect of 'intra-Community transport costs' on the basis of a separate invoice, the transaction value within the meaning of Article 3 (1) of Regulation No 1224/80 includes only the first of those amounts; however the competent customs authorities may, if the circumstances warrant it, check the invoice relating to the costs in question in order to verify that they are not fictitious.

## The other questions

38 Since the other questions were submitted only in the case of an affirmative reply being given to Question 1 (a), there is no need to reply to them.

## Costs

39 The costs incurred by the Commission of the European Communities, which 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 as to costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions referred to it by the Bundesfinanzhof by an order of 30 October 1984, hereby rules:

**Where a local buyer has paid a foreign seller, in addition to the price of the goods, an amount in respect of 'intra-Community transport costs' on the basis of a separate invoice, the transaction value within the meaning of Article 3 (1) of Regulation No 1224/80 includes only the first of those amounts; however the competent customs authorities may, if the circumstances warrant it, check the invoice relating to the costs in question in order to verify that they are not fictitious.**

Bahlmann Bosco

Koopmans O'Higgins Schockweiler

Delivered in open court in Luxembourg on 10 December 1985.

P. Heim
Registrar

K. Bahlmann
President of the Fourth Chamber