JUDGMENT OF THE COURT (First Chamber)

14 June 2007 *

In Case C-56/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Finanzgericht Düsseldorf (Germany), made by decision of 31 January 2006, received at the Court on 2 February 2006, in the proceedings

Euro Tex Textilverwertung GmbH

v

Hauptzollamt Duisburg,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, R. Schintgen, A. Tizzano (Rapporteur), A. Borg Barthet and E. Levits, Judges,

* Language of the case: German.

Advocate General: E. Sharpston,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Euro Tex Textilverwertung GmbH, by A. Gläser, Rechtsanwalt,

— the Commission of the European Communities, by J. Hottiaux and B. Schima, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 January 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, approved by Decision 93/743/Euratom, ECSC, EC of the Council and the

Commission of 13 December 1993 (OJ 1993 L 348, p. 1) (hereinafter 'the Association Agreement') and more specifically of Article 7(1)(b) of Protocol 4 to that agreement, as amended by Decision No 1/97 of the Association Council, Association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, of 30 June 1997 (OJ 1997 L 221, p. 1) (hereinafter 'Protocol 4').

2 The reference was made in the course of proceedings between Euro Tex Textilverwertung GmbH (hereinafter 'Euro Tex') and the Hauptzollamt Duisburg (Principal Tax Office, Duisburg, hereinafter 'the Hauptzollamt') concerning the correctness of the proofs of origin provided for the purposes of the export of used textile products to Poland.

Community legislation

3 Protocol 4 defines the concept of 'originating products' and contains some provisions in respect of administrative cooperation.

4 Article 2(1) of Protocol 4 provides:

'For the purpose of implementing the Agreement, the following products shall be considered as originating in the Community:

(a) products wholly obtained in the Community within the meaning of Article 5 of this Protocol;

(b) products obtained in the Community incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the Community within the meaning of Article 6 of this Protocol;

...'

5 Article 6 of Protocol 4 provides:

'1. For the purposes of Article 2, products which are not wholly obtained are considered to be sufficiently worked or processed when the conditions set out in the list in Annex II are fulfilled.

...

3. Paragraphs 1 and 2 shall apply except as provided in Article 7.'

6 Finally, Article 7 of Protocol 4 is in the following terms:

'1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 6 are satisfied:

...

(b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting up;

...'

7 It is appropriate to point out that Article 7 of Protocol 4 was amended, with effect from 1 January 2001, by Decision No 4/2000 of the EU-Poland Association Council of 29 December 2000 amending Protocol 4 to the Europe Agreement with Poland concerning the definition of the concept of 'originating products' and methods of administrative cooperation (OJ 2001 L 19, p. 29; hereinafter 'amended Protocol 4').

8 Article 7(1)(j) of amended Protocol 4, which replaces, in part, Article 7(1)(b) of Protocol 4, no longer refers to 'simple operations' but refers, instead, to 'sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles)'.

The main proceedings and the question referred for a preliminary ruling

9 It appears from the order for reference that, at the time of the facts, Euro Tex managed a certified undertaking which collected, transported and processed clothes and other textile products.

10 The articles deposited by the public in street containers were then subjected to sorting and matching operations in several stages. Those considered to be capable of being worn again were progressively separated out according to a series of criteria. Euro Tex's employees responsible for those sorting and matching operations were in particular required to select, as a priority, particularly 'fashionable' articles by reference to the customers' requirements.

11 During 1998 and 1999 Euro Tex delivered to retailers in Poland textile products which had been sorted and matched. In order to prove that they had 'originating' status within the meaning of the preferential customs procedures established by the Association Agreement, Euro Tex attached to its commercial invoices declarations of origin of the goods delivered, or submitted 'EUR.1' movement certificates for the goods.

12 Following an inspection at Euro Tex's premises, carried out at the request of the Polish authorities, the Hauptzollamt declared, by decision of 19 July 2001, that Euro Tex was not in a position to prove the origin of the goods. The German authorities, in addition, withdrew the EUR.1 movement certificates and stated that they would inform the Polish authorities of the results of the inspection on site.

13 Euro Tex made a complaint about that decision to the Hauptzollamt, which, however, rejected it as unfounded by decision of 30 June 2002. By that decision, the Hauptzollamt concluded, among other things, that the conditions referred to by Protocol 4 for the used textiles, intended to be worn again, to be regarded as entirely obtained in the Community were not fulfilled. The decision states, further, that the sorting and matching operations carried out in this case constituted no more than minimal processing which did not affect the origin of those products.

14 Euro Tex then brought proceedings before the Finanzgericht Düsseldorf (District Tax Court, Düsseldorf) for a declaration of the illegality of the notice sent by the Hauptzollamt to the Polish customs authorities, informing them of the incorrectness of the declarations and certificates of origin in question.

15 Uncertain as to the interpretation of Article 7(1)(b) of Protocol 4, the Finanzgericht Düsseldorf decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Do the matching operations described in more detail in the present order go beyond simple operations of matching for the purposes of Article 7(1)(b) of Protocol 4?'

16 The uncertainty of the Finanzgericht Düsseldorf arises, in particular, from differences between several language versions of Protocol 4. In the referring court's view, certain language versions of that protocol suggest that there is a distinction between simple matching operations and complex matching operations, whereas other versions seem to indicate that all the operations referred to in Article 7(1)(b) of Protocol 4 are, by definition, 'simple'.

17 Thus, for example, while the German version of Article 7(1)(b) of Protocol 4 refers to 'einfaches Entstauben, Sieben, Aussondern, Einordnen, Sortieren (einschließlich des Zusammenstellens von Sortimenten) ...' and the French version to 'opérations simples de dépoussiérage, de criblage, de triage, de classement, d'assortiment (y compris la composition de jeux de marchandises) ...', the English version of that provision refers to 'simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles) ...'.

The question referred

18 By its question, the national court is asking, in essence, whether, in the light of the provisions of Protocol 4, a distinction should be drawn between simple matching operations and more complex matching operations. The former would, under Article 7(1)(b) of Protocol 4, be insufficient working or processing to confer on goods the status of 'originating products', whereas the latter could constitute working or processing sufficient to confer that status under Article 6 of the Protocol. If such a distinction could be drawn, the Finanzgericht Düsseldorf wishes to ascertain whether matching operations such as those carried out by Euro Tex come within the latter category, namely that of more complex operations.

Observations submitted to the Court

19 Euro Tex claims that the matching operations carried out as part of the recycling of used textile products are of a completely different nature from that which should be understood by 'simple operations consisting of ... matching' within the meaning of Article 7(1)(b) of Protocol 4. That provision covers only very simple operations not requiring any special knowledge and not involving any real recovery of the products. By contrast, the matching of used textile products leads to a significant recovery of those articles. It is carried out, in fact, by means of a whole series of separating out operations for which the employees of recycling undertakings must, indeed, possess some specific skills (for example the ability to recognise fabric quality, fashion trends, etc.). Moreover, to that end, such employees receive specific training within the undertaking.

20 Therefore, since the matching operations in question in the main proceedings can confer the status of originating products on the goods dealt with, Euro Tex suggests that an affirmative reply be given to the Finanzgericht Düsseldorf.

21 The Commission, taking the opposite view, submits that no distinction between simple matching operations and more complex matching operations can be drawn under the terms of Protocol 4. That follows, in particular, from a comparative examination of the different language versions of Article 7(1)(b) of Protocol 4, and especially from the English and Dutch versions.

22 Such an interpretation of the provision in question would also be consistent with the standards in Annex D.1 to the International Convention on the simplification and harmonisation of customs procedures ('the Kyoto Convention'), several annexes to which were accepted on behalf of the Community by Council Decision 77/415/EEC of 3 June 1977 (OJ 1977 L 166, p. 1).

The Court's reply

23 The question referred by the national court concerns the treatment of the operations in question in the main proceedings as simple or complex operations. In that regard, in support of their interpretations of Article 7(1)(b) of Protocol 4, the parties to those proceedings referred, essentially, to the divergences between the different language versions of that provision.

24 It is true that certain language versions of that provision could be interpreted as well in the sense suggested by the applicant in the main proceedings as in that suggested by the Commission. That is the case particularly with the German ('einfaches'), French ('les opérations simples de'), Spanish ('las operaciones simples de'), Italian ('le semplici operazioni di') and Portuguese ('simples operações de') versions.

25 It appears, however, from other language versions that the operations referred to by that provision are, by definition, 'simple'. Such is the indication which can be deduced from the following expressions, namely 'simple operations consisting of' in the English version, 'enkle foranstaltninger som' in the Danish version, 'eenvoudige verrichtingen zoals' in the Dutch version, and 'enkel behandling bestående i' in the Swedish version.

26 Consequently, as the Commission argued, the interpretation consisting in regarding as simple all the operations mentioned in Article 7(1)(b) of Protocol 4 is not contrary to any language version of that protocol, whereas the interpretation suggested by Euro Tex — involving distinguishing between simple and complex matching operations — is inconsistent, at the very least, with the language versions mentioned in the preceding paragraph.

27 In any event, it must be recalled that it is settled case-law that the different language versions of a Community text must be given a uniform interpretation and hence, in the case of divergence between the language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part (see Case C-236/97 *Codan* [1998] ECR I-8679, paragraph 28; Case C-420/98 *W.N.* [2000] ECR I-2847, paragraph 21; and judgment of 16 March 2006 in Case C-332/04 *Commission* v *Spain*, not published in the ECR, paragraph 52).

28 The fourth and sixth recitals in the preamble to Decision No 1/97 state that it is intended 'to further facilitate trade and to simplify administrative burdens' and 'to facilitat[e] the work of users and customs administrations'. As the Commission submitted, it would undermine the objectives of simplification and legal certainty to ask the national authorities to distinguish between simple and complex operations of matching, removal of dust, sifting etc. without any criterion or parameter on the basis of which to make such a distinction being indicated in the protocol.

29 In addition, it must be observed that the amendment, by Decision No 4/2000, to Article 7(1)(b) of Protocol 4 also appears to support that reading of the provision in question, since the reference to 'simple operations' was omitted from the text of that provision.

30 Therefore, no distinction between simple and complex matching operations can be drawn either from the wording of Article 7(1)(b) of Protocol 4 or from the purposes of that protocol.

31 It is appropriate to add, finally, that the text of the Kyoto Convention, cited in the observations submitted by the parties, does not support that distinction either.

32 Indeed, in a case such as that in the main proceedings, standard 3 in Annex D.1 to the Kyoto Convention would make the origin of the goods dependent on the place where they underwent their 'last substantial manufacturing or processing'. Standard 6 in that annex states that '[o]perations which do not contribute or which contribute to only a small extent to the essential characteristics or properties of the goods' are not to be regarded as constituting substantial manufacturing or processing. In that regard, the standard mentions, among others, 'operations to improve the packaging or the marketable quality of the goods or to prepare them for shipment, such as breaking bulk, grouping of packages, sorting and grading, repacking' and the 'mixing of goods of different origin, provided that the characteristics of the resulting product are not essentially different from the characteristics of the goods which have been mixed'. Accordingly, no distinction between simple and complex operations is mentioned there.

33 The reply to the question referred by the Finanzgericht Düsseldorf must therefore be that since Article 7(1)(b) of Protocol 4 does not make it possible to draw a distinction between simple and more complex matching operations, matching operations such as those described in the order for reference are covered by the concept of simple operations of matching for the purposes of that provision.

Costs

34 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 (First Chamber) hereby rules:

Since Article 7(1)(b) of Protocol 4 to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, as amended by Decision No 1/97 of the Association Council, Association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, of 30 June 1997 does not make it possible to draw a distinction between simple and more complex matching operations, matching operations such as those described in the order for reference are covered by the concept of simple operations of matching for the purposes of that provision.

[Signatures]