JUDGMENT OF THE COURT (Fifth Chamber)
4 February 1986 *

In Case 65/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof [Federal Finance Court] for a preliminary ruling in the action pending before it between

Hauptzollamt [Principal Customs Office] **Hamburg-Ericus**

and

Van Houten International GmbH

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

THE COURT (Fifth Chamber)

composed of: U. Everling (President of the Chamber), R. Joliet, O. Due, Y. Galmot and C. Kakouris, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

the Commission of the European Communities, by Jörn Sack, a member of its Legal Department, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 11 December 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 dated 12 February 1985 which was received at the Court on 14 March 1985, the Bundesfinanzhof referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the interpretation of Article 3 (1) and (3) of Council Regulation No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes.

2 The question arose in an action between Van Houten International GmbH and the Hauptzollamt Hamburg-Ericus concerning the payment of customs duties on a consignment of cocoa beans imported by Van Houten in July 1980.

3 On importation Van Houten declared, in addition to the net invoice price, the weighing costs of DM 157 which it had incurred. According to the contract of sale, the sale was concluded c.i.f. Hamburg 'net delivered weights', the purchase price was determined by the delivered weight and the cost of determining the delivered weight was to be borne by the buyer, that is to say Van Houten. The Hauptzollamt incorporated the weighing costs in the customs value.

4 Van Houten brought an action challenging that decision before the Finanzgericht [Finance Court] Hamburg, which decided that the weighing costs had been wrongly incorporated in the customs value. The Hauptzollamt appealed against that judgment to the Bundesfinanzhof, arguing in particular that Van Houten had paid the weighing costs for the benefit of the seller and that according to Article 3 (3) (a) of the aforesaid regulation those costs were therefore part of the customs value as defined in Article 3 (1).

5 The Bundesfinanzhof stayed the proceedings and submitted the following question to the Court of Justice for a preliminary ruling:

'Should Article 3 (1) and (3) of Council Regulation (EEC) No 1224/80, in the version in force prior to 1 January 1981, be interpreted as including in the transaction value the cost of establishing the weight of goods on arrival in the case of what is known as an arrival contract if, according to the contract of sale, that cost is to be borne by the buyer?'

6 In its order for reference the Bundesfinanzhof points out that according to Article 3 (1) the customs value of imported goods is 'the transaction value, that is, the price actually paid or payable', which is defined in the first sentence of Article 3 (3) (a) as 'the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods'.

7 The Bundesfinanzhof also points out that after the importation at issue in this case the latter definition was expanded by Council Regulation No 3193/80 of 8 December 1980 (Official Journal 1980, L 333, p. 1), which added the following clause: 'and includes all payments made or to be made 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'. Since Regulation No 1224/80 was designed to bring the Community rules into line with the General Agreement on Tariffs and Trade (GATT) and the clause added by Regulation No 3193/80 is contained in the Protocol which is annexed to GATT and whose provisions must be regarded as forming an integral part of it, the Bundesfinanzhof considers that that amendment is merely declaratory. The original text of Article 3 (3) should therefore in its view be interpreted in the light of the subsequent amendment.

8 The Bundesfinanzhof recognizes that the objective of GATT, which according to its preamble is to ensure that customs value is based on simple and equitable criteria, can only be attained if the provisions of the actual contract of sale are taken as the sole basis for determining the customs value. It points out, however, that the rules on customs value do sometimes take into account standard terms which do not accord with the provisions of the contract in question. An obligation which customarily devolves on the seller may therefore be regarded as an 'obligation of the seller' for purposes of the clause added to Article 3 (3) of the regulation. As in so-called 'arrival contracts' it would appear to be customary for the seller to bear the cost of determining the quantity at the place of destination, it might therefore be justified to include that cost in the customs value, even if the contract in question provides that they are to be paid by the buyer.

9 The Bundesfinanzhof adds that according to the last sentence of Article 3 (3) (a) the payment which must be taken into account 'may be made directly or indirectly', and if the customs value is largely left to be determined by the parties to the contract of sale, the system would be open to abuse.

10 The Commission stresses in its observations that the Community provisions on customs value were placed on a new footing as a result of multilateral trade negotiations within GATT. The new provisions, which are contained in Regulation No 1224/80, provide that, where possible, the customs valuation of goods should be based on the transaction value. Under the new system, the customs value is thus calculated on the basis of the particular terms of each individual contract and trade practice is no longer relevant.

11 According to the Commission, the transaction value is adjusted in appropriate cases, pursuant to Article 8 of the regulation, but the additions which must be made to the price actually paid pursuant to that article do not include the weighing costs. Thus the only relevant consideration is whether those costs form part of the 'price actually paid or payable', as defined in Article 3 (3) of the regulation. Article 3 (3) (a) specifies the payments which are to be included in that price and Article 3 (3) defines those which are not to be included.

12 The Commission recognizes that according to Article 3 (3) (a) the payment may be made 'indirectly'. However, according to subparagraph (b), 'activities . . . undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller'. As the weighing was carried out by the buyer at his own expense and as weighing costs are not referred to in Article 8, those costs cannot be regarded as an indirect payment to the seller.

13 In reply to the question which has been referred for a preliminary ruling, it must be stressed that Regulation No 1224/80 replaced the concept of 'normal price' which was the basis for the calculation of customs value under the previous rules, by the concept of 'transaction value', which, as a general rule, is the price actually

paid or payable for the goods. Under the new system, the customs value must therefore be calculated on the basis of the conditions on which the individual sale was made, even if they do not accord with trade practice or may appear unusual for the type of contract in question.

14 As is expressly stated in the sixth recital in the preamble to Regulation No 1224/80, the use of arbitrary or fictitious customs values has no place in this system, and that is reflected in those provisions of the regulation which define the transaction value or make adjustments to it. As the Commission has pointed out, according to those provisions the customs value does not include the cost of determining the quantity of goods on arrival at their destination where such costs are paid by the buyer. That has not been changed by the clause added to the first sentence of Article 3 (3) (a) by Regulation No 3193/80, which in any case does not apply to the importation at issue. As determining the quantity actually delivered at the place of destination is in the buyer's interest as much as the seller's, it cannot be regarded as an activity carried out by the buyer 'to satisfy an obligation of the seller' within the meaning of that provision, unless the contract at issue provides for such an obligation.

15 The answer to the question is therefore that Article 3 (1) and (3) of Council Regulation No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes must be interpreted as excluding from the transaction value the cost of establishing the weight of goods on arrival, where that cost is to be borne by the buyer, in the case of what is known as an arrival contract.

Costs

16 The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As these proceedings are, so far as the parties to the main proceedings are concerned, 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 (Fifth Chamber),

in answer to the question submitted to it by the Bundesfinanzhof by an order dated 12 February 1985, hereby rules:

Article 3 (1) and (3) of Council Regulation No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes must be interpreted as excluding from the transaction value the cost of establishing the weight of goods on arrival, where that cost is to be borne by the buyer, in the case of what is known as an arrival contract.

Everling Joliet

Due Galmot Kakouris

Delivered in open court in Luxembourg on 4 February 1986.

P. Heim
Registrar

U. Everling
President of the Fifth Chamber