JUDGMENT OF THE COURT (Fifth Chamber)
24 February 1994 *

In Case C-368/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'Appel, Toulouse (France), for a preliminary ruling in the proceedings pending before that court between

Administration des Douanes

and

Solange Chiffre

on the interpretation of the provisions of Commission Regulations (EEC) Nos 3749/83 of 23 December 1983 (Official Journal 1983 L 372, p. 1) and 693/88 of 4 March 1988 (Official Journal 1988 L 77, p. 1) on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the European Economic Community in respect of certain products from developing countries,

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, R. Joliet, G. C. Rodríguez Iglesias, F. Grévisse and M. Zuleeg (Rapporteur), Judges,

Advocate General: C. Gulmann,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Solange Chiffre and Société Bonnieux, party bearing civil liability, by Hervé Tassy, of the Marseilles Bar;

— the French Government, by Jean-Louis Falconi, Secretary for Foreign Affairs at the Ministry of Foreign Affairs and Edwige Belliard, Deputy Director of the Legal Department in that Ministry, acting as Agents,

— the Belgian Government, by Jan Devadder, Administrative Director at the Ministry of Foreign Affairs, acting as Agent,

— the United Kingdom Government, by John E. Collins of the Treasury Solicitor's Department, acting as Agent,

— the Commission of the European Communities by Blanca Rodriguez Galindo, a member of its Legal Service, and Virginia Melgar, a national civil servant seconded to its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Solange Chiffre and Société Bonnieux, the French Government and the Commission at the hearing on 16 September 1993,

after hearing the Opinion of the Advocate General at the sitting on 13 October 1993,

gives the following

Judgment

1 By judgment of 7 March 1991, which was received at the Court Registry on 23 September 1992, the Cour d'Appel (Court of Appeal), Toulouse, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the provisions of Commission Regulation (EEC) No 3749/83 of 23 December 1983 (Official Journal 1983 L 372, p. 1) and Commission Regulation (EEC) No 693/88 of 4 March 1988 (Official Journal 1988 L 77, p. 1), both on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the European Economic Community in respect of certain products from developing countries.

2 The question was raised in proceedings between the Administration française des Douanes (French Customs Authorities) and Solange Chiffre, Managing Director of Société Bonnieux, concerning the conditions for obtaining exemption from customs duties on the importation of certain goods originating from India.

3 In the course of 1987 and 1988 Société Bonnieux, a customs agent, submitted 20 declarations to the French Customs Office for the purpose of releasing for consumption in France, on behalf of ALJA France, leather clothing originating from India.

4 In order to benefit from full exemption from customs duties pursuant to the generalized system of tariff preferences granted by the Community to certain products originating from developing countries, Société Bonnieux produced, in support of its customs declarations, certificates of origin Form A drawn up by the Indian authorities, on which box 12 indicated that the goods were to be exported to the Czechoslovak Socialist Republic or the Polish People's Republic.

5 Société Bonnieux informed the French authorities, however, that the certificates in question indicated those destinations because the goods to which they referred were the subject of compensatory purchases between the East European countries and India. When East European countries sell material in India, Indian purchasers, who do not have sufficient foreign exchange available, pay for the material in goods such as skins and clothes. Since the East European countries do not need those goods they resell them on other markets, for example in France, to which they are sent directly.

6 The French Customs Authorities did not contest the origin of the goods, but nevertheless considered that the products imported by Société Bonnieux were not entitled to benefit from the preference system, since box 12 on the certificates produced by that company referred neither to the European Community nor to a Member State as is required by the above-mentioned regulations.

7 The Customs Authorities accordingly demanded payment of the 7% duty normally applicable to goods of that type. When Solange Chiffre refused to pay that duty they sued her jointly with Société Bonnieux in the Tribunal d'Instance (Court of First Instance), Albi. In a judgment of 25 September 1990 that court ordered Solange Chiffre to pay a fine of FF 2 000.

8 On 28 September 1990 the French Customs Authorities appealed against that judgment to the Cour d'Appel, Toulouse, which stayed the proceedings and referred the following question to the Court of Justice:

'Is the benefit of the preferential treatment granted by the EEC to developing countries, resulting in exemption from customs duties, necessarily lost when the certificate of origin Form A issued on the export of the products refers to a State other than a Member State of the EEC?'

9 The conditions under which products from developing countries are entitled to benefit from suspension of customs duties under the generalized tariff preference system are defined, as regards declarations drawn up before 1 January 1988, by Regulation No 3749/83 and, as regards declarations made after that date, by Regulation No 693/88.

10 The certificate of origin Form A, the rules for the drawing up and issue of which are identical under Articles 16 to 24 and the corresponding notes and annexes of Regulations Nos 3749/83 and 693/88, constitutes the documentary evidence for application of the provisions concerning tariff preferences referred to in Article 1 of the said regulations.

11 Box 12 of the certificate, with which the present case is concerned, contains a declaration by the exporter that the goods in question comply with the origin requirements specified by the country to which the goods are being exported in order to be eligible to benefit from the tariff preference system. The full text of the declaration in box 12 is thus worded:

'The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in ... (name of the country), and that they comply

with the origin requirements specified for those goods in the generalized system of preferences for goods exported to ... (importing country) .

Place and date, signature of authorized signatory.'

12 Explanatory Note 9 in Annex 1 to Regulation No 693/88, which corresponds to Note 8 in the annex to Regulation No 3749/83, states that box 12 of the certificate

'... shall be duly completed by indicating "European Economic Community" or one of the Member States'.

13 Under that system, the indication 'European Economic Community' or a specific Member State in box 12 of the certificate of origin is, alongside the data comprised in the certificate, a substantive condition for the grant of the tariff preferences provided for by the Community regulations. That indication represents the sole means by which the customs authorities of the Member States can ensure that the rules of the Community tariff preference system concerning the origin of goods have been complied with by the exporter.

14 Accordingly, if, as in this case, the certificate of origin Form A is drawn up so as to indicate a country of destination other than a Member State of the European Community or the European Community itself, it cannot be taken into account for the purposes of the application of the tariff preference system in the Community.

15 Contrary to the contention of Solange Chiffre and Société Bonnieux, Article 12 of Regulations Nos 3749/83 and 693/88, according to which

'the discovery of slight discrepancies between the statements made in the certificate and those made in the documents produced to the customs office for the purpose of carrying out the formalities for importing the products shall not *ipso facto* render the certificate null and void, provided it is duly established that the certificate corresponds to the products concerned',

is not applicable in this case.

16 If the country in which the certificate is submitted for the purposes of obtaining the benefit of tariff preferences does not correspond to that indicated in box 12 of the certificate of origin, the discrepancy cannot be described as slight. It is not excluded in such a situation that the origin rules applicable in the country of destination indicated on the certificate might differ from the origin rules in force in the Community and that, accordingly, the competent customs authorities in the Member State of actual destination will not be in a position to check on the basis of the certificate of origin submitted that the origin rules applicable in the Community have been complied with.

17 It should, moreover, be added that such a certificate cannot be replaced by another certificate indicating as the country of destination the country where grant of tariff preferences is, in fact, requested, in accordance with Article 22 of Regulations Nos 3749/83 and 693/88. That provision states that:

'It shall always be possible to replace one or more certificates of origin Form A by one or more other such certificates, provided that this is done at the customs office in the Community where the products are located.'

18 As the French and United Kingdom Governments have pointed out, that provision refers only to a case where a consignment originally destined for one Member

State is sent on in whole or in part to another Member State for release into free circulation. Since, in that case, the changes do not concern the origin of products but only factors internal to the Community, it is for the competent customs authorities in the Community to draw up a fresh certificate indicating the Member State to which the goods are to be exported. Nevertheless, as Explanatory Note 7 in the annex to Regulation No 3749/83 and Explanatory Note 8 in Annex 1 to Regulation No 693/88 provide, the entries in box 12 concerning the country of origin and the country of destination are to be taken from the original certificate.

19 That provision does not, however, concern a case where the amendment to be made involves the exporter's declaration appearing in box 12. The responsibility for certifying the veracity of that declaration is solely that of the competent government authority of the exporting country benefiting from the system of tariff preferences.

20 The final question to be examined is whether, in a case such as this, the competent authorities of the exporting State — in the event the Indian authorities — could not, pursuant to Article 23 of Regulations Nos 3749/83 and 693/88, issue retrospectively a fresh certificate of origin by which they would confirm that the goods in question also complied with the origin rules of the Community or of one of the Member States of the European Community.

21 Article 23 of Regulation No 693/88 provides:

'1. In exceptional cases, a certificate may be issued after the actual exportation of the products to which it relates, if it was not issued at the time of exportation as a result of errors involuntarily made or omissions or other special circumstances, and provided that the goods were not exported before the communi-

cation to theCommission of the European Communities of the information required by Article 26.

2. The appropriate governmental authority may issue a certificate retrospectively only after verifying that the particulars contained in the exporter's application agree with those contained in the corresponding export documents and that no certificate of origin was issued when the products in question were exported.

Certificates of origin Form A issued retrospectively must bear, in box 4, the endorsement "Délivré a posteriori" or "Issued retrospectively".'

22 The French Government considers that that provision does not authorize, in circumstances such as those arising in this case, the retrospective issue of a fresh certificate of origin because, contrary to what is assumed in that provision, a certificate of origin Form A had already been issued for the purpose of the export of the goods in question.

23 The Belgian and United Kingdom Governments and the Commission support the contrary position. In their view, where the certificate of origin has been issued for the purpose of the export of goods to a country other than one of the Member States of the Community, it must be regarded as non-existent as regards the export of goods to the Community and, consequently, with regard to the Community regulations.

24 In that connection it should be pointed out that the function of the certificate of origin is to guarantee that the goods in question comply with the origin rules of the country of destination indicated in box 12 of the certificate, but it does not represent any undertaking on the part of the competent government authorities in the exporting country as regards application of the origin rules imposed by

another country. Since the effects and scope of that certificate are strictly limited to application of the system of tariff preferences of the country indicated in box 12, it can in no way be taken into account for the application of the tariff preference system of another country.

25 It follows that the condition to which Article 23 (2) of Regulations Nos 3749/83 and 693/88 subjects the issue of a retrospective certificate of origin, namely that no certificate has been issued when the products in question were exported, must be regarded as satisfied if the original certificate does not mention the country of actual destination in box 12.

26 However, Article 23 (1) of Regulations Nos 3749/83 and 693/88 restricts the retrospective issue of a certificate of origin to situations of an exceptional nature.

27 Compensation operations such as those taking place in this case between India and East European countries fulfil that condition. They are characterized by the fact that goods are exchanged in another State not for a sum of money but for other goods and, if the country of destination has no need of those goods, they are subsequently resold on other markets.

28 That explains why the certificates of origin first mention the country of the operator who is party to the compensatory purchase, in view of the fact that, when the contract is concluded, the market on which the products in question will finally be resold is not always known with certainty.

29 Finally, provided the products in question satisfy the Community origin rules, there is no reason why a fresh certificate may not be issued retrospectively by the competent government authority of the exporting country to that effect, on the

basis of Article 23 of Regulations Nos 3749/83 and 693/88. The fresh certificate must then be taken into account by the competent customs authority in the Community for the purposes of grant of the tariff exemption established by the Community's system of generalized tariff preferences, provided that all the other conditions of validity laid down in the Community rules are satisfied.

30 In view of the foregoing, the reply to the question referred to the Court must be that entitlement to benefit from the system of tariff preferences granted by the Community to certain products from developing countries is lost if the certificate of origin Form A issued when products are exported pursuant to Regulations Nos 3749/83 and 693/88 states the country of destination to be a country other than a Member State of the European Community. However entitlement to the tariff exemption cannot be refused when the competent government authority of the exporting country has issued retrospectively a fresh certificate which satisfies the conditions laid down in Community law.

Costs

31 The costs incurred by the French, Belgian and United Kingdom Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Cour d'Appel, Toulouse, by judgment of 7 March 1991, hereby rules:

Entitlement to benefit from the system of tariff preferences granted by the Community to certain products from developing countries is lost if the certificate of origin Form A issued when products are exported pursuant to Commission Regulations (EEC) Nos 3749/83 of 23 December 1983 and 693/88 of 4 March 1988 on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the European Economic Community in respect of certain products from developing countries states the country of destination to be a country other than a Member State of the European Community. However entitlement to the tariff exemption cannot be refused when the competent government authority of the exporting country has issued retrospectively a fresh certificate which satisfies the conditions laid down in Community law.

Moitinho de Almeida Joliet Rodríguez Iglesias

Grévisse Zuleeg

Delivered in open court in Luxembourg on 24 February 1994.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber