Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 23 January 2025 [1]

Case C-782/23

'Tauritus' UAB
v
Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos,
intervening party:
Kauno teritorinė muitinė

(Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania))

(Preliminary ruling proceedings – Customs union – Regulation (EU) No 952/2013 – Union Customs Code – Common Customs Tariff – Customs value – Transaction value – Determination – Goods imported on the basis of a contract stating the provisional purchase price – Definitive price unknown on the date of acceptance of the customs declaration)

1. The dispute giving rise to this request for a preliminary ruling concerns the amount of interest on arrears due on account of the late payment of the value added tax (VAT) relating to an import.

2. In order to determine the amount of that interest, the exact amount of the import VAT must be established. The import VAT amount depends, in turn, on how the customs value of the imported goods is calculated, in accordance with Regulation (EU) No 952/2013. [2]

I. Legislative framework

A. The Customs Code

3. Article 15 ('Provision of information to the customs authorities'), paragraph 2, states:

'The lodging of a customs declaration … by a person to the customs authorities … shall render the person concerned responsible for all of the following:

(a) the accuracy and completeness of the information given in the declaration, notification or application;

[1] Original language: Spanish.

[2] Regulation of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1; corrigenda OJ 2016 L 267, p. 2, and OJ 2017 L 7, p. 23); 'the Customs Code'.

…’

4. Article 48 (‘Post-release control’) provides:

‘For the purpose of customs controls, the customs authorities may verify the accuracy and completeness of the information given in a customs declaration … and the existence, authenticity, accuracy and validity of any supporting document and may examine the accounts of the declarant and other records relating to the operations in respect of the goods in question … after having released them.’

5. Article 70 (‘Method of customs valuation based on the transaction value’) states:

‘1. The primary basis for the customs value of goods 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 Union, adjusted, where necessary.

2. The price actually paid or payable shall be the total payment made or to be made by the buyer to the seller or by the buyer to a third party for the benefit of the seller for the imported goods and include all payments made or to be made as a condition of sale of the imported goods.

3. The transaction value shall apply provided that all of the following conditions are fulfilled:

…

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

…’

6. Article 71 (‘Elements of the transaction value’) and Article 72 (‘Elements not to be included in the customs value’) provide for the adjustments which have to be made in order to determine the customs value under Article 70. [3]

7. Article 73 (‘Simplification’) states:

‘The customs authorities may, upon application, authorise that the following amounts be determined on the basis of specific criteria, where they are not quantifiable on the date on which the customs declaration is accepted:

(a) amounts which are to be included in the customs value in accordance with Article 70(2); and

[3] Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of the Customs Code (OJ 2015 L 343, p. 558), in Article 128 (‘Transaction value’), paragraph 1, provides the following clarification:
‘The transaction value of the goods sold for export to the customs territory of the Union shall be determined at the time of acceptance of the customs declaration on the basis of the sale occurring immediately before the goods were brought into that customs territory.’
Moreover, Article 133 (‘Valuation of conditions and considerations’) of the same implementing regulation provides:
‘Where the sale or price of imported goods is subject to a condition or consideration the value of which can be determined with respect to the goods being valued, such value shall be regarded as part of the price actually paid or payable …’

(b) the amounts referred to in Articles 71 and 72.’ [4]

8. Article 74 (‘Secondary methods of customs valuation’) states:

‘1. Where the customs value of goods cannot be determined under Article 70, it shall be determined by proceeding sequentially from points (a) to (d) of paragraph 2, until the first point under which the customs value of goods can be determined.

…

2. The customs value, pursuant to paragraph 1, shall be:

(a) the transaction value of identical goods …;

(b) the transaction value of similar goods …;

(c) the value based on the unit price …; or

(d) the computed value, consisting of the sum of:

(i) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(ii) an amount for profit and general expenses …;

(iii) the cost or value of the elements referred to in point (e) of Article 71(1).

3. Where the customs value cannot be determined under paragraph 1, it shall be determined on the basis of data available in the customs territory of the Union, using reasonable means consistent with the principles and general provisions of all of the following:

(a) the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade;

(b) Article VII of the General Agreement on Tariffs and Trade;

(c) this Chapter.’ [5]

9. Article 101 (‘Determination of the amount of import or export duty’) provides:

‘1. The amount of import or export duty payable shall be determined by the customs authorities … as soon as they have the necessary information.

[4] Article 71 (‘Simplification’), paragraph 1, of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 as regards detailed rules concerning certain provisions of the Union Customs Code (OJ 2015 L 343, p. 1), in the version applicable to the facts, states:
‘1. The authorisation referred to in Article 73 of the Code may be granted where the following conditions are met:
(a) the application of the procedure referred to in Article 166 of the Code would, in the circumstances, represent disproportioned administrative costs;
(b) the customs value determined, will not significantly differ from that determined in the absence of an authorisation.’

[5] According to Article 144 (‘Fall-back method’), paragraph 1, of Implementing Regulation 2015/2447: ‘When determining the customs value under Article 74(3) of the Code, reasonable flexibility may be used in the application of the methods provided for in Articles 70 and 74(2) of the Code. The value so determined shall, to the greatest extent possible, be based on previously determined customs values.’

2. Without prejudice to Article 48, the customs authorities may accept the amount of import or export duty payable determined by the declarant.

…’

10. Article 166 (‘Simplified declaration’), states in paragraph 1:

‘The customs authorities may accept that a person has goods placed under a customs procedure on the basis of a simplified declaration which may omit certain of the particulars referred to in Article 162 or the supporting documents referred to in Article 163’.

11. Article 167 (‘Supplementary declaration’) provides:

‘1. In the case of a simplified declaration pursuant to Article 166 … the declarant shall lodge a supplementary declaration containing the particulars necessary for the customs procedure concerned at the competent customs office within a specific time limit. [6]

In the case of a simplified declaration pursuant to Article 166, the necessary supporting documents shall be in the declarant’s possession and at the disposal of the customs authorities within a specific time limit.

The supplementary declaration may be of a general, periodic or recapitulative nature.

…

4. The simplified declaration referred to in Article 166 or the entry in the declarant’s records referred to in Article 182, and the supplementary declaration shall be deemed to constitute a single, indivisible instrument taking effect, respectively, on the date on which the simplified declaration is accepted in accordance with Article 172 and on the date on which the goods are entered in the declarant’s records.

…’

12. Article 172 (‘Acceptance of a customs declaration’), paragraph 2, states:

‘The date of acceptance of the customs declaration by the customs authorities shall, except where otherwise provided, be the date to be used for the application of the provisions governing the customs procedure for which the goods are declared and for all other import or export formalities.’

6 In accordance with Article 146 (‘Supplementary declaration’) of Delegated Regulation 2015/2446, in the version applicable to the facts:
‘1. Where the customs authorities are to enter the amount of import or export duty payable in the accounts in accordance with the first subparagraph of Article 105(1) of the Code, the supplementary declaration referred to in the first subparagraph of Article 167(1) of the Code shall be lodged within 10 days of the release of the goods.
2. Where an entry in the accounts takes place in accordance with the second subparagraph of Article 105(1) of the Code and the supplementary declaration is of a general, periodic or recapitulative nature, the period of time covered by the supplementary declaration shall not exceed one calendar month.
3. The time limit for lodging the supplementary declaration referred to in paragraph 2 shall be set by the customs authorities. It shall not exceed 10 days from the end of the period of time covered by the supplementary declaration.
…’.

13. Article 173 ('Amendment of a customs declaration') stipulates:

'1. The declarant shall, upon application, be permitted to amend one or more of the particulars of the customs declaration after that declaration has been accepted by customs. The amendment shall not render the customs declaration applicable to goods other than those which it originally covered.

…

3. Upon application by the declarant, within three years of the date of acceptance of the customs declaration, the amendment of the customs declaration may be permitted after release of the goods in order for the declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned.'

B. Directive 2006/112/EC[7]

14. In accordance with Article 85:

'In respect of the importation of goods, the taxable amount shall be the value for customs purposes, determined in accordance with the Community provisions in force.'

II. Facts, dispute and questions referred for a preliminary ruling

15. The account of the facts provided in the order for reference is as follows:

– Pursuant to a decision of 26 May 2017, the Kauno teritorinė muitinė (Kaunas regional customs service, Lithuania)[8] carried out a tax inspection of 'Tauritus' UAB relating to the period from 1 October 2015 to 30 April 2017.

– The Regional Service found that, during that period, Tauritus had purchased different quantities of diesel and fuel from various suppliers and had imported them into the territory of the Republic of Lithuania.

– The contracts concluded with the suppliers and the pro forma invoices issued by those suppliers stated the provisional price that Tauritus had to pay to purchase the goods.

– When declaring the fuel purchased and imported in that way, with a view to its release for free circulation and marketing, Tauritus stated the provisional price as the customs value of the goods in the import declarations. It also stated in those declarations that the method used to determine the customs value of the goods was that provided for in Article 74(3) of the Customs Code.

– Under the terms of the contracts concluded with the suppliers, the provisional price was subsequently adjusted to take account of certain circumstances arising after the goods were imported, such as the average prices of the fuel on the market for the relevant period and the average exchange rate for that period.

7 Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

8 'the Regional Service'.

– Tauritus and its suppliers agreed that adjusted price ('the final price') by means of additional clauses annexed to the contracts, on the basis of which the suppliers issued amended invoices. Depending on the fluctuations in the market prices and the exchange rates, the final price was in some cases higher than the provisional price and in others lower.

– After receiving the amended invoices from the suppliers, Tauritus, acting on its own initiative, lodged applications to adjust the value of the goods stated in its import declarations.

– In the course of that inspection, it was found that, during the period from 29 September 2016 to 1 February 2017, Tauritus lodged 13 import declarations with the Regional Service ('the declarations at issue') in which it had stated the provisional price agreed with the suppliers as the customs value of the imported fuel.

– On 6 February and 15 March 2017, the suppliers issued the company with amended invoices indicating final prices for the imported fuels that were higher than the customs value stated in the declarations at issue.

– Unlike on other occasions, Tauritus did not apply to the customs authorities to adjust the customs value specified in the declarations at issue, nor did it pay the additional import VAT to the public treasury before the inspection began (26 May 2017). [9]

– The Regional Service, on the basis of the valuation method provided for in Article 70(1) of the Customs Code, accepted the final price stated on the adjusted invoices as the customs value of the goods and required Tauritus to pay interest on the arrears of the import VAT relating to the period between the date of acceptance by the customs authorities of the declarations at issue and the date of that service's own report. [10]

16. Tauritus disagreed with the decision of the Regional Service and took its disagreement, successively, to the Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos (Customs Department of the Ministry of Finance of the Republic of Lithuania), the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Tax Disputes Commission under the Government of the Republic of Lithuania) and the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania), which all found the calculation of the interest on arrears to be justified.

17. Tauritus brought an appeal against the judgment of the court of first instance before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), which, by a judgment of 17 June 2020, sent the matter back to the customs administration for reconsideration.

18. In the opinion of the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), the customs authority had improperly calculated the customs value of the goods by using the method known as the 'transaction value' method. The application of Article 70(1) of the Customs Code could not be based on a final price which was not, nor could be, known on the dates on which the goods were imported and the initial declarations were lodged.

[9] During the hearing, the Lithuanian Government explained that Tauritus would only have lodged adjustment applications (in its favour) when the final value of the goods turned out to be lower than the provisional value initially declared.

[10] Report No 7KM320048M, of 14 September 2017. The total amount of the interest was EUR 4 853.

19. The matter having been sent back to the customs administration, that administration, by a decision of the Customs Department of 31 December 2020, confirming the decision of the Regional Service, reiterated Tauritus' obligation to pay the interest on arrears. According to that authority:

– After having received the adjusted invoices containing the final price from the suppliers, Tauritus was obliged to calculate the customs value of the goods in accordance with Article 70(1) of the Customs Code, recognising the final price specified in those adjusted invoices as the transaction value.

– In so far as Tauritus had not complied with that obligation before the inspection by the customs authority began, that authority was authorised to calculate the interest on arrears from the date on which the initial declarations were lodged.

20. That decision having been confirmed by the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) in a judgment of 19 January 2022, Tauritus brought a further appeal before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), which has referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 70 of [the Customs Code] be interpreted as meaning that paragraph 1 thereof does not apply to a situation, such as that in the present case, where, at the time of acceptance of the customs declaration and on the basis of the sale occurring immediately before the goods were brought into the customs territory, only the price provisionally payable is known, which is subsequently (that is to say, after the declaration has been lodged and the goods have been released for free circulation) adjusted upwards or downwards in the light of circumstances beyond the control of the parties to the transaction and unknown at the time of lodging the declaration?

(2) Must Article 173(3) of [the Customs Code] be interpreted as meaning that the declarant is not under an obligation to apply to the customs authorities for an adjustment of the customs value determined and declared in accordance with Article 74 of that [code] where, as in the present case, the price actually payable for the goods, as referred to in Article 70(1) of that [code], which was not and could not have been known at the time of lodging the declaration, becomes apparent after those goods have been released for free circulation?'

III. Procedure before the Court

21. The request for a preliminary ruling was received at the Court on 19 December 2023.

22. Written observations were submitted by the Spanish and Lithuanian Governments, and by the European Commission.

23. The Spanish, French and Lithuanian Governments, as well as the Commission, appeared at the hearing held on 6 November 2024.

IV. Analysis

A. Preliminary considerations

24. As I have already said, the purpose of the present proceedings is to establish the amount of interest on arrears which a company is required to pay following payment of import VAT.

25. The dispute revolves around the method used to determine the customs value of the imported goods.[11] The amount of the tax liability and, consequently, the calculation of the interest on arrears payable depends on that value.

26. In particular, Tauritus determined the customs value in accordance with the *secondary method* provided for in Article 74(3) of the Customs Code. That method is to be used when it is not possible to use the *primary method* provided for in Article 70 of that code.[12] The customs authority, conversely, proposes that the primary method should apply to the present case.

27. The referring court emphasises that the dispute 'concerns only the amount of the interest on arrears charged to the appellant', an amount which, in its view, is 'directly related to the amount of the tax arrears and the moment when the tax liability arises'.[13]

28. The referring court has not, however, referred any question to the Court regarding the temporal scope of the interest on arrears, that is to say, regarding when it begins to be chargeable. On that point, I repeat, the request for a preliminary ruling is silent, which implies leaving open the question of the start and end dates for calculating the interest, and which the questions referred do not address.

29. With regard to the 'amount of the tax arrears', which is the other factor mentioned by the referring court, everything appears to indicate that Tauritus has not, as such, challenged the VAT amount ultimately charged. If that is so (something which it is for the referring court to establish), Tauritus must be deemed to have accepted, implicitly, the customs value – and, therefore, the taxable value – of the goods *for the purposes of payment of the import VAT*.

30. In that context, the statement of the court *a quo* on which the order for reference hinges stands out for its hypothetical nature: 'if the customs value – and, therefore, the taxable amount – were found to have been determined incorrectly, part of the interest on arrears charged could not be considered justified.'[14]

31. If the person liable for payment does not object to the amount of the 'tax arrears' (in respect of VAT), established precisely on the basis of the transaction value, I cannot see what need there would be to deliberate *that transaction value* now, in connection with the payment of interest on arrears.[15]

[11] The debate does not concern the scope of the powers to carry out controls, conferred by Article 48 of the Customs Code, to which the Commission refers.

[12] In accordance with Article 70 of the Customs Code, the primary basis for the calculation is to be the 'transaction value', which is defined as 'the price actually paid or payable for the goods when sold for export to the customs territory of the Union, adjusted, where necessary'.

[13] Order for reference, paragraph 22.

[14] Order for reference, paragraph 22, *in fine*.

[15] The referring court rules out the possibility that the transactions at issue in the dispute involve fraud, an abuse of rights or any other form of tax evasion.

32. Hence, at the hearing, certain doubts were raised regarding the usefulness of any response which the Court may give to the referring court. If its questions were to be regarded as hypothetical (not strictly necessary to resolve the original dispute), [16] the request for a preliminary ruling would be inadmissible.

33. In any event, I shall comment on the questions referred, in case the Court should decide to undertake a substantive examination of them, based on a presumption of their relevance.

B. First question referred

34. The referring court requests an interpretation of Article 70 of the Customs Code. It wishes to know whether paragraph 1 of that article is applicable to a situation where 'at the time of acceptance of the customs declaration and on the basis of the sale occurring immediately before the goods were brought into the customs territory, only the price provisionally payable is known, which is subsequently (that is to say, after the declaration has been lodged and the goods have been released for free circulation) adjusted upwards or downwards in the light of circumstances beyond the control of the parties to the transaction and unknown at the time of lodging the declaration'.

35. The Court has already ruled on the determination of the customs value of imported goods. Its case-law contains the following statements:

– '… the objective of EU law on customs valuation is to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values. The customs value must thus reflect the real economic value of an imported good and take into account all of the elements of that good that have economic value …' [17]

– 'In particular, by virtue of Article 29 [now Article 70] of the Customs Code, the customs value of imported goods is the transaction value, that is to say, the price actually paid or payable for the goods when they are sold for export to the customs territory of the European Union, adjusted, where necessary, in accordance, in particular, with Article 32 [now Article 71] of that code …' [18]

– '… the customs value must be determined primarily according to the "transaction value" method of the imported goods … That method of determining the customs value is thus assumed to be the most appropriate and the most frequently used …' [19]

– As a general rule, the price actually paid or payable for the goods therefore forms the basis for calculating the customs value, even if that price is a factor that potentially must be adjusted where necessary in order to avoid the setting of an arbitrary or fictitious customs value …' [20]

[16] The Lithuanian Government noted that possibility at the hearing.

[17] Judgment of 20 December 2017, *Hamamatsu Photonics Deutschland* (C-529/16, EU:C:2017:984; 'the judgment in *Hamamatsu Photonics Deutschland*'), paragraph 24 and the case-law cited.

[18] Judgment of 19 November 2020, *5th AVENUE Products Trading* (C-775/19, EU:C:2020:948; 'the judgment in *5th AVENUE Products Trading*'), paragraph 23.

[19] The judgment in *5th AVENUE Products Trading*, paragraph 24.

[20] The judgment in *5th AVENUE Products Trading*, paragraph 25.

36. In view of those criteria, the primary valuation method (Article 70 of the Customs Code) should, in principle, be applied to the original dispute. Contrary to what certain intervening parties maintained at the hearing, the importer is not free to choose, at its discretion, the valuation method applicable to the goods; that view seems incorrect to me and runs counter to the assumption that there is a hierarchy between the successive valuation methods, expressly imposed by the Customs Code itself.

37. It is my view, conversely, that the importer must apply the method which the conditions of each transaction require. It may only exclude the application of the primary method (provided for in Article 70 of the Customs Code) when the requirements established for that method are not satisfied. Only in that scenario may it use one of the secondary methods (provided for in Article 74(1) of the Customs Code), opting for the method best suited to the circumstances of the import, and, failing that, the residual method provided for in Article 74(3).

38. According to the referring court, a number of reasons stand in the way of the (mandatory) application of the method provided for in Article 70 of the Customs Code in the present case:

– At the time of lodging the customs declaration, it was not possible to know the price actually paid or payable.

– Article 70(3) of the Customs Code excludes the use of the transaction value if the price is subject to conditions which make it impossible to determine the value of the goods.

– The final price being unknown at the time of lodging the declaration, the declarant cannot be required to apply the transaction value method, since Article 15(2)(a) of the Customs Code makes the declarant responsible for the accuracy and completeness of the information given in the declaration.

– According to the judgment in *Hamamatsu Photonics Deutschland*, 'an agreed transaction value, composed of an amount initially invoiced and declared and a flat-rate adjustment made after the end of the accounting period … [and which is] made up or down' cannot be accepted. [21]

39. For the referring court, the circumstances it enumerates would lead to the application of one of the secondary (residual) valuation methods provided for in Article 74 of the Customs Code, specifically, in the present case, that set out in paragraph 3 of that article.

40. In my opinion, taking into account the totality of the information provided to the Court, there was nothing to prevent the application of Article 70(1) of the Customs Code in the present case, for these reasons:

– The primary basis for determining the customs value of goods is the transaction value, that is to say, the price actually paid *or payable* for the goods, determined at the time of acceptance of the customs declaration and including all payments made *or to be made* as a condition of sale of the goods.

– The transaction value may (and must) be adjusted subsequently, subject to compliance with Article 70(1) of the Customs Code and in accordance with paragraph 3(b) of that article. To

[21] The judgment in *Hamamatsu Photonics Deutschland*, paragraph 35.

that end, 'the sale or price [must not be] subject to some condition … for which a value cannot be determined with respect to the goods'.

41. The price declared by Tauritus was provisional, as had been agreed in the contracts for the sale of the goods.[22] Those contracts and their annexes stated that the final price would be conditional on two factors which could only be known after import, namely the average prices of the fuel on the market and the average exchange rate.[23]

42. Both factors constitute 'conditions of sale', for the purposes of Article 70(1) and (3)(b) of the Customs Code. As such, they contribute to the quantification of certain payments which, by virtue of the contractual relationship between the buyer and the seller, are of such importance to the latter that, if those payments were not made, the sale would not ultimately take place.[24]

43. Certainly, the amount of the payments concerned was not completely *determined* at the time of the customs declaration. However, the conditions for its definitive calculation meant that that amount was already, from the moment of signing the contracts, perfectly *determinable*. Only if that were not so should the transaction value method be excluded, pursuant to Article 70(3)(b).

44. As the Spanish Government noted at the hearing, with the endorsement of the French Government, neither of those conditions of sale (average prices of the fuel and average exchange rate) was subject to the exclusive control of either contracting party, but rather both depended on objective circumstances of an external nature. Those circumstances could easily be verified by the customs authorities, to whom the declarant would be able to provide evidence of the price finally paid, after adding to the provisional price, or subtracting from it, the agreed adjustments, resulting from publicly disclosed factors.

45. Contrary to what the referring court appears to maintain,[25] the considerations which led the Court to deliver the judgment in *Hamamatsu Photonics Deutschland* cannot, in my opinion, be extrapolated to the present case. I concur, in that assessment, with the unanimous position expressed at the hearing by the participating governments and by the Commission.

46. The contracts concluded by Tauritus stipulated that the final sale price was subject to easily verifiable objective conditions, unlike what occurred in the judgment in *Hamamatsu Photonics Deutschland*. In that particular case, an undertaking purchased goods from its parent company which were invoiced at intra-group prices and the total of the amounts invoiced for the goods underwent regular verification and, where necessary, adjustment, using a method known as the 'Residual Profit Split Method'. That method involved combining the allocation of a minimum profit with the division of a residual profit on a proportional basis and the establishment of an operating margin range which determined whether additional credits or debit charges were made.[26]

[22] It is irrelevant, for the present purposes, that pro forma invoices were initially provided for the customs declaration. Article 145 of Implementing Regulation 2015/2447 does not exclude that form of invoice from the supporting documents relating to the declared transaction value, in the case of a provisional price which has to be finalised later.

[23] That way of proceeding is usual in the contracts of sale which the main fuel market operators conclude with their customers. As the Commission notes in paragraphs 29 and 30 of its written observations, in the context of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 119), the determination of the customs value of goods falls within a process in which the possible revision of prices does not automatically require the exclusion of the transaction value method.

[24] See, in that regard, the judgment in *5th AVENUE Products Trading*, paragraph 41.

[25] Paragraph 29 of the order for reference, citing paragraph 35 of the judgment in *Hamamatsu Photonics Deutschland*.

[26] The judgment in *Hamamatsu Photonics Deutschland*, paragraphs 14 and 15.

47. The conditions for determining the value of the goods in the judgment in *Hamamatsu Photonics Deutschland* were then notably more complicated and, in particular, more difficult for the customs authority to verify than those of the case which concerns us here. It is therefore my view that the case-law of that judgment cannot be extended to the present proceedings.

48. In short, I maintain that the primary method set out in Article 70(1) of the Customs Code would be appropriate in circumstances such as those of the original dispute. The price actually paid or payable for the imported goods (which, as I have stated, as a general rule, constitutes the basis for calculating the customs value) could have been adjusted *ex post*, on the basis of easily objectifiable factors that had already been provided for in the contract of sale, in order to reflect the real economic value of those goods.

C. Second question referred

49. The referring court is seeking an interpretation of Article 173(3) of the Customs Code. It wishes to know, in particular, whether the declarant is obliged to apply to the customs authorities to *amend* the customs value, determined and declared in accordance with Article 74 of that code, where 'the price actually payable for the goods, as referred to in Article 70(1) of that [code], which was not and could not have been known at the time of lodging the declaration, becomes apparent after those goods have been released for free circulation'.

50. The answer to the second question referred could be unnecessary, if it is confirmed that the transaction value in the present case had to be calculated using the primary method set out in Article 70 of the Customs Code.

51. In any event, given the terms in which the second question of the referring court is posed, I shall address it in my analysis, for which it is necessary to clarify the mechanism for adjusting the final price, when its calculation depends on certain future (but easily objectifiable) factors.

52. In that scenario, the adjustment of the final price is done by means of a process carried out in two stages: (a) that relating to the time of the declaration, when only the provisional price is known; and (b) that relating to the time at which, the remaining conditions of sale having been fulfilled, the definitive price of the released goods is established.

53. To that end, the Customs Code provides two mechanisms:

– In the first place, in Article 166, it is acceptable that 'a person has goods placed under a customs procedure on the basis of a simplified declaration which may omit some of the particulars referred to in Article 162 or the supporting documents referred to in Article 163'.[27] A supplementary declaration, governed by Article 167 of that code, would later be added to the simplified declaration.

– In the second place, in Article 73, the customs authorities may authorise that certain amounts should 'be determined on the basis of specific criteria, where they are not quantifiable on the date on which the customs declaration is accepted.'

[27] In particular, Article 162 of the Customs Code refers to 'all the particulars necessary for application of the provisions governing the customs procedure for which the goods are declared'.

54. According to the mechanism provided for in Article 166 of the Customs Code, the importer initially declares the provisional price of the goods and then, at the relevant time, the definitive price, using the supplementary declaration (Article 167 of that code).

55. Conversely, the mechanism provided for in Article 73 of the Customs Code is reserved for imports which, on the date on which the customs declaration is accepted, are only quantifiable on the basis of *specific criteria set by the customs authorities*.

56. Given the facts of the dispute, it is my view that the mechanism provided for in Article 166 of the Customs Code should have been used and not that provided for in Article 73 of that code, since the two factors established in the contracts of sale for calculating the final price (average price of the fuel and average exchange rate) allowed the total amount of that price to be determinable on the date of the customs declaration. It would, therefore, have been sufficient to use the simplified declaration provided for in Article 166, in the expectation of making the supplementary declaration referred to in Article 167.

57. In the presence of elements which, by themselves, allow the amounts determining the customs value to be quantified, there is no need to resort to the mechanism provided for in Article 73 of the Customs Code, that is to say, through the setting of other *specific criteria*.

58. The mechanism provided for in Articles 166 and 167 of the Customs Code, as well as satisfying the relevant accuracy requirements (Article 15 of that code), ensures that the real economic value of the goods is determined in the end. The mechanism provided for in Article 73, on the other hand, does not allow for such accuracy, since it operates according to criteria which, even though they are specific, will never be able to yield a result as reliable as that produced by the price elements which determine, exactly, the real economic value of the imported goods.

59. I have already set out why the secondary valuation method used by Tauritus (that provided for in Article 74(3) of the Customs Code) was not appropriate. It is a purely residual method, restricted to cases in which it is not even possible to determine the customs value according to the methods established in Article 74(1). Those methods, in turn, are only applicable if it is not possible to use the primary method provided for in Article 70 of the Customs Code, because the price of the goods (transaction value) is subject to conditions which prevent its value from being determined.

60. If, as I propose, the conditions established in the contracts concluded between Tauritus and its suppliers allowed the final price to be determined easily and objectively, the primary method should have been used (Article 70 of the Customs Code) to discover the actual value of the transaction.

61. I should add that the residual method provided for in Article 74(3) of the Customs Code cannot *naturally*, for want of a better word, be supplemented by the amendment procedure under Article 173 of that code. That is to say, the two provisions cannot be combined to form a complex procedure, in the way that Articles 166 and 167 of the Customs Code are combined.

62. Indeed, the simplified declaration provided for in Article 166 of the Customs Code has its necessary addition in the supplementary declaration provided for in Article 167 of that code, for the purposes of making up the customs declaration in its entirety (the two 'constitute a single, indivisible instrument', according to Article 167(4) of the Customs Code).

63. In the present circumstances, adhering to the text of the second question referred, Article 173 of the Customs Code, which provides for the '*amendment* of a customs declaration', was not applicable.

64. The amendments permitted under Article 173 of the Customs Code are not intended *to supplement* a prior declaration of a *provisional* nature, but rather *to correct* the content of a declaration that was lodged, at the relevant time, as a finished and complete declaration. Apart from that, it must be borne in mind that the use of amendments, because they represent an exception to the principle of the irrevocability of the customs declaration, is subject to a restrictive regime. [28]

65. To put it another way, customs declarations stating a final price that is not subject to subsequent adjustments may, where necessary, be amended (but not supplemented) under Article 173 of the Customs Code. Conversely, declarations stating a provisional price that is subject to easily verifiable subsequent adjustments are to be governed by Articles 166 and 167 of that code.

66. If, from the start (at the time of lodging the declaration), it is known that the price of the goods is only provisional, it is not permissible to conceal that information from the customs authorities and wait until the time the final price is known, in order to make them aware of it by means of an amendment, pursuant to Article 173, of the initial declaration.

67. In the interests of the accuracy and completeness of the information given in the initial declaration, as required by Article 15(2)(a) of the Customs Code, the appropriate course of action is to communicate that fact at the time of the initial declaration itself.

68. Thus it is my view that, in circumstances such as those at issue, the initial declaration should take the form of a simplified declaration (Article 166 of the Customs Code), which would subsequently be supplemented in accordance with Article 167 of that code. It was not appropriate to have recourse to Article 173 of the Customs Code, in order *to amend* a declaration lodged in accordance with Article 74(3) of that code, with the aim of *correcting* information that was known to be incomplete from the start.

69. What has been reasoned thus far, logically, does not prevent the customs authorities, as part of a tax inspection, verifying the accuracy and completeness of the information provided in customs declarations. In particular, such authorities are empowered to ascertain what the economic value of the imported goods was (the price actually paid after the relevant adjustments to the provisional price) and to deduce the appropriate consequences with a view to calculating the import VAT and interest on arrears.

70. The second question, however, does not concern the powers of customs authorities to carry out controls.

[28] See, in that regard, the judgment of 8 June 2023, *Zes Zollner Electronic* (C-640/21, EU:C:2023:457), paragraphs 41 to 48.

V. Conclusion

71. In the light of the foregoing, I propose that the Court of Justice should reply to the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) as follows:

(1) Article 70(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code must be interpreted as meaning that:

it applies to a situation in which, at the time of acceptance of the customs declaration and on the basis of the sale occurring immediately before the goods were brought into the customs territory, in addition to the provisional price, the conditions that are to determine the final price are known, provided that those conditions relate to objective criteria that may easily be verified by the customs authority, which it is for the referring court to determine.

(2) Article 173(3) of Regulation No 952/2013 must be interpreted as meaning that:

it permits the declarant, upon application, to amend one or more particulars of the customs declaration, without such an amendment being the appropriate mechanism when what is required is to lodge a supplementary declaration pursuant to Article 167 of Regulation No 952/2013.