JUDGMENT OF THE COURT (FIRST CHAMBER)
27 OCTOBER 1983 [1]

Volkswagenwerk AG v Hauptzollamt Braunschweig (reference for a preliminary ruling from the Finanzgericht Hamburg)

(Preferential tariffs — Production of certificates of origin)

Case 321/82

Common Customs Tariff — Generalized preference scheme in favour of developing countries — Suspension of customs duties up to a certain ceiling — Certificate of origin of goods — Production after re-introduction of customs duties — No entitlement to exemption

(Council Regulation No 2789/79, Art. 1 (3) and Art. 3 (1) and (2))

It follows from all the provisions of Regulation No 2789/79 opening preferential tariffs for certain products originating in developing countries, especially Articles 1 (3) and 3 (1) and (2) thereof, that production of the certificate of origin of the products in question is necessary for the goods to be charged against the ceiling on imports which enjoy suspension of customs duties determined pursuant to Article 1 (3) and that the goods must be charged against the ceiling in order to obtain exemption from duties.

Accordingly, the suspension of customs duties provided for in the regulation may not be applied to goods imported and entered for free circulation before the re-introduction of customs duties if the certificate of origin is produced after the re-introduction has come into effect.

In Case 321/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the proceedings pending before that court between

1 — Language of the Case: German.

VOLKSWAGENWERK AG, Wolfsburg,

and

HAUPTZOLLAMT [Principal Customs Office] BRAUNSCHWEIG,

on the interpretation of Council regulations relating to the application of preferential tariffs granted by the Community in respect of certain products originating in developing countries,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: S. Rozès
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The order making the reference, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. On 10 December 1979 the Council adopted Regulation (EEC) No 2789/79 opening preferential tariffs for certain products originating in developing countries (Official Journal 1979, L 328, p. 25) in order to implement the Community offer made under the generalized preference scheme instituted by the United Nations Conference on Trade and Development (Unctad) in favour of developing countries. Article 1 of that regulation provides that in 1980 the Common Customs Tariff duties on the products listed in an annex are to be suspended up to a Community ceiling in respect of each category of products. By

Article 2, as soon as the ceilings fixed are reached, the levying of customs duties may be re-introduced until the end of the year in question. The Commission, acting in close cooperation with the competent authorities of the Member States, monitors the extent to which the ceilings have been reached and, if necessary, must re-introduce the levying of duties by regulation (Article 4). Article 3 of the regulation provides that:

"(1) Imports of the products in question shall be charged against the Community ceilings and maximum amounts as and when the products are entered for free circulation, on the basis of the customs value of the said products, and provided that they are accompanied by a certificate of origin in accordance with the rules laid down in Article 1 (2).

(2) Goods may be charged against a ceiling or maximum amount only if the certificate of origin referred to in paragraph (1) is submitted before the date on which the levying of duties is re-introduced.

(3) The extent to which the ceilings and maximum amounts have been used shall be determined at Community level on the basis of the imports charged in accordance with paragraphs (1) and (2)."

As regards the certificate of origin referred to in that article, Commission Regulation (EEC) No 3067/79 of 20 December 1979 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 (Official Journal 1979, L 349, p. 1) provides that it must be produced to the customs authorities in the Member State in accordance with the procedures laid down by that State.

Article 7 of that regulation provides that the certificate must be produced, to the Community customs office at which the goods are presented, within 10 months of the date of issue by the responsible governmental authority of the exporting beneficiary country. However, according to Article 11 certificates produced after expiry of that period may be accepted by the competent customs authorities where the failure to observe the time-limit is due to *force majeure* or to exceptional circumstances and also where the products have been presented to them before expiry of that period.

2. Volkswagenwerk AG, the plaintiff in the main proceedings, is exempted, in respect of the goods it imports, from customs clearance formalities under the procedure known as "Zollbehandlung ohne Abfertigung" laid down in Paragraph 40 (a) of the Zollgesetz [Customs Law]. Under that procedure the declarant is permitted to put the goods in question into free circulation by himself keeping a record of those goods. The recording of the goods gives rise to the customs debt.

On 11 March 1980 the plaintiff in the main proceedings declared the goods which it had recorded in February 1980 to the Customs office at Wolfsburg for the purposes of the customs declaration for February 1980. Amongst those goods were four consignments of accumulators, classified under heading 85.04 of the Common Customs Tariff, originating in Yugoslavia. On 21, 28 and 29 February 1980 the plaintiff had entered them in its records as "exempt from duty" under the preferential tariff. For those accumu-

lators it claimed the customs exemption provided for by Regulation No 2789/79 referred to above. However, the plaintiff did not produce the certificates of origin required to establish the accumulators' origin until April 1980.

As from 8 March 1980 Commission Regulation (EEC) No 545/80 of 3 March 1980 (Official Journal 1980, L 60, p. 14) re-introduced the levying of customs duties on electric lead-acid accumulators originating in Yugoslavia.

By a notice of re-assessment dated 19 March 1980 the Hauptzollamt [Principal Customs Office], Braunschweig, charged customs duty of DM 28 914.50 on the accumulators calculated at the tariff rate of 9.5% applicable to non-member countries on the ground that the certificates of origin had not been produced within the period in which the preferential tariff was in force.

After the plaintiff's objection lodged against that notice had been rejected, it brought an action before the Finanzgericht [Finance Court] Hamburg. In support of its application it essentially argued that in order for the preferential tariff to apply it was not the time when the certificate of origin was produced which counted but the time when the goods were released into free circulation, which in this case was when they were recorded under the procedure provided for by Paragraph 40 (a) of the Zollgesetz, thus before the preferential tariff was abolished. On this point it referred to the judgment of the Court of Justice of 10 June 1982 in Case 231/81 *(Hauptzollamt Würzburg* v *H. Weidenmann GmbH & Co.* [1982] ECR 2259) in which it was held that:

"The suspension of customs duties pursuant to Article 1 of Regulation (EEC) No 3004/75 of the Council might apply in the case of goods which were imported, presented and entered for home use in 1976 even though the certificate of origin was produced after that regulation ceased to apply . . .".

The Hauptzollamt, the defendant in the main proceedings, relied on the same judgment as well as on Article 3 of Regulation No 2789/79 to support its submission that the conditions for the application of the preferential tariff, including the condition concerning the production of the certificate of origin, had to be fulfilled before the re-introduction of customs duties.

3. In the grounds of its order for reference the Finanzgericht points out that the facts which gave rise to the *Weidenmann* judgment are different from those of the instant case. The importation in the *Weidenmann* case occurred on 20 December 1976, that is to say during the period in which Regulation No 3004/75 opening preferential tariffs for certain products in 1976 (Official Journal 1975, L 310, p. 24) applied, whilst the certificate of origin was not produced until 2 February 1977. In that case, however, customs duties were not re-introduced, the suspension of duties being continued into 1977 by Regulation No 3022/76 (Official Journal 1976, L 349, p. 69).

Although the operative part of the *Weidenmann* judgment contains no reservation as to the re-introduction of customs duties, the judgment nevertheless seems to be based on the assumption that the certificate of origin may not be produced after the period of application of the preferential tariff has expired unless duties have not been re-introduced. In this regard the Finanzgericht points out that according to the grounds of that judgment the certificate may be presented after the goods have been entered for customs purposes, provided that it is presented before the levying of duties is re-introduced (paragraph 9), and that the grounds of that judgment take into consideration the

fact that the suspension of duties continued into 1977 without interruption or alteration (paragraph 12).

Secondly, the Finanzgericht points out that, according to the same judgment, Articles 7 and 11 of the Commission's implementing regulation indicate that the certificate of origin may properly be produced within a period of several months after importation, thus entitling traders to believe that they may produce any certificate for as long as it remains valid (paragraph 11). On this point, Article 7 of Commission Directive 82/57/EEC of 17 December 1981, laying down certain provisions for implementing Council Directive 79/695/EEC on the harmonization of procedures for the release of goods for free circulation (Official Journal 1982, L 28, p. 38), contains no indication of any express limitation, by the re-introduction of customs duties, of the period in which certificates of origin may be produced. On the contrary, it in principle allows them to be produced after the expiry of the period in which duties were suspended.

Considering that neither the rules applicable nor the Court's judgment of 10 June 1982 could resolve the question whether the certificates of origin may be produced after customs duties have been re-introduced, the Finanzgericht, by order of 29 October 1982, stayed the proceedings and submitted the following question to the Court for a preliminary ruling:

"Must Council Regulation (EEC) No 2789/79, especially Articles 2 and 3 thereof, read in conjunction with Commission Regulation (EEC) No 3067/79, especially Articles 7 and 11 thereof, be construed as meaning that the certificate of origin may no longer be validly produced after the customs duty has been re-introduced?"

4. The order for reference was registered at the Court on 16 December 1982.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by Volkswagenwerk AG, represented by Mr Bergler and Mr Richter, acting as Agents, and by the Commission of the European Communities, represented by Jürgen Grunwald and Xenophon Yataganas, members of its Legal Department, acting as Agents.

Pursuant to Article 95 of the Rules of Procedure the Court decided, by order of 18 May 1983, to assign the case to the First Chamber.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

Volkswagenwerk AG, the *plaintiff in the main proceedings*, in substance maintains the view which it advanced in the proceedings before the Finanzgericht. It considers that, by virtue of the applicable regulations and the Court's judgment of 10 June 1982 in the *Weidemann* case, the only relevant time for the purposes of the grant of preference is the time when the goods in question are released into free circulation, which in this case was the date on which they were recorded under the simplified customs declaration pro-

cedure provided for by Paragraph 40 (a) of the Zollgesetz.

It also points out that the Community system of preferential tariffs for developing countries envisages graduated measures depending on whether the products in question are sensitive, semi-sensitive or non-sensitive. The possibility provided in Article 2 of Regulation No 2789/79 to re-introduce customs duties, as soon as the ceilings fixed are reached, on the semi-sensitive products involved in this case is a necessary, but also sufficient, regulatory means of protecting the Community. As the re-introduction of customs duties in this case as from 8 March 1980 shows, that possibility already limits the effectiveness of this means of cooperating in development very considerably. The application of an additional restrictive measure concerning the production of the certificate of origin would represent an unforeseeable withdrawal of the preferential treatment with the result that semi-sensitive products would be treated in the same way as sensitive products. Thus the aim of promoting the imports in question as part of development policy would be in serious jeopardy so far as semi-sensitive products are concerned.

The *Commission of the European Communities* considers that exemption from customs duties under Regulation No 2789/79 is excluded if the certificate of origin for the imported goods is not submitted until after the Commission has re-introduced those duties.

In this regard it refers to Article 3 (2) of Regulation No 2789/79 which provides that goods may be charged against a ceiling only if the certificate of origin is submitted before the date on which the levying of duties is re-introduced. That goods can be charged against the ceilings fixed is the logical and legal condition for the grant of the customs exemption. If only goods in respect of which a certificate of origin is submitted before the date on which duties are re-introduced may be charged against the ceilings, it is only for those goods that exemption from customs duty may be claimed. That interpretation is confirmed by Article 7 (2) of Commission Directive 82/57/EEC of 17 December 1981, cited above, which states that the importation may be charged within the authorized limits only when the document on which the granting of the reduced or zero rate is conditional is actually produced. It goes on to provide that the document must be produced before the date on which a Community measure re-introduces the levying of normal import duties. Although that directive does not expressly apply to an importation in 1980, it does, however, constitute a specific implementation of Council Directive 79/695/EEC of 24 July 1979 (Official Journal 1979, L 205, p. 19), which was already applicable at the time of the importation in question.

Next, the Commission contends that it is clear from the judgment of the Court of 10 June 1982, cited above, that that judgment concerns the validity of the certificate of origin and applies to cases where the Commission has not re-introduced customs duties. Referring in particular to the grounds of that judgment, the Commission contends that even the operative part implicitly assumes that customs duties have not been re-introduced.

Finally, there is no rule which might give rise to a legitimate expectation on the part of traders that they may produce the

certificate of origin even after the re-introduction of duties without losing their right to exemption from customs duty. Article 3 (2) of Regulation No 2789/79 unequivocally states that the certificate of origin must be submitted before duties are re-introduced. Furthermore, Articles 7 and 11 of the Commission's implementing regulation make no express derogation from that provision and they cannot be construed in a way which is contrary to their legal basis.

III — Oral procedure

At the sitting on 14 July 1983 the Commission of the European Communities, represented by Jürgen Grunwald and Xenophon Yataganas, members of its Legal Department, presented oral argument.

The Advocate General delivered her opinion at the sitting on 6 October 1983.

Decision

1 By an order of 29 October 1982, received at the Court on 16 December 1982, the Finanzgericht [Finance Court] Hamburg referred to the Court for a preliminary ruling under Article 17 of the EEC Treaty a question on the interpretation of Council Regulation No 2789/79 of 10 December 1979 opening preferential tariffs for certain products originating in developing countries (Official Journal, L 328, p. 25) and Commission Regulation No 3067/79 of 20 December 1979 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 (Official Journal, L 349, p. 1).

2 The question was raised in proceedings between Volkswagenwerk AG and the Hauptzollamt Braunschweig in relation to the import of consignments of accumulators from Yugoslavia, the levying thereon of customs duties and the importer's claim to exemption from customs duties under Regulation No 2789/79.

3 Regulation No 2789/79 provides for the complete suspension of Common Customs Tariff duties on products listed in Annex A to the regulation, which include accumulators, originating from the countries and territories listed in Annex B, which include Yugoslavia. The suspension applied from 1 January

to 31 December 1980; however it was granted for the majority of products concerned only up to a ceiling determined by Article 1 (3) of the regulation. As soon as the ceiling fixed for a particular product is reached the Commission may re-introduce the levying of customs duties.

4 In order to determine when the ceiling is reached Article 3 (1) of Regulation No 2789/79 provides that "imports of the products in question shall be charged against the . . . ceilings . . . as and when the products are entered for free circulation, . . . and provided that they are accompanied by a certificate of origin". Article 3 (2) provides that "goods may be charged against a ceiling . . . only if the certificate of origin . . . is submitted before the date on which the levying of duties is re-introduced".

5 The consignments of accumulators which are the subject of the proceedings in the main action were declared for import and put into free circulation under the German customs legislation in February 1980. The relevant certificates of origin were not submitted until April 1980, however. In the meantime the levying of customs duties had been re-introduced from 8 March 1980 by Commission Regulation No 545/80 of 3 March 1980 (Official Journal, L 60, p. 14).

6 Since the importer maintained that the moment when the goods were put into free circulation must be regarded as decisive in applying suspension and, moreover, the certificates of origin were valid for 10 months pursuant to Article 7 of Regulation No 3067/79, the national court decided to refer the following question to the Court for a preliminary ruling:

"Must Council Regulation (EEC) No 2789/79, especially Articles 2 and 3 thereof, read in conjunction with Commission Regulation (EEC) No 3067/79, especially Articles 7 and 11 thereof, be construed as meaning that the certificate of origin may no longer be validly produced after the customs duty has been re-introduced?"

7 In its judgment of 10 June 1982 in Case 231/81 *(Hauptzollamt Würzburg* v *Weidenmann* [1982] ECR 2259) the Court stated that the suspension of

customs duties under the system of tariff preferences in favour of developing countries may apply to goods imported, presented and entered for home use during the calendar year in which suspension applies even though the certificate of origin is produced after the regulation suspending the duties has ceased to apply, provided that the certificate is valid and, that it is produced in accordance with the conditions laid down by the relevant rules.

8 It must be emphasized that the aforesaid judgment deals only with the situation where the levying of duties has not been re-introduced and where the late production of the certificate of origin cannot cause the ceiling established for the goods in question to be exceeded since the period of suspension of duties has been extended. That is why the judgment states that if the Commission has not re-introduced the duties in the calendar year in question late production of the certificate in the early months of the following year cannot, any more than late production in the same year, prejudice the effectiveness of the regulation providing for suspension.

9 The Commission maintains that the problem with which the present proceedings are concerned requires a different answer. Where duties have been re-introduced in the interval between the putting into free circulation and the production of the certificate of origin, the goods can no longer be charged against the ceiling. In the Commission's view where goods can no longer be charged against the ceiling they can no longer enjoy the customs exemption in question.

10 The Court shares the view expressed by the Commission. It is apparent from the provisions of Regulation No 2789/79 that suspension can be granted only until the ceiling is reached (Article 1 (3)), that the goods are charged against such a ceiling as and when the declaration in respect of free circulation and the certificate of origin are both lodged (Article 3 (1)) and that the goods may be charged against a ceiling only if the certificate of origin is submitted before the date on which the duties are re-introduced (Article 3 (2)). It follows from those provisions taken together that production of the certificate is necessary for the goods to be charged against the ceiling and the goods must be charged against the ceiling in order to obtain exemption from duties.

11 It is thus apparent that the exemption from customs duties provided for by Regulation No 2789/79 is excluded when the certificate of origin of the goods imported into the Community is produced after the customs duties for such goods have been re-introduced.

12 That interpretation is supported by practical considerations. The efficient management of the ceilings allowed in relation to customs exemption for developing countries and territories would be made extremely difficult if after duties were re-introduced goods whose certificates of origin were produced late might still enjoy retroactive exemption.

13 Articles 7 and 11 of Regulation No 3067/79, to which the national court refers, are no obstacle to such interpretation. Those provisions relate to the duration of the validity of certificates of origin from the date of their issue by the competent authority in the exporting country and to certain cases where a certificate may be validly produced after the time-limit has expired; thus they do not concern the question of the effect of the re-introduction of duties on the right to exemption where the certificate has not yet been produced when the re-introduction takes effect.

14 In the circumstances the question put by the Finanzgericht Hamburg must be answered to the effect that Article 3 of Regulation No 2789/79 must be interpreted as meaning that the suspension of customs duties provided for thereby may not be applied to goods imported and entered for free circulation before the re-introduction of customs duties if the certificate of origin is produced after the re-introduction has come into effect.

Costs

15 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. As the proceedings are, as far as the parties to the main action are concerned, in the nature of a step in the proceedings before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the question referred to it by the Finanzgericht Hamburg by order of 29 October 1982, hereby rules:

The suspension of customs duties provided for in Regulation No 2789/79 may not be applied to goods imported and entered for free circulation before the re-introduction of customs duties if the certificate of origin is produced after the re-introduction has come into effect.

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 27 October 1983.

P. Heim
Registrar

T. Koopmans
President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 6 OCTOBER 1983 [1]

Mr President,
Members of the Court,

The Finanzgericht [Finance Court] Hamburg seeks an interpretation of Council Regulation No 2789/79 of 10 December 1979 opening preferential tariffs for certain products originating in developing countries, [2] on the basis of which Commission Regulation No 3067/79 of 20 December 1979 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 [3] was adopted.

1 — Translated from the French.

2 — Official Journal, L 328, 24. 12. 1979, p. 25.
3 — Official Journal, L 349, 31. 12. 1979, p. 1.