JUDGMENT OF THE COURT (First Chamber)
6 June 1990 *

In Case C-17/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof (Federal Finance Court) for a preliminary ruling in the proceedings before that Court between

Hauptzollamt Frankfurt am Main-Ost (Principal Customs Office, Frankfurt-on-Main-East), defendant, and appellant in the appeal on a point of law,

and

Deutsche Olivetti GmbH, plaintiff, and respondent in the appeal on a point of law,

on the interpretation of Articles 8 and 15 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980, L 134, p. 1),

THE COURT (First Chamber)

composed of: M. Zuleeg, President of Chamber, for the President of the First Chamber, R. Joliet and G. C. Rodríguez Iglesias,

Advocate General: G. Tesauro
Registrar: J.-G. Giraud

after considering the observations submitted on behalf of

Deutsche Olivetti GmbH, by Dirk Krüger, of the Frankfurt Bar,

* Language of the case: German.

the Commission of the European Communities, by its Legal Adviser, Jörn Sack, acting as Agent, assisted by Jean Imbach, of the Strasbourg Bar,

having regard to the Report for the Hearing and further to the hearing on 7 February 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 28 March 1990,

gives the following

Judgment

1 By an order of 14 December 1988, which was received at the Court on 23 January 1989, the Bundesfinanzhof referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 8(1)(e)(i) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980, L 134, p. 1, hereinafter referred to as 'the regulation').

2 The questions arose in proceedings between Deutsche Olivetti GmbH (hereinafter referred to as 'Olivetti') and the Hauptzollamt Frankfurt am Main-Ost (hereinafter referred to as 'the Hauptzollamt') concerning the valuation of the cost of transport in connection with goods imported in May 1982.

3 Olivetti purchased the goods in question in Hong Kong and agreed with a forwarding agent to pay a single all-inclusive freight charge to have them transported from Hong Kong to Frankfurt. The goods, packed in a container, were carried by sea to Hamburg and then overland to Frankfurt.

4 When Olivetti made its customs declaration it added the cost of transport and of insurance to the place of introduction of the goods into the customs territory of the Community to the price actually paid or payable for the goods, in accordance with Articles 3(1) and 8(1)(e)(i) of the regulation. Those additional costs declared were determined by reference to a schedule of freight rates normally applied by a private shipping agency for the journey between Hong Kong and Hamburg.

5 After carrying out an inspection, the Hauptzollamt recalculated the cost of transport and requested Olivetti to pay a supplementary customs duty. The Hauptzollamt based its request on Article 15(2)(a) of the regulation, which provides that:

'Where goods are carried by the same means of transport to a point beyond the place of introduction into the customs territory of the Community, transport costs shall be assessed in proportion to the distance covered outside and inside the customs territory of the Community, unless evidence is produced to the customs authorities to show the costs that would have been incurred under a general compulsory schedule of freight rates for the carriage of the goods to the place of introduction into the customs territory of the Community.'

6 The Hauptzollamt assessed the transport costs actually paid by Olivetti in proportion to the distance covered outside and inside the customs territory of the Community. It then doubled the proportion corresponding to the distance covered between Hamburg and Frankfurt because of the higher cost of transport within the Community.

7 Olivetti brought an action against that decision before the Finanzgericht (Finance Court). In support of its action, it claimed that Article 15(2)(a) is applicable only to goods 'carried by the same means of transport to a point beyond the place of introduction into the customs territory of the Community', which was not so in the case at issue as the goods had been carried first by sea and then overland.

8 After the Finanzgericht found in favour of Olivetti, the Hauptzollamt lodged an appeal on a point of law before the Bundesfinanzhof claiming that container transport must itself be considered to be 'a means of transport'.

9 In order to settle that dispute the Bundesfinanzhof stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'According to what criteria are transport costs which, under Article 8(1)(e)(i) of Council Regulation (EEC) No 1224/80, are to be added to the price actually paid or payable for goods within the meaning of Article 3 to be determined if under fob terms of delivery an importer has paid a single all-inclusive price for transport of the goods beyond the place of introduction into the Community to a point inside the Community? If the goods are imported in a container, is it material whether or not the goods were carried in the same container during the entire journey?'

10 Reference is made to the Report for the Hearing for a fuller account of the facts and the legal background to the case and the written observations submitted to the Court, which are referred to or mentioned hereinafter only in so far as is necessary for the reasoning of the Court.

11 It is evident from the documents before the Court that by its questions the Bundesfinanzhof seeks to establish, first of all, whether container transport may be regarded as a 'means of transport' within the meaning of Article 15(2)(a) of the regulation and, if not, how the cost of transport referred to in Article 8(1)(e)(i) must be calculated when the importer has paid a single all-inclusive price to have the goods transported to a point beyond the place of introduction to the customs territory of the Community, assuming that the goods have been carried using several different means of transport.

Question 1

12 By way of a preliminary observation, it should be pointed out that Article 15(1) of the regulation provides that 'the customs value of imported goods shall not include the cost of transport after importation into the customs territory of the

Community provided that such cost is distinguished from the price actually paid or payable for the imported goods'. That provision is merely a restatement of the rule laid down in Articles 3(1) and 8(1)(e)(i), according to which the cost of transport to the place of introduction of goods into the customs territory of the Community must be added to the transaction value of the goods.

13 Article 15(2) contains special provisions relating to the cost of transport within the Community when such cost is not clearly distinguished from the cost of transport outside the Community. Article 15(2)(a) provides that transport costs are to be assessed in proportion to the distance covered outside and inside the customs territory of the Community where the goods are carried by the same means of transport.

14 A proportional assessment of those costs presupposes that the same schedule of rates or, in any event, schedules of rates which are not appreciably different, apply for the entire journey. In such cases, the proportion of the total journey represented by the distance covered outside the Community is equal to the proportion of the total costs incurred for transport outside the Community. However, if several means of transport have been used and if, therefore, different schedules of freight rates have been applied, there is no longer any direct relationship between the proportion of the total distance represented by the journey outside the Community and the proportion of the costs relating thereto. In such cases, an assessment of the costs in proportion to the distance covered would result in arbitrary and fictitious values, which is expressly prohibited by Article 2(4)(g) of the regulation.

15 It follows that container transport does not constitute a means of transport within the meaning of Article 15(2)(a) of the regulation since it may be effected in different ways (by road, by air, by rail or by sea) and the cost of transport varies depending on the way chosen.

16 The reply to the first question must therefore be that container transport cannot be regarded as a 'means of transport' within the meaning of Article 15(2)(a) of the regulation.

Question 2

17 In the absence of more specific rules, the cost of transport outside the Community which, under Article 3(1) of the regulation, forms part of the customs value of goods, must be determined, pursuant to Article 2(3) of the regulation, using means consistent with the principles and general provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (published in an annex to Council Decision 80/271/EEC of 10 December 1979, concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations, Official Journal 1980, L 71, p. 1, hereinafter referred to as 'the Agreement') and Article VII of the General Agreement on Tariffs and Trade, and on the basis of data available in the Community.

18 It is evident from the fifth recital in the preamble to the Agreement that the criteria adopted for determining the customs value must be simple, equitable and consistent with commercial practices.

19 The Commission therefore claims that, having regard to those considerations, it was appropriate to calculate the cost of transport to the place of introduction of the goods into the customs territory of the Community by determining, first of all, the price fixed or generally applied for the distance covered by the goods within the Community and then deducting that price from the total cost of transport actually paid or payable by the importer.

20 The national court has provisionally rejected that method because of the distortions to which it could give rise in view of the fact that the real unit cost of transport generally decreases as the distance covered increases. However, that argument is valid essentially in cases where the journey is uninterrupted and a single means of transport is used, as specifically envisaged in Article 15(2)(a) of the regulation. However, it is clear from the reply to the first question that those conditions are not fulfilled in the case at issue.

21 It must therefore be accepted that the criterion proposed by the Commission is in conformity with the regulation and may be applied in order to determine the transport costs to be included in the customs value.

22 In the grounds of its order for reference, the Bundesfinanzhof also raised the question whether the cost of transport outside the Community, determined on the basis of the schedule of freight rates normally applied for the means of transport in question, must be added to the transaction value.

23 That method is expressly adopted in Article 15(2)(c) of the regulation for calculating the cost of transport where transport is free or provided by the buyer. It may also be applied by analogy to the case referred to in the second question.

24 Finally, the two criteria considered above refer to the freight rates normally applied for the means of transport in question. Thus in both cases the cost of transport is calculated in accordance with data available in the Community. It is for the national authorities to choose the criterion which is more likely to avoid arbitrary or fictitious values.

25 The reply to the second question must therefore be that, where an importer has paid an all-inclusive price for transport to a point beyond the place of introduction into the customs territory of the Community, and the goods have been carried using several different means of transport, the cost of transport referred to in Article 8(1)(e)(i) of the regulation must be calculated either by deducting the cost of transport within the customs territory of the Community, determined on the basis of the schedule of freight rates normally applied, from the price actually paid or payable, or by determining the cost of transport to the place of introduction into the customs territory of the Community directly on the basis of the rates normally applied. It is for the national authorities to choose the criterion which is more likely to avoid arbitrary and fictitious values.

Costs

26 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (First Chamber),

in answer to the questions submitted to it by the Bundesfinanzhof, by an order of 14 December 1988, hereby rules:

(1) Container transport cannot be considered to be a 'means of transport' within the meaning of Article 15(2)(a) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980, L 134, p. 1).

(2) Where an importer has paid an all-inclusive price to have goods transported to a point beyond the place of introduction into the customs territory of the Community, and the goods have been carried using several different means of transport, the cost of transport referred to in Article 8(1)(e)(i) of the aforementioned regulation must be calculated either by deducting the cost of transport within the customs territory of the Community, determined on the basis of the rates normally applied, from the price actually paid or payable, or by determining the cost of transport to the place of introduction of the goods into the customs territory of the Community directly on the basis of the rates normally applied. It is for the national authorities to choose the criterion which is more likely to avoid arbitrary and fictitious values.

Zuleeg Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 6 June 1990.

J.-G. Giraud
Registrar

M. Zuleeg
President of Chamber for the President of the First Chamber