Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

9 June 2022 *

(Reference for a preliminary ruling – Regulation (EEC) No 2913/92 – Community Customs Code – Article 30(2)(a) and (b) – Customs value – Determination of the transaction value of similar goods – Database set up and managed by the national customs authority – Databases set up and managed by the customs authorities of other Member States and by the services of the European Union – Identical or similar goods exported to the European Union 'at or about the same time'

In Case C-187/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Supreme Court, Hungary), made by decision of 4 February 2021, received at the Court on 25 March 2021, in the proceedings

FAWKES Kft.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis, M. Ilešič, D. Gratsias (Rapporteur) and Z. Csehi, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– FAWKES Kft., by L.P. Maruzs, ügyvéd,

– the Hungarian Government, by M.Z. Fehér and K. Szíjjártó, acting as Agents,

– the Spanish Government, by I. Herranz Elizalde and S. Jiménez García, acting as Agents,

* Language of the case: Hungarian.

– the French Government, by G. Bain and A.-L. Desjonquères, acting as Agents,

– the Finnish Government, by M. Pere, acting as Agent,

– the European Commission, by B. Béres and F. Clotuche-Duvieusart, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 30(2)(a) and (b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1) and Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17; 'the Customs Code').

2 The request has been made in proceedings between FAWKES Kft. and Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Resources Directorate of the National Tax and Customs Administration, Hungary; 'the Hungarian customs authority') concerning the decision by which the latter, in accordance with Article 30(2)(b) of the Customs Code, determined the customs value of textile goods originating in the People's Republic of China ('the contested decision').

Legal context

The Customs Code

3 The Customs Code was repealed and replaced by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1 and corrigendum OJ 2013 L 287, p. 90). However, under Article 286(2) of that regulation, read in conjunction with Article 288(2) thereof, the Customs Code remained applicable until 30 April 2016.

4 The eighth recital of the Customs Code states:

'In adopting the measures required to implement this Code, the utmost care must be taken to prevent any fraud or irregularity liable to affect adversely the General Budget of the European [Union].'

5 Article 6(3) of the Customs Code provides:

'Decisions adopted by the customs authorities in writing which either reject requests or are detrimental to the persons to whom they are addressed shall set out the grounds on which they are based.'

6 Article 29(1) of that code states:

‘The customs value of imported 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 [European Union], adjusted, where necessary, in accordance with Articles 32 and 33 …’

7 Article 30(1) and (2) of that code provides:

‘1. Where the customs value cannot be determined under Article 29, it is to be determined by proceeding sequentially through subparagraphs (a), (b), (c) and (d) of paragraph 2 to the first subparagraph under which it can be determined …

2. The customs value as determined under this Article shall be:

(a) the transaction value of identical goods sold for export to the [European Union] and exported at or about the same time as the goods being valued;

(b) the transaction value of similar goods sold for export to the [European Union] and exported at or about the same time as the goods being valued;

(c) the value based on the unit price at which the imported goods for identical or similar imported goods are sold within the [European Union] in the greatest aggregate quantity to persons not related to the sellers;

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

– the cost or value of materials and fabrication or other processing employed in producing the imported goods,

– an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the [Union],

– the cost or value of the items referred to in Article 32(1)(e).’

8 Article 31(1) of the Customs Code provides:

‘Where the customs value of imported goods cannot be determined under Articles 29 or 30, it shall be determined, on the basis of data available in the [European Union], using reasonable means consistent with the principles and general provisions of:

– the agreement on implementation of Article VII of the General Agreement on Tariffs and Trade of 1994;

– Article VII of the General Agreement on Tariffs and Trade of 1994;

– the provisions of this chapter.’

9 Article 78 of that code is worded as follows:

‘1. The customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods.

2. The customs authorities may, after releasing the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes. Those authorities may also examine the goods where it is still possible for them to be produced.

3. Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities shall, in accordance with any provisions laid down, take the measures necessary to regularize the situation, taking account of the new information available to them.’

10 Article 221(3) and (4) of that code provide:

‘3. Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. This period shall be suspended from the time an appeal within the meaning of Article 243 is lodged, for the duration of the appeal proceedings.

4. Where the customs debt is the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the amount may, under the conditions set out in the provisions in force, be communicated to the debtor after the expiry of the three-year period referred to in paragraph 3.’

The Implementing Regulation

11 Title V of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1 and corrigendum OJ 1994 L 268, p. 32), as amended by Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ 1994 L 346, p. 1) (‘the Implementing Regulation’) is entitled ‘Customs value’ and includes Articles 141 to 181a.

12 Article 142 of the Implementing Regulation states:

‘1. For the purposes of this title:

…

(c) “identical goods” means goods produced in the same country which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical;

(d) "similar goods" means goods produced in the same country which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable; the quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;

…'

13 Article 150 of the Implementing Regulation is worded as follows:

'1. In applying Article 30(2)(a) of the [Customs Code] (the transaction value of identical goods), the customs value shall be determined by reference to the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued. …

…

3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

4. In applying this Article, a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under paragraph 1 for identical goods produced by the same person as the goods being valued.

5. For the purposes of this Article, the transaction value of identical imported goods means a customs value previously determined under Article 29 of the [Customs Code], adjusted as provided for in paragraphs 1 and 2 of this Article.'

14 Article 151 of that regulation provides:

'1. In applying Article 30(2)(b) of the [Customs Code] (the transaction value of similar goods), the customs value shall be determined by reference to the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued. …

…

3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value for the imported goods.

4. In applying this Article, a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under paragraph 1 for similar goods produced by the same person as the goods being valued.

5. For the purposes of this Article, the transaction value of similar imported goods means a customs value previously determined under Article 29 of the [Customs Code], adjusted as provided for in paragraphs 1 and 2 of this Article.'

15 Article 181a of the Implementing Regulation provides:

‘1. The customs authorities need not determine the customs valuation of imported goods on the basis of the transaction value method if, in accordance with the procedure set out in paragraph 2, they are not satisfied, on the basis of reasonable doubts, that the declared value represents the total amount paid or payable as referred to in Article 29 of the [Customs Code].

2. Where the customs authorities have the doubts described in paragraph 1 they may ask for additional information in accordance with Article 178(4). If those doubts continue, the customs authorities must, before reaching a final decision, notify the person concerned, in writing if requested, of the grounds for those doubts and provide him with a reasonable opportunity to respond. A final decision and the grounds therefor shall be communicated in writing to the person concerned.’

Regulation No 515/97

16 Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ 1997 L 82, p. 1), as amended by Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008 (OJ 2008 L 218, p. 48) (‘Regulation No 515/97’) provides, in Article 1(1):

‘This Regulation lays down the ways in which the administrative authorities responsible for implementation of the legislation on customs and agricultural matters in the Member States shall cooperate with each other and with the Commission in order to ensure compliance with that legislation within the framework of a [European Union] system.’

17 Titles I and II of that regulation concern, respectively, assistance on request and spontaneous assistance.

18 Title V of that regulation, entitled ‘Customs information system [CIS]’, includes Chapter 2, entitled ‘Operation and use of the CIS’, containing Article 24, which provides:

‘The CIS shall consist of a central database facility and it shall be accessible via terminals in each Member State and at the Commission. It shall comprise exclusively data necessary to fulfil its aim as stated in Article 23(2), including personal data, in the following categories:

…

(g) goods detained, seized or confiscated;

…’

Implementing Regulation (EU) 2016/346

19 Recital 1 of Commission Implementing Regulation (EU) 2016/346 of 10 March 2016 determining the items to be included in the Customs Information System (OJ 2016 L 65, p. 40) states:

'The aim of the [CIS] is to assist the competent authorities in the prevention, investigation and prosecution of operations in breach of customs and agricultural legislation. In order to achieve this aim the competent authorities of the Member States enter information on relevant events, such as seizure or detention of goods in the CIS. In order for the CIS to continue to address the needs of the competent authorities it is necessary to update the list of items to be included in the CIS.'

Legislation concerning statistics relating to external trade

20 Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95 (OJ 2009 L 152, p. 23), provides in Article 3(1):

'External trade statistics shall record imports and exports of goods.

…

An import shall be recorded by Member States in the event that goods enter the statistical territory of the [European Union] in accordance with one of the following customs procedures laid down in the Customs Code:

(a) release for free circulation;

(b) inward processing;

…'

21 Article 4(1) of that regulation provides:

'The data source for records on the imports and exports of goods referred to in Article 3(1) shall be the customs declaration, including possible amendments or changes to statistical data resulting from decisions by customs pertaining to it.'

22 Article 5(1) of that code states:

'Member States shall obtain the following set of data from records on imports and exports referred to in Article 3(1):

…

(c) the statistical value of the goods at the national border of the importing or exporting Member States;

…'

23 Article 6 of Regulation No 471/2009 provides:

‘1. Member States shall compile for each monthly reference period statistics on imports and exports of goods expressed in value and quantity by:

(a) goods code;

(b) importing/exporting Member States;

(c) partner countries;

(d) statistical procedure;

(e) nature of the transaction;

(f) preferential treatment on import;

(g) mode of transport.

…’

24 Article 8 of that regulation provides:

‘1. Member States shall transmit to the Commission (Eurostat) the statistics referred to in Article 6(1) no later than 40 days after the end of each monthly reference period.

Member States shall ensure that the statistics contain information on all imports and exports in the reference period in question, making adjustments where records are not available.

…’

25 Commission Regulation (EU) No 113/2010 of 9 February 2010 implementing Regulation No 471/2009 as regards trade coverage, definition of the data, compilation of statistics on trade by business characteristics and by invoicing currency, and specific goods or movements (OJ 2010 L 37, p. 1) provides, in Article 4(1) and (2):

‘1. The statistical value shall be based on the value of the goods at the time and place the goods cross the border of the Member State of destination on import and of the Member State of actual export on export.

The statistical value shall be calculated on the basis of the value of the goods referred to in paragraph 2 and, where necessary, adjusted for the costs of transport and insurance according to paragraph 4.

2. With respect to the valuation principles laid down in the agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade (WTO customs valuation agreement), the value of the goods for imports or exports shall be:

(a) in the event of a sale or purchase, the price actually paid or payable for the imported or exported goods, excluding arbitrary or fictitious values;

(b) in other cases, the price which would have been paid in the event of sale or purchase.

The customs value shall be used if determined according to the Customs Code for goods released for free circulation.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

26 In 2012, FAWKES, the appellant in the main proceedings, imported into the European Union, on several occasions, textile goods originating in the People's Republic of China. The Hungarian customs authority considered that the transaction value declared in accordance with Article 29 of the Customs Code was abnormally low. Taking the view that it was impossible to determine the customs value of those goods on the basis of their transaction value in accordance with the rule laid down in Article 29 of that code or to apply the methods laid down in Article 30 of the code, that authority, to that end, applied Article 31 of the code by adopting several decisions which the applicant has challenged in the main proceedings before the competent national court.

27 As is apparent from the observations submitted both by the applicant in the main proceedings and by the Hungarian Government, which have been confirmed by the material in the file before the Court, those decisions were annulled by the competent national court. The Hungarian customs authority adopted further decisions, which were also annulled following appeals brought by the applicant in the main proceedings. That authority then adopted the contested decision in which the customs value was determined in accordance with Article 30(2)(b) of the Customs Code. To that end, it used information from a national database covering a period of 90 days, including 45 days before and 45 days after customs clearance. That authority did not take account of other customs clearances granted to the applicant in the main proceedings.

28 In support of its action against the contested decision, the applicant in the main proceedings claimed, first, that, in order to establish the customs value in accordance with Article 30(2)(a) or (b) of the Customs Code, the Hungarian customs authority should have consulted the databases of various EU services, such as the Directorate-General for Taxation and Customs Union (DG TAXUD) of the European Commission, the European Anti-Fraud Office (OLAF) and Eurostat, the Statistical Office of the European Union. Secondly, that customs authority should not have excluded the transaction values corresponding to other imports made by the applicant in the main proceedings into Hungary and other Member States without having been challenged by the competent authorities. Thirdly, according to the applicant in the main proceedings, the period taken into account for the purposes of determining the customs value should have been greater than the period of 90 days referred to by the customs authority.

29 After the national court of first instance dismissed that action, the applicant in the main proceedings brought an appeal on a point of law before the Kúria (Supreme Court, Hungary), the referring court. In support of its appeal, the appellant in the main proceedings reiterated its complaints based on the alleged obligation to establish the customs value by consulting the databases managed by the European Union, to take account of the transaction values relating to other imports by that applicant and to take account of a relevant period of more than 90 days.

30 According to the referring court, when determining the customs value on the basis of the transaction value of identical or similar goods, within the meaning of Article 30(2)(a) and (b) of the Customs Code, a national customs authority cannot abstain from approaching the customs authorities of other Member States for information. In the absence of an EU-wide database

compiling all the necessary information, that provision must be interpreted as allowing the customs authority of a Member State to request information from its counterparts from other Member States.

31 In addition, the referring court considers that the customs authority may disregard the transaction values used in previous customs clearance procedures made at the request of the same importer if there is doubt as to whether those customs values are acceptable within the meaning of Article 29 of the Customs Code. The referring court also considers that a period of 90 days, including 45 days before and 45 days after customs clearance, fulfils the concept of goods exported to the European Union 'at or about the same time as the goods being valued' within the meaning of Article 30(2)(a) and (b) of that code.

32 In those circumstances, the Kúria (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 30(2)(a) and (b) of [the Customs Code] be interpreted as meaning that only the values listed in the database created from the customs clearances of the Member State's own customs authority may and must be taken into account as the customs value?

(2) If the first question is answered in the negative, is it necessary, for the purposes of determining the customs value in accordance with Article 30(2)(a) and (b) of the Customs Code, to approach the customs authorities of other Member States in order to obtain the customs value of similar goods listed in their databases, and/or is it necessary to consult a [European Union] database and obtain the customs values listed in it?

(3) May Article 30(2)(a) and (b) of the Customs Code be interpreted as meaning that, for the purposes of determining the customs value, account may not be taken of transaction values relating to transactions performed by the applicant for customs clearance himself, even if those values have not been challenged either by the national customs authority or by the [customs] authorities of other Member States?

(4) Must the requirement of "at or about the same time", laid down in Article 30(2)(a) and (b) of the Customs Code, be interpreted as meaning that it may be limited to a period of +/- 45 days before and after customs clearance?'

Consideration of the questions referred

The first and second questions

33 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 30(2)(a) and (b) of the Customs Code must be interpreted as meaning that, when determining the customs value in accordance with that provision, the customs authority of a Member State may confine itself to using information contained in the national database which it compiles and manages, or whether it must access information held by the customs authorities of other Member States or by the services and institutions of the European Union, if necessary by making a request to them for additional data for the purposes of that determination.

34 It should be noted that the objective of EU legislation relating to customs valuation is to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values. The customs value must therefore reflect the real economic value of an imported product and take into account all of the elements of that product that have economic value (judgment of 9 July 2020, *Direktor na Teritorialna direktsiya Yugozapadna Agentsiya 'Mitnitsi'*, C-76/19, EU:C:2020:543, paragraph 34 and the case-law cited).

35 Furthermore, bearing in mind that the various methods for determining customs value set out in Article 30(2)(a) to (d) of the Customs Code are subordinately linked, customs authorities must exercise due care when implementing each of the successive methods set out in that provision before they can set it aside (judgment of 9 November 2017, *LS Customs Services*, C-46/16, EU:C:2017:839, paragraph 52).

36 Accordingly, when the customs authority determines a customs value pursuant to Article 30(2)(a) of the Customs Code, it must base its assessment on information concerning identical goods, as defined in Article 142(1)(c) of the Implementing Regulation, exported at or about the same time as the goods being valued, while complying with the other conditions laid down in Article 150 of that regulation, relating, inter alia, to the commercial level and quantity at which the identical goods are sold and to the person who produced them.

37 Similarly, where the customs authority determines a customs value in accordance with Article 30(2)(b) of that code, after finding that the method laid down in Article 30(2)(a) of the Customs Code is not applicable, it must base its assessment on information concerning similar goods, as defined in Article 142(1)(d) of the Implementing Regulation, exported at or about the same time as the goods being valued, while complying with the other conditions laid down in Article 151 of that regulation, which are identical to those laid down in Article 150 of that regulation.

38 Against that background, in view of the obligation imposed on them to exercise due care when implementing Article 30(2)(a) and (b) of the Customs Code, customs authorities are required to consult all the information sources and databases available to them in order to establish the customs value in the manner that is most accurate and closest to the actual value (see, to that effect, judgments of 9 November 2017, *LS Customs Services*, C-46/16, EU:C:2017:839, paragraph 56, and of 20 June 2019, *Oribalt Rīga*, C-1/18, EU:C:2019:519, paragraph 27).

39 In accordance with that obligation, each customs authority is required to use the national database which it manages and compiles, in so far as that database provides it with the information necessary to apply Article 30(2)(a) and (b) of the Customs Code, subject to the adoption of a reasoned decision in accordance with Article 6(3) of that code. By contrast, a customs authority cannot be required to seek systematically, on its own initiative or on simple request, access to information sources or databases which are not necessary for the purposes of applying Article 30(2) (a) and (b) of that code, particularly where it does not have free and immediate access to those information sources or databases or the data contained therein cannot be included in the statement of reasons for a decision adopted under that provision.

40 It should be noted, in that regard, that national databases are compiled by customs authorities by means of customs declarations received pursuant to the Customs Code. In particular, it is apparent from a combined reading of the second subparagraph of Article 3(1) and Article 4(1) of Regulation No 471/2009 that Member States are required to register any importation of goods which enter their territory as part of the statistical territory of the European Union, within the

meaning of Article 2(b) of that regulation, by using the customs declaration as a data source for records. The statistical data compiled by the customs authorities include, according to Article 5(1)(c) of that regulation, the statistical value of the goods at the border of the importing Member State, which, according to Article 4(1) of Regulation No 113/2010, is based on the value of the goods at the time and at the place where they cross the border of the Member State of destination on import.

41 The national databases thus created are therefore capable, as a rule, of referring to the information necessary for the application of Article 30(2)(a) and (b) of the Customs Code. Moreover, each of those national databases is, by definition, freely and immediately accessible to the customs authority of the Member State concerned which compiles and manages it.

42 In those circumstances, whether a customs authority of the Member State in which the customs clearances take place has an obligation to use the information contained in the databases set up and managed by the customs authorities of other Member States or by the services of the European Union depends on whether the customs authority concerned is in a position to determine the customs value in accordance with Article 30(2)(a) and (b) of the Customs Code, on the basis of the information immediately available to it. If that authority, on the basis of databases which it compiles and manages, already possesses the materials necessary for that purpose, the information contained in databases managed by other customs authorities or by the departments of the European Union will be of no particular use.

43 Furthermore, free and immediate access to each of the national databases is reserved exclusively for the customs authority of the Member State concerned that compiles and manages it, and therefore its counterparts from other Member States can derive information from it only by means of an application made in accordance with Regulation No 515/97.

44 It is apparent from Article 1(1) of Regulation No 515/97 that that regulation provides for the manner in which the administrative authorities responsible for implementation of the legislation on customs and agricultural matters in the Member States are to cooperate with each other and with the Commission in order to ensure compliance with that legislation. That assistance is provided either on request, in accordance with the provisions of Title I of that regulation, or spontaneously, in accordance with Title II of that regulation, in situations which are different from a simple inspection for the purposes of determining the customs value.

45 In those circumstances, where the information contained in the national database of the Member State concerned is sufficient for the customs authority of that Member State to determine the customs value in accordance with Article 30(2)(a) and (b) of the Customs Code, imposing a systematic obligation on customs authorities to derive information from databases managed by the customs authorities of other Member States would be unnecessarily burdensome and could jeopardise the attainment of the objective of combating financial fraud and any other illegal activity affecting the financial interests of the European Union. That objective, set out in Article 325 TFEU and recital 8 of the Customs Code, requires customs inspections to be concluded in good time to allow the effective and complete collection of customs duties (see, to that effect, judgment of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraphs 209 to 211 and the case-law cited).

46 As regards the statistical data compiled at EU level, in particular those referred to in the written observations submitted to the Court, it is not certain that they necessarily contain elements which may be used for the purposes of determining customs value pursuant to Article 30(2)(a) and (b) of the Customs Code, owing to their aggregated and confidential nature.

47 In that regard, it should be noted that Regulation No 515/97 establishes, under Title V, a customs information system consisting of a central database facility which is accessible via terminals in each Member State and at the Commission. However, it is apparent from Article 24(g) of that regulation and recital 1 of Implementing Regulation 2016/346 that the competent authorities of the Member States are to provide the customs information system with information concerning relevant events, such as seizure or detention of goods. The customs information system does not therefore identify information on all customs clearances taking place within the customs territory of the European Union from which the competent authorities may, in any event, extract the information necessary to determine the customs value of goods in accordance with Article 30(2)(a) and (b) of the Customs Code.

48 Similarly, it is apparent from Articles 5, 6 and 8 of Regulation No 471/2009 that Member States must provide Eurostat with aggregated data on imports, expressed in value and broken down by goods code. As has been stated in paragraphs 36 and 37 above, when determining the customs value in accordance with Article 30(2)(a) and (b) of the Customs Code, the customs authority must examine factors such as physical characteristics, quality, reputation, interchangeability of goods and the commercial level of the sales taken into account.

49 Consequently, as the Hungarian Government claims, the data transmitted by the Member States to Eurostat under Regulation No 471/2009 do not, in themselves, appear capable of enabling the customs authority to determine the customs value in accordance with Article 30(2)(a) and (b) of the Customs Code.

50 That is also the case for any database set up at EU level, which contains information relating to customs, such as tariffs, rules of origin, additional duties and taxes, import procedures and formalities, goods requirements, barriers to trade and statistics on trade, without providing, however, precise information allowing the customs value to be determined in accordance with Article 30(2)(a) and (b) of the Customs Code.

51 Moreover, the obligation on customs authorities to state reasons when implementing the Customs Code has an impact on whether databases managed by the departments of the EU can be used for the prevention of fraud.

52 According to Article 6(3) of the Customs Code, decisions adopted by the customs authorities in writing which are detrimental to the persons to whom they are addressed are to set out the grounds on which they are based.

53 Accordingly, the obligation to state reasons incumbent on the customs authorities in the course of implementing the Customs Code must, first, make it possible to disclose clearly and unequivocally the reasons which led them to set aside one or more methods for determining customs value, in this case Article 29 of the Customs Code (see, to that effect, judgment of 9 November 2017, *LS Customs Services*, C-46/16, EU:C:2017:839, paragraph 44).

54 Secondly, that obligation means that those authorities are required to set out, in their decision fixing the amount of import duties due, the data on the basis of which the customs value of the goods was calculated, in this case under Article 30(2) of the Customs Code, both to enable the recipient of that decision to defend its rights under the best possible conditions and decide in full knowledge of the circumstances whether it is worthwhile to bring an action against it, and to enable the courts to review the legality of that decision (see, to that effect, judgment of 9 November 2017, *LS Customs Services*, C-46/16, EU:C:2017:839, paragraph 45).

55 Even if it could prove useful for determining customs value, confidential information from a database which seeks, by means of statistical exploration methods, to detect commercial models capable of constituting cases of fraud cannot form part of the statement of reasons required in Article 6(3) of the Customs Code. Consequently, the database from which that information derives cannot be regarded as being at the disposal of the customs authorities for the purposes of determining the customs value, within the meaning of Article 30(2)(a) and (b) of the Customs Code.

56 That said, the considerations set out in paragraphs 42 to 55 above do not prevent the customs authority of a Member State, in the light of the circumstances of each case and having regard to its obligation to exercise due care, from sending to the customs authorities of other Member States or the EU services and institutions appropriate requests seeking additional information which it needs in order to determine customs value (see, by analogy, judgment of 9 November 2017, *LS Customs Services*, C-46/16, EU:C:2017:839, paragraph 55), provided that they are capable of being brought to the attention of the operator concerned pursuant to Article 6(3) of the Customs Code.

57 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 30(2)(a) and (b) of the Customs Code must be interpreted as meaning that, when determining the customs value in accordance with that provision, the customs authority of a Member State may confine itself to using information contained in the national database which it compiles and manages, without that customs authority being required, where the information is sufficient for that purpose, to access information held by the customs authorities of other Member States or by the EU services and institutions, without prejudice, if that is not the case, to the possibility for that customs authority to make a request to those authorities or to those services and institutions in order to obtain additional data for the purposes of that determination.

The third question

58 By its third question, the referring court asks, in essence, whether Article 30(2)(a) and (b) of the Customs Code must be interpreted as meaning that the customs authority of a Member State may exclude, when determining the customs value, transaction values relating to other transactions entered into by the applicant for customs clearance, even if those values have not been challenged either by that customs authority or by the customs authorities of other Member States.

59 It is apparent from Article 150(5) and Article 151(5) of the Implementing Regulation that the transaction value of identical or similar goods means the transaction value previously determined under Article 29 of the Customs Code in respect of the other goods which are identical or similar to the goods being valued.

60 Those provisions do not preclude transaction values established under Article 29 of the Customs Code in respect of other imports by the same trader from being taken into account for the purpose of determining the customs value in respect of a particular import under Article 30(2)(a) and (b) of the Customs Code.

61 However, under Article 78(1) and (2) of the Customs Code, the customs authority may, after releasing the goods, revise the customs declaration and/or inspect the commercial documents and data relating to the import operations in respect of the goods concerned. It is also apparent from Article 221(3) of the Customs Code that the amount of duty – be it the amount initially established or the amount which could be established following revision or inspection – must be communicated to the debtor within three years of the date on which the customs debt was incurred.

62 Finally, it is apparent from Article 181a of the Implementing Regulation that if the customs authority is not satisfied, on the basis of reasonable doubts, that the declared value represents the total amount paid or payable, it may refuse to accept the declared price if those doubts continue after they have asked for additional information or documents and have provided the person concerned with a reasonable opportunity to respond to the grounds for those doubts (judgment of 16 June 2016, *EURO 2004. Hungary*, C-291/15, EU:C:2016:455, paragraph 31).

63 It is apparent from all of the provisions referred to in paragraphs 59 to 62 above that, when determining the customs value of a given import in accordance with Article 30(2)(a) and (b) of the Customs Code, the customs authority of a Member State may exclude the customs values declared in respect of other imports by that operator into that Member State, provided that that authority first calls them into question pursuant to Article 78(1) and (2) of the Customs Code, within the time limits imposed by Article 221 thereof and following the procedure laid down in Article 181a of the Implementing Regulation.

64 The situation is different where the operator concerned relies on transaction values relating to imports into other Member States. Since the customs authority of a Member State is not in a position to influence the choices of its counterparts from other Member States as regards the application of Article 181a of the Implementing Regulation to one or more imports, the fact that the authorities of other Member States have not called into question the transaction values in question cannot, in itself, prevent the customs authority of a Member State from assessing the plausibility of the transaction values relied on by the importer. In such a case, that authority retains the possibility of excluding the customs values declared on other imports that that trader has made into other Member States, albeit on the condition that it must set out the grounds for that exclusion in accordance with Article 6(3) of the Customs Code by reference to factors affecting the plausibility of the transaction values in question.

65 In the light of those considerations, the answer to the third question is that Article 30(2)(a) and (b) of the Customs Code must be interpreted as meaning that the customs authority of a Member State may exclude, when determining the customs value, transaction values relating to other transactions performed by the applicant for customs clearance, even if those values have not been challenged either by that customs authority or by the customs authorities of other Member States, provided that (i) for transaction values relating to imports into that Member State, that authority first calls them into question pursuant to Article 78(1) and (2) of the Customs Code, within the time limits imposed by Article 221 thereof and following the procedure laid down in Article 181a of the Implementing Regulation, and (ii) for transaction values relating to imports

into other Member States, that customs authority sets out the grounds for that exclusion in accordance with Article 6(3) of the Customs Code by reference to factors affecting their plausibility.

The fourth question

66 By its fourth question, the referring court asks, in essence, whether the concept of goods exported 'at or about the same time' as the goods being valued, used in Article 30(2)(a) and (b) of the Customs Code, must be interpreted as meaning that, when determining the customs value in accordance with that provision, a customs authority of a Member State may confine itself to using data relating to transaction values covering a period of 90 days, including 45 days before and 45 days after customs clearance.

67 As set out in paragraph 34 above, the objective of the provisions 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 therefore reflect the real economic value of imported goods and take into account all of the elements of those goods that have economic value.

68 In that context, customs authorities are required, as has been pointed out in paragraph 38 of this judgment, to consult all the information sources and databases available to them in order to establish the customs value in the manner that is most accurate and closest to the actual value.

69 It is in the light of those objectives that the obligation on the customs authorities to determine the customs value on the basis of the transaction value of identical or similar goods, exported 'at or about the same time' as the goods to be valued, must be understood.

70 In particular, the requirement of taking into account the transaction value of goods exported 'at or about the same time' as the goods to be valued is intended to ensure that transactions taking place at a sufficiently close date to the date of export are taken account of, so as to avoid the risk of a substantial change in commercial practices and market conditions affecting the prices of the goods to be valued.

71 Accordingly, a customs authority may, in principle, take account only of transaction values of identical or similar goods sold for export to the European Union for a period fixed by the European Union at 90 days, including 45 days before and 45 days after customs clearance. That period appears to be sufficiently close to the date of export that the risk of a substantial change in commercial practices and market conditions affecting the prices of the goods to be valued is avoided. Therefore, if that authority concludes that the export transactions of goods which are identical or similar to the goods being valued over that period enable it to determine the customs value of those goods in accordance with Article 30(2)(a) and (b) of the Customs Code, it cannot, in principle, be required to extend its enquiry to include exports of identical or similar goods made outside that period.

72 In the absence of exports of goods which are identical or similar during that 90-day period, it is for the customs authority to examine whether such exports have been made over a longer period, but not too far removed from the date of export of the goods being valued, provided that, during that longer period, the commercial practices and market conditions affecting the prices of the goods being valued have remained substantially the same. It is only if the customs authority concludes,

subject to review by the national court, that such exports do not exist, that it may use, sequentially, the methods for determining customs value set out in Article 30(2)(c) and (d) of the Customs Code or, failing that, in Article 31 thereof.

73 The answer to the fourth question is that the concept of goods exported 'at or about the same time' as the goods being valued, used in Article 30(2)(a) and (b) of the Customs Code, must be interpreted as meaning that, when determining the customs value in accordance with that provision, the customs authority of a Member State may confine itself to using data relating to transaction values covering a period of 90 days, including 45 days before and 45 days after the customs clearance of the goods being valued, provided that the transactions relating to exports, into the European Union, of goods which are identical or similar to the goods being valued over that period enable it to determine the customs value of those goods in accordance with that provision.

Costs

74 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

1. **Article 30(2)(a) and (b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that, when determining the customs value in accordance with that provision, the customs authority of a Member State may confine itself to using information contained in the national database which it compiles and manages, without that customs authority being required, where the information is sufficient for that purpose, to access information held by the customs authorities of other Member States or by the EU services and institutions, without prejudice, if that is not the case, to the possibility for that customs authority to make a request to those authorities or to those services and institutions in order to obtain additional data for the purposes of that determination.**

2. **Article 30(2)(a) and (b) of Regulation No 2913/92 must be interpreted as meaning that the customs authority of a Member State may exclude, when determining the customs value, transaction values relating to other transactions entered into by the applicant for customs clearance, even if those values have not been challenged either by that customs authority or by the customs authorities of other Member States, provided that (i) for transaction values relating to imports into that Member State, that authority first calls them into question pursuant to Article 78(1) and (2) of Regulation No 2913/92, within the time limits imposed by Article 221 thereof and following the procedure laid down in Article 181a of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 3254/94 of 19 December 1994, and (ii) for transaction values relating to imports into other Member States, that customs authority sets out the grounds for that exclusion in accordance with Article 6(3) of Regulation No 2913/92 by reference to factors affecting their plausibility.**

3. The concept of goods exported 'at or about the same time' as the goods being valued, referred to in Article 30(2)(a) and (b) of Regulation No 2913/92, must be interpreted as meaning that, when determining the customs value in accordance with that provision, a customs authority may confine itself to using data relating to transaction values covering a period of 90 days, including 45 days before and 45 days after the customs clearance of the goods being valued, provided that the transactions relating to exports, into the EU, of goods which are identical or similar to the goods being valued over that period enable it to determine the customs value of those goods in accordance with that provision.

[Signatures]