JUDGMENT OF THE COURT (Sixth Chamber)

1 February 2001 *

In Case C-66/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Finanzgericht Bremen (Germany) for a preliminary ruling in the proceedings pending before that court between

D. Wandel GmbH

and

Hauptzollamt Bremen,

on the interpretation of Article 75, Article 201(1)(a) and (2), Article 203(1) and Article 204(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen (Rapporteur) and F. Macken, Judges,

Advocate General: G. Cosmas,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— D. Wandel GmbH, by H. Kühle and G. Schemmann, Steuerberater,

— the Finnish Government, by H. Rotkirch and T. Pynnä, acting as Agents,

— the Commission of the European Communities, by J.C. Schieferer, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of D. Wandel GmbH, represented by K. Masorsky and M. Zitzmann, Steuerberater, of the French Government, represented by C. Vasak, acting as Agent, and the Commission, represented by J.C. Schieferer, at the hearing on 13 July 2000,

after hearing the Opinion of the Advocate General at the sitting on 28 September 2000,

gives the following

Judgment

1 By order of 2 February 1999, received at the Court on 25 February 1999, the Finanzgericht (Finance Court), Bremen, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) five questions on the interpretation of Article 75, Article 201(1)(a) and (2), Article 203(1) and Article 204(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; 'the Customs Code').

2 Those questions have been raised in proceedings between D. Wandel GmbH ('Wandel'), an international haulage and storage company, and the Hauptzollamt (Principal Customs Office), Bremen, ('the Hauptzollamt') concerning the incurrence of a customs debt on importation.

Community legislation

3 Article 4, point 20, of the Customs Code provides:

'For the purposes of this Code, the following definitions shall apply:

...

(20) "Release of goods" means the act whereby the customs authorities make goods available for the purposes stipulated by the customs procedure under which they are placed'.

4 Article 37 of the Customs Code provides:

'1. Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to control by the customs authority in accordance with the provisions in force.

2. They shall remain under such supervision for as long as necessary to determine their customs status, if appropriate, and in the case of non-Community goods and

without prejudice to Article 82(1), until their customs status is changed, they enter a free zone or free warehouse or they are re-exported or destroyed in accordance with Article 182.'

5 Article 40 of the Customs Code provides that goods which arrive at the customs office or other place designated or approved by the customs authorities are to be presented to customs by the person who brought the goods into the customs territory of the Community or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry.

6 Under Article 50 of the Customs Code, until such time as they are assigned a customs-approved treatment or use, goods presented to customs are to have, following such presentation, the status of goods in temporary storage.

7 Article 51 of the Customs Code provides:

'1. Goods in temporary storage shall be stored only in places approved by the customs authorities under the conditions laid down by those authorities.

2. The customs authorities may require the person holding the goods to provide security with a view to ensuring payment of any customs debt which may arise under Articles 203 or 204.'

8 Article 52 of the Code states:

'Without prejudice to the provisions of Article 42, goods in temporary storage shall be subject only to such forms of handling as are designed to ensure their preservation in an unaltered state without modifying their appearance or technical characteristics.'

9 Article 62 of the Customs Code provides:

'1. Declarations in writing shall be made on a form corresponding to the official specimen prescribed for that purpose. They shall be signed and contain all the particulars necessary for implementation of the provisions governing the customs procedure for which the goods are declared.

2. The declaration shall be accompanied by all the documents required for implementation of the provisions governing the customs procedure for which the goods are declared.'

10 Under Article 63 of the Customs Code, declarations which comply with the conditions laid down in Article 62 are immediately accepted by the customs authorities, provided that the goods to which they refer are presented to customs.

11 Article 66(1) of the Customs Code is worded as follows:

'The customs authorities shall, at the request of the declarant, invalidate a declaration already accepted where the declarant furnishes proof that goods were declared in error for the customs procedure covered by that declaration or that, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified.

Nevertheless, where the customs authorities have informed the declarant of their intention to examine the goods, a request for invalidation of the declaration shall not be accepted until after the examination has taken place.'

12 Article 67 of the Customs Codes lays down that:

'Save as otherwise expressly provided, the date to be used for the purposes of all the provisions governing the customs procedure for which the goods are declared shall be the date of acceptance of the declaration by the customs authorities.'

13 Article 68 of the Customs Code provides that:

'For the verification of declarations which they have accepted, the customs authorities may:

(a) examine the documents covering the declaration and the documents accompanying it. The customs authorities may require the declarant to present other documents for the purpose of verifying the accuracy of the particulars contained in the declaration;

(b) examine the goods and take samples for analysis or for detailed examination.'

14 Article 71 of the Customs Code provides as follows:

'1. The results of verifying the declaration shall be used for the purposes of applying the provisions governing the customs procedure under which the goods are placed.

2. Where the declaration is not verified, the provisions referred to in paragraph 1 shall be applied on the basis of the particulars contained in the declaration.'

15 According to the first sentence of Article 73(1) of the Customs Code and without prejudice to Article 74, where the conditions for placing the goods under the procedure in question are fulfilled and provided the goods are not subject to any prohibitive or restrictive measures, the customs authorities are to release the goods as soon as the particulars in the declaration have been verified or accepted without verification.

16 Article 74 of the Customs Code provides that:

'1. Where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration shall not be released unless the customs debt has been paid or secured. However, without prejudice to paragraph 2, this provision shall not apply to the temporary importation procedure with partial relief from import duties.

2. Where, pursuant to the provisions governing the customs procedure for which the goods are declared, the customs authorities require the provision of a security, the said goods shall not be released for the customs procedure in question until such security is provided.'

17 Article 75 of the Customs Code provides as follows:

'Any necessary measures, including confiscation and sale, shall be taken to deal with goods which:

(a) cannot be released because:

— it has not been possible to undertake or continue examination of the goods within the period prescribed by the customs authorities for reasons attributable to the declarant; or,

— the documents which must be produced before the goods can be placed under the customs procedure requested have not been produced; or,

— payments or security which should have been made or provided in respect of import duties or export duties, as the case may be, have not been made or provided within the period prescribed; or

— they are subject to bans or restrictions'.

18 Article 79 of the Customs Codes states:

'Release for free circulation shall confer on non-Community goods the customs status of Community goods.

It shall entail application of commercial policy measures, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due.'

19 Article 201(1)(a) of the Customs Codes lays down that:

'A customs debt on importation shall be incurred through:

(a) the release for free circulation of goods liable to import duties'.

20 Article 201(2) of the Customs Code states that:

'A customs debt shall be incurred at the time of acceptance of the customs declaration in question.'

21 Article 202 of the Customs Code reads as follows:

'1. A customs debt on importation shall be incurred through:

(a) the unlawful introduction into the customs territory of the Community of goods liable to import duties, or

(b) the unlawful introduction into another part of that territory of such goods located in a free zone or free warehouse.

For the purpose of this Article, unlawful introduction means any introduction in violation of the provisions of Articles 38 to 41 and the second indent of Article 177.

2. The customs debt shall be incurred at the moment when the goods are unlawfully introduced.'

22 Article 203 of the Customs Code is worded as follows:

'1. A customs debt on importation shall be incurred through:

— the unlawful removal from customs supervision of goods liable to import duties.

2. The customs debt shall be incurred at the moment when the goods are removed from customs supervision.'

23 Article 204 of the Customs Code provides that:

'1. A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or

(b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods,

in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

2. The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.'

24 The first indent of point (c) in the first paragraph of Article 233 of the Customs Code is worded as follows:

'Without prejudice to the provisions in force relating to the time-barring of a customs debt and non-recovery of such a debt in the event of the legally established insolvency of the debtor, a customs debt shall be extinguished:

...

(c) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties:

— the customs declaration is invalidated in accordance with Article 66'.

25 Article 218(1)(c) 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), as amended by Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ 1994 L 346, p. 1; hereinafter 'the implementing regulation'), provides:

'The following documents shall accompany the customs declaration for release for free circulation:

...

(c) the documents required for the application of preferential tariff arrangements or other measures derogating from the legal rules applicable to the goods declared'.

26 Article 865 of the implementing regulation reads as follows:

'The presentation of a customs declaration for the goods in question, or any other act having the same legal effects, and the production of a document for

endorsement by the competent authorities, shall be considered as removal of goods from customs supervision within the meaning of Article 203(1) of the Code, where these acts have the effect of wrongly conferring on them the customs status of Community goods.'

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

27 It appears from the order for reference that on 12 July 1994, Wandel, in its capacity as 'authorised consignee', took receipt of a consignment of 470 boxes of television chassis, 24 boxes of circuit boards and 29 boxes of modules, which were brought into the Community on 11 July 1994 under the external Community transit procedure.

28 On 13 July 1994, Wandel presented the part of the transit declaration intended for the customs office of destination to the competent customs office and, on behalf of another German company, declared the goods for release for free circulation. The customs office registered the transit document which was serving as a summary declaration. It accepted and registered the declaration for release for free circulation. At the same time Wandel was notified that the goods which had been declared were to be examined on 14 July 1994 at the premises being used for temporary storage under Article 51(1) of the Customs Code.

29 Since that examination could not be carried out (Wandel no longer having custody of the goods when the customs inspector arrived), the Hauptzollamt marked the original of administrative document 0779 'invalidated (Article 66(1) of the Customs Code) ...' and took the view that taking the goods out of storage

amounted to removing temporarily stored non-Community goods from customs supervision.

30 By an assessment notice of 2 August 1994 the Hauptzollamt claimed import duties from Wandel amounting to DEM 78 878.46 on the basis of Article 203 of the Customs Code. It applied the rate of duty applicable to non-member countries to the television chassis, stating that a preferential rate could be allowed only when goods entitled to preferential arrangements had been properly released for free circulation.

31 On 11 August 1994, Wandel, while not disputing that a customs debt on importation had been incurred under Article 203(1) and (3) of the Customs Code, objected to the notice of assessment. First, it submitted that, since the Hauptzollamt had been provided with proof of preference, in Form A, which had been submitted with the customs declaration, it ought to have applied the preferential zero rate to the television chassis. Subsequently, Wandel submitted that, since the Hauptzollamt had accepted the declaration for release for free circulation, the customs debt had been incurred under Article 201 of the Customs Code and thus was no longer capable of arising under Article 203 of the Code. At most, a customs debt might still at that time have been incurred under Article 204(1) of the Customs Code. Wandel also questioned whether the fact that the goods had been prematurely removed from the storage procedure was capable of having any effect on the correct operation of the temporary storage process.

32 By a decision of 3 January 1995, the Hauptzollamt rejected Wandel's objection as unfounded, stating, in particular, that the customs declaration lodged by Wandel had no effect since it covered goods which had not been presented to customs, that the *bona fide* acceptance of the customs declaration by the customs office in no way altered that outcome, that the customs debt was incurred under Article 203(1) of the Customs Code and that application of a preferential rate

was precluded for all customs debts incurred otherwise than under Article 201 of the Customs Code.

33 The Finanzgericht Bremen, before which the case was brought, considered that an interpretation of the Community legislation was necessary in order for the dispute to be resolved and decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is Article 201(1)(a), in conjunction with Article 201(2), of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) to be construed as meaning that a customs debt on importation is incurred once a customs declaration for the release of non-Community goods into free circulation satisfying the requirements of Article 62 of the Customs Code has been received by the competent customs office and its acceptance evidenced by the attachment of a customs registration stamp?

2. If Question 1 is answered in the affirmative:

Is Article 75 of the Customs Code to be construed as meaning that the customs office which has accepted such a customs declaration is entitled to treat the declaration as invalid or to invalidate it without a request by the declarant to that end, with the result that a customs debt incurred under Article 201(1)(a) of the Customs Code is deemed not to have been incurred or is extinguished under the first indent of Article 233(c) of the Customs Code, if the declared goods cannot be released to the declarant because they were removed, before the customs examination ordered was carried out, from their prescribed place of storage and from the area for which the customs office is responsible?

3. If Question 1 is answered in the negative or Question 2 in the affirmative:

Is Article 203(1) of the Customs Code to be construed as meaning that there is a removal from customs supervision where the non-Community goods declared for release for free circulation are removed from the prescribed place of storage/examination and consequently from the local area for which the customs office in question is responsible, even though the customs office had ordered a customs examination?

4. If Question 3 is answered in the negative:

Is Article 204(1) of the Customs Code to be construed as meaning that the unauthorised removal of the goods from their place of storage has had "no significant effect" on the correct operation of the temporary storage if, after their removal, the goods could, on request, have been presented at another customs office?

5. Can there be no question of a customs debt on importation being incurred

(a) under Article 201(1)(a), in conjunction with Article 201(2), of the Customs Code, where the customs declaration is merely received by the customs office, or

(b) under Article 203(1) of the Customs Code, or

(c) under Article 204 of the Customs Code,

if technically correct certificates of origin corresponding to Form A were attached to the customs declaration received by the customs office and a zero preferential tariff applied to the goods covered by the declaration?'

The first and third questions

34 By its first and third questions, which it is appropriate to consider together, the national court is essentially asking whether, where an examination of goods has been ordered by the customs authority for the purposes of verifying a declaration which has been accepted and it has proved impossible to carry out the examination because the goods have been removed from the place of temporary storage without the authorisation of the relevant customs authority, the customs debt on importation is incurred under Article 201(1) of the Customs Code or under Article 203(1) of the Code.

35 In that regard, it should first be borne in mind that, in accordance with Article 37(2) of the Customs Code, goods in temporary storage remain under customs supervision until, *inter alia*, their customs status is changed.

36 Furthermore, if Article 10 of the EC Treaty (now, after amendment, Article 24 EC) is read together with Article 74 and the second paragraph of Article 79 of the Customs Code, it is apparent that non-Community goods declared for release for free circulation do not obtain the status of Community goods until commercial policy measures have been applied and the other formalities laid down in respect

of the importation of goods have been completed and any import duties legally due have been not only charged but paid or secured.

37 Obviously those formalities include the lodging and immediate acceptance of a customs declaration under Article 59(1) and Article 63 of the Customs Code, but they must also be taken to include application of the measures referred to in Article 68 of the Customs Code, which entitles the customs authorities, when verifying the declarations which they have accepted, to carry out, *inter alia*, an examination of the goods (which may involve the taking of samples for analysis or detailed examination).

38 Likewise, given that, under the first paragraph of Article 79 of the Customs Code, the purpose of release for free circulation is to confer on non-Community goods the status of Community goods, the grant of release of the goods (defined in Article 4(20) of the Customs Code) must be considered as one of the requisite formalities for imported goods to be properly released for free circulation.

39 If Article 73(1) and the first indent of Article 75(a) of the Customs Code are read in conjunction, it is apparent that in a situation such as that at issue in the main proceedings, where the customs authorities have been unable to carry out an examination of goods, release of the goods cannot have been granted.

40 It follows that those goods cannot have acquired the status of Community goods since they were not duly released for free circulation.

41 As Wandel, the French Government and the Commission have pointed out, Article 201(2) of the Customs Code provides that a customs debt on importation

arising as a result of release for free circulation is incurred at the time of acceptance of the customs declaration in question. However, Article 201(2) applies only if the chargeable event referred to in Article 201(1)(a) has occurred. It is clear from that provision that the chargeable event triggering the debt is the due release for free circulation of the goods concerned, and thus a duly effected alteration of their status.

42 It follows that in a situation of the kind giving rise to the dispute before the national court, where the goods concerned were not properly released for free circulation, the chargeable event prescribed by Article 201(1) of the Customs Code and triggering the customs debt has not occurred and no customs debt could have been incurred under that provision.

43 If, in a situation of the kind giving rise to the dispute before the national court, incurrence of the customs debt were to be held to coincide with acceptance of the customs declaration, that would not only imply that the chargeable event triggering the debt is constituted by acceptance of the customs declaration, contrary to the express terms of Article 201(1) of the Customs Code, but also render nugatory *inter alia* the customs authorities' power under Article 68 of the Customs Code to verify declarations and their grant of release of goods.

44 Furthermore, the consequence of that interpretation would be to prevent a customs debt being incurred under Article 203(1) of the Customs Code whenever goods liable to import duty are removed from customs supervision after acceptance of the customs declaration.

45 It should be borne in mind that customs supervision continues after acceptance of the customs declaration and, under Article 37(2) of the Customs Code, ends only when, *inter alia*, the status of non-Community goods changes and they become

Community goods. Since that change in status is not a consequence of acceptance of the customs declaration, it must be held that the removal from customs supervision of goods liable to import duty between the time when the customs declaration is accepted and the time when the goods are released falls within the scope of Article 203 of the Customs Code.

46 It is true that Community legislation does not define what constitutes removal; as the Advocate General has observed in point 87 of his Opinion, Article 865 of the implementing regulation contains only examples of acts which are to be regarded as constituting removal for the purposes of Article 203(1) of the Customs Code.

47 However, if Articles 37(1), 50, 51(1) and 203(1) of the Customs Code are read together, it is apparent that the scope of Article 203(1) extends well beyond the acts referred to in Article 865 of the implementing regulation and that removal must be understood as encompassing any act or omission the result of which is to prevent, if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from monitoring them as provided for in Article 37(1) of the Customs Code.

48 It should also be noted that, for the purposes of Article 203(1) of the Customs Code, removal of goods from customs supervision does not require intent: it is sufficient if certain objective conditions are met, including, in particular, the absence of the goods from the approved place of storage at the time when the customs authorities intend to carry out an examination of them.

49 That interpretation is borne out by the wording of Article 203(3) of the Customs Code, from which it is clear that intention is relevant only when it comes to

ascertaining who is liable for the debt arising as a result of the removal of goods. Although the person who removed the goods from customs supervision is unconditionally liable for the debt, persons who participated in their removal, or who acquired or held the goods in question, are debtors only if they were aware or should reasonably have been aware that the goods were being removed from customs supervision for the purposes of Article 203(1) of the Customs Code.

50 It follows that any withdrawal from authorised storage of goods subject to customs supervision without the authorisation of the customs authority constitutes removal for the purposes of Article 203(1) of the Customs Code and thus gives rise under that provision to a customs debt on importation.

51 Accordingly, the answer to the first and third questions must be that where an examination of goods has been ordered by the customs authority for the purposes of verifying a declaration which has been accepted and it has proved impossible to carry out the examination because the goods have been removed from the place of temporary storage without the authorisation of the relevant customs authority, the customs debt on importation is incurred under Article 203(1) of the Customs Code.

The second and fourth questions

52 In view of the answer to the first and third questions, it is not necessary to reply to the second and fourth questions.

The fifth question

53 In view of the answer to the first and third questions, consideration of the fifth question may be confined to the assumption that the debt on importation is incurred under Article 203(1) of the Customs Code.

54 Article 62(2) and Article 201 of the Customs Code read in conjunction with Article 218(1)(c) of the implementing regulation make it clear that production with the customs declaration of the documents required in order for preferential tariff arrangements to apply in no way affects the incurrence of the customs debt, but is simply a means of ascertaining which tariff arrangements are applicable and the amount of the duty lawfully due. Thus, although the production of documents enabling a preferential zero rate to be applied may indeed result in goods being exempt from import duties under certain conditions, it cannot affect the existence of the customs debt itself.

55 That is particularly so in a case such as that before the national court, in which Article 203 of the Customs Code applies, that is to say where the customs debt on importation is incurred independently of the lodging of the declaration of release for free circulation because of the removal from customs supervision of goods which are liable to import duty and thus because of an infringement of Community legislation.

56 It follows that whether a document enabling preferential tariff treatment to be given under certain conditions exists, or is produced at any time, has no bearing on the incurrence or the existence of a customs debt on importation.

57 The answer to the fifth question must therefore be that it is possible for a customs debt on importation to be incurred under Article 203(1) of the Customs Code where the customs declaration recieved by the customs office was accompanied by technically correct certificates of origin corresponding to Form A and where the zero preferential tariff applied to the goods covered by the declaration.

Costs

58 The costs incurred by the French and Finnish Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Finanzgericht Bremen by order of 2 February 1999, hereby rules:

1. **Where an examination of goods has been ordered by the customs authority for the purposes of verifying a declaration which has been accepted and it has**

proved impossible to carry out the examination because the goods have been removed from the place of temporary storage without the authorisation of the relevant customs authority, the customs debt on importation is incurred under Article 203(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code.

2. It is possible for a customs debt on importation to be incurred under Article 203(1) of Regulation No 2913/92 where the customs declaration received by the customs office was accompanied by technically correct certificates of origin corresponding to Form A and where the zero preferential tariff applied to the goods covered by the declaration.

Gulmann Skouris

Puissochet Schintgen Macken

Delivered in open court in Luxembourg on 1 February 2001.

R. Grass C. Gulmann

Registrar President of the Sixth Chamber