Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

1 August 2025 * [i]

(Reference for a preliminary ruling – Customs union – Repayment or remission of import or export duties – Regulation (EEC) No 1430/79 – Customs duties collected in infringement of EU law – Third subparagraph of Article 2(2) – Conditions for repayment on their own initiative – Finding that those duties were wrongly collected before the expiry of a period of three years from the date on which they were entered in the accounts – Finding that the national customs authorities are aware of the identity of the operators concerned and of the amount to be repaid to each of them – Obligation on those authorities to take the necessary and appropriate measures to obtain the information necessary to make such repayment)

In Case C-206/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 13 March 2024, received at the Court on 14 March 2024, in the proceedings

YX,

Logística i Gestió Caves Andorranes i Vidal SA

v

Ministre de l'Économie, des Finances et de la Relance,

Directeur général des douanes et droits indirects,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún (Rapporteur), President of the Chamber, D. Gratsias, E. Regan, J. Passer and B. Smulders, Judges,

Advocate General: R. Norkus,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: French.

after considering the observations submitted on behalf of:

– the French Government, by P. Chansou and B. Travard, acting as Agents,

– the European Commission, by A. Demeneix and B. Eggers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 March 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(2) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986 (OJ 1986 L 286, p. 1) ('Regulation No 1430/79'), and of the third subparagraph of Article 236(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Community Customs Code').

2 The request has been made in proceedings between YX and Logística i Gestió Caves Andorranes i Vidal SA ('Caves Andorranes'), a company incorporated under Andorran law, on the one hand, and the ministre de l'Économie, des Finances et de la Relance (Minister for Economic Affairs, Finance and Budget, France) and the Directeur général des douanes et droits indirects (Director-General of Customs and Indirect Taxes, France), on the other, concerning the repayment *ex officio* of customs duties wrongly collected in respect of imports of goods from third countries into Andorra.

Legal context

Regulation No 1430/79

3 Article 1 of Regulation No 1430/79 stated:

'1. This Regulation lays down the conditions under which the competent authorities shall repay or remit import and export duties.

2. For the purposes of this Regulation:

…

(e) "entry in the accounts" means the official act by which the amount of the import duties or export duties to be collected by the competent authorities is duly determined;

…'

4 Article 2 of that regulation provided:

‘1. Import duties shall be repaid or remitted in so far as the competent authorities are satisfied that the amount of such duties entered in the accounts:

– relates to goods in respect of which a customs debt has either not arisen or has been settled other than by payment or prescription,

– exceeds for any reason the amount lawfully payable.

2. Import duties shall be repaid or remitted for one of the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within a period of three years from the date on which those duties were entered in the accounts by the authority responsible for their collection.

This period may not be extended unless the person concerned can prove that he was prevented by unforeseeable circumstances or *force majeure* from submitting his application within the prescribed period.

Where the competent authorities themselves discover within this period that one or other of the situations described in paragraph 1 obtains, they shall repay or remit on their own initiative.’

5 The first paragraph of Article 15 of that regulation was worded as follows:

‘Import or export duties shall be repaid or remitted only to the person who paid or is liable to pay those duties, or to the persons who have succeeded him in his rights and obligations.’

6 Regulation No 1430/79 was repealed by Article 251 of the Community Customs Code.

The Community Customs Code

7 Article 236 of the Community Customs Code provided:

‘1. Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

Import duties or export duties shall be remitted in so far as it is established that when they were entered in the accounts the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.

2. Import duties or export duties shall be repaid or remitted upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor.

That period shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances or *force majeure*.

Where the customs authorities themselves discover within this period that one or other of the situations described in the first and second subparagraphs of paragraph 1 exists, they shall repay or remit on their own initiative.'

8 In accordance with the second paragraph of Article 253 thereof, that code was to apply from 1 January 1994.

9 That code was repealed by Article 186 of Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ 2008 L 145, p. 1); that latter code was itself repealed by Article 286 of 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 2016 L 267, p. 2).

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

10 Between the years 1988 and 1991, companies incorporated under Andorran law imported into Andorra, through the company Ysal, a customs agent established in France, goods originating, in particular, from third countries. Those imports resulted in the payment of customs duties in France. At that time, the French customs authorities required that goods originating from third countries and destined for Andorra be released for free circulation when they crossed French territory.

11 On 23 January 1991, the European Commission published reasoned opinion COM(90) 2042 final, in which, first, it found that the French Republic, by imposing such a requirement that goods be released for free circulation, had failed to fulfil its obligations under certain provisions of EU law and, second, it called upon that Member State to take the measures necessary to comply with that reasoned opinion within 30 days.

12 It is apparent from the documents before the Court that, on 27 March 1991, the French authorities informed the Commission that they had decided to respond favourably to the Commission's request by abolishing the requirement of release for free circulation, which they did by means of a notice to importers and exporters from the ministère de l'Économie, des Finances et du Budget (Ministry of the Economy, Finance and Budget, France), published in the *Journal officiel de la République française* (Official Journal of the French Republic) on 6 June 1991.

13 On 20 May 2008, Ysal brought an action against the French customs administration before a court of first instance in France seeking repayment of the customs duties which that authority had wrongly collected in respect of imports of goods from third countries into Andorra between 1988 and 1991 ('the customs duties at issue').

14 By judgment of 15 June 2010, that court of first instance dismissed the action brought by Ysal as inadmissible on the ground that it lacked standing to bring and interest in bringing proceedings. That judgment was upheld on appeal on 13 December 2011.

15 By judgment of 21 January 2014, the Cour de cassation (Court of Cassation, France) dismissed the appeal brought by Ysal against that appeal decision. It is apparent from the documents before the Court that, in that judgment, the Cour de cassation (Court of Cassation) noted, inter alia, that the Andorran importers had repaid to Ysal the customs duties at issue, which Ysal had paid on their behalf, and that, consequently, only those importers had legal standing and an interest in bringing proceedings.

16 On 16 July 2015, those importers, from whose rights Caves Andorranes and YX are derived, brought proceedings against the French customs authorities before the tribunal de grande instance de Toulouse (Regional Court, Toulouse, France) seeking the payment of a sum corresponding to the customs duties at issue wrongly collected by those authorities. By judgment of 4 July 2017, that court dismissed that action.

17 By judgment of 10 February 2020, the cour d'appel de Toulouse (Court of Appeal, Toulouse, France) upheld that judgment. In that regard, that court held that in order to repay, on their own initiative, the customs duties at issue on the basis of Article 2(2) of Regulation No 1430/79 and the third subparagraph of Article 236(2) of the Community Customs Code, the French customs authorities had to have the information necessary to determine both the amount of duties to be repaid and the identity of every person liable for payment, without having to carry out disproportionate research.

18 Caves Andorranes and YX brought an appeal against that judgment before the Cour de cassation (Court of Cassation), which is the referring court, in support of which they claim, in essence, that the cour d'appel de Toulouse (Court of Appeal, Toulouse), by its judgment of 10 February 2020, infringed Article 2(2) of Regulation No 1430/79. They submit that the obligation to make a repayment on the authorities' own initiative provided for in that provision is subject solely to compliance with a time limit of three years from the date on which the customs duties were notified to the debtor. In contrast, that provision does not provide that the customs authorities must have the information necessary to determine both the amount of duty to be repaid and the identity of each person liable for payment. They argue that the cour d'appel de Toulouse (Court of Appeal, Toulouse) thus added a condition to Article 2(2) that it does not contain.

19 The referring court points out that the French customs authorities submit that they can repay the customs duties at issue on their own initiative only if they have all the information necessary to establish that such duties have been wrongly collected and must be repaid. The customs authorities could not be required to carry out extensive research to determine the amounts of duties to be repaid to each of the operators concerned.

20 The Cour de cassation (Court of Cassation) thus asks whether Article 2(2) of Regulation No 1430/79 and Article 236(2) of the Community Customs Code must be interpreted as meaning that the competent national authorities are required to repay duties wrongly collected on their own initiative only if they have all the information necessary in order to do so and, failing that, only if they are not required to carry out disproportionate research.

21 According to that court, the preliminary question also arises as to whether the repayment by a national customs authority on its own initiative may take place after a period of three years from the date on which the duties were notified to the debtor. Having regard to the judgment of 14 June 2012, *CIVAD* (C-533/10, EU:C:2012:347, paragraph 21), in which the Court held that the first subparagraph of Article 236(2) of the Community Customs Code imposes a three-year time limit on the repayment of customs duties not legally owed, the referring court asks whether

Article 2(2) of Regulation No 1430/79 must be interpreted as meaning that the competent authorities can no longer, beyond that period, make a repayment on their own initiative, even if it were established during that period that the duties were not legally owed.

22 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 2(2) of [Regulation No 1430/79], which is incorporated into the third subparagraph of Article 236(2) of [the Community Customs Code], be interpreted as meaning that the repayment of wrongly collected customs duties by customs authorities on their own motion is limited to a period of three years from the date on which those duties were entered in the accounts by the authorities responsible for their collection or [as meaning] that the customs authorities must establish, during the three years following the chargeable event, that the duties were not legally owed?

(2) Must Article 2(2) of [Regulation No 1430/79], which is incorporated into the third subparagraph of Article 236(2) of [the Community Customs Code], be interpreted as meaning that the repayment of wrongly collected customs duties by customs authorities on their own motion is subject to the latter knowing the identity of the operators concerned and the amounts to be repaid to each of them without it being necessary to carry out extensive or disproportionate research?’

Consideration of the questions referred

23 As a preliminary point, it should be noted that, having regard to the date on which it is alleged that the right to repayment of the customs duties at issue on the customs authorities’ own initiative arose, it is the provisions of Regulation No 1430/79 which apply exclusively to the dispute in the main proceedings.

24 Therefore, it must be held that, by its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether the third subparagraph of Article 2(2) of Regulation No 1430/79 must be interpreted as meaning that the existence of an obligation on a national customs authority to repay customs duties on its own initiative is subject, first, to the fact that that authority has itself established, before the expiry of a period of three years from the entry in the accounts of those duties, that those duties have been wrongly collected and, second, to the knowledge, by that authority, of the identity of the operators concerned and of the amount to be repaid to each of them. In that context, that court raises the question of the measures which that authority must, where appropriate, take in order to obtain such information.

25 It follows from Article 2(1) of that regulation, inter alia, that customs duties are to be repaid in so far as it is established, to the satisfaction of the competent authorities, that the amount of those duties entered in the accounts relates to goods in respect of which no customs debt has been incurred or is greater than the amount legally owed.

26 Article 2(2) of that regulation lays down two distinct procedures for making such a repayment, namely, either on application or on the customs authorities’ own initiative (see, to that effect, judgment of 26 October 2017, *Aqua Pro*, C-407/16, EU:C:2017:817, paragraph 41).

27 Thus, in the first place, in accordance with the first subparagraph of Article 2(2) of Regulation No 1430/79, repayment is to be granted upon submission of an application to the appropriate customs office within a period of three years from the date on which those duties were entered in the accounts. In the second place, in accordance with the third subparagraph of Article 2(2) of that regulation, the competent authorities are to make repayment on their own initiative where they themselves discover within this period the existence of one or other of the situations described in Article 2(1) of that regulation.

28 In the light of the situations described in Article 2(1) of Regulation No 1430/79, it follows that those authorities are automatically to repay customs duties where they themselves establish, within that period, that the customs duties have been wrongly collected, that is to say, where, in accordance with Article 2(1) of that regulation, it is established, to the satisfaction of those authorities, inter alia, that the amount of those duties entered in the accounts relates to goods in respect of which no customs debt has been incurred or is greater than the amount legally owed.

29 In that regard, the third subparagraph of Article 2(2) of that regulation, in so far as it provides in categorical terms that the national customs authorities are to 'repay … on their own initiative', establishes an obligation of repayment on the part of those authorities without the importer concerned having to request repayment.

30 Given that, in that provision, the words 'within this period' relate to the verb 'discover', those words must be understood as meaning that, in order for that repayment obligation to arise, such a finding must be made before the expiry of a period of three years from the date on which the customs duties were entered in the accounts. In accordance with Article 1(2)(e) of Regulation No 1430/79, that date corresponds to the date of adoption of the official act by which the amount of those duties was initially established by the competent authorities.

31 Therefore, the existence of an obligation on a national customs authority to repay customs duties on its own initiative must be regarded as being subject to the fact that that authority has itself established, before the expiry of such a period of three years from the date of entry in the accounts of the customs duties concerned, that those duties were wrongly collected.

32 That period thus defines the period during which the national customs authorities, which have themselves established that customs duties have been wrongly collected, are required to undertake to repay those duties on their own initiative. By contrast, as the Advocate General observed, in essence, in points 46 to 50 of his Opinion, repayment as such does not necessarily have to be made within that period, with the result that it may be made after the expiry of that period.

33 Furthermore, in so far as customs duties are imposed in respect of specific amounts, established by the national customs authority on the basis of customs declarations submitted on behalf of a specific person, the finding, by that authority, that such duties have been wrongly collected necessarily implies a finding that a person known to that authority has unduly paid a specific amount, also known to that authority. Consequently, where the national customs authority finds that customs duties have been wrongly collected and must be repaid, it is, in principle, aware both of the identity of the person whom it must repay and of the exact amount to be repaid.

34 That authority cannot rely on the fact that it no longer has in its possession the customs declarations submitted by the persons concerned, or the individual decisions adopted in relation to them, in order to justify a possible failure to repay to those persons the customs duties which

it has found, within the three-year period laid down in the third subparagraph of Article 2(2) of Regulation No 1430/79, to have been wrongly collected because, as long as that period has not expired, the customs authorities are required to retain any documents and information which may be relevant for the purpose of proceeding with any repayment of the customs duties which have been collected.

35 Those considerations also apply where the undue nature of the collection of customs duties arises from an error on the part of the national customs authority as to the possibility of charging customs duties on imports from or into a particular third country. It is true that such an error may concern a large number of traders and individual decisions and, consequently, require quantitatively significant research on the part of the customs authority of the Member State concerned to identify the persons entitled to repayment. However, it is settled case-law that the authorities of a Member State cannot plead practical, administrative or financial difficulties in order to justify failure to observe obligations arising under EU law (judgment of 27 February 2020, *Commission* v *Belgium (Accountants)*, C-384/18, EU:C:2020:124, paragraph 58 and the case-law cited).

36 It is true that, in certain cases, in order to repay customs duties which it has found to have been wrongly collected, the national customs authority may need certain information which is not, and could not be, in its possession. The same may be true, for example, of the identity of the person or persons who succeeded the person who paid the duties having to be repaid, since, in accordance with the first paragraph of Article 15 of Regulation No 1430/79, the repayment of customs duties is granted only to the actual person who paid those duties or to the persons who have succeeded him or her in his or her rights and obligations. The same may also apply to the details of a bank account into which repayment is made.

37 However, that fact is, as the case may be, relevant not for the purpose of establishing the existence of an obligation to repay, given that such an obligation arises as soon as the national customs authority finds, in the circumstances referred to in paragraph 31 of the present judgment, that the payment of customs duties was not due, but in order to determine whether, by delaying such repayment or not making such repayment, that authority failed to fulfil its obligation to act on its own initiative.

38 Specifically, where that customs authority does not have, through no fault of its own, the information necessary to repay customs duties wrongly collected, such as those referred to in paragraph 36 of the present judgment, it is for that authority, in order to comply with its repayment obligation arising from the third subparagraph of Article 2(2) of Regulation No 1430/79, to take the necessary and appropriate measures to obtain that information. It is true that such measures do not include disproportionate research, namely research which would require the use of human and material resources unrelated to what may reasonably be expected of a diligent administration. However, a passive attitude on the part of the customs authority, on the pretext that it does not have that information, is not compatible either with its abovementioned repayment obligation or with the requirements arising from the right to good administration, which is a general principle of EU law intended to apply to the Member States when they implement that law (see, to that effect, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 35 and the case-law cited).

39 In the case in the main proceedings, it is thus for the referring court to determine whether it can be considered that the French customs authorities had themselves established, before the expiry of a period of three years from the entry in the accounts of the customs duties at issue, that those duties have been wrongly collected. However, in order to guide that referring court in that assessment, the Court may provide it with all the elements of interpretation under EU law which may be useful to it (judgment of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraph 46 and the case-law cited).

40 In that regard, it is apparent from the documents before the Court that, on 23 January 1991, the Commission sent the French Republic a reasoned opinion in which it maintained that the practice of requiring payment of customs duties on goods from third countries destined for Andorra was contrary to EU law. By letter of 27 March 1991, the French authorities replied to the Commission that they had decided to respond favourably to the Commission's request and, taking account of the provisions of an agreement between the European Economic Community and that third country which was to apply on 1 July 1991, to amend the scheme for the export of agricultural products to Andorra in advance. By a ministerial opinion of 6 June 1991, the French authorities put an end to that practice, with regard to all goods from third countries destined for Andorra.

41 If the referring court were to consider that it can be inferred from those events that the French customs authorities implicitly, but necessarily, found that the customs duties levied on the importation of goods from third countries into Andorra had been unlawfully collected, given that a reasoned opinion issued by the Commission does not, in itself, have any binding legal effect (see, inter alia, judgment of 29 September 1998, *Commission* v *Germany*, C-191/95, EU:C:1998:441, paragraph 44), such a finding must be regarded as having been made 'themselves' by those customs authorities, with the result that they were obliged, in order to comply with the third subparagraph of Article 2(2) of Regulation No 1430/79, to repay the customs duties at issue on their own initiative, since those duties were collected during the three years preceding that finding.

42 If it transpires that, in order to repay the customs duties at issue, the French customs authorities needed additional information, such as that envisaged in paragraph 36 of the present judgment, which was not and could not be in their possession, the referring court will, in order to determine whether those authorities wrongly failed to comply with their obligation to make that repayment on their own initiative under the third subparagraph of Article 2(2), have examined whether, after finding that the customs duties at issue had been unlawfully collected, those authorities then took measures which, without being disproportionate, were necessary and appropriate in order to obtain that information. In that regard, subject to the assessment of the referring court, it must nevertheless be held that it is not apparent from the documents before the Court that such measures were taken.

43 In the light of all the foregoing considerations, the answer to the questions referred is that the third subparagraph of Article 2(2) of Regulation No 1430/79 must be interpreted as meaning that the existence of an obligation on a national customs authority to repay customs duties on its own initiative is subject to the fact that that authority has itself established, before the expiry of a period of three years from the entry in the accounts of those duties, that those duties have been wrongly collected, that finding implying that that authority is aware of the identity of the persons who paid those duties and of the amount to be repaid to each of them. Where that authority does not have, and could not have, at its disposal all of the information necessary to make such a repayment to the person who paid the customs duties wrongly collected or to the persons who succeeded him

or her in his or her rights and obligations, it is for that authority, in order to comply with its repayment obligation, to take the measures which, without being disproportionate, are necessary and appropriate in order to obtain that information and to make the repayment.

Costs

44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

The third subparagraph of Article 2(2) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties, as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986,

must be interpreted as meaning that the existence of an obligation on a national customs authority to repay customs duties on its own initiative is subject to the fact that that authority has itself established, before the expiry of a period of three years from the entry in the accounts of those duties, that those duties have been wrongly collected, that finding implying that that authority is aware of the identity of the persons who paid those duties and of the amount to be repaid to each of them. Where that authority does not have, and could not have, at its disposal all of the information necessary to make such a repayment to the person who paid the customs duties wrongly collected or to the persons who succeeded him or her in his or her rights and obligations, it is for that authority, in order to comply with its repayment obligation, to take the measures which, without being disproportionate, are necessary and appropriate in order to obtain that information and to make the repayment.

[Signatures]

[i] The wording of the names of the parties on the first page of this document has been amended since it was first put online.