



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

6 February 2014 *

(Request for a preliminary ruling — Customs union and Common Customs Tariff — Euro-Mediterranean Agreement with Egypt — Article 20 of Protocol 4 — Proof of origin — Movement certificate EUR.1 — Replacement movement certificate EUR.1 issued at a time when the goods were no longer under the control of the issuing customs authority — Refusal to apply preferential treatment)

In Case C-613/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Germany), made by decision of 12 December 2012, received at the Court on 24 December 2012, in the proceedings

Helm Düngemittel GmbH

v

Hauptzollamt Krefeld,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Helm Düngemittel GmbH, by H. Nehm, Rechtsanwalt,
- the European Commission, by B.-R. Killmann and T. Scharf, acting as Agents,

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

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, signed in Luxembourg on 25 June 2001, approved by Council Decision 2004/635/EC of 21 April 2004 (OJ 2004 L 304, p. 38) ('the Euro-Mediterranean Agreement with Egypt'), and, more particularly, of Article 20 of Protocol 4 to that agreement concerning the definition of the concept of 'originating products' and methods of administrative cooperation, as amended by Decision No 1/2006 of the EU-Egypt Association Council of 17 February 2006 (OJ 2006 L 73, p. 1) ('Protocol 4').
- 2 The request has been made in proceedings between Helm Düngemittel GmbH ('Helm Düngemittel') and Hauptzollamt Krefeld (Principal Customs Office, Krefeld) concerning the imposition of import duties.

Legal context

The Vienna Convention

- 3 Under Article 1 of the Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, vol. 1155, p. 331) ('the Vienna Convention'), entitled 'Scope of the present Convention', the Vienna Convention applies to treaties between States.

- 4 Article 3 of the Vienna Convention, entitled 'International agreements not within the scope of the present Convention', provides:

'The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

...

- (b) the application to [such agreements] of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

...'

- 5 Article 26 of the Vienna Convention, entitled 'Pacta sunt servanda', provides:

'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.'

- 6 Article 31 of the Vienna Convention, entitled 'General rule of interpretation', provides in its paragraph 1:

'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'

The Euro-Mediterranean Agreement with Egypt

- 7 The Euro-Mediterranean Agreement with Egypt entered into force on 1 June 2004.

8 Under Article 1 of that agreement:

‘1. An Association is hereby established between the Community and its Member States of the one part and Egypt of the other part.

2. The aims of this Agreement are:

...

— to establish conditions for the progressive liberalisation of trade in goods, services and capital,

...’

9 Included in Title II of that agreement, relating to the free movement of goods, Article 6 of the latter provides:

‘The Community and Egypt shall gradually establish a free trade area over a transitional period not exceeding 12 years from the entry into force of this Agreement, according to the modalities set out in this Title and in conformity with the provisions of the General Agreement on Tariffs and Trade of 1994 and of the other multilateral agreements on trade in goods annexed to the Agreement establishing the World Trade Organisation (WTO) ...’

10 Article 8 of that agreement, which, in accordance with the title of Chapter 1 of Title II thereof, applies to industrial products, is worded as follows:

‘Imports into the Community of products originating in Egypt shall be allowed free of customs duties and of any other charge having equivalent effect and free of quantitative restrictions and of any other restriction having equivalent effect.’

11 Under Article 27 of the Euro-Mediterranean Agreement with Egypt:

‘The concept of “originating products” for the application of the provisions of this Title and the methods of administrative cooperation relating to them are set out in Protocol 4.’

12 Under Article 16(1) of Protocol 4, which is included in Title V of the latter, entitled ‘Proof of origin’:

‘Products originating in the Community shall, on importation into Egypt, and products originating in Egypt shall, on importation into the Community, benefit from the provisions of the Agreement upon submission of one of the following proofs of origin:

(a) a movement certificate EUR.1 ...

...’

13 According to Article 17(1) of Protocol 4, ‘[a] movement certificate EUR.1 or EUR-MED shall be issued by the customs authorities of the exporting country ...’.

14 Article 20 of Protocol 4 provides:

‘When originating products are placed under the control of a customs office in the Community or in Egypt, it shall be possible to replace the original proof of origin by one or more movement certificates EUR.1 or EUR-MED for the purpose of sending all or some of these products elsewhere within the Community or Egypt. The replacement movement certificate(s) EUR.1 or EUR-MED shall be issued by the customs office under whose control the products are placed.’

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

- 15 It is apparent from the order for reference that Helm Düngemittel purchased a consignment of 9 300 metric tonnes of urea in Egypt and chartered a vessel to transport one portion to Terneuzen (Netherlands) and the other portion to Hamburg (Germany). On 2 February 2009, the Egyptian customs authorities issued a movement certificate EUR.1 ('the movement certificate') for the entire consignment, which indicated Egypt as the country of origin.
- 16 On 11 February 2009, Helm Düngemittel presented that certificate to the Netherlands customs authorities and requested them to issue a replacement movement certificate EUR.1 ('the replacement movement certificate') in view of the division of the goods and the dispatch of one portion of them to Germany.
- 17 On 12 February 2009, the vessel arrived in the port of Terneuzen, where the portion of the goods intended for the Netherlands was discharged. On 13 February 2009, the vessel left the Netherlands. The remainder of the consignment was discharged in Hamburg and released for free circulation on 16 February 2009.
- 18 On 24 February 2009, the Netherlands customs authorities issued a replacement movement certificate for the portion of the goods sent from the Netherlands to Germany.
- 19 On 2 March 2009, Helm Düngemittel lodged a supplementary customs declaration, relating to February 2009, for the portion of the goods which had been released for free circulation in Germany. It attached to that declaration the replacement movement certificate issued by the Netherlands customs authorities and applied for preferential customs treatment under the Euro-Mediterranean Agreement with Egypt for the abovementioned portion of the goods.
- 20 On 15 April 2009, the Hauptzollamt Krefeld questioned the Netherlands authorities for clarification as to the replacement movement certificate which they had issued. In their response, those authorities stated that, at the time when that certificate was issued, the goods in question had already left the Netherlands and that that certificate had consequently been issued contrary to Article 20 of Protocol 4, since the goods were no longer under their control at the time when that certificate was issued.
- 21 On 19 November 2010, the Hauptzollamt Krefeld sent a notice of duty to Helm Düngemittel relating to EUR 68 382.54 of import duty on the ground that the replacement movement certificate was not capable of confirming the preferential Egyptian origin of the portion of the goods in question intended for Germany.
- 22 On 24 February 2011, in response to a fresh request from the German customs authorities, the Netherlands customs authorities stated that the content of the replacement movement certificate was correct and that it would not be annulled or declared void.
- 23 Helm Düngemittel lodged an objection against the notice of duty issued by the Hauptzollamt Krefeld, which the latter dismissed by decision of 16 November 2011.
- 24 Helm Düngemittel brought an action against that decision before the referring court, seeking annulment of the notice of duty of 19 November 2010. It claims that Article 20 of Protocol 4 provides for the right to obtain a replacement movement certificate and that that right does not depend on the period during which the customs office has control of the goods. Post-clearance recovery is, moreover, incompatible with the right to preferential treatment provided for by the Euro-Mediterranean Agreement with Egypt. The assessment carried out by the authorities of the country of exportation is, it argues, conclusive for the purpose of establishing whether goods have preferential origin. In the

present case, the replacement movement certificate issued by the Netherlands customs authorities should be recognised as having the same probative value as to origin as if it had been issued by the State of exportation.

- 25 The Hauptzollamt Krefeld contends that the action should be dismissed. In its view, Protocol 4 does not provide for the retroactive issuance of a replacement movement certificate. The replacement movement certificate in question does not, therefore, make it possible to establish the origin of the portion of the goods imported into Germany.
- 26 According to the referring court, it is common ground that the goods in question originated in Egypt. The only issue giving rise to uncertainty, according to that court, is whether the replacement movement certificate presented by Helm Düngemittel is capable of demonstrating the preferential origin of the portion of the goods imported into Germany, within the meaning of Protocol 4. The referring court takes the view that, under Article 20 of Protocol 4, a replacement movement certificate may be issued only where the goods are under the control of the customs office of the Member State which issued that certificate in order that the latter can verify whether those goods are identical to the goods described in the initial movement certificate. Since, however, the goods in question were already in free circulation at the time when the replacement movement certificate was issued, that was not the position in the present case. It is apparent, however, from the Court's case-law that there are exceptions to the principle that preferential treatment can be granted only on presentation of valid proof of entitlement to such treatment. The referring court notes in this regard that, in the present case, the refusal to recognise the replacement certificate as constituting proof of origin is based on purely formal grounds.
- 27 In those circumstances the Finanzgericht Düsseldorf decided to stay the proceedings before it and to refer the following question to the Court for a preliminary ruling:

'Has the origin of goods not been established in the case where a partial movement certificate for the goods was issued under Article 20 of Protocol 4 ..., although the requirements of that provision were not fulfilled because the goods were not under the control of the issuing customs authorities at the point in time at which the partial movement certificate was issued?'

The question referred for a preliminary ruling

- 28 By its question, the referring court asks, in essence, whether the Euro-Mediterranean Agreement with Egypt must be interpreted as meaning that the Egyptian origin of goods, for the purpose of the preferential customs treatment established by that agreement, can be proved even in the case where the goods were divided up when they arrived in a first Member State in order that a portion thereof could be sent to a second Member State and where the replacement movement certificate issued by the customs authorities of the first Member State for the portion of those goods sent to the second Member State does not satisfy the conditions set out in Article 20 of Protocol 4 to that agreement for the issuance of such a certificate.
- 29 First of all, it should be noted that, under Article 20 of Protocol 4, when products originating in a Member State or in Egypt are 'placed under the control' of a customs office in a Member State or in Egypt, it is possible, in particular for the purpose of sending all or some of those products elsewhere within the European Union, to replace the original proof of origin of those goods by one or more replacement movement certificates issued by the customs office 'under whose control the products are placed'.

- 30 It thus follows from the wording of that latter phrase that the replacement movement certificate must be issued by the customs authorities while the goods are under their control or, in the event that those authorities are in actual control of those goods, as soon as possible after that control has come to an end.
- 31 In the present case, it is apparent from the order for reference that the goods in question in the main proceedings were divided up in the Netherlands in order that one portion thereof could be dispatched to Germany. The replacement movement certificate relating to that portion of the goods was issued by the Netherlands customs authorities 11 days after that portion had left the territory of the Netherlands. However, it does not necessarily follow from this that the origin of that portion of the goods cannot be established in accordance with European Union law.
- 32 It is, admittedly, true that, according to the Court's case-law, the movement certificate constitutes documentary evidence of the preferential origin of goods and to allow other means of proof to be adduced in addition to that evidence of origin would adversely affect the unity and security of the application of those free-trade agreements concluded with non-member countries (see, to that effect, Case C-334/93 *Bonapharma* [1995] ECR I-319, paragraph 16). The requirement of valid proof of origin cannot, therefore, be considered to be a mere formality that may be overlooked where the place of origin is established by means of other evidence (see, to that effect, Case C-386/08 *Brita* [2010] ECR I-1289, paragraph 57 and the case-law cited).
- 33 However, the Court has already held that it is for the authorities of the State of exportation to establish the origin of goods and that the customs officials of the Member States must in principle take into account the assessments made by the customs authorities of the State of exportation, in particular where the preferential treatment is established by an international agreement binding the European Union to a non-member country on the basis of reciprocal obligations (see, to that effect, Case C-409/10 *Afasia Knits Deutschland* [2011] ECR I-13331, paragraph 29, and Case C-438/11 *Lagura Vermögensverwaltung* [2012] ECR, paragraphs 34 to 36 and the case-law cited).
- 34 Furthermore, the recognition, by the customs authorities of Member States, of decisions taken by the authorities of the State of exportation connected with the European Union under a free-trade agreement is necessary in order that the European Union can in turn demand, from the authorities of that country, respect for decisions taken by the customs authorities of Member states relating to the origin of products exported from the European Union to that State (see, to that effect, Case 218/83 *Les Rapides Savoyards and Others* [1984] ECR 3105, paragraph 27).
- 35 It is apparent from the factual circumstances described in the order for reference, which are not disputed, that the preferential origin of the goods imported from Egypt by Helm Düngemittel was confirmed by a movement certificate issued by the Egyptian customs authorities. In accordance with the case-law referred to in paragraph 33 of the present judgment, such a certificate is binding on all customs authorities of the European Union as regards the preferential origin of the goods referred to therein.
- 36 In that regard, it should be noted that a situation such as that in the main proceedings is not comparable to a situation in which the movement certificate issued by the State of exportation fails to satisfy the conditions laid down in Protocol 4. In that second case, the preferential origin of the entirety of the goods imported into the European Union cannot be established, whereas, in the first case, the origin of the goods in question imported into the European Union remains established by the movement certificate validly issued by the Egyptian customs authorities.

- 37 Furthermore, it must be noted that international treaty law was codified, in essence, by the Vienna Convention and that the rules contained in that convention apply to an agreement concluded between a State and an international organisation, such as the Euro-Mediterranean Agreement with Egypt, in so far as those rules are an expression of general international customary law (see, by analogy, *Brita*, paragraphs 40 and 41).
- 38 A situation in which an importer holding a movement certificate issued by the State of exportation in accordance with Protocol 4 is denied preferential treatment for goods which it has imported into the European Union is incompatible with the principles set out in Articles 26 and 31 of the Vienna Convention, and with the aims of the Euro-Mediterranean Agreement with Egypt, listed in Article 1 thereof, and is in breach of Article 8 of that agreement.
- 39 However, where the goods in question have been divided up on their arrival in the European Union for the purpose of sending a portion of them elsewhere in the European Union, in accordance with Article 20 of Protocol 4, it is for the importer to whom a replacement movement certificate has been issued even though the conditions set out in that provision were not satisfied, but who wishes nevertheless to rely on the movement certificate issued by the Egyptian customs authorities, to establish that that divided portion of the goods does indeed correspond to the goods the preferential origin of which is established by the movement certificate issued by the Egyptian customs authorities.
- 40 In the light of all those considerations, the answer to the question referred is that the Euro-Mediterranean Agreement with Egypt must be interpreted as meaning that the Egyptian origin of goods, within the meaning of the preferential customs arrangement established by that agreement, can be proved even in the case where the goods were divided up when they arrived in a first Member State in order that a portion of them could be sent to a second Member State and where the replacement movement certificate issued by the customs authorities of the first Member State for the portion of those goods sent to the second Member State does not satisfy the conditions for the issuance of such a certificate set out in Article 20 of Protocol 4 to that agreement.
- 41 The administration of such proof requires, however, first, that the preferential origin of the goods initially imported from Egypt be established by means of a movement certificate issued by the Egyptian customs authorities in accordance with that protocol and, second, that the importer prove that the portion of the goods divided up in that first Member State and dispatched to the second Member State corresponds to a portion of the goods imported from Egypt into the first Member State. It is for the referring court to determine whether those conditions are satisfied in the main proceedings.

Costs

- 42 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 (Third Chamber) hereby rules:

The Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, signed in Luxembourg on 25 June 2001, approved by Council Decision 2004/635/EC of 21 April 2004, must be interpreted as meaning that the Egyptian origin of goods, within the meaning of the preferential customs arrangement established by that agreement, can be proved even in the case where the goods were divided up when they arrived in a first Member State in order that a portion of them could be sent to a second Member State and where the replacement movement certificate EUR.1 issued by the customs authorities of the first Member

State for the portion of those goods sent to the second Member State does not satisfy the conditions for the issuance of such a certificate set out in Article 20 of Protocol 4 to that agreement concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation, as amended by Decision No 1/2006 of the EU-Egypt Association Council of 17 February 2006.

The administration of such proof requires, however, first, that the preferential origin of the goods initially imported from Egypt be established by means of a movement certificate EUR.1 issued by the Egyptian customs authorities in accordance with that protocol and, second, that the importer prove that the portion of the goods divided up in that first Member State and dispatched to the second Member State corresponds to a portion of the goods imported from Egypt into the first Member State. It is for the referring court to determine whether those conditions are satisfied in the main proceedings.

[Signatures]