JUDGMENT OF THE COURT (First Chamber)

15 December 2011 *

In Case C-409/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Germany), made by decision of 29 June 2010, received at the Court on 16 August 2010, in the proceedings

Hauptzollamt Hamburg-Hafen

v

Afasia Knits Deutschland GmbH,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Safjan, M. Ilešič (Rapporteur), E. Levits and M. Berger, Judges,

* Language of the case: German.

Advocate General: J. Mazák,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 7 July 2011,

after considering the observations submitted on behalf of:

— Afasia Knits Deutschland GmbH, by H. von Zanthier and M. Stawska-Höbel, Rechtsanwälte,

— the Czech Government, by M. Smolek, acting as Agent,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by G. Albenzio, avvocato dello Stato,

— the European Commission, by A. Bordes and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 September 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 32 of Protocol 1 to Annex V to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ 2000 L 317, p. 3), and approved on behalf of the Community by Council Decision 2003/159/EC of 19 December 2002 (OJ 2003 L 65, p. 27) ('the Cotonou Agreement'), and of Article 220 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 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 reference has been made in the course of proceedings between the Hauptzollamt Hamburg-Hafen (Principal Customs Office of the Port of Hamburg; 'the Hauptzollamt') and Afasia Knits Deutschland GmbH ('Afasia') concerning the post-clearance import duties paid by that company in respect of the importation of textiles into the European Union.

Legal context

The Cotonou Agreement

3 The Cotonou Agreement entered into force on 1 April 2003. However, pursuant to Decision No 1/2000 of the ACP-EC Council of Ministers of 27 July 2000 regarding transitional measures valid from 2 August 2000 until the entry into force of the ACP-EC Partnership Agreement (OJ 2000 L 195, p. 46), as extended by Decision No 1/2002 of the ACP-EC Council of Ministers of 31 May 2002 (OJ 2002 L 150, p. 55), this agreement was the subject of advance application as from 2 August 2000.

4 An amending Agreement was signed in Luxembourg on 25 June 2005 and entered into force on 1 July 2008. On 14 June 2010, the Council adopted Decision 2010/648/EU on the signing, on behalf of the European Union, of the Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005 (OJ 2010 L 287, p. 1). However, in view of the date of the facts in the main proceedings, the present dispute remains governed by the rules laid down in the initial version of the Cotonou Agreement.

5 Pursuant to Article 100 of the Cotonou Agreement, '[t]he Protocols and Annexes attached to this Agreement shall form an integral part thereof…'

6 Annex V to the Cotonou Agreement, entitled 'Trade regime applicable during the preparatory period referred to in Article 37(1)', provided in Article 1 that '[p]roducts originating in the ACP States shall be imported into the Community free of customs duties and charges having equivalent effect'.

7 Protocol 1 to Annex V ('Protocol 1'), concerning the definition of the concept of 'originating products' and methods of administrative cooperation, provided at Article 2(1) as follows:

'For the purpose of implementing the … provisions of Annex V, the following products shall be considered as originating in the ACP States:

(a) products wholly obtained in the ACP States within the meaning of Article 3 of this Protocol;

(b) products obtained in the ACP States incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the ACP States within the meaning of Article 4 of this Protocol.'

8 Title IV of Protocol 1, entitled 'Proof of Origin', included Article 14, paragraph (1) of which provided as follows:

'Products originating in the ACP States shall, on importation into the Community, benefit from Annex V upon submission of …

(a) a movement certificate EUR.1 [hereinafter referred to as an "EUR.1 certificate"] …'

9 Article 15(1) of that protocol provided that the EUR.1 certificate was to be issued by the customs authorities of the exporting State. According to Article 15(3), '[t]he exporter applying for the issue of [an EUR.1 certificate] shall be prepared to submit at any time, at the request of the customs authorities of the exporting ACP State where the … certificate is issued, all appropriate documents proving the originating status of the products concerned …'

10 Under Article 28(1) of that protocol, the exporter was required to keep the documents referred to in Article 15(3) for at least three years.

11 Title V of Protocol 1, entitled 'Arrangements for administrative cooperation', included Articles 31 and 32 of that protocol, entitled 'Mutual assistance' and 'Verification of proofs of origin' respectively.

12 Article 31 provided as follows in paragraph (1) and the first subparagraph of paragraph (2):

'1. The ACP States shall send to the Commission specimens of the stamps used together with the addresses of the customs authorities competent to issue [EUR.1 certificates] and carry out the subsequent verification of [EUR.1 certificates] and invoice declarations.

[EUR.1 certificates] and invoice declarations shall be accepted for the purpose of applying preferential treatment from the date the information is received by the Commission.

The Commission shall send this information to the customs authorities of the Member States.

2. In order to ensure the proper application of this Protocol, the Community … [and] the ACP States shall assist each other, through the competent customs administrations, in checking the authenticity of the [EUR.1 certificates], the invoice declarations or supplier's declarations and the correctness of the information given in these documents.'

13 Article 32 of Protocol 1 stated:

'1. Subsequent verifications of proofs of origin shall be carried out at random or whenever the customs authorities of the importing country have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Protocol.

2. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the importing country shall return the [EUR.1 certificate] and the invoice, if it has been submitted, the invoice declaration, or a copy of these documents, to the customs authorities of the exporting country giving, where appropriate, the reasons for the enquiry. Any documents and information obtained suggesting that the information given on the proof [of] origin is incorrect shall be forwarded in support of the request for verification.

3. The verification shall be carried out by the customs authorities of the exporting country. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.

…

5. The customs authorities requesting the verification shall be informed of the results of this verification as soon as possible. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in the ACP States … and fulfil the other requirements of this Protocol.

…

7. Where the verification procedure or any other available information appears to indicate that the provisions of this Protocol are being contravened, the ACP State, on its own initiative or at the request of the Community, shall carry out appropriate enquires or arrange for such enquiries to be carried out with due urgency to identify and prevent such contraventions, and for this purpose the ACP State concerned may invite the participation of the Community in these enquiries.'

The Customs Code

14 The Customs Code was repealed by 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), certain provisions of which became applicable as from 24 June 2008. However, given the date of the facts in the main proceedings, the present dispute remains governed by the rules set out in the Customs Code.

15 In the version applicable to the main proceedings, Article 220(1) of the Customs Code provided that, '[w]here the amount of duty resulting from a customs debt has not been entered in the accounts … or has been entered in the accounts at a level lower than the amount legally owed, the amount of duty to be recovered or which

remains to be recovered shall be entered in the accounts within two days of the date on which the customs authorities become aware of the situation and are in a position to calculate the amount legally owed and to determine the debtor (subsequent entry in the accounts)...'

16 However, paragraph (2) of Article 220 provided for exceptions to the subsequent entry in the accounts. That paragraph was worded as follows:

'... subsequent entry in the accounts shall not occur where:

...

(b) the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

Where the preferential status of the goods is established on the basis of a system of administrative cooperation involving the authorities of a third country, the issue of a certificate by those authorities, should it prove to be incorrect, shall constitute an error which could not reasonably have been detected within the meaning of the first subparagraph.

The issue of an incorrect certificate shall not, however, constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where, in particular, it is evident that the issuing authorities were aware, or should have been aware, that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment.

The person liable may plead good faith when he can demonstrate that, during the period of the trading operations concerned, he has taken due care to ensure that all the conditions for the preferential treatment have been fulfilled.

…'

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

17 Afasia belongs to a group of companies which market textiles. That group has its head office in Hong Kong (China) and has established undertakings in, among other places, Jamaica.

18 In 2002, Afasia sought the release into free circulation in the European Union of several consignments of textiles from ARH Enterprises Ltd ('ARH'), which is one of the Jamaican undertakings belonging to that group.

19 Afasia obtained that release into free circulation on the basis of a declaration that the country of origin of the goods in question was Jamaica and on the basis of the submission of EUR.1 certificates issued by the Jamaican customs authorities confirming the origin of the goods.

20 In the context of a mission carried out in Jamaica during March 2005 by the Commission, and more precisely by the European Anti-Fraud Office (OLAF), at the invitation of the Jamaican Ministry of Foreign Affairs and Foreign Trade, on the basis of a suspicion that irregularities had occurred, the EUR.1 certificates issued over the period from 2002 to 2004 were inspected. The results of that mission were formally documented in a report dated 23 March 2005, drawn up on headed paper of the European Commission. That report was signed by those who had participated in the mission and, on behalf of Jamaica, by the Permanent Secretary of the Ministry of Foreign Affairs and Foreign Trade.

21 That report attests that:

— the Jamaican exporters, including ARH, had infringed the provisions of the Cotonou Agreement because most or all of the goods exported to the European Union had been manufactured from completed parts from China or were completed textiles originating in China;

— it was none the less possible that some of the exported goods may have been Jamaican in origin; however, the exporters concerned had been unable to provide evidence to demonstrate that to the investigators;

— the Jamaican exporters made false declarations as to the origin of the goods in their applications for the issue of EUR.1 certificates. It would have been very difficult for the Jamaican customs authorities to detect the false nature of those declarations because of the professional manner in which the origin of the goods had been concealed. The Jamaican customs authorities had therefore acted with due care and in good faith, and

— the Jamaican customs authorities concluded that the EUR.1 certificates issued since 2002 were incorrect and, for that reason, invalid.

22 In view of the lack of cooperation, during the investigation, on the part of the owners of the Afasia group, and in view of the fact that no document could be found during a visit to the workshops and offices of ARH, the results of the enquiry, as referred to in the preceding paragraph, were based, in particular, on an examination of the transport documents and of the documents in the possession of the Jamaican authorities concerning the consignments of goods exported, as well as on a comparison of the data contained in those documents with the data contained in documents sent to the investigators by the Chinese customs authorities. It became apparent from that examination and comparison that the majority of the goods belonging to those consignments could not have been manufactured in Jamaica, but were either assembled from completed textile parts from China or consisted of completed textiles originating in China.

23 On 3 May 2005, the Hauptzollamt levied post-clearance customs duties on the consignments of textiles concerned in the amount of EUR 62 323,45.

24 Afasia challenged that decision, claiming that it had become impossible to provide evidence of the Jamaican origin of the goods because of the destruction of the manufacturing workshops established in Jamaica by a hurricane in 2004. Afasia also contended that the EUR.1 certificates, initially issued by the Jamaican authorities, were still valid as they had not been properly cancelled by those authorities.

25 As the Hauptzollamt upheld its decision, Afasia brought the matter before the Finanzgericht Hamburg (Finance Court, Hamburg; 'the Finanzgericht'). The Finanzgericht allowed the appeal on the ground that, contrary to the requirements of the Cotonou

Agreement, the findings that had led to the post-clearance recovery of the import duties were based neither on a verification request addressed to the Jamaican customs authorities nor on an investigation conducted by those authorities, but on an enquiry carried out by the Commission's services. Consequently, the Finanzgericht ruled, the EUR.1 certificates relating to the consignments of textiles in question had not been validly cancelled. Furthermore, that court found that Afasia had a legitimate expectation that the importation of those consignments of goods had been lawful.

26 The Hauptzollamt appealed on a point of law ('Revision') to the Bundesfinanzhof (Federal Finance Court), which, having doubts as to the soundness of the findings made by the Finanzgericht Hamburg, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is it compatible with Article 32 of [Protocol 1] if the European Commission essentially takes it upon itself to undertake the subsequent verification of proofs of origin in the exporting country, albeit with the assistance of the authorities of that country, and does it constitute a result of this verification within the meaning of that article if the results of the verification so obtained by the Commission are recorded in a report that is co-signed by a representative of the government of the exporting country?

2. If the answer to the first question is in the affirmative: can the person liable for the duty in a case such as the action in the main proceedings – in which the exporting country has declared [EUR.1 certificates] issued during a particular period to be invalid because the origin of the goods could not be confirmed by subsequent verification even though it could not be ruled out that some export goods satisfied

the origin requirements – rely on the protection of legitimate expectations on the basis of the second and third subparagraphs of Article 220(2)(b) of [the Customs Code] and claim that the [EUR.1] certificates presented in his case may have been correct and were therefore based on a correct account of the facts provided by the exporter?'

Consideration of the questions referred

The first question

27 By its first question, the referring court asks, in essence, whether Article 32 of Protocol 1 must be interpreted as meaning that the results of a subsequent verification of EUR.1 certificates issued by an ACP State are binding on the authorities of the Member State into which the goods referred to in those certificates were imported, when that verification essentially consisted of an investigation carried out, in that ACP State, by the Commission and those results were notified to those authorities by means of a report which was jointly signed by a representative of that ACP State.

28 As the Court has already held, the system of administrative cooperation established by a protocol stating, in an annex to an agreement between the European Union and a non-member State, the rules concerning the origin of goods is based on mutual trust between the authorities of the importing Member States and those of the exporting State (Joined Cases C-23/04 to C-25/04 *Sfakianakis* [2006] ECR I-1265, paragraph 21, and Case C-442/08 *Commission* v *Germany* [2010] ECR 1-6457, paragraph 70).

29 With regard, in particular, to the subsequent verification of the EUR.1 certificates issued by the exporting State, the findings of the authorities of the exporting State are binding on the authorities of the importing Member State. The cooperation established by a protocol with regard to the origin of goods can function only if the importing State accepts the determinations legally made in that regard by the exporting State (Case C-97/95 *Pascoal & Filhos* [1997] ECR I-4209, paragraph 33; Case C-442/08 *Commission* v *Germany*, paragraphs 72 and 73; and Case C-386/08 *Brita* [2010] ECR I-1289, paragraph 62).

30 With regard to the question whether, in circumstances such as those in the case in the main proceedings, the results of a subsequent verification constitute determinations legally made by the exporting State and are therefore binding on the authorities of the importing Member State, it must be noted firstly that, contrary to Afasia's submission, a subsequent verification of EUR.1 certificates issued by an ACP State may be carried out in the absence of a request from the authorities of the importing Member State.

31 In that context, it must be held that, in addition to the rules set out in Article 32(1) to (6) of Protocol 1, paragraph (7) of that article provides that the exporting ACP State must carry out, on its own initiative or at the request of the European Union, the necessary enquiries to identify and prevent contraventions of the provisions of that protocol.

32 It follows that, as pointed out in the written observations of the Czech and Italian Governments and of the Commission, and as observed by the Advocate General at point 23 of his Opinion, a subsequent verification must be carried out not only when the importing Member State so requests, but also, in general, when, according to one of the States party to the Agreement or according to the Commission, which, in accordance with Article 211 EC, is charged with ensuring the correct implementation of the Agreement, there are indications which point to an irregularity in regard to the origin of the imported goods (see, by analogy, *Sfakianakis*, paragraphs 30 and 31, and Case C-442/08 *Commission* v *Germany*, paragraph 82).

33 Next, it must be held that Article 32(7) of Protocol 1 allows the exporting ACP State to invite the European Union to participate in enquiries. In the present case, it is not disputed that the investigating mission led by OLAF was carried out, as the mission report makes clear, at the invitation of the Jamaican Ministry of Foreign Affairs and Foreign Trade. In those circumstances, contrary to Afasia's assertions, the investigation conducted by OLAF on Jamaican territory cannot be regarded as amounting to interference in the internal affairs of that State and does not therefore constitute a violation of that State's sovereignty.

34 It must also be observed that the detailed arrangements pursuant to which the European Union is to participate in enquiries in the exporting ACP State are defined neither in Protocol 1 nor elsewhere in the Cotonou Agreement. In the absence of specific rules, and in the light of the objectives of a correct application of that agreement and good administrative cooperation, the view must be taken that Article 32(7) of Protocol 1 allows the exporting ACP State, if that State so wishes or if it accepts a corresponding proposal from the European Union, to benefit from the resources and expertise of OLAF by arranging for the latter to carry out the greater part of the investigation required. When the exporting ACP State chooses to proceed in this manner, it is sufficient, in order for that State to fulfil properly its function as the entity responsible for subsequent verification, that it acknowledge, unequivocally and in writing, its endorsement of the results of the investigation carried out by OLAF.

35 As observed by the Advocate General at points 25 and 29 of his Opinion, that acknowledgment of the investigation's results must be duly signed and dated on behalf of the exporting ACP State, and the fact that those results are recorded on OLAF headed paper is irrelevant.

36 As Article 32(7) of Protocol 1 also does not contain provisions governing the form in which the investigation results must be notified to the importing Member State in order to be capable of binding the authorities of that State, it must be held that

the notification, to those authorities, of the report on the investigation conducted by OLAF, duly signed on behalf of the exporting ACP State and stating unequivocally that the EUR.1 certificates are incorrect and, therefore, void, has the effect of making such results binding on those authorities.

37 Finally, as regards the question, also raised by Afasia, as to whether the person who signed the investigation report on behalf of the exporting ACP State was competent to do so under the law of that State, it must be stated, firstly, that, in the absence of such competence, the ACP State concerned cannot be treated as having endorsed the investigation's results and, secondly, that the mutual trust which is the hallmark of the cooperation between the exporting ACP States and the importing Member States implies that the latter must not systematically examine the validity of signatures of those persons who appear to have the power to bind the ACP State in export-related matters.

38 Consequently, it is only where doubts exist as to the competence of the person who signed on behalf of the exporting State that the authorities of the importing Member State have an obligation to establish with the ACP State concerned whether that person was in fact competent to bind the latter in that respect.

39 In the present case, it will be for the referring court to assess whether, regard being had to the information contained in the report on the investigation and the arguments set out by Afasia concerning the alleged lack of competence on the part of the Permanent Secretary of the Ministry of Foreign Affairs and Foreign Trade to sign that document on behalf of Jamaica, the Hauptzollamt ought to have verified that matter.

40 In view of the foregoing, the answer to the first question is that Article 32 of Protocol 1 must be interpreted as meaning that the results of a subsequent verification as to the accuracy of the origin of goods as indicated on the EUR.1 certificates issued by an ACP State and which consisted, for the most part, of an investigation conducted by

the Commission, and more precisely by OLAF, in that State, and at its invitation, are binding on the authorities of the Member State into which the goods were imported, provided that – and this is a matter for the national court to establish – those authorities received a document unequivocally acknowledging that that ACP State endorsed those results.

The second question

41 By its second question, the referring court asks, in essence, whether Article 220(2)(b) of the Customs Code must be interpreted as meaning that, in circumstances where the EUR.1 certificates issued for the importation of goods into the European Union are cancelled on the ground that the issue of those certificates is marred by irregularities and that the preferential origin indicated on those certificates could not be confirmed during a subsequent verification, the importer can object to post-clearance recovery of the import duties by claiming that the possibility cannot be ruled out that, in reality, some of those goods have that preferential origin.

42 The referring court thus seeks to ascertain what legal consequences might follow from the investigators' findings, as mentioned at paragraph 21 of the present judgment, according to which it is possible that some of the goods were of Jamaican origin, even though the exporters did not provide any evidence to that effect.

43 In that regard, it must be noted at the outset that the purpose of subsequent verification is to check whether the statement of origin in the EUR.1 certificate is correct (Case C-293/04 *Beemsterboer Coldstore Services* [2006] ECR I-2263, paragraph 32 and the case-law cited).

44 As the Court has repeatedly held in this context, where a subsequent verification does not allow confirmation of the origin of the goods as stated in the EUR.1 certificate, it must be concluded that those goods are of unknown origin and that the EUR.1 certificate and the preferential tariff were therefore wrongly granted (Case C-12/92 *Huygen and Others* [1993] ECR I-6381, paragraphs 17 and 18; Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465, paragraph 16; and *Beemsterboer Coldstore Services*, paragraph 34).

45 That case-law precludes the importer from avoiding post-clearance recovery of import duties by relying on the unknown origin of the goods and, consequently, on the fact that there may be no way to discount the possibility that some of those goods may have the preferential origin indicated on the cancelled EUR.1 certificates.

46 On the contrary, it follows from the case-law that the post-clearance recovery of import duties unpaid at the time of importation is the normal consequence where a subsequent verification does not allow confirmation of the origin of the goods as stated in the EUR.1 certificate (*Huygen and Others*, paragraph 19, and *Faroe Seafood and Others*, paragraph 16).

47 For an importer to be able validly to claim a legitimate expectation pursuant to Article 220(2)(b) of the Customs Code and thus to benefit from the waiver of post-clearance recovery provided for by that provision, three cumulative conditions must be met. It is necessary, first, that the irregular issuing of the EUR.1 certificates must have been due to an error on the part of the competent authorities themselves, second, that that error must have been such that it could not reasonably have been detected by the person liable for payment acting in good faith, and, finally, that that person must have complied with all the provisions laid down by the legislation in force (see, inter alia, *Faroe Seafood and Others*, paragraph 83; Case C-499/03 P *Biegi Nahrungsmittel and Commonfood* v *Commission* [2005] ECR I-1751, paragraph 46; and Case C-173/06 *Agrover* [2007] ECR I-8783, paragraph 30).

48 Where, as in the case in the main proceedings, the authorities of the exporting State issued incorrect EUR.1 certificates in the context of a system of administrative cooperation, the issue of those certificates must, pursuant to the second and third subparagraphs of Article 220(2)(b), be considered to be an error on the part of those authorities unless it transpires that those certificates were issued on the basis of an incorrect presentation of the facts by the exporter. If those certificates were issued on the basis of false declarations by the exporter, the first of the three cumulative conditions referred to above will not have been fulfilled and post-clearance recovery of the import duties must, consequently, be carried out, unless, inter alia, it is clear that the authorities which issued those certificates knew, or ought to have known, that the goods did not meet the conditions necessary in order for them to benefit from preferential treatment.

49 Although, in the case in the main proceedings, the referring court does not call into question the finding in the report on the investigation carried out, to the effect that the Jamaican authorities did not know, and could not have known, that the textiles exported by ARH did not meet the conditions necessary in order for them to be regarded as being of Jamaican origin, the referring court is, by contrast, unsure whether the onus is on the Hauptzollamt to prove that the incorrect certificates were issued on the basis of false declarations by that company or whether, on the contrary, the onus is on Afasia to prove that ARH correctly presented the facts to the Jamaican authorities.

50 The referring court asks, in particular, how the interpretation of Article 220(2)(b) of the Customs Code provided by the Court in the judgment in *Beemsterboer Coldstore Services* is to be transposed to circumstances such as those in the main proceedings.

51 In that judgment, the Court held that the customs authorities of the importing State cannot be required to prove that the exporter made false declarations when it transpires that the latter has not kept the documents relating to the goods in question for at least three years, notwithstanding the obligation laid down in the applicable rules. In such circumstances, it is impossible for those authorities to establish whether the

information provided by the exporter for the issue of the EUR.1 certificates was correct or not (*Beemsterboer Coldstore Services*, paragraph 40).

52 Afasia argues that that solution reached by the Court in *Beemsterboer Coldstore Services* cannot be transposed to the case in the main proceedings as it was impossible for ARH to comply with its obligation to keep the relevant documents for at least three years, laid down in Article 28 of Protocol 1, in view of the fact that its workshops were destroyed by a hurricane before the expiry of that period. That element of *force majeure*, Afasia submits, has the effect that the question whether the EUR.1 certificates were issued on the basis of false declarations by the exporter can no longer be resolved and that the issuing of incorrect EUR.1 certificates must therefore be classified as an error on the part of the Jamaican authorities.

53 Such an argument, however, fails to take into account the fact that OLAF, given that it was unable to secure the cooperation of the owners of the Afasia group, and in view of the fact that, during an enforced inspection carried out in cooperation with the Jamaican authorities, the workshops and offices of ARH contained no documents, focused its investigation on the transport documents as well as on the documents held by the Jamaican authorities relating to the consignments of exported goods and compared the data contained in those documents with those supplied by the Chinese customs authorities. On the basis of those documents and that data comparison, the conclusion was drawn that the declarations relating to the origin of those goods which ARH and the other Jamaican exporters had made to the Jamaican authorities could not be other than false.

54 As the Italian Government and the Commission have correctly observed, where the authorities of the exporting State have been misled by the exporters, the issue of incorrect EUR.1 certificates cannot be regarded as constituting an error on the part of those authorities themselves. In this respect, it follows from well-established case-law that only errors that are attributable to acts of the competent authorities confer

entitlement to the waiver of post-clearance recovery of customs duties. In the absence of such an error, Article 220(2)(b) of the Customs Code does not allow the person liable to claim a legitimate expectation (see, inter alia, *Faroe Seafood and Others*, paragraphs 91 and 92, and *Agrover*, paragraph 31). In those circumstances, Afasia's arguments alleging a case of *force majeure* serve no purpose.

55 In the light of the foregoing, the answer to the second question is that Article 220(2)(b) of the Customs Code must be interpreted as meaning that, in circumstances where the EUR.1 certificates issued for the importation of goods into the European Union are cancelled on the ground that the issue of those certificates was marred by irregularities and that the preferential origin indicated on those certificates could not be confirmed during a subsequent verification, the importer cannot object to post-clearance recovery of the import duties by claiming that the possibility cannot be ruled out that, in reality, some of those goods have that preferential origin.

Costs

56 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 (First Chamber) hereby rules:

1. **Article 32 of Protocol 1 to Annex V to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, and approved on behalf of the Community by Council Decision 2003/159/EC of 19 December 2002, must be interpreted as meaning that the results of a subsequent verification as to the accuracy of the origin of goods as indicated on the EUR.1 certificates issued by an ACP State and which consisted, for the most part, of an investigation conducted by the Commission, and more precisely by the European Anti-Fraud Office, in that State, and at its invitation, are binding on the authorities of the Member State into which the goods were imported, provided that – and this is a matter for the national court to establish – those authorities received a document unequivocally acknowledging that that ACP State endorsed those results.**

2. **Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, must be interpreted as meaning that, in circumstances where the EUR.1 certificates issued for the importation of goods into the European Union are cancelled on the ground that the issue of those certificates was marred by irregularities and that the preferential origin indicated on those certificates could not be confirmed during a subsequent verification, the importer cannot object to post-clearance recovery of the import duties by claiming that the possibility cannot be ruled out that, in reality, some of those goods have that preferential origin.**

[Signatures]