

Case C-372/06

Asda Stores Ltd

v

Commissioners of Her Majesty's Revenue and Customs

(Reference for a preliminary ruling
from the VAT and Duties Tribunal, London)

(Community Customs Code — Implementing measures — Regulation (EEC)
No 2454/93 — Annex 11 — Non-preferential origin of goods — Television receivers
— Concept of substantial processing or working — Added value test — Validity and
interpretation — EEC-Turkey Association Agreement — Decision No 1/95 of the
Association Council — Direct effect — Interpretation)

Judgment of the Court (Fourth Chamber), 13 December 2007 I - 11228

Summary of the Judgment

1. *Origin of goods — Determination — Substantial process or operation*
(Council Regulation No 2913/92, Arts 24 and 249; Commission Regulation No 2454/93,
Annex 11)

2. *Origin of goods — Determination — Substantial process or operation*
(Council Regulation No 2913/92, Art. 24; Commission Regulation No 2454/93, Annex 11)
3. *International agreements — EEC-Turkey Association Agreement — Customs union*
(Additional Protocol to the EEC-Turkey Association Agreement, Art. 47(1) to (3); Decision No 1/95 of the EEC-Turkey Association Council, Arts 44 to 47)
4. *International agreements — EEC-Turkey Association Agreement — Customs union*
(Decision No 1/95 of the EEC-Turkey Association Council, Art. 47)
5. *International agreements — EEC-Turkey Association Agreement — Customs union*
(Additional Protocol to the EEC-Turkey Association Agreement, Art. 47(2); Decision No 1/95 of the EEC-Turkey Association Council, Arts 46 and 47)

1. An operation of assembling various parts amounts to a substantial working or processing operation capable of being regarded as conferring origin where it represents, from a technical point of view and having regard to the definition of the goods in question, the decisive production stage during which the use to which the component parts are to be put becomes definite and the goods in question are given their specific qualities.

necessary to take account of the value added by the assembly as an ancillary criterion.

However, in view of the variety of operations which may be described as assembly, there are situations where consideration on the basis of technical criteria may not be decisive in determining the origin of goods. In such cases it is

In that regard, the onus is on the Commission, within the framework of its discretion to adopt the measures required for implementing Regulation No 2913/92 establishing the Community Customs Code, and in particular those relating to the origin of goods, to adopt provisions of a general nature which, with a view to ensuring legal certainty, take into account the overall situation of an industrial sector on a long-term basis and which, consequently, will not be called into question by the specific situation at a given time of one particular undertaking within that sector.

Thus, account taken by the Commission of the wide variety of operations covered by the concept of assembly throughout the industrial sector concerned may justify reliance being placed on the criterion of added value.

(see paras 36, 37, 45, 46, 51, operative part 1)

2. The provisions in column 3 under heading 8528 of the Combined Nomenclature, mentioned in Annex 11 to Regulation No 2454/93, laying down certain provisions for implementing Regulation No 2913/92, must be interpreted as meaning that, in calculating the value acquired by colour television receivers on their manufacture, there is no cause to determine separately the non-preferential origin of a distinct part, such as a chassis assembled by the supplier of the finished product. The provisions at issue are drafted in general terms and do not confer any decisive significance in the determination of the origin of the product concerned on any of its particular components. What matters is to take account of the whole of the components actually and objectively entering into the assembly carried out by the undertaking which manufactures the finished product. Neither the provisions of Article 24 of Regulation No 2913/92 establishing the Community Customs Code nor the provisions of

Annex 11 to Regulation No 2454/93 provide that such an assessment may be made without taking into account the assembly operations in their entirety. Those provisions do not envisage taking account, in the manufacturing process, of certain assembly operations to the detriment of certain others, or thereby artificially isolating such and such a part which itself comes from an assembly carried out by the same supplier. In that regard, to accept that one of the parts assembled by the supplier must be considered separately in the assembly process, because it might then itself acquire the status of an original product, would amount to leaving to the assessment of the importer or its supplier the function of determining at what stage of that assembly process one of the components of the imported product acquires the status of a finished product used as a part in the process of manufacturing, in the same undertaking, another product. Such an approach, which would thus make the origin of a product depend on a subjective assessment, incompatible with the objective and foreseeable nature of the legislative provisions at issue, would deprive the provisions of Annex 11 to Regulation No 2454/93 of all useful effect.

(see paras 57-59, 73, operative part 2)

3. The provisions of Article 44 of Decision No 1/95 of the EEC-Turkey Association Council, concerning the entry into force of the final phase of the Customs Union, read in conjunction with those of Article 47(1) to (3) of the Additional Protocol to the EEC-Turkey Association Agreement and with the provisions of Articles 45 and 46 of the said decision, do not have direct effect before national courts and do not therefore allow individual operators validly to plead their infringement in order to resist payment of anti-dumping duties normally due.

Secondly, the provisions of Article 47(1) to (3) of the Additional Protocol to the EEC-Turkey Association Agreement, and those of Article 46 of Decision No 1/95, in that they allow the contracting parties the possibility of taking appropriate protection measures, do not contain any obligation. Even if, moreover, those provisions provide that the contracting party concerned is to notify the measure to the Association Council, pursuant to Article 47 of the Additional Protocol, or to the Customs Union Joint Committee, pursuant to Article 46 of Decision No 1/95, they thereby create an obligation only as regards the parties to the EEC-Turkey Association Agreement. That simple formality of inter-institutional information, which does not in any way affect the rights or obligations of individuals and the breach of which would have no effect on the position of the latter, is thus not capable of conferring direct effectiveness on those provisions.

First, by conferring upon the EEC-Turkey Association Council the possibility of suspending the application of commercial defence instruments, the provisions of Article 44(1) of Decision No 1/95 are conditional in nature because they make exercise of that competence subject to the condition that the Republic of Turkey has applied the rules on competition, the control of State aid, and the other provisions of the *acquis communautaire* concerning the internal market, and have ensured their effective application. Such provisions thus require the intervention of other measures for the rights of operators to be affected, and are not capable of directly governing the legal position of individuals.

Concerning, thirdly, Article 45 of Decision No 1/95, that provision merely encourages the contracting parties to coordinate their action by exchanges of information and consultation, and thus does not contain any obligation either. The case-law on direct effectiveness

therefore does not apply to that provision either.

(see paras 85-89, 91, operative part 3)

4. The provisions of Article 47 of Decision No 1/95 of the EEC-Turkey Association Council, concerning the entry into force of the final phase of the Customs Union, have direct effect and the individuals to whom they apply have the right to rely on them before the courts of the Member States. They set out in clear, precise and unconditional terms, without being subordinate in their execution or effects to the intervention of any other measure, an obligation on the authorities of the importing State to request the importer to indicate the origin of the products concerned on the customs declaration. Given the nature and purpose of the provisions in question, such an obligation, demonstrating the will of the contracting parties to require importers to provide certain information, is capable of directly governing the legal position of operators.

(see paras 90, 91, operative part 3)

5. The provisions of Article 47 of Decision No 1/95 of the EEC-Turkey Association Council, concerning the entry into force of the final phase of the Customs Union, must be interpreted as not requiring that the information which the contracting parties which adopted anti-dumping measures must provide to the Customs Union Joint Committee pursuant to Article 46 of Decision No 1/95 or to the Association Council pursuant to Article 47(2) of the Additional Protocol, must be brought to the knowledge of operators.

Even if the operators concerned are entitled to claim to be informed clearly and precisely in advance of the anti-dumping measures to which they may be subject, and, in consequence, such measures must be appropriately published, notably in the *Official Journal of the European Union*, those requirements do not in any way imply that those operators must also be informed of formalities which were established only in the interests of the contracting parties.

(see paras 95, 97, operative part 4)