

- Does Directive 2004/73/EC comply with Framework Directive 67/548/EEC, in particular with Annexes V and VI thereto, in so far as it classifies nPB as highly flammable (R11) and as a category 2 substance which is toxic for reproduction (R60) on the basis of the precautionary principle without complying with the methods and criteria set out in Annexes V and VI to Directive 67/548/EEC?
- Does Directive 2004/73/EC comply with Framework Directive 67/548/EEC in so far as it classifies nPB as highly flammable (R11) and as a category 2 substance which is toxic for reproduction (R60) on the basis of tests which are different from those carried out on competing products, inter alia chlorinated halogens, and without regard to the principle of proportionality?

Question 2:

- If Directive 2004/73/EC does not comply with Directive 67/548/EEC, should the Kingdom of Belgium have refrained from transposing into national law the classification of nPB which stems from Directive 2004/73/EC or even rejected that classification, even though under Article 2 of Directive 2004/73/EC 'Members States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 October 2005 at the latest'?

(¹) Commission Directive 2004/73/EC of 29 April 2004 adapting to technical progress for the twenty-ninth time Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 2004 L 152, p. 1).

(²) Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ, English Special Edition 1967, p. 234).

Reference for a preliminary ruling from VAT and Duties Tribunals, London (United Kingdom) made on 29 September 2008 — Terex Equipment Ltd v The Commissioners for Her Majesty's Revenue & Customs

(Case C-430/08)

(2008/C 327/22)

Language of the case: English

Referring court

VAT and Duties Tribunals, London (pursuant to a request from the Edinburgh Tribunal Centre)

Parties to the main proceedings

Applicant: Terex Equipment Ltd

Defendant: The Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Does the Code (¹), and in particular Article 78, permit revision of the declaration to correct the CPC and if so, are HMRC required to amend the declaration and to regularise the situation?
2. Were the goods in this case unlawfully removed from customs supervision within the meaning of Article 203(1) of the Code by reason of the operation of Article 865 IR (²)?
3. If so, was a customs debt on importation thereby incurred under Article 203 of the Code?
4. Even if there was no customs debt under Article 203 of the Code, has a customs debt arisen by virtue of Article 204 having regard to
 - (i) the findings on 'obvious negligence' and
 - (ii) the question whether HMRC failed to comply with Article 221(3) 45 of the Code by failing to communicate the Article 204 customs debt within the time limit
5. Given that:
 - (i) there can be no regularisation under Article 78 of the Code and
 - (ii) there was a customs debt and
 - (iii) there was a special situation as contemplated by Article 899 IR,
 was it open to the Tribunal to conclude that there was no obvious negligence present, so that the customs debt should be remitted under Article 239 of the Code?

(¹) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, p. 1).

(²) ² Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, p. 1).