Reports of Cases

Order of the General Court (First Chamber)

28 February 2012 *

(Customs union — Importation of colour television sets assembled in Turkey — Post-clearance recovery of import duties — Application for waiver of post-clearance entry in the accounts of import duties and for remission of those duties — Article 220(2)(b) and Article 239 of Regulation (EEC) No 2913/92 — Commission decision rejecting that application — Annulment by the national court of decisions taken by national authorities ordering post-clearance entry of import duties in the accounts — No need to adjudicate)

In Case T-153/10,

Schneider España de Informática, SA, established in Torrejón de Ardoz (Spain), represented by P. De Baere and P. Muñiz, lawyers,

applicant,

v

European Commission, represented by R. Lyal and L. Bouyon, acting as Agents,

defendant,

APPLICATION for the annulment of Commission Decision C(2010) 22 final of 18 January 2010 finding that post-clearance entry in the accounts of import duties is justified and that remission of those duties is not justified in a particular case (Case REM 02/08),

THE GENERAL COURT (First Chamber),

composed of J. Azizi, President, E. Cremona and S. Frimodt Nielsen (Rapporteur), Judges,

Registrar: E. Coulon,

makes the following

Order

Background to the dispute

1 In 1999, 2000 and 2001, the applicant, Schneider España de Informática, SA, imported into Spain, for release for free circulation, colour television sets that were declared to be Turkish in origin.

* Language of the case: English.

2 On 28 August 2002, the Spanish customs authorities notified the applicant that they would be carrying out a post-clearance verification of the imports referred to in paragraph 1 above.

3 An administrative cooperation mission, carried out in Turkey from 29 April to 2 May 2003 by the European Anti-Fraud Office (OLAF) and by representatives of certain Member States, concluded that the applicant's Turkish supplier had used cathode ray tubes originating in China or South Korea in the colour television sets imported by the applicant. Those imports were subject to the anti-dumping duties provided for at that time by Council Regulation (EC) No 710/95 of 27 March 1995 imposing a definitive anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand and collecting definitively the provisional duty imposed (OJ 1995 L 73, p. 3), as amended by Council Regulation (EC) No 2584/98 of 27 November 1998 (OJ 1998 L 324, p. 1).

4 Following that investigation, by three decisions of 23 June 2004 ('the post-clearance decisions'), the Spanish customs authorities established the existence of a customs debt arising from the anti-dumping duties due on the imports referred to in paragraph 1 above and sought payment from the applicant of those duties in the amount of EUR 51 639.89, plus interest in the amount of EUR 10 008.97, and also sought payment of VAT in the amount of EUR 8 263.38 together with EUR 1 601.44 in interest ('the duties at issue').

5 By letter of 18 May 2005, the applicant applied for waiver of the post-clearance entry in the accounts of that customs debt pursuant to Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended (OJ 1992 L 302, p. 1) ('the Community Customs Code'), and remission of those duties under Article 239 of that regulation. That application ('the applicant's application') was sent by the Kingdom of Spain to the Commission by letter of 17 March 2008.

6 Alongside its application, the applicant brought an action for annulment before the national administrative and judicial authorities against the post-clearance decisions.

7 On 21 November 2008, the Tribunal Económico-Administrativo Regional de Madrid (Regional Tax Authority, Madrid) (Spain) dismissed the applicant's action for annulment. The applicant brought proceedings against that decision before the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid).

8 By Commission Decision C(2010) 22 final of 18 January 2010 finding that post-clearance entry in the accounts of import duties is justified and that remission of those duties is not justified in a particular case (Case REM 02/08) ('the contested decision'), the European Commission dismissed the applicant's request submitted by the Kingdom of Spain.

9 In the contested decision, the Commission took the view, first, that, in the present case, the customs authorities had not committed any error within the meaning of Article 220(2)(b) of the Community Customs Code and that the applicant had not proved that it acted diligently, as required by that provision. The Commission also took the view, second, that no special situation within the meaning of Article 239 of that Code could be established.

10 On 3 May 2010, ruling pursuant to Article 869 et seq. and Article 908(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of the Community Customs Code (OJ 1993 L 253, p. 1) ('the implementing regulation'), as amended by Commission Regulation (EC) No 1335/2003 of 25 July 2003 (OJ 2003 L 187, p. 16), and in accordance with the contested decision, the Spanish customs authorities dismissed the applicant's request.

Procedure and forms of order sought

11 By application lodged at the Registry of the General Court on 6 April 2010, the applicant brought the present action.

12 By a separate document, lodged at the Registry of the General Court on the same day, the applicant submitted an application for the adoption of measures of organisation of procedure by which the General Court was requested to order the Commission to produce a copy in full of 28 documents. In the observations which it submitted in that regard within the period prescribed, the Commission opposed that request.

13 The applicant claims that the General Court should:

— annul the contested decision;

— order the Commission to pay the costs.

14 The Commission contends that the General Court should:

— dismiss the action;

— order the applicant to pay the costs.

15 By letter lodged at the Registry of the General Court on 21 September 2011, the applicant sent to the General Court a copy of judgment No 178/11 of the Tribunal Superior de Justicia de Madrid of 16 March 2011 ('the judgment of the Tribunal Superior de Justicia'). According to the judgment of the Tribunal Superior de Justicia, against which no further appeal lies, the post-clearance decisions were annulled on the ground that, at the date on which they were communicated to the applicant, the limitation period set out in Article 221(3) of the Community Customs Code had expired. In the letter accompanying the copy of that judgment sent to the General Court, the applicant acknowledges that, as a result of this annulment, it is no longer liable to pay the duties at issue. It claims, none the less, that the Court should rule on the action or, alternatively, should it hold that there is no need to adjudicate, order that each party bear its own costs.

16 In response to a question from the General Court, the Commission expressed the view that, as a result of the intervention of the judgment of the Tribunal Superior de Justicia, the present action had become devoid of purpose. The applicant submitted observations on the position adopted by the Commission within the period prescribed.

Law

17 Under Article 113 of its Rules of Procedure, the General Court may at any time, of its own motion, after hearing the parties, declare that the action has become devoid of purpose and that there is no longer any need to adjudicate on it. It follows from Article 114(3) of those Rules that, unless the General Court otherwise decides, the remainder of the proceedings are to be oral.

18 In the present case, as the parties have been heard (see paragraphs 15 and 16 above), the General Court considers itself to be sufficiently informed by the contents of the case-file to decide the matter without further procedure.

19 By the present action, the applicant seeks the annulment of the contested decision, by which the Commission rejected the applicant's request for no post-clearance entry in the accounts of import duties and for remission of the customs debt for which the applicant is liable in accordance with the

post-clearance decisions. It is therefore necessary to determine whether, following the annulment of the post-clearance decisions by a final judicial decision, annulment of the contested decision could still procure an advantage for the applicant. If there is no further legal interest in the present action, it would have to be held that the present action has become devoid of purpose and, consequently, that there is no need to adjudicate.

20 The provision that the action must retain its purpose is, indeed, a prerequisite in order for the Court to exercise its powers, and requires the existence of a concrete advantage that the applicant may procure from the final judgment (see, to that effect, the order of 11 October 2007 in Case C-301/05 P *Wilfer* v *OHIM*, not published in the ECR, paragraph 19 and the case-law cited).

21 The applicant's legal interest in obtaining a judicial decision must be assessed with regard to the extent of the Court's powers, taking account of the type of action and the context in which it was brought (see, to that effect, Joined Cases C-138/03, C-324/03 and C-431/03 *Italy* v *Commission* [2005] ECR I-10043, paragraph 25).

22 The question whether an action retains its purpose must therefore be considered in conjunction with whether or not the applicant has a legal interest in bringing that action. However, while the absence of a legal interest in bringing proceedings — which is a matter to be assessed at the time when the action was lodged — results in the action being dismissed as inadmissible (Joined Cases C-61/96, C-132/97, C-45/98, C-27/99, C-81/00 and C-22/01 *Spain* v *Council* [2002] ECR I-3439, paragraph 23), the fact that the proceedings become devoid of purpose in the course of the proceedings, with the result that the judicial decision is no longer liable to procure an advantage to the applicant, leads to there being no need to adjudicate (see Case C-13/03 P *Commission* v *Tetra Laval* [2005] ECR I-1113, paragraph 23; Case C-362/05 P *Wunenburger* v *Commission* [2007] ECR I-4333, paragraph 42; and order of 26 June 2008 in Joined Cases T-433/03, T-434/03, T-367/04 and T-244/05 *Gibtelecom* v *Commission*, not published in the ECR, paragraph 48 and the case-law cited).

23 Lastly, in some circumstances, the finding that the action has become devoid of purpose may be raised by the Court of its own motion (see Joined Cases C-399/06 P and C-403/06 P *Hassan and Ayadi* v *Council and Commission* [2009] ECR I-11393, paragraph 58 and the case-law cited). In such a case, the Court must refrain from adjudicating on the action and has no discretion so far as concerns the likely consequences of such a finding (see, to that effect, *Wunenburger* v *Commission*, paragraph 39).

24 In order to determine whether or not the present action retains a purpose, it is therefore necessary, in the first place, to examine the relationship between (i) the decisions of the national customs authorities establishing the existence of a customs debt for which the importer is liable, such as, in the present case, the post-clearance decisions and (ii) the decisions by which the Commission rules on whether Article 220(2)(b) and Article 239 of the Community Customs Code are applicable to the situation of that importer, such as the contested decision.

25 In that regard, Articles 201 to 205 of the Community Customs Code set out how a customs debt on importation is incurred. In the present case, it should be borne in mind that, pursuant to Article 201 of the Community Customs Code, the introduction into Spain for release for free circulation of the colour television sets referred to in paragraph 1 above has the result that a customs debt, for which the applicant is liable, is incurred at the time of acceptance by the Spanish customs authorities of the customs declaration made by the applicant upon importation.

26 Under Articles 217 to 221 of the Community Customs Code, the national customs authorities are responsible for the entry in the accounts of the amount of duty relating to each customs debt and communication of any decisions taken by them to importers who have not correctly declared the duty for which they are liable (Article 221(2) of the Community Customs Code). In the present case, by adopting the post-clearance decisions (see paragraph 4 above), the Spanish customs authorities

claimed payment from the applicant of the duties at issue, namely the payment of anti-dumping duties due on the imports referred to in paragraph 1 above that were not contained in the applicant's customs declaration submitted upon importation.

27 However, in the cases for which Article 220(2)(b) and Article 239 of the Community Customs Code provide, even though the existence of a customs debt was legally established and the amount which falls to be paid as a result was correctly calculated, the importer may, upon his request, be exempted from the payment of those duties.

28 That is the case, first of all, where 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. Such circumstances justify the waiver of the post-clearance entry in the accounts of the duties which have not been paid (the first subparagraph of Article 220(2)(b) of the Community Customs Code).

29 The same is true, second, where the person liable to pay customs duties demonstrates the existence of a special situation and the absence of obvious negligence and deception on his part, thereby justifying the remission or, in some circumstances, the repayment of that person's customs debt (Article 239 of the Community Customs Code). Article 239 of the Community Customs Code thus constitutes a general equitable provision (see, by analogy, with regard to the interpretation of Article 13 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), Case 283/82 *Papierfabrik Schoellershammer* v *Commission* [1983] ECR 4219, paragraph 7). In order to benefit therefrom, the person liable for payment must establish that he is in an exceptional situation as compared with other operators engaged in the same business and that he could not have reasonably detected the errors committed in the application of the Community Customs Code (see, by analogy, Joined Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99 *Kaufring and Others* v *Commission* [2001] ECR II-1337, paragraphs 217 to 219 and the case-law cited).

30 It follows that the factors taken into account in applying Article 220(2)(b) and Article 239 of the Community Customs Code therefore have no bearing on the question whether the existence of a customs debt has been legally declared and whether the duties for which the importer is liable have been correctly calculated and that the decisions taken pursuant to those articles have, in principle, neither the object nor the effect of giving a ruling on that question (see, to that effect and by analogy, Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465, paragraphs 66 to 68; Case C-413/96 *Sportgoods* [1998] ECR I-5285, paragraphs 41 to 43; Case T-195/97 *Kia Motors and Broekman Motorships* v *Commission* [1998] ECR II-2907, paragraph 36; and Case T-205/99 *Hyper* v *Commission* [2002] ECR II-3141, paragraphs 98 and 99 and the case-law cited).

31 In the present case, the applicant filed an application with the Spanish customs authorities seeking application of Article 220(2)(b) and Article 239 of the Community Customs Code and, consequently, the waiver of the payment by it of the duties at issue (see paragraph 5 above). In accordance with Article 871(1) and Article 905(1) of the implementing regulation, the applicant's request, since it alleged that the Commission committed an error within the meaning of Article 220(2)(b) and failed to fulfil its obligations, on the one hand, and that the circumstances of the case were linked to the conclusions drawn from a Community investigation (see paragraph 3 above), on the other, was sent by the Spanish authorities to the Commission, which adopted the contested decision.

32 Nevertheless, decisions taken pursuant to Article 220(2)(b) and Article 239 of the Community Customs Code, such as the contested decision, to the extent that they presuppose the existence of a customs debt and decide whether, despite the debt, the importer may not be charged for the payment of those unpaid duties, only affect the legal situation of the importer in question in so far as he is legally liable

for the duties claimed from him. Indeed, it is apparent from the fourth indent of Article 871(6) and the fourth indent of Article 905(6) of the implementing regulation that, where the existence of a customs debt has not been established, the Commission must return the dossier to the customs authority and, consequently, is not to take a decision. Furthermore, the administrative procedure conducted by the Commission is deemed never to have been initiated.

33 Decisions concerning the determination of customs debts and the calculation of the customs duty payable may be the subject of appeals before the national administrative and judicial authorities, as provided for in Article 243 of the Community Customs Code. In the present case, the applicant has availed itself of those means of redress by challenging the post-clearance decisions before the Spanish national administrative and judicial authorities and obtained annulment of those decisions on the ground that, at the date of their communication to the applicant, the limitation period set out in Article 221(3) of the Community Customs Code had expired (see paragraphs 6, 7 and 15 above).

34 Therefore, as the parties have agreed, annulment of the post-clearance decisions has the result that payment of the duties at issue can no longer be claimed from the applicant. Consequently, the contested decision is devoid of purpose and is not capable of affecting the applicant's legal situation. The applicant cannot, therefore, procure an advantage from the annulment of that decision.

35 It is however necessary to examine, in the second place, the applicant's claim that, notwithstanding the finding made in paragraph 34 above, the present action retains a purpose and there is therefore reason for the General Court to adjudicate.

36 First, the applicant submits that, if the annulment of the contested decision is not capable of affecting its legal situation with regard to payment of the customs debt for which it is liable under the post-clearance decisions, a judgment of the General Court ruling on the legality of the contested decision would nevertheless be liable to affect the situation of other importers on whose situation, pursuant to Article 905(2) of the implementing regulation, the Commission has not adopted a decision but referred the national customs authorities to the contested decision so far as concerns those other cases which it considers to be comparable.

37 It should be noted in that regard that, pursuant to Articles 874, 875 and 908 of the implementing regulation, the Commission's decisions concerning the application of Article 220(2)(b) and Article 239 of the Community Customs Code, such as the contested decision, are communicated to the Member State concerned and are brought to the attention of the other Member States, which have a duty to decide on the requests submitted by the operators in accordance with the Commission's decisions, whether the Commission has ruled on the particular person applying to the national customs authorities for waiver of post-clearance entry in the accounts of import duties or for remission of those duties or on other cases involving comparable issues of fact and of law.

38 The applicant is therefore justified in maintaining that the contested decision is capable of affecting other importers. Moreover, it has produced evidence of procedures concerning other importers in which the Commission has referred the national authorities to the contested decision. It does not follow therefrom, however, that the present action retains a purpose.

39 First, according to settled case-law (see paragraphs 20 to 22 above), the question whether the action retains a purpose must be assessed with regard to the applicant's legal interest in obtaining a judicial decision, taking account of the type of action brought. The interest in question is, in principle, the same as that which the applicant must prove in order to establish the admissibility of its action (see *Wunenburger* v *Commission*, paragraph 42 and the case-law cited).

40 However, it is settled case-law that the person concerned must demonstrate a personal interest in bringing proceedings and that an action for annulment may not be brought in the general interest of third parties or for the sake of legality (see Case T-256/97 *BEUC* v *Commission* [2000] ECR II-101,

paragraph 33 and the case-law cited). That personal interest must also be sufficiently direct (see, to that effect, Joined Cases C-68/94 and C-30/95 *France and Others* v *Commission* [1998] ECR I-1375, paragraph 67). The mere fact that there is a third party interest in the applicant's bringing an action for annulment of the contested decision is not sufficient, in those circumstances, to conclude that the present act has not become devoid of purpose.

41 Second, in its reply to the Commission's observations on its letter referred to in paragraph 15 above, the applicant indeed stated that it did not intend to rely on the interest of the other importers in bringing proceedings in order to claim that the present action had not become devoid of purpose. In any event, in the case giving rise to the judgment in *Wunenburger* v *Commission* (paragraphs 50 to 52), the Court of Justice held that an applicant may retain an interest in claiming the annulment of an act of a Union institution or body to prevent its alleged unlawfulness recurring in the future, but only in so far as the alleged unlawfulness is liable to recur in the future independently of the circumstances of the case which gave rise to the action brought by that applicant.

42 However, the first of the three pleas in law relied upon by the applicant concerns procedural objections which relate to it personally, and the two others concern errors allegedly made by the Commission in applying Article 220(2)(b), Article 236 and Article 239 of the Community Customs Code to the facts of the present case. As to the contested decision, it decides on the application of Article 220(2)(b) and Article 239 of the Community Customs Code to the applicant's particular situation in specific factual circumstances. The unlawfulness alleged by the applicant is not therefore liable to recur in the future independently of the circumstances of the present case.

43 In that regard, the mere fact that the Commission considered that other importers might be in a comparable situation does not invalidate that finding. Indeed, they could be subject to what the Commission decided in the contested decision only pursuant to a national decision taken in accordance with Articles 874, 875 and 908 of the implementing regulation (see paragraph 37 above) and taking account of their particular situation. However, in support of the proceedings that those other importers may bring before the national courts against the decisions that relate to them, they may, where appropriate, challenge the legality of the contested decision by requesting that the Court of Justice gives a preliminary ruling on its validity (see, to that effect, *Hyper* v *Commission*, paragraph 98).

44 The head of claim alleging that, according to the applicant, the other importers do not have available to them the possibility of bringing a direct action against the contested decision before the Courts of the European Union is a matter falling under the conditions for admissibility laid down in Article 263 TFEU which is not the subject of proceedings in the present case. In any event, even if the other operators were not able to demonstrate that they are directly and individually concerned by the contested decision, that would have no bearing on whether the applicant retains a personal interest in its annulment (see paragraph 40 above).

45 It follows that the applicant's first plea must be rejected.

46 Second, the applicant submits that the state of the present action is such as to permit final judgment to be given, when other proceedings liable to challenge the legality of the contested decision are pending.

47 However, such concerns, relating to procedural economy, would require an assessment of appropriateness to be carried out in the present case. In accordance with settled case-law (see paragraph 23 above), where an action has become devoid of purpose, the Court has a duty not to adjudicate and has no discretion so far as concerns the likely consequences of such a finding.

48 The applicant's second argument must therefore be rejected as ineffective.

49 Third, the applicant claims that the contested decision continues to affect its legal situation despite the extinction of the customs debt.

50 The applicant submits that the Spanish customs authorities adopted a decision concerning it on the basis of the contested decision (see paragraph 10 above) and that an appeal is still pending against that decision.

51 Nevertheless, the finding that the post-clearance decisions are invalid means that the applicant is no longer liable for payment of the duties at issue. Thus, the rejection of its application by the Spanish customs authorities has no effect on the applicant's legal situation and the applicant cannot therefore rely on the existence of that decision in support of its claim that it maintains an interest in obtaining a judicial decision from the Court concerning the legality of the contested decision.

52 Moreover, the applicant submits that the contested decision contains assessments prejudicial to it and which could prevent it from being granted the status of authorised economic operator, as provided for in Article 5a of the Community Customs Code, in the event that the applicant wished to apply for that status.

53 The assessment of the applicant's conduct forms the subject-matter of recitals 46 to 58 of the contested decision. The Commission stated, in essence, that the question of the non-preferential origin of the colour television sets imported by the applicant was not complex (recitals 48 to 54), that the applicant had to be regarded as an experienced importer (recital 55), that the applicant cannot support its claim by relying on technical problems that it could have remedied by contacting the national customs authorities (recital 56) and that, in those circumstances, the applicant could not be considered to have acted diligently (recital 57).

54 Contrary to the applicant's view, the relevant passage of the contested decision does not call the applicant's reputation into question. In particular, contrary to the applicant's claims, the Commission did not call into question the applicant's good faith, but merely considered that, in the light of the complexity of the applicable customs legislation, a diligent operator with the applicant's level of experience should have been able to avoid the customs declaration error committed by the applicant. Thus, in the contested decision, the Commission has not made a value judgment about the applicant or its conduct but, rather, has focused on whether the applicant could benefit from the application of the exonerating circumstances provided for in Article 220(2)(b) and Article 239 of the Community Customs Code, as the customs declaration errors made by the applicant could not have reasonably been avoided, or whether those errors should, on the contrary, be attributed to the applicant.

55 As regards the possible difficulties which the applicant claims it may experience if it wished to request being granted the status of authorised economic operator, as provided for in Article 5a of the Community Customs Code, it should be noted from the outset that that argument is purely hypothetical. In any event, in the present case, due effect should be given to the Commission's finding that the annulment of the contested decision would not procure any advantage for the applicant. In those circumstances, the contested decision cannot of itself be sufficient to rule out that the applicant has an 'appropriate' record of compliance with customs requirements, in accordance with Article 5a(2) of the Community Customs Code.

56 Accordingly, the applicant's third argument must also be rejected.

57 In the light of the foregoing, the annulment of the contested decision cannot procure an advantage for the applicant and, consequently, the present action has become devoid of purpose. Accordingly, there is no longer any need to adjudicate on the action, or to adjudicate on the applicant's request for the adoption of measures of organisation of procedure, which has also become devoid of purpose.

Costs

58 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are to be in the discretion of the Court.

59 The General Court considers it justifiable, in the circumstances of this case, to order that each party must bear its own costs.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby orders:

1. There is no longer any need to adjudicate on the action.

2. Each party shall bear its own costs.

Luxembourg, 28 February 2012.

Registrar
E. Coulon

President
J. Azizi