



## Reports of Cases

**Case C-175/12**

**Sandler AG**

**v**

**Hauptzollamt Regensburg**

(Request for a preliminary ruling from the Finanzgericht München)

(Customs union and Common Customs Tariff — Preferential arrangement for the import of products originating in the African, Caribbean and Pacific (ACP) States — Articles 16 and 32 of Protocol 1 to Annex V of the Cotonou Agreement — Import of synthetic fibres from Nigeria into the European Union — Irregularities in the movement certificate EUR.1 established by the competent authorities of the State of export — Stamp not matching the specimen notified to the Commission — Post-clearance and replacement certificates — Community Customs Code — Articles 220 and 236 — Possibility of retrospective application of a preferential customs duty no longer in effect on the date when the request for repayment is made — Conditions)

Summary — Judgment of the Court (Tenth Chamber), 24 October 2013

1. *Own resources of the European Union — Repayment or remission of import or export duties — Post-clearance applicability of a preferential customs duty no longer in effect on the date when the request for repayment is made — Conditions*

*(Council Regulation No 2913/92, Art. 236; Commission Regulation No 2454/93, Art. 889(1), first para., second indent)*

2. *International agreements — ACP-EU Cotonou Agreement — Preferential customs arrangement for products originating in the ACP States — Proof origin through the certificate EUR.1 established by the authorities of the State of export — Post-clearance inspection finding irregularities in the certificate — Stamp not matching the specimen notified to the Commission — Refusal of that certificate by the customs authorities of the State of import and return to the importer in order to allow him to obtain a certificate issued retrospectively — Lawfulness*

*(ACP-EU Cotonou Agreement, Annex V, Protocol No 1, Arts 16(1)(b) and 32)*

3. *International agreements — ACP-EU Cotonou Agreement — Preferential customs arrangement for products originating in the ACP States — Proof origin through the certificate EUR.1 — Certificate issued retrospectively by the authorities of the State of export, not bearing the wording 'issued retrospectively' but the wording 'being issued in replacement' — Refusal by the authorities of the State of import — Not permissible — Doubts as to the authenticity of that document or the originating status of the products concerned — Consequences — Triggering of the procedure for inspection by the authorities of the State of import*

*(ACP-EU Cotonou Agreement, Annex V, Protocol No 1, Arts 16(4) and (5) and 32)*

1. The second indent of the first subparagraph of Article 889(1) of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, as amended most recently by Regulation No 214/2007, must be interpreted as not precluding a request for repayment of customs duties where preferential customs treatment was requested and granted at the time the goods were placed in free circulation and it was only subsequently, in the course of a post-clearance examination after the expiry of the preferential customs arrangement and the re-establishment of the customs duties normally due, that the authorities of the State of import recovered the difference between that and the customs duty applicable to goods originating from a non-member country.

The exception to the application of Article 236 of the Customs Code provided for in the second indent of the first subparagraph of Article 889(1) of Regulation No 2454/93 covers only those cases where goods are placed in free circulation subject to the customs duty normally owing but it transpires subsequently that a reduced rate of duty could have been requested, under, for example, a preferential arrangement.

Consequently, where preferential customs treatment was requested and granted at the time the goods were placed in free circulation and it was only subsequently, in the course of a post-clearance examination after the expiry of the preferential customs arrangement and the re-establishment of the customs duties normally due, that the authorities of the State of import recovered the difference between that and the customs duty applicable to goods originating from a non-member country, the second indent of the first subparagraph of Article 889(1) of Regulation No 2454/93 does not preclude a request for repayment of that difference.

(see paras 36-38, operative part 1)

2. Articles 16(1)(b) and 32 of Protocol No 1 of 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 in behalf of the Community by Decision 2003/159, must be interpreted as meaning that if it transpires in a post-clearance examination that a stamp not matching the specimen notified by the authorities of the State of export was affixed to the EUR.1 certificate, the customs authorities of the State of import may refuse that certificate and return it to the importer in order to allow him to obtain a certificate issued retrospectively pursuant to Article 16(1)(b) of Protocol No 1 rather than triggering the procedure provided for in Article 32 of that protocol.

As regards the action to be taken in such a situation by the authorities of the Member State of import, Protocol No 1 does not contain any provision setting out specifically the respective scopes of the procedure referred to in Article 16 of that protocol and that provided for in Article 32 thereof. The choice between those two procedures must be made taking into account not only the legal rules laid down in Protocol No 1 and the Notes but also all the aspects of the case, including the facts. Moreover, 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. In that regard, both of the procedures provided for in Articles 16 and 32 of that protocol require the involvement of the authorities of the State of export; the only difference consists in whether those authorities are contacted by the authorities of the Member State of import pursuant to Article 32 of Protocol No 1 or by the importer pursuant to Article 16(1) of Protocol No 1. Similarly, the checks provided for by Article 32 of that protocol are carried out by the authorities of the State of export in order to confirm the authenticity of the EUR.1 certificates and the origin of the products.

(see paras 44, 45, 49, 50, 56, operative part 2)

3. Articles 16(4) and (5) and 32 of Protocol No 1 of 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 in behalf of the Community by Decision 2003/159, must be interpreted as precluding the authorities of a State of import from refusing to accept, as a EUR.1 certificate issued retrospectively within the meaning of Article 16(1) of that protocol, a EUR.1 certificate which, whilst complying in all other respects with the requirements of the provisions of that protocol, does not contain, in the 'Remarks' box, the wording specified by Article 16(4) of Protocol No 1, but an indication to the effect that the EUR.1 certificate was issued pursuant to Article 16(1) of that protocol. In cases of doubt as to the authenticity of that document or the originating status of the products concerned, those authorities are required to initiate the control procedure provided for in Article 32 of that protocol.

(see para. 66, operative part 3)