Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

3 July 2014*

(Recovery of a customs debt — Principle of respect for the rights of the defence — Right to be heard — Addressee of the recovery decision not heard by the customs authorities before its adoption, but only during the subsequent objection stage — Infringement of the rights of the defence — Determination of the legal consequences of non-observance of the rights of the defence)

In Joined Cases C-129/13 and C-130/13,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Netherlands), made by decisions of 22 February 2013, received at the Court on 18 March 2013, in the proceedings

Kamino International Logistics BV (C-129/13),

Datema Hellmann Worldwide Logistics BV (C-130/13),

v

Staatssecretaris van Financiën,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, A. Rosas (Rapporteur), D. Šváby and C. Vajda, Judges,

Advocate General: M. Wathelet,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 January 2014,

after considering the observations submitted on behalf of:

— Kamino International Logistics BV and Datema Hellmann Worldwide Logistics BV, by B. Boersma and G. Koevoets, adviseurs,

— the Netherlands Government, by M. Bultermann, B. Koopman and J. Langer, acting as Agents,

— the Belgian Government, by M. Jacobs and J.-C. Halleux, acting as Agents,

— the Greek Government, by D. Kalogiros and K. Paraskevopoulou, acting as Agents,

* Language of the case: Dutch.

— the Spanish Government, by J. García-Valdecasas Dorrego, acting as Agent,

— the European Commission, by F. Wilman and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 February 2014,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 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 L 311, p.17) ('the Customs Code'), and the principle of respect for the rights of the defence under European Union law.

2 The requests were made in proceedings between Kamino International Logistics BV ('Kamino') and Datema Hellmann Worldwide Logistics BV ('Datema') on the one hand, and the Staatssecretaris van Financiën, on the other hand, concerning the application of the principle of respect for the rights of the defence in connection with the Customs Code.

Legal context

European Union law

3 Article 6(3) of the Customs Code is worded as follows:

'Decisions adopted by the customs authorities in writing which either reject requests or are detrimental to the persons to whom they are addressed shall set out the grounds on which they are based. They shall refer to the right of appeal provided for in Article 243.'

4 In Title VII of the Customs Code, on customs debt, Chapter 3 deals with recovery of the amount of that debt. Section 1 of that chapter, entitled 'Entry in the accounts and communication of the amount of duty to the debtor', comprises Articles 217 to 221 of the Customs Code.

5 Article 219(1) of the Customs Code provides:

'The time limits for entry in the accounts laid down in Article 218 may be extended:

(a) for reasons relating to the administrative organisation of the Member States, and in particular where accounts are centralised, or

(b) where special circumstances prevent the customs authorities from complying with the said time limits.

Such extended time limit shall not exceed 14 days.'

6 Pursuant to Article 220(1) of the Customs Code:

'Where the amount of duty resulting from a customs debt has not been entered in the accounts in accordance with Articles 218 and 219 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). That time limit may be extended in accordance with Article 219.'

7 Article 221 of the Customs Code provides:

'1. As soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with appropriate procedures.

…

3. Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. This period shall be suspended from the time an appeal within the meaning of Article 243 is lodged, for the duration of the appeal proceedings.

...'

8 Articles 243 to 245 of the Civil Code form part of Title VIII of that code, entitled 'Appeals'. Article 243 provides:

'1. Any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.

…

The appeal must be lodged in the Member State where the decision has been taken or applied for.

2. The right of appeal may be exercised:

(a) initially, before the customs authorities designated for that purpose by the Member States;

(b) subsequently, before an independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States.'

9 Article 244 of the Customs Code provides:

'The submission of an appeal shall not cause implementation of the disputed decision to be suspended.

The customs authorities shall, however, suspend implementation of such decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

Where the disputed decision has the effect of causing import duties or export duties to be charged, suspension of implementation of that decision shall be subject to the existence or lodging of a security. However, such security need not be required where such a requirement would be likely, owing to the debtor's circumstances, to cause serious economic or social difficulties.'

10 Pursuant to Article 245 of the Customs Code:

'The provisions for the implementation of the appeals procedure shall be determined by the Member States.'

Netherlands law

11 According to Article 4:8(1) of the General Law on administrative law (Algemene wet bestuursrecht; 'the Awb'), before taking a decision likely to affect adversely an interested party who did not request that decision, an administrative body must give the interested party the opportunity to put forward his views if that decision relies on information relating to facts and interests which concern the interested party and the information concerned was not provided by the interested party himself.

12 Article 4:12(1) of the Awb reads as follows:

'An administrative body may decline to apply the provisions of Articles 4:7 and 4:8 when taking a decision that sets out a financial obligation or financial right if:

(a) an objection or administrative appeal may be lodged against that decision, and

(b) the adverse consequences of the decision are likely to be nullified in their entirety as a result of the objection or appeal.'

13 Article 6:22(1) of the Awb states:

'A decision against which an objection or appeal is lodged may, notwithstanding the infringement of a written or unwritten legal rule or of a general legal principle, be upheld by the body which decides on the objection or appeal, if it may be considered that the infringement of the rule or principle did not adversely affect the interested parties.'

14 Article 7:2 of the Awb provides:

'1. Before deciding on the objection, the administrative body shall give the interested party the opportunity to be heard.

2. In all cases, the administrative body shall notify the decision to the party that lodged the objection and to the interested parties who, in the course of preparing the decision, have made their views known.'

15 Administrative decisions may subsequently be challenged before the courts, with the possibility of an appeal and a further appeal on a point of law.

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

16 In each of the actions in the main proceedings, a customs agent, namely Kamino in Case C-129/13 and Datema in Case C-130/13, acting on the instructions of the same undertaking, filed in 2002 and 2003 declarations for the release for free circulation of specified goods, described as 'garden pavilions/party tents and side walls'. Kamino and Datema declared those goods under code 6 601 10 00 of the Combined Nomenclature ('Garden or similar umbrellas') and paid customs duty at the rate of 4.7% cited for that code.

17 Following an inspection by the Netherlands customs authorities, the tax inspector found that the classification was incorrect and that the goods concerned should be classified under code 6 306 99 00 of the Combined Nomenclature ('Tents and camping goods'), to which a higher rate of customs duty of 12.2% applies.

18 As a result, the tax inspector sent, by decisions of 2 and 28 April 2005, demands for payment on the basis of Articles 220(1) and 221(1) of the Customs Code, in order to effect the recovery of the additional customs duties still due from Kamino and Datema, respectively.

19 Kamino and Datema did not have the opportunity to be heard before the demands for payment were issued.

20 They lodged an objection against the relevant demand with the tax inspector, who dismissed it after considering the arguments made.

21 Their appeals against those dismissal decisions were declared unfounded by the Rechtbank te Haarlem. On further appeal, the Gerechtshof te Amsterdam upheld the judgment of the Rechtbank te Haarlem in so far as it required Kamino and Datema to perform their obligations under the demands for payment at issue.

22 Both Kamino and Datema then appealed on a point of law to the Hoge Raad der Nederlanden.

23 In its orders for reference, the Hoge Raad der Nederlanden notes that, on appeal, the Gerechtshof te Amsterdam found, in the light of the judgment of the Court in *Sopropé*, C-349/07, EU:C:2008:746, that the tax inspector had infringed the principle of respect for the rights of the defence in so far as he had not offered the interested parties, before issuing the demands for payment at issue, the opportunity to express their views on the information on which the post-clearance recovery of the customs duties was based.

24 The Hoge Raad der Nederlanden notes, however, that neither the Customs Code nor the applicable national law contains procedural provisions requiring customs authorities to give a customs debtor, before effecting the communication of a customs debt under Article 221(1) of the Customs Code, the opportunity to make known his views as regards the information on which the post-clearance recovery is based.

25 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions, which are formulated in the same terms in Cases C-129/13 and C-130/13, to the Court for a preliminary ruling:

‘1. Does the European law principle of respect for the rights of the defence by the authorities lend itself to direct application by the national courts?

2. If the answer to Question 1 is in the affirmative:

(a) Must the European law principle of respect for the rights of the defence by the authorities be interpreted to mean that the principle is infringed where the addressee of an intended decision was not given a hearing before the authorities adopted a measure which adversely affected it but was given the opportunity to be heard at a subsequent administrative (objection) stage, which precedes access to the national courts?

(b) Are the legal consequences of the infringement by the authorities of the European law principle of respect for the rights of the defence governed by national law?

3. If the answer to Question 2(b) is in the negative, what circumstances may the national courts take into account when determining the legal consequences, and in particular may they take into account whether it is likely that, without the infringement by the authorities of the European law principle of respect for the rights of the defence, the proceedings would have had a different outcome?’

26 By order of the President of the Court of 24 April 2013, Cases C-129/13 and C-130/13 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred

The first question

27 By its first question, the referring court essentially wishes to know whether the principle of respect for the rights of the defence by the authorities and the resulting right of every person to be heard before the adoption of any decision liable adversely to affect his interests, as they apply in the context of the Customs Code, may be relied on directly by individuals before national courts.

28 In that regard, it should be noted that observance of the rights of the defence is a fundamental principle of European Union law, in which the right to be heard in all proceedings is inherent (*Sopropé*, EU:C:2008:746, paragraphs 33 and 36, and *M*, C-277/11, EU:C:2012:744, paragraphs 81 and 82).

29 The right to be heard in all proceedings is now affirmed not only in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, which ensure respect for both the rights of the defence and the right to fair legal process in all judicial proceedings, but also in Article 41 of the Charter, which guarantees the right to good administration. Article 41(2) provides that the right to good administration includes, inter alia, the right of every person to be heard before any individual measure which would affect him adversely is taken (*M*, EU:C:2012:744, paragraphs 82 and 83). However, as the Charter of Fundamental Rights of the European Union entered into force on 1 December 2009, it does not apply as such to the proceedings that led to the demands for payment of 2 and 28 April 2005 (see, by analogy, *Sabou*, C-276/12, EU:C:2013:678, paragraph 25).

30 In accordance with that principle, which applies where the authorities are minded to adopt a measure which will adversely affect an individual (*Sopropé*, EU:C:2008:746, paragraph 36), the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision (*Sopropé*, EU:C:2008:746, paragraph 37).

31 The authorities of the Member States are subject to that obligation when they take decisions which come within the scope of European Union law, even though the legislation applicable does not expressly provide for such a procedural requirement (see *Sopropé*, EU:C:2008:746, paragraph 38; *M*, EU:C:2012:744, paragraph 86; and *G and R*, C-383/13 PPU, EU:C:2013:533, paragraph 32).

32 In the cases in the main proceedings, neither the Customs Code nor the applicable national legislation provides, in the context of proceedings for the post-clearance recovery of customs duties on imports, for a right to be heard by the competent customs authority before the issue of demands for payment. As regards proceedings relating to the post-clearance recovery of customs duties and, consequently, a decision falling within the scope of European Union law, it is moreover not in dispute that the principle of respect for the rights of the defence applies to the Member States.

33 Lastly, in paragraph 44 of the judgment in *Sopropé*, EU:C:2008:746, a case in which the Court was asked about the compatibility of the requirements of the principle of respect for the rights of the defence with the 8 to 15 day period laid down by national law for the exercise by a taxpayer of his right to be heard before the adoption of a recovery decision, the Court stated that, where national legislation sets a time-limit for collecting the observations of the parties concerned, it is for the

national court to ensure, while duly taking into account the specific facts of the case, that that period corresponds with the particular situation of the person or undertaking in question and that it allows them to exercise their rights of defence in accordance with the principle of effectiveness.

34 It is clear from the foregoing considerations not only that national authorities are required to respect the rights of the defence when they take decisions falling within the scope of European Union law, but also that interested parties must be able to rely on them directly before the national courts.

35 Accordingly, the answer to the first question is that the principle of respect for the rights of the defence by the authorities and the resulting right of every person to be heard before the adoption of any decision liable adversely to affect his interests, as they apply in the context of the Customs Code, may be relied on directly by individuals before national courts.

The second question, part (a)

36 By part (a) of its second question, the referring court essentially wishes to ascertain whether the principle of respect for the rights of the defence and, in particular, the right of every person to be heard before the adoption of an adverse individual measure must be interpreted as meaning that the rights of defence of the addressee of a demand for payment adopted in a procedure for the post-clearance recovery of customs duties on imports, under the Customs Code, are infringed if he has not been heard by the authorities before the adoption of the decision, even though he may express his views during a subsequent administrative objection stage.

37 In order to reply to that question, the objective pursued by the principle of respect for the rights of the defence, in particular in respect of the right to be heard, should first be recalled.

38 According to the Court, the purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his observations before the decision is adopted is to enable the competent authority effectively to take into account all relevant information. In order to ensure that the person or undertaking concerned is in fact protected, the purpose of that rule is, inter alia, to enable them to correct an error or submit such information relating to their personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (*Sopropé*, EU:C:2008:746, paragraph 49).

39 In accordance with established case-law, the right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely (see *M*, EU:C:2012:744, paragraph 87 and the case-law cited). As indicated in paragraph 31 above, that right is required even where the applicable legislation does not expressly provide for such a procedural requirement (see *G and R*, EU:C:2013:533, paragraph 32 and the case-law cited).

40 In that regard, it is undisputed that, in the cases in the main proceedings, the addressees of the demands for payment were not heard prior to the adoption of the decisions adversely affecting them.

41 In those circumstances, it should be considered that the adoption of the demands for payment, on the basis of Articles 220(1) and 221(1) of the Customs Code and the administrative procedure applicable under national legislation such as that at issue in the main proceedings, implementing Article 243 of the Customs Code, entails a limitation of the right to be heard of the addressees of those demands for payment.

42 However, settled case-law also holds that fundamental rights, such as respect for the rights of the defence, do not appear as unfettered prerogatives, but may be restricted, provided that the restrictions in fact correspond to objectives of public interest pursued by the measure in question and that they do

not constitute, in the light of the objectives pursued, a disproportionate and intolerable interference which impairs the very substance of the rights guaranteed (*G and R*, EU:C:2013:533, paragraph 33, and *Texdata Software*, C-418/11, EU:C:2013:588, paragraph 84).

43 It must be examined whether, in a situation such as that of the cases in the main proceedings, the limitation of the right to be heard at issue in the main proceedings may be justified in the light of the case-law cited in the preceding paragraph.

44 The Netherlands Government argues that, were the Court to find that the national authorities, in cases of post-clearance recovery, must in principle hear interested parties before the issue of a demand for payment, there are grounds of justification for deviating from that rule. In particular, hearing the interested party before the issue of a demand for payment is incompatible with binding rules on accounting and collection in the Customs Code. Because of the time-limits imposed by the Customs Code, the customs authorities must, once they have been able to determine the customs debt, be able to enter it in the accounts and issue the demand for payment as promptly as possible. The public interest pursued is an interest of administrative simplification and of efficient administration of proceedings. Because of the very large number of demands for payment, a prior hearing of the interested parties would not be efficient.

45 The Netherlands Government also maintains that, in the light of all the characteristics of the national administrative procedure in question, the absence of a hearing before the adoption of a demand for payment does not prejudice the rights of the defence in their very essence, because the addressees of demands for payment have, by virtue of Article 7:2 of the Awb, the opportunity to be heard in a subsequent procedure when an objection is brought against those demands. Given that the same legal effects may be attained by that objection and that the element having strong effects may be postponed, the core of the principle of respect for the rights of the defence, which lies in being able to challenge a given decision without subsequent prejudice, is preserved.

46 In that respect, regard should be had, first, to the time-limits imposed by the Customs Code for the subsequent entry in the accounts of the duties resulting from a customs debt and, secondly, to the characteristics of the national administrative procedure at issue in the main proceedings.

47 With regard to, in the first place, the time-limits imposed by the Customs Code, Article 220(1) of that code requires, where the amount of duty resulting from a customs debt has not been entered in the accounts in accordance with Articles 218 and 219 of the code, or has been entered in the accounts at a level lower than the amount legally owed, that the amount of duty to be recovered or which remains to be recovered must 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. That time-limit may be extended pursuant to Article 219 of the Customs Code for specific reasons, but may not exceed 14 days. Article 221 of the code adds that the amount of duty must be communicated to the debtor as soon as it has been entered in the accounts.

48 According to the Netherlands Government, a mandatory time-limit of two days appears difficult to reconcile with the obligation to hear the interested party before the issue of a demand for payment.

49 In that regard, it must be noted, however, that the Court has previously ruled in *Commission* v *Spain*, C-546/03, EU:C:2006:132 and *Commission* v *Italy*, C-423/08, EU:C:2010:347 on the need for Member States to observe the time-limit for the subsequent entry in the accounts of the amount of duty resulting from customs debt laid down in Article 220(1) of the Customs Code, in the context of infringement proceedings in which, in attempting to justify the non-compliance with such a time-limit which had caused a delay in the making available of the European Community's own resources, the Member States concerned had relied on the obligation to observe the rights of the defence of the persons liable for the customs debt.

50 In paragraphs 33 and 45 respectively of *Commission* v *Spain*, EU:C:2006:132 and *Commission* v *Italy*, EU:C:2010:347, the Court distinguished between, on the one hand, the relations between the Member States and the European Union and, on the other hand, the relations between the person liable for the customs debt and the national customs authorities, in the context of which the rights of the defence must be respected.

51 The Court has held that, while the principle of respect for the rights of the defence applies, inter alia, to a post-clearance recovery procedure, in relations between a debtor and a Member State, it cannot however, as regards the relations between the Member States and the European Union, result in a Member State being entitled to disregard its obligation to enter in the accounts, within the time-limits laid down by European Union legislation, the entitlement of the European Union to its own resources (*Commission* v *Spain*, EU:C:2006:132, paragraph 33, and *Commission* v *Italy*, EU:C:2010:347, paragraph 45).

52 It should also be stated, as the European Commission observed during the hearing, that the time-limit of two days, laid down in Article 220(1) of the Customs Code for the entering in the accounts of the amount of duty resulting from a customs debt, may be extended pursuant to Article 219 of that code. In accordance with Article 219(1)(b), the time-limit for entry in the accounts may, in particular, be extended, although not beyond 14 days, owing to special circumstances preventing the customs authorities from complying with that time-limit.

53 Lastly, in paragraph 46 of *Commission* v *Italy*, EU:C:2010:347, the Court also noted that entry in the accounts and notification of the amount of customs duty owed, and the crediting of the own resources, do not prevent the debtor challenging, under Article 243 et seq. of the Customs Code, the obligation imposed on him by means of all the arguments at his disposal.

54 As regards, in the second place, the question of whether the rights of the defence of the interested parties in the main proceedings were observed, when they could submit their observations only in the objection procedure, it must be noted that the general interest of the European Union, in particular the interest in recovering its own revenue as soon as possible, means that inspections must be capable of being carried out promptly and effectively (*Sopropé*, EU:C:2008:746, paragraph 41).

55 Moreover, it is apparent from the case-law of the Court that, in the context of an appeal lodged against an adverse decision, a subsequent hearing may, under certain conditions, be able to ensure observance of the right to be heard (see, by analogy, *Texdata Software*, EU:C:2013:588, paragraph 85).

56 With regard to decisions of the customs authorities, according to the first subparagraph of Article 243 of the Customs Code, any person has the right to appeal against decisions taken pursuant to customs legislation which concern him directly and individually. However, as the referring court and the Commission point out, the lodging of an appeal pursuant to Article 243 of the Customs Code does not, under the first subparagraph of Article 244 of that code, in principle, cause implementation of the disputed decision to be suspended. As the appeal does not have suspensory effect, it does not preclude the immediate implementation of that decision. The second subparagraph of Article 244 of the Customs Code, however, authorises the customs authorities to suspend, in whole or in part, implementation of the decision where they have good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned. Moreover, the third subparagraph of Article 244 of the Customs Code requires, in that case, the lodging of a security.

57 As is apparent from Article 245 of the Customs Code, the provisions for the implementation of the appeals procedure are to be determined by the Member States.

58 The administrative procedure at issue in the cases in the main proceedings is organised by the Awb. In principle, under Article 4:8 of the Awb, administrative bodies, before taking a decision likely to affect adversely an interested party who did not request that decision, must allow him to put forward his views on the envisaged decision.

59 In accordance with Article 4:12 of the Awb, it is possible for that principle not to apply, however, in the case of decisions of a financial nature if an objection or administrative appeal may be lodged against such a decision and the adverse consequences of the decision are likely to be nullified in their entirety as a result of the objection or appeal.

60 That provision was applied in the cases in the main proceedings.

61 Before being able to lodge a legal challenge, with the possibility of an appeal and a further appeal on a point of law, the interested parties had the opportunity to lodge an objection with the decision-maker and, pursuant to Article 7:2 of the Awb, to be heard in the context of that objection.

62 It appears, moreover, from the observations of the Netherlands Government that that objection takes place on the basis of the relevant legal provisions and facts as they stand when the decision on the objection is taken, so that the adverse consequences of the initial decision may be nullified as a result of the objection proceedings. In the present case, the possible adverse consequences of demands for payment such as those at issue in the main proceedings may be nullified subsequently, in that the payment may be postponed in the case of objection and the decision on demand for payment suspended pending the outcome of the objection (and of the appeal) pursuant to the national rules.

63 However, the Netherlands Government stated during the hearing that suspension of implementation of the decision on demand for payment was not automatic, but had to be requested by the addressee of the demand for payment in his objection. The government also claimed that suspension was generally granted, and that such grant as a matter of principle was provided for by ministerial circular.

64 Thus, the objection procedure does not have the effect of automatically suspending implementation of the adverse decision and rendering it immediately inoperable.

65 It follows from paragraph 85 of *Texdata Software*, EU:C:2013:588 that the latter characteristic may be of some importance when considering possible justifications for restricting the right to be heard before the adoption of an adverse decision.

66 Thus, in that judgment, the Court held that the imposition of a penalty without prior notice or the opportunity to be heard before the penalty is imposed does not appear to impair the core of the fundamental right at issue, since the submission of a reasoned objection against the decision imposing the penalty renders that decision immediately inoperable and triggers an ordinary procedure under which there is a right to be heard (*Texdata Software*, EU:C:2013:588, paragraph 85).

67 However, it cannot be inferred from the case-law cited in the previous paragraph that, in the absence of a hearing before the adoption of a demand for payment, the lodging of an objection or administrative appeal against that demand for payment must necessarily have the effect of automatically suspending implementation of the demand for payment in order to ensure observance of the right to be heard in connection with that objection or appeal.

68 Having regard to the general interest of the European Union in recovering its own revenue as soon as possible, noted in paragraph 54 above, the second subparagraph of Article 244 of the Customs Code provides that the lodging of an appeal against a demand for payment has the effect of suspending implementation of that demand only where there is good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

69 It should be recalled that the Court has consistently held that provisions of European Union law, such as those of the Customs Code, must be interpreted in the light of the fundamental rights which, according to settled case-law, form an integral part of the general principles of law whose observance the Court ensures (see, to that effect, judgment in *Österreichischer Rundfunk and Others*, C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 68, and *Google Spain and Google*, C-131/12, EU:C:2014:317, paragraph 68).

70 In such circumstances, the national provisions implementing the conditions laid down by the second subparagraph of Article 244 of the Customs Code for the grant of suspension of implementation should, in the absence of a prior hearing, ensure that those conditions, namely the existence of good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned, are not applied or interpreted restrictively.

71 In the cases in the main proceedings, suspension of implementation of the demands for payment in case of objection is granted pursuant to ministerial circular. It is for the referring court to ascertain whether that circular is such as to allow the addressees of demands for payment, in the absence of a prior hearing, to obtain suspension of their implementation until their possible amendment, so that the right to obtain such suspension of operation is effective.

72 In any event, the national administrative procedure implementing the second subparagraph of Article 244 of the Customs Code cannot restrict the grant of such suspension where there is good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

73 In those circumstances, the answer to part (a) of the second question is that the principle of respect for the rights of the defence and, in particular, the right of every person to be heard before the adoption of an adverse individual measure must be interpreted as meaning that, where the addressee of a demand for payment adopted in a procedure for the post-clearance recovery of customs duties on imports, under the Customs Code, has not been heard by the authorities before the adoption of the decision, his rights of defence are infringed even though he can express his views during a subsequent administrative objection stage, if national legislation does not allow the addressees of such demands, in the absence of a prior hearing, to obtain suspension of their implementation until their possible amendment. Such is the case, in any event, if the national administrative procedure implementing the second subparagraph of Article 244 of the Customs Code restricts the grant of such suspension where there is good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

The second question, part (b), and the third question

74 By part (b) of its second question, and its third question, which should be examined together, the referring court is essentially asking whether the legal consequences of infringements by the authorities of the principle of respect for the rights of the defence are governed by national law and what circumstances may be taken into account by the national court in the context of its review. It is asking, in particular, whether the national court may take into consideration whether the result of the decision-making process would have been the same, had the right to be heard before it been observed.

75 In that regard, it should be noted at the outset that the Court has previously stated that, where neither the conditions under which observance of the rights of the defence is to be ensured nor the consequences of the infringement of those rights are laid down by European Union law, those conditions and consequences are governed by national law, provided that the rules adopted to that effect are the same as those to which individuals in comparable situations under national law are

subject (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights of defence conferred by the European Union legal order (principle of effectiveness) (see *G and R*, EU:C:2013:533, paragraph 35 and the case-law cited).

76 That conclusion is applicable to customs matters in so far as Article 245 of the Customs Code expressly refers to national law, stipulating that '[t]he provisions for the implementation of the appeals procedure shall be determined by the Member States'.

77 None the less, while the Member States may allow the exercise of the rights of the defence under the same rules as those governing internal situations, those rules must comply with European Union law and, in particular, must not undermine the effectiveness of the Customs Code (*G and R*, EU:C:2013:533, paragraph 36).

78 As indicated by the Commission, the obligation of the national court to ensure that European Union law is fully effective does not have the effect of requiring that a disputed decision, because it has been adopted in infringement of the rights of the defence, in particular the right to be heard, must be annulled in all cases.

79 According to European Union law, an infringement of the rights of the defence, in particular the right to be heard, results in the annulment of the decision taken at the end of the administrative procedure at issue only if, had it not been for such an irregularity, the outcome of the procedure might have been different (see, to that effect, *France* v *Commission*, C-301/87, EU:C:1990:67, paragraph 31; *Germany* v *Commission*, C-288/96, EU:C:2000:537, paragraph 101; *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, C-141/08 P, EU:C:2009:598, paragraph 94; and *G and R*, EU:C:2013:533, paragraph 38).

80 Consequently, an infringement of the principle of respect for the rights of the defence results in the annulment of the decision in question only if, had it not been for that infringement, the outcome of the procedure could have been different.

81 It should be noted that, in the cases in the main proceedings, the interested parties themselves admit that the objection procedure would not have had a different outcome, had they been heard prior to the disputed decision, in so far as they are not contesting the tariff classification applied by the tax authority.

82 In view of the foregoing considerations, the answer to part (b) of the second question and the third question is that the conditions under which observance of the rights of the defence is to be ensured and the consequences of the infringement of those rights are governed by national law, provided that the rules adopted to that effect are the same as those to which individuals in comparable situations under national law are subject (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights of defence conferred by the European Union legal order (principle of effectiveness). The national court, which is under an obligation to ensure that European Union law is fully effective, may, when assessing the consequences of an infringement of the rights of the defence, in particular the right to be heard, consider that such an infringement entails the annulment of the decision taken at the end of the administrative procedure at issue only if, had it not been for such an irregularity, the outcome of the procedure might have been different.

Costs

83 Since these proceedings are, for the parties to the main proceedings, a step in the actions 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 (Fifth Chamber) hereby rules:

1. **The principle of respect for the rights of the defence by the authorities and the resulting right of every person to be heard before the adoption of any decision liable adversely to affect his interests, as they apply in the context 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, may be relied on directly by individuals before national courts.**

2. **The principle of respect for the rights of the defence and, in particular, the right of every person to be heard before the adoption of an adverse individual measure must be interpreted as meaning that, where the addressee of a demand for payment adopted in a procedure for the post-clearance recovery of customs duties on imports, under Regulation No 2913/92, as amended by Regulation No 2700/2000, he has not been heard by the authorities before the adoption of the decision, his rights of defence are infringed even though he can express his views during a subsequent administrative objection stage, if national legislation does not allow the addressees of such demands, in the absence of a prior hearing, to obtain suspension of their implementation until their possible amendment. Such is the case, in any event, if the national administrative procedure implementing the second subparagraph of Article 244 of Regulation No 2913/92, as amended by Regulation No 2700/2000, restricts the grant of such suspension where there is good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.**

3. **The conditions under which observance of the rights of the defence is to be ensured and the consequences of the infringement of those rights are governed by national law, provided that the rules adopted to that effect are the same as those to which individuals in comparable situations under national law are subject (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights of defence conferred by the European Union legal order (principle of effectiveness).**

   The national court, which is under an obligation to ensure that European Union law is fully effective, may, when assessing the consequences of an infringement of the rights of the defence, in particular the right to be heard, consider that such an infringement entails the annulment of the decision taken at the end of the administrative procedure at issue only if, had it not been for such an irregularity, the outcome of the procedure might have been different.

[Signatures]