



Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 15 October 2015¹

Case C-430/14

Valsts ieņēmumu dienests
v
Artūrs Stretinskis
(Request for a preliminary ruling from the
Augstākā tiesa (Supreme Court, Latvia))

(Reference for a preliminary ruling — Customs union — Customs value — Definition of ‘related persons’ for the purposes of determining the customs value — Family or kinship relationship between the buyer, a natural person, and the director of the company which sold the goods)

I – Introduction

1. Can recourse to the transaction value method for the purposes of determining the customs duties on imported goods be called in question on the ground that the director of the companies which sold those goods is the brother of the buyer, where the latter intends to release the goods for free circulation in the territory of the European Union? That is the point at issue in this reference for a preliminary ruling.
2. Between 2008 and 2010, Mr Stretinskis imported into Latvia for release for free circulation in the territory of the European Union second-hand clothing bought from two US companies. The accounting records drawn up by Mr Stretinskis show that the customs value of the goods was calculated in accordance with the transaction value method.
3. This is the basic method for determining the customs value of imported goods in order to apply the Common Customs Tariff. Article 29(1)(d) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code² (‘the Customs Code’) defines the transaction value as ‘the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted, where necessary, in accordance with Articles 32 and 33, provided ... that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes under paragraph 2’.

¹ — Original language: French.

² — OJ 1992 L 302, p. 1.

4. Following an audit, the Valsts ieņēmumu dienests (Latvian tax authority; ‘the tax authority’) found that the records submitted did not reflect the actual customs value of the goods. Its doubts are based on the fact that the director of both US companies is the buyer’s brother. Article 143(1)(h) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92³ provides:

‘[F]or the purposes of Article 29 [of the Customs Code], persons shall be deemed to be related only if:

...

(h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another:

— brother and sister (whether by whole or half blood),

...’

5. By decision of 22 July 2010, the tax authority recalculated the value of the goods under Article 31 of the Customs Code, following which it issued an adjustment notice in respect of import duties and value added tax (VAT) plus late-payment interest and a fine. The tax authority, in particular, based its decision on the fact that the brother of the applicant in the main proceedings had participated in the economic activity by meeting the transport costs, with the result that the declared value of the goods was significantly lower than that of equivalent goods traded between two unrelated persons.

6. Mr Stretinskis first lodged an action before the director general of the tax authority, which was dismissed. Next, he brought an action before the court of first instance for annulment of the tax authority’s decision, which was also dismissed. He then appealed against that decision. The appeal court held that the tax authority’s doubts were not sufficiently substantiated and that the two brothers could not, in circumstances such as those of the main proceedings, be considered to be ‘related persons’ for the purposes of Article 143(1)(h) of Regulation No 2454/93, in particular because the tax authority had not proven that Mr Stretinskis’s brother owned the two companies from which the goods were purchased.

7. It was against that background that the tax authority lodged an appeal before the national court. Faced with a difficulty in interpreting EU law, the Augstākā tiesa (Supreme Court) decided to stay the proceedings and, by order received at the Court Registry on 22 September 2014, to refer the following two questions to the Court for a preliminary ruling under Article 267 TFEU:

‘(1) Must Article 143(1)(h) of Regulation No 2454/93 be interpreted as referring not only to situations in which the parties to the transaction are exclusively natural persons, but also to situations in which there is a family or kinship relationship between a director of one of the parties (a legal person) and the other party to the transaction (a natural person) or a director of that party (in the case of a legal person)?

(2) If the answer is affirmative, must the judicial body hearing the matter carry out an in-depth examination of the circumstances of the case in relation to the actual influence of the natural person concerned over the legal person?’

8. The Latvian Government and the European Commission submitted written observations on these questions.

³ — OJ 1993 L 253, p. 1.

II – Legal analysis

9. By the two questions referred for a preliminary ruling, which must be examined together, the national court essentially seeks to clarify the scope of the notion of ‘related persons’ within the meaning of EU customs legislation.

10. Neither the Customs Code nor Regulation No 2454/93 refers to the laws of the Member States in order to define that notion. Consequently, as the Court has consistently held, the need for uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purposes of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union; that interpretation must take into account the context of the provision and the purpose of the legislation in question.⁴

11. It is also apparent from the Court’s case-law that ‘the objective of the EU legislation on customs valuation is to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values’.⁵

12. As regards the background to Article 143(1)(h) of Regulation No 2454/93, in respect of which the national court seeks interpretation, it should be noted that this article is one of the provisions implementing Article 29 of the Customs Code. As such, it is necessary to take a moment to consider the system put in place by Article 29 for the purposes of determining the customs value of imported goods.

13. Article 29 of the Customs Code enshrines the principle that the customs value of the goods is their transaction value, that is, the price actually paid or payable. The system is based on the basic trust placed in operators that the transaction value reflects the actual economic value of the goods. Priority is thus clearly given to the transaction value, ‘that method of determining the customs value [being] assumed to be the most appropriate and the most frequently used’,⁶ adjusted, where necessary, in accordance with Articles 32 and 33 of the Customs Code.⁷

14. However, the trust placed by the customs authorities in the transaction value only applies in so far as the buyer and seller are not related or, if they are, provided that the transaction value is acceptable for customs purposes.⁸ In this connection, the Customs Code expressly states that ‘the fact that the buyer and the seller are related shall not in itself be sufficient grounds for regarding the transaction value as unacceptable’.⁹

15. The fact that the buyer and seller are related is a necessary, but not sufficient, element giving grounds for assuming that the price of the goods — and, therefore, the transaction value — might have been influenced by the special relationship between the two economic operators. The circumstances surrounding the sale must then be examined in order to determine whether the transaction value of the goods is, notwithstanding the relationship between the buyer and seller,

4 — See, in an extensive body of case-law, judgment in *Christodoulou and Others* (C-116/12, EU:C:2013:825, paragraph 34 and the case-law cited). Guaranteeing the uniform application of the Customs Code is also one of the legislature’s concerns (see the seventh recital in its preamble), particularly because the EU legislation in this field aspires to be ‘complete’ (see the first recital in the preamble to Regulation No 2454/93).

5 — Judgment in *Christodoulou and Others* (C-116/12, EU:C:2013:825, paragraph 36 and the case-law cited).

6 — Judgment in *Christodoulou and Others* (C-116/12, EU:C:2013:825, paragraph 44).

7 — See Article 29(1) of the Customs Code. Also see judgment in *Mitsui & Co. Deutschland* (C-256/07, EU:C:2009:167, paragraph 24 and the case-law cited). The first choice of the transaction value method means that the other methods are intended to be subordinate to it: see Articles 30(1) (‘it is to be determined by proceeding sequentially ...’), and 31(1) of the Customs Code. On this subordinate link, see judgment in *Christodoulou and Others* (C-116/12, EU:C:2013:825, paragraph 43).

8 — Article 29(1)(d) of the Customs Code.

9 — Article 29(2)(a) of the Customs Code.

acceptable.¹⁰ If the customs authorities suspect that there has been an influence on the price and, therefore, if there is a doubt as to whether the transaction value of the goods reflects their actual economic value, those authorities are to communicate their grounds to the declarant and give him an opportunity to respond.¹¹

16. It is thus apparent from the description of the system put in place by Article 29 of the Customs Code that the decisive factor is the identification of the situations in which the transaction value of the goods might have been manipulated in order to reduce the duties and taxes payable upon their entry into the European Union.

17. The wording of Article 29(1)(d) of the Customs Code was, as I have indicated above, made clear by Regulation No 2454/93, which constitutes the applicable customs legislation, and, more specifically, by Article 143(1) of that regulation.

18. Article 143(1) of Regulation No 2454/93 contains a seemingly exhaustive list ('persons shall be deemed to be related *only if*')¹² of eight cases in which persons are deemed to be related. These cases can be grouped into three categories. First, there are situations covering relationships of a 'structural' nature¹³ between the buyer and the seller. Second, there are situations covering relationships of a 'hierarchical' nature, namely relationships of subordination.¹⁴ Third, there is one situation covering family relationships.¹⁵

19. Whilst some of the situations listed in Article 143(1) of Regulation No 2454/93 could certainly apply to legal persons, it is obvious that, as regards the third situation, *prima facie*, family relationships can only be between natural persons.

20. Thus, if a person sells goods directly to his brother, that buyer and seller will be regarded as related persons for the purposes of Article 143(1)(h) of Regulation No 2454/93.

21. However, Article 143(1)(h) of Regulation No 2454/93 prevents us from considering that, in the context of the main proceedings, the goods were traded by related persons. Strictly speaking, Mr Stretinskis's brother does not appear to be the seller. On the contrary, the goods were sold by the two companies of which he is director.

22. Ultimately, according to this narrow construction of Article 143(1)(h) of Regulation No 2454/93, in order to avoid being treated as 'related persons' it is sufficient for the persons bound by a family relationship to perform their transactions through the fiction of a legal person. However, since the reality of international trade more often than not brings together economic operators constituted as legal persons, the dangers inherent in that interpretation are clearly apparent.¹⁶

10 — Article 29(2)(a) of the Customs Code.

11 — *Idem*.

12 — Emphasis added.

13 — These are the cases referred to in Article 143(1)(a) and (d) of Regulation No 2454/93.

14 — These are the cases referred to in Article 143(1)(b), (c), (e), (f) and (g) of Regulation No 2454/93.

15 — These are the cases referred to in Article 143(1)(h) of Regulation No 2454/93.

16 — Furthermore, the term 'persons' used in EU customs legislation covers natural persons as well as legal persons. This is clear from Article 4(1) of the Customs Code. Therefore, the term 'persons', also used in Article 143(1) of Regulation No 2454/93, should have the same meaning. It must also be pointed out, as the Commission does, that upholding such an interpretation of Article 143(1)(h) of Regulation No 2454/93 would be in line with international trade law. This provision derives from Article 15(4) of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (OJ 1994 L 336, p. 103), which is accompanied by interpretative notes. The note relating to Article 15 expressly states that 'the term "persons" includes a legal person, where appropriate', which paves the way for a broad interpretation of 'persons' and, therefore, of 'related persons'.

23. This is why we have to go beyond the wording of Article 143(1)(h) of Regulation No 2454/93 and weigh it against the general objective pursued by EU customs legislation as well as the specific objective pursued by Article 29 of the Customs Code. This is a question of detecting the situations in which there is a potential risk of influence on the price and, therefore, the situations in which there is a risk that the transaction value no longer represents the actual economic value of the goods. From this standpoint of detecting ‘borderline’ situations, the conditions necessary for optimal identification must be satisfied, so that the Customs Code is applied fairly.

24. On pain of partly depriving Article 29(1)(d) of the Customs Code of its practical effect, the view to be taken of the notion of ‘related persons’ is therefore a broad one.

25. Since the fact that two persons are related is not, in any case, sufficient to prevent the transaction value method from being applied, a broad interpretation of the notion of ‘related persons’ is not liable to call into question the priority given by the Customs Code to that method.¹⁷

26. I am therefore inclined to consider that Article 29(1)(d) of the Customs Code, read in the light of Article 143(1) of Regulation No 2454/93, must be interpreted as meaning that, in the circumstances of the main proceedings, the buyer and the seller are related. Thus, legal personality must, so to speak, be stripped back in order to provide a better view of the truth of the relationship between the buyer and the director of the legal person that sold the goods.

27. This finding is obviously facilitated by the fact that, in the present case and according to the national court, Mr Stretinskis’s brother is the director of the two companies from which the goods were purchased.

28. When a legal person has been involved in a transaction and the customs authorities have found that a family relationship exists between the buyer and a member of the legal person, the authorities cannot rely on that relationship to object to the application of the transaction value method. Put another way, the mere fact that a member of the buyer’s family works at the legal person that sold the goods is not sufficient to substantiate the doubts of the customs authorities.

29. Those authorities are required to examine the price indicated by the person making the declaration and, where necessary, reject it,¹⁸ having regard to ‘the circumstances surrounding the sale’,¹⁹ namely (a) the family relationship between the buyer and the member of the legal person, (b) the latter’s position within that legal person, that is to say his ability to exert a genuine influence on the pricing policy implemented by the legal person or on the terms of the transaction in question, and (c) any other relevant circumstances.

30. It will then fall to the buyer to dispel the doubts of the customs authorities by showing that the transaction value continues to be acceptable, as provided for in Article 29(2)(b) of the Customs Code.

31. It follows from all of the foregoing considerations that Article 29(1)(d) of the Customs Code, read in the light of Article 143(1)(h) of Regulation No 2454/93, is to be interpreted as meaning that when a legal person sells goods to a natural person for the purposes of their release for free circulation in the territory of the European Union, and the buyer’s brother is the director of that legal person, the sale is deemed to have taken place between related persons.

¹⁷ — See point 13 of this Opinion.

¹⁸ — Judgment in *Carboni e derivati* (C-263/06, EU:C:2008:128, paragraph 37).

¹⁹ — Article 29(2)(a) of the Customs Code.

32. The customs authorities may disapply the transaction value method only after communicating the grounds which led them to believe that the relationship might have influenced the price for which the goods were sold. Those grounds must, in particular, be based not only on the family or kinship relationship, but also on the specific position occupied by the family member within the legal person in question, which must be such as to have enabled him, in all probability, to exert an influence when the goods were sold as well as an influence over any other relevant circumstances. It will then fall to the buyer to dispel, where necessary, the doubts of the customs authorities by showing that the transaction value continues to be acceptable, as provided for in Article 29(2)(b) of the Customs Code.

III – Conclusion

33. In the light of all of the foregoing considerations, I suggest that the Court give the following reply to the questions referred by the Augstākā tiesa (Supreme Court): Article 29(1)(d) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, read in the light of Article 143(1)(h) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, must be interpreted as meaning that when a legal person sells goods to a natural person for the purposes of their release for free circulation in the territory of the European Union, and the buyer's brother is the director of that legal person, the sale is deemed to have taken place between related persons. The customs authorities may disapply the transaction value method only after communicating the grounds which led them to believe that the relationship might have influenced the price for which the goods were sold. Those grounds must, in particular, be based not only on the family or kinship relationship, but also on the specific position occupied by the family member within the legal person in question, which must be such as to have enabled him, in all probability, to exert an influence when the goods were sold as well as an influence over any other relevant circumstances. It will then fall to the buyer to dispel, where necessary, the doubts of the customs authorities by showing that the transaction value continues to be acceptable, as provided for in Article 29(2)(b) of Regulation No 2913/92.