Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 7 April 2016 [1]

Case C-4/15

Staatssecretaris van Financiën
v
Argos Supply Trading BV
(Request for a preliminary ruling from the

Hoge Raad der Nederlanden (Supreme Court of the Netherlands))

(Reference for a preliminary ruling — Outward processing procedure — Compensating products — Import duties — Total or partial relief — Issue of authorisation — Economic conditions — Community processors — Regulation (EEC) No 2913/92 — Article 148(c) — Abuse of law)

I – Introduction

1. This request for a preliminary ruling concerns the interpretation of Article 148(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, [2] as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 [3] ('the Customs Code').

2. This request is made in the context of a dispute between the Staatssecretaris van Financiën (State Secretary for Finance, Netherlands) and the company Argos Supply Trading BV ('Argos') concerning the rejection by the Netherlands customs authorities of an application by that company for authorisation of outward processing.

3. The question referred for a preliminary ruling invites the Court to clarify the scope of the economic conditions set out in Article 148(c) of the Customs Code for the granting of such authorisation. More specifically, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) seeks to obtain certain clarifications as regards the term 'Community processors' within the meaning of that provision, in so far as those economic conditions refer to there being no serious harm to their essential interests.

1 — Original language: French.
2 — OJ 1992 L 302, p. 19.
3 — OJ 2005 L 117, p. 13.

II – Legal framework

A – *EU law*

1. Regulation (EEC) No 2473/86

4. Council Regulation (EEC) No 2473/86 of 24 July 1986 on outward processing relief arrangements and the standard exchange system [4] laid down the provisions applicable to the outward processing procedure until the entry into force of the Customs Code.

5. The first, fourth and sixth recitals of that regulation stated:

'Whereas, under the international division of labour, many Community undertakings have recourse to outward processing arrangements, that is the export of goods with a view to their subsequent re-import after processing, working or repair; whereas recourse to these arrangements is justified for economic or technical reasons;

...

Whereas it is necessary to set up a system to provide partial or total relief from import duties applicable to compensating products o[r] goods replacing such products in order to avoid the taxation of goods exported from the Community for processing;

...

Whereas the use of outward processing relief arrangements must be refused by customs authorities where the essential interests of Community processors are likely to be seriously affected;

...'

2. The Customs Code

6. Article 84 et seq. of the Customs Code introduce a number of customs procedures with economic impact. These include, in particular, the arrangements for outward processing and processing under customs control.

7. According to Article 85 of the Customs Code, 'the use of any customs procedure with economic impact shall be conditional upon authorisation being issued by the customs authorities'.

a) Provisions relating to the outward processing procedure

8. Article 145 of the Customs Code states:

'1. The outward processing procedure shall ... allow Community goods to be exported temporarily from the customs territory of the Community in order to undergo processing operations and the products resulting from those operations to be released for free circulation with total or partial relief from import duties.

4 — OJ 1986 L 212, p. 1.

2. Temporary exportation of Community goods shall entail the application of export duties, commercial policy measures and other formalities for the exit of Community goods from the customs territory of the Community.

3. The following definitions shall apply:

(a) "temporary export goods" means goods placed under the outward processing procedure;

(b) "processing operations" means the operations referred to in Article 114(2)(c), first, second and third indents;

(c) "compensating products" means all products resulting from processing operations;

...'

9. Article 148(c) of the Customs Code provides that authorisation for outward processing is to 'be granted only where authorisation to use the outward processing procedure is not liable seriously to harm the essential interests of Community processors (economic conditions)'.

10. Article 151(1) of the Customs Code provides that 'the total or partial relief from import duties provided for in Article 145 shall be effected by deducting from the amount of the import duties applicable to the compensating products released for free circulation the amount of the import duties that would be applicable on the same date to the temporary export goods if they were imported into the customs territory of the Community from the country in which they underwent the processing operation or last processing operation'.

11. Article 114(2) of the Customs Code reads as follows:

'The following expressions shall have the following meanings:

...

(c) processing operations:

— the working of goods, including erecting or assembling them or fitting them to other goods;

— the processing of goods;

— the repair of goods, including restoring them and putting them in order;

and

— the use of certain goods defined in accordance with the committee procedure which are not to be found in the compensating products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process.

...'

b) Provisions relating to processing under customs control

12. Article 130 of the Customs Code provides that 'the procedure for processing under customs control shall allow non-Community goods to be used in the customs territory of the Community in operations which alter their nature or state, without their being subject to import duties or commercial policy measures, and shall allow the products resulting from such operations to be released for free circulation at the rate of the import duty appropriate to them. Such products shall be termed processed products'.

13. Article 133 of that code states:

'Authorisation shall be granted only:

...

(e) where the necessary conditions for the procedure to help create or maintain a processing activity in the Community without adversely affecting the essential interests of Community producers of similar goods (economic conditions) are fulfilled. The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with the committee procedure.'

3. The new Customs Code

14. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) [5] ('the new Customs Code') now lays down in Article 211 the authorisation conditions applicable to all customs procedures with economic impact (referred to as 'special procedures'). Under Article 211(4)(b), which is concerned specifically with processing procedures, [6] authorisation may be granted only if, in particular, 'the essential interests of Union producers would not be adversely affected by an authorisation for a processing procedure'. In accordance with Article 288 of the new Customs Code, [7] that provision is to apply as from 1 May 2016.

4. The Implementing Regulation

15. Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 214/2007 of 28 February 2007 (OJ 2007 L 62, p. 6, 'the Implementing Regulation'), contains in Title III thereof, entitled 'Customs Procedures with Economic Impact', a Chapter 1 entitled 'Basic provisions common to more than one of the arrangements'.

16. In that connection, Article 502 of that regulation provides:

'1. Except where the economic conditions are deemed to be fulfilled pursuant to [Chapter 6], the authorisation shall not be granted without examination of the economic conditions by the customs authorities.

...

5 — OJ 2013 L 269, p. 1.

6 — These include outward processing and inward processing (processing under customs control having been merged with the latter procedure as indicated in recital 50 of the new Customs Code).

7 — As corrected by the Corrigendum to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 287, p. 90).

4. For the outward processing arrangements (Chapter 6), the examination shall establish whether:

(a) carrying out processing outside the Community is likely to cause serious disadvantages for Community processors; or

(b) carrying out processing in the Community is economically unviable or is not feasible for technical reasons or due to contractual obligations.'

17. In accordance with Article 503(a) of that regulation, the customs authorities have the option of involving the Commission when examining the economic conditions. Article 504 of that regulation governs, in the following terms, the procedure to be followed where that option is exercised:

'1. Where an examination in accordance with Article 503 is initiated, the case shall be sent to the Commission. It shall contain the results of the examination already undertaken.

2. The Commission shall send an acknowledgement of receipt or notify the customs authorities concerned when acting on its own initiative. It shall determine in consultation with them whether an examination of the economic conditions in the Committee is required.

...

4. The Committee's conclusion shall be taken into account by the customs authorities concerned and by any other customs authorities dealing with similar authorisations or applications.

...'

18. According to Article 551(1) of the Implementing Regulation, 'the arrangements for processing under customs control shall apply for goods the processing of which leads to products which are subject to a lower amount of import duties than that applicable to the import goods'.

19. Article 585(1) of that regulation, which appears in Chapter 6 of Title III, entitled 'Outward processing', provides that 'except where indications to the contrary exist, the essential interests of Community processors shall be deemed not to be seriously harmed'.

B – *International law*

20. The revised version of the International Convention on the Simplification and Harmonisation of Customs Procedures concluded in Kyoto on 18 May 1973 ('the revised Kyoto Convention') entered into force on 3 February 2006. As its preamble states, the purpose of that convention is to simplify and harmonise the customs procedures of the contacting parties.

21. The Convention comprises a General Annex and several Specific Annexes.[8] Each annex is accompanied by guidelines, the texts of which are not binding upon contracting parties.[9]

8 — Article 4(1) of the revised Kyoto Convention.

9 — Article 4(4) of the revised Kyoto Convention. According to Article 1(g) of the Convention, those Guidelines are 'a set of explanations of the provisions of the General Annex, Specific Annexes and Chapters therein ...'.

22. Specific Annex F, entitled 'Processing', sets out, in Chapter 2 thereof, the provisions applicable to outward processing. The Guidelines to Specific Annex F of the revised Kyoto Convention ('the Kyoto Guidelines') state, in Chapter 2 thereof, entitled 'Outward Processing', under the heading 'The economic conditions':

'Authorisation for the outward processing procedure is not granted when the planned operations are likely to seriously damage the vital interests of national processors or producers.

In the case of outward processing, a country's economic interests are difficult to establish, because although this procedure generally favours employment abroad it also reduces the production costs of national manufacturers.

A balance must therefore be found in this respect between a maximum reduction in the total production costs of national operators through sub-contracting abroad as opposed to keeping the processing operations for other national operators at the risk of reducing the national industry's competitiveness.'

23. The European Union acceded to the revised Kyoto Convention by Council Decision 2003/231/EC of 17 March 2003 concerning the accession of the European Community to the Protocol of Amendment to the International Convention on the simplification and harmonisation of customs procedures (Kyoto Convention).[10] The European Union did not however accede to Appendix III to the Protocol of Amendment, which corresponds to the specific annexes of the revised Kyoto Convention.[11]

III – The dispute in the main proceedings, the question referred and the procedure before the Court

24. On 30 June 2008, Argos applied to the Netherlands Customs Inspector pursuant to Article 85 of the Customs Code for an outward processing authorisation. That company wished to place under that procedure petrol of Community origin for export for the purpose of being blended with bioethanol from a non-Member State that had not been released for free circulation in the European Union. Following blending, in a ratio of approximately 15 units of petrol to 85 units of bioethanol, Argos would have obtained ethanol 85 ('E85'), a biofuel suitable for use in certain modified vehicles, called 'flexible fuel' vehicles.

25. According to that application, Argos planned to perform the blending on the high seas. The petrol and bioethanol would have been brought on board a ship in a Netherlands port and loaded into two compartments separated by a partition. Once the ship was outside EU territorial waters, the partition would have been removed, allowing the two constituents to mix together, the process being assisted by the swell. The ship would then have returned to the Netherlands.

26. The E85 so obtained would then have been declared to customs for release for free circulation in the European Union subject to the import duty payable on that product (at the rate of 6.5% *ad valorem*). Application of the outward processing procedure would have entitled Argos to a reduction in that duty by an amount equivalent to that of the customs duty (at the rate of 4.7% *ad valorem*) which would have been applicable for petrol of Community origin on the same date if it had been imported and released for free circulation in the European Union from the place where it was blended.

10 — OJ 2003 L 86, p. 21.

11 — See Article 1(1) and recital 2 of Decision 2003/231.

27. The Customs Inspector referred Argos' application to the European Commission for it to assess whether the economic conditions for the granting of an outward processing authorisation under Article 148(c) of the Customs Code were fulfilled.[12] The Commission then sought the opinion of the Customs Code Committee ('the Committee').[13]

28. The Committee considered that Argos should be refused the benefit of the outward processing procedure on the grounds that those conditions were not met. That conclusion was adopted on the basis of the arguments put forward by the Commission at a meeting of the Committee held on 11 November 2009. The Commission argued that imported E85 was in direct competition with Community bioethanol since bioethanol is the main constituent of E85. Moreover, in 2008 almost half of the European Union's industrial ethanol production capacity was not being used. According to the Commission, the importation of large quantities of bioethanol would therefore have seriously harmed the essential interests of Community bioethanol producers.

29. By decision of 13 April 2010, the Customs Inspector, referring to those arguments, rejected Argos' application.

30. After the Rechtbank te Haarlem (District Court, Haarlem) dismissed its action, Argos appealed to the Gerechtshof te Amsterdam (Regional Court of Appeal, Amsterdam). The Gerechtshof te Amsterdam quashed the lower court's decision, holding in particular that it was necessary to determine whether the processing of Community petrol into E85 under the outward processing procedure adversely affected the interests not of Community producers of bioethanol but of Community producers of E85. However, according to the Gerechtshof te Amsterdam, since the Customs Inspector considered that he had no evidence that the requested procedure would have adversely affected the latter producers' essential interests, he ought to have considered the economic conditions for that procedure to be satisfied in accordance with the presumption provided for in Article 585(1) of the Implementing Regulation. The State Secretary for Finance then brought an appeal in cassation before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

31. That court takes the view that the outcome of the appeal depends on the interpretation of the term 'Community processors' within the meaning of Article 148(c) of the Customs Code and, more specifically, whether, that term includes, in the present case, Community bioethanol producers.

32. In particular, that court entertains doubts as to whether the findings of the Court in relation to the procedure for processing under customs control in the judgment in *Friesland Coberco Dairy Foods*[14] should be extended by analogy to the outward processing procedure. It is clear from that judgment that an examination of whether the economic conditions of the latter procedure are fulfilled must take account of both the economic interests of Community producers of the finished product obtained by processing and those of Community producers of the raw materials used during processing.

33. In those circumstances, the referring court decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'In an examination of the economic conditions governing an outward processing customs procedure, must the term "Community processors" in Article 148(c) of the Customs Code be interpreted as also covering Community producers of basic products or intermediate products identical to those processed, as non-Community goods, in the processing operation?'

12 — As allowed under Article 503(a) of the Implementing Regulation.

13 — In accordance with Article 504 of the Implementing Regulation.

14 — C-11/05, EU:C:2006:312.

34. Written observations have been submitted by Argos, the Greek and Netherlands Governments and the Commission. Argos, the Netherlands Government and the Commission appeared at the hearing of 13 January 2016.

IV – Assessment

A – *Preliminary remarks*

35. The dispute in the main proceedings has its origin in the refusal by the Netherlands customs authorities to grant Argos an authorisation to use the outward processing procedure for an operation involving the export of Community petrol to the high seas to be blended with non-Community bioethanol, the E85 so obtained then being imported. [15]

36. As that company stated at the hearing, the sole purpose of performing that operation on the high seas was to take advantage of a difference in customs duty between bioethanol and E85.

37. Considered an agricultural product, bioethanol is as such subject to import duties currently amounting, according to the Commission, to a charge of approximately 40% *ad valorem*. [16] Once it is blended with petrol, even in tiny amounts, bioethanol ceases to be an agricultural product and becomes a chemical product taxed at a rate of 6.5% *ad valorem*. [17]

38. The tariff on the finished product (E85) is therefore lower than that on the raw materials or semi-finished products (together, 'intermediate products' [18]) of non-Community origin used to obtain that product (bioethanol). Such a situation is commonly called a 'tariff anomaly' since the rates laid down by the common customs tariff normally increase in line with the extent to which the product has been worked. [19]

39. Argos also explained at the hearing that it had originally requested authorisation to blend the above products under the procedure for processing under customs control. [20] Use of that procedure would have allowed it to process non-Community bioethanol within the European Union without that product being subject to import duties, since only the product resulting from the processing, the 'processed product' (E85), would be taxed at the relevant (lower) tariff when released for free circulation. [21] Only when that request was refused did the company go on to request authorisation to blend the products on the high seas under the outward processing procedure.

15 — It is not disputed that such blending is a 'processing operation' within the meaning of Article 114(2)(c) of the Customs Code.

16 — Un-denatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher fell under subheading 2207 10 00 and was subject to customs duties of EUR 19.20 per hectolitre under Commission Regulation (EC) No 1214/2007 of 20 September 2007 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2007 L 286, p. 1). That same tariff remains in force under Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2013 L 290, p. 1).

17 — E85 was considered a chemical product falling under tariff subheading 3824 90 97 by virtue of Regulation 1214/2007. Regulation No 1001/2013 did not alter that tariff.

18 — The concepts of intermediate product and finished product form part of a relative typology relating to the product's use. Thus, for example, bioethanol and petrol are either intermediate or finished products, depending on their intended use. A product is said to be 'intermediate' when it is processed in order to obtain another product into which its value is incorporated.

19 — See, in that regard, judgment in *Wacker Werke* (C-142/96, EU:C:1997:386, paragraphs 14, 15 and 21) and Opinion of Advocate General Poiares Maduro in *Friesland Coberco Dairy Foods* (C-11/05, EU:C:2006:78, point 42).

20 — That point is not, however, clear from the order for reference.

21 — Article 130 of the Customs Code.

40. It seems to me worthwhile pointing out at this stage that Argos did not take the route of blending, outside the European Union, the bioethanol with Community petrol placed under the export procedure.[22] However, use of that procedure does not in principle require prior authorisation.[23] More simply, any operator is free to blend bioethanol with non-Community petrol outside the European Union in order to process it into a product falling under a tariff heading with lower duties. It seems, incidentally, that such blends are now used on a considerable scale.[24]

41. By performing the planned operation under the outward processing procedure, Argos would, however, have benefited not only from the tariffs applicable to E85 instead of those on pure bioethanol, but also from a reduction in import duties on E85 equal to the amount of (notional) duties applicable to petrol exported temporarily (4.7% *ad valorem*[25]). That procedure allows those using it to deduct from the amount of import duties on the goods resulting from the processing operation, referred to as 'compensating products', the amount of import duties that would be applied to the Community temporary export goods if they were reimported in the unaltered state.[26]

42. In this case, the Netherlands Customs Inspector refused to grant Argos the outward processing authorisation requested on the ground of non-fulfilment of the requirement (referred to as 'economic conditions') set out in Article 148(c) of the Customs Code, according to which such authorisation is to be granted only 'where authorisation to use the outward processing procedure is not liable seriously to harm the essential interests of Community processors'.

43. The referring court asks in essence whether the term 'Community processors', within the meaning of that provision, refers only to Community producers of products similar to the compensating product it is planned to produce under the outward processing procedure (the E85) or also to Community producers of products similar to the non-Community intermediate products intended for incorporation into the temporary export goods during their processing (the bioethanol).

44. Before addressing that question, I shall respond to a number of arguments raised by the Greek Government and the Commission since, although those parties have not formally raised the possibility that that question is inadmissible, their arguments are in essence designed to persuade the Court that the question may be hypothetical.

B – *Admissibility*

1. Applicability of the outward processing procedure to operations taking place on the high seas

45. The Greek Government maintains that the outward processing procedure does not apply to operations taking place on the high seas, since the wording of Article 151(1) of the Customs Code requires that the planned operations be carried out in a particular 'country'.

22 — Indeed, the processing of Community goods outside the European Union and the subsequent importation of the compensating product at the applicable tariff do not in themselves require the goods to be placed under the outward processing procedure. They need be placed under that procedure only in order to benefit from the specific customs facility it confers.

23 — See Articles 161 and 162 of the Customs Code.

24 — See *La politique d'aide aux biocarburants, Rapport public thématique, — Évaluation d'une politique publique*, Cour des comptes de la République française (Court of Auditors of the French Republic), January 2012, available at http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/124000047.pdf, pp. 76 and 107 to 110.

25 — Regulation 1214/2007 placed that petrol under tariff subheading 2710 11 45. The same tariff now applies pursuant to Regulation 1001/2013.

26 — Article 151(1) of the Customs Code. Where the outward processing procedure is not applied, because Community goods lose that status when they leave the customs territory of the European Union (Article 4(8) of the Customs Code), the temporary export goods would, when reimported in the form of compensating products, be treated in the same way as non-Community goods.

46. I note in that regard that the wording used in Article 151(1) of that code is not found in the other relevant provisions. Article 145(1) of that code and Article 502(4) of the Implementing Regulation refer respectively to processing operations '[outside] the customs territory of the Community' and 'outside the Community'.

47. In view of that terminological discrepancy, the interpretation most consistent with the procedure's objective must be sought. That objective is, essentially, to prevent Community goods that have been in free circulation and are exported temporarily for processing from being taxed when re-imported in the form of compensating products.[27] The relief thus sought applies regardless of the destination to which those goods are temporarily dispatched.

48. In the light of such an objective, it is of little importance whether the goods in question are shipped to the territory of a non-Member State or to an area where no State is sovereign (like the high seas), provided that the area in question is outside the customs territory of the European Union.

49. I therefore consider that the outward processing procedure may be applied where the operations in question take place on the high seas.[28]

2. The impossibility for the Court to call into question the Customs Inspector's findings

50. The Commission first of all disputes the referring court's premiss, based on the Customs Inspector's statement at the hearing before the Gerechtshof te Amsterdam (Regional Court of Appeal, Amsterdam), that use of the outward processing procedure would not in this case seriously harm the essential interests of Community producers of E85.[29] The Commission refers in that connection to the minutes of the Committee meeting of 11 November 2009,[30] which, it argues, show that the interests of Community producers of both bioethanol and E85 would be seriously harmed if authorisation to use that procedure were granted. The Commission goes on to argue that the question referred for a preliminary ruling would be devoid of purpose if it were accepted that application of that procedure would seriously harm the essential interests of Community producers of E85.

27 — See recital 8 of Council Directive 76/119/EEC of 18 December 1975 on the harmonisation of provisions laid down by law, regulation or administrative action in respect of outward processing (OJ 1976 L 24, p. 58); recital 4 of Regulation 2473/86, and judgments in *Wacker Werke* (C-142/96, EU:C:1997:386, paragraph 21) and *GEFCO* (C-411/01, EU:C:2003:536, paragraph 51). See also the Commission recommendation to the Member States on the tariff treatment applicable to goods re-imported following temporary exportation for processing, working or repair of 29 November 1961 (JO 1962, 3, p. 79).

28 — Most of the Member States on the Committee also supported that conclusion (Customs Code Committee, Section: 'Special Procedures', Minutes/summary record of the 7th meeting (extract) held on 11 November 2009, 18 December 2009, TAXUD/C4/MK/).

29 — While not questioning that premiss, I think it is worth pointing out that that inspector's statement that he had no evidence that using that procedure might seriously harm the interests of Community producers of E85 is not the same as asserting that there is no such risk. The statement simply means that in the absence of explicit evidence to that effect in the Committee's conclusions from the examination of the economic conditions the inspector refrained from finding that there was a risk of those interests being seriously harmed, and consequently the presumption of Article 585(1) of the Implementing Regulation was not rebutted.

30 — See footnote 28 to this Opinion.

51. Without commenting on whether the Committee actually considered that Argos' planned operation was liable to seriously harm the essential interests of Community producers of both bioethanol and E85, [31] I would point out that such a finding is not, in any event, capable of rendering the question inadmissible.

52. On the one hand, if the Commission's arguments amount to calling into question the factual context as described in the order for reference, I would point out that the assessment of the facts of the case is a matter for the national court. The Court is therefore empowered to rule on the interpretation or validity of Community provisions only on the basis of the facts which the national court puts before it. [32]

53. On the other hand, as the Court held in *Friesland Coberco Dairy Foods*, [33] the Committee's conclusion is not binding on the national customs authorities. [34] Consequently, even if the customs inspector departed from the Committee's conclusion, [35] that fact would not invalidate his decision or render the question referred for a preliminary ruling hypothetical.

54. Having thus confirmed that the question is admissible, I shall now examine the substance of it.

C – *Interpretation of the term 'Community processors' within the meaning of Article 148(c) of the Customs Code*

55. According to Argos, in this case the term 'Community processors' refers exclusively to Community producers of E85. The other parties, however, consider that that term also includes Community producers of bioethanol.

56. Those opposing approaches are based in particular on different lessons drawn from the judgment in *Friesland Coberco Dairy Foods*, [36] in which the Court interpreted Article 133(e) of the Customs Code. That provision lays down the economic conditions for the procedure for processing under customs control, requiring in particular that the essential interests of 'Community producers of similar goods' not be adversely affected. In that judgment, the Court concluded that examination of those conditions must take account 'not only of the market for the finished products but also of the economic situation of the market for the raw materials used to produce those products'. [37]

31 — As stated in point 52 of this Opinion, the Court does not have jurisdiction to make such an assessment. I would however venture to observe that the above minutes do not support the Commission's position. They show that the Committee *first of all* examined whether there was any evidence that the economic conditions were not satisfied, in which case the presumption established by Article 585(1) of the Implementing Regulation would be rebutted and those conditions would then have to be examined. The Committee found such evidence in the fact that most Member States had stressed that the essential interests of Community producers of bioethanol and E85 would be seriously harmed if the imported bioethanol, be it in the pure form or blended with petrol to make E85, were in direct competition with domestic bioethanol. Consequently, the Committee went on, *secondly*, to examine the economic conditions. Based on the Commission's arguments that the importation of large quantities of bioethanol would seriously harm Community bioethanol producers, it concluded that those conditions were not satisfied. It therefore appears that, although the Member States indeed mentioned the essential interests of producers of E85 for the purpose of establishing that there was evidence that those conditions were not met and hence of initiating an examination of them, the Commission referred only to the interests of bioethanol producers for the purpose of that examination in the proper sense.

32 — See, to that effect, judgment in *Dumon and Froment* (C-35/95, EU:C:1998:365, paragraphs 25 and 26 and case-law cited).

33 — C-11/05, EU:C:2006:312, paragraph 33.

34 — Article 504(4) of the Implementing Regulation requires the customs authorities only to take the Committee's conclusion into account. The Court nevertheless held in *Friesland Coberco Dairy Foods* (C-11/05, EU:C:2006:312, paragraph 27) that if they disregard it they must give their reasons for their decision in that respect.

35 — For the reasons set out in footnote 31 to this Opinion, in my view this does not seem to be the case.

36 — C-11/05, EU:C:2006:312.

37 — Ibid., paragraph 52.

57. The Greek and Netherlands Governments and the Commission argue in favour of the application by analogy to the outward processing procedure of the Court's finding in that judgment. Argos, on the other hand, pleads that that finding cannot be extended to that procedure given the differences concerning, on the one hand, the texts of the provisions laying down the economic conditions for processing under customs control and outward processing and, on the other hand, the respective objectives of those procedures.

58. I am persuaded by the first of those approaches, for the reasons explained below.

1. Literal interpretation

59. At first sight, certain textual arguments might support a restrictive reading of Article 148(c) of the Customs Code.

60. First of all, in its everyday sense, the term 'processors' implies the performance of activities that change the state of a pre-existing product. The term 'Community processors' would therefore refer, as Argos maintains, only to producers who process Community intermediate products similar to the temporary export goods (petrol) within the European Union in order to obtain a finished product similar to the compensating product (E85). [38]

61. Next, Article 148(c) of the Customs Code refers to the essential interests of 'Community processors', whilst Article 133(e) of that Code refers to those of 'Community producers'. It might legitimately be argued that, by using different terminology in those two provisions, the legislature intended to give them a different meaning.

62. Finally, although the Customs Code does not define the term 'processors', 8 of the 23 language versions of that code use terms with the same root to refer to 'processors' within the meaning of Article 148(c) of that code and the 'processing operations' defined in Article 114(2)(c) of that code. [39] For example, the English version of Article 148(c) of the Customs Code uses the term 'processors', which corresponds to the expression 'processing' defined in Article 114(2)(c) of that code. Similarly, in the Dutch language version of that code those provisions use the terms 'veredelaars' and 'veredelingshandelingen' respectively.

63. Those considerations cannot, however, dispel all ambiguity concerning the interpretation of Article 148(c) of that code.

64. The Bulgarian, Estonian, Croatian, Lithuanian and Finnish language versions of the Customs Code use the same words to refer to 'producers' within the meaning of Article 133(e) and 'processors' within the meaning of Article 148(c) of that code. Those terms, which are translated into French by the word 'producteurs', do not imply any intervention on a pre-existing product.

38 — The Netherlands Government has proposed a variant on that literal interpretation, according to which 'Community processors' would include not only operators who process raw materials or semi-finished products into a compensating product (E85) but also those who process raw materials or semi-finished products in order to obtain other semi-finished products (bioethanol) which are constituents of the compensating product. That interpretation would entail a distinction, which I consider to be unjustified, according to whether the goods processed are raw materials or semi-finished products. Whilst the interests of Community producers of semi-finished products, who 'process' raw materials in order to obtain those products, could be taken into account under Article 148(c) of the Customs Code, the interests of Community producers of raw materials, who do not 'process' anything, would be ignored.

39 — Namely the English, Croatian, Latvian, Hungarian, Maltese, Dutch, Slovak and Swedish language versions.

65. Furthermore, in 11 Language versions,[40] the term referring to 'processors' used in the latter provision has the same root as the expression corresponding to 'processing' in Article 114(2)(c), second indent, of that code.[41] A purely literal interpretation would therefore result in account being taken only of the interests of Community operators engaged in 'processing' activities in the European Union. It would, on the other hand, exclude the interests of those engaging in 'working' or 'repair', which nonetheless also constitute 'processing operations' within the meaning of Article 114(2)(c) of that code.

66. In those circumstances, I consider that the Court must make an analysis of the objectives and context of Article 148(c) of the Customs Code. In particular, in view of the divergences between the language versions of that provision, it must, in accordance with settled case-law, be interpreted 'by reference to the purpose and general scheme of the rules of which it forms a part'.[42] For the reasons explained below, those aspects call for a broad interpretation of that provision.

2. Teleological and contextual interpretation

a) The economic conditions for the customs procedures with economic impact must be interpreted broadly

67. By departing from the rules laid down for the common customs procedures of importation and exportation, the customs procedures with economic impact make it possible to avoid certain consequences of the application of those rules which are considered harmful to Community industry.

68. Thus the procedure for processing under customs control aims to keep processing activities in the European Union where 'the charging of goods in accordance with their tariff description or their state at the time of their importation leads to a higher charge than can be economically justified and one that tends to encourage certain economic activities to move outside the [European Union]'.[43] To that end, that procedure allows non-Community goods to be processed inside the European Union without their being subject to import duties, only the processed products being charged.[44]

69. More specifically, the procedure for processing under customs control is used where the import duties applicable to the processed products are lower than those charged on the intermediate products used in the processing operation.[45] That procedure therefore has its raison d'être in tariff anomalies which, if they could not be remedied, would encourage processing activities to be moved outside the European Union.

40 — Namely the Spanish, Czech, Danish, German, Greek, French, Italian, Polish, Portuguese, Romanian and Slovenian language versions. In the English, Latvian, Hungarian, Maltese and Slovak language versions, although the term for 'processing' has the same root as that corresponding to 'processors', the first of those terms is identical to that referring to 'processing' in Article 114(2)(c) of the Customs Code.

41 — The German language version, for example, uses the term 'Verarbeitern' in Article 148(c) of the Customs Code and the word 'Verarbeitung' in Article 114(2)(c), second indent, of that code.

42 — See, to that effect, judgment in *Elsacom* (C-294/11, EU:C:2012:382, paragraph 27 and case-law cited).

43 — First recital of Council Regulation (EEC) No 2763/83 of 26 September 1983 on arrangements permitting goods to be processed under customs control before being put into free circulation, (OJ 1983 L 272, p. 1), repealed by the Customs Code.

44 — Article 130 of the Customs Code.

45 — Article 551(1) of the Implementing Regulation.

70. Outward processing, for its part, prevents Community goods that are exported for processing from being charged when reimported in the form of compensating products.[46] That procedure makes it easier to move certain processing activities outside the European Union, the Community legislature having considered this to be justified for technical or economic reasons in the context of the international division of labour.[47]

71. However, the advantage which those procedures confer on those making use of them may potentially be harmful to other interests of Community industry.[48] Being aware of such a risk, the legislature sought to strike a balance between the interests in question by making authorisation for the use of those procedures subject to the fulfilment of certain economic conditions. In the case of both processing under customs control and outward processing, the purpose of those conditions is to prevent application of those procedures from harming the 'essential interests' of other Community operators, while seeking to stimulate the industrial activity of those benefiting from them.[49] Those conditions therefore prevent Community industry from being weakened more than strengthened by use of those exceptions to normal customs procedures.

72. It is, in my view, with this in mind that the legislature framed the economic conditions for the customs procedures with economic impact in broad terms, at the same time allowing a significant amount of discretion to the competent customs authorities in assessing compliance and to the Committee responsible for assisting them to that end, should that be necessary.

73. Thus, the terminology used in the provisions relating to those conditions is careful not to circumscribe their examination too tightly. Those provisions identify neither the specific matters that the examination must take into account nor the markets concerned by that examination. In particular, Article 133(e) of the Customs Code refers to the essential interests of Community producers 'of similar goods', without specifying the degree of similarity or substitutability required. Article 148(c) of the Customs Code and Article 502(4) of the Implementing Regulation, for their part, refer to the essential interests of 'Community processors', without specifying the markets concerned by the latter's activities. Similarly, the new Customs Code refers tersely to the interests of 'Union producers'.[50]

74. Moreover, the customs authorities are neither bound to consult the Commission in connection with that examination,[51] nor, if they do decide to consult it and the Commission in turn refers the matter to the Committee, bound by the Committee's conclusions.[52]

75. In the light of those considerations, I consider that those economic conditions must be interpreted and applied flexibly[53] so as to allow the competent customs authorities fully to play their role as guarantors of the balance between the interests involved. In view of the exceptional nature of the customs procedures with economic impact, it also seems to me to be justified to give a broad interpretation to the conditions for the issue of an authorisation to make use of those procedures.

46 — See point 47 of this Opinion.

47 — First and second recitals of Directive 76/119 and first recital 1 of Regulation 2473/86, which followed that directive before being replaced by the Customs Code.

48 — See points 83 to 91 of this Opinion.

49 — In the same way, the Kyoto Guidelines (p. 3) state that 'the application of [the outward processing procedure] may be made subject to the condition that the processing operations envisaged are not detrimental to national interests'.

50 — Article 211(4)(b) of the new Customs Code.

51 — Article 503 of the Implementing Regulation.

52 — Article 504(4) of the Implementing Regulation and judgment in *Friesland Coberco Dairy Foods* (C-11/05, EU:C:2006:312, paragraph 27).

53 — In my opinion, the scope of the discretion enjoyed by the national customs authorities responsible for applying the Customs Code reflects that enjoyed by the Community authorities when they are required to undertake complex economic assessments (see, in particular, as regards the Commission's discretion in matters of State aid, judgment in *Commission* v *Scott*, C-290/07 P, EU:C:2010:480, paragraph 66 and case-law cited).

76. Conversely, it would seem to me to run counter to the spirit and objectives of the outward processing procedure if a rigid interpretation of that procedure's economic conditions were to prevent those authorities from taking account of the essential interests of certain Community operators even though they would establish that allowing that procedure to be used would seriously harm those interests.

77. In other words, pursuit of the objective of that procedure's economic conditions, as described in point 71 of this Opinion, does not in my view allow a distinction to be made according to whether the interests at risk concern the market in finished products, in semi-finished products or in the raw materials involved in the processing operation.

78. Such a reading presents no risk of either excessively limiting the rights of those requesting authorisation or making the procedure for issuing an outward processing authorisation any more cumbersome.

79. I would point out in that regard that under Article 502(1) read in conjunction with Article 585(5) of the Implementing Regulation, the economic conditions for the outward processing procedure are deemed to be satisfied unless there are indications to the contrary, in which case their fulfilment must be verified. The burden of proof that the conditions are fulfilled does not therefore lie with the person requesting authorisation: it is for the customs authorities to establish that they are not satisfied. Moreover, the customs authorities are under no obligation to carry out a systematic examination of those conditions in the light of the various essential interests of the Community industry which might be involved. Such an examination is made only if there are indications of a risk that those interests might be seriously harmed.

80. In my view it is the combination of that mechanism of presumption and the flexibility given to the customs authorities which makes it possible to reconcile, on the one hand, the promotion of the interests of those requesting authorisation and the efficiency of authorisation procedures and, on the other hand, the protection of the interests of Community industry as a whole on the other.

b) The economic conditions for processing under customs control and for outward processing must be interpreted in a consistent manner

81. As points 67 to 71 of this Opinion have shown, the economic conditions for processing under customs control and for outward processing serve the same objective. Taken as a whole, their aim is to prevent the stimulating effect of the application of those procedures for a sector of Community industry from being counterbalanced by serious harm to other sectors of Community industry. Consequently, in my view the interests in question deserve to be taken into account in the same way when the economic conditions for each of those procedures are examined.

82. In the judgment in *Friesland Coberco Dairy Foods*, the Court has already held that the purpose of the economic conditions attached to the procedure for processing under customs control is to ensure that there is no adverse effect on the interests either of Community producers of finished products similar to the processed products or of Community producers of intermediate products similar to those used to manufacture those finished products. [54]

54 — C-11/05, EU:C:2006:312, paragraphs 50 to 52.

83. In support of such a finding, the Court held that, by exempting its beneficiaries from customs duties on intermediate products imported from third countries and used during the processing operation, that procedure might adversely affect the essential interests of any Community producers of products similar to those intermediate products. [55]

84. In my view that reasoning may be applied by analogy to the outward processing procedure.

85. It is true that, by facilitating the processing of Community goods outside the European Union, the outward processing procedure essentially threatens the interests of Community undertakings which process the same goods within the European Union. [56]

86. Moreover, the processing operation may (but does not necessarily) involve the incorporation of non-Community products into the (Community) temporary export goods. Application of the outward processing procedure, unlike processing under customs control, does not however entail any tariff advantage for any non-Community products that may be incorporated during processing, since the relief applies only to the temporary export goods. [57] That customs procedure's ability to harm the interests of Community producers of intermediate products is not therefore immediately obvious.

87. While that consideration might, in my view, explain the choice of a different wording in most language versions of Article 133(e) and Article 148(c) of the Customs Code, the fact remains that the outward processing procedure may in some situations give rise to the same conflict of interest as processing under customs control.

88. Thus, the factual background to the main proceedings has highlighted that where the customs tariffs on the compensating products are lower than those on the non-Community intermediate products involved in an outward processing operation, that operation will have the same outcome as one performed under the procedure for processing under customs control.

89. At the end of either of those operations, import duties are charged only on the finished products, at the rates applicable to them. The non-Community intermediate products involved in the processing operation are not, on the other hand, taxed as such. Thus, non-Community intermediate products are altered in order to obtain a product released for free circulation in the European Union against payment of duties lower than those which would have been charged on imports of those intermediate products in the absence of such alteration.

90. So far as customs duties are concerned, the only difference between the two operations lies then in the additional customs advantage gained by the person using the outward processing procedure, namely relief from the (notional) import duties on the Community temporary export goods.

91. In such a situation, the outward processing operation entails the same conflict of interests — made worse by the effects of such relief — as the Court identified in the judgment in *Friesland Coberco Dairy Foods* in the context of processing under customs control. [58]

55 — Judgment in *Friesland Coberco Dairy Foods* (C-11/05, EU:C:2006:312, paragraph 49). Since the question referred specifically concerned taking account of the interests of producers of raw materials, neither the Court nor the Advocate General had reason also to justify taking account of the interests of producers of finished products similar to the processed products. None of the parties disputed that the economic conditions for processing under customs control applied at the very least to the latter producers. Such a premiss, consensual as it was, was not however required by the wording of Article 133(e) of the Customs Code alone, since the formulation 'Community producers of similar goods' could be understood by reference to the products to be processed (namely the intermediate products). In those circumstances, the Court's acceptance of that premiss therefore seems to me to be consistent with the broad reading of the economic conditions that I am advocating.

56 — Thus, the Kyoto Guidelines (p. 6) state that 'a balance must ... be found ... between a maximum reduction in the total production costs of national operators through sub-contracting abroad as opposed to keeping the processing operations for other national operators at the risk of reducing the national industry's competitiveness'.

57 — In that context, unlike that of processing under customs control, it is not therefore a question of mitigating the effects of tariff anomalies.

58 — C-11/05, EU:C:2006:312, paragraph 49. See point 83 of this Opinion.

92. In the present case, by incorporating petrol into the bioethanol Argos would benefit from customs tariffs far lower than those charged on imports of pure bioethanol. This could certainly have a negative effect on the competitive position of Community bioethanol producers. Such a disadvantage, which would primarily be the result of the importation of E85 as such instead of un-denatured bioethanol, would be even worse if, through the application of the outward processing procedure, the duties charged on the imported E85 were reduced by the amount corresponding to the (notional) duties on the petrol component of that product.

93. Moreover, the consequences of the above tariff anomaly would be all the more marked because bioethanol accounts for around 85% of the compensating product. The Committee's conclusions also show, as Argos confirmed at the hearing, that the E85 covered by the application in question was intended, at least in part, to be mixed with petrol to obtain a conventional fuel with a lower bioethanol content (5%), referred to as E5.[59] That E85 would therefore have been put to the same use (the proportions of the blended components being adjusted) as the pure bioethanol intended for blending with petrol. Those considerations are precisely what led the Committee, and the customs inspector, to find a risk that the essential interests of Community bioethanol producers would be seriously affected.

94. It is established that authorisation to use the procedure for processing under customs control to make the proposed blend on the customs territory of the European Union could have been granted only if there were no risk of serious harm to the interests of Community bioethanol producers. Moreover, Argos did make an unsuccessful application to do just that.[60]

95. In those circumstances, use of the outward processing procedure cannot *a fortiori* be authorised given that it is likely to cause even more harm to the interests of Community bioethanol producers than use of processing under customs control.

96. I therefore consider that the broad interpretation arrived at by the Court in the judgment in *Friesland Coberco Dairy Foods*[61] must also be adopted for the outward processing procedure.

97. The argument set out by the Court, for the sake of completeness, in paragraph 51 of that judgment, according to which the approach the Court takes there is 'the only interpretation capable of taking account of the requirements of the common Community policies, including those of the common agricultural policy,' also seems to me to be relevant in this case. Bioethanol production in the European Union is in fact considered an activity covered by the common agricultural policy, which high customs duties are designed to protect. However, the operation covered by Argos' application would have the effect of evading those duties while additionally benefiting from the relief provided for the outward processing procedure.

98. I would also make clear that my proposed approach is entirely consistent with paragraph 21 of the judgment in *Wacker Werke*, to which Argos refers in its written observations. It is true that in that judgment the Court held that the possibility of tariff anomalies arising and resulting in customs advantages for the economic operator concerned was a 'risk inherent in' the outward processing procedure that must be tolerated.[62] However, such a statement must be read in the light of its context.

59 — See minutes of the meeting of 11 November 2009 (footnote 28 to this Opinion).

60 — See point 39 of this Opinion.

61 — C-11/05, EU:C:2006:312.

62 — Judgment in *Wacker Werke* (C-142/96, EU:C:1997:386).

99. In the case giving rise to that judgment, the tariff anomaly at issue was a difference in customs duties, not between the compensating products and the non-Community goods incorporated during processing, but between the compensating products and the Community temporary export goods. The only question raised by that case was whether it was relevant, for the purpose of determining the customs value of the temporary export goods necessary for calculating the relief under that procedure, that the (notional) import duties chargeable on them were greater than those on the compensating products, as a result of which use of the outward processing procedure would potentially have resulted in total relief from import duties. It was not therefore a matter of assessing whether or not the consequences of tariff anomalies may be taken into account when examining the economic conditions for the outward processing procedure.

100. Seen in that light, paragraph 21 of the judgment in *Wacker Werke* does not in my view allow any relevant conclusions to be drawn for the present case. In any event, the Court was careful to qualify therein its statement that the risk entailed by tariff anomalies must in principle be tolerated. [63]

c) The wording of other instruments of international and EU law

101. As the Greek Government and the Commission maintain, the wording of other relevant instruments of international and EU law supports the interpretation which I am advocating.

102. Thus, the Kyoto Guidelines rule out use of the outward processing procedure where the planned operations are likely to seriously damage the essential interests of 'national *processors or producers*'. [64] Although those guidelines are not binding and the European Union has not in any event acceded to the annex which they interpret, [65] they are nevertheless a relevant contextual element. They do in fact provide a number of clarifications concerning how the parties to the revised Kyoto Convention perceive the objectives of the outward processing procedure and the interests involved.

103. Moreover, Article 211(4)(b) of the new Customs Code, which applies to all processing procedures, [66] now provides that authorisation to use a processing procedure may be granted only if, in particular, 'the essential interests of Union *producers*' [67] would not be adversely affected. With effect from 1 May 2016, the economic conditions for those procedures will therefore aim to protect the essential interests of all Union producers, whether the products they produce are similar to the processed products or to the intermediate products used during processing.

104. There is nothing to suggest that the legislature thereby intended to make a substantial modification to the economic conditions for the outward processing procedure. [68] It seems to me that that change reflects a desire to simplify the rules by combining the economic conditions applicable to different customs procedures in the same provision.

63 — Paragraph 21 of the judgment in *Wacker Werke* (C-142/96, EU:C:1997:386) in fact states that such is the case only provided 'there is nothing to indicate that the prices charged by the two traders respectively were influenced by the business links between them'. The acceptance of such a restriction seems to echo the Opinion of Advocate General Tesauro in *Wacker Werke* (C-142/96, EU:C:1997:217, point 15), which stated more explicitly that 'i.

64 — Kyoto Guidelines, p. 6 (emphasis added).

65 — See points 21 and 23 of this Opinion.

66 — See footnote 6 to this Opinion.

67 — Emphasis added.

68 — Recital 15 of the new Customs Code mentions in that regard only that 'customs procedures should be merged or aligned ...'.

3. Conclusion

105. In the light of all the foregoing, I consider that Article 148(c) of the Customs Code must be interpreted as meaning that the term 'Community processors', within the meaning of that provision, refers not only to Community producers of products similar to the compensating products covered by the outward processing application, but also to Community producers of products similar to the non-Community raw materials or semi-finished products intended for incorporation into the Community temporary export goods in the course of the processing operations referred to in that application.

106. In that connection I would point out that the consequences that use of the outward processing procedure is likely to have for the essential interests of one or other of those categories of producers must in fact be examined only if there are indications that use of that procedure would be likely to seriously harm those interests.[69]

D – *The possible existence of abuse*

107. In the alternative, the Commission claims, in essence, that, should the Court answer the question referred in the negative, use of the outward processing procedure would in this case constitute abuse.

108. Although I propose, in this case, that the question referred for a preliminary ruling be answered in the affirmative and the national court has not referred to the Court the question of whether there may be an abuse of law,[70] I shall briefly consider that issue for the sake of completeness.

109. I would begin by pointing out the subsidiary and exceptional nature of the doctrine of abuse of law, which is a 'safety valve' allowing the granting an advantage deemed to be unjustified to be refused or its restitution to be ordered even though the legal conditions for obtaining such advantage are otherwise formally satisfied.

110. Under Article 4(3) of Regulation (EC, Euratom) No 2988/95[71] and according to settled case-law, the existence of abuse requires the presence of a subjective element and an objective element. The first implies that the essential aim of the practice in question is to obtain an advantage from Community rules by artificially creating the conditions laid down for obtaining it.[72] The second refers to a combination of objective circumstances in which, despite formal observance of the conditions laid down by the Community rules, the purpose of those rules has not been achieved.[73] While the Court may give some guidance in that regard, it is ultimately for the competent national courts to assess whether those elements are present, taking into account all the circumstances of the case.[74]

69 — In the absence of such indications, those conditions are deemed to be satisfied (Article 585(5) of the Implementing Regulation).

70 — According to settled case-law, the Court cannot, at the request of one party to the main proceedings, examine questions which have not been submitted to it by the national court (see, in particular, judgment in *Slob*, C-236/02, EU:C:2004:94, paragraph 29 and case-law cited). However, the Court has already held that that principle does not preclude examination of the possibility of an abuse of EU law, even where this is not formally raised by the national court, for the purpose of providing that court with elements of interpretation which may be of assistance in adjudicating on the case before it (see judgment in *ING. AUER*, C-251/06, EU:C:2007:658, paragraphs 38 and 39; see also, to that effect, judgment in *Agip Petroli*, C-456/04, EU:C:2006:241, paragraphs 18 to 24).

71 — Council Regulation of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1). Article 4(3) of that regulation provides that 'acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the Community law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal'.

72 — See, in particular, judgment in *Halifax and Others* (C-255/02, EU:C:2006:121, paragraph 75).

73 — See, in particular, judgments in *Emsland-Stärke* (C-110/99, EU:C:2000:695, paragraph 52) and *Vonk Dairy Products* (C-279/05, EU:C:2007:18, paragraph 33).

74 — See, in particular, judgments in *Pometon* (C-158/08, EU:C:2009:349, paragraph 26) and *Cimmino and Others* (C-607/13, EU:C:2015:448, paragraph 60).

111. In the light of those principles, the referring court should be given some guidance to assist it in its adjudication.

112. In that regard, I would point out from the outset that, as observed in point 35 of this Opinion, the placing of Community petrol under the outward processing procedure for the operation described in Argos' application does not, as Argos itself admits, serve any technical or economic purpose other than obtaining customs advantages.

113. In those circumstances, first, a subjective element could be found in so far as taking Community petrol to the high seas in order to blend it with bioethanol is artificial in nature and designed only to evade the high customs duties on bioethanol while at the same time enjoying relief from the (notional) duties on the petrol exported temporarily.

114. Secondly, those same considerations lead me to suspect that allowing Argos to use that procedure would not serve the purpose for which it was introduced. As is clear from point 70 of this Opinion, that purpose is to avoid customs charges on Community goods that are exported temporarily in order to be processed, where there are technical or economic reasons for moving the processing operations outside the Community.

115. That said, even supposing that the national court finds use of the outward processing procedure for the operation planned in this case to be abusive, that classification cannot extend to the mere practice of blending outside the European Union 85% bioethanol with 15% petrol and importing the E85 so obtained into the European Union at the tariffs applicable to it instead of those applicable to pure bioethanol. [75]

116. There is, in my view, hardly any doubt that such an operation cannot be classified as abusive as such. No one disputes that the properties and uses of E85 differ from those of bioethanol. [76] Thus, even though the main purpose of such blending is to avoid the tariffs applicable to bioethanol, it also serves a number of independent technical and/or economic purposes. At the very least, the subjective element of abuse of law is lacking.

117. In the light of the foregoing considerations, the doctrine of abuse of law is in my opinion capable of preventing use of the outward processing procedure in a situation such as that in the main proceedings, subject to verification by the referring court. On the other hand, that doctrine cannot in principle prevent importers from taking advantage of a tariff anomaly by processing bioethanol intended for importation into the European Union into E85 in order to have the tariff heading changed. It is ultimately for the legislature to rectify such an anomaly if it considers such action appropriate.

75 — See point 40 of this Opinion.

76 — The addition of petrol overcomes, in particular, the cold starting difficulties associated with the use of pure bioethanol (see Ballerini, D., '*Les biocarburants: État des lieux, perspectives et enjeux du développement*', IFP Publications, éd. Technip, Paris, 2006, p. 112). See, in that regard, judgment in *Roquette Frères* (C-114/99, EU:C:2000:568, paragraph 19), where, in the matter of export refunds on agricultural products, the Court held that 'aThe Court nevertheless held in the judgment in *Eichsfelder Schlachtbetrieb* (C-515/03, EU:C:2005:491, paragraphs 41 and 42) that the existence of substantial processing or working within the meaning of Article 24 of the Customs Code was no barrier to the existence of an abuse of law if the if the elements constituting such abuse were established.

V – Conclusion

118. I propose that the Court answer the question referred by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) as follows:

Article 148(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 214/2007 of 28 February 2007, must be interpreted as meaning that the term 'Community processors', within the meaning of that provision, refers not only to Community producers of products similar to the compensating products covered by the outward processing application, but also to Community producers of products similar to the non-Community raw materials or semi-finished products intended for incorporation into the Community temporary export goods in the course of the processing operations referred to in that application.