Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

12 October 2017* *

(Reference for a preliminary ruling — Customs union — Community Customs Code — Article 29 — Import of vehicles — Determination of the customs value — Article 78 — Revision of the declaration — Article 236(2) — Repayment of import duties — Period of three years — Regulation (EEC) No 2454/93 — Article 145(2) and (3) — Risk of defects — Period of 12 months — Validity)

In Case C-661/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 4 December 2015, received at the Court on 11 December 2015, in the proceedings

X BV

v

Staatssecretaris van Financiën,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, E. Levits, A. Borg Barthet (Rapporteur), M. Berger and F. Biltgen, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 30 November 2016,

after considering the observations submitted on behalf of:

– X BV, by L.E.C. Kanters, E.H. Mennes and L.G.C.A. Pfennings,

– the Netherlands Government, by M. Bulterman and B. Koopman, acting as Agents,

– the European Commission, by L. Grønfeldt, M. Wasmeier and F. Wilman, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 March 2017,

gives the following

* Language of the case: Dutch.

Judgment

1 This request for a preliminary ruling concerns, first, the interpretation of Article 29(1) and (3) and Article 78 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; 'the Customs Code') and of Article 145(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 444/2002 of 11 March 2002 (OJ 2002 L 68, p. 11; 'the implementing regulation') and, secondly, the validity of Article 145(3) of the implementing regulation.

2 The request has been made in proceedings between X BV and the Staatssecretaris van Financiën (State Secretary for Finance, Netherlands) in respect of the latter's rejection of its claims for reimbursement of customs duties on vehicles.

Legal context

3 Article 29 of the Customs Code provides:

'1. The customs value of imported goods shall be the transaction value, that is, 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:

(a) that there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:

– are imposed or required by a law or by the public authorities in the Community,

– restrict the geographical area in which the goods may be resold,

or

– do not substantially affect the value of the goods;

(b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 32;

and

(d) 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.

…

3.

(a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party

to satisfy an obligation of the seller. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instrument and may be made directly or indirectly.

(b) Activities, including marketing activities, undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 32, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value of imported goods.'

4 Under Article 78 of that code:

'1. The customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods.

2. The customs authorities may, after releasing the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes, Those authorities may also examine the goods where it is still possible for them to be produced.

3. Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities shall, in accordance with any provisions laid down, take the measures necessary to regularise the situation, taking account of the new information available to them.'

5 Article 236 of the Customs Code reads as follows:

'1. Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

Import duties or export duties shall be remitted in so far as it is established that when they were entered in the accounts the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.

2. Import duties or export duties shall be repaid or remitted upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor.

That period shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances or *force majeure*.

Where the customs authorities themselves discover within this period that one or other of the situations described in the first and second subparagraphs of paragraph 1 exists, they shall repay or remit on their own initiative.'

6 Article 238(1) and (4) of that code provides:

‘1. Import duties shall be repaid or remitted in so far as it is established that the amount of such duties entered in the accounts relates to goods placed under the customs procedure in question and rejected by the importer because … they are defective or do not comply with the terms of the contract on the basis of which they were imported.

…

4. Import duties shall be repaid or remitted for the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within 12 months from the date on which the amount of those duties was communicated to the debtor.

…’

7 Article 145 of the implementing regulation provides:

‘…

2. After release of the goods for free circulation, an adjustment made by the seller, to the benefit of the buyer, of the price actually paid or payable for the goods may be taken into consideration for the determination of the customs value in accordance with Article 29 of the Code, if it is demonstrated to the satisfaction of the customs authorities that:

(a) the goods were defective at the moment referred to by Article 67 of the Code;

(b) the seller made the adjustment in performance of a warranty obligation provided for in the contract of sale, concluded before release for free circulation of the goods; and

(c) the defective nature of the goods has not already been taken into account in the relevant sales contract.

3. The price actually paid or payable for the goods, adjusted in accordance with paragraph 2, may be taken into account only if that adjustment was made within a period of 12 months following the date of acceptance of the declaration for entry to free circulation of the goods.’

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

8 X purchases passenger cars from a manufacturer established in Japan and releases them for free circulation on the EU customs territory. X sells those cars to dealers, who sell them on to final purchasers.

9 In August 2007 X declared the entry of type A passenger cars (‘type A cars’) and type D passenger cars (‘type D cars’) into free circulation. In March 2008, X declared the entry of type C passenger cars (‘type C cars’) into free circulation. In accordance with Article 29 of the Customs Code, the customs value of those three types of passenger cars was established on the basis of the purchase price paid by X to the manufacturer. Accordingly, X paid the import duties set by the Inspecteur van de Belastingdienst/Douane (Inspector of Taxes/Customs, Netherlands; ‘the Inspecteur’).

10 After the type A cars had been entered into free circulation, the manufacturer requested X to invite all owners of that type of car to make an appointment with a dealer in order to have the steering coupling replaced free of charge. X reimbursed the costs associated with that recall to the dealers. The

manufacturer then reimbursed those costs to X pursuant to a warranty obligation included in the contract of sale concluded with X. That reimbursement took place within a period of 12 months following the date of acceptance of the declaration for entry of those cars to free circulation.

11 After types D and C cars had entered into service, they showed door hinge and rubber seal defects respectively. The dealers concerned repaired those defects in 2010 under the warranty which they give. Once again, X reimbursed the costs of those repairs to the dealers on the basis of the warranty obligation in the sale contract concluded with them. The manufacturer then reimbursed those costs to X pursuant to its warranty obligation under the sale contract concluded with it.

12 By letter of 10 May 2010, pursuant to Article 236 of the Customs Code, X applied for partial repayment of the customs duties which it had paid in respect of the type A, C and D cars. It based that application on the fact that, in retrospect, the customs value of each of the cars concerned had proven to be lower than the original customs value. The difference between the original customs value and the real customs value corresponds, according to X, to the amount reimbursed to it by the manufacturer in respect of each car.

13 The Inspecteur took the view that the application concerned an adjustment made by the manufacturer, in favour of X, of the price actually paid for those cars, within the meaning of Article 145(2) of the implementing regulation. However, he rejected it as regards the type A cars, on the ground that they were not 'defective' within the meaning of that provision. With regard to the type D and C cars, the Inspecteur also rejected the application for repayment of the customs duties on the ground that the period of 12 months from the date of acceptance of the declaration of import within which payment by the vendor to the purchaser must be made, which time limit is laid down in Article 145(3) of the implementing regulation, had expired.

14 The rechtbank Noord-Holland (District Court, Noord-Holland, Netherlands), seised at first instance, dismissed the action brought by X against the rejection decisions adopted by the Inspecteur. It held in particular that X had failed to prove that, at the date of acceptance of the import declaration, the type A cars were 'defective' within the meaning of Article 145(2) of the implementing regulation since, according to that court, it is not sufficient to establish the 'risk or possibility that there is a defect' to apply that provision.

15 Hearing the appeal, the referring court is doubtful, first, as regards the type A cars, as to the exact scope of Article 145(2) of the implementing regulation. It notes, in that regard, that the reimbursement by the manufacturer of the costs of replacing the steering coupling of those cars corresponds to a reduction in the purchase price, after their import, and that that reduction is the result of a finding that those cars had a manufacturing defect which meant that there was a risk that the coupling would become defective in use. In those circumstances, the manufacturer replaced them as a precaution in all vehicles affected.

16 The referring court states, in accordance with the opinion of the Inspecteur and referencing the collected texts concerning customs values, that Article 145(2) of the implementing regulation could cover only cases where it is established a posteriori that, at the date of acceptance of the declaration of entry to free circulation, the goods were actually defective. However, that court also takes the view that that provision could be interpreted more broadly to cover cases where it is established that, at the date of acceptance of that declaration, there was a manufacture-related risk that an imported product may actually become defective.

17 If the Court finds that Article 145(2) of the implementing regulation does not apply in the present case, the referring court then asks whether, having regard to the judgment of 19 March 2009, *Mitsui & Co. Deutschland* (C-256/07, EU:C:2009:167), Article 29(1) and (3) of the Customs Code, read in conjunction with Article 78 of that code, does not require the reduction in the price initially agreed granted by the manufacturer to X to be regarded as a reduction in the customs value of the type A

cars. In fact, if it is found, after the import of a product, that, at the date of that import, there was a risk of the product in question becoming defective before the expiry of the warranty period, so that it is not usable, that would have negative repercussions on its economic value and, accordingly, on its customs value.

18 Secondly, with regard to the type C and D vehicles, the referring court entertains doubts as to the validity of the time limit of 12 months laid down in Article 145(3) of the implementing regulation.

19 In the present case, it notes that the manufacturer reimbursed X for the costs of the repair of the defective parts of cars of those two types pursuant to a contractual warranty obligation, which must be regarded as an adjustment to the price paid for those cars. However, that adjustment could not be taken into account in the determination of the customs value, since it did not occur within the 12-month time limit laid down in that Article 145(3).

20 It points out that the reasons which led to the setting of that time limit are not clear from the recitals of the implementing regulation. In that regard, it refers to the judgment of 19 March 2009, *Mitsui & Co. Deutschland* (C-256/07, EU:C:2009:167), in which the Court held that Article 29(1) and (3) of the Customs Code forms the basis of repayment or remittance of customs duties. Accordingly, the referring court is uncertain whether the 12-month time limit laid down in Article 145(3) of the implementing regulation complies with Article 29 of the Customs Code, read in conjunction with Article 78 of that code, since those provisions do not provide for a time limit on adjustments of the customs value following an adjustment to the price, and with Article 236 of that code, since it provides for a three-year time limit for the filing of applications for repayment of customs duties.

21 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) (a) Should Article 145(2) of the implementing regulation, read in conjunction with Article 29(1) and (3) of the Customs Code, be interpreted as meaning that the rule laid down therein also applies in a case where it is established that, at the time of acceptance of the declaration for specific goods, there was a manufacture-related risk that a component of the goods might become defective in use, and in view of this the seller, pursuant to a contractual warranty towards the buyer, grants the latter a price reduction in the form of reimbursement of the costs incurred by the buyer in modifying the goods in order to exclude that risk?

(b) In the event that the rule laid down in Article 145(2) of the implementing regulation does not apply in the case referred to in (a) above, are the provisions of Article 29(1) and (3) of the Customs Code, read in conjunction with Article 78 of the Customs Code, sufficient, without more, to reduce the declared customs value after the abovementioned price reduction has been granted?

(2) Is the condition laid down in Article 145(3) of the implementing regulation for adjustment of the customs value referred to therein, namely that the adjustment of the price actually paid or payable for the goods must have been made within a period of twelve months following the date of acceptance of the declaration for entry to free circulation, contrary to the provisions of Articles 78 and 236 of the Customs Code, read in conjunction with Article 29 of [that code]?’

Consideration of the questions referred

The first question

22 By its first question, (a), the referring court asks, in essence, whether Article 145(2) of the implementing regulation, read in conjunction with Article 29(1) and (3) of the Customs Code, must be interpreted as meaning that it covers a situation such as that at issue in the main proceedings, where it is established that, at the time of acceptance of the declaration for entry to free circulation for certain goods, there was a manufacture-related risk that the goods might become defective in use, and where the seller, pursuant to a contractual warranty towards the buyer, grants the latter a price reduction in the form of reimbursement of the costs incurred by the buyer in modifying the goods in order to exclude that risk.

23 The referring court is doubtful, in particular, as to the scope of the 'defective' nature which the imported goods must have, within the meaning of Article 145(2) of the implementing regulation, in order for the adjustment by the seller in favour of the buyer of the price actually paid for them may be taken into account in determining the customs value under Article 29 of the Customs Code.

24 From the outset, it must be specified that it is apparent from the order for reference that the type A cars, because of their manufacture, carried a risk of failure of their steering coupling.

25 It must be noted that there is no definition in the implementing regulation of the concept of 'defective goods' and that that regulation makes no reference to the law of the Member States in order to determine the meaning and scope of that concept.

26 In those circumstances, in accordance with the settled case-law of the Court, it is appropriate, in order to ensure the uniform application of EU law and comply with the principle of equality, to give that notion an autonomous and uniform interpretation throughout the European Union (see, to that effect, judgments of 12 December 2013, *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 34 and the case-law cited, and of 3 September 2014, *Deckmyn and Vrijheidsfonds*, C-201/13, EU:C:2014:2132, paragraph 14).

27 Accordingly, the determination of the meaning and scope of the concept of 'defective goods' must be determined, in accordance with the established case-law of the Court, by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it forms part (judgments of 22 December 2008, *Wallentin-Hermann*, C-549/07, EU:C:2008:771, paragraph 17, and of 22 November 2012, *Probst*, C-119/12, EU:C:2012:748, paragraph 20).

28 According to its usual meaning in everyday language, the concept of 'defective goods' covers, as the European Commission has observed, any goods which do not possess the qualities which may legitimately be expected having regard to their nature and all the relevant circumstances. Thus, the term 'defective' covers goods which lack required qualities or which are imperfect.

29 That definition corresponds, moreover, to that of defective products laid down in Article 6(1) of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29). Under that provision, a product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including the presentation of the product, the use to which it could reasonably be expected that the product would be put and the time when the product was put into circulation.

30 In the particular circumstances of the case in the main proceedings, having regard to the nature of the imported goods, namely cars, and the component concerned, namely the steering coupling, it is legitimate and reasonable to require a high degree of safety in the light of the serious risks to the physical integrity and life of drivers, passengers and third parties connected with their use, as the Advocate General noted in point 32 of his Opinion. That safety requirement is not met where there is a manufacture-related risk of failure of the steering coupling which means that those goods do not provide the safety which a person is entitled to expect and that they must accordingly be regarded as being defective.

31 In those circumstances, the risk of manufacture-related defects in goods, such as cars, means that those goods are 'defective', within the meaning of Article 145(2) of the implementing regulation, from manufacture and, therefore, a fortiori, at the time of their import into EU territory.

32 That interpretation of 'defective nature', within the meaning of Article 145(2) of the implementing regulation, is corroborated by the objectives and context of which that provision forms part.

33 With regard to the objective pursued, it follows from the settled case-law that the EU legislation on customs valuation seeks to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values (judgment of 12 December 2013, *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 36 and the case-law cited).

34 As regards the context of which Article 145(2) of the implementing regulation forms part, it must be recalled that that provision sets out the specific details of the general rule established in Article 29 of the Customs Code (judgment of 19 March 2009, *Mitsui & Co. Deutschland*, C-256/07, EU:C:2009:167, paragraph 27).

35 By virtue of Article 29 thereof, the customs value of imported goods is the transaction value, that is to say, the price actually paid or payable for the goods when they are sold for export to the customs territory of the European Union, adjusted, where necessary, in accordance with Articles 32 and 33 of that code.

36 In that regard the Court has held that, although, as a general rule, the price actually paid or payable for the goods forms the basis for calculating the customs value, that price is a factor that potentially must be adjusted where necessary in order to avoid the setting of an arbitrary or fictitious customs value (see, to that effect, judgment of 12 December 2013, *Christodoulou and Others*, C-116/12, EU:C:2013:825, paragraph 39 and the case-law cited).

37 The customs value must reflect the real economic value of imported goods and take into account all the elements of those goods that have economic value (judgment of 15 July 2010, *Gaston Schul*, C-354/09, EU:C:2010:439, paragraph 29 and the case-law cited).

38 The presence of a manufacture-related risk that a product may fail in use reduces, as such and independently of the risk occurring, the value of that product, as the Advocate General stated in point 34 of his Opinion.

39 Commentary No 2 of the Compendium of Customs Valuation texts, to which the referring court refers, is not such as to call into question the conclusion in paragraph 31 of this judgment, since, apart from the fact that it is not binding in law, the situation to which that commentary relates is different from that at issue in the main proceedings, where there is a manufacture-related risk that all the vehicles will effectively become defective in use, requiring replacement of the steering coupling in all the vehicles affected.

40 Having regard to the foregoing considerations, the answer to the first question, (a), is that Article 145(2) of the implementing regulation, read in conjunction with Article 29(1) and (3) of the Customs Code, must be interpreted as meaning that it applies in a case, such as that at issue in the main proceedings, where it is established that, at the time of acceptance of the declaration for entry to free circulation for specific goods, there was a manufacture-related risk that the goods might become defective in use, and in view of this the seller, pursuant to a contractual warranty towards the buyer, grants the latter a price reduction in the form of reimbursement of the costs incurred by the buyer in modifying the goods in order to exclude that risk.

41 It follows that there is no need to answer the first question, (b), referred by the referring court in the alternative.

The second question

42 By its second question, the referring court asks, in essence, whether Article 145(3) of the implementing regulation, in so far as it provides for a time limit of 12 months from acceptance of the declaration for entry to free circulation of the goods, within which an adjustment of the price actually paid or payable must take place, is invalid in the light of Article 29 of the Customs Code, read in conjunction with Articles 78 and 236 of that code.

43 The referring court is doubtful as to the conformity of Article 145(3) of the implementing regulation with the Customs Code in so far as, when the adjustment of the customs value of the imported goods is the result of a price adjustment in application of Article 145(2) of that regulation, it would have the effect of reducing the time limit of three years laid down in Article 236(2) of the Customs Code, within which an application for repayment of customs duties may be made.

44 It must be noted that the implementing regulation was adopted on the basis of Article 247 of the Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17), which takes in a provision essentially equivalent to Article 249 of that code. That article constitutes a sufficient basis for the Commission to adopt the implementation measures in respect of that code (see, to that effect, judgments of 11 November 1999, *Söhl & Söhlke*, C-48/98, EU:C:1999:548, paragraph 35, and of 8 March 2007, *Thomson and Vestel France*, C-447/05 and C-448/05, EU:C:2007:151, paragraph 23).

45 It follows from the case-law of the Court that the Commission is authorised to adopt all the measures which are necessary or useful for the implementation of the basic legislation, provided that they are not contrary to such legislation or to the implementing legislation adopted by the Council of the European Union (see, inter alia, judgment of 11 November 1999, *Söhl & Söhlke*, C-48/98, EU:C:1999:548, paragraph 36 and the case-law cited). In that regard, the Commission has a measure of discretion (see, to that effect, judgments of 8 March 2007, *Thomson and Vestel France*, C-447/05 and C-448/05, EU:C:2007:151, paragraph 25, and of 13 December 2007, *Asda Stores*, C-372/06, EU:C:2007:787, paragraph 45).

46 In the present case, concerning whether the time limit of 12 months laid down in Article 145(3) of the implementing regulation is necessary or useful, it must be noted that the arguments put forward by the Commission in that regard cannot, however, be accepted.

47 First, the Commission is of the opinion that the time limit is useful, and even necessary, to the implementation of Article 29 of the Customs Code since it enables the combating of the risk of error or fraud in the application of Article 145(2) of the implementing regulation, having regard to the difficulty of determining the time at which the defect was established.

48 In that regard, it must be noted that the first of the relevant conditions stated in that provision requires that it be shown to the satisfaction of the customs authorities that the goods were defective at the time of the acceptance of the declaration for their entry to free circulation.

49 In those circumstances, as the Advocate General noted in point 45 of his Opinion, it is no longer necessary, or even useful to make an adjustment in the customs value subject to the additional requirement that the price adjustment must be made within 12 months of the date of acceptance of the declaration for entry to free circulation.

50 Secondly, the Commission refers to the need to ensure legal certainty and the uniform application of Article 145(2) of the implementing regulation.

51 It is appropriate to note in that regard that, by virtue of Article 236(2) of the Customs Code, any application for repayment or remission of import duties must be submitted to the appropriate customs office within three years from the date on which the amount of the duties was communicated to the debtor. In other words, if a debtor is entitled to a repayment, following an adjustment to the customs value of goods which he has imported, pursuant to Article 145(2) of the implementing regulation, that repayment of the customs duties will not be made unless the application was submitted within the time limit of three years laid down in Article 236(2) of the Customs Code, on the same basis as any other application made under that Article 236.

52 Accordingly, it is difficult to conceive of any reason, where there is an application for repayment on the basis of the defective nature of goods within the meaning of Article 145(2) of the implementing regulation, for which that time limit would not ensure an adequate degree of legal certainty and uniformity for the Member States' customs authorities, as for applications for repayment based on another ground and made by virtue of Article 236 of the Customs Code.

53 Thirdly, nor can the argument based on alignment of the time limit laid down in Article 145(3) of the implementing regulation and that of the time limit of the same duration laid down in Article 238(4) of the Customs Code succeed.

54 Article 238(4) of the Customs Code covers a situation distinct from that covered by Article 145(3) of the implementing regulation, since it concerns the repayment or remission of import duties where the importer rejects the goods as defective or otherwise not in accordance with the contract. In contrast, the buyer referred to in Article 145(3) of the implementing regulation is in theory unaware of a defect affecting the goods at the time of their import.

55 It follows therefrom that the time limit of 12 months laid down in Article 145(3) of the implementing regulation is not necessary, or even useful, to the implementation of the Customs Code.

56 In any event, with regard to the conformity of Article 145(3) of the implementing regulation with the Customs Code, it must be noted that that provision runs counter to Article 29 of that code, read in conjunction with Article 78 and Article 236(2) thereof.

57 It must be recalled, as is apparent from paragraphs 34 and 35 of this judgment, that Article 29 of the Customs Code establishes the general rule that the customs value of imported goods must correspond to their transaction value, namely the price actually paid or payable for the goods, and that that general rule was made more specific in Article 145(2) of the implementing regulation.

58 It is clear from the judgment of 19 March 2009, *Mitsui & Co. Deutschland* (C-256/07, EU:C:2009:167, paragraph 36) that Article 145(2) and (3) of the implementing regulation, as introduced by Regulation No 444/2002, does not apply to situations arising prior to the entry into force of that latter regulation on the ground that that provision would undermine the legitimate expectations of the economic operators concerned. The Court has held that that was the case since the competent customs

authorities were applying the general time limit of three years laid down in Article 236(2) of the Customs Code in the event of adjustment, after import, of the transaction value of goods due to the fact that they were defective, in order to determine their customs value.

59 Article 145(3) of the implementing regulation provides that the adjustment of the price in accordance with paragraph (2) of that article can be taken into account, in determining the customs value, only if it took place within 12 months of the date of acceptance of the declaration for entry to free circulation. In consequence, if such a price adjustment takes place after the 12-month time limit laid down in Article 145(3), the customs value of the imported goods will not correspond to their transaction value within the meaning of Article 29 of the Customs Code and it can no longer be adjusted.

60 It follows therefrom, as the Advocate General noted in point 60 of his Opinion, that Article 145(3) of the implementing regulation leads, in breach of Article 29 of the Customs Code, to a customs valuation which does not correspond to the transaction value of the goods as adjusted after import.

61 It must also be recalled that Article 78 of the Customs Code allows the customs authorities to revise the customs declaration on a request from the declarant submitted after release of the goods and, if appropriate, to repay the excess received where the import duties paid by the declarant exceed what was legally due at the time of their payment. That reimbursement may be made in accordance with Article 236 of the Customs Code if the conditions laid down by that provision are fulfilled, in particular compliance with the time limit, which is in principle three years, laid down for submissions of the application for reimbursement (see, to that effect, judgment of 20 October 2005, *Overland Footwear*, C-468/03, EU:C:2005:624, paragraphs 53 and 54).

62 The Court has held, in that regard, that Article 78 of the Customs Code applies to amendments capable of being made to the information taken into account in determining the customs value and, hence, import duties. In consequence, an adjustment to the customs value resulting from the 'defective' nature of the imported goods, within the meaning of Article 145(2) of the implementing regulation, may be made by way of a revision of the customs declaration under Article 78 of the Customs Code.

63 It follows therefrom, as the Advocate General noted in point 62 of his Opinion, that, on the basis of Article 29 of the Customs Code, read in conjunction with Article 78 and Article 236(2) thereof, the debtor can obtain repayment of import duties, proportionate to the reduction in the customs value resulting from the application of Article 145(2) of the implementing regulation, until expiry of a time limit of three years from the communication of those duties to the debtor.

64 Article 145(3) of that regulation reduces that possibility to a time limit of 12 months since the adjustment to the customs value resulting from the application of Article 145(2) can be taken into account only if the adjustment was made within that 12-month time limit.

65 Consequently, Article 145(3) of the implementing regulation runs counter to Article 29 of the Customs Code, read in conjunction with Article 78 and Article 236(2) of that code.

66 Having regard to the foregoing considerations, the answer to the second question is that Article 145(3) of the implementing regulation, in so far as it provides for a time limit of 12 months from acceptance of the declaration for entry to free circulation of the goods, within which an adjustment of the price actually paid or payable must be made, is invalid.

Costs

67 Since these proceedings are, for the parties to the main proceedings, a step in the action 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. **Article 145(2) of 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, as amended by Commission Regulation (EC) No 444/2002 of 11 March 2002, read in conjunction with Article 29(1) and (3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, must be interpreted as meaning that it applies in a case, such as that at issue in the main proceedings, where it is established that, at the time of acceptance of the declaration for entry to free circulation for specific goods, there was a manufacture-related risk that the goods might become defective in use, and in view of this the seller, pursuant to a contractual warranty towards the buyer, grants the latter a price reduction in the form of reimbursement of the costs incurred by the buyer in modifying the goods in order to exclude that risk.**

2. **Article 145(3) of Regulation No 2454/93, as amended by Regulation No 444/2002, in so far as it provides for a time limit of 12 months from acceptance of the declaration for entry to free circulation of the goods, within which an adjustment of the price actually paid or payable must be made, is invalid.**

[Signatures]