



## Reports of Cases

### Case C-661/15

X BV

v

Staatssecretaris van Financiën

(Request for a preliminary ruling from the Hoge Raad der Nederlanden)

(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)

Summary — Judgment of the Court (Fifth Chamber), 12 October 2017

1. *Customs union — Common Customs Tariff — Value for customs purposes — Transaction value — Determination — Goods affected by defects found after their entry to free circulation — Taking account of subsequent reimbursements made by the seller under a contractual warranty obligation — Notion of defective goods — Interpretation — Taking account of the context and usual meaning of the terms*

*(Council Regulation No 2913/92, Art. 29(1) and (3); Commission Regulation No 2454/93, as amended by Regulation No 444/2002, Art. 145(2))*

2. *Customs union — Common Customs Tariff — Value for customs purposes — Transaction value — Determination — Goods affected by defects found after their entry to free circulation — Taking account of subsequent reimbursements made by the seller under a contractual warranty obligation — Notion of defective goods — Manufacture-related risk that the goods might become defective in use — Included*

*(Council Regulation No 2913/92, Art. 29(1) and (3); Commission Regulation No 2454/93, as amended by Regulation No 444/2002, Art. 145(2))*

3. *Customs union — Common Customs Tariff — Value for customs purposes — Transaction value — Determination — Goods affected by defects found after their entry to free circulation — Taking account of adjustments to the price of the goods — Condition — Adjustment made within 12 months of the date of acceptance of the declaration for entry to free circulation of the goods — Incompatible with the Community Customs Code — Invalidity of Article 145(3) of Regulation No 2454/93*

*(Council Regulation No 2913/92, Arts 29, 78 and 236(2); Commission Regulation No 2454/93, as amended by Regulation No 444/2002, Art. 145(3))*

1. See the text of the decision.

(see paras 25-27)

2. 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.

(see para. 40, operative part 1)

3. 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.

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.

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.

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.

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).

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.

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.

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.

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.

(see paras 57-59, 61-66, operative part 2)