

JUDGMENT OF THE COURT (Second Chamber)

20 October 2005<sup>\*</sup>

In Case C-247/04,

REFERENCE for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 28 May 2004, received at the Court on 11 June 2004, in the proceedings

**Transport Maatschappij Traffic BV**

v

**Staatssecretaris van Economische Zaken,**

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk (Rapporteur), C. Gulmann, R. Schintgen and J. Klučka, Judges,

<sup>\*</sup> Language of the case: Dutch.

Advocate General: C. Stix-Hackl,  
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 April 2005,

after considering the observations submitted on behalf of:

- Transport Maatschappij Traffic BV, by A. Wolkers and E.H. Mennes, advocaten,
- the Netherlands Government, by H.G. Sevenster and C.M. Wissels, acting as Agents,
- the Commission of the European Communities, by X. Lewis, acting as Agent, assisted by F. Tuytschaever, advocaat,

after hearing the Opinion of the Advocate General at the sitting on 10 May 2005,

gives the following

### **Judgment**

- 1 The reference for a preliminary ruling concerns the interpretation of Article 236(1), first subparagraph, of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; 'the CCC').

- 2 The reference was made in the course of proceedings between Transport Maatschappij Traffic BV ('Traffic') and the Staatssecretaris van Economische Zaken (Minister for Economic Affairs, 'the Minister') concerning the latter's refusal to grant the request for repayment of antidumping duties paid by Traffic.

### **Legal context**

- 3 Article 4 of the CCC contains the following definitions:

' ...

- (9) "Customs debt" means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply to specific goods under the Community provisions in force;

...

- (23) "Provisions in force" means Community or national provisions.

...'

- 4 Article 20(1) of the CCC, which is contained in Title II of the Code ('Factors on the basis of which import duties or export duties and the other measures prescribed in respect of trade in goods are applied'), provides:

'1. Duties legally owed where a customs debt is incurred shall be based on the Customs Tariff of the European Communities.'

- 5 Chapter 2 of Title VII of the CCC contains provisions on how a customs debt is incurred. These provisions describe in particular the events giving rise to such a debt in addition to the time and place at which it is incurred.
- 6 For the purposes of Chapter 3 of the same title, relating to recovery of the amount of the customs debt, Article 221 of the CCC provides:

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

...

3. Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. ...'

7 Chapter 4 of Title VII of the CCC includes provisions dealing with extinction of customs debt.

8 Article 236(1), first subparagraph, of the Code, which is contained in Chapter 5 of Title VII, entitled 'Repayment and remission of duty', provides:

'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).'

### **The main proceedings and the question referred for a preliminary ruling**

9 By payment demand of 18 December 1997, the Roosendaal district customs inspector (hereinafter 'the Inspector') notified Traffic that it owed NLG 62 045.20 (EUR 28 154.88) in respect of antidumping duties.

10 Having paid that amount, Traffic, on 19 February 1998, filed an objection to the payment demand.

11 On 18 May 1998, Traffic, firstly, withdrew the objection and, secondly, requested from the Inspector, on the basis of Article 236 of the CCC, repayment of the antidumping duties paid on the ground that they were not legally owed. Traffic claimed in particular that the Inspector was not authorised to impose such duties. Following the refusal of that request, Traffic lodged an objection with the Minister

for Economic Affairs which was rejected by decision of 9 October 2000. Traffic then appealed against that decision before the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry, 'the College').

- 12 On 13 February 2002, the College set aside the decision of the Minister for Economic Affairs on the ground that he had not ruled, under Article 236 of the CCC, on whether, at the time of payment, the amount of the duties at issue was not 'legally owed' or whether the amount had been entered in the accounts contrary to Article 220(2) of the CCC.
- 13 On 19 November 2002, the Minister for Economic Affairs took a decision rejecting, once more, the request for repayment made by Traffic.
- 14 Traffic then appealed against that decision before the College. Traffic claims in particular that the amount of duties is owed, under Article 236 of the CCC, only if that amount has been communicated to the debtor in accordance with appropriate procedures, as required by Article 221 of the CCC. That is not the case where the amount of the duties was communicated by an authority not competent to do so.
- 15 In its order for reference the College points out that Chapter 5 of Title VII of the CCC lists a certain number of grounds on which import or export duties may be repaid or remitted. Therefore, it seeks to ascertain whether the lack of competence of an administrative authority under national law can constitute one of those grounds and, more particularly, whether such lack of competence can lead to the conclusion that at the time of payment the amount of the duties was not 'legally owed' within the meaning of Article 236 of the CCC.

- 16 In this regard the referring court emphasises that, in Netherlands public law, the payment demand of 18 December 1997 addressed to Traffic has the character of a decision that creates an obligation to pay. Accordingly, an objection could be lodged against that payment demand within the time-limit, prescribed by the Netherlands legislation, of six weeks from its being communicated to the interested party.
- 17 The College also states that, on 18 December 1997, the Inspector was not competent to send such a payment demand and he was not vested with this competence until 1 January 1998.
- 18 None the less, the referring court considers that although that lack of competence could effectively be invoked in support of an objection or appeal against the payment demand, this same lack of competence could not be used as a basis for a request for repayment or remission of export or import duties.
- 19 In this context the College decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must the term “legally owed” in Article 236 of the [CCC] be understood as referring exclusively to the question whether the conditions for a customs debt to be incurred, as set out in Chapter 2 of Title VII of the CCC, are fulfilled or can legal indebtedness arise only if there are no grounds, including grounds under the national provisions

in force as specified in Article 4(23) of the [CCC], for challenging the communication that duties are owed?’

### **The question referred for a preliminary ruling**

- 20 In order to reply to the question referred it is appropriate to establish whether, as a consequence of the fact that the amount of the duties at issue was not communicated in accordance with Article 221(1) of the CCC, the said amount was not legally owed when it was paid, in accordance with Article 236 of the CCC.
- 21 In this regard it is appropriate to recall that the first subparagraph of Article 236(1) of the CCC provides that import duties or export duties are to be repaid in particular where it is established that ‘when they were paid the amount of such duties was not legally owed’.
- 22 As was correctly stated by the Netherlands Government and the Commission of the European Communities in their written and oral observations, Article 20(1) of the CCC, which is contained in Title II thereof, provides that ‘[d]uties legally owed where a customs debt is incurred shall be based on the Customs Tariff of the European Communities’. Moreover, the rules on how a customs debt is incurred are set out in Chapter 2 of Title VII of the CCC. In particular, under Article 201(1)(a) of the CCC, a customs debt on importation is to be incurred through the release for free circulation of goods liable to import duties.



23 As regards the application of the Customs Tariff of the European Communities ('the Common Customs Tariff') it suffices to find that the duties at issue in this case, that is antidumping duties, are included, in accordance with Article 20(3)(g) of the CCC, in that tariff under the heading of 'other tariff measures provided for by other Community legislation'.

24 As to the customs debt, it is appropriate to remember that this is defined, in the words of Article 4(9) of the CCC, as 'the obligation on a person to pay the amount of the import duties ... or export duties ... which apply to specific goods under the Community provisions in force'.

25 The recovery of the amount of the customs debt is subject to distinct provisions in Chapter 3 of Title VII of the CCC which provide, in particular, for the obligation to communicate the amount of that debt before being able to proceed to its recovery.

26 It follows from those provisions, as well as from the distinction made by the Community legislature between the actual existence of a customs debt and its recovery, that the incurring of a customs debt precedes the communication of its amount and is therefore necessarily independent of that communication. The communication cannot therefore have any influence on the existence of the customs debt, as pointed out by the Advocate General in point 31 of her Opinion.

27 It is also appropriate to add that the contrary interpretation, put forward by Traffic, according to which duties would not be 'legally owed' within the meaning of the CCC unless they were validly communicated to the debtor would mean that the application of Article 236 of the CCC would be dependent on compliance with the national law applicable in the various Member States and, therefore, would be liable to undermine the uniform application of the CCC.

28 It should therefore be concluded that, while infringement of Article 221(1) of the CCC by the customs authorities of a Member State may hinder the recovery of the amount of the duties legally owed or the collection of interest for late payment, the fact remains that such an infringement has no influence on the existence of those duties.

29 In light of all these considerations, the answer to the question referred must be that, for the purposes of the first subparagraph of Article 236(1) of the CCC, import duties or export duties are legally owed where a customs duty has been incurred within the conditions laid down by Chapter 2 of Title VII of that Code and where the amount of those duties could be determined by the application of the Common Customs Tariff in accordance with the provisions of Title II of that Code.

The amount of the import duties or export duties remains legally owed within the meaning of the first subparagraph of Article 236(1) of the CCC even where that amount has not been communicated to the debtor in accordance with Article 221(1) of the Code.

## Costs

30 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 (Second Chamber) hereby rules:

**For the purposes of the first subparagraph of Article 236(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, import duties or export duties are legally owed where a customs duty has been incurred within the conditions laid down by Chapter 2 of Title VII of that regulation and where the amount of those duties could be determined by the application of the Common Customs Tariff of the European Communities in accordance with the provisions of Title II of that regulation.**

**The amount of the import duties or export duties remains legally owed within the meaning of the first subparagraph of Article 236(1) of Regulation No 2913/92 even where that amount has not been communicated to the debtor in accordance with Article 221(1) of that regulation.**

[Signatures]