Parties to the main proceedings

Applicant: Gebr. Stolle GmbH & Co. KG

Defendant: Hauptzollamt Hamburg-Jonas

Questions referred

1. Does a poultry carcase come under CAP Goods List number 0207 1290 9990 ([1]) even if a part of the poultry that is not permitted under that product code adheres to giblets that are permitted?

2. If the answer to the first question should be in the negative: when a customs office examines whether export products comply with the CAP Goods List number stated in the export declaration is a margin of error to be allowed so that a so-called 'anomaly' is not detrimental to a refund?

([1]) OJ 1998 L 322, p. 31.

Reference for a preliminary ruling from the Curtea de Apel Craiova (Romania) lodged on 6 July 2010 — Administrația Finanțelor Publice a Municipiului Târgu-Jiu, Administrația Fondului pentru Mediu v Claudia Norica Vijulan

(Case C-335/10)

(2010/C 274/10)

Language of the case: Romanian

Referring court

Curtea de Apel Craiova

Parties to the main proceedings

Appellants: Administrația Finanțelor Publice a Municipiului Târgu-Jiu, Administrația Fondului pentru Mediu

Respondent: Claudia Norica Vijulan

Questions referred

1. Is the first paragraph of Article 110 TFEU (formerly Article 90 EC) to be interpreted as precluding a Member State from introducing a tax with the characteristics of the pollution tax governed by Government Emergency Order No 50/2008, as amended by Government Emergency Order No 218/2008, from which motor vehicles in category M1 and pollution class Euro 4, with a cylinder capacity of not more than 2 000 cc, are exempt, as are all motor vehicles in category N1 and pollution class Euro 4 which were registered for the first time in Romania or in another Member State between 15 December 2008 and 31 December 2009, but which applies to similar or competing second-hand motor vehicles from other Member States which were registered before 15 December 2008, in that such a tax could amount to a domestic tax on goods from other Member States which is indirectly discriminatory when compared with the tax treatment of domestic goods, thus protecting the domestic manufacture of new motor vehicles?

2. Is the first paragraph of Article 110 TFEU (formerly Article 90 EC) to be interpreted as precluding a Member State from introducing a tax with the characteristics of the pollution tax introduced by Government Emergency Order No 50/2008, as amended by Government Emergency Order No 218/2008, from which motor vehicles in category M1 and pollution class Euro 4, with a cylinder capacity of not more than 2 000 cc, are exempt, as are all motor vehicles in category N1 and pollution class Euro 4 which were registered for the first time in Romania or in another Member State between 15 December 2008 and 31 December 2009, but which applies to motor vehicles with different technical characteristics from those indicated which were registered during the same period in other Member States, in that such a tax could amount to a domestic tax on goods from other Member States which is indirectly discriminatory when compared with the tax treatment of domestic goods, thus protecting the domestic manufacture of new motor vehicles?

Reference for a preliminary ruling from the Curtea de Apel Craiova (Romania) lodged on 6 July 2010 — Administrația Finanțelor Publice a Municipiului Târgu-Jiu, Administrația Fondului Pentru Mediu v Victor Vinel Ijac

(Case C-336/10)

(2010/C 274/11)

Language of the case: Romanian

Referring court

Curtea de Apel Craiova

Parties to the main proceedings

Applicants: Administrația Finanțelor Publice a Municipiului Târgu-Jiu, Administrația Fondului Pentru Mediu

Defendant: Victor Vinel Ijac

Question referred

Is the first paragraph of Article 110 TFEU (formerly Article 90 EC) to be interpreted as precluding a Member State from introducing a tax with the characteristics of the pollution tax governed by Government Emergency Order No 50/2008, which levies a pollution tax on the registration in Romania of imported second-hand motor vehicles already registered in other Member States of the European Union, while that tax is not levied on second-hand motor vehicles registered in Romania in the event of their re-sale and consequent re-registration, in that such a tax could amount to a domestic tax on goods from other Member States which is indirectly discriminatory when compared with the tax treatment of domestic goods?

Appeal brought on 8 July 2010 by Freixenet, SA against the judgment of the General Court (Third Chamber) delivered on 27 April 2010 in Case T-109/08 Freixenet v OHIM

(Case C-344/10 P)

(2010/C 274/12)

Language of the case: French

Parties

Appellant: Freixenet, SA (represented by: F. de Visscher, E.Cornu and D. Moreau, lawyers)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— principally: set aside the judgment of the General Court of 27 April 2010 and annul the decision of the First Board of Appeal of OHIM of 30 October 2007, and decide that the application for Community trade mark No 32 532 satisfies the conditions for publication under Article 40 of Regulation No 40/94 (now Article 39 of Regulation No 207/2009);

— in the alternative, set aside the judgment of the General Court of 27 April 2010;

— in any event, order OHIM to pay the costs.

Pleas in law and main arguments

The appellant relies on the following three pleas in support of its appeal.

By its first plea, the appellant essentially alleges an infringement of the rights of the defence and the right to a fair hearing, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 73 (second sentence) and 38(3) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark [1] (now Articles 75 (second sentence) and 37(3) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark). [2]

The first part of this plea alleges the breach of the audi alteram partem rule. According to the appellant, contrary to what the General Court found in the judgment under appeal, the First Board of Appeal of OHIM, in the decision that was brought before the General Court, undertook a new appraisal of the distinctive character of the appellant's trade mark without allowing the appellant to make observations on that new appraisal. In this respect the reasons given by the General Court in support of the decision of the First Board of Appeal are incorrect and insufficient in the light of the principle of procedural fairness and respect for the rights of the defence. The judgment under appeal furthermore infringes the principle of the rights of the defence and procedural fairness, in deciding that the Office could communicate to the appellant a series of facts, indicating that it would base its refusal decision on those facts and then, after receiving the appellant's written observations on those facts, decided, at least in part, to disregard them and to found its decision on an evaluation that was factually and conceptually different, without giving the appellant the opportunity to submit any observations.

In the second part, the appellant principally alleges a breach by the General Court of the requirement to state reasons, in that the judgment under appeal could not consider that a sufficient statement of reasons was given for the decision of the First Board of Appeal on the application of Article 7(1)(b), a decision which does not specify any of the documents upon which it seeks to rely, and could not consider that it was unnecessary to refer to items of evidence because the First Board of Appeal allegedly relied upon "deductions made from practical experience". Furthermore, the uncertainty of the facts and the documents upon which the Office and the General Court relied affect both the rights of the defence and the requirement under Article 73 of Regulation No 40/94 to state reasons.