Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 5 December 2013 [1]

Case C-571/12

Greencarrier Freight Services Latvia SIA
v
Valsts ieņēmumu dienests

(Request for a preliminary ruling from the Augstākās tiesas Senāts (Latvia))

(Customs union — Customs Code — Articles 70, 78 and 221 of Regulation (EEC) No 2913/92 — Revision of customs declarations — Partial examination of goods — Application of the results of examinations to identical goods included in other declarations — Lawfulness — Post-clearance examination — No possibility of requesting a further examination — Limitation period — Legal certainty)

I – Introduction

1. The present reference for a preliminary ruling from the Augstākās tiesas Senāts (Senate of the Supreme Court, Latvia) raises, in essence, the question of the extent to which customs authorities are entitled to apply the results of the examination of customs declarations carried out on the basis of samples taken from the goods covered by those declarations to earlier declarations covering goods, to all appearances identical, from which samples were not and can no longer be taken.

2. This question has arisen in proceedings between Greencarrier Freight Services Latvia SIA ('GFSL'), a limited liability company governed by Latvian law, which imports crackers, biscuits and chocolate bars from Russia on behalf of SIA 'Hantas' in order to release them for free circulation in the European Union, and the Latvian tax administration.

3. More specifically, in April and May 2007, the tax administration carried out an inspection of the customs duties paid by SIA Hantas between 1 May 2004 and 31 December 2006 on the basis of 35 customs declarations completed by GFSL, which would have to be regarded as the debtor if a customs debt were incurred. In that connection, the Latvian tax administration took and analysed samples relating to six customs declarations made in October and November 2005. Taking as its basis the results of that check, the tax administration observed that, in 29 customs declarations submitted between 4 June 2004 and 29 November 2005, including the six declarations examined, GFSL had declared the goods imported into the Union in order to be released for free circulation there under Combined Nomenclature codes for their classification in the Integrated Tariff of the European Communities (TARIC) which were incorrect.

1 — Original language: French.

4. By decision of 31 May 2001, the tax administration informed GFSL that a customs debt had been incurred, set the amounts of import duties and value added tax (VAT), together with default interest, and imposed on it a fine for incorrect application of the Combined Nomenclature codes.

5. Following GFSL's objection, that decision was confirmed by decision of 14 September 2007.

6. In an action for the annulment of that decision brought before it by GFSL, the Administratīvā apgabaltiesa (Regional Administrative Court of Appeal) ruled, by judgment of 8 December 2011, that, although the import duties, the VAT and the fine concerning the goods covered by the six declarations examined had been rightly determined, by contrast, the remainder of the decision of 14 September 2007 had to be annulled on the ground that the Latvian tax administration, contrary to Article 70(1) of Regulation (EEC) No 2913/92 [2] ('the Customs Code'), had wrongly applied the results of the examination of the goods covered by those six declarations to the goods covered by 23 other declarations made between 4 June 2004 and 6 September 2005, that is, goods imported more than one year before the goods which were examined. Since the Latvian tax administration was not entitled to find that incorrect codes were applied to the goods in question, GFSL is under no obligation to adduce evidence concerning the objective characteristics of those goods, especially since it is no longer in a position to have examinations of those goods carried out.

7. Both the Latvian tax administration and GFSL brought appeals on points of law against that judgment before the referring court.

8. Before the latter, the tax administration claimed that the goods relating to the 23 other customs declarations were identical to those covered by the six declarations examined, having the same composition, name, appearance and manufacturer, which is borne out by the information in the certificates provided by GFSL. The Latvian administration is therefore entitled, in accordance with the principle of procedural economy, not to examine the remainder of the goods and to apply the results of the identification to the other identical goods, GFSL being under an obligation, for its part, to provide evidence of the difference between the goods.

9. The referring court observes, however, that those results were applied to goods covered by declarations made more than one year prior to the declarations for which samples had been taken. According to GFSL, it is not objectively possible either to subject the goods which had been entered in those declarations to an examination subsequent to customs clearance, or to exercise the right to request a further examination.

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

'(1) May the first subparagraph of Article 70(1) of [the Customs Code] be interpreted as meaning that it is possible to apply the results of the examination of part of the goods in a customs declaration also to goods included in earlier declarations which were not the subject of the partial examination, but which had been declared with the same Combined Nomenclature code, came from the same manufacturer and which, according to information concerning the name and composition of the goods on that manufacturer's certificates, were identical to the goods in the declaration in respect of which samples had been taken for partial examination?

2 — Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1). The provisions of that regulation have been amended on several occasions, but those amendments are not relevant to this case. It should also be noted that Regulation No 2913/92 was repealed and replaced by Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ 2008 L 145, p. 1), which has been applicable only since 24 June 2013.

In other words:

Does the concept of "declaration" within the meaning of the first subparagraph of Article 70(1) of [the Customs Code] also include declarations in respect of which samples have not been taken for examination, but in which identical goods have been declared (that is, the goods are declared under the same Combined Nomenclature code, come from the same manufacturer and on the manufacturer's certificates the same name and composition of goods are given)?

2. If the first question is answered in the affirmative, may the results of the partial examination of the goods under the first subparagraph of Article 70(1) of [the Customs Code] be applied also to declarations in respect of which, for objective reasons, the declarant is unable to request a further examination under the second subparagraph of Article 70(1) of Regulation No 2913/92 since it is not possible to produce the goods for examination pursuant to Article 78(2) of [that code]?'

11. Before the Court, written observations have been submitted by GFSL, by the Spanish, Latvian and Czech Governments and by the European Commission. With the exception of the Czech and Spanish Governments, those interested parties presented oral argument at the hearing on 2 October 2013.

II – Analysis

A – *Article 70(1) of the Customs Code*

12. In its two questions referred for a preliminary ruling, the referring court raises the question of the interpretation of Article 70(1) of the Customs Code, making incidental reference to Article 78 of that Code in the second of those questions.

13. Although the Court repeatedly recognises the responsibility of the national courts, when making a reference for a preliminary ruling, to assess, inter alia, the relevance of the questions which they put to it, the Court nevertheless needs, in order, in particular, to be able to provide the national court with a useful answer, to have at least some explanation of the reasons for the choice of the provisions of EU law of which that court requests an interpretation and of the connection which it establishes between those provisions and the national legislation applicable to the dispute in the main proceedings, as well as in the light of the factual circumstances of that dispute. [3]

14. For the reasons which will be set out below, I do not think, in this case, that the questions referred for a preliminary are at risk of having to be considered inadmissible.

15. However, in the light of the factual circumstances set out by the referring court, the relevance of a reply from the Court concerning the interpretation of Article 70(1) of the Customs Code appears debatable, as pointed out, moreover, by the Spanish Government in its written observations

16. That provision, which forms part of the section of the Customs Code relating to the 'normal procedure' for the examination of customs declarations, states that, '[w]here only part of the goods covered *by a* declaration are examined, the results of [that] partial examination shall be taken to apply to all the goods covered *by that* declaration'. [4]

3 — See, to that effect, inter alia, order of 17 September 2009 in Joined Cases C-404/08 and C-409/08 *Investitionsbank Sachsen-Anhalt*, paragraphs 28 to 30 and case-law cited.

4 — Emphasis added.

17. As the Spanish and Czech Governments have rightly submitted in their written observations, Article 70(1) of the Customs Code therefore governs the examination, carried out by the competent authorities of a Member State, of customs declarations prior to the release of the goods by authorising an extrapolation of the results of such an examination relating to part of the goods in a declaration to all the goods covered by that same declaration.

18. The Court has thus held, as regards the provisions of EU law predating Article 70 of the Customs Code but on which that article was directly based, that an operator's right to challenge the representativeness of a sample chosen by the customs authorities cannot be unlimited and must in principle lapse when those authorities release the goods concerned. [5]

19. The factual circumstances set out by the referring court mention a post-clearance examination by the Latvian tax authorities of the customs declarations at issue in the main proceedings, which all relate to goods already released previously, and also concern the extrapolation of the examination of goods covered by six declarations to goods which had been covered by 23 other, earlier declarations, and not the extrapolation of the partial examination of goods in one and the same declaration, this latter situation being the only one contemplated by Article 70(1) of the Customs Code.

20. A reply from the Court concerning the interpretation of that provision therefore does not seem to me to be very useful to the referring court in the light of the circumstances of the dispute in the main proceedings, unless, quite simply, it states that Article 70(1) of the Customs Code does not govern the situation of a post-clearance examination of goods after they have been released and does not permit extrapolation of the examination of goods covered by several customs declarations to goods, even identical, which were covered by other, earlier customs declarations.

21. Such a reply is not only consistent with the wording of Article 70(1) of the Customs Code but also corresponds to the scheme of that code.

22. Article 70 of the Customs Code falls within the four main stages of the single procedure relating to one customs declaration and which results in the decision whether or not to release goods under the customs procedure concerned, which are: (a) lodging of the customs declaration (Article 62 of the Customs Code); (b) acceptance of the customs declaration (Article 63 of that code); (c) optional verification of the customs declaration, including possible examination of the goods and determination of any consequences of such an examination (Articles 68 to 72 of the code); and (d) the decision whether or not to release the goods (Articles 73 to 75 of the code). Where the declaration is not verified, as appears in all likelihood to have been the case with GFSL's initial declarations, Article 71(1) of the code provides for the provisions of the code to be applied on the basis of the particulars contained in the declaration, whereas Article 73 of that code states, in that event, that the customs authorities are to release all the goods covered by the same declaration.

23. Accordingly, the scheme of the Customs Code does confirm, in my view, that the examination provided for by Article 70(1) of the Customs Code relates only to verification of part of the goods covered by one and the same declaration before the goods are released, verification which cannot therefore take place subsequently to that release and of which the results cannot be extrapolated to other, earlier declarations.

5 — See, Case C-290/01 *Derudder* [2004] ECR I-2041, paragraph 43.

24. Since Article 70(1) of the Customs Code does not govern the situation of a post-clearance examination of goods after they have been released and does not permit extrapolation of the examination of goods covered by two or more customs declarations to goods, even identical, which have been covered by other, earlier customs declarations, it follows that there is no need to consider the second question referred by the national court, which is raised only in the event of an answer in the affirmative to the first of its questions.

25. However, in the light of the factual situation contemplated by the referring court in mentioning, as I have already stated, a post-clearance examination of GFSL's customs declarations, and of the written and oral observations submitted to the Court concerning Article 78 of the Customs Code, it is that provision which appears to have been applied in the case in the main proceedings and the interpretation of which could be of some help to the referring court, given that, as the court which decides appeals on points of law, it is nevertheless likely to be limited in its review by the assessments and legal basis relied on by the national court whose judgment is under appeal.

26. Subject to that reservation of a procedural nature, which it will be for the referring court, where appropriate, to remove, and with a view to providing that court with the elements of interpretation of EU law which are of assistance in enabling it to resolve the legal problem before it,[6] Article 78 of the Customs Code calls for the following observations on my part.

B – *Article 78 of the Customs Code*

27. Article 78 of the Customs Code is found in section 'C. Post-clearance examination of declarations' of the Customs Code and provides, in paragraph 1, that '[t]he customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods'.

28. Paragraph 2 of that article states that those 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'.

29. Finally, Article 78(3) of the code states that '[w]here 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'.

30. It will also be recalled that there was no equivalent to that article in the Community legislation preceding the Customs Code and it may thus be assumed that it was introduced because a gap had been discovered in the previous system in that the Community legislature realised that it was necessary to provide for the possibility of correcting customs declarations even after goods are released.[7]

6 — See, to that effect, inter alia, Case C-268/11 *Gülbahce* [2012] ECR, paragraphs 31and 32 and case-law cited.

7 — See, to that effect, point 57 of the Opinion of Advocate General Mischo in Case C-379/00 *Overland Footwear* [2002] ECR I-11133. It should be noted that, in its judgment (see paragraph 22), the Court held that it was not necessary to rule on the interpretation of Article 78 of the Customs Code.

31. In the present case, it is not disputed that the customs authorities have a broad discretion, already recognised by the Court, to carry out such post-clearance examinations and to revise the declaration(s) subjected to such examinations, either on their own initiative or at the request of the declarant, including in cases where the goods concerned can no longer be subjected to a physical examination. [8]

32. Nor does this case concern the interpretation of the phrase, used by Article 78(3) of the Customs Code, 'incorrect or incomplete information' in the original customs declarations, which was apparently discovered by the customs authorities following their post-clearance examinations and the revision of those declarations. [9]

33. The proceedings have, by contrast, been concerned with three other aspects which have in common the fact that they relate to the scope of Article 78 of the Customs Code and which can be summarised by the following questions: (a) Can the post-clearance examination and revision of a declaration be applied to other declarations? (b) If so, is the extrapolation of the results of the examinations confined solely to identical goods? (c) Is the application of Article 78 of the Customs Code restricted in time, so that the customs authorities are not entitled to revise customs declarations indefinitely?

1. The principle of the extrapolation of the results of post-clearance examinations of certain declarations to other, including earlier, declarations

34. The immutability of customs declarations has long been considered an inviolable principle by most of the Member States of the European Union. [10] Although that principle has not been called into question, its rigour has nevertheless progressively lessened, since the Customs Code allows a declaration to be amended at the declarant's request before the goods are released and under the conditions laid down by the code (see Article 65 of the Customs Code) and, subsequently to acceptance of release, to be revised, in accordance with Article 78 of the Customs Code. [11]

35. Article 78 of the Customs Code is therefore an exception to the principle of the immutability of customs declarations [12] and should, on that basis, in my view, be interpreted strictly.

36. It is evident from a straightforward reading of the wording of Article 78 of the Customs Code that there is no mention of any extrapolation of the post-clearance examinations carried out by the customs authorities of certain customs declarations to other declarations, in particular to customs declarations made previously.

37. However, that provision does not preclude such an extrapolation from being made by the customs authorities in the light of the scheme and objectives of the Customs Code.

38. Indeed, since, on the one hand, the customs authorities do not generally carry out a priori examinations as it is necessary for 'customs formalities and controls [to] be abolished or at least kept to a minimum' [13] in order to speed up the conduct of commercial operations in view of the 'paramount importance' [14] of external trade for the Union, and since, on the other hand, those same

8 — See, with regard to the discretion, Joined Cases C-608/10, C-10/11 and C-23/11 *Südzucker* [2012] ECR, paragraph 48, and concerning the possibility of a revision even in the absence of a physical check of the goods, *Südzucker*, paragraph 50, and Joined Cases C-320/11, C-330/11, C-382/11 and C-383/11 *DIGITALNET* [2012] ECR, paragraph 66.

9 — So far as it may be relevant, I would point out that the Court has already ruled that that phrase covers both technical errors or omissions and errors of interpretation of the applicable law: see, in particular, Joined Cases C-430/08 and C-431/08 *Terex Equipment and Others* [2010].ECR I-321, paragraph 56 and case-law cited.

10 — See, to that effect, Berr, C.J., and Trémeau, H., *Le droit douanier communautaire et national*, 6th edition, Economica, Paris, 2004, p. 179.

11 — See, to that effect, Case C-468/03 *Overland Footwear* [2005] ECR I-8937, paragraph 64.

12 — See point 33 of the Opinion of Advocate General Poiares Maduro in Case C-468/03 *Overland Footwear*.

13 — See sixth recital in the preamble to the Customs Code.

14 — Idem.

authorities must have extensive powers of control in order to ensure the correct application of customs legislation,[15] it seems to me essential to allow them, either on their own initiative or at the declarant's request, to apply the results of post-clearance examinations conducted in respect of goods in one customs declaration to identical goods which were covered by other customs declarations and, therefore, where appropriate, to revise all of those declarations.

39. Conferring such discretion on customs authorities ensures a fair balance between the requirements of the correct administration of customs legislation and the rights of declarants.

40. Indeed, where the revision indicates that the provisions governing the customs procedure in question were applied on the basis of incorrect or incomplete information, the customs authorities must, in accordance with Article 78(3) of the Customs Code, take the measures necessary to regularise the situation, taking account of the new information available to them. According to the case-law, in particular where a revision is applied for by the declarant, if that revision shows that the import duties originally paid exceeded those that were legally owed, the measure necessary to regularise the situation can consist only in reimbursement of the overpaid amount or remission of those duties.[16] Consequently, if, in the context of the application of Article 78 of the Customs Code, the customs authorities were prohibited from applying the results of their post-clearance examinations of certain declarations to other declarations, such a prohibition would be liable to result in an unjustified enrichment of those authorities if those results showed an overpayment to the administration. Those authorities would therefore be led, in my view, not to discharge fully their obligation to regularise the declarant's situation in the light of the new information which would be available to them, contrary to Article 78(3) of the Customs Code.

41. Such an argument must also be valid where post-clearance examinations may lead to a revision of customs declarations, the result of which may in turn lead to communication of a new customs debt consisting of the increase in the customs duties originally paid.

42. Indeed, since the decision to carry out such examinations, including on the authorities' own initiative, does not necessarily lead to the revision of one or more customs declarations and *a fortiori* to a correction of the customs duties originally paid, I do not see how the customs authorities could only be authorised *ex ante* to carry them out to the extent that the result is favourable to the declarant.

43. Moreover, if the powers of the customs authorities were restricted in such a way, there would be every reason to fear that those authorities would be led to multiply and intensify pre-clearance examinations of customs declarations, which would be hardly compatible with the aim of the Customs Code, which is to guarantee rapid and efficient procedures for the release for free circulation of goods imported into the Union.[17]

44. In that context, permitting the customs authorities to carry out post-clearance examinations on the basis of samples of goods and an appropriate extrapolation of the results of those examinations also appears consistent both with the limited resources available to those authorities and with the law of probability and risk management.[18]

45. However, the discretion enjoyed by the customs authorities in applying Article 78 of the Customs Code cannot be unlimited.

15 — See fifth recital in the preamble to the Customs Code.

16 — See, to that effect, Case C-468/03 *Overland Footwear*, paragraph 53, and *Terex Equipment and Others*, paragraph 63. That remission is governed by Article 236 of the Customs Code: see *Terex Equipment and Others*, paragraph 64 and case-law cited.

17 — See, to that effect, *Derudder*, paragraph 45.

18 — See, to that effect, in the context of the post-clearance examination by the national authorities of goods (meat from bovine animals) resulting in claims for the repayment of export refunds granted to an economic operator, Case C-436/98 *HMIL* [2000] ECR I-10555, paragraph 83 and case-law cited.

2. Identical nature of the goods covered by the extrapolation of the post-clearance examinations

46. First of all, as GFSL and the Spanish Government have correctly pointed out, that extrapolation of the results of the post-clearance examinations is legitimate only if the goods not subjected to the examinations are identical to those examined, that is to say, they should all have been classified under the same tariff nomenclature subheading. Consequently, differences between the goods which would have no impact on the tariff classification of those goods should not matter in any way, in my view.

47. Although, as a matter of principle, the condition concerning the identical nature of the goods is not subject to debate, its satisfaction in the case in the main proceedings has, on the other hand, been strongly disputed by GFSL, the latter maintaining that the customs authorities did not demonstrate that the goods covered by the customs declarations which were not subjected to the post-clearance examinations were in fact identical to those in the six declarations which underwent those examinations.

48. It is not easy to determine whether the question of the identity of the goods has been settled definitively in the case in the main proceedings, an issue of a factual nature on which it would not, in any event, be for the Court to rule in the context of the cooperation provided for by Article 267 TFEU.

49. The fact remains that, as the court of last instance, the referring court, in formulating its questions for a preliminary ruling, acted on the basis of the very premise that the identity of the goods covered by different customs declarations constitutes a condition for the application of extrapolation of the results of post-clearance examinations carried out under Article 78 of the Customs Code.

50. I would add, so far as this point is relevant, that there is not a shadow of a doubt that the burden of proof of the identity of those goods, a question also debated before the Court, rests on the party which seeks to rely on that identity for the purpose of revision of the declarations, namely, the customs authorities.

51. Where, as in the case in the main proceedings, the goods can no longer be physically examined, those authorities are entitled, under Article 78(2) of the Customs Code, to rely on all the documentary evidence which they have been able to obtain and which supports that identity.

52. Where such documents exist, a declarant who wishes to dispute that the goods are identical, as found to be the case by the customs authorities, must be able to challenge the position of the latter by adducing any kind of evidence and must have available to it the legal remedies necessary in order to do so.

3. Temporal limits on post-clearance examinations

53. For the purpose of the hearing before the Court, the interested parties were invited to give their views on the existence of possible temporal limits on the right of customs authorities to revise customs declarations retrospectively pursuant to Article 78 of the Customs Code, having regard inter alia to the silence of that provision on any limitation period.

54. Whereas GFSL simply maintained that the post-clearance revision of customs declarations pre-dating those subjected to examinations by the customs authorities is incompatible with the principle of legal certainty, the Latvian Government and the Commission set out more detailed arguments.

55. According to the Commission, the revision of a customs declaration may not take place on the expiry of a period of three years after the original declaration was submitted. The setting of such a period is consistent with the provisions of Article 16 of the Customs Code, under which, in essence, declarants are obliged to keep the relevant documents only for three years from acceptance of the declaration for release for free circulation, and those of Article 221(3) of that code, which state that communication of a customs debt may not take place after the expiry of a period of three years from the date on which the customs debt was incurred. In this case, that period was observed since the communication of the new customs debt as a result of the post-clearance examinations carried out by the Latvian customs authorities was sent on 31 May 2007, whereas the first original declarations concerned date from 4 June 2004.

56. While sharing that view, the Latvian Government accepted that another tenable line of argument is that, in the absence of any mention of a limitation period in Article 78 of the Customs Code, it is for the Member States to fill that gap. In that regard, the Latvian Government's representative stated that the Republic of Latvia insists that any revision of a customs declaration followed by communication of a new customs debt cannot take place after a period of three years from the date of the original declaration. That period is considered reasonable and ensures a balance between the obligations of the customs administration and the rights of economic operators.

57. It is important to note that Article 78 of the Customs Code does not lay down a limitation period beyond which post-clearance revision of a customs declaration can no longer take place.

58. Such a silence may be understandable, since the consequences of a post-clearance revision do not automatically operate to the detriment of the declarant. As I have already pointed out, the latter can instigate such a post-clearance revision ultimately resulting in a reduction in the customs duties originally paid.

59. On the other hand, where the post-clearance revision could result in an increase in the customs duties originally paid, the legal certainty of declarants must be preserved, since that principle requires the position of individuals, in particular vis-à-vis the tax or customs authorities, not to be open to challenge indefinitely. [19]

60. Those remarks permit the inference that, in the final analysis, having regard to the general principle of legal certainty, it is not so much the post-clearance revision procedure as such which should be subject to a limitation period as the measures adopted by the customs authorities to regularise the situation. Moreover, Article 78(3) of the Customs Code states that such measures must be taken by the customs authorities only 'in accordance with any provisions laid down'.

61. However, from that point of view, as stated in essence by both the Latvian Government and the Commission, Article 221(3) of the Customs Code guarantees that, where a post-clearance revision is likely to lead to a new communication of a customs debt, that communication may no longer take place if the original customs debt was incurred more than three years before the date on which the customs authorities send or intend to send the new communication to the declarant. Indeed, once that period of three years has elapsed, the debt is time-barred and therefore extinguished within the meaning of Article 233 of the Customs Code. [20]

19 — See, to that effect, Case C-294/11 *Elsacom* [2012] ECR, paragraph 29 and case-law cited.

20 — See, in that regard, Case C-201/04 *Molenbergnatie* [2006] ECR I-2049, paragraphs 40 and 41, and Case C-264/08 *Direct Parcel Distribution Belgium* [2010] ECR I-731, paragraph 43.

62. Even where the customs debt is extinguished and a new communication to the debtor is no longer possible, not to make post-clearance revision of a customs declaration as such subject to a limitation period could have certain advantages. Indeed, as the Latvian Government pointed out at the hearing, accepting that such a revision can be made would retain a practical effect for the future, should the declarant intend to import identical goods into the European Union.

63. However, the silence of Article 78 of the Customs Code on the setting of a limitation period beyond which post-clearance revision of a customs declaration can no longer take place does not preclude the Member States from making that procedure subject to such a time-limit. Indeed, there does not seem to me to be any need to call into question the competence of the Member States to remedy such a silence, since the European Union customs legislation consists not only of the provisions of the Customs Code or those adopted at EU level to implement it, but also, as laid down in Article 1 of that code, of the provisions adopted nationally to implement it. [21]

64. In that regard, the Latvian Government stated, at the hearing before the Court, that the Republic of Latvia has made the power of the customs authorities to revise customs declarations retrospectively subject to a maximum period of three years from the date of the original declaration, a period which is similar to that laid down for the communication to the debtor of the customs debt. According to my research, that is also the situation in Italy. [22]

65. Although, in the case in the main proceedings, it is for the referring court to satisfy itself that the Latvian legislation does in fact make post-clearance revision subject to compliance with such a time-limit, that revision (and the communication of the customs debt which followed it) appears, according to the information made available by that court and by the interested parties at the hearing, to have been carried out in compliance with that time-limit (and also, in the case of the communication of the customs debt, within the period of three years laid down in Article 221(3) of the Customs Code) for all the declarations to which the results of the post-clearance examinations were applied. Indeed, according to the file, the first of those declarations dates from 4 June 2004, whereas the decision of the Latvian tax administration informing the declarant of the revision of the declarations concerned and communicating the new customs debt was sent on 31 May 2007.

66. A Member State's choice to introduce a limitation period of three years applicable to the post-clearance revision of a customs declaration appears reasonable and consistent with the period which applies to communication of the customs debt, laid down in Article 221(3) of the Customs Code. [23] It also makes it possible not to affect beyond what is necessary the principle of the immutability of customs declarations.

67. The setting of different limitation periods in different Member State or their coexistence with no limitation periods set in other Member States could nevertheless potentially affect the uniform application of the Customs Code within the European Union.

21 — The Court has thus held, in a case concerning the interpretation of Article 236(2) of the Customs Code, which lays down a limit of three years within which customs duties not legally owed must be repaid, that, irrespective of whether it is imposed by national law or EU law, the setting of a reasonable time-limit is in the interests of legal certainty and does not preclude the individual from exercising rights conferred by EU law: see Case C-533/10 *CIVAD* [2012] ECR,paragraph 23.

22 — See Article 11(1) of Legislative Decree No 374/90 of 8 November 1990, which states: '[l]a revisione (dell'accertamento divenuto definitivo) e' eseguita d'ufficio, ovvero quando l'operatore interessato ne abbia fatta richiesta con istanza presentata, a pena di decadenza, entro il termine di tre anni dalla data in cui l'accertamento e divenuto definitivo'. See also De Cicco, A., *Legislazione e tecnica doganale*, G. Giappichelli Editore, Torino, 2003, p. 524.

23 — And with that which applies to applications for repayment of customs duties not legally owed, pursuant to Article 236(2) of the Customs Code.

68. The undesirable consequences of those differences could be overcome by the adoption of appropriate measures at Union level, either by the EU legislature or, where appropriate, in accordance with the procedure laid down by Articles 247 and 247a of the Customs Code.[24]

69. On the other hand, faced with the silence of Article 78 of the Customs Code, and with the residual competence of the Member States, I do not think that the Courts of the Union are entitled to assume the role of the EU legislature by imposing, judicially, a particular limitation period. At the very most, they could review, as the customs legislation now stands, the reasonableness of the limitation periods laid down by the Member States to remedy the silence of Article 78 of the Customs Code, having regard to the principles of equivalence and effectiveness.

70. In that connection, and even though it is not certain that such a scenario could arise, such a review could be undertaken with regard to any legislation of a Member State which contemplated the application of a limitation period for the post-clearance revision of a customs declaration which was shorter than the period of three years applicable to communication of the customs debt pursuant to Article 221(3) of the Customs Code.

71. Indeed, it would need to be ascertained, in that event, whether the prohibition on revising customs declarations retrospectively below a period of three years would, in practice, have the effect of preventing the customs authorities from recovering, in whole or in part, a customs debt incurred before the expiry of the period of three years specified in Article 221(3) of the Customs Code, which would also have the effect of damaging the financial interests of the Union.

72. Equally, the fact that a Member State has not prescribed a precise extinctive time-limit beyond which the customs authorities may no longer revise a customs declaration retrospectively must not have the effect of disregarding the limitation period laid down in Article 221(3) of the Customs Code. As stated above, such a post-clearance revision could then retain any possible effects only for the future, should the declarant intend to import identical goods into the territory of the Union.

73. Accordingly, I suggest adding to the proposed answer relating to the interpretation of Article 70 of the Customs Code the further point that Article 78 of that code must be interpreted as not precluding the customs authorities of a Member State from applying the results of post-clearance examinations carried out on certain customs declarations to other customs declarations, including earlier ones, provided that the goods covered by all of those declarations are identical and that the post-clearance revision of those declarations cannot enable those authorities to disregard the limitation period applicable to the communication to the debtor of the customs debt in accordance with Article 221(3) of the Customs Code, which it is for the referring court to ascertain.

III – Conclusion

74. In the light of all the foregoing considerations, I propose that the following answers be given to the questions referred for a preliminary ruling by the Augstākās tiesas Senāts:

(1) Article 70(1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code does not govern the situation of a post-clearance examination of goods after their release and does not permit extrapolation of the examination of goods covered by two or more customs declarations to goods, even identical goods, which were covered by other, earlier customs declarations.

24 — This is what is known as the regulatory procedure under which the Commission is assisted by the Customs Code Committee for the adoption of measures necessary for the implementation of the code.

(2) Article 78 of Regulation No 2913/92 must be interpreted as not precluding the customs authorities of a Member State from applying the results of post-clearance examinations carried out on certain customs declarations to other customs declarations, including earlier ones, provided that the goods covered by all of those declarations are identical and that the post-clearance revision of those declarations cannot enable those authorities to disregard the limitation period applicable to the communication to the debtor of the customs debt in accordance with Article 221(3) of the Customs Code, which it is for the referring court to ascertain.