JUDGMENT OF THE COURT (Fourth Chamber)

25 February 2010 *

In Case C-386/08,

REFERENCE for a preliminary ruling under Article 234 EC, from the Finanzgericht Hamburg (Germany), made by decision of 30 July 2008, received at the Court on 1 September 2008, in the proceedings

Brita GmbH

v

Hauptzollamt Hamburg-Hafen,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Third Chamber, acting for the President of the Fourth Chamber, R. Silva de Lapuerta, E. Juhász, J. Malenovský (Rapporteur) and T. von Danwitz, Judges,

* Language of the case: German.

Advocate General: Y. Bot,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 3 September 2009,

after considering the observations submitted on behalf of:

— Brita GmbH, by D. Ehle, Rechtsanwalt,

— the European Commission, by C. Tufvesson, F. Hoffmeister and L. Bouyon, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 October 2009,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, signed in Brussels on 20 November 1995 (OJ 2000 L 147, p. 3; 'the EC-Israel Association Agreement'), account being taken of the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the

Palestinian Authority of the West Bank and the Gaza Strip, of the other part, signed in Brussels on 24 February 1997 (OJ 1997 L 187, p. 3; 'the EC-PLO Association Agreement').

2 The reference has been made in the context of a customs dispute between Brita GmbH ('Brita'), a company incorporated under German law, and the Hauptzollamt Hamburg-Hafen (the main customs office of the port of Hamburg) concerning the refusal of the Hauptzollamt to grant Brita preferential treatment with regard to the importation of products manufactured in the West Bank.

Legal context

The Vienna Convention

3 Under Article 1 of the Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, vol. 1155, p. 331; 'the Vienna Convention'), which is entitled 'Scope of the present Convention', the Vienna Convention applies to treaties between States.

4 Article 3 of the Vienna Convention, which is entitled 'International agreements not within the scope of the present Convention', provides:

'The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

…

(b) the application to [such agreements] of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

…'

5 Under Article 31 of the Vienna Convention, which is entitled 'General rule of interpretation':

'1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. … for the purpose of the interpretation of a treaty, …

3. … there shall be taken into account, together with the context:

…

(c) any relevant rules of international law applicable in the relations between the parties.

…'

6 Article 34 of the Vienna Convention, which is entitled 'General rule regarding third States', provides:

'A treaty does not create either obligations or rights for a third State without its consent.'

The EC-Israel Association Agreement

7 The EC-Israel Association Agreement, approved by Decision 2000/384/EC, ECSC of the Council and the Commission of 19 April 2000 (OJ 2000 L 147, p. 1), entered into force on 1 June 2000.

8 In Title II of the EC-Israel Association Agreement, which concerns the free movement of goods, Article 6(1) provides:

'The free trade area between the Community and Israel shall be reinforced according to the modalities set out in this Agreement and in conformity with the provisions of the General Agreement on Tariffs and Trade of 1994 and of other multilateral agreements on trade in goods annexed to the Agreement establishing the World Trade Organisation (WTO) …'

9 Under Article 8 of the EC-Israel Association Agreement, with regard to industrial products as defined in that agreement and subject to the exceptions provided for, 'customs duties on imports and exports, and any charges having equivalent effect, shall be prohibited between the Community and Israel. …'

10 Article 75(1) of the EC-Israel Association Agreement provides:

'Each of the Parties may refer to the Association Council any dispute relating to the application or interpretation of this Agreement.'

11 The territorial scope of the EC-Israel Association Agreement is defined as follows in Article 83 thereof:

'This Agreement shall apply, on the one hand, to the territories in which the Treaties establishing the European Community and the European Coal And Steel Community are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of the State of Israel.'

12 Protocol 4 to the EC-Israel Association Agreement ('the EC-Israel Protocol') lays down the rules relating to the definition of 'originating products', as well as methods of administrative cooperation.

13 In accordance with point (2) of Article 2 of the EC-Israel Protocol, products wholly obtained in Israel, within the meaning of Article 4 of that protocol, are to be treated as originating in Israel, as are products obtained in Israel which contain materials not wholly obtained there, provided that those materials have undergone sufficient working or processing in Israel, within the meaning of Article 5 of the EC-Israel Protocol.

14 Article 17(1) of the EC-Israel Protocol states:

'Originating products within the meaning of this Protocol shall, on importation into one of the Parties, benefit from the Agreement upon submission of either:

(a) a movement certificate EUR.1…;

(b) in the cases specified in Article 22(1), a declaration, … given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified ["the invoice declaration"].'

15 Under paragraph (1)(a) of Article 22 of the EC-Israel Protocol, which is entitled 'Conditions for making out an invoice declaration', the invoice declaration referred to in Article 17(1)(b) of the protocol may be made out by an approved exporter within the meaning of Article 23 of that protocol.

16 Under Article 23 of the EC-Israel Protocol, the customs authorities of the exporting State may authorise any exporter (an 'approved exporter') who makes frequent shipments of products under the EC-Israel Association Agreement, and who offers to the satisfaction of the customs authorities all guarantees necessary to verify the originating status of those products as well as the fulfilment of the other requirements of the EC-Israel Protocol, to make out invoice declarations. Such a declaration is proof that the products concerned possess the appropriate originating status and thus allows the importer to benefit from the preferential treatment provided for under the agreement.

17 Article 32 of the EC-Israel Protocol governs, in the following terms, the procedure for verifying proof of origin:

'1. Subsequent verification of movement certificates EUR.1 and of invoice declarations shall be carried out at random or whenever the customs authorities of the importing State have reasonable doubt as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Protocol.

2. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the importing [State] shall return the movement certificate EUR.1, and the invoice, if it has been submitted, or the invoice declaration, or a copy of these documents, to the customs authorities of the exporting country giving, where appropriate, the reasons of substance or form for an inquiry.

They shall forward, in support of the request for subsequent verification, any documents and information that have been obtained suggesting that the information given on the movement certificate EUR.1 or the invoice declaration is incorrect.

3. The verification shall be carried out by the customs authorities of the exporting [State]. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check which they consider appropriate.

4. …

5. The customs authorities requesting the verification shall be informed of the results of this verification within a maximum period of 10 months. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as originating products and fulfil the other requirements of this Protocol.

…

6. If in cases of reasonable doubt there is no reply within 10 months or if the reply does not contain sufficient information to determine the authenticity of the document in

question or the real origin of the products, the requesting customs authorities shall, except in the case of *force majeure* or in exceptional circumstances, refuse entitlement to the preferences.'

18 On the subject of dispute settlement, Article 33 of the EC-Israel Protocol provides:

'Where disputes arise in relation to the verification procedures of Article 32 which cannot be settled between the customs authorities requesting a verification and the customs authorities responsible for carrying out this verification or where they raise a question as to the interpretation of this Protocol, they shall be submitted to the Customs Cooperation Committee.

…'

19 Under Article 39 of the EC-Israel Protocol, which is entitled 'Customs Cooperation Committee':

'1. A Customs Cooperation Committee shall be set up, charged with carrying out administrative cooperation with a view to the correct and uniform application of this Protocol and with carrying out any other task in the customs field which may be entrusted to it.

2. The Committee shall be composed, on the one hand, of experts of the Member States and of officials of the department of the Commission of the European Communities who are responsible for customs questions and, on the other hand, of experts nominated by Israel.'

EC-PLO Association Agreement

20 The EC-PLO Association Agreement, approved by Council Decision 97/430/EC of 2 June 1997 (OJ 1997 L 187, p.1) entered into force on 1 July 1997.

21 Article 3 of the EC-PLO Association Agreement states:

'The Community and the Palestinian Authority shall establish progressively a free trade area … in conformity with the provisions of the General Agreement on Tariffs and Trade of 1994 and of the other multilateral agreements on trade in goods annexed to the agreement establishing the World Trade Organisation (WTO) …'

22 Articles 5 and 6 of the EC-PLO Association Agreement provide:

'Article 5

No new customs duty on imports, or any other charge having equivalent effect, shall be introduced on trade between the Community and the West Bank and the Gaza Strip.

Article 6

Imports into the Community of products originating in the West Bank and the Gaza Strip shall be allowed free of customs duties and of any other charge having equivalent effect and free of quantitative restrictions and of any other measure having equivalent effect.'

23 As regards the territorial scope of the EC-PLO Association Agreement, Article 73 provides:

'This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of the West Bank and the Gaza Strip.'

24 Protocol 3 appended to the EC-PLO Association Agreement ('the EC-PLO Protocol') lays down the rules concerning the definition of 'originating products', as well as methods of administrative cooperation.

25 Under Article 2(2) of the EC-PLO Protocol, products wholly obtained in the West Bank and the Gaza Strip are to be treated as products originating in the West Bank and the Gaza Strip, as are products obtained in the West Bank and Gaza Strip incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the West Bank and Gaza Strip.

26 Article 15(1) of the EC-PLO Protocol provides that, on importation into the Community, products originating in the West Bank and the Gaza Strip are to benefit from the EC-PLO Association Agreement upon submission of either a movement certificate EUR.1 or — in the situations listed in Article 20(1) of the protocol — a declaration made out by the exporter on an invoice, or on a delivery note, or on any other commercial document, which describes the products concerned in sufficient detail to enable them to be identified. That declaration is referred to as an 'invoice declaration'.

27 Article 16(1) of the EC-PLO Protocol provides that the movement certificate EUR.1 is to be issued by the customs authorities of the exporting State. Under Article 16(4), such a certificate is to be issued by the customs authorities of the West Bank and Gaza Strip if the products concerned can be considered to be products originating in the West Bank and Gaza Strip and if they fulfil the other requirements laid down in the protocol.

28 Under paragraph (1)(a) of Article 20 of the EC-PLO Protocol, which concerns the conditions for making out an invoice declaration, such a declaration may be made out by an approved exporter within the meaning of Article 21 of the protocol. Under Article 20(2) of the EC-PLO Protocol, an invoice declaration may be made out if the products concerned can be considered to be products originating in the Community, the West Bank and Gaza Strip and if they fulfil the other requirements laid down in that protocol.

29 Paragraph 1 of Article 21 of the EC-PLO Protocol, which concerns approved exporters, provides that the customs authorities of the exporting State may grant authority to make out invoice declarations to any exporter who makes frequent shipments of products under the EC-PLO Association Agreement and who offers to the satisfaction of the customs authorities all guarantees necessary to verify the originating status of the products as well as the fulfilment of the other requirements laid down in the protocol.

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

30 Brita, the applicant in the main proceedings, is established in Germany. It imports drink-makers for sparkling water, as well as accessories and syrups, all produced by an Israeli supplier, Soda-Club Ltd, at a manufacturing site at Mishor Adumin in the West Bank, to the east of Jerusalem. Soda-Club Ltd is an approved exporter within the meaning of Article 23 of the EC-Israel Protocol.

31 During the first six months of 2002, Brita applied for some imported goods to be released for free circulation, filing more than 60 customs declarations in total. It stated that the country of origin for those goods was 'Israel' and sought the application of the preferential tariff provided for under the EC-Israel Association Agreement on the basis of invoice declarations made out by the supplier confirming that the products concerned originated in Israel.

32 The German customs authorities provisionally granted the preferential tariff applied for, but commenced the procedure for subsequent verification. On being questioned by the German customs authorities, the Israeli customs authorities replied that '[o]ur verification has proven that the goods in question originate in an area that is under Israeli Customs responsibility. As such, they are originating products pursuant to the [EC-Israel] Association Agreement and are entitled to preferential treatment under that agreement'.

33 By letter of 6 February 2003, the German customs authorities asked the Israeli customs authorities to indicate, by way of supplementary information, whether the goods in question had been manufactured in Israeli-occupied settlements in the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights. That letter remained unanswered.

34 By decision of 25 September 2003, the German Customs authorities therefore refused the preferential treatment that had been granted previously, on the ground that it could not be established conclusively that the imported goods fell within the scope of the EC-Israel Association Agreement. Consequently, a decision was taken to seek post-clearance recovery of customs duties amounting to a total of EUR 19 155.46.

35 The objection filed by Brita was dismissed, whereupon it brought an action before the Finanzgericht Hamburg (Finance Court, Hamburg) for annulment of that decision. The Finanzgericht Hamburg takes the view that the outcome of the dispute depends on the interpretation of the EC-Israel Association Agreement, the EC-Israel Protocol and the EC-PLO Association Agreement.

36 In those circumstances, the Finanzgericht Hamburg decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Should the importer of goods which originate in the West Bank be granted the preferential treatment requested in any event in light of the fact that preferential treatment is provided under two agreements which come under consideration in the present case — namely the [EC-Israel Association Agreement] and the [EC-PLO Association Agreement] — for goods originating in the territory of the State of Israel or in the West Bank, even if only a formal certificate of origin from Israel is submitted?

If Question 1 is to be answered in the negative:

(2) Is the customs authority of a Member State bound under the EC-Israel Association Agreement, vis-à-vis an importer who is requesting preferential treatment for goods which have been imported into Community territory, by a proof-of-origin

certificate issued by the Israeli authority — and the verification procedure under Article 32 of the [EC-Israel] Protocol has not been opened — as long as the customs authority of that Member State has no doubt as to the originating status of the goods other than that as to whether the goods originate in an area which is merely under Israeli control — that is, pursuant to the terms of the Israeli-Palestinian Interim Agreement of 1995 — and as long as no dispute-settlement procedure was carried out pursuant to Article 33 of the [EC-Israel] Protocol?

If Question 2 is to be answered in the negative:

(3) May the customs authority of the country of importation refuse automatically to grant preferential treatment for the following reason alone, namely that, pursuant to its request for verification under Article 32(2) of the [EC-Israel] Protocol, it was confirmed by the Israeli authorities (only) that the goods were manufactured in an area which is subject to Israeli customs jurisdiction and that they were for that reason of Israeli origin, and where the subsequent request by the customs authority of the country of importation for further specification by the Israeli authorities remained unanswered, in particular without the actual origin of the goods having to be taken into account?

If Question 3 is to be answered in the negative:

(4) May the customs authorities [of the importing Member State] refuse automatically to grant preferential treatment under the EC-Israel Association Agreement in the case where — as has become clear in the meantime — the goods originate in the West Bank, or should preferential treatment also be granted under the [EC-Israel Agreement] for goods originating in that area, in any event as long as no dispute-

settlement procedure has been carried out under Article 33 of the [EC-Israel] Protocol concerning the interpretation of the expression "territory of the State of Israel" used in that agreement?'

The questions referred for a preliminary ruling

Questions 1 and 4

37 By Questions 1 and 4, which it is appropriate to examine together, the referring court asks, essentially, whether the customs authorities of the importing Member State may refuse to grant the preferential treatment provided for under the EC-Israel Association Agreement where the goods at issue originate in the West Bank.

38 By way of a preliminary point, it should be noted that the answer to Questions 1 and 4 closely depends on the interpretation to be given to Article 83 of the EC-Israel Association Agreement, which defines the territorial scope of that agreement.

39 In this respect, it should be recalled that an agreement concluded by the Council of the European Union with a non-Member State in accordance with Articles 217 TFEU and 218 TFEU, constitutes, as far as the European Union is concerned, an act of one of the institutions of the Union, within the meaning of point (b) of the first paragraph of Article 267 TFEU; that, from the moment it enters into force, the provisions of such an agreement form an integral part of the legal order of the European Union; and that, within the framework of that legal order, the Court has jurisdiction to give preliminary rulings concerning the interpretation of such an agreement (see, to that effect, Case 12/86 *Demirel* [1987] ECR 3719, paragraph 7, and Case C-162/96 *Racke* [1998] ECR I-3655, paragraph 41). In addition, having been concluded by two subjects of public

international law, the EC-Israel Association Agreement is governed by international law and, more specifically, as regards its interpretation, by the international law of treaties.

40 The international law of treaties was consolidated, essentially, in the Vienna Convention. Under Article 1 thereof, the Vienna Convention applies to treaties between States. However, under Article 3(b) of the Vienna Convention, the fact that the Vienna Convention does not apply to international agreements concluded between States and other subjects of international law is not to affect the application to them of any of the rules set forth in that convention to which they would be subject under international law independently of the convention.

41 It follows that the rules laid down in the Vienna Convention apply to an agreement concluded between a State and an international organisation, such as the EC-Israel Association Agreement, in so far as the rules are an expression of general international customary law. Consequently, the EC-Israel Association Agreement must be interpreted in accordance with those rules.

42 In addition, the Court has held that, even though the Vienna Convention does not bind either the Community or all its Member States, a series of provisions in that convention reflect the rules of customary international law which, as such, are binding upon the Community institutions and form part of the Community legal order (see, to that effect, *Racke,* paragraphs 24, 45 and 46; see, also, as regards the reference to the Vienna Convention for the purposes of the interpretation of association agreements concluded by the European Communities, Case C-416/96 *El-Yassini* [1999] ECR I-1209, paragraph 47, and Case C-268/99 *Jany and Others* [2001] ECR I-8615, paragraph 35 and the case-law cited).

43 Pursuant to Article 31 of the Vienna Convention, a treaty is to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. In that respect, account is to be taken, together with the context, of any relevant rules of international law applicable in the relations between the parties.

44 Among the relevant rules that may be relied on in the context of the relations between the parties to the EC-Israel Association Agreement is the general international law principle of the relative effect of treaties, according to which treaties do not impose any obligations, or confer any rights, on third States ('*pacta tertiis nec nocent nec prosunt*'). That principle of general international law finds particular expression in Article 34 of the Vienna Convention, under which a treaty does not create either obligations or rights for a third State without its consent.

45 It follows from those preliminary considerations that Article 83 of the EC-Israel Association Agreement, which defines the territorial scope of that agreement, must be interpreted in a manner that is consistent with the principle '*pacta tertiis nec nocent nec prosunt*'.

46 In this respect, it is common ground that the European Communities concluded two Euro-Mediterranean Association Agreements, first with the State of Israel and then with the PLO for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip.

47 Each of those two association agreements has its own territorial scope. Under Article 83 thereof, the EC-Israel Association Agreement applies to the 'territory of the State of Israel'. Under Article 73 thereof, the EC-PLO Association Agreement applies to the 'territories of the West Bank and the Gaza Strip'.

48 That being so, those two association agreements pursue an identical objective — referred to in Article 6(1) of the EC-Israel Association Agreement and Article 3 of the EC-PLO Association Agreement, respectively — which is to establish and/or reinforce a free trade area between the parties. They also have the same immediate purpose — defined, for industrial products, in Article 8 of the EC-Israel Association Agreement and in Articles 5 and 6 of the EC-PLO Association Agreement, respectively — which is to abolish customs duties, quantitative restrictions and other measures having equivalent effect in relation to trade between the parties to each of those agreements.

49 As regards methods of administrative cooperation, in the case, first, of the EC-Israel Association Agreement, it emerges from Articles 22(1)(a) and 23(1) of the EC-Israel Protocol that the invoice declaration needed in order to be allowed preferential treatment for exports is to be made out by an exporter who has been approved by the 'customs authorities of the exporting [State]'.

50 Secondly, in the case of the EC-PLO Association Agreement, it emerges from Articles 20(1)(a) and 21(1) of the EC-PLO Protocol that the invoice declaration needed in order to be allowed preferential treatment for exports is to be made out by an exporter approved by the 'customs authorities of the exporting [State]'. In addition, Article 16(4) of the EC-PLO Protocol implies that, if the products concerned can be regarded as products originating in the West Bank or the Gaza Strip, the 'customs authorities of... the West Bank and Gaza Strip' have sole competence to issue a movement certificate EUR.1.

51 It follows from the foregoing that the 'customs authorities of the exporting [State]', within the meaning of the two protocols mentioned above, have exclusive competence — within their territorial jurisdiction — to issue movement certificates EUR.1 or to approve exporters based in the territory under their administration.

52 Accordingly, to interpret Article 83 of the EC-Israel Association Agreement as meaning that the Israeli customs authorities enjoy competence in respect of products originating in the West Bank would be tantamount to imposing on the Palestinian customs authorities an obligation to refrain from exercising the competence conferred upon them by virtue of the abovementioned provisions of the EC-PLO Protocol. Such an interpretation, the effect of which would be to create an obligation for a third party without its consent, would thus be contrary to the principle of general international law, '*pacta tertiis nec nocent nec prosunt*', as consolidated in Article 34 of the Vienna Convention.

53 It follows that Article 83 of the EC-Israel Association Agreement must be interpreted as meaning that products originating in the West Bank do not fall within the territorial scope of that agreement and do not therefore qualify for preferential treatment under that agreement.

54 In those circumstances, the German customs authorities could refuse to grant, in respect of the goods at issue, preferential treatment as provided for under the EC-Israel Association Agreement, on the ground that those goods originated in the West Bank.

55 For the purposes, still, of Question 1, the referring court asks, essentially, whether the customs authorities of the importing State may grant preferential treatment when such treatment is provided for under both the agreements to be taken into account — namely, the EC-Israel Association Agreement and the EC-PLO Association Agreement — and it is not contested that the goods at issue originate in the West Bank and only a formal certificate of Israeli origin has been submitted. The referring court asks, more specifically, to what extent it is possible to accept that the customs authorities are free to choose between two substantively equivalent possibilities ('to make an elective

determination'), leaving open the questions of which of the two agreements applies and of whether proof of origin falls to be issued by the Israeli authorities or by the Palestinian authorities.

56 To allow elective determination simply because both the agreements at issue provide for preferential treatment and because the place of origin of the goods is established by evidence other than that envisaged under the association agreement that is actually applicable would be tantamount to denying, generally, that, in order to be entitled to the preferential treatment, it is necessary to provide valid proof of origin issued by the competent authority of the exporting State.

57 It is clear, both from Article 17 of the EC-Israel Protocol and from Article 15 of the EC-PLO Protocol, that proof of origin must be produced in respect of products originating in the territories of the contracting parties if they are to qualify for the preferential treatment. That requirement of valid proof of origin issued by the competent authority cannot be considered to be a mere formality that may be overlooked as long as the place of origin is established by means of other evidence. In this respect, the Court has already held that the validity of certificates issued by authorities other than those designated by name in the relevant association agreement cannot be accepted (see, to that effect, Case C-432/92 *Anastasiou and Others* [1994] ECR I-3087, paragraphs 37 to 41).

58 In the light of the above considerations, the answer to Questions 1 and 4 is that the customs authorities of the importing Member State may refuse to grant the preferential treatment provided for under the EC-Israel Association Agreement where the goods concerned originate in the West Bank. Furthermore, the customs authorities of the importing Member State may not make an elective determination, leaving open the questions of which of the agreements to be taken into account — namely, the EC-Israel Association Agreement and the EC-PLO Association Agreement — applies in the circumstances of the case and of whether proof of origin falls to be issued by the Israeli authorities or by the Palestinian authorities.

Questions 2 and 3

59 By Questions 2 and 3, which it is appropriate to examine together, the referring court asks, essentially, whether, for the purposes of the procedure laid down in Article 32 of the EC-Israel Protocol, the customs authorities of the importing State are bound by the proof of origin that is submitted and by the reply given by the customs authorities of the exporting State. The referring court also asks whether, in order to settle a dispute that has arisen in relation to the verification of invoice declarations, the customs authorities of the importing State must, pursuant to Article 33 of the protocol, submit that dispute to the Customs Cooperation Committee before adopting measures unilaterally.

The question whether the customs authorities of the importing State are bound by the reply given by the customs authorities of the exporting State

60 It is clear from Article 32 of the EC-Israel Protocol that the subsequent verification of invoice declarations is carried out whenever the customs authorities of the importing State have reasonable doubt as to the authenticity of such documents or the originating status of the products concerned. The verification is carried out by the customs authorities of the exporting State. The customs authorities requesting the verification are to be informed of the results of that verification within a maximum period of 10 months. Those results must indicate clearly whether the invoice declarations are authentic and whether the products concerned can be considered to be originating products. If, in cases of reasonable doubt, there is no reply within 10 months or if the reply does not contain sufficient information to enable the authenticity of the invoice declarations or the real origin of the products to be determined, the customs authorities of the importing State are to refuse to grant the preferential treatment.

61 In a similar legal context, the Court has held that it follows from such provisions that the determination of the origin of goods is based on a division of powers between the customs authorities of the parties to the free-trade agreement concerned, inasmuch as

origin is established by the authorities of the exporting State. That system is justified by the fact that the authorities of the exporting State are those best placed to verify directly the facts which determine origin (see, to that effect, Case 218/83 *Les Rapides Savoyards and Others* [1984] ECR 3105, paragraph 26).

62 However, a mechanism of that kind can function only if the customs authorities of the importing State accept the determinations legally made by the authorities of the exporting State (see, to that effect, *Les Rapides Savoyards and Others*, paragraph 27, and Joined Cases C-23/04 to C-25/04 *Sfakianakis* [2006] ECR I-1265, paragraph 23).

63 It follows that, in the context of that system of mutual recognition, the customs authorities of the importing State may not unilaterally declare invalid an invoice declaration made out by an exporter who has been properly approved by the customs authorities of the exporting State. Likewise, in cases of subsequent verification, the customs authorities of the importing State are generally bound by the results of such verification (see, to that effect, *Sfakianakis*, paragraph 49).

64 Nevertheless, in the case before the referring court, the subsequent verification pursuant to Article 32 of the EC-Israel Protocol did not concern the question whether the imported products were wholly obtained in a certain location or whether they had undergone sufficient working and processing there for them to be considered to be products originating in that location, in accordance with the EC-Israel Protocol. The aim of the subsequent verification was to establish the precise place of manufacture of the imported products, for the purposes of determining whether those products fell within the territorial scope of the EC-Israel Association Agreement. The European Union takes the view that products obtained in locations which have been placed under Israeli administration since 1967 do not qualify for the preferential treatment provided for under that agreement.

65 In accordance with Article 32(6) of the EC-Israel Protocol, if the reply given by the customs authorities of the exporting State does not contain sufficient information to enable the real origin of the products to be determined, the requesting customs authorities are to refuse to grant preferential treatment in respect of those products.

66 As it is, it is apparent from the circumstances of the case before the referring court that, in the context of the subsequent verification, the Israeli customs authorities gave no reply to the letters which the German customs authorities had sent in order to check whether the products at issue had been manufactured in Israeli-occupied settlements in the West Bank, the Gaza Strip, East Jerusalem or the Golan Heights. The letter of 6 February 2003 from the German customs authorities even remained unanswered.

67 In circumstances such as those, it must be held that a reply such as that given by the customs authorities of the exporting State does not contain sufficient information, for the purposes of Article 32(6) of the EC-Israel Protocol, to enable the real origin of the products to be determined, which means that, in a context such as this, the assertion made by those authorities that the products at issue qualify for preferential treatment under the EC-Israel Association Agreement is not binding upon the customs authorities of the importing Member State.

The obligation to bring the matter before the Customs Cooperation Committee

68 The first paragraph of Article 33 of the EC-Israel Protocol provides that, where disputes arise in relation to the verification procedures under Article 32 of the protocol or where they raise a question as to the interpretation of that protocol, they are to be submitted to the Customs Cooperation Committee.

69 Under Article 39 of the EC-Israel Protocol, the Customs Cooperation Committee is an administrative body composed of customs experts and officials from the Commission, the Member States and the State of Israel. Within the framework of that protocol, it is to be entrusted with the performance of any technical task in the customs field. Consequently, it cannot be regarded as having competence to settle disputes concerning questions of law such as those relating to the interpretation of the EC-Israel Association Agreement itself. On the other hand, such disputes may, in accordance with Article 75(1) of the EC-Israel Association Agreement, be submitted to the Association Council.

70 In a case such as that before the referring court, the reply given by the customs authorities of the exporting State in the context of the subsequent verification procedure provided for in Article 32 of the EC-Israel Protocol cannot be considered to be at the origin of a dispute between the contracting parties concerning the interpretation of that protocol. First, that reply fails to provide the information requested. Secondly, even though, in the case before the referring court, a dispute arose at the time of the subsequent verification procedure requested by the customs authorities of the importing State, that dispute does not concern the interpretation of the EC-Israel Protocol, but the determination of the territorial scope of the EC-Israel Association Agreement.

71 It follows that, in circumstances such as those in the case before the referring court, each of the contracting parties has the right to bring before the Association Council a question concerning the interpretation of the territorial scope of the EC-Israel Association Agreement. By contrast, there is no obligation to bring the matter before the Customs Cooperation Committee since that question of interpretation does not fall within its sphere of competence.

72 In any event, even if it might have been conceivable, had there been a dispute concerning the interpretation of the Association Agreement as such, to bring the matter before the Association Council, it should be recalled that, as the Court has already held, the fact that the dispute was not referred to the Association Committee, an emanation of the Association Council, cannot be used as justification for derogating

from the system of cooperation and respect for the areas of competence as allocated under the Association Agreement (see, by analogy, *Sfakianakis*, paragraph 52).

73 In the light of all of the foregoing, the answer to Questions 2 and 3 is that, for the purposes of the procedure laid down in Article 32 of the EC-Israel Protocol, the customs authorities of the importing State are not bound by the proof of origin submitted or by the reply given by the customs authorities of the exporting State where that reply does not contain sufficient information, for the purposes of Article 32(6) of the EC-Israel Protocol, to enable the real origin of the products to be determined. Furthermore, the customs authorities of the importing State are not obliged to refer to the Customs Cooperation Committee set up under Article 39 of that protocol a dispute concerning the territorial scope of the EC-Israel Association Agreement.

Costs

74 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 (Fourth Chamber) hereby rules:

1. The customs authorities of the importing Member State may refuse to grant the preferential treatment provided for under the Euro-Mediterranean Agreement establishing an association between the European Communities

and their Member States, of the one part, and the State of Israel, of the other part, signed in Brussels on 20 November 1995, where the goods concerned originate in the West Bank. Furthermore, the customs authorities of the importing Member State may not make an elective determination, leaving open the questions of which of the agreements to be taken into account — namely, the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, and the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, signed in Brussels on 24 February 1997 — applies in the circumstances of the case and of whether proof of origin falls to be issued by the Israeli authorities or by the Palestinian authorities.

2. **For the purposes of the procedure laid down in Article 32 of Protocol No 4 appended to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, the customs authorities of the importing State are not bound by the proof of origin submitted or by the reply given by the customs authorities of the exporting State where that reply does not contain sufficient information, for the purposes of Article 32(6) of that protocol, to enable the real origin of the products to be determined. Furthermore, the customs authorities of the importing State are not obliged to refer to the Customs Cooperation Committee set up under Article 39 of that protocol a dispute concerning the territorial scope of that agreement.**

[Signatures]