

**Judgment of the Court (Grand Chamber)
of 6 December 2005**

**Gaston Schul Douane-expediteur BV v Minister van Landbouw, Natuur en Voedselkwaliteit.
Reference for a preliminary ruling: College van Beroep voor het bedrijfsleven - Netherlands. Article 234
EC - Obligation on a national court to seek a preliminary ruling - Invalidity of a provision of
Community law - Sugar - Additional import duty - Regulation (EC) No 1423/95 - Article 4. Case
C-461/03.**

1. Preliminary rulings - Assessment of validity - Finding of invalidity of Community provisions comparable to those already declared invalid by the Court - Lack of jurisdiction of national courts - Duty to refer

(Art. 230 EC, Art. 234 EC, third para., and Art. 241 EC)

2. Agriculture - Common organisation of the markets - Sugar - Trade with non-member countries - Additional import duties - Determination on the basis of the cif import price - Obligation on the importer to make an application - Determination on the basis of the representative price - Not valid

(Commission Regulation No 1423/95, Arts 1(2) and 4(1) and (2))

1. The third paragraph of Article 234 EC requires a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law to seek a ruling from the Court of Justice on a question relating to the validity of the provisions of a regulation even where the Court has already declared invalid analogous provisions of another comparable regulation. National courts have no jurisdiction themselves to determine that acts of Community institutions are invalid.

Although the rule that national courts may not themselves determine that Community acts are invalid may have to be qualified in certain circumstances in the case of proceedings relating to an application for interim measures, the interpretation adopted in *Cilfit and Others*, referring to questions of interpretation, cannot be extended to questions relating to the validity of Community acts.

That solution is imposed, first, by the requirement of uniformity in the application of Community law. That requirement is particularly vital where the validity of a Community act is in question. Differences between courts of the Member States as to the validity of Community acts would be liable to jeopardise the essential unity of the Community legal order and undermine the fundamental requirement of legal certainty.

It is imposed, secondly, by the necessary coherence of the system of judicial protection instituted by the EC Treaty. References for a preliminary ruling on validity constitute, on the same basis as actions for annulment, a means of reviewing the legality of Community acts. By Articles 230 EC and 241 EC, on the one hand, and Article 234 EC, on the other, the Treaty established a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions and has entrusted such review to the Community Courts.

(see paras 17-19, 21-22, 25, operative part 1)

2. Paragraphs (1) and (2) of Article 4 of Regulation No 1423/95 laying down detailed implementing rules for the import of products in the sugar sector other than molasses are invalid inasmuch as they provide that the additional duty referred to therein is, as a general rule, established on the basis of the representative price referred to in Article 1(2) of that regulation and that that duty is established on the basis of the cif import price of the shipment concerned only if the importer so requests.

(see para. 32, operative part 2)

In Case C-461/03,

REFERENCE for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 24 October 2003, received at the Court on 4 November 2003, in the proceedings

Gaston Schul Douane-expediteur BV

v

Minister van Landbouw, Natuur en Voedselkwaliteit,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and J. Malenovsku, Presidents of Chambers, N. Colneric (Rapporteur), S. von Bahr, J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Lenaerts, G. Arestis, A. Borg Barthet and M. Ilei, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,

Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Netherlands Government, by H.G. Sevenster and N.A.J. Bel, acting as Agents,
- the Commission of the European Communities, by T. van Rijn and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 June 2005,

gives the following

Judgment

On those grounds, the Court (Grand Chamber) hereby rules:

1. The third paragraph of Article 234 EC requires a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law to seek a ruling from the Court of Justice on a question relating to the validity of the provisions of a regulation even where the Court has already declared invalid analogous provisions of another comparable regulation;

2. Paragraphs (1) and (2) of Article 4 of Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses are invalid inasmuch as they provide that the additional duty referred to therein is, as a general rule, established on the basis of the representative price referred to in Article 1(2) of that regulation and that that duty is established on the basis of the cif import price of the shipment concerned only if the importer so requests.

1. The reference for a preliminary ruling concerns the interpretation of Article 234 EC and the validity of Article 4(1) and (2) of Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses (OJ 1995 L 141, p. 16).

2. The reference was made in proceedings between Gaston Schul Douane-expediteur BV (Gaston Schul') and the Minister van Landbouw, Natuur en Voedselkwaliteit (the Minister for Agriculture') regarding the import of cane sugar.

Legal context

3. Pursuant to Article 234 EC:

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.'

4. The Agreement on Agriculture in Annex 1A to the Agreement establishing the World Trade Organisation (the WTO') was approved on behalf of the Community by virtue of the first indent of Article 1(1) of Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1). Article 5 of the Agreement on Agriculture provides as follows:

1. Notwithstanding the provisions of paragraph 1(b) of Article II of GATT 1994, any Member may take recourse to the provisions of paragraphs 4 and 5 below... if:

- (a) ...
- (b) the price at which imports of that product may enter the customs territory of the Member [of the WTO] granting the concession, as determined on the basis of the cif import price of the shipment concerned expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986 to 1988 reference price for the product concerned.

...

5. The additional duty imposed under subparagraph 1(b) shall be set according to the following schedule:

...'

5. Article 15(3) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), as amended by Council Regulation (EC) No 3290/94 of 22 December 1994 on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations (OJ 1994 L 349, p. 105) (the basic regulation') provides that the import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration' and that cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product'.

6. The Commission of the European Communities adopted Regulation (EC) No 1423/95 laying down detailed implementing rules for the basic regulation. Article 4 of Regulation No 1423/95 provides:

1. In the absence of a request as referred to in paragraph 2 or where the cif import price of the consignment in question as referred to in paragraph 2 is less than the relevant representative price

fixed by the Commission, the cif import price of the consignment in question to be taken into account for the imposition of an additional duty shall be the representative price referred to in Article 1(2) or (3).

2. When the cif price of the consignment in question is higher than the relevant representative price as referred to in Article 1(2) or (3), the importer may, on request made to the competent authority of the importing Member State at the time of acceptance of the import declaration, have applied for the purposes of establishing the additional duty either the cif import price of the consignment in question of white sugar or raw sugar converted into the standard quality as defined, respectively, in Article 1 of Regulation (EEC) No 793/72 and Article 1 of Regulation (EEC) No 431/68, or the equivalent price for the product falling within CN code 1702 90 99, as the case may be.

The cif import price of the consignment in question shall be converted into the price of sugar of the standard quality by adjustment pursuant to the relevant provisions of Article 5 of Regulation (EEC) No 784/68.

In such cases the cif import price of the consignment in question shall apply for the purposes of establishing the additional duty, provided that the interested party submits to the competent authorities of the importing Member State at least the following evidence:

- the contract of purchase or equivalent proof,
- the insurance contract,
- the invoice,
- the transport contract (where applicable),
- the certificate of origin,
- in the case of maritime transport, the bill of lading,

within thirty days of the date on which the import declaration was accepted.

The Member State in question may require any other information and documents in support of the request. As soon as the request has been lodged, the additional duty in question as fixed by the Commission shall apply.

However, the difference between the additional duty in question fixed by the Commission and the additional duty established on the basis of the cif import price of the consignment in question shall give rise, at the request of the interested party, to the lodging by the latter of a security pursuant to Article 248 of Commission Regulation (EEC) No 2454/93.

The security shall be released as soon as the competent authority of the importing Member State accepts the request on the basis of the evidence supplied by the interested party.

The competent authority of the Member State shall refuse the request if it judges that the evidence supplied does not justify it.

If the authority does not accept the request, the security shall be forfeit.

...'

The main proceedings and the questions referred for a preliminary ruling

7. On 6 May 1998 Gaston Schul declared the import of 20 000 kg of raw cane sugar from Brazil at a cif price of NLG 31 916. According to the information sent by the customs authorities on 13 May 1998 with the comment check concluded without adjustments', the amount of the import duty

due was NLG 20 983.70. On 4 August 1998 the inspector of the Tax Department of Roosendaal Customs District, on behalf of the Minister for Agriculture, requested payment from Gaston Schul of NLG 4 968.30 in respect of an agricultural levy'. This levy was calculated as follows: 20 000 kg multiplied by NLG 24.841182 (ECU 11.11) in respect of additional import duty per 100 kg. After making an unsuccessful claim against that notice of duty, Gaston Schul brought an action before the national court.

8. That court has noted, first, that Article 15 of the basic regulation, laying down the system for additional duty in the sugar sector, is identical to Article 5 of Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organisation of the market in poultrymeat (OJ 1975 L 282, p. 77), as amended by Regulation No 3290/94, those two provisions, in their current versions, having been adopted on the same date.

9. In the poultrymeat and egg sector, the Court, in its judgment in Case C317/99 *Kloosterboer Rotterdam* [2001] ECR I9863, declared invalid paragraphs (1) and (3) of Article 3 of Commission Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing additional import duties in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation No 163/67/EEC (OJ 1995 L 145, p. 47), inasmuch as they provide that the additional duty referred to therein is, as a general rule, established on the basis of the representative price laid down in Article 2(1) of that regulation and that the duty is established on the basis of the cif import price of the consignment concerned only if the importer so requests. According to that judgment, the Commission exceeded its executory powers.

10. The national court takes the view that paragraphs (1) and (3) of Article 3 of Regulation No 1484/95, which have been declared invalid by the Court of Justice as a result of these considerations, are identical in the respects considered by the Court of Justice to the provisions of Article 4(1) and (2) of Regulation No 1423/95. In both instances there is a basic regulation specifying, in accordance with Article 5 of the Agreement on Agriculture in Annex 1A to the Agreement establishing the WTO, that the additional import duty is calculated on the basis of the cif price, whereas in a Commission implementing regulation calculation of the additional duty on the basis of the representative price is made the general rule.

11. Paragraphs (1) and (2) of Article 4 of Regulation No 1423/95 are thus incompatible with Article 15 of the basic regulation.

12. On the basis of the Court's judgment in Case 314/85 *Foto-Frost* [1987] ECR 4199, the national court observes that it is for the Court of Justice alone to rule on the invalidity of acts of the Community institutions.

13. It considers, nevertheless, that the question whether the situation could be different in a national dispute such as that in the main proceedings, where the question posed concerns the validity of provisions corresponding to other provisions of Community law which the Court has already declared to be invalid in a preliminary ruling, such as the *Kloosterboer Rotterdam* judgment, requires an interpretation of the third paragraph of Article 234 EC.

14. Under those circumstances, the *College van Beroep voor het bedrijfsleven* decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

1. Is a court or tribunal as referred to in the third paragraph of Article 234 EC also required under that provision to submit to the Court of Justice a question such as that set out below concerning the validity of provisions of a regulation where the Court of Justice has ruled that analogous provisions of another, comparable regulation are invalid, or may it refrain from applying the first-mentioned provisions in view of the clear analogies between them and the provisions declared invalid?

2. Are paragraphs (1) and (2) of Article 4 of Regulation... No 1423/95 ... invalid inasmuch as they provide that the additional duty referred to therein is, as a general rule, established on the basis of the representative price referred to in Article 1(2) of Regulation... No 1423/95 and that that duty is established on the basis of the cif import price of the shipment concerned only if the importer so requests?'

The questions

The first question

15. By the first question, the national court essentially asks whether the third paragraph of Article 234 EC requires a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law to seek a ruling from the Court of Justice on a question relating to the validity of the provisions of a regulation even where the Court has already declared invalid analogous provisions of another comparable regulation.

16. With regard to questions of interpretation, it is clear from the judgment in Case 283/81 *Cilfit and Others* [1982] ECR 3415, paragraph 21, that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt (see also Case C495/03 *Intermodal Transports* [2005] ECR I0000, paragraph 33).

17. However, it is clear from paragraph 20 of the *Foto-Frost* judgment that national courts have no jurisdiction themselves to determine that acts of Community institutions are invalid.

18. The rule that national courts may not themselves determine that Community acts are invalid may have to be qualified in certain circumstances in the case of proceedings relating to an application for interim measures (*Foto-Frost*, paragraph 19; see also, to that effect, Case 107/76 *Hoffmann-La Roche* [1977] ECR 957, paragraph 6; Joined Cases 35/82 and 36/82 *Morson and Jhanjan* [1982] ECR 3723, paragraph 8; Joined Cases C143/88 and C92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I415, paragraphs 21 and 33; and Case C465/93 *Atlanta Fruchthandelsgesellschaft and Others (I)* [1995] ECR I3761, paragraphs 30, 33 and 51).

19. Nevertheless, the interpretation adopted in the *Cilfit* judgment, referring to questions of interpretation, cannot be extended to questions relating to the validity of Community acts.

20. Firstly, even in cases which at first sight are similar, careful examination may show that a provision whose validity is in question is not comparable to a provision which has already been declared invalid because, for instance, it has a different legal or factual context, as the case may be.

21. The main purpose of the jurisdiction conferred on the Court by Article 234 EC is to ensure that Community law is applied uniformly by national courts. That requirement of uniformity is particularly vital where the validity of a Community act is in question. Differences between courts of the Member States as to the validity of Community acts would be liable to jeopardise the essential unity of the Community legal order and undermine the fundamental requirement of legal certainty (*Foto-Frost*, paragraph 15).

22. The possibility of a national court ruling on the invalidity of a Community act is likewise incompatible with the necessary coherence of the system of judicial protection instituted by the EC Treaty. It is important to note in that regard that references for a preliminary ruling on validity constitute, on the same basis as actions for annulment, a means of reviewing the legality

of Community acts. By Articles 230 EC and 241 EC, on the one hand, and Article 234 EC, on the other, the Treaty established a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions and has entrusted such review to the Community Courts (see Case 294/83 *Parti écologiste Les Verts' v Parliament* [1986] ECR 1339, paragraph 23; *Foto-Frost*, paragraph 16; and Case C50/00 *P Union de Pequeños Agricultores* [2002] ECR I6677, paragraph 40).

23. Reducing the length of the proceedings cannot serve as justification for undermining the sole jurisdiction of the Community Courts to rule on the validity of Community law.

24. It must also be emphasised that the Community Courts are in the best position to rule on the validity of Community acts. Under Article 23 of the Statute of the Court of Justice, Community institutions whose acts are challenged are entitled to participate in the proceedings in order to defend the validity of the acts in question. Furthermore, under the second paragraph of Article 24 of that Statute, the Court may require Community institutions which are not participating in the proceedings to supply any information which it considers necessary for the purposes of the case before it (see *FotoFrost*, paragraph 18).

25. It follows from all the foregoing considerations that the answer to the first question must be that the third paragraph of Article 234 EC requires a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law to seek a ruling from the Court of Justice on a question relating to the validity of the provisions of a regulation even where the Court has already declared invalid analogous provisions of another comparable regulation.

The second question

26. By the second question, the national court asks whether paragraphs (1) and (2) of Article 4 of Regulation No 1423/95 are invalid inasmuch as they provide that the additional duty referred to therein is, as a general rule, established on the basis of the representative price referred to in Article 1(2) of Regulation No 1423/95 and, moreover, that that duty is established on the basis of the cif import price of the shipment concerned only if the importer so requests.

27. It is clear from the wording of the first subparagraph of Article 15(3) of the basic regulation that only the cif import price of the consignment may serve as a basis for determining any additional duty.

28. No conditions or exceptions are attached to application of that rule.

29. The second subparagraph of Article 15(3) of the basic regulation provides unambiguously that the representative price for the product concerned is taken into account only for the purposes of checking the accuracy of the cif import price.

30. However, under Article 4(1) and (2) of Regulation No 1423/95, the cif import price may be taken into consideration in establishing the additional duty on condition that the importer submits a formal request to that effect accompanied by certain supporting documents, and in all other cases the price taken into consideration must be the representative price, which is thus to be the general rule.

31. Inasmuch as Article 15(3) of the basic regulation makes no provision for an exception to the rule that additional duty is established on the basis of the cif import price, paragraphs (1) and (2) of Article 4 are contrary to that provision.

32. The answer to the second question must therefore be that paragraphs (1) and (2) of Article 4 of Regulation No 1423/95 are invalid inasmuch as they provide that the additional duty referred to therein is, as a general rule, established on the basis of the representative price referred to in Article 1(2) of Regulation No 1423/95 and that that duty is established on the basis of

the cif import price of the shipment concerned only if the importer so requests.

Costs

33. 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.

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Ruiz-Jarabo Colomer

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