Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

26 October 2017 (*)

(Reference for a preliminary ruling — Customs union — Community Customs Code — Article 220(1) and (2)(b) — Post-clearance recovery of import or export duties — Definition of ‘entry in the accounts of the import duties’ — Decision of the competent customs authority — Time limit for submitting an application for repayment or remission — Obligation to transmit the case to the European Commission — Evidence in the event of an appeal against a decision of the competent authority of the importing Member State)

In Case C?407/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augst?k?s tiesas Administrat?vo lietu departaments (Supreme Court, Administrative Chamber, Latvia), made by decision of 15 July 2016, received at the Court on 20 July 2016, in the proceedings

‘Aqua Pro’ SIA

v

Valsts ie??mumu dienests,

THE COURT (Sixth Chamber),

composed of J.-C. Bonichot, acting as President of the Chamber, S. Rodin (Rapporteur) and E. Regan, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Latvian Government, by I. Kucina, D. Pelše, G. Bamb?ne and I. Kalni?š, acting as Agents,

– the European Commission, by A. Caeiros and E. Kalni?š, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 220(1) and (2)(b) and Articles 236 and 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation

(EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17) ('the Customs Code'), and of Article 869(b) and Article 875 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 1335/2003 of 25 July 2003 (OJ 2003 L 187, p. 16) ('the Implementing Regulation').

2 The request has been made in proceedings between 'Aqua Pro' SIA and Valsts ie??mumu dienests (the Latvian tax authority, 'the tax authority') concerning the charging of import duties and value added tax (VAT), together with interest for late payment, during a post-clearance examination of a customs declaration.

Legal context

3 Article 217(1) of the Customs Code provides:

'Each and every amount of import duty or export duty resulting from a customs debt, hereinafter called "amount of duty", shall be calculated by the customs authorities as soon as they have the necessary particulars, and entered by those authorities in the accounting records or on any other equivalent medium (entry in the accounts).

…'

4 Under Article 220 of the Customs Code:

'1. Where the amount of duty resulting from a customs debt has not been entered in the accounts in accordance with Articles 218 and 219 or has been entered in the accounts at a level lower than the amount legally owed, the amount of duty to be recovered or which remains to be recovered shall be entered in the accounts within two days of the date on which the customs authorities become aware of the situation and are in a position to calculate the amount legally owed and to determine the debtor (subsequent entry in the accounts). That time limit may be extended in accordance with Article 219.

2. Except in the cases referred to in the second and third subparagraphs of Article 217(1), subsequent entry in the accounts shall not occur where:

…

(b) the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

Where the preferential status of the goods is established on the basis of a system of administrative cooperation involving the authorities of a third country, the issue of a certificate by those authorities, should it prove to be incorrect, shall constitute an error which could not reasonably have been detected within the meaning of the first subparagraph.

The issue of an incorrect certificate shall not, however, constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where, in particular, it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment.

The person liable may plead good faith when he can demonstrate that, during the period of the trading operations concerned, he has taken due care to ensure that all the conditions for the

preferential treatment have been fulfilled.

The person liable may not, however, plead good faith if the European Commission has published a notice in the *Official Journal of the European [Union]*, stating that there are grounds for doubt concerning the proper application of the preferential arrangements by the beneficiary country;

…’

5 Article 236 of the Customs Code provides:

‘1. Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

Import duties or export duties shall be remitted in so far as it is established that when they were entered in the accounts the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.

2. Import duties or export duties shall be repaid or remitted upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor.

That period shall be extended if the person concerned provides evidence that he was prevented from submitting his application within the said period as a result of unforeseeable circumstances or force majeure.

Where the customs authorities themselves discover within this period that one or other of the situations described in the first and second subparagraphs of paragraph 1 exists, they shall repay or remit on their own initiative.’

6 Article 239 of the Customs Code provides:

‘1. Import duties or export duties may be repaid or remitted in situations other than those referred to in Articles 236, 237 and 238:

– to be determined in accordance with the procedure of the committee;

– resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned. The situations in which this provision may be applied and the procedures to be followed to that end shall be defined in accordance with the committee procedure. Repayment or remission may be made subject to special conditions.

2. Duties shall be repaid or remitted for the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within 12 months from the date on which the amount of the duties was communicated to the debtor.

However, the customs authorities may permit this period to be exceeded in duly justified exceptional cases.’

7 According to Article 869 of the Implementing Regulation:

‘The customs authorities shall themselves decide not to enter uncollected duties in the accounts:

(a) in cases in which preferential tariff treatment has been applied in the context of a tariff quota, a tariff ceiling or other arrangements when entitlement to this treatment had been ended at the time of acceptance of the customs declaration without that fact having been published in the *Official Journal of the European Communities* before the release for free circulation of the goods in question or, where such fact is not published, having been made known in an appropriate manner in the Member State concerned, the person liable for payment for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration;

(b) in cases in which they consider that the conditions laid down in Article 220(2)(b) of the Code are fulfilled, except those in which the dossier must be transmitted to the Commission pursuant to Article 871. However, where Article 871(2), second indent, is applicable, the customs authorities may not adopt a decision waiving entry in the accounts of the duties in question until the end of a procedure initiated in accordance with Articles 871 to 876.

Where a request is submitted for repayment or remission under Article 236 of the Code in conjunction with Article 220(2)(b) of the Code, subparagraph (b) of the first paragraph of this Article and Articles 871 to 876 shall apply *mutatis mutandis*.

For the purposes of applying the above paragraphs the Member States shall give each other mutual assistance, particularly where an error by the customs authorities of a Member State other than the one responsible for taking the decision is concerned.’

8 Article 871 of the Implementing Regulation is worded as follows:

‘1. The customs authority shall transmit the case to the Commission to be settled under the procedure laid down in Articles 872 to 876 where it considers that the conditions laid down in Article 220(2)(b) of the Code are fulfilled and:

– it considers that the Commission has committed an error within the meaning of Article 220(2)(b) of the Code,

– the circumstances of the case are related to the findings of a Community investigation carried out under Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [OJ 1997 L 82, p. 1] or under any other Community legislation or any agreement concluded by the Community with a country or group of countries in which provision is made for carrying out such Community investigations, or

– the amount not collected from the operator concerned in respect of one or more import or export operations but in consequence of a single error is EUR 500 000 or more.

2. However, the cases referred to in paragraph 1 shall not be transmitted where:

– the Commission has already adopted a decision under the procedure provided for in Articles 872 to 876 on a case involving comparable issues of fact and of law,

– the Commission is already considering a case involving comparable issues of fact and of

law.

…’

9 Article 875 of the Implementing Regulation provides:

‘Where it is established by the decision referred to in Article 873 that the circumstances under consideration are such that the duties in question need not be entered in the accounts, the Commission may specify the conditions under which the Member States may refrain from subsequent entry in the account in cases involving comparable issues of fact and of law.’

10 Article 9 of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136, p. 1, ‘the Regulation on investigations conducted by OLAF’) provides:

‘1. On completion of an investigation carried out by the Office, the latter shall draw up a report, under the authority of the Director, specifying the facts established, the financial loss, if any, and the findings of the investigation, including the recommendations of the Director of the Office on the action that should be taken.

2. In drawing up such reports, account shall be taken of the procedural requirements laid down in the national law of the Member State concerned. Reports drawn up on that basis shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports.

3. Reports drawn up following an external investigation and any useful related documents shall be sent to the competent authorities of the Member States in question in accordance with the rules relating to external investigations.

4. Reports drawn up following an internal investigation and any useful related documents shall be sent to the institution, body, office or agency concerned. The institution, body, office or agency shall take such action, in particular disciplinary or legal, on the internal investigations, as the results of those investigations warrant, and shall report thereon to the Director of the Office, within a deadline laid down by him in the findings of his report.’

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

11 From 1 September 2007 to 31 December 2009, Aqua Pro imported into the European Union bicycles originating in Cambodia. Under a distribution agreement, it bought the bicycles from a German undertaking for the purpose of their release for free circulation.

12 In accordance with a ‘Form A’ certificate of origin, issued by the Cambodian authorities under the generalised system of preferences, Aqua Pro did not pay any custom duty or VAT.

13 In 2010, the tax authority received information from the European Anti-Fraud Office (OLAF) to the effect that the certificate of origin issued by the Cambodian Government in respect of the goods in question did not comply with the requirements of EU law.

14 On the basis of that information, the tax authority conducted an audit of the customs duty and other taxes due by Aqua Pro and found that the ‘Form A’ certificate of origin had been incorrectly issued and that exemptions from customs duty had been wrongly granted in respect of

those goods.

15 Consequently, by decision of 3 September 2010, the tax authority ordered Aqua Pro to pay the relevant customs duty and VAT, together with interest for late payment (‘the contested decision’).

16 Having, subsequently, challenged that decision without success before the director general of the tax authority, Aqua Pro brought an action for its annulment before the Administrat?v? rajona tiesa (District Administrative Court, Latvia) on the ground that, in declaring the goods at the rate of 0%, it acted in good faith in so far as it could not, in particular, have known that the ‘Form A’ certificate of origin had been incorrectly issued.

17 In the course of those proceedings, the matter arose of the applicability to the facts of the case of Commission Decision C(2012) 8694 of 30 November 2012, adopted following a request from the Republic of Finland concerning import duties for bicycles originating in Cambodia imported by a Finnish company, in which the Commission decided that in that case a waiver of subsequent entry in the accounts of the amount of duty to be recovered was justified.

18 In that regard, the tax authority contended in particular that, since Aqua Pro had not lodged an application for repayment or remission of import duties in accordance with Articles 878 and 879 of the Implementing Regulation, no corresponding procedure had been initiated for the purposes of determining whether that importer could have detected the error made at the time the certificate of origin was issued. In addition, according to the tax authority, Aqua Pro’s situation was not comparable to the situation on which the abovementioned Commission decision was based.

19 Having obtained, via the tax authority, information from the Cambodian Ministry of Commerce regarding the circumstances in which ‘Form A’ certificates were issued in respect of bicycles exported to Latvia, from which it appeared that that ministry could not verify whether the certificates had been correctly issued because the exporter had not forwarded the relevant documents, the Administrat?v? rajona tiesa (District Administrative Court) dismissed Aqua Pro’s action for annulment by judgment of 28 November 2013.

20 After consideration of the case on appeal, the Administrat?v? apgabaltiesa (Administrative Court of Appeal, Latvia) also dismissed Aqua Pro’s plea for annulment, by judgment of 7 May 2015, on the ground that Aqua Pro had not satisfied the conditions for pleading legitimate expectations under Article 220(2)(b) of the Customs Code as set out in the Court’s case-law. In particular, Aqua Pro, which bears the burden of proof according to that court, had not adduced evidence to call into question the findings of OLAF regarding the origin of the bicycle components on the basis of ‘B and D Form’ certificates of origin.

21 Aqua Pro appealed on a point of law to the referring court.

22 First of all, that court observes that there are doubts as to whether the customs authorities and the Administrat?v? rajona tiesa (District Administrative Court) were correct to refuse to consider whether Aqua Pro was acting in good faith within the meaning of Article 220(2)(b) of the Customs Code on the ground of there being no application from Aqua Pro initiating the duties remission or repayment procedure. There are, according to the referring court, also doubts as to whether the customs authorities and the Administrat?v? rajona tiesa (District Administrative Court) were correct not to take into account Commission Decision C(2012) 8694 of 30 November 2012 on the request from the Finnish Republic. In that regard, the referring court takes the view that the decisive factor is whether the factual and legal issues are comparable and whether the person concerned acted in good faith and complied with all the provisions in the legislation as regards the customs declaration.

23 Next, the referring court considers it necessary to put queries as to the use of the OLAF report as evidence and of the post-clearance examination in establishing the facts.

24 Lastly, the referring court has doubts as to whether, in assessing the matter of the applicant's good faith, account should not be taken, in conjunction with the other circumstances of the case, including the operating model of the Cambodian undertakings and of the authorities in question, of the fact that Aqua Pro did not acquire the goods directly from the Cambodian undertaking, but, under a distribution agreement, from a German undertaking, given that that commercial model itself already, in principle, excludes direct cooperation between Aqua Pro and the Cambodian undertaking, failing any contact between the two.

25 In those circumstances, the Augst?k?s tiesas Administrat?vo lietu departaments (Supreme Court, Administrative Chamber, Latvia) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) (a) Is Article 220(1) and (2)(b) of [the Customs Code] to be interpreted as meaning that the amount of duty found to be owed by the tax authority is to be regarded as entered in the accounts by the authority when it decides to enter that amount in the accounts or when it establishes the obligation to pay the duty, regardless of whether that decision has been subject to an administrative appeal and challenged in court proceedings?

(b) Are Articles 236 and 239 of [the Customs Code] to be interpreted as meaning that when the tax authority has adopted the decision to enter the corresponding amount of duty in the accounts and has established the debtor's obligation to pay it (as is the case of the tax authority in the main proceedings), but that debtor has brought an administrative appeal against that decision and challenged it in court proceedings, it is necessary for the debtor to apply at the same time for remission or repayment of that duty, in accordance with the procedure laid down in Articles 236 or 239 of [the Customs Code] (or in that case is challenging the decision of the tax authority also to be regarded as an application for remission or repayment)? If so, what is the difference in substance between the review of the lawfulness of the decision of the tax authority to enter the duty in the accounts and to impose the obligation to pay the duty, on the one hand, and the matter which must be resolved in accordance with Article 236 [of the Customs Code], on the other?

(c) Is the first subparagraph of Article 236(2) of [the Customs Code] to be interpreted as meaning that the fact that an appeal has been brought against the tax authority's decision establishing the obligation to pay the duty, and the duration of the legal proceedings, extend the time limit for submitting the application for remission or repayment of the duty (or justify failure to comply with it)?

(d) If the question of whether, in this case, the duty should be entered in the accounts or

remitted is to be decided regardless of the decision of the European Commission adopted in relation to another Member State (in this case, [the Republic of] Finland), should the customs authority or the courts, having regard to Article 869(b) of [the Implementing Regulation] and also to the amount of the possible duty in the case under consideration, refer the question of non-entry or remission of the duty to the European Commission?

(2) (a) When Article 220(2)(b) of [the Customs Code] is applied, should a subsequent check be made of the circumstances relating to the conduct of the authorities and the exporter of the third country (in the present case, Cambodia), which were investigated in connection with the OLAF mission? Or should the general description of the circumstances contained in the OLAF report on the aforementioned conduct be admitted as evidence?

(b) Is the information obtained in the subsequent check, even if it refers to the case of a specific Member State, decisive in connection with the OLAF report?

(c) Is Article 875 of [the Implementing Regulation] to be interpreted as meaning that the European Commission's decision, adopted on the basis of the aforementioned OLAF report in respect of another Member State (namely, [the Republic of] Finland), is binding on the Member State?

(d) Should a subsequent check be carried out and should the information obtained thereby be used if the European Commission, on the basis of the OLAF report, has adopted a decision not to enter the duty in the accounts in relation to another Member State and has applied Article 875 of the Implementing Regulation?

(3) When the existence of reasonable grounds and good faith in the conduct of the taxable person is evaluated for the purposes of applying Article 220(2)(b) of [the Customs Code], may it be relevant in the specific circumstances that the transaction importing the goods is based on a distribution agreement?'

Consideration of the questions referred

Question 1(a)

26 It should be observed as a preliminary point that, according to the Court's settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. With that in mind, the Court may have to reformulate the questions referred to it. Further, the Court may decide to take into consideration rules of EU law to which the national court has made no reference in the wording of its question (judgment of 1 February 2017, *Município de Palmela*, C?144/16, EU:C:2017:76, paragraph 20 and the case-law cited).

27 In the present case, according to the order for reference, the Augst?k?s tiesas Administrat?vo lietu departaments (Supreme Court, Administrative Chamber) asks, inter alia, whether subsequent entry in the accounts of the amount of duty to be recovered, which Aqua Pro could contest under Article 220(2)(b) of the Customs Code, has already taken place, given that judicial review of the legality of the contested decision has not yet given rise to a final decision and that the matter of whether the duty in question should be entered in the accounts has therefore not yet been settled.

28 In that light, by question 1(a), the referring court asks, in essence, at what time subsequent entry in the accounts of the amount of duty to be recovered must, having regard to Article 220 of

the Customs Code, be regarded as taking place where the decision of the authority to enter that amount in the accounts or establish the obligation to pay the duty is subject to an administrative appeal or judicial review.

29 In that regard, it should be noted that Article 220(1) of the Customs Code merely provides, as far as concerns subsequent entry in the accounts of the amount of duty to be recovered, that the amount of duty must, subject to the scenarios of Article 219 of that code, be entered in the accounts within two days of the date on which the customs authorities become aware of the situation referred to in Article 220(1) thereof and are in a position to calculate the amount legally owed and to determine the debtor.

30 However, as regards the matter of the time at which the amount of duty to be recovered must be regarded as actually entered in the accounts, it follows from Article 217(1) of the Customs Code that, according to settled case-law, entry in the accounts consists of the entry, by the customs authorities, of the amount of import duty or export duty resulting from a customs debt in the accounting records or on any other equivalent medium (see, inter alia, judgments of 16 July 2009, *Distillerie Smeets Hasselt and Others*, C?126/08, EU:C:2009:470, paragraph 22, and of 8 November 2012, *KGH Belgium*, C?351/11, EU:C:2012:699, paragraph 21).

31 Accordingly, in the case of post-clearance recovery, the amount of duty found to be owed by the authorities is to be regarded as entered in the accounts when the customs authorities enter that amount in the accounting records or on any other equivalent medium, that entry being required, in principle, to take place within two days, as laid down in Article 220(1) of the Customs Code.

32 Nevertheless, the fact that, subsequently, the decision of the authority to enter an amount of duty in the accounts or establish the obligation to pay the duty is subject to an administrative appeal or judicial review is not per se capable of affecting the finding that that amount has actually been entered in the accounts in accordance with Article 217(1) and Article 220(1) of the Customs Code.

33 That interpretation is, inter alia, supported by the fact that the lodging of an appeal pursuant to Article 243 of the Customs Code does not, under the first subparagraph of Article 244 of that code, in principle, cause implementation of the disputed decision to be suspended and that such an appeal does not therefore preclude the immediate implementation of that decision (see, to that effect, judgment of 3 July 2014, *Kamino International Logistics andDatema Hellmann Worldwide Logistics*, C?129/13 and C?130/13, EU:C:2014:2041, paragraph 56).

34 In the light of the foregoing considerations, the answer to question 1(a) is that Article 217(1) and Article 220(1) of the Customs Code must be interpreted as meaning that, in the case of post-clearance recovery, the amount of duty found to be owed by the authorities is to be regarded as entered in the accounts when the customs authorities enter that amount in the accounting records or on any other equivalent medium, regardless of the fact that the decision of the authority to enter that amount in the accounts or establish the obligation to pay the duty is subject to an administrative appeal or judicial review.

Question 1(b)

35 As a preliminary matter, it should be noted that, according to the order for reference, question 1(b) is intended to establish whether the tax authority and the lower courts could legitimately take the view that since Aqua Pro had not lodged an application for remission or repayment under Articles 236 and 239 of the Customs Code, there was no need to consider whether Aqua Pro could rely on a legitimate expectation within the meaning of Article 220(2)(b) of

that code.

36 That question must thus be construed as seeking to know, in essence, whether Article 220(2)(b) and Articles 236, 239 and 243 of the Customs Code must be interpreted as meaning that, in the case of an administrative appeal and then judicial review brought against the decision of the tax authority subsequently to enter in the accounts an amount of import duty and to require the importer to pay it, that importer must, in order to be able to rely on a legitimate expectation under Article 220(2)(b) of the Customs Code, lodge an application for remission or repayment of such duty in accordance with the procedure laid down in Articles 236 and 239 of that code, and whether, where relevant, the challenge to that decision in the administrative appeal or judicial review may be regarded as constituting such an application.

37 In order to answer that question, it should, first of all, be noted that Article 220(2)(b) of the Customs Code is intended to protect the legitimate expectations of the person liable for payment as to the soundness of all the factors on which the decision to recover or not to recover customs duties is based (see, inter alia, judgments of 18 October 2007, *Agrover*, C?173/06, EU:C:2007:612, paragraph 31, and of 10 December 2015, *Veloserviss*, C?427/14, EU:C:2015:803, paragraph 43).

38 To that end, Article 220(2)(b) of the Customs Code provides that subsequent entry in the accounts of the amount of duty legally owed, and consequently recovery of such duty, is not to occur where an importer may rely on a legitimate expectation for the purposes of that provision.

39 It follows, as is also stated in Article 869(b) of the Implementing Regulation, that it is in principle for the customs authorities themselves to decide not subsequently to enter uncollected duties in the accounts and not to recover them if they consider that the conditions for protecting such a legitimate expectation have been satisfied by the importer in question.

40 If, however, the customs authorities decide, in particular following a subsequent check, to enter uncollected duty in the accounts and require its recovery from the importer, it is for those authorities, under Article 236(1) of the Customs Code, to repay or remit the duty if and in so far as it subsequently comes to light, inter alia, that its amount has been entered in the accounts contrary to Article 220(2)(b) of that code.

41 Such repayment or remission of duty under Article 236 in conjunction with Article 220(2)(b) of the Customs Code, is to take place either on the customs authorities' own initiative, under the third subparagraph of Article 236(2) of the code, or, under the first subparagraph of Article 236(2), upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of the duties in question was communicated.

42 In so far as Aqua Pro, initially, as appears from the order for reference, challenged before the authorities the subsequent entry in the accounts of the amount of duty to be recovered, it is for the referring court to ascertain whether Aqua Pro has submitted an application for remission or repayment to the appropriate customs office within the meaning of the first subparagraph of Article 236(2) in conjunction with Article 220(2)(b) of the Customs Code, or whether it has lodged an administrative appeal, as provided for under Article 243 of the Customs Code, before the customs authorities designated for that purpose in accordance with Article 243(2)(a), against the decision of the tax authority to enter in the accounts the amount of duty at issue and to require Aqua Pro as importer to pay it.

43 In that regard, it is clear that although the Customs Code provides, inter alia in Articles 236 and 239, for a specific procedure for the remission or repayment of customs duty in the event, in particular, of entry in the accounts contrary to Article 220(2)(b) of that code, a person liable for

payment may also rely on that provision in order to challenge subsequent entry in the accounts of the import duty, inter alia, by way of administrative appeal or judicial review within the meaning of Article 243 of the code.

44 According to that provision, a person liable for payment has, in general, the right to challenge, in an administrative appeal or judicial review, any decisions taken by the authorities which relate to the application of customs legislation, and which concern him directly and individually.

45 In the light of the foregoing considerations, the answer to question 1(b) is that Article 220(2)(b) and Articles 236, 239 and 243 of the Customs Code must be interpreted as meaning that, in the case of an administrative appeal or judicial review, within the meaning of Article 243 of that code, brought against a decision of the competent tax authority subsequently to enter in the accounts an amount of import duty and to require the importer to pay it, that importer may rely on a legitimate expectation under Article 220(2)(b) of that code in order to challenge that entry in the accounts, regardless of whether the importer has submitted an application for remission or repayment of such duty in accordance with the procedure laid down in Articles 236 and 239 of the code.

Question 1(c)

46 By question 1(c) the referring court asks, in essence, whether the first paragraph of Article 236(2) of the Customs Code must be interpreted as meaning that the fact that the decision of the authority to enter the amount of a duty in the accounts or establish the obligation to pay the duty is subject to an administrative appeal or judicial review has the effect of extending the time limit for submitting an application for remission or repayment of that duty.

47 In so far as that question is premissed on the possibility, negated by the answer to question 1(b), of reliance, in an administrative appeal or judicial review, on a legitimate expectation under Article 220(2)(b) of the Customs Code being conditioned on the submission of an application for remission or repayment of customs duties under Article 236 of that code, there is no need to answer it.

Question 1(d)

48 By question 1(d) the referring court asks, in essence, if and to what extent Article 869(b) of the Implementing Regulation must be interpreted as meaning that the matter of whether or not to enter a customs duty in the accounts or remit such a duty must be referred to the Commission where it is appropriate not to take into account a decision that the Commission adopted on that subject in respect of another Member State.

49 It appears from Article 869(b) of the Implementing Regulation that, where the customs authorities consider that all the conditions laid down in Article 220(2)(b) of the Customs Code are fulfilled, they are themselves to decide not subsequently to enter uncollected duties in the accounts, unless the dossier must be transmitted to the Commission pursuant to Article 871 of that regulation.

50 The first paragraph of Article 871 lays down the conditions in which the case must be transmitted to the Commission for it to be settled under the procedure laid down in Articles 872 to 876 of the Implementing Regulation, while the second paragraph of Articles 871 provides that, in two circumstances, there is no need to transmit, namely, first, where the Commission has already adopted a decision under that procedure on a case involving comparable issues of fact and of law and, second, where the Commission is already considering a case involving comparable issues of

fact and of law.

51 In that regard, it appears from the order for reference and the wording of question 1(d) that the referring court starts from the premiss that, in particular due to the lack of comparability of the present case with that of a Commission decision relating to Finland, those two conditions are not satisfied on the facts of the present case.

52 In that context, in accordance with Article 869 of the Implementing Regulation, read in conjunction with Article 871 of that regulation, the customs authorities may not themselves decide not to enter uncollected duties subsequently in the accounts by taking the view that the conditions for pleading a legitimate expectation under Article 220(2)(b) of the Customs Code are satisfied, and they must transmit the dossier to the Commission if the facts of the case involve one of the situations set out in Article 871(1) of the Implementing Regulation. Accordingly, the customs authorities are required to transmit the dossier to the Commission where they consider that the Commission has committed an error within the meaning of that provision of the Customs Code, where the circumstances of the case are related to the findings of an EU investigation within the meaning of that provision of the Implementing Regulation, or where the amount of the duty in question is EUR 500 000 or more.

53 In the light of the foregoing considerations, the answer to question 1(d) is that Article 869(b) of the Implementing Regulation must be interpreted as meaning that, where there is no Commission decision or procedure within the meaning of Article 871(2) of that regulation, in a situation such as that at issue in the case in the main proceedings, the customs authorities may not themselves decide not to enter uncollected duties subsequently in the accounts by taking the view that the conditions for pleading a legitimate expectation under Article 220(2)(b) of the Customs Code are satisfied, and that those authorities are required to transmit the dossier to the Commission, either where they consider that the Commission has committed an error within the meaning of that provision of the Customs Code, or where the circumstances of the case in the main proceedings are related to the findings of an EU investigation within the meaning of the second indent of Article 871(1) of the Implementing Regulation, or where the amount of the duties at issue in the main proceedings is EUR 500 000 or more.

Question 2(a)

54 By question 2(a) the referring court asks, in essence, whether Article 220(2)(b) of the Customs Code must be interpreted as meaning that information contained in an OLAF report relating to the conduct of the customs authorities of the exporting State and that of the exporter may be admitted as evidence or whether the customs authorities are required to carry out subsequent checks in that regard.

55 It should be noted at the outset that the Court has previously held, in paragraph 48 of the judgment of 16 March 2017, *Veloserviss* (C?47/16, EU:C:2017:220), in reply to a similar question which had also been referred to it by the Augst?k?s tiesas Administrat?vo lietu departaments (Supreme Court, Administrative Chamber) that, to the extent that it contains relevant information for that purpose, an OLAF report can be taken into consideration in order to establish whether the conditions for an importer to rely on a legitimate expectation under Article 220(2)(b) of the Customs Code are satisfied.

56 In addition, as the referring court and the parties were correct to observe, according to Article 9(2) of the regulation on investigations conducted by OLAF, such reports constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors.

57 However, as also follows from the judgment of 16 March 2017, *Veloserviss* (C?47/16, EU:C:2017:220), in so far as such a report contains only a general description of the situation at issue, which is to be determined by the referring court, that report cannot, on its own, suffice for the purposes of establishing whether those conditions are satisfied in all respects, in particular as regards the relevant conduct of the exporter or, where relevant, of the customs authorities of the exporting State (see, to that effect, judgment of 16 March 2017, *Veloserviss*, C?47/16, EU:C:2017:220, paragraphs 49 and 50).

58 In those circumstances, and in accordance with that case-law, it is in principle for the customs authorities of the importing State to prove, by means of additional evidence, that the issue, by the customs authorities of the exporting State of an incorrect ‘Form A’ certificate of origin is attributable to an incorrect statement of the facts by the exporter (see judgment of 16 March 2017, *Veloserviss*, C?47/16, EU:C:2017:220, paragraphs 47 and 50).

59 It follows that, although the information contained in an OLAF report counts among the evidence to be taken into consideration in order to establish whether the conditions for an importer to rely on a legitimate expectation under Article 220(2)(b) of the Customs Code are satisfied, such a report may, in the light of the information that it contains, prove to be insufficient for the purposes of establishing to the requisite legal standard whether those conditions are actually satisfied in all respects.

60 Consequently, the customs authorities may be led to provide further evidence to that effect, in particular as far as concerns the relevant conduct of the exporter or of the customs authorities of the exporting State, inter alia by carrying out subsequent checks.

61 In that regard, it is settled case-law that the authorities enjoy broad discretion in carrying out subsequent checks (see, to that effect, judgments of 12 July 2012, *Südzucker and Others,* C?608/10, C?10/11 and C?23/11, EU:C:2012:444, paragraphs 48 and 50, and of 10 December 2015, *Veloserviss*, C?427/14, EU:C:2015:803, paragraphs 27 and 28).

62 Having regard to the foregoing considerations, the answer to question 2(a) is that Article 220(2)(b) of the Customs Code must be interpreted as meaning that information contained in an OLAF report relating to the conduct of the customs authorities of the exporting State and that of the exporter may be admitted as evidence in ascertaining whether the conditions for an importer to rely on a legitimate expectation under that provision are satisfied. To the extent, however, that such a report proves insufficient, in the light of the information that it contains, for the purposes of establishing to the requisite legal standard whether those conditions are actually satisfied in all respects, which is for the referring court to ascertain, the customs authorities may be required to provide further evidence for that purpose, inter alia by carrying out subsequent checks.

Question 2(b)

63 By question 2(b) the referring court asks, in essence, whether Article 220(2)(b) of the Customs Code must be interpreted as meaning that, in order to establish whether the conditions for an importer to rely on a legitimate expectation in accordance with that provision are satisfied, the information obtained in the subsequent check takes priority over that contained in an OLAF

report.

64 According to Article 9(2) of the regulation on investigations conducted by OLAF, OLAF reports are in particular subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and are of identical value to such reports.

65 Consequently, priority is not to be given to information obtained in the subsequent check over that contained in an OLAF report.

66 In the light of the foregoing considerations, the answer to question 2(b) is that Article 220(2)(b) of the Customs Code must be interpreted as meaning that it is for the referring court to ascertain, in the light of all the specific evidence in the case in the main proceedings, and in particular of the evidence adduced by the parties in those proceedings for that purpose, whether the conditions for an importer to rely on a legitimate expectation under that provision are satisfied. For the purpose of that assessment, priority is not to be given to information obtained in a subsequent check over that contained in an OLAF report.

Question 2(c)

67 By question 2(c) the referring court asks, in essence, whether Article 875 of the Implementing Regulation must be interpreted as meaning that a Member State is bound by a Commission decision, within the meaning of Article 873 of that regulation, addressed to another Member State and adopted in accordance with an OLAF report on the conduct of the authorities, and an exporter of, a non-Member State.

68 In accordance with Article 875 of the Implementing Regulation, where it is established by a decision adopted under Article 873 of that regulation that the circumstances under consideration are such that the duty in question need not be entered in the accounts, the Commission may specify the conditions under which the Member States may refrain from subsequent entry in the accounts in cases involving comparable issues of fact and of law.

69 It follows that a Member State, and more particularly its administrative and judicial bodies (see, to that effect, judgment of 20 November 2008, *Heuschen & Schrouff Oriëntal Foods Trading*, C?375/07, EU:C:2008:645, paragraph 64), is bound, under the conditions specified by the Commission, by the findings of a Commission decision adopted under Article 873 of the Implementing Regulation in respect of another Member State in cases involving comparable issues of fact and of law.

70 In that regard, essentially for the same reasons as those set out in paragraphs 55 and 56 above, an OLAF report can be taken into consideration in order to establish whether a particular case is, in the sense outlined above, comparable to a case on which a Commission decision was taken under Article 873 of the Implementing Regulation.

71 In the light of the foregoing considerations, the answer to question 2(c) is that Article 875 of the Implementing Regulation must be interpreted as meaning that a Member State is bound, under the conditions specified by the Commission pursuant to that article, by the findings of a Commission decision adopted under Article 873 of that regulation in respect of another Member State in cases involving comparable issues of fact and of law, which it is for its authorities and courts to ascertain by taking into account, inter alia, the information on the conduct of the exporter or that of the customs authorities of the exporting State as stated in the OLAF report on which the decision is based.

Question 2(d)

72 By question 2(d) the referring court asks, in essence, whether Article 220(2)(b) of the Customs Code and Article 875 of the Implementing Regulation must be interpreted as meaning that a post-clearance check should be carried out and the resulting information used where the Commission has, on the basis of an OLAF report, adopted a decision not to enter the duty in the accounts in accordance with Articles 873 and 875 of the Implementing Regulation.

73 As stated in paragraph 61 above, customs authorities enjoy broad discretion in conducting subsequent checks and in regularising the situation appropriately (see, inter alia, judgment of 10 December 2015, *Veloserviss*, C?427/14, EU:C:2015:803, paragraphs 27 and 28).

74 Those authorities may, in principle, carry out as many post-clearance checks as they deem necessary, and use the information obtained from those checks, both in ascertaining whether the conditions for an importer to rely on a legitimate expectation under Article 220(2)(b) of the Customs Code are satisfied, and, in particular, in determining whether a case before those authorities is comparable, within the meaning of Article 875 of the Implementing Regulation, to a case on the basis of which a decision not to enter a duty in the accounts was adopted by the Commission in accordance with Article 873 of that regulation.

75 Accordingly, the answer to question 2(d) is that Article 220(2)(b) of the Customs Code and Article 875 of the Implementing Regulation must be interpreted as meaning that the customs authorities may, in principle, carry out as many post-clearance checks as they deem necessary, and use the information obtained from those checks, both in ascertaining whether the conditions for an importer to rely on a legitimate expectation under Article 220(2)(b) of the Customs Code are satisfied and in determining whether a case before those authorities involves issues of fact and of law that are ‘comparable’, within the meaning of Article 875 of the Implementing Regulation, to a case on the basis of which a decision not to enter a duty in the accounts was adopted by the Commission in accordance with Article 873 of that regulation.

The third question

76 By its third question, the referring court asks, in essence, whether or to what extent Article 220(2)(b) of the Customs Code must be interpreted as meaning that the fact that a transaction importing goods such as that at issue in the main proceedings is based on a distribution agreement is relevant for ascertaining whether, in the case in the main proceedings, the conditions for pleading a legitimate expectation under that provision are satisfied.

77 Article 220(2)(b) of the Customs Code being intended, as stated in paragraph 37 above, to protect the legitimate expectations of a person liable for payment as to the correctness of all the information and criteria on which the decision to recover customs duties is based, it cannot be inferred from the wording of that provision or its underlying legislative intention that a person liable for payment who has imported the goods in question under a distribution agreement cannot rely, in the same conditions, on a legitimate expectation under that provision as a person liable for payment who has imported those goods by buying them directly from the exporter.

78 In that regard, it should be noted that, according to settled case-law, an importer may validly rely on a legitimate expectation pursuant to that provision, and thus benefit from the waiver of post-clearance recovery provided for therein, only if three cumulative conditions are fulfilled. First, it is necessary that the failure to levy duties was due to an error on the part of the competent authorities themselves, secondly, that the error made by them was such that it could not reasonably have been detected by a person liable acting in good faith and, finally, that that person

complied with all the provisions laid down by the legislation in force as regards the customs declaration (see, inter alia, judgments of 18 October 2007, *Agrover*, C?173/06, EU:C:2007:612, paragraph 35, and of 15 December 2011, *Afasia Knits Deutschland*, C?409/10, EU:C:2011:843, paragraph 47).

79 Those conditions, in essence, spread the risk of errors or irregularities vitiating a customs declaration on the basis of the conduct and diligence of each of the parties involved, namely the competent authorities of the exporting and importing States, the exporter and the importer (judgment of 16 March 2017, *Veloserviss*, C?47/16, EU:C:2017:220, paragraph 25).

80 In the present case, it is clear from the order for reference that the referring court is uncertain, more particularly, of the importance which should be attached to a distribution agreement and, inter alia, to the resulting lack of direct contact with the exporter in determining whether Aqua Pro, as a person liable for payment, could or ought to have checked whether the ‘Form A’ certificate of origin had been correctly issued.

81 In that light, the third question therefore concerns, more particularly, the assessment in such circumstances of the second condition to which the case-law set out in paragraph 78 above refers, relating to the fact that the error on the part of the competent authorities could not have been detected, and thus the diligence that an importer operating under a distribution agreement must exercise.

82 In that regard, it should be noted that the Court has repeatedly held that it is the responsibility of economic operators to make the necessary arrangements in their contractual relations in order to guard against the risks of an action for post-clearance recovery, and that prevention of risks may consist inter alia in the person liable for payment obtaining from the other contracting party, on or after conclusion of the contract, all the necessary evidence confirming that the goods come from the State which is a ‘beneficiary country’ under the generalised tariff preferences scheme, including documents establishing that origin (see, inter alia, judgments of 8 November 2012, *Lagura Vermögensverwaltung*, C?438/11, EU:C:2012:703, paragraphs 30 and 31, and of 16 March 2017, *Veloserviss*, C?47/16, EU:C:2017:220, paragraph 38).

83 The Court has also held that it is the duty of economic operators, where they have doubts as to the exact application of provisions non-compliance with which may result in a customs debt being incurred, or as to the definition of the origin of the goods, to make enquiries and seek all possible clarification in order to ascertain whether those doubts are well founded (see, to that effect, inter alia, judgments of 14 May 1996, *Faroe Seafoodand Others*, C?153/94 and C?204/94, EU:C:1996:198, paragraph 100; of 11 November 1999, *Söhl & Söhlke*, C?48/98, EU:C:1999:548, paragraph 58; and of 16 March 2017, *Veloserviss*, C?47/16, EU:C:2017:220, paragraph 37).

84 In that regard, the Court has furthermore previously held that it is for an importer, in the context of his duty of diligence, where he has clear reasons for doubting the accuracy of a ‘Form A’ certificate of origin, to obtain, using his best efforts, information concerning the circumstances of the issue of that certificate (see, to that effect, judgment of 16 March 2017, *Veloserviss*, C?47/16, EU:C:2017:220, paragraphs 39 and 43).

85 The abovementioned principles apply just as much to a situation, such as that at issue in the main proceedings, in which an importer, due to the fact that he imported the goods in question under a distribution agreement with a third party operator, has no direct contractual relationship with the exporter of those goods.

86 Thus, an importer who has failed to obtain information, in such a way, from a contracting party to a distribution agreement, under which the goods in question were imported, for the

purposes of verifying the accuracy of a ‘Form A’ certificate of origin issued in respect of those goods, cannot rely on a legitimate expectation within the meaning of Article 220(2)(b) of the Customs Code by claiming that the error on the part of the competent authorities could not, in the light of that distribution agreement, reasonably have been detected by a person liable for payment acting in good faith within the meaning of the second condition referred to in the case-law set out in paragraph 78 above.

87 In the light of the foregoing considerations, the answer to the third question referred is that Article 220(2)(b) of the Customs Code must be interpreted as meaning that the fact that an importer imported goods under a distribution agreement has no incidence on his ability to plead a legitimate expectation on the same conditions as an importer who has imported goods by buying them directly from the exporter, that is to say, if three cumulative conditions are satisfied. It is necessary, first, that the failure to levy the duties was due to an error on the part of the competent authorities themselves, secondly, that that error was such that it could not reasonably have been detected by a person liable for payment acting in good faith and, finally, that that person complied with all the provisions laid down by the legislation in force as regards his customs declaration. To that end, it is for such an importer to guard against the risks of an action for post-clearance recovery, inter alia, by seeking to obtain from the other contracting party to that distribution agreement, at the time when the agreement is concluded or thereafter, all the necessary evidence confirming that the ‘Form A’ certificate of origin in respect of those goods was correctly issued. There can thus be no legitimate expectation within the meaning of the provision, in particular where, although he has clear reasons for doubting the accuracy of a ‘Form A’ certificate of origin, that importer failed to obtain from that contracting party information concerning the circumstances of the issue of that certificate in order to verify whether those doubts were well founded.

Costs

88 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 (Sixth Chamber) hereby rules:

1. **Article 217(1) and Article 220(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, must be interpreted as meaning that, in the case of post-clearance recovery, the amount of duty found to be owed by the authorities is to be regarded as entered in the accounts when the customs authorities enter that amount in the accounting records or on any other equivalent medium, regardless of the fact that the decision of the authority to enter that amount in the accounts or establish the obligation to pay the duty is subject to an administrative appeal or judicial review.**

2. **Article 220(2)(b) and Articles 236, 239 and 243 of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that, in the case of an administrative appeal or judicial review, within the meaning of Article 243 of that regulation, as amended by Regulation No 2700/2000, brought against a decision of the competent tax authority subsequently to enter in the accounts an amount of import duty and to require the importer to pay it, that importer may rely on a legitimate expectation under Article 220(2)(b) of that regulation, as amended by Regulation No 2700/2000, in order to challenge that entry in the accounts, regardless of whether the importer has submitted an application for remission or repayment of such duty in accordance with the procedure laid down in Articles 236 and 239 of the regulation, as amended by Regulation No 2700/2000.**

3. **Article 869(b) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 1335/2003 of 25 July 2003, must be interpreted as meaning that, where there is no Commission decision or procedure within the meaning of Article 871(2) of the regulation, as amended by Regulation No 1335/2003, in a situation such as that at issue in the case in the main proceedings, the customs authorities may not themselves decide not to enter uncollected duties subsequently in the accounts by taking the view that the conditions for pleading a legitimate expectation under Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, are satisfied, and that those authorities are required to transmit the dossier to the European Commission, either where they consider that the Commission has committed an error within the meaning of that provision of Regulation No 2913/92, as amended by Regulation No 2700/2000, or where the circumstances of the case in the main proceedings are related to the findings of an EU investigation within the meaning of the second indent of Article 871(1) of Regulation No 2454/93, as amended by Regulation No 1335/2003, or where the amount of the duties at issue in the main proceedings is EUR 500 000 or more.**

4. **Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that information contained in a European Anti-Fraud Office (OLAF) report relating to the conduct of the customs authorities of the exporting State and that of the exporter may be admitted as evidence in ascertaining whether the conditions for an importer to rely on a legitimate expectation under that provision are satisfied. To the extent, however, that such a report proves insufficient, in the light of the information that it contains, for the purposes of establishing to the requisite legal standard whether those conditions are actually satisfied in all respects, which is for the referring court to ascertain, the customs authorities may be required to provide further evidence for that purpose, inter alia by carrying out subsequent checks.**

5. **Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that it is for the referring court to ascertain, in the light of all the specific evidence in the case in the main proceedings, and in particular of the evidence adduced by the parties in those proceedings for that purpose, whether the conditions for an importer to rely on a legitimate expectation under that provision are satisfied. For the purpose of that assessment, priority is not to be given to information obtained in a subsequent check over that contained in a European Anti-Fraud Office (OLAF) report.**

6. **Article 875 of Regulation No 2454/93, as amended by Regulation No 1335/2003, must be interpreted as meaning that a Member State is bound, under the conditions specified by the European Commission pursuant to that article, by the findings of a European Commission decision adopted under Article 873 of that regulation, as amended by Regulation No 1335/2003, in respect of another Member State in cases involving**

comparable issues of fact and of law, which it is for its authorities and courts to ascertain by taking into account, inter alia, the information on the conduct of the exporter or that of the customs authorities of the exporting State as stated in the European Anti-Fraud Office (OLAF) report on which the decision is based.

7. **Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, and Article 875 of Regulation No 2454/93, as amended by Regulation No 1335/2003, must be interpreted as meaning that the customs authorities may, in principle, carry out as many post-clearance checks as they deem necessary, and use the information obtained from those checks, both in ascertaining whether the conditions for an importer to rely on a legitimate expectation under Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, are satisfied and in determining whether a case before those authorities involves issues of fact and of law that are comparable, within the meaning of Article 875 of Regulation No 2454/93, as amended by Regulation No 1335/2003, to a case on the basis of which a decision not to enter a duty in the accounts was adopted by the European Commission in accordance with Article 873 of Regulation No 2454/93, as amended by Regulation No 1335/2003.**

8. **Article 220(2)(b) of Regulation No 2913/92, as amended by Regulation No 2700/2000, must be interpreted as meaning that the fact that an importer imported goods under a distribution agreement has no incidence on his ability to plead a legitimate expectation on the same conditions as an importer who has imported goods by buying them directly from the exporter, that is to say, if three cumulative conditions are satisfied. It is necessary, first, that the failure to levy the duties was due to an error on the part of the competent authorities themselves, secondly, that that error was such that it could not reasonably have been detected by a person liable for payment acting in good faith and, finally, that that person complied with all the provisions laid down by the legislation in force as regards his customs declaration. To that end, it is for such an importer to guard against the risks of an action for post-clearance recovery, inter alia by seeking to obtain from the other contracting party to that distribution agreement, at the time when the agreement is concluded or thereafter, all the necessary evidence confirming that the 'Form A' certificate of origin in respect of those goods was correctly issued. There can thus be no legitimate expectation within the meaning of the provision, in particular where, although he has clear reasons for doubting the accuracy of a 'Form A' certificate of origin, that importer failed to obtain from that contracting party information concerning the circumstances of the issue of that certificate in order to verify whether those doubts were well founded.**

[Signatures]

* Language of the case: Latvian.