

JUDGMENT OF THE COURT (Second Chamber)

16 July 2020 (*)

(Reference for a preliminary ruling — Customs Code — Customs declarations — Article 78 of that code — Revision of the customs declaration — Name of the declarant — Amendment of information relating to the identity of the declarant seeking to show that there is a relationship of indirect representation — Indirect representation of the person who has obtained an import licence)

In Case C-97/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany), made by decision of 9 January 2019, received at the Court on 8 February 2019, in the proceedings

Pfeifer & Langen GmbH & Co. KG

v

Hauptzollamt Köln,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, P.G. Xuereb and T. von Danwitz, Judges,

Advocate General: G. Hogan,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 19 December 2019,

after considering the observations submitted on behalf of:

- Pfeifer & Langen GmbH & Co. KG, by D. Ehle, Rechtsanwalt,
- the Hauptzollamt Köln, by W. Liebe and E. Schmidt, acting as Agents,
- the Czech Government, by M. Smolek, J. Vlácil and O. Serdula, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and C.S. Schillemans, acting as Agents,
- the European Commission, by F. Clotuche-Duvieusart and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 February 2020,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 78(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; ‘the Customs Code’).

- 2 The request has been made in proceedings between Pfeifer & Langen GmbH & Co. KG and Hauptzollamt Köln (Principal Customs Office, Cologne, Germany) ('the Principal Customs Office') concerning the latter's refusal to grant an application for amendment of information relating to the identity of the declarant in a customs declaration.

Legal context

- 3 The Customs Code was repealed and replaced by Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ 2008 L 145, p. 1), which entered into force on 24 June 2008. That regulation was amended by Regulation (EU) No 528/2013 of the European Parliament and of the Council of 12 June 2013 (OJ 2013 L 165, p. 62) ('the Modernised Customs Code'). As is apparent from Article 188 of the Modernised Customs Code, certain provisions thereof were applicable from 24 June 2008, and the other provisions were to be applicable on 1 November 2013 at the latest. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1, and corrigendum OJ 2013 L 287, p. 90), which entered into force on 30 October 2013, repealed both the Modernised Customs Code and the Customs Code, since certain provisions of the latter code remained applicable until 1 November 2013 at the latest. It is thus apparent from Article 286(2) of Regulation No 952/2013, read in conjunction with Article 288(2) thereof, that the Customs Code was repealed with effect from 1 May 2016. Consequently, in view of the time of the facts in the main proceedings, the Customs Code remains applicable to the present case. Furthermore, none of the provisions of the Modernised Customs Code applicable from 24 June 2008 is relevant to this case.

- 4 The eighth recital of the Customs Code stated:

'... in adopting the measures required to implement this Code, the utmost care must be taken to prevent any fraud or irregularity liable to affect adversely the General Budget of the European Communities.'

- 5 Article 4 of the Customs Code provided:

'For the purposes of this Code, the following definitions shall apply:

...

(17) "Customs declaration" means the act whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure.

(18) "Declarant" means the person making the customs declaration in his own name or the person in whose name a customs declaration is made.

...'

- 6 Article 5 of that code provided:

'1. Under the conditions set out in Article 64(2) and subject to the provisions adopted within the framework of Article 243(2)(b), any person may appoint a representative in his dealings with the customs authorities to perform the acts and formalities laid down by customs rules.

2. Such representation may be:

– direct, in which case the representative shall act in the name of and on behalf of another person,

or

– indirect, in which case the representative shall act in his own name but on behalf of another person.

A Member State may restrict the right to make customs declarations:

- by direct representation, or
- by indirect representation,

so that the representative must be a customs agent carrying on his business in that country's territory.

...

4. A representative must state that he is acting on behalf of the person represented, specify whether the representation is direct or indirect and be empowered to act as a representative.

A person who fails to state that he is acting in the name of or on behalf of another person or who states that he is acting in the name of or on behalf of another person without being empowered to do so shall be deemed to be acting in his own name and on his own behalf.

5. The customs authorities may require any person stating that he is acting in the name of or on behalf of another person to produce evidence of his powers to act as a representative.'

7 Article 64 of that code provided:

'1. Subject to Article 5, a customs declaration may be made by any person who is able to present the goods in question or to have them presented to the competent customs authority, together with all the documents which are required to be produced for the application of the rules governing the customs procedure in respect of which the goods were declared.

2. However:

- (a) where acceptance of a customs declaration imposes particular obligations on a specific person, the declaration must be made by that person or on his behalf;

...'

8 Under Article 65 of that code:

'The [declarant] shall, at his request, be authorised to amend one or more of the particulars of the declaration after it has been accepted by customs. The amendment shall not have the effect of rendering the declaration applicable to goods other than those it originally covered.

However, no amendment shall be permitted where authorisation is requested after the customs authorities:

- (a) have informed the declarant that they intend to examine the goods; or,
- (b) have established that the particulars in question are incorrect; or
- (c) have released the goods.'

9 Article 66 of the Customs Code provided:

'1. The customs authorities shall, at the request of the declarant, invalidate a declaration already accepted where the declarant furnishes proof that goods were declared in error for the customs procedure covered by that declaration or that, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified.

...

2. The declaration shall not be invalidated after the goods have been released, except in cases defined in accordance with the committee procedure.

...'

10 Article 74 of that code provided:

- ‘1. Where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the declaration shall not be released unless the customs debt has been paid or secured. ...
2. Where, pursuant to the provisions governing the customs procedure for which the goods are declared, the customs authorities require the provision of a security, the said goods shall not be released for the customs procedure in question until such security is provided.’

11 Article 78 of that code provided:

- ‘1. The customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods.
2. The customs authorities may, after releasing the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes. Those authorities may also examine the goods where it is still possible for them to be produced.
3. Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities shall, in accordance with any provisions laid down, take the measures necessary to regularise the situation, taking account of the new information available to them.’

12 Under Article 201 of that code:

- ‘1. A customs debt on importation shall be incurred through:
 - (a) the release for free circulation of goods liable to import duties,or
 - (b) the placing of such goods under the temporary importation procedure with partial relief from import duties.
2. A customs debt shall be incurred at the time of acceptance of the customs declaration in question.
3. The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor.

Where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up on the basis of information which leads to all or part of the duties legally owed not being collected, the persons who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known that such information was false, may also be considered debtors in accordance with the national provisions in force.’

13 Article 236 of the Customs Code provided:

- ‘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.

...

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.'

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

- 14 SC Zahărul Oradea SA ('Zahărul Oradea'), which is established in Romania, is a subsidiary of Pfeifer & Langen. It had purchased 45 000 tonnes of cane sugar from Brazil to be refined in Pfeifer & Langen's factory in Euskirchen (Germany), under an agreement between the latter and Zahărul Oradea. Once refined, the sugar was to be sold to Pfeifer & Langen.
- 15 On 13 December 2011, the competent Romanian authorities issued Zahărul Oradea with a licence to import that quantity of cane sugar. According to the information provided by the referring court, on 2 February 2012 Zahărul Oradea granted Pfeifer & Langen a power of attorney to represent it for the purposes of customs declarations relating to that importation.
- 16 On 24 February 2012, Pfeifer & Langen submitted a customs declaration in its own name to the Principal Customs Office for the release for free circulation of a partial quantity of 499 456 kilograms (kg) of cane sugar intended for refining. In the customs declaration, it referred to Zahărul Oradea's import licence. In addition, it submitted a copy of the power of attorney granted by Zahărul Oradea. The Principal Customs Office accepted the declaration and, after recording that quantity of cane sugar on the import licence submitted by Pfeifer & Langen, claimed from the latter, applying a reduced rate of EUR 252.50 per tonne, customs duties of EUR 126 113.65.
- 17 By two letters of 10 and 11 January 2013, Pfeifer & Langen contacted the Principal Customs Office to request an amendment to the customs declaration lodged on 24 February 2012, to the effect that it had made that declaration as an indirect representative of the declarant Zahărul Oradea, as it was not certain that it could benefit from the reduced rate of duty for the cane sugar.
- 18 By decision of 24 January 2013, the Principal Customs Office claimed from Pfeifer & Langen post-clearance recovery of EUR 83 158.41 in customs duties. That amount was obtained by applying the rate of EUR 41.90 per 100 kg laid down for cane sugar under subheading 1701 14 90 of the Combined Nomenclature. In support of that decision, the Principal Customs Office stated that Pfeifer & Langen should not have benefited from the reduced rate on the ground that the import licence had been issued to Zahărul Oradea.
- 19 Pfeifer & Langen challenged that decision on the basis of its request for amendment of the customs declaration of 24 February 2012.
- 20 By decision of 26 April 2018, the Principal Customs Office rejected that challenge on the ground that, since Pfeifer & Langen had not specified in the customs declaration that it was acting on behalf of Zahărul Oradea, it had the status of a declarant and was therefore also the debtor of the customs debt. According to that decision, as an intentional procedural act, the statement of the identity of the declarant in a customs declaration cannot be incorrect or incomplete, which is why it is not possible to amend it subsequently. In that regard, it was immaterial that Pfeifer & Langen's customs declaration was inconsistent with the copy of the power of attorney from Zahărul Oradea which Pfeifer & Langen had submitted to the Principal Customs Office.

- 21 Pfeifer & Langen brought an action against the decision of 26 April 2018 before the referring court. By its action, it argues that its customs declaration must be amended to the effect that it was acting as an indirect representative of Zahărul Oradea. The reason why Pfeifer & Langen did not state that it was acting as an indirect representative of Zahărul Oradea in that customs declaration, contrary to what was originally intended, was solely that, according to Pfeifer & Langen, incorrect information was provided to it by an official of the Principal Customs Office. That official reportedly stated, in reply to a question from Pfeifer & Langen, that it had to draw up the customs declarations in its own name and on its own behalf. In submitting the copy of the power of attorney provided to it by Zahărul Oradea, Pfeifer & Langen referred however to the power to act as a representative. In addition, Pfeifer & Langen submits that the objectives of the customs procedure have not been jeopardised. The requirements for a release of the cane sugar by the Principal Customs Office were satisfied since, according to Pfeifer & Langen, it had deposited a bank guarantee in respect of the import duties.
- 22 The Principal Customs Office contends that Pfeifer & Langen did not receive the alleged information from a customs official. Furthermore, in its view, the data provided by Pfeifer & Langen in its customs declaration were not incorrect. Since Pfeifer & Langen submitted the customs declaration in its own name, the Principal Customs Office takes the view that it validly acquired the status of declarant and that it waived its intention to make the customs declaration as an indirect representative, despite the power to act as a representative that it possessed.
- 23 According to the referring court, it follows from the case-law of the Court that Article 78(3) of the Customs Code must be interpreted as allowing, on the custom authority's own initiative or at the request of the declarant, a customs declaration, such as that at issue in the main proceedings, to be revised and amended so that, in the case pending before it, the information relating to the identity of the declarant may be altered so as to indicate the relationship of indirect representation between Zahărul Oradea and Pfeifer & Langen. In that regard, the referring court states that the information which appears in the customs declaration at issue in the main proceedings, pursuant to which Pfeifer & Langen was considered to be the declarant without any mention having been made of the relationship of indirect representation on behalf of Zahărul Oradea, was the result of an error in the interpretation of the applicable law. Furthermore, that court considers that such an amendment does not jeopardise the objectives of the customs procedure concerned and that Pfeifer & Langen has adduced sufficient evidence to show that the provisions governing the customs procedure concerned were applied on the basis of incorrect or incomplete information.
- 24 The referring court nevertheless wonders whether such an interpretation of Article 78(3) of the Customs Code is possible, in so far as, according to that court, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) and the Finanzgericht Hamburg (Finance Court, Hamburg, Germany) have, in recent judgments, considered that the application of that provision could not have the effect that a person other than that indicated in the customs declaration could be regarded as a declarant.
- 25 In those circumstances, the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- ‘Is Article 78(3) of [the Customs Code] to be interpreted as meaning that, according to that provision, in a case such as that in the main proceedings, a customs declaration must be checked and corrected in such a way that the particulars relating to the declarant are replaced by the designation of the person to whom an import licence was issued for the imported goods, and this person is represented by the person who was named as the declarant in the customs declaration and who has submitted a power of attorney from the holder of the import licence to the Principal Customs Office?’

Consideration of the question referred

- 26 As a preliminary point, it should be noted that, according to the information set out in the request for a preliminary ruling, although Pfeifer & Langen received a power of attorney to represent Zahărul Oradea for the purposes of completing the customs procedure, and it submitted that power of attorney to the customs authorities when it made the customs declaration, it failed to state in that declaration

that it was representing Zahărul Oradea. In the context of the dispute in the main proceedings, Pfeifer & Langen seeks the amendment of that declaration so that it mentions a relationship of indirect representation between it and Zahărul Oradea.

- 27 Thus, by its question, the referring court asks, in essence, whether Article 78(3) of the Customs Code must be interpreted as meaning that the customs authorities may grant an application for amendment of a customs declaration seeking to show that there is a relationship of indirect representation between, on the one hand, a person in possession of a power of attorney who has mistakenly indicated that it was acting exclusively in its own name and on its own behalf, even though it has received such a power from the person holding the import licence, and, on the other hand, the person who has granted the power of attorney and on whose behalf the declaration has been made.
- 28 In that regard, it should be recalled that Article 78 of the Customs Code establishes a procedure enabling customs authorities, on their own initiative or at the request of the declarant, to amend the customs declaration after release of the goods covered by that declaration, that is to say, after that declaration has been made (judgment of 12 October 2017, *Tigers*, C-156/16, EU:C:2017:754, paragraph 29).
- 29 The Court has already held that, when the declarant seeks a revision of its declaration, its application must be examined by the customs authorities, at least in relation to the question whether or not there is cause to carry out such a revision, and that the revision applied for by the declarant is thus subject to the assessment of those authorities as regards both its principle and its result. Those authorities enjoy, for that purpose, broad discretion (see, to that effect, judgment of 12 July 2012, *Südzucker and Others*, C-608/10, C-10/11 and C-23/11, EU:C:2012:444, paragraph 48 and the case-law cited).
- 30 In that context, the customs authorities are to take into account, in particular, the possibility of reviewing the statements contained in the declaration to be revised and in the application for revision. If revision is in principle possible, the customs authorities must either reject the declarant's application by reasoned decision or carry out the revision applied for (judgment of 12 July 2012, *Südzucker and Others*, C-608/10, C-10/11 and C-23/11, EU:C:2012:444, paragraph 49 and the case-law cited).
- 31 If that re-examination or those inspections show that the provisions governing the customs procedure in question have been applied on the basis of incorrect or incomplete information, the customs authorities must, in accordance with Article 78(3), take the measures necessary to regularise the situation, taking account of the new information available to them (judgment of 12 October 2017, *Tigers*, C-156/16, EU:C:2017:754, paragraph 30).
- 32 It thus follows from Article 78 of the Customs Code as a whole that it is permissible to present new material which may be taken into consideration by the customs authorities after the customs declaration has been made. The specific logic of that article is to bring the customs procedure into line with the actual situation (judgment of 12 October 2017, *Tigers*, C-156/16, EU:C:2017:754, paragraph 31).
- 33 In the present case, it must be determined whether, in the circumstances of the case in the main proceedings, Article 78 of that code allows the customs authorities to amend information relating to the identity of the declarant and, in particular, to indicate that there is a relationship of indirect representation between the declarant and the person who granted the declarant a power of attorney.
- 34 It must be borne in mind that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 22 June 2016, *Thomas Philipps*, C-419/15, EU:C:2016:468, paragraph 18 and the case-law cited, and of 21 November 2019, *Procureur-Generaal bij de Hoge Raad der Nederlanden*, C-678/18, EU:C:2019:998, paragraph 31).
- 35 As regards, first, the wording of Article 78 of the Customs Code, it should be recalled that the wording of that article does not preclude the right of the customs authorities to amend a customs declaration, within the meaning of Article 78(1), to conduct a post-clearance examination thereof, within the meaning of Article 78(2), or to take the measures necessary to regularise the situation, within the

meaning of Article 78(3) (judgment of 10 December 2015, *Veloserviss*, C-427/14, EU:C:2015:803, paragraph 25).

- 36 The Court of Justice also held that that article does not distinguish errors or omissions that can be corrected from other situations of the same kind that cannot. The words ‘incorrect or incomplete information’ must be interpreted as covering both clerical errors or omissions and errors of interpretation of the applicable law (judgment of 16 October 2014, *VAEX Varkens-en Veehandel*, C-387/13, EU:C:2014:2296, paragraph 50 and the case-law cited).
- 37 As regards, second, the context of that provision, it should be noted that no provision of that code prohibits elements of the customs declaration, such as information relating to the identity of the declarant, in particular whether a relationship of indirect representation exists, from being amended on the basis of Article 78(3) of that code.
- 38 Furthermore, it is necessary to reject the argument, put forward by the Principal Customs Office and the Netherlands Government, relating to the fact that Article 78 of the Customs Code is part of Title IV thereof, relating to customs-approved treatment or use, whereas the provisions regarding the identity of the declarant are part of Title I of that code, relating to general provisions. That circumstance does not preclude customs authorities’ revising information relating to the identity of the declarant which has been indicated in customs declarations, by relying on the existence of a relationship of indirect representation, in order to regularise, where appropriate, the situation. The Court has held, in that regard, that declarations relating to the value of goods can be amended in certain circumstances, even though the provisions relating to that value were included under Title II of the Customs Code and not Title IV thereof (see, to that effect, judgment of 20 October 2005, *Overland Footwear*, C-468/03, EU:C:2005:624, paragraph 70).
- 39 Moreover, contrary to the argument put forward by the Principal Customs Office and the Netherlands Government, Article 66 of the Customs Code concerning the invalidation of a customs declaration does not preclude such a revision. The procedure for invalidating a customs declaration, the conditions of which are specified in that article, applies only in two situations, namely where the declarant furnishes proof that goods were declared in error for the customs procedure covered by that declaration or where, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified. In the event of invalidation, the customs debt arising from the invalidated declaration is extinguished. Article 66(2) specifies, moreover, that a declaration is not, in principle, to be invalidated after the goods have been released.
- 40 Unlike Article 66, Article 78 of the Customs Code requires only the revision of an existing declaration and does not have the effect of rendering that declaration or debt resulting therefrom inoperative. Furthermore, Article 78 applies only to applications for revision submitted after the release of the goods, that is to say at a stage when it is no longer possible to verify the accuracy of the information concerning the goods in question.
- 41 In that regard, the Court held, in its judgment of 12 July 2012, *Südzucker and Others* (C-608/10, C-10/11 and C-23/11, EU:C:2012:444, paragraph 50), that the mere fact that a physical check of the goods prior to their being exported has become impossible, since those goods have already left the territory of the European Union on the date of submission of the request for revision of the export declaration, does not mean that it is impossible to carry out such a revision.
- 42 It should also be noted that an amendment to information relating to the identity of the declarant in such a way as to reflect the existence of a relationship of indirect representation is not comparable to an amendment to information concerning the nature or characteristics of the goods, in respect of which the Court held, in its judgment of 20 October 2005, *Overland Footwear* (C-468/03, EU:C:2005:624, paragraphs 47 and 48), that the customs authorities may refuse to carry out a revision where the facts to be verified require physical verification and, following the release of the goods, the latter can no longer be presented to them.
- 43 Thus, Article 78 of the Customs Code may apply in a situation where the person in possession of the power of attorney is able, even after the goods have been released, to present the power of attorney by which it was instructed to submit the customs declaration.

- 44 As regards, third, the objective pursued by Article 78 of the Customs Code, it should be recalled, as was observed in paragraph 32 of this judgment, that it is to bring the customs procedure into line with the actual situation.
- 45 In that regard, it must, however, be ensured that the revision applied for is not liable to compromise the other objectives of the customs rules, including the objective of combating fraud, as set out in the eighth recital of the Customs Code.
- 46 The Court has held that, if the amendment indicates that the objectives of the legislation at issue are not threatened, particularly in that the goods for which an export declaration was submitted were actually exported and sufficient evidence available to the competent authorities allows the connection between the quantity exported and the licence actually covering the export to be established, the customs authorities must, in accordance with Article 78(3) of the Customs Code, take the measures necessary to regularise the situation, taking account of the information available to them (see, to that effect, judgment of 16 October 2014, *VAEX Varkens-en Veehandel*, C-387/13, EU:C:2014:2296, paragraph 54 and the case-law cited).
- 47 In the present case, the referring court appears to rule out the possibility of an abuse of rights. It is apparent from the order for reference that the information given in the customs declaration is not consistent with the information provided in the power of attorney submitted by the declarant when the customs declaration was lodged and that the power to act as a representative which the latter has under that power of attorney was produced in a timely manner, for the purposes of Article 5(4) of the Customs Code. Moreover, it is also apparent from the information provided by the referring court that the goods were actually imported for the holder of the import licence, namely Zahărul Oradea, and that Pfeifer & Langen in actual fact lodged the customs declaration only on behalf of Zahărul Oradea, submitting the power of attorney already granted.
- 48 As regards the risk of fraud, it should be noted, as the Advocate General observed in point 65 of his Opinion, that the amendment to a declaration intended to show that there was a relationship of indirect representation of Zahărul Oradea by Pfeifer & Langen, in order to allow Zahărul Oradea to benefit from a preferential import tariff or an export refund, does not confer any undue advantage on that person, but merely enables it to benefit from the advantage which it would have been entitled to receive if it had initially been mentioned in that declaration that Pfeifer & Langen had been acting on behalf of that person.
- 49 In addition, as the Advocate General observes in point 66 et seq. of his Opinion, other provisions of the Customs Code considerably limit the risk of fraud that could have resulted from a change in the information relating to the name of the declarant.
- 50 First of all, Article 74(1) of the Customs Code states that the customs debt must be paid or secured before the goods in question can be released. In so far as Article 78 of the Customs Code applies after release of the goods and, consequently, after the customs debt has been paid or secured, the amendment of information relating to the declarant's identity has no bearing on whether there is a risk of non-payment of the customs debt. This is all the more so since, as is apparent from a combined reading of Article 4(18), Article 5(2) and the first subparagraph of Article 201(3) of that code, an amendment to that information for the purposes of indicating the existence of a relationship of indirect representation would have the effect of rendering liable for payment of that debt not only the person who initially made the customs declaration in his own name and on his own behalf, but also the person indirectly represented.
- 51 Next, with regard to imports, such as that at issue in the main proceedings, the second subparagraph of Article 201(3) of the Customs Code provides that, where a customs declaration is drawn up on the basis of incorrect information, 'the persons who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known that such information was false, may also be considered debtors in accordance with the national provisions in force'. Since the person who originally made the customs declaration in his own name and on his own behalf necessarily provided some of the information set out in the declaration, that person may also be considered to be a

‘debtor’, within the meaning of that provision, of the customs debt if that information proved to be incorrect.

52 Lastly, it should be noted that the remission or repayment of import duties or export duties to the new declarant is subject to fulfilment of the conditions laid down in Article 236 of the Customs Code, namely, in particular, an absence of deliberate action on the part of the declarant and compliance with a period of three years for submission of the application for remittance or repayment.

53 Furthermore, account must be taken of the fact that the reason why the applicant in the main proceedings stated that it was acting in its own name and on its behalf when lodging the customs declaration, while at the same time providing a power of attorney under which, in its view, it should be regarded as the indirect representative of Zahărul Oradea, is the result of an error in the interpretation of the law applicable to the completion of customs formalities, and not of a deliberate choice.

54 As was already noted in paragraph 36 of this judgment, the concept of ‘error’ covers not only material errors, but also unintentional omissions and any declaration made in disregard of a customs rule (see, to that effect, judgment of 10 July 2019, *CEVA Freight Holland*, C-249/18, EU:C:2019:587, paragraphs 32 to 38 and the case-law cited).

55 In this respect, it should be borne in mind that Article 5(4) of the Customs Code requires that the power to act as a representative is already established when the customs declaration is lodged. In addition, that provision provides that persons who fail to state that they are empowered to act as a representative are deemed to be acting in their own name and on their own behalf. The representation must therefore be express and cannot be implied (judgment of 7 April 2011, *Sony Supply Chain Solutions (Europe)*, C-153/10, EU:C:2011:224, paragraph 31).

56 As the European Commission observes, Article 78 of the Customs Code cannot be interpreted as meaning that it fails to comply with the provisions of Article 5(4) of that code, in particular the obligation to give express notice of the power to act as a representative for which Article 5(4) provides.

57 The referring court states in that regard that Pfeifer & Langen received a power of attorney from Zahărul Oradea which it submitted in a timely manner, for the purposes of Article 5(4) of the Customs Code, that is to say when the customs declaration was lodged.

58 Furthermore, it is apparent from the order for reference that the goods were actually imported for the holder of the import licence, Zahărul Oradea, and that the customs authorities recorded the quantity imported on that import licence. In actual fact, the applicant in the main proceedings therefore lodged the customs declaration only on behalf of that company.

59 In the light of the foregoing, the answer to the question referred is that Article 78(3) of the Customs Code must be interpreted as meaning that the customs authorities may grant an application for amendment of a customs declaration seeking to show that there is a relationship of indirect representation between, on the one hand, a person in possession of a power of attorney who has mistakenly indicated that it was acting exclusively in its own name and on its own behalf, even though it has received such a power from the person holding the import licence, and, on the other hand, the person who has granted the power of attorney and on whose behalf the declaration has been made.

Costs

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

Article 78(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that the customs authorities may

grant an application for amendment of a customs declaration seeking to show that there is a relationship of indirect representation between, on the one hand, a person in possession of a power of attorney who has mistakenly indicated that it was acting exclusively in its own name and on its own behalf, even though it has received such a power from the person holding the import licence, and, on the other hand, the person who has granted the power of attorney and on whose behalf the declaration has been made.

[Signatures]

* Language of the case: German.