



**COUNCIL OF
THE EUROPEAN UNION**

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INFORMATION NOTE

from : Council Legal Service
to : COREPER (2nd part)
Subject : **Case before the Court of Justice of the European Union
- Case C-3/13 (Baltic Agro)**

1. By the decision of 27 December 2012, Tartu Ringkonnakohus (Estonia) (Tartu Circuit Court), lodged on 3 January 2013, requested the Court of Justice to give a preliminary ruling pursuant to Article 267 TFEU, for the interpretation of Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96¹, and the interpretation and validity of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ² in case involving AS Baltic Agro as applicant and appellant and Maksu-ja Tolliameti Ida maksu- ja tollikeskus as Defendant and respondent.

¹ Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ 2008 L 185, 12.7.2008, p. 1-34).

² Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, 19.10.1992, p. 1-50).

2. The questions referred to the Court of Justice are as follows:

- (a) Is Article 3(1) of Council Regulation (EC) No 661/2008 to be interpreted as meaning that the importer and the first independent customer in the Community must always be one and the same person?
- (b) Is Article 3(1) of Council Regulation (EC) No 661/2008, in conjunction with Commission Decision 2008/577/EC,¹ to be interpreted as meaning that exemption from anti-dumping duty applies only to such first independent customer in the Community as has not resold the goods to be declared prior to making the declaration?
- (c) Is Article 66 of the Community Customs Code established by Council Regulation (EEC) No 2913/92, in conjunction with Article 251 of Commission Regulation (EEC) No 2454/93 and the other procedural rules relating to subsequent amendments to a customs declaration, to be interpreted as meaning that, where the wrong consignee is entered in a customs declaration on the importation of goods, it must be possible, upon an application being lodged, for the declaration to be invalidated and the consignee's details to be corrected even after the goods have been released if the customs duty exemption provided for in Article 3(1) of Council Regulation (EC) No 661/2008 ought to have applied if the correct consignee had been entered, or is Article 220(2)(b) of the Community Customs Code established by Council Regulation (EEC) No 2913/92 to be interpreted, in those circumstances, as meaning that the customs authorities are not entitled to make a subsequent entry in the accounts?

¹ Commission Decision 2008/577/EC of 4 July 2008 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in Russia and Ukraine (OJ 2008 L 185, p. 43).

(d) If both of the alternatives in Question (c) should be answered in the negative, is it then compatible with Article 20 of the Charter of Fundamental Rights of the European Union, in conjunction with Article 28(1) and Article 31 of the Treaty on the Functioning of the European Union, if Article 66 of the Community Customs Code established by Council Regulation (EEC) No 2913/92, in conjunction with Article 251 of Commission Regulation (EEC) No 2454/93¹ and the other procedural rules relating to subsequent amendments to a customs declaration, does not permit a declaration to be invalidated and the consignee's details to be corrected, upon an application being lodged, after the goods have been released if the customs duty exemption provided for in Article 3(1) of Council Regulation (EC) No 661/2008 ought to have been applied if the correct consignee had been entered?

3. The Council is, according to Article 23 of the Statute of the Court of Justice, entitled to submit observations within two months of receipt of the notification, in a case governed by Article 267 of the TFEU if the act, the validity or interpretation of which is in dispute, originates from the Council. Question (d) referred by the Tartu Ringkonnakohus (Estonia) (Tartu Circuit Court) raises the question of the validity of Article 66 of the Community Customs Code established by Council Regulation (EEC) No 2913/92.
4. The Director-General of the Council Legal Service has appointed Ms. Sonja BOELAERT, and Ms. Mari REMMELGAS, members of the Legal Service, as the Council's agents in this case. They will be assisted by Mr. Georg BERRISCH and Mr. Brian BYRNE (Covington & Burling in Brussels).

¹ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).