Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 13 September 2016[1]

Case C-141/15

Doux SA
Maître Sophie Gautier, acting as administrator in the judicial administration of Doux SA, SCP Valliot-Le Guenevé-Abittbol, in the person of Maître Valliot, acting as administrator in the judicial administration of Doux SA
v
Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)

(Request for a preliminary ruling from the Tribunal administratif de Rennes (Administrative Court, Rennes (France))

(Requirements for granting export refunds — Interpretation of Article 28(1) of Regulation (EC) No 612/2009 — Sound and fair marketable quality — Meaning of the words marketed within EU territory 'in normal conditions' — Prescribed limits for water content in frozen poultrymeat — Whether prescribed limits are obsolete — Rights of exporter in relation to checks for water content and requests for counter-analyses of checks)

1. The chilling method used to produce frozen poultrymeat results in the absorption of water by the final product. EU legislation sets the limits for the total water content (that is, natural physiological water content plus additional absorbed water) that is considered permissible. In this request for a preliminary ruling the Tribunal administratif de Rennes (Administrative Court, Rennes) seeks guidance on the interpretation of those rules together with the EU measures governing the payment of export refunds.

2. The common agricultural policy provides the European Union with a number of tools allowing it to support the price obtained for goods produced by economic operators within its territory that are exported to third countries. Of particular relevance to this Opinion are the export refunds paid to producers of poultrymeat to enable them to export EU poultry (including frozen chicken) profitably to the world market, where prices are lower than in the EU domestic market. The referring court is uncertain as to whether the rules in Regulation (EC) No 543/2008[2] concerning marketing standards for poultrymeat and, in particular, the provisions setting the prescribed limits for water content, must be met in order to fulfil the conditions for obtaining export refunds laid down in Regulation (EC) No 612/2009 governing the export refund system for such products.[3] It also wishes to know whether the testing methods used to determine whether frozen chicken carcasses contain water in excess of those limits are valid. Finally, it asks whether Regulation No 543/2008 lays down provisions that are

1 — Original language: English.

2 — Commission Regulation of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat (OJ 2008 L 157, p. 46). That regulation repealed Commission Regulation (EEC) No 1538/91 of 5 June 1991 introducing detailed rules for implementing Regulation (EEC) No 1906/90 on certain marketing standards for poultry (OJ 1991 L 143, p. 11). See further footnote 5 below.

3 — Commission Regulation of 7 July 2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products (recast) (OJ 2009 L 186, p. 1).

sufficiently precise to enable national competent authorities to conduct checks to verify the water content of frozen poultrymeat, and whether the procedures for economic operators to request a counter-analysis of the results of slaughterhouse checks comply with the fundamental right to good administration guaranteed by Article 41 of the Charter of Fundamental Rights of the European Union. [4]

Legislation

Regulation No 1234/2007

3. Regulation (EC) No 1234/2007 [5] laid down rules governing, inter alia, the common organisation of the market in poultrymeat. Annex XIV, Section B, point 2, stated that poultrymeat for export from the European Union was not subject to the marketing standards laid down in that regulation. [6]

4. Article 121(e) empowered the European Commission to establish detailed rules, inter alia, on marketing standards concerning poultrymeat. Those measures covered 'the rules to be applied as regards the percentages of water absorption during the preparation of fresh, frozen and quick frozen carcasses and cuts thereof as well as the indications to be made in that respect' (Article 121(e)(vii)).

Regulation No 543/2008

5. Under Article 7(1) poultrymeat may be graded as class 'A' or 'B'. In order to be classified in either category pursuant to that provision, poultry carcasses must meet the listed minimum requirements, that is, they must be: (a) intact; (b) clean, free from any visible foreign matter, dirt or blood; (c) free of any foreign smell; (d) free of visible blood stains except those which are small and unobtrusive; (e) free of protruding broken bones; and (f) free of severe contusions. Certain additional criteria (laid down in Article 7(2)) must be satisfied for the poultrymeat to be graded as class A. [7]

4 — OJ 2010 C 83, p. 389 ('the Charter').

5 — Council Regulation of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1). That regulation repealed Council Regulation (EEC) No 1906/90 of 26 June 1990 on certain marketing standards for poultry (OJ 1990 L 173, p. 1). While Regulation No 1234/2007 was the EU legislation in force at the time of the events giving rise to the main proceedings, it has itself since been repealed by Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products (OJ 2013 L 347, p. 671).

6 — See further Article 116 of Regulation No 1234/2007. Annex XIV, Section B, point 2, was previously enacted in the first indent of Article 1(3) of Regulation No 1906/90.

7 — The distinction between classes A and B is made by reference to checks on samples and the number of defects displayed by a sampled batch. A table indicating the tolerable number of defective units in any batch is set out in Article 8(2). For class B chicken the tolerable number of defective units is double that for class A chicken (Article 8(4)). As regards poultry produced within the European Union, the national competent authorities are required to prohibit the marketing of batches that have a greater number of defects than those permitted for chicken classed as B (Article 8(5)).

6. Article 15(1) of Regulation No 543/2008 provides: 'without prejudice to Article 16(5) … frozen and quick-frozen chickens may be marketed by way of business or trade within the [European Union] only if the water content does not exceed the technically unavoidable values determined by the method of analysis described in Annex VI (drip method) or that in Annex VII (chemical method)'.[8] Member States' competent authorities must ensure that slaughterhouses adopt all measures necessary to comply with that provision.[9]

7. The procedure for checking on absorption of water in the production establishment (the 'Slaughterhouse test') is laid down in Annex IX. The limits for extraneous water content in point 10 of that annex are as follows: (i) air chilling 0%; (ii) air-spray chilling 2%; and (iii) immersion chilling 4.5%.

8. Article 16 states:

'1. Regular checks in accordance with Annex IX on the water absorbed or checks in accordance with Annex VI shall be carried out in the slaughterhouses at least once each working period of eight hours.

Where these checks reveal that the amount of water absorbed is greater than the total water content permitted under the terms of this Regulation, account being taken of the water absorbed by the carcases during the stages of processing which are not subject to checking, and where, in any case, the amount of water absorbed is greater than the levels referred to in point 10 of Annex IX, or in point 7 of Annex VI, the necessary technical adjustments shall be made immediately by the slaughterhouse to the process.

2. In all cases referred to in the second subparagraph of paragraph 1 and in any case at least once every two months, checks on water content referred to in Article 15(1) shall be carried out, by sampling, on frozen and quick-frozen chickens from each slaughterhouse in accordance with Annex VI or VII, to be chosen by the competent authority of the Member State. These checks shall not be conducted for carcases in respect of which proof is provided to the satisfaction of the competent authority that they are intended exclusively for export.

…

5. If the result of the checks referred to in paragraph 2 is in excess of the admissible limits, the batch concerned shall be deemed not to comply with this Regulation. In that event, however, the slaughterhouse concerned may request that a counter-analysis be carried out in the reference laboratory of the Member State, using a method to be chosen by the competent authority of the Member State. The costs of this counter-analysis shall be borne by the holder of the batch.

8 — The water content thresholds ('the prescribed limits') are laid down in Annexes VI ('Determination of thaw loss (drip test)') and VII ('Determination of the total water content of chickens (chemical test)'). The 'drip test' is the method used to determine the amount of water lost from frozen or quick frozen chickens (in this Opinion 'frozen chickens' should be read as also covering quick-frozen chickens) during the thawing process. Where the following limits are exceeded it is considered that excess water has been absorbed during processing: (i) air chilling 1.5%; (ii) air spray chilling 3.3%; and (iii) immersion chilling 5.1% (point 7 of Annex VI). The 'chemical test' is used to determine the total water content of frozen chickens. That test involves determination of the water and protein content of samples from homogenised poultry carcases. The results are calculated in accordance with the rules laid down in Annex VII, point 6, which sets out certain formulae for that purpose. Point 6.5 states that if the average water content of seven carcases (as calculated under point 6.2) does not exceed the value given in point 6.4 (which sets out formulae for determining the technically unavoidable water content arising from the process of air chilling, air-spray chilling and immersion chilling), the quantity of poultry subjected to checking is considered to be up to standard.

9 — Article 15(2).

6. Where the batch in question is deemed after such counter-analysis not to comply with this Regulation, the competent authority shall take the appropriate measures aimed at allowing it to be marketed as such within the [European Union] only on condition that both individual and bulk packaging of the carcases concerned shall be marked by the slaughterhouse under the supervision of the competent authority with a tape or label bearing, in red capital letters, at least one of the indications set out in Annex X.

The batch referred to in the first subparagraph shall remain under the supervision of the competent authority until it is dealt with in accordance with this paragraph or otherwise disposed of. If it is certified to the competent authority that the batch referred to in the first subparagraph is to be exported, the competent authority shall take all necessary measures to prevent the batch in question from being marketed within the [European Union].

The indications provided for in the first subparagraph shall be marked in a conspicuous place so as to be easily visible, clearly legible and indelible. They shall not in any way be hidden, obscured or interrupted by other written or pictorial matter. The letters shall be at least 1 cm high on the individual packaging and 2 cm on bulk packaging.'[10]

9. Pursuant to Article 18(2) Member States must adopt: '… the practical measures for the checks provided for in Articles 15, 16 … at all stages of marketing, including checks on imports from third countries at the time of customs clearance in accordance with Annexes VI and VII. They shall inform the other Member States and the Commission of these measures. …'

Regulation No 612/2009

10. Article 28(1) of Regulation (EC) No 612/2009[11] states:

'No refund shall be granted on products which are not of sound and fair marketable quality on the date on which the export declaration is accepted.

Products shall be deemed to meet the requirement laid down in the first subparagraph if they can be marketed on the [European Union's] territory in normal conditions under the description appearing in the refund application and if, where such products are intended for human consumption, their use for that purpose is not excluded or substantially impaired by reason of their characteristics or condition.

The conformity of the products with the requirements laid down in the first subparagraph shall be examined in accordance with the standards or practices in force in the [European Union].

However, the refund shall also be granted where, in the country of destination, the exported products are subject to specific obligatory conditions, in particular health and hygiene conditions, which do not correspond to the standards or practices in force within the [European Union]. It shall be the responsibility of the exporter, at the request of the competent authority, to prove that the products comply with such obligatory conditions in force in the country of destination.

In addition, specific provisions may be adopted for certain products.'

10 — The English language version of the wording of the label mentioned in the first subparagraph of Article 16(6) set out in Annex X is: 'Water content exceeds [EU] limit'.

11 — Regulation No 612/2009 repealed and replaced Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11). That regulation had in its turn repealed and replaced Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1).

The Customs Code

11. At the material time, the examination of goods for export was governed by Regulation (EC) No 450/2008.[12] The person making a customs declaration ('the declarant') had the right to be present or to be represented when goods were examined or samples were taken (Article 118(2)). The declarant also had the right to request a further examination or sampling of the goods concerned if he considered that the results obtained by the competent authorities were not valid (second subparagraph of Article 119(1)).

Regulation No 1276/2008

12. Article 1 of Regulation (EC) No 1276/2008[13] states that that regulation lays down certain procedures for monitoring whether operations conferring entitlement to payment of export refunds have been carried out correctly. Article 5(4) states that where there are specific grounds for suspecting the sound, fair and marketable quality of a product, it is the task of the customs office of export to verify compliance with the applicable EU provisions.

Facts, procedure and questions referred

13. Doux SA is an economic operator which produces poultrymeat within the European Union. Its activities include exporting frozen chicken to third countries. Doux has received export refunds under the EU regime which governs the common organisation of the poultrymeat sector. In order to receive those refunds Doux must provide guarantees (securities) that it will comply with the obligations appropriate to exporting frozen poultrymeat. The obligations include meeting the requirement that the exported products should be of 'sound and fair marketable quality' in accordance with Article 28(1) of Regulation No 612/2009.

14. The Établissement national des produits de l'agriculture et de la mer ('FranceAgriMer') conducted tests on Doux's poultrymeat for export and found that the products contained water in excess of the prescribed limits laid down in Annexes VI and VII to Regulation No 543/2008. Accordingly, on 22 July 2013 FranceAgriMer adopted a decision ('the contested decision') by which it froze the release of securities relating to requests for export refunds for claims received after 21 April 2013.[14] Doux instituted proceedings before the referring court seeking to annul that decision.

15. Doux argues that the prescribed limits set out in Article 15 of Regulation No 543/2008 do not apply to exports and that the contested decision is vitiated by an error of law, because it makes the right to export refunds dependent on the water content of the frozen poultrymeat exported.

16. FranceAgriMer considers that, under Article 28(1) of Regulation No 612/2009, export refunds should not be granted where the products concerned cannot be marketed within the European Union in normal conditions and if such products are not of 'sound and fair marketable quality' on the date when the export declaration is accepted. Frozen poultrymeat that contains water over the prescribed limits does not fulfil the requirement in Article 28(1) and is not therefore eligible for a refund.

12 — Regulation 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). That regulation repealed Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), which the Commission refers to in its written observations. Regulation No 450/2008 was repealed and replaced by 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) with effect from 29 October 2013. See further point 14 and footnote 14 below.

13 — Commission Regulation of 17 December 2008 on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts (OJ 2008 L 339, p. 53).

14 — There is no information in the order for reference as to precisely when the checks on the batches of Doux's frozen chicken for export were conducted. I have therefore examined this case by reference to the EU legislation as it stood at the date of the contested decision.

17. The referring court has decided to stay the proceedings and seeks a preliminary ruling on the following questions:

‘(1) Does compliance with the water-content threshold laid down by Article 15 of [Regulation No 543/2008], in conjunction with Annexes VI and VII thereto, constitute a requirement of “sound and fair marketable quality” within the meaning of Article 28(1) of [Regulation No 612/2009] and of the judgment of the Court of Justice in *Nowaco Germany*? [15]

(2) Can frozen poultry with a water content exceeding the threshold laid down by Article 15 of [Regulation No 543/2008], in conjunction with Annexes VI and VII thereto, accompanied by a health certificate issued by the competent authority, be marketed within the European Union in normal conditions, within the meaning of Article 28 of [Regulation No 612/2009], and, if so, in what conditions?

(3) Is the fact that the water-content threshold remains at 5.1% under Annex VI to [Regulation No 543/2008], and has not been revised for several decades, despite alleged changes in rearing practices and criticism in certain scientific studies that that threshold is obsolete, compatible or incompatible with EU law, and in particular with the principle of legal certainty?

(4) Are Annexes VI and VII to [Regulation No 543/2008] sufficiently precise for the checks provided for by Article 15 of that regulation to be carried out, or was France under an obligation to lay down “practical measures for the checks” “at all stages of marketing”, failing which checks carried out at the stage of exportation of the goods cannot be relied upon?

(5) Can the requests for counter-analyses which are provided for by Article 16(2) and (5) of [Regulation No 543/2008] in respect of the results of slaughterhouse checks be extended to checks carried out at the stage of marketing of export products, in the presence of the parties, pursuant to, inter alia, Article 41 of the [Charter]?’

18. Written observations have been submitted by Doux, the French Government and the Commission, all of whom made oral submissions at the hearing on 3 March 2016.

Assessment

Admissibility

19. Doux, France and the Commission all state that the order for reference does not set out in sufficient detail the facts underlying the contested decision. Thus, there must at least be some doubt as to whether the request for a preliminary ruling is admissible.

20. According to settled case-law, the need to provide an interpretation of EU law which will be of use to the national court means that that court should define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based. The information provided in orders for reference must not only be such as to enable the Court to reply usefully but must also enable the governments of the Member States and other interested parties to submit observations pursuant to Article 20 of the Statute of the Court of Justice. In order to ascertain whether the information supplied by the referring court in the present matter satisfies those requirements, the nature and scope of the questions raised have to be taken into consideration. [16]

15 — Judgment of 7 September 2006, C-353/04, EU:C:2006:522 (‘*Nowaco Germany*’).

16 — Judgment of 17 July 2008, *Raccanelli*, C-94/07, EU:C:2008:425, paragraphs 24 to 27 and the case-law cited.

21. In their written observations the parties point to certain gaps in the description of the facts. According to Doux, the world market in frozen chicken is dominated by two Brazilian exporters which account for approximately 70% of that market. Doux itself has about 15% of the world market. It is the third largest exporter in the world and the predominant European exporter. Doux's economic survival is now threatened as a result of the penalties imposed upon it by FranceAgriMer. [17]

22. The French Government explains in its written observations that Doux has benefited from export refunds since the mid-1970s. Between March 2010 and March 2013, the French customs authorities conducted checks on the water content of frozen chicken for export produced by Doux. In the majority of batches inspected the prescribed limits were exceeded. Following an exchange of correspondence between France and the Commission concerning whether the frozen poultrymeat in question qualified for export refunds, the Commission opened a clearance of accounts procedure against France. In the Commission's view, in order for the frozen poultrymeat to be eligible for export refunds under Article 28(1) of Regulation No 612/2009, its water content had to comply with the prescribed limits. The Commission considered that the French authorities had failed to monitor adequately the water content of the chickens in question, with the result that the Commission had been induced to reimburse payments of refunds that were not properly due. France indicated that it did not agree with the Commission's interpretation of the legislation in question, but decided to adopt the contested decision pending resolution of the matter by the Court.

23. In my view, whilst there may be gaps in the factual background set out in the order for reference, the questions posed raise a clear issue of interpretation. The Court is asked to give guidance on the rules governing the prescribed limits for the water content in frozen poultry construed together with those relating to the regulation of export refunds. Which of the parties' factual assertions the referring court ultimately considers to be established is not determinative. In my opinion, therefore, the Court has sufficient information to enable it to reply to those questions.

Substance

Question 3

24. I shall start by examining Question 3, where the referring court asks whether the fact that the prescribed limits set out in point 7 of Annex VI to Regulation No 543/2008 have not been revised for several decades, even though certain scientific studies state that they are now obsolete, is compatible with EU law and, in particular, with the principle of legal certainty. If the application of those limits were held to be contrary to EU law, there would be no need to reply to the remaining questions posed.

17 — By 'penalties' I understand Doux to mean the value of the securities relating to requests for export refunds that have been frozen. This amounts to EUR 52106394.36.

25. Doux submits that the prescribed limits are obsolete because they do not reflect current scientific knowledge.[18] The limits are thus incompatible with (i) Regulation No 1234/2007, which incorporates the provisions of Regulation No 1906/90 including the rule that the prescribed limits should be frequently updated because of their technical nature[19] and (ii) the principle that rules must reflect the context in which they produce their effects. Doux also argues that the prescribed limits are contrary to the principle of legal certainty.

26. The French Government considers that a reply to Question 3 becomes necessary only if the Court responds in the negative to Questions 1 and 2. The Commission maintains that the prescribed limits in point 7 of Annex VI to Regulation No 543/2008 are valid.

27. I agree with the view expressed by Advocate General Mischo in *National Farmers' Union*[20] that in relation to legal rules nothing is immutable and that every legislature has a duty to check '… if not constantly at least periodically, that the rules which it has imposed still meet the needs of society and, second, to amend or even repeal the rules which have ceased to have any justification and are thus no longer appropriate in the new context in which they must produce their effects'.

28. That said, in my view the current prescribed limits are not incompatible with EU law for the following reasons.

29. First, in accordance with Article 121(e) of Regulation No 1234/2007 the Commission established detailed rules some eight years ago regarding the marketing of poultrymeat by adopting Regulation No 543/2008.[21] Whilst it is true that the prescribed limits in Annexes VI and VII of the latter regulation are the same as those previously to be found in Regulation No 2891/93, it does not follow simply by passage of time that those (unchanged) limits are now obsolete. The Commission explains in its written observations that it is in the process of conducting further scientific studies, referring in particular to a study also cited by Doux.[22] It therefore seems to me over simplistic to claim that the Commission has failed to fulfil its duty to verify whether the current prescribed limits are appropriate. The Commission does have the matter under review. Given that the decision to leave the 1993 limits unchanged was taken in 2008, that there is further scientific evidence to be evaluated and that we are now in mid-2016, it would be reasonable to expect that the Commission acting with due administrative diligence will decide fairly soon whether or not to revise the limits. It does not necessarily follow that a reassessment of the prescribed limits in the light of current scientific evidence means that the limits for excess water will automatically be increased or that, if they are, they will be increased by a particular percentage. That decision is one that, in principle, lies within the discretion enjoyed by the EU legislator.

18 — According to Doux, scientific studies show that developments in respect of poultry breeds and age/weight at slaughter may have caused a change in the physiological water content of poultrymeat (water that is ordinarily present in, for example, chicken) produced in the European Union which justify periodical review of the prescribed limits. Thus, the physiological water content of modern poultry is higher than it was in birds reared when the prescribed limits were set in 1993. Both the breeds reared for meat and poultry husbandry techniques have since changed. As a result, meat is now derived from birds that are both younger and that have a higher physiological water content and a lower protein content than birds reared previously.

19 — Doux relies on the seventh recital of Regulation No 1906/90, which stated that it was likely that any implementing rules to give effect to that regulation would require frequent amendments given the technical nature of the subject matter.

20 — C-241/01, EU:C:2002:415, point 51.

21 — The prescribed limits in Annexes VI and VII of that regulation are rules concerning the percentages of water absorption during the preparation of fresh, frozen and quick-frozen carcasses for the purposes of Article 121(e)(vii) of Regulation No 1234/2007.

22 — A recent study requested by the Commission is the 'Study of physiological water content of poultry reared in the EU', Final Report (Report Number LGC CPFC/2012/492). That study sampled flocks from seven Member States which together accounted for more than 70% of total EU poultry production, based on 2009 figures. It concluded that younger birds did have slightly more water and slightly less protein when compared to the results of a previous (1993) study; and that there was strong evidence to support a decision to amend the limits in EU legislation so that they reflect chicken reared in the European Union in 2012 (p. 8).

30. Doux seeks to rely on the reference to the provisions of Regulation No 1906/90 in Regulation No 1234/2007 in support of its argument that the Commission is obliged periodically to update the prescribed limits concerning water content. However, there is no enacting provision imposing such a specific obligation in Regulation No 1234/2007. Recitals 52 and 105 of Regulation No 1234/2007 merely state that the new regulation incorporates a number of previous acts, including Regulation No 1906/90, which was duly repealed by Regulation No 1234/2007.

31. Nor does reference to the principle of legal certainty assist Doux's case. That principle requires that EU rules enable those concerned to know precisely the extent of the obligations which are imposed on them, and that those persons must be able to ascertain unequivocally what their rights and obligations are and take steps accordingly.[23] The current rules comply with that principle in so far as the prescribed limits, in particular for the drip test in point 7 of Annex VI, are unambiguous as regards content and scope. In the absence of those rules, there would be no legal certainty.

32. I therefore conclude that the prescribed limits for the water content in frozen chicken set out in point 7 of Annex VI to Regulation No 543/2008 are compatible with EU law.

Questions 1 and 2

33. By Questions 1 and 2, the referring court seeks guidance on the meaning of Article 28(1) of Regulation No 612/2009, with particular reference to the requirement that to be eligible for export refunds products must be of 'sound and fair marketable quality'. Is that requirement met where the water content of poultrymeat for export exceeds the prescribed limits mentioned in Article 15 of Regulation No 543/2008? The referring court asks in particular whether such products are marketed 'in normal conditions' for the purposes of the rules governing the payment of export refunds.

34. The Commission reads Article 15 of Regulation No 543/2008 and Article 28 of Regulation No 612/2009 as meaning that frozen poultrymeat must comply with the prescribed limits in order to qualify for export refunds. Doux and the French Government disagree with that view.

35. I also do not accept the Commission's interpretation of the legislation at issue.

– Preliminary remarks — *Nowaco Germany*

36. The Court examined the meaning of the requirement that products must be of 'sound and fair marketable quality' in *Nowaco Germany*. Following an examination of two consignments of frozen chicken, the competent authorities in Germany found that some of the products contained defects — samples showed that certain carcasses had broken and protruding bones. The export refunds for those consignments were accordingly fixed at DEM 0 by the competent authorities (later adjusted to half of the export refund due by the Finanzgericht). Nowaco argued that it followed from the first indent of Article 1(3) of Regulation No 1906/90[24] that the marketing standards laid down therein did not apply to exports of poultrymeat and that it should accordingly be entitled to the full amount of the export refund.

37. The Court rejected Nowaco's submissions. It is worth examining its reasoning in some detail.

23 — See, inter alia, judgment of 29 March 2011, *ArcelorMittal Luxembourg* v *Commission* and *Commission* v *ArcelorMittal Luxembourg and Others*, C-201/09 P and C-216/09 P, EU:C:2011:190, paragraph 68, and see more recently judgment of 10 September 2015, *Nannoka Vulcanus Industries*, C-81/14, EU:C:2015:575, paragraph 61.

24 — Article 1(3), first indent of Regulation No 1906/90 provided: 'This Regulation shall not apply — to poultrymeat for export from the [European Union].' An equivalent provision was, at the material time of the present proceedings, to be found in Annex XIV, Section B, point I.2(A), of Regulation No 1234/2007.

38. First, the Court recalled that it had already held in an analogous context that 'the requirement of "sound and fair marketable quality" constitutes a general objective condition for the grant of a refund and that a product which could not be marketed within the [European Union] "under normal conditions" would not meet these requirements as to quality'.[25] The Court noted that 'the fact that the marketability of a product in "normal conditions" is an aspect inherent in the concept of "sound and fair marketable quality" is indeed clearly apparent from the rules relating to export refunds for agricultural products inasmuch as, from Regulation No 1041/67 [26] onwards, all the relevant regulations have adopted the concept of "sound and fair marketable quality" as well as the criterion of the product's marketability "in normal conditions"'.[27] It followed that 'to be considered of "sound and fair marketable quality" and therefore qualify for export refunds, a product exported from the [European Union] to a third country must be marketable on the [European Union's] territory "in normal conditions", and must therefore meet the quality requirements governing its marketing in the [European Union] for human consumption'.[28]

39. Next, the Court confirmed that the EU rules did not establish criteria for exportability as such. Even if a product did not meet the necessary quality requirements to be marketed in the European Union in normal conditions (at that time, those laid down by Articles 6 and 7 of Regulation No 1538/91), it could in principle be exported.[29] Those requirements did not apply to export operations themselves; their sole purpose was to establish entitlement to a financial subsidy granted by the European Union.[30] An interpretation which permitted the subsidising of exports of products which did not meet the marketing standards applying within the European Union would mean that there was inconsistency in the EU system of export refunds.[31]

40. Crucially, the Court then drew a distinction (in paragraph 38 of the judgment) between two types of requirement. The first category comprised 'the minimum requirements laid down in Article 6(1) of Regulation No 1538/91 (such as, inter alia, being free of any foreign smell, matter or visible bloodstains)'. These were described as being 'requirements which directly concern the quality of the products'. Failure to satisfy those requirements therefore meant that the product would not satisfy the marketing standards applying within the European Union. The second type of requirement was described as 'other provisions of that regulation not concerning quality (for example those concerning the naming and labelling of the products), the objective of which is to inform the consumer and economic operators'. The Court said of *that* requirement that it 'cannot be invoked for the purposes of the application of Article 13 of Regulation No 3665/87' (that is, the provision then governing the availability of export refunds).

41. In my opinion the principles established in *Nowaco Germany* apply equally here.

42. It is however also important to note that in *Nowaco Germany* the concept of what was to be considered 'sound and fair marketable quality' was determined directly by reference to the detailed internal market rules for marketing standards within the European Union, namely Articles 6 and 7 of Regulation No 1538/91. In the present case, the Court has *two* sets of provisions whose interaction it needs to consider. First, there are the current marketing standards applicable within the European Union. For present purposes, the relevant standards are those contained in Articles 15 *and* 16 of

25 — Paragraph 27 and the case-law cited.

26 — Regulation No 1041/67/EEC of the Commission of 21 December 1967 on detailed rules for the application of export refunds on products subject to a single price system (OJ, English Special Edition 1967, p. 323).

27 — Paragraph 28.

28 — Paragraph 30.

29 — Paragraph 35.

30 — Paragraph 36.

31 — Paragraph 37 and the case-law cited.

Regulation No 543/2008.[32] Second, there is the rule in Article 28(1) of Regulation No 612/2009, which governs the circumstances in which refunds are payable and which contains an important provision as to when products shall be deemed to meet the requirement that they be of sound and fair marketable quality.[33]

– Analysis

43. I begin by recording the legislative history of the rules governing, respectively, the grading of poultry that is deemed to be of suitable quality for human consumption and the rules governing water content. The grading rules were introduced by Regulation No 1538/91 (the statutory predecessor of Regulation No 543/2008), which provided for poultrymeat to be graded in two classes, 'A' and 'B'. Whilst meat graded as 'A' is of a higher quality than meat graded 'B', both are regarded as fully marketable on the internal market. Two years later, the rules governing the water content thresholds in frozen poultry were introduced into Regulation No 1538/91 by Regulation No 2891/93.[34] Those rules have remained essentially unchanged and are currently to be found in Articles 15 and 16 of Regulation No 543/2008.

44. Turning to the rules governing water content, the basic position under Article 15 is that frozen chicken may be marketed by way of business or trade only if the water content does not exceed the prescribed limits determined by the drip or chemical testing methods.[35] However, the first subparagraph of Article 16(6) then contains *specific authorisation* allowing chicken whose water content exceeds the permissible limits nevertheless to be marketed ('… the competent authority shall take the appropriate measures *aimed at allowing it to be marketed as such within [the European Union]*'), albeit subject to strict labelling requirements ('only on condition that both individual and bulk packaging of the carcasses concerned shall be marked by the slaughterhouse under the supervision of the competent authority with a tape or label, bearing, in red capital letters, at least one of the indications set out in Annex X'). The second and third subparagraphs of Article 16(6) put in place further safeguards aimed at ensuring that, if the chicken is marketed in the EU — and it clearly *may* lawfully be so marketed — it is appropriately and conspicuously labelled.

45. Article 16(6), second subparagraph, final sentence, foresees only one exception to these labelling requirements: 'If it is certified to the competent authority that the batch referred to … is to be exported, the competent authority shall take all necessary measures to prevent the batch in question from being marketed within [the European Union].'

46. It can — self-evidently — be said that chicken bearing such a label is presented differently to the consumer (or the economic operator buying it wholesale for further processing) from chicken whose water content is within the limits laid down by Regulation No 543/2008. That, indeed, is the whole point. The detailed rules in Article 16 ensure that the purchaser is made aware, through the stringent labelling requirements, of the fact that chicken so labelled has a higher water content. It is not difficult to imagine that he will, accordingly, expect to pay a lower price for it than the price that chicken *not* so labelled will command. Both are, however, chicken that can lawfully be marketed within the EU. It seems reasonable to assume, indeed, that they are in competition with each other.

32 — Those provisions were formerly contained in Article 14*a*(1) of Regulation No 1538/91 as modified by Regulation No 2891/93, Article 1(7).

33 — This provision was first introduced in Article 21 of Regulation No 800/1999. The Court has held that that provision confirmed the legal position which existed at the time that it entered into force: see *Nowaco Germany*, paragraph 29 and the case-law cited.

34 — Commission Regulation (EEC) No 2891/93 of 1 October 1993 (OJ 1993 L 263, p. 12).

35 — See footnote 8 above.

47. Here, it seems to me pertinent to recall the distinction drawn by the Court in *Nowaco* between 'requirements which directly concern the quality of the products' and 'other provisions … not concerning quality (for example those concerning the naming and labelling of the products)'. At first sight, the requirement in Article 16(6) would seem to be a labelling requirement which, provided that it is complied with, allows the product so labelled to be placed on the EU market just like *any other chicken that meets all other product quality requirements*. I shall return to this question below when I examine the concept of 'in normal conditions' more closely. [36]

48. I emphasise that it is entirely a matter for the referring court, as sole judge of fact, to make the necessary findings as to whether the frozen chicken for which Doux claimed refunds did, or did not, meet all other product quality requirements. The question of principle here is whether chicken with a water content in excess of the prescribed limits can be marketed lawfully within the European Union. The answer to that question of principle appears to be 'yes'.

49. I turn now to the specific rule governing eligibility for refunds contained in Article 28(1) of Regulation No 612/2009. Were the products at issue in the main proceedings of 'sound and fair marketable quality', so that they satisfied the first subparagraph of that provision?

50. The second subparagraph of Article 28(1) states that products are deemed to meet the requirement of sound and fair marketable quality if: (i) they can be marketed on the European Union's territory 'in normal conditions under the description appearing in the refund application' [37] and if (ii) 'where such products are intended for human consumption, their use for that purpose is not excluded or substantially impaired by reason of their characteristics or condition'.

51. It is relatively easy to deal with the second condition.

52. Doux has produced examples of health certificates issued by the French authorities indicating that the poultrymeat at issue had been certified as being 'healthy' in so far as it was, inter alia, free from evidence of infectious diseases and had been prepared in accordance with EU hygiene rules and was fit for human consumption.

53. On the one hand, whilst Regulation No 543/2008 contains no requirement for a health certificate to be issued for poultrymeat containing water in excess of the prescribed limits, the presence of that certificate is a matter that the referring court would be entitled to take into account in assessing compliance with the second condition in the second subparagraph of Article 28(1) of Regulation No 612/2009.

54. On the other hand, it is not necessary for the poultrymeat at issue to be classified as class A within the meaning of Article 7 of Regulation No 543/2008: chicken classified as class B also meets that condition. [38] Thus, the quality of poultrymeat for human consumption which is exported must be *fit for purpose*, but it does not have to be demonstrated to be the best meat that is produced within the European Union.

55. However, satisfying the second condition, whilst necessary, is not sufficient to obtain a refund. It does not follow from the fact that the products at issue fulfil the hygiene criteria and are the object of a commercial transaction that they must be regarded as being marketable in normal conditions and therefore deemed to be of sound and fair marketable quality. [39]

36 — See points 62 to 65 below.

37 — The marketability of a product 'in normal conditions' is an inherent aspect of the requirement that it must be of 'sound and fair marketable quality': see judgment of 1 December 2005, *Fleisch-Winter*, C-309/04, EU:C:2005:732 ('*Fleisch-Winter*'), paragraph 21.

38 — Only chicken whose quality falls below class B may not be marketed internally within the European Union: see footnote 7 above.

39 — Judgment of 26 May 2005, *SEPA*, C-409/03, EU:C:2005:319 ('*SEPA*'), paragraph 30.

56. What, then, of the first condition, that the poultrymeat at issue is marketed 'in normal conditions'?

57. Here, it is immediately necessary to examine two cases in which the Court ruled that products were *not* being marketed in normal conditions.

58. In *SEPA* the economic operator in question exported meat to third countries that had been slaughtered in special slaughterhouses (known as 'isolation slaughterhouses') pursuant to national measures in Germany governing meat hygiene and the slaughter of animals in cases of sickness or on emergency grounds (such as an accident). The economic operator was granted export refunds for meat produced from those animals up to October 1997. In November 1997 a request for export refunds relating to a shipment of frozen beef from animals that had been slaughtered urgently on emergency grounds (for example following an accident) was rejected by the national competent authority on the grounds that the products were not of 'sound and fair marketable quality'. Although the meat was certified as being fit for human consumption, it was subject to significant restrictions under German law. Those restrictions covered its production, treatment and distribution. In particular the meat concerned could be sold only by certain agencies of the isolation slaughterhouses which had to be authorised and supervised by the competent authorities. Also, the meat was subject to circulation restrictions within the (then) Community, as it could be marketed only locally. The Court ruled that products subject to such restrictions cannot be regarded as being marketable in normal conditions.

59. It seems to me that those circumstances are very different from those envisaged by Article 16(6) of Regulation No 543/2008. Under the first and third subparagraphs of that provision, *provided* that the product is labelled appropriately, 'the competent authority shall take the appropriate measures aimed at allowing it to be marketed as such within the [European Union]'.

60. *Fleisch-Winter* also concerned the refusal of a request for export refunds for frozen beef. There were concerns that the meat in question had been produced in the United Kingdom and imported into Belgium in breach of the export ban introduced by the rules which had been adopted to provide protection against the spread of bovine spongiform encephalopathy ('BSE'). [40]

61. Products subject to an export ban that applies within the European Union's territory as well as to third countries in response to a situation such as the BSE crisis clearly cannot be regarded as being marketable in normal conditions. Again, it seems to me that the circumstances of the present case are very different.

62. Article 16(6) of Regulation No 543/2008 is a permissive provision. Far from banning the sale of poultrymeat whose water content exceeds the prescribed limits, Article 16(6) expressly allows it to be marketed subject to the condition that it is conspicuously labelled. [41]

63. It therefore seems reasonable to deduce from that provision that the EU legislature was content that poultrymeat which is in other respects fit for purpose 'may be marketed by way of business or trade within the [European Union]', even where the water content exceeds the prescribed limits, provided only that it bears the appropriate label.

40 — Commission Decision 96/239/EC of 27 March 1996 on emergency measures to protect against bovine spongiform encephalopathy (OJ 1996 L 78, p. 47), as amended by Commission Decision 96/362/EC of 11 June 1996 (OJ 1996 L 139, p. 17), Article 1 of which prohibited the United Kingdom from exporting beef slaughtered in that Member State to other Member States or third countries.

41 — In accordance with the third subparagraph of Article 16(6), labels must be conspicuous and the letters must be at least 1 cm high on the individual packaging and 2 cm on bulk packaging.

64. Such a labelling requirement does not place significant restrictions on the production, treatment or distribution of the products concerned as compared to poultrymeat that complies with the prescribed limits. Thus, there is (for example) no requirement that chicken containing water in excess of the prescribed limits should be produced at particular locations, that it should be distributed through different outlets to chicken which complies with those limits or that it may only be used for certain processes or purposes.

65. It therefore seems to me that, in the absence of measures that limit the circulation within the European Union's territory of the poultrymeat concerned, or measures that significantly restrict the production, treatment or distribution of that product within the Member State where the poultry is reared, requiring a label to be affixed pursuant to Article 16(6) of Regulation No 543/2008 is not of itself sufficient to mean that the meat is not marketed on EU territory 'in normal conditions'.

66. I also recall that, in *Nowaco Germany*, the Court expressly stated that 'other provisions … not concerning quality (for example those concerning the *naming and labelling* of the products), the objective of which is to *inform* the consumer and economic operators, *cannot* be invoked for the purposes of [refusing a refund]' (paragraph 38, emphasis added).[42] It seems to me that the label affixed in accordance with Article 16(6) of Regulation No 543/2008 identifies the product as chicken whose 'water content exceeds [EU] limit' and, in that sense, the *label* gives the product a different *name* from 'standard chicken'.[43] One would expect chicken containing excess water to be marketed at a lower price than chicken which meets those limits. And the purpose of the label is to *inform* consumers and economic operators.

67. Finally for the sake of good order I add that the fourth subparagraph of Article 28(1) of Regulation No 612/2009 states that export refunds 'shall also be granted where, in the country of destination, the exported products are subject to specific obligatory conditions, in particular health and hygiene conditions which do not correspond to the standards or practices in force within the [European Union]'.[44] Such rules would presumably provide consumer protection and/or product information to the level deemed appropriate by the competent authorities of that third State. That, at least, appears to be the approach expressly adopted by the EU legislature in providing that, in such circumstances export refunds '*shall* … be granted' (emphasis added). There is no information before the Court indicating whether the products at issue are or might be covered by that provision. That too, will be a matter for the referring court to examine if necessary.

– Underlying considerations

68. The Commission argues that it is necessary to bear in mind that the aim of the export refund regime is to provide financial support for exported products on the world market and to avoid an excess of such products on the internal market which results in lower prices and reduced yields for economic operators.[45] Poultrymeat which exceeds the prescribed limits should not be eligible for export refunds because it is not in competition with poultrymeat which complies with those rules. Exporting poor quality frozen chicken undermines the image of EU agricultural products and does not therefore merit financial support.

69. I do not find that view to be persuasive.

42 — See point 40 above.

43 — Indeed, Annex X of Regulation No 543/2008 dictates the wording of the label used in the naming process.

44 — See point 10 above.

45 — According to the Commission that policy has now changed and the new position is reflected in Regulation No 1308/2013.

70. First, the Court does not have any information in the order for reference indicating how poultrymeat that complies with the prescribed limits and poultrymeat which exceeds them is distributed within the European Union. Both types of frozen chicken may or may not be sold at the same point in the distribution chain to the same types of purchaser for the same purposes. Second, it has not been indicated whether the poultrymeat at issue was certified as being for export in accordance with the second subparagraph of Article 16(6) of Regulation No 543/2008.[46] If that were the case then the competent authority would have been obliged to take the necessary measures to prevent the poultrymeat that exceeded the prescribed limits from being marketed within the European Union and the question as to whether it was in competition with poultrymeat that complied with those limits might not arise on the facts.[47] Third, it seems intuitively plausible to suppose that frozen chicken marketed within the EU's territory in accordance with the labelling rules in Article 16(6) of Regulation No 543/2008 is probably in direct competition within the European Union with poultrymeat that satisfies the prescribed limits.[48] It will obviously be for the national court to make any necessary findings of fact. Finally, it seems a little tendentious to assert that exporting 'poor quality' frozen chicken will 'undermine' the image of EU agricultural products when that same product may, as we have seen, lawfully be marketed within the European Union.

71. I also stress that whether these particular pieces of frozen chicken were or were not actually labelled, in accordance with Article 16(6), as having excess water content is irrelevant when examining the question of principle as to whether such chicken is of 'sound and fair marketable quality'. *If* sold on the EU internal market, such chicken must of course be labelled. But these consignments were — on the facts — exported.

72. I conclude therefore that frozen and quick-frozen chickens which contain water in excess of the prescribed limits laid down in Article 15(1) of Regulation No 543/2008 can be deemed to be of 'sound, and fair marketable quality' on the grounds that the poultrymeat can be marketed within the European Union's territory 'in normal conditions' for the purposes of Article 28(1) of Regulation No 612/2009, provided it is labelled in accordance with Article 16(6) of Regulation No 543/2008 and is not subject to special measures, in particular those which restrict its circulation within the EU territory, or locally within a Member State, or which significantly limit its production, treatment or distribution.

Question 4

73. By Question 4, the referring court asks whether the tests to establish whether the water content of frozen chickens exceeds the prescribed limits are sufficiently precise or whether the French authorities are required to adopt measures under Article 18(2) of Regulation No 543/2008 in order to carry out the necessary checks on exports.

74. Whilst regulations are of course directly applicable in national law, there is an exception to that rule where the provisions of the regulation in question are *not* sufficiently precise.[49] Article 18(2) of Regulation No 543/2008 falls within that exception, since it specifically requires Member States to adopt the practical measures for the checks provided for, inter alia, by Articles 15 and 16 in relation to frozen chicken marketed within the European Union.

46 — Annex 4 to Doux's written observations contains three examples of 'certificats sanitaires' ('health certificates'). One certificate is dated 31 May 2013. The other two certificates are not dated. The health certificates indicate that the French authorities certified that poultrymeat was *approved* for export in all three cases. However, it is not clear whether the certificates were obtained for the purposes of *certifying* the poultrymeat for export, or indeed for the purposes of Article 16(6) of Regulation No 543/2008 at all.

47 — See point 66 above.

48 — Thus, direct competition that might exist between the two variants of chicken lawfully marketed within the European Union allowing a choice to be made between product X (chicken containing water within the prescribed limits at a higher price) and product Y (chicken containing water exceeding those limits at a lower price).

49 — Judgment of 7 July 2011, *Rakvere Piim and Maag Piimatööstus*, C-523/09, EU:C:2011:460, paragraphs 16 to 18 and the case-law cited.

75. However, we are here dealing with the availability of financial support for economic operators for frozen poultry which is to be exported to third countries and those rules do not apply. The position is instead governed by Article 5(4) of Regulation No 1276/2008, which states that the customs office must ensure that exports are of sound, fair and marketable quality in accordance with Article 28(1) of Regulation No 612/2009. In so doing, the customs office must take account of the applicable EU provisions, including Article 15 of Regulation No 543/2008, as well as any relevant provisions relating to, for example, animal health. There is no obligation under Article 5(4) of Regulation No 1276/2008 for Member States to adopt practical measures.

76. I therefore conclude that Member States are under no obligation under Regulation No 543/2008 to adopt practical measures to establish whether the water content of frozen chickens for export exceeds the thresholds laid down in Annexes VI and VII of that regulation.

Question 5

77. Article 16(2) of Regulation No 543/2008 states that regular checks on the water content of frozen chickens must be carried out in slaughterhouses at least once every two months in accordance with Annex VI or VII. Where the results of such checks show that the water content exceeds the prescribed limits, the products are deemed not to comply with Regulation No 543/2008. However, the slaughterhouse may request a counter-analysis of the results under Article 16(5). The referring court asks in Question 5 whether exporters are also entitled to request a counter-analysis pursuant to those provisions in relation to poultrymeat for export and whether such checks should be conducted in the presence of the economic operator concerned.

78. In my view the answer to that question is 'no'.

79. First, Article 16(2) of Regulation No 543/2008 makes it clear that the checks on the water content of frozen chickens (as mentioned in Article 15(1)) are not required for carcasses which are intended exclusively for export. As I have already indicated, it is not clear from the order for reference whether the products in question were *certified* as being destined exclusively for export (or, if not, at what precise point they became destined for export).

80. Second, the procedures for the examination of goods for export are governed by the Customs Code. Thus, at that stage the rules in Article 16(2) and (5) which cover frozen chicken marketed within the EU territory do not apply. The Customs Code '… provides for a sort of cooperation between the exporter and the national customs authority …'.[50] At the material time, the declarant (or the exporter in the context of the main proceedings) was entitled to be present or represented when the goods were examined and when samples were taken. Importantly, he also had the right to request a further examination or sampling of the goods concerned if he considered that the results obtained by the competent authorities were not valid.[51]

81. Third, by lodging an application for a refund, the exporter continues to assert either expressly or impliedly that the product in question is of 'sound and fair marketable quality'. It is for the exporter, according to the rules of evidence of national law, to prove that that requirement is, in fact, satisfied if a declaration is questioned by the national authorities. That does not seem prima facie to be an objectionable arrangement. I add that Article 41 of the Charter is concerned exclusively — as Article 41(1) expressly makes clear — with an individual's right 'to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union'. It cannot therefore be relevant to the economic operator's relationship with the customs authorities.

50 — *Nowaco Germany*, paragraph 63.

51 — See point 11 above.

82. Finally, since Article 16(2) of Regulation No 543/2008 does not apply to the procedures for the examination of frozen poultrymeat for export, the right to a counter-analysis laid down in Article 16(5) will similarly not apply.

Conclusion

83. In the light of all the foregoing considerations, I am of the opinion that the Court should answer the questions raised by the Tribunal administratif de Rennes (Administrative Court, Rennes (France)) as follows:

— The prescribed limits for water content in point 7 of Annex VI to Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat are compatible with EU law.

— Frozen and quick-frozen chicken which contains water in excess of the prescribed limits referred to in Article 15(1) of Regulation No 543/2008 can be deemed to be of 'sound and fair marketable quality' on the grounds that the poultrymeat can be marketed within the European Union's territory 'in normal conditions' for the purposes of Article 28(1) of Commission Regulation (EC) No 612/2009 of 7 July 2009 laying down common detailed rules for the application of the system of export refunds on agricultural products, provided it is labelled in accordance with Article 16(6) of Regulation No 543/2008 and is not subject to special measures, in particular which restrict its circulation within the EU territory, or locally within a Member State, or which significantly limit its production, treatment or distribution.

— Member States are not required under Regulation No 543/2008 to adopt practical measures to establish whether the water content of frozen chicken for export exceeds the limits laid down in Annexes VI and VII to that regulation.

— Article 16(2) and (5) of Regulation No 543/2008 does not govern the procedures for the examination of frozen chicken for export. The relevant rules are those set out in Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code.