JUDGMENT OF THE COURT (Fourth Chamber)

14 January 2010 *

In Joined Cases C-430/08 and C-431/08,

REFERENCES for a preliminary ruling under Article 234 EC from the VAT and Duties Tribunal, Edinburgh (United Kingdom), and the VAT and Duties Tribunal, Northern Ireland (United Kingdom), made by decisions of 23 September 2008, received at the Court on 29 September 2008, in the proceedings

Terex Equipment Ltd (C-430/08),

FG Wilson (Engineering) Ltd (C-431/08)

Caterpillar EPG Ltd (C-431/08)

v

The Commissioners for Her Majesty's Revenue & Customs,

* Language of the case: English.

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Third Chamber, acting as the President of the Fourth Chamber, E. Juhász, G. Arestis, J. Malenovský and T. von Danwitz (Rapporteur), Judges

Advocate General: M. Poiares Maduro,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 24 September 2009,

after considering the observations submitted on behalf of:

— Terex Equipment Ltd, by J. White, Barrister,

— FG Wilson (Engineering) Ltd and Caterpillar EPG Ltd, by G. Salmond, Solicitor, and R. Cordara QC,

— the United Kingdom Government, by H. Walker, acting as Agent, assisted by S. Moore, Barrister,

— the Czech Government, by M. Smolek, acting as Agent,

— the Commission of the European Communities, by L. Bouyon and R. Lyal, acting as Agents,

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

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Articles 78, 203, 204 and 239 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') and Article 865 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 1677/98 of 29 July 1998 (OJ 1998 L 212, p. 18) ('the implementing regulation').

2 The references have been made in proceedings between Terex Equipment Ltd ('Terex'), FG Wilson (Engineering) Ltd ('Wilson') and Caterpillar EPG Ltd ('Caterpillar'), on the one hand, and the Commissioners for Her Majesty's Revenue & Customs ('HMRC'), on the other, regarding the consequences of the use in the re-export declaration of the goods at issue in the main proceedings, which were under the inward processing procedure, of an incorrect customs procedure code indicating the export of Community goods.

Legal context

3 Article 4 of the Customs Code states:

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

…

(7) "Community goods" means goods:

— …

— imported from countries or territories not forming part of the customs territory of the Community which have been released for free circulation,

— …

(8) "Non-Community goods" means goods other than those referred to in subparagraph 7.

Without prejudice to Articles 163 and 164, Community goods shall lose their status as such when they are actually removed from the customs territory of the Community.

…

(13)"Supervision by the customs authorities" means action taken in general by those authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed.'

4 Article 37 of the Customs Code states:

'1. Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to control by the customs authority in accordance with the provisions in force.

2. They shall remain under such supervision for as long as necessary to determine their customs status, if appropriate, and in the case of non-Community goods and without prejudice to Article 82(1), until their customs status is changed, they enter a free zone or free warehouse or they are re-exported or destroyed in accordance with Article 182.'

5 Article 59(2) of the Customs Code provides:

'Community goods declared for an export, outward processing, transit or customs warehousing procedure shall be subject to customs supervision from the time of acceptance of the customs declaration until such time as they leave the customs territory of the Community or are destroyed or the customs declaration is invalidated.'

6 Under Article 78 of the Customs Code:

'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.
…

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 regularize the situation, taking account of the new information available to them.'

7 According to the first sentence of Article 79 of the Customs Code, '[r]elease for free circulation shall confer on non-Community goods the customs status of Community goods'.

8 Article 161(5) of the Customs Code states:

'The export declaration must be lodged at the customs office responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment. Derogations shall be determined in accordance with the committee procedure.'

9 Article 182(3) of the Customs Code states:

'… Where goods placed under an economic customs procedure when on Community customs territory are intended for re-exportation, a customs declaration within the meaning of Articles 59 to 78 shall be lodged. In such cases, Article 161(4) and (5) shall apply.

…'

10 Article 203(1) of the Customs Code states:

'A customs debt on importation shall be incurred through:

— the unlawful removal from customs supervision of goods liable to import duties.'

11 Article 204 of the Customs Code provides:

'1. A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or

…

in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

2. The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

…'

12 Article 236 of the Customs Code states:

'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).

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

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

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

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

13 Article 865 of the Implementing Regulation states:

'The presentation of a customs declaration for the goods in question, or any other act having the same legal effects, and the production of a document for endorsement by the competent authorities, shall be considered as removal of goods from customs supervision within the meaning of Article 203(1) of the Code, where these acts have the effect of wrongly conferring on them the customs status of Community goods.

However, in the case of airline companies authorised to use a simplified transit procedure with the use of an electronic manifest, the goods shall not be considered to have been removed from customs supervision if, at the initiative or on behalf of the person concerned, they are treated in accordance with their status as non-Community goods before the customs authorities find the existence of an irregular situation and if the behaviour of the person concerned does not suggest any fraudulent dealing.'

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

Case C-430/08

14 Terex is a company which manufacturers earth-moving machinery. It imports various items which are incorporated into that machinery. Customs duties on those imported items are suspended under the inward processing procedure laid down in Articles 114 to 129 of the Customs Code. That machinery is sold to buyers inside and outside the Community.

15 Where those goods are re-exported in accordance with the conditions of the inward processing procedure, no duty becomes payable.

16 Between January 2000 and July 2002, customs agents acting on behalf of Terex or purchasers inserted code 10 00 into the export declarations, indicating the export of Community goods, instead of code 31 51 used for the re-export of goods for which duties are suspended.

17 The customs authorities considered in that case that the export declarations under an incorrect customs procedure code had the effect of wrongly conferring on the goods at issue the customs status of Community goods, which led to a customs debt pursuant to Article 203(1) of the Customs Code and Article 865 of the Implementing Regulation. In any event, a customs debt arose under Article 204(1)(a) of the Customs Code, because there had been no prior notification of the re-export of the goods, which is obligatory under the inward processing procedure.

18 Terex sought a revision of its export declarations in order to regularise the situation pursuant to Article 78(3) of the Customs Code. The customs authorities refused to amend those declarations on the grounds that Terex's application sought to change the customs arrangements applicable and, moreover, the situation could not be regularised because it was impossible to present, after the event, a prior notification of re-export of goods.

19 Terex also sought remission of the customs debt pursuant to Article 239 of the Customs Code. The customs authorities refused that request on the ground that Terex had displayed 'obvious negligence' which precluded the application of that provision.

20 The national court is of the view that Article 203 of the Customs Code does not give rise to a customs debt in the case in the main proceedings. The goods exported by Terex did not acquire the status of Community goods within the meaning of Article 4(7) of the Customs Code solely because an incorrect customs code was used in the export declarations, namely code 10 00. The national court considers, however, that Article 204 of the Customs Code can, in the circumstances of the present case, give rise to a customs debt and that the debt is neither eliminated by the application of Article 859 of the Implementing Regulation nor time-barred. As to the application of Article 78(3) of the Customs Code to the present case, the national court considers that that provision enables the situation to be regularised despite the fact that Article 182(3) requires that there be prior notification of the re-export of goods.

21 Lastly, the national court is of the opinion that Terex cannot be criticised for obvious negligence within the meaning of Article 239 of the Customs Code. In that regard, it is of the view that the behaviour of the customs authorities contributed, during the relevant time period, to the use of an incorrect code.

22 In those circumstances, the VAT and Duties Tribunal, Edinburgh, stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'1. Does the Customs Code, and in particular Article 78, permit revision of the declaration to correct the customs procedure code and if so, are HMRC required to amend the declaration and to regularise the situation?

2. In the circumstances summarised in paragraph 3 to 21 [of the order for reference] were the goods in this case unlawfully removed from customs supervision within the meaning of Article 203(1) of the Customs Code by reason of the operation of Article 865 of the Implementing Regulation?

3. If so, was a customs debt on importation thereby incurred under Article 203 of the Customs Code?

4. Even if there was no customs debt under Article 203 of the Customs Code, has a customs debt arisen by virtue of Article 204 having regard to

(i) the findings on "obvious negligence" in paragraphs 34 to 43 [of the order for reference] and

(ii) the question whether HMRC failed to comply with Article 221(3) of the Customs Code by failing to communicate the Article 204 customs debt within the time-limit?

5. Given that:

(i) there can be no regularisation under Article 78 of the Customs Code and

(ii) there was a customs debt and

(iii) there was a special situation as contemplated by Article 899 of the Implementing Regulation,

was it in the circumstances [described in the order for reference] open to the Tribunal to conclude that there was no obvious negligence present, so that the customs debt should be remitted under Article 239 of the Customs Code?'

Case C-431/08

23 Wilson and Caterpillar manufacture generating sets. They import components which are assembled into sets, along with other items of Community origin. Customs duties

on the imported components are suspended under the inward processing procedure. The generating sets are sold mostly to purchasers outside the Community.

24 From October 2002 to February 2005, the customs agents acting on behalf of Wilson and of Caterpillar or on behalf of purchasers used customs procedure code 10 00 in the export declarations for the goods at issue in the main proceedings, applicable to the export of Community goods, instead of code 31 51 used for the re-export of goods for which duties are suspended.

25 On 21 February 2005, Wilson and Caterpillar informed the United Kingdom customs authorities that they had used the incorrect customs procedure code, prompting the decisions of those authorities to issue post-clearance demands.

26 As in the Terex case, the tax authorities considered that the use of an incorrect code gave rise to the obligation to pay customs duties on the goods which were subject to the suspension of duties, that the situation could not be regularised under Article 78 of the Customs Code and that there were no grounds for granting a remission of the customs debt pursuant to Article 239 of the Customs Code.

27 The national court considers that the goods were always 'non-Community goods' within the meaning of Article 4(8) of the Customs Code and that the use of an incorrect customs procedure code could not make them subject to the export arrangements exclusively reserved for Community goods. Therefore, the mere use of an incorrect customs procedure code does not confer Community goods status on those at issue in the main proceedings, as Article 865 of the Implementing Regulation presupposes.

28 According to the national court, the goods at issue had remained at all times subject to supervision by the customs authorities within the meaning of Article 4(13) of the Customs Code, even though the use of the wrong customs procedure code might have impeded the customs authorities' supervision procedures. The customs authorities' interpretation of Article 203 of the Customs Code and Article 865 of the Implementing Regulation implies that they lay down a penalty for use of an incorrect code which, in the view of the national court, is contrary to the intentions of the Community legislature.

29 As regards the application of Article 78 of the Customs Code to the situation at issue in the main action, the national court is of the opinion that the situation may be regularised pursuant to Article 78(3).

30 Lastly, the national court, having examined the circumstances in the proceedings pending before that court, concludes that Wilson and Caterpillar cannot be criticised for 'obvious negligence' within the meaning of Article 239 of the Customs Code. In that regard, it relies in particular on the complexity of the applicable rules and the fact that the United Kingdom customs authorities did not comply with their obligation to warn traders of the consequences of using an incorrect customs procedure code.

31 In those circumstances, the VAT and Duties Tribunal, Northern Ireland, stayed the proceedings and referred the following questions to the Court for a preliminary ruling.

'1. In the circumstances summarised [in the order for reference] were the goods in this case unlawfully removed from customs supervision within the meaning of

Article 203(1) of the Customs Code, by reason of the operation of Article 865 of the Implementing Regulation?

2. If so, was a customs debt on importation thereby incurred under Article 203 of the Customs Code?

3. If the answers to Questions 1 and 2 are in the affirmative, does the Customs Code, and in particular Article 78(3), permit revision of the declaration to correct the customs procedure code and if so, are HMRC required to amend the declaration and to regularise the situation?

4. If there can be no regularisation under Article 78 of the Customs Code and given that there was a customs debt under Article 203 of the Customs Code and given that it is common ground that there was a special situation as contemplated by Article 899 of the Implementing Regulation, was it in the circumstances and in the light of the findings [in the order for reference] open to the Tribunal to conclude that there was no obvious negligence present, so that the customs debt should be remitted under Article 239 of the Customs Code and the demand for customs duty should be withdrawn? In particular, in considering whether there has been obvious negligence on the part of the trader concerned, are the competent authorities entitled to take into account the fact that the revenue authority's own failing in its duty of care and management has contributed to the errors giving rise to the customs debt?'

32 By order of the President of the Court of 13 November 2008, Cases C-430/08 and C-431/08 were joined for the purposes of the written and oral procedure and the judgment.

The questions referred for a preliminary ruling

The second and third questions in Case C-430/08 and the first and second questions in Case C-431/08

33 By these questions, which it is appropriate to consider together, the national courts seek, in essence, to establish whether the use in the export declarations of code 10 00 indicating the export of Community goods, instead of code 31 51 used for the re-export of goods which are under the inward processing procedure, should be regarded as a removal of the goods from customs supervision and as incurring a customs debt pursuant to Article 203(1) of the Customs Code.

34 Under Article 203(1) of the Customs Code, a customs debt on importation is incurred through the unlawful removal from customs supervision of goods liable to import duties.

35 According to the case-law of the Court, removal from customs supervision must be understood as encompassing any act or omission the result of which is to prevent, if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from carrying out the monitoring required by Community customs legislation (see Case C-66/99 *D. Wandel* [2001] ECR I-873, paragraph 47; Case C-371/99 *Liberexim* [2002] ECR I-6227, paragraph 55; Case C-337/01 *Hamann International* [2004] ECR I-1791, paragraph 31; and Case C-222/01 *British American Tobacco* [2004] ECR I-4683, paragraph 47).

36 Since that term is not defined by the Community legislation, Article 865 of the Implementing Regulation contains examples of acts which are to be regarded as constituting removal from customs supervision for the purposes of Article 203(1) of the Customs Code (see *D. Wandel*, paragraph 46).

37 Pursuant to the first paragraph of Article 865 of the Implementing Regulation, the presentation of a customs declaration for goods, or any other act having the same legal effects, are to be regarded as removal of those goods from customs supervision within the meaning of Article 203(1) of the Customs Code, where those acts have the effect of wrongly conferring the customs status of Community goods on the goods concerned.

38 In that regard, the national courts, Terex and also Wilson and Caterpillar consider that the use of customs code 10 00 indicating the export of Community goods, instead of code 31 51 used for the re-export of goods which are under the inward processing procedure does not alter the customs status of the goods concerned, which should still be regarded as non-Community goods. They had not been released for free circulation, which would have conferred on them, in accordance with Article 79 of the Customs Code, the status of Community goods. It is not sufficient, for the purpose of applying Article 865 of the Implementing Regulation, that the use of customs code 10 00 merely created the false impression that they were Community goods.

39 That interpretation cannot be accepted.

40 Article 865 of the Implementing Regulation covers a situation in which declarations confer on goods the status of Community goods which they cannot be deemed to have, so that non-Community goods are removed from the customs supervision which the Customs Code, and in particular Article 37 thereof, imposes on them.

41 In that regard, emphasis must be placed on the particular characteristics of the inward processing procedure and the role played, in particular, in that context by the use of the

correct customs code for the purposes of assessing whether or not the use of a code indicating the export of Community goods affects the monitoring abilities of the customs authorities.

42 It must be observed, first of all, as the Commission of the European Communities maintains, that the inward processing procedure, which involves the suspension of customs duties, is an exceptional measure intended to facilitate the carrying out of certain economic activities. Since that procedure involves obvious risks to the correct application of the customs legislation and the collection of duties, the beneficiaries of that regime are required to comply strictly with the obligations resulting therefrom. Similarly, the consequences of non-compliance with their obligations must be strictly interpreted.

43 The obligation under Article 182(3) of the Customs Code to lodge a customs declaration bearing the correct customs code indicating that there is a re-export of goods that were under the inward processing procedure is of particular importance for customs supervision in the framework of that customs procedure.

44 The objective of the use of the customs code indicating the re-export of goods under the inward processing procedure is to ensure effective monitoring by the customs authorities and to give them the power to identify, solely on the basis of the customs declaration, the status of the goods concerned without the need for subsequent assessments and findings. That objective is particularly important since the goods which are introduced into the customs territory of the Community remain under customs supervision, pursuant to Article 37(2) of the Customs Code, only until such time as they are re-exported.

45 Therefore, the objective of the use of the customs code indicating the re-export of Community goods under the inward processing procedure is to permit the customs authorities to decide at the last minute to carry out a customs check pursuant to

Article 37(1) of the Customs Code, namely to check whether the re-exported goods in fact correspond to the goods placed under the inward processing procedure.

46 Consequently, the use of customs code 10 00 in the export declarations at issue in the main proceedings erroneously conferred the status of Community goods on the goods concerned and therefore directly affected the ability of the customs authorities to carry out controls pursuant to Article 37(1) of the Customs Code.

47 In these circumstances, the use in the export declarations of customs code 10 00 indicating the export of Community goods instead of code 31 51 used for the re-export of goods under the inward processing procedure must be classified as 'removal' of those goods from customs supervision (see, by way of analogy, *British American Tobacco*, paragraph 53).

48 Furthermore, as regards the possible lack of customs supervision during the period concerned, such a situation is not a factor excluding the application of the concept of removal from customs supervision. According to the case-law, for there to be removal from customs supervision, it is sufficient that the goods in question have been objectively removed from possible controls, whether or not such controls have actually been carried out by the competent authority (see *British American Tobacco*, paragraph 55).

49 Finally, the view that that interpretation of Article 203(1) of the Customs Code wrongly attributes the character of a disproportionate penalty to that article cannot be accepted.

50 As pointed out in paragraph 42 of this judgment, the beneficiaries of the inward processing procedure are required to comply strictly with their obligations under that procedure. Moreover, since the goods at issue were exported as Community goods, they might potentially be re-imported into the Community as returned goods within the meaning of Article 185 of the Customs Code without import duties being due.

51 In view of the foregoing, the answer to the second and third questions in Case C-430/08 and the first and second questions in Case C-431/08 is that the use in the export declarations at issue of customs code 10 00 indicating the export of Community goods, instead of code 31 51 used for goods on which duties have been suspended under the inward processing procedure, gives rise to a customs debt pursuant to Article 203(1) of the Customs Code and the first paragaph of Article 865 of the Implementing Regulation.

52 In view of that answer, there is no need to reply to the fourth question in Case C-430/08.

The first question in Case C-430/08 and the third question in Case C-431/08

53 By these questions, which it is appropriate to examine together, the national courts ask, in essence, whether Article 78(3) of the Customs Code permits revision of the export declarations in order to correct the customs procedure code used and if so, whether the customs authorities are required to amend the declarations and to regularise the situations.

54 The national courts state, in that respect, that the customs authorities refused to apply Article 78(3) of the Customs Code on the grounds that, first, there was not a correction of the export declarations but a change in the customs procedure and, secondly, in the absence of the prior notification required by Article 182(3) of the Customs Code, the situation cannot be regularised.

55 First, it must be held, as submitted by the national courts and by Wilson and Caterpillar, that the 'customs procedure concerned' within the meaning of Article 78(3) of the Customs Code was the inward processing procedure, applied by the applicants in the main proceedings but using the incorrect customs code 10 00.

56 Similarly, the Court rejects the argument that Article 78(3) of the Customs Code cannot remedy the lack of the prior notification required by Article 182(3) of the Customs Code. An interpretation to that effect would run counter to the logic of that article, which is to bring the customs procedure into line with the actual situation. Therefore, Article 78(3) does not make a distinction between errors or omissions which may be corrected and others which may not. The words 'incorrect or incomplete information' must be interpreted as covering both technical errors or omissions and errors of interpretation of the applicable law (Case C-468/03 *Overland Footwear* [2005] ECR I-8937, paragraphs 63).

57 Therefore, contrary to the view taken by the customs authorities and the United Kingdom Government, the situations at issue in the main proceedings fall within the scope of Article 78 of the Customs Code and, in principle, may be re-established under that provision.

58 Article 78(1) of the Customs Code provides that the customs authorities 'may', on their own initiative or at the request of the declarant, amend the declaration, that is to say re-examine it. Where the declarant applies for a revision, 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 (*Overland Footwear*, paragraphs 45 and 46). That

provision makes a revision applied for by the declarant subject to the assessment of the customs authorities as regards both its principle and its result (see *Overland Footwear*, paragraph 66)

59 In making that first assessment, 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 (*Overland Footwear*, paragraph 47).

60 If revision is in principle possible, at the conclusion of their assessment the customs authorities must, subject to the possibility of a subsequent court action, either reject the declarant's application by reasoned decision or carry out the revision applied for (see *Overland Footwear*, paragraph 50).

61 In this latter case, the customs authorities re-examine the declaration and assess whether the declarant's claims are well founded, in the light of the information notified (*Overland Footwear,* paragraph 51).

62 If the revision indicates that the provisions governing the customs procedure in question were applied on the basis of incorrect or incomplete information and that the objectives of the inward processing procedure are not threatened, in particular in that the goods covered by that customs procedure had actually been re-exported, 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 new information available to them (see, to that effect, *Overland Footwear*, paragraph 52).

63 Where it is apparent, in the final analysis, that the import duties were not legally owed when they were entered in the accounts, the measure necessary to regularise the situation can consist only in remission of those duties (see, to that effect, *Overland Footwear*, paragraph 53).

64 That remission is to be made in accordance with Article 236 of the Customs Code if the conditions laid down by that provision are fulfilled, in particular that there has been no manipulation by the declarant and that the application for remission has been submitted within the time-limit, which is in principle three years (see, to that effect, *Overland Footwear*, paragraph 54).

65 In view of the foregoing, the answer to the first question in Case C-430/08 and the third question in Case C-431/08 is that Article 78 of the Customs Code permits the revision of the export declaration of the goods in order to correct the customs code given to them by the declarant, and that the customs authorities are obliged, first, to assess whether the rules governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information and whether the objectives of the inward processing regime have not been threatened, in particular in that the goods subject to that customs procedure have actually been re-exported, and, second, where appropriate, to take the measures necessary to regularise the situation, taking account of the new information available to them.

66 Having regard to the reply to those questions, there is no need to reply to the fifth question in Case C-430/08 and the fourth question in Case C-431/08.

Costs

67 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national courts, the decision on costs is a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **The use in the export declarations at issue in the main proceedings of customs code 10 00 indicating the export of Community goods, instead of code 31 51 used for goods for which duties are suspended under the inward processing procedure, gives rise to a customs debt pursuant to Article 203(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and the first paragraph of Article 865 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 1677/98 of 29 July 1998.**

2. **Article 78 of Regulation No 2913/92 permits the revision of the export declaration of the goods in order to correct the customs procedure code given to them by the declarant, and the customs authorities are obliged, first, to assess whether the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information and whether the objectives of the inward processing regime have not been threatened, in particular in that the goods subject to that customs procedure have actually been re-exported, and, second, where appropriate, to take the**

measures necessary to regularise the situation, taking account of the new information available to them.

[Signatures]