Provisional text

OPINION OF ADVOCATE GENERAL
NORKUS
delivered on 8 May 2025 (1)

Joined Cases C-72/24 [Keladis I] and C-73/24 [Keladis II] (i)

HF (C-72/24)
WI (C-73/24)
v
Anexartiti Archi Dimosion Esodon

(Request for a preliminary ruling from the Dioikitiko Protodikeio Thessalonikis (Greece))

(Reference for a preliminary ruling – Customs Union – Regulation (EEC) No 2913/92 – Community Customs Code – Regulation (EU) No 952/2013 – Union Customs Code – Imports of goods – Fraud resulting from undervalued imports of products – Secondary methods for determining customs value – Administrative practice using the 'lowest acceptable price' to determine customs value)

I. Introduction

1. These requests for a preliminary ruling from the Dioikitiko Protodikeio Thessalonikis (Administrative Court of First Instance, Thessaloniki, Greece) under Article 267 TFEU concern the interpretation of EU rules on customs and commercial matters, including the provisions implementing the General Agreement on Tariffs and Trade.

2. The requests have been made in proceedings between, on the one hand, two natural persons, HF, the owner of a textile products business in Grevena (Greece), and WI, an employee of an importing undertaking, and, on the other hand, the Anexartiti Archi Dimosion Esodon (Independent Revenue Authority, Greece) ('the AADE') concerning several post-clearance recovery notices relating to the imposition of value added tax (VAT) on imports of textile products from Türkiye. By those notices, HF and WI, who were alleged to have been involved in smuggling operations, were charged increased taxes for the offences committed. By their actions, HF and WI seek annulment of those notices, challenging, inter alia, the method by which the customs authorities calculated the customs value of the goods at issue, which consists essentially in the use of certain statistical data.

3. The compatibility with EU law of the use of such statistical data in order to determine the customs value is the central legal issue in the joined cases. (2) Consequently, in accordance with the request by the Court of Justice, my Opinion will focus on that issue. Even though the existing case-law already provides some points of reference, I take the view that an interpretation by the Court is necessary in the interests of legal certainty, especially since the answer to be given to the referring court is likely to have financial consequences both for the persons concerned and for the EU budget. Such an

interpretation should also ensure uniform application by the national authorities of the methods for determining the customs value. (3)

II. Legal framework

A. International law

4. Article 7(2)(f) of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 is relevant to the present cases. (4)

B. European Union law

5. In the context of the present cases, Article 85 of Directive 2006/112/EC, (5) Articles 29 to 31 of the Community Customs Code, (6) Articles 152 and 181a of, and Annex 23 to, Regulation (EEC) No 2454/93, (7) Articles 70, 71 and 74 of the Union Customs Code (8) and Articles 140, 142 and 144 of Implementing Regulation (EU) 2015/2447 (9) are relevant.

C. Greek law

6. Article 29(1) and (6) of Nomos 2960/2001, Ethnikos Teloniakos Kodikas (Law 2960/2001, National customs code) (FEK A' 265) ('the Customs Code') provides:

'1. A customs debt is the obligation of any natural or legal person to a customs authority to pay all customs duties, taxes, including value added tax (VAT) and other duties and taxes imposed by the State which are due in respect of goods and which are applied to those goods in accordance with the relevant provisions.

…

6. The person liable for payment of the customs debt is the declarant, the person in whose name a declaration of excise duty and other taxes is lodged, and any other person against whom the debt is incurred under the provisions of the customs legislation. …'

7. Under Article 33(1) of the Customs Code:

'After presenting them to the customs authority, the owner of the goods or his or her legal representative under the legislation in force must lodge a declaration in order for those goods to be placed under any customs procedure or assigned to any other customs-approved treatment or use, in accordance with the specific provisions of Community legislation.'

8. Article 155 of that code provides:

'1. The following shall constitute smuggling:

…

(b) any action intended to deprive the Greek State or the European Union of the customs duties, taxes and other financial charges due to them in respect of imported or exported goods, including where they have been levied at a time and in a manner other than those provided for by law. The offences referred to in this paragraph will give rise to the imposition on the perpetrators of increased duties in accordance with the provisions of this Code, even if the competent authorities consider that the constituent elements of the offence of smuggling subject to prosecution are not present.

2. The following shall be regarded as constituting smuggling:

…

(g) the purchase, sale and possession of goods imported or released for consumption in a manner that constitutes a smuggling offence;

…

(i) the undervaluation or overvaluation of imported or exported goods, if it results in a loss of customs duties, taxes and other financial charges [point (i) as replaced by Article 1(60) of Law 3583/2007].

…'

9. Article 35(3) of Nomos 2859/2000, Kyrosi Kodika Forou Prostithemenis Axias (Law 2859/2000 on the VAT Code) (FEK A' 248/7.11.2000) ('the VAT Code') provides:

'3. For the import of goods, the person liable to pay tax is the person deemed to be the owner of the imported goods, in accordance with the provisions of customs legislation.'

III. The facts giving rise to the disputes in the main proceedings, the main proceedings and the questions referred for a preliminary ruling

A. Case C-72/24 (Keladis I)

10. In 2014, in the course of his business, HF imported textile products into Greece from Türkiye.

11. The customs declarations were lodged with the customs authorities in accordance with the simplified declaration procedure laid down in Article 81 of the CCC, which provides that those authorities may, at the request of the declarant, agree that import duties be charged on the whole consignment on the basis of the tariff classification of the goods which are subject to the highest rate of import duty.

12. Pursuant to Decision No 1/95 of the EC-Türkiye Association Council of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC) (OJ 1996 L 35, p. 1), customs duties are not to be levied on goods from Türkiye. Consequently, the goods declared by the importing company were subject only to import VAT, taking the customs value stated by that company in its import declarations to be the taxable amount.

13. In 2016, following a complaint of undervaluation of imported goods, the customs authorities carried out an investigation which revealed that there was well-founded evidence to suggest that the customs value indicated in a number of customs declarations was incorrect and that the consignee of the goods named in those declarations was not the actual owner of the goods.

14. On account of their doubts, on 14 December 2016 the customs authorities carried out a post-release control on all the customs declarations, and reached the conclusion that there was a smuggling system which had given rise to 289 false import declarations. In that regard, the customs authorities found that, through a complex fraud mechanism, that system had involved the declaration of customs values which were significantly below the minimum commercially viable values.

15. However, the customs authorities noted that, since it was impossible to carry out a subsequent physical check of the goods and since the goods were described only in general terms in the corresponding invoices, they were unable to reconstruct the actual prices paid to the Turkish suppliers for those goods.

16. In those circumstances, in order to determine the customs value of the goods at issue, the customs authorities determined a lowest acceptable price ('LAP') using a risk assessment tool based on EU-wide data, developed by the European Anti-Fraud Office (OLAF).

17. That method consists, first of all, in calculating a 'cleaned average price' ('CAP'), also known as the 'fair price' or 'fair value'. CAPs are calculated on the basis of the monthly import prices of the products concerned from Türkiye as extracted from Comext, the reference database for detailed statistics on international trade in goods managed by Eurostat. Such prices are statistical estimates of the prices of products marketed, calculated on the basis of data which exclude outliers.

18. Lastly, a value corresponding to 50% of the CAPs is calculated, which constitutes the 'lowest acceptable price'. The LAP, also expressed as a per kilogram price, is used as a risk profile or threshold enabling the customs authorities of Member States to detect particularly low values declared on importation and, consequently, imports presenting a significant risk of undervaluation.

19. The customs authorities of all Member States have at their disposal a communication system, the Anti-Fraud Information System (AFIS), in which OLAF also participates. Through that system, and more specifically by using the Automated Monitoring Tool (AMT), it is possible for them to detect cases of undervaluation.

20. In the present case, on the basis of the LAP thus calculated, the customs authorities determined the 'unit price' within the meaning of Article 30(2)(c) of the CCC. The reasons given by those authorities for that choice were that it was impossible to rely, first, on the fictitious transaction value of the products at issue, which were deliberately undervalued, or, second, on the transaction value of identical or similar products, on account of the incomplete description of the products in the invoices attached to the customs declarations. Furthermore, those authorities were not in a position to physically check the goods in question at the time of their post-release control, as they had escaped seizure.

21. In that regard, the customs authorities state that none of the participants in the alleged smuggling ring had provided, in their explanations, any evidence to suggest that the customs values used were much higher than the prices actually paid.

22. The customs authorities thus found that the sum of VAT fraudulently evaded amounted, in respect of all the goods declared fraudulently through the smuggling system in question, to EUR 6 211 300.18.

23. As regards HF's involvement in that smuggling system, in 2014 he held goods which had been the subject of a false customs value declaration and is, therefore, under national law, liable for the evaded VAT due on those goods.

24. HF brought an action against the adjustment notices at issue before the Dioikitiko Protodikeio Thessalonikis (Administrative Court of First Instance, Thessaloniki), the referring court. He argued that the determination of the customs value of the goods on the basis of LAPs is unlawful since the latter, as statistical data on import prices, can be used only to challenge the declared value but cannot constitute a method for determining the customs value. In addition, he claims to have been definitively acquitted of the offence of smuggling by a judgment of the Trimeles Plimmeleiodikeio Grevenon (three-member criminal court, Grevena, Greece).

25. As a preliminary point, the referring court considers that it is bound by the acquittal delivered by the Trimeles Plimmeleiodikeio Grevenon (three-member criminal court, Grevena) only in so far as the recovery notices imposed on HF increased duties, which should be annulled. On the other hand, it considers that HF is still liable for the evaded import VAT.

26. The Dioikitiko Protodikeio Thessalonikis (Administrative Court of First Instance, Thessaloniki) expresses doubts as to whether the use of threshold prices for determining customs values is compatible with EU law. It has therefore decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are the statistical values referred to as 'threshold values'/'fair prices', which are based on Eurostat's Comext statistical database and are derived from [AFIS], of which the [AMT] is an application, available to the national customs authorities through their respective electronic systems? Do they meet the requirement of accessibility for all economic operators, as referred to in the judgment of 9 June 2022, *Fawkes Kft.*, C-187/21? Do they contain solely aggregated data, as defined in [Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95 (OJ 2009 L 152, p. 23) and Commission Regulation (EU) No 113/2010 of 9 February 2010 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards trade coverage, definition of the data, compilation of

statistics on trade by business characteristics and by invoicing currency, and specific goods or movements (OJ 2010 L 37, p. 1)], as in force at the relevant time?

(2) In the context of *ex post* controls in which it is not possible to physically check the imported goods, may those statistical values in the Comext database, if regarded as generally accessible and as not containing aggregated data only, be used by the national customs authorities solely in order to substantiate their reasonable doubts as to whether the value declared in the declarations represents the transaction value, that is to say, the amount actually paid or payable for those goods, or may they also be used to determine the customs value of the goods, in accordance with the alternative method referred to in Article 30(2)(c) of the [CCC] [corresponding to Article 7[4](2)(c) of the [UCC]; 'deductive method'] or possibly another alternative method? How does the fact that it cannot be established that identical or similar goods are involved in transactions at the relevant time, as defined in Article 152(1) of [the CCC implementing regulation] affect the answer to that question?

(3) In any event, is the use of those statistical values to determine the customs value of certain imported goods, which is equivalent to the application of minimum values, consistent with the obligations arising under the World Trade Organization (WTO) International Agreement on the Determination of Customs Valuation, otherwise known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, to which the European Union is a party, in view of the fact that that agreement expressly prohibits the use of minimum values?

(4) In relation to the previous question, is the reservation in favour of the principles and general provisions of the aforementioned International Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, laid down in Article 31(1) of the [CCC] concerning the fall-back method for determining the customs value and, accordingly, the exclusion of the application of minimum values laid down in Article 31(2) of the [CCC] (which does not appear in the corresponding provision of Article 74(3) of the [UCC]), valid only where that method is applied or does it govern all the alternative methods for determining customs value?

(5) Where it is established that simplification through the grouping of headings, within the meaning of Article 81 of the [CCC] (now Article 177 of the [UCC]), was used on importation, is it possible to apply the alternative method set out in Article 30(2)(c) of the [CCC] (corresponding to Article 70(2)(c) of the [UCC]), irrespective of the disparity between the goods declared under the same TARIC code in the same declaration and the value fictitiously established as a result for those goods not belonging to that tariff classification code?

(6) Finally, irrespective of the preceding questions, are the provisions in the Greek legislation concerning the determination of the persons liable for payment of import VAT sufficiently clear, pursuant to the requirements of EU law, in so far as they designate the "deemed owner of the imported goods" as the person liable?'

B. Case C-73/24 (Keladis II)

27. With the exception of the fact that, first, WI is an employee of an undertaking engaged in the wholesale trade in textile products from Türkiye and that she is deemed to have been aware of the smuggling system at issue given that she was responsible for most of the management of that undertaking and, second, that the customs declarations at issue were lodged between March 2014 and December 2016, the facts and reasoning of the order for reference in Case C-73/24 (Keladis II) are similar to those of the order for reference in Case C-72/24 (Keladis I).

28. In those circumstances, the Dioikitiko Protodikeio Thessalonikis (Administrative Court of First Instance, Thessaloniki) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling, worded in terms similar to those in the request for a preliminary ruling in Case C-72/24:

'(1) Where reasonable doubts arise as to whether the declared customs value of imported goods is their actual transaction value, but during the post-release control it is impossible to determine the

transaction value on the basis of the methods set out in Article 30(2)(a) and (b) of [the CCC] and Article 74(2)(a) and (b) of [the UCC] (transaction value of identical and similar goods) because, on the one hand, the goods have escaped seizure and therefore it is impossible to physically check them and, on the other hand, the description of the goods in the documents accompanying the import declaration is general and vague, is an administrative practice under which, in the context of the 'deduction method' provided for in those provisions, "threshold values", which are defined in the [AMT] system of the [AFIS] and determined by means of statistical methods, are used as the basis for determining the transaction value of the goods, compatible with the provisions of Article 30(2)(c) of [the CCC] and of Article 74(2)(c) of [the UCC]?

(2) If the first question is answered in the negative, is it permissible to use the aforementioned "threshold values" in the context of any of the other methods described in Articles 30 and 31 of [the CCC] and Article 74(1) to (3) of [the UCC], in view, in particular, of the reasonable flexibility that must on the one hand distinguish the application of the "fall-back method" under Article 31 of [the CCC] and Article 74(3) of [the UCC] and, on the other hand, the express prohibition on determining the customs value on the basis of minimum customs values, which is provided for in relation to that "fall-back method" (Article 31(2)(f) of [the CCC] and Article 144(2)(f) of [the UCC implementing regulation]?

(3) If the answer to both of the preceding questions is in the negative, is it permissible under EU law not to charge VAT evaded to an importer who is subsequently found to have imported (and indeed systematically imported) goods at prices lower than those determined as the minimum commercially viable prices, where the customs authorities are unable, during the post-release control, to determine the customs value of the imported goods by any of the methods described in Articles 30 and 31 of [the CCC] and Article 74(1) to (3) of [the UCC], or is it permissible, in that case, as a last resort, to charge them on the basis of the statistically determined minimum acceptable prices, as has already been accepted in the case of charging by the Commission of loss of own resources to a Member State that did not carry out the appropriate customs checks [see judgment of the Court of Justice of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167]?

(4) If the answer to the second or third question above is in the affirmative: must the statistically determined minimum values represent imports that took place at or around the same time as the imports subject to the checks and, if so, what is the maximum permitted interval between the imports used to derive the statistical result and the imports checked? For example, may the 90 days provided for in Article 152(1)(b) of [the CCC implementing regulation] and in Article 142(2) of [the UCC implementing regulation] be applied by way of analogy?

(5) If the answer to any of the first three questions is in the affirmative as regards the use of "threshold values" in order to determine the transaction values of imported goods: where the procedure for simplifying the drawing up of customs declarations by grouping the TARIC codes of the goods, provided for in Article 81 of [the CCC] and Article 177 of [the UCC], has been adopted on importation, is an administrative practice whereby the customs value of all goods imported under each import declaration is calculated on the basis of the "threshold value" determined for the product in question, the TARIC code of which has been recorded in the import declaration, since the customs authority considers that it is bound, on the basis of Article 222(2)(b) of [the UCC implementing regulation], by the grouping carried out by the importer, consistent with the principle prohibiting the determination of arbitrary or fictitious customs values? Or, on the contrary, must the value of each product be determined on the basis of its own tariff heading even if the code is not recorded in the import declaration, in order to avoid the risk of arbitrary customs duties being imposed?'

IV. Procedure before the Court of Justice

29. The orders for reference in Cases C-72/24 (Keladis I) and C-73/24 (Keladis II), dated 30 November 2023, were received at the Registry of the Court of Justice on 30 January 2024.

30. By decision of the President of the Court of 25 March 2024, Cases C-72/24 and C-73/24 were joined for the purposes of the written and oral parts of the procedure and of the judgment.

31. The parties to the main proceedings, the Greek, Czech, Spanish and French Governments and the Commission submitted written observations within the period prescribed by Article 23 of the Statute of the Court of Justice of the European Union.

32. At the hearing on 29 January 2025, the legal representatives of the parties to the main proceedings, the Greek, Czech and Spanish Governments and the Commission submitted observations.

V. Legal analysis

A. Preliminary remarks

33. The present joined cases concern, in essence, the applicability of the different methods for determining the customs value in cases where there is a risk of undervaluation, but where a physical inspection of the goods in question is no longer possible since they have escaped seizure by the customs authorities. Given the impossibility of determining the actual customs value, it might be appropriate to use statistical values in order to approximate the customs value as closely as possible. That raises the question of the *lawfulness of such an approach*, which I shall examine in the present Opinion in the light of the applicable customs legislation.

34. The need to clarify that question stems in particular from the fact that, as the Court has held, the functioning of a Customs Union requires of necessity the existence of *uniform criteria for determining the valuation for customs purposes* of goods imported from third countries, because that is the only way to guarantee a common commercial policy. (10) The uniformity of those criteria avoids distortions which might represent non-tariff barriers to trade, thus ultimately guaranteeing conformity with the rules of the multilateral trade system. (11)

35. As a preliminary point, it should be noted that, pursuant to Article 286(2) and Article 288(2) of the UCC, the CCC was replaced by the UCC with effect from 1 May 2016. However, since the facts of the dispute in the main proceedings in Case C-73/24 (Keladis II) occurred both before and after that date, it is necessary, in order to answer the questions referred, to *interpret the provisions of those two codes*. In that regard, Articles 70 and 74 of the UCC, which lay down the rules for determining the customs value of goods, are essentially identical to the rules laid down in Articles 29 to 31 of the CCC. The case-law relating to the CCC is therefore, in principle, also applicable to the UCC.

36. As requested by the Court, the present Opinion will focus on the first, second, third and fourth questions in Cases C-72/24 (Keladis I) and C-73/24 (Keladis II). As may be seen from the statements in the orders for reference giving rise to the two joined cases, the various questions referred to the Court for a preliminary ruling overlap on several points and may, for that reason, be grouped into three topics. Those questions concern (i) the possibility of using statistical values where it has not been possible to establish the customs value in accordance with Article 29 of the CCC and Article 70 of the UCC, (12) (ii) the compatibility of threshold values established on the basis of statistical data with the prohibition on the use of minimum customs values, (13) and (iii) the maximum permitted interval between the imports used to derive the statistical result and the imports checked. (14) I shall address the questions referred for a preliminary ruling by the referring court in the context of an exposition of those three topics.

B. The methods for calculating the customs value of goods

37. However, before examining those aspects, it is important to explain the relevance of the customs value of goods and the way in which it is calculated by customs administrations. The customs value is used to determine the value of goods when they are placed under the various customs procedures. It is essential in order to determine the correct amount of customs duties to be paid on goods released for free circulation. In the European Union, the customs value is also used to calculate VAT. (15) Article 85 of Directive 2006/112 provides that ‘in respect of the importation of goods, the taxable amount shall be

the value for customs purposes, determined in accordance with the Community provisions in force'. The way those provisions have been interpreted in the case-law must also be taken into account.

38. As the Court has recalled in its case-law, (16) EU law on customs valuation seeks to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values. The customs value must therefore reflect the real economic value of an imported product and take into account all of the elements of that product that have economic value. (17) In that regard, it should be noted that, pursuant to Article 29(1) of the CCC, (18) the basis for determining the customs value is, in principle, the 'transaction value' of imported goods, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the European Union, adjusted, where necessary, in accordance with Articles 32 and 33 of the CCC. Therefore, for the purposes of determining the customs value, *priority* should be given to the 'transaction value'. The method for calculating the customs value of goods based on the 'transaction value' is considered to be the most appropriate and the most frequently used method. (19)

39. In some cases, however, it is not possible to calculate the customs value on the basis of the transaction value. Article 181a of the CCC implementing regulation provides that the customs authorities need not necessarily determine the customs valuation of imported goods on the basis of the transaction value if they are not satisfied, on the basis of reasonable doubts, that the declared value represents the total amount paid or payable. In that event, they may refuse to accept the declared value if their doubts continue after they have asked for additional information or documents and have provided the person concerned with a reasonable opportunity to respond to the grounds for those doubts. (20) If the importer is unsuccessful in dispelling the reasonable doubts of the customs authorities or if it does not respond or does not provide fresh evidence, the customs authorities may reject the declared transaction value and apply another method for determining the customs value. If the transaction value method cannot be applied or if the declared transaction value is rejected by the customs authorities, the customs value is to be determined using one of the secondary valuation methods. A similar provision is contained in Article 140 of the UCC implementing regulation.

40. As regards the validity of the doubts concerning the transaction value, the Court has held that the customs authorities may consider that the declared transaction value of the imported goods is abnormally low in relation to the statistical average value of imports of comparable goods. In particular, where the declared price is more than 50% lower than the statistical average value, the price difference appears sufficient to substantiate the customs authorities' doubts and the rejection of the declared customs value. That is precisely the situation that arose in the present cases. (21)

41. Where the customs value cannot be determined, pursuant to Article 29 of the CCC, by the transaction value of the imported goods, the customs valuation is to be carried out in accordance with the provisions of Article 30 of the CCC by applying sequentially the methods laid down in Article 30(2)(a) to (d) of the CCC. (22) If it is no longer possible to determine the customs value of the imported goods on the basis of Article 30 of the CCC, the customs valuation is to be carried out in accordance with the provisions of Article 31 of the CCC (23) under the fall-back method. (24)

42. As the Court has held, it is clear, both from the wording of Articles 29 to 31 of the CCC and from the order in which the criteria for determining the customs value must be applied pursuant to those articles, that those provisions are *subordinately linked* to each other. (25) When the customs value cannot be determined by applying a given provision, only then is it appropriate to refer to the provision which comes immediately after it in the established order. (26) It should be made clear that, in accordance with point 2 of the interpretive notes on customs value in Annex 23 to the CCC implementing regulation concerning Article 31(1) of the CCC, a 'reasonable flexibility' in the application of those methods is in conformity with the objectives and provisions of Article 31(1) of the Code. (27)

43. The Court has held that, bearing in mind that the various methods for determining customs value set out in Article 30(2)(a) to (d) of the CCC are subordinately linked, the customs authorities must exercise due care when implementing each of the successive methods set out in that provision before they can set it aside. (28) Accordingly, where the customs authority determines a customs value

pursuant to Article 30(2)(a) of the CCC, it must base its assessment on information concerning identical goods exported at or about the same time as the goods being valued. (29)

44. Where, after finding that that method is not applicable, the customs authority determines a customs value in accordance with Article 30(2)(b) of the CCC, it must base its assessment on information concerning similar goods exported to the European Union at or about the same time as the goods being valued. In the light of the obligation to exercise due care when implementing Article 30(2)(a) and (b) of the CCC, the customs authorities are required to consult all the information sources and databases available to them in order to establish the customs value in the most precise and realistic as possible manner. (30)

45. The obligation to state reasons incumbent on the customs authorities in the course of implementing those provisions must, first, make it possible to disclose clearly and unequivocally the reasons which led them to set aside one or more methods for determining customs value; second, that obligation means that those authorities are required to set out, in their decision fixing the amount of import duties due, the data on the basis of which the customs value of the goods was calculated, both to enable the recipient of that value to defend its rights under the best possible conditions and decide in full knowledge of the circumstances whether it is worthwhile to bring an action against it, and to enable the courts to review the legality of that decision. (31)

46. In the present cases, it is apparent from the orders for reference that the Greek customs authorities did not apply the methods for determining the customs value based on the transaction value of identical or similar goods referred to in Article 30(2)(a) and (b) of the CCC and Article 74(2)(a) and (b) of the UCC because those methods could not be applied on the ground that the goods had escaped seizure and their description on the invoices accompanying the import declarations was general and vague.

47. It is with that in mind that the national court asks whether it is possible to use, in one of the secondary valuation methods referred to in Article 30(2) of the CCC and Article 74(2) of the UCC, the statistically calculated values contained in the AMT. That question falls within the scope of the first topic, which encompasses the first two questions referred in Case C-72/24 (Keladis I) and the first three questions referred for a preliminary ruling in Case C-73/24 (Keladis II). It will be examined below.

C. The possibility of using statistical data for the purposes of determining the customs value

1. The nature of the data contained in the AMT and the limits on the use of statistical data according to case-law

48. In that regard, it should be noted that the Court has authorised the use of statistical data in certain areas of the customs authorities' activity. For the purposes of the present case, I think it appropriate to recall the cases in which the use of statistical data has been held to comply with the requirements of EU law. That will make it possible to establish which restrictions EU law imposes on such an approach.

49. In its judgment of 16 June 2016, *EURO 2004. Hungary* (C-291/15, EU:C:2016:455), the Court held that the statistical values available in the AMT could be used by the customs authorities to reject the declared transaction value. More specifically, the Court held that where the declared price is 50% lower than the mean price calculated statistically, that significant difference in price is sufficient to substantiate the customs authorities' doubts and their rejection of the declared customs value of the products at issue. (32)

50. The AMT is thus a risk analysis tool that enables customs authorities to detect potentially undervalued declarations that require additional customs controls. As mentioned above, the Greek customs authorities used precisely that approach, and no interested party disputes the lawfulness of the approach. However, the Greek customs authorities did not confine themselves to using statistical data in order to detect undervaluation, but used those data to determine the customs value. In my view, the case-law to date provides only limited guidance in assessing the lawfulness of such a use of statistical data.

51. In its judgment in *FAWKES*, the Court held that, when determining the customs value in accordance with secondary methods based on the transaction value of identical or similar goods referred to in Article 30(2)(a) and (b) of the CCC, the customs authorities of a Member State must take account of factors such as the physical characteristics, quality, reputation, interchangeability of goods and the commercial level of the sales. (33)

52. The Court also noted the importance of the *obligation to state reasons*, (34) referred to in point 45 of the present Opinion. It should be borne in mind that the Court has held, in essence, that in order to guarantee an economic operator's right to be informed of the data used for the purposes of determining the customs value of the goods it has imported, that operator must have information enabling it to challenge any inconsistency between the reference data used by the customs authority and its imports in the light of the requirements contained in Article 30(2)(a) and (b), respectively, of the CCC. (35) In other words, an economic operator must be able to challenge the comparison of its own imports with other actual imports used for the purposes of applying the additional methods of determining customs value, which is, by its very nature, not possible in the case of statistical values, as those values do not correspond to any actual imports.

53. It should be noted, however, that *FAWKES* (C-187/21) concerned the determination of the customs value solely on the basis of Article 30(2)(a) and (b) of the CCC. The methods laid down in those provisions do indeed require the comparison of certain elements such as those listed in point 51 of the present Opinion. (36)

54. Although the statistical values contained in the AMT are useful for identifying the risks of fraud and undervalued imports, they are not suitable for forming part of the grounds for a customs decision determining the customs value on the basis of the provisions used in *FAWKES* (C-187/21).

55. Those statistical values do not contain sufficiently precise information on comparable imports, which is necessary for the application of the additional methods for determining customs value under Article 30 of the CCC and Article 74(2) of the UCC. That was confirmed by the Commission, which stated in its observations that the statistical values referred to as 'fair prices' in the AMT are only *aggregated data* and *do not take into account the specific characteristics of the products concerned*, such as their quality. Moreover, *compared to transaction values* they are *more general* and *indirect*.

56. As regards the accessibility of the data contained in the AMT, the Commission explains in its written observations that the statistically calculated prices referred to as 'fair prices' and appearing in the AMT may be communicated to economic operators in the context of the exercise of the right to be heard. It confirmed that point at the hearing and no interested party present at the hearing called it into question. On the other hand, according to the Commission, the 'threshold prices', calculated by the Member States on the basis of a percentage of the statistical values contained in the AMT and which are set to assist customs authorities in detecting declarations to be subjected to checks, should be regarded as information not to be disclosed to economic operators 'in an uncontrolled manner' in order to avoid compromising the effectiveness of the risk management system. (37)

57. From that perspective, in view of the characteristics of the statistical values contained in the AMT, referred to in the preceding paragraphs, and the obligation of the customs authorities 'to set out, in their decision fixing the amount of import duties due, the data on the basis of which the customs value of the goods was calculated', (38) the question arises as to whether a statement of reasons based on aggregated statistical data could satisfy those requirements. The answer to that question presupposes, from the outset, a need to examine whether the use of data of that type may be permitted as part of any secondary method of determining customs value.

58. In that regard, it should be noted that, in *Commission* v *United Kingdom (Action to counter undervaluation fraud)* (C-213/19), concerning the determination of the amounts of losses caused to the European Union's own resources, the Court held that, in the absence of sufficient data in relation to the quality of the goods already released for free circulation, where it is no longer possible, owing to the customs authorities' failure to adopt necessary measures (such as physical controls, requests for information or documents or the systematic collection of samples), to determine the value of those goods on the basis of one of the valuation methods provided for in Articles 29 to 31 of the CCC, '*only a*

statistical method can be used to estimate the value of those goods'. (39) In other words, the Court did not rule out the possibility that such an approach might, in certain circumstances, be regarded as a *last resort.*

59. Moreover, it must not be forgotten that the correct determination of the customs debt is a vital task in order to ensure the effective and comprehensive collection of traditional own resources, namely customs duties. (40) More specifically, the Court has recalled that, in so far as there is a direct link between the collection of revenue deriving from customs duties and the availability to the Commission of the corresponding resources, it is for the Member States, in accordance with the obligations imposed on them under Article 325(1) TFEU to protect the financial interests of the European Union against fraud or any other illegal activities affecting those interests, to adopt the measures necessary to guarantee the effective and comprehensive collection of those duties and, therefore, of those resources. (41) It is in that context that the use of statistical values was authorised by the Court in a case resulting from infringement proceedings initiated by the Commission against the United Kingdom of Great Britain and Northern Ireland, on the ground that the United Kingdom had failed to fulfil its obligation to correctly collect traditional own resources under Article 325 TFEU.

60. Admittedly, it should be noted that the Court has been called upon to rule on the lawfulness of the Commission's use of statistical values, determined on the basis of a method developed by OLAF, (42) in calculating the amounts of those own resources losses, and that the Court has also emphasised on several occasions the particular nature of the circumstances of the case. (43)

61. However, what is important to note is that the Court has accepted the use of statistical values to establish the loss of the European Union's own resources in the situation of release for free circulation of the goods concerned, since those goods could no longer be recalled for checks to establish their true value, (44) which corresponds, in essence, to the factual context established by the referring court in the present cases. While I am aware of the aspects which distinguish *Commission* v *United Kingdom (Combating undervaluation fraud)* from the present cases, (45) I take the view that the use of statistical values, *in principle*, cannot be ruled out as an appropriate measure to safeguard the financial interests of the European Union as an instrument of *last resort* where all other methods have failed. If the use of statistical data were permitted in order to determine the extent of a Member State's liability for the loss of the European Union's own resources, but the use of the same values in order to establish the customs value of the goods in relation to an economic operator were absolutely prohibited, that would risk transferring responsibility for the customs debt from an economic operator to a Member State and would thus create a loophole in the customs system.

62. However important the objectives of preventing fraud and safeguarding the financial interests of the European Union may be, it is also clear from the case-law cited in the preceding points that those objectives cannot be pursued to the detriment of the rights of economic operators. That is why statistical values should be used in such a way as to ensure 'a balance between, on the one hand, the need for customs authorities to ensure the correct application of customs legislation and, on the other, the right of economic operators to be treated fairly', as is apparent from recital 26 of the UCC. In particular, it should be ensured that, whatever method is used in the present case, the customs values are *as close as possible to the real economic value* of the imported goods.

63. Furthermore, it should be borne in mind that, in its judgment in *Baltic Master* (C-599/20), the Court held that it was permissible to have recourse to the information available in national databases. More specifically, the Court has stated that data contained in a national database relating to goods ascribed to the same TARIC code and originating from the same seller as the goods concerned constitute 'data available in the [European Union]', within the meaning of Article 31(1) of the CCC, which may be used as a basis for the purposes of determining the customs value of the goods concerned. According to the Court, reference to such data constitutes a means of determining a customs value which is both 'reasonable' within the meaning of Article 31(1) of the CCC and consistent with the principles and general provisions of the international agreements and the provisions to which that article refers. (46)

64. The conclusions to be drawn from the latter judgment in respect of the present cases are, however, limited, in particular on account of the fact that the use of data from national databases

regarded as lawful by the Court in *Baltic Master* was not limited to aggregated statistical data but was more targeted (goods ascribed to the same TARIC code and originating from the same seller as the goods concerned) than in the cases at issue. Despite that, I consider that that judgment must be seen as an acknowledgement that all databases, including those managed by the Member States themselves, may be of use to customs authorities. The judgment must be read in conjunction with the judgment in *FAWKES* cited above, in which the Court noted the possibility available to the Member States, by means of appropriate requests, to access information held by the customs authorities of other Member States and by EU institutions and services. (47)

2. Compliance of the statistical approach with the customs regulatory framework

65. In the following considerations, I shall examine the extent to which statistical values may be used in the application of the secondary methods of determining customs value in order for that approach to satisfy the legal requirements set out in point 63 of the present Opinion. In particular, I shall set out the difficulties inherent in each of the methods, with a view to proposing an approach that is in compliance with EU law. I shall structure my analysis according to the *order of subsidiarity* between the different methods as described in the present Opinion. (48)

66. As I shall show in this examination, only one of those methods can, in my view, be considered suitable for use with statistical data, namely the fall-back method. That is why I shall only briefly cover the other methods. As a preliminary point, it should be noted that the applicability of those methods is essentially hampered by two factors, first, the *lack of necessary information on the goods* at issue and, second, the fact that *the statistical values set out in the AMT are merely aggregated data*, which take no account of the specific characteristics of the goods concerned.

(a) Transaction value of identical or similar goods

67. With reference to what I have stated above, (49) it should be noted that the very nature of statistical values is the reason why recourse to them seems to me to be precluded in the context of a possible application of the method referred to in Article 30(2)(a) and (b) of the CCC and Article 74(2)(a) and (b) of the UCC. In so far as that method involves a comparison between goods considered to be identical (or similar) and those in respect of which determination of the customs value is sought, certain information is essential in order to assess a number of criteria, listed by the Court in its case-law, such as physical characteristics, quality, reputation, interchangeability of goods and the commercial level of sales. (50) However, on account of their characteristics, the data contained in the AMT do not provide precise information enabling such a comparison to be made. In that context, it is important to note that the Greek authorities also rejected the application of that method in the present case.

(b) Deductive method

68. The deductive method referred to in Article 30(2)(c) of the CCC and Article 74(2)(c) of the UCC is based on the unit price, which is the price at which the imported goods or identical or similar imported goods are sold within the European Union at or about the same time as the goods being valued. For the application of that method, the customs authorities need to know certain information relating to the products, such as commissions paid or agreed and the additions made for profit and general expenses, so that they can deduct them from the price used as a customs value. In the present cases, the Greek customs authorities applied the deductive method in view of the fact that it was impossible to rely on the transaction value of the products at issue, which had been deliberately undervalued, or on the transaction value of identical or similar products, on account of the incomplete description of the products in the invoices attached to the declarations.

69. As the Commission submits in its observations, there are several reasons why that method cannot be applied in the present case. In particular, it is difficult to understand how an average price calculated on the basis of the import values accepted in the past can be useful in applying the deductive method based on selling prices. Indeed, in order to apply that method, the customs authorities must refer to specific unit prices calculated in accordance with the rules set out in Article 152(1)(a) of the CCC implementing regulation and Article 142(5) of the UCC implementing regulation. According to those rules, the unit price is always determined on the basis of the selling price of identical or similar

imported goods at a given time. However, as the Commission states, those selling prices are not available in the AMT.

(c) Computed value method

70. As regards the computed value method, it should be noted that its application presupposes that the customs authorities have specific information on the cost or value of the raw materials and manufacturing operations used to produce the products, and on the amount for profit and general expenses normally taken into account in sales of goods of the same category or nature as the goods being valued that have been manufactured by producers in the country of export to the European Union.

71. However, as the Commission explains in its observations, the statistical values that are referred to as 'fair prices' and are available in the AMT do not include such information. The statistical values available in the AMT cannot, therefore, be used to calculate the customs value of imported goods. Moreover, account must be taken of the fact that, in a case such as the present one, where the goods have escaped seizure and are not available for physical inspection, the data available in the databases of the Member States do not enable the customs authorities to obtain such information. Consequently, the application of the computed value method must also be rejected.

(d) Use of 'threshold prices' in the fall-back method

72. The last method laid down in the legislation for the purposes of determining the customs value is the fall-back method, referred to in Article 31(2) of the CCC and Article 74(3) of the UCC; in fact, EU customs law provides for *two different versions of that method*.

73. On the one hand, the fall-back method permits the use of 'reasonable flexibility', in accordance with point 2 of the interpretative note on customs value concerning Article 31(1) of the CCC. (51) The concept of 'reasonable flexibility' involves, in particular, that the secondary methods for calculating customs value may be used with *some relaxation of the criteria for their application.* (52)

74. On the other hand, it is apparent from Article 31(1) of the CCC and Article 74(3) of the UCC that the customs value may be determined using 'reasonable means'. The latter provision should be read in conjunction with Article 144(2) of the UCC implementing regulation, which provides that 'other appropriate methods' may be used for the purposes of determining customs value. Although there is no equivalent provision in the CCC system, I take the view that such an approach is also conceivable under that code, since no provision expressly prevents the customs authorities from using such 'appropriate methods'. Article 144(2) of the UCC implementing regulation merely provides some clarification on the scope of the powers conferred on the administration.

75. In principle, *both versions of the method, in my view, offer the possibility of using statistics for the purposes of determining the customs value*. However, thanks to the broad wording of the abovementioned provisions, the second version of the method appears to be the most suitable basis for innovative approaches developed by the administration. Moreover, by virtue of its subsidiary nature, that version clearly refers to instruments of last resort in situations where there is a lack of information concerning the goods in question.

76. Leaving aside the differences which characterise the two versions of the fall-back method, in both cases their application is subject to the condition that *the methods to be used are not covered by any of the prohibitions listed in Article 31(2)(a) to (g) of the CCC or Article 74(3) of the UCC*, read in conjunction with Article 144(2)(a) to (g) of the UCC implementing regulation. Under those provisions, no customs value is to be determined, in particular, *on the basis of minimum customs values* or arbitrary or fictitious values.

(1) Compatibility with the prohibition of minimum customs values

77. The prohibition on determining the customs value on the basis of minimum customs values, which is the subject of the third and fourth questions referred in Case C-72/24 (Keladis I) and the

second and third questions referred in Case C-73/24 (Keladis II), is the second topic to be examined in the present Opinion.

78. That prohibition is specifically referred to in Article 31(2)(f) of the CCC and Article 144(2)(f) of the UCC implementing regulation. In addition, it should be noted that Article 31(1) of the CCC and Article 74(3) of the UCC refer to the *principles and general provisions of Article VII of the General Agreement on Tariffs and Trade 1994* and of the Agreement on Implementation of Article VII of that Agreement and, like those principles, include a prohibition on determining the customs value on the basis of minimum values. EU law thus implements the provisions of the law of the multilateral trading system, which prohibit contracting parties from unilaterally fixing customs values in order to protect their domestic industries. (53)

79. In that regard, I take the view, as does the Commission, that the use by the customs authorities of 'threshold prices' based on statistical values to determine customs values could, in certain circumstances, infringe that prohibition. In particular, that would be the case *if that administrative practice were systematic and if the economic operator were not given the opportunity to provide reasons to support the low prices indicated in its declaration*. Such a practice, which would preclude the acceptance of transaction values below the 'threshold' and would entail an upward adjustment of the declared customs values, namely up to the 'threshold' in question, would in fact constitute a system of minimum values.

80. However, it should be noted that, as is apparent from the observations of the parties at the hearing, such an approach does not correspond to the practice of the customs authorities. On the contrary, in the cases in the main proceedings, there appears to have been a number of exchanges between the Greek customs authorities and the applicants in order to determine both the nature and the value of the goods at issue. For that reason, it cannot be claimed that the applicants in the main proceedings did not have the opportunity to provide additional information in the course of the administrative procedure before the customs authorities. The scenario against which the Commission warned therefore did not occur in the present cases.

81. Moreover, I am not unsympathetic to the argument put forward by the French Government that 'threshold prices', in so far as they do not come from State legislation, cannot be equated with minimum customs values. As stated above, the prohibition at issue is intended to prevent States from unilaterally imposing trade restrictions in the form of minimum values. However, it is only in the very limited case described in the present Opinion that 'threshold prices' could possibly have a similar effect, and then only de facto.

82. It follows that the use of 'threshold prices' based on the CAPs available in the AMT constitutes, in principle, a possible way to determine the customs value of imported goods *which is consistent with the requirements of EU law*. Those 'threshold prices' could be regarded as 'data available in the [European Union]', in accordance with Article 31(1) of the CCC and Article 74(3) of the UCC. The use of 'threshold prices', therefore, does not infringe the prohibition of minimum customs values.

83. That provides an answer to the essentially identical question of whether the use of 'threshold prices' to determine the customs value of goods is consistent with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, to which Article 31(1) of the CCC and Article 74(3)(a) of the UCC refer, on the basis of an approach whereby such prices are in the nature of 'minimum prices'.

84. On account of the fact that the use of statistical values is only possible under the fall-back method provided for in Article 31(2) of the CCC and Article 74(3) of the UCC, the fourth question referred for a preliminary ruling in Case C-72/24 (Keladis I), which concerns the exclusion of minimum values and the reservation in favour of the principles and general provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, in the application of *all alternative methods* of determining customs values, is no longer relevant and there is no longer any need to answer it.

(2) Indirect and direct application of average statistical prices

85. In its observations, the Commission takes an approach whereby it is only possible to use average statistical prices ('fair prices') available in the AMT to *identify declarations relating to similar goods*. The declaration serving as the reference point could subsequently be used to determine the customs value of the imported goods. As the Commission explains, *statistical averages of values are also not used directly as values replacing declared customs values*, but only indirectly to select the declaration representing a transaction value of similar goods to be used to determine the undervalued customs value. The Commission takes the view that such an approach falls within the 'reasonable flexibility' allowed when applying the method involving the transaction value of similar products.

86. The advantage of that approach is that it is a more accurate reflection of the true value. Moreover, such an approach appears to be consistent with the principle that customs values determined by application of the provisions of Article 31(1) of the CCC should, to the greatest extent possible, *be based on previously determined customs values*, as is apparent from point 1 of the interpretative note on customs value relating to that provision. That principle is also apparent from Article 144(1) of the UCC implementing regulation, which provides for reasonable flexibility in the application of the methods laid down in Article 70 and Article 74(2) of the UCC.

87. However, in my view, the possibility of indirectly using statistical values to identify declarations relating to similar goods does not entirely correspond to the hypothesis put forward by the referring court regarding the complete absence of information concerning the characteristics of the imported goods, which could constitute an obstacle to the identification of the importation of similar goods. The impossibility of determining the customs value by application of Article 144(1) of the UCC implementing regulation is also provided for in Article 144(2) of that regulation, which paves the way for the use of 'other appropriate methods'. Like the Spanish and French Governments, I take the view that, in circumstances where no more relevant data are available, owing in particular to the lack of cooperation on the part of the operator concerned, which provided a customs declaration containing inaccurate or insufficient information, and the fact that it is impossible to carry out a physical inspection of the goods, the use of aggregated statistical data compiled at EU level appears to be a 'reasonable' means of determining the customs value within the meaning of Article 31(1) of the CCC and Article 74(3) of the UCC, in the absence of alternative means, and thus corresponds to 'other appropriate methods' within the meaning of Article 144(2) of the UCC implementing regulation. (54)

88. It remains to be determined whether the requirement to state reasons for decisions of the customs authorities laid down in Article 6(3) of the CCC and Article 22(2) of the UCC, read in conjunction with the case-law set out in point 45 of the present Opinion, could preclude the use of statistical data for the purposes of determining the customs value. The French Government maintains that data based on aggregated statistics may be used by the customs authorities for the purposes of determining the customs value of goods only if they can be brought to the attention of the operator concerned and thus form part of the statement of reasons required by Article 6(3) of the CCC. The Court has expressly excluded from the statement of reasons required by Article 6(3) of the CCC 'confidential information from a database which seeks, by means of statistical exploration methods, to detect commercial models capable of constituting cases of fraud'. (55)

89. Nevertheless, *the requirement to state reasons must be appropriate to each customs decision* (56) which, in the case under consideration, should reflect the use of the fall-back method for the purposes of determining the customs value. As the Commission has explained, the statistically calculated prices that appear in the AMT may be communicated to economic operators. (57) Furthermore, it cannot be ruled out that the requirement to state reasons may be met if aggregated data from confidential databases are used in combination with other data, such as data from national databases, which could be brought to the attention of an economic operator. Account must also be taken of the possibility open to each economic operator to provide reasons to support a customs value other than that suggested by statistical values. If the customs authority rejects data provided by an economic operator, it is required to state the reasons for doing so. That said, a lack of cooperation on the part of an economic operator cannot have the effect of making it impossible for the customs authority to discharge its obligations under EU law. For that reason, it seems to me justified, in the event of a lack of cooperation, to allow the customs authority to give reasons for its decisions on the basis of the statistical values available to it. (58)

D. The maximum permitted interval between the imports used to derive the statistical result and the imports checked

90. The third topic to be examined in the remainder of the present Opinion, which relates specifically to the fourth question referred for a preliminary ruling in Case C-73/24 (Keladis II), concerns the maximum permitted interval between the imports used to derive a statistical result and the imports checked, and, in particular, whether the 90-day period provided for in Article 152(1)(b) of the CCC implementing regulation and Article 142(2) of the UCC implementing regulation is applicable by analogy for that purpose. Consideration of those questions logically presupposes the possible use of statistical values for the purposes of determining the customs value of the imported goods, which has been confirmed in the preceding points.

91. In that regard, it should be noted from the outset that *all secondary methods take account of the time element*, since the existence of significant differences in time may affect the value of the goods and lead to the use of values which do not correspond to the reality of the transaction being valued. It is, therefore, necessary to take the time element into account when applying the fall-back method referred to in Article 31 of the CCC and Article 74(3) of the UCC, since the same reasons as those justifying the setting of a time reference point close to the transaction under the other methods are also applicable to the fall-back method. That must be understood without prejudice to the possibility of applying the 'reasonable flexibility' criterion, which I shall address in the remainder of the present Opinion.

92. An analysis of the case-law seems to me to confirm the relevance of the temporal element. In its judgment in *FAWKES* (C-187/21), the Court held that a period of 90 days, including 45 days before and 45 days after customs clearance of the goods being valued, appeared sufficiently close to the date of export to avoid the risk of a substantial change in commercial practices and market conditions affecting the prices of the goods being valued. (59) The question arises, however, as to whether the application of such a time limit to the present case can be legally justified.

93. In my view, that question should be answered in the affirmative, in particular if the application of that time limit is to be regarded as reflecting 'reasonable flexibility'. In that context, it should be recalled that in its judgment in *Oribalt Rīga*, the Court held that the time limit of 90 days laid down in Article 152(1)(b) of the CCC implementing regulation therefore constitutes an exception to the principle set down in Article 152(1)(a) of that regulation and must, on that basis, be *interpreted strictly*. (60)

94. Annex 23 to the CCC implementing regulation, entitled 'Interpretative notes on customs value', provides, as regards the interpretation of Article 31(1) of the CCC, that the methods of valuation to be employed under that provision should be those laid down in Articles 29 to 30(1) and (2) inclusive, but that a 'reasonable flexibility' in the application of such methods would be in conformity with the aims and provisions of Article 31 of the CCC. (61) That annex provides some examples of 'reasonable flexibility'. Thus, as regards the application of the deductive method provided for in Article 30(2)(c) of the CCC, it is stated that the *90-day period could be administered flexibly*. The same should apply to the provisions of the UCC.

95. Consequently, *a time limit of 90 days seems to me to be appropriate to take account of the requirements of international trade*, as are apparent both from the rules on international trade and from the case-law cited above. As the Commission stated at the hearing, such a time limit also appears appropriate when applying the second version of the fall-back method, referred to in Article 144(2) of the UCC implementing regulation. On the other hand, I note that several interested parties argued in their observations against the application of a time limit of four years, on the ground that such a period would be excessive. (62) I share that point of view, given that such a long period is likely to undermine the objective of enabling the customs value to be established in the most precise and realistic as possible manner.

96. Since the customs authorities are required to comply with the requirements of proportionality when applying EU law, the setting of a longer time limit can, in my view, be justified only exceptionally and as a last resort, in particular where more reliable information is not available and the

general objective of protecting the financial interests of the European Union, as recognised in Article 325 TFEU, cannot otherwise be achieved, especially in a matter involving ensuring the effective and comprehensive collection of traditional own resources, namely customs duties. (63)

97. In the light of the foregoing, I am of the opinion that Article 31(1) of the CCC and Article 74(3) of the UCC must be interpreted as *not precluding the application by analogy of the 90-day time limit* provided for in Article 152(1)(b) of the CCC implementing regulation and Article 142(2) of the UCC implementing regulation, in order to determine the maximum permitted interval between the imports used to derive the statistical result and the imports checked, a time limit which may be made more flexible but which must not be excessive, to the detriment of the objective pursued by that time limit.

E. Interim conclusions

98. The analysis above has shown that the use of statistical values is, in principle, *an appropriate measure to safeguard the financial interests of the European Union* in so far as it enables the administration to establish customs debts and prevent fraud affecting its financial interests.

99. The use of statistical values for the purposes of determining the customs value may be envisaged as a measure of *last resort* where it is not possible to achieve that objective by using other methods. Such an approach is particularly relevant in circumstances characterised by *a lack of cooperation on the part of the operator concerned*, which provided *a* customs declaration containing inaccurate or insufficient information, and by the fact that *it is impossible for the customs authorities to carry out a physical inspection of the goods*. However, their application is subject to compliance with certain requirements of EU law.

100. By their very nature, ‘threshold prices’, which are based on statistically calculated values available in the AMT, *cannot be used to determine the customs value* of imported goods by one of the secondary methods referred to in Article 30(2) of the CCC or Article 74(2) of the UCC.

101. However, as a method of last resort laid down in Article 31 of the CCC and Article 74(3) of the UCC, and where no other more specific data are available, aggregated statistical data compiled at EU level may be used for the purposes of establishing the customs value, provided that the decision of a customs authority satisfies the requirement to state reasons laid down in Article 6(3) of the CCC and Article 22(6) of the UCC.

102. Moreover, my analysis has shown that the use of ‘threshold prices’ does not infringe the prohibition on determining the customs value on the basis of minimum values where the economic operator is able to provide reasons to support the low prices stated in the declaration.

103. Finally, it has been established that *the time limit of 90 days* laid down in Article 152(1)(b) of the CCC implementing regulation and in Article 142(2) of the UCC implementing regulation *may be applied by analogy* for the purpose of determining the maximum permitted interval between the imports used to derive the statistical result and the imports checked, and that that period may be made more flexible, but must not be excessive to the point of being detrimental to the objective pursued by that time limit.

VI. Conclusions

104. In the light of the foregoing considerations, I propose that the Court of Justice should answer the questions referred by the Dioikitiko Protodikeio Thessalonikis (Administrative Court of First Instance, Thessaloniki, Greece) as follows:

(1) Article 30 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Article 74(2) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

must be interpreted as precluding aggregated statistical data compiled at EU level from being used by customs authorities for the purpose of establishing the customs value of goods by

applying the secondary methods referred to in those articles.

(2) Article 31 of Regulation No 2913/92 and Article 74(3) of Regulation No 952/2013

must be interpreted as not precluding customs authorities, when using the fall-back method referred to in those articles for the purpose of establishing the customs value of goods, from using aggregated statistical data compiled at EU level and from providing those data to economic operators in order to guarantee them the right to be heard, provided that the use of such data is exceptional and is limited to cases in which the customs authority, after having exhausted all the procedures laid down by the legislation, is unable to determine a customs value in accordance with any other method laid down.

(3) The use of aggregated statistical data compiled at EU level in the context of the fall-back method referred to in Article 31 of Regulation No 2913/92 and Article 74(3) of Regulation No 952/2013 cannot be regarded as the application of a system of minimum prices provided that the economic operator is able to provide reasons for the low prices stated in the declaration.

(4) The 90-day time limit laid down in Article 152(1)(b) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, as amended by Commission Regulation (EC) No 46/1999 of 8 January 1999, and in Article 142(2) of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013, may be applied by analogy in order to determine the maximum permitted interval between imports used to derive the statistical result and the imports checked, and that period may be made more flexible, but must not be excessive to the point of being detrimental the objective pursued by that time limit.

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1 Original language: French.

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i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

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2 The subject has been debated in the legal literature. D'Angelo, G., 'Customs Valuation adjustment in recent CJEU case law', *Aspects of customs control in selected EU Member States*, Bologna 2023, p. 172, states that in certain circumstances the Court is prepared to permit the use of the statistical value method enabling the Commission to adjust declared customs values, in order to recover from Member States traditional own resources attributable to the EU budget. However, it is not clear whether and under what conditions, in the context of the fall-back method, national customs authorities could use the statistical value method in order to adjust customs values declared by importers.

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3 Lyons, T., *EU Customs Law*, 3rd edition, Oxford University Press, Oxford 2018, p. 160, points out that the very purpose of those methods is to ensure uniform application of the rules determining customs duties.

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4 OJ 1994 L 336, p. 119.

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5 Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

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6 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1); ('the CCC').

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7 Commission Regulation of 2 July 1993 laying down provisions for the implementation of Council Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 46/1999 of 8 January 1999 (OJ 1999 L 10, p. 1); ('the CCC implementing regulation').

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8 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); ('the UCC').

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9 Commission Implementing Regulation of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ 2015 L 343, p. 558); ('the UCC implementing regulation').

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10 See judgment of 12 July 1973, *Massey-Ferguson* (8/73, EU:C:1973:90, paragraph 3).

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11 Fabio, M., *Customs Law of the European Union*, 5th edition, Kluwer Law International, Alphen aan den Rijn, 2020, p. 140.

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12 See point 48 et seq. of the present Opinion.

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13 See point 77 et seq. of the present Opinion.

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14 See point 90 et seq. of the present Opinion.

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15 Albert, J.-L., *Le droit douanier de l'Union européenne*, Chapter 3 ('L'espèce, l'origine, la valeur'), Bruylant, Brussels, 2019, p. 304 et seq..

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16 See judgment of 28 February 2008, *Carboni e derivati* (C-263/06, EU:C:2008:128, paragraph 60).

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17 See judgment of 9 July 2020, *Direktor na Teritorialna direktsiya Yugozapadna Agentsiya 'Mitnitsi'* (C-76/19, EU:C:2020:543, paragraph 34).

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18 See also the corresponding provisions of Article 70(1) of the UCC.

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19 See judgment of 12 December 2013, *Christodoulou and Others* (C-116/12, EU:C:2013:825, paragraph 44).

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20 See judgment of 28 February 2008, *Carboni e derivati* (C-263/06, EU:C:2008:128, paragraph 52).

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21 The Greek customs authorities took the view that the transaction value method provided for in Article 29 of the CCC should be ruled out on the ground that the declared customs values were too low in relation to the 'threshold prices' calculated as a percentage of the 'fair prices'. According to those authorities, that fact justified the reasonable doubts as to the declared values and, consequently, the rejection of those values.

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22 See also the corresponding provisions of Article 74(1) of the UCC.

23 See also the corresponding provisions of Article 74(3) of the UCC.

24 See judgment of 16 June 2016, *EURO 2004. Hungary* (C-291/15, EU:C:2016:455, paragraph 28).

25 Advocate General Campos Sánchez-Bordona explains in point 36 of his Opinion in *Tauritus*, (C-782/23, EU:C:2025:30), that there is a 'hierarchy', expressly imposed by the Customs Code itself, between the successive valuation methods.

26 See judgment of 16 June 2016, *EURO 2004. Hungary* (C-291/15, EU:C:2016:455, paragraph 29).

27 See judgments of 28 February 2008, *Carboni e derivati* (C-263/06, EU:C:2008:128, paragraph 60), and of 9 March 2017, *GE Healthcare* (C-173/15, EU:C:2017:195, paragraph 80).

28 See judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraph 35).

29 See judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraph 36).

30 See judgments of 9 November 2017, *LS Customs Services* (C-46/16, EU:C:2017:839, paragraph 56), and of 20 June 2019, *Oribalt Rīga* (C-1/18, EU:C:2019:519, paragraph 27).

31 See judgments of 9 November 2017, *LS Customs Services* (C-46/16, EU:C:2017:839, paragraphs 44 and 45), and of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraphs 53 and 54).

32 See judgment of 16 June 2016, *EURO 2004. Hungary* (C-291/15, EU:C:2016:455, paragraphs 38 and 39).

33 See judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraph 48).

34 Judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraphs 39, 51, 53 and 55).

35 Judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraph 54).

36 Judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraph 48).

37 The Commission does not, however, specify what it means by 'in an uncontrolled manner' and whether, in its view, access to the threshold prices in the context of legal proceedings could also undermine the effectiveness of the risk management system.

38 Judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraph 54).

39 Judgment of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)* (C-213/19, EU:C:2022:167, paragraph 443). Emphasis added.

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40 Rijo, J., *Customs Law in the European Union*, Wolters Kluwer, Alphen aan den Rijn, 2021.

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41 Judgment of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)* (C-213/19, EU:C:2022:167, paragraph 346).

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42 The reference is to the OLAF-JRC method (see paragraph 53 of the judgment of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)* (C-213/19, EU:C:2022:167).

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43 Judgment of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)* (C-213/19, EU:C:2022:167, paragraphs 444 and 447).

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44 See judgment of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)* (C-213/19, EU:C:2022:167, paragraph 443).

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45 The Court's examination of the use of the OLAF-JRC method, in the context of the infringement proceedings (*Commission* v *United Kingdom (Action to counter undervaluation fraud)*) was intended, in essence, to ascertain that that method was justified in the light of the particular circumstances of the case and that it was sufficiently precise and reliable in that, in particular, it was based on criteria that are neither arbitrary nor biased and on an objective and coherent analysis of all the relevant data available, and accordingly does not lead to a clear overestimate of the amount of those losses (see judgment of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)* (C-213/19, EU:C:2022:167, paragraph 452)), whereas the aim of the determination of the customs value is to establish those values so that they are as close as possible to the real economic value of the imported goods).

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46 See judgment of 9 June 2022, *Baltic Master* (C-599/20, EU:C:2022:457, paragraphs 54 to 56).

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47 See judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraphs 56 and 57).

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48 See points 38 and 41 of the present Opinion.

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49 See points 51 to 58 of the present Opinion.

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50 See judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraph 48).

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51 See judgment of 9 June 2022, *Baltic Master* (C-599/20, EU:C:2022:457, paragraph 48).

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52 Niestedt, M., (in *EU-Außenwirthschaftsrecht und Zollrecht*, Krenzler/Herrmann/Niestedt, Munich, 2024) (see also Article 74 of the UCC, point 7) explains that the 'flexible' application of the other methods may involve responding more generously to the individual requirements of the other methods. According to that author, the results of EU-wide market observations, *trade statistics* and price surveys can be used as 'reasonable means'. The determination of the customs value using the fall-back method does not require the establishment of a market price. It is essentially an estimate of the various elements of the customs value, in which inaccuracies are accepted.

53 Rosenow, S. and O'Shea, B., *A Handbook on the WTO Customs Valuation Agreement*, Cambridge, 2010, p. 127. The authors explain that official or minimum values were used by a number of countries (particularly, developing countries) prior to the entry into force of the WTO Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade 1994 to protect their domestic industries, among other reasons. The continued use of minimum values by developing countries is subject to reservations and to the agreement of other WTO Members. Otherwise, such minimum values are prohibited.

54 See point 75 of the present Opinion.

55 See judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraph 55).

56 See, in that regard, the case-law on Article 296 TFEU, according to which the statement of reasons required by that provision must be appropriate to the act at issue. The requirements to be satisfied by the statement of reasons depend *on the circumstances of each case*, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into *all the relevant facts* and points of law. The question whether the statement of reasons meets the requirements of that provision must be assessed *with regard to all the legal rules governing the matter in question* (see judgment of 30 April 2009, *Commission* v *Italy and Wam,* C-494/06 P, EU:C:2009:272, paragraph 48). From that point of view, I consider that the fall-back method offers the flexibility required to allow a statement of reasons for a customs decision to be based on statistics.

57 See point 56 of the present Opinion.

58 An economic operator which refuses to cooperate with the customs authorities by providing insufficient information on the goods it has declared cannot rely on the unlawfulness of a customs decision on the sole ground that insufficient information obliges those authorities to rely on statistics. Such conduct should be described as '*venire contra factum proprium*'.

59 See judgment of 9 June 2022, *FAWKES* (C-187/21, EU:C:2022:458, paragraph 71).

60 Judgment of 20 June 2019, *Oribalt Rīga* (C-1/18, EU:C:2019:519, paragraph 33). Emphasis added.

61 See judgment of 9 June 2022, *Baltic Master* (C-599/20, EU:C:2022:457, paragraph 48).

62 The Commission stated at the hearing that the statistical data in the AMT database now refer to a period of one month instead of 48 months. The Commission also argued that it would therefore be possible to take into account more precise data, in terms of the time period covered. It is my view, however, that the Court of Justice does not have precise information concerning that method of investigation, which cannot, in any event, be applicable to the dispute in the main proceedings.

63 See points 59 and 60 of the present Opinion.