# JUDGMENT OF THE COURT
13 February 1996 *

In Case C-143/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tariefcommissie, Amsterdam, for a preliminary ruling in the proceedings pending before that court between

**Gebroeders van Es Douane Agenten BV**

and

**Inspecteur der Invoerrechten en Accijnzen,**

on the interpretation and validity of Commission Regulation (EEC) No 482/74 of 27 February 1974 on the classification of goods within subheading No 23.04 B of the Common Customs Tariff (OJ 1974 L 57, p. 23),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray (Rapporteur), P. Jann, H. Ragnemalm and L. Sevón, Judges,

* Language of the case: Dutch.

Advocate General: M. B. Elmer,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Pell Nederland BV and Gebroeders van Es Douane Agenten BV, by H. J. Bronkhurst, of the Hague Bar, and E. H. Pijnacker Hordijk, of the Amsterdam Bar,

— the Commission of the European Communities, by H. van Lier, Legal Adviser, and F. de Sousa Fialho, of its Legal Service, acting as Agents, assisted by J. Stuyck, of the Brussels Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Gebroeders van Es Douane Agenten BV, represented by E. H. Pijnacker Hordijk, and T. P. J. van Oers, of the Hague Bar, and the Commission of the European Communities, represented by H. van Lier and J. Stuyck, at the hearing on 18 May 1994,

after hearing the Opinion of Advocate General Gulmann at the sitting on 12 July 1994,

having regard to the order reopening the proceedings of 25 January 1995,

after hearing the Opinion of Advocate General Elmer at the sitting on 20 June 1995,

gives the following

## Judgment

1 By decision of 1 February 1993, received at the Court on 5 April 1993, the Tariefcommissie (Administrative Court for Customs and Excise), Amsterdam, referred to the court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation and validity of Commission Regulation (EEC) No 482/74 of 27 February 1974 on the classification of goods within subheading No 23.04 B of the Common Customs Tariff (OJ 1974 L 57, p. 23).

2 Those questions were raised in proceedings between Gebroeders van Es Douane Agenten BV (hereinafter 'Van Es') and the Inspecteur der Invoerrechten en Accijnzen (Inspector of Customs and Excise), Rotterdam.

3 The Common Customs Tariff Nomenclature in force until 1 January 1988 was introduced by Council Regulation (EEC) No 950/68 of 28 June 1968 on the common customs tariff (OJ, English Special Edition 1968 (I), p. 275). Chapter 23 concerned 'Residues and waste from the food industries; prepared animal fodder'.

Heading 23.04 concerned 'Oil-cake and other residues (except dregs) resulting from the extraction of vegetable oils';

4 Heading 23.04 is subdivided as follows:

'A.Oil-cake and other residues resulting from the extraction of olive oil

B.Other.'

5 On 16 January 1969 the Council adopted Regulation (EEC) No 97/69 on measures to be taken for uniform application of the nomenclature of the Common Customs Tariff (OJ, English Special Edition 1969 (I), p. 12), which authorized the Commission to adopt the provisions required for the application of the Common Customs Tariff Nomenclature as regards classification of goods.

6 On the basis of that regulation the Commission adopted Regulation No 482/74 of 27 February 1974. Article 1 of that regulation is worded as follows:

'Residues resulting from the extraction, by solvents or by compression, of maize germ oil shall fall within subheading No 23.04 B of the Common Customs Tariff

only where they contain the following ingredients in the quantities specified, calculated by weight on the dry product:

1. Products of an oil content of less than 3%:

— starch content: less than 45%

— protein content (nitrogen content x 6.25): not less than 11.5%.

2. Products of an oil content of not less than 3% and not more than 8%:

— starch content: less than 45%

— protein content (nitrogen content x 6.25): not less than 13%.

Moreover, such residues shall not contain ingredients which are not obtained from maize grains.'

7 Regulations No 950/68 and No 97/69 were then repealed with effect from 1 January 1988 by Article 16 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ('the CCT') (OJ 1987 L 256, p. 1). In that regulation, headings 2302 10 90 and 2306 90 91 form part of Chapter 23 of the combined nomenclature, which is headed 'Residues and waste from the food industries; prepared animal fodder'.

Heading 2302 10 90 is worded as follows:

| | |
|---|---|
| '2302 | Bran, sharps and other residues, whether or not in the form of pellets derived from the sifting, milling or other working of cereals or of leguminous plants: |
| 2302 10 | — of maize (corn): |
| 2302 10 10 | — — with a starch content not exceeding 35% by weight |
| 2302 10 90 | — — other'. |

Heading 2306 90 91 states as follows:

| | |
|---|---|
| '2306 | Oilcake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of heading No 2304 or 2305: |

...

2306 90 — Other:

— — Oilcake and other residues resulting from the extraction of olive oil:

2306 90 11 — — containing 3% or less by weight of olive oil

2306 90 19 — — containing more than 3% by weight of olive oil

— — Other:

2306 90 91 — — of germ of maize

2306 90 93 — — of sesame seeds

2306 90 99 — — other.'

8 Commission Regulation (EEC) No 315/91 of 7 February 1991 amending Regulation No 2658/87 (OJ 1991 L 37, p. 24), which entered into force on 1 April 1991,

added an additional note in Chapter 23 of the combined nomenclature regarding heading 2306 90 91. That additional note is worded as follows:

'Subheading 2306 90 91 includes only residues from the extraction of oil from the germs of maize, excluding products containing components from parts of maize grains which have been added after processing and not been subjected to the oil extraction process.'

Article 15(1) of Regulation No 2658/87 deals with the transition from the old to the new scheme in the following terms:

'1. The codes and the descriptions of goods established on the basis of the combined nomenclature shall replace those established on the basis of the nomenclatures of the Common Customs Tariff and the Nimexe, without prejudice to international agreements concluded by the Community before the entry into force of this regulation, and to acts taken in implementation thereof, which refer to the said nomenclatures.

Community acts which include the tariff or statistical nomenclature shall be amended accordingly by the Commission.'

On the basis of that provision, the Commission adopted three regulations: Regulation (EEC) No 646/89 of 14 March 1989 replacing the codes established on the basis of the Common Customs Tariff Nomenclature in force on 31 December

1987 with those established on the basis of the combined nomenclature in certain regulations concerning the classification of goods (OJ 1989 L 71, p. 20), Regulation (EEC) No 2723/90 of 24 September 1990 replacing the codes established on the basis of the Common Customs Tariff Nomenclature in force on 31 December 1987 with those established on the basis of the combined nomenclature in certain regulations concerning the classification of goods (OJ 1990 L 261, p. 24) and Regulation (EEC) No 2080/91 of 16 July 1991 replacing the codes established on the basis of the Common Customs Tariff Nomenclature in force on 31 December 1987 with those established on the basis of the combined nomenclature in certain regulations concerning the classification of goods (OJ 1991 L 193, p. 6).

11 The preamble to Regulation No 646/89 states that:

'Whereas Article 15(1) of Regulation (EEC) No 2658/87 lays down that the codes and descriptions of goods established on the basis of the combined nomenclature are to replace those established on the basis of the nomenclature of the Common Customs Tariff in force on 31 December 1987;

Whereas for the sake of clarity and simplification those of the said regulations which are still of practical significance and in which the transposition will involve no changes of substance should be amended accordingly.'

12 The first of those two recitals is reproduced in the same terms in Regulation No 2723/90. It is followed by another recital which states as follows:

'Whereas those regulations which are still of practical significance and whose transposition will involve no changes of substance should be amended accordingly

and so to complement an initial series of regulations which has been adopted by Commission Regulation (EEC) No 646/89.'

4 Neither of those regulations refers to Regulation No 482/74.

5 On 8 December 1988 and 12 February 1989 Van Es imported into the Netherlands from Argentina four consignments of germ of maize residues which were the property of Pell Nederland BV.

6 According to the documents in the Court's file, upon importation the four consignments were declared under subheading 2306 90 91 of the combined nomenclature, as introduced with effect from 1 January 1988 by Regulation No 2658/87, without any reference being made to Regulation No 482/74. In view of that classification, no import duty or agricultural levy was charged.

7 After a check had been carried out by the Inspector of Import and Excise Duties, Rotterdam, the goods in question were reclassified under subheading 2302 10 90 of the combined nomenclature on the basis of Regulation No 482/74. The analysis carried out had revealed a fat content of less than 3%, a protein content (calculated by weight on the dry product) of not less than 11.5% and a starch content (calculated by weight on the dry products) greater than 45%. An agricultural levy totalling HFL 1 197 831 was consequently imposed in respect of the four consignments.

17 After a complaint against the decision to classify the product under heading 2302 10 90 had been rejected, an action was brought before the Tariefcommissie (Administrative Court for Customs and Excise), Amsterdam, on 1 October 1990.

18 Van Es disputes the application of Regulation No 482/74 to the present case. It considers that that regulation lapsed as a result of the repeal of Regulations Nos 950/68 and 97/69 by Regulation No 2658/87. Furthermore, if Regulation No 482/74 were still applicable, it would be invalid on the ground that Article 1 thereof amends the content of heading 23.04 B of the Common Customs Tariff.

19 Taking the view that the outcome of the dispute pending before it required an interpretation and an assessment of the validity of the Community rules in question, the national court decided to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

'1. Is Regulation No 482/74 still in force with regard to the four import declarations at issue, notwithstanding the provisions of Article 16 of the current Common Customs Tariff regulation?

2. In the event that the first question is answered in the affirmative, may Regulation No 482/74 be lawfully applied for the purposes of the classification of goods under subheading 2306 90 91 of the current Common Customs Tariff even though the subheading itself contains no criterion regarding the starch content of residues resulting from the extraction of maize oil?'

## Question 1

20 The national court's first question seeks to establish whether Regulation No 482/74 is applicable to declarations made in respect of importations after 1 January 1988, the date of the entry into force of the combined nomenclature.

21 Van Es considers that the repeal of Regulation No 97/69 led to the elimination of Regulation No 482/74. In its view, a regulation lapses when the measure on which it is based is repealed, unless that regulation is given a new legal basis, which was not the case with regard to Regulation No 482/74.

22 In order to establish whether, as Van Es claims, Regulation No 482/74 has lapsed as a result of the repeal of Regulation No 97/69, on 1 January 1988, it must first be examined whether the Council laid down rules in Regulation No 2658/87 in respect of the status of measures adopted by the Commission on the basis of the regulation which had been repealed. Only if Regulation No 2658/87 is silent in that regard, is it necessary to examine whether there is a general principle of Community law which may be applied in the present case.

23 The second subparagraph of Article 15(1) of Regulation No 2658/87 merely refers to amendments of Community acts setting out the tariff or statistical nomenclature; that indicates therefore that the Council in no way intended to treat all those acts as having lapsed merely because Regulation No 97/69 had been repealed.

24 That conclusion is confirmed by the penultimate recital in the preamble to Regulation No 2658/87. Although it states that 'following the setting-up of the combined nomenclature, numerous Community acts in particular in the field of the

common agricultural policy must be adapted to take into account the use of this nomenclature', it does not provide that those acts should have lapsed first.

25 Van Es also claims that, unless they have been amended, the Community acts adopted on the basis of Regulation No 97/69 have become devoid of purpose because of the differences which exist between the descriptions and codifications of goods set out in Regulation No 950/68 and those used in Regulation No 2658/87. Moreover, it does not accept that regulations on the classification of goods, such as Regulation No 482/74, can be regarded as implicitly modified by the new combined nomenclature implemented by Regulation No 2658/87, since such a modification would, in its view, be contrary to the principle of legal certainty.

26 It follows from the first subparagraph of Article 15(1) of Regulation No 2658/87 that the references in the relevant Community acts to the codes and descriptions established on the basis of the Common Customs Tariff Nomenclature are implicitly replaced by the references to the codes and descriptions established on the basis of Regulation No 2658/87.

27 However, that still leaves the question of legal certainty to be addressed. In that regard, it should be noted that the principle of legal certainty is a fundamental principle of Community law (see, to that effect, the judgment in Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* v *Germany* [1983] ECR 2633) which requires in particular that rules imposing charges on a taxpayer be clear and precise so that he may be able to ascertain unequivocally what his rights and obligations are and take steps accordingly (see the judgments in Case 169/80 *Gondrand Frères* [1981] ECR 1931 and in Joined Cases 92/87 and 93/87 *Commission* v *France and United Kingdom* [1989] ECR 405).

28 In providing that Community acts setting out the tariff or statistical nomenclature are to be amended accordingly by the Commission, the second subparagraph of Article 15(1) implements that principle.

29 Contrary to the Commission's contention in its written observations, that provision does not simply empower it to make technical adjustments to Community acts in line with the new combined nomenclature. It requires the Commission expressly to amend the regulations adopted on the basis of Regulation No 97/69 which were still of practical significance at the time of the adoption of the combined nomenclature, so that individuals may be able to ascertain unequivocally what their rights and obligations are and take steps accordingly. In the absence of such amendments, it may prove difficult for individuals to ascertain precisely what their legal position is. Moreover, the Commission itself acknowledged in the preamble to Regulations No 646/89 and No 2723/93 that certain acts adopted on the basis of the Common Customs Tariff Nomenclature were of virtually no further practical significance following the entry into force of Regulation No 2658/87 and that it was therefore necessary 'for the sake of clarity and simplification' to amend such regulations as were still of practical significance.

30 The existence of an obligation on the part of the Commission expressly to amend such regulations adopted on the basis of Regulation No 97/69 as retained practical significance when the combined nomenclature was drawn up is, furthermore, confirmed by the use in the English and Spanish versions of the wording 'shall be amended' and 'serán modificados', which is not contradicted in any way by the other language versions.

31 Failing the amendment of the Community acts adopted on the basis of Regulation No 97/69, it must therefore be established whether the individuals concerned were able to ascertain precisely what their legal position was.

32 In that regard, the significant differences existing between the subheadings of Chapter 23 of Regulation No 950/68 and those of Chapter 23 of Regulation No 2658/87 do not permit individuals to determine the precise scope of Commission Regulation No 482/74 in the light of the provisions of Chapter 23 of Council Regulation No 2658/87.

33 Consequently, the answer to Question 1 must be that, since Regulation No 482/74 was not amended by the Commission in accordance with the second subparagraph of Article 15(1) of Regulation No 2658/87, it cannot be applied to declarations concerning importations after 1 January 1988 inasmuch as that failure to amend the former regulation prevents individuals from determining its precise scope.

## Question 2

34 In view of the answer to Question 1, it is not necessary to answer Question 2.

## Costs

35 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tariefcommissie, Amsterdam, by decision of 1 February 1993, hereby rules:

**Since Commission Regulation (EEC) No 482/74 of 27 February 1974 on the classification of goods within subheading 23.04 B of the Common Customs Tariff was not amended by the Commission in accordance with the second subparagraph of Article 15(1) of Council Regulation No 2658/87 of 23 July 1987, it cannot be applied to declarations concerning importations after 1 January 1988 inasmuch as that failure to amend the former regulation prevents individuals from determining its precise scope.**

Rodríguez Iglesias Kakouris Hirsch

Mancini Schockweiler

Moitinho de Almeida Kapteyn Murray

Jann Ragnemalm Sevón

Delivered in open court in Luxembourg on 13 February 1996.

R. Grass G. C. Rodríguez Iglesias

Registrar President