JUDGMENT OF THE COURT (Sixth Chamber)

13 September 2007 *

In Case C-400/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 22 September 2006, received at the Court on the same date, in the proceedings

Codirex Expeditie BV

v

Staatssecretaris van Financiën,

THE COURT (Sixth Chamber),

composed of P. Kūris, President of the Chamber, J.-C. Bonichot and C. Toader (Rapporteur), Judges,

Advocate General: M. Poiares Maduro,
Registrar: R. Grass,

* Language of the case: Dutch.

after considering the observations submitted on behalf of:

— the Netherlands Government, by H.G. Sevenster and P. van Ginneken, acting as Agents,

— the Greek Government, by V. Kontolaimos and E. Svolopoulou, acting as Agents,

— the Commission of the European Communities, by J. Hottiaux, acting as Agent,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of subheading 0202 30 50 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 2204/1999 of 12 October 1999 (OJ 1999 L 278, p. 1) ('the CN').

2 The reference was made in the course of proceedings between Codirex Expeditie BV ('Codirex') and the Staatssecretaris van Financiën concerning the tariff classification of pieces of frozen boned meat from the forequarter of bovine animals.

Legal context

3 The CN is based on the worldwide Harmonised Commodity Description and Coding System ('the HS') drawn up by the Customs Cooperation Council (now the World Customs Organisation), and established by the International Convention concluded at Brussels on 14 June 1983, which was approved on behalf of the Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1). The CN takes six-digit headings and subheadings from the HS, with only the seventh and eighth digits forming subdivisions specific to the CN.

4 The version of the CN applicable at the material time is that in Annex I to Regulation No 2204/1999.

5 The general rules for the interpretation of the CN, which are in Part One, Section I, A, of that annex, state in particular:

'Classification of goods in the [CN] shall be governed by the following principles:

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

...

3. When ... goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description ...

...

(c) when goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

...

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and mutatis mutandis to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule the relative section and chapter notes also apply, unless the context otherwise requires.'

6 The CN codes likely to be applied in the present case, which are in Part Two, Section 1, Chapter 2 of the CN, are the following:

CN Code	Description
1	2
0202	Meat of bovine animals, frozen:
...	...
0202 30	— Boneless:
...	...
0202 30 50	— — Crop, chuck and blade and brisket cuts
0202 30 90	— — Other

7 The Additional Notes concerning subheading 0202 30 50 provide that '"crop" and "chuck and blade" cuts' are 'the dorsal part of the forequarter, including the upper part of the shoulder obtained from a forequarter with a minimum of four ribs and a maximum of 10 ribs by a cut along a straight line through the point where the first rib joins the first sternal segment to the point of reflection of the diaphragm on the tenth rib' (Additional Note 1.A(h)(11) to Chapter 2 of the CN). Further, 'the lower part of the forequarter comprising the brisket navel end and the brisket point end is "brisket cut"' (Additional Note 1.A(h)(22) to Chapter 2 of the CN).

The main proceedings and the reference for a preliminary ruling

8 On 18 April 2000 Codirex referred, in its customs declaration, to a consignment of frozen boned beef imported from Zimbabwe, packed in 535 cardboard cartons, under subheading 0202 30 50 of the CN.

9 As part of the Netherlands Customs Authorities' verification of the customs declaration, two boxes were removed as samples. After analysis of their content, the laboratory considered that the samples did not consist of 'whole "chucks and blades" but of pieces thereof'. After a second analysis, requested by Codirex, the laboratory confirmed the result.

10 The customs inspector therefore reclassified the consignment under CN subheading 0202 30 90 and Codirex was requested to pay NLG 111 352.80 in customs duties over and above the amount previously charged.

11 Codirex brought an administrative objection against the demand for payment. By decision of 10 January 2001 the customs inspector rejected the objection. Codirex then contested that decision before the Tariefcommissie te Amsterdam (Amsterdam Customs and Excise Tribunal). The Gerechtshof te Amsterdam (Court of Appeal, Amsterdam), which replaced the Tariefcommissie with effect from 1 January 1992, dismissed the application.

12 In its appeal to the referring court, Codirex contested the Gerichthof's interpretation of the concept of 'crop [and] chuck and blade ... cuts'. It asserted that the use of the word 'cuts' in the plural ('gedeelten' in Dutch) in Additional Note 1.A(h)(11) to Chapter 2 of the CN and of the English words 'chucks and blades' in the Dutch version of subheading 0202 30 50, and 'découpes de quartiers avant dites "australiennes"' in the French version, suggests that this subheading describes loose pieces. Coderix claimed, moreover, that the forequarter cuts cannot consist of a single piece because they are not linked together by bones and can therefore only consist of anatomically distinct pieces.

13 Likewise, according to the reference for a preliminary ruling, the Advocaat Generaal considered that it follows from the different language versions of Additional Note 1. A(h)(11) to Chapter 2 of the CN and from 'the reasons for the introduction of the subheadings of heading 0202 30' that the terms '"crop" and "chuck and blade" cuts'

refer to the forms in which loosely assorted and separately packed-together beef cuts obtained from the part of the animal described in that note are commonly presented in trade. Further, according to the Advocaat Generaal, it is clear from the Dutch and English versions of subheading 0202 30 50, referring to 'crop, chuck and blade and brisket cuts', that, for cuts of meat to be classified under this subheading, it is sufficient that they all come from the forequarter of the bovine animal as described in that Additional Note.

14 It was in those circumstances that the Hoge Raad der Nederlanden (Supreme Court, Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must subheading 0202 30 50 of the CN be interpreted as meaning that frozen (boned) meat derived from the part of the forequarter of the bovine animal referred to in Additional Note 1.A.(h)(11) to Chapter 2 of the CN may qualify for classification under that subheading only if the meat in question is one connected piece?

(2) If the answer to Question 1 means that meat in loose pieces may also qualify for classification under subheading 0202 30 50, is it sufficient for classification under that subheading that it has been established that the imported consignment of meat consists of cuts of frozen meat all of which are derived from the part of the forequarter described in Additional Note 1.A.(h)(11) to Chapter 2 of the CN, or must that consignment of meat as a whole or the parts of the consignment individually (the cartons) additionally satisfy other criteria or have other characteristics?'

The questions referred for a preliminary ruling

The first question

15 By its first question the referring court essentially asks if a consignment of frozen boned meat from the forequarter of the bovine animal, consisting of several pieces, can be classified under subheading 0202 30 50.

16 To reply to that question it should be recalled, at the outset, that the decisive criterion for the classification of goods for customs purposes is, in general, to be found in their objective characteristics and properties as defined in the wording of the relevant tariff heading and in the notes to the sections or chapters (see to that effect, inter alia, Case C-175/82 *Dinter* [1983] ECR 969, paragraph 10, Case C-233/88 *Van de Kolk* [1990] ECR I-265, paragraph 12, and Case C-400/05 *B.A.S. Trucks* [2007] ECR I-311, paragraph 27).

17 According to the version of the CN applicable at the material time, which is set out in Annex I to Regulation No 2204/1999, 'crop, chuck and blade and brisket cuts' are classified under subheading 0202 30 50, relating to frozen boned meat.

18 In the wording of Additional Note 1.A(h)(11) to Chapter 2 of the CN, regarding that subheading, '"crop" and "chuck and blade" cuts' are 'the dorsal part of the forequarter, including the upper part of the shoulder, obtained from a forequarter with a minimum of four ribs and a maximum of 10 ribs by a cut along a straight line through the point where the first rib joins the first sternal segment to the point of reflection of the diaphragm on the tenth rib'.

19 Notwithstanding the absence, in the wording of subheading 0202 30 50 and in the Additional Note in question, of an express reference to pieces of meat from the forequarter of the bovine animal, the Greek Government and the Commission of the European Communities submit that that wording cannot be interpreted as excluding those pieces of meat from classification under that subheading. On the one hand, some language versions of the wording of subheading 0202 30 50 make no reference to the 'forequarter', as a whole, but to parts of it indicated, according to the English terminology, by the words 'crop[s]' and 'chuck[s] and blade[s]', appearing, inter alia, in the English and Dutch versions of the CN. On the other hand, the pieces of meat produced by cutting and boning are naturally detached, as they are no longer connected by bones, and therefore no longer have the essential characteristics and qualities of that part of the meat of the forequarter.

20 Such an interpretation must be upheld. It must be pointed out that, as the Commission emphasises, the different language versions of the wording of subheading 0202 30 50 are not altogether coterminous, in so far as some of them refer expressly to the forequarter of the bovine animal (such as the French and Spanish versions of the CN) while others refer expressly to different parts of the forequarter such as 'crops' and 'chucks and blades' (such as the Dutch, English and German versions of the CN).

21 A uniform interpretation of the various language versions as required by the case-law in the absence of coterminous texts (see, to that effect, inter alia, Case C-48/98 *Söhl & Söhlke* [1999] ECR I-7877, paragraph 46) must mean that the CN does not expressly require the frozen boned forequarter of the bovine animal to be presented

at customs in a single piece, since some language versions of subheading 0202 30 50 do not even refer to the whole of the forequarter of the bovine animal.

22 Furthermore, the fact that the meat from the forequarter of the bovine animal is produced at customs in pieces does not affect its essential characteristics as indicated in subheading 0202 30 50, since the product content is the same as that described in the Additional Note relating to that subheading, even if it is produced in pieces. A variation in the presentation of a product, from the presentation mentioned in the CN which does not change the nature of the content of the product described does not result in its exclusion from the subheading concerned (see, to that effect, Case C-290/97 *Bruner* [1998] ECR I-8333, paragraphs 25 to 27).

23 In those circumstances, the reply to the first question must be that Annex I to Regulation No 2658/87, as amended by Regulation No 2204/1999, must be interpreted as meaning that pieces of frozen boned meat from the forequarter of the bovine animal come under subheading 0202 30 50 of the CN.

The second question

24 By its second question the referring court asks if pieces of frozen boned meat from the forequarter of the bovine animal must satisfy other conditions to be classified under subheading 0202 30 50. It is clear from the observations raised in the course of the main proceedings, as indicated in the judgment making the reference, that the referring court is asking, in essence, if the pieces must come from the forequarter of the same animal.

25 In that regard, it should be noted that for the tariff heading 'meat of bovine animals, frozen' and 'boneless' the CN sets out three subheadings, the first of which is numbered 0202 30 10 and concerns 'forequarters, whole or cut into a *maximum* of five pieces, each quarter being in a single block; "compensated" quarters in two blocks, one of which contains the forequarter, whole or cut into a *maximum* of five pieces, and the other, the hindquarter, excluding the tenderloin, in one piece.' The second is subheading 0202 30 50, at issue in the main proceedings, and the third, numbered 0202 30 90, the residual, generic category, entitled 'other'.

26 It is clear that, while subheading 0202 30 10 refers to the whole forequarter and allows it to be presented to customs in a maximum of five pieces only if it is presented in a single block, there is — as is pointed out above — no such indication in the subheading for which the referring court requires an interpretation.

27 On the contrary, that subheading expressly involves 'cuts' ('découpes') in the French version and 'delen' in the Dutch version of the CN and refers inter alia in the French version to cuts of forequarters, according to the relevant Additional Note.

28 To interpret that subheading as covering only consignments of meat which contain all the pieces of the forequarter of the bovine animal, and thus contain only pieces from the forequarter of a single animal, would have the effect of preventing a distinction between the subheadings of 0202 30 of the CN relating to frozen and boned meat of bovine animals.

29 Subheading 0202 30 10 already refers to the whole forequarter, which may be presented to customs in a number of pieces, according to the interpretation given in the answer to the first question. Subheading 0202 30 50, on the other hand, refers to those parts of the forequarter specifically mentioned in the English and Dutch versions. Those parts are therefore presented as different products from the whole forequarter. As their essential characteristic is that they come from the cutting mentioned in the relevant Additional Note, they can be classified in that subheading without having to satisfy special conditions such as coming from the same animal.

30 On the basis of those considerations, the answer to the second question must be that Annex I to Regulation No 2658/87, as amended by Regulation No 2204/1999, must be interpreted as meaning that pieces of frozen boned meat from the forequarter of the bovine animal do not have to satisfy any other conditions, and in particular, do not have to come from the same animal, in order to be classified under subheading 0202 30 50.

Costs

31 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2204/1999 of 12 October 1999, must be interpreted as meaning that pieces of frozen boned meat from the forequarter part of the bovine animal come under subheading 0202 30 50 of the Combined Nomenclature.**

2. **Annex I to Regulation No 2658/87, as amended by Regulation No 2204/1999, must be interpreted as meaning that pieces of frozen boned meat from the forequarter of the bovine animal do not have to satisfy any other conditions, and in particular, do not have to come from the same animal, in order to be classified under subheading 0202 30 50.**

[Signatures]