JUDGMENT OF THE COURT (Sixth Chamber)

7 October 2004 *

In Case C-379/02,

REFERENCE for a preliminary ruling under Article 234 EC, from the Østre Landsret (Denmark), made by order of 15 October 2002, received at the Court on 21 October 2002, in the proceedings

Skatteministeriet

v

Imexpo Trading A/S,

THE COURT (Sixth Chamber),

composed of: A. Borg-Barthet, President of the Chamber, J.-P. Puissochet (Rapporteur) and S. von Bahr, Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

* Language of the case: Danish.

having regard to the written procedure and further to the hearing on 15 July 2004,

after considering the observations submitted on behalf of:

— Imexpo Trading A/S, by H.S. Hansen, T. Kristjánsson and P. Stanstrup, avokaterne,

— the Danish Government, by J. Molde, acting as Agent, and P. Biering, advokat,

— the Commission of the European Communities, by J. Schieferer and H. Støvlbæk, acting as Agents,

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

gives the following

Judgment

1 The reference for a preliminary ruling relates to the interpretation of the Combined Nomenclature set out 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 1734/96 of 9 September 1996 (OJ 1996 L 238, p. 1), Commission Regulation (EC) No 2086/97 of 4 November 1997 (OJ 1997 L 312, p. 1), Commission Regulation (EC) No 2261/98 of 26 October 1998 (OJ 1998 L 292, p. 1) and Commission Regulation (EC) No 2204/99 of 12 October 1999 (OJ 1999 L 278, p. 1) ('the Combined Nomenclature').

2 That question was raised in proceedings between Imexpo Trading A/S ('Imexpo') and Skatteministeriet (Ministry of Fiscal Affairs) concerning the tariff classification of chairmats.

Legal background

3 The purpose of the Combined Nomenclature is to enable the application of the Common Customs Tariff, and to facilitate the drawing up of external trade statistics of the Community and statistics relating to other Community policies concerning the importation or exportation of goods. It classifies goods imported to or exported from the Community and sets the customs tariffs applicable to imported goods.

4 The Combined Nomenclature is based on the Harmonised Commodity Description and Coding System ('the Harmonised System'), and uses the same headings and six-digit subheadings, only the seventh and eighth digits forming subdivisions specific to the Combined Nomenclature. The Harmonised System was established under the international convention signed in Brussels on 14 June 1983, which was approved, together with a protocol of amendment of 24 June 1986, on behalf of the Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

That convention was drawn up under the auspices of the Council for Customs Cooperation, since 1994 more commonly referred to as the 'World Customs Organisation', which was established by the international convention on a nomenclature for the classification of goods in customs tariffs, signed in Brussels on 15 December 1950.

5 In order to provide further explanations as to the application of the Harmonised System, the World Customs Organisation regularly publishes Harmonised System Explanatory Notes. Likewise, pursuant to the second indent of Article 9(1)(a) of Regulation No 2658/87, in order to ensure application of the Combined Nomenclature the Commission draws up Explanatory Notes. Those notes, which are published regularly in the *Official Journal of the European Union*, do not replace the Harmonised System Explanatory Notes, but should be viewed as complementary to those notes and consulted together with them.

6 Part I of the Combined Nomenclature contains general rules for its interpretation.

7 General rule 1 provides:

'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.'

8 General rule 3 states:

'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 [rule] 3 (a) ..., they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.'

9 Finally, general rule 6 provides:

'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.'

The dispute in the main proceedings and the question referred

10 Imexpo imports into the Community sheets of plastic of various shapes, specially designed to be placed on the floor beneath office chairs on wheels to facilitate their movement while also protecting the floor covering ('chairmats').

11 The Danish customs authorities and Imexpo differ as to the correct classification of those chairmats in the Combined Nomenclature. The customs authorities consider that they should be classified in Chapter 39, entitled 'plastics and articles thereof', under subheading 3918 10 90, which covers 'floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles' (heading 3918), of polymers of vinyl chloride (3918 10) except for those consisting of a support impregnated, coated or covered with polyvinyl chloride (subheading 3918 10 90). Imexpo considers that the chairmats it imports should be classified in Chapter 94, which concerns furniture, under subheading 9403 70 90, which covers furniture, except for seats, medical, surgical, dental or veterinary furniture, barbers' chairs and similar chairs (heading 9403), made of plastics (subheading 9403 70), except for furniture for use in civil aircraft (subheading 9403 70 90).

12 In 1997, 1998, 1999 and 2000, goods classified under subheading 3918 10 90 were subject to customs duty of, respectively, 10.7%, 10.1%, 9.5% and 8.9%, whereas goods classified under subheading 9403 70 90 where subject to customs duty of, respectively, 2.2 %, 1.1%, and 0%.

13 The Østre Landsret, called upon to rule on a dispute concerning the duties to be remitted by Imexpo in respect of those years, considered it necessary to refer the following question to the Court of Justice for a preliminary ruling:

'Must Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature, as amended by Commission Regulation (EC) No 1734/96 of 9 September 1996, Commission Regulation (EC) No 2086/97 of 4 November 1997, Commission Regulation (EC) No 2261/98 of 26 October 1998 and Commission Regulation (EC) No 2204/99 of 12 October 1999, be construed as meaning that chairmats consisting of loose sheets of clear plastic

— with straight, round or bevelled sides, which may be machined or moulded,

— with grippers on the under side for carpeted floors and without grippers for wooden and other hard-surface floors,

— with or without anti-slip film,

— with or without a punched handle,

— which are used as mats for chairs in order to protect the existing floor covering or for reasons of ergonomics,

— and which are further described in the attached brochure (Annex 1),

were to be classified, over the period from 15 July 1997 to 20 March 2000, as floor coverings of plastics under tariff subheading 3918 10 90 in Chapter 39 or as furniture of plastics under tariff subheading 9403 70 90 in Chapter 94?'

The application of Article 104(3) of the Rules of Procedure

14 Taking the view that the answer to the question referred by the Østre Landsret admitted of no reasonable doubt, the Court, in accordance with Article 104(3) of its Rules of Procedure, informed the national court concerned that it intended to give its decision by reasoned order and called upon the persons referred to in Article 23 of the Statute of the Court of Justice to submit any observations they might have on the matter.

15 Neither the Danish Government nor the Commission objected to that procedure. However, by letter of 16 April 2004, Imexpo put forward certain arguments which led the Court to abandon the simplified procedure.

The question referred by the national court

16 The decisive criterion for the classification of goods in the Combined Nomenclature must be sought generally in their objective characteristics and qualities, as defined in

the wording of the headings and in the notes to the sections or chapters, and in accordance with the general rules on interpretation of the Combined Nomenclature in so far as they are not inconsistent with the headings and notes. In addition, the Harmonised System Explanatory Notes are, as such, useful aids to the interpretation of the Combined Nomenclature (see, inter alia, Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945, paragraphs 11 and 12).

17 In the present case, plastic chairmats such as those at issue in the main proceedings can be regarded as floor coverings. They are, in fact, carpets of various shapes, one purpose of which is to protect floor coverings. First, the customary meaning of the word 'covering' is something that covers something else to protect or strengthen it and, second, a covering which covers a floor covering must itself be regarded as a floor covering. The wording of Chapter 57 of the Combined Nomenclature, entitled 'carpets and other textile floor coverings', as well as the analogous wording of several headings in that chapter confirms that a carpet must, in principle, be regarded as a floor covering.

18 To be classified under heading 3918, a plastic floor covering must also come in rolls or in the form of tiles. That is clear from the very wording of the first part of the heading, 'floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles ...', and is confirmed by the first part of the Harmonised System Explanatory Note relating to that heading, which states: 'the first part of the heading covers plastics of the types normally used as floor coverings, in rolls or in the form of tiles. It should be noted that self-adhesive floor coverings are classified in this heading'.

19 The parties agree that mats such as those at issue in the main proceedings do not come in rolls. However, in their observations submitted to the Court, the parties to the main proceedings and the Commission do not agree as to whether the chairmats take the form of tiles. The Commission takes the view that they are, in fact, plastic sheets. However, tiles, according to the customary meaning of the word, are a specific type of sheet, designed to cover a surface. Imexpo submits that tiles are generally designed to cover a surface, together with other such units, and that once put in place the resulting covering cannot, in principle, be dislodged, which does not hold true for chairmats. Nevertheless, while that use is doubtless one of the most common for that type of product, a tile does not lose its essential quality if it is placed, alone, on the surface which it is to protect or decorate and if it is not affixed to that surface in a lasting way. Given its dimensions, a chairmat is thus comparable to a tile, that is to say, it is a sheet intended for placement on a surface, in this case the area covered by the normal movement of the office chair on wheels with which it is used.

20 The products at issue are therefore covered by the wording 'floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles ...' used in heading 3918 of the Combined Nomenclature.

21 When classifying a product according to the Combined Nomenclature, where a product meets the definition given in a heading the question may nevertheless arise whether it also meets the definition in another heading which more specifically applies to it or which, at the very least, describes it just as well. In particular, if that is so, the national court, in a case such as the one in the main proceedings, must decide whether it would be more appropriate to classify the product under a heading other than heading No 3918, either in the light of the notes to Chapter 39, or in the light of general rule 3, cited in paragraph 8 of this judgment.

22 In the present case, Imexpo submits that the chairmats it imports come under subheading 9403 70 90 which covers certain furniture made of plastics. If that is the

case, subheading 9403 should be preferred over subheading 3918 because note 2(u) to Chapter 39 states: 'This chapter does not cover ... articles of Chapter 94 (for example, furniture ...)'. Pursuant to general rule 1 on the interpretation of the Combined Nomenclature, that note prevails over general rule 3(a), which provides that the most specific heading must be preferred to headings providing a more general description.

23 The question is thus whether plastic chairmats can in fact be regarded as furniture within the meaning of Chapter 94. Therefore, as there are no express terms in the headings and subheadings of and notes to Chapter 94 classifying those products as furniture, or, conversely, excluding them from Chapter 94, account must be taken of the Harmonised System Explanatory Notes, and, where relevant, the Combined Nomenclature Explanatory Notes (see, to that effect, Joined Cases 69/76 and 70/76 *Dittmeyer* [1977] ECR 231, paragraph 4, and Case C-270/96 *Laboratoires Sarget* [1998] ECR I-1121, paragraph 16).

24 The general notes of the Harmonised System Explanatory Notes to Chapter 94 state:

'For the purposes of this chapter, the term "furniture" means

(A) Any "movable" articles (**not included** under other more specific headings of the Nomenclature) which have the essential characteristic that they are constructed for placing on the floor ... and which are used, mainly with a utilitarian purpose, to equip private dwellings ... offices ...'

25 In the light of those instructions, although plastic chairmats such as those at issue in the main proceedings are indeed designed for placing on the floor and are used to equip various types of premises, it is clear that heading 3918, which covers 'floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles ...', more specifically describes the products in question than heading 9403, entitled 'other furniture and parts thereof', which covers a very wide variety of furniture. Therefore, those products cannot be classified as 'furniture of plastics' as referred to in subheading 9403 70 90.

26 The answer to the question referred must therefore be that the Combined Nomenclature set out in Annex I to Regulation No 2658/87 as amended by Regulations Nos 1734/96, 2086/97, 2261/98 and 2204/99 must be construed as meaning that in a dispute such as that in the main proceedings, in which the parties disagree as to whether plastic chairmats such as those at issue in the main proceedings come under subheading 3918 10 90 or subheading 9403 70 90 of the Combined Nomenclature, classification under the former subheading is to be preferred.

Costs

27 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) rules as follows:

The Combined Nomenclature set out 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, as amended by Commission Regulation (EC) No 1734/96 of 9 September 1996, Commission Regulation (EC) No 2086/97 of 4 November 1997, Commission Regulation (EC) No 2261/98 of 26 October 1998, and Commission Regulation (EC) No 2204/99 of 12 October 1999 must be construed as meaning that in a dispute such as that in the main proceedings, in which the parties disagree as to whether plastic chairmats such as those at issue in the main proceedings come under subheading 3918 10 90 or subheading 9403 70 90 of the Combined Nomenclature, classification under the former subheading is to be preferred.

Signatures.