JUDGMENT OF THE COURT (Seventh Chamber)

16 June 2011 *

In Case C-152/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Højesteret (Denmark), made by decision of 8 March 2010, received at the Court on 31 March 2010, in the proceedings

Unomedical A/S

v

Skatteministeriet,

THE COURT (Seventh Chamber),

composed of D. Šváby, President of the Chamber, G. Arestis (Rapporteur) and J. Malenovský, Judges,

* Language of the case: Danish.

Advocate General: P. Cruz Villalón,
Registrar: A. Calot Escobar,

having regard to the written procedure and further to the hearing on 3 March 2011,

after considering the observations submitted on behalf of:

— Unomedical A/S, by A. Hedetoft and M. Andersen, advokater,

— the Danish Government, by B. Weis Fogh, acting as Agent, and by K. Lundgaard Hansen, advokat,

— the European Commission, by L. Bouyon, acting as Agent, and N. Fenger, Professor,

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 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), in the versions applicable to the dispute in the main proceedings,

('the CN') and, in particular, the meaning to be given to the notions of 'parts' and 'accessories' in Chapter 90 of the CN.

2 The reference has been made in the context of proceedings between Unomedical A/S ('Unomedical') and Skatteministeriet (the Danish Ministry of Taxation) concerning the tariff classification of urine drainage bags for catheters and drainage bags intended for dialysers.

Legal context

The CN

3 The CN is based on the 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 on the Harmonised Commodity Description and Coding System concluded at Brussels on 14 June 1983 ('the HS Convention') and the Protocol of Amendment thereto of 24 June 1986, which were approved on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

4 The general rules for the interpretation of the CN are set out in Part One, Section I A, thereof. Those rules are identical in all of the CN versions which apply to the main proceedings and provide, inter alia:

'Classification of goods in the Combined Nomenclature 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.

…

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 requires otherwise.'

5 Part Two, Section VII, Chapter 39, of the CN concerns the classification of 'plastics and articles thereof'.

6 At the time of the facts in the main proceedings, that is to say, between May 2001 and December 2003, Chapter 39 included, inter alia, the following headings and subheadings:

'3926 Other articles of plastics …

3926 90 – Other: …

3926 90 99 – – – – Other.'

7 It follows from, inter alia, note 2(r) to Chapter 39 of the CN that '[t]his chapter does not cover: … articles of Chapter 90 (for example, optical elements, spectacle frames, drawing instruments)'.

8 Part Two, Section XVIII, Chapter 90, of the CN deals with, inter alia, the classification of 'medical or surgical instruments and apparatus; parts and accessories thereof'.

9 With regard, in particular, to heading 9018, the CN provided, at the material time, as follows:

'9018 Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments:

…

9018 20 00 – …

Syringes, needles, catheters, cannulae and the like:

…

9018 39 00 – – Other

…

9018 90 – Other instruments and appliances:

…

9018 90 30 – – … artificial kidneys ….'

10 The notes in Chapter 90 of the CN contain, inter alia, the following further details concerning the parts and accessories for the articles covered by that chapter:

'2. Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this chapter or of Chapter[s] 84, 85 or 91 (other than heading[s] 8485, 8548 or 9033) are in all cases to be classified in their respective headings.

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine,

instrument or apparatus of heading[s] 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind.

(c) All other parts and accessories are to be classified in heading 9033.'

The HS explanatory note concerning heading 8473

11 Under Article 6(1) of the HS Convention, a committee entitled 'the Harmonised System Committee', composed of representatives of each Contracting Party, was set up within the Customs Cooperation Council. One of the tasks of the Committee is to propose amendments to that convention and to prepare explanatory notes, classification opinions and other advice on the interpretation of the HS.

12 Under Article 3(1) of the HS Convention, each Contracting Party undertakes to ensure that its customs tariff and statistical nomenclatures will be in conformity with the HS, to use all of the headings and subheadings of the HS without addition or modification, together with their related numerical codes, and to follow the numerical sequence of that system. Each Contracting Party also undertakes to apply the General Rules for the interpretation of the HS and all the section, chapter and subheading notes of the HS, and not to modify their scope.

13 The HS explanatory note concerning heading 8473 of the HS states:

'The accessories covered by this heading are interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations.'

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

14 Between May 2001 and December 2003, Unomedical imported urine drainage bags for catheters and drainage bags for dialysers into Denmark.

15 According to the national court, the urine drainage bags for catheters are bags with a capacity of two litres intended for bed-ridden patients. The bags are manufactured from PVC foil and injection-moulded plastic components. The bags are designed to function together with a standard balloon catheter, but are imported and sold without the catheter. The function of the bags is to collect urine, at the same time ensuring a sterile environment around the catheter and facilitating observation, measurement and sampling of the drained urine.

16 The upper part of those bags is fitted with a small piece of connective tubing to which is glued a cannula designed to correspond to the urine flow-rate. One end of the cannula is fitted with a connector which is designed to be attached to a standard balloon catheter and also enables urine specimens to be taken. In addition, an anti-reflux valve, intended to prevent urine flowback from the bag into the patient's bladder, is fitted to the bags. The bags are also equipped, at the bottom, with a connective tube to which a discharge valve is fused to enable the bag contents to be emptied. The bags are emptied regularly and, in principle, are changed at least once a week.

17 The national court states that the drainage bags for dialysers are haemodialysis bags specially designed to fit a dialyser, the purpose of which is to cleanse the patient's blood and to remove excess fluid from the body when the patient's own kidneys are no longer able to do so. These plastic bags, which have a capacity of two litres, serve to collect the excess liquid filtered by the dialyser. When in use, dialysis bags hang on

a hook at the bottom of the dialyser and are fitted with a piece of tubing which ends in a connector used to connect them to the dialyser.

18 Dialysers are, as a general rule, equipped with a mechanism which electronically prevents dialysis from starting up or proceeding if there is a break in the closed system in the form of leaking joints or air in cannulae. In the same way, dialysers are designed to stop and sound an alarm if dialysis bags are full or are not correctly attached.

19 For the importation of those goods, between 1 May 2001 and 31 December 2003, ToldSkat Nordsjælland, Region Helsingør (the Regional Tax and Customs Office of Nordsjælland, Helsingør Region), taking the view that the bags had to be classified under tariff subheading 3926 90 99 of the CN as being 'plastics and articles thereof', sought customs duties of 6.5 % under Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1, and corrigendum at OJ 1997 L 179, p. 11) ('the Customs Code').

20 As it was of the view that the imported bags ought to be classified under tariff subheading 9018 39 00 of the CN, in the case of the urine drainage bags for catheters, and under tariff subheading 9018 90 30 of the CN, in the case of the drainage bags for dialysers, as 'parts' and/or 'accessories' for catheters or dialysers as referred to in Chapter 90 of the CN, and that they were therefore exempt from customs duties, Unomedical challenged that decision before the Landsskatteret (National Tax Court). By order of 15 November 2005, that court confirmed the decision of the ToldSkat Nordsjælland.

21 Unomedical thereupon appealed to the Østre Landsret (Eastern Regional Court), which, by a judgment of 19 December 2007, dismissed the appeal. In its ruling, that court referred in particular to the judgment of the Court of Justice in Case C-276/00 *Turbon International* [2002] ECR I-1389, in which the Court defined the notions of 'parts' and 'accessories' in respect of heading 8473 of the CN and held that there was not sufficient reason to apply the definitions of those concepts to other tariff headings.

22 The Østre Landsret did, however, take the view that the function of a catheter does not depend on the installation of a urine drainage bag such as that at issue in the main proceedings and concluded that that type of bag cannot be regarded as an 'accessory' for a catheter. The Østre Landsret found that the bags for dialysers did not contribute to the actual dialysis process and could not, as a result, constitute a 'part' of that apparatus. Accordingly, in the view of the Østre Landsret, both types of bags were to be classified in Chapter 39 of the CN as 'plastics and articles thereof'. Unomedical thereupon appealed to the Højesteret (Danish Supreme Court).

23 Taking the view that the classification of the bags at issue in the main proceedings depends on the interpretation of the notions of 'parts' and 'accessories' in Chapter 90 of the CN, the Højesteret decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is a dialysis bag, manufactured from plastic, which is specially designed for, and can only be used with, a dialyser to be classified under:

— Chapter 90 [of the CN], subheading [9018 90 30], as a "part" and/or "accessory" for a dialyser (see chapter note 2(b) to Chapter 90 of the Common Customs Tariff);

or

— Chapter 39 [of the CN], subheading 3926 90 99, as plastics or articles thereof?

2. Is a urine drainage bag, manufactured from plastic, which is specially designed for, and therefore can only be, and in fact is, used exclusively in connection with, a catheter, to be classified under:

— Chapter 90 [of the CN], subheading [9018 39 00], as a "part" and/or "accessory" for a catheter (see chapter note 2(b) to Chapter 90 of the Common Customs Tariff);

or

— Chapter 39 [of the CN], subheading 3926 90 99, as plastics or articles thereof?'

Consideration of the questions referred

24 By its two questions, which it is appropriate to consider together, the national court asks the Court, in essence, whether, for the period from 1 May 2001 to 31 December 2003, plastic drainage bags were to be regarded as 'parts' and/or 'accessories' for a catheter or a dialyser and, therefore, classified under heading 9018 of the CN, or whether they were to be classified under heading 3926 of the CN as 'articles of plastics'.

25 At the outset, it should be borne in mind that, according to the Court's settled case-law, in the interests of legal certainty and for ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and the notes to the sections or chapters (see, inter alia, Case C-142/06 *Olicom* [2007] ECR I-6675, paragraph 16; Case C-376/07 *Kamino International Logistics* [2009] ECR I-1167, paragraph 31; and Joined Cases C-288/09 and C-289/09 *British Sky Broadcasting Group and Pace* [2011] ECR I-2851, paragraph 60).

26 In the present case, having regard to their physical characteristics, there are grounds, in principle, to classify the plastic drainage bags in Chapter 39 of the CN. However, it must be noted that, in accordance with note 2(r) to Chapter 39 of the CN, that chapter does not cover the articles in Chapter 90 of the CN. Consequently, it is necessary to ascertain whether the goods at issue in the main proceedings can be classified in Chapter 90, in particular under heading 9018 of the CN.

27 As the parties to the main proceedings have pointed out, catheters and dialysers are classified under heading 9018 of the CN as '[i]nstruments and appliances used in medical … [science]'. Classification under heading 9018 of the CN of the urine drainage bags for catheters and drainage bags for dialysers is therefore possible only on condition that those bags can be regarded as 'parts' or 'accessories' for catheters and dialysers respectively.

28 To that end, note 2(b) to Chapter 90 of the CN states that '[o]ther parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading … are to be classified with the machines, instruments or apparatus of that kind'.

29 In that regard, it must be noted, as did the national court, that Regulation No 2658/87, in the versions applicable to the main proceedings, does not define the notions of 'parts' and 'accessories' within the meaning of Chapter 90 of the CN. However, the Court, ruling on the scope of those concepts in connection with heading 8473 of the CN for the purpose of classifying ink cartridges for printers, stated that the notion of 'parts' implies a whole for the operation of which the part is essential and that the notion of 'accessories' implies an interchangeable part designed to adapt a machine for a particular operation, or to increase its range of operations, or to perform a particular service relative to the main function of the machine (see *Turbon International*, paragraphs 30 and 32).

30 In the present case, there is nothing which permits the conclusion that those notions cannot be defined identically in respect of headings 8473 and 9018 of the CN. Furthermore, application of the same definitions for those two headings will ensure a coherent and uniform application of the Common Customs Tariff.

31 In this respect, with regard to the notion of 'parts', it must be noted that, in Case C-183/06 *RUMA* [2007] ECR I-1559, at paragraph 31, the Court has already had the opportunity to apply that notion as defined in the judgment in *Turbon International*, in respect of heading 8473 of the CN, in the context of a question concerning the classification of a product under one of a number of different subheadings in Chapter 85 of the CN.

32 As regards the notion of 'accessories', the Court refers, in its judgment in *Turbon International*, to the terms of the HS explanatory note to heading 8473 of the CN in order to establish the definition of that notion.

33 In that regard, it is settled case-law that both the notes which head the chapters of the Common Customs Tariff and the HS Explanatory Notes are important means for ensuring the uniform application of the Tariff and, as such, may be regarded as useful aids to its interpretation (see, inter alia, Case C-338/95 *Wiener SI* [1997] ECR I-6495, paragraph 11, and *Turbon International*, paragraph 22). Consequently, in the absence of any element to the contrary, the definition of the notion of 'accessory' given in the judgment in *Turbon International* must be applied, on the basis of the HS explanatory note to heading 8473, to heading 9018 of the CN.

34 In addition, it must be pointed out that note 2(a) to Chapter 90 of the CN refers to the notions of 'parts' and 'accessories' by making reference to Chapters 84, 85, 90 and 91 of the CN, thereby allowing the inference to be drawn that those notions have the same meaning in those chapters.

35 With regard to the types of goods at issue in the main proceedings, it must be held that neither of them can be classified either as a 'part' or as an 'accessory' in respect of catheters (subheading 9018 39 00) or in respect of dialysers (artificial kidneys) (subheading 9018 90 30).

36 Neither the urine drainage bag for catheters nor the drainage bag for dialysers is indispensable for the functioning of those instruments or apparatus. It is apparent that catheters do not depend on the presence of a urine drainage bag in order to function and, similarly, that dialysers do not depend on the presence of a drainage bag in order to carry out dialysis, since the process of cleansing blood is complete at the time when the bag is used, that bag serving only to collect the liquid drained (see, by analogy, Case C-339/98 *Peacock* [2000] ECR I-8947, paragraph 21, and *Turbon International*, paragraph 30).

37 The latter finding cannot be called into question by the fact that dialysers work only when a bag is attached. In that regard, suffice it to state, as the European Commission points out, that, were it not for the security mechanism with which that apparatus is fitted, the dialysis process could be carried out without a bag, that security mechanism being the sole link between the apparatus and the bag (see, by analogy, Case C-250/05 *Turbon International* [2006] ECR I-10531, paragraph 23).

38 Likewise, those bags do not enable the instruments and apparatus to be adapted for a particular operation, nor do they increase their range of operations, or enable them to perform a particular service connected with their main function. A drainage bag attached to a catheter has the sole purpose of collecting liquid drained after the catheter itself has fulfilled its own function, which is to drain the urine present in the bladder. For its part, a drainage bag for a dialyser does not enable that apparatus to perform operations other than that for which it is designed, namely that of cleansing blood.

39 In the light of the foregoing, goods such as those at issue in the main proceedings cannot be classified in Chapter 90 of the CN. They must therefore be classified under heading 3926 of the CN as 'articles of plastics' and, more precisely, under subheading 3926 90 99 of the CN.

40 Moreover, such classification is corroborated by classification opinions of the Customs Code Committee and the HS Committee classifying the type of bags such as that at issue in the main proceedings under heading 3926 of the CN.

41 In that regard, it is settled case-law, as far as the opinions of those Committees are concerned, that, although they do not have legally binding force, they nonetheless constitute an important means of ensuring the uniform application of the Customs Code by the customs authorities of the Member States and, as such, may be regarded as being a valid aid to the interpretation of the Code (see, to that effect, Case

C-486/06 *Van Landeghem* [2007] ECR I-10661, paragraph 25, and Case C-165/07 *Ecco Sko* [2008] ECR I-4037, paragraph 47, respectively).

42 Furthermore, it must be stated that, contrary to the argument advanced by Unomedical, those interpretative opinions, which have not led to the adoption of a regulation, can validly be used in legal relationships which arose and were established before those opinions were adopted.

43 Consequently, the answer to the questions referred is that the CN must be interpreted as meaning that a dialysis drainage bag, manufactured from plastic, which is specially designed for, and can be used only with, a dialyser (artificial kidney), had, between May 2001 and December 2003, to be classified under subheading 3926 90 99 of the CN as 'plastics and articles thereof' and that a urine drainage bag, manufactured from plastic, which is specially designed for, and therefore can be used only in connection with, a catheter had, during the same period, to be classified under subheading 3926 90 99 of the CN as 'plastics and articles thereof'.

Costs

44 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 (Seventh Chamber) hereby rules:

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, in the versions applicable to the dispute in the main proceedings, must be interpreted as meaning that a dialysis drainage bag, manufactured from plastic, which is specially designed for, and can be used only with, a dialyser (artificial kidney), had, between May 2001 and December 2003, to be classified under subheading 3926 90 99 of the Combined Nomenclature as 'plastics and articles thereof' and that a urine drainage bag, manufactured from plastic, which is specially designed for, and therefore can be used only in connection with, a catheter had, during the same period, to be classified under subheading 3926 90 99 of the Combined Nomenclature as 'plastics and articles thereof'.

[Signatures]