Case 32/84

Van Gend & Loos NV

v

Inspecteur der Invoerrechten en Accijnzen, Enschede

(reference for a preliminary ruling
from the Tariefcommissie, Amsterdam)

'Common Customs Tariff — Sails for sailboards'

Summary

Common Customs Tariff — Tariff headings — 'Sails' within the meaning of heading 62.04 — Sails for sailboards imported separately from the boards — Included

The words 'sails' in tariff heading 62.04 of the Common Customs Tariff must be interpreted as including sails made of synthetic textile fibres and specifically intended for sailboards when they are imported separately from their supporting structure.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 31 January 1985 *

Mr President,
Members of the Court,

1. When a quantity of sails for sailboards were imported from Hong Kong in April 1981, Van Gend & Loos contested the decision classifying them under heading 62.04 of the Common Customs Tariff taken by the competent customs authority. The Netherlands court before which proceedings

* Translated from the French.

were brought submitted the following question to the Court of Justice:

Must sails such as those at issue in this case — which are made of synthetic textile fibres and are specifically intended for sailboards — be regarded as sails within the meaning of heading 62.04 of the Common Customs Tariff?

2. The tariff problem which is thus raised derives from the recent appearance of a 'product' which could not have been envisaged at the time when the Common Customs Tariff entered into force. Thus, two tariff subheadings of the Common Customs Tariff are at issue:

Subheading 62.04 B I (a) which refers to 'sails' of 'synthetic textile fibres';

Subheading 97.06 C which refers to 'appliances, apparatus, accessories and requisites for gymnastics or athletics, or for sports and outdoor games', other than cricket and polo equipment or tennis rackets.

3. It can be seen from the order for reference that the plaintiff in the main proceedings seeks to have sails for sailboards classified under subheading 97.06 C. In its view, even if they are being imported separately, such sails, since they are component parts of sailboards, must be classified in that chapter. In fact, Note 4 to Chapter 97 of the Common Customs Tariff provides that 'subject to Note 1 above, parts and accessories which are suitable for use solely or principally with articles falling within any heading of this chapter are to be classified with those articles'. Moreover, the Commission, in Classification Slip No 6 of 11 September 1979, classified sailboards under heading 97.06.

On the other hand, the plaintiff in the main proceedings considers that sails for sail boards cannot be classified under subheading 62.04 B I (a) since the list of products referred to in that heading is, in its view, exhaustive. Furthermore, it draws attention to the characteristics peculiar to sails for sailboards as distinct from those intended for boats or sand yachts, which fall under that subheading by virtue of an explanatory note issued by the Customs Cooperation Council.

4. Contrary to the plaintiff's view, I think, as does the Commission and, it would seem, the court making the reference, that *separate* importation of sails specifically intended for sailboards falls under tariff subheading 62.04 B I (a).

However, the court making the reference expressed doubts as to whether it was possible to interpret the concept of 'sails' broadly because of the apparently restrictive nature of the concept of 'boat' contained in Chapter 89 of the Common Customs Tariff (ships, boats and floating structures). In that connection, it is sufficient to note that heading 62.04 refers not to the boats themselves but to the sails ('voiles d'embarcation'). The problem would only arise therefore in regard to the tariff classification of *complete* sailboards.

Even if it is true that, as component parts of a sailboard, the sails which are intended for use with them are of such a nature as to make it possible, in accordance with the aforementioned Note 4 to Chapter 97, to classify them with the boards themselves, it must be pointed out that that is 'subject' to Note 1 (f) which expressly excludes from the scope of Chapter 96 'sails for boats or landcraft, falling within Chapter 62'.

In short, it can be seen by simply reading Chapter 97 that only sails imported *with their board* can be classified under subheading 97.06 C. Where, on the other hand, sails are imported *separately*, the heading to be applied is 62.04, in respect of which an explanatory note published by the Customs Cooperation Council states that it covers

'sails (for sailing-boats, yachts, fishing-smacks, sports boats, *etc.*) ...' as well as 'sails of similar types for land-craft (*e.g.* sand yachts and ice-yachts) . . . '. [1]

It must therefore be pointed out that that list, far from being exhaustive, is merely declaratory. Moreover, it cannot be doubted that, whatever they may be attached to, the different types of sails perform the same function, are made of similar materials and are manufactured in a similar way.

Consequently, it is hard to understand why sails for sailboards, when they are delivered separately, should have a different tariff applied to them than would be applied to sails for boards with wheels or which are intended to be used on ice.

5. I propose therefore that the Court should rule as follows:

Sails made of synthetic textile fibres and specifically intended for sailboards must be regarded as sails within the meaning of tariff subheading 62.04 B I (a) of the Common Customs Tariff.

1 — The italics are mine.