JUDGMENT OF THE COURT (First Chamber)

28 March 2000 *

In Case C-309/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Finanzgericht München, Germany, for a preliminary ruling in the proceedings pending before that court between

Holz Geenen GmbH

and

Oberfinanzdirektion München

on the validity of Commission Regulation (EC) No 1509/97 of 30 July 1997 concerning the classification of certain goods in the combined nomenclature (OJ 1997 L 204, p. 8),

* Language of the case: German.

THE COURT (First Chamber),

composed of: L. Sevón (Rapporteur), President of the Chamber, P. Jann and M. Wathelet, Judges,

Advocate General: F.G. Jacobs,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Holz Geenen GmbH, by H. Glashoff, Tax Adviser, and U. Reimer, Aussenwirtschaftsberater,

— the Commission of the European Communities, by R.B. Wainwright, Principal Legal Adviser, and K. Schreyer, a national civil servant on secondment to its Legal Service, acting as Agents, assisted by M. Núñez Müller, Rechtsanwalt, Hamburg,

having regard to the Report for the Hearing,

after hearing the oral observations of Holz Geenen GmbH and the Commission at the hearing on 10 June 1999,

after hearing the Opinion of the Advocate General at the sitting on 8 July 1999,

gives the following

Judgment

1 By order of 24 June 1998, received at the Court on 10 August 1998, the Finanzgericht München (Finance Court, Munich) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the validity of Commission Regulation (EC) No 1509/97 of 30 July 1997 concerning the classification of certain goods in the combined nomenclature (OJ 1997 L 204, p. 8).

2 That question was raised in proceedings between Holz Geenen GmbH ('Holz Geenen') and the Oberfinanzdirektion München (Principal Revenue Office, Munich; 'the Oberfinanzdirektion') concerning the classification of certain goods in the combined nomenclature ('the CN'), as listed in Annex I to Commission Regulation (EC) No 1734/96 of 9 September 1996 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1996 L 238, p. 1).

3 Chapter 44 of the CN covers 'Wood and articles of wood; wood charcoal'. The basic six-digit structure of heading 4418 'Builders' joinery and carpentry of

wood, including cellular wood panels, assembled parquet panels, shingles and shakes' is as follows:

4418 10 Windows, frenchwindows and their frames
4418 20 Doors and their frames and thresholds
4418 30 Parquet panels
4418 40 Shuttering for concrete constructional work
4418 50 Shingles and shakes
4418 90 Other.

4 Subheading 4418 90 of the CN is subdivided into 4418 90 10 'Glue-laminated timber' and 4418 90 90 'Other'.

5 Heading 4421 of the CN, the last in Chapter 44, is for the residual category 'Other articles of wood' and subheading 4421 90 99 is for the most residual of all, namely 'Other — other — other'.

6 On 2 January 1996, Holz Geenen sought the issue of binding tariff information regarding goods described as 'laminated window scantlings' from the Oberfinanzdirektion. According to the order for reference, those goods are rectangular wood blocks with slightly rounded edges and cross dimensions of 48 × 72 mm or 85 × 72 mm (width × height) in which two layers of meranti are glued together with a core of coniferous wood in such a way that the grain runs parallel. The goods are generally imported in lengths of 76 to 300 cm and used in the construction of window frames.

7 By information notice of 23 January 1996, the Oberfinanzdirektion classified the goods as 'item of builders' carpentry of wood (glue-laminated timber)' under CN subheading 4418 90 10.

8 The objection proceedings brought by Holz Geenen against that information notice were stayed pending a decision by the Commission and then the objection was dismissed by decision of 16 October 1997 of the Oberfinanzdirektion following the adoption by the Commission of Regulation No 1509/97 pursuant to Article 9 of 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).

9 In point 2 of the Annex to Regulation No 1509/97, the Commission classified 'Rectangular wood blocks, 48 or 85 mm wide × 72 mm high, used in the construction of window frames, consisting of layers of wood glued together with the grain running parallel and with slightly rounded edges' under CN subheading 4418 90 10, which corresponded to the classification by the Oberfinanzdirektion in its information notice of 23 January 1996. The reason given in that annex is that 'Classification is determined by the provisions of General Rules 1 and 6 for the interpretation of the combined nomenclature and by the wording of CN codes 4418, 4418 90 and 4418 90 10. Laminated wood is an item of builder's carpentry.'

10 Holz Geenen brought an action against the decision of the Oberfinanzdirektion before the Finanzgericht München, claiming that the goods at issue are not items of builders' carpentry but 'Other articles of wood' within the meaning of CN heading 4421. It submits that Regulation No 1509/97 is unlawful in so far as it contains a classification which deviates from the International Convention on the Harmonised Commodity Description and Coding System ('the HS'), done at Brussels on 14 June 1983 and approved on behalf of the Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1, 'the Convention').

11 The national court states that, according to the Oberfinanzdirektion, the designation 'laminated wood' is neutral and not associated with a particular intended use for the goods. Since it can be used for all kinds of construction purposes, laminated wood is covered by the term 'builders' carpentry'. The description of the goods in Regulation No 1509/97 makes it clear that the Commission classifies laminated wood under CN heading 4418, irrespective of its use in construction for load-bearing or other purposes.

12 Since the Finanzgericht München shared Holz Geenen's uncertainty about the validity of Regulation No 1509/97, it decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Commission Regulation (EC) No 1509/97 of 30 July 1997 concerning the classification of certain goods in the combined nomenclature (OJ 1997 L 204, p. 8) — in this case rectangular wood blocks, 48 or 85 mm wide x 72 mm high, used in the construction of window frames, consisting of layers of wood glued together with the grain running parallel and with slightly rounded edges — invalid?'

13 At the outset it must be recalled that the Council has conferred upon the Commission, acting in cooperation with the customs experts of the Member States, a broad discretion to define the subject-matter of tariff headings falling to be considered for the classification of particular goods. However, the Commission's power to adopt the measures mentioned in Article 9(1)(a), (b), (d) and (e) of Regulation No 2658/87 does not authorise it to alter the subject-matter of the tariff headings which have been defined on the basis of the HS established by the Convention whose scope the Community has undertaken, under Article 3 thereof, not to modify (see Case C-267/94 *France* v *Commission* [1995] ECR I-4845, paragraphs 19 and 20).

14 It is settled case-law that, 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. The explanatory notes drawn up, as regards the CN, by the Commission and, as regards the HS, by the Customs Cooperation Council ('the HSENs'), may be an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (see Case C-405/97 *Mövenpick Deutschland* v *Hauptzollamt Bremen* [1999] ECR I-2397, paragraph 18).

15 In addition, the intended use of a product may constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties (see Case C-459/93 *Thyssen Haniel Logistic* [1995] ECR I-1381, paragraph 13).

16 In the present case, CN heading 4418 covers 'Builders' joinery and carpentry of wood, including cellular wood panels, assembled parquet panels, shingles and shakes'.

17 In its observations, the Commission contends that since CN heading 4418 is not a heading relating to use or intended use it is important to know how the terms included in it are to be objectively understood.

18 In this respect, the very wording of CN heading 4418, which refers to 'builders" goods, contains a criterion of intended use. That is borne out, moreover, by the first paragraph of the HSENs to heading 44.18 which states that the heading 'applies to woodwork ... used in the construction of any kind of building'.

19 The second paragraph of the HSENs to heading 44.18 states that '[t]he term "*joinery*" applies more particularly to builders' fittings (such as doors, windows, shutters, stairs, door or window frames), whereas the term "*carpentry*" refers to woodwork (such as beams, rafters and roof struts) used for structural purposes or in scaffoldings, arch supports, etc., and includes assembled shuttering for concrete constructional work.'

20 CN heading 4418 therefore includes, apart from certain exceptions which are not material to the main proceedings, all wood components intended for use as builders' fittings or used in the structure of a building or in the construction thereof (scaffoldings, arch supports, etc.).

21 It is common ground that rectangular wood blocks such as those at issue in the main proceedings do not yet constitute 'incomplete or unfinished' windows or window frames within the meaning of Part One, Section I, entitled 'General Rules', A, which lists 'General rules for the interpretation of the combined nomenclature', point 2(a) of Annex I to Regulation No 1734/96. It follows that those blocks cannot constitute builders' joinery.

22 It is therefore necessary to examine whether such goods constitute builders' carpentry.

23 It is apparent from both the order for reference and Regulation No 1509/97 that rectangular wood blocks such as those at issue in the main proceedings are used in the construction of window frames. The national court also found that those blocks do not meet the requirements as to load-bearing capacity corresponding to that of the goods covered by the designation builders' carpentry and, in this respect, Holz Geenen submitted, without being contradicted on this point by the Commission, that they are non-load-bearing building components of wood.

24 None of the evidence put before the Court suggests that such rectangular wood blocks are intended for use in the structure of a building or in the construction thereof nor that their objective characteristics and properties are, in any way, those of goods covered by the designation 'builders' ... carpentry' mentioned in CN heading 4418. It follows that they cannot be classified under that heading.

25 That conclusion is not invalidated by the fact that the third paragraph of the HSENs to heading 44.18 states that 'Builders' carpentry also includes glue-laminated timber (glulam), which is a structural timber product obtained by gluing together a number of wood laminations having their grain essentially parallel.'

26 In this respect, the meaning of the term 'glue-laminated timber (glulam)', which, moreover, also appears [in slightly different form] in the second paragraph of the HSENs to heading 44.12, which states that 'the heading does not cover massive products such as laminated beams and arches (so-called "glulam" products) (generally heading 44.18)', is limited in the context of CN heading 4418 by the wording of that heading. Furthermore, it is clear from the third paragraph of the HSENs to heading 44.18 that the glue-laminated timber to which that heading refers is a structural timber product. In that context, the term 'glue-laminated timber' designates, therefore, a product obtained by gluing together a number of wood laminations having their grain essentially parallel which is intended for use in the structure of a building or in the construction thereof.

27 Although it can be inferred from the third paragraph of the HSENs to heading 44.18 that certain products made of glue-laminated timber are covered by the designation 'builders' ... carpentry' mentioned in CN heading 4418, it cannot however be inferred from that designation that all products made of glue-laminated timber must be classified under CN heading 4418 as builders' carpentry. In order for such products to be classified under that heading they must have the objective characteristics and properties defined by the wording of CN heading 4418.

28 It follows that when, in point 2 of the Annex to Regulation No 1509/97, the Commission classified 'Rectangular wood blocks, 48 or 85 mm wide × 72 mm high, used in the construction of window frames, consisting of layers of wood glued together with the grain running parallel and with slightly rounded edges' under CN subheading 4418 90 10, it altered the subject-matter of CN heading 4418.

29 Although the national court did not ask what the classification of goods such as those at issue in the main proceedings should be if the question referred were answered in the affirmative, it is appropriate to furnish it with guidance on the interpretation of Community law which may be of assistance in judging the case before it.

30 In this regard, the Court finds that the term 'laminated wood' is also used in the CN to designate a product obtained by gluing together a number of wood laminations.

31 The term appears in particular in CN heading 4412 which concerns 'Plywood, veneered panels and similar laminated wood'. It is apparent from Note 4 to Chapter 44 of the CN and from the third paragraph of the HSENs to heading 44.12 that products covered by that heading remain classified under that heading whether or not they have been worked to form the shapes provided for in respect of the goods of heading No 4409, curved, corrugated, perforated, cut or formed to shapes other than square or rectangular or submitted to any other operation provided it does not give such products the character of articles of other headings. None the less, it is clear from the wording of CN heading 4412 and from the first paragraph of the HSENs to heading 44.12 that the product covered by that heading must have at least one outer layer consisting of a sheet of veneer, that is to say a thin layer of wood.

32 The term 'laminated wood' also appears in Note 3 to Chapter 44 of the CN which states that 'Heading Nos 4414 to 4421 apply to articles of ... laminated

wood... as they apply to such articles of wood'. As the Advocate General pointed out in paragraph 49 of his Opinion, if the rectangular wood blocks at issue in the main proceedings are to fall under one of the headings which include articles of laminated wood under that note, then it must be CN heading 4421, since CN heading 4418 does not apply, as is clear from paragraph 20 of the present judgment, and the other headings are clearly inappropriate. On that interpretation CN subheading 4421 90 99 offers the only possible classification of the blocks.

33 It is for the national court, on the basis of the foregoing guidance, to classify the goods at issue in the main proceedings.

34 The answer to the question must therefore be that Regulation No 1509/97 is invalid in so far as point 2 of the Annex thereto classifies 'Rectangular wood blocks, 48 or 85 mm wide × 72 mm high, used in the construction of window frames, consisting of layers of wood glued together with the grain running parallel and with slightly rounded edges' under CN subheading 4418 90 10.

Costs

35 The costs incurred by the Commission, 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Finanzgericht München by order of 24 June 1998, hereby rules:

Commission Regulation (EC) No 1509/97 of 30 July 1997 concerning the classification of certain goods in the combined nomenclature is invalid in so far as point 2 of the Annex thereto classifies 'Rectangular wood blocks, 48 or 85 mm wide × 72 mm high, used in the construction of window frames, consisting of layers of wood glued together with the grain running parallel and with slightly rounded edges' under subheading 4418 90 10 of the combined nomenclature.

Sevón Jann Wathelet

Delivered in open court in Luxembourg on 28 March 2000.

R. Grass

Registrar

L. Sevón

President of the First Chamber