JUDGMENT OF THE COURT (Second Chamber)
17 October 1995 *

In Joined Cases C-59/94 and C-64/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Cour d'Appel, Pau (France) for a preliminary ruling in the proceedings pending before that court between

Ministre des Finances

and

Société Pardo & Fils (Case C-59/94),

and between

Ministre des Finances

and

Camicas SARL (Case C-64/94),

* Language of the case: French.

on the interpretation of headings 2205 and 2206 of the Combined Nomenclature of the Common Customs Tariff, in the version laid down by 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) and Commission Regulation (EEC) No 3174/88 of 21 September 1988 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1988 L 298, p. 1),

THE COURT (Second Chamber),

composed of: G. Hirsch (Rapporteur), President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges,

Advocate General: F. G. Jacobs,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Société Pardo & Fils and Camicas SARL, by Girard, Bournilhas, Citron SCPA, of the Paris Bar,

— the French Government (in Case C-59/94), by Catherine de Salins, Deputy Director of the Legal Affairs Department at the Ministry of Foreign Affairs, and Nicolas Eybalin, Secretary for Foreign Affairs in the same Department, acting as Agents,

— the Spanish Government (in Case C-64/94), by Alberto Navarro Gonzáles, Director-General for Community Legal and Institutional Coordination, and Rosario Silva de Lapuerta, Abogado del Estado, a member of the State Legal Service for Matters before the Court of Justice, acting as Agents,

— the Commission of the European Communities, by Hendrik van Lier, Legal Adviser, acting as Agent, and Hervé Lehmann, of the Paris Bar,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 16 March 1995,

gives the following

Judgment

1 By two judgments of 8 December 1993, received at the Court on 11 and 15 February 1994, the Cour d'Appel, Pau, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question, which is identical in both cases, on the interpretation of headings 2205 and 2206 of the Combined Nomenclature of the Common Customs Tariff, in the version laid down by 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) and Commission

Regulation (EEC) No 3174/88 of 21 September 1988 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1988 L 298, p. 1).

2 The question has arisen in two disputes between Pardo & Fils and Camicas SARL, the plaintiffs in the main proceedings (hereinafter 'Pardo' and 'Camicas' respectively), and the Ministry of Finance, the defendant in those proceedings, as to the tariff classification of a drink described as sangria.

3 In 1988 and 1989, Pardo and Camicas, who are French customs brokers, imported large quantities of sangria into France from Spain.

4 At that time, customs duties remained in force for a transitional period between the Kingdom of Spain and other Member States.

5 The Court file shows that the sangria in question was a mixture of wine of fresh grapes (more than 50%), water (between 30 and 36%), sugar and fruit extracts. Its alcohol content was 6.97%.

6 Pardo and Camicas declared the goods under heading 2205, which applies to 'vermouth and other wine of fresh grapes flavoured with plants or aromatic

substances'. The French customs authorities, however, classified the sangria under heading 2206 00, which applies to 'other fermented beverages (for example, cider, perry, mead)' and attracts higher customs duties. Pardo and Camicas brought legal proceedings challenging that classification.

7 Finding that the two disputes before it raised the same question on the interpretation of the Common Customs Tariff, the Cour d'Appel, Pau, referred the following question to the Court for a preliminary ruling:

'Should the beverage described as sangria, made with more than 50% wine of fresh grapes (heading 2204), be classified under heading 2205 or 2206 of the Common Customs Tariff?'

8 By order of 15 February 1995, and in accordance with Article 43 of the Rules of Procedure of the Court of Justice, the President of the Second Chamber joined Cases C-59/94 and C-64/94 for the purposes of the oral procedure and judgment.

9 In order to reply to the question, it is important to note that for the classification of goods in the Combined Nomenclature the versions of the Common Customs Tariff in force in 1988 and 1989 were those laid down in Regulations

Nos 2658/87 and 3174/88, cited above. The relevant headings under those regulations are identical, and read as follows:

'—	2204	Wine of fresh grapes, including fortified wines; grape must other than that of heading No 2009:
		...
—	2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:
		...
—	2206 00	Other fermented beverages (for example, cider, perry, mead):
		...'

10 It is settled case-law that, in the interests of legal certainty and 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 relevant headings of the Common Customs Tariff and the notes to the sections or chapters. Likewise, for the purpose of interpreting the Common Customs Tariff, the Court has consistently held that both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the Nomenclature of the Customs Cooperation Council are important means for ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation (see the judgment in Case C-395/93 *Neckermann Versand* v *Hauptzollamt Frankfurt am Main-Ost* [1994] ECR I-4027, paragraph 5).

11 If the drink in question contained neither sugar nor water, it would have to be classified under heading 2205, since it would then correspond exactly to the description of 'vermouth and other wine of fresh grapes flavoured with plants or aromatic substances'.

12 The question to be examined, therefore, is whether the addition of water and sugar affects that classification.

13 The French Government argues that it follows from the wording of headings 2205 and 2204 that those headings cover only pure wines, free of any added non-alcoholic liquid.

14 That argument cannot, however, be accepted.

15 Reference must be made here to the general rules for the interpretation of the Combined Nomenclature, which are set forth in Section I. A of Part I of Annex I to Regulations Nos 2658/87 and 3174/88, cited above.

16 General Rule 2(b) provides that: 'Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances ...'. It follows that heading 2205 does not cover only pure wines without the addition of water.

17 That interpretation is further supported by the Explanatory Notes issued by the Customs Cooperation Council in relation to heading 2204. They exclude from that heading 'beverages with a basis of wine of heading 2205'. The expression 'basis of

wine' implies that beverages covered by heading 2205 may contain, in particular, a certain amount of water.

18 Under General Rule 3(b), the classification of mixed products depends on the material or component which gives them their essential character where, as in the present case, the goods in question are *prima facie* classifiable under two headings and Rule 3(a) does not apply.

19 It is undisputed that aromatized wine gives a drink, such as the sangria in question, which contains more than 50% wine of fresh grapes, fruit extracts, water and sugar, its essential character. When added in reasonable quantities, water and sugar cannot change the essential character of aromatized wine. The drink in question therefore falls under heading 2205.

20 This is confirmed by the Explanatory Notes to the Combined Nomenclature issued by the Commission, which state that heading 2205 includes 'wine-based beverages known as "sangria", flavoured with lemon or orange, for example'.

21 It follows from the above that the answer to the question referred by the national court must be that heading 2205 of the Combined Nomenclature for the Common Customs Tariff, in the versions laid down in Regulations Nos 2658/87 and 3174/88, is to be interpreted as covering a beverage described as 'sangria'

consisting of more than 50% wine of fresh grapes together with water, sugar and fruit extracts.

Costs

22 The costs incurred by the French and Spanish Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Cour d'Appel, Pau, by judgments of 8 December 1993, hereby rules:

Heading 2205 of the Combined Nomenclature for the Common Customs Tariff, in the versions laid down in Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff and Commission Regulation (EEC) No 3174/88 of 21 September 1988 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, is to be

interpreted as covering a beverage described as 'sangria' consisting of more than 50% wine of fresh grapes together with water, sugar and fruit extracts.

Hirsch Mancini Schockweiler

Delivered in open court in Luxembourg on 17 October 1995.

R. Grass

Registrar

G. Hirsch

President of the Second Chamber