JUDGMENT OF THE COURT (Second Chamber)
18 September 1990 *

In Case C-228/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht München (Finance Court, Munich) for a preliminary ruling in the proceedings pending before that court between

Farfalla Flemming und Partner

and

Hauptzollamt (Principal Customs Office) **München-West**

on the interpretation of tariff Headings 70.13 'Glassware for indoor decoration or for similar uses', 99.01 'Paintings . . . executed entirely by hand' and 99.03 'Original sculptures and statuary, in any material' in the annexes to Council Regulation (EEC) No 3000/80 of 28 October 1980 and Council Regulation (EEC) No 3300/81 of 16 November 1981 amending Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journals 1980 L 315, p. 1, and 1981 L 335, p. 1),

THE COURT (Second Chamber)

composed of: F. A. Schockweiler, President of Chamber, G. F. Mancini and T. F. O'Higgins, Judges,

Advocate General: G. Tesauro
Registrar: D. Louterman, Principal Administrator,

* Language of the case: German.

after considering the observations presented on behalf of

farfalla Flemming, by Monika Flemming and Peter Pommerencke, partners therein, acting as Agents,

the Commission of the European Communities, by its Legal Adviser, Jörn Sack, acting as Agent,

having regard to the Report for the Hearing,

after hearing oral argument presented for farfalla Flemming and the Commission of the European Communities at the hearing on 5 June 1990,

after hearing the Opinion of the Advocate General, delivered at the sitting on 26 June 1990,

gives the following

Judgment

1 By order of 26 April 1989, which was received at the Court Registry on 18 July 1989, the Finanzgericht (Finance Court) München referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of tariff Headings 70.13 'Glassware for indoor decoration or for similar uses', 99.01 'Paintings . . . executed entirely by hand' and 99.03 'Original sculptures and statuary, in any material' in the annexes to Council Regulation (EEC) No 3000/80 of 28 October 1980 and Council Regulation (EEC) No 3300/81 of 16 November 1981 amending Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journals 1980 L 315, p. 1, and 1981 L 335, p. 1, hereinafter referred to as the 'CCT').

2 The questions were raised in proceedings brought by farfalla Flemming und Partner (hereinafter referred to as 'farfalla Flemming') against Hauptzollamt München-West (hereinafter referred to as 'the Hauptzollamt') concerning the tariff classification of paperweights imported into the Federal Republic of Germany from the United States by farfalla Flemming between 4 May 1981 and 30 April 1982.

3 It is apparent from the documents forwarded by the national court that the paperweights at issue are flat-based spheres of glass with coloured motifs. The coloured motifs are either a representation applied to the glass under heat using a spatula and covered with a thin layer of glass or a prefabricated three-dimensional subject placed inside the glass sphere. Both the glass spheres and the motifs are made entirely by hand by recognized American glassware artists. As a result of that manual production method, each piece is different; however, in each case the artist produces a series of paperweights which are similar to each other as regards size, motif and method of execution. Each piece is signed by the artist and its sale price is between USD 35 and 300, on which discounts are granted according to the quantity purchased.

4 Farfalla Flemming presented the goods for customs clearance, declaring them as 'original sculptures and statuary, in any material' under Heading 99.03 of the CCT, in respect of which an exemption from customs duty is granted.

5 However, the Hauptzollamt classified the goods under tariff Heading 70.13 'glassware . . . for indoor decoration, or similar uses', in respect of which customs duty is payable.

6 Farfalla Flemming instituted proceedings against that decision before the Finanzgericht München claiming that, since they were original works of art executed by hand by famous glassware artists and were sought after by collectors and museums, the paperweights in question should be classified under Heading 99.03 of the CCT. Since the articles in question served no functional purpose, never being used as paperweights, they could not be regarded as decorative articles or as goods of a commercial character and could not therefore be classified under Heading 70.13 of the CCT.

7 In the alternative, farfalla Flemming maintained before the national court that the paperweights in question fell within Heading 99.01 of the CCT ('paintings . . . executed entirely by hand'), since the colours were applied to the

glass spheres using a spatula in the same way as to a canvas, the only difference from traditional painting being that the background material was glass.

8 The Hauptzollamt, on the other hand, contended that the paperweights in question were articles for ordinary use classifiable as works of craftsmanship and not as works of art. The utilitarian value of the paperweights is not affected by the fact that in practice they are never put to ordinary use. According to the Hauptzollamt, original works of statuary, within the meaning of Heading 99.03 of the CCT, are, by contrast with the articles in question, characterized by their non-functionality and non-utility. The fact that the paperweights are not hand-painted but are produced by the shaping of molten coloured glass militates against their classification under Heading 99.01.

9 Considering that the dispute raised a problem of interpretation of the relevant Community provisions, the Finanzgericht München stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Are glass spheres having a flat base and described as "paperweights", which are made entirely by hand by recognized glassware artists using a method whereby coloured glass in the form of pictorial representations is laid on the surface of the molten glass by the use of a spatula, to be regarded for the purposes of the Common Customs Tariff as paintings (Heading 99.01) or as works of conventional craftsmanship?

(2) Can articles as described above, made and signed by recognized artists, or similar objects in which the coloured motifs (instead of lying as a two-dimensional image on the surface) are incorporated within the sphere as a three-dimensional shape, be works of a commercial character within the meaning of Note 3 to Chapter 99?

(3) If Question 2 is answered in the affirmative: are the goods to be regarded as being of a commercial character if they

(a) are produced by the artists using the same conventional craft techniques as similar glass products which are mass-produced in glassworks by glass-blowers according to artists' designs,

(b) are produced individually by the artists but in small, limited editions of uniform size, decoration and execution,

(c) are decorative in character by reason of the motifs selected for the pictorial and colour representations, and

(d) are offered and sold at a standard unit-price for each series, which ranges between USD 35 and 300, and on which discounts are given?

What, otherwise, are the determining criteria for designating works of conventional craftsmanship as being of a commercial character?'

10 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

11 The national court wishes to know essentially whether flat-based glass spheres decorated with two-dimensional or three-dimensional motifs, described as 'paperweights', which are produced entirely by hand, in limited editions, and signed by well-known glassware artists, must be regarded, for the purposes of tariff classification, as articles of a commercial character and consequently be classified by reference to their constituent material or whether they are to be classified, as works of art, under Chapter 99 of the CCT. In the latter case, the national court wishes also to know whether the articles in question should be classified as 'paintings, drawings and pastels, executed entirely by hand', within the meaning of Heading 99.01 of the CCT or as 'original sculptures and statuary, in any material', within the meaning of Heading 99.03 of the CCT.

12 In answering those questions it must be borne in mind at the outset that the distinction between CCT headings cannot be based on qualities which are defined essentially by reference to subjective and indeterminate criteria but must be founded on the objective criteria adopted by the CCT for the purposes both of its

effective operation and of legal certainty (see judgments in Case 23/77 *Westfälischer Kunstverein* v *Hauptzollamt Münster* [1977] ECR 1985, paragraph 3, and Case C-1/89 *Raab* [1989] ECR 4423, paragraph 25).

13 As the Court has held on numerous occasions, the decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the relevant heading of the CCT and in the notes to the sections or chapters (see for example Case 200/84 *Daiber* v *Hauptzollamt Reutlingen* [1985] ECR 3363, paragraph 13, and Case 252/84 *Collector Guns* v *Hauptzollamt Koblenz* [1985] ECR 3387, paragraph 10).

14 In that connection, it must be observed in the first place that it is apparent from Note 3 to Chapter 99 of the CCT that sculptures which are commercial in character, and in particular works of craftsmanship, do not fall within that chapter — the title of which is: 'Works of art, collectors' pieces, and antiques' — but must be classified in the chapter covering the constitutive material of the article.

15 It must then be noted that that classification is confirmed by the wording of tariff Heading 99.01 which, with regard to paintings, drawings and pastels, excludes from its scope hand-decorated manufactured articles.

16 It follows, as the Court has already held, that the fact that an article may be recognized as being of an artistic nature does not necessarily mean that it is to be classified under Chapter 99 of the CCT, that quality being defined essentially by reference to subjective and indeterminate criteria (see, for example, the judgment in *Raab*, *supra*).

17 In those circumstances, even if, as Farfalla Flemming maintains, the paperweights at issue are to be regarded as works of art, that fact cannot determine their customs classification.

18 It must also be pointed out that the reason for which the CCT provides for an exemption from duty for certain works of art is that such works, being entirely personal creations through which the artists express an aesthetic ideal, do not compete economically either with each other or with other articles.

19 Accordingly, such an exemption is not justified for articles which, at least potentially, compete economically with similar articles manufactured industrially or as works of craftsmanship.

20 Since the customs authorities can rely, for customs classification, only on objective criteria relating to the external characteristics of goods, the latter must, even if they are hand-made by artists, be regarded as goods of a commercial character within the meaning of Note 3 to Chapter 99 of the CCT whenever, by reason of their configuration, they appear similar to comparable articles manufactured industrially or as works of craftsmanship.

21 The foregoing statement applies to the paperweights at issue in the present case. It is apparent from the documents forwarded by the national court and from the proceedings before the Court of Justice that the paperweights at issue, by virtue of their characteristics and their ostensible properties, are, for customs classification purposes, commercial in character in so far as they are capable of competing with products which are similar in appearance and are manufactured industrially by famous glassware producers.

22 That conclusion is not invalidated by the fact that the paperweights in question are produced by hand in limited editions by well-known artists and are collected by collectors and displayed in museums without ever being used as paperweights. Just as any artistic value which an article may have is not a matter for assessment by the customs authorities, the method employed for producing the article and the actual use for which that article is intended cannot be adopted by those authorities as criteria for tariff classification, since they are factors which are not apparent

from the external characteristics of the goods and cannot therefore be easily appraised by the customs authorities. For the same reasons, the price of the article in question is not an appropriate criterion for customs classification.

23 The fact that the paperweights are signed by the glassware artist who made them likewise cannot render them classifiable as works of art within the meaning of Chapter 99 of the CCT. Notwithstanding the fact that works of craftsmanship are frequently signed personally by the person who made them, Note 3 to Chapter 99 expressly excludes works of that type from the scope of that chapter.

24 Having regard to the foregoing considerations, it must be stated in reply to the Finanzgericht München that glass spheres having a flat base, decorated with two-dimensional or three-dimensional motifs and described as 'paperweights', which are made entirely by hand in limited series and signed by well-known glassware artists are to be regarded, for the purposes of tariff classification, as being works of a commercial character and, consequently, classified according to their constituent materials.

25 Since the goods in question thus do not come within Chapter 99 of the CCT, it is unnecessary to give a ruling on the distinction between Headings 99.01 and 99.03 in that chapter.

Costs

26 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 reply to the questions submitted to it by the Finanzgericht München, by order of 26 April 1989, hereby rules:

Glass spheres having a flat base, decorated with two-dimensional or three-dimensional motifs and described as 'paperweights', which are made entirely by hand in limited series and signed by well-known glassware artists are to be regarded, for the purposes of tariff classification, as being works of a commercial character and, consequently, classified according to their constituent materials.

Schockweiler Mancini O'Higgins

Delivered in open court in Luxembourg on 18 September 1990.

J.-G. Giraud
Registrar

F. A. Schockweiler
President of the Second Chamber