JUDGMENT OF THE COURT (Third Chamber)
4 July 1985 *

In Case 167/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof [Federal Finance Court] for a preliminary ruling in the proceedings pending before that court between

Hauptzollamt Bremen-Freihafen [Principal Customs Office, Bremen Free Port]

and

Firma J. Henr. Drünert, Holzimport,

on the interpretation of headings Nos 44.05 and 44.13 of the Common Customs Tariff for the purpose of the classification of balsa wood planks,

THE COURT (Third Chamber)

composed of: C. Kakouris, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: M. Darmon,
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Firma J. Henr. Drünert, Holzimport, represented by Klaus Landry, Rechtsanwalt, Hamburg,

the Commission of the European Communities, represented by Jörn Sack,

after hearing the Opinion of the Advocate General delivered at the sitting on 15 May 1985,

gives the following

* Language of the Case: German.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order dated 8 May 1984, which was received at the Court on 2 July 1984, the Bundesfinanzhof referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of headings Nos 44.05 and 44.13 of the Common Customs Tariff for the purpose of the classification of balsa wood planks.

2 That question arose in the course of a dispute between Firma J. Henr. Drünert, Holzimport (hereinafter referred to as 'Drünert'), established in Bremen, and the German customs authorities on the classification of a number of bundles of balsa wood imported by Drünert from Ecuador in 1978.

3 It appears from the file that the customs authorities took the view, after inspecting samples of the imported wood, that, apart from certain bundles, the wood had been planed, because the opposite faces had been smoothed so that no saw marks were visible. It therefore classified the wood under heading No 44.13, which covers:

'Wood (including blocks, strips and friezes for parquet or wood block flooring, not assembled), planed, tongued, grooved, rebated, chamfered, V-jointed, centre V-jointed, beaded, centre-beaded or the like, but not further manufactured'.

4 Drünert challenged that classification before the Finanzgericht [Finance Court] Bremen, claiming that the wood should be classified under subheading 44.05 C, which applies to:

'Wood sawn lengthwise, sliced or peeled, but not further prepared, of a thickness exceeding 5 mm:

...

C. Other'.

5 At first instance, the Finanzgericht Bremen decided that the wood should be classified under subheading 44.05 C. In its judgment it stated that the planks had been smoothed on a special surfacing machine, using a relatively fine circular saw. Such smoothing was carried out because the quality of balsa wood cut with coarse circular saws into squared timbers could not, as a result of the loose structure of the wood, be examined since the fibres made it impossible to determine whether there were any defects in the wood. Balsa wood processors, especially manufacturers of scale models, then cut those planks into thin strips by means of special knives and planed them on special machines. In so doing they took little account of the smooth surfaces produced by the surfacing machine in Ecuador. The balsa wood processed by a special surfacing machine therefore could not be regarded as planed within the meaning of heading No 44.13 because it subsequently had to undergo further preparation.

6 It should be noted that the Explanatory Notes of the Customs Cooperation Council state, as regards tariff heading No 44.05, that: 'With a few exceptions, this heading covers all wood and timber . . . sawn . . . but not further worked . . . . "Hit or miss" dressing, that is rough planing which merely removes excrescences and some of the saw marks, does not affect the classification of sawn wood in this heading'. The note on heading No 44.13 states that that heading covers timber which 'has been surface worked by planing to produce smooth, flat surfaces, and generally worked along the edges to facilitate subsequent assembly'.

7 As regards the distinction between subheading 44.05 C and heading No 44.13, an opinion, known as a 'Classification Slip', of 18 May 1972, Reference No 075, of the Committee on Common Customs Tariff Nomenclature, which was set up under Regulation (EEC) No 97/69 of the Council of 16 January 1969 on measures to be taken for uniform application of the nomenclature of the Common Customs Tariff (Official Journal, English Special Edition 1969 (I), p. 12), classified under subheading 44.05 C: 'Wood . . . smoothed on one side or on two adjoining sides by means of a sizer in order to correct small errors of dimension due to the high speed of the sawing. The uniform dimensions obtained simplify the tasks of packing and transporting, and also subsequent working up'. The reason given for that classification was that the smoothing done by the sizer 'serves no purpose other than the elimination of errors of dimension'. The question whether the timber obtained, though a little smoother than that obtained by sawing, 'still bears traces of the tools used' — which was referred to in another Classification Slip of the same date, Reference No 076, concerning a profile cutter — was not considered in the Classification Slip relating to the sizer.

8 The Hauptzollamt lodged an appeal on a point of law before the Bundesfinanzhof against the judgment of the Finanzgericht Bremen, which had classified the balsa wood treated on a surfacing machine under tariff heading No 44.05. The Bundesfinanzhof considered it doubtful whether the smoothing of the two edges of the squared balsa wood in question amounted to preparation which was sufficiently intensive to rule out classification of the goods under heading No 44.05, in view of the fact that it could not be inferred either from the Explanatory Notes of the Customs Cooperation Council or from the two Classification Slips dated 18 May 1972 that a 'hit or miss' dressing or smoothing would preclude the application of heading No 44.05. It therefore referred the following question to the Court for a preliminary ruling:

'Is heading No 44.05 of the Common Customs Tariff to be construed as covering balsa wood sawn lengthwise, of a thickness exceeding 5 mm, which has been smoothed on two opposite narrow sides so that no sign of the original saw marks is now visible? If this question is answered in the negative, should such goods be classified under heading No 44.13 of the Common Customs Tariff?'

9 In order to justify the application of subheading 44.05 C to balsa wood planks such as those concerned in this case, Drünert essentially repeats in the observations which it has submitted to the Court the arguments put forward by the Finanzgericht Bremen in the judgment at first instance. In addition, it refers to the Classification Slip of 18 May 1972 concerning wood treated on two adjoining sides by means of a sizer which states that the fact that the smoothing by such a machine completely removes saw marks does not preclude the application of subheading 44.05 C. According to Drünert, the treatment by the surfacing machine in this case differs only in so far as two opposite surfaces have been smoothed.

10 The mission considers that heading No 44.13 applies to planks of the kind in question. In its opinion, the Classification Slip on smoothing by means of a sizer in any case marks the very limit of the scope of subheading 44.05 C and cannot influence the tariff classification in this instance because it concerns smoothing on two adjoining sides and not opposite sides. It is necessary for the customs authorities to be able to base their decisions on tariff classification on the objective external characteristics of goods. The existence or absence of saw marks thus constitutes the essential criterion for delimiting the two tariff headings. In so far as

the smoothing by the surfacing machine removes those marks, it may be assimilated to planing within the meaning of heading No 44.13.

11 In addition, the Commission observes that, contrary to what is stated in the order for reference, it was the faces, and not the edges, of the planks which were smoothed in this case. It denies that the surfacing treatment is necessary to facilitate the grading of balsa wood and contends that such smoothing, especially where it is applied to the faces, presents advantages for the subsequent working of the wood and increases its economic value.

12 First, as regards the Commission's observations, it should be pointed out that Article 177 of the EEC Treaty is based on a clear separation of functions between national courts, on the one hand, and the Court of Justice, on the other, and it does not permit the Court to enquire into the facts of the case or to verify whether the national court's statement of the facts is correct. Thus it is not for this Court to determine whether the Commission is right in its allegations concerning the facts set out in the order of the Bundesfinanzhof or those set out in the judgment at first instance, and not questioned in the order for reference; it is required solely to provide the national court with a ruling on the interpretation of Community law in order to enable it to resolve the legal issue before it.

13 Consequently, the question asked by the Bundesfinanzhof seeks clarification of the criteria for delimiting the ambit of subheading 44.05 C and that of heading No 44.13 of the Common Customs Tariff.

14 As the Court has ruled on a number of occasions, for the purposes of the interpretation of the Common Customs Tariff both the Explanatory Notes of the Customs Cooperation Council and the opinions of the Committee on Common Customs Tariff Nomenclature constitute an important means of ensuring the uniform application of the tariff by the customs authorities of the Member States and, as such, may be considered a valid aid to the interpretation of the tariff. For the purpose of the interpretation of the two tariff headings in question, it is therefore

necessary to take into consideration not only the wording and scheme of the Common Customs Tariff but also the content of the Explanatory Notes and Classification Slips referred to above.

15 It follows from the wording of tariff headings No 44.05 and No 44.13, from a comparison of those headings, and from the abovementioned aids to interpretation that as a general rule any working of wood, over and above sawing, which removes the saw marks brings the wood within the scope of heading No. 44.13. That interpretation is in particular consistent with the requirement that products should be classified on the basis of their objective characteristics and properties.

16 However, it also follows from the abovementioned aids to interpretation that certain rudimentary working purely incidental to sawing, which is not intended to smooth the surfaces of the wood in order to facilitate its subsequent use, is not assimilable to the working referred to in heading No. 44.13 and therefore does not preclude classification of the word under heading No 44.05.

17 In order to ascertain whether wood has undergone purely incidental treatment of that kind, it is impossible to adopt the sole criterion of the existence or absence of saw marks on the wood, as proposed by the Commission. That criterion does not take account of the particularities of each type of wood or of technical developments in wood-processing as a result of which rudimentary treatment, purely incidental to the sawing and necessary for technical reasons, may remove the saw marks even though that is not the purpose of such an operation. In particular, it cannot be ruled out that certain rudimentary incidental treatment may remove the saw marks from certain planks but leave them on others. In such a case, it would be contrary to the requirements of legal certainty and foreseeability in the field of customs classification for planks of wood which have been subject to the same treatment to be classified differently.

18 Therefore, although the absence of saw marks constitutes an important criterion for classifying wood under tariff heading No 44.13, it does not prevent heading No 44.05 from being applicable where it is established that the absence of any saw marks is the result of a process purely incidental to the sawing, which is necessary

for technical reasons in view of the particularities of the wood in question and the state of development of techniques for processing that wood, and which is not intended to smooth the surfaces to such an extent as to remove the saw marks and thus facilitate the subsequent use of the wood.

19 It is for the national court to determine whether, having regard to the particularities of balsa wood and the methods of processing balsa wood generally used at the present stage of technical development, a treatment of such wood as described in the order for reference may be regarded as work purely incidental to sawing as described above.

20 The answer to the Bundesfinanzhof's question should therefore be:

Headings Nos 44.05 and 44.13 of the Common Customs Tariff must be interpreted as meaning that where there are no saw marks on wood that has been sawn lengthwise, the wood falls under heading No 44.13 rather than heading No 44.05 unless it is established that, having regard to the particularities of the wood in question and the state of development of techniques for processing that type of wood, the absence of such marks is the result of a process purely incidental to the sawing which is necessary for technical reasons and is not intended to facilitate the subsequent use of the wood by removing those saw marks.

It is for the national court to determine whether, on the basis of that interpretation, balsa wood sawn lengthwise, of a thickness exceeding 5 mm, on two opposite sides of which no saw marks are now visible, may be classified under heading No 44.05.

Costs

21 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since the proceedings are, so far as the parties to the main proceedings are concerned, 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 (Third Chamber)

in answer to the question referred to it by the Bundesfinanzhof by order of 8 May 1984, hereby rules:

Headings Nos 44.05 and 44.13 of the Common Customs Tariff must be interpreted as meaning that where there are no saw marks on wood that has been sawn lengthwise, the wood falls under heading No 44.13 rather than heading No 44.05 unless it is established that, having regard to the particularities of the wood in question and the state of development of techniques for processing that type of wood, the absence of such marks is the result of a process purely incidental to the sawing which is necessary for technical reasons and is not intended to facilitate the subsequent use of the wood by removing those saw marks.

It is for the national court to determine whether, on the basis of that interpretation, balsa wood sawn lengthwise, of a thickness exceeding 5 mm, on two opposite sides of which no saw marks are now visible, may be classified under heading No 44.05.

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 4 July 1985.

P. Heim
Registrar

C. Kakouris
President of the third Chamber