JUDGMENT OF THE COURT (Second Chamber)
14 February 1985 [1]

In Case 40/84

Casteels PVBA, whose registered office is in Brussels, represented by Ivo Onkelinx of the Brussels Bar, with an address for service in Luxembourg at the Chambers of André Elvinger and Jean Hoss, 15 Côte d'Eich,

applicant,

v

Commission of the European Communities, represented by Xenophon Yataganas and Thomas van Rijn, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Manfred Beschel, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Regulation No 3529/83 of 12 December 1983 on the classification of goods under subheading 85.01 B 1 (b) of the Common Customs Tariff is void,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

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1 — Language of the Case: Dutch.

* after hearing the Opinion of the Advocate General delivered at the sitting on 13 December 1984,

gives the following

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 application lodged at the Court Registry on 14 February 1984, Casteels PVBA, whose registered office is in Brussels, brought an action under the second paragraph of Article 173 of the EEC Treaty requesting the Court to declare void Commission Regulation No 3529/83 of 12 December 1983 on the classification of goods under subheading 85.01 B 1 (b) of the Common Customs Tariff (Official Journal 1983 No L 352, p. 32), adopted pursuant to Regulation 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).

2 The applicant states that together with its affiliated company Casteels-France S.à R.L., whose registered office is in Paris, it has for some years imported into the Community windscreen wipers and parts of windscreen wipers. It explains that the tariff classification of windscreen-wiper motors imported without arm or wiper blade has given rise to disparities between Member States and also between non-member countries. Thus in Belgium the customs authorities considered that windscreen-wiper motors should be classified as 'windscreen wipers' under heading No 85.09 by virtue of Rule 2 (a) of the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, which provides that 'Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as imported, the incomplete or unfinished article has the essential character of the complete or finished article' (Council Regulation No 3333/83 of 4 November 1983 on the Common Customs Tariff, Official Journal 1983 L 313, p. 1, Section I).

3 However, the French customs authorities refused a request for the motors to be classified under that heading and held instead that they fell within heading No 85.01, which covers *inter alia* 'motors'. In reply to a question asked by the Court at the hearing, the applicant explained that the advantage of classifying the motors as windscreen wipers under heading No 85.09 is that motors imported from certain countries into some Member States, including France, are subject to quantitative restrictions.

4 The Commission contends that the application is inadmissible. So far as the background to the contested regulation is concerned, it states that the tariff classification of the product in question was first raised with it by the French customs authorities and, after due consideration, it concluded that the classification applied by them was correct. The other Member States were informed and the question was examined by the Committee on Common Customs Tariff Nomenclature, set up by Regulation No 97/69. At that stage, it became clear that the product in question was indeed classified differently both within the Community and in non-member countries. At the end of its examination, the Nomenclature Committee decided, by a qualified majority, to deliver a favourable opinion on a draft regulation submitted by the Commission, which adopted the solution favoured by the French authorities. Regulation No 3529/83 was based on that draft.

5 From a legal point of view, the Commission explains that where it is established that a product is classified under different tariff headings in different Member States, the principle of the uniformity of the Common Customs Tariff is breached. In order to remedy that situation, which is contrary to the principles of the customs union, the Commission must, acting in accordance with the procedure laid down in Regulation No 97/69, adopt the measures needed to ensure the uniform application of the tariff. According to the Commission, the regulations adopted for that purpose, of which the contested regulation is just one example, are general measures adopted on an objective basis with a view to rectifying situations which impair the unity of the customs tariff. For that reason the importance of such measures far exceeds the interest of individual undertakings.

6 In that regard the Commission states that such measures are adopted in relation to products defined objectively, regardless of the number and identity of the natural or legal persons involved in marketing those products in the Member States. In spite of their apparent specificity, the regulations on the tariff classification of particular products thus remain measures of general application which may affect the activity of any undertaking trading in the products concerned. Furthermore, such regulations are addressed to, and must be applied by, all the customs authorities of the Member States.

7 In this case, although the applicant can claim an interest in the annulment of Regulation No 3529/83, it cannot be considered to be directly and individually

concerned by the regulation within the meaning of the second paragraph of Article 173 of the Treaty. Only the decision taken by the customs authorities on the classification of the product in question may be contested by individuals before the competent national courts and, by that means, cases concerning tariff classification may be referred to the Court of Justice in accordance with the procedure for obtaining a preliminary ruling under Article 177 of the EEC Treaty.

8 The Commission therefore concludes that the direct action brought by Casteels challenging Regulation No 3529/83 is inadmissible.

9 The applicant disputes that contention, claiming that it is concerned by the regulation in question by reason of special circumstances in which it is differentiated from all other persons and which therefore distinguish it individually for the purposes of the second paragraph of Article 173 of the Treaty. The circumstances to which it refers are the dispute between the applicant or its French associate and the French customs authorities, which prompted the latter to take the matter up with the Commission and thus ultimately resulted in the adoption of Regulation No 3529/83.

10 The applicant's argument cannot be accepted. Whatever the background to Regulation No 3529/83, it is indisputably a legislative measure, intended to determine the tariff classification of a particular type of product and thus to delimit the two tariff headings within which the product may fall.

11 In spite of the apparent specificity of the descriptions contained in the regulation, it is none the less of entirely general application, since it concerns all products of the type described, regardless of their individual characteristics and origin, and it takes effect, in the interests of the uniform application of the Common Customs Tariff, in relation to all customs authorities in the Community and all importers.

12 Consequently, the contested regulation concerns the applicant not because it is directly and individually addressed to it but solely because the applicant, together with an indeterminate number of other traders, deals in the product defined and classified by the regulation and is for that reason subject to its legislative effects.

13 The application is therefore inadmissible.

Costs

14 According to Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the applicant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Dismisses the application as inadmissible;

(2) Orders the applicant to pay the costs.

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 14 February 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber