Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

9 June 2016*

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Common Customs Tariff — Tariff classification — Subheading 6211 3310 00 0 — Aprons — Anti-radiation protective coats)

In Case C-288/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht München (Munich Finance Court, Germany), made by decision of 16 April 2015, received at the Court on 15 June 2015, in the proceedings,

Medical Imaging Systems GmbH (MIS)

v

Hauptzollamt München,

THE COURT (Eighth Chamber),

composed of D. Šváby, President of the Chamber, M. Safjan and M. Vilaras (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Medical Imaging Systems GmbH (MIS), by G. Eder, Rechtsanwalt,

— the Hauptzollamt München, by C. Erhart-Parzefall,

— the European Commission, by M. Wasmeier and A. Caeiros, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of subheading 6211 3310 00 0 of the Combined Nomenclature in Annex I to 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), as amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 (OJ 2012 L 304, p. 1) ('the CN').

2 The request has been made in proceedings between Medical Imaging Systems GmbH (MIS) and the Hauptzollamt München (Principal Customs Office, Munich, Germany) concerning the tariff classification of radiation protective apron-coats in the CN.

Legal context

3 The customs classification of goods imported into the European Union is governed by the CN. The CN is based on the Harmonised Commodity Description and Coding System ('the HS'), drawn up by the Customs Cooperation Council, now the World Customs Organisation (WCO), and established by the convention creating that council, concluded in Brussels on 15 December 1950. The HS was established by the International Convention on the Harmonised Commodity Description and Coding System concluded in Brussels on 14 June 1983 and approved, with its amending protocol of 24 June 1986, on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1). The CN reproduces the headings and subheadings of the HS to six digits, with only the seventh and eighth figures creating further subheadings which are specific to it.

4 Article 12 of Regulation No 2658/87, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16), provides that the European Commission is to adopt each year, by means of a regulation, a complete version of the CN together with the corresponding autonomous and conventional rates of duty of the Common Customs Tariff, as it results from measures adopted by the Council of the European Union or by the Commission. That regulation is to be published not later than 31 October in the *Official Journal of the European Union* and to apply from 1 January of the following year.

5 The version of the CN applicable to the facts in the main proceedings is, as is apparent from the file submitted to the Court, that for the year 2013, resulting from Implementation Regulation No 927/2012.

6 Part One of the CN consists of a number of preliminary provisions. Under Section I of that part, on 'General Rules', part A of which, entitled 'General rules for the interpretation of the [CN]', provides:

'Classification of goods in the [CN] shall be governed by the following principles.

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

2. …
   (b) 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. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When, by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:
   (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;
   (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable;
   (c) when goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

…

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise.'

7 Part Two of the CN, which contains a table of duties, is divided into sections. Section XI of that part contains Chapter 62, which is entitled 'Articles of apparel and clothing accessories, not knitted or crocheted'.

8 Heading 6211 of the CN, which is in Chapter 62, is structured as follows:

'6211 Tracksuits, ski suits and swimwear; other garments

…

6211 33 – – of man-made fibres

6211 33 10 – – – Industrial and occupational clothing

…'

9 Part Two of the CN contains also Section XV, entitled 'Base metals and articles of base metal'. That section includes, inter alia, the following notes:

'3. Throughout the nomenclature, the expression "base metals" means: … antimony …

7. Classification of composite articles:

Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the interpretative rules) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals.

For this purpose:
   (a) Iron and steel, or different kinds of iron or steel, are regarded as one and the same metal;

(b) An alloy is regarded as being entirely composed of that metal as an alloy of which, by virtue of note 5, it is classified;

…’

10 Chapter 81, entitled ‘Other base metals; cermets; articles thereof’, is in Section XV. Heading 8110 of that chapter is structured as follows:

‘8110 Antimony and articles thereof, including waste and scrap

8110 10 00 – Unwrought antimony; powders

8110 20 00 – Waste and scrap

8110 90 00 – Other’

11 Pursuant to the second indent of Article 9(1)(a) of Regulation No 2658/87, as amended by Regulation No 254/2000, and in accordance with the procedure laid down in Article 10 of that regulation, the Commission must draw up Explanatory Notes to the CN. They are to be published in the *Official Journal of the European Union*.

12 The Explanatory Note to the CN concerning Chapter 62, in the version applicable at the time of the facts in the main proceedings (OJ 2011 C 137, p. 1), states inter alia:

‘General …

4. This chapter includes items of industrial and occupational clothing which are referred to in subheadings of the Combined Nomenclature and which because of their general aspect (simple or special cut or design related to the function of the garment) and the nature of their fabric, which is generally tough and non-shrink, make it clear that they are designed to be worn solely or mainly in order to provide protection (physical or health) for other clothing and/or persons during industrial, professional or domestic activities.

…

Mention may be made among industrial and occupational clothing of clothing used by mechanics, factory workers, bricklayers, farmers, etc., which are generally two-piece garments, overalls, bib and brace overalls and trousers. For other activities these may be aprons, dust coats, etc. (for doctors, nurses, charwomen, hairdressers, bakers, butchers, etc.).

…’

13 The Explanatory Notes to the HS are drawn up within the WCO in accordance with the provisions of the International Convention on the Harmonised Commodity Description and Coding System and are published in the two official languages of the WCO, namely French and English. The Explanatory Notes to the HS relating to heading 62.10 of the HS (‘Garments, made up of fabrics of heading 56.02, 56.03, 59.03, 59.06 or 59.07’), state, in particular:

‘Among the articles in this heading are the following: … airtight clothing affording protection against radiation, not combined with respiration apparatus.’

The dispute in the main proceedings and the question referred for a preliminary ruling

14 On 19 March 2013, MIS lodged a declaration with the principal customs office of Munich with a view to the release for free circulation of the radiation protection goods of the model 'Xenolite NL 8250' from the United States of America ('the goods at issue'). In that declaration, MIS classified those goods in subheading 6211 33 10 00 0 of the CN. That declaration was accepted by that office which, by a notice of that day, fixed the import duties on the basis of a 12% rate applicable to the abovementioned subheading of the CN.

15 Since the complaint lodged by MIS against that duty notice was rejected, it brought an action for annulment of that notice before the referring court. In support of that action, it claims, in essence, that the goods at issue should have been classified in subheading 8110 90 00 of the CN.

16 The referring court states that the goods at issue are anti-radiation protective apron-coats whose interior and exterior surfaces are made of monochromatic fabric composed entirely of synthetic fibres (polyamide and polyester) and having a thickness of about 0.2 millimetre. The internal layer consists primarily of antimony (60% by weight) and other elements with a polymer as substrate. Those sleeveless overwrap apron-coats extend below the crotch, and have a round, close-fitting neckline without collar, as well as padded shoulders sewn in. It has full overlapping front panels, with the front panel closing at the right side and right shoulder with Velcro. The front panel also has a breast pocket made of a brightly printed fabric. In addition, those goods have a key ring made of base metal that is attached to a cord sewn onto the band of the neckline. Those apron-coats are designed to protect individuals against x-rays when performing their job.

17 According to the information provided by the referring court, MIS claims before it that the goods at issue were made up of different components, with a predominant share of antimony, which determines their character with respect to the use and value of the different components making them up. Without that amount of antimony, those goods could not fulfil their role in protecting against x-ray exposure. The external appearance of those goods is irrelevant where they are made up of different components. Consequently, according to MIS, the goods at issue should have been classified in subheading 8110 90 00 of the CN.

18 The referring court states that the resolution of the dispute before it depends on the question whether, for the purposes of classifying goods in subheading 6211 33 10 00 0 of the CN, only the external appearance and the intended use of the goods concerned are important or whether it is necessary to take into account the components of the goods which give them their essential character.

19 According to it, the goods at issue are in subheading 6211 33 10 00 0 of the CN, in the light of their objective properties, their external appearance and their inherent purpose. It considers, moreover, that heading 6211 of the CN is the heading which provides the most specific description, within the meaning of rule 3(a) for the interpretation of the CN and must, therefore, be preferred to headings providing a more general description. It has, however, doubts regarding the classification in subheading 6211 33 10 of the CN of the goods at issue in the case pending before it, since such a classification fails to take account of the internal layer material of those goods, and in particular of the antimony, which represents about 60% of the weight of the internal layer and provides the anti-radiation protection offered by those goods.

20 In those circumstances, the Finanzgericht München (Finance Court, Munich, Germany) decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Does classification under subheading 6211 33 10 00 0 "Industrial and occupational clothing" of the [CN] depend solely on external appearance or intended use, or does General Rule 3(b) require that consideration be given to those components of the goods which give them their essential character?'

The question referred for a preliminary ruling

21 It is apparent from the order for reference that, by its question, the referring court asks, in essence, whether the CN must be interpreted as meaning that an anti-radiation protective apron-coat, such as that at issue in the main proceedings, must be classified in subheading 6211 33 10 00 of the CN on the basis of its external appearance or intended use, or whether, for the purposes of its classification, consideration should also be given to the components which give it its essential character as anti-radiation protective clothing, which could, as the case may be, justify its classification in another heading of the CN, in particular in heading 8110 of the latter.

22 In that regard, it is necessary, first, to note the settled case-law, in accordance with which, 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 wording of the relevant heading of the CN and in the section or chapter notes (judgment of 18 May 2011 in *Delphi Deutschland*, C-423/10, EU:C:2011:315, paragraph 23 and the case-law cited).

23 The explanatory notes drawn up by the Commission as regards the CN and by the World Customs Organisation as regards the HS are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (judgment of 18 May 2011 in *Delphi Deutschland*, C-423/10, EU:C:2011:315, paragraph 24 and the case-law cited).

24 Moreover, according to equally settled case-law, the intended use of a product may also 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 (judgments of 20 June 2013 in *Agroferm*, C-568/11, EU:C:2013:407, paragraph 41, and of 4 March 2015 in *Oliver Medical*, C-547/13, EU:C:2015:139, paragraph 47). In addition, the intended use of a product is a relevant criterion only where the classification cannot be made on the sole basis of the objective characteristics and properties of the product (judgments of 16 December 2010 in *Skoma-Lux*, C-339/09, EU:C:2010:781, paragraph 47, and of 28 April 2016, in *Oniors Bio*, C-233/15, EU:C:2016:305, paragraph 33).

25 Next, it should be noted that subheading 6211 33 10 of the CN, the wording of which refers to 'industrial and occupational clothing', is included in heading 6211 33 of the CN, which covers 'Tracksuits, ski suits and swimwear; other garments' made of 'man-made fibres'.

26 The explanatory note to the CN concerning Chapter 62, cited in paragraph 12 of the present judgment, states that that chapter includes industrial and occupational clothing which, because of their general aspect and the nature of their fabric, which is generally tough and non-shrink, 'make it clear that they are designed to be worn solely or mainly in order to provide protection (physical or health) for other clothing and/or persons during industrial, professional or domestic activities'. As is apparent from the case-law cited in the above paragraphs, goods such as those at issue in the main proceedings, consisting of man-made fibres and designed to be worn solely or mainly in order to provide protection to persons exposed to radiation during their professional activities, must be classified as 'industrial and occupational clothing' for the purposes of subheading 6211 33 10 00 0, in the light of their characteristics and objective properties, and in particular their external appearance.

27 That interpretation is confirmed by the explanatory note to the HS concerning heading 62.10 of the HS, which states that when 'airtight clothing affording protection against radiation' are made up of goods in headings Nos 56.02, 56.03, 59.03, 59.06 or 59.07 of the HS, they are to be regarded as 'clothing' in heading 62.10 of the HS. Even though the goods at issue in the main proceedings are not made up of goods in headings Nos 56.02, 56.03, 59.03, 59.06 or 59.07 of the HS, it can be deduced

from that note that, more generally, radiation protection equipment, which has the characteristics and objective properties of clothing, is covered by the different headings and subheadings of the CN which concern clothing.

28 Finally, concerning the question whether it is necessary to also take into consideration, for the purposes of the classification of goods such as those at issue in the main proceedings, the components which give them their essential character, it should be noted that that criterion is referred to in general rule 3(b) for the interpretation of the CN. It follows from the wording itself of that general rule of interpretation that it covers cases in which 'goods are *prima facie* classifiable under two or more headings'.

29 If such a situation occurs, it is necessary to apply general rule 3(a) for the interpretation of the CN, according to which 'the heading which provides the most specific description shall be preferred to headings providing a more general description'. It is only where the application of that rule does not allow an appropriate classification of certain goods, in particular where there is no specific tariff heading for the classification of those goods (see, to that effect, judgments of 10 May 2001 in *VauDe Sport*, C-288/99, EU:C:2001:262, paragraph 21, and of 15 November 2012 in *Kurcums Metal*, C-558/11, EU:C:2012:721, paragraph 36), that it is necessary to apply general rule 3(b) for the interpretation of the CN and to classify such goods 'as if they consisted of the material or component which gives them their essential character'.

30 As is apparent from paragraph 26 of the present judgment, there is a specific heading for the classification of goods such as those at issue in the main proceedings, in this case heading 6211 of the CN, which includes subheading 6211 33 10 00 0 thereof.

31 Although the referring court raises the possibility of the goods at issue being classified in another heading of the CN, in particular heading 8110 thereof, it is nevertheless apparent from the wording of the latter that it concerns 'antimony' and 'antimony articles, including waste and scrap' and not clothing such as the goods at issue in the main proceedings.

32 The fact that those goods contain an internal layer consisting principally of antimony, which gives them their anti-radiation protection character, does not suffice for them to be classified as an antimony article, covered by heading 8110 of the CN.

33 As has already been noted, it appears that subheading 6211 33 10 00 0 of the CN is 'the heading which provides the most specific description', within the meaning of general rule 3(a) for the interpretation of the CN and must be preferred over others. It is therefore not necessary, in order to determine the tariff classification of the goods at issue in the main proceedings, to rely on general rule 3(b) for the interpretation of the CN, which refers to the 'material or component' giving goods their 'essential character'.

34 In the light of all the above considerations, the answer to the question referred is that the CN must be interpreted as meaning that an anti-radiation protective apron-coat, such as that at issue in the main proceedings, must be classified in subheading 6211 33 10 00 0 of the CN due to its objective characteristics and properties, including, in particular, its external appearance, without it being necessary to refer to the components conferring on the product in question its essential character.

Costs

35 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012, must be interpreted as meaning that an anti-radiation protective apron-coat, such as that at issue in the main proceedings, must be classified in subheading 6211 33 10 00 0 of the CN due to its objective characteristics and properties, including, in particular, its external appearance, without it being necessary to refer to the components conferring on the product in question its essential character.

[Signatures]