JUDGMENT OF THE COURT (Seventh Chamber)

28 July 2011 *

In Case C-215/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the First-Tier Tribunal (Tax Chamber) (United Kingdom), made by decision of 20 April 2010, received at the Court on 4 May 2010, in the proceedings

Pacific World Limited,

FDD International Limited

v

The Commissioners for Her Majesty's Revenue and Customs,

THE COURT (Seventh Chamber),

composed of D. Šváby, President of the Chamber, E. Juhász and G. Arestis (Rapporteur), Judges,

* Language of the case: English.

Advocate General: Y. Bot,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 April 2011,

after considering the observations submitted on behalf of:

— Pacific World Limited and FDD International Limited, by V. Sloane, Barrister,

— the United Kingdom Government, by L. Seeboruth, acting as Agent, and by M. Angiolini, Barrister,

— the European Commission, by L. Bouyon and R. Lyal, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns, firstly, the validity of Commission Regulation (EC) No 1417/2007 of 28 November 2007 concerning the classification of certain goods in the Combined Nomenclature (OJ 2007 L 316, p. 4), and, secondly, the interpretation of tariff subheadings 3926 90 97, 3304 30 00 and 8214 20 00

of 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 (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1) ('the CN').

2 The reference has been made in proceedings between, on the one hand, Pacific World Limited ('Pacific World') and FDD International Limited ('FDD') and, on the other, the Commissioners for Her Majesty's Revenue and Customs ('the Commissioners') concerning the tariff classification of false nail sets.

Legal context

Overview

3 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, established by the International Convention concluded in Brussels on 14 June 1983 and approved on behalf of the Community by Council Decision 87/369/EEC of 7 April 1987 concerning the conclusion of the International Convention on the Harmonised Commodity Description and Coding System and of the Protocol of Amendment thereto (OJ 1987 L 198, p. 1) ('the HS Convention').

The CN

4 Part One of the CN contains a series of preliminary provisions. In that part, Section I on general rules, subsection A, entitled 'General rules for the interpretation of the [CN]' ('the CN General Rules'), provides as follows:

'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. (a) …

(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.'

5 Part Two of the CN contains a classification of goods in sections, chapters, headings and subheadings.

6 Section VI, entitled 'Products of the chemical or allied industries', contains Chapter 33, which is entitled 'Essential oils and resinoids; perfumery, cosmetic or toilet preparations'. Chapter 33 contains heading 3304, which is worded as follows: 'Beauty or make-up preparations for the care of the skin (other than medicaments), including sunscreen or suntan preparations; manicure or pedicure preparations'. Subheading 3304 30 00 is entitled 'Manicure or pedicure preparations'.

7 Section VI also contains Chapter 35, entitled 'Albuminoidal substances; modified starches; glues; enzymes'. Chapter 35 includes, inter alia, subheading 3506 10 00, entitled 'Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg'.

8 Section VII bears the title 'Plastics and articles thereof; rubber and articles thereof'. Section VII includes Chapter 39, entitled 'Plastics and articles thereof'. The last heading of Chapter 39 is heading 3926, entitled 'Other articles of plastics and articles of other materials of headings 3901 to 3914', which contains subheading 3926 90, entitled 'Other', which, in turn, contains subheading 3926 90 97, itself entitled 'Other'.

9 Section XV, entitled 'Base metals and articles of base metal', contains Chapter 82, which is entitled 'Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal'. Chapter 82 contains heading 8214, entitled 'Other articles of

cutlery (for example, hair clippers, butchers' or kitchen cleavers, choppers and mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files)'. That heading, in turn, contains subheading 8214 20 00, entitled 'Manicure or pedicure sets and instruments (including nail files)'.

Regulation No 1417/2007

10 The annex to Regulation No 1417/2007 ('the Annex') contains the classification of three types of goods.

11 The first type of goods referred to by Regulation No 1417/2007 is a set for nail decorating, put up for retail sale, containing a variety of sizes of false nails made of moulded plastic, a small tube of glue, a nail file, a manicure stick and decorating stickers for the nails. This product is classified under CN code 3926 90 97, in accordance with General Rules 1, 3(b) and 6 of the CN.

12 The Annex to Regulation No 1417/2007 thus states that the set in question, consisting of different articles, is to be classified under subheading 3926 90 97 on the basis of the article which gives it its essential character, that is to say, plastic false nails. The Annex makes reference to the HS explanatory notes to heading 33.04, (B), and states that such a 'set does not consist of manicure products of subheading 3304 30 00 as it includes the addition of false nails stuck over the fingernail and does not include manicure preparations which simply care for and beautify the hand and the natural nails …'.

13 The second classification effected by Regulation No 1417/2007 relates to moulded plastic false nails of the same size, packaged in batches and designed to be bound to the natural nail using an acrylic bonding solution. According to the Annex, those false nails must be classified as other articles of plastics under subheading 3926 90 97, according to their constituent material and pursuant to CN General Rules 1 and 6. It is also stated that those false nails are not considered to constitute manicure products of subheading 3304 30 00 for the same reasons as those given in relation to the first type of goods.

14 The third type of goods referred to in the Annex to Regulation No 1417/2007 is a bonding solution intended to adhere moulded plastic false nails to the natural nail and packaged in small tubes, of a net weight not exceeding 1 kg, with a nozzle to facilitate application. The Annex states that that product is to be classified under CN code 3506 10 00, according to CN General Rules 1 and 6, and is not considered to constitute a manicure or pedicure preparation under heading 3304.

The HS Explanatory Notes

15 The World Customs Organisation is required to approve, under the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes and Classification Opinions adopted by the HS Committee. Under Article 7(1) of the HS Convention, the functions of that Committee include proposing amendments to that Convention and preparing Explanatory Notes, Classification Opinions and other advice as guides to the interpretation of the HS.

16 Explanatory Note VIII relating to General Rule 3(b) on the interpretation of the HS provides:

'The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.'

17 The HS Explanatory Note relating to heading 33.04 thereof provides as follows at (B):

'(B) Manicure or pedicure preparations

This part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers or other preparations for use in manicure or pedicure.

This heading does not cover:

(a) Medicinal preparations used to treat certain skin complaints, e.g., creams for the treatment of eczema (heading 30.03 or 30.04).

(b) Foot deodorants and preparations for treating nails or claws on animals (heading 33.07).'

18 The wording of paragraph 2 of the HS Explanatory Note relating to heading 82.14 thereof is as follows:

'Manicure or pedicure sets and instruments, including nail files (folding or not). Such instruments also include nail cleaners, corn-cutters, corn-extractors, cuticle cutting knives, cuticle pressers and pushers, nail nippers and clippers.

Manicure or pedicure sets usually contain such instruments in boxes, cases, etc., and may include scissors, non-metallic nail polishers, hair removing tweezers, etc., which, taken separately, would be classified in their appropriate headings.'

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

19 Pacific World and FDD are established in the United Kingdom and import sets (also called 'kits') of false nails into the European Union. Those kits contain, normally, a set of plastic false nails, of different sizes, designed to be bound to the natural fingernail or toenail, a bonding solution specially designed to bind false nails to natural nails, and other tools such as a manicure stick and application tool.

20 FDD and Pacific World obtained, in 2005 and 2006 respectively, a Binding Tariff Information, issued by the Commissioners, classifying false nails and false nail products under CN subheading 3304 30 00, as 'manicure or pedicure preparations'.

21 That tariff information was based on a decision handed down in 2005 by the VAT and Duties Tribunal, now the First-Tier Tribunal (Tax Chamber), which found that false nails and the bonding solution for false nails were to be classified under CN subheading 3304 30 00 and not under CN subheading 3926 90 90 as 'other articles of plastics'.

22 However, on 4 December 2007 Regulation No 1417/2007 was published in the *Official Journal of the European Union*. Regulation No 1417/2007 classifies false nails and false nail sets under CN subheading 3926 90 97 as 'other articles of plastics' and classifies the bonding solution for false nails, when sold separately, under subheading 3506 10 00 as 'products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg'.

23 Taking account of that regulation, the Commissioners notified Pacific World and FDD of new decisions stating that the abovementioned Binding Tariff Informations had ceased to be valid.

24 Both companies challenged those new decisions before the VAT and Duties Tribunal, on the basis that the correct classification of the goods is that set out in the Binding Tariff Informations previously issued by the Commissioners and that, consequently, Regulation No 1417/2007 is invalid in so far as it relates to the classification of such goods.

25 In the light of the foregoing, the First-Tier Tribunal (Tax Chamber) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is [Regulation No 1417/2007] valid in so far as it classifies under CN code 3926 90 97 [previously 3926 90 90] the false nails, and thereby the false nail sets, described in [the Annex] to the said Regulation?

(2) If the answer to Question (1) is in the negative, is the [CN] to be interpreted as requiring that the false nail sets in issue be classified as ["manicure or pedicure preparations"] under tariff [sub]heading 3304 30 00 or as ["manicure or pedicure sets and instruments (including nail files)"] under tariff [sub]heading 8214 20 00?'

Consideration of the questions referred

26 By its questions, which it is appropriate to examine together, the national tribunal seeks clarification as to the validity of Regulation No 1417/2007 in so far as it classifies moulded plastic false nails and, thereby, sets of such false nails, under CN subheading 3926 90 97, as other articles of plastics, and as to the possible classification of those sets under subheadings 3304 30 00 or 8214 20 00, which relate respectively to manicure or pedicure preparations and to manicure or pedicure sets and instruments.

27 It is apparent from the reference for a preliminary ruling that the dispute in the main proceedings relates solely to the classification of false nail sets that are for retail sale and imported by the appellants in the main proceedings.

28 It should be noted that 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 wording of the relevant heading of the CN and in the section or chapter notes (see, inter alia, Case C-142/06 *Olicom* [2007] ECR I-6675, paragraph 16, and Joined Cases C-362/07 and C-363/07 *Kip Europe and Others* [2008] ECR I-9489, paragraph 26).

29 It should also be recalled that the HS Explanatory Notes are important means of ensuring the uniform application of the Common Customs Tariff and, as such, may be regarded as useful aids to its interpretation (see Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945, paragraph 12; Case C-382/95 *Techex* [1997] ECR I-7363, paragraph 12; Case C-15/05 *Kawasaki Motors Europe* [2006] ECR I-3657, paragraph 36; and Case C-123/09 *Roeckl Sporthandschuhe* [2010] ECR I-4065, paragraph 29).

Goods characteristic of sets such as those at issue in the main proceedings

30 In the present case, it should be noted that false nail sets such as those at issue in the main proceedings, consisting of different articles, inter alia a variety of sizes of false nail tips, glue, a manicure stick and an application tool, are not expressly referred to by the wording of the CN headings or by that of the CN section or chapter notes.

31 Consequently, all the relevant CN General Rules should be applied in order to classify those sets.

32 In that regard, it should be noted that such moulded plastic false nail sets come under CN General Rule 3, since they 'are prima facie classifiable under two or more headings'. They may come within the wording of heading 3304, which refers to 'Beauty or make-up preparations for the care of the skin (other than medicaments), including … manicure or pedicure preparations', and within that of heading 3926, relating to 'Other articles of plastics … '. CN General Rule 3(b) applies if the articles cannot be

classified by reference to CN General Rule 3(a). That is the position here, given that no CN heading, general or specific, refers to false nail sets such as those at issue in the main proceedings.

33 CN General Rule 3(b) provides that goods put up for retail sale in sets, which cannot be classified by reference to CN General Rule 3(a), are to be classified as if they consisted of the component which gives them their essential character, in so far as this criterion is applicable (see *Kip Europe and Others*, paragraph 49, and *Roeckl Sporthandschuhe*, paragraph 33).

34 In that regard, HS Explanatory Note VIII relating to CN General Rule 3(b) states that the factor which determines the essential character of goods may, as between different kinds of goods, be determined, for example, by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. It should be noted, in line with the parties concerned which have submitted observations to the Court, that the false nails dominate sets such as those at issue in the main proceedings in bulk and in quantity, and that the other goods, that is to say, the nail glue, the manicure stick and the application tool, are accessories which merely contribute to the achievement of the purpose of the product. It is therefore the false nails that give those sets their essential character.

The classification of moulded plastic false nails

35 In relation to the CN classification of false nails such as those at issue in the main proceedings, Regulation No 1417/2007 refers to subheading 3926 90 97, corresponding to 'other articles of plastics'. The appellants in the main proceedings disagree with that

classification and submit, primarily, that the goods at issue should be classified under heading 3304 as 'manicure or pedicure preparations' in so far as, firstly, having regard to their method of manufacture, they are the result of a polymerisation reaction during which several components are mixed and, secondly, they have the sole purpose of beautifying hands and feet.

36 As follows from the case-law cited in paragraph 28 of the present judgment, classification must be made according to the objective characteristics and properties of the product. To that effect, a false nail tip is, objectively, a plastic item, measured to be fitted to a natural nail and to modify the shape of that nail. Consequently, the classification of such goods under subheading 3926 90 97 as 'other articles of plastics' appears, in principle, to be justified.

37 Moreover, in Regulation No 1417/2007 the Commission, referring to the HS Explanatory Note relating to heading 33.04 thereof, paragraph (B), states that false nails are not considered to be manicure products under subheading 3304 30 00 as they are intended to be added to natural nails and are not manicure preparations designed solely to care for and beautify hands and natural nails. The United Kingdom Government supports that position.

38 Firstly, the wording of heading 3304 refers to preparations for the care of the skin, including manicure or pedicure preparations. Paragraph B of the HS Explanatory Note relating to heading 33.04 lists 'nail polishes, nail varnishes, nail varnish removers, cuticle removers or other preparations for use in manicure or pedicure' as examples of 'manicure or pedicure preparations'.

39 It must, therefore, be held that the abovementioned 'manicure or pedicure preparations' consist of substances which may take different forms, such as powders, liquids and ointments, and which are used for manicure or pedicure treatments, that is to say, aesthetic treatments designed to beautify hands or feet, and in particular nails.

40 Secondly, it must be noted that, while it is true that the Common Customs Tariff contains, in certain cases, references to manufacturing processes and to the use for which goods are intended, it is generally preferred, in the interests of legal certainty and ease of verification, to employ criteria for classification based on the objective characteristics and properties of products, which can be ascertained when customs clearance is obtained (see Case 38/76 *Industriemetall LUMA* [1976] ECR 2027, paragraph 7, and Case 40/88 *Weber* [1989] ECR 1395, paragraph 14).

41 Consequently, the manufacturing processes of a product are decisive only when a tariff heading expressly so provides (see *Weber*, paragraph 15).

42 In the present case, in the absence of a tariff heading and section or chapter notes relating to false nails, such as those at issue in the main proceedings, under which the manufacturing process would constitute a factor, such a factor does not affect the classification of false nails in the CN.

43 In that regard, the argument put forward by Pacific World and FDD that a false nail is 'simply an alternative to nail varnish', cannot be accepted. A false nail tip, unlike nail varnish, is a solid plastic object, glued on to the natural nail and allowing the shape of the natural nail to be changed, in particular by lengthening the natural nail. Moreover, the application of false nails does not in any way constitute treatment of nails, hands or feet.

44 Consequently, such a product is not a manicure or pedicure preparation coming under subheading 3304 30 00.

45 As regards classification under subheading 8214 20 00, put forward by Pacific World and FDD as an alternative submission, it must be noted that a false nail, being the article which confers the essential character on the sets at issue, cannot be considered to be an instrument within the meaning of heading 8214.

46 Firstly, it must be stated that Chapter 82, which contains that heading, forms part of Section XV, entitled 'Base metals and articles of base metal'. False nails, however, are made of plastic.

47 The argument of the appellants in the main proceedings, to the effect that it follows from the English version of the CN that the wording of subheading 8214 20 00 does not refer expressly to sets of manicure or pedicure 'instruments', cannot be upheld.

48 According to settled case-law, firstly, the wording used in one language version of a provision of European Union law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Secondly, the various language versions of a text of European Union law must be given a uniform interpretation and hence, in the case of divergence between the language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part (see Joined Cases C-230/09 and C-231/09 *Kurt und Thomas Etling and Others* [2011] ECR I-3097, paragraph 60 and the case-law cited).

49 In that regard, reference should be made to paragraph 2 of the HS Explanatory Note relating to heading 82.14 thereof, which refers specifically to tools that can be presented in sets for manicures or pedicures, such as a nail file, nail clippers or nail cleaner.

50 Taking account of those specifications, false nail sets such as those at issue in the main proceedings, which, as has been indicated in paragraph 30 of the present judgment, consist in particular of false nail tips of different sizes and glue, cannot be considered as sets of 'instruments' for manicures and pedicures within the meaning of subheading 8214 20 00.

51 It must be concluded that false nails cannot be classified either under subheading 3304 30 00 as 'manicure or pedicure preparations' or under subheading 8214 20 00 as 'manicure or pedicure sets and instruments', but rather, in view of their objective characteristics and properties, come under subheading 3926 90 97 as 'other articles of plastics'. Consequently, pursuant to CN General Rule 3(b), false nail sets such as those at issue in the main proceedings must be classified under subheading 3926 90 97.

52 Having regard to the foregoing, the answer to the questions referred is that Regulation No 1417/2007 is valid in so far as it classifies the false nails and, thereby, the false nail sets described in its annex under CN subheading 3926 90 97.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national tribunal, the decision on costs is a matter for that tribunal. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

Commission Regulation (EC) No 1417/2007 of 28 November 2007 concerning the classification of certain goods in the Combined Nomenclature is valid in so far as it classifies the false nails and, thereby, the false nail sets described in its annex under subheading 3926 90 97 of 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 Regulation (EC) No 1549/2006 of 17 October 2006.

[Signatures]