JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 8 DECEMBER 1977 [1]

Carlsen Verlag GmbH v Oberfinanzdirektion Köln (preliminary ruling requested by the Bundesfinanzhof)

'Children's picture books'

Case 62/77

1. Common Customs Tariff — Description of goods — Criterion for classification

2. Common Customs Tariff — Tariff heading 49.01 — Interpretation

3. Common Customs Tariff — Description of goods — Tariff heading 49.03 — Note 5 to Chapter 49 — Interpretation

1. The decisive criterion for the classification of goods for customs purposes is in general to be sought in their characteristics and objective properties as defined in the wording of the relevant heading of the Common Customs Tariff and of the notes to the sections or chapters.
2. The wording of tariff heading 49.01, where it refers without further qualification to 'books', must be interpreted as meaning publications in which the text in prose or verse conveys the information or narrative which it is intended to bring to the attention of the reader. A publication having as its salient features 'illustrations' or 'pictures' accordingly does not correspond to the wording of heading 49.01.
3. Tariff heading 49.03 and Note 5 to Chapter 49 must be interpreted as referring to children's picture books bound otherwise than in paper in which the pictures cover almost the whole page and constitute the essential means by which the meaning is conveyed whilst the short captions serve merely a simply explanatory purpose.

In Case 62/77

Reference to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof (Federal Finance Court) of the Federal Republic of Germany for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

CARLSEN VERLAG GMBH, Reinbek,

and

OBERFINANZDIREKTION (Regional Finance Office) KÖLN,

on the interpretation of Note 5 to Chapter 49 of the Common Customs Tariff [1] with regard to the tariff classification of certain publications intended for children,

THE COURT (Second Chamber)

composed of: M. Sørensen, President of Chamber, Lord Mackenzie Stuart and A. Touffait, Judges,

Advocate-General: F. Capotorti
Registrar: H. J. Eversen (Deputy Registrar)

gives the following

JUDGMENT

Facts and issues

The facts and the arguments put forward by the parties in the course of the written and oral procedures may be summarized as follows:

I — Facts and Procedure

The order making the reference indicates that on 26 February 1973 Carlsen Verlag, the plaintiff in the main action, requested the Oberfinanzdirektion, the defendant in the main action, to issue an official tariff classification opinion on 'children's books'. The present case relates to books for children entitled 'Teddybär, Teddybär' ('Teddy Bear, Teddy Bear'), 'Kindergarten für Tiere' ('Kindergarten for Animals'), 'Die Mausuhr' ('The Mouse Clock') and 'Meine Freunde' ('My Friends'). In its opinion of 30 March 1973 the Oberfinanzdirektion classified the goods as bound children's picture books under tariff heading 49.03.

The plaintiff in the main action then submitted a complaint against this opinion in so far as it related to the books entitled 'Teddybär, Teddybär', 'Die Mausuhr' and 'Meine Freunde'. It

1 — Translator's note: In order adequately to convey the sense of the original, literal translations are given of the Common Customs Tariff wherever that sense does not emerge from the official English version.

submitted various arguments on the facts. In particular, the copies produced show that the three books which still constitute the subject-matter of the dispute are bound books of 12 pages with large illustrations and printed text, each consisting of fine tear-resistent sheets of paperboard. The pages consist entirely or almost entirely of coloured illustrations. Each illustration is accompanied by a caption or short narrative. An illustration from the book 'Teddybär, Teddybär' is, for example, accompanied by the following text: 'Teddy bear, Teddy bear, bend down'. In the book 'Die Mausuhr', for example, the text accompanying an illustration runs: 'Tick, tack, tock, the mouse looks at the clock. Breakfast time! The table is laid. How hungry the children are again today! What's the time?'. The illustrations in the book 'Meine Freunde' have captions such as: 'I see another friend. He is a fireman. When there is a fire people telephone him. He gets onto the fire engine and comes very quickly. Using a hose he sprays the flames with water until the fire is put out'.

The Oberfinanzdirektion dismissed the complaint as unfounded. It considered that with regard to the books for children at issue the interest of the child was attracted primarily by the pictures whilst the text had only a subsidiary, albeit not unimportant, function.

The plaintiff in the main action submitted an application against this decision in which it requested that the books should be classified under tariff heading 49.01 on the basis of a judgment to that effect by the Finanzgericht Hamburg of 25 June 1973. The relevant books are printed matter featuring a text and intended for educational and recreational reading which, according to the official explanatory notes, in consequence come under tariff heading 49.01. An impartial observer would instinctively classify them as books for children and not as picture books. The extensive text of the books, to be read by or to the child, conveys their intrinsic meaning. The plaintiff lodged a number of expert opinions which in each case emphasize the special significance and independence of the texts which are the principal feature of the books whilst the illustrations merely constitute a supplement 'intended to make them clearer and more entertaining'.

On the basis of the written submissions the Bundesfinanzhof initially delivered a 'Vorbescheid' (provisional decision) on 3 August 1976, finding against Carlsen, which was to become final unless one of the parties requested the opening of the oral procedure within a month. It appears that in the course of that procedure Carlsen submitted three expert opinions (which were summarized as follows by the Commission):

Professor Giehrl considers that the characteristic feature of the books is 'a continuous narrative in verse' ('Die Mausuhr') or 'the basic independence of the text'. Even the pictures in the book 'Teddybär, Teddybär' must, he considers, be classified, having regard to the independent value of the narrative verse form, 'as illustrations intended to supplement the text'.

Mrs Ramseger considers the book 'Teddybär, Teddybär' as an educational and recreational means of making the necessity of bedtime less painful to children; the picture is not an end in itself but rather a means to make the words easier to memorize. The book 'Die Mausuhr' is intended for children of kindergarten age. The reader learns to tell the time from the clock face. The text gives a succinct and expressive interpretation of the pictures. The third book, 'Meine Freunde', is stated to be 'meaningless without the text or comprehensible only in parts'. She states later that 'one's general impression of children's books differs appreciably from the definition given in heading 49.03 of the Common Customs Tariff'.

Dr Haag of the Association of German Book Dealers considers that in all the books the pictures and text are inseparably connected. The text is not secondary; on the contrary, the illustrations are subsidiary to the verse. It is the text which stimulates the desired thought-process in the child.

The Bundesfinanzhof stayed the procedure again and submitted a question to the Court of Justice by an Order of 19 April 1977. It summarized the legal aspects of the dispute emphasizing that the latter turns on the point whether the books in question come under heading 49.01 of the Common Customs Tariff: 'printed books, booklets, brochures, pamphlets and leaflets', or tariff heading 49.03: 'Children's picture books and painting books, bound otherwise than in paper'.

According to Note 5 to Chapter 49: 'for the purposes of heading No 49.03, the expression 'children's picture books' means books for children in which the pictures dominate and are not subsidiary to the text'.

In the order making the reference the Bundesfinanzhof expressed its doubts on legal and factual points as follows: 'Were the wording of heading 49.03 alone to be relied upon for classifying the books for tariff purposes, an interpretation according to the ordinary meaning of the words would lead to their classification under that heading; for the books are what is usually understood by the expression 'children's picture books'.

However, Note 5 to Chapter 49 has to be considered also (Cf. Rule 1 of the General Rules for the interpretation of the Common Customs Tariff). According to that note the determinative question is whether the pictures dominate and are not subsidiary to the text. If, when the first part of that provision (dominate) is considered, attention is focussed on the extent of the visual impression it can hardly be denied that the relatively large pictures hold the attention of the reader more than the short passages of text. On the other hand, if the significance of the text is considered (Cf. the Explanatory Notes to the Brussels Nomenclature, marginal number 1 to heading 49.03, according to which the pictures must form the 'principal interest'), there is much to be said for another view. The text of the book 'Meine Freunde' is independent, goes further than a description of the pictures and explains the theme running through the book. It is true that the text of the book 'Die Mausuhr', does not describe anything which cannot be identified in the pictures, but, owing to its easily remembered verses and the repetition of certain words, it has a not inconsiderable educational significance for the child who uses the book. Even the very short text of the book 'Teddybär, Teddybär' is not without significance, for it is inspired by an old nursery rhyme and is intended to explain the movements of the bear which are not ascertainable from the pictures alone.

The Bundesfinanzhof states that Note 5 to Chapter 49 entails an additional requirement for assigning the books to heading 49.03, namely that the pictures should not be subsidiary to the text. If those words are interpreted literally they mean that the pictures are not subsidiary whenever the intrinsic meaning of the pictures is easily grasped by the ordinary reader for whom the book is intended. This applies in the present proceedings in the case of all three books, although the texts are not of secondary importance. Such an interpretation is however irreconcilable with the Explanatory Notes to the Brussels Nomenclature, according to which the books are treated as falling within tariff heading 49.03 provided that the pictures form the principal interest and the text is merely 'subsidiary'. Those notes in fact give the impression that the pictures are subsidiary whenever, although the meaning is evident from the pictures themselves, the text makes a positive

contribution towards a better understanding of them.

Finally, there is little information relevant to the solution of this question in the two other sentences in the Explanatory Notes to the Brussels Nomenclature (marginal numbers 2 and 3 to tariff heading 49.03). There is only a small difference of substance between them since they both assume that the books concerned contain a story and a series of pictures to illustrate incidents within that story. The notes merely draw a distinction regarding the text of the books to be classified, that is between a simple caption or brief narrative for each illustration (= tariff heading 49.03) and a continuous narrative (= tariff heading 49.01) On this view the question whether the text is subsidiary accordingly does not appear to constitute a distinguishing criterion.

That is why the Bundesfinanzhof considered it appropriate to submit the following question to the Court:

'How is Note 5 to Chapter 49 of the Common Customs Tariff to be interpreted? Is the question whether 'the pictures dominate' to be decided purely quantitatively on a visual basis or is the (for example, educational) significance of the pictures to be compared to that of the text? Is it therefore to be understood that the pictures "are not subsidiary to the text" only if any normal person looking at the pictures can grasp their essential meaning easily even without the text or are the pictures subsidiary to the text whenever the text makes it appreciably easier to understand the pictures?'

This order was recorded at the Court Registry on 17 May 1977. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged on behalf of the Commission of the European Communities.

Having heard the views of the Advocate General the Court decided by Order of 21 September 1977 to assign the case to the Second Chamber pursuant to Article 95 (1) of the Rules of Procedure of the Court.

II — Summary of the written observations

The *Commission* first considers in detail the facts and the course of the procedure and recalls the arguments put forward by the parties to the main action; it states that in its view there are two distinct aspects to the Bundesfinanzhof's endeavours to obtain clarification of the meaning in law of the tariff headings and of the explanatory note in question:

On the one hand, it asks what factors must be taken into consideration in order to determine whether in children's books 'the pictures *dominate*'. More particularly, the Bundesfinanzhof wishes to know whether this point must be appraised purely quantitatively on a visual basis, namely according to whether the illustrated part covers more of the surface, or whether account should also be taken of 'the importance of the text'. The Bundesfinanzhof considers that 'the ordinary meaning of the words' tends to favour the first alternative, whilst the Explanatory Notes to the Nomenclature of the Customs Cooperation Council (Explanatory Notes to the Brussels Nomenclature) suggest another interpretation, in favour of the second alternative.

In the second part of the preliminary question it has asked on what condition it may be considered that *the pictures 'are not subsidiary to the text'*. In particular, the Bundesfinanzhof wishes to know whether it is sufficient, in order to establish that the pictures are subsidiary, that although the meaning of the pictures 'emerges unaided, the text makes a positive contribution towards a better understanding of them' (page 5 of the

order making the reference). The Bundesfinanzhof also considers that there is a contradiction between the wording of Note 5 to Chapter 49 and the Explanatory Notes to the Brussels Nomenclature.

In order to reply to the question thus restated the Commission maintains in particular that the following factors are significant:

The distinction between tariff headings 49.01 and 49.03 is based not on content or purpose but on form: 'the salient feature of picture books is that the information which they contain reposes in the pictures and is expressed through the latter'.

Since heading 49.03 refers to 'children's' picture books it must be considered 'what, from the point of view of the child for whom a combination of words and pictures is intended, constitutes the essential informative element of the printed matter'; the foregoing is confirmed by Note 5 which is intended to supply criteria for establishing this point.

According to Note 5, the illustration must 'dominate' in order for it to be classified under heading 49.03; this is determined by a quantitative criterion (the illustration must cover a larger area than the text) together with a relative criterion (the pictures must not be subsidiary to the text).

The individual language versions of Note 5 indicate that for a proper application of those criteria two further factors should be taken into consideration; comparison of those versions makes it clear that for the child the pictures must form the principal element and the text must be subsidiary.

A revision (taking the form of a correction) of the German and French versions of Note 5, following the 35th Meeting of the Nomenclature Committee of the Customs Cooperation Council in April 1976, confirms that the other versions were more precise, thus strengthening the argument of the Commission; this is confirmed by Regulation No 2723/76 of the Council of 8 November 1976 which adopted clearer wording and henceforth is in accordance with the suggested interpretation. The Note now reads:

'5. For the purposes of heading No 49.03, the expression "children's picture books" means books for children in which the pictures form the principal interest and the text is subsidiary.'

Although the provision in force when the dispute occurred has thus been clarified by the revision of 1976, one point remains to be settled, namely the question 'how the educational material is conveyed to children'; it appears that, even though the explanatory function of the text is important educationally, it may be considered for tariff purposes as 'subsidiary' to the pictures which are intended to be presented to the child as the essential conveyer of information.

This view is confirmed by the Explanatory Notes to the Brussels Nomenclature and above all by the example given therein of pictorial alphabet-books, the educational purpose of which is plainly to provide rudimentary training in the alphabet and vocabulary and which fall within tariff heading 49.03 because the picture serves to explain the word-symbol.

Having regard to the foregoing the Commission suggests that the reply to the preliminary question which has been submitted should be as follows:

'Children's picture books, consisting of pictures accompanied by short captions or texts which, by reason of their content and presentation, are intended for children of less than school age, the pages of which are almost entirely

covered by the pictures, the latter constituting, for children, the essential means by which the meaning is conveyed, whilst the captions merely serve a simple explanatory purpose, must be classified under tariff heading 49.03 of the Common Customs Tariff, even if the explanatory captions or short texts are intended to impart to the child a clearly-specified meaning of the pictures which has been determined for an educational purpose and which could not be apprehended without reference to such captions or texts.'

III — Oral procedure

In the course of the oral procedure which took place on 13 October 1977 Carlsen Verlag, represented by Professor Dr Kuno Barth, and the Commission, represented by its Agent, Dr M. Beschel, developed the arguments expounded in the course of the written procedure; during the oral procedure certain points raised by the Court were clarified.

Carlsen Verlag maintained that the question can be settled only if the point of view of children and their particular behaviour-patterns are borne in mind. Children cannot fully understand unless there is an illustration linked to the text; the illustration merely serves to provide a better explanation and its quantitative significance must be disregarded.

Children's books provide information for children and account must be taken of this in adopting criteria, as is established by the modification of the provision applicable from 8 November 1976 (Regulation No 2723/76 of the Council); that textual amendment should not alter the date of application of the judgment to be given, in pursuance of German constitutional principles concerning legal certainty and respect for legitimate expectations.

The *Commission* emphasizes that the difficulties with which the Bundesfinanzhof and the Court of Justice are confronted arise in fact from the very provision which was adopted in order to establish the boundary between the two tariff headings and to facilitate that distinction. The Commission is also of the view that it is necessary to take into consideration the fact that the books must be intended for children and their particular mentality. In view of this there are three possibilities:

- either the meaning is contained in the picture and the text has no decisive significance; or
- the two factors are to some degree equally balanced and taken together constitute the meaning; or finally
- the words convey the meaning, while the picture, as in the classic illustrated book, fulfils a merely subordinate role.

Although this abstract division no doubt can indeed cause difficulties it in any case clarifies the Common Customs Tariff itself. In practice combinations of pictures and words are of necessity based on the premise that the words and pictures go together and constitute an entity; within the framework of that entity the point to be settled is which of the two elements is the more important. This question must be answered in the abstract, as the Commission has suggested.

The parties then replied to a number of questions put by Members of the Court.

The Advocate-General delivered his opinion at the hearing on 17 November 1977.

Decision

1 By an Order of 19 April 1977, which was received at the Court on 17 May 1977, the Bundesfinanzhof requested pursuant to Article 177 of the EEC Treaty an interpretation of Note 5 to Chapter 49 of the Common Customs Tariff.

That request for an interpretation was made in the context of a dispute concerning the tariff classification of books for children entitled 'Teddybär, Teddybär', 'Die Mausuhr' and 'Meine Freunde', imported from Japan into the Federal Republic of Germany.

By an opinion of 30 March 1973, the Oberfinanzdirektion Köln classified these bound books, each of which consists of five tear-resistent sheets of paperboard almost entirely covered by coloured illustrations accompanied by captions or short passages of text, under tariff heading 49.03, which is worded as follows: 'Children's picture books and painting books [bound otherwise than in paper]'.

The importer has contested this classification and maintains that the books in question are publications the salient feature of which is the text, which are intended to provide educational and recreational reading material and which come under tariff heading 49.01: 'Printed books, booklets, brochures, pamphlets and leaflets'.

2 According to Note 5 to Chapter 49: 'For the purposes of heading No 49.03, the expression 'children's picture books' means books for children in which the pictures dominate and are subsidiary to the text'.

3 The decisive criterion for the classification of goods for customs purposes is in general to be sought in their characteristics and objective properties as defined in the wording of the relevant heading of the Common Customs Tariff and of the notes to the sections or chapters.

4 The wording of heading 49.01 must be understood as meaning that a product displaying the characteristics of the product in dispute cannot be classified under the heading 'brochures', which consist of a small number of pages of text alone, unless, they are described as 'illustrated', or the heading 'imprimés similaires' (similar printed material).

That wording, where it refers without further qualification to 'books', must be interpreted as meaning publications in which the text in prose or verse conveys the information or narrative which it is intended to bring to the attention of the reader.

The salient feature of a publication of the type in question, namely that it is an 'illustrated' or 'picture' book, accordingly does not correspond to the wording of heading 49.01.

5 Tariff heading 49.03 refers to 'children's picture books [bound otherwise than in paper]'.

The interpretation of this wording corresponds to the character of a publication such as that which is in dispute, which clearly falls within the definition of 'children's picture books [bound otherwise than in paper]'.

The interpretation of the wording of tariff heading 49.03, read in isolation, is accordingly not such as to raise doubts as to the classification of the product in question under that heading.

6 The complication in this case is caused by the wording of Note 5 to Chapter 49 on the interpretation of heading 49.03.

The wording of that note in fact prompted the Bundesfinanzhof to submit the following question:

'Is the question whether the pictures dominate to be decided purely quantitatively on a visual basis or is the (for example, educational) significance of the pictures to be compared to that of the text? Is it therefore to be understood that the pictures "are not subsidiary to the text" only if any normal person looking at the pictures can grasp their essential meaning easily even without the text or are the pictures subsidiary to the text whenever the text makes it appreciably easier to understand the pictures?'

7 It is clear from the wording of this question that it is concerned to establish whether a publication intended for children of less than school age in which the pictures cover almost the whole page and constitute the dominant interest may be classified under the general heading 49.01 and not under the special tariff heading 49.03 if the text does not merely emphasize elements which may be apprehended visually but supplements the picture with ideas which the latter alone does not suggest.

8 It is clear from the wording of Note 5 to Chapter 49 that the written text could exclude a children's picture book, bound otherwise than in paper, from heading 49.03 only if it were in the form of a continuous narrative and not merely episodic and if it contained pictures illustrating events dealt with in the narrative itself.

Pictures are subsidiary to the text only if the essential meaning of the book reposes in the text which the pictures are intended to illustrate.

9 It is clear from the wording of tariff heading 49.03, supplemented by Note 5 to Chapter 49, that children's picture books, bound otherwise than in paper, must be excluded from that heading only if it is clear that the text is of inherent interest, is fully valid of itself and is self-sufficient independently of the illustrations.

In view of the foregoing, tariff heading 49.03 and Note 5 to Chapter 49 must be interpreted as referring to children's picture books bound otherwise than in paper in which the pictures cover almost the whole page and constitute the essential means by which the meaning is conveyed whilst the short captions serve merely a simple explanatory purpose.

10 Although a court may have regard only to provisions in force at the time of the events giving rise to the dispute, it is not without interest, although the point cannot form part of the foregoing reasoning, that on grounds of linguistic harmonization Note 5 to Chapter 49 was amended by a corrigendem of 23 June 1976 in such a way as to confirm the decision which has been reached.

Costs

11 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 action are concerned, in the nature of a step in the action pending before the Bundesfinanzhof, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

In answer to the questions submitted to it by the Bundesfinanzhof by an Order of 19 April 1977, hereby rules:

Tariff heading 49.03 and Note 5 to Chapter 49 must be interpreted as referring to children's picture books bound otherwise than in paper in which the pictures cover almost the whole page and constitute the essential means by which the meaning is conveyed whilst the short captions serve merely a simple explanatory purpose.

Sørensen Mackenzie Stuart Touffait

Delivered in open court in Luxembourg on 8 December 1977.

H. J. Eversen
Deputy Registrar

M. Sørensen
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL CAPOTORTI DELIVERED ON 17 NOVEMBER 1977 [1]

Mr President,
Members of the Court,

1. The proceedings pending before the Bundesfinanzhof of the Federal Republic of Germany which have given rise to the present case concern the tariff classification of illustrated books essentially intended for children of less than school age. The books in question each consist of 12 tear-resistent pages of paperboard containing illustrations which almost entirely fill the pages and which are accompanied by captions consisting of a few lines. The latter describe or comment on the pictures above, supplementing them in certain cases with details or ideas which are not directly supplied by the pictures themselves. Certain of these publications also have an educational purpose: for instance, to teach the child to read the face of a clock or to help it to understand the usefulness to society of certain jobs.

1 — Translated from the Italian.