JUDGMENT OF THE COURT (Third Chamber)
9 December 1997 *

In Case C-143/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between

Leonhard Knubben Speditions GmbH

and

Hauptzollamt Mannheim

on the interpretation of subheading 0904 20 of the Combined Nomenclature, in the version resulting from Commission Regulation (EEC) No 3174/88 of 21 September 1988 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1988 L 298, p. 1) and from Commission Regulation (EEC) No 2886/89 of 2 August 1989 amending Annex I to Regulation No 2658/87 (OJ 1989 L 282, p. 1),

* Language of the case: German.

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida (Rapporteur) and J.-P. Puissochet, Judges,

Advocate General: A. La Pergola,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Leonhard Knubben Speditions GmbH, by K. Friedrich, Rechtsanwalt, Frankfurt,

— the Commission of the European Communities, by F. Castillo de la Torre, of its Legal Service, acting as Agent, and H.-J. Rabe, Rechtsanwalt, Hamburg,

having regard to the Report for the Hearing,

after hearing the oral observations of Leonhard Knubben Speditions GmbH, represented by K. Friedrich, and the Commission, represented by H.-J. Rabe, at the hearing on 26 June 1997,

after hearing the Opinion of the Advocate General at the sitting on 17 July 1997,

gives the following

Judgment

1 By order of 7 March 1996, received at the Court on 29 April 1996, the Bundesfinanzhof (Federal Finance Court) referred for a preliminary ruling under

Article 177 of the EC Treaty a question concerning the interpretation of subheading 0904 20 of the Combined Nomenclature, in the version resulting from Commission Regulation (EEC) No 3174/88 of 21 September 1988 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1988 L 298, p. 1) and from Commission Regulation (EEC) No 2886/89 of 2 August 1989 amending Annex I to Regulation No 2658/87 (OJ 1989 L 282, p. 1).

2 That question has arisen in a dispute between Leonhard Knubben Speditions GmbH ('Leonhard Knubben') and the Hauptzollamt (Principal Customs Office) Mannheim ('the Hauptzollamt') concerning the tariff classification of consignments of dried sweet peppers cut into pieces measuring between 4 and 8 mm.

3 Subheading 0904 20 of the Combined Nomenclature resulting from Regulations No 3174/88 and No 2886/89 ('the Combined Nomenclature') is worded as follows:

'0904 20 — Fruits of the genus Capsicum or of the genus Pimenta, dried or crushed or ground:

— — Neither crushed nor ground:

0904 20 10 — — — Sweet peppers

— — — Other:

...

0904 20 90 — — Crushed or ground'.

4 According to the Explanatory Note to subheading 0904 20 10,

'... This subheading covers only dry peppers, whole or in pieces but neither crushed nor ground'.

5 In addition, Council Regulation (EEC) No 4161/87 of 22 December 1987 laying down, consequent on the entry into force of the combined nomenclature, the basic duties to be adopted within the Community as constituted on 31 December 1985 for the purpose of calculating the successive reductions provided for in the Act of Accession of Spain and Portugal (OJ 1987 L 395, p. 1) contains, at subheading 0904 20 10, published in Table I of Appendix 2 to its Annex, the following reference:

'Sweet red or green peppers, in pieces, with a moisture content not exceeding 9.5%'.

6 Between June 1989 and November 1990, Leonhard Knubben imported from Hungary and Chile consignments of dried sweet peppers cut into pieces measuring between 4 and 8 mm and declared them as 'crushed or ground' peppers within the meaning of subheading 0904 20 90 of the Combined Nomenclature. Such peppers are subject to a customs duty of 5% pursuant to Council Regulation (EEC) No 1672/89 of 29 May 1989 amending Regulation No 2658/87 (OJ 1989 L 169, p. 1), which prolongs the suspension of customs duties for the corresponding products.

7 Following inquiries as to the nature of the goods, the Hauptzollamt concluded that they comprised peppers which were 'neither crushed nor ground' within the meaning of subheading 0904 20 10 of the Combined Nomenclature and subject to

a customs duty of 12%, and, by a reassessment notice of 12 March 1992, proceeded to post-clearance recovery of the customs duties. Following an administrative appeal, the Hauptzollamt confirmed its decision.

8 By application of 5 August 1993, Leonhard Knubben brought an action against that decision before the Finanzgericht (Finance Court) Baden-Württemberg. By judgment of 22 June 1995, that court dismissed the action on the ground that peppers having such dimensions could only be products 'in pieces' coming under subheading 0904 20 10 of the Combined Nomenclature. Such a classification would, moreover, be consistent with subheading 0904 20 10 published in Table I of Appendix 2 to the Annex to Regulation No 4161/87.

9 Leonhard Knubben appealed on a point of law against that decision to the Bundesfinanzhof.

10 According to the Bundesfinanzhof, peppers cut into pieces measuring between 4 and 8 mm cannot in any event be regarded as being 'ground'. The Bundesfinanzhof is inclined rather to treat such peppers as being 'crushed' and as thus requiring to be classified under subheading 0904 20 90 in view of the German text of the Combined Nomenclature, which refers to peppers which are 'gemahlen oder sonst zerkleinert' (ground or otherwise crushed). The expression 'sonst zerkleinert' (otherwise crushed) might, it suggests, indicate any degree of crushing not necessarily achieving the fineness of a milled product.

11 However, the Bundesfinanzhof takes the view that the classification of peppers cut into pieces measuring between 4 and 8 mm under subheading 0904 20 90 gives rise to some doubt, in view of the other language versions of that subheading. Thus, the term 'broyés' used in the French version and the term 'crushed' used in the

English version, corresponding to the German expression 'sonst zerkleinert', may indicate a greater degree of crushing achieving the fineness of a milled product. The Bundesfinanzhof also finds that such an interpretation was accepted by Regulation No 4161/87, as well as by the German customs authorities, which use subheading 0904 20 10 to classify peppers, in pieces or in flakes, the sides of which are 1 mm or more in length.

12 Since it formed the view that the resolution of the dispute required an interpretation of Community law, the Bundesfinanzhof referred the following question to the Court for a preliminary ruling:

'How is subheading 0904 20 of the Common Customs Tariff — Combined Nomenclature 1989 and 1990 — to be interpreted? Does the term "sonst zerkleinert" ("otherwise crushed") used therein signify merely a fineness similar to the ground product, or does it also cover a product cut into pieces, such as a product cut into pieces measuring between 4 and 8 mm?'

13 By its question, the national court is seeking to ascertain whether subheading 0904 20 of the Combined Nomenclature falls to be construed as meaning that the expression 'sonst zerkleinert' ('otherwise crushed') covers only a product of a fineness comparable to that of a product which has been ground or whether it also covers a product cut into pieces measuring between 4 and 8 mm.

14 It is settled case-law that, in the interests of legal certainty and ease of verification, the decisive criterion for the customs classification of goods must generally be their objective characteristics and properties, as defined by the wording of the headings of the Combined Nomenclature and the notes to the sections or chapters (Case C-164/95 *Fábrica de Queijo Eru Portuguesa* v *Alfândega de Lisboa* [1997] ECR I-3441, paragraph 13). There are also explanatory notes drawn up, so far as the Combined Nomenclature is concerned, by the European Commission, which may be an important aid to the interpretation of the scope of the various tariff

headings but do not have legally binding force (Joined Cases C-106/94 and C-139/94 *Colin and Dupré* [1995] ECR I-4759, paragraph 21, and Case C-201/96 *LTM* [1997] ECR I-6147, paragraph 17).

15 It should first be noted that the French and English versions of the Combined Nomenclature, to which reference should be made in so far as the Combined Nomenclature was established on the basis of the Harmonized Commodity Description and Coding System, only the French and English versions of which are authoritative, use, in the wording of subheading 0904 20, the terms 'broyés' and 'crushed' alongside the terms 'pulvérisés' and 'ground'.

16 It follows from those terms that peppers are subject to different classification according to whether their fragmentation is the result of 'crushing' or 'grinding' or, on the contrary, results from neither of those processes.

17 Cutting into pieces is a fragmentation process distinct from both 'crushing' and 'grinding'.

18 It should be noted in this regard that the terms in the other language versions corresponding to 'broyés' and 'crushed', in particular 'tritati' in the Italian and 'triturados' in the Spanish and Portuguese versions, likewise designate a fragmentation process distinct from that of cutting into pieces.

19 Next, according to the French and English versions of the Explanatory Notes on the Combined Nomenclature, subheading 0904 20 10 relating to peppers which have been neither crushed nor ground 'covers only dry peppers, whole or in pieces, but neither crushed nor ground'.

20 Thus, it also follows from those Notes that peppers in pieces are neither 'crushed' nor 'ground' within the meaning of subheading 0904 20. It should be pointed out in this regard that, with regard to cinnamon and cinnamon-tree flowers, the Explanatory Notes on the Combined Nomenclature state in like manner that subheading 0906 10 00 ('Cinnamon and cinnamon-tree flowers, neither crushed nor ground') covers 'pieces made by cutting cinnamon sticks to specified lengths ...'.

21 Peppers cut into pieces cannot therefore be treated as 'crushed' within the meaning of subheading 0904 20.

22 This interpretation is confirmed by Regulation No 4161/87, which was adopted after the Combined Nomenclature had entered into force. That regulation cites under subheading 0904 20 10 ('Fruits of the genus Capsicum or of the genus Pimenta, neither crushed nor ground'), published in Table I of Appendix 2 to its Annex, 'Sweet red or green peppers, in pieces, with a moisture content not exceeding 9.5%'.

23 The answer to the question submitted for a preliminary ruling must therefore be that subheading 0904 20 of the Combined Nomenclature must be construed as meaning that the expression 'sonst zerkleinert' ('otherwise crushed') does not cover a product cut into pieces measuring between 4 and 8 mm.

Costs

24 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Bundesfinanzhof by order of 7 March 1996, hereby rules:

Subheading 0904 20 of the Combined Nomenclature, in the version resulting from Commission Regulation (EEC) No 3174/88 of 21 September 1988 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff and from Commission Regulation (EEC) No 2886/89 of 2 August 1989 amending Annex I to Regulation No 2658/87, must be construed as meaning that the expression 'sonst zerkleinert' ('otherwise crushed') does not cover a product cut into pieces measuring between 4 and 8 mm.

Gulmann Moitinho de Almeida Puissochet

Delivered in open court in Luxembourg on 9 December 1997.

R. Grass

Registrar

C. Gulmann

President of the Third Chamber