JUDGMENT OF THE COURT (Fifth Chamber)

10 May 2001 *

In Case C-463/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Appeal Commissioners (Ireland) for a preliminary ruling in the proceedings pending before them between

Cabletron Systems Ltd

and

The Revenue Commissioners,

on the validity of Commission Regulation (EC) No 1638/94 of 5 July 1994 concerning the classification of certain goods in the Combined Nomenclature (OJ 1994 L 172, p. 5) and Commission Regulation (EC) No 1165/95 of 23 May 1995 concerning the classification of certain goods in the Combined Nomenclature (OJ 1995 L 117, p. 15), and on the interpretation of the Combined Nomenclature of the Common Customs Tariff, set out in Annex I to Council

* Language of the case: English.

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 (EEC) No 2505/92 of 14 July 1992 (OJ 1992 L 267, p. 1), by Commission Regulation (EEC) No 2551/93 of 10 August 1993 (OJ 1993 L 241, p. 1), by Commission Regulation (EC) No 3115/94 of 20 December 1994 (OJ 1994 L 345, p. 1) and by Commission Regulation (EC) No 3009/95 of 22 December 1995 (OJ 1995 L 319, p. 1),

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, M. Wathelet, D.A.O. Edward (Rapporteur), P. Jann and L. Sevón, Judges,

Advocate General: F.G. Jacobs,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Cabletron Systems Ltd, by P. Sreenan SC and R. Hastings BL, instructed by Arthur Cox, Solicitors,

— the Revenue Commissioners, by F. Cooke, acting as Agent, assisted by E. Fitzsimons SC and B. Conway BL,

— the Netherlands Government, by M.A. Fierstra, acting as Agent,

— the Commission of the European Communities, by R.B. Wainwright and J.C. Schieferer, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Cabletron Systems Ltd, the Revenue Commissioners and the Commission at the hearing on 30 November 2000,

after hearing the Opinion of the Advocate General at the sitting on 1 February 2001,

gives the following

Judgment

1 By decision of 15 December 1998, received at the Court Registry on 17 December 1998, the Appeal Commissioners referred for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) four questions on the validity of Commission Regulation (EC) No 1638/94 of 5 July 1994 concerning the classification of certain goods in the Combined Nomenclature (OJ 1994 L 172, p. 5) and of Commission Regulation (EC) No 1165/95 of 23 May 1995 concerning the classification of certain goods in the Combined Nomenclature (OJ 1995 L 117, p. 15), and on the interpretation of the Combined Nomen-

clature of the Common Customs Tariff, 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 (EEC) No 2505/92 of 14 July 1992 (OJ 1992 L 267, p. 1), by Commission Regulation (EEC) No 2551/93 of 10 August 1993 (OJ 1993 L 241, p. 1), by Commission Regulation (EC) No 3115/94 of 20 December 1994 (OJ 1994 L 345, p. 1) and by Commission Regulation (EC) No 3009/95 of 22 December 1995 (OJ 1995 L 319, p. 1).

2 Those questions have arisen in proceedings between Cabletron Systems Ltd, a company having its head office in Limerick, Ireland, ('Cabletron') and the Revenue Commissioners, the body responsible in Ireland for matters relating to customs, concerning the customs classification of 58 types of equipment designed for controlling, processing, formatting, routing, switching and bridging information between two units of a local area network, the latter being defined as an interconnection of one or more computers or servers and computer peripherals.

The legal framework

The Combined Nomenclature up to 31 December 1995

3 Heading No 8471 of the Combined Nomenclature is worded as follows:

'Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included'.

4 Note 5 to Chapter 84 of the Combined Nomenclature, which relates to heading No 8471, in the version prior to 1 January 1996, states:

'(A)...

(B) Automatic data-processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all the following conditions:

(a) it is connectable to the central processing unit either directly or through one or more other units;

(b) it is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

Such units presented separately are also to be classified within heading No 8471.

Heading No 8471 does not cover machines incorporating or working in conjunction with an automatic data-processing machine and performing a

specific function. Such machines are classified in the headings appropriate to their respective functions or, failing that, in residual headings.'

5 Heading No 8517 of the Combined Nomenclature, in the version prior to 1 January 1996, was worded as follows:

'Electrical apparatus for line telephony or line telegraphy, including such apparatus for carrier-current line systems'.

The Combined Nomenclature as from 1 January 1996

6 While the wording of heading No 8471 of the Combined Nomenclature has remained unchanged, Note 5 to Chapter 84 of the Combined Nomenclature was amended by Regulation No 3009/95, which entered into force with effect from 1 January 1996. As amended by that regulation, Note 5 now reads as follows:

'(A)...

(B) Automatic data-processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E)

below, a unit is to be regarded as being a part of a complete system if it meets all of the following conditions:

(a) it is of a kind solely or principally used in an automatic data-processing system;

(b) it is connectable to the central processing unit either directly or through one or more other units; and

(c) it is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) Separately presented units of an automatic data-processing machine are to be classified in heading No 8471.

(D) ...

(E) Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data-processing

machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.'

7 As amended by Regulation No 3009/95, Heading No 8517 of the Combined Nomenclature reads as follows:

'Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones'.

Regulations No 1638/94 and No 1165/95

8 Under Regulations No 1638/94 and No 1165/95, adapters, link adapters and transceivers, as described in items 1 to 3 of the annex to Regulation No 1638/94, and the adapter cards described in item 4 of the annex to Regulation No 1165/95 must be classified under subheading 8517 82 90 of the Combined Nomenclature (electrical apparatus for line telegraphy other than facsimile machines).

The dispute in the main proceedings

9 In March and April 1993, the Revenue Commissioners, at the request of Cabletron, issued binding tariff information classifying 43 types of network equipment under CN subheading 8471 99 10 (peripheral units of automatic data-processing machines).

10 Following the adoption of Regulations No 1638/94 and No 1165/95, the Revenue Commissioners, in November 1994, April 1995, May 1995 and June 1995, withdrew that binding tariff information and replaced it with other information classifying the types of equipment in question under CN subheading 8517 82 90.

11 In March 1996, in the light of substantial changes to the Combined Nomenclature introduced by Regulation No 3009/95, the Revenue Commissioners reclassified those types of equipment under the new CN subheading 8517 50 90 (other apparatus for digital line systems).

12 In response to a fresh request by Cabletron for classification of other types of network equipment, the Revenue Commissioners also issued binding tariff information in April 1996 classifying 16 of those items of equipment under CN subheading 8517 50 90.

13 Since the rate of customs duty under heading No 8517 was at that time much higher than that under heading No 8471, Cabletron appealed to the Appeal Commissioners against those classifications by the Revenue Commissioners.

14 Taking the view that the proceedings raised problems of Community law, the Appeal Commissioners decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Commission Regulation (EC) No 1638/94 of 5 July 1994 concerning the classification of certain goods in the Combined Nomenclature (OJ 1994

L 172, p. 5) valid in so far as it classifies under CN Code 8517 82 90 the goods respectively described at items 1, 2 and 3 of the Annex to the said Regulation?

(2) Is Commission Regulation (EC) No 1165/95 of 23 May 1995 concerning the classification of certain goods in the Combined Nomenclature (OJ 1995 L 117, p. 15) valid in so far as it classifies under CN Code 8517 82 90 the goods described at item 4 of the Annex to the said Regulation?

(3) Is the Combined Nomenclature (Council Regulation No 2658/87, as amended) (OJ 1987 L 256, p. 1) to be interpreted as requiring that those goods [in issue in the main proceedings] be classified as *"Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included ..."* under tariff heading 8471 either (i) *post* 1 January 1996, or (ii) between 28 April 1993 and 31 December 1995, or (iii) for both periods of time?

(4) If the answer to any part of Question (3) is in the negative in respect of one or more of the goods [in issue in the main proceedings], is the Combined Nomenclature to be interpreted as requiring that such goods be classified, *ante* 1 January 1996, as *"Electrical apparatus for line telephony or line telegraphy, including such apparatus for carrier-current line systems ..."* under tariff heading 8517 or, *post* 1 January 1996, as *"Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones ..."* under tariff heading 8517?'

The questions submitted for preliminary ruling

15 By their questions, the Appeal Commissioners are in substance asking, first, whether Regulations No 1638/94 and No 1165/95 are valid inasmuch as they classify the types of equipment in issue in the main proceedings under heading No 8517 and, second, what was the correct heading in the Combined Nomenclature for classification of the equipment in question on the dates on which the different tariff information notices were issued in the case in the main proceedings.

16 It should be noted first of all that, in its judgment in Case C-339/98 *Peacock* [2000] ECR I-8947, the Court held that, between July 1990 and May 1995, network cards designed to be installed in automatic data-processing machines were to be classified under heading No 8471 as units of machines of that type.

17 The Court held, in particular, that network cards are designed solely for automatic information processing machines, that they are directly connected to those machines and that their function is to supply and accept data in a form which those machines can use. From this it inferred that network cards are comparable to any other medium whereby an automatic information processing machine accepts or delivers data in the sense that they have no function which they would be capable of performing without the assistance of such a machine (*Peacock*, cited above, paragraph 16). The final subparagraph of Note 5(B) to Chapter 84 of the Combined Nomenclature, in the version in force prior to 1 January 1996, could not therefore preclude them from being classified under heading No 8471, given that they do not perform any specific function (*Peacock*, paragraphs 17 and 18). Further, network cards satisfy the conditions relating to 'units' set out in that note, since they can be connected to the central unit and are

specifically designed as parts of an automatic data-processing system (*Peacock*, paragraph 20).

18 Although *Peacock* concerned only one category of network equipment, it is common ground that all of the goods at issue in the main proceedings satisfy the conditions relating to 'units' set out in Note 5(B) to Chapter 84 of the Combined Nomenclature, in its version prior to 1 January 1996, a circumstance which persuaded the Court, in *Peacock*, to rule in favour of the application of heading No 8471.

19 Furthermore, all of these goods appear to be covered by the broad definitions in items 4 and 5 of Note I(D) of the explanatory notes on the Harmonised System in regard to heading 8471, as 'control and adaptor units such as those to effect interconnection of the central processing unit to other digital data-processing machines, or to groups of input or output units', '*channel to channel adaptors* used to connect two digital systems to each other', or 'signal converting units .... [which] enable an external signal to be understood by the machine, while at output they convert the output signals that result from the processing carried out by the machine into signals which can be used externally'.

20 For these reasons and for those explained by the Advocate General in points 71 to 74 of his Opinion, the goods at issue in the main proceedings were, before the adoption of Regulations No 1638/94 and No 1165/95, to be classified under heading No 8471.

21 Second, for the reasons set out in points 82 to 95 of the Advocate General's Opinion, the argument submitted by the Commission and the Revenue

Commissioners, to the effect that Regulations No 1638/94 and No 1165/95 are none the less valid inasmuch as the Commission's classification error cannot be described as 'manifest', must be rejected.

22 The Commission ought to have realised, in the light of the wording of headings No 8471 and No 8517, read in conjunction with the explanatory notes, as worded when Regulations No 1638/94 and No 1165/95 were adopted, that it was wrong to classify under heading No 8517 the types of network equipment mentioned in items 1 to 3 of the annex to Regulation No 1638/94 and in item 4 of the annex to Regulation No 1638/94. That error is manifest and consequently renders those regulations invalid.

23 Third, for the reasons explained by the Advocate General in points 96 to 102 of his Opinion, the amendments made to the wording of heading No 8517 as from 1 January 1996 do not concern the types of network equipment at issue in the main proceedings.

24 It follows that network equipment which satisfies the conditions relating to units of an automatic data-processing machine in the form of a system, laid down by Note 5(B) to Chapter 84 of the Combined Nomenclature, in its version applying after 1 January 1996, does not, after that date, fall under heading No 8517 simply because it uses cables and digital techniques.

25 Nor is the amendment to Note 5 that took effect from 1 January 1996 such as to alter the Court's findings in its judgment in *Peacock* in respect of the period subsequent to that date.

26 Finally, for the reasons explained by the Advocate General in points 111 to 115 of his Opinion, the request by the Revenue Commissioners for a limitation of the temporal effects of any judgment declaring Regulations No 1638/94 and No 1165/95 invalid must be rejected.

27 The questions submitted must therefore be answered as follows:

— Regulation No 1638/94 is invalid inasmuch as it classifies the adapters, link adapters and transceivers described in items 1 to 3 of its annex under heading No 8517 of the Combined Nomenclature;

— Regulation No 1165/95 is invalid inasmuch as it classifies the adapter cards described in item 4 of its annex under heading No 8517 of the Combined Nomenclature;

— items of computer network equipment which are connectable to the central processing unit either directly or through one or more other units, which are specifically designed as part of a data-processing system, which are able to accept or deliver data in a form which can be used by the system and which have no function that they would be capable of performing without the assistance of an automatic data-processing machine must be classified under heading No 8471 of the Combined Nomenclature both before and after 1 January 1996.

Costs

28 The costs incurred by the Netherlands Government and by the Commission, which have 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 (Fifth Chamber),

in answer to the questions referred to it by the Appeal Commissioners by decision of 15 December 1998, hereby rules:

1. Commission Regulation (EC) No 1638/94 of 5 July 1994 concerning the classification of certain goods in the Combined Nomenclature is invalid inasmuch as it classifies the adapters, link adapters and transceivers described in items 1 to 3 of its annex under heading No 8517 of the Combined Nomenclature.

2. Commission Regulation (EC) No 1165/95 of 23 May 1995 concerning the classification of certain goods in the Combined Nomenclature is invalid inasmuch as it classifies the adapter cards described in item 4 of its annex under heading No 8517 of the Combined Nomenclature.

3. Items of computer network equipment which are connectable to the central processing unit either directly or through one or more other units, which are specifically designed as part of a data-processing system, which are able to accept or deliver data in a form which can be used by the system and which have no function that they would be capable of performing without the assistance of an automatic data-processing machine must be classified under heading No 8471 of the Combined Nomenclature both before and after 1 January 1996.

La Pergola Wathelet Edward

Jann Sevón

Delivered in open court in Luxembourg on 10 May 2001.

R. Grass

Registrar

A. La Pergola

President of the Fifth Chamber