JUDGMENT OF THE COURT (First Chamber)
7 March 1985 *

In Case 32/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tariefcommissie [Administrative Court of Last Instance in Revenue Matters], Amsterdam, for a preliminary ruling in the proceedings pending before that Court between

Van Gend & Loos NV

and

Inspecteur der Invoerrechten en Accijnzen [Inspector of Customs and Excise], Enschede,

for a preliminary ruling on the interpretation of heading 62.04 of the Common Customs Tariff,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, T. Koopmans and R. Joliet, Judges,

Advocate General: M. Darmon
Registrar: D. Louterman, Administrator

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gives the following

* Language of the Case: Dutch.

** after considering the observations submitted on behalf of the Commission of the European Communities by Mr A. Riem and Mr J. Sack, acting as Agents,
after hearing the Opinion of the Advocate General delivered at the sitting on 31 January 1985,

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By a letter of 12 January 1984, received at the Court on 2 February 1984, the Tariefcommissie, Amsterdam, referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty a question relating to the interpretation of heading 62.04 of the Common Customs Tariff.

2 The main proceedings are between Van Gend & Loos NV and the Inspector of Customs and Excise, Enschede. The dispute concerns the amount of customs duty which must be paid on importation of sails intended for sailboards.

3 On 16 April 1981, Van Gend & Loos NV imported such sails, originating in Hong Kong and coming from Switzerland. The competent collector of customs duties considered that goods of that type fell under heading 62.04 of the Common Customs Tariff. He therefore levied import duty at 16%.

4 Van Gend & Loos NV contested that decision by submitting a complaint to the Inspector of Customs and Excise at Enschede. In support of its complaint, the company contended that the sails which had been imported ought to have been classified under tariff heading 97.06 as being component parts of sailboards, which themselves fall under that tariff heading. Consequently, customs duty on importation should have been charged at 9.1%.

5 After the Inspector of Customs and Excise had refused to grant the application submitted by Van Gend & Loos, the latter brought an action before the Tariefcommissie against the Inspector's decision.

6 Since it considered that the dispute raised a problem regarding the interpretation of Community law, the Tariefcommissie submitted the following question to the Court:

Must sails such as those at issue in this case - which are made of synthetic textile fibres and are specifically intended for sailboards — be regarded as sails within the meaning of heading 62.04 of the Common Customs Tariff?

7 Before replying to that question, reference must be made to the relevant provisions of the Common Customs Tariff. Tariff heading 62.04 indicates that it covers 'tarpaulins, sails, awnings, sunblinds, tents and camping goods . . . '. Heading 97.06 covers sports equipment. It is not contested that sailboards come within the latter category.

8 Moreover, Note 1 (f) to Chapter 97 states that that chapter does not cover, in particular, 'sails for boats or landcraft, falling within Chapter 62'. Note 4 to Chapter 97 states that the chapter covers 'parts and accessories which are suitable for use solely or principally with articles falling within any heading of this chapter' (namely, sports equipment).

9 As the Commission, which alone submitted observations to the Court, has indicated, two hypotheses must be distinguished. On the one hand, the case in which the sails for sailboards were imported at the same time as the boards and, on the other, the case in which the sails were imported separately. In the first hypothesis, the sails fall under tariff heading 97.06, in accordance with Note 4 to Chapter 97. In the second hypothesis, however, it must be determined whether the 'sails' in Note 1 to Chapter 97 include sails intended for sailboards, and, if so, whether those sails fall under tariff heading 62.04.

10 It should be noted in that connection that the Customs Cooperation Council's Explanatory Note No 2 relating to tariff heading 62.04 states that that heading covers 'sails (for sailing boards, yachts, fishing smacks, sports boats, etc.)' and also 'sails of similar types for landcraft (e.g. sand yachts and ice yachts)'.

11 The use of the terms 'etc.' and 'e.g.' shows that the list set out in that text is not exhaustive. Furthermore, that list is very extensive because it covers sails for objects as different as fishing boats and sand yachts.

12 In those circumstances, it must be deduced that the Community legislature has classified under tariff heading 62.04 different types of sails which perform the same

function and are made of similar materials regardless of the supporting structure for which they are intended.

13 Since there are no notable differences between sails for sailboards and the types of sails listed in Explanatory Note No 2, the reply to the question submitted by the Tariefcommissie, Amsterdam, must be that the word 'sails' in tariff heading 62.04 of the Common Customs Tariff must be interpreted as including sails made of synthetic textile fibres and specifically intended for sailboards when those sails are imported separately from their supporting structure.

Costs

14 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 proceedings are concerned, in the nature of a step in the proceedings pending before the Tariefcommissie, Amsterdam, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Tariefcommissie, Amsterdam, by letter of 12 January 1984, hereby rules:

The words 'sails' in tariff heading 62.04 of the Common Customs Tariff must be interpreted as including sails made of synthetic textile fibres and specifically intended for sailboards when those sails are imported separately from their supporting structure.

Bosco Koopmans Joliet

Delivered in open court in Luxembourg on 7 March 1985.

P. Heim
Registrar

G. Bosco
President of the First Chamber