# JUDGMENT OF THE COURT (Fourth Chamber)
19 January 1988 *

In Case 141/86

Reference to the Court under Article 177 of the EEC Treaty by the Divisional Court of the Queen's Bench Division of the High Court of Justice of England and Wales for a preliminary ruling in the proceedings pending before that court between

**The Queen**

and

**HM Customs and Excise *ex parte* Imperial Tobacco Ltd**

on the interpretation and validity of Commission Regulation (EEC) No 3517/84 of 13 December 1984 on the classification of goods falling within subheading 24.01 B of the Common Customs Tariff (Official Journal 1984, L 328, p. 9),

THE COURT (Fourth Chamber),

composed of: G. C. Rodríguez Iglesias, President of Chamber, T. Koopmans and C. Kakouris, Judges,

Advocate General: C. O. Lenz
Registrar: S. Hackspiel, acting as Administrator

after considering the observations submitted on behalf of

Imperial Tobacco Ltd, the applicant in the main proceedings, by R. S. Whiting, Solicitor, in the written procedure, and by Francis Jacobs, QC, and J. F. Bellis, Barrister, in the oral procedure,

the Belgian Government, by A. Van de Velde, Adviser at the Customs and Excise Administration, acting as Agent, in the written procedure,

* Language of the Case: English.

the United Kingdom, by H. R. L. Purse, Assistant Treasury Solicitor, acting as Agent, in the written procedure,

the Commission of the European Communities, by P. Oliver, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 10 June 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 September 1987,

gives the following

## Judgment

1 By order of 2 June 1986, which was received at the Court on 6 June 1986, the High Court of Justice of England and Wales referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty two questions on the interpretation and validity of Commission Regulation (EEC) No 3517/84 of 13 December 1984 on the classification of goods falling within subheading 24.01 B of the Common Customs Tariff (Official Journal 1984, L 328, p. 9).

2 The questions were raised in proceedings between Imperial Tobacco Ltd and HM Customs and Excise on the classification for customs purposes of the stems of leaves of Virginia flue-cured tobacco.

### The applicable legislation

3 Council Regulation (EEC) No 3564/84 of 18 December 1984 applying generalized tariff preferences for 1985 in respect of certain agricultural products originating in developing countries (Official Journal 1984, L 338, p. 183) opened a tariff quota in the Community for imports of unmanufactured Virginia 'flue-cured' type tobaccos falling within subheading 24.01 ex A of the Common Customs Tariff.

4 Heading No 24.01 of the Common Customs Tariff, in the version in force on 1 January 1985 (Council Regulation (EEC) No 3400/84 of 27 November 1984, (Official Journal 1984, L 320, p. 1)), reads as follows:

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'24.01 Unmanufactured tobacco; tobacco refuse:

A. Flue-cured Virginia type and light air-cured Burley type tobacco (including Burley hybrids); light air-cured Maryland type and fire-cured tobacco ([a])

B. Other

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([a]) Entry under this subheading is subject to conditions to be determined by the competent authorities'.

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5 Article 1 of Commission Regulation (EEC) No 3035/79 of 20 December 1979 laying down conditions for the entry of tobacco under subheading 24.01 A of the Common Customs Tariff (Official Journal 1979, L 341, p. 26) provides as follows:

'The entry under subheading 24.01 A of the Common Customs Tariff [of certain types of tobacco] ... shall be subject to presentation of a certificate of authenticity meeting the requirements specified in this regulation.'

6 Pursuant to the power set out in Article 2 (3) and Article 3 of Regulation (EEC) No 97/69 of the Council of 16 January 1969 on measures to be taken for uniform application of the Nomenclature of the Common Customs Tariff (Official Journal, English Special Edition 1969 (I), p. 12), as amended by Council Regulation (EEC) No 2055/84 of 16 July 1984 (Official Journal 1984, L 191, p. 1), the Commission adopted Regulation (EEC) No 3517/84, which is at issue in this case, on the classification of goods falling within subheading 24.01 B of the Common Customs Tariff. Article 1 of Regulation (EEC) No 3517/84 provides as follows:

'Leave-stalks, stems, ribs and trimmings of tobacco leaves shall be classified in the Common Customs Tariff within subheading:

24.01 Unmanufactured tobacco; tobacco refuse:

B. Other.'

## The main proceedings

7 In April 1985 the applicant in the main proceedings, Imperial Tobacco Ltd, a major tobacco importer and cigarette manufacturer, imported into the United Kingdom a quantity of flue-cured Virginia tobacco stem under the quota opened by Council Regulation No 3564/84, referred to above. In the customs entry form, Imperial Tobacco Ltd declared that the tobacco stem in question fell under subheading 24.01 A of the Common Customs Tariff, as had been the case hitherto. However, H. M. Customs and Excise classified those goods under subheading 24.01 B pursuant to Regulation No 3517/84.

8 Imperial Tobacco Ltd challenged that classification before the High Court, which stayed the proceedings and asked the Court to give a preliminary ruling on the following questions:

'(1) Whether the correct interpretation of Commission Regulation (EEC) No 3517/84 is such as to place within subheading 24.01 B of the Common Customs Tariff tobacco stem covered by a certificate of authenticity which establishes that it is of flue-cured Virginia type?

(2) If so, whether the Regulation is to that extent invalid in that it conflicts with the terms of Council Regulation (EEC) No 3400/84?'

9 Reference is made to the Report for the Hearing for a fuller account of the facts and the legal background to the main proceedings, for the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

## The first question

10 As the United Kingdom, the Belgian Government and the Commission correctly point out, it is clear both from the wording of Article 1 of Regulation No 3517/84 and from the preamble to that regulation that the rib — which is another word for the stem — of tobacco leaves falls under subheading 24.01 B.

11 The answer to the first question must therefore be that Commission Regulation No 3517/84 must be interpreted as meaning that stem of flue-cured Virginia type tobacco must be classified under subheading 24.01 B of the Common Customs Tariff.

## The second question

12 It should be observed that Regulation No 3517/84 was adopted pursuant to the basic Council Regulation No 97/69, as amended, Article 3 of which provides that the Commission is to adopt the necessary measures to ensure uniform application of the Common Customs Tariff Nomenclature where they are in accordance with the opinion of the Committee on the Common Customs Tariff Nomenclature.

13 In interpreting that provision the Court has held (most recently in the judgment of 28 March 1979 in Case 158/78 *Biegi* v *Hauptzollamt Bochum* [1979] ECR 1103, and the judgment of 20 March 1980 in Joined Cases 87, 112 and 113/79 *Bagusat* v *Hauptzollamt Berlin-Packhof* [1980] ECR 1159) that the Council has conferred upon the Commission, acting in cooperation with the customs experts of the Member States, a wide power of discretion in defining the subject-matter of tariff headings coming into consideration for classification.

14 Therefore the question arising in this case is whether, in adopting Regulation No 3517/84, the Commission exceeded the limits of the power thereby conferred upon it.

15 It is appropriate to point out, as appears from the documents before the Court, that the expression 'flue-cured' denotes the procedure whereby the tobacco has been cured and the term 'Virginia' designates a particular type of tobacco. After harvesting, tobacco, which is grown in a large number of countries, is first cured, then threshed and finally dried before being packed and shipped to the manufacturer. None of those operations constitutes a manufacturing process.

16 In the threshing stage the leaf stem, the main rib which bisects the leaf and attaches it to the plant, is separated from the rest of the leaf, which is known as the lamina. In the past the stem used to be discarded after threshing, but modern

manufacturing technology permits both the stem and the lamina to be used in the manufacture of cigarettes. Stem accounts for approximately 20% by weight of Virginia type tobacco.

17 In view of that development, Imperial Tobacco Ltd argues that subheading 24.01 A of the Common Customs Tariff includes not only the lamina of the tobacco in question but also the stems, there being no doubt or lacuna in that respect.

18 It must be observed that, in so far as it does not define 'stems' of tobacco leaves, heading No 24.01 of the Common Customs Tariff has given rise to differing interpretations and hence, as appears from the documents before the Court, until Regulation No 3517/84 was adopted the Member States' practice with regard to the classification of stem was not uniform.

19 In those circumstances, the Commission cannot be criticized for having sought to remedy that situation in which the Common Customs Tariff was not applied uniformly.

20 Furthermore, it must be observed that, having regard to heading No 24.01 of the Common Customs Tariff, which is at issue in these proceedings, nothing in the documents before the Court suggests that the Commission exceeded the limits of its powers when it classified the product in question as tobacco refuse. It should be noted in that connection that, according to the Court's case-law (see, for example, the judgment of 15 February 1977 in Joined Cases 69 and 70/76 *Dittmeyer* v *Hauptzollamt Hamburg-Waltershof* [1977] ECR 231, and the judgment of 22 March 1984 in Case 90/83 *Paterson and Others* v *W. Weddel & Company* [1984] ECR 1567), for the purposes of the Common Customs Tariff the term 'refuse' does not refer to substances which are completely valueless, since, in any event, such substances do not need to be classified, but to secondary products of less value than other products.

21 In view of the foregoing considerations it must be held that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulation No 3517/84.

## Costs

22 The costs incurred by the United Kingdom, the Belgian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As the 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 national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions submitted to it by the Divisional Court of the Queen's Bench Division of the High Court of Justice of England and Wales by order of 2 June 1986, hereby rules:

**(1) Commission Regulation No 3517/84 of 13 December 1984 must be interpreted as meaning that stem of flue-cured Virginia type tobacco must be classified under subheading 24.01 B of the Common Customs Tariff.**

**(2) Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of that regulation.**

Rodríguez Iglesias Koopmans Kakouris

Delivered in open court in Luxembourg on 19 January 1988.

P. Heim
Registrar

G. C. Rodríguez Iglesias
President of the Fourth Chamber