JUDGMENT OF THE COURT (Second Chamber)
22 January 2004 *

In Joined Cases C-133/02 and C-134/02,

REFERENCES to the Court under Article 234 EC by the Gerechtshof te Amsterdam (Netherlands) for a preliminary ruling in the proceedings pending before that court between

Timmermans Transport & Logistics BV, formerly Timmermans Diessen BV,

and

Inspecteur der Belastingdienst — Douanedistrict Roosendaal,

and between

Hoogenboom Production Ltd

and

Inspecteur der Belastingdienst — Douanedistrict Rotterdam,

* Language of the case: Dutch.

on the interpretation of Article 9(1) and 12(5)(a)(iii) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1, and Corrigendum, OJ 1997 L 179, p. 11),

THE COURT (Sixth Chamber),

composed of: C. Gulmann (Rapporteur), acting for the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the Netherlands Government, by H.G. Sevenster, acting as Agent,

— the Commission of the European Communities, by H.M.H. Speyart, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Timmermans Transport & Logistics BV and Hoogenboom Production Ltd, represented by R.G.A. Tusveld and D.L.L. van den Berg, belastingadviseurs, of the Netherlands Government, represented by S. Terstal, acting as Agent, and of the Commission, represented by H.M.H. Speyart at the hearing on 6 February 2003,

after hearing the Opinion of the Advocate General at the sitting on 11 September 2003,

gives the following

Judgment

1 By orders of 2 April 2002, received at the Court on 10 April 2002, the Gerechtshof te Amsterdam (Regional Court of Appeal of Amsterdam) referred to the Court for a preliminary ruling under Article 234 EC questions, identical in both cases, on the interpretation of Article 9(1) and 12(5)(a)(iii) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1, and Corrigendum OJ 1997 L 179, p. 11; 'the Customs Code').

2 The question was raised in the course of two actions between, respectively, Timmermans Transport & Logistics BV, formerly Timmermans Diessen BV ('Timmermans') and the Inspecteur der Belastingdienst — Douanedistrict Roosendaal (Customs Inspectorate, Roosendaal district; 'the Roosendaal Inspector')

and between Hoogenboom Production Limited ('Hoogenboom') and the Inspecteur der Belastingdienst — Douanedistrict Rotterdam (Customs Inspectorate, Rotterdam district; 'the Rotterdam Inspector'), in relation to binding tariff information ('BTI') issued by the above inspectors to Timmermans and Hoogenboom and which was then withdrawn.

Relevant provisions

3 Article 4 of the Customs Code provides:

'For the purposes of this Code, the following definitions shall apply:

...

(5) "Decision" means any official act by the customs authorities pertaining to customs rules giving a ruling on a particular case, such act having legal effects on one or more specific or identifiable persons; this term covers inter alia a binding tariff information within the meaning of Article 12.

...'

4 Article 9 of the Customs Code provides:

'1. A decision favourable to the person concerned, shall be revoked or amended where, in cases other than those referred to in Article 8, one or more of the conditions laid down for its issue were not or are no longer fulfilled.

...

3. The person to whom the decision is addressed shall be notified of its revocation or amendment.

4. The revocation or amendment of the decision shall take effect from the date of notification. However, in exceptional cases where the legitimate interests of the person to whom the decision is addressed so require, the customs authorities may defer the date when revocation or amendment takes effect.'

5 Under Article 12(1) to (6) of the Customs Code:

'1. The customs authorities shall issue binding tariff information or binding origin information on written request, acting in accordance with the committee procedure.

2. Binding tariff information or binding origin information shall be binding on the customs authorities as against the holder of the information only in respect of the tariff classification or determination of the origin of goods.

...

3. The holder of such information must be able to prove that:

— for tariff purposes: the goods declared correspond in every respect to those described in the information,

— ...

4. Binding information shall be valid for a period of six years in the case of tariffs and three years in the case of origin from the date of issue. By way of derogation from Article 8, it shall be annulled where it is based on inaccurate or incomplete information from the applicant.

5. Binding information shall cease to be valid:

(a) in the case of tariff information:

(i) where a regulation is adopted and the information no longer conforms to the law laid down thereby;

(ii) where it is no longer compatible with the interpretation of one of the nomenclatures referred to in Article 20(6):

— at Community level, by reason of amendments to the explanatory notes to the combined nomenclature or by a judgment of the Court of Justice of the European Communities,

— at international level, by reason of a classification opinion or an amendment of the explanatory notes to the Nomenclature of the Harmonised Commodity Description and Coding System, adopted by the World Customs Organisation established in 1952 under the name "the Customs Cooperation Council";

(iii) where it is revoked or amended in accordance with Article 9, provided that the revocation or amendment is notified to the holder.

The date on which binding information ceases to be valid for the cases cited in (i) and (ii) shall be the date of publication of the said measures or, in the case of international measures, the date of the Commission communication in the "C" series of the *Official Journal of the European Communities*;

(b) ...

6. The holder of binding information which ceases to be valid pursuant to paragraph 5(a)(ii) or (iii) or (b)(ii) or (iii) may still use that information for a period of six months from the date of publication or notification, provided that he concluded binding contracts for the purchase or sale of the goods in question, on the basis of the binding information, before that measure was adopted. However, in the case of products for which an import, export or advance-fixing certificate is submitted when customs formalities are carried out, the period of six months is replaced by the period of validity of the certificate.

In the case of paragraph 5(a)(i) and (b)(i), the Regulation or agreement may lay down a period within which the first subparagraph shall apply.

...'

The main proceedings

Case C-133/02

6 On 12 January 1999, Timmermans filed an application for a BTI with the Roosendaal Inspector. The application concerned glass chandeliers to which it considered tariff subheading 9405 50 00 90 of the Common Customs Tariff ('CCT') was applicable. In support of its application it claimed that that tariff subheading had already been used for the same type of goods by a previously issued BTI, and it sent a brochure showing all the products it offered for sale, and including in particular photographs of the goods in question.

7 On 15 January 1999, the Roosendaal Inspector issued the BTI requested. It described the goods in the same way and classified them under the same subheading as in the application.

8 However, on 19 March 1999 the Roosendaal Inspector withdrew the BTI on the ground that, on a closer examination and in consultation with the customs authorities of a neighbouring district concerning the interpretation of the applicable nomenclature, it had become apparent that the goods in question should be classified under tariff subheading 7013 29 91 00 of the CCT, as glassware of a kind used for table, kitchen, toilet, office, or similar purposes. The revocation decision came into effect on the day of its adoption.

9 On 29 March 1999, Timmermans entered an objection against that decision which was dismissed by the Roosendaal Inspector on 20 May 1999.

10 On 12 June 1999 Timmermans brought an action before the Gerechtshof te Amsterdam.

Case C-134/02

11 On 9 October 1997, Hoogenboom filed an application for a BTI with the Rotterdam Inspector. The application concerned preserved apricots containing added sugar to which it considered tariff subheading 2008 50 61 00 00 of the CCT was applicable.

12 On 5 December 1997, the Rotterdam Inspector issued the BTI requested. It described the product in the same way and classified it under the same subheading as in the application.

13 On 6 February 1998, Hoogenboom filed four other applications for a BTI with the Rotterdam Inspector. The application concerned sunflower seeds, nuts and apples, all preserved and containing added sugar, and non-roasted ground-nuts. It added that tariff subheadings 2008 19 19 90 00, 2008 19 19 10 00, 2008 99 49 30 00 and 2008 11 94 00 00 of the CCT respectively applied to those products.

14 On 26 February 1998, the Rotterdam Inspector issued the BTIs requested. In them, the products were described and classified in the same way as in the applications.

15 However, on 6 October 1998, the Rotterdam Inspector withdrew the five RTCs issued to Hoogenboom on the ground that the classification of the goods in question under tariff heading 2008 of the CCT (fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing other added sugar or other sweetening matter or spirit, not elsewhere specified or included) was incompatible with the wording of that heading. It stated that the goods should be classified under tariff heading 1701 of the CCT (cane or beet sugar and chemically pure sucrose in solid form). As the BTIs were being withdrawn as a result of an administrative error, the Rotterdam Inspector authorised Hoogenboom to use them until 31 December 1998.

16 On 9 November 1998, Hoogenboom filed an objection against that decision which was dismissed by the Rotterdam Inspector on 25 March 1999.

17 On 23 April 1999, Hoogenboom brought an action against that decision before the Gerechtshof te Amsterdam.

The question referred

18 In the circumstances, the Gerechtshof te Amsterdam decided to stay the proceedings and to refer the following question, identical in both cases, to the Court for a preliminary ruling:

'Does Article 9(1) of the Community Customs Code, read in conjunction with Article 12(5)(a)(iii) thereof, provide the customs authorities with a legal basis for withdrawing a [BTI] where those authorities change the interpretation given therein of the legal provisions applicable to the tariff classification of the goods concerned, even where the change is made within the six-year period referred to?'

The question

Observations submitted to the Court

19 According to Timmermans and Hoogenboom, a BTI cannot be amended unilaterally by the national customs authorities. It is the Commission which has the authority to initiate such an amendment. To take any other view would run counter to the requirements of legal certainty as well as to the objectives pursued by the institution of BTIs and to the uniform application of Community law.

20 The Netherlands Government and the Commission argue that it follows from the wording of Article 12(5)(a)(iii) of the Customs Code read in conjunction with Article 9(1) thereof that the customs authorities may revoke a BTI before the expiry of the six-year period of validity when 'one or more of the conditions laid down for its issue were not or are no longer fulfilled'. This would be the case where the thinking in relation to the classification of certain products has evolved. The Netherlands Government maintains that the holder of a BTI is protected from an unexpected change of heading by the customs authorities under Article 12(6) of the Customs Code, according to which the holder of a BTI which ceases to be valid may still use it for a period of six months after notification of revocation. The Commission argues that the scheme of Articles 9 and 12 of the Customs Code is such that the general principles of Community law are safeguarded automatically if the authorities in question comply with the procedure laid down in them.

The Court's answer

21 Article 12(5)(a) of the Customs Code sets out three situations in which a BTI ceases to be valid. Under point (iii) this is the case when a BTI 'is revoked or amended in accordance with Article 9' of the Customs Code and provided that the revocation or amendment decision is notified to the holder.

22 Under Article 9(1) of the Customs Code, a decision favourable to the person concerned may be revoked if one or more of the conditions laid down for its issue were not or are no longer fulfilled.

23 Thus, the Community legislature has unequivocally provided that a BTI ceases to be valid where one of the conditions set for its issue was not or is no longer fulfilled.

24 The issue of a BTI is made on the basis of an interpretation by the customs authorities of the legal provisions applicable to the tariff classification of the goods concerned and is subject to proper justification for that interpretation.

25 Where, on more detailed examination, it appears to the customs authorities that that interpretation is wrong, following an error of assessment or evolution in the thinking in relation to tariff classification, they are entitled to consider that one of the conditions laid down for the issue of a BTI is no longer fulfilled and to revoke that BTI with a view to amending the tariff classification of the goods concerned.

26 It is important to point out that, in order to protect legal certainty, the Community legislature laid down specific rules in Article 12(6) of the Customs Code, which also apply to revocations made under Article 12(5)(a)(iii) and according to which, under certain conditions, a BTI remains valid for a certain period after its revocation.

27 In order to reply to the question referred in the course of these cases, it does not appear necessary to take a view on the question of whether those provisions safeguard legal certainty sufficiently in all situations.

28 In the light of the foregoing, the answer to the question referred must be that Article 9(1) read in conjunction with Article 12(5)(a)(iii) of the Customs Code must be interpreted as meaning that they provide the customs authorities with a legal basis for withdrawing a binding tariff information where those authorities change the interpretation given therein of the legal provisions applicable to the tariff classification of the goods concerned.

Costs

29 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 (Sixth Chamber),

in answer to the question referred to it by the Gerechtshof te Amsterdam by orders of 2 April 2002, hereby rules:

Article 9(1) read in conjunction with Article 12(5)(a)(iii) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as meaning that they provide the customs authorities with a legal basis for withdrawing a binding tariff information where those authorities change the interpretation given therein of the legal provisions applicable to the tariff classification of the goods concerned.

Gulmann Cunha Rodrigues Puissochet

Schintgen Macken

Delivered in open court in Luxembourg on 22 January 2004.

R. Grass V. Skouris

Registrar President