JUDGMENT OF THE COURT (Second Chamber)
17 May 2001 *

In Case C-119/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal d'instance du VII[e] arrondissement de Paris (France) for a preliminary ruling in the proceedings pending before that court between

Hewlett Packard BV

and

Directeur Général des Douanes et Droits Indirects,

on the interpretation of point 3 of the Annex to Commission Regulation (EC) No 2184/97 of 3 November 1997 concerning the classification of certain goods in the combined nomenclature (OJ 1997 L 299, p. 6),

* Language of the case: French.

THE COURT (Second Chamber),

composed of: V. Skouris, President of the Chamber, R. Schintgen and N. Colneric (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Hewlett Packard BV, by F. Goguel, avocat,

— the French Government, by K. Rispal-Bellanger and C. Vasak, acting as Agents,

— the Commission of the European Communities, by R. Tricot, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Hewlett Packard BV and the Commission at the hearing on 6 December 2000,

after hearing the Opinion of the Advocate General at the sitting on 18 January 2001,

gives the following

Judgment

1 By judgment of 30 March 1999, received at the Court on 12 April 1999, the Tribunal d'instance (District Court) du VII[e] arrondissement de Paris referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of point 3 of the Annex to Commission Regulation (EC) No 2184/97 of 3 November 1997 concerning the classification of certain goods in the combined nomenclature (OJ 1997 L 299, p. 6).

2 That question was raised in proceedings between Hewlett Packard BV, a company incorporated under Netherlands law (hereinafter 'Hewlett Packard'), and the Directeur Général des Douanes et Droits Indirects (Director-General of Customs and Indirect Taxes) on the subject of the classification of multi-function machines combining the functions of printer, copier, facsimile machine and scanner.

Legal background

3 The combined nomenclature laid down 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 (EC) No 2086/97 of 4 November 1997 (OJ 1997 L 312, p. 1) (hereinafter 'the CN'), includes the following headings:

'8471 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:

...

8471 60 — Input or output units, whether or not containing storage units in the same housing:

8471 60 10 — — For use in civil aircraft

— — Other:

8471 60 40 — — — Printers

8471 60 50 — — — Keyboards

8471 60 90 — — — Other'

and

'8517 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:

...

...

— Facsimile machines and teleprinters:

8517 21 00 — — Facsimile machines

8517 22 00 — — Teleprinters'.

4 Article 1 of Regulation No 2184/97 provides:

'The goods described in column 1 of the annexed table are now classified within the combined nomenclature under the appropriate CN codes indicated in column 2 of the said table.'

5 That regulation contains an annex, point 3 of which reads as follows:

Description	Classification CN code	Reason
(1)	(2)	(3)
3. Multifunction facsimile machine essentially consisting of: — a modem, — a scanner, — a printing device. The apparatus operates either in an autonomous form (fax-transmitting or receiving) or in conjunction with a computer (as printer, scanner or fax machine). The apparatus also includes a document copying function (2 to 3 pages per minute) available in autonomous mode.	8517 21 00	Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the combined nomenclature, note 3 to Section XVI and by the wording of CN codes 8517 and 8517 21 00. The telecommunication (facsimile) function is the principal function of this item of equipment.

6 General rules 1 and 6 for the interpretation of the combined nomenclature, set out in Section IA of the first part of the CN, referred to in the reason stated in point 3 of the Annex to Regulation No 2184/97, provide:

'1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined

according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

...

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and *mutatis mutandis* to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule the relative section and chapter notes also apply, unless the context otherwise requires.'

7 Pursuant to note 3 to Section XVI of the second part of the CN, which contains headings 8471 and 8517, '[u]nless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.'

The main proceedings

8 Hewlett Packard, a member of the group of the same name, is responsible within the group for importing into Europe multi-function machines under the name 'HP Office Jet', which, using digital technology, combine the functions of printer, photocopier, facsimile machine and computer scanner.

9 According to the order for reference, in 1995 a binding tariff information issued by the Italian customs authorities classified these machines under tariff subheading 8471 92 20 00, then in force. In 1996, a binding tariff information issued by the United Kingdom customs authorities classified them under subheading 8471 60 40, which had replaced the previous subheading. Following the United Kingdom customs authorities, the French customs authorities in turn issued a binding tariff information classifying those appliances in the category 'printers', under subheading 8471 60 40.

10 Because of a possible similarity with the equipment described in point 3 of the Annex to Regulation No 2184/97, Hewlett Packard sought a new tariff information from the French customs authorities in respect of the new HP Office Jet 300, 500 and 600 series machines placed on the market in the intervening period. According to Hewlett Packard, those machines should also be classified in the category 'printers'.

11 However, the tariff information issued by the French customs authorities — valid with effect from 2 April 1998 — classified those appliances in the category 'facsimile machines' under subheading 8517 21 00 as a result *inter alia* of Regulation No 2184/97.

12 It is clear from the court file that, at the time, printers and facsimile machines were subject to import duty at rates of 1.5% and 3.8% respectively.

13 As it disputed the tariff information which was issued, Hewlett Packard brought proceedings before the Tribunal d'instance du VII[e] arrondissement de Paris for a declaration that the HP Office Jet 300, 500 and 600 series multi-function machines fell under subheading 8471 60 40 or 8471 60 90 and that Regulation

No 2184/97 was not applicable to the tariff classification of those machines and, in the alternative, was not valid.

The question referred for a preliminary ruling

14 The Tribunal d'instance took the view that, contrary to Hewlett Packard's claim, Regulation No 2184/97 did apply to the HP Office Jet machines, so that, under that regulation, those machines should in fact be classified under subheading 8517 21 00. However, the Tribunal d'instance raised the question of the validity of that regulation.

15 Accordingly, it decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Under the Common Customs Tariff, facsimile machines and printers do not fall under the same tariff heading. When a single machine is designed to perform several functions, the tariff heading is determined according to the principal function.

In point 3 of Regulation No 2184/97 was the Commission therefore entitled to decide that all multi-function facsimile machines essentially consisting of:

— a modem

— a scanner

— and a printing device

and operating either in an autonomous form or in conjunction with a computer fall under tariff heading 8517 21 00 (facsimile machines), thus excluding the possibility of determining the dominant function of each machine on a case-by-case basis and laying down the principle that the printing device is of secondary importance, whatever the machine, provided that it falls within the category described?'

The interpretation of point 3 of the Annex to Regulation No 2184/97

16 As a preliminary point, it must be observed that the referring court raised the question of the validity of Regulation No 2184/97 because of its reading of point 3 of the Annex to that regulation. It understands that provision as requiring it to classify under subheading 8517 21 00 all multi-function facsimile machines essentially consisting of a modem, a scanner and a printing device and operating either in an autonomous form or in conjunction with a computer.

17 In order to provide a proper answer to the referring court in accordance with settled case-law (see, for example, Case C-88/99 *Roquette Frères* [2000] ECR I-10465, paragraph 18), it must first be determined whether that premiss is correct and whether Regulation No 2184/97 must be interpreted as the referring court has interpreted it.

18 A classification regulation, such as Regulation No 2184/97, is adopted by the Commission on the advice of the Customs Code Committee when the classification in the CN of a particular product is such as to give rise to difficulty or to be a matter for dispute.

19 As the Advocate General observed at point 21 of his Opinion, a classification regulation is of general application in so far as it does not apply to an individual trader but, in general, to products which are the same as that examined by the Customs Code Committee.

20 In the interpretation of a classification regulation, in order to determine its scope, account must be taken *inter alia* of the reasons given, as the Court did in its judgment in *Rank Xerox* (Case C-67/95 [1997] ECR I-5401, paragraph 26).

21 The reason stated in point 3 of the Annex to Regulation No 2184/97, in the third column of that Annex, following a citation of the relevant provisions of the CN, is that '[t]he telecommunication (facsimile) function is the principal function of this item of equipment'.

22 It follows that the regulation in question only applies if the telecommunication (facsimile) function is in fact the principal function of the machine to be classified.

23 The question whether this is so in the case of the machines at issue in the main proceedings and whether, as a result, those machines must be classified under tariff subheading 8517 21 00 falls outside the remit of this procedure, the scope of which is defined by the referring court in its judgment.

24 Accordingly, as the Advocate General stated in point 35 et seq. of his Opinion, that task falls to the national court in this case.

The invalidity of Regulation No 2184/97

25 In the light of the interpretation of Regulation No 2184/97 at paragraph 22 of this judgment, it must be held that, since that regulation classifies under subheading 8517 21 00 multi-function machines whose principal function is in fact that of a facsimile machine and does not seek to lay down the principle that all machines combining the functions of printer, copier, facsimile machine and scanner must be classified as facsimile machines, it is perfectly valid.

26 Accordingly, it must be held that consideration of the question referred has disclosed nothing that would affect the validity of point 3 of the Annex to Regulation No 2184/97.

Costs

27 The costs incurred by the French 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 (Second Chamber),

in answer to the question referred to it by the Tribunal d'instance du VII[e] arrondissement de Paris by judgment of 30 March 1999, hereby rules:

Consideration of the question referred has disclosed nothing that would affect the validity of point 3 of the Annex to Commission Regulation (EC) No 2184/97 of 3 November 1997 concerning the classification of certain goods in the combined nomenclature.

Skouris Schintgen Colneric

Delivered in open court in Luxembourg on 17 May 2001.

R. Grass V. Skouris

Registrar President of the Second Chamber