JUDGMENT OF THE COURT (FIRST CHAMBER)
OF 15 DECEMBER 1977 [1]

Fritz Fuss KG, electronics factory v Oberfinanzdirektion München (preliminary ruling requested by the Bundesfinanzhof)

Case 60/77

Common Customs Tariff — Description of goods — Individual electrical appliances — Nature of 'parts' — Classification under tariff heading 85.17

Note 2 in conjunction with Note 5 to Section XVI of the Common Customs Tariff must be interpreted as meaning that individual electrical appliances which are suitable for use solely or principally with an electric sound or visual signalling apparatus within the meaning of tariff heading 85.17 are 'parts' within the meaning of that note and are to be classified accordingly under tariff heading 85.17 even when imported without the cables linking the various parts and without the acoustic or visual alarm signalling device.

In Case 60/77

Reference to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof (Federal Finance Court) for a preliminary ruling in the action pending before that court between

FRITZ FUSS KG, ELECTRONICS FACTORY, Albstadt-Ebingen,

and

OBERFINANZDIREKTION (Regional Finance Office) MÜNCHEN

on the interpretation of the Common Customs Tariff for the purpose of the tariff classification of certain electrical appliances,

1 — Language of the Case: German.

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, J. Mertens de Wilmars and A. O'Keeffe, Judges,

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The facts, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. The main action is concerned with the tariff classification of goods described as 'ultrasonic movement detectors, designated Advisor III and Advisor VI'. Their purpose is to detect movements within a given area and to transmit this information by means of an electric cable to an external alarm signalling device (alarm unit). The cable and alarm signalling device are not the subject of the tariff classification.

The construction and manner of functioning of 'Advisor III' and 'Advisor VI' are basically similar. The latter is intended for monitoring larger areas and is therefore more expensive. Both alarm units, as constructed, consist of a master set and various secondary sets (Advisor III has up to 3 and Advisor VI has up to 20).

In the metal or plastic cabinet of the control unit there is an ultra-sonic transmitter, an ultrasonic receiver (in the Advisor VI there is in addition an amplifier), a signal processing circuit (electronic analyser) and an alarm relay output connexion. The secondary sets contain only transmitters and receivers. The analysis of the signals is effected by the electronics contained in the master set. Advisor VI comprises in addition two cable control units which monitor the connecting cables for breaks and short circuits.

When there is movement in the monitored area the waves detected by the ultrasonic receivers in the appliances register variations due to the so-called Doppler effect as against the waves transmitted by the ultrasonic transmitter. Those variations are transformed into electric signals and transmitted through cables to the control unit where they are analysed and, in the event of an alarm, passed on by means of the alarm relay output to an external alarm signalling device.

2. On 12 May 1975 the Oberfinanzdirektion München issued two binding

customs tariff notifications to Fritz Fuss KG, electronics factory, (hereinafter referred to as 'Fuss') in respect of those articles.

Because of their function and their construction, both ultrasonic movement detectors were classified by the Oberfinanzdirektion under tariff sub-heading 85.22 C ('electrical appliances and apparatus, having individual functions, not falling within any other heading of this chapter ... Other'), which provides for a rate of duty of 13 % (autonomous) or 8 % (conventional).

By an objection lodged against those notifications on 6 June 1975 Fuss sought the classification of both Advisors under tariff heading 85.17 ('electric sound or visual signalling apparatus [such as ... burglar ... alarms]') which bears a rate of duty of 15 % (autonomous) or 6 % (conventional). In support it stated that the Advisors are not independent appliances, having individual functions, but parts of an alarm installation. They were developed exclusively for use in alarm installations and there is no other possible use for them. As a result the products in question should be classified under tariff heading 85.17. Classification under that heading accords not only with the practice of the European Communities but also with the Explanatory Notes to the Brussels Nomenclature, according to which the articles in question fall within heading 85.17 as being 'parts of the goods of the present heading.'

Classification under heading 85.22 is not possible since that heading covers only electrical appliances and apparatus having individual functions.

By decision dated 1 September 1975 the Oberfinanzdirektion dismissed the objection. It accepted that the Advisors are necessary component parts of alarm installations but also stated that they have individual functions as devices for activating alarms even if they do not themselves give a sound or visual alarm. It further contended that Note 2 (a) to Section XVI of the Common Customs Tariff does not apply in the present case. That note presupposes the existence of parts of 'permanently assembled' constructional units, whereas the alarm installations for which the Advisors are intended consist of several appliances which are linked to one another only by electrical connexions to form 'functional units'. For the classification of accoustic component parts of such functional units the Brussels Explanatory Notes to Section XVI of the Brussels Nomenclature contain a 'special provision' according to which component parts imported separately fall to be classified under their appropriate headings.

Classification of the Advisors under heading 85.17 would therefore be possible only if by reason of their characteristics they were articles covered by that heading, to which that heading was appropriate. That is not so in the present case.

3. In the view of the Bundesfinanzhof, before which the undertaking concerned brought the question at issue, the settlement of the case depends on the interpretation of the Common Customs Tariff. By order dated 19 April 1977, received at the Court on 12 May 1977, the Bundesfinanzhof stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Is Note 2 in conjunction with Note 5 to Section XVI of the Common Customs Tariff to be interpreted to the effect that parts of appliances or parts within the meaning of the first-mentioned Note should be regarded as including individual electrical appliances which together are necessary component parts of an electric sound or visual signalling apparatus under tariff heading 85.17 of the Common Customs Tariff but which cannot be classified under that tariff heading because they are to be classified

without the cables linking the individual electrical appliances and without the acoustic or optical alarm devices or does Note 2 only refer to parts of a permanently assembled unit?'

In the order making the reference the Bundesfinanzhof states in particular:

— For the purposes of tariff classification it is above all relevant to ascertain whether the electrical appliances here at issue which are necessary for the installation of an electric signalling device may be regarded as parts of appliances within the meaning of Note 2 to Section XVI of the Common Customs Tariff.
— In the present instance, however, doubt may be felt as to the applicability of Note 2 because an electric signalling appliance of the kind in question is a composite machine within the meaning of Note 3 to Section XVI, made up of several electrical appliances, its individual components being linked together only by means of electric cables, and not parts of a permanently assembled unit.
— With regard to such composite machines or appliances consisting of functional units, the Brussels Explanatory Notes do not refer to parts but to separate component parts which are to be classified under tariff heading 85.17 only if all the component parts of those units are imported together. Component parts imported separately, on the other hand, are to be classified under their appropriate headings.

4. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Fritz Fuss KG, represented by Heinz Stehle, and the Commission of the European Communities, represented by its Legal Adviser, Manfred Beschel.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court made an order in accordance with Article 95 of the Rules of Procedure that the case be assigned to the First Chamber and that the oral procedure be opened without any preparatory inquiry.

II — Written observations submitted under Article 20 of the Statute of the Court of Justice of the EEC

(a) *Fuss* states first of all:

— It is not contested that alarm installations as such fall under heading 85.17 of the Common Customs Tariff;
— The (complete) alarm installations manufactured and sold by it fall typically within the category of appliances and apparatus listed and described in the note to tariff heading 85.17;
— That heading applies not only to complete alarm installations but also to parts of such.

In view of these observations Fuss then states that the Advisors in question are parts of appliances which do not have individual functions and which can function and be used only in connexion with a central alarm generator and an alarm signalling device. The Advisors have been constructed solely for that special purpose; they are of no use nor can they subsequently have any use for other installations or apparatus. No other possible future use has so far become apparent.

Further, it is clear that tariff heading 85.22 covers only appliances which have an individual function. Since the Advisors do not have an individual function they cannot be classified under heading 85.22.

From the point of view of the structure of the Common Customs Tariff it would also be illogical to classify parts of alarm installations not under the special

provision existing for such apparatus but under heading 85.22, which is a general residuary heading covering only such appliances as cannot be classified elsewhere.

The proposed classification moreover accords with the practice of the other Member States of the Community and in particular Belgium. The authorities of those Member States certainly would not classify goods under heading 85.17 if the provisions of the Common Customs Tariff did not allow for such a possibility.

A different classification comes into question only in borderline cases or cases of doubt. If, in spite of everything, the other States have opted for heading 85.17 it is not reasonable to proceed otherwise with the imports in question; the resulting competitive disadvantage for the German economy should not be disregarded. This, however, is not a borderline or doubtful case.

(b) The *Commission* observes first of all that the answer to be given to the Bundesfinanzhof should not be limited to interpreting Note 2 to Section XVI of the Common Customs Tariff, since the interpretation of that note does not allow the problems of Community law raised by the court making the reference to be dealt with comprehensively. For that purpose it is appropriate also to consider Rule A 2 (a) of the General Rules for the interpretation of the nomenclature, which provides that: 'Any reference ... to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as imported, the incomplete or unfinished article has the essential character of the complete or finished article' (OJ L 295, 1974, p. 11).

Secondly, the Bundesfinanzhof refers to Note 2 to Section XVI of the Common Customs Tariff without considering further which of the classification rules referred to there under (a) to (c) it considers relevant.

With regard to the observation that where the said provision applies 'in principle' the goods should necessarily be classified under tariff heading 85.17 in application of Note 2 (b) to Section XVI, the Bundesfinanzhof is obviously taking the view that the question of classification 'under their appropriate headings' (the central issue in the main action) no longer arises in so far as Note 2 applies to parts of the kind in question.

This view is not well founded. For proper clarification to be given to the national court with regard to the content and scope of Community law it is therefore necessary also to give an opinion on the interpretation on the other possibilities for classification afforded by letters (a) to (c) of Note 2 and their relationship *inter se*.

Subject to this, the Commission states that with regard to the classification of an article according to its physical state the Common Customs Tariff provides for three possibilities:

- The *complete* article is covered as such by the wording of a heading or subheading, in conjunction, where appropriate, with rules or principles of interpretation;
- The *incomplete or unfinished* article, which nevertheless already possesses the essential characteristics of a complete or finished article, is to be classified pursuant to Note 2 (a) in the same way as the complete or finished article;
- *Component and replacement parts* of articles are governed by the section or chapter notes of the Common Customs Tariff, which provide special classification rules such as Note 2 to Section XVI.

When therefore the Bundesfinanzhof states that the articles in question cannot be classified under tariff heading 85.17 since 'they cannot function fully as electric signalling appliances because of the absence of the cables linking the individual appliances and of the actual

alarm device' this does not exclude application of Rule A 2 (a) of the General Rules and thus classification under tariff heading 85.17. That depends on whether the control unit together with the secondary sets have the essential characteristics of an alarm installation functioning according to ultrasonic principles. That possibility is not excluded simply because without cable and alarm device the installation is not capable of functioning. Even if an article cannot (yet) completely carry out its intended function, it is possible that its construction gives it the essential characteristics of a complete article. This may be assumed if:

— It is clearly apparent from the objectively ascertainable condition of the article in question which (complete) article is to be produced; and
— The parts which are missing are of secondary importance to the whole (for example, if they are only of small value in relation to the 'whole').

Of course, it is for the national court to judge whether the abovementioned conditions are satisfied in a particular case.

The Bundesfinanzhof has assumed that in the present case a classification of the article in question under tariff heading 85.17 is not possible pursuant to Rule A 2 (a) of the General Rules and has then referred the question on the interpretation of Note 2 to Section XVI for a preliminary ruling to ascertain how the article in question is to be classified as 'parts' within the meaning of the said note.

In the Commission's view the word 'parts' used in that note covers all parts of the articles listed in Section XVI of the Common Customs Tariff and thus also individual electric appliances of the kind in question.

The decisive question to be resolved is whether a complete burglar alarm installation which consists of loosely (by means of cable) connected individual appliances is to be classified under tariff heading 85.17.

Although various provisions of the Common Customs Tariff give the impression that a machine (or appliance) may be classified under a heading specially provided for it only if it represents a 'physical unit' neither the objectives of the Common Customs Tariff nor the wording of the Brussels Nomenclature justify a view which restricts the concept of a machine (or appliance) to physically 'permanently assembled' units.

From the wording of the headings of Chapters 84 and 85 the characteristics of the articles falling thereunder depends on two basic requirements. The articles in question must:

Have certain technical characteristics of construction fulfilling the conceptual conditions of a machine (or appliance); and

Be suitable, according to objective criteria, for one of the uses listed in the particular tariff headings.

These basic requirements correspond not only to the general principle of customs classification according to which the classification of articles should be undertaken on the basis of objective criteria linked to their inherent characteristics but also to a reasonable economic philosophy which is also at the basis of the Brussels Explanatory Notes to Note 3 to Section XVI in so far as they concern 'functional units'.

The introduction of the concept of a 'functional unit' does not exclude the application either of the general classification Rule 2 (a) or of Note 2 to Section XVI. In the one case it is conceivable that even a 'functional unit' could be incomplete within the meaning of General Rule 2 (a). The sole

requirement is that the functional connexion is apparent from the component parts so that the 'essential characteristics' of the complete article may be said to be present. Where, on the other hand, the articles to be classified are objectively identifiable as 'parts' of a functional unit covered by a particular heading of the Common Customs Tariff there is nothing to prevent the application of Note 2 to Section XVI.

That note does not conflict with the classification rules with relation to 'functional units' contained in the Explanatory Notes to the Brussels Nomenclature. According to those rules individual appliances which are not objectively identifiable as 'parts' of a functional unit, are to be classified 'in their own appropriate headings'. If the individual appliances may be described as 'component parts of a functional unit', in principle Note 2 applies. That note explains how classification should be undertaken and mentions to this end three possibilities listed under letters (a), (b) and (c). If it is applicable, an answer still has to be given to the question whether the machines in question, according to the wording of letter (a), are 'goods of a kind described in any of the headings of Chapters 84 and 85' and accordingly to be classified 'in their respective headings', or whether the machines are covered by letters (b) or (c) of the note.

If, as the Oberfinanzdirektion believes, the Advisors fulfil the conditions for classification under subheading 85.22 C, Note 2 would be relevant.

However, heading 85.22, especially when compared with heading 85.28, makes clear that the articles falling under it are 'independent' electrical appliances and apparatus; thus the criterion for classification is the 'individual function' of the said article (cf. also the Explanatory Notes to the Brussels Nomenclature). The problem of the classification of the Advisors under that heading is therefore related to the question whether the products at issue have or do not have an 'individual function'.

First, the fact that an appliance is vital for the general function of a larger functional unit does not necessarily mean that the individual appliance has no independent function. Conversely, the functional independence of the appliance cannot be inferred from the fact that it performs an (incomplete) part of the general function.

Secondly, the Explanatory Notes to heading 85.22 of the Common Customs Tariff do not give much help in answering the question raised. Only the Explanatory Notes to the Brussels Nomenclature in respect of heading 84.59 give a general description of the articles in question on the basis of particular criteria.

According to those Notes the following are to be regarded as having individual functions:

'(A) Mechanical devices ... whose function can be performed distinctly from and independently of any other machine or appliance.

...

(B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, *provided* that this function:

(i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, *and*

(ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.'

Articles of the kind in question here have no independent function in relation to the complete alarm system. Their

function cannot be clearly distinguished from that of the alarm system itself; on the other hand, it is necessarily part of the function of the system. Therefore, in the absence of an individual function of their own, articles of the kind in question do not fall within subheading 85.22 C.

This result accords, moreover, with subheading 85.17-90 of the Nomenclature of Goods for External Trade Statistics of the Community (Nimexe) (Regulation No 1445/72 of the Council of 24 April 1972, JO L 161, p. 1), in which 'parts' for electric sound or visual signalling apparatus of heading 85.17 are listed. It is true that the Nimexe is a legal measure of the Community independent of the Common Customs Tariff, but it reproduces the headings and subheadings of the Common Customs Tariff and incorporates 'statistical subdivisions' thereof. Therefore those subdivisions should have some authority for the interpretation of the Common Customs Tariff.

To summarize its observations, the Commission proposes that the question referred for a preliminary ruling should be answered as follows:

'1. The expression 'parts of machines' (or of appliances) contained in Note 2 to Section XVI of the Common Customs Tariff does not imply that such articles must be parts of a permanently assembled unit. The said note therefore also applies in the case of objectively recognizable parts of electric sound or visual signalling apparatus of heading 85.17 of the Common Customs Tariff which consists of separate appliances connected to one another simply by electric cables, subject nevertheless to the proviso that such parts are not to be considered as incomplete articles within the meaning of Interpretative Rule 2 (a) and to be classified accordingly.

2. Parts of electric sound or visual signalling apparatus of heading 85.17, the function of which is to detect by means of the application of particular technical methods (ultrasonics) movements in particular areas and to pass this information over cable to an external alarm signalling device do not have an independent function *vis-à-vis* the signalling apparatus as a whole and cannot therefore be classified under heading 85.22 C of the Common Customs Tariff.'

III — Oral procedure

The Commission of the European Communities made oral observations at the hearing on 20 October 1977.

The Advocate-General delivered his opinion at the hearing on 1 December 1977.

Decision

1 By order dated 19 April 1977, received at the Court on 12 May 1977, the Bundesfinanzhof referred the following question to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

'Is Note 2 in conjunction with Note 5 to Section XVI of the Common Customs Tariff to be interpreted to the effect that parts of appliances or parts

within the meaning of the first-mentioned Note should be regarded as including individual electrical appliances which together are necessary component parts of an electric sound or visual signalling apparatus under tariff heading 85.17 of the Common Customs Tariff but which cannot be classified under that tariff heading because they are to be classified without the cables linking the individual electrical appliances and without the acoustic or optical alarm devices or does Note 2 only refer to parts of a permanently assembled unit?'

2 This question has been raised in an action on the tariff classification of articles which were described as 'ultrasonic movement detectors Advisor III and Advisor VI' whose function is to detect movement in particular areas and to transmit this information by means of electric impulses through electric cables to an alarm unit (sound or visual alarm signalling device). By two official tariff classification opinions dated 12 May 1975 the customs authorities classified those articles under subheading 85.22 C of Section XVI, Chapter 85, of the Common Customs Tariff ('Electrical appliances and apparatus, having individual functions, not falling within any other heading of this chapter: ... Other'). The plaintiff in the main action contests that classification and alleges that the articles in question fall under heading 85.17 of the same section and chapter: 'Electric sound or visual signalling apparatus (such as ... burglar and fire alarms), other than those of heading No 85.09 or 85.16.'

3 Note 2 to Section XVI of the Common Customs Tariff mentions 'parts of machines' and Note 3 'composite machines consisting of ... machines fitted together ...'. Note 5 provides that the expression 'machine' means any machine, apparatus or appliance of a kind falling within Section XVI.

4 The Bundesfinanzhof makes it clear in its question that the latter relates to the classification of 'individual electrical appliances which together are necessary component parts of an electric sound or visual signalling apparatus'. The answer to that question requires consideration of whether articles of the kind in question are 'parts of machines' or 'composite machines' within the meaning of the abovementioned Note 2 and 3.

5 Note 3 reads: 'Unless the headings otherwise require, 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'. According to the Explanatory Notes to the Brussels Nomenclature relating to that note, for the purposes of the said tariff headings, 'machines of different kinds are taken to be fitted together to form a whole when incorporated one in the other or mounted one on the other' or, generally speaking, where the machines are firmly fixed together and thus form a physical unit. The Explanatory Notes moreover state that the expression 'composite machines' for the purposes of Note 3 does not cover machines or appliances consisting 'of separate components which are designed to contribute together to a single clearly defined function', including *inter alia* 'burglar alarms'. It appears from those Explanatory Notes that where separate component parts are joined together and designed to form a functional unit, such as a burglar alarm, they are to be regarded as 'parts of machines' within the meaning of Note 2 to Section XVI of the Common Customs Tariff and to be classified according to the rules contained in letters (a), (b) and (c) of that note. It is a condition of classification under letter (a) of that note that the parts of machines in question are goods of a kind described in any of the headings of Chapters 84 and 85. Letter (b) of the note relates to parts 'if suitable for use solely or principally with a particular kind of machine, or with a number of machines falling within the same heading'. It is not a condition of tariff classification according to that provision that the parts in question should include all the component parts which normally go to make up the complete appliance. Rule 2 (a) of the Rules for the interpretation of the nomenclature of the Common Customs Tariff provides: 'Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as imported, the incomplete or unfinished article has the essential character of the complete or finished article'. The necessary component parts of an appliance covered by a tariff heading, which form a functional unit and when fitted together have the essential character of the complete article, are therefore covered by the expression 'parts' within the meaning of Note 2 to Section XVI of the Common Customs Tariff and are to be classified according to the criteria set out at letter (b) of that note.

6 The question referred must therefore be answered to the effect that Note 2 in conjunction with Note 5 to Section XVI of the Common Customs Tariff must be interpreted as meaning that individual electrical appliances which are suitable for use solely or principally with an electric sound or visual signalling apparatus within the meaning of tariff heading 85.17 are 'parts' within the meaning of that note and are to be classified accordingly under tariff heading 85.17 even when imported without the cables linking the various parts and without the acoustic or visual alarm signalling device.

Costs

7 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the question referred to it by the Bundesfinanzhof by order dated 19 April 1977, hereby rules:

Note 2 in conjunction with Note 5 to Section XVI of the Common Customs Tariff must be interpreted as meaning that individual electrical appliances which are suitable for use solely or principally with an electric sound or visual signalling apparatus within the meaning of tariff heading 85.17 are 'parts' within the meaning of that note and are to be classified accordingly under tariff heading 85.17 even when imported without the cables linking the various parts and without the acoustic or visual alarm signalling device.

Bosco Mertens de Wilmars O'Keeffe

Delivered in open court in Luxembourg on 15 December 1977.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber