OPINION OF MR ADVOCATE GENERAL JACOBS
delivered on 21 November 1989 *

My Lords,

1. This case concerns a dispute as to whether the weight of imported tents should be calculated including or excluding the accessories, such as the poles, pegs and ropes, which usually accompany the fabric or textile part of a tent.

2. A number of traders imported tents into France from South Korea in February 1983. The imported tents were each packed in a separate bag which contained both the fabric part of the tent and the accessories. The importers made customs declarations stating only the weight of the fabric used in the tents, whereas the total weight with the accessories was substantially more. The French customs authorities prosecuted the importers for making false declarations. The importers relied on Community law as justifying the declarations they had made. The tribunal de grande instance, Nanterre, before which the prosecutions were brought, noted that under Community law imports of textile products originating in certain countries, including South Korea, were subject to quotas determined by weight and that in return customs duties were suspended in respect of a certain quantity that was also fixed by weight. It considered that the relevant provisions of Community law must be interpreted in order to determine whether the weight of the textile content of the tent or its total weight including the accessories must be taken into account in determining the import quotas; and it referred the cases to the Court of Justice for a preliminary ruling.

3. The French customs authorities appealed against that decision to the cour d'appel, Versailles. That court maintained the reference of the question formulated by the tribunal de grande instance and, taking the view that the determination of the import quota and the calculation of customs duties were closely linked, added a second question relating to customs duties. The cases have been joined and are now regarded as being references from the cour d'appel, Versailles, asking this Court to rule on the following questions:

(1) whether, for the determination of the import quota, account should be taken of the weight of the textile material or the total weight including tent poles and tent pegs;

(2) whether, for the determination of customs duties payable on the import of tents originating in Korea, account should be taken only of the weight of the textile material or the total weight of the textile material together with the accessories.

* Original language: English.

4. When the imports in question took place, in February 1983, the position was governed, on the one hand, by Council Regulation (EEC) No 3589/82 of 23 December 1982 on common rules for imports of certain textile products originating in third countries (Official Journal 1982, L 374, p. 106) and, on the other hand, by Council Regulation (EEC) No 3378/82 of 8 December 1982 applying generalized tariff preferences for 1983 to textile products originating in developing countries (Official Journal 1982, L 363, p. 92). (The first of those regulations, Regulation No 3589/82, was amended by Regulation No 3762/83, which is referred to by the national court, but since that regulation only came into force in 1984 it does not appear to have been applicable at the relevant time. It appears that the second of those regulations, Regulation No 3378/82, was applicable at the relevant time, rather than Regulation (EEC) No 2894/79, referred to by the national court.)

5. Regulation No 3589/82 is based on agreements on trade in textile products between the European Community and a number of non-member supplier countries. It lays down quantitative limits for each supplier country in respect of imports into the Community of a number of products, including tents. Those quantitative limits are determined by weight. The limit for South Korea was 1 992 tonnes for 1983: see Annex III, Group III C, Category 91. Regulation No 3378/82 provides that the Common Customs Tariff duties shall be totally suspended, *inter alia* on the products at issue in the present case, within the framework of Community tariff ceilings: see Article 1(1). The relevant tariff ceilings were also determined by weight, and the tariff ceiling for South Korea in 1983 in respect of the goods in question was 169.4 tonnes: see Annex A, Category 91. When the tariff ceiling is reached, the levying of normal customs duties is reintroduced on imports, which may continue up to the quantitative limit laid down by Regulation No 3589/82.

6. The first question asked by the national court concerns the quantitative limit laid down by Regulation No 3589/82 and the second question concerns the tariff ceiling fixed by Regulation No 3378/82. However, since both the quantitative limit and the tariff ceiling are defined by weight, the issue raised by the two questions is essentially the same: for both purposes, the cut-off point is reached more quickly if the weight is calculated including the accessories than if the weight is calculated on the basis of the textile content of the tents alone. It seems to be common ground that the answer to the one question follows from the answer to the other.

7. Kühne et Nagel, the 'partie civilement responsable' in Cases C-156/88 and C-157/88, observes that the regulations in issue arose out of the Arrangement regarding International Trade in Textiles (known as 'the Multifibre Arrangement' or 'MFA') and submits that the relevant consideration is therefore the weight of the textiles concerned and not of any non-textile accessories such as tent pegs or poles. Their argument is that it would be illogical to count the weight of such accessories against quotas laid down for the purpose of controlling trade in textile products.

8. The Commission takes the view that the issue concerns tariff nomenclature rather than the interpretation of the regulations

giving effect to the Multifibre Arrangement, because those regulations contain no specific provisions as to the appropriate method of calculating the weight of tents, whereas Article 1(2) of Regulation No 3589/82 specifically states that the classification of the products in question is to be based on the Common Customs Tariff Nomenclature and the Nomenclature of Goods for the External Trade Statistics of the Community and Statistics of Trade between Member States (Nimexe). Tents come under subheading 62.04 B II of the Common Customs Tariff and position 62.04-73 of the Nimexe, and the Commission considers that the classification remains unchanged whether or not the tents are presented with their accessories. It follows that the weight of the tents, for the purpose of the quantitative limit and the tariff ceiling, should be calculated inclusive of accessories. A similar point of view is put forward by the French Government.

9. Neither Regulation No 3589/82 nor Regulation No 3378/82 contains any specific provision on the question whether the weight of tents should be calculated including or excluding their accessories. However, Article 1(2) of Regulation No 3589/82 provides:

'The classification of the products listed in Annex I shall be based on the nomenclature of the Common Customs Tariff and on the nomenclature of goods for the external trade statistics of the Community and the statistics of trade between Member States (Nimexe), without prejudice to Article 3(7). The procedures for the application of this paragraph are laid down in Annex VI.'

10. Article 1 of Annex VI to the regulation provides:

'The classification of the textile products referred to in Article 1(1) of this regulation is based on the Annex to Council Regulation (EEC) No 950/68 on the "Common Customs Tariff", as subsequently amended, and on the Annex to Council Regulation (EEC) No 1445/72, "Nomenclature of goods for the external trade statistics of the Community and statistics of trade between Member States (Nimexe)", as subsequently amended.'

11. It is clear from those provisions that the definition of the product for the purpose of applying the quantitative limits under Regulation No 3589/82 is to be carried out by reference to the Common Customs Tariff and the Nimexe.

12. Regulation No 3378/82 does not contain express references to the Common Customs Tariff or the Nimexe such as those just cited, but the reference thereto is implicit in its annexes. Those annexes list the products to which tariff suspensions apply by reference to the Common Customs Tariff and the Nimexe. Moreover, Article 11 of the regulation requires Member States to forward to the Statistical Office of the European Communities information relating to imports of the products in question in accordance with the provisions of the Nimexe.

13. The Common Customs Tariff and the Nimexe were regularly amended until they were replaced, as from 1 January 1988, by the Combined Nomenclature. At the time of the imports in question in this case the version of the Common Customs Tariff applicable was that laid down by Council Regulation No 3000/82 of 19 October 1982 (Official Journal 1982, L 318, p. 1).

Tents fell under subheading 62.04 B II in that Tariff; and they fell under Nimexe code 62.04-73. The description of the goods in both cases is simply 'tents'.

14. According to the case-law of the Court, the 'decisive criterion for the classification of goods for customs purposes is in general to be sought in their characteristics and objective properties as defined in the wording of the relevant heading of the Common Customs Tariff and of the notes to the sections or chapters' (see, for example, Case 62/77 *Carlsen-Verlag* v *Oberfinanzdirektion Köln* [1977] ECR 2343, at p. 2350). If that criterion is applied to the goods in issue in the present case, namely tents complete with their essential accessories, it is difficult to see how they can fail to be classified as 'tents' under subheading 62.04 B II of the Common Customs Tariff. Their characteristics and objective properties are those of a tent. As the French Government has pointed out, a tent invariably consists not only of a textile sheet but also of the accessories without which it cannot be erected and used. Indeed, if a trader contracted to supply tents and failed to supply those accessories, he would, I think, prima facie be in breach of contract because the goods would not correspond to their description.

15. The view that I have just reached, as to the tariff classification of tents complete with their accessories, is confirmed by the General Rules for the interpretation of the nomenclature of the Common Customs Tariff. Rule 2(b), last sentence, provides that 'the classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3'. Rule 3(a) states that 'the heading which provides the most specific description shall be preferred to headings providing a more general description'. As the French Government has pointed out, it would be difficult to conceive of a heading more specific than one which describes a product by its name. Thus Rule 3(a) leads to the conclusion that tents, including their accessories, are to be classified under subheading 62.04 B II. If, however, one takes the view that Rule 3(a) does not resolve the issue, Rule 3(b) must be applied. It provides as follows:

'Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets . . . shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.'

In my view, the material that gives the goods in issue their essential character is the fabric part of the tents. It follows, once again, that those goods, including their accessories, fall to be classified under subheading 62.04 B II.

16. On that basis it is not necessary to have regard to the Explanatory Notes to the Nomenclature of the Customs Cooperation Council, which are not binding and are merely relevant as an aid to interpretation. Nevertheless, in so far as they are relevant, those notes provide in relation to tents: 'They . . . may be imported complete with tent poles, tent pegs, guy ropes or other accessories'. That confirms the view that the presentation of a tent along with its accessories does not detract from its essential

character as a tent. On the contrary, anyone with even the slightest experience of camping will appreciate that a tent without poles and pegs is of little use and hardly deserves to be called a tent. It seems logical therefore to include the weight of those accessories when calculating the weight of the tents.

17. The argument that it is inappropriate to count the weight of the tent pegs and other accessories against quotas laid down for the purpose of controlling trade in textile products is not without force. However, that argument would lose its attraction if it could be shown that the weight of the accessories had been taken into account when the quotas were fixed. The Commission has stated that that was indeed the case, since the agreements concerning trade in textile products were negotiated by the Community on the basis of actual imports as recorded by statistics compiled in accordance with the Nimexe and the Common Customs Tariff nomenclature. The Commission argues that, since that nomenclature requires the accessories to be classified under the same heading as the rest of the tent which they accompany, it follows that the negotiations themselves proceeded on that basis and that the quantities stipulated in the agreements made allowance for the weight of the accessories. That is confirmed by the 14th recital in the preamble to Regulation No 3378/82, which explains that the quantities to be admitted into the Community free of duty were determined by applying 'a certain uniform percentage to the data concerning total imports by the beneficiaries into the Community in 1977, by category of products'. Since no one has contested the Commission's assertion that tents are invariably imported together with their accessories, it can be presumed that the 1977 trade statistics included the weight of those accessories and that the duty-free quotas were calculated on that basis. Thus the inclusion of the weight of the accessories in circumstances such as those of the present case would not represent a distortion of the system.

18. Before concluding I would point out that, although I believe the interpretation advocated by the defendants in the main proceedings to be mistaken, it is certainly not a perverse or illogical interpretation or one that no bona fide trader could reasonably entertain. That is a matter which the national court may wish to take into account when assessing the criminal liability of the defendants.

19. Accordingly I consider that the questions referred for a preliminary ruling should be answered as follows:

'Both for the determination of the quantitative limit under Regulation No 3589/82 and for the determination of the tariff ceiling under Regulation No 3378/82, in respect of tents imported from South Korea, the weight of the tents should be calculated including accessories such as tent poles and tent pegs.'