JUDGMENT OF THE COURT (Fifth Chamber)
16 June 1994 *

In Case C-35/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht Baden-Württemberg (Germany) for a preliminary ruling in the proceedings pending before that court between

Develop Dr Eisbein GmbH & Co.

and

Hauptzollamt Stuttgart-West

on the interpretation of the second sentence of Rule 2(a) of the Rules for the interpretation of the nomenclature of the Common Customs Tariff in Part I, Section I, A of the Annex to Regulation (EEC) No 950/68 of the Council of 28 June 1968 on the Common Customs Tariff (OJ, English Special Edition 1968(I), p. 275), as amended by Regulation (EEC) No 1/72 of the Council of 20 December 1971 (Journal Officiel 1972 L 1, p. 1),

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida (Rapporteur), President of the Chamber, D. A. O. Edward, R. Joliet, G. C. Rodríguez Iglesias and M. Zuleeg, Judges,

* Language of the case: German.

Advocate General: C. Gulmann,
Registrar: J.-G. Giraud,

after considering the written observations submitted on behalf of:

— Develop Dr Eisbein GmbH & Co., the plaintiff in the main proceedings, by Hans-Jörg Niemeyer, of the Brussels Bar,

— the Commission of the European Communities, by Francisco Fialho, of the Legal Service, assisted by Claus-Michael Happe, a national civil servant seconded to the Commission, acting as Agents, and Hans-Jürgen Rabe, Rechtsanwalt of Hamburg,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiff in the main proceedings and the Commission at the hearing on 25 November 1993,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1993,

gives the following

Judgment

1 By order of 12 January 1993, received at the Court on 5 February 1993, the Finanzgericht (Finance Court) Baden-Württemberg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of the second sentence of Rule 2(a) of the Rules for the interpretation of the

nomenclature of the Common Customs Tariff in Part I, Section I, A of the Annex to Regulation (EEC) No 950/68 of the Council of 28 June 1968 on the Common Customs Tariff (OJ, English Special Edition 1968(I), p. 275), as amended by Regulation (EEC) No 1/72 of the Council of 20 December 1971 (Journal Officiel 1972 L 1, p. 1).

2 Those questions were raised in proceedings between Develop Dr Eisbein GmbH & Co. ('Develop Eisbein') and the Hauptzollamt (Principal Customs Office) Stuttgart-West ('the Hauptzollamt') concerning the tariff classification of complete photocopiers incorporating an optical system described as EP 50 or D 200 and EP 410 Z or D 500, imported from Japan by Develop Eisbein between 1 November 1985 and 30 April 1987. The photocopiers were supplied in kits comprising some 200 pieces.

3 In accordance with Develop Eisbein's declaration, the customs office first classified those parts of photocopiers under subheading 90.10A (Photo-copying apparatus incorporating an optical system) of the Common Customs Tariff (CCT) — NIMEXE code 90.10.28 (Parts and accessories) — and cleared them into free circulation as parts of photocopiers.

4 However, following an inspection at the premises of Develop Eisbein, the Hauptzollamt considered, pursuant to the second sentence of Rule 2(a), that the imported goods were to be classified as photocopiers imported unassembled in subheading 90.10. A of the CCT — NIMEXE code 90.10.22 (Apparatus) — and subject to an anti-dumping duty under Commission Regulation (EEC) No 2640/86 of 21 August 1986 imposing a provisional anti-dumping duty on imports of plain paper photocopiers originating in Japan (OJ 1986 L 239, p. 5) and Council Regulation (EEC) No 535/87 of 23 February 1987 imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan (OJ 1987 L 54, p. 12).

5 Accordingly, by amending notice of 8 June 1989, the Hauptzollamt required Develop Eisbein to pay an anti-dumping duty of DM 3 112 836.97.

6 Develop Eisbein submitted an objection against the Hauptzollamt's decision which was unsuccessful whereupon it brought an action before the Finanzgericht Baden-Württemberg claiming that the parts imported in kit form cannot be regarded as finished photocopiers pursuant to the second sentence of Rule 2(a). It points out in this respect that under paragraph VI of the Explanatory Notes concerning that Rule of the nomenclature of the Customs Cooperation Council (in the 1972 version; it became paragraph VII of the Explanatory Notes to the Harmonized Commodity Description and Coding System of 1986) an unassembled article 'means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolts, etc.) or by rivetting or welding, for example, provided only simple assembly operations are involved'. The assembly of photocopiers cannot be regarded as a simple assembly operation within the meaning of the Explanatory Notes, that is an operation whereby a more or less finished manufacturing process is completed by simple actions. Develop Eisbein points out in this regard that in assembling the photocopiers it employs highly qualified specialized staff working in modern production units using highly developed machinery and special know-how and that mechanics, electronics specialists and engineers are responsible for the adjustments and measuring which have to be carried out after each stage of the assembly process.

7 That view is moreover, according to Develop Eisbein, confirmed by the judgment of the Court of Justice in Case C-26/88 *Brother International* v *Hauptzollamt Giessen* [1989] ECR 4253 in which the Court defined simple assembly operations

as operations which do not require staff with special qualifications for the work in question or sophisticated tools or specially equipped factories for the purposes of assembly (paragraph 17).

8 The Hauptzollamt, on the other hand, believes that the assembly of photocopiers in kit form is a simple assembly within the meaning of paragraph VI of the Explanatory Notes and that by mentioning welding that paragraph in no way rules out the use of sophisticated techniques by qualified, specialized staff. Moreover, such staff are involved only in the adjustment and measuring operations relating to the photocopiers, which are not part of the assembly. The Hauptzollamt considers that operations go beyond the bounds of simple assembly only if they involve changes to the form of the part in question in the course of the production process. Finally, no reliance may be placed on the judgment in *Brother* since that judgment relates to the interpretation of provisions concerning the origin of goods, whose aims are quite different from those of the Common Customs Tariff.

9 The Finanzgericht Baden-Württemberg carried out an inspection at Develop Eisbein's works of the assembly of photocopier EP 3170, which replaced the photocopiers at issue in the main proceedings, and commissioned an expert's report on the assembly process for that photocopier. It then stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'1. (a) Is the second sentence of Rule 2(a) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff to be interpreted as meaning that an article is disassembled or, to the same effect, unassembled, where the assembly of its component parts supplied together does not require a complicated procedure, or

(b) Does it depend solely on whether the component parts to be assembled are processed or transformed before assembly, or

(c) Does the very large number of components inevitably lead to the conclusion that the individual components do not constitute an article presented unassembled?

2. If the questions under 1 are answered in the negative: Must the second sentence of Rule 2(a) be interpreted as meaning that an article is presented unassembled where the assembly of its individual parts, supplied together, does not require staff with special qualifications for the work in question or sophisticated tools or specially equipped factories for the purposes of assembly as stated in paragraph 17 of the judgment of the Court of Justice in Case C-26/88 *Brother International* v *Hauptzollamt Giessen* [1989] ECR 4253?

3. If Question 1(a) is answered in the affirmative: May the criteria mentioned in Question 2 be used in addition?'

Question 1

10 The national court's first question asks what are the criteria for considering that goods are presented unassembled or disassembled within the meaning of the second sentence of Rule 2(a). It asks first whether that is the case when, in accordance with paragraph VI of the Explanatory Notes, the assembly of the separate parts in question does not involve a complicated assembly procedure and, further, whether goods cannot be considered to be presented unassembled if the separate parts must first undergo further processing and there are a large number of separate parts.

11 The national court points out that according to paragraph VI of the Explanatory Notes assembly is to be considered simple if the methods or means used for that

purpose are simple. But it does not regard as clearly wrong the view that the second sentence of Rule 2(a) does not preclude the application of complicated assembly methods, a view based on the idea that assembly processes represent a simple assembly operation if no further processing of the separate pieces is necessary. The national court observes that such processing may be very simple and should therefore not affect the classification of the assembly pursuant to paragraph VI of the Explanatory Notes. Finally, it asks whether the large number of separate parts affects the classification of the assembly.

12 The Commission points out that the wording of the second sentence of Rule 2(a) is clear and that that Rule applies when all the separate parts of goods are presented at the same time to the customs. It states that paragraph VI of the Explanatory Notes serves to specify that that Rule applies when, before assembly, the various separate parts have to undergo negligible substantive processing using simple techniques. On the other hand where those parts have to undergo major processing before assembly, the second sentence of Rule 2(a) does not apply since without such processing the article is unfinished and does not have the relevant essential character. However, in view of the aim of that provision, such substantive changes which in each case are required for the purposes of the assembly process in order to obtain the finished goods or goods considered as finished do not render Rule 2(a) inapplicable. The Commission also points out that the term articles presented 'unassembled or disassembled' gives no indication regarding the number of parts to be assembled and that that number cannot, therefore, serve as a determining criterion.

13 According to Develop Eisbein the second sentence of Rule 2(a) must primarily be interpreted on the basis of its wording. Referring to the concept of articles presented 'unassembled or disassembled' and the concept of assembly as defined by the Court in its judgment in Case 295/81 *IFF* v *Hauptzollamt Bad Reichenhall* [1982] ECR 3239, at p. 3248, it considers that it is rather the process of manufacturing the goods which serves to determine whether the separate parts must be considered for tariff purposes as finished or complete articles. Accordingly,

Develop Eisbein considers that account should essentially be taken of the Explanatory Note concerning the rule in question.

14 Develop Eisbein further points out that the second sentence of Rule 2(a) envisages a derogation since it governs the particular case in which exceptionally parts are classified for tariff purposes as complete articles and it must therefore be interpreted strictly. Only interpretation by reference to the degree of difficulty of the assembly technique would be compatible with the requirement of a strict interpretation.

15 Finally, Develop Eisbein points out that in its judgment in *Brother* the Court did not confine its definition of the concept of simple assembly operations to the sphere of the origin of goods, which was at issue in that case, and that, consequently, that definition also applies for the purposes of the tariff classification of a product.

16 Under Rule 2(a): '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. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), imported unassembled or disassembled.'

17 It is clear from the wording of the second sentence of that Rule that for tariff purposes an article presented unassembled or disassembled must be regarded as a complete article. No reference is made to the assembly technique which must be applied in order to produce the finished product.

18 The Court has held that whilst the customs tariff does indeed in certain cases contain references to manufacturing processes of goods, the preference is, in the interests of legal certainty and ease of verification, to have recourse to criteria for classification based on the objective characteristics and properties of products, as defined in the wording of the headings of the Common Customs Tariff and of the notes to the sections or chapters, which can be ascertained on the occasion of customs clearance. Consequently, the manufacturing processes of a product, referred to by Develop Eisbein, are decisive only when the tariff heading expressly so provides (see Case 40/88 *Weber* v *Milchwerke Paderborn-Rimbeck* [1989] ECR 1395 and Case C-338/90 *Hamlin Electronics* v *Hauptzollamt Darmstadt* [1992] ECR I-2333).

19 The second sentence of Rule 2(a) must therefore be interpreted as meaning that an article is to be considered to be imported unassembled or disassembled where the component parts, that is the parts which may be identified as components intended to make up the finished product, are all presented for customs clearance at the same time and no account is to be taken in that regard of the assembly technique or the complexity of the assembly method.

20 Paragraph VI of the Explanatory Notes cannot affect that interpretation.

21 The Court has stated on many occasions that the Explanatory Notes to the nomenclature of the Customs Cooperation Council constitute an important means of ensuring the uniform application of the Common Customs Tariff by the customs authorities of the Member States and as such may be considered a valid aid to the interpretation of the tariff. However, those notes do not have legally binding force so that, where appropriate, it is necessary to consider whether their content is in accordance with the actual provisions of the Common Customs Tariff and whether they alter the meaning of such provisions (see Joined Cases 69 and 70/76 *Dittmeyer* v *Hauptzollamt Hamburg-Waltershof* [1977] ECR 231 and Case 798/79 *Hauptzollamt Köln-Rheinau* v *Chem-Tec* [1980] ECR 2639).

22 The meaning of the second sentence of Rule 2(a), as apparent from its wording, would be considerably altered if, in applying it, account had to be taken of the assembly technique or the complexity of the assembly method. Consequently, if paragraph VI of the Explanatory Notes did bear the interpretation attributed to it by Develop Eisbein, it could not be taken into consideration.

23 Accordingly, it should be stated in reply to the first question that an article is to be considered to be imported unassembled or disassembled where the component parts, that is the parts which may be identified as components intended to make up the finished product, are all presented for customs clearance at the same time, and no account is to be taken in that regard of the assembly technique or the complexity of the assembly method.

Questions 2 and 3

24 In view of the answer given to the first question, there is no need to rule on the other questions.

Costs

25 The costs incurred by the Commission of the European Communities, which has 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 (Fifth Chamber),

in answer to the questions referred to it by the Finanzgericht Baden-Württemberg, by order of 12 January 1993, hereby rules:

The second sentence of Rule 2(a) of the Rules for the interpretation of the nomenclature of the Common Customs Tariff in Part I, Section I, A of the Annex to Regulation (EEC) No 950/68 of the Council of 28 June 1968 on the Common Customs Tariff, as amended by Regulation (EEC) No 1/72 of the Council of 20 December 1971 must be interpreted as meaning that an article is to be considered to be imported unassembled or disassembled where the component parts, that is the parts which may be identified as components intended to make up the finished product, are all presented for customs clearance at the same time and no account is to be taken in that regard of the assembly technique or the complexity of the assembly method.

Moitinho de Almeida Edward Joliet

Rodríguez Iglesias Zuleeg

Delivered in open court in Luxembourg on 16 June 1994.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber