

- (2) When unassembled parts of an article are presented for customs clearance only any surplus parts not allowing of the assembly of a complete article are to be regarded as “parts and fittings” of the said article within the meaning of the Common Customs Tariff.

Mackenzie Stuart

Pescatore

Touffait

Delivered in open court in Luxembourg on 29 May 1979.

A. Van Houtte

A. J. Mackenzie Stuart

Registrar

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI
DELIVERED ON 22 MARCH 1979¹

*Mr President,
Members of the Court,*

1. The German Bundesfinanzhof, by an order of 13 June 1978, referred to the Court of Justice three preliminary questions which are concerned in essence to clarify the meaning and scope of the second sentence of General Rule 2 (a) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff.

General Rule 2 (a) is worded as follows: “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*”.

In the context of a dispute between an importer of ball-point pens and the German customs administration the question was raised whether a binding classification opinion issued on 15 June 1977 at the request of the importer concerned by the Oberfinanzdirektion [Regional Finance Office] (in pursuance of Article 23 (1) of the German customs law) was in conformity with that rule. The binding opinion related to the

¹ — Translated from the Italian.

simultaneous importation of various consignments of all the constituent parts of ball-point pens: in particular, barrels of base metal containing the mechanism of the ball-point pens, magazines to be mounted in the barrels, and caps, also of base metal. Further the importer used to have included in such consignments of parts extra refill-magazines to complete his stocks.

According to the opinion of the Oberfinanzdirektion the caps and barrels, and the number of magazines corresponding thereto, should be classified on the basis of the Common Customs Tariff as disassembled ball-point pens (heading 98.03 A) whilst the surplus magazines would come under heading 98.03 C II as parts of ball-point pens. It should be stated in this connexion that tariff heading 98.03 entitled "Fountain-pens, stylograph pens and pencils (including ball-point pens and pencils) and other pens, pen-holders, pencil-holders and similar holders, propelling pencils and sliding pencils; parts and fittings thereof ..." includes at subheading A "Fountain-pens and stylograph pens and pencils (including ball-point, felt-tipped and fibre-tipped pens and pencils)" and at subheading C "Parts and fittings", and that the goods coming under subheading A are liable to a higher duty than that provided for subheading C.

The Oberfinanzdirektion, in effecting the said classification of the caps and barrels and the corresponding number of magazines, referred to the said Rule 2 (a) of the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff and to the Explanatory Notes to the Nomenclature of the Customs Co-operation Council. The importer however denies that that rule applies in cases such as the present

where there is a specific tariff subheading for parts (subheading 98.03 C).

In the proceedings before the Bundesfinanzhof the importer also disputed another aspect of the lawfulness of the binding interpretation of the Oberfinanzdirektion, on the basis of the German version of the said General Rule 2 (a). The German version, unlike those in all the other official languages of the Community, does not refer to articles presented as "unassembled or disassembled", but merely as "zerlegt" which, if taken in isolation, might be understood as referring to articles which have already been assembled and have subsequently been disassembled. The undertaking concerned has therefore maintained that all the parts imported by it which are assembled to form ball-point pens only after importation, must be classified on the basis of the said General Rule 2 (a) as parts and accordingly included under the said subheading C.

2. In Question 1 the Court of Justice is requested to state whether the final part of General Rule 2 (a) (which, as we have seen, extends the treatment for tariff purposes of the complete or finished article to its constituent parts which together make up the article as if it were unassembled or disassembled) is inapplicable in view of the fact that the Common Customs Tariff contains a specific heading for the parts of an article, the forgoing being in pursuance of the third sentence of General Rule 1 which states that the classification shall be determined according to the terms of the headings and any relevant section or chapter notes.

I consider that the reply must be in the negative. First of all it must in fact be considered that General Rule 2 (a) plays

a part in determining the extent of the tariff headings (and thus the scope of their wording) by treating unassembled or disassembled articles as equivalent to the complete or finished products. In that sense the second sentence of Rule 2 (a) and the third sentence of Rule 1 are perfectly compatible with each other. Secondly, as the Commission has stated, the concept of "parts" is subsidiary to the concepts of "complete or finished article", in that, when a product can be considered complete or finished there is no longer any reason to classify its components as parts. Under the above-mentioned second sentence of Rule 2 (a), for an article to be classified as "complete or finished", it is sufficient for all its constituent parts to be present even though they are not yet fitted together.

The development of the provisions of the Common Customs Tariff confirms the validity of this interpretation. The Commission recalls that, before the existence of Rule 2 (a) (adopted on 1 January 1972 in accordance with a recommendation of the Customs Co-operation Council), a provision of the same nature was provided with reference only to the articles of Sections XVI and XVII of the tariff. As the Commission properly observes, if it were true that the headings concerning parts which were formerly contained in those sections took precedence over the rule concerning the classification of complete articles, unassembled or disassembled, no purpose would be served by the simultaneous existence at the same time of those headings and that rule. It may accordingly be stated that in the period prior to the adoption of General Rule 2 (a) the application of the provisions concerning complete articles imported disassembled in parts was not ruled out by the existence of the headings or sub-headings concerning parts. The adoption

of the above-mentioned general rule merely constituted an extension to all the articles of the Common Customs Tariff of a criterion which had already been laid down previously, but with application only to the articles in Sections XVI and XVII.

This interpretation is further confirmed by the Explanatory Notes to the Nomenclature of the Customs Co-operation Council. In fact the statement relating to Section XVI, Part (V), concerning unassembled machines, notes, after referring expressly to "Interpretative" Rule 2 (a): "For convenience of transport many machines and apparatus are transported in an unassembled state. Although in effect the goods are then a collection of parts, they are classified as being the machine in question and not in any separate heading for parts. The same applies to an incomplete machine imported unassembled".

I think therefore that it has been established with sufficient clarity that General Rule 2 (a) also applies where the Common Customs Tariff contains a specific heading for the parts of an article.

3. I shall now proceed to the second question in which the German court asks whether Rule 2 (a) covers, in addition to disassembled articles, articles which have never been assembled. The doubt arises from the German version of the rule which, as we have already seen, is not fully in accordance with all the official

versions in the other languages of the Community.

When the Court of Justice has had to consider problems arising from the fact that the versions in various languages of Community texts are not fully in accordance it has always emphasized that it is necessary to have a uniform interpretation of such provisions and has consequently declared that a provision which differs from the versions in other languages cannot be considered in isolation. It must instead be interpreted in the light of the other versions, having regard to the actual intention of its author and of the purpose in view: see the judgments in Case 29/69 *Stauder* ([1969] ECR 419), in Case 61/72 *PPW Internationaal NV* ([1973] ECR 301), and in Case 6/74 *Moulijn* ([1974] ECR 1287). In a more recent expression of its views (judgment of 27 October 1977 in Case 30/77 *Regina v Bouchereau* [1977] ECR 1999) the Court summarized as follows the criterion on which it bases its decisions: "The different language versions of a Community text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part" (paragraph 14).

In interpreting provisions concerning the classification of goods for tariff purposes regard must be had to the need for customs authorities to proceed on the basis of objective criteria which are easy

to establish and check; the Court of Justice has always recognized this need. In this context I concur in a comment made by the Commission to the effect that it is in general difficult to establish at the time of importation whether the constituent parts of a given product were possibly obtained by disassembling articles which were previously assembled. On the other hand it is easy, by examining the parts, to establish at the time of importation whether they are capable of being fitted together so as to constitute a given finished product. On the basis of these considerations, and having regard to the clear and unequivocal wording of all the other language versions of the same provision there appears to me to be no doubt that that provision covers both articles which are unassembled and those which have not yet been assembled.

4. In the third question the Bundesfinanzhof asks whether the second sentence of General Rule 2 (a) also applies if, when a number of parts of articles which have not yet been assembled is presented for customs clearance, it is impossible to establish with certainty which will be put together in order to obtain a single finished article. In the grounds for the order of reference it was stated that, in the present case, by combining the various imported parts it was possible to produce ball-point pens of varied appearance and application since there were different models of caps and barrels in each consignment and the magazines contained various colours of ink and had different sizes of points. Since there were a number of possible combinations of the same parts it was not possible to establish at the time of importation a separate identity for the individual ball-point pens

for which there were, as we have seen, all the separate constituent parts.

In such a situation can it be said that the imported articles in the state in which they were at the time of importation have the essential character of the complete or finished product for the purposes of the said general rule of interpretation?

The important point in my view is that any part of a ball-point pen may be interchanged with (or replaced by) any other constituent part of the same type for the purposes of assembly. In other words the decisive factor is that any combination of the three parts in question (barrels, magazines and caps) always produces a ball-point pen, an article which comes under tariff sub-heading 98.03 A.

It seems to me that, in those circumstances, in order to fulfil the condition laid down in the said Rule 2 (a) it is

sufficient that, at the time of importation, the constituent parts of each ball-point pen are all present, so that a complete and finished product results from their combination. Although it may be possible to combine such pieces in various ways they nevertheless serve as a whole to make up the prescribed number of finished products. Since the parts in question are determined both with regard to their nature and their respective functions they may be classified under the appropriate tariff sub-heading as parts of unassembled articles in accordance with the said Rule 2 (a).

Finally it is clear that the surplus parts which, in the same consignment of goods, exceed the number of other parts necessary to make up the final product must be classified under the subheading of the Common Customs Tariff for parts of the article in question.

5. For the reasons set out above I conclude by suggesting that the Court of Justice, in reply to the preliminary questions submitted to it by the Bundesfinanzhof by an order of 13 June 1978, should rule as follows:

1. The second sentence of General Rule 2 (a) for the Interpretation of the Nomenclature of the Common Customs Tariff applies even where the tariff contains a specific subheading for the parts of an article.
2. The said general rule applies not only to disassembled articles but also to articles which have not previously been assembled.
3. In the classification of articles which are interchangeable the said general rule also applies where, at the time when the articles are presented to the customs authorities, the parts to be assembled to form each finished article cannot be individually determined.