

JUDGMENT OF THE COURT (FIRST CHAMBER)
22 MARCH 1984 ¹

3M Deutschland GmbH
v Oberfinanzdirektion Frankfurt am Main
(reference for a preliminary ruling
from the Bundesfinanzhof)

(Tariff classification — Bonded fibre or similar
bonded yarn fabrics for trapping dirt)

Case 92/83

Common Customs Tariff — Tariff headings — “Bonded fibre fabrics and similar bonded yarn fabrics” and articles of such fabrics within the meaning of heading 59.03 — Individual case

A product consisting of a fabric which is made of polyvinyl chloride monofil 0.9 mm thick, laid direct from a spinning nozzle in the form of coils and hardened and joined together by heat treatment

with the aid of a spray, being a bonded fibre fabric or similar bonded yarn fabric, falls under heading No 59.03 of the Common Customs Tariff, even if it is intended for use as a floor covering.

In Case 92/83

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

3M DEUTSCHLAND GMBH, Neuss,

and

OBERFINANZDIREKTION [Principal Revenue Office] FRANKFURT AM MAIN,

on the interpretation of headings Nos 58.02 and 59.03 of the Common Customs Tariff,

¹ — Language of the Case: German.

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, Lord Mackenzie Stuart and G. Bosco, Judges,

Advocate General: C. O. Lenz
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The order making the reference, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

In its binding customs tariff notification of 7 April 1982, the Oberfinanzdirektion classified the article under subheading 58.02 A II (b) of the Common Customs Tariff as "carpets, carpeting, rugs, mats and matting other than knotted carpets, other than coir mats and matting and other than tufted carpets, not woven, of synthetic textile fibres".

I — Facts and written procedure

1. On 10 March 1982, 3M Deutschland GmbH, the plaintiff in the main proceedings, applied to the Oberfinanzdirektion, Frankfurt am Main, for a binding customs tariff notification ("verbindliche Zolltarifauskunft") in respect of an article described as a "mat for trapping dirt" ("Schmutzfangmatte"). The article is a fabric made of polyvinyl chloride monofil 0.9 mm thick, laid directly from a spinning nozzle in the form of coils and hardened and joined together by heat treatment with a spray (bonded fibre or yarn fabric). The article is imported from its country of origin, the United States of America, in strips 90 cm and 120 cm wide and 610 cm long for use as a floor covering.

Knotted carpets, carpeting and rugs are covered by tariff heading No 58.01; tariff heading No 58.02 is worded as follows:

"58.02 Other carpets, carpeting, rugs, mats and matting and 'Kelem', 'Schumacks' and 'Karamanie' rugs and the like (made up or not):

A. Carpets, carpeting, rugs, mats and matting:

I. Coir mats and matting

II. Other:

(a) Tufted carpets, carpeting, rugs, mats and matting

(b) Other

B. 'Kelem', 'Schumacks' and 'Karamanie' rugs and the like".

The plaintiff in the main proceedings lodged an objection to that classification and claimed that the article should be classified under heading No 59.03, which is worded as follows:

"59.03 Bonded fibre fabrics, similar bonded yarn fabrics, and articles of such fabrics, whether or not impregnated or coated".

By decision of 19 August 1982, the Oberfinanzdirektion dismissed the objection, relying upon Notes 1 and 2 to Chapter 58 of the Common Customs Tariff. Those notes provide as follows:

"1. The headings of this Chapter are to be taken not to apply to coated or impregnated fabrics, elastic fabrics or elastic trimmings, machinery belting or other goods falling within Chapter 59. However, embroidery on any textile base falls within heading No 58.10.

2. In headings Nos 58.01 and 58.02, the words 'carpets' and 'rugs' are to be taken to extend to similar articles having the characteristics of floor coverings but intended for use for other purposes. These headings are to be taken not to apply to felt carpets, which fall within Chapter 59".

According to the Oberfinanzdirektion, it is apparent from the first note that an article of bonded fibre fabric or of similar bonded yarn fabric in principle falls outside Chapter 58. According to the first sentence of Note 2, however, floor coverings and similar articles are classified in principle under Chapter 58. With regard to floor coverings, Note 2 is more specific and therefore takes precedence over Note 1.

The Oberfinanzdirektion considers that the "mat for trapping dirt" satisfies the conditions for classification as a "carpet" or "rug" within the meaning of Note 2 to Chapter 58 and of tariff heading No 58.02. In everyday speech and usage, "carpets" or "rugs" are taken to mean a floor covering or wall hanging made of textile material and manufactured by various methods. According to the Explanatory Notes to the Customs Cooperation Council Nomenclature for tariff heading No 58.02, the articles classified under that heading as carpets or rugs "are sufficiently thick, stiff and strong to be used as floor coverings". The plaintiff in the main proceedings stated that the "mat for trapping dirt" is to be regarded as a floor covering designed to trap dirt for industrial and outdoor purposes. Moreover, the product is sufficiently thick, stiff and strong to be used as a floor covering.

2. The plaintiff in the main proceedings then submitted an appeal to the Bundesfinanzhof for reclassification of the goods under heading No 59.03 of the Common Customs Tariff.

In support of its application, the plaintiff claims that by virtue of Note 1 to Chapter 58 "The headings of this chapter are to be taken not to apply to ... other goods falling within Chapter 59". Consequently, articles of bonded fibre fabric or similar bonded yarn fabric cannot be classified under Chapter 58.

According to the plaintiff Note 2 to Chapter 58 does not take precedence over Note 1. By laying down that a product such as a felt carpet or rug; which can certainly serve as a floor covering, may not be classified as a floor covering within the meaning of Chapter 58, Note 2 attributed only limited significance to the intended use of an article as a floor covering. It is the

method of manufacture, that is to say manufacture from felt, rather than the intended use, which is decisive for its classification. For that reason alone, the article in question falls within tariff heading No 59.03.

Moreover, it is apparent from the Explanatory Notes to the Customs Cooperation Council Nomenclature in respect of Chapter 58, and also from the definition of the term according to its general use, that a "carpet" or "rug" is distinguished by a particular method of manufacture. It consists of a ground fabric and an upper surface formed by individual threads standing upright. The "mats for trapping dirt" do not display these structural features; they are not therefore comparable to floor coverings. Moreover, a floor covering is not the same as a carpet or rug either in everyday speech or in the terminology of the Customs Tariff.

In support of its suggestion that a preliminary ruling be sought from the Court, the plaintiff stated that the "mats for trapping dirt" which are the subject of the contested binding customs tariff notification and which are sold by its subsidiaries in the Community are classified differently by the various national customs authorities. In Italy, they are classified under Chapter 59 and by the authorities in the other Member States under Chapter 58.

In the proceedings before the Bundesfinanzhof, the Oberfinanzdirektion referred to the observations set out in its decision rejecting the plaintiff's objection.

3. As is apparent from the statement of grounds of the order making the

reference, the national court wonders in the first place whether Note 2 to Chapter 58, being a special note, takes precedence over Note 1 to Chapter 58. If that question is answered in the affirmative, the further question arises whether articles similar to carpets or rugs "but intended for use for other purposes" within the meaning of Note 2 concern only articles which are not used as carpets or rugs but are intended for other purposes, for example as wall hangings. If that is the case, the note does not cover the articles at issue.

However, Note 2 may also be understood as relating to articles similar to floor coverings "even though they are intended for use for other purposes". If that is the case, it is necessary to consider how the words "similar articles having the characteristics of floor coverings" are to be construed. The Common Customs Tariff gives no information in that respect.

Neither do the Explanatory Notes to the Customs Cooperation Council Nomenclature make it possible to classify the articles in question unequivocally. According to those notes, carpets and rugs falling within tariff heading No 58.02 are "sufficiently thick, stiff and strong to be used as floor coverings" (Section XI, 58.02, paragraph (A), first subparagraph). The national court nevertheless considers that that note does not mean that no other characteristics may also play a rôle in the interpretation of the words "similar articles". Moreover, the Explanatory Notes relating to tariff heading No 59.03 indicate that carpets and carpeting are excluded from that tariff heading (Section XI, 59.03, towards the end under (c)). Finally, the Nomenclature Committee of the Customs Cooperation Council decided, by a majority of 20 votes to 5, to classify an article which is essentially identical to

the article in question under tariff heading No 58.02, the minority of five delegations having expressed a preference for classification under tariff heading No 59.03.

4. Since determination of the case depended upon an interpretation of Community law, the Bundesfinanzhof considered that it was obliged by virtue of the third paragraph of Article 177 of the Treaty to request the Court for a preliminary ruling. By order of 21 April 1983, it decided to ask the Court to give a preliminary ruling on the following question:

“Must an article consisting of a fabric which is made of PVC monofil 0.9 mm thick, laid direct from a spinning nozzle in the form of coils and hardened and joined together by heat treatment with the aid of a spray, and which is imported in strips 90 cm and 120 cm wide and 610 cm long for use as floor covering (mat for trapping dirt), be classified under heading No 58.02 or heading No 59.03 of the Common Customs Tariff?”

The order making the reference was received at the Court Registry on 24 May 1983.

By order of 19 October 1983, the Court, pursuant to Article 95 (1) and (2) of the Rules of Procedure, assigned the case to the First Chamber.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by 3M Deutschland GmbH, the plaintiff in the main proceedings, represented by K. Wilhelm and J. Harmsen, Rechtsanwälte of Munich, and by the Commission of the European Communities, represented by Christoph Bail, a member of its Legal Department, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it invited the Commission to reply to the following question:

“Can the Commission confirm the information given by the national court to the effect that the mats for trapping dirt at issue in the main proceedings are classified under Chapter 58 of the Common Customs Tariff by the customs authorities in the majority of the Member States, and that only the Italian authorities have classified the articles in question in Chapter 59?”

II — Written observations submitted to the Court

The *plaintiff in the main proceedings* refers to the arguments which it has already put forward before the national court and states that the “Nomad” mat for trapping dirt, with which the proceedings are concerned, is a fabric which, by contrast with carpets and rugs strictly so-called, does not consist of a ground fabric and an upper surface of a different structure (cf. paragraph 1.2 above).

The *Commission* points out in the first place that the mat for trapping dirt at issue is an article of bonded fibre or similar bonded yarn fabric, manufactured by a process corresponding to the filament-extrusion process described in a note issued by the European Disposables and Non-Wovens Association. The article serves as a floor covering for trapping dirt, being used *inter alia* in hospitals, at the entrance to operating theatres. According to the wording of tariff headings Nos 58.02 and 59.03,

such a mat could be classified as either a "carpet" or "rug" under heading No 58.02, in view of the use to which it is put, or as bonded fibre or similar bonded yarn fabric under heading No 59.03, in view of the nature of the material used.

In that respect, the Commission points out that according to Note 1 to Chapter 58, the articles covered by Chapter 59 do not, with the sole exception of embroidery, fall within Chapter 58. That rule, which relates to overlapping tariff headings, is not affected by the first sentence of Note 2 to Chapter 58, which is merely intended to define the words "carpets" and "rugs" as used in headings Nos 58.01 and 58.02.

In the Commission's view, Note 2 does not constitute, in relation to Note 1, a "*lex specialis*" by virtue of which, with the exception of felt carpets, all articles displaying the characteristics of floor coverings fall within Chapter 58, even if their designation corresponds to that of goods in Chapter 59. The first sentence of Note 2 is not formulated as a rule of classification intended to obviate problems of overlapping tariff headings. On the contrary, it embodies a rule of interpretation whose purpose is to extend the description of "carpets" and "rugs" so as to include articles which, although displaying the characteristics of floor coverings, are intended for use for other purposes, for example as coverings for tables, furniture or walls. Moreover, Note 2 does not indicate that floor coverings fall within Chapter 58, whatever the material used for their manufacture. Had the legislature wished to cut down the scope of the rule intended to prevent alternative classifications contained in Note 1, it would have had to lay down an express derogation to that effect.

Neither, according to the Commission, can any different conclusion be drawn, a

contrario, from the second sentence of Note 2, which merely states that felt carpets fall within Chapter 59. Although it is true that that sentence is formulated as a rule of classification, that is explained by the fact that felt products displaying the characteristics of floor coverings are often used for other purposes, for example as coverings for tables, furniture or walls. The second sentence of Note 2 therefore confirms the rule contained in Note 1.

The Commission's view is confirmed by the origin of the provisions in question. In the original version of the Nomenclature contained in the Brussels Convention of 15 December 1950 on Nomenclature for Classification of Goods in Customs Tariffs, there is no mention of bonded fibre fabrics or similar bonded yarn fabrics. At that time, they were little known and were probably assimilated to felt, which by virtue of Note 2 to Chapter 58 already fell within Chapter 59.

The Protocol of 1 July 1955 amending the 1950 Convention created a new heading No 59.03 for "bonded fibre and similar bonded yarn fabrics" and the first sentence of Note 2 to Chapter 58 was extended so that the description of "carpets" and "rugs" within the meaning of Chapter 58 included all goods displaying the characteristics for floor coverings.

The Commission presumes that the failure to amend the second sentence of Note 2 at the same time was probably due to the fact that at that time bonded fibre and similar bonded yarn fabrics were not yet capable of being used for the manufacture of floor coverings or similar products. There was no reason to apply to carpets and rugs or floor coverings of bonded fibre or similar bonded yarn fabric a rule different from

that applied to felt carpets. According to Note 1 to Chapter 58, both those types of carpeting fall within Chapter 59 in any case.

The Commission acknowledges that the Nomenclature Committee of the Customs Cooperation Council voted by a majority to classify under heading No 58.02 a product known as "Nomad Cushion", which in all essential respects is identical to the article at issue.

Moreover, at its 40th meeting in May 1978, the Nomenclature Committee amended its Explanatory Notes to tariff heading No 59.03, confirming that carpets and carpeting are excluded from that heading.

In reply to the question put by the Court, the Commission confirmed that the "mats for trapping dirt" ("Nomad Cushion") in question are classified under tariff heading No 58.02 by all the Member States, with the exception of Greece. The Greek authorities have issued a provisional notification to the effect that the said articles should be classified under heading No 59.03.

The Commission observes however that the amended Customs Cooperation Council Explanatory Note to tariff heading No 59.03 is in no way binding and is contradicted by Note 1 to Chapter 58 of the Common Customs Tariff, which by contrast is binding. It considers, finally, that the fact that the article in question displays the characteristics of a floor covering can in no way change the fact that, according to Note 1 to Chapter 58, they must be classified under heading No 59.03.

III — Oral procedure

At the sitting on 12 January 1984 oral argument was presented by the Commission of the European Communities, represented by Christoph Bail, a member of its Legal Department, acting as Agent.

The Advocate General delivered his opinion at the sitting on 9 February 1984.

Decision

- 1 By order of 21 April 1983, which was received at the Court on 24 May 1983, the Bundesfinanzhof [Federal Finance Court] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the Common Customs Tariff.
- 2 That question was raised in the course of a dispute concerning the tariff classification of a product described as a "mat for trapping dirt" ("Schmutzfangmatte") which, according to the importing firm, is a product made of

bonded fibre fabric or similar bonded yarn fabric covered by tariff heading No 59.03, but which the competent customs authorities classified in a binding customs tariff notification under subheading No 58.02 A II (b).

- 3 Heading No 59.03 of the Common Customs Tariff comprises bonded fibre fabrics, similar bonded yarn fabrics, and articles of such fabrics, whether or not impregnated or coated. Chapter 59, to which that heading belongs, covers wadding and felt, twine, cordage, ropes and cables, special fabrics, impregnated and coated fabrics, and textile articles of a kind suitable for industrial use.
- 4 Chapter 58 of the Common Customs Tariff encompasses carpets, mats, matting and tapestries, pile and chenille fabrics, narrow fabrics, trimmings, tulle and other net fabrics, lace and embroidery. Heading No 58.01 covers knotted carpets, carpeting and rugs (made up or not) and heading No 58.02 other carpets, carpeting, rugs, mats and matting, and “Kelem”, “Schumacks” and “Karamanie” rugs and the like (made up or not). Subheading 58.02 A is worded as follows:

“A. Carpets, carpeting, rugs, mats and matting:

I. Coir mats and matting

II. Other:

- (a) Tufted carpets, carpeting, rugs, mats and matting
- (b) Other.”

- 5 In the question which it puts to the Court the Bundesfinanzhof describes the product at issue as follows: “an article consisting of a fabric which is made of PVC monofil 0.9 mm thick, laid direct from a spinning nozzle in the form of coils and hardened and joined together by heat treatment with the aid of a spray”. The product is to be imported in strips 90 cm and 120 cm wide and 610 cm long for use as a floor covering (mat for trapping dirt).
- 6 The national court asks whether such a product falls under heading No 58.02 or heading No 59.03 of the Common Customs Tariff.

- 7 Note 1 to Chapter 58 states that the chapter is not to be taken to apply to coated or impregnated fabrics, elastic fabrics or elastic trimmings, machinery belting or "other goods falling within Chapter 59."
- 8 It follows that a product which, by virtue of its composition, might be classified under Chapter 59 does not fall within the scope of Chapter 58 simply because it is used as a floor covering.
- 9 It is true that, according to Note 2 to Chapter 58, the words "carpets" and "rugs" in headings Nos 58.01 and 58.02 are to be taken to extend to similar articles having the characteristics of floor coverings but intended for use for other purposes. That provision, however, as the Commission has rightly pointed out, is intended to define the meaning of "carpets" and "rugs" for the purpose of interpreting headings Nos 58.01 and 58.02 and not to create an exception, in the case of carpets and rugs, to the system of classification laid down in Note 1.
- 10 A further argument supporting the same conclusion is provided by the second sentence of Note 2, which states that felt carpets fall within Chapter 59. That provision makes it clear that, in classifying a floor covering, it is necessary to have regard to the nature of the product and its method of manufacture rather than to the use to which it may be put.
- 11 That interpretation is confirmed by the fact that the products which are expressly referred to in Chapter 58 are similar inasmuch as they are manufactured by knotting, weaving, netting or knitting, whereas bonded fabrics are made up of fibres or yarns which are joined together by a chemical process or by heat treatment.
- 12 It follows from the foregoing that the Common Customs Tariff must be interpreted as meaning that a product consisting of a fabric which is made of polyvinyl chloride monofil 0.9 mm thick, laid direct from a spinning nozzle in the form of coils and hardened and joined together by heat treatment with the aid of a spray, being a bonded fibre fabric or similar bonded yarn fabric, falls under heading No 59.03, even if it is intended for use as a floor covering.

Costs

- 13 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings pending before the national court, the decision on 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 of 21 April 1983, hereby rules:

A product consisting of a fabric which is made of polyvinyl chloride monofil 0.9 mm thick, laid direct from a spinning nozzle in the form of coils and hardened and joined together by heat treatment with the aid of a spray, being a bonded fibre fabric or similar bonded yarn fabric, falls under heading No 59.03 of the Common Customs Tariff, even if it is intended for use as a floor covering.

Koopmans

Mackenzie Stuart

Bosco

Delivered in open court in Luxembourg on 22 March 1984.

For the Registrar
D. Louterman
Administrator

T. Koopmans
President of the First Chamber