Case C-270/96

Laboratoires Sarget SA
v
Fonds d'Intervention et de Régularisation du Marché du Sucre (FIRS)

(Reference for a preliminary ruling
from the Tribunal Administratif, Paris)

(Refund for use of sugar in the manufacture of certain chemical products — Anti-asthenia products — Tariff classification)

Summary of the Judgment

Common Customs Tariff — Tariff headings — Product having no specific therapeutic or prophylactic characteristics — Classification as a 'medicament' under heading 3004 of the Combined Nomenclature — Excluded — Product regarded as a 'medicinal product' for the purposes of Directive 65/65 — Not the deciding factor as regards tariff classification
(Council Regulation No 1010/86; Council Directive 65/65)

A product presented in the form of chewable tablets, effervescent tablets, and a drinkable solution in ampoules, their active ingredients being in principle identical, a drinkable 5 ml ampoule containing 1 g of arginine-aspartate as the single active ingredient, excipients and sodium, and a product presented in the form of a powder to make a drinkable solution, contained in sachets, and a drinkable solution in the form of ampoules, containing 3 g of arginine-glutamate (the active ingredient of the product, with the same therapeutic effects as arginine-aspartate), the second product having practically the same composition as the first product and identical therapeutic indications, cannot be classified under heading 3004 of the Combined Nomenclature, and consequently do not come within the scope of Regulation No 1010/86 laying down general rules for the production refund on certain sugar products used in the chemical industry, when it has not been established that the products had clearly defined therapeutic or prophylactic characteristics with an effect concentrated on precise functions of the human organism or that they were capable of being applied in the prevention or treatment of specific diseases or ailments.

Nor, for identical reasons, can a product marketed in a drinkable solution put up in 5 or 10 ml ampoules, one 5 ml ampoule containing 15 µg of vitamin B 12 and a 10 ml ampoule double that quantity and in addition amino acids and preservatives, or a product presented in the form of drinkable ampoules for adults of 5 or 10 ml, its composition including 500 µg of vitamin B 12 per ampoule of 10 ml and 250 µg of vitamin B 12 per ampoule of 5 ml and also containing amino acids and preservatives, be classified under heading 3004 and consequently those products do not come within the scope of Regulation No 1010/86.

Neither the fact that, pursuant to the provisions of Directive 65/65 on medicinal products, marketing authorisations were granted for those products as 'medicinal products' by the competent national authorities, nor the fact that those products are regarded as such under that State's legislation, nor the presentation of the products is a deciding factor in so far as the classification of such products is concerned.