

JUDGMENT OF THE COURT (Fifth Chamber)

19 October 2000 *

In Case C-339/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Finanzgericht Düsseldorf (Germany) for a preliminary ruling in the proceedings pending before that court between

Peacock AG

and

Hauptzollamt Paderborn,

on the interpretation of Note 5(B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff, set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by the annexes to Commission Regulation (EEC) No 2886/89 of 2 August 1989 (OJ 1989 L 282, p. 1), Commission Regulation (EEC) No 2472/90 of 31 July 1990 (OJ 1990 L 247, p. 1), Commission Regulation (EEC) No 2587/91 of 26 July 1991 (OJ 1991 L 259, p. 1), Commission Regulation (EEC) No 2505/92 of 14 July 1992 (OJ 1992 L 267, p. 1), Commission Regulation (EEC) No 2551/93 of

* Language of the case: German.

10 August 1993 (OJ 1993 L 241, p. 1) and Commission Regulation (EC) No 3115/94 of 20 December 1994 (OJ 1994 L 345, p. 1),

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the First Chamber, acting as President of the Fifth Chamber, D.A.O. Edward (Rapporteur), J.-P. Puissechet, P. Jann and L. Sevón, Judges,

Advocate General: F.G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- Peacock AG, by H. Nehm, Rechtsanwalt, Düsseldorf,
- the Commission of the European Communities, by R. Tricot and J. Schieferer, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Peacock AG, represented by H. Nehm, of the Netherlands Government, represented by M.A. Fierstra, Deputy Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, and of the Commission, represented by R. Tricot and J. Schieferer, at the hearing on 16 September 1999,

after hearing the Opinion of the Advocate General at the sitting on 28 October 1999,

gives the following

Judgment

- 1 By order of 14 September 1998, received at the Court on 17 September 1998, the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Note 5(B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff, set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by the annexes to Commission Regulation (EEC) No 2886/89 of 2 August 1989 (OJ 1989 L 282, p. 1), Commission Regulation (EEC) No 2472/90 of 31 July 1990 (OJ 1990 L 247, p. 1), Commission Regulation (EEC) No 2587/91 of 26 July 1991 (OJ 1991 L 259, p. 1), Commission Regulation (EEC) No 2505/92 of 14 July 1992 (OJ 1992 L 267, p. 1), Commission Regulation (EEC) No 2551/93 of 10 August 1993 (OJ 1993 L 241, p. 1) and Commission Regulation (EC) No 3115/94 of 20 December 1994 (OJ 1994 L 345, p. 1) ('the Combined Nomenclature').

- 2 That question was raised in proceedings between Peacock AG ('Peacock') and the Hauptzollamt (Principal Customs Office) Paderborn concerning a claim for repayment of the customs duty paid between July 1990 and May 1995 on imports into the Community of network cards designed to be installed in personal computers to enable them to exchange information or data with other computers via a local area network to which they are all connected.

- 3 The cards forming the subject-matter of the main proceedings were placed in free circulation and declared under subheading No 8473 30 of the Combined Nomenclature until 1993, as 'Parts and accessories of the machines of heading No 8471', and under subheading No 8473 30 10 from 1994. The Danish, Netherlands and United Kingdom customs authorities first sent binding tariff information to that effect to Peacock and two of its subsidiaries on 13 October 1993. Consequently, the network cards were subjected to a customs duty of 4% until 1994 and 3.8% in 1995.

- 4 However, by way of a number of amendment notices and a decision of 11 September 1995 the Hauptzollamt Paderborn determined that the network cards should be classified under heading No 8517 of the Combined Nomenclature, as 'Electrical apparatus for line telephony or line telegraphy, including such apparatus for carrier-current line systems', and imposed a customs duty of 7.5% on them. The Hauptzollamt demanded back payment of the corresponding difference in customs duty.

- 5 Peacock challenged those decisions before the Finanzgericht Düsseldorf on the ground that network cards are not machines performing a specific function within the meaning of Note 5(B) to Chapter 84 of the Combined Nomenclature but computer parts whose function is to control the flow of data between computers connected via the network and that heading No 8517 of the Combined Nomenclature is not apt because network cards do not operate according to telephony or telegraphy techniques.

- 6 Note 5(B) to Chapter 84 of the Combined Nomenclature is worded as follows:

'Automatic data-processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be

regarded as being a part of the complete system if it meets all the following conditions:

- (a) it is connectable to the central processing unit either directly or through one or more other units;

- (b) it is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

Such units presented separately are also to be classified within heading No 8471.

Heading No 8471 does not cover machines incorporating or working in conjunction with an automatic data-processing machine and performing a specific function. Such machines are classified in the headings appropriate to their respective functions or, failing that, in residual headings.'

- 7 Being uncertain as to the interpretation to be given to Note 5(B) to Chapter 84 of the Combined Nomenclature, the Finanzgericht Düsseldorf decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Note 5(B) to Chapter 84 of the Combined Nomenclature in the version which was in force from 1990 to 1995 to be interpreted as meaning that the transmission of data using the network cards described in more detail in the

grounds of this order is not to be regarded as a specific function but as data processing, so that the network cards are to be classified under heading No 8473?’

- 8 By that question, the national court is essentially asking what the correct heading in the Combined Nomenclature for the classification of network cards was at the material time.

- 9 As the Court has repeatedly held, the decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the relevant heading of the Common Customs Tariff and in the notes to the sections or chapters (see, in particular, Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945, paragraph 11, and Case C-382/95 *Techex* [1997] ECR I-7363, paragraph 11).

- 10 Both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the Nomenclature of the Customs Cooperation Council are important means of ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation (see judgments in *Siemens Nixdorf*, cited above, paragraph 12, and *Techex*, cited above, paragraphs 12).

- 11 At the material time, heading Nos 8471, 8473 and 8517 of the Combined Nomenclature and the World Customs Organisation (WCO) harmonised system were worded as follows:

— ‘8471 Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in

coded form and machines for processing such data, not elsewhere specified or included’,

— ‘8473 Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472’,

— ‘8517 Electrical apparatus for line telephony or line telegraphy, including such apparatus for carrier-current line systems’.

- 12 Although network cards are designed solely to be installed in automatic data-processing machines, the Commission states that they fulfil a specific function other than data-processing and that, having regard to Note 5(B) to Chapter 84 of the Combined Nomenclature, they are therefore excluded from heading No 8471. According to the Commission, the function of network cards is to transmit data. Since the transmission techniques used are telecommunications techniques, the cards should therefore be classified under heading No 8517.
- 13 Since a network card is not a ‘machine incorporating an automatic data-processing machine’ within the meaning of Note 5(B) to Chapter 84 of the Combined Nomenclature, it is necessary to consider whether it is none the less a machine working in conjunction with a machine of that type and performing a specific function. Those conditions must both be satisfied.
- 14 In that regard, the Commission submits that network cards perform a specific function distinct from information processing, namely the transmission of information.

- 15 It should be noted that such an assessment is based not on the objective characteristics and properties of a network card but on the functions which it allows an automatic information processing machine, as a whole, to perform.
- 16 As the national court has observed, network cards are designed solely for automatic information processing machines, they are directly connected to those machines and their function is to supply and accept data in a form which those machines can use. Network cards are thus comparable with any other medium whereby an automatic information processing machine accepts or delivers data in the sense that they have no function which they would be capable of performing without the assistance of such a machine.
- 17 It is therefore unnecessary to consider whether network cards could be classified as machines within the meaning of Note 5(B) to Chapter 84 of the Combined Nomenclature, since they cannot in any event be regarded as performing ‘a specific function’.
- 18 Consequently, Note 5(B) to the Combined Nomenclature does not preclude network cards from being classified under heading No 8471.
- 19 It is also necessary to consider whether network cards are to be classified in the Combined Nomenclature under heading No 8471 as ‘units’ of automatic data-processing machines or under heading No 8473 as ‘parts’ or ‘accessories’ of machines of that type.
- 20 In that regard, network cards satisfy the conditions relating to ‘units’ set out in Note 5(B) to Chapter 84 of the Combined Nomenclature, since they can be

connected to the central unit and are specifically designed as parts of an automatic data-processing system.

- 21 The word 'part', on the other hand, implies a 'whole' for the operation of which the part is essential and this is not so in the case of network cards. In that respect, it appears from the documents before the Court that network cards, which come in the form of slot-in cards, may also take other forms, in particular that of a standalone unit.
- 22 The explanatory notes to the WCO harmonised system take as an example of 'accessories' diskettes for cleaning disk drives in computer equipment. Network cards are clearly different in nature, and belong rather to the examples relating to 'units' given in the explanatory notes to the WCO harmonised system. Thus explanatory note (I)(D) concerning heading No 8471 of the Combined Nomenclature refers to control and adaptor units interconnecting the central unit to other automatic data processing units and to signal converting units which, at input, enable an external signal to be understood by the machine or which, at output, convert the processed signals into signals which can be used externally.
- 23 It follows from all the foregoing considerations that network cards must be classified under heading No 8471 of the Combined Nomenclature as 'units' of automatic data processing machines.
- 24 The answer to the question referred to the Court must therefore be that Note 5(B) to Chapter 84 of the Combined Nomenclature does not preclude the classification of network cards designed to be installed in automatic data processing machines under heading No 8471 of the Combined Nomenclature. Between July

1990 and May 1995 those cards were therefore to be classified under heading No 8471 as units of machines of that type.

Costs

- 25 The costs incurred by the Netherlands Government and the Commission, which have 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 question referred to it by the Finanzgericht Düsseldorf by order of 14 September 1998, hereby rules:

Note 5(B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff, set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by the annexes to Commission Regulation (EEC) No 2886/89 of 2 August 1989, Commission Regulation (EEC) No 2472/90 of

31 July 1990, Commission Regulation (EEC) No 2587/91 of 26 July 1991, Commission Regulation (EEC) No 2505/92 of 14 July 1992, Commission Regulation (EEC) No 2551/93 of 10 August 1993 and Commission Regulation (EC) No 3115/94 of 20 December 1994, does not preclude the classification of network cards designed to be installed in automatic data processing machines under heading No 8471 of the Combined Nomenclature. Between July 1990 and May 1995 those cards were therefore to be classified under heading No 8471 as units of machines of that type.

Wathelet

Edward

Puissochet

Jann

Sevón

Delivered in open court in Luxembourg on 19 October 2000.

R. Grass

A. La Pergola,

Registrar

President of the Fifth Chamber