

JUDGMENT OF THE COURT (Fourth Chamber)

8 July 2004<sup>\*</sup>

In Case C-400/03,

REFERENCE to the Court under Article 234 EC by the Tribunal d'instance du VII<sup>e</sup> arrondissement de Paris (France) for a preliminary ruling in the proceedings pending before that court between

**Waterman SAS, formerly Waterman SA**

and

**Directeur général des douanes and droits indirects,**

on the conformity of the explanatory notes for subheadings 4202 12 11 and 4202 12 19 of the Combined Nomenclature contained in the Commission's communication entitled 'Explanatory Notes to the Combined Nomenclature of the European Communities' (OJ 2000 C 199, p. 1) with the combined nomenclature of

\* Language of the case: French.

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 Commission Regulation (EC) No 2263/2000 of 13 October 2000 (OJ 2000 L 264, p. 1),

THE COURT (Fourth Chamber),

composed of: J.N. Cunha Rodrigues, President of the Chamber, J.-P. Puissochet and K. Lenaerts (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,  
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— Waterman SAS, by F. Goguel, avocat,

— the French Government, by A. Colomb and G. de Bergues, acting as Agents,

— the Commission of the European Communities, by C. Schieferer and X. Lewis, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Waterman SAS, the French Government and the Commission at the hearing on 1 April 2004,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

### **Judgment**

- 1 By judgment of 21 August 2003, lodged at the Court Registry on 26 September 2003, the Tribunal d'instance du VII<sup>e</sup> arrondissement de Paris (District Court of the VII<sup>th</sup> arrondissement, Paris) referred to the Court for a preliminary ruling under Article 234 EC a question on the conformity of the explanatory notes for subheadings 4202 12 11 and 4202 12 19 of the Combined Nomenclature, contained in the Commission's communication entitled 'Explanatory Notes to the Combined Nomenclature of the European Communities' (OJ 2000 C 199, p. 1) with 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 Commission Regulation (EC) No 2263/2000 of 13 October 2000 (OJ 2000 L 264, p. 1).

- 2 That question was raised in proceedings between the company Waterman SAS, the successor in title to Waterman SA (hereinafter ‘Waterman’) following a merger, and the Director-General of Customs and Indirect Duties in respect of the tariff classification of pen cases imported by that company into the European Union.

### **Legal framework**

- 3 The version of the Combined Nomenclature (hereinafter ‘the CN’) which applied at the material time is set out in Annex I to Regulation No 2263/2000. The second section of that annex contains a Chapter 42, entitled ‘Leather articles; saddlery and harness; travel goods, handbag similar; articles of animal gut’.
- 4 That Chapter includes a heading 4202, which refers inter alia to ‘jewellery boxes ... and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanised fibre or of paperboard, or wholly or mainly covered with such materials or with paper’.
- 5 Subheading 4202 92 19 applies to the goods referred to in the preceding paragraph when they have an ‘outer surface of plastic sheeting or of textile materials’. At the material time, the conventional tax rate for those goods was 9.7 %.

- 6 Subheading 4202 99 00 relates to the goods mentioned in paragraph 4 above when they have an outer surface which is not of leather, of composition leather or of patent leather or an outer surface of plastic sheeting or of textile materials. At the material time, the rate of conventional tax on those goods was 3.7%.
- 7 The Additional [*sic*] Note to Chapter 42 of the Combined Nomenclature states that 'for the purposes of the subheadings of heading 4202, the term "outer surface" shall refer to the material of the outer surface of the container being visible to the naked eye, even where this material is the outer layer of a combination of materials which makes up the outer material of the container'.
- 8 The Explanatory Note for subheadings 4202 92 11 to 4202 92 19, set out in the Commission Communication referred to in paragraph 1 above, refers back to the explanatory notes for subheadings 4202 12 11 and 4202 12 19 (hereinafter 'the explanatory notes in question'), which clarify the term 'in the form of plastic sheeting' as follows:

'If a container has an outer material that is a combination of materials where the outer layer being visible to the naked eye is plastic sheeting (e.g., woven fabric of textile fibres in combination with plastic sheeting) it is irrelevant for classification purposes whether the sheeting was manufactured separately before creating the combined material or whether the plastic layer is the result of applying a coating or covering of plastics to the material (e.g., woven fabric of textile fibres), provided that the resultant outer layer being visible to the naked eye has the same visual appearance as an applied layer of manufactured plastic sheeting.'

## **The main proceedings and the question referred for a preliminary ruling**

- 9 On 11 April 2001, Waterman sent the French customs authority a request for binding tariff information (BTI) for the purpose of classifying a pen case, the ‘Man Bille Coverlux’ case, described as follows in its request:

‘Shell (base and cover) in plastic

Steel spring hinge

Interior lining of satin

Foam padded cover

External coating of the case in Coverlux

...

External cover of plain board.’

- 10 In its request, Waterman asked for the product to be classified under subheading 4202 99 00.
- 11 On 28 June 2001, the French customs authority issued BTI, numbered FR-E4-2001-001470, which classifies the goods in question under subheading 4202 92 19. On the basis of two analyses by the Laboratoire interrégional des douanes de Paris (inter-regional laboratory of the Paris customs service), that authority took the view that the case in question had an outer surface of plastic sheeting with an average thickness of 0.12 millimetres. In support of the BTI, it relied inter alia on the explanatory notes in question.
- 12 On 11 September 2001, Waterman brought proceedings against the Directeur général des douanes and droits indirects before the Tribunal d'instance du VII<sup>e</sup> arrondissement de Paris, seeking annulment of the BTI and a ruling that the goods in question come under subheading 4202 99 00.
- 13 By judgment of 5 February 2002, that court asked the Commission de conciliation et d'expertise douanière to establish and describe the composition and the manufacturing process of the outer surface of the goods. In an opinion of 22 May 2002, that commission concluded that 'the outer surface of the cases submitted for examination is composed of acrylic polymer combined with colour pigments and that this mixture was roll-coated on in a semi-liquid state before the cases were moulded'.
- 14 Asked whether a material of that composition, obtained by such a process, comes under the subheading 4202 92 19, chosen by the French customs authority on the basis of the Explanatory Notes in question, the Tribunal d'instance du VII<sup>e</sup>

arrondissement de Paris decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Is the Explanatory Note to the Combined Nomenclature relating to subheadings 4202 12 11 and 4202 12 19, which clarifies the term “in the form of plastic sheeting” as follows: “If a container has an outer material that is a combination of materials where the outer layer being visible to the naked eye is plastic sheeting (e.g., woven fabric of textile fibres in combination with plastic sheeting) it is irrelevant for classification purposes whether the sheeting was manufactured separately before creating the combined material or whether the plastic layer is the result of applying a coating or covering of plastics to the material ... provided that the resultant outer layer being visible to the naked eye has the same visual appearance as an applied layer of manufactured plastic sheeting”, contrary to the tariff?’

### **Concerning the question referred for a preliminary ruling**

- 15 First, it should be pointed out that the question does not apply to the interpretation of the CN subheadings 4202 92 19 and 4202 99 00 relied on, respectively, by the French customs authority and by Waterman for the purpose of tariff classification of the pen cases imported by the latter into the European Union, but rather to the validity of the Explanatory Notes in question, which apply to CN subheadings 4202 92 11 to 4202 92 19.
- 16 It should be recalled that the Explanatory Notes to the Combined Nomenclature are a valid aid to the interpretation of the tariff provided that their content is in accordance with the actual provisions of the common customs tariff and do not alter the meaning of its provisions (Case 798/79 *Chem-Tec* [1980] ECR 2639, paragraphs 11 and 12).



- 17 In the present case, the Explanatory Notes in question state that if a container has an outer material that is a combination of materials where the outer layer being visible to the naked eye is plastic sheeting, it is irrelevant for tariff classification purposes whether that sheeting was manufactured before creating the combined material of which it is the visible outer layer or whether the plastic layer is the result of applying a coating or covering of plastics to the material (textile materials, for example), provided that that second manufacturing process results in an appearance analogous to that resulting from the first process.
- 18 As a result, those Notes assimilate, for the purpose of interpreting the expression 'plastic sheeting' within the meaning of the Combined Nomenclature, the plastic layer obtained by applying a coating or covering of plastic to material with plastic sheeting manufactured prior to its being applied to the container, provided that they have the same visual appearance. With that reservation, those Notes consider equivalent two processes resulting in an outer surface of plastic for the containers which come under Nomenclature heading 4202, that is, the process which consists in affixing manufactured plastic sheeting and that which consists in coating or covering a material (textile, for example) with plastic.
- 19 In the light of the case-law cited in paragraph 16 above, it is appropriate to examine whether the Explanatory Notes in question are consistent with the terms of the relevant headings and subheadings and their accompanying notes and with the rule mentioned in paragraph 6 of the general rules for the interpretation of the Combined Nomenclature, under the first heading of its first part, to which those Explanatory Notes are contrary, according to Waterman.
- 20 As regards the terms of those headings and subheadings, namely heading 4202 and subheadings 4202 92 11 to 4202 92 19 of the Nomenclature, it should be pointed out that those do not specify what must be understood by 'plastic sheeting'.

- 21 The fact cited by Waterman in its written observations that the Explanatory Notes in question use the terms ‘sheet’ and ‘layer’ interchangeably, whilst the second does not appear in the heading and subheadings at issue and is not synonymous with the first in everyday usage, does not permit the inference that those Notes are contrary to the terms of that heading and those subheadings and to the rule mentioned in paragraph 6 of the general rules for the interpretation of the Combined Nomenclature, according to which the classification of goods is to be determined according to the terms of subheadings.
- 22 The term ‘layer’ in the Explanatory Notes in question serves to designate the product of a technical process which must be of ‘plastic material’ and which, under those notes, can be assimilated to plastic sheeting within the meaning of subheadings 4202 92 11 to 4202 92 19 of the CN only if it has the same appearance as such sheeting.
- 23 As the French Government observes, it must also be pointed out that Additional Note 1 of Chapter 42 of the Combined Nomenclature (see paragraph 7 above), which concerns, *inter alia*, the containers with an outer surface in the form of plastic sheeting referred to in CN subheadings 4202 92 11 to 4202 92 19, uses the term ‘layer’ to clarify the notion of ‘outer surface’ within the meaning of those subheadings, among others.
- 24 As regards the Notes which apply to the relevant heading and subheadings, it must be pointed out that Section VIII of the CN, which includes Chapter 42, does not include a Note. That chapter for its part contains three notes and an Additional Note.
- 25 Notes 1 and 2 exclude a series of articles from Chapter 42 and heading 4202 of the Combined Nomenclature, respectively, while Note 3 concerns heading 4203. Accordingly, none of those Notes is relevant for the purpose of determining the validity of the Explanatory Notes concerned.

- 26 Additional Note 1, set out in paragraph 7 above, states that for the purposes of the subheadings of CN heading 4202, the joining of the outer surface of the container to one of the types of surface referred to in those subheadings must take place on the basis of material visible to the naked eye, even where that material is only the outer layer of a combination of materials which makes up the outer material of the container.
- 27 The Explanatory Notes in question are an extension of that Additional Note, in that they specify that in one of the cases covered by the note, namely where the outer layer visible to the naked eye is sheeting of plastic, the process by which that sheeting was obtained is irrelevant for the purposes of tariff classification.
- 28 Note 10 of Chapter 39 of the Nomenclature, relied on by Waterman, is not relevant in assessing the validity of the Explanatory Notes in question, since those concern subheadings under Chapter 42. Moreover, that note does not include a definition of plastic sheeting with which those Explanatory Notes could conflict.
- 29 It must be pointed out that in considering equivalent two technical processes which result in an identical product, namely an outer surface of plastic, the explanatory notes in question comply with the case-law under which the decisive criterion for the tariff classification of goods lies in their objective characteristics and qualities, as defined in the relevant heading of the Common Customs Tariff and in the notes to the relevant sections or chapters (Case 200/84 *Daiber* [1985] ECR 3363, paragraph 13; Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945, paragraph 11; and Case C-339/98 *Peacock* [2000] ECR I-8947, paragraph 9).

- 30 Contrary to the position put forward by Waterman in its written observations but as that company acknowledged at the hearing, no information contained in the Explanatory Notes in question permits the inference that the Commission's notes assimilate a coat of paint to plastic sheeting.
- 31 Moreover, contrary to Waterman's claim, the condition of similarity of appearance set out in the Explanatory Notes in question cannot be read as conveying a preference on the part of the Commission for the criterion of appearance in disregard of the judicial criterion referred to in paragraph 29 above. The application of that condition presupposes that the product resulting from the process of coating or covering is a layer 'of plastic'.
- 32 In the light of all the foregoing, the answer to the national court must be that consideration of the question does not reveal any information such as to affect the validity of the Explanatory Notes in question.

## **Costs**

- 33 The costs incurred by the French Government and the Commission, which 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 (Fourth Chamber),

in answer to the question referred to it by the Tribunal d'instance du VII<sup>e</sup> arrondissement de Paris by judgment of 21 August 2003, hereby rules:

**Examination of the question raised does not reveal any information such as to affect the validity of subheadings 4202 12 11 and 4202 12 19 of the Combined Nomenclature, contained in the Commission's communication entitled 'Explanatory Notes to the Combined Nomenclature of the European Communities'.**

Cunha Rodrigues

Puissochet

Lenaerts

Delivered in open court in Luxembourg on 8 July 2004.

R. Grass

J. N. Cunha Rodrigues

Registrar

President of the Fourth Chamber