JUDGMENT OF THE COURT (Third Chamber)

12 January 2006 *

In Case C-311/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Gerechtshof te Amsterdam (Netherlands), made by decision of 28 June 2004, received at the Court on 22 July 2004, in the proceedings

Algemene Scheeps Agentuur Dordrecht BV

v

Inspecteur der Belastingdienst — Douanedistrict Rotterdam,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J. Malenovský (Rapporteur), J.-P. Puissochet, S. von Bahr and U. Lõhmus, Judges,

* Language of the case: Dutch.

Advocate General: J. Kokott,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Algemene Scheeps Agentuur Dordrecht BV, by A. Wolkers and E.H. Mennes, advocaten,

— the Netherlands Government, by S. Terstal, acting as Agent,

— the Commission of the European Communities, by M. van Beek and X. Lewis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 October 2005,

gives the following

Judgment

1 The reference for a preliminary ruling concerns, firstly, the validity of Additional Note 1(f) to Chapter 10 of 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 2388/2000 of 13 October 2000 (OJ 2000 L 264, p. 1, and corrigendum OJ 2000 L 276, p. 92), ('Regulation No 2658/87'). Secondly, it concerns the interpretation of the fourth subparagraph of Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17), (the 'Customs Code').

2 The reference has been made in the course of proceedings between the company Algemene Scheeps Agentuur Dordrecht BV ('ASAD') and the Inspecteur der Belastingdienst — Douanedistrict Rotterdam (Customs Inspector of Rotterdam District, 'the Inspector') concerning the tariff classification of a number of consignments of rice.

Legal context

International law

3 The International Convention establishing the Harmonised Commodity Description and Coding System ('the HS'), concluded in Brussels on 14 June 1983, and the Protocol of Amendment thereto of 24 June 1986 ('the HS Convention') were approved on behalf of the Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

4 Under Article 3(1) of that convention, each Contracting Party undertakes to ensure that its customs tariff and statistical nomenclatures will be in conformity with the HS, to use all of the headings and subheadings of the HS without addition or

modification, together with their related codes, and to follow the numerical sequence of that system. Each Contracting Party also undertakes to apply the general rules for the interpretation of the HS and all the section, chapter and subheading notes of the HS, and not to modify their scope.

5 The Customs Cooperation Council, now the World Customs Organisation (the 'WCO'), established by the International Convention for creation of that council, signed at Brussels on 15 December 1950, approves, under the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes to the HS adopted by the HS Committee provided for in Article 6 thereof.

6 The nomenclature set out in the Annex to the HS Convention includes a Section II entitled 'Vegetable Products', which features, inter alia, a Chapter 10, entitled 'Cereals'. That chapter includes, inter alia, heading 10.06, entitled 'Rice'. The subheadings are laid down under the following codes: 1006.10 'Rice in the husk (paddy or rough)', 1006.20 'Husked (brown) rice', 1006.30 'Semi-milled or wholly milled rice, whether or not polished or glazed', and 1006.40 'Broken rice'.

7 According to the WCO's Explanatory Note on that heading 10.06, it covers, inter alia:

'(1) Rice in the husk (paddy or rough rice), that is to say, rice grain still tightly enveloped by the husk.

(2) Husked (brown) rice (cargo rice) which, although the husk has been removed by mechanical hullers, is still enclosed in the pericarp. Husked rice almost always still contains a small quantity of paddy.

(3) Semi-milled rice, that is to say, whole rice grains from which the pericarp has been partly removed.

(4) Wholly milled rice (bleached rice), whole rice grains from which the pericarp has been removed by passage through special tapering cylinders ...'

Community law

— The Combined Nomenclature

8 Regulation No 2658/87 established, for the needs of both the Common Customs Tariff ('the CCT') and the external trade statistics of the Community, a nomenclature of goods, known as the 'Combined Nomenclature' ('the CN') which is based on the HS, from which it takes the six-digit headings and subheadings, only the seventh and eighth digits forming subdivisions specific to the CN.

9 The version of the CN applicable at the time of the facts in the main proceedings is set out in Annex I to Regulation No 2388/2000. The second part of that annex

includes a Section II, entitled 'Vegetable Products'. That section contains, inter alia, a Chapter 10, entitled 'Cereals'. Under that chapter, heading 1006 is found, entitled 'Rice', with, inter alia, the following subheadings:

'...

CN Code	Description of goods
...	...
1006 20	Husked (brown) rice:
	— — Parboiled:
...	...
	— — Other:
...	...
	— — — Long grain:
...	...
1006 20 98	— — — — Of a length/width ratio equal to or greater than 3
1006 30	— Semi-milled or wholly milled rice, whether or not polished or glazed:
	— — Semi-milled rice:
	— — — Parboiled
...	...
	— — — Other:
...	...
	— — — — Long grain
...	...
1006 30 48	— — — — — Of a length/width ratio equal to or greater than 3
...	...

...'

10 Chapter 10 also includes an Additional Note (the 'Additional Note at issue'), under which the following terms have the meanings hereunder assigned to them:

'(d) "paddy rice"...: rice which has retained its husk after threshing;

(e) "husked rice" (subheadings ... 1006 20 98): rice from which only the husk has been removed. Examples of rice falling within the definition are those with the commercial descriptions ... "cargo rice" ...;

(f) "semi-milled rice" (subheadings ... 1006 30 48): rice from which the husk, part of the germ and the whole or part of the outer layers of the pericarp, but not the inner layers, have been removed;

(g) "wholly milled rice" (subheadings ... 1006 30 98): rice from which the husk, the whole of the outer and inner layers of the pericarp, the whole of the germ in the case of long or medium grain rice, and at least part thereof in the case of round grain rice, have been removed ...'.

11 Under Additional Note 2 to Chapter 10 of the CN, the rate of duty applicable to mixtures covered by that chapter is as follows:

'(a) in mixtures where one of the components represents at least 90% by weight the rate applicable to that component applies;

(b) in other mixtures, the rate applicable shall be that of the component which results in the highest amount of import duty'.

— The Customs Code

12 Under Article 217 of the Customs Code:

'1. Each and every amount of import duty or export duty resulting from a customs debt, hereinafter called "amount of duty", shall be calculated by the customs authorities as soon as they have the necessary particulars, and entered by those authorities in the accounting records or on any other equivalent medium (entry in the accounts).

...'

13 Article 220 of the Customs Code provides:

'1. Where the amount of duty resulting from a customs debt has not been entered in the accounts in accordance with Articles 218 and 219 or has been entered in the accounts at a level lower than the amount legally owed, the amount of duty to be recovered or which remains to be recovered shall be entered in the accounts within two days of the date on which the customs authorities become aware of the situation and are in a position to calculate the amount legally owed and to determine the debtor (subsequent entry in the accounts). ...

2. Except in the cases referred to in the second and third subparagraphs of Article 217(1), subsequent entry in the accounts shall not occur where:

...

(b) the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

Where the preferential status of the goods is established on the basis of a system of administrative cooperation involving the authorities of a third country, the issue of a certificate by those authorities, should it prove to be incorrect, shall constitute an error which could not reasonably have been detected within the meaning of the first subparagraph.

The issue of an incorrect certificate shall not, however, constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where, in particular, it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment.

The person liable may plead good faith when he can demonstrate that, during the period of the trading operations concerned, he has taken due care to ensure that all the conditions for the preferential treatment have been fulfilled.

...'

The main proceedings and the questions referred for a preliminary ruling

14 On 10 August 2001, ASAD, in its capacity as a customs agent, declared to the Netherlands customs authorities the importation of a consignment of 1 134 500 kg of rice, described as 'long grain, semi-milled rice of a length/width ratio equal to or greater than 3'. ASAD thereby declared the rice under subheading 1006 30 48 of the CCT, corresponding to that of semi-milled rice.

15 The import declaration gave Aruba as the country of origin. ASAD claimed the preferential tariff applicable to goods listed under that subheading 1006 30 48 and originating in Aruba.

16 ASAD enclosed three EUR.1. movement certificates with its declaration. Of those three certificates, two were stamped by the competent Aruban authorities. The description of the goods given on those certificates was as follows: 'cargo rice of ACP origin Guyana which had been processed in Aruba, in accordance with the provisions and Annex II to the EEC Council's Decision No 91/482/EEC of 25 July 1991'.

17 Those documents were accompanied by an 'AGRIM' import certificate, concerning a total quantity of 3 694 000 kg of long grain, semi-milled rice classified under tariff subheading 1006 30 48 of the CCT, and an invoice describing the rice as 'processed long grain cargo rice ...'.

18 The Netherlands customs authorities took samples of the goods for analysis and notified ASAD that verification of the import declaration was being suspended pending the results of the analysis of the samples.

19 The analysis of the samples established that more than half of the consignment of rice consisted of husked rice and less than half was semi-milled rice with traces, in particular, of paddy rice. Those results were obtained on the basis of the view, derived from the criteria in the Additional Note at issue, that rice from which part of the pericarp, but not the germ, had been removed should be classified as husked rice and not as semi-milled rice. On the basis of those results, the Inspector classified the rice under tariff subheading 1006 20 98 of the CCT, thereby departing from the subheading cited in that declaration and making it impossible for ASAD to claim the preferential tariff.

20 Pursuant to that modification, the Inspector on 27 November 2001 sent a demand to ASAD for payment of customs duties in the sum of NLG 541 394.80 (EUR 245 674.25).

21 Following an unsuccessful complaint, ASAD, which disputes the amendment thus made to the classification, brought an action before the Gerechtshof te Amsterdam (Amsterdam Regional Court of Appeal). At issue in the proceedings is the question whether the demand for payment was correctly made, rather than the calculation of the customs duties as such.

22 The Gerechtshof noted that, outside the Community, the WCO's Explanatory Note is used to distinguish rice under heading 1006.20 of the HS from that under heading 1006.30 of the HS. Having regard to the fact that the Additional Note at issue uses an extra criterion to classify semi-milled rice, namely the removal of (a part of) the germ of the rice grain, that court considers that the Community legislature relied on a different definition for the purpose of distinguishing those headings. Taking the view that the Community might be in the position of failing to comply with its international obligations under the HS Convention, it raises the question of the validity of the Additional Note at issue. Should that note not be declared invalid, the Gerechtshof submits that ASAD was right to invoke Article 220(2)(b) of the Customs Code to oppose the demand for payment, but it doubts whether that company took due care to ensure that all the conditions for entitlement to the preferential treatment had been fulfilled.

23 In those circumstances, the Gerechtshof te Amsterdam decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is [the] Additional Note [at issue] ... valid in so far as it lays down requirements in respect of the term "semi-milled rice" that differ from those laid down in the [WCO's] Explanatory Note to subheading 10.06 of the Harmonised System?

(2) If the answer to the first question is in the affirmative, is it possible for an appellant to plead good faith pursuant to the fourth subparagraph of Article 220(2)(b) of the Community Customs Code in a situation where the appellant was or ought to have been aware of [the] Additional Note [at issue] but did not know or may at least have had doubts as to whether that note was valid in the light of the different description set out in the [WCO's] Explanatory Note to subheading 10.06 of the Harmonised System?'

The questions

The first question

24 By its first question, the referring court essentially asks whether the Additional Note at issue is invalid in so far as it gives a definition of semi-milled rice which includes an element, concerning the germ of the rice grain, which is not mentioned in the Explanatory Note to the HS.

25 The first point to be noted is that, in accordance with the provisions of Article 300(7) EC, the HS Convention binds the Community institutions. The Community, under Article 3 of that convention, undertook not to alter the scope of the HS (see, to that effect, Case C-309/98 *Holz Geenen* [2000] ECR I-1975, paragraph 13). In this connection, it is also important to note that the primacy of international agreements concluded by the Community over secondary Community legislation (Case C-344/04 *IATA and Others* [2006] ECR I-403, paragraph 35) requires that the latter, in so far as possible, be interpreted in conformity with those agreements (Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 52, and Case C-286/02 *Bellio F.lli* [2004] ECR I-3465, paragraph 33).

26 Furthermore, it is settled case-law that, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and in the section or chapter notes (see, inter alia, Case C-396/02 *DFDS* [2004] ECR I-8439, paragraph 27, and Case C-495/03 *Intermodal Transports* [2005] ECR I-8151, paragraph 47).

27 The explanatory notes drawn up, as regards the CN, by the Commission of the European Communities and, as regards the HS, by the WCO are an important aid to interpretation of the scope of the various tariff headings but do not have legally binding force (see, inter alia, *DFDS*, paragraph 28, and *Intermodal Transports*, paragraph 48).

28 The content of those notes to the CN must therefore be compatible with its provisions and may not alter the scope of those provisions (see, in particular, Case

C-280/97 *ROSE Electrotechnik* [1999] ECR I-689, paragraph 23, Case C-42/99 *Eru Portuguesa* [2000] ECR I-7691, paragraph 20, and *Intermodal Transports*, paragraph 48).

29 In the present case, the wording of the descriptions of the various types of rice in the headings and subheadings is identical in the HS and in the CN. It is also common ground that the definitions of paddy rice and husked rice in paragraphs (d) and (e) of the Additional Note at issue are identical to those given by the Explanatory Note to the HS. Paddy rice is therefore rice in which the grains still have their husk. Husked rice is rice from which, following an initial treatment, that husk has been removed.

30 As regards subheading 1006 30, it covers, in the HS as in the CN, rice which, having been exposed to further treatment, becomes semi-milled or wholly milled rice, whether or not polished or glazed. The CN is thus consistent with the HS.

31 The question asked by the referring court involves an examination into whether the wording of the provisions of the Additional Note at issue, in so far as it defines semi-milled and wholly milled rice, alters the scope of the CN.

32 According to the HS, the scope of which is clarified by the WCO's Explanatory Note, semi-milled rice is that in which the pericarp has been partly removed, wholly milled

rice being that in which the pericarp has been wholly removed. The Additional Note at issue defines, in paragraph (f), semi-milled rice as being rice from which the husk, part of the germ and the whole or part of the outer layers of the pericarp, but not the inner layers, have been removed. The same Additional Note defines, in paragraph (g), wholly milled rice as being that from which the husk, the whole of the outer and inner layers of the pericarp, the whole of the germ in the case of long grain and medium grain rice, and at least part of the germ in the case of round grain rice, have been removed. There is thus, as between the Explanatory Note of the WCO and the Additional Note at issue, a difference in the wording of those definitions which turns on whether or not the removal of the germ is taken into account in the definition of semi-milled rice.

33 However, taking account of the objective characteristics of the rice, as they appear from the information produced in the file, rice from which part of the pericarp has been removed is no longer husked rice coming under subheading 1006.20 of the HS since, for that, as stated in paragraph 29 of the present judgment, only the husk has been removed. Furthermore, since, under the HS, the category of semi-milled rice encompasses all rice from which part of the pericarp has been removed, the semi-milled rice defined in the Additional Note at issue, under paragraph (f), meets that criterion and, accordingly, that note does not, in itself, conflict with the HS.

34 Even if the Additional Note at issue were none the less to be read as excluding from subheading 1006 30 rice from which part of the pericarp, but not the germ, has been removed, that rice could not be classified under subheading 1006 20 of the CN either. Such an interpretation would thereby have the consequence of denying that rice all possibility of classification and, as a result, of restricting the scope of the HS, the general purpose of which is precisely to assign a classification to all goods. It is therefore necessary, having regard to the conditions noted in paragraph 25 of the present judgment, which provide that secondary legislation must be interpreted in the light of international agreements which bind the Community under Article 300 (7) EC, to examine whether there is another interpretation of the Additional Note at issue which is consistent with the HS.

35 As the Advocate General notes in point 42 of her Opinion, it is apparent from the harmonisation of paragraphs (f) and (g) of the Additional Note at issue that it may be read as merely stating that the partial removal of the germ, in the case of long grain rice, is not sufficient to classify that rice as wholly milled rice. In those circumstances, that note must be interpreted as meaning that mention of the removal of part of the germ is not an additional requirement for classification of rice as semi-milled rice, as distinct from husked rice.

36 In so far as the reference to the germ in the Additional Note at issue can affect only the classification of the rice as either semi-milled or wholly milled rice, both of which come under the same subheading 1006 30 of the CN, it does not have the effect of precluding rice the pericarp of which has been totally or partially treated in accordance with the HS from being classified under that subheading. That reference must therefore be regarded as consistent with the HS and, thus, does not call in question the validity of the Additional Note at issue.

37 In the light of those considerations, the reply to the first question must be that examination of the question has revealed no factor of such a kind as to affect the validity of paragraph (f) of the Additional Note at issue.

The second question

38 By its second question, the referring court essentially asks, in the event that the Additional Note at issue is acknowledged to be valid, whether, in order to be exempt

from post-clearance recovery of import duties under the provisions of Article 220(2)(b) of the Customs Code, a liable person such as ASAD can be considered to have acted in good faith, when it is unclear whether that liable person, in setting out its customs declaration on the basis of the Explanatory Note of the WCO and not on that of the Additional Note at issue, had taken all due care to ensure that all the conditions entitling it to preferential treatment had been fulfilled.

39 It is apparent from the decision to refer that the second question was only raised with reference to a situation in which the application of the Additional Note at issue would lead to classification of consignments of rice from which part of the pericarp, but not the germ, had been removed under a subheading other than that of semi-milled or wholly milled rice.

40 It follows from paragraph 35 of the present judgment that the Additional Note at issue must be interpreted as meaning that rice from which part of the pericarp, but not the germ, has been removed cannot be classified under a subheading other than that of semi-milled rice. The referring court itself stated that the rice declared should be classified under subheading 1006 30 of the CN and that ASAD had observed all the provisions prescribed by the legislation in force.

41 In those circumstances, it is unnecessary to answer the second question.

Costs

42 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Examination of the first question raised has revealed no factor of such a kind as to affect the validity of Additional Note 1(f) to Chapter 10 of 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 Commission Regulation (EC) No 2388/2000 of 13 October 2000.

[Signatures]