

JUDGMENT OF THE COURT (Third Chamber)

29 April 2010*

In Case C-123/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Finanzgericht München (Germany), made by decision of 12 March 2009, received at the Court on 3 April 2009, in the proceedings

Roeckl Sporthandschuhe GmbH & Co. KG

v

Hauptzollamt München,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta, G. Arestis (Rapporteur), J. Malenovský and D. Šváby, Judges,

* Language of the case: German.

Advocate General: V. Trstenjak,
Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 28 January 2010,

after considering the observations submitted on behalf of:

- Roeckl Sporthandschuhe GmbH & Co. KG, by H. Kühle and U. Reimer, Steuerberater,

- the European Commission, by B.-R. Killmann and L. Bouyon, acting as Agents,

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

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of the Combined Nomenclature constituting 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 1789/2003 of 11 September 2003 (OJ 2003 L 281, p. 1, 'the CN').

- 2 The reference has been made in the course of proceedings between Roeckl Sporthandschuhe GmbH & Co. KG ('Roeckl') and Hauptzollamt München (Principal Customs Office, Munich), concerning the tariff classification of riding gloves made of crocheted fabric and a layer of plastic, the crocheted fabric of which is raised on one side and is then completely covered on the raised side with plastic, namely with a polyurethane foam.

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 the HS 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. The same provision provides that 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 the scope of the sections, chapters, headings and subheadings.

- 5 The Customs Cooperation Council, now the World Customs Organisation ('WCO'), established by the Convention establishing that Council concluded at Brussels on 15 December 1950, is to approve, under the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes and Classification Opinions adopted by the HS Committee, a body the organisation of which is governed by Article 6 thereof. Under Article 7(1) of the HS Convention, the functions of that committee include proposing amendments to that Convention and preparing Explanatory Notes, Classification Opinions and other advice as guides to the interpretation of the HS.

- 6 According to paragraph VIII of the HS Explanatory Note concerning general rule 3(b) on the interpretation of the CN, 'the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.'

- 7 The general considerations included under Chapter 39 of the HS Explanatory Note, entitled 'Plastics and articles thereof' explain the scope of that chapter. Textile and plastics combinations are among the products that are covered by that chapter. The general considerations concerning those goods are worded as follows:

'Wall or ceiling coverings which comply with Note 9 to this Chapter are classified in heading 39.18. Otherwise the classification of plastics and textile combinations is

essentially governed by Note 1(h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59. The following products are also covered by this Chapter:

- (a) Felt impregnated, coated, covered or laminated with plastics or rubber, containing 50% or less by weight of textile material or felt completely embedded in plastics;

- (b) Textile fabrics and nonwovens, either completely embedded in plastics, or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour;

- (c) Textile fabrics impregnated, coated covered or laminated with plastics which cannot without fracturing be bent manually around a cylinder of a diameter of 7 mm at a temperature between 15°C and 30°C;

- (d) Plates, sheets and strip of cellular plastics combined with textile fabrics (as defined in Note 1 to Chapter 59), felt or nonwovens, where the textile is present merely for reinforcing purposes.

In this respect, unfigured, unbleached, bleached or uniformly dyed textile fabrics, felt or nonwovens, when applied to one face only of these plates, sheets or strip, are regarded as serving merely for reinforcing purposes. Figured, printed or more elaborately worked textiles (e.g. by raising) and special products, such as pile fabrics, tulle

and lace and textile products of heading 5811, are regarded as having a function beyond that of mere reinforcement.

…’

Community law

- 8 The CN is based on the HS. The CN takes six-digit headings and subheadings from the HS, only the seventh and eighth digits forming subdivisions that are specific to it.

- 9 Part One of the CN contains preliminary provisions. In that part, Section I, which contains general rules, subsection A, entitled ‘General rules for the interpretation of the [CN]’ (‘the general rules’), provides:

‘Classification of goods in the [CN] shall be governed by the following principles:

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of

the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

2. ...

- (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When, by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

...

- (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable;

- (c) when goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

...

- 10 Part Two of the CN includes Section VII, covering ‘Plastics and articles thereof; rubber and articles thereof’. That section includes Chapter 39, entitled ‘Plastics and articles thereof’.

- 11 Pursuant to the Additional Note to Chapter 39:

‘Where the woven, knitted or crocheted fabrics, felt or nonwovens are present merely for reinforcing purposes, gloves, mittens or mitts impregnated, coated or covered with cellular plastics belong to Chapter 39, even if they are:

- made up from woven, knitted or crocheted fabrics (other than those of heading 5903), felt or nonwovens impregnated, coated or covered with cellular plastics, or

- made up from unimpregnated, uncoated or uncovered woven, knitted or crocheted fabrics, felt or nonwovens and subsequently impregnated, coated or covered with cellular plastics

(Note 3(c) to Chapter 56 and note 2(a)(5) to Chapter 59):

- 12 Heading 3926 of the CN includes subheading 3926 20 00 and reads as follows:

CN Code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:		
...			
3926 20 00	— Articles of apparel and clothing accessories (including gloves, mittens and mitts):	6,5	—

- 13 Section XI of the CN dealing with 'Textiles and textile articles' includes Chapter 56, entitled 'Wadding, felt and nonwovens, special yarns, twine, cordage, ropes and cables and articles thereof', Chapter 59, entitled, 'Impregnated, coated, covered or laminated textile fabrics, textile articles of a kind suitable for industrial use', and Chapter 61, entitled 'Articles of apparel and clothing accessories, knitted or crocheted'.

14 Pursuant to the notes to Section XI:

‘1. This section does not cover:

...

(h) woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of Chapter 39;

...’

15 In paragraph 3 of the Notes to Chapter 56 of Section XI of the CN, it is stated:

‘Headings 5602 and 5603 cover respectively felt and nonwovens, impregnated, coated, covered or laminated with plastics or rubber whatever the nature of these materials (compact or cellular).

Heading 5603 also includes nonwovens in which plastics or rubber forms the bonding substance.

Heading 5602 and 5603 do not, however, cover:

...

- (c) plates, sheets or strip of cellular plastics or cellular rubber combined with felt or nonwovens, where the textile material is present merely for reinforcing purposes (Chapter 39 or 40).

...'

¹⁶ Note 2 to Chapter 59 of Section XI of the CN provides:

'Heading No 5903 applies to:

- (a) textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square metre and whatever the nature of the plastic material (compact or cellular), other than:

...

- (5) plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39);

...'

17 Pursuant to the Additional Notes to Chapter 61 of Section XI:

'...

3. Heading 6111 and subheadings 6116 1020 and 6116 1080:

cover gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, even if they are:

— made up from knitted or crocheted textile fabrics impregnated, coated or covered with plastics or rubber of heading 5903 or 5906, or

— made up from unimpregnated, uncoated or uncovered knitted or crocheted textile fabrics and subsequently impregnated, coated or covered with plastics or rubber.

Where knitted or crocheted textile fabrics serve only as reinforcement, gloves, mittens or mitts impregnated, coated or covered with cellular plastics or cellular rubber belong in Chapter 39 or 40, even if they are made up from unimpregnated, uncoated or uncovered knitted or crocheted textile fabrics and subsequently impregnated, coated or covered with cellular plastics or cellular rubber (note 2(a)(5) and note 4, last paragraph, to Chapter 59).'

18 Heading 6116 of the CN contains subheading 6116 10 80 and is worded as follows:

CN Code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
6116	gloves, mittens or mitts, knitted or crocheted:		
6116 10	— Impregnated, coated, covered or laminated with plastics or rubber:		
6116 10 20	— — Gloves impregnated, coated or covered with rubber	8	pa
6116 10 80	— — Other	8,9	pa

The dispute in the main proceedings and the question referred for preliminary ruling

- ¹⁹ Roeckl is a company which sells gloves, including both ranges of riding gloves at issue in the main proceedings with article numbers 3301-208 and 3301-233. Those ranges are manufactured from a composite material made of crocheted fabric and a layer of plastic. During their manufacture the support layer is raised on one side and the raised side is then completely covered with a layer of polyurethane foam. The side of the crocheted fabric that is in contact with the wearer's skin is not raised.
- ²⁰ On 3 August 2000, the Oberfinanzdirektion Koblenz (Principal Revenue Office, Koblenz) – Zolltechnische Prüfungs- und Lehranstalt (Testing and Training Establishment for Technical Customs Matters) issued Roeckl with binding tariff information DE F/2113/00-1 for the glove range with article number 3301-208 and classified the glove under subheading 6116 10 80 of the CN.
- ²¹ Roeckl brought an action against that decision, which was dismissed on 14 August 2003 by the Finanzgericht Rheinland-Pfalz (Finance Court, Rheinland-Pfalz) primarily because the crocheted fabric used in the manufacture of the glove in question had undergone further processing by being raised and thus did not serve merely to reinforce the layer of plastic.
- ²² On 10 January 2005, Roeckl filed a supplementary declaration for the December 2004 accounting period for the release of various gloves, including the riding gloves at issue in the main proceedings, and on that occasion classified them under subheading 6116 10 80 of the CN. On the basis of that declaration, the Hauptzollamt München set import duties in a notice of 10 January 2005 in the total sum of EUR 58 753,24.

Following that tax notice, Roeckl filed an objection against that assessment before the Hauptzollamt München, which was rejected by decision of 11 January 2006.

- 23 Roeckl subsequently appealed against that decision before the referring court, arguing that the riding gloves at issue in the main proceedings should be classified under subheading 3926 20 00 of the CN since, in particular, the raising of the crocheted fabric served only to improve adhesion between the layer of plastic and the textile fabric and therefore had to be regarded as a process enabling the textile fabric to serve as reinforcement of the layer of plastic.
- 24 Having regard to those circumstances, the national court is uncertain whether the raising automatically lends to the textile material a function going beyond that of mere reinforcement. It points out that that result appears, however, debatable where the raising serves only to improve the adhesion of the plastic to the textile fabric.
- 25 The Finanzgericht München accordingly decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must subheading 3926 20 00 of the [CN] be interpreted as meaning that it covers also textile articles that have been raised on one side and covered with a layer of plastic, but which do not have a function beyond that of mere reinforcement, where the raising serves only to improve the adhesion of the layer of plastic and is no longer discernible to the user once the manufacture of the article has been completed (see also Harmonised System Explanatory Note 56.6 on Chapter 39 of the [CN])?’

The question referred for a preliminary ruling

- ²⁶ By its question, the national court asks, in essence, whether riding gloves such as those at issue in the main proceedings should be classified under subheading 3926 20 00 of the CN, as plastic goods, or under subheading 6116 10 80 of the CN, as textile goods.
- ²⁷ First of all, 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-142/06 *Olicom* [2007] ECR I-6675, paragraph 16, and Joined Cases C-362/07 and C-363/07 *Kip Europe and Others* [2008] ECR I-9489, paragraph 26).
- ²⁸ Next, the intended use of a product may also constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties (see Case C-183/06 *RUMA* [2007] ECR I-1559, paragraph 36, and *Olicom*, paragraph 18).
- ²⁹ Lastly, it should be recalled that both the notes which head the chapters of the Common Customs Tariff and the HS Explanatory Notes are important means of ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation (see Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945, paragraph 12; Case C-382/95 *Techex* [1997] ECR I-7363, paragraph 12; Case C-339/98 *Peacock* [2000] ECR I-8947, paragraph 10, and *Olicom*, paragraph 17).
- ³⁰ In the case in the main proceedings, it should be noted that the riding gloves in question, composed of crocheted fabric and a layer of plastic, are not expressly referred to

in the wording of either the relevant CN headings or the notes to the relevant sections or chapters of the CN.

- ³¹ In that regard, heading 3926 of the CN, which covers, according to Roeckl, the riding gloves at issue in the main proceedings, refers, in particular, to '[o]ther articles of plastics and articles of other materials of headings 3901 to 3914'; whereas the wording of heading 6116 of the CN refers, in particular, to 'gloves, mittens or mitts, knitted or crocheted'. 'Articles of apparel and clothing accessories (including gloves, mittens and mitts)' fall specifically under subheading 3926 20 00 of the CN, whereas subheading 6116 10 80 of the CN, which is included in the category of gloves, mittens or mitts impregnated, coated or covered with plastics or rubber, is defined in a negative manner, by the use of the general reference to '[o]ther' in relation to subheading 6116 10 20 of the CN, which includes '[g]loves impregnated, coated or covered with rubber'.
- ³² Therefore, since the riding gloves at issue in the main proceedings consists of different materials and there is no specific tariff heading under which they may be classified, the only provision applicable to the classification of those gloves is general rule 3(b) (see, to that effect, Case 253/87 *Sportex* [1988] ECR 3351, paragraph 7, and Case C-250/05 *Turbon International* [2006] ECR I-10531, paragraph 20).
- ³³ It has to be borne in mind that under general rule 3(b), which specifically covers the situation in which goods are prima facie classifiable under two or more headings, mixtures which cannot be classified by reference to 3(a), are to be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable. If that is not the case, in accordance with general rule 3(c) they are to be classified under the heading which occurs last in numerical order among those which equally merit consideration (see *Kip Europe*, paragraph 49).

- 34 With regard to the question concerning the criteria applicable to classification under the CN of the riding gloves at issue in the main proceedings, the referring court asks whether, in the dispute before it, the raising of the textile material can be considered a criterion that suffices to lend the textile material a function going beyond that of mere reinforcement, which would mean classifying the gloves under heading 6116 of the CN, as textile goods.
- 35 In that connection, it should be pointed out that the first sentence of Additional Note 3 to Chapter 61 of the CN as well as the Additional Note to Chapter 39 of the CN delimits the scope of Chapter 39. That chapter includes gloves, mittens or mitts, impregnated, coated or covered with cellular plastics, even if they are made up from unimpregnated, uncoated or uncovered crocheted fabrics and subsequently impregnated, coated or covered with cellular plastics, provided such fabrics are present merely for reinforcing purposes. Chapter 39 also includes plates, sheets and strip of cellular plastics combined with textile fabrics (as defined in Note 1 to Chapter 59), felt or nonwovens, where the textile is present merely for reinforcing purposes.
- 36 According to the HS Explanatory Notes to Chapter 39 of the CN, textile fabrics unfigured, unbleached, bleached, uniformly dyed, when applied to one face only of these plates, sheets or strip are regarded as serving merely for reinforcing purposes. Figured printed or more elaborately worked textiles (e.g. by raising) and special products such as pile fabrics tulle and lace and textile products of heading 58.11 are regarded as having a function beyond that of mere reinforcement.
- 37 It should be recalled that the HS Explanatory Notes are indications which are an important aid to the interpretation of the scope of the various tariff headings of the CN (see Case C-15/05 *Kawasaki Motors Europe* [2006] ECR I-3657, paragraph 36), but do not have legally binding force (see Case C-400/05 *B.A.S. Trucks* [2007] ECR I-311, paragraph 28).

- 38 According to the European Commission, as regards the express reference in the HS Explanatory Notes to Chapter 39 of the CN, the criteria for determining whether the textile is for reinforcement apply only to plastic composite goods to which a layer of fabric is attached. That is not so in the case in the main proceedings, where it is not the crocheted fabric which is attached to the plastic but the plastic which is attached to the crocheted fabric, which cannot therefore be deemed to be mere reinforcement for the plastic. Furthermore, no preponderant weight can be attributed to the materials of which the riding gloves at issue in the main proceedings are composed, that is to say, either to the crocheted fabric or to the plastic. In addition, the gloves' fabric is not completely embedded in plastic. Under those conditions, by reason of the particular structure of the gloves, the criteria provided both by the CN Explanatory Notes and by the HS Explanatory Notes are of no use.
- 39 That assertion cannot be accepted. The consequence of such an interpretation, with regard to goods such as those at issue in the main proceedings, would be to be deprived of useful indications for their classification contained in both the CN and the HS and, consequently, to restrict the scope of the CN Notes and the HS Explanatory Notes. It must be pointed out that both Chapter 39 of the CN and the HS Explanatory Notes concerning that chapter cover goods composed of plastic and of fabric, explaining that such goods should be classified as plastic when the fabric serves merely to reinforce the plastic. In those circumstances, there is nothing to prevent those criteria applying to goods such as those at issue in the main proceedings.
- 40 However, the enumeration of the characteristics of the fabric required in order for it to be deemed to be reinforcement of the plastic, set out in the HS Explanatory Note to Chapter 39, must not be understood as meaning that the mere addition of the characteristics pertaining to the gloves at issue would be, as such, decisive for their classification. As pointed out at paragraph 33 of this judgment, it is instead necessary to assess the general appearance of the riding gloves and all the features that give them their essential character, taking into account, in particular, the relative importance of

the criteria used for their classification. Consequently, the raising of the textile material on those gloves cannot be the decisive criterion for their classification.

- ⁴¹ Under general rule 3(b), it is necessary, in carrying out the tariff classification of goods, to identify, from among the materials of which they are composed, the one which gives them their essential character; this may be done by determining whether the goods would retain their characteristic properties if one or other of their constituents were removed from them (see Case C-288/99 *VauDe Sport* [2001] ECR I-3683, paragraph 25; *Turbon International*, paragraph 21; and Case C-150/08 *Siebrand* [2009] ECR I-3941, paragraph 31).
- ⁴² Similarly, as indicated by paragraph VIII of the HS Explanatory Note concerning general rule 3(b), the factor which determines the essential character of the goods may, depending on the type of goods, be determined for example by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.
- ⁴³ In the case in the main proceedings, the gloves in question are designed for horse riding. Those gloves have the primary function of enabling the reins to be held and the horse controlled, by facilitating flexibility and grip. The element which allows that function to be performed, and is especially designed for that purpose, is the polyurethane foam which covers all of the outer part of those gloves and which comes into contact with the reins. The textile material inside the gloves does not fundamentally change the polyurethane's properties, but merely increases its effectiveness by improving grip and comfort for the wearer. Consequently, it is the layer of polyurethane that gives the riding gloves at issue in the main proceedings their essential character rather than the textile material.

- 44 Having regard to all the foregoing considerations, the answer to the question referred is that the CN is to be interpreted as meaning that riding gloves, such as those at issue in the main proceedings, made up of fabric raised on one side and covered with a layer of plastic, where the support fabric is raised on one side and the raised side is then completely covered with a layer of polyurethane foam, which has an essential function in use of the gloves as riding gloves, be classified under subheading 3926 20 00 of the CN.

Costs

- 45 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:

The Combined Nomenclature constituting 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 1789/2003 of 11 September 2003, must be interpreted as meaning that riding gloves, such as those at issue in the main proceedings, made up of fabric raised on one side and covered with a layer of plastic, where the support fabric is raised on one side and the raised side is then completely covered with a layer

of polyurethane foam, which has an essential function in use of the gloves as riding gloves, must be classified under subheading 3926 20 00 of the Combined Nomenclature.

[Signatures]