

JUDGMENT OF THE COURT (Eighth Chamber)

18 May 2011 \*

In Case C-423/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Germany), made by decision of 11 August 2010, received at the Court on 27 August 2010, in the proceedings

**Delphi Deutschland GmbH**

v

**Hauptzollamt Düsseldorf**

THE COURT (Eighth Chamber),

composed of K. Schiemann, President of the Chamber, C. Toader and A. Prechal (Rapporteur), Judges,

\* Language of the case: German.

Advocate General: J. Mazák,  
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Delphi Deutschland GmbH, by L. Harings, Rechtsanwalt,
- the European Commission, by L. Bouyon and B.-R. Killmann, acting as Agents,

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

gives the following

## **Judgment**

- <sup>1</sup> This reference for a preliminary ruling concerns the interpretation of subheading 8536 69 of the Combined Nomenclature ('the CN') 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). With respect to 2005, 2006 and 2007,

that annex was replaced respectively by the annexes to Commission Regulation (EC) No 1810/2004 of 7 September 2004 (OJ 2004 L 327, p. 1), Commission Regulation (EC) No 1719/2005 of 27 October 2005 (OJ 2005 L 286, p. 1) and Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1).

- 2 The reference has been made in proceedings between Delphi Deutschland GmbH ('Delphi Deutschland'), the applicant in the main proceedings, and Hauptzollamt Düsseldorf (Principal Customs Office, Düsseldorf), the defendant in the main proceedings, concerning the tariff classification of electrical connectors.

### **Legal context**

- 3 Part Two of the CN, as amended by Regulation No 1810/2004, includes Section XVI, entitled 'Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles'.
- 4 Section XVI includes Chapter 85, entitled 'Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders

and reproducers, and parts and accessories of such articles.’ That chapter contains, inter alia, the following headings and subheadings:

‘8536           Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp holders, junction boxes), for a voltage not exceeding 1 000 V;

...

—   Lamp holders, plugs and sockets

853661       --   Lamp holders

...

853669       --   Other

85366910    ---   For printed circuits

85366930    ---   For printed circuits

85366990    ---   Other’

5   That chapter also includes the following subheadings:

‘853690       —   Other apparatus

...

85369010    --   Connections and contact elements for wires and cables’

- 6 The subheadings set out in paragraphs 4 and 5 of the present judgment are the same in the CN as amended by Regulation No 1719/2005, Regulation No 1549/2006 and Commission Regulation (EC) No 1214/2007 of 20 September 2007 (OJ 2007 L 286, p. 1).
- 7 In accordance with the second indent of Article 9(1)(a) of Regulation No 2658/87, the Commission provides explanatory notes concerning the CN, which it regularly publishes in the *Official Journal of the European Union*. Those published on 28 February 2006 (OJ 2006 C 50, p. 1), which refer to the headings and subheadings of the CN for 2005, reproduced in Regulation No 1810/2004, do not include any explanatory notes concerning subheading 8536 69.
- 8 By contrast, the explanatory notes published on 30 May 2008 (OJ 2008 C 133, p. 1), which refer to the headings and subheadings of the CN for 2008, reproduced in Regulation No 1214/2007, state, in respect of subheadings 8536 69 10 to 8536 69 90:

‘These subheadings include electro-mechanical plugs and sockets which permit multi-way connection, for instance between appliances, cables and connector boards, simply by plugging the attached plugs into the attached sockets with no assembly work required.

The connectors may have a plug or socket on either side or a plug or socket on one side and another contact device on the other (for example, crimp, clamp, soldered or screw-type).

These subheadings also include plug-in couplings comprising a plug and socket pair (two pieces). The plug and the socket pieces each have one socket and one other contact device.

These subheadings do not include connection or contact elements with which an electrical connection is established by other means (for example, crimp, screw-type, soldered or clamp terminals). These are covered by subheading 8536 90.’

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

- 9 It is apparent from the order for reference that Delphi Deutschland, an undertaking in the automotive components industry, imported electrical connectors labelled ‘terminals’ which it subdivided into ‘female terminals’ (‘Flachsteckhülsen’) and ‘male terminals’ (‘Flachstecker’). The goods, which were manufactured from pressed metal (copper, brass and sheet steel), were not insulated. Partly for transportation purposes, they were on metal bands from which they were cut for use.
  
- 10 The necessary cable was crimped to the connectors for their further use. During that crimping process, the cable was firmly attached to the connectors by way of bending and folding the metal wings, which protrude at the end of each connector, round the cable and pressing together. Thereafter, the ‘female terminals’ and ‘male terminals’ were installed in two compatible plastic casings (‘female connector’ and ‘male connector’). Accordingly, the connectors in those casings were fixed to a specific plastic part. In most of the plastic casings, the cable was fixed to another specific plastic part as well. In addition, the cable and casing could also be sealed. The cable, which was to be connected to the compatible plastic casings in question, could be quickly and safely connected and subsequently disconnected.

- 11 That connector also allows an electrical connection between two cables, to which the compatible 'female terminals' and 'male terminals' are crimped, to be quickly and safely established and subsequently disconnected. The 'female terminals' are designed so that they completely envelop the 'male terminals', up to the component parts which serve as the crimp connection on each cable used, thereby establishing a safe electrical connection. The electrical connection thus established is however, in general, only ready for practical use when both the connecting elements have also been insulated.
  
- 12 On 7 December 2007, Delphi Deutschland presented connection and contact elements under subheading 8536 90 10 of the CN to the airport customs office of Hauptzollamt Düsseldorf to be released for free circulation, without the levy of customs duties.
  
- 13 The goods at issue were pin headers, consisting of metal pins set in parallel, which were gold coloured at one end. The metal pins were used to establish an electrical connection for a voltage not exceeding 1 000 v and were not intended for coaxial cables, printed circuits or aircraft.
  
- 14 On the basis of analyses carried out, Hauptzollamt Düsseldorf considered that the goods at issue should be classified under subheading 8536 69 90 of the CN. On that basis, by decisions of 2 and 20 May and 1 and 30 August 2008, it assessed customs duties in a total amount of EUR 112 823.62.
  
- 15 Delphi Deutschland lodged an objection against those decisions, which Hauptzollamt Düsseldorf rejected as unfounded by decisions of 28 May 2009.

- 16 Ruling on the dispute between Delphi Deutschland and Hauptzollamt Düsseldorf, the Finanzgericht (Finance Court) Düsseldorf raises the question whether subheading 8536 69 of the CN also covers the connectors at issue in the main proceedings.
- 17 First, according to the referring court, in the light only of the German language version of subheading 8536 69 of the CN and the sub-title under which the subheading comes, namely ‘Lamp holders, plugs and sockets’, since that sub-title uses the term ‘Steckvorrichtungen’, the classification under subheading 8536 69 90 is correct in so far as the electrical connection between two cables can be established by inserting compatible connectors into each other.
- 18 Secondly, the referring court notes that the English and French language versions use, with respect to subheading 8536 69 of the CN, the words ‘plugs and sockets’ and ‘fiches et prises de courant’ respectively, which is more like ‘Stecker’ and ‘Steckdosen’.
- 19 Those connectors must normally also ensure the insulation of the connection at the connection point, which the connectors at issue in the main proceedings do not. Moreover, although an electrical connection can be established with those connectors merely by plugging them in, they represent only a fraction of the plugs and sockets manufactured subsequently by the applicant in the main proceedings.
- 20 Since it considers that resolution of the dispute before it requires the interpretation of subheading 8536 69 of the CN, the Finanzgericht Düsseldorf decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Do the electrical connectors described in [the order for reference] come under subheading 8536 69 of the [CN]?’



**Consideration of the question referred**

- 21 As a preliminary point, it should be borne in mind that, when the Court is requested to give a preliminary ruling on a matter of classification for customs purposes, its task is to provide the national court with guidance on the criteria which will enable the latter to classify the products at issue correctly in the CN, rather than to effect that classification itself, a fortiori since the Court does not necessarily have available to it all the information which is essential in that regard. In any event, the national court is in a better position to do so (Case C-423/09 *X* [2010] ECR I-10821, paragraph 14 and case-law cited).
- 22 In the light of the explanations in the order for reference, as reproduced, in particular, in paragraph 19 of the present judgment, it must be considered that the referring court asks, in essence, whether subheading 8536 69 of the CN must be interpreted as meaning that electrical connectors, such as those at issue in the main proceedings, are excluded from that subheading on the ground that they do not ensure the insulation of the connection at the connection point or that they represent only some of the plugs and sockets manufactured subsequently.
- 23 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, *X*, paragraph 15 and case-law cited).
- 24 The explanatory notes drawn up by the European Commission as regards the CN and by the World Customs Organisation as regards the Harmonised Commodity Description and Coding System are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (*X*, paragraph 16 and case-law cited).

- 25 It should be noted that the wording of subheading 8536 69 of the CN is ‘other’. However, as follows from the wording of subheadings 8536 61 and 8536 69 of the CN and the sub-title preceding those two subheadings, subheading 8536 69 of the CN refers, in fact, to goods classified as ‘Steckvorrichtungen’ in German, as ‘plugs and sockets’ in English and as ‘fiches et prises de courant’ in French.
- 26 With regard to the interpretation of the scope of subheading 8536 69 of the CN, it is necessary to take into account also the explanatory notes, even if they refer to subheadings 8536 69 10 to 8536 69 90 of the CN, as amended by Regulation No 1214/2007. Since the wording of those subheadings is identical to that of the same subheadings of the CN, as amended by Regulation No 1810/2004, Regulation No 1719/2005 and Regulation No 1549/2006, a different meaning should not, in principle, be given to the latter from that which should be given to the former, taking account of the explanatory notes.
- 27 It is apparent from the explanatory notes relating to subheadings 8536 69 10 to 8536 69 90 of the CN and, in particular, the first paragraph thereof that those subheadings must be interpreted as including electro-mechanical plugs and sockets which permit multi-way connection, for instance between appliances, cables and connector boards, simply by plugging the attached plugs into the attached sockets with no assembly work required.
- 28 It follows that the objective characteristics and properties of the goods covered by subheading 8536 69 of the CN, as is suggested by their wording and confirmed by the explanatory notes, consist in the fact that they permit multi-way connection in a very specific way, namely simply by plugging the attached plugs into the attached sockets with no assembly work required.

- 29 Where goods permit that sort of connection in that way, it must be held that they are covered by subheading 853669 of the CN, and the facts that those goods do not ensure the insulation of the connection at the connection point or that they represent only some of the plugs and sockets manufactured subsequently are not in themselves relevant. Since that subheading does not include any reference to such circumstances, it must be concluded that they have no effect on the classification of those goods for customs purposes (see, by analogy, Case 40/88 *Weber* [1989] ECR 1395, paragraph 16, and *X*, paragraph 34).
- 30 The answer to the question referred is therefore that subheading 853669 of the CN, as amended with respect to 2005, 2006 and 2007 respectively by Regulation No 1810/2004, Regulation No 1719/2005 and Regulation No 1549/2006, must be interpreted as meaning that electrical connectors, such as those at issue in the main proceedings, are not excluded from that subheading on the ground that they do not ensure the insulation of the connection at the connection point or that they represent only some of the plugs and sockets manufactured subsequently, provided that they permit multi-way connection, for instance between appliances, cables and connector boards, simply by plugging the attached plugs into the attached sockets with no assembly work required.

## Costs

- 31 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 (Eighth Chamber) hereby rules:

**Subheading 8536 69 of the Combined Nomenclature 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 with respect to 2005, 2006 and 2007 respectively by Commission Regulation (EC) No 1810/2004 of 7 September 2004, Commission Regulation (EC) No 1719/2005 of 27 October 2005 and Commission Regulation (EC) No 1549/2006 of 17 October 2006, must be interpreted as meaning that electrical connectors, such as those at issue in the main proceedings, are not excluded from that subheading on the ground that they do not ensure the insulation of the connection at the connection point or that they represent only some of the plugs and sockets manufactured subsequently, provided that they permit multi-way connection, for instance between appliances, cables and connector boards, simply by plugging the attached plugs into the attached sockets with no assembly work required.**

[Signatures]