

Case C-72/21**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

4 February 2021

Referring Court:

Augstākā tiesa (Senāts) (Supreme Court, Latvia)

Date of the decision to refer:

2 February 2021

Applicant at first instance and appellant:

SIA 'PRODEX'

Defendant at first instance and respondent:

Valsts ieņēmumu dienests (State Tax Authority, Latvia)

Subject matter of the main proceedings

Appeal in administrative proceedings in which SIA 'PRODEX' ('the appellant') seeks the annulment of the decision of the Valsts ieņēmumu dienests (State Tax Authority; 'VID') to allocate to the State budget as a payment of customs duties the deposit in the amount of EUR 473.30 paid by the appellant ('the contested decision').

Subject matter and legal basis of the request for a preliminary ruling

In accordance with Article 267 TFEU, the referring court requests an interpretation of the Combined Nomenclature set out in Annex I to Regulation (EEC) No 2658/87, as amended by Regulation (EU) No 1006/2011, in particular subheading 4418 20 thereof.

Questions referred for a preliminary ruling

(1) Must the Combined Nomenclature 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 Commission Regulation (EU) No 1006/2011 of 27 September 2011, be interpreted as meaning that subheading 4418 20 of the Combined Nomenclature can include door frames and thresholds as separate goods?

(2) In the light of the first sentence of rule 2(a) of the general rules for the interpretation of the Combined Nomenclature, included in Annex I, Part One, Section I A of Commission Regulation (EU) No 1006/2011 of 27 September 2011 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, can subheading 4418 20 of the Combined Nomenclature also include unfinished door frames, door panels and thresholds provided that they have the essential features of complete and finished door frames and thresholds?

(3) Must the wood panels and mouldings at issue in the main proceedings, which have a profile and decorative finish which objectively establish that their use in the manufacture of doors, door frames and thresholds is foreseeable, but which, prior to assembly of the door, must be cut to adjust their length and must have spaces made on them for fixing, and, if necessary, must have spaces for hinges and spaces for locks included in them, be classified under subheading 4418 20 or, based on the features of the specific panels or mouldings, under headings 4411 and 4412 of the Combined Nomenclature?

Provisions of EU law relied on

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), in particular Article 12 thereof

Commission Implementing Regulation (EU) No 1006/2011 of 27 September 2011 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2011 L 282, p. 1), in particular the subheadings referred to in Chapter 44 thereof ('Wood and articles of wood; wood charcoal') and point 4 of the notes to Chapter 44, the general rules for the interpretation of the Combined Nomenclature, set out in Annex I, Part One, Section I A, including the first sentence of rule 2(a), and rules 3 and 6

Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2013 L 290, p. 1)

Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2016 L 294, p. 1), in particular heading 4418 20 in the Latvian language version

Explanatory notes to the Combined Nomenclature [of the European Union] (OJ 2011 C 137, p. 1), particularly in relation to codes 4418 20 10 to 4418 20 80

International Convention on the Harmonized Commodity Description and Coding System, in particular Articles 3(1) and 8

General Rules for the interpretation of the Harmonized System, in particular rule 1 and points III(b) and V(b) of the explanatory notes thereto, rule 2(a) and the explanatory note referring to rule 2(a), note 4 to Chapter 44, fifth paragraph, point 4 of the explanatory note to subheading 4409, the explanatory notes to subheadings 4412 and 4418, etc.

European Commission Guidelines of 11 April 2013 on the classification in the Combined Nomenclature of goods put up in sets for retail sale, in particular Part C, points 1(b) and (c) and 2(a) and (b)

Recommendation of the Secretariat of the World Customs Organization of 16 November 2007 concerning reference codes 44.11 and 44.18

Case-law of the Court of Justice

Judgment in *Holz Geenen* (C-309/98, EU:C:2000:165), in particular paragraph 25.

Brief summary of the facts and procedure

- 1 On 23 September 2014, when completing its customs declaration, the appellant declared the following goods under the customs procedure of release for free circulation: interior doors of coniferous wood with frames, declaring them under a heading with Combined Nomenclature and TARIC code 4418 20 50 00: builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes: – doors and their frames and thresholds: – coniferous. The basic rate of import duty of 0% was applied to the goods.
- 2 The contested decision held that, in order to complete the assembly process, the appellant's goods had to undergo treatment. It stated that the goods in question do not have the characteristics of goods put up in sets for retail sale, which must be clearly identifiable at the time of import and declaration, or the characteristics of an unassembled product which establish the existence of a set as a single unit for the purposes of heading 4418 of the combined nomenclature. The VID concluded that those goods could not be classified with the code 4418 20 50 00 indicated by the appellant, and that they had to be classified separately under the relevant

headings of the Combined Nomenclature and TARIC codes 4411 13 90 00, 4411 14 90 00 and 4412 99 85 90 (fibreboard of wood or other ligneous materials, plywood, veneered panels and similar laminated wood).

- 3 The appellant brought an action contesting the decision of the VID before the administrative court, claiming that that decision should be annulled. After examining the [subsequent] appeal, the Administratīvā apgabaltiesa (Regional Administrative Court) dismissed that appeal by judgment of 25 January 2018. In its judgment, the Administratīvā apgabaltiesa (Regional Administrative Court) held that the VID had rightly ruled that the beadings and mouldings and MDF profiles declared by the appellant, which did not constitute a finished single set together with certain door leaves, had to be classified separately under the relevant headings.
- 4 The Administratīvā apgabaltiesa (Regional Administrative Court) rejected the appellant's contention that the imported goods are finished articles which can be put to their intended use and that it proposed to market the goods directly to consumers without any additional treatment or processing. That court found, on the basis of the appellant's website, that door accessories, such as frames, are sold as separate products. The appellant offers for sale both complete door sets ready for use (with hinges, handles and frames included) and individual parts. It also offers services such as measurement, assembly and installation of doors. According to the Administratīvā apgabaltiesa (Regional Administrative Court), this also shows that the appellant does not import finished products which can be used as a set.
- 5 The appellant brought an appeal on a point of law against the judgment of the [Administratīvā] apgabaltiesa (Regional Administrative Court), claiming again that the relevant headings of the Combined Nomenclature in Implementing Regulation No 1001/2013 had been misinterpreted.

Essential arguments of the parties to the main proceedings

- 6 In the appellant's submission, the [Administratīvā] apgabaltiesa (Regional Administrative Court) wrongly held that the door components should be classified under heading 4418 only in so far as they formed a single set with door leaves. The appellant contends that the description and the explanatory notes to subheading 4418 20 of the combined nomenclature do not include a criterion requiring wood panels to form a set with door leaves. It contends that door leaves, which the VID, however, classified separately under heading 4418, are, moreover, only one of a number of panels making up a door. The appellant contends that there is no legal basis for making the classification of other door panels subject to whether or not they form a set with another door panel (the door leaf).
- 7 The appellant states that it is apparent from the facts established by the VID and by the [Administratīvā] apgabaltiesa (Regional Administrative Court) that the goods declared by the appellant were effectively recognised as wood panels

specifically intended for use in the manufacture of doors and that, also for that reason, heading 4418 should have been applied.

- 8 The appellant contends that the VID and the [Administratīvā] apgabaltiesa (Regional Administrative Court) did not act consistently when they held that some of the wood panels could not be declared under heading 4418 of the Combined Nomenclature whereas other wood panels had to be classified under heading 4418 of the Combined Nomenclature (in all likelihood, it was recognised that the door leaves had to be declared under the heading in question due to the fact that the leaf is the most similar to a 'door' in the usual sense of the word).
- 9 For their part, headings 4411 and 4412 are not intended to cover door components because the goods under that heading are used for other purposes such as thermal rehabilitation, sound insulation, flooring work, etc.
- 10 The VID has stated in the appeal proceedings that the goods were presented separately and that the number indicated in relation to door leaves, MDF profiles, veneered profiles, MDF beadings and mouldings and MDF boards does not establish that the principle of proportionality of sets put up for retail sale was respected, that no clear cross-reference exists, and that the goods are not put up in such a way that they can be sold directly to users without first being repacked. In view of this, it should be concluded that Part C, points 1(b) and (c) and 2(a) and (b) of the Commission Guidelines of 11 April 2013 on the classification in the Combined Nomenclature of goods put up in sets for retail sale has not been complied with. In the present case, it is not possible to recognise the goods concerned as being 'builders' joinery and carpentry of wood'; in other words, at the time when they were imported, the goods did not have the objective characteristics and properties provided for in the description of heading 4418 of the Combined Nomenclature; rather, when they were imported, the goods concerned were clearly defined under a heading of the Combined Nomenclature as 'similar laminated wood'.
- 11 The appellant has also stated that subheading 4418 20 of the Combined Nomenclature can include a complete door set and, separately, frames or thresholds, each as a finished product. Accordingly, in the appellant's submission, it is immaterial whether only door leaves or frames were imported, meaning that, in its view, there was no basis for the [Administratīvā] apgabaltiesa (Regional Administrative Court) to focus on the question of whether the appellant imported complete door sets.
- 12 The appellant compares different language versions of Regulation No 2658/87, observing that, in the French, Italian and German versions, the subheading concerned also includes doors, door frames and door thresholds and that each of these belongs individually to that subheading.
- 13 The appellant has explained during the proceedings that the goods imported by it, which were purchased from a specialist door manufacturer, could not be put to a

use other than that suited to their purpose, that is to say, as components of a particular model of door. The wooden doors are fitted with rubber draught excluders to ensure that the individual sheets of wood are sealed. All the components of a particular model of wooden door are varnished in the same tone, have cross references, and, furthermore, all the components of the MDF doors are laminated in the same way and have identical references. The dimensions of the profiling on all the door frames match the thickness of the respective door leaves, which indicates that the goods are not to be separated. All door frames and extenders are manufactured in accordance with the manufacturer's standard product specifications, which are also set out on the website and in the manufacturer's product catalogue. The appellant submits that, for the purposes of the Combined Nomenclature, these are all items of 'builder's joinery' which ensure that the door works properly only when they are all used together.

- 14 The VID, referring to the explanatory notes to the specific headings referred to above, takes the view that the appellant presented articles of wood in the form of different beadings and mouldings and so forth, and not door components.

Summary of the reasoning in the request for a preliminary ruling

- 15 The appellant had classified the goods at issue in accordance with heading 4418 of the Combined Nomenclature in Regulation No 2658/87, entitled 'Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes', under subheading 4418 20 50 00 '– Doors and their frames and thresholds – – Coniferous'.
- 16 The VID applied a further three headings of the Combined Nomenclature to the goods at issue:
- 1) Heading 4411, 'Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances', subheading 4411 13 90 00, '– Medium density fibreboard (MDF) – – Of a thickness exceeding 5 mm but not exceeding 9 mm – – – Other'.
 - 2) Heading 4411, 'Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances', subheading 4411 14 90 00, '– Medium density fibreboard (MDF) – – Of a thickness exceeding 9 mm – – – Other'.
 - 3) Heading 4412, 'Plywood, veneered panels and similar laminated wood', subheading 4412 99 85 90, '– Other – – Other – – – Other'.
- 17 In simplified terms, therefore, these proceedings could be described as a dispute concerning whether the imported goods were doors or wood panels.
- 18 Above all, the dispute concerns the actual scope of subheading 4418 20.

- 19 It should be noted that Regulation No 2658/87 states as follows in a footnote relating to the relevant subheading of the combined nomenclature: ‘A door or window with or without its frame or threshold is considered as one piece.’ However, that does not clarify whether, for example, a frame without a door or a threshold without a door should be considered to constitute a finished product in accordance with that subheading.
- 20 If the view of the [Administratīvā] apgabaltiesa (Regional Administrative Court) is regarded as correct, it may be concluded that the appellant, which imported a variety of beadings and mouldings, sealing profiles and so forth, which are essentially door frame components, should always present complete door sets (even if they are unassembled) in order to be able to conclude that it imports ‘doors and their frames [in Latvian, frames are called “rāmji” in the current language version of the provision and “aplodas” in an earlier language version] and thresholds’, and that individual classification of, for example, frames only or thresholds only under subheading 4418 20 is not permitted.
- 21 The other aspect which is not clear is whether the goods in question should be treated as finished articles.
- 22 During their production and manufacturing cycle, it becomes increasingly clear that the components of complete articles are taking on the characteristics of the final product (or at least the characteristics of an article coming under a specific subheading of the Combined Nomenclature). Accordingly, it is often difficult to determine the heading to be applied to goods which are in the middle of the production cycle and are not clearly covered by any particular heading, as in the present case.
- 23 It is apparent from the parties’ arguments that, in the present case, there is not a sufficiently clear distinction between:
- (1) Rule 2(a) of the general rules for the interpretation of the Harmonised System (‘HS’) and of the combined nomenclature; and
 - (2) The explanatory notes to certain headings and subheadings.
- 24 Rule 2(a) of the general rules for the interpretation of the HS and of the combined nomenclature (similarly in relation to both the HS and the Combined Nomenclature) states that both incomplete and unfinished articles and complete and finished articles which are unassembled (disassembled) can be assigned to the subheading which includes complete and finished articles.
- 25 In that respect, in the main proceedings, in the light of the arguments put forward in the appeal, it is possible to identify two issues in contention:
- (1) The VID and the Administratīvā apgabaltiesa (Regional Administrative Court) examined the second sentence of rule 2(a), concerning unassembled or disassembled articles, whereas the appellant’s arguments confirm that it

- takes the view that the first sentence of rule 2(a) (on incomplete or unfinished articles) should be applied to the imported articles.
- 2) If the issue relates specifically to the first sentence of rule 2(a), however, it is not clear how finished an article must be in order to conclude that the goods imported have the essential characteristics of complete or finished articles.
- 26 That leaves a certain margin of discretion.
- 27 Certainly, headings 4411 and 4412 essentially include panels in general, which may also have profiles, and, therefore, semi-manufactures of wood of a sufficiently general nature. Furthermore, the VID submitted a recommendation to the Secretariat of the World Customs Organization on 16 November 2007, in connection with reference codes 44.11 and 44.18. In it, the VID rejected the view that the goods presented – fibreboard of wood (MDF) of different shapes and without discontinuities (door profiles, skirting profiles, crown moulding, wall panels covered by a decorative plastic layer presented in 2 800 mm lengths with a groove or rebate in the edge) – should be classified under heading 44.18. The recommendation states that, unlike builder’s joinery and carpentry under heading 44.18, such as articles of wood in the form of assembled products or identifiable products in the form of unassembled articles, the goods in question are presented according to their length. It also states that heading 44.11 not only includes boards in the form of ‘panels’ but also articles which can take the form of the goods referred to under heading 44.09: curved, corrugated, perforated, cut or formed to shapes other than square or rectangular or submitted to any other operation, provided that it does not give them the characteristics of articles referred to under other headings.
- 28 Consequently, this inevitably leads to the question referred to, concerning which characteristics must be used to determine the moment when the beadings and mouldings acquired the essential characteristics of a finished door (or of its frame or threshold, depending on how subheading 4418 20 is interpreted).
- 29 If it is assumed that the level of finishing must be such that complete door sets are presented which only need to be hung, then it is not clear whether it is possible to apply the first sentence of rule 2(a) of the general rules on interpretation to goods of that type at all.
- 30 Furthermore, it should be noted that the mouldings imported by the appellant could in fact simply appear, at first sight, to be assorted beadings and mouldings.
- 31 However, it is important to bear in mind the appellant’s arguments, set out above, concerning the specific characteristics which make the mouldings solely and exclusively suitable as components of a door set. It should also be noted that those mouldings are not all of the same length but are of different lengths, which may genuinely match the measurements of the components of longer and shorter door leaves and frames. Although the VID has denied that it is possible to classify the goods as door components, it describes them in its decision as assorted mouldings

intended for the manufacture of doors. Accordingly, the VID itself does not identify mouldings of wood of any type as generic semi-manufactures of wood and instead specifically identifies ‘profiles for making door frames’, ‘beadings and mouldings/frames for making door frames’, ‘beadings and mouldings/extendors for making door extendors’, and so forth.

- 32 The appellant itself does not dispute that the dimensions of the goods at issue are frequently adjusted by cutting those goods to meet the requirements of a particular customer: for example, for different doorways, depending on whether or not the frame is ‘inserted’ into the floor, and so forth. They also do not have spaces specially included for hinges and handles.
- 33 The VID takes the view that adjustments of that kind are a reason for applying to the goods the explanatory note relating to heading 4418 of the HS, referred to above. That note states that the articles of wood in question are presented in that heading as identifiable unassembled units (for example, prepared with tenons, mortises, dovetails or other similar joints for assembly), regardless of whether they include metal fittings such as hinges, locks, and the like.
- 34 Based on real-life observations, the explanations included in the appeal and the visual contents of the case file, the Senāts concludes that the styles of door and forms of treatment of wood which are usual nowadays, and which are often simple, do not really require specific major preparation work on the articles of wood in order for their direct connection to finished doors to be clearly visible. Frames and leaves are characterised by smooth, simple profiles. Simple, practical techniques exist for joining together components which do not require specific fasteners, cuts at a 45-degree angle, whereas if that angle is applied perhaps the fasteners created by cutting may not be present, and so forth. This makes it possible for anyone with limited skills to assemble a door from components of that kind, even if it is necessary to adjust the dimensions, add a handle, and so on. In that case, the question therefore arises of whether it is necessary to exclude such door components, which are simple in appearance, from classification under the heading intended for doors.
- 35 That distinction could appear obvious, as it did to the Court of Justice of the European Union in a similar case concerning windows, *Holz Geenen* (C-309/98, EU:C:2000:165). As can be seen from paragraph 25 of that judgment, neither the parties to the proceedings nor the Court of Justice were in any doubt that the goods at issue could not be considered to be ‘unfinished windows or window frames’. Likewise, the recommendation issued by the World Customs Organization is rather brief when it comes to the distinction (because ‘the goods in question are presented by reference to their length’). However, it is clear from the arguments put forward by the appellant and the respondent that quite a lot of uncertainty exists in relation to how the general rules for interpretation, which make it possible also to register incomplete and unfinished articles under a particular heading, are consistent with the chapter notes and certain specific explanatory notes on particular cases, from which it could be inferred that the only

remaining action to be carried out in order for an article to be finished is its assembly.

- 36 In addition, it should be pointed out that the different binding customs information submitted by the appellant, on the one hand, and by the VID, on the other, creates uncertainty as to whether goods of that type with the same ‘complete’ or ‘incomplete’ nature are classified in the same way in the Member States.

WORKING DOCUMENT