

Case C-542/21**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:**

30 August 2021

Referring court:

Augstākā tiesa (Senāts) (Latvia)

Date of the decision to refer:

26 August 2021

Applicant at first instance and appellant:

SIA Mikrotīkls

Defendant at first instance and respondent:

Valsts ieņēmumu dienests

Subject matter of the main proceedings

Appeal seeking partial annulment of the decision by the Valsts ieņēmumu dienests (National Tax Authority, ‘the VID’) ordering the appellant to make an additional tax payment to the tax authorities following the correction made by the VID to the customs declarations submitted by the appellant and the classification of the goods declared by the appellant — aerials and parts thereof — which had previously been classified by the appellant under code 8517 70 11 90 of the combined nomenclature and integrated tariff of the European Union, as coming under code 8517 70 19 90.

Subject matter and legal basis of the request

Pursuant to Article 267 TFEU, the referring court requests an interpretation of subheading 8517 70 of the combined nomenclature which appears in Annex I to Regulation (EEC) No 2658/87, as amended by Commission Implementing Regulation (EU) No 927/2012 and Commission Implementing Regulation (EU) No 1001/2013.

Question referred for a preliminary ruling

Must 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 by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 and Commission Implementing Regulation No 1001/2013 of 4 October 2013, be interpreted as meaning that subheading 8517 70 11 of the combined nomenclature can include router aeriels configured for use in local area networks (LAN) and/or wide area networks (WAN)?

Provisions of international law relied on

International Convention on the Harmonized Commodity Description and Coding System, approved on behalf of the European Economic Community by means of Council Decision 87/369/EEC of 7 April 1987, in particular Article 3(1) and Article 8.

General Rules for the interpretation of the Harmonized System, in particular Rules 1, 3 and 6.

Explanatory Notes to the Harmonized Commodity Description and Coding System in respect of heading 8517, Section II, letters (F) and (G).

Provisions of European Union 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 2(1) and Article 12; Chapter 85, note 4 to Section XVI.

Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2012 L 304, p. 1), in particular Section XVI, note 2, and Part One, Section I, A of Annex I.

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).

Explanatory notes to the Combined Nomenclature (OJ 2011 C 137, p. 1), particularly as regards code 8517 62 00.

Succinct presentation of the facts and procedure in the main proceedings

- 1 During the period from 7 January 2013 to 27 October 2014, the appellant included in the customs procedure of release for free circulation certain goods — router

aerials and parts thereof — which it declared under a single heading with combined nomenclature ('CN') and TARIC code 8517 70 11 90. The goods were subject to basic import duty at 0%.

- 2 By decision of the VID of 29 January 2016, the appellant was issued with an assessment of principal debt due in respect of customs duties and value added tax on the goods in question, together with a fine and a late payment surcharge.
- 3 The decision stated that when the essential characteristics of the appellant's routers (computer network devices) were examined alongside the system of CN heading 8517 and the explanatory notes to heading 8517 of the harmonized system ('HS'), it was concluded that the explanatory notes to the HS defined routers as specific apparatus configured for use in local area networks (LAN) and/or wide area networks (WAN), and that they were classed as *other communication apparatus* under the HS. In the view of the VID, the HS differentiated between routers and apparatus for radio-telegraphy or radio-telephony, television, radio-broadcasting, mobile telephony, radar and so forth. In consequence, the VID concluded that the World Customs Organization had excluded routers from the category of apparatus for radio-telegraphy and radio-telephony.
- 4 The appellant lodged an action with the administrative courts seeking annulment of the VID's decision.
- 5 In those proceedings, the Administratīvā apgabaltiesa (Regional Administrative Court) dismissed the application by judgment of 12 February 2010. The court endorsed the view of the VID that, in the case in question, Section II, letter (F) of the HS explanatory notes to heading 8517 applied, and that therefore the CN and TARIC code 8517 70 11 90 did not apply to the goods as parts of radio-telephony apparatus. Router aerials and parts thereof were to be classified under CN code 8517 70 19. The explanatory notes to the HS did not contradict the explanatory notes to the CN for code 8517 62 00. Evidence that the CN classified apparatus for radio-telegraphy or radio-telephony as separate apparatus was also to be found, for example, in the explanatory notes to the CN in respect of CN codes 8517 69 39 and 8517 69 90. The Regional Administrative Court noted that the customs authorities of other Member States also classified router aerials and parts thereof under CN code 8517 70 19.
- 6 The appellant lodged an appeal against the judgment with the referring court.

The essential arguments of the parties in the main proceedings

- 7 The appellant considers that, in the present case, the relevant headings of the combined nomenclature of Implementing Regulation No 1001/2013 ('the Implementing Regulation') have been interpreted incorrectly.

- 8 According to the appellant, the court's conclusions are contrary to Rule 3(a) of the general rules for the interpretation of the CN, note 2(b) to Section XVI of the CN, the wording of CN and TARIC subheadings 8517 62 00 90 and 8517 70 11 90, the explanatory notes to the CN adopted by the European Commission, the case-law of the Court of Justice of the European Union and the binding tariff information issued by the VID, according to which data transmission apparatus of which the aerial forms an integral part is to be classified under code 8517 62 00 90.
- 9 According to the appellant, the objective properties of the apparatus manufactured by it match the characteristics of the goods defined in CN and TARIC subheading 8517 62 00 90. This is confirmed by the binding tariff information issued by the VID. The court did not assess this information or analyse the wording of the lower subheadings within CN subheading 8517 62 00, which constitute the basic criteria for classifying data transmission apparatus and its functional components. It is clear from the wording of the lower subheadings (8517 62 00 10 and 8517 62 00 90) within CN subheading 8517 62 00 that this subheading does not differentiate between routers and radio-telegraphy and radio-telephony transmission apparatus. The wording of the lower subheadings within that subheading draws a distinction only between radio-telegraphic or radio-telephonic apparatus for use in civil aircraft and other communication apparatus performing data reception, conversion and transmission functions, and consequently both routers and radio-telegraphy and radio-telephony transmission apparatus not for use in civil aircraft match these characteristics and are therefore included in this group (8517 62 00 90).
- 10 Rule 3(a) of the general rules for the interpretation of the CN provides that 'the heading which provides the most specific description shall be preferred to headings providing a more general description'. General Rule 3 for the interpretation of the HS also establishes that when by application of Rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description is to be preferred to headings providing a more general description.
- 11 CN subheading 8517 62 00 90 includes both routers and radio-telegraphy or radio-telephony transmission apparatus not for use in civil aircraft. Therefore, the most specific and concrete description of the goods appears in CN heading 8517 70 11, rather than in the general description in CN heading 8517 70 19 indicated by the VID.
- 12 In fact, the list and description of communication apparatus which appears by way of example in letter (G) of Section II of the explanatory notes to HS heading 8517 ('Other communication apparatus') matches the list of communication apparatus in the CN explanatory note to subheading 8517 62 00. It is also clear from the explanatory notes that these describe the goods included in this subheading in greater detail and more fully.
- 13 Letter (F) of Section II of the explanatory notes for HS heading 8517 does not cover the entirety of radio-telegraphy or radio-telephony apparatus as such, nor

does the description it contains apply to all such apparatus. Letter (F) of Section II of the explanatory notes to HS heading 8517 refers to — and solely describes — radio-telegraphy or radio-telephony apparatus with a particular (specifically stated) function, namely, radio-telegraphy or radio-telephony apparatus whose function is to receive or transmit.

- 14 Radio-telegraphy or radio-telephony transmission apparatus also has many other functions, such as routing and switching, for example, and it is therefore clear that letter (F) of Section II of the explanatory notes to HS heading 8517 does not describe or cover the entire range of communication apparatus included in the group of transmission apparatus for radio-telegraphy or radio-telephony.
- 15 The court unreasonably ignored the expert opinion submitted by the appellant and the customs certificates which permit the manufacturer to export the goods to another Member State of the European Union and are binding on all Member States.
- 16 The VID has submitted observations on the appeal, stating that it considers the appeal to be unfounded.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 17 The appellant had classified the goods at issue under subheading 8517 70 11 90 of heading 8517 of the combined nomenclature, pursuant to the Implementing Regulation.
- 18 The VID classified the goods at issue under subheading 8517 70 19 90 of heading 8517 of the combined nomenclature in the Implementing Regulation.
- 19 In the proceedings, there is therefore a difference of opinion over the eighth digit (three-dash subheading) of the combined nomenclature code in the Implementing Regulation, that is to say, over whether router aerials are to be classified under code:
 - ‘1) 8517 70 11: ... – - Aerials for radio-telegraphic or radio-telephonic apparatus; or
 - 2) 8517 70 19: ... – - Other.’
- 20 Clarification is therefore required as to whether aerials for routing apparatus are to be classified as aerials for radio-telephonic or radio-telegraphic apparatus, or as aerials for other apparatus falling within CN heading 8517.
- 21 First, there is a disagreement over the actual scope of subheading 8517 62 [— Telephone sets, including telephones for cellular networks or for other wireless networks: – Machines for the reception, conversion and transmission or

regeneration of voice, images or other data, including switching and routing apparatus].

- 22 The explanatory notes to the CN for code 8517 62 00 specify that this subheading covers two groups of machines:

- ‘1. machines for the reception, conversion and transmission of voice, images or other data;
- 2. machines for the regeneration of voice, images or other data.

These machines include: network interface cards; modems; repeaters; hubs, bridges (including switches); routers.’

- 23 The EU legislation therefore refers to routers in heading 8517, in the wording of subheading 8517 62 00, as the specific group of apparatus known as ‘routing apparatus’.
- 24 The wording of the lower subheadings within subheading 8517 62 00 provides that radio-telegraphic or radio-telephonic apparatus for use in civil aircraft is to be classified under subheading 8517 62 00 10, while other machines for the reception, conversion and transmission or regeneration of voice, images or other data are to be classified under subheading 8517 62 00 90.
- 25 According to the appellant, subheading 8517 62 00 does not differentiate between routers and transmission apparatus for radio-telegraphy and radio-telephony. The wording of the lower subheadings within this subheading differentiate only between radio-telegraphic or radio-telephonic apparatus for use in civil aircraft and other communication apparatus performing data reception, conversion and transmission functions, and consequently both routers and radio-telegraphy or radio-telephony transmission apparatus not for use in civil aircraft match these characteristics and are therefore included in this group (8517 62 00 90).
- 26 For its part, the VID considers that it is clear from an examination of the essential characteristics of the appellant’s routers (computer network devices), the system of CN heading 8517 and the HS explanatory notes to heading 8517 that the HS explanatory notes define routers as specific apparatus configured for use in local area networks (LAN) and/or wide area networks (WAN), and that they are to be classified as ‘other’ communication apparatus under the HS. In its view, in practice the HS differentiates between routers and apparatus for radio-telegraphy or radio-telephony, television, radio-broadcasting, mobile telephony, radar and so forth.
- 27 Having examined the arguments put forward by both parties, the Regional Administrative Court took the view that the VID’s conclusion — namely, that, according to the explanatory notes to the HS, radio-telephonic and radio-telephonic apparatus is differentiated, as separate apparatus, from routers configured for use in local area networks (LAN) and/or wide area networks

(WAN), which constitute *other communication apparatus* under the HS — was well-founded.

- 28 It can be seen from the arguments put forward by the parties that the distinction between the explanatory notes to particular headings and subheadings is not sufficiently clear.
- 29 According to the arguments submitted in the appeal proceedings, the appellant considers that the conclusions reached by the VID and the Regional Administrative Court are contrary to Rule 3(a) of the general rules for the interpretation of the combined nomenclature and to note 2(b) to Section XVI of the combined nomenclature in the Implementing Regulation.
- 30 Note 2 to Section XVI of the combined nomenclature provides that ‘Subject to note 1 to this section, note 1 to Chapter 84 and note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:
 - (a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings.
 - (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517.’
- 31 It can be inferred from this that parts of apparatus for the reception, conversion and transmission or regeneration of voice, images or other data are to be classified with that apparatus.
- 32 Rule 3(a) of the general rules for the interpretation of the combined nomenclature provides that ‘when by application of Rule 2(b) or for any other reason, goods are *prima facie* classifiable under two or more headings ... the heading which provides the most specific description shall be preferred to headings providing a more general description’.
- 33 Routers are referred to in heading 8517, in the wording of subheading 8517 62 00, as a specific group of apparatus. Having regard to the wording of the lower headings within that subheading, the appellant considers that a router should be classified under subheading 8517 62 00 90, given that this includes both routers and radio-telegraphy or radio-telephony transmission apparatus not for use in civil aircraft. The appellant considers that the most concrete and specific description of the goods imported by it is to be found in CN subheading 8517 70 11.

- 34 However, the terms of subheading 8517 70 11 indicate that it applies to aerials and aerial reflectors of all kinds; parts suitable for use therewith (two-dash wording), and is then divided into two parts (three-dash wording): (1) aerials for radio-telegraphic or radio-telephonic apparatus, and (2) other.
- 35 While the appellant accepts that the main purpose of point 5 of heading B of the ‘special provisions’ of the CN, to be found in Part One, Section II of the CN, is to provide exemptions from customs duties for civil aircraft, it also argues that this point also clearly designates CN subheadings that include radio-telegraphic or radio-telephonic apparatus. Indeed, in that point, the description in subheadings 8517 69 31 and 8517 69 39 refers to ‘radio-telephony or radio-telegraphy’. For its part, the description in subheadings 8517 12, 8517 61, 8517 62 and 8517 69 90 refers to ‘radio-telegraphic or radio-telephonic apparatus’. Therefore, according to the appellant, radio-telegraphic or radio-telephonic apparatus can be classified under various subheadings, including also subheading 8517 62.
- 36 The appellant argues that letter (F) of Section II of the explanatory notes to the HS for heading 8517 does not include the entirety of radio-telegraphy or radio-telephony transmission apparatus as such. It refers only to radio-telegraphy or radio-telephony apparatus with a specifically defined purpose. This type of transmission apparatus also has many other functions, including routing and switching, for example.
- 37 For its part, the VID argues that under Section II, letter (G) of the explanatory notes to the HS for heading 8517, routers are *other communication apparatus* configured for use in local area networks (LAN) and/or wide area networks (WAN).
- 38 Given this situation, there are doubts as to whether the provisions of EU law must be interpreted as meaning that aerials for radio-telegraphic or radio-telephonic apparatus also include router aerials. In other words, whether regard must be had to the fact that parts for machines for the reception, conversion and transmission or regeneration of voice, images or other data are to be classified with those machines, and the wording of subheading 8517 62 00 90 includes both routers and radio-telegraphy or radio-telephony apparatus not for use in civil aircraft, or whether the wording of subheading 8517 70 and lower subheadings is, however, not to be interpreted broadly and, therefore, given that subheading 8517 70 11 does not include router aerials, these are to be classified under subheading 8517 70 19, as aerials for other apparatus configured for use in local area networks (LAN) and/or wide area networks (WAN).
- 39 It should also be noted that when the Regional Administrative Court examined the binding tariff information issued by customs authorities of Member States of the European Union, it found that the customs authorities of other Members States classify router aerials and parts thereof under CN code 8517 70 19. However, aerials for radio-telephonic and radio-telegraphic communications, aerials for

GSM mobile communications and parts thereof, and radio-telephone aeriāls are classified under CN code 8517 70 11.

WORKING DOCUMENT