

Case C-24/22**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:**

11 January 2022

Referring court:

Rechtbank Noord-Holland (Netherlands)

Date of the decision to refer:

7 January 2022

Applicant:

PR Pet BV

Defendant:

Inspecteur van de Belastingdienst/Douane, kantoor Eindhoven

Subject matter of the main proceedings

The applicant lodged an appeal against the decision of the inspecteur van de Belastingdienst/Douane (Inspector of the Tax and Customs Administration), rejecting the Combined Nomenclature ('CN') classifications selected by the applicant for the cat scratching posts at issue, and calculating customs duties on the basis of other CN classifications.

Subject matter and legal basis of the request

The request for a preliminary ruling made under Article 267 TFEU concerns the question of the precise CN classification(s) of the cat scratching posts in question.

Questions referred for a preliminary ruling

1. Must CN heading 9403 be interpreted as meaning that cat scratching posts, made up of a variety of materials, intended to be placed on the floor in (living) areas and to remain there so that cats can climb into them, sit on them, lie on them

and scratch them, are not covered by this CN heading because they are of a different nature as referred to in Commission Implementing Regulation (EU) No 1229/2013 of 28 November 2013 and Commission Implementing Regulation (EU) No 350/2014 of 3 April 2014? If there is a different nature that precludes classification under CN heading 9403, what constitutes that different nature?

2. Does the answer to question 1 have any implications for the validity of Commission Implementing Regulation (EU) No 1229/2013 of 28 November 2013 and Commission Implementing Regulation (EU) No 350/2014 of 3 April 2014?

Provisions of European Union law relied on

Combined Nomenclature ('CN'), Chapters 44 (CN headings 4411 and 4421), 56 (CN heading 5609), 63 (CN heading 6307) and 94 (CN headings 9401 and 9403);

Commission Implementing Regulation (EU) No 1229/2013 of 28 November 2013 concerning the classification of certain goods in the Combined Nomenclature.

Commission Implementing Regulation (EU) No 350/2014 of 3 April 2014 concerning the classification of certain goods in the Combined Nomenclature.

Succinct presentation of the facts and procedure in the main proceedings

- 1 The applicant is engaged in the import and export and the sale of pet supplies, including cat scratching posts.
- 2 In dispute is the classification of various models of cat scratching posts under the CN. These scratching posts differ from each other in both shape and covering materials.
- 3 In the period 12 September 2016 to 28 August 2017, the applicant submitted, inter alia, seven declarations relating to the cat scratching posts referred to in paragraph 2. The 2016 declarations cited TARIC code 4421 9097 90, the 2017 declarations cited TARIC code 4421 9999 99.
- 4 Following an administrative control in 2017, the defendant determined that TARIC codes 6307 9098 90 and 5609 000 00 were applicable to the cat scratching posts for which the declarations had been made, and consequently issued a demand for payment in the amount of EUR 10 699.25 in respect of customs duties, against which the applicant raised an objection.
- 5 After declaring the applicant's objection unfounded, the defendant lodged an appeal against the objection with the referring court.

Essential arguments of the parties to the main proceedings

- 6 The applicant submits, primarily, that, by application of General Rule 1 for the interpretation of the CN, the cat scratching posts in question should be classified as furniture under Chapter 94 of the CN, more specifically, under CN heading 9403 ('Other furniture and parts thereof') and CN heading 9401 ['Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof'] respectively.
- 7 That position is substantiated by the following arguments. Cat scratching posts are positioned on the ground, are placed in living areas and, together with other furniture, constitute the furnishings of those living areas. The term 'furnishing' is not defined in the CN. In common parlance, furnishing means 'providing with household goods'. Cat scratching posts are part of the household effects. The placing of a cat scratching post in a living area also gives effect to the requirement set out in the explanatory notes to Chapter 94 of the HS that furnishing must primarily serve utilitarian purposes. In this regard, the applicant refers to a Binding Tariff Information issued by the German customs authority in 2020, in which an item of cat furniture almost identical to one of the cat scratching posts at issue here is classified under CN code 9401 6100.
- 8 In the alternative, the applicant takes the position that the item at issue here is a composite item falling under CN heading 4421 ('Other articles of wood'), and refers to a Binding Tariff Information issued by the Belgian customs authority in 2019 in which an item of cat furniture intended for scratching, sitting and sleeping is classified under TARIC code 4421 9999 99.
- 9 To the extent that Implementing Regulations (EU) No 1229/2013 and (EU) No 350/2014 (hereinafter referred to collectively as 'the classification regulations') – each of which classifies one particular type of cat scratching post under CN Code 6307 90 98 – play a role in the classification, the applicant submits, in brief, that those regulations cannot be correct because they were adopted on the basis of incorrect assumptions.
- 10 The defendant argues that the cat scratching posts in question cannot be classified by applying General Rule 1 for the interpretation of the CN. There can be no question of classification as furniture under Chapter 94 of the CN because the goods are of a different nature to that of furniture intended for furnishing living quarters and other utilitarian purposes. They are, after all, products used by cats.
- 11 Because of their composition – the cat scratching posts are made neither exclusively of fiberboard, wood, cardboard or plastic, nor exclusively of one kind of covering material – the goods in question are, according to the defendant, capable of classification under several headings. In accordance with General Rule 3(b) for the interpretation of the CN, classification should be made according to the material which gives the goods in question their essential character. In practical terms, this means that the cat scratching posts in question should be

classified according to the covering material that is predominant, which is also confirmed by the classification regulations. The result is that the models largely covered in sisal rope or water hyacinth rope must be classified under TARIC code 5609 00 00 00 and the models largely covered in plush are to be classified under TARIC code 6307 90 10 00.

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

- 12 According to the settled case-law of the Court of Justice, in the interests of legal certainty and ease of control, the decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the relevant CN headings and in the notes to the sections and chapters (judgments of 19 May 1994, *Siemens Nixdorf*, C-11/93, paragraph 11, and of 18 December 1997, *Techex*, C-382/95, paragraph 11).
- 13 Further in accordance with the settled case-law of the Court, the intended use of a product may constitute an objective criterion in relation to tariff classification if it is inherent in the product, and such inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties (judgment of 22 December 2010, *Premis Medical*, C-273/09, EU:C:2010:809, paragraph 43).
- 14 Finally, it follows from the case-law of the Court that a classification regulation is general in scope and is applicable by analogy to goods which are sufficiently similar to the goods covered by that regulation (judgment of 13 September 2018, *Vision Research Europe*, C-372/17, EU:C:2018:708, paragraph 44).
- 15 More specifically, with regard to the cat scratching posts at issue here, the referring court notes that they are intended to give cats a place of their own in a room, where they can stay (lie or sit), scratch with their nails and/or play on/in.
- 16 Referring to the wording of CN headings 9403 and 9401 and the explanatory notes to Chapter 94 of the [HS], the referring court is of the view that it is defensible to classify the cat scratching posts at issue under CN headings 9403 and 9401 respectively by application of General Rule 1 for the interpretation of the CN. However, that would ignore the classification regulations which, although not directly relied on by the defendant, cover sufficiently similar products and contain a statement of reasons for such classification which has been reproduced verbatim by the defendant in this case.
- 17 It is not clear to the referring court on what grounds the classification regulations exclude a classification of the cat scratching posts referred to in those regulations as furniture under CN heading 9403 by virtue of the fact that that heading 'contains products of a different kind', which results in a preliminary ruling being required. Indeed, the validity of those regulations is at issue.