Case C-344/23

Request for a preliminary ruling

Date lodged:

31 May 2023

Referring court:

Augstākā tiesa (Senāts) (Latvia)

Date of the decision to refer:

30 May 2023

Applicant/respondent:

Pārtikas drošības, dzīvnieku veselības un vides zinātniskais institūts BIOR

Defendant/appellant:

Valsts ieņēmumu dienests

[…]

Administratīvo lietu departaments (Department of Administrative Cases)

Latvijas Republikas Senāts (Senate of the Republic of Latvia)

ORDER

Riga, 30 May 2023

The Senate […] [composition of the court]

By written procedure examined the appeal brought by the Valsts ieņēmumu dienests (State Tax Authority) against the judgment of the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) of 18 September 2020, in administrative proceedings originating in an application lodged by Pārtikas drošības, dzīvnieku veselības un vides zinātniskais institūts BIOR (Institute of Food Safety, Animal Health and Environment BIOR) seeking annulment of decision […] of the State Tax Authority of 20 November 2018.

Background

Presentation of the facts

1 In June 2018, the applicant at first instance, the Institute of Food Safety, Animal Health and Environment BIOR, declared certain goods (‘T-bar’, ‘streamer’ and ‘standard anchor t-bar’ plastic fish tags and tagging applicators) for customs purposes (for release for free circulation) under combined nomenclature (‘CN’) and TARIC code 3926 90 92 90, and at the same time indicated additional code C13 (educational, scientific and cultural materials; scientific instruments and apparatus imported exclusively for non-commercial purposes). In accordance with the additional code, a standard 0% rate of import duty was applied to the goods, that is to say, they enjoyed relief from import duties. The applicant at first instance claimed that the imported goods were scientific instruments or apparatus that it imports exclusively for non-commercial purposes.

By decision of the State Tax Authority of 20 November 2018, the applicant at first instance was assessed as liable in respect of those goods for import duties of EUR 612.20 and a default penalty of EUR 3.76, plus VAT of EUR 128.56 and a default penalty of EUR 7.14.

The decision states that, in accordance with point (a) of Article 46 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, ‘scientific instrument or apparatus’ means any instrument or apparatus which, by reason of its objective technical characteristics and the results which it makes possible to obtain, is mainly or exclusively suited to scientific activities. The imported goods are tags (or markers) for fisheries research, which are plastic coated or made from polyethylene rods, to be used to tag fish in the context of scientific research by attaching them to fish in order to observe their migration and growth. The fish tags are imported for non-commercial purposes: to tag fish with a view to studying subsequent populations. They cannot be regarded as instruments, because they do not have the characteristics of instruments. They serve as a source from which information can be obtained and are, therefore, data media intended for the performance of research activities. The fish tags are not used for the specific activities normally performed using instruments. They are, intrinsically, objects used to mark the subject of the research.

2 The applicant at first instance brought an action before the administrative court, seeking annulment of the decision of the State Tax Authority.

On appeal, by judgment of 18 September 2020, the Regional Administrative Court upheld the action. The court held that the imported goods must be regarded as scientific instruments within the meaning of Article 44 and point (a) of Article 46 of Regulation No 1186/2009, because they are used exclusively for non-commercial purposes and, according to their objective technical characteristics, can be used only for scientific purposes: to tag fish with a view to studying

subsequent populations. The imported fish tags are therefore instruments by means of which a particular result is obtained for scientific purposes. There is no objective reason to doubt the arguments of the applicant at first instance according to which the imported goods are produced and used for scientific activities, are exclusively suited to use in scientific activity and are used exclusively for that activity: to tag fish with a view to studying subsequent populations. Use of the imported goods is therefore aimed at achieving a given result in scientific research.

3 The State Tax Authority appealed on a point of law against the judgment of the regional court.

It was stated in the appeal proceedings that the regional court misinterpreted Article 44 and point (a) of Article 46 of Regulation No 1186/2009. By classifying the fish tags as scientific instruments or apparatus merely because they are used for a scientific purpose, the regional court unjustifiably extended the scope of application of the relief from import duties under Article 44 of Regulation No 1186/2009. The imported goods serve as markers for identifying an individual fish, and therefore simply provide information. The regional court failed to take into account the fact that while the fish tags (or markers) may be regarded as, for example, scientific objects or accessories, they do not have the characteristics of instruments.

The State Tax Authority also asserts that, in line with the Court's consistent case-law, the terms used to justify the exemptions from the general principle that VAT is to be levied on all goods and services, and the legal provisions establishing relief from import duties, are to be interpreted strictly (judgments of 19 July 2012, *Lietuvos geležinkeliai*, C-250/11, EU:C:2013:17, paragraph 35, and, by analogy, of 12 December 1996, *Olasagasti and Others*, C-47/95 to C-50/95, C-60/95, C-81/95, C-92/95 and C-148/95, paragraph 20). According to the authority, therefore, in the context of applying an exemption from the ordinary tax rules, the term 'instrument' may only be interpreted literally.

Grounds in law

Legal context

4 The classification of goods in the European Union is governed by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

Article 12 of Regulation No 2658/87 provides that the Commission is to adopt each year by means of a Regulation a complete version of the combined nomenclature together with the corresponding autonomous and conventional rates of duty of the Common Customs Tariff, as it results from measures adopted by the Council or by the Commission. The said Regulation is to be published not later than 31 October in the *Official Journal of the European Communities* and it is to apply from 1 January of the following year.

Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff had been adopted at the time the applicant at first instance imported the goods declared. Chapter 39 ('Plastics and articles thereof') of Regulation 2017/1925 includes the following headings:

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 90	Other		
[…]			
3926 90 92	– – – Made from sheet	6.5	
3926 90 97	– – – Other	6.5 …	

5 Article 44 of Regulation No 1186/2009 provides that, subject to Articles 45 to 49, scientific instruments and apparatus which are not included in Article 43 are to be admitted free of import duties when they are imported exclusively for non-commercial purposes. The relief referred to in Article 44(1) is to be limited to scientific instruments and apparatus which are intended for either:

(a) public establishments principally engaged in education or scientific research and those departments of public establishments which are principally engaged in education or scientific research; or

(b) private establishments principally engaged in education or scientific research and authorised by the competent authorities of the Member States to receive such articles duty free.

Point (a) of Article 46 of Regulation No 1186/2009 provides that, for the purposes of Articles 44 and 45, 'scientific instrument or apparatus' means any instrument or apparatus which, by reason of its objective technical characteristics and the results which it makes possible to obtain, is mainly or exclusively suited to scientific activities.

6 Article 5 of Commission Implementing Regulation (EU) No 1225/2011 of 28 November 2011 for the purposes of Articles 42 to 52, 57 and 58 of Council Regulation (EC) No 1186/2009 setting up a Community system of reliefs from customs duty provides that for the purposes of point (a) of Article 46 of Regulation (EC) No 1186/2009, the objective technical characteristics of a scientific instrument or apparatus shall be understood to mean those characteristics resulting from the construction of that instrument or apparatus or

from adjustments to a standard instrument or apparatus which make it possible to obtain high-level performances above those normally required for industrial or commercial use.

Where it is not possible to establish clearly on the basis of its objective technical characteristics whether an instrument or apparatus is to be regarded as a scientific instrument or apparatus, reference is to be made to the use of the instrument or apparatus for which admission free of import duties is requested. If this examination shows that the instrument or apparatus in question is used for scientific purposes, it is to be deemed to be of a scientific nature.

Reasons why there is uncertainty as to the interpretation of the EU legislation

7 The applicant at first instance applied a relief from import duties to the imported goods, under Articles 44 to 49 of Regulation No 1186/2009, identifying CN and TARIC code 3926 90 92 90 and at the same time indicating additional code C13 (educational, scientific and cultural materials; scientific instruments and apparatus imported exclusively for non-commercial purposes).

The State Tax Authority, in contrast, applied CN and TARIC code 3926 90 97 90 to the goods imported by the applicant at first instance, with a rate of import duty of 6.5%.

There is therefore a dispute between the applicant at first instance and the State Tax Authority as to whether the imported goods should be classified under:

(1) code 3926 90 92 90 (Other articles of plastics and articles of other materials of headings 3901 to 3914 – Other – – – Made from sheet), indicating additional code C13 (educational, scientific and cultural materials; scientific instruments and apparatus imported exclusively for non-commercial purposes); or

(2) code 3926 90 97 90 (Other articles of plastics and articles of other materials of headings 3901 to 3914 – Other – – – Other).

However, since, in the present case, the same rate of import duty must be applied to both the CN code and the TARIC code, that issue is of secondary importance. The key point in the present case is whether the applicant at first instance correctly applied the relief from import duties to the imported goods, that is to say, whether the goods imported by the applicant at first instance meet the criterion of being a ‘scientific instrument or apparatus’ established in point (a) of Article 46 of Regulation No 1186/2009.

8 According to the general rules for the interpretation of the combined nomenclature, the classification of goods is to be determined according to the terms of the headings and any section or chapter notes of that nomenclature. In the interests of legal certainty and ease of verification, the decisive criterion for the tariff classification of goods is in general to be sought in their objective characteristics and properties, as defined in the wording of the relevant

nomenclature heading and of the notes to the sections or chapters. The intended use of a product may also constitute an objective criterion for classification, since it is inherent to the product and that inherent character can be assessed on the basis of its objective characteristics and special features (see, to that effect, judgment of 2 May 2019, *Onlineshop*, C-268/18, EU:C:2019:353, paragraphs 27 to 29 and the case-law cited)

Point (a) of Article 46 of Regulation No 1186/2009 defines 'scientific instrument or apparatus' as meaning any instrument or apparatus which, by reason of its objective technical characteristics and the results which it makes possible to obtain, is mainly or exclusively suited to scientific activities.

The Court of Justice has held, by reference to Article 5(1) of Commission Regulation (EEC) No 1745/85 of 26 June 1985 amending Regulation (EEC) No 2290/83 laying down provisions for the implementation of Articles 50 to 59 of Council Regulation (EEC) No 918/83 setting up a Community system of reliefs from customs duty, that the 'objective technical characteristics' are to be understood to mean those characteristics resulting from the construction of that instrument or apparatus or from adjustments to a standard instrument or apparatus which make it possible to obtain high-level performances above those normally required for industrial or commercial use (judgment of the Court of Justice of 26 June 1986, *Nicolet Instrument* v *Hauptzollamt Frankfurt am Main-Flughafen*, 203/85, EU:C:1986:269, paragraph 21). The 'mainly or exclusively suited to scientific activities' criterion, in contrast, requires only that the instrument or apparatus must be primarily suitable for scientific activities, without excluding the possibility that it might also be suitable, secondarily, for other purposes, such as, for example, industrial use (judgments of the Court of Justice of 2 February 1978, *Universiteitskliniek Utrecht* v *Inspecteur der invoerrechten en accinzen*, 72/77, EU:C:1978:21, summary and paragraph 15 of the grounds; of 29 January 1985, *Gesamthochschule Duisburg* v *Hauptzollamt München-Mitte*, 234/83, EU:C:1985:30, paragraph 27; and of 21 January 1987, *Control Data* v *Commission*, 13/84, EU:C:1987:16, paragraph 16).

It can be concluded, therefore, that a scientific instrument or apparatus has characteristics resulting from the construction of that instrument or apparatus or from adjustments to a standard instrument or apparatus which make it possible to obtain high-level performances above those normally required for industrial or commercial use. At the same time, although the instrument or apparatus is primarily suitable for scientific activities, the possibility is not thereby excluded that it might also be suitable for other purposes.

9 The applicant at first instance has explained that unless fish are tagged, scientists would not be able to research their migration patterns or growth or determine their survival rates. According to the applicant at first instance, therefore, the fish tags (or markers) must be regarded as instruments intended to mark the subjects of scientific research and which, by reason of their objective technical characteristics and the results they obtain, are exclusively or mainly

suited to scientific activities. The applicant at first instance also emphasises, and the State Tax Authority has not disputed, that the fish tags (or markers) are imported exclusively for non-commercial purposes: in order to tag fish with a view to studying subsequent populations. The State Tax Authority nevertheless considers that to classify articles used in scientific activity as scientific instruments or apparatus merely because they are used for a scientific purpose would be unjustifiably to extend the scope of application of the relief from import duties under Article 44 of Regulation No 1186/2009.

Neither point (a) of Article 46 of Regulation No 1186/2009 nor the concept of 'scientific instrument or apparatus' used in it have been interpreted by the Court. The Court has clarified the sense of the concept of 'scientific instrument or apparatus' and whether a particular thing (or article) meets the requirements to be a 'scientific instrument or apparatus' only in the context of Regulation (EEC) No 1798/75 of the Council of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials. That Regulation has been repealed and, unlike Regulations No 918/83 and No 1186/2009, did not define the concept of 'scientific instrument or apparatus'. Furthermore, Regulation No 1798/75 established an additional condition for relief from import duties, namely that no instruments or apparatus of equivalent scientific value were being manufactured in the European Community. In any event, that provision, which is no longer in force, is irrelevant in the present case.

Interpreting Regulation No 1798/75, the Court of Justice held that the concept of 'scientific instrument' cannot be given a narrow interpretation but may, on the contrary, include materials manufactured on the basis of scientific discoveries and used not as a (passive) object but as a means of scientific research (judgment of the Court of Justice of 10 November 1983, *Gesamthochschule Essen*, 300/82, EU:C:1983:324, summary and paragraph 15). In a case concerning the import of glass flasks used in experiments, the Court of Justice held that the relief from customs duties provided for in Article 3(1) of Regulation No 1798/75 was limited to items which, by virtue of their particular technical structure and functioning, themselves serve directly as a means of scientific research. On the other hand, an item which is used not as a means but only as an object of scientific research cannot be described as a scientific instrument or apparatus; that is to say, where research is carried out not by means of that item but on it, the item plays only a purely passive role in the scientific research process (judgment of the Court of Justice of 26 January 1984, *Ludwig-Maximilians-Universität München*, 45/83, EU:C:1984:31, summary and paragraphs 11, 12 and 14 of the grounds).

The Court of Justice also held that certain components (parts) could be found to be a 'scientific instrument or apparatus' if they satisfied all the requirements laid down by Regulation No 1798/75 (judgments of the Court of Justice of 15 September 1984, *Universität Hamburg* v *Hauptzollamt München-West*, 236/83, EU:C:1984:350, paragraph 18, and of 4 July 1985, *Land Niedersachsen* v *Hauptzollamt Friedrichshafen*, 51/84, EU:C:1985:295, paragraph 19).

Accordingly, when it interpreted Regulation No 1798/75, the Court of Justice held that an object which, intrinsically, is not a means of research but a tool for performing scientific research cannot be regarded as a 'scientific instrument or apparatus', whereas objects which, by virtue of their particular technical structure and functioning, themselves serve directly as a means of scientific research can be regarded as 'scientific instruments or apparatus'.

In view of the argument put forward by the applicant at first instance that the fish tags (or markers) should not be regarded as merely an object used in the scientific research process but as a means of enabling scientific research into fish, that is to say, that the scientific research process would be significantly hindered if fish tags were not used, it is uncertain whether the interpretation of Regulation No 1798/75 should be extrapolated to Regulation 2017/1925 and whether, accordingly, the goods imported by the applicant at first instance can be regarded as 'scientific instruments or apparatus'.

10 According to the Court's consistent case-law, provisions of EU law must be interpreted and applied uniformly and the different language versions are all equally authentic and must therefore, in principle, all be given the same weight. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, to that effect, judgment of 8 October 2020, *Combinova*, C-476/19, EU:C:2020:802, paragraph 31).

The definitions of the terms 'apparatus' and 'instrument' differ in the Latvian, English, French and German language versions.

In Latvian, *aparāts* means a technical device or item of equipment (see *Tēzaurs*, available here). In English, in contrast, 'apparatus' means 'the tools or other pieces of equipment that are needed for a particular activity or task' (*Oxford Learner's Dictionaries*, available here). Other sources, however, suggest that it should instead be understood as a set of instruments or pieces of equipment: in the *Cambridge Dictionary*, for example, 'apparatus' is understood as 'a set of equipment or tools or a machine that is used for a particular purpose' (see here). In French, *appareil* is understood as a set of technical elements organised in a more complete set than an instrument and having a function ('ensemble d'éléments techniques organisés en un ensemble plus abouti qu'un outil et qui possède une fonction') (*Dictionnaire français*; the definition is available here). In German, *Apparate* are understood as devices that perform particular functions (*Gerät, das bestimmte Funktionen erfüllt*). The definition is available here.

The Latvian word *instruments* is different. It means a tool, a means (of performing an activity or task or of achieving something, normally in a person's interest) (*Tēzaurs*, available here). In English, 'instrument' means 'the tools or other pieces of equipment that are needed for a particular activity or task' (*Oxford Learner's Dictionaries*, available here). In French, *instrument* means a tool for performing

an operation or activity (‘outil permettant d’effectuer une opération, un travail’) (*Dictionnaire français*; the definition is available here). In German, *Instrumente* is understood to mean tools, instruments produced for scientific purposes (‘Zu wissenschaftlichen Zwecken hergestelltes Gerät, Werkzeug’). The definition is available here.

The term ‘instrument’ can therefore be interpreted in two ways: it can be interpreted narrowly, as the State Tax Authority did in the present case when it stated that the fish tags (or markers) imported by the applicant at first instance are not used for the specific activities normally performed using instruments; alternatively, the term can be interpreted broadly to include tools and means which can be used to perform a specific activity or task (here, to research the subsequent fish population).

11 It should also be borne in mind that the expression ‘scientific instrument or apparatus’ is not defined in detail in Regulation No 1186/2009. The Court of Justice has stated that the regulations which previously governed that field likewise did not indicate how the terms ‘instrument’ or ‘apparatus’ should be interpreted (judgment of 26 January 1984, *Ludwig-Maximilians-Universität München*, 45/83, EU:C:1984:31, paragraph 8 of the grounds).

In its judgment in Case 300/82, the Court of Justice interpreted Article 60 of Regulation No 918/83 (repealed on the entry into force of Regulation No 1186/2009), which governed relief from import duties on imports of biological or chemical substances intended for research and laboratory animals (Article 53 of Regulation No 1186/2009, which is currently in force, contains a similar provision). As a result, the Court has held that, in relation to Regulation No 1186/2009, it is possible to speak of two categories of relief: in one category, the relief depends on both the nature of the imported goods and on the importer; in the other category, the relief depends on the use by the recipient of the imported goods and not on the identity of the importer.

It is not clear from a combined examination of point (a) of Article 46 and Articles 44 and 45 of Regulation No 1186/2009 whether it is possible to speak of two categories of relief in the present case also, and whether the second category of relief (that is to say, relief depending on the use to which the recipient puts the imported goods) may be applied to the goods imported by the applicant at first instance.

12 In the light of the foregoing, it is uncertain whether the EU legislation must be interpreted as meaning that the expression ‘scientific instrument or apparatus’ in point (a) of Article 46 of Regulation No 1186/2009 includes the fish tags (or markers) imported by the applicant at first instance. That is to say, whether objects which, by virtue of their particular technical structure and functioning, themselves serve directly as a means of scientific research can be regarded as a ‘scientific instrument or apparatus’ within the meaning of point (a) of Article 46 of Regulation No 1186/2009 and be classified under CN and TARIC code 3926 90

92 90, in which case the relief from import duties applies to them, or whether, on the contrary, the expression ‘scientific instrument or apparatus’ must not be interpreted broadly and the fish tags imported by the applicant at first instance must be classified under subheading 3926 90 97 90, with no relief from import duties, because they are not used for the specific activities normally performed using instruments.

13 The Senate therefore considers it necessary to refer a question to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union.

Operative part

In accordance with Article 267 of the Treaty on the Functioning of the European Union […] [national procedural rules], the Senate

Hereby orders

That the following questions be referred to the Court of Justice of the European Union for a preliminary ruling:

1) Must the expression ‘scientific instrument or apparatus’ in point (a) of Article 46 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, be interpreted as meaning that it may include objects which, by virtue of their particular technical structure and functioning, themselves serve directly as a means of scientific research?

2) 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) 2017/1925 of 12 October 2017, be interpreted as meaning that subheading 3926 90 92 90 of the combined nomenclature may include fish tags made of plastic?

That the proceedings be stayed until the Court of Justice of the European Union has given its ruling.

No appeal lies against this decision.

[…]

[signatures]