



Fact Sheet

Tariff classification of goods

Foreword

The European Union comprises a customs union which covers all trade in goods. This has two main parts. First, it prohibits, as between Member States, customs duties on imports and exports and all charges having equivalent effect, both in respect of products originating in Member States and those coming from third countries which are in free circulation in the Member States. Secondly, it requires the adoption of a Common Customs Tariff in relations with third countries.

The latter includes a Combined Nomenclature ('the CN') for goods which makes it possible to link all imported or exported goods to specific tariff headings. That is the purpose of a tariff classification system.

Given that the amount of customs duties to be levied by the customs authorities of the Member States depends on the tariff classification of the product concerned and that the proceeds of those duties constitute the European Union's own resources, the tariff classification of the goods is of particular importance both from the point of view of the protection of the financial interests of the European Union and from that of the interests of the economic operators concerned.

That system can give rise to numerous difficulties, in particular in relation to complex goods. In order to address these in accordance with the requirements inherent in the principle of legal certainty, a legal regime has been established at European level.¹

The European system of tariff classification is based on the Harmonised Commodity Description and Coding System ('the HS') drawn up by the World Customs Organisation ('the WCO'), and established by the International Convention on the Harmonised Commodity Description and Coding System ('the HS Convention') concluded in Brussels on 14 June 1983, and approved, with its Protocol of Amendment of 24 June 1986, on behalf of the European Economic Community by Decision 87/369.²

Under Article 3(1) of the HS Convention, each Contracting Party undertakes to ensure that its customs tariff and statistical nomenclatures are in conformity with the HS, to use all the headings and subheadings of the HS without addition or modification, together with their related codes, and to follow the numerical sequence of that system. Each Contracting Party also undertakes to apply the general rules for the interpretation of the HS and all the section, chapter and subheading notes of the HS, and not to modify their scope. The WCO approves, under the conditions laid down in Article 8 of the HS

¹ The European goods classification system is divided into two parts, namely the CN and the Integrated Tariff of the European Union (TARIC), established by the Commission, which provides information on the corresponding customs duty rates and other measures applicable to specific goods in the European Union and which consists of the eight-digit CN code, supplemented by two additional digits.

² Council Decision 87/369/EEC of 7 April 1987, concerning the conclusion of the International Convention on the Harmonized Commodity Description and Coding System and of the Protocol of Amendment thereto (OJ 1987 L 198, p. 1).

Convention, the Explanatory Notes and Classification Opinions adopted by the HS Committee.

That system, resulting from Council Regulation No 2658/87,³ the Annex to which is regularly updated,⁴ in particular in order to insert new codes or additional subdivisions, includes general rules of interpretation, explanatory notes and classification regulations adopted by the Commission. Thus, it is for the Court, in the exercise of the powers conferred on it, to ensure consistency in the application of the abovementioned rules and acts. To that end, the Court is required, by way of references for preliminary rulings from the national courts, to clarify the interpretation of the general rules governing tariff classification and the applicable criteria in that area, to clarify the scope of the CN headings and subheadings, and to rule on the validity of the classification regulations adopted by the Commission.

Without itself carrying out the tariff classification for the product in question, the Court is thus called upon to provide all the parties concerned with all relevant information, with a view to ensuring a correct classification, while providing, where appropriate, relevant guidance for the purposes of the exercise of the powers of the customs authorities and of the national courts in the future.

In so doing, the Court has had the opportunity, on numerous occasions, to specify the factors to be taken into consideration for the purposes of classification, such as the intended purpose or function of a product, and to interpret the concepts relevant to the classification of products containing multiple components or forming part of another product.

All those elements of the Court's extensive case-law, on account of to the often high complexity and technicality of the products examined, necessarily contribute to the importance of the role of that case-law for the tariff classification of goods.

The purpose of this factsheet is to provide an overview of the key elements of that case-law. In that regard, it is important to emphasise that the Court is regularly called upon to give a preliminary ruling on questions which, apart from their legal nature, relate to specific scientific and technical points concerning the objective characteristics and properties of the goods concerned. As a consequence, the guidance provided by the Court's case-law often forms part of the considerations and assessments specific to a particular product. Consequently, in order to enable the reader to better understand the factual and legal context specific to each of the decisions selected without undermining the comprehensibility of this fact sheet as a whole, the key elements of the Court's case-law are presented in the specific context of each decision and, as far as possible, highlighted in italics.

³ 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). That regulation established the CN which meets the requirements of both the CCT, the external trade statistics of the Union and other EU policies relating to the importation or exportation of goods.

⁴ Annex I to Council Regulation No 2658/87 was replaced by a new annex pursuant to Commission Implementing Regulation (EU) 2021/1832 of 12 October 2021 amending Annex I to Regulation No 2658/87 (OJ 2021 L 385, p. 1), with effect from 1 January 2022.

List of Abbreviations

ITA: Agreement on trade in information technology products

CEN: European Committee for Standardisation

CN: Combined Nomenclature

WCO: World Customs Organisation

WTO: World Trade Organisation

BTI: Binding Tariff Information

HS: Harmonised Commodity Description and Coding System

CCT: Common Customs Tariff

List of acts referred 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).

Commission Regulations (EEC) No 3174/88 of 21 September 1988 amending Annex I to Regulation No 2658/87 (OJ 1988 L 298, p. 1); **No 548/89** of 28 February 1989, concerning the classification of certain goods in the Combined Nomenclature (OJ 1989 L 60, p. 31); **No 812/89** of 21 March 1989 concerning the classification of certain goods in the Combined Nomenclature (OJ 1989, L 86, p. 25); **No 2886/89** of 2 August 1989, amending Annex I to Regulation No 2658/87 (OJ 1989 L 282, p. 1); **No 2472/90** of 31 July 1990 amending Annex I to Regulation No 2658/87 (OJ 1990 L 247, p. 1); **No 2587/91** of 26 July 1991 amending Annex I to Regulation No 2658/87 (OJ 1991 L 259, p. 1); **No 2505/92** of 14 July 1992 amending Annexes I and II to Regulation No 2658/87 (OJ 1992 L 267, p. 1) and **No 2551/93** of 10 August 1993 amending Annex I to Regulation No 2658/87 (OJ 1993 L 241, p. 1).

Commission Regulations (EC) No 535/94 of 9 March 1994 amending Annex I to Regulation No 2658/87 (OJ 1994 L 68, p. 15); **No 3115/94** of 20 December 1994 amending Annexes I and II to Regulation No 2658/87 (OJ 1994 L 345, p. 1); **No 1165/95** of 23 May 1995 concerning the classification of certain goods in the Combined Nomenclature (OJ 1995 L 117, p. 15); **No 3009/95** of 22 December 1995 amending Annex I to Regulation No 2658/87 (OJ 1995 L 319, p. 1); **No 1734/96** of 9 September 1996 amending Annex I to Regulation No 2658/87 (OJ 1996 L 238, p. 1); **No 1196/97** of 27 June 1997 on the classification of certain goods in the Combined Nomenclature (OJ 1997 L 170, p. 13); **No 1624/97** of 13 August 1997 amending Annex I to Commission Regulation No 2658/87 (OJ 1997, L 224, p. 16) **No 1264/98** of 17 June 1998 concerning the classification of certain goods in the combined nomenclature (OJ 1998 L 175, p. 4); **No 2261/98** of 26 October 1998 amending Annex I to Regulation No 2658/87 (OJ 1998 L 292, p. 1); **No 2518/98** of 23 November 1998 concerning the classification of certain goods in the Combined Nomenclature (OJ 1998 L 315, p. 3); **No 2204/1999** of 12 October 1999 amending Annex I to Regulation No 2658/87 (OJ 1999 L 278, p. 1); **No 2263/2000** of 13 October 2000 amending Annex I to Regulation No 2658/87 (OJ 2000 L 264, p. 1); **No 2031/2001** of 6 August 2001 amending Annex I to Regulation No 2658/87 (OJ 2001 L 279, p. 1); **No 1832/2002** of 1 August 2002 amending Annex I to Regulation No 2658/87 (OJ 2002 L 290, p. 1); **No 1789/2003** of 11 September 2003 amending Annex I to Regulation No 2658/87 (OJ 2003 L 281, p. 1); **No 1871/2003** of 23 October 2003 amending Annex I to Regulation No 2658/87 (OJ 2003 L 275, p. 5); **No 2344/2003** of 30 December 2003 amending Annex I to Regulation No 2658/87 (OJ 2003 L 346, p. 38); **No 754/2004** of 21 April 2004 on the classification of certain goods in the Combined Nomenclature (OJ 2004 L 118, p. 32); **No 1810/2004** of 7 September 2004 amending Annex I to Regulation No 2658/87 (OJ 2004 L 327, p. 1); **No 1719/2005** of 27 October

2005 amending Annex I to Regulation No 2658/87 (OJ 2005 L 286, p. 1); **No 400/2006** of 8 March 2006 concerning the classification of certain goods in the Combined Nomenclature (OJ 2006 L 70, p. 9); **No 1549/2006** of 17 October 2006 amending Annex I to Regulation No 2658/87 (OJ 2006 L 301, p. 1); **No 1214/2007** of 20 September 2007 amending Annex I to Regulation No 2658/87 (OJ 2007 L 286, p. 1); **No 1031/2008** of 19 September 2008 amending Annex I to Regulation No 2658/87 (OJ 2008 L 291, p. 1); **No 948/2009** of 30 September 2009 amending Annex I to Regulation No 2658/87 (OJ 2009 L 287, p. 1) and **No 1051/2009** of 3 November 2009 concerning the classification of certain goods in the Combined Nomenclature (OJ 2009 L 290, p. 56).

Commission Regulations (EU) No 861/2010 of 5 October 2010 amending Annex I to Regulation No 2658/87 (OJ 2010 L 284, p. 1) and **No 1006/2011** of 27 September 2011, amending Annex I to Regulation No 2658/87 (OJ 2011 L 282, p. 1).

Commission Implementing Regulations (EEC) No 620/2011 of 24 June 2011 amending Annex I to Regulation No 2658/87 (OJ 2011 L 166, p. 16); **No 727/2012** of 6 August 2012 concerning the classification of certain goods in the Combined Nomenclature (OJ 2012 L 213, p. 5); **No 927/2012** of 9 October 2012 amending Annex I to Regulation No 2658/87 (OJ 2012, p. 304, p. 1); **No 1001/2013** of 4 October 2013 amending Annex I to Regulation No 2658/87 (OJ 2013 L 290, p. 1); **No 113/2014** of 4 February 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ 2014 L 38, p. 20); **No 1101/2014** of 16 October 2014 amending Annex I to Regulation No 2658/87 (OJ 2014 L 312, p. 1); **No 1212/2014** of 11 November 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ 2014 L 329, p. 3); **2015/1754** of 6 October 2015, amending Annex I to Regulation No 2658/87 (OJ 2015 L 285, p. 1) and **2016/1140** of 8 July 2016 concerning the classification of certain goods in the Combined Nomenclature (OJ 2016 L 189, p. 1).

Council Regulations (EEC) No 950/68 of 28 June 1968 on the Common Customs Tariff (OJ 1968 L 172, p. 1); **No 1/71** of 17 December 1970 amending Regulation No 950/68 (OJ 1971 L 1, p. 1); **No 3400/84** of 27 November 1984 amending Regulation No 950/68 (OJ 1984 L 320, p. 1) and **No 750/87** of 16 March 1987 amending Regulation No 950/68 (OJ 1987 L 76, p. 1).

Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1).

Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 amending Regulation No 2913/92 (OJ 1997 L 17, p. 1).

Commission Regulation (EC) No 12/97 of 18 December 1996 amending Regulation No 2454/93 (OJ 1997 L 9, p. 1).

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ 2013 L 269, p. 1).

Council Regulation (EC) No 1601/2001 of 2 August 2001, imposing a definitive anti-dumping duty and definitively collecting the provisional anti-dumping duty imposed on imports of certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey (OJ 2001 L 211, p. 1).

Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21).

Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).

Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (OJ 1998 L 350, p. 58).

Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p.1).

Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 (OJ 2011 L 174, p. 74).

Directive 2014/77/EU of 10 June 2014 amending Annexes I and II of Directive 98/70 (OJ 2014 L 170, p. 62).

Table of Contents

FOREWORD	3
LIST OF ABBREVIATIONS	5
LIST OF ACTS REFERRED TO	6
I. GENERAL CONSIDERATIONS ON THE NATURE AND SCOPE OF THE DUTIES INCUMBENT ON THE COURTS OF THE EUROPEAN UNION AND ON THE RELEVANT ASSESSMENT CRITERIA	10
II. PRINCIPLES APPLICABLE TO TARIFF CLASSIFICATION	18
1. Content and Scope of the General Rules of Interpretation	18
1.1. Rule 1 – Value of both the terms of the headings and subheadings and the titles of the CN	18
1.2. Rule 2(a) and (b) – Principles applicable to articles, depending on their state of completion or completeness, and to materials, according to their use.....	20
1.3. Rule 3(a) to (c) – Principles for mixed or composite goods which can be classified under more than one heading.....	22
1.4. Rules 4 to 6 – default rule, special rule for certain containers, rule on comparisons between subheadings.....	30
2. Classification criteria.....	34
2.1. Objective characteristics and properties of the product.....	34
2.2. Intended use of the product.....	44
2.3. Product use.....	51
2.4. Function of the product	57
III. SOURCES OF THE REGIME APPLICABLE TO THE TARIFF CLASSIFICATION PROCEDURE	63
1. Explanatory Notes	63
1.1. Explanatory Notes of the WCO	63
1.2. Explanatory Notes of the Commission.....	68
2. Tariff classification regulations adopted by the Commission	74
3. Classification Opinions and Binding Tariff Informations.....	83
3.1. Classification Opinions of the WCO and of the Customs Code Committee.....	83
3.2. Binding Tariff Informations.....	87
4. Other legally binding acts	95

I. General considerations on the nature and scope of the duties incumbent on the Courts of the European Union and on the relevant assessment criteria

Judgment of 7 May 1991, Post (C-120/90, [EU:C:1991:196](#))

(Common Customs Tariff – Tariff Headings – Product containing 76.6% protein, 5% lactose and 2.1% fat, without detectable sugar, obtained by ultrafiltration – Classification under subheading 0404 90 33 of the Combined Nomenclature)

In the case which gave rise to this judgment, the Court was called upon to answer the question whether a powder referred to as ‘75% whey protein concentrate’, obtained by ultrafiltration of whey and containing 76.6% protein, 2.1% fat and 5% lactose, without detectable sugar, must be classified under subheading 0404 90 33 of the CCT,⁵ ‘products consisting of natural milk constituents’, or whether that product falls within ‘whey’ under subheading 0404 10 11 of the CCT.

As a preliminary point, the Court notes that it is settled case-law that the decisive criterion for the tariff classification of goods is, in general, to be found in their objective characteristics and properties as defined in the wording of the CCT headings and subheadings, as well as in the section or chapter notes.

In that regard, the Court finds that subheadings 0404 10 and 0404 90 of the CCT concern two groups of products, entitled, first, ‘whey ...’ (subheading 0404 10) and, secondly, ‘products consisting of natural milk constituents ...’ (subheading 0404 90). Next, it notes that the explanatory notes make it clear that whey, within the meaning of heading 0404 of the CCT, is made up of the natural constituents of milk which remain after the fat and casein have been removed. According to those explanatory notes, part of the lactose or some minerals may be removed from the whey and it may be concentrated.

The Court therefore concludes that it is necessary to compare the proportion of lactose contained in whey and in a product such as the one at issue in this case in order to determine whether the latter product can be regarded as whey from which part of the lactose has been removed, within the meaning of the explanatory notes.

Furthermore, the Court refers to its case-law according to which a product, to be classifiable under a given subheading of the CCT, must contain the essential constituents of the basic product in proportions which do not differ substantially from those of the basic product. The Court finds that that requirement is not fulfilled in the case of a 75% whey protein concentrate of the type at issue in that case since, first, the proportion of lactose in that product is no more than about one-fourteenth of the proportion usually contained in powdered whey and, secondly, as a result of the removal of almost all the

⁵ CCT in Annex I to Regulation No 950/68, in the version set out in the Annex to Regulation No 3174/88.

lactose, the respective proportions of the other constituents of the whey have also changed substantially.

On the basis of those considerations, the Court holds that a product of the kind at issue in the main proceedings cannot be classified under subheading 0404 of the CCT, since it no longer possesses the essential characteristics of the basic product 'whey'.

Instead, the Court finds that a protein concentrate of the type at issue in the main proceedings displays the objective characteristics defined in the wording of tariff subheading 0404 90 33.

The Court points out that that conclusion is confirmed by the fact that the Nomenclature Committee of the Customs Cooperation Council decided to classify modified whey under subheading 0404 90 of the CCT. However, the fact that on that occasion the Nomenclature Committee stated that it considered that it would be desirable in the future to amend the nomenclature so as to bring natural whey and modified whey both under subheading 0404 10 of the CCT and that that view will be transposed into EU legislation in the future, is not relevant to the interpretation of the present version of the CCT. Similarly, neither the alleged trade usage nor any divergent application of the rules in certain Member States can influence the interpretation of the CCT.

The Court therefore holds that a product such as the one at issue in the main proceedings must be classified under subheading 0404 90 33 of the CCT as 'products consisting of natural milk constituents ...', as contained in the Annex to Regulation No 3174/88. Such a product, which no longer possesses the essential characteristics of whey, cannot fall within subheading 0404 10 'whey, whether or not concentrated ... not containing added sugar or other sweetening matter'.

Judgment of 15 November 2012, Kurcums Metal (Case C-558/11, [EU:C:2012:721](#))

(Common Customs Tariff – Tariff classification – Combined Nomenclature – 'Taifun' composite cables manufactured in Russia, made of polypropylene and steel thread – Corrugated clips with rounded tips connected by means of a pin – Anti-dumping duties on imports of certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey)

In 2007, Kurcums Metal imported from Russia into Latvia, with a view to their release for free circulation, cables manufactured using a combination of materials, intended for use in the manufacture of fishing equipment such as deep-sea nets. The corrugated clips for cables imported by Kurcums Metal are manufactured in the form of corrugated staples with rounded tips, which are connected by means of a threaded pin.

On carrying out an inspection the Latvian tax authorities took the view, on the basis of General Rule 3(b), for the interpretation of the CN, that the cables came under CN subheading 7312 10 98, since, even though they were made up of different materials (steel and polypropylene), the essential character of the cables (strength and weight)

was conferred on them by the steel. The authority took the view that the clips came under CN subheading 7326 90 98, since they did not have pointed or sharp-edged tips and did not display the characteristics of a ‘pointed staple’.

Therefore, Kurcums Metal was required to pay definitive anti-dumping duties, import duties and value added tax, in each case with default interest and a fine.

Kurcums Metal brought an action for annulment of that decision, which was dismissed both at first instance and on appeal.

Hearing an appeal on a point of law in the case, the referring court asked the Court whether CN subheading 5607 49 11 ⁶ must be interpreted as meaning that cables such as those at issue in the main proceedings, which consist of both polypropylene and wound steel thread, fall as such within that subheading.

In that regard, the Court observes that it is apparent from the wording of subheadings 5607 49 11 and 7312 10 98 that cables such as those at issue in the main proceedings do not fall within CN subheadings 5607 49 11 nor 7312 10 98. They are composed of both polypropylene and wound steel thread, with those two materials being combined in such a way that together they constitute the cables in question. In those circumstances, the cables are neither, as such, cordage, ropes or cables of polypropylene nor cables of steel.

Consequently, the Court’s answer is that CN subheading 5607 49 11 must be interpreted as meaning that cables such as those at issue in the main proceedings, which consist of both polypropylene and wound steel thread, do not fall as such within that subheading.

Furthermore, the referring court asks whether Article 1 of Regulation No 1601/2001 must be interpreted as meaning that cables such as those at issue in the main proceedings, on the assumption that they are covered by CN subheading 7312 10 98, fall within the scope of that provision.

After recalling the scope of Article 1 of Regulation No 1601/2001, the Court finds that, if cables are covered by CN subheading 7312 10 98, they fall within the scope of the that provision.

As regards a divergence between the Latvian language version of Article 1 of Regulation No 1601/2001 and the other language versions of that provision, which, unlike the Latvian language version, all mention CN subheading 7312 10 99 in the version of Regulation No 2263/2000, the Court recalls that the wording used in one language version of a provision of European Union law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement for the uniform application of EU law. Where there is divergence between different language

⁶ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1549/2006.

versions, the provision must be interpreted by reference to the general scheme and purpose of the rules of which it forms part.

In the light of the general scheme of Article 1 of Regulation No 1601/2001, the Court notes that the mere omission in the Latvian language version of that provision, of a reference to CN subheading 7312 10 99 in the version arising from Regulation No 2263/2000, an omission which is clearly an editing mistake, does not allow that provision to be interpreted as excluding from its scope the importation from Russia into Latvia of cables such as those at issue in the main proceedings, on the assumption that those cables are covered by CN subheading 7312 10 98.

The referring court also asks essentially whether CN subheading 7317 00 90 must be interpreted as meaning that corrugated clips with rounded tips connected by means of a pin, such as those at issue in the main proceedings, fall within that subheading.

Regarding that question, the Court notes that CN subheading 7317 00 90 applies, in accordance with the wording of CN heading 7317 00, to nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel.

According to the Court, such goods have pointed tips. That is not the case of corrugated clips with rounded tips connected by means of a pin, such as those at issue in the main proceedings. Consequently, the Court answers that question in the negative.

Judgment of 20 November 2014, Rohm Semiconductor (C-666/13, [EU:C:2014:2388](#))

(Reference for a preliminary ruling – Customs Union – Tariff classification – Common Customs Tariff – Combined Nomenclature – Headings 8541 and 8543 – Modules for short-range data transmission and reception – Subheadings 8543 89 95 and 8543 90 80 – Definition of parts of electrical machines and apparatus)

In the case which gave rise to this judgment, the referring court asked, by its first question, whether the CN must be interpreted as meaning that modules, each consisting of the interconnection of a light emitting diode, a photo-diode and a number of other semiconductor devices and which can be used as infrared transmitters/receivers where their electricity supply derives from the devices in which they are incorporated, come under heading 8541 or heading 8543 of the CN.⁷

First of all, the Court recalls that it is clear from the settled case-law of the Court that, when the Court is requested to give a preliminary ruling on a matter of tariff classification, its task is to provide the national court with guidance on the criteria, the implementation of which will enable the latter to classify the products at issue correctly in the CN, rather than to effect that classification itself. However, in order to give the

⁷ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1832/2002.

referring court a useful answer, the Court may, in a spirit of cooperation with national courts, provide it with all the guidance that it deems necessary.

The Court then refers to its jurisprudence according to which 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 CN heading and in the section or chapter notes. Finally, the Court adds that the Explanatory Notes to the CN drawn up by the Commission and those to the HS are an important aid for interpreting the scope of the various tariff headings but do not have legally binding force.

After making those preliminary remarks, the Court explains that it is clear from the subsidiary nature of heading 8543 that it applies to an electrical machine or apparatus only if it has an individual function and if it cannot be classified under other headings of Chapter 85 of the CN.

Thus, since modules, such as those at issue, used to transmit and receive short-range data in interaction with other electronic tools using infrared light, have an individual function, and those modules, which are each composed of the interconnection of a light emitting diode, a photo-diode and a number of other semiconductor devices, and which are intended to be inserted in other devices from which their electricity supply is derived, are not included in any heading of Chapter 85 of the CN other than heading 8543, those modules come under the latter heading.

By its second question, the referring court sought to ascertain, in essence, whether the CN must be interpreted as meaning that modules incorporated in devices for the mechanical or electrical functioning of which they are not necessary, do not constitute parts for the purposes of CN subheading 8543 90 80 but come under subheading 8543 89 95 of that nomenclature.

First, the Court recalls that the concept of 'parts' within the meaning of Note 2 of Section XVI of the CN is not defined by the latter and that the Court has given that concept a single definition common to all the chapters of the CN.

Secondly, the Court finds that it is clear from its case-law that the concept of 'parts' implies a whole for the functioning of which the part is essential.

Therefore, in order to be able to classify a product as a 'part', it is not sufficient to show that, without that product, the machine is not able to function properly. It remains necessary to establish that the mechanical or electrical functioning of the machine in question is dependent upon that product.

Thus, the Court holds that modules such as those at issue in the main proceedings do not constitute parts within the meaning of subheading 8543 90 80 of the CN, but do come under subheading 8543 89 95 of that nomenclature.

Judgment of 15 December 2016, LEK (C-700/15, [EU:C:2016:959](#))

(Reference for a preliminary ruling – Combined Nomenclature – Classification of goods – Food supplements falling under heading 2106 – Active ingredient as the essential component – Possible classification in Chapter 30 of the Combined Nomenclature – Goods presented and marketed as medicinal products)

In this case, the Court was called upon to rule, inter alia, on the interpretation of the CN in the light of other EU acts. In particular, the referring court asked, by its third question, whether heading 3004 of the CN⁸ must be interpreted as meaning that goods which fall within the definition of ‘medicinal product’ within the meaning of Directive 2001/83 must automatically be classified under that heading.

At the outset, the Court clarifies that it follows from recitals 2 to 5 of that directive that it aims to ensure the approximation of national legislation concerning medicinal products whilst ensuring the attainment of its essential aim, which is the safeguarding of public health. Therefore, the classification of a product in one Member State as a medicinal product within the meaning of Directive 2001/83, does not require the competent authorities of another Member State to classify the same product as a medicinal product within the meaning of other instruments of EU law.

Furthermore, it is clear from the eighth recital of Regulation No 2658/87 that the provisions of the CN must be given an identical interpretation by each of the Member States.

Moreover, it follows from the wording of Article 1 of Directive 2001/83 that a medicinal product within the meaning of that directive includes, first, any substance or combination of substances presented for treating or preventing disease in human beings and, secondly, any substance or combination of substances which may be administered to human beings with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in human beings.

Consequently, that definition does not require that products falling within it necessarily comply with the condition for classification in Chapter 30 of the CN, namely that they have clearly defined therapeutic or prophylactic characteristics with an effect concentrated on precise functions of the human organism or are capable of being applied in the prevention or treatment of diseases or ailments. Directive 2001/83 pursues different objectives from those pursued by the CN.

Therefore, the Court rules that heading 3004 of the CN must be interpreted as meaning that goods which fall within the definition of ‘medicinal product’ within the meaning of Directive 2001/83 are not automatically required to be classified under that heading.

⁸ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1006/2011.

Judgment of 20 September 2018, 2M-Locatel (C-555/17, [EU:C:2018:746](#))

(Reference for a preliminary ruling – Regulation (EEC) No 2658/87 – Customs Union and Common Customs Tariff – Tariff classification – Combined Nomenclature – Subheadings 8528 71 13 and 8528 71 90 – Apparatus capable of receiving, decoding and processing live TV signals transmitted using internet technology)

Between 2007 and 2010, 2M-Locatel imported IPTV set-top boxes from China, which are not capable of receiving, decoding and processing television signals transmitted via antenna, cable or satellite. These boxes incorporate an Ethernet device and incorporate a ‘modem’ within the meaning of the CN. At the time of importation, that product was declared as coming under CN subheading 8528 71 13 and was thus released into free circulation exempt from customs duties.

Taking the view, however, that that product should be classified under CN subheading 8528 71 90 on the ground that it does not incorporate a ‘video tuner’ for the purposes of the CN, the Danish tax and customs authority issued a notice of additional assessment providing for the a posteriori recovery of customs duties on the importation, plus interest.

Following receipt of a complaint from 2M-Locatel, the Danish National Tax Tribunal amended that decision and cancelled the recovery order on the ground that the IPTV set-top boxes came under CN subheading 8528 71 13. The Ministry of Taxation brought an appeal against that decision which was upheld by a judgment of 15 July 2015.

2M-Locatel appealed against that judgment before the referring court.

Harbouring doubts, in particular, as to the absence of a definition of the concept of ‘video tuner’ in the CN, the referring court asked the Court whether the CN⁹ must be interpreted as meaning that apparatus, such as the IPTV set-top boxes at issue in the main proceedings, come within CN subheading 8528 71 13 or subheading 8528 71 90.

As regards the absence of the definition in question for the purposes of subheading 8528 71 of the CN, the Court recalls that the meaning and scope of terms for which EU law provides no definition must be determined by reference to their usual meaning in everyday language, while also taking into account the context in which they occur and the objectives of the rules of which they form part.

Therefore, a ‘video tuner’, or a ‘television tuner’, within the usual meaning of those terms, covers apparatus which convert high-frequency television signals into signals usable by video recording or reproducing apparatus or monitors. It also makes it possible to select television signals transmitted at a specific frequency. Moreover, according to the Court, that definition is supported by the Explanatory Notes to the CN in force at the time of the imports at issue in the main proceedings.

⁹ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1549/2006.

It follows that, in order to come under CN subheadings 8528 71 11 to 8528 71 19, the apparatus must incorporate a video tuner or a 'television tuner', namely, apparatus making it possible to select channels or carrier frequencies and to convert high-frequency television signals into signals usable by video recording or reproducing apparatus or monitors.

In that context, the Court adds that that interpretation is not called into question by paragraph 2 of the ITA.¹⁰ Admittedly, it follows from the Court's settled case-law that the primacy of international agreements concluded by the European Union over provisions of secondary legislation means that such provisions must, so far as possible, be interpreted in a manner that is consistent with those agreements.

However, in this case, the Court finds that such an interpretation, which would involve endorsing the view that set-top boxes which have a communication function must be classified under CN subheading 8528 71 13, even those which do not make it possible to select channels or carrier frequencies or to convert high-frequency television signals into signals usable by video recording or reproducing apparatus or monitors, is not possible since it would run counter to the wording of the CN and, consequently, to the intention of the EU legislature.

Moreover, the Court recalls that, for the period prior to the expiry date of the reasonable period granted to the European Union in accordance with the Understanding on Rules and Procedures Governing the Settlement of Disputes to comply with the recommendations or decisions of the World Trade Organisation (WTO) Dispute Settlement Body, the EU Courts cannot conduct a review of the lawfulness of the EU measures in the light of the WTO rules, without rendering that reasonable period ineffective.

The reasonable time period granted to the European Union to implement those reports adopted by the WTO Dispute Settlement Body indicating, *inter alia*, what is meant by 'set-top box' expired on 30 June 2011 and the Commission took them into account in adopting Implementing Regulation (EU) No 620/2011 which entered into force on 1 July 2011 and has no retroactive effect.

In such circumstances, the validity of Regulation No 1549/2006 cannot, in any event, be called into question on the ground that it classifies set-top boxes with a communication function which do not incorporate a television tuner under CN subheading 8528 71 90.

In conclusion, the Court rules that apparatus capable of receiving, decoding and processing live TV signals transmitted using internet technology must be classified under subheading 8528 71 90 thereof, provided that they do not incorporate a video tuner or a 'television tuner', this being a matter for the referring court to ascertain.

¹⁰ The Agreement on trade in information technology products (ITA), made up of the Ministerial Declaration on trade in information technology products, adopted on 13 December 1996 at the first Conference of the WTO in Singapore, together with its annexes and attachments.

II. Principles applicable to tariff classification

1. Content and Scope of the General Rules of Interpretation

1.1. Rule 1 – Value of both the terms of the headings and subheadings and the titles of the CN

Part One of the CN in Annex I to Regulation No 2658/87, concerning 'Preliminary provisions', includes Section I, which deals with 'General Rules', Section A of which contains general rules for the interpretation of the CN.

Rule 1 provides that 'The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.'

Judgment of 12 June 2014, Lukoyl Neftohim Burgas (C-330/13, [EU:C:2014:1757](#))

(Request for a preliminary ruling – Common Customs Tariff – Combined Nomenclature – Classification of goods – Goods described as 'heavy oils, lubricating oils or other oils for undergoing a specific process' – Headings 2707 and 2710 – Aromatic and non aromatic constituents – Relationship between the Combined Nomenclature and the Harmonised System)

In this judgment, the Court answers 10 questions referred for a preliminary ruling concerning the tariff classification of an oil. More specifically, it is a directly distilled petroleum oil containing a mixture of hydrocarbons in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents. That oil is not composed of benzene, toluene, xylene, naphthalene, other aromatic hydrocarbon mixtures, creosote oils or crude oils, sulphuretted toppings, basic products, anthracene or phenols.

By its fourth to sixth questions, the referring court asked, in essence, what criterion should be used to classify the oil in the main proceedings under heading 2707 or heading 2710 of the CN.¹¹

In that regard, the Court states that, first, the General rules for the interpretation of the CN provide that the classification of goods is to be determined according to the terms of the headings and any section or chapter notes, the titles of sections, chapters and sub-chapters being provided for ease of reference only. Secondly, according to settled case-

¹¹ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1006/2011.

law, 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 CN heading and of the section or chapter notes.

Next, the Court explains that the Explanatory Notes to the HS are an important means of ensuring the uniform application of the Common Customs Tariff and, as such, may be regarded as useful aids to its interpretation, in spite of the fact that they lack binding force.

On the basis of an analysis of the wording of the CN heading and the Explanatory Notes to the CN and the HS relating to the headings in question, the Court concludes that the criterion to take into consideration in order to classify products with characteristics such as those of the product at issue in the main proceedings under Heading 2707 or Heading 2710 of the CN is the content by weight of the aromatic constituents in relation to the non-aromatic constituents.

By its first and third questions, the referring court asked, in essence, how to determine the content of aromatic constituents in a given product in order to classify it under heading 2707 or heading 2710 of the CN.

In that regard, the Court confirms that the Explanatory Notes to the CN do not have legally binding force. Consequently, the Annex A method for determining the content of aromatic constituents in a given product must not be regarded as the only method applicable for that purpose. Furthermore, the Explanatory Notes to the CN must be disregarded where it is apparent that they are contrary to the wording of the headings of the CN and of the section or chapter notes. It follows that, where the customs authorities of a Member State or an economic operator are confronted with a case in which the application of the Explanatory Notes to the CN leads to a result which is incompatible with the CN, they must have the possibility of bringing an action before the competent body. Accordingly, if the customs authorities of a Member State or an economic operator take the view that the Annex A method does not lead to a result consistent with the CN, they can bring an action before the competent authority.

The Court therefore rules that it is for the court hearing the case to decide on the most appropriate method to determine the content of aromatic constituents of a specific product in order to classify it under heading 2707 or heading 2710 of the CN.

By its seventh to tenth questions, the referring court asked, in essence, about the interpretation of point 1 of the Explanatory Notes to the CN on subheadings 2707 99 91 and 2707 99 99 of the CN.

First of all, the Court refers to its settled case-law, according to which, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part. Secondly, the need for a uniform interpretation of EU legislation makes it impossible for the text of a provision to be considered, in case of doubt, in isolation; on the contrary, it requires

that it be interpreted and applied in the light of the versions existing in the other official languages. Thirdly, it must be stated that, since the Explanatory Notes to the CN are intended to facilitate its interpretation for the purposes of tariff classification, they must be interpreted in such a way as to ensure that the subheadings of the CN are properly applied.

In the light of those considerations, the Court concludes that point 1 of the Explanatory Notes to the CN on subheadings 2707 99 91 and 2707 99 99 thereof must be interpreted as being non-exhaustive, so that a product falling under heading 2707 of the CN which cannot be classified under a specific subheading must be classified under subheading 2707 99 99 of the CN.

1.2. Rule 2(a) and (b) – Principles applicable to articles, depending on their state of completion or completeness, and to materials, according to their use

Under rule 2(a), 'any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.' Rule 2(b) provides that 'any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.'

Judgment of 26 May 2016, Latvijas propāna gāze (C-286/15, [EU:C:2016:363](#))

(Reference for a preliminary ruling – Common Customs Tariff – Tariff classification – Combined Nomenclature – Heading 2711 – Petroleum gases and other gaseous hydrocarbons – Material giving the essential character – Liquefied petroleum gas)

In the case which gave rise to that judgment, Latvijas propāna gāze imported liquefied petroleum gas ('LPG') from Russia into Latvia, classifying it under tariff subheading 2711 19 00 and, consequently, applying to it a rate of import duty of 0% of its customs value. That LPG contains methane, ethane, ethylene, propane, propylene, butane and butylene. However, its certificate of quality did not indicate separately the percentage, in content by weight, of each of those substances.

Nevertheless, the tax authority took the view that the LPG at issue in the main proceedings had to be classified, by the application of rules 2(b), 3(b) and 6 of the

General rules for the interpretation of the CN, according to the material which gave it its essential character. In that regard, it found that the predominant substances in that LPG were propane and butane, with a preponderance of propane, and classified that LPG under tariff subheading 2711 12 97.

Latvijas propāna gāze brought an action against the tax authority's decision before the regional administrative court, which took the view that the tax authority's findings were unfounded.

In that context, the referring court, before which the tax authority brought an appeal on a point of law, decided to ask the Court whether rule 2(b) and rule 3(b) of the General rules for the interpretation of the CN ¹² must be interpreted as meaning that, where the essential character of an LPG is determined by its components together and none of its components may be identified separately as alone giving it its essential character, it must be presumed that the component which gives that LPG its essential character within the meaning of rule 3(b) is that present in the greatest proportion in the LPG's content by weight.

In the light of a scientific opinion, which the referring court may decide to take into consideration, according to which it is not possible to determine that one of those substances alone gave the LPG its essential character, the Court concludes it is not possible to determine, in accordance with rule 3(b) of the General rules for the interpretation of the CN, the substance present in the LPG which gives the mixture its physical and chemical properties and, specifically, its calorific capacity.

It is not possible to determine the exact quantity of each of the components of the LPG at issue where, in the certificate of quality for the goods, the percentage of the gases in the LPG is stated by group of gas, since the quantity of propylene in such an LPG may exceed that of propane.

In that context, the Court finds that rules 2(b) and 3(b) of the General rules for the interpretation of the CN must be interpreted as meaning that, where the essential character of a gas mixture, such as the LPG at issue in the main proceedings, is determined by all the components of that mixture together, so that no component may be identified as the factor giving it its essential character and, in any event, the exact quantity of each of the components of the LPG at issue may not be determined, a presumption that the factor which gives the goods their essential character, within the meaning of rule 3(b) of those general rules, is the substance which is present in the greatest proportion in the mixture must not be used.

Furthermore, the referring court asked whether Article 218(1)(d) of Regulation No 2454/93 must be interpreted as meaning that it follows from that provision that a

¹² CN in Annex I to Regulation No 2658/87, in the versions resulting from Regulation No 1031/2008 and Regulation No 948/2009 respectively.

declarant of LPG is under an obligation to indicate precisely the percentage amount of the substance present in the greatest quantity in that LPG.

Having observed that it may not be presumed that, where an LPG comprises several substances, the substance which is present in the greatest proportion gives that LPG its essential character, and that the failure to indicate precisely the percentage of the substances comprising an LPG does not preclude the tariff classification rules being applied, the Court replies in the negative.

1.3. Rule 3(a) to (c) – Principles for mixed or composite goods which can be classified under more than one heading

Rule 3 provides that ‘when by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods; (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable; (c) When goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.’

Judgment of 21 June 1988, Sportex (C-253/87, [EU:C:1988:333](#))

(Tariff classification – Pre-impregnated carbon-fibres)

In the case giving rise to this judgment, the Court was asked to answer two questions referred for a preliminary ruling concerning the tariff classification for mixed products.

The referring court asked, in essence, whether the CCT¹³ must be interpreted as meaning that a product such as that at issue in the main proceedings, namely a semi-finished product in sheet form, composed of epoxy resin (proportion: 36% by weight), carbon fibre (proportion: 42% by weight) and glass-fibre mesh (proportion: 22% by weight), intended for the manufacture of tubes, comes under heading 39.01 of that tariff.

¹³ CCT in Annex I to Regulation No 950/68, as amended by Regulation No 750/87.

First of all, the Court points out that there are only two tariff headings which may be considered for the purpose of classifying such a product: on the one hand, heading 39.01 (condensation, poly condensation and polyaddition products, whether or not modified or polymerised, and whether or not linear ...) which includes under subheading C VII all 'other forms' of plastic materials; on the other hand, heading 68.16 (articles of stone or of other mineral substances, including articles of peat, not elsewhere specified or included), which under subheading B includes all articles of this kind other than unfired bricks made of chromite.

Taking account of the fact that the goods at issue are composed of different materials and that the two subheadings mentioned are both general in scope, the Court clarifies that it is necessary to apply General Rule 3(b) for the interpretation of the CCT nomenclature, according to which classification is to be made according to the material or article which gives the product its essential character.

Next, the Court finds that the identification of the material which gives the product its essential character may be effected by examining whether the product would retain its characteristic properties if one or other of its constituents were removed from it. In that regard, the Court explains that it is common ground that tubing made of carbon and glass fibre but without epoxy resin would lose the property which characterises the product in question, namely its flexibility.

Thus, the Court concludes that goods such as that at issue in the main proceedings are to be regarded as artificial resins and plastic materials and, as such, fall under heading 39.01 of the CCT.

Judgment of 15 November 2012, *Kurcums Metal* (Case C-558/11, [EU:C:2012:721](#))

(Common Customs Tariff – Tariff classification – Combined Nomenclature – ‘Taifun’ composite cables manufactured in Russia, made of polypropylene and steel thread – Corrugated clips with rounded tips connected by means of a pin – Anti-dumping duties on imports of certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey)

In that judgment, the factual background to which has been set out above,¹⁴ the referring court also asked the Court whether General Rule 3(b) for the interpretation of the CN must be interpreted as meaning that the tariff classification of cables such as those at issue in the main proceedings is to be carried out pursuant to that rule.

With respect to that general rule, the Court recalls that, by virtue of same, in carrying out the tariff classification of goods it is necessary to determine, from among the materials of which they are composed, the one which gives them their essential character; this

¹⁴ See Section I., entitled 'General considerations on the nature and scope of the duties incumbent on the Courts of the European Union and on the relevant assessment criteria'.

may be done by determining whether the goods would retain their characteristic properties if one or other of their constituents were removed.

In the same way, the factor which determines the essential character of the goods may, depending on the type of goods, be determined, for example, by the nature of the constituent materials or components, their bulk, quantity, weight, or value, or the role of a constituent material in relation to the use of the goods.

If neither of the two materials of which the cables are composed in itself gives them their essential character, in order to carry out the tariff classification of those cables, General Rule 3(c), for the interpretation of the CN must be applied. Under that rule, those cables must be classified under the heading of the CN which occurs last in numerical order among those which equally merit consideration.

In this case, since it is apparent from the documents before the Court that neither of the two materials of which those cables are composed – namely polypropylene and wound steel thread – in itself gives those cables their essential character, the Court finds that the tariff classification of those cables is not to be carried out pursuant to General Rule 3(b) for the interpretation of the CN; rather, it is to be carried out pursuant to General Rule 3(c) for the interpretation of the CN. Under the latter rule, those cables must be classified under the CN heading which occurs last in numerical order among those which equally merit consideration, which appears to be CN subheading 7312 10 98.

In those circumstances, the Court concludes that General Rule 3(b) for the interpretation of the CN must be interpreted as meaning that the tariff classification of cables such as those at issue in the main proceedings is not to be carried out pursuant to that rule, subject to verification by the referring court, in the light of all the elements of fact placed before it, that neither of the two materials of which those cables are composed in itself gives those cables their essential character.

Judgment of 10 March 2016, VAD et van Aert (C-499/14, [EU:C:2016:155](#))

(Reference for a preliminary ruling – Customs Union and Common Customs Tariff – Tariff classification – Combined Nomenclature – Interpretation – General Rules – Rule 3(b) – Definition of ‘goods put up in sets for retail sale’ – Separate packages)

In this judgment, the Court gives an interpretation of the concept of ‘set of goods’ within the meaning of rule 3(b) of the General rules for the interpretation of the CN .¹⁵

The referring court asks, in particular, whether, and to what extent, rule 3(b) of the General Rules may be interpreted as meaning that goods which are presented for customs clearance in separate packages and are packed together only after that transaction, may nevertheless be considered to be ‘goods put up in sets for retail sale’

¹⁵ CN in Annex I to Regulation No 2658/87, in the versions resulting from Regulation No 1031/2008 and Regulation No 1214/2007 respectively.

within the meaning of that rule, and, therefore, be subject to one and the same tariff heading, where it is established, having regard to other objective factors, that the goods belong together as a unit and are intended to be offered as such for retail sale.

In the first place, the Court notes that it is not apparent from the wording of rule 3(b) of the General Rules or from the Explanatory Notes of the Harmonised Commodity Description and Coding System or the Guidelines on the classification in the CN of goods put up in sets for retail sale, the latter laying down certain exceptions to the requirement that there must be a single package, that the concept of a 'set', within the meaning of that rule, necessarily presupposes, in every case, that the goods concerned are presented within the same package for the purposes of customs clearance.

In the second place, the concept of a 'set' within the meaning of that rule presupposes that the goods are closely linked, from the perspective of how they are marketed, such that they are not only presented together for customs clearance but are also normally supplied together, at the various marketing stages and in particular at the retail stage, as a unit in a single package in order to meet a particular need or to carry out a specific activity.

Thus, the Court clarifies that the goods being in a single package, at the time of their presentation to customs, does not constitute a condition sine qua non in order to consider that they belong together as a unit and hence constitute a 'set', within the meaning of rule 3(b) of the General Rules, but merely evidence that allows the inference of such a finding.

Consequently, the Court rules that that rule must be interpreted as meaning that goods which are presented for customs clearance in separate packages and are packed together only after that transaction, may nevertheless be considered to be 'goods put up in sets for retail sale' within the meaning of that rule, and, therefore, be subject to one and the same tariff heading, where it is established, having regard to other objective factors, which it is for the national court to assess, that the goods belong together as a unit and are intended to be offered as such for retail sale.

Judgment of 12 May 2016, Toorank Productions (C-532/14 and C-533/14, [EU:C:2016:337](#))

(Reference for a preliminary ruling – Common Customs Tariff – Tariff classification – Tariff heading 2206 – Tariff number: 2208 – Alcoholic beverages obtained through fermentation followed by purification – Addition of additives to alcoholic beverages obtained through fermentation followed by purification – Beverages which have lost the properties of the beverages falling within tariff heading 2206)

The questions referred to the Court for a preliminary ruling in the joined cases which gave rise to that judgment concern the interpretation of the CN ¹⁶ for the purposes of the tariff classification of a beverage called 'Ferm Fruit', obtained by fermentation of an apple concentrate, designed to be consumed either undiluted or as a base in other beverages, being neutral in terms of colour, smell and taste as a result of purification – in particular, ultrafiltration – and having an alcoholic strength by volume, without the addition of distilled alcohol, of 16%.

As a preliminary point, the Court recalls, inter alia, that the intended use of products may constitute an objective criterion for classification if it is inherent to those products, having regard to the objective characteristics and properties of those products. Nevertheless, the intended use of a product is a relevant criterion only where the classification can be made on the sole basis of the objective characteristics and properties of that product.

On the basis of those principles, the Court replies that the CN must be interpreted as meaning that a beverage such as that in the present case is covered by heading 2208 of that nomenclature. A product obtained as a result of fermentation followed by a process of purification falls under heading 2208 of the CN in so far as it has lost the properties of the fermented beverages falling under heading 2206 of the CN and acquired those of the ethyl alcohol covered by heading 2208 of that nomenclature.

In the light of that conclusion, the Court then addresses the question of whether the CN must be interpreted as meaning that a beverage with an alcoholic strength by volume of 13.4% which is manufactured by adding sugar, aromatic substances, colouring and flavouring agents, thickening agents, preservatives and distilled alcohol to Ferm Fruit, where that distilled alcohol does not exceed, either in volume or percentage, 49% of the alcohol present in that beverage, with the remaining 51% resulting from a process of fermentation, falls under heading 2206 or heading 2208 of that nomenclature.

In that regard, the Court considers that the referring court's doubts concern, inter alia, the interpretation of the criteria established in the judgment of 7 May 2009, *Siebrand* (C-150/08, [EU:C:2009:294](#)), concerning the classification for customs purposes of beverages which are manufactured by adding distilled alcohol and other substances to a fermented beverage base. In particular, that court is unsure whether those criteria

¹⁶ CN in Annex I to Regulation No 2658/87, in the versions resulting from Regulation No 1719/2005 and Regulation No 1214/2007 respectively.

constitute a set of criteria, all of which must be fulfilled in order for a beverage to be regarded as falling under CN heading 2208, or whether it is necessary to ascribe greater importance to the respective quantities of fermented alcohol and distilled alcohol than to the other objective characteristics and properties of the products concerned.

The Court notes that it is clear from the judgment of 7 May 2009 in *Siebrand* (C-150/08, [EU:C:2009:294](#)), that, in determining the essential character of a product for the purposes of rule 3(b) of the CN, a number of objective characteristics and properties may be taken into account. Consequently, the fact that the proportion of one type of alcohol may be larger than that of another type of alcohol is only one of several criteria to be taken into account when determining, in accordance with rule 3(b) of the CN, which substance gives the product under consideration its essential characteristics.

However, rule 3(b) of the CN does not govern the classification of that beverage, which is based on the criterion relating to the organoleptic properties and characteristics of that beverage. Consequently, the Court concludes that, since such a beverage does not have the organoleptic properties and characteristics of beverages falling under heading 2206 of the CN, but has those of products falling under heading 2208 of the CN, it falls under that second heading.

Judgment of 26 May 2016, *Latvijas propāna gāze* (C-286/15, [EU:C:2016:363](#))

(Reference for a preliminary ruling – Common Customs Tariff – Tariff classification – Combined Nomenclature – Heading 2711 – Petroleum gases and other gaseous hydrocarbons – Material giving the essential character – Liquefied petroleum gas)

In this judgment, the factual background to which was set out above,¹⁷ the referring court also asked the Court whether, where the Customs declarant has failed to indicate precisely the percentage amount of the substance present in the greatest quantity in a LPG, such as that at issue in the main proceedings, containing 0.32% methane, ethane and ethylene, 58.32% propane and propylene and no more than 39.99% butane and butylene, the CN must be interpreted as meaning that that LPG must be classified under the subheading 2711 19 00, as 'Petroleum gases and other gaseous hydrocarbons, Liquefied, Other', or under the subheading 2711 12 97, as 'Petroleum gases and other gaseous hydrocarbons, Liquefied, Propane, Other, For other purposes, Other'.

In that regard, after referring to its answer to the first question, according to which it is not possible to presume which gas confers the essential character on the LPG, the Court finds that since a mixture of LPG gas such as that described by the referring court cannot be classified by reference to rule 3(b) of the General rules for the interpretation of the CN, rule 3(c) of those rules, which states that the goods must be classified under

¹⁷ See Section II.1.2, entitled 'Rule 2 (a) and (b) – Principles applicable to articles, depending to their state of completion or completeness, and to materials, according to their use'.

the heading which occurs last in numerical order among those which equally merit consideration, must be applied.

Therefore, according to the Court, an LPG, such as that at issue in the main proceedings, containing 0.32% methane, ethane and ethylene, 58.32% propane and propylene and no more than 39.99% butane and butylene, and in respect of which it cannot not be determined which of its constituent substances gives it its essential character, comes under the subheading 2711 19 00.

Judgment of 8 September 2016, Schenker (C-409/14, [EU:C:2016:643](#))

(Reference for a preliminary ruling – Common Customs Tariff – Combined Nomenclature – Classification of goods – Interpretation of a subheading of the Combined Nomenclature – Directive 2008/118/EC – Importation of excise goods – Customs suspensive procedure or arrangement – Effects of a customs declaration referring to an incorrect subheading of the Combined Nomenclature – Irregularities during the movement of excise goods)

Schenker is a commercial company established in Hungary engaged in the supply of customs and logistical services. In 2011, it was tasked by a Hungarian commercial company to place consignments of tobacco in ‘temporary storage’ because of a lack of space. Those consignments arrived in Hungary under the external transit procedure.

After checking a consignment, the first instance tax authority, once the organoleptic characteristics of the goods had been analysed, found that they were not ‘tobacco not stemmed/stripped’, as indicated in their documentation, but cut tobacco under CN subheading 2401 10 35.

After testing the examined sample, the Committee of Experts of the Regional Customs and Tax Directorate (Hungary) found that the sample in question was ‘smoking tobacco’. Subsequently, the first-instance tax authority found that the product in question constituted excise goods and, by its decision of 21 June 2011, ordered Schenker to pay a penalty by way of excise duty.

The Customs Directorate-General hearing Schenker’s appeal upheld the decision of the first instance tax authority. Schenker then sought judicial review of that decision, submitting that the decision was unlawful for a number of reasons.

In those circumstances, the referring court decided to ask the Court, in essence, about the interpretation of headings 2401 and 2403 of the CN ¹⁸ for the purposes of the tariff classification of a product with characteristics such as those at issue in the main proceedings.

¹⁸ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 861/2010.

According to the Court, since it is apparent from the order for reference that the goods at issue in the main proceedings consist of components which may be classified as ‘tobacco waste’, but, at the same time, the product also constitutes ‘smoking tobacco’, it is necessary to identify, under the rule stated in point 3(b), from among the materials of which they are composed, the one which gives them their essential character. This may be done by determining whether the goods would retain their characteristic properties if one or other of their constituents were removed from them.

Similarly, as indicated by paragraph VIII of the Explanatory Note to the HS concerning point 3(b) of the General rules for the interpretation of the CN, the factor which determines the essential character of the goods may, depending on the type of goods, be determined for example by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Since the presence of tobacco waste does not prevent the product as a whole from constituting smoking tobacco, that product cannot be classified under heading 2401 of the CN. More specifically, the decisive criterion for classifying goods under heading 2403 of the CN rather than heading 2401 thereof depends on whether the leaves have been subject to processing to such an extent that they constitute manufactured tobacco ready to be smoked without further industrial processing.

In those circumstances, the Court finds that, in so far as the goods at issue in the main proceedings consist of tobacco ready for smoking, packed in bulk, compacted in plastic-lined bags having a net weight 30 kg per box, they are to be classified under subheading 2403 10 90 of the CN.

Furthermore, the referring court also asked whether the concept of ‘customs suspensive procedure or arrangement’ in Article 4(6) of Directive 2008/118 must be interpreted as meaning that the submission of specific goods to the customs suspensive procedure or arrangement may be challenged if the chapter of the CCT under which the goods are classified is correctly mentioned in their accompanying documents, but the specific subheading is incorrectly indicated, and whether Article 2(b) and Article 4(8) of Directive 2008/118 must be interpreted as meaning that, in such a case, there has been an importation of those goods.

According to the Court, when the presentation of goods to customs required by Article 40 of the Customs Code is accompanied by the lodging of a summary declaration or a customs declaration which contains the information necessary for the identification of the goods as to their type, their quantity and their packing, only the tariff subheading being incorrect, those goods cannot be regarded as having entered the customs territory of the European Union unlawfully within the meaning of Article 202 of the Customs Code.

Nevertheless, as regards the conditions potentially giving rise to a customs debt, given that the obligation on the declarant to provide accurate information also extends to the

determination of the correct subheading at the time of the tariff classification of the goods, it is conceivable that a customs debt may arise on the basis of Article 204 of the Customs Code. However, Article 859 of Implementing Regulation No 2454/93 supports the finding that the failure to perform one of the obligations contingent on the use of the transit procedure has no significant effect on the correct operation of that procedure if the three conditions listed in point 2 of Article 859 are fulfilled and provided that the three conditions set out in the first indent of Article 859 are satisfied. It is for the national court to ascertain whether all of those conditions are fulfilled.

It follows that the concept of 'customs suspensive procedure or arrangement' in Article 4(6) of Directive 2008/118 must be interpreted as meaning that the placement of specific goods under a customs suspensive procedure or arrangement cannot be challenged if the chapter of the Common Customs Tariff which covers those goods is correctly mentioned in their accompanying documents, but the specific subheading is incorrectly indicated. In such a case, Article 2(b) and Article 4(8) of Directive 2008/118 must be interpreted as meaning that there has been no importation of those goods, and that they are not excise goods.

Finally, the referring court asked essentially whether, in a situation such as that at issue in the main proceedings, the concept of 'irregularity' within the meaning of Article 38 of Directive 2008/118 must be interpreted as meaning that it covers goods placed under a 'customs suspensive procedure or arrangement', within the meaning of Article 4(6) thereof, which are accompanied by a document mentioning an incorrect tariff heading.

In that regard, the Court points out that the conditions of Article 38(4) of Directive 2008/118, read in conjunction with Article 33(1) thereof, are not satisfied where they have not been released for consumption in a Member State, as they were placed under a customs suspensive procedure or arrangement within the meaning of Article 4(6) of Directive 2008/118 and where they were not held for commercial purposes in another Member State in order to be delivered or used there, but are intended to be re-exported to a third State.

Therefore, the concept of 'irregularity' does not cover goods placed under a customs suspensive procedure or arrangement and accompanied by a document mentioning an incorrect tariff classification.

1.4. Rules 4 to 6 – default rule, special rule for certain containers, rule on comparisons between subheadings

Under rule 4, 'goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.' Rule 5 states that 'in addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein: (a) camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially

shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character; (b) subject to the provisions of rule 5(a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.' In accordance with rule 6, 'for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise.'

Judgment of 13 July 2006, Uroplasty (C-514/04, [EU:C:2006:464](#))

(Tariff classification – Sterile flakes of polydimethylsiloxane – Silicone elastomer – Meaning of 'primary form' – Medicament – Packaging – Meaning of 'appliance to be implanted in the body')

In the case which gave rise to that judgment, the referring court asked the Court whether a silicone elastomer in flakes which is developed and intended to be injected and become fixed in the human body in order to treat problems connected with incontinence, may be classified under heading 9021 of the CN.¹⁹ If so, the referring court sought to ascertain under which subheading that product must be classified.

In answering this question, the Court considers headings 3910, 3926, 3004 and 9021 of the CN. In that regard, it clarifies that it could be classified either according to its essential characteristics or according to its objective purpose, namely polydimethylsiloxane.

It clarifies, first, that as a silicone elastomer in flakes, the polydimethylsiloxane is presented in the form referred to in Notes 3 and 6(b) to Chapter 39 of the CN. However, such silicone cannot be classified under heading 3910 as a 'primary form'. That concept refers only to silicones intended to be processed. These are raw materials which are particularly suited to processing and are intended for it. The product at issue in the main proceedings is specially developed and intended only to be implanted in the body for the treatment of sphincter weakness. It follows that polydimethylsiloxane is a finished product which, as such, cannot therefore be classified under heading 3910 of the CN.

Secondly, according to the Court, it appears that the polydimethylsiloxane has a therapeutic profile. However, it cannot be classified under heading 3004 of the CN as a 'medicament'. Its packaging in unit form in syringes for single use results from an

¹⁹ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 2388/2000.

operation carried out after importation. It follows that the polydimethylsiloxane, as it is presented to customs, does not come within the definition given in heading 3004 of the CN.

Thirdly, since the product cannot be classified under the preceding headings, the Court determines that the product can be classified under heading 9021 of the CN. The characteristics and objective properties of the polydimethylsiloxane are those of a finished product, which is specially developed and intended only to be implanted in the body. By lodging itself definitively in the defective muscle, polydimethylsiloxane enables connective tissues to develop which compensate for the sphincter weakness. It follows that it must be regarded as an appliance to be implanted in the body within the meaning of heading 9021 of the CN.

As regards, lastly, the subheading of heading 9021 of the CN under which the polydimethylsiloxane is to be classified, the Court observes that it follows from General Rule No 6 for the interpretation of the CN that the classification of goods in the subheadings of a heading is to be determined according to the terms of those subheadings and any related subheading notes. Consequently, since the product at issue in the main proceedings is an appliance to be implanted in the body which does not come within any of the other subheadings of heading 9021 of the CN, it must therefore be classified under subheading 9021 90 90 of the CN as 'other appliances'.

It follows that a product such as the polydimethylsiloxane, made up of sterile flakes, specially developed and intended only to be implanted in the body for the treatment of a condition and which is packaged at the time of its presentation to customs in 1 kg bags, is to be regarded as an appliance to be implanted in the body which must be classified under heading 9021 of the CN. Since the purpose of such a product is not to replace an organ but to enable a defective muscle to create connective tissues, it must be classified under subheading 9021 90 90 of the CN.

Judgment of 13 September 2018, Vision Research Europe (C-372/17, [EU:C:2018:708](#))

(Reference for a preliminary ruling – Common Customs Tariff – Tariff headings – Classification of goods – Volatile-memory camera, meaning that recorded images are erased when the camera is switched off or when new images are captured – Combined Nomenclature – Subheadings 8525 80 19 and 8525 80 30 – Explanatory Notes – Interpretation – Implementing Regulation (EU) No 113/2014 – Interpretation – Validity)

In May 2009, Vision Research submitted an application to the Inspector of the Tax and Customs Administration for a BTI for the 'Phantom V7.3' camera. It stated in its

application that the camera should be classified under CN subheading 8525 80 30,²⁰ as a digital camera.

By the BTI, the Inspector nevertheless classified the camera in question under CN subheading 8525 80 19 as an 'other television camera'. In that regard, the Inspector based his decision on General Rules 1 and 6 for the interpretation of the CN, on Implementing Regulation No 113/2014, which he regarded as applicable by analogy to the camera, and on the wording of CN headings 8525, 8525 80 and 8525 80 19 of the CN. He took the view that the fact that there was an option of connecting the camera to an external memory was irrelevant to the classification given, because the BTI had been requested for a camera without that optional memory.

Vision Research lodged a complaint against the BTI with the Inspector, who rejected it as unfounded. The applicant then brought an action before the referring court against the Inspector's decision, seeking a classification of the camera in question under CN subheading 8525 80 30.

In those circumstances, the referring court therefore decided to refer to the Court the question of whether CN subheading 8525 80 30 must be interpreted as covering a camera, such as that in question in the main proceedings, which is capable of capturing a large number of photographic images per second and of storing them in its volatile internal memory – images that are deleted from that memory when the camera is switched off – and, if so, whether Implementing Regulation No 113/2014, in so far as potentially applicable by analogy to that camera, is valid.

The Court states that, in order to answer that question, it is appropriate to interpret the relevant CN headings and subheadings in order to be able to determine the CN classification of the camera in question.

In the context of that interpretation, the Court states, *inter alia*, that the decisive feature that distinguishes digital cameras under CN subheading 8525 80 30 from television cameras under CN subheading 8525 80 19 is the former's capability of recording still images onto an internal memory or a storage device.

In that context, the Court concludes that the camera at issue in the main proceedings must be classified under CN subheading 8525 80 30.

²⁰ CN in Annex I to Regulation No 2658/87, in the version resulting from Implementing Regulation No 1001/2013.

2. Classification criteria

2.1. Objective characteristics and properties of the product

Judgment of 8 November 1990 (Full Court), *Gmurzynska-Bscher* (C-231/89, [EU:C:1990:386](#))

(Preliminary rulings – Jurisdiction of the Court – Reference by national legislation to provisions of Community law – Common Customs Tariff – Headings 8306, 9701 and 9703 – Classification of a work of art)

In this judgment, the Court is asked, in essence, whether an object of art consisting of a steel plate with a fused coating of enamel-glaze colours constitutes a ‘painting ... executed entirely by hand’ or a ‘similar decorative plaque’ under heading 9701 of the CCT²¹ or an ‘original sculpture and statuary’ within the meaning of heading 9703, or whether it should be classified according to its material composition under the description ‘ornament of base metal’.

That question arose in proceedings on the application of German tax law in relation to turnover tax on the import into Germany of a work of art from the Netherlands. Before importing that work, the applicant requested the German customs authorities to issue a binding customs tariff ruling for the purposes of applying German revenue law in relation to turnover tax on importation. For the purpose of granting exemptions or reductions in such cases, German law referred to the Nomenclature of the CCT. The latter provided for the application of a reduced rate of tax for works of art falling under Headings 9701 and 9703 of the CCT.

Before addressing the questions referred for a preliminary ruling on the interpretation of the CCT, the Court observes that the interpretation which it is asked to give of the provisions of the CCT at issue is intended to enable the national court to give judgment on the application, not of the CCT, but of German law on turnover tax, which refers to the Nomenclature of the CCT. In those circumstances the preliminary question arises as to whether the procedure provided for in Article 177 of the EEC Treaty is applicable, and thus, whether the Court has jurisdiction to give a ruling on the questions referred.

In that regard, the Court clarifies that, in the division of functions in the administration of justice between national courts and the Court, provided for by Article 177 of the EEC Treaty, the Court gives preliminary rulings without, in principle, having to examine the circumstances in which the national courts have been led to refer questions and propose to apply the provision of EU law which they have asked the Court to interpret.

The matter would be different only if it were apparent either that the procedure provided for in Article 177 had been diverted from its true purpose and sought in fact to

²¹ TDC in Annex I to Regulation No 2658/87.

lead the Court to give a ruling without there being any genuine dispute, or that the provision of EU law referred to the Court for interpretation was incapable of applying.

That is not the case where the Court is asked to interpret a provision of EU law which the national court must apply, irrespective of the scope assigned to it by EU law, because the national legislation refers to it by means of a reference.

In the light of those considerations, the Court concludes that it has jurisdiction to give a preliminary ruling on the questions concerning the interpretation of the CCT.

In order to answer the referring court's questions, the Court notes at the outset that the object of art at issue cannot be regarded as being for decoration, which, according to the Explanatory Notes, constitutes the essential feature of articles classified under the heading 'other ornaments, of base metal' of Heading 8306 of the CCT.

The Court points out that that interpretation is consistent, moreover, with Note 4 to Chapter 97 of the CCT, according to which, if there is doubt as to the classification of goods, preference should be given to classifying them under one of the headings comprised in the chapter covering works of art, collectors' pieces and antiques.

In the Court's view, that is particularly important in view of the fact that, according to the case-law of the Court, the criterion for distinguishing between the headings 9701 'paintings, drawings and pastels, executed entirely by hand' and 'similar decorative plaques' and 9703 'original sculptures and statuary, in any material' of the CCT lies in the fact that as regards productions of statuary and sculptural art, the essential artistic nature consists in the shaping of a three-dimensional form of the work, whereas for paintings, collages and similar decorative plaques, it consists in shaping the surface of the work, so that a work of art consisting of a plate of steel with no artistic value of its own, with a fused coating of enamel-glaze colours, applied by the artist by hand, must be regarded as a 'painting executed entirely by hand' within the meaning of Heading 9701.

On the basis of those criteria, the Court concludes that a work of art such as that in the present case must be classified under heading 9701 of the CCT.

Judgment of 19 February 2009, Kamino International Logistics (C-376/07, [EU:C:2009:105](#))

(Common Customs Tariff – Combined Nomenclature – Tariff classification – Monitors of the liquid crystal display (LCD) type with SUB-D, DVI-D, USB, S-video and composite-video sockets – Heading 8471 – Heading 8528 – Regulation (EC) No 754/2004)

In 2004, Kamino declared, for release into free circulation, a consignment of colour monitors of the LCD type, which were classified under subheading 8528 21 90. The monitors have D-Sub, DVI-D, USB, S-video and composite-video sockets. As a result the monitor can display pictures from an automatic data-processing machine and pictures from other apparatus.

Taking the view that those monitors should be classified under subheading 8471 60 90, Kamino appealed against the payment notice. However, that appeal was dismissed by decision of the Customs Inspector.

In the appeal lodged before it against that decision, the Court of Appeal (Netherlands), having examined the characteristics and properties of the colour monitors in question, found that those monitors satisfy the requirements in Note 5(B) to Chapter 84 of the CN. The Secretary of State for Finance (Netherlands) appealed against that judgment before the referring court, claiming that the Court of Appeal did not take into account the other possibilities for use of those monitors as part of an automatic data-processing system.

In those circumstances, the national court asked the Court whether monitors such as those at issue before the referring court, capable of reproducing signals coming either from an automatic data-processing machine or from other sources, may be regarded as being units of 'a kind ... principally used in an automatic data-processing system' within the meaning of Note 5(B) to Chapter 84 of the CN,²² and classified under subheading 8471 60 90 thereof.

In that regard, the Court notes, first, that it is apparent from Note 5(E) to Chapter 84 of the CN that only machines incorporating an automatic data-processing machine or working in conjunction with such a machine, whose function is not data processing, perform 'a specific function other than data processing'. Those monitors, apart from the function of reproduction of images coming from apparatus such as a games console, a video recorder/player or a DVD player, which does not constitute data processing, also display signals coming from automatic data-processing machines.

Secondly, according to the Court, if, for the purposes of their classification under subheading 8471 60 90, those monitors are not of a kind solely used in an automatic data-processing system since they are connectable to the central processing unit, receive data in a form which can be used by the system and are capable of reproducing signals from other sources, an interpretation of Explanatory Note 5(B)(a), from Chapter 84 of the CN, to the effect that the mere possibility for the monitors in question to reproduce images from sources other than an automatic data-processing machine precludes them from being classified under heading 8471, would amount to removal of the term 'principally' in the text of that note.

Lastly, if the Explanatory Notes relating to heading 8471 of the HS had to be interpreted as precluding the classification in subheading 8471 60 90 of all monitors capable of displaying signals coming both from an automatic data-processing machine and from other sources, they would have the effect of amending and, in particular, of restricting the scope of Note 5(B)(a) to Chapter 84 of the CN. Therefore, even if the Explanatory notes to the CN relating to subheading 8471 60 90 and the Explanatory Notes relating to heading 8471 of the HS were to be interpreted in that manner, those Notes should be

²² CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1789/2003.

considered inapplicable since that interpretation does not accord with Note 5(B)(a) to Chapter 84 of the CN.

It follows that monitors of the LCD type, with SUB-D, DVI-D, USB, S-video and composite-video sockets are not excluded from classification in subheading 8471 60 90, as units of the kind used 'principally' in an automatic data-processing system within the meaning of Note 5(B)(a) to Chapter 84 of the CN on the sole ground that they are capable of displaying signals coming both from an automatic data-processing machine and from other sources.

Furthermore, the national court asked the Court to define the criteria which make it possible to determine whether monitors such as those at issue in the main proceedings are units of a kind used principally in an automatic data-processing system.

According to the Court, in order to determine whether LCD monitors equipped with D-Sub, DVI-D, USB, S-video and video composite monitors are units of a kind used principally in an automatic data-processing system, the national authorities, including the courts, must refer to the indications given in the Explanatory Notes relating to heading 8471 of the HS, in particular the points relating to display units of automatic data-processing machines.

In that regard, the Court finds that the number and type of sockets with which such monitors are equipped cannot, alone, constitute decisive criteria for the tariff classification and, for that purpose, an assessment must be made, in relation also to other criteria and in the light of the characteristics and objective properties of those monitors, both as to the degree to which they are capable of performing a number of functions and as to the standard of performance which they achieve when performing those functions, having recourse to the Explanatory Notes relating to heading 8471 of the HS.

Accordingly, since those monitors cannot be excluded from the concept of units of an automatic data-processing machine within the meaning of Notes 5(B)(a) and 5(C) to Chapter 84 of the CN, it is necessary to identify the criteria which may be relied on to decide whether those monitors are of the kind used principally in an automatic data-processing system or whether their characteristics and technical properties place them among television screens or video monitors.

Consequently, the Court concludes that in order to determine whether monitors such as those at issue in the main proceedings are units of a kind used principally in an automatic data-processing system, the national authorities, including the courts, must refer to the indications given in the Explanatory Notes relating to heading 8471 of the HS.

Judgment of 7 May 2009, Siebrand (C-150/08, [EU:C:2009:294](#))

(Combined Nomenclature – Tariff headings 2206 and 2208 – Fermented beverage containing distilled alcohol – Beverage produced from fruit or from a natural product – Addition of substances – Effects – Loss of the taste, smell and appearance of the original beverage)

In the case giving rise to this judgment, the national court asked the Court, in essence, whether fermented alcohol-based beverages corresponding originally to heading 2206 of the CN,²³ to which a certain proportion of distilled alcohol, water, sugar syrup, aromas, colourings and, in some cases, a cream base have been added, resulting in the loss of the taste, smell and/or appearance of a beverage produced from a particular fruit or natural product, come under heading 2206 of the CN as fermented beverages or under heading 2208 of the CN as distillates.

In that regard, the Court states that, according to the HS Explanatory Note relating to heading 2206 of the CN, the addition of alcohol to beverages coming under that heading does not preclude such beverages from retaining that classification provided that they retain the character of products coming under the heading, namely that of fermented beverages. However, since the beverages at issue in the main proceedings have lost the taste, smell and appearance of a beverage produced from a particular fruit or natural product, that is to say a fermented beverage, such products cannot be classified under heading 2206 of the CN.

As regards the classification of such products, the Court then notes that Rule 2(b) provides that any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. That is the case in regard to products such as those at issue in the main proceedings, which contain fermented alcohol and also distilled alcohol. Those substances come under different tariff headings.

General Rule 3(a) states that, when by application of rule 2(b), 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. Where products such as those at issue in the main proceedings are composed of different materials and neither of the two headings mentioned above is more specific than the other, the sole provision to which recourse may be had for the purpose of classifying the goods at issue in the main proceedings is General Rule 3(b). Under General Rule 3(b), in carrying out the tariff classification of goods, it is necessary to identify, from among the materials of which they are composed, the one which gives them their essential character.

Consequently, the Court clarifies that it is necessary to identify, from among the materials of which products such as those at issue in the main proceedings are

²³ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 2587/91.

composed, the one which gives them their essential character. In that regard, a number of objective characteristics and properties may be taken into account in determining their essential character, including, first, the essential objective characteristics and properties, including, first, the distilled alcohol content, secondly, the organoleptic characteristics and, finally, the its intended use as a spirit drink.

On the basis of those criteria, the Court concludes that the essential characteristics of beverages such as those at issue in the main proceedings correspond overall to those of a product coming under heading 2208 of the CN.

In those circumstances, the Court holds that beverages such as those in the present case do not come under heading 2206 of the CN, but under heading 2208 thereof.

Judgment of 28 October 2010, X (C-423/09, [EU:C:2010:650](#))

(Common Customs Tariff – Tariff classification – Combined Nomenclature – Dried vegetables (garlic bulbs) from which not all moisture has been removed)

X, acting as a customs forwarding agent, submitted 15 declarations for the release into free circulation of consignments of garlic bulbs originating in China and stored in chilled containers at the time of importation. Each of the import declarations referred to subheading 0712 90 90 of the CN and described the goods as dried garlic.

After the goods had been released by the customs authorities, the container housing the garlic was transferred to a chilled room belonging to a storage undertaking where it was kept at a temperature of -3 °C. Taking the view that the imported garlic ought to have been classified as chilled garlic under subheading 0703 20 00 of the CN, the customs inspector issued the requests for payment of the customs duty at issue.

X lodged an unsuccessful objection. It then brought an action which was declared unfounded. X lodged an appeal against that decision, following which a judgment was delivered, finding that the inspector had failed to establish any ground for departing from the CN tariff heading which had been indicated, namely heading 0712.

In those circumstances, the referring court, hearing an appeal on a point of law against that judgment, asked the Court to clarify the criteria to be applied for determining whether garlic which has undergone a drying process comes under tariff subheading 0703 20 00 of the CN ²⁴ or under tariff subheading 0712 90 90 of the CN.

Referring to the HS Explanatory Note to heading 0712, the Court concludes that, for classification under that heading, the vegetables must have undergone an intensive drying process in accordance with a specific treatment as a result of which all, or almost

²⁴ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1810/2004.

all, of the moisture in the product is removed. Thus, following that process, the amount of residual moisture in the vegetables must be insignificant.

By analogy with the judgment of 15 June 1976, *Riemer* (120/75, [EU:C:1976:90](#)), the Court finds that, in order to classify garlic bulbs under heading 0712, the process of drying the garlic must give rise to substantial and irreversible changes, with the result that the product is no longer in the natural state.

Therefore, the removal of water must substantially change the properties and objective characteristics of the product in such a way that that change results in classification under a tariff heading other than heading 0703, which covers fresh or chilled vegetables.

Moreover, the fact that the partially dried garlic was imported in a chilled state indicates that the drying did not remove all, or almost all, of the moisture in the product, since dehydration is a method of preservation which obviates the need to preserve the dehydrated products at temperatures below 0 °C.

It is true that preservation over a long period may constitute an additional indicator as to the degree to which moisture has been removed from the garlic for its classification under heading 0712 as a dried vegetable, in contrast to fresh or chilled garlic. However, the Court finds that headings 0703 and 0712 of the CN do not include any reference to preservation as a classification criterion, from which it must be concluded that the length of time for which a product is preserved has itself no effect on its classification for customs purposes.

It follows that garlic which has undergone an intensive drying process in accordance with a specific treatment as a result of which all, or almost all, of the moisture in the product is removed comes under tariff subheading 0712 90 90 of the CN, but that partially dried garlic which retains the properties and characteristics of fresh garlic comes under tariff subheading 0703 20 00 of the CN.

Judgment of 26 April 2017, Stryker EMEA Supply Chain Services (C-51/16, [EU:C:2017:298](#))

(Reference for a preliminary ruling – Common Customs Tariff – Tariff headings – Classification of goods – Implant screws intended to be inserted in the human body for the treatment of fractures or the stabilisation of prostheses – Combined Nomenclature – Heading 9021 – Implementing regulation (EU) No 1212/2014 – Validity)

The Netherlands customs authorities had issued to Stryker three BTIs for three types of implant screws intended for insertion into the human body for the treatment of fractures or the stabilisation of prostheses. Those screws have common characteristics and specific characteristics. In view of those characteristics, on the basis of the BTIs

issued by the customs authorities, the latter classified those three types of medical implant screw under CN heading 9021 90 90 .²⁵

Following the publication of Implementing Regulation No 1212/2014, the customs authorities repealed those tariff informations. The repeal was justified on the ground that, for the purposes of that regulation, a ‘screw intended for use in surgery, due to its objective characteristics and properties, should be classified as a part of general use’.

Following an unsuccessful complaint lodged with the customs authorities, Stryker brought an action against the repeal decision before the referring court.

In support of its action, Stryker claimed, in essence, that, given the objective characteristics and properties of the implant screws, including their inherent intended purpose, there is no question of their being ‘regular’ screws as referred to in CN heading 7318. In addition, according to Stryker, that Implementing Regulation No 1212/2014 is invalid because it classified the medical implant screws at issue purely on the basis of their external characteristics, disregarding the inherent intended purpose of those screws, which is contrary to the case-law of the Court.

The referring court, taking the view that, due to their objective properties and characteristics, including their inherent intended purpose, the implant screws at issue in the main proceedings are eligible for classification under CN heading 9021, asked the Court whether medical implant screws such as those at issue in the main proceedings which are solely intended to be inserted in the human body for the treatment of bone fractures or the stabilisation of prostheses fall under CN heading 9021.

On the basis of an analysis of the wording of the HS Explanatory Note to Chapter 90 and heading 9021 and the Explanatory Note to subheading 9021 39 90 of the CN, the Court explains, in the first place, that goods which are characterised by the finish of their manufacture and their high degree of precision and are capable of being inserted in the body for the purpose of holding affected body parts or setting fractures, characteristics which, consequently, distinguish them from ordinary goods, must be classified under CN heading 9021.

In the second place, the Court refers to its case-law, according to which the criteria for distinguishing simple or ordinary products from those serving a medical purpose include the method of manufacture of the product concerned and the specificity of its purpose.

In the light of that case-law, the Court analyses the method of manufacture and the purpose of the product, concluding that goods such as those at issue in the main proceedings are distinguished from ordinary goods by the finish of their manufacture and their high degree of precision, bearing in mind their method of manufacture and the specificity of their purpose. It follows from the objective characteristics and

²⁵ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1101/2014.

properties of medical implant screws such as those at issue in the main proceedings that such goods are capable of falling under CN heading 9021.

Consequently, the Court holds that medical implant screws such as those at issue in the main proceedings come under heading 9021 of the CN, as those goods have characteristics which distinguish them from ordinary goods by the finish of their manufacture and their high degree of precision, as well as by their method of manufacture and the specificity of their purpose.

Judgment of 13 March 2019, B.S. (Malt in the composition of beer) (C-195/18, [EU:C:2019:197](#))

(Reference for a preliminary ruling – Taxation – Excise duties on alcohol and alcoholic beverages – Directive 92/83/EEC – Article 2 – Definition of ‘beer’ – Beverage produced from wort obtained from a mixture containing more glucose than malt – Combined Nomenclature – Heading 2203 (beer made from malt) or 2206 (other fermented beverages))

B. S. produced an alcoholic beverage which he stated to be a mixture of beer and non-alcoholic beverages. The main ingredient in the wort from which the intermediate product used to manufacture that beverage was glucose syrup, not malt.

For that production, he sent the competent customs office each month an excise duty declaration describing the beverage manufactured by him as a ‘mixture of beer’ within CN heading 2203 and non-alcoholic beverages and applying the rate of excise duty for beer.

The head of the customs office challenged those declarations, taking the view that the should be classified under CN heading 2206 as a beverage based on fermented beverages other than beer and on non-alcoholic beverages, and should therefore be subject to a higher rate of excise duty. The head of the customs office based on the fact that the main ingredient used for making the intermediate product was glucose syrup, not malt, and that the product could not therefore be classified under CN heading 2203, which refers to ‘beer made from malt’.

Those decisions of the head of the customs office were confirmed by a number of decisions of the director of the tax chamber. The appeals brought by B. S. against those decisions were dismissed by the Polish administrative courts. In those proceedings, the applicant was prosecuted for misleading the Polish tax authorities on the nature of the beverage he was producing, leading to a reduction of the excise duty for which he was liable. B.S. then appealed to the referring court against that decision.

In those circumstances, the referring court asked the Court whether Article 2 of Directive 92/83²⁶ must be interpreted as meaning that an intermediate product intended to be

²⁶ Article 2 of Directive 92/83 includes under the description of ‘beer’ not only any product falling within CN heading 2203 but also any product containing a mixture of beer with non-alcoholic drinks falling within CN heading 2206, in either case with an actual alcoholic strength by volume exceeding 0.5% vol.

mixed with non-alcoholic beverages, obtained from a wort containing less malt ingredients than non-malt ingredients and to which glucose syrup is added before the fermentation process, may be classified as 'beer made from malt' within CN heading 2203.²⁷

In finding that the final product at issue is a mixture which cannot be classified under heading 2203 of the CN, the Court finds that that product can be classified as 'beer' and be covered by Article 2 only if the intermediate alcoholic product, intended to be mixed with non-alcoholic beverages, in order to obtain the end product, can itself be classified as 'beer made from malt' within the meaning of heading 2203 of the CN; it does not appear to be disputed that the end product has an alcoholic content exceeding 0.5% vol.

First, in order to determine whether an alcoholic product obtained by fermentation of a wort composed of, inter alia, glucose syrup and a small proportion of malt may be classified as 'beer made from malt' within the meaning of CN heading 2203, the Court observes that the CN does not lay down a minimum percentage of malted ingredients in the mash from which the beer is to be produced. CN heading 2203 does indeed refer to 'beer made from malt', which presumes that a beer within that heading cannot be produced without malt being used as an ingredient. However, it cannot be deduced simply from the words 'beer made from malt' that a minimum percentage of malt is required in the mash.

Secondly, as regards the glucose syrup added to the mash, the Court observes that the presence of that syrup is not prohibited by the CN and that, moreover, the Explanatory Note to the HS relating to that heading expressly recognises the possibility of flavourings being added to the wort during fermentation.

It follows that a product manufactured with a small proportion of malt and the addition of glucose before the alcoholic fermentation is not precluded on those grounds alone from being 'beer made from malt' within CN heading 2203. Nevertheless, such a product can come under that heading only on condition that its objective characteristics and properties correspond to those of beer. In this regard, account must be taken more particularly of the organoleptic characteristics of the product in question.

In that context, according to the Court, if the organoleptic characteristics of the intermediate alcoholic product do not correspond to those of beer, which would be the case in particular if that intermediate product did not visually resemble beer or did not have its specific taste, that product could not be classified as 'beer made from malt' within CN heading 2203.

²⁷ CN in Annex I to Regulation No 2658/87, in the version resulting from Regulation No 2587/91.

2.2. Intended use of the product

Judgment of 14 April 2011, *British Sky Broadcasting Group and Pace (C-288/09 and C-289/09, EU:C:2011:248)*

(Common Customs Tariff – Tariff classification – Combined Nomenclature – Digital satellite television receivers and decoders with a recording function – Community Customs Code – Article 12(5)(a)(i) and (6) – Period of validity of a binding tariff information)

The references for a preliminary ruling giving rise to this judgment concern, inter alia, CN subheading 8521 90 00 and 8528 71 13.²⁸ In its first questions in the cases at hand, the referring court asked, in particular, whether the CN must be interpreted as meaning that set-top boxes with a communication function and a hard disk drive are to be classified under subheading 8528 71 13, despite the Explanatory Notes to the CN published on 7 May 2008, according to which those set-top boxes come under subheading 8521 90 00.

First, the Court observes that the Explanatory Notes to the CN state that set-top boxes which incorporate a device performing a recording or reproducing function (for example, a hard disk) are excluded from subheading 8528 71 13 and are to be classified under subheading 8521 90 00. The Explanatory Notes to the HS in force at the time of the facts of the dispute in the main proceedings stated, however, that reception apparatus for television, whether or not incorporating recording apparatus, are excluded from heading 8521 and should be classified under heading 8528.

In that context, the Court explains that it is apparent from the definitions in subheadings 8521 90 00 and 8528 71 13 that goods falling within those two subheadings may both receive television signals and record them. What differentiates the two subheadings is the main or ancillary character of those functions. Subheading 8521 90 00 covers recording apparatus with an ancillary function of television reception whereas subheading 8528 71 13 covers television apparatus with an ancillary recording function.

Pursuant to note 3 of Section XVI of the CN, which contains the subheadings at issue, 'composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function'. The box at issue in the main proceedings clearly has both the function of recording and of receiving television signals. It is therefore a machine adapted for the purpose of performing two or more complementary or, alternative functions, within the meaning of note 3 of Section XVI of the CN.

²⁸ CN in Annex I to Regulation No 2658/87, as amended by Regulations No 2587/91 and No 1214/2007.

The Court therefore finds that it must be ascertained which of the two functions of recording and reception of television signals is the principal one and which is ancillary.

In that regard, the Court recalls that the intended use of a product may constitute an objective criterion for the classification of the product, if that intended use is inherent to the product, and that inherent character is capable of being assessed on the basis of the product's objective characteristics and properties. In particular, it is necessary to take into account what consumers would consider to be ancillary or principal.

On the basis of those considerations, the Court concludes that the box is principally intended to be used to receive television signals and that function is inherent to that apparatus. It therefore constitutes its principal function and the recording function is only secondary.

Therefore, boxes such as those in the main proceedings fall under subheading 8528 71 13 despite the Explanatory Notes to the CN.

Consequently, since the Explanatory Notes to the CN contradict the CN on that point, they must be disregarded.

Judgment of 22 November 2012, Digitalnet and Others (C-320/11, C-330/11, C-382/11 and C-383/11, [EU:C:2012:745](#))

(Common Customs Tariff – Tariff classification – Combined Nomenclature – Apparatus capable of receiving television signals and incorporating a modem for gaining access to the internet and having a function of interactive information exchange)

Three companies whose main activity is the supply of access to digital television and the internet imported identical set-top boxes with a communication function ('set-top boxes') into Bulgaria under various commercial names. The set-top boxes were declared as coming under CN tariff subheading 8528 71 13, with exemption from customs duties.

The customs authorities carried out an inspection and took the view that the set-top boxes were not equipped with an integrated modem and that they should have been classified under subheading 8528 71 19 of the CN. Accordingly, they adopted administrative acts making the three companies liable for payment of customs duties.

Before the referring court, the companies concerned challenged the validity of those administrative acts by bringing four separate proceedings, two of which concern the same company.

The referring court then asked the Court which goods may be classified under subheading 8528 71 13 of the CN ²⁹ and what is covered by the concepts of 'modem' and 'access to the internet', within the meaning of that subheading and within the meaning

²⁹ CN in Annex I to Regulation No 2658/87, as amended by Regulations No 1214/2007, No 1031/2008 and No 948/2009.

of the Explanatory Notes of 7 May 2008. It is also uncertain whether the type of modem used is relevant for the purpose of tariff classification or whether it suffices that the modem makes internet access possible.

As a preliminary point, the Court notes that, in order to be classified under CN subheading 8528 71 13, apparatus must be able, first, to receive television signals, and, secondly, to incorporate a modem for gaining access to the internet and having a function of interactive information exchange. Consequently, any apparatus which does not have one or other of those characteristics must be classified under CN subheading 8528 71 19, in accordance with General Rule 3(c), for the interpretation of the CN.

The intended use of a product may constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties.

Given that the CN does not define the concept of 'modem' or that of 'access to the internet', the Court considers the Explanatory Notes of 7 May 2008, in force at the time of the imports at issue in the main proceedings, which provide clarification as to the types of apparatus which may be regarded as modems, within the meaning of subheading 8528 71 13, and as to the characteristics which those apparatus must have in order to be regarded as allowing access to the internet and the exchange of interactive information.

Referring to the definition of modem, within the meaning of subheading 8528 71 13, contained in those explanatory notes in the light of their usual meaning in everyday language and the definition of the WTO Panel report, the Court finds that, by excluding from the concept of a 'modem' devices which fulfil similar functions to a modem because of technical considerations, whereas only the objective of the capacity for gaining access to the internet is relevant for the purposes of classification, the Explanatory Notes of 7 May 2008 regarding subheading 8528 71 13 have restricted the meaning of that term. Those notes therefore contradict the CN on that point and must be disregarded.

Under those circumstances, the Court concludes that, for the purposes of the meaning of CN subheading 8528 71 13, a 'modem for gaining access to the internet' is a device which is capable of accessing the internet and of ensuring interactivity or an exchange of information in both directions. It is solely the capacity to gain access to the internet, and not the technique used to achieve this, that is relevant for the purposes of classification. Moreover, in order to be classified under CN subheading 8528 71 13, the apparatus must be capable of accessing the internet solely by means of the modem which is incorporated therein, without the intervention of any other apparatus or mechanism.

The court also sought to ascertain which of those two functions performed by that apparatus, namely the reception of television signals or the presence of a modem enabling access to the internet, may be regarded as being the principal function.

In that regard, the Court finds that, for the purposes of determining whether apparatus may be classified under CN subheading 8528 71 13, it is not necessary to examine whether the function of television reception is the principal function and whether the function of gaining access to the internet is subsidiary, or vice versa, since those two functions must be present at the same time in the apparatus and, in the absence of one or other of those functions, the apparatus will come, not under subheading 8528 71 13, but, in accordance with general rule 3(b) for the interpretation of the CN, under CN subheading 8528 71 19.

Furthermore, the referring court asks, in essence, whether Article 78(2) of the Customs Code must be interpreted as meaning that *ex post* inspection of goods and the subsequent change of their tariff classification may be made on the basis of written evidence without the customs authorities being required to physically check those goods.

Since it follows from that article that *ex post* inspections of the declarations may be carried out without the customs authorities being required to physically inspect the goods, the Court answers in the affirmative.

Judgment of 22 September 2016, *Kawasaki Motors Europe* (C-91/15, [EU:C:2016:716](#))

(Reference for a preliminary ruling – Assessment of validity – Regulation (EC) No 1051/2009 – Common Customs Tariff – Tariff classification – Combined Nomenclature – Heading 8701 – Tractors – Subheadings 8701 90 11 to 8701 90 39 – Agricultural tractors (excluding pedestrian-controlled tractors) and forestry tractors, wheeled, new – Light four-wheeled all terrain vehicles designed to be used as tractors)

In that case, the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, Netherlands) asked the Court about the validity of Regulation No 1051/2009, classifying all terrain vehicles according to their engine power.

In 2010, Kawasaki Motors Europe (KME) requested that three all-terrain vehicles be classified, respectively, as agricultural and forestry tractors, on the basis of their engine power, under subheadings 8701 90 11, 8701 90 20 and 8701 90 25 of the CN. However, the customs authorities classified those vehicles under subheading 8701 90 90. After an unsuccessful objection, KME brought an action against the decisions on which those tariff informations were based; that action was pending at the appeal stage before the referring court. In its decision, it referred to an earlier case dating back to 1992, in which similar vehicles had first been incorrectly classified, before being properly classified as agricultural tractors.

By judgment of 27 April 2006, *Kawasaki Motors Europe* (C-15/05, [EU:C:2006:259](#)), the Court rules that Regulation No 2518/98 is invalid. Following that judgment, the Inspector issued new BTIs classifying the vehicles concerned under CN subheadings 8701 90 11 or

8701 90 20, depending on their respective engine power. However, those informations had become invalid as a result of the entry into force of Regulation No 1051/2009.

In that context, the referring court, taking the view that Regulation No 1051/2009 is applicable by analogy to the vehicles at issue in the main proceedings, questions the validity of that regulation in that it follows from it that those vehicles must be classified under subheading 8701 90 90 of the CN, on the ground that they do not have a power take-off shaft, hydraulic lift or winch.

New all terrain four-wheeled vehicles with one seat only, fitted with Ackerman steering controlled by a handlebar, equipped with a towing hitch and the technical characteristics of which enable them to push twice their own weight or more, must be classified in subheading 8701 90 of the CN, classification of those vehicles in eight-digit subheadings being determined by their engine power. In that regard, only eight-digit CN subheadings 8701 90 11 to 8701 90 39 of the CN are relevant, relating to new agricultural tractors and forestry tractors.

In accordance with General Rule 1 for the interpretation of the CN, for legal purposes, the classification is to be determined according to the terms of the headings and any relative section or chapter notes, in addition to other general rules, provided such headings or notes do not otherwise require. General Rule 6 provides that the classification of goods in the subheadings of a heading is to be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, according to the other general rules. Furthermore, it follows from General Rule 3(a), that, where goods are prima facie classifiable under two headings, the most specific description is to be preferred to headings providing a more general description. The intended use of a product may also constitute an objective criterion for classification if it is inherent in the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties.

In that context, it is irrelevant that tractors apparently intended for agriculture or forestry may have a recreational use. If the objective characteristic of a product can be established at the time of customs clearance, the fact that it may also be possible to envisage another use for that product will not preclude its classification for legal purposes. For its classification for customs purposes, that product does not have to be solely or exclusively intended for use corresponding to that objective characteristic. It suffices if that is the main use for which it is intended.

In accordance with that case-law, the Court concludes that the agricultural or forestry use of tractors may derive from their design and the presence of devices or equipment which make them suitable for use in the context of agricultural or horticultural holdings, without there being any need to link a priori the presence of certain devices or equipment exhaustively listed to that intended use. The commercial vehicles referred to in point 2 of the Annex to Regulation No 1051/2009 must therefore be regarded as 'tractors' within the meaning of subheading 8701 90, which concerns only commercial

vehicles. The main distinction is based on the intended use – agricultural, forestry or other.

Judgment of 26 March 2020, Pfizer Consumer Healthcare (C-182/19, [EU:C:2020:243](#))

(Reference for a preliminary ruling – Common Customs Tariff – Combined Nomenclature – Tariff classification – Heading 3005 and heading 3824 – Self-heating patches and belts to relieve pain – Implementing Regulation (EU) 2016/1140 – Invalidity)

Pfizer imported single-use products falling under the registered trade mark ThermaCare. The products are presented and marketed for the purposes of heat therapy, to deliver benefits such as analgesia, reduced stiffness and acceleration of healing to damaged tissue.

On account of the different classification of those products by various countries, the French customs authorities requested the Commission in 2015 to consider the classification of ThermaCare products, which referred the matter to the EU Customs Code Committee which led to the adoption by the Commission of Implementing Regulation 2016/1140 which classified ThermaCare products under heading 3824 of the CN.³⁰

In those circumstances, the referring court decided to ask the Court about the validity of Implementing Regulation 2016/1140.

At the outset, the Court notes that the goods, which are imported by Pfizer are identical or at least sufficiently similar to the two products covered by Implementing Regulation 2016/1140 for that regulation to be applicable.

In that regard, the Court recalls that the European Parliament and the Council of the European Union have conferred upon the Commission, acting in cooperation with the customs experts of the Member States, broad discretion to define the subject matter of tariff headings falling to be considered for the classification of particular goods. However, the Commission's power to adopt the measures referred to in Article 57(4) of the Customs Code does not authorise it to alter the subject matter and the scope of the tariff headings.

In the present case, as is clear from the wording of column (1) of the table set out in the Annex to Implementing Regulation 2016/1140, the products covered by that implementing regulation are presented in the form of self-heating patches or belts to relieve pain. Those patches are made of adhesive material intended for attaching to the skin, while the belts are made of non-adhesive material, which is attached by means of a self-adhesive strip. Both products are made of a soft synthetic material conforming to the body's shape which contains a number of discs filled with iron powder, charcoal, salt

³⁰ CN in Annex I to Regulation No 952/2013.

and water which, on exposure to the air, generate heat as a result of an exothermic reaction.

According to the terms of heading 3824 of the CN, products falling within that heading are products 'not elsewhere specified or included'. Thus, the Court considers it to be necessary to examine whether, by classifying the products covered by Implementing Regulation 2016/1140 under subheading 3824 90 96 of the CN, and not under heading 3005 thereof, the Commission has altered the subject matter or the scope of those CN headings.

First, as regards the criterion relating to the forms or packings for retail sale in heading 3005 of the CN, the Court notes that it is true that no details are provided in column (1) of the table set out in the Annex to Implementing Regulation 2016/1140 regarding the forms or packings for retail sale of the products covered by that implementing regulation. However, it is not contested that those products are put up in forms or packings for retail sale, which is also confirmed by the legislative history of that implementing regulation.

Secondly, the Court notes that the concept of 'medical purposes', within the meaning of heading 3005 of the CN, is not defined either in the CN or in the Explanatory Notes thereto. According to settled case-law, the meaning and scope of terms for which EU law provides no definition must be determined according to their meaning in everyday language. In addition, in order to establish whether a product is intended for medical use, it is appropriate to take account of all the relevant factors in the case. In this case, the Court considers that goods specifically designed to prevent, detect or treat illnesses or injuries relate to 'medical purposes' within the meaning of heading 3005 of the CN. Furthermore, the fact that those products are classified as an 'active medical device' under Directive 93/42 constitutes further evidence in that regard.

Thirdly, the Court examines whether the products can be considered as 'similar articles' to 'wadding, gauze [or] bandages' within the meaning of heading 3005 of the CN. According to the Court, the fact that those goods should not be used in some cases does not call into question the finding that they are intended to treat sores or wounds. Consequently, the products covered by Implementing Regulation 2016/1140 fall within heading 3005 of the CN and thus, do not fall within heading 3824.

It follows that, by classifying those products in subheading 3824 90 96 of the CN, and not heading 3005, the Commission has altered the subject matter of those tariff headings and has exceeded the powers conferred on it by Article 57(4) of the Customs Code.

Consequently, Implementing Regulation 2016/1140 is invalid.

2.3. Product use

Judgment of 19 October 2000, Peacock (C-339/98, [EU:C:2000:573](#))

(Common customs tariff – Tariff headings – Tariff classification of network cards – Classification in the Combined Nomenclature)

In this judgment, the Court answers a question referred for a preliminary ruling concerning the tariff classification of network cards designed to be installed in personal computers to enable them to exchange information or data with other computers.

The referring court in this case asked, in essence, for clarification on the correct heading in the CN ³¹ for the classification of network cards. That question was raised in proceedings concerning a claim for repayment of the customs duties paid from July 1990 to May 1995 on imports into the European Union of network cards.

The cards in the main proceedings were placed in free circulation and declared under subheading 8473 30 of the CN until 1993, as ‘parts and accessories of the machines of heading No 8471’. From 1994, the products have been regarded as coming under subheading 8473 30 10 of the CN. Consequently, the network cards were subjected to a customs duty of 4% until 1994 and 3.8% in 1995.

First, the Court states that the General rules for the interpretation of the CN provides that the classification of goods is to be determined according to the terms of the headings and any section or chapter notes. Moreover, the characteristics and properties of the goods form the decisive criterion for the customs classification of goods.

Then the Court notes that Note 5(B) to Chapter 84 of the CN provides, inter alia, that heading No 8471 does not cover machines incorporating or working in conjunction with an automatic data-processing machine and performing a specific function. ‘Automatic data-processing machines and units thereof’ must be interpreted as not precluding the classification under that heading of network cards designed to be installed in automatic data processing machines.

Network cards are comparable with any other medium whereby an automatic information processing machine accepts or delivers data in the sense that they have no function which they would be capable of performing without the assistance of such a machine. Therefore, network cards cannot, in any event, be regarded as performing a ‘specific function’.

Finally, the Court adds that network cards are to be classified under heading 8471 of the CN as ‘units’ of automatic data processing machines, since they connectable to the central unit and specifically designed to form part of an automatic data-processing

³¹ CN in Annex I to Regulation No 2658/87, as amended by Regulations No 2886/89, No 2472/90, No 2587/91, No 2505/92, No 2551/93 and No 3115/94.

system. They do not meet the definition of 'parts' or 'accessories', since those words imply that the component part is essential to the functioning of a whole, which is not the case with network cards. The characteristics of network cards correspond more closely to the examples of 'units' in the Explanatory Notes to the WCO Harmonised System.

Consequently, the Court rules that Note 5(B) of Chapter 84 of the CN does not preclude network cards designed to be installed in automatic data-processing machines from being classified under heading 8471 of the CN. Between July 1990 and May 1995 those cards were therefore to be classified under heading No 8471 as units of machines of that type, since those cards satisfied the conditions relating to 'units' set out in the abovementioned note, in so far as they can be connected to the central unit and are specifically designed as parts of an automatic data-processing system.

Judgment of 20 June 2013, Agroferm (C-568/11, [EU:C:2013:407](#))

(Tariff classification – Combined Nomenclature – Sugar-based product consisting of 65% lysine sulphate and 35% impurities resulting from the manufacturing process – Regulation (EC) No 1719/2005 – Regulation (EC) No 1265/2001 – Production refund on certain products used in the chemical industry – Community aid wrongly paid – Repayment – Principle of the protection of legitimate expectations)

The Danish undertaking, Agroferm, manufactured lysine sulphate in a factory in Esbjerg (Denmark) until June 2006. Lysine compounds are manufactured from sugar, which is the basic product.

In May 2004, Agroferm applied to the Danish customs authorities for a prior approval for the grant of lysine sulphate production refunds. In that application, Agroferm stated that the product which it planned to manufacture was lysine sulphate, which, in its view, came under heading 2922 of the CN.³² Following a favourable response from those authorities to that application, Agroferm regularly received production refunds corresponding to the quantities of sugar which it used to manufacture lysine sulphate.

Having been consulted by the Danish customs authorities, the Customs Code Committee stated that it was appropriate to classify the preparation at issue in the main proceedings under chapter 23 of the CN and not under chapter 29 thereof.

By a decision of 10 August 2006, the Direktoratet for FødevareErhverv (the Danish Food Industry Agency, 'Direktoratet') informed Agroferm that it had now been established, after consulting the European Commission and the Customs Code Committee, that the products manufactured by Agroferm were not to be classified as lysine-based products for the purpose of heading 2922 of the CN, and that, therefore, Agroferm was not entitled to production refunds. Direktoratet then decided that Agroferm should repay an

³² CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1719/2005.

amount corresponding to the production refunds received between August 2004 and March 2006, an amount on which the parties to the main proceedings disagree.

Agroferm brought, before the Ministeriet for Fødevarer, Landbrug og Fiskeri (the Danish Ministry of Food, Agriculture and Fisheries, 'Ministeriet') an action directed against the decisions taken by Direktoratet. In its decision, the Ministeriet followed the decisions adopted by Direktoratet on all counts and held that Agroferm had not acted in good faith when it had applied to receive production refunds.

Agroferm brought an action against that decision of the Ministeriet. In those circumstances, the referring court decided to refer three questions to the Court for a preliminary ruling.

By its first question the referring court asked, in essence, whether a product such as that at issue in the main proceedings, a compound of lysine sulphate with impurities resulting from the manufacturing process, comes under headings 2309, 2922 or 3824 of the CN.

As regards heading 2922 of the CN, the Court notes that Note 1(a) to chapter 29 of the CN provides that the headings of that chapter apply only to separate chemically defined organic compounds, whether or not containing impurities.

In that regard, the Court notes that the lysine sulphate based product at issue in the main proceedings was a chemically defined organic compound containing around 65% lysine sulphate and 35% biomass resulting from the fermentation manufacturing process used. Further, that biomass, which contains nutrients with a high biological value, had been deliberately left in that product in order to improve the product's suitability for use as an additive in animal feed and to prevent the lysine sulphate from absorbing moisture.

The Court states that the question therefore arises whether that biomass may be placed in that category of impurities the presence of which, in accordance with Note 1(a) to chapter 29 of the CN, does not call into question classification under the headings of that chapter.

In that regard, the Court holds that, although Note 1 to chapter 29 of the CN permits the presence of impurities, they are necessarily residual, in order not to affect the 'separateness' of the organic compound at issue. In addition, it follows from Notes 1(f) and (g) to chapter 29 of the CN that the headings of that chapter may include inter alia the products referred to in Note 1(a) with various added substances necessary for their preservation or transport, or to facilitate their identification, or for safety reasons, provided that the additions do not render the product particularly suitable for a specific use rather than for general use.

If, according to Notes 1(f) and (g) of that chapter, the addition of other substances in products capable of being classified under that chapter must meet certain precise requirements, relating in particular to reasons of safety or identification, whilst

maintaining the general use of the product concerned, it is clear that, *a fortiori*, the same is true of the impurities mentioned in Note 1(a) of that chapter.

The Court explains that, where a product contains impurities resulting from the manufacturing process which render it suitable for specific uses, distinct from its general use, such a product cannot be considered to be 'separate' within the meaning of Note 1(a) to Chapter 29 of the CN, since such impurities determine its use.

In this case, the impurities are left in the product at issue in the main proceedings after fermentation with a view to rendering it suitable for a specific use, rather than for its general use, as an additive for complete animal feed containing a number of nutrients with a high biological value.

The Court therefore concludes that a product such as that at issue in the main proceedings cannot be classified under heading 2922 of the CN. It then explains that that product met the requirements of classification under heading 2309 of the CN. As for heading 3824 of the CN, the Court notes that it is a residual heading, which applies solely when the product concerned cannot be classified under another heading.

Consequently, the Court holds that a product such as that at issue must be classified under heading 2309 as a preparation of a kind used in animal feeding.

By its second and third questions, the referring court asked the Court, in essence, whether European Union law precludes national customs authorities, having regard to the principles of legal certainty and of the protection of legitimate expectations which must be observed under national law, first, from seeking repayment of wrongly paid lysine sulphate production refunds that the producer accepted in good faith and, secondly, from refusing to pay lysine sulphate production refunds which those authorities had given undertakings to that producer to pay.

At the outset, the Court refers back to its settled case-law according to which it cannot be regarded as contrary to European Union law for national law, as far as the withdrawal of administrative measures and the recovery of sums wrongly paid by public authorities are concerned, to take into account, in addition to the principle of legality, the principles of the protection of legitimate expectations and legal certainty, since those principles form part of the legal order of the European Union. Those principles must be observed all the more strictly in the case of a measure liable to have financial consequences.

However, the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of EU law; nor can the conduct of a national authority responsible for applying EU law, which acts in breach of that law, give rise to a legitimate expectation on the part of a trader of beneficial treatment contrary to EU law.

Consequently, a trader may rely on a legitimate expectation of payment of a production refund only if the product manufactured by him or her is to be classified under the heading or in the chapter of the CN indicated in the refund certificate.

Therefore, the Court rules that the principle of the protection of legitimate expectations does not preclude the national customs authorities from seeking repayment of a wrongly paid amount of lysine sulphate production refunds that the producer has already received and from refusing to pay production refunds on that product which those authorities had given undertakings to that producer to pay.

Judgment of 5 September 2019, TDK-Lambda Germany (C-559/18, [EU:C:2019:667](#))

(Reference for a preliminary ruling – Regulation (EEC) No 2658/87 – Customs Union and Common Customs Tariff – Tariff classification – Combined Nomenclature – Subheading 8504 40 30 – Static converters – Classification criteria – Main intended use)

TDK-Lambda Germany is a subsidiary of the TDK-Lambda Corporation, established in Tokyo, (Japan), which develops, manufactures, markets and services electronic devices and components, including electrical power supplies.

Between 2013 and 2014, it imported regulated power supplies ('the converters at issue') in 75 instances into the European Union, indicating in its customs declarations that the converters at issue should be classified under CN subheading 8504 40 30, as goods originating from third countries that are exempt from customs duties.

During a customs inspection conducted in 2015, the customs office took the view that the converters at issue, as regulated power supply units, were static converters that could not be classified as being 'of a kind used with telecommunication apparatus, automatic data-processing machines and units thereof', within the meaning of CN subheading 8504 40 30, and therefore could not be regarded as goods originating from third countries that are exempt from customs duties, but fell within CN subheading 8504 40 90, as goods originating from third countries that are subject to the 3.3% customs tariff.

Consequently, the customs office issued a notice for the post-clearance recovery of import duty and, by decision of 30 August 2016, rejected as unfounded the complaint made by TDK-Lambda Germany against that recovery notice. Following that rejection, the applicant brought proceedings before the referring court, contesting, in particular, the decision to classify the converters at issue under CN tariff subheading 8504 40 90.

In those circumstances, the referring court asked, in essence, whether CN ³³ subheading 8504 40 30 must be interpreted as meaning that in order to fall within that subheading, it is sufficient that static converters are, owing to their technical characteristics and objective properties, compatible with 'telecommunication apparatus, automatic data-processing machines and units thereof', within the meaning of that provision.

³³ CN in Annex I to Regulation No 2658/87, in the versions resulting successively from Implementing Regulation No 927/2012 and Implementing Regulation No 1001/2013.

In the first place, the Court recalls that, as regards the classification of goods under a heading related to a use, that is to say a heading whose criterion for classification is a particular use of the goods concerned, the product to be classified need not be solely or exclusively intended for that use. It suffices that the use referred to in the heading is the main use for which the product is intended.

As regards the subheading in question, the Court notes that neither the wording of that subheading nor the section or chapter notes specify whether in order for a static converter to be regarded as being 'of a kind used with telecommunication apparatus, automatic data-processing machines and units thereof', within the meaning of that subheading, it is sufficient that the converter can, in view of its technical characteristics and objective properties, be used with such products.

However, the wording of CN subheading 8504 40 30 clearly refers to a specific use of the static converters covered by that provision, namely use with telecommunication apparatus, automatic data-processing machines and units thereof. Furthermore, the Explanatory Notes to the CN concerning this subheading confirm that the classification criterion for the heading in question is founded on a specific use of the goods concerned.

Therefore, as regards static converters that may come within the scope of CN subheading 8504 40 30, such as the converters at issue, the mere fact that they are compatible with the apparatus referred to in that subheading does not constitute sufficient grounds for classifying those converters within that subheading, unless the main use for which those converters are intended corresponds to the use referred to in that subheading.

In that regard, the Court points out, first, that, unlike the other subheadings within CN subheading 8504 40, subheading 8504 40 30 designates static converters intended for a specific use, namely use in conjunction with telecommunication apparatus, automatic data-processing machines and units thereof. Under those circumstances, it cannot be inferred from the fact that there is no mention of exclusive or principal use with the products referred to by subheading 8504 40 30 that any converter which is compatible, in principle, with such products, may fall within that subheading.

Secondly, it recalls that secondary legislation, such as the CN, must be interpreted, so far as possible, in a manner that is consistent with the international agreements entered into by the European Union. Subheading 8504 40 30 of the CN reflects the undertakings given by the European Union in the ITA. Therefore, it must be interpreted in a manner that is consistent with that agreement, and with the aim of enhancing market access opportunities for information technology products.

According to the Court, In the light of the specific context of CN subheading 8504 40 30, the interpretation that that subheading must be understood as encompassing only static converters whose main use is intended to be with telecommunication devices,

automatic data processing machines and units thereof is compatible with the objectives of the ITA.

In those circumstances, the Court rules that CN subheading 8504 40 30 must be interpreted as meaning that static converters such as those at issue in the main proceedings may fall within that subheading only if the main use for which they are intended is with 'telecommunication apparatus or automatic data processing machines and the units thereof', within the meaning of that subheading.

2.4. Function of the product

Judgment of 7 November 2002, *Lohmann and Medi Bayreuth* (C-260/00 to C-263/00, [EU:C:2002:637](#))

(Common Customs Tariff – Tariff headings – Classification in the Combined Nomenclature of wrist orthoses, lumbar support belts, elbow supports and knee supports – Note 1(b) to Chapter 90 of the Combined Nomenclature)

In these joined cases, the referring court asked the Court, in essence, to ascertain the criteria for determining whether products such as wrist orthoses, lumbar support belts, elbow supports and knee supports can be classified in heading 9021 of the CN.³⁴

In that respect, the Court notes that, according to settled case-law, 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 found in their objective characteristics and properties as defined in the wording of the relevant heading of the CCT and of the notes to the sections or chapters.

The Court therefore finds that the products at issue in the main proceedings are not expressly referred to either in the wording of the relevant CN headings or in that of the notes to the relevant sections or chapters thereof. However, the HS Explanatory Notes provide useful guidance as to their classification.

In that regard, the Court recalls that, according to the first explanatory note to heading 9021, the orthopaedic appliances covered by CN heading 9021 are for 'preventing or correcting bodily deformities' or 'supporting or holding organs following an illness or operation'.

The list following that description, and which gives examples of appliances satisfying those criteria, sometimes specifies that the product in question must be made to measure (orthopaedic footwear, special insoles). That has led the Court to find that sandals and shoes which can be assimilated to mass-produced inner soles or to mass-

³⁴ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1734/96.

produced footwear the soles of which support the arch do not constitute 'orthopaedic appliances' under CN heading 9021.

However, the Court notes that no such requirement is laid down for most of the products mentioned in that list.

With regard to appliances for correcting scoliosis and curvature of the spine as well as medical or surgical corsets and belts, the first explanatory note to heading 9021 states that that heading covers inter alia such appliances as are characterised by the presence of elements which are adjustable to fit the patient. The same note states that the 'special design of these articles for a particular orthopaedic purpose distinguishes them from ordinary corsets and belts, whether or not the latter also serve to support or hold'.

The Court concludes that the requirement of being made to measure or at least adjustable to fit the patient reflects the desire to avoid classifying in CN heading 9021 products which are 'ordinary' products, that is to say, simple products which lack the characteristics specific to the products mentioned in the first explanatory note to heading 9021. The HS Explanatory Notes in fact describe Chapter 90 of the CN as covering a category of instruments and appliances of which, as a general rule, the essential characteristics are the finish of their manufacture and their high degree of precision.

According to the Court, that is why the first explanatory note to heading 9021 uses the criterion of being made to measure as the basis for differentiating orthopaedic footwear from ordinary footwear, or the criteria of adjustability to fit the patient, the nature of the materials of which the product is made or the presence of reinforced parts as the basis for distinguishing certain corrective appliances from ordinary corsets or belts, or the criterion of specificity of purpose of the products as the basis for distinguishing orthopaedic suspenders from simple suspenders of knitted, netted or crocheted materials. The criteria for distinguishing simple or ordinary products from those serving a medical purpose therefore include the method of manufacture of the product concerned, the nature of the materials of which it is made, its adjustability to the handicaps which it is intended to correct or other special characteristics, in particular the specificity of its purpose.

In the light of those considerations, the Court holds that CN heading 9021 must be interpreted as meaning that products such as wrist orthoses, lumbar support belts, elbow supports and knee supports fall within that heading if they display characteristics which distinguish them, in particular by the materials of which they are made, their method of operation or their adjustability to the patient's specific handicaps, from ordinary belts and supports for general use.

Judgment of 18 July 2007, *Olicom* (C-142/06, [EU:C:2007:449](#))

(Common Customs Tariff – Tariff headings – Classification in the combined nomenclature – Automatic data processing machines – Combined network/modem cards – Definition of ‘specific function’)

Between 1996 and 1999, Olicom imported computer network equipment, in particular, network cards designed to be inserted into portable computers, which it classified under heading 8471 of the CN. Those cards receive and convert signals and deliver them from a computer to other computers in the network.

They are the result of development of pure LAN products and are designed so that the ‘WAN’ function cannot be used without the ‘LAN’ function, the latter, however, remaining operational even if the ‘WAN’ function is disabled.

In application of point 4 of the Annex to Regulation (EC) No 1165/95, pursuant to which cards for incorporation in cable-linked computers enabling the exchange of data over a local area network without using a modem were to be classified under heading No 8517, which meant a rise in the rate of duty to be paid, the Danish authorities decided to proceed to post-clearance recovery of customs duties due from Olicom. The latter appealed against that decision.

By its judgment of 10 May 2001, *Cabletron* (C-463/98, [EU:C:2001:256](#)), the Court declared as invalid Regulation No 1165/95 which classified the network cards referred to in point 4 of the Annex to that regulation under heading No 8517 of the CN.

On the basis of guidelines for interpretation of the aforementioned judgment, drawn up by the Commission and addressed to the Member States, Olicom obtained reimbursement of customs duties relating to network cards with a purely ‘LAN’ function. With regard to the duty on the combined cards, the competent Danish authorities refused reimbursement, taking the view that, because those cards also had a modem function, they should be classified under heading No 8517, as telecommunication apparatus.

Olicom contested that classification of the combined cards and, after administrative remedies had been exhausted, brought the dispute before the referring court. That court asked the Danish authorities to refer the matter to the Customs Code Committee. That committee issued an opinion, stating that the combined cards were to be classified under heading No 8517.

In those circumstances, the referring court decided to ask the Court whether combined cards designed to be inserted into portable computers must, after 1 January 1996, be classified as data-processing machines under heading No 8471 of the CN ³⁵ or, as telecommunication apparatus, under heading No 8517 thereof. In that regard, it asks

³⁵ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 3009/95.

whether, for the purposes of such classification, 'specific function' within the meaning of Note 5(E) to Chapter 84 of the CN is to be interpreted as requiring that the 'modem' function of those cards may operate independently of an automatic data-processing machine or whether it is sufficient that the cards have that function.

After recalling the conclusions drawn from its previous case-law on network cards, the Court considers it appropriate to examine the applicability of that caselaw to the combined cards which, because they have the 'modem' function can be used for data exchange over external networks.

In that respect, the Court notes that combined cards fulfil the three conditions laid down by Note 5(B) of Chapter 84 of the CN, since they are used solely when inserted in portable computers, they work only if they are connected to that type of computer and are capable of converting incoming signals into data usable by an automatic data-processing machine and outgoing signals into data usable externally, whether they are transmitted across a local network (LAN) or an external network (WAN).

Such cards do not perform any 'specific function' within the meaning of Note 5(B) of Chapter 84 of the CN. The 'specific function' performed by a machine working with an automatic data-processing machine must be a function 'other than data-processing'. Since the combined cards are designed to transfer data between a number of computers and, in order to do so, render incoming external signals comprehensible to the computer and transform outgoing signals processed by it into signals usable externally, regardless of whether the signal received or emitted is analogue or digital, the function which they perform consists of data-processing.

In those circumstances, the Court concludes that combined cards designed to be inserted into portable computers which, because they also have a 'modem' function, can be used for data exchange over external networks, must, after 1 January 1996, be classified as data-processing machines under heading 8471 of the CN.

Judgment of 11 December 2008, Kip Europe and Others (C-362/07 and C-363/07, [EU:C:2008:710](#))

(Common Customs Tariff – Combined Nomenclature – Tariff classification – Multi-function apparatus – Apparatus combining the functions of laser printer and a digital electronic scanner module, with a copier function – Heading 8471 – Subheading 9009)

In this case, the Court was asked essentially, whether Note 5(E) to Chapter 84 of the CN ³⁶ is to be interpreted as meaning that machines are to be deemed to be performing a 'specific function other than data processing' within the meaning of that note since, apart from the printing and electronic scanning functions which they carry out in

³⁶ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1719/2005.

connection with an automatic data-processing machine, they also have an autonomous copying function.

In that regard, the Court notes that the French, Netherlands and Polish Governments and the Commission take the view that the classification of the machines at issue in the main proceedings under heading 8471 is precluded by Note 5(E) to Chapter 84 of the CN because, in so far as they may be used to make photocopies without being connected to an automatic data-processing machine, they perform a 'specific function other than data processing' within the meaning of that note.

According to the Court, however, that argument cannot be accepted.

Indeed, it follows from the wording of Note 5(E) to Chapter 84 of the CN that the 'specific function' performed by a machine working with an automatic data-processing machine must be a function 'other than data-processing'.

Furthermore, it follows from the general scheme and purpose of that note that the expression 'are to be classified in the headings appropriate to their respective functions' does not seek to have one function take priority over others also performed by the apparatus to be classified and which also constitute data processing, but to prevent apparatus whose function has nothing to do with data processing from being classified under heading 8471 for the sole reason that they incorporate an automatic data-processing machine or work in connection with such a machine.

According to the Court, that interpretation is confirmed by the judgment of 17 March 2005 in *Ikegami* (C-467/03, [EU:C:2005:182](#)), in which the Court holds that a machine whose basic equipment enables it to perform automatic data processing must nevertheless be considered to have a specific function within the meaning of Note 5(E) to Chapter 84 of the CN since, as it is equipped, it cannot be used for purposes other than the recording and reproduction of images and sounds in the course of video surveillance, as it lacks sufficient software.

However, it is apparent from the data from the file submitted to the Court in the context of the present proceedings that the machines at issue in the main proceedings, in addition to their copying function, which does not fall within the scope of data processing, also have printing and electronic scanning functions.

The Court therefore rules that Note 5(E) to Chapter 84 of the CN must be interpreted as meaning that only machines incorporating an automatic data-processing machine or working in conjunction with such a machine, whose function is not data processing, perform 'a specific function other than data processing'.

Judgment of 11 June 2015, Amazon EU (C-58/14, [EU:C:2015:385](#))

(Reference for a preliminary ruling – Regulation (EEC) No 2658/87 – Customs union and Common Customs Tariff – Combined Nomenclature – Heading 8543 70 – Electrical machines and

apparatus, having individual functions, not specified or included elsewhere in Chapter 85 of the Combined Nomenclature – Subheadings 8543 70 10 and 8543 70 90 – Reading devices for electronic books with translation or dictionary functions)

Amazon is a company which imports inter alia reading devices for electronic books. In addition to the hardware and software necessary for reading books, a speech output option and a programme for the reproduction of audio formats, the devices have a dictionary function.

Reading devices for electronic books imported into Germany by Amazon in 2011 were classified under CN subheading 8543 70 90 by the competent customs authorities. Amazon lodged an objection against that classification. By decision of 20 October 2011, the Principal Customs Office of the competent authority reclassified the reading devices under CN subheading 8543 70 10.

In October 2011, Amazon sought binding tariff information from Hauptzollamt Hannover (Principal Customs Office, Hanover, Germany, the 'HZA') and proposed that the reading devices be classified under CN subheading 8543 70 10. However, in the BTI thus delivered, the latter decided to classify the reading devices under CN subheading 8543 70 90 on the ground that their main function is the reproduction of books stored in electronic form and not the translation or dictionary function.

Amazon then brought an action before the Finanzgericht Hamburg (Finance Court, Hamburg, Germany) which, by judgment of 14 February 2013, ordered the HZA to issue a BTI classifying the reading devices at issue in the main proceedings under CN subheading 8543 70 10. HZA lodged an appeal on a point of law against that judgment before the referring court.

Subsequently, the referring court asked the Court, in essence, whether the CN ³⁷ must be interpreted as meaning that a reading device for electronic books which has a translation or dictionary function must be classified under subheading 8543 70 10 as an electrical machine with translation or dictionary functions, or under subheading 8543 70 90 as other electrical apparatus.

As a preliminary point, the Court notes that it is clear from its questions and explanations, that the referring court considers that the principal function of the reading devices at issue is a reading function.

The CN does not contain any subheading the wording of which expressly refers to an electrical apparatus whose principal function is that of reading. However, it cannot be concluded that, in default of a subheading in the CN corresponding exactly to the principal function of such an apparatus, the apparatus must be classified under a specific subheading on the basis of one of its ancillary functions.

³⁷ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 861/2010.

The tariff classification of a product must be made having regard to its principal function, and not to one of its ancillary functions, even in a situation where there is no CN subheading corresponding specifically to that principal function.

Therefore, in the absence in the CN of a subheading corresponding to the principal function of a product, that product must be classified under a residual subheading of that nomenclature.

Consequently, the Court concludes that a reading device for electronic books which has a translation or dictionary function must, where that function is not its principal function, that being a matter for the national court to ascertain, be classified under subheading 8543 70 90 as other electrical apparatus and not under subheading 8543 70 10 as an electrical machine with translation or dictionary functions.

III. Sources of the regime applicable to the tariff classification procedure

1. Explanatory Notes

1.1. Explanatory Notes of the WCO

Judgment of 15 May 2014, Data I/O (C-297/13, [EU:C:2014:331](#))

(Reference for a preliminary ruling – Tariff classification – Common Customs Tariff – Combined Nomenclature – Section XVI, note 2 – Headings 8422, 8456, 8473, 8501, 8504, 8543, 8544 and 8473 – Concepts of ‘parts’ and ‘articles’ – Parts and accessories (motors, power supplies, lasers, generators, cables and heat sealers) intended for programming systems – No precedence of heading 8473 over other headings of Chapters 84 or 85)

Between 2002 and 2005, Data I/O imported various models of electric motors, power supplies, lasers, cables, heat sealers and generators used in automated programming systems (together ‘the goods at issue’) to Germany from the USA.

The goods imported were declared as coming under heading 8471 of the CN. They were released for free circulation without customs duties being levied. Following a post-release control, the Hauptzollamt München (Principal Customs Office, Munich, Germany), taking the view that the motors, power supplies, lasers, cables, heat sealers and generators ought to be classified under headings 8501, 8504, 8456, 8543, 8544 and 8422 of the CN respectively, acted to recover a posteriori the import duties resulting from that classification.

In that context, Data I/O brought an action before the referring court. In support of its action, it argues that the goods at issue must be classified under heading 8473 of the CN as parts of a machine which comes, in its view, under heading 8471 of the CN.

Harbouring doubts about the compliance of this classification with Note 2(a) to Section XVI of the CN,³⁸ the referring court asked the Court if that note must be interpreted as meaning that goods which may be classified under heading 8473 of the CN, as parts of a machine under heading 8471 thereof, and under one of headings 8422, 8456, 8501, 8504, 8543 and 8544 thereof, as individual goods, are to be classified as individual goods under headings 8473 or one of the latter headings.

Having stated that Note 2 to Section XVI of the CN applies only to 'parts of machines', the Court observes that it follows from the case-law developed in connection with heading 8473 of the CN and Note 2(b) to Section XVI thereof, that the notion of 'parts' implies a whole for the operation of which the part is essential. In order to be able to classify an article as a 'part', it is not sufficient to show that, without that article, the machine is not able to function properly. It remains necessary to establish that the mechanical or electrical functioning of the machine in question is dependent upon that article.

First, heading 8473, in so far as it concerns parts and accessories suitable for use solely or principally with machines of headings 8469 to 8472 of the CN, is a generic heading.

Secondly, it is apparent from the wording of note 2(b) to Section XVI of the CN that, on the one hand, it applies only to parts of machines which are not suitable for classification under note 2(a) since they do not constitute individual goods coming, as such, under specific headings of Chapter 84 or Chapter 85 of the CN and, on the other, that note, which lays down a classification rule based on the intended use of the parts of a machine in question, expressly permits the classification of such parts under heading 8473 of the CN.

Accordingly, classification under heading 8473 of the CN is possible only where there is no tariff heading enabling the parts in question to be classified as individual goods. Heading 8473 of the CN must, in consequence, be regarded as a residual heading and, accordingly, subsidiary as regards the headings enabling classification of parts of a machine as individual goods.

In that regard, the Court concludes that Note 2(a) to Section XVI of the CN does not provide, as a matter of precedence, for the classification of parts of a machine under heading 8473 of the CN rather than under another heading in Chapters 84 and 85 of the CN. On the contrary, the classification of parts of a machine under heading 8473 is subsidiary to classification of the parts as goods, pursuant to part (a) of that note.

³⁸ CN in Annex I to Regulation No 2658/87, in the versions resulting successively from Regulation No 2031/2001, Regulation No 1832/2002, Regulation No 1789/2003 and Regulation No 1810/2004.

It does indeed follow from the Explanatory Notes to the HS on Chapter 85 of the CN that, where a machine or apparatus can be covered by a heading in Chapter 84 and by a heading in Chapter 85 of the CN, its tariff classification must be under the first of those headings. Nevertheless, the Court notes that the rule laid down in the first paragraph of Part (A) of the Explanatory Notes to the HS concerning Chapter 85 of that system does not apply to the tariff classification of parts of machines within the meaning of note 2 to Section XVI of the CN.

Accordingly, the first paragraph of Part (A) of the Explanatory Notes to the HS concerning Chapter 85 of that system cannot be regarded as derogating from the classification rules for parts of a machine, as set out in note 2 to Section XVI of the CN, nor as laying down any precedence in classification for parts of machines under heading 8473 of the CN over the headings in Chapter 85 thereof.

It follows that goods which may be classified under heading 8473 of the CN in that Annex, as parts of a machine under heading 8471 thereof, and under one of headings 8422, 8456, 8501, 8504, 8543 and 8544 thereof, as individual goods, are to be classified as individual goods under one of the latter headings, according to their individual characteristics.

Judgment of 13 March 2019, B.S. (Malt in the composition of beer) (C-195/18, [EU:C:2019:197](#))

(Reference for a preliminary ruling – Taxation – Excise duties on alcohol and alcoholic beverages – Directive 92/83/EEC – Article 2 – Definition of ‘beer’ – Beverage produced from wort obtained from a mixture containing more glucose than malt – Combined Nomenclature – Heading 2203 (beer made from malt) or 2206 (other fermented beverages))

In that judgment, the factual background to which was set out above,³⁹ the Court observes that heading 2203 of the CN, the interpretation of which was sought by the referring court, does not lay down a minimum percentage of malted ingredients in the mash from which the beer is to be produced. In that context, the Court refers to the HS Explanatory Note relating to that heading, which expressly states that certain quantities of non-malted cereals may be used for preparing the wort, without requiring the proportion of those non-malt ingredients to be smaller than that of malt ingredients. The Court points out, however, that the Explanatory Notes to the HS, drawn up by the WCO, whilst they are an important aid to the interpretation of the scope of the various tariff headings, do not have legally binding force.

Moreover, as regards the glucose syrup added to the mash which is not prohibited by the CN, the Court observes that the Explanatory Note to the HS relating to heading 2203 expressly recognises the possibility of flavourings being added to the wort during fermentation. Even if there is some divergence between the English and French

³⁹ See Section II.2.1, entitled ‘Objective characteristics and properties of the product’.

language versions as to the precise moment when glucose may be added, the French referring to it being added 'to the beer' while the English does not specify, neither of those two official versions require that the wort to be fermented is free from glucose.

Therefore, a product manufactured with a small proportion of malt and the addition of glucose before the alcoholic fermentation is not precluded on those grounds alone from being 'beer made from malt' within CN heading 2203.

Judgment of 7 April 2022, Y GmbH (Vanilla oleoresin) (C-668/20, [EU:C:2022:270](#))

(Reference for a preliminary ruling – Common Customs Tariff – Combined Nomenclature – Classification of goods – Headings 1302, 3301 and 3302 – Extracted vanilla oleoresin – Excise duties – Directive 92/83/EEC – Exemptions – Article 27(1)(e) – Definition of 'flavour' – Directive 92/12/EEC – Excise Committee of the European Commission – Powers)

In the case giving rise to this judgment, the referring court asked the Court, inter alia, whether the CN ⁴⁰ must be interpreted as meaning that a product consisting of approximately 85% ethanol, 10% water and 4.8% dry residue and having an average vanilla content of 0.5%, which is obtained by diluting in water and ethanol an intermediate product itself extracted from vanilla bean using ethanol, falls under subheading 1302 19 05, subheading 3301 90 30 or subheading 3302 10 90 of that nomenclature. In order to obtain such goods, an intermediate product is first extracted from the vanilla bean using ethanol ('the intermediate product'). That strongly aromatic, viscous, dark brown intermediate product is then diluted with alcohol and water in order to obtain the goods at issue in the main proceedings.

As a preliminary point, the Court carries out an analysis of the goods covered by headings 1302, 3301 and 3302 of the CN and recalls that in accordance with General Rule 1 of the CN, classification for the purpose of customs duties is, in principle, to be determined according to the terms of the headings and any relative section or chapter notes.

In the light of those preliminary findings, the Court relies on point (ij) of the second paragraph of Note 1 to Chapter 13 of the CN and on Note 1(a) to Chapter 33 of the CN to conclude, in the first place, that goods such as those at issue in the main proceedings must be regarded as a vegetable extract within the meaning of heading 1302 of the CN and, more specifically, as a vanilla oleoresin, within the meaning of subheading 1302 1905 thereof.

In that regard, the Court emphasises that the fact that the Explanatory Notes to the HS state that heading 1302 thereof refers only to vegetable extracts not elsewhere specified or included does not, in itself, preclude goods such as those at issue in the main

⁴⁰ CN in Annex I to Regulation No 2658/87, as amended by Implementing Regulation No 2015/1754.

proceedings from being regarded as a vegetable extract within the meaning of heading 1302 of the CN, on the ground that those goods could fall under more specific headings and, more specifically, headings 3301 and 3302 of the CN.

It is not in any way apparent from heading 1302 of the CN or from the notes thereto that that heading is to be regarded as a subsidiary heading, unlike certain CN headings which expressly set out such a characteristic. The Court recalls that the Explanatory Notes to the HS are not binding and cannot therefore take precedence over the provisions of the CN or alter their content.

In any event, it follows from the Explanatory Notes to the HS that, as regards heading 1302 thereof, the more specific headings to which reference is made are those referred to at the end of Part (A) of the note concerned. The list of goods in that list does not mention the goods of headings 3301 or 3302 of the HS.

Then the Court notes that, although it has been extracted from vanilla bean using ethanol, the intermediate product, referred to in paragraph 24 of the present judgment, may be classified as vanilla oleoresin within the meaning of heading 1302 19 05 of the CN. The first paragraph of Note 1 to Chapter 13 of the CN expressly provides that 'extract of pyrethrum' falls under heading 1302 of the CN. According to the Explanatory Notes to the HS, that extract is obtained 'by extraction with an organic solvent', like the intermediate product.

In addition, heading 1301 of the CN refers, *inter alia*, to natural oleoresins. By contrast, vanilla oleoresin, within the meaning of CN subheading 1302 19 05, must therefore be regarded as a vegetable extract which is not obtained in a 'natural' manner, but by means of a technological extraction process, for instance by means of a solvent. Such an interpretation is further confirmed by the Explanatory Notes to the CN, as regards heading 1302, which state that 'vegetable extracts of heading No 1302 are crude raw vegetable materials obtained by, for instance, solvent extraction'.

In addition, the Court observes that, in order to obtain the goods at issue in the main proceedings, that intermediate product is strongly diluted with ethanol and water. Nevertheless, as the Explanatory Notes to the CN state as regards heading 1302, a vegetable extract will still fall under that heading even if it undergoes processing related to standardisation.

Similarly, the Explanatory Notes to the HS state, as regards heading 1302, that that heading also covers 'fluid extracts', namely '[generally standardised] solutions of [vegetable] extracts in ... alcohol', to produce commercial grades with a standard vegetable extract content in the product. Moreover, neither the provisions of the CN or the HS nor their explanatory notes set a maximum limit on the quantities of other products which can be used to standardise the vegetable extract in question.

The Court therefore concludes that when a vegetable extract is diluted in order to ensure its standardisation, the vegetable extract thus diluted can still fall under heading 1302 of the CN.

Finally, the Court notes that the Explanatory Notes to the HS state, as regards headings 1302 and 3301 of the HS, that vegetable extracts of heading 1302 differ from extracted oleoresins, within the meaning of heading 3301 of the HS, in that, apart from volatile odoriferous constituents, they contain ordinarily a far higher proportion of other plant substances than the extracted oleoresins of heading 3301 of the HS. That appears to be the case for the goods at issue in the main proceedings, since the proportion of dry residues in vanilla bean is, according to the information provided by the referring court, nine times higher than the proportion of vanilla.

In those circumstances, the Court rules that the CN must be interpreted as meaning that goods such as those at issue in the main proceedings fall within subheading 1302 19 05 of that nomenclature.

1.2. Explanatory Notes of the Commission

Judgment of 3 December 1998, *Clees* (C-259/97, [EU:C:1998:587](#))

(Common Customs Tariff – Collections and collectors' pieces of historical or ethnographic interest – Vintage cars)

In 1991, Mr Clees applied to the appropriate customs office for clearance for free circulation of a second-hand Mercedes-Benz 300 SL motor car, manufactured in 1956, as a collectors' piece of historical interest, falling under CN heading 9705.

After inspecting the car, the customs office determined that the motor vehicle should indeed be classified under subheading 9705 0000 0003 of the CN. It therefore granted Mr Clees's application by notice of assessment.

However, the customs authority sent Mr Clees an amended notice of assessment claiming import duties, on the ground that the vehicle had wrongly been classified under heading 9705 of the CN and had to be treated as a second-hand car falling under heading 8703, in accordance with the judgment of the Court of 10 October 1985, *Daiber* (200/84, [EU:C:1985:403](#)). Since the objection lodged by Mr Clees against the customs office's amended notice of assessment was rejected, he brought an action before the referring court.

That court then asked the Court of Justice whether heading 9705 of the CN ⁴¹ must be interpreted as meaning that as a rule, motor vehicles as collectors' pieces of historical interest are required merely to be in their original state, without any substantial change to the chassis, steering or braking system, engine, etc., at least 30 years old and of a model or type which is no longer in production.

In answering that question, the Court observes that, having found that the abovementioned judgment had been interpreted in various ways by the national customs authorities, the Commission adopted the abovementioned explanatory notes.

Given that the referring court stated that the criteria laid down are not necessarily met by every old vehicle, the Court recalls that the interpretation given by a judgment of the Court to a provision concerning tariff classification cannot be altered by the Commission's adoption of explanatory notes which, whilst they constitute an important means of ensuring the uniform interpretation of the CN by the customs authorities of the Member States, do not have legally binding force.

In that regard, the Court concludes that the three criteria established by the Commission, namely the criterion that the vehicle in question must be in its original state, without any substantial change to its most important components, the criterion that the vehicle must no longer be in production and the criterion setting a minimum age for the vehicle in question, as constituents of the presumption established by the Commission, do not depart from the guidance provided by the Court in the judgment of 10 October 1985, *Daiber* (200/84, [EU:C:1985:403](#)). Vehicles which meet those criteria are, as a rule, such as to attest to the distinctive technical and aesthetic features of the age in which they were manufactured and thus such as to illustrate, in particular, a period of the evolution of human achievements in the field of car design.

However, the fact that a vehicle meets the three criteria set out by the Commission is not sufficient for it to be classified under heading 9705 of the CN. First, compliance with those three criteria merely establishes a presumption of historical or ethnographic interest, which is rebutted where the competent authority establishes that the vehicle's specific character is not in anyway linked to a period in the past in the sense that the vehicle is not liable to evidence a significant step in the evolution of human achievements or illustrate a period of that evolution. Secondly, it is also necessary to meet the four criteria concerning the characteristics which a vehicle must possess in order to be included in a collection.

In those circumstances, the Court replies that heading 9705 of the CN must be interpreted as meaning that motor vehicles which are in their original state, without substantial changes to the chassis, steering or braking system, engine, etc., are at least 30 years old and of a model or type which is no longer in production, are presumed to be of historical or ethnographic interest. However, motor vehicles which satisfy those

⁴¹ CN in Annex I to Regulation No 2658/87.

conditions are not of historical or ethnographic interest where the competent authority establishes that they are not liable to evidence a significant step in the evolution of human achievements or illustrate a period of that evolution. In addition, the criteria laid down by the case-law of the Court concerning the characteristics required in order for a vehicle to be included in a collection must be met.

Judgment of 12 January 2006, Algemene Scheeps Agentuur Dordrecht (C-311/04, [EU:C:2006:23](#))

(Common Customs Tariff – Tariff headings – Classification of consignments of rice – Additional Note 1(f) to Chapter 10 of the Combined Nomenclature – Validity – Post-clearance recovery of import duties – Article 220(2)(b) of the Community Customs Code – Interpretation – Good faith of the person liable for payment)

The version of the CN ⁴² applicable at the time of the facts in the main proceedings included a Section II, entitled 'Vegetable Products'. That section contains, inter alia, a Chapter 10, entitled 'Cereals'. Under that chapter, heading 1006 is found, entitled 'Rice', with, inter alia, the subheading 'semi-milled rice' (subheading 1006 30). Chapter 10 also includes an Additional Note (the 'Additional Note at issue'), providing for a definition of semi-milled rice which includes an element, concerning the germ of the rice grain, which is not mentioned in the Explanatory Note to the HS.

In the light of those circumstances, the referring court asks the Court, inter alia, whether the Additional Note at issue is invalid, in so far as it gives a definition of semi-milled rice which includes an element, concerning the germ of the rice grain, which is not mentioned in the Explanatory Note to the HS.

As a preliminary point, the Court recalls that, in accordance with the provisions of Article 300(7) EC, the HS Convention binds the EU institutions. By virtue of Article 3 of that Convention, the EU undertook not to modify the scope of the HS. In that regard, the primacy of international agreements concluded by the European Union over provisions of EU secondary legislation requires that the latter be interpreted, in so far as is possible, in accordance with those agreements.

Furthermore, the Explanatory Notes drawn up, as regards the CN, by the Commission and, as regards the HS, by the WCO, are an important aid to interpretation of the scope of the various tariff headings but do not have legally binding force. The content of those notes to the CN must therefore be compatible with its provisions and may not alter the scope of those provisions

In the present case, the Court, having analysed the wording of the descriptions of the different types of rice in the headings and subheadings, concludes that the CN conforms with the HS. The Court thus clarifies that the question asked by the referring court

⁴² CN in Annex I to Regulation No 2658/87, as amended by Regulation No 2388/2000.

involves an examination into whether the wording of the provisions of the Additional Note at issue, in so far as it defines semi-milled and wholly milled rice, alters the scope of the CN.

In that regard, the Court determines, on the basis of a comparison of the wording of the WCO Explanatory Note and the Additional Note at issue relating to semi-milled rice, that there is a difference in the wording of those definitions which turns on whether or not the removal of the germ is taken into account in the definition of semi-milled rice.

Even if, as a result of this difference, the Additional Note at issue were to be read as excluding from subheading 1006 30 of the CN rice from which part of the pericarp, but not the germ, has been removed, that rice could not be classified under subheading 1006 20 of the CN either. Such an interpretation would thereby have the consequence of denying that rice all possibility of classification and, as a result, of restricting the scope of the HS, the general purpose of which is precisely to assign a classification to all goods. The Court therefore emphasises that it is important, having regard to the fact that secondary legislation must be interpreted in the light of international agreements which bind the European Union by virtue of Article 300(7) EC, to examine whether there is another interpretation of the Additional Note at issue which is consistent with the HS.

In the light of this, the Court then states that it is possible to interpret the Additional Note at issue in conformity with the HS. Consequently, the divergence of wording in the Additional Note must be regarded as consistent with the HS and, thus, does not call into question the validity of that Additional Note.

Judgment of 14 April 2011, British Sky Broadcasting Group and Pace (C-288/09 and C-289/09, [EU:C:2011:248](#))

(Common Customs Tariff – Tariff classification – Combined Nomenclature – Digital satellite television receivers and decoders with a recording function – Community Customs Code – Article 12(5)(a)(i) and (6) – Period of validity of a binding tariff information)

In that judgment, the factual background to which was set out above,⁴³ the Court explains that the Explanatory Notes to the CN⁴⁴ must be disregarded in so far as they are contrary to the wording of the CN.

The Court recalls that the Explanatory Notes to the CN formulated by the Commission, and, as regards the HS, by the WCO, are an important aid to the interpretation of the scope of the various headings but do not have legally binding force.

Furthermore, the content of the Explanatory Notes to the CN, which do not take the place of those of the HS but should be regarded as complementary to them, and

⁴³ See Section II.2.2., entitled 'Intended Use of the product'. That judgment is also mentioned in Section III.3.2, entitled 'Binding tariff information'.

⁴⁴ CN in Annex I to Regulation No 2658/87, as amended by Regulations No 2587/91 and No 1214/2007.

consulted jointly with them, must accordingly be consistent with the provisions of the CN and may not alter their scope.

On the basis of those considerations, the Court clarifies that where it is apparent that they are contrary to the wording of the headings of the CN and the section or chapter notes, the Explanatory Notes to the CN must be disregarded.

Judgment of 17 February 2016 *Salutas Pharma* (C-124/15, [EU:C:2016:87](#))

(Reference for a preliminary ruling – Common Customs Tariff – Tariff classification – Combined Nomenclature – Heading 3004 – Effervescent tablets containing 500 mg of calcium – Level of substance per recommended daily dose significantly higher than the recommended daily allowance to maintain general health or well-being)

In 2012, *Salutas Pharma* applied for the issue of BTI for tablets consisting of a preparation having calcium as its main ingredient, and is intended to be taken after being dissolved in water. It proposed that that product should be classified under subheading 3004 90 00 of the CN.

The Customs Office classified that product in a BTI under subheading 2106 90 92 of the CN on the ground that it does not fall under heading 3004 of the CN as it does not correspond to a level of consumption of calcium which is significantly higher than the recommended daily allowance for maintaining general health or well-being.

Following an objection by *Salutas Pharma*, the Customs Office confirmed the classification decision for the product at issue in the main proceedings under heading 2106 of the CN, holding that the condition in Additional Note 1 to Chapter 30 of the CN had not been satisfied, as the calcium content of the recommended maximum daily dose of that product was not equal to three times the recommended daily allowance for calcium.

Salutas Pharma brought an action before the referring court against that decision of the Customs Office, arguing that Additional Note 1 to Chapter 30 of the CN is not valid, in so far as it modifies the content of tariff heading 3004 of the CN.

In those circumstances, the Court was asked by the referring court whether effervescent tablets with a calcium content of 500 mg per tablet that is used for the prevention and treatment of a calcium deficiency and to support a special therapy for the prevention and treatment of osteoporosis, and for which the maximum recommended daily dose for adults indicated on the label is three tablets, falls within heading 3004 90 00 of the CN.⁴⁵

⁴⁵ CN in Annex I to Regulation No 2658/87, in the version resulting from Regulation No 1006/2011.

At the outset, the Court recalls that the chapter notes to the CN constitute important means for ensuring the uniform application of the CCT and provide, as such, useful information for its interpretation. The content of those notes must therefore be construed in accordance with the provisions of the CN and may not alter the scope of those provisions. Furthermore, the Explanatory Notes are an important aid for interpreting the scope of the various tariff headings but do not have legally binding force.

In this case, the Court finds that the product at issue in the main proceedings satisfies conditions in the first paragraph, points (a), (b), (c) and (d), of Additional Note 1 to Chapter 30 of the CN., the parties in the main proceedings disagreeing only as to whether the amount of calcium contained in the recommended daily dose of the product at issue is 'significantly higher than the recommended daily allowance to maintain general health or well-being' within the meaning of that additional note.

The Explanatory Note relating to Chapter 30 of the CN is meant to clarify that criterion, by stating that it covers the recommended daily dose, the vitamins or mineral content of which is 'much higher, generally at least three times higher than the recommended daily allowance'.

First, that explanatory note, which does not have binding legal force, provides that a product in respect of which the vitamin or mineral content of the recommended daily dose is three times higher than the recommended daily allowance is to be included in that chapter if all the other conditions are also met. Secondly, as regards the use of the word 'generally' in that note, the latter does not exclude products from Chapter 30 of the CN solely because the vitamin or mineral content of their recommended daily dose is not three times higher than the recommended daily allowance.

Therefore, according to the Court, the Explanatory Note relating to Chapter 30 of the CN cannot be interpreted as meaning that the vitamin or mineral content of the recommended daily dose of the products composed of those substances must be three times the recommended daily allowance in order for them to be classified under heading 3004 of the CN. Where the quantity of vitamins, minerals, essential amino acids and fatty acids contained in the recommended daily dose of a product with the objective characteristics and properties defined by the wording of heading 3004 of the CN is significantly higher than what is necessary or recommended for general dietary purposes, it must be classified under that heading.

2. Tariff classification regulations adopted by the Commission

Judgment of 20 November 1997, Wiener SI (C-338/95, [EU:C:1997:552](#))

(Common Customs Tariff – Tariff heading – Nightdress)

In 1985, the German company Wiener imported from Thailand garments which it declared as 'women's nightdresses' under subheading 60.04 B IV b 2 bb of the CCT. Following a partial inspection, those garments were released into free circulation and recorded against the tariff quota for 'nightdresses'.

Following a subsequent examination, however, the German customs authorities formed the view that the goods were 'dresses of synthetic textile fibres' coming under subheading 60.05 A II b 4 cc 22 of the CCT and accordingly proceeded to post-clearance recovery of customs duty at a higher rate.

Consequently, Wiener appealed against that claim for recovery which was, however, dismissed by judgment. Wiener appealed against that judgment on a point of law to the referring court.

In those circumstances, the referring court asked the Court whether the term 'nightdresses' within the meaning of tariff subheading 60.04 B IV b 2 bb of the 1985 CCT,⁴⁶ is to be interpreted as covering exclusively 'other' under garments which, in view of their characteristics, are clearly intended only to be worn as night wear, or does it also cover products which, on the basis of their appearance, are intended mainly, but not exclusively, to be worn in bed.

First of all, the Court notes that the wording of subheading 60.04 B IV b 2 bb of the CCT does not contain any definition of those products. Nor is there any such definition in the explanatory notes of the CCT or in those on the Nomenclature of the Customs Cooperation Council.

In applying the reasoning in the judgment of 9 August 1994, *Neckermann Versand* (C-395/93, [EU:C:1994:318](#)), to this case, the Court considers that, since the goods in question are intended to be worn essentially in bed, they must be regarded as 'nightdresses' within the meaning of subheading 60.04 B IV b 2 bb of the CCT, even though they may be used for other purposes.

According to the Court, that conclusion cannot be affected by the adoption of Regulation No 548/89, the Annex to which provides that lightweight knitted garments, intended to cover the upper part of the body and reaching down to mid-thigh, having a rounded, loose-fitting neckline and short, loose-fitting sleeves, and a tie string sewn into the left seam at the waist, cannot be classified as 'nightdresses', but are rather 'dresses' within

⁴⁶ CCT, in the version resulting from Regulation No 3400/84.

the meaning of heading 6104 of the CN, on the ground that they are not clearly identifiable as being intended to be worn exclusively as nightwear, or by the adoption of Regulation No 812/89 which rejects classification as 'nightdresses' in the case of various lightweight knitted garments (100% cotton) reaching down to mid-thigh, with a loose-fitting rounded neckline, short loose-fitting sleeves, without a tie string at the waist.

Indeed, those classification regulations postdate the facts of the dispute in the main proceedings. The provisions of those regulations cannot therefore be applied by analogy for the purpose of interpreting earlier tariff rules, even though those regulations seek only to clarify and did not amend the wording of the headings or subheadings in question.

In this regard, the Court notes in particular that, before the Commission's later classification regulations could operate to impose a restrictive interpretation of 'nightdress', it was perfectly in keeping with the principle of legal certainty for that term to be generally understood as covering not only under garments intended to be worn exclusively in bed, but also those intended essentially for such a use.

Consequently, subheading 60.04 B IV b 2 bb of the CCT must be construed as covering under garments which, by reason of their objective characteristics, are intended to be worn exclusively or essentially in bed. It is for the national court to determine, in the light of the cut of the garments, their composition and presentation, and developments in fashion within the Member State concerned, whether those garments do have such objective characteristics or whether, on the contrary, they may be worn equally in bed and elsewhere.

Judgment of 20 November 2008, Heuschen & Schrouff Oriëntal Foods Trading (C-375/07, [EU:C:2008:645](#))

(Reference for a preliminary ruling – Validity of a classification regulation – Interpretation of the Annex to Regulation (EC) No 1196/97 – Articles 220 and 239 of the Customs Code – Articles 871 and 905 of Regulation (EEC) No 2454/93 – Dried sheets consisting of rice flour, salt and water – Tariff classification – Post-clearance recovery of import duties – Procedure for remission – Detectable error on the part of the customs authorities – Obvious negligence on the part of the importer)

H & S is a Netherlands undertaking engaged in production and trade which supplies, among others, restaurant owners with Asian foodstuffs. It imports rice paper from Vietnam for that purpose.

H & S was already importing that product in 1996 under subheading 1901 90 99 of the CN.⁴⁷ That tariff classification was accepted on numerous occasions by the Netherlands

⁴⁷ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1624/97.

customs authorities ('the customs authorities'), even after inspections and analyses carried out on samples of the imported consignments.

In 1997, the Commission adopted Regulation No 1196/97, which provides that the goods in question in fact come under subheading 1905 90 20 of the CN. That regulation came into force on 19 July 1997.

H & S, however, continued to classify the rice paper which it imported under subheading 1901 90 99. The customs authorities also continued to accept its declarations, on the last occasions on 14 July 1997 and 16 March 1998. Then, on 16 March 1998, the customs authorities became aware of the incorrect classification and informed H & S that the goods were covered by the heading laid down by the aforementioned regulation, namely subheading 1905 90 20 of the CN. Thereafter, H & S declared its foodstuffs under that heading.

In the course of 2000, the customs authorities informed H & S that they intended to proceed with post-clearance recovery of the duties which ought to have been paid under subheading 1905 90 20 of the CN in respect of the period from 25 November 1997 to 2 February 1998.

H & S thereupon applied for remission of those duties. That application was rejected, which ultimately led to the dispute in the main proceedings.

The referring court, harbouring doubts as to the tariff classification of the rice paper, decided to ask the Court, *inter alia*, whether sheets prepared from rice flour, salt and water, which are then dried, but do not undergo any heat treatment, are covered by subheading 1905 90 20 of the CN and, if necessary, whether Regulation No 1196/97 is valid.

At the outset, the Court finds that the Dutch version of the wording of heading 1905 of the CN, unlike a number of other language versions, does not expressly refer to sheets of flour or starch pastes and other similar products, which must be 'dried'. The Dutch version refers only to goods in the form of sheets.

However, the Court recalls that, according to settled case-law, the need for a uniform interpretation of provisions of EU regulations makes it impossible for the text of a provision to be considered, in case of doubt, in isolation but requires, that it be interpreted and applied in the light of the versions existing in the other official languages.

In that regard, the Court notes, first, the reference to 'rice paper' or to 'dried' goods is included expressly in the wording of several language versions of subheading 1905 90 20 of the CN, whereas heading 1901 is merely residual and covers only goods which are not specified or included elsewhere in the CN.

Secondly, as is apparent from a reading of several language versions of the CN and in the light of the Commission's Explanatory Notes, which refer to the Explanatory Notes to

the HS Convention, the fact of being cooked is not a characteristic necessary for the classification of goods under subheading 1905 90 20.

Having regard to those considerations, the Court therefore concludes that, the classification under subheading 1905 90 20 of the CN of foodstuffs prepared from rice flour, salt and water in the form of dried, translucent sheets or discs of various sizes is in accordance with the wording of that subheading. It follows that the validity of Regulation No 1196/97 is not affected.

Judgment of 19 February 2009, Kamino International Logistics (C-376/07, [EU:C:2009:105](#))

(Common Customs Tariff – Combined Nomenclature – Tariff classification – Monitors of the liquid crystal display (LCD) type with SUB-D, DVI-D, USB, S-video and composite-video sockets – Heading 8471 – Heading 8528 – Regulation (EC) No 754/2004)

In that judgment, the factual background to which was set out above,⁴⁸ the referring court also asked the Court about the applicability of Regulation No 754/2004 for the purposes of tariff classification of the LCD monitors at issue in the main proceedings.

In that regard, the Court recalls, first, that a classification regulation is adopted by the Commission when the classification in the CN of a particular product is such as to give rise to difficulty or to be a matter for dispute and, secondly, such a regulation is of general application in so far as it does not apply to an individual trader but, in general, to products identical to the one thus classified.

Although the application by analogy of a classification regulation to goods similar to those covered by that regulation facilitates a coherent interpretation of the CN and the equal treatment of traders, it is still necessary, in such a case, for the goods to be classified and those covered by the classification regulation to be sufficiently similar. Those monitors of the LCD type are not identical from a technological point of view to the goods classified under Regulation No 754/2004, which relates to monitors with plasma screens, which also differ in their dimensions and their resolutions.

The mere fact that both the monitors at issue in the main proceedings and the goods covered by Regulation No 754/2004 are all capable of displaying signals coming from an automatic data-processing machine and from other sources, leaving aside any assessment of their objective characteristics and their performance of their various functions, cannot be sufficient for that regulation to apply to those monitors by analogy.

It follows that Regulation No 754/2004 does not apply for the purposes of the tariff classification of LCD monitors equipped with D-SUB, DVI-D, USB, S-video and composite-video sockets.

⁴⁸ See Section II.2.1, entitled 'Objective characteristics and properties of the product'.

Judgment of 17 July 2014, *Panasonic Italia and Others* (C-472/12, [EU:C:2014:2082](#))

(Reference for a preliminary ruling – Regulation (EEC) No 2658/87 – Common Customs Tariff – Tariff classification – Combined Nomenclature – Headings 8471 and 8528 – Plasma screens – Function as computer screen – Potential function as a television screen, after insertion of a video card)

From 2001 to 2004, the applicants in the main proceedings imported plasma screens into Italy. For the purpose of making customs declarations, they classified them under heading 8471 60 90 of the CN, as screens exclusively intended for the transmission of images generated by a computer, with the result that those goods were exempt from customs duties and the payment of value added tax at the rate of 20%.

However, the Customs Office took the view that those screens should have been classified under heading 8528 of the CN, which refers, inter alia, to reception apparatus for television and video monitors, with the result that customs duties at a rate of 14% were applicable.

Consequently, the applicants in the main proceedings appealed against the judgments at first instance before Commissione tributaria provinciale di Milano (Provincial Tax Court, Milan), which rejected those actions on the ground that the possibility to programme the screen to receive composite video signals simply by inserting a video card meant that the apparatus could not be classified under tariff heading 8471 of the CN. The applicants in the main proceedings appealed against the judgments at first instance before the Commissione tributaria regionale di Milano (Regional Tax Court, Milan) which confirmed the classification of the imported screens under tariff heading 8528 of the CN.

In those circumstances, the referring court, hearing the appeals on a point of law against the judgments delivered on appeal, asked the Court about the criteria to be applied in order to determine whether the screens at issue in the main proceedings are to be classified under heading 8471 of the CN ⁴⁹ or, if not, under heading 8528 thereof.

As regards the method to be followed in order to make the tariff classification of such screens, the Court observes that Note 5(B)(a) to (c) of Chapter 84 of the CN states that screens such as those at issue in the main proceedings fall within heading 8471 of the CN as units of an automatic data-processing machine if they satisfy simultaneously three conditions, namely they are of a kind solely or principally used in an automatic data-processing system; they are connectable to the central processing unit either directly or through one or more other units; and they are able to accept or deliver data in a form (codes or signals) which can be used by the system.

⁴⁹ CN in Annex I to Regulation No 2658/87, in the versions resulting successively from Regulation No 2388/2000, Regulation No 2031/2001, Regulation No 1832/2002 and Regulation No 1789/2003.

The second and third conditions set out above being viewed as fulfilled, as regards the first condition, the Court recalls that the mere fact that screens are able to display images coming from sources other than an automatic data-processing machine does not preclude their classification in heading 8471 of the CN, having regard to Note 5(B)(a) to Chapter 84 of the CN, which refers to units used 'solely or mainly' in an automatic data-processing system.

Indeed, it is apparent from the points of the Explanatory Notes relating to heading 8471 that monitors used principally in an automatic data-processing system can be identified not only by the fact that they are fitted with standard sockets for connection to data-processing systems, but also by other technical characteristics, in particular by the fact that they are intended to be viewed close up, that they cannot display television signals, that they have low magnetic field emissions, that their display pitch starts at 0.41 mm for medium resolution and gets smaller as the resolution increases, that their bandwidth is 15 MHz or greater and that the dimension of the pixels on the screen is smaller than for video monitors in heading 8528 of the HS, whereas the convergence of the former is greater than that of the latter.

In those circumstances, the Court rules that, for the purposes of the tariff classification within the CN of plasma screens, in colour, with a diagonal dimension of 106.6 cm, equipped with two loudspeakers and a remote control and having an input device already provided for the insertion of a video card, account must be taken of their inherent intended purpose consisting of reproducing, first, data from an automatic data-processing machine and, secondly, composite video signals. Such screens must be classified under subheading 8471 60 90 of the CN if they are used solely or mainly in an automatic data-processing system, within the meaning of Note 5B(a) of Chapter 84 of the CN, or under subheading 8528 21 90 of the CN if that is not the case, which is a matter for the national court to determine on the basis of the objective characteristics of those screens and in particular those mentioned in the Explanatory Notes relating to heading 8471 to that HS, in particular those in points 1 to 5 of the part of Chapter I(D) of the HS relating to display units for automatic data-processing machines.

Secondly, the referring court sought to ascertain whether Regulation No 754/2004 must be applied retroactively.

Having recalled its case-law, according to which the principle of legal certainty precludes a regulation from being applied retroactively, regardless of whether such application might produce favourable or unfavourable effects for the person concerned, unless a sufficiently clear indication can be found, either in the terms of the regulation or its stated objectives, which allows the conclusion to be drawn that the regulation was not merely providing for the future, the Court observes that nothing in the preamble to Regulation No 754/2004, in the wording of its provisions or in its annex suggest that that regulation is to be applied retroactively.

In any event, a regulation specifying the conditions for classification in a tariff heading or subheading of the CN cannot have retroactive effect. Regulation No 754/2004 cannot, therefore, be applied retroactively.

Judgment of 22 September 2016, *Kawasaki Motors Europe* (C-91/15, [EU:C:2016:716](#))

(Reference for a preliminary ruling – Assessment of validity – Regulation (EC) No 1051/2009 – Common Customs Tariff – Tariff classification – Combined Nomenclature – Heading 8701 – Tractors – Subheadings 8701 90 11 to 8701 90 39 – Agricultural tractors (excluding pedestrian-controlled tractors) and forestry tractors, wheeled, new – Light four-wheeled all terrain vehicles designed to be used as tractors)

In that judgment, the factual background to which was set out above,⁵⁰ in the context of the judicial proceedings brought by KME relating to BTIs, the *Gerechtshof Amsterdam* (Amsterdam Regional Court of Appeal) questioned the Court as to the validity of regulation No 1051/2009 and, if appropriate, under which subheadings it would be appropriate to classify the vehicles concerned.

The parties in the main proceedings and the referring court consider that, while not identical, the vehicles referred to in Regulation No 1051/2009 and those at issue in the main proceedings are sufficiently similar for that regulation to apply by analogy. However, the referring court questions the validity of that regulation because of the absence of specific equipment such as power take-off shafts, hydraulic lifts or winches.

The referring court also observed that the Explanatory Notes on tariff subheadings refer to specific equipment such as winches for forestry tractors, but describe agricultural tractors as being only 'generally' equipped with hydraulic lifting devices and power take-off shafts. That observation raised questions as to the applicability of Regulation No 1051/2009 to similar all-terrain vehicles, which could be classified as agricultural tractors even if they were not equipped with those devices.

In that regard, the Court recalls, in particular, that, where a national court has doubts as to the validity of a classification regulation which it must apply by analogy to goods which are sufficiently similar to those covered by that regulation, it is justified for that court to submit a request for a preliminary ruling to the Court to assess the validity of that regulation.

In conclusion, the Court rules that paragraph 2 of the Annex to Regulation No 1051/2009 is invalid in so far as it classifies the vehicle described in that paragraph under CN,⁵¹ subheading 8701 90 90 and not under one of CN subheadings 8701 90 11 to 8701 90 39, which correspond to the engine power of that vehicle.

⁵⁰ As regards the factual and legal context of the dispute, see Section II.2.2, entitled 'Intended Use of the product'.

⁵¹ NC as amended by Regulation No 948/2009.

Judgment of 15 December 2016, LEK (C-700/15, [EU:C:2016:959](#))

(Reference for a preliminary ruling – Combined Nomenclature – Classification of goods – Food supplements falling under heading 2106 – Active ingredient as the essential component – Possible classification in Chapter 30 of the Combined Nomenclature – Goods presented and marketed as medicinal products)

In this case, part of the legal context of which has been set out above,⁵² the referring court, by its first and second questions, asks, in essence, whether the CN⁵³ must be interpreted as meaning that goods, such as those at issue in the main proceedings, which have beneficial effects on health and in which the essential component is an active ingredient found in food supplements classified under tariff heading 2106 of the CN, although they are presented by their manufacturer as medicinal products and are marketed and sold as such, may be classified under CN heading 3004 or whether they fall instead under heading 2106 thereof.

In that context, the Court addresses, inter alia, the question of whether Regulation No 1264/98 and Implementing Regulation No 727/2012, which classify certain products under heading 2106 of the CN, are applicable to the goods at issue in the main proceedings.

In the first place, the Court recalls its settled case-law that a classification regulation is of general application in so far as it does not apply to an individual trader but, in general, to products which are the same as that examined by the Customs Code Committee. In the interpretation of a classification regulation, in order to determine its scope, account must be taken, inter alia, of its statement of reasons. In that regard, the Court finds that the goods at issue in the main proceedings are not identical to those covered by those regulations. Consequently, those regulations are not directly applicable to the goods at issue in the main proceedings.

In the second place, the Court refers to its case-law, according to which the application by analogy of a classification regulation, such as Regulation No 1264/98 and Implementing Regulation No 727/2012, to products similar to those covered by that regulation facilitates a coherent interpretation of the CN and the equal treatment of traders. In the light of that case-law, the Court then carries out a comparison of the objective characteristics and properties of the products covered by those regulations and the products at issue in the main proceedings. The Court thus concludes that those goods have the same active ingredient as the goods classified by Regulation No 1264/98 and Implementing Regulation No 727/2012 and the only differences between the two are the concentration of the micro-organisms and the excipients used.

⁵² See Section I, entitled 'General considerations on the nature and scope of the duties incumbent on the Courts of the European Union and on the relevant assessment criteria'.

⁵³ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1006/2011.

On the basis of those considerations, the Court responds that goods, such as those at issue in the main proceedings, which have beneficial effects on health and in which the essential component is an active ingredient that is found in food supplements classified under tariff heading 2106 of the CN, although they are presented by their manufacturer as medicinal products and are marketed and sold as such, fall under that heading.

Judgment of 13 September 2018, *Vision Research Europe* (C-372/17, [EU:C:2018:708](#))

(Reference for a preliminary ruling – Common Customs Tariff – Tariff headings – Classification of goods – Volatile-memory camera, meaning that recorded images are erased when the camera is switched off or when new images are captured – Combined Nomenclature – Subheadings 85258019 and 85258030 – Explanatory Notes – Interpretation – Implementing Regulation (EU) No 113/2014 – Interpretation – Validity)

In that judgment, the factual context of which is set out above,⁵⁴ regarding the examination of the validity of Implementing Regulation No 113/2014, the Court notes that it is settled case-law that a classification regulation is of general application in so far as it does not apply to an individual trader but, in general, to products which are the same as that examined by the Customs Code Committee. In the interpretation of a classification regulation, in order to determine its scope, account must be taken, *inter alia*, of its statement of reasons.

Next, the Court states that it follows from the comparison of the characteristics of the devices described by Implementing Regulation No 113/2014 and those of the camera in question in the main proceedings that those devices are not identical and, therefore, that that regulation is not directly applicable to the camera at issue.

However, it is clear from the settled case-law that, if a classification regulation is not directly applicable to goods which are not identical, but only similar, to the goods covered by that regulation, the latter is applicable by analogy to such goods. In that regard, it is sufficient if the goods to be classified and those covered by the classification regulation are sufficiently similar.

Since the devices described in Implementing Regulation No 113/2014 have similar objective characteristics and properties to the camera in question in the main proceedings, it follows that Implementing Regulation No 113/2014 is applicable by analogy to that camera. As a result, the validity of that regulation must be examined.

In that regard, the Court notes that, with respect to the application of the CN, the Council of the European Union has conferred upon the Commission, acting in cooperation with the customs experts of the Member States, broad discretion to define the subject matter of tariff headings falling to be considered for the classification of

⁵⁴ See Section II.1.4., entitled 'Rules 4 to 6 – default rule, special rule for certain containers, rule on comparisons between subheadings'.

particular goods. However, the Commission's power to adopt the measures mentioned in Article 9(1)(a) of Regulation No 2658/87 does not authorise it to alter the subject matter of the tariff headings which have been defined on the basis of the HS established by the HS Convention whose scope the European Union has undertaken, under Article 3 thereof, not to modify

In the present case, the Court finds that Implementing Regulation No 113/2014 classifies 'high speed cameras' under CN subheading 8525 80 19. The grounds for that classification are based on the finding that 'temporary storage onto volatile memory is not considered recording in the camera as the images are lost after switching off the camera'. Therefore, as the Court has already clarified, the capability of digital cameras of recording still images onto an internal memory is an essential characteristic of the goods covered by CN tariff subheading 8525 80 30, irrespective of whether that recording capability is temporary or permanent.

Given that Implementing Regulation No 113/2014 excludes, contrary to what is stated in CN subheading 8525 80 30, devices which temporarily record images in volatile memory from that subheading and therefore classifies 'high speed cameras' under CN subheading 8525 80 19, the Court concludes that that implementing regulation is incompatible with the scope of CN subheading 8525 80 30.

Consequently, by adopting Implementing Regulation No 113/2014, the Commission altered the scope of CN subheading 8525 80 30 by restricting it and exceeded the authority conferred on it by Article 9(1)(a) of Regulation No 2658/87.

Therefore, the Court holds that CN subheading 8525 80 30 must be interpreted as covering a camera, such as the camera at issue in the main proceedings, that is capable of capturing a large number of photographic images per second and of storing them in its volatile internal memory – images that are deleted from that memory when the camera is switched off – and that Implementing Regulation No 113/2014, in so far as it is applicable by analogy to goods that have the characteristics of that camera, is invalid.

3. Classification Opinions and Binding Tariff Informations

3.1. Classification Opinions of the WCO and of the Customs Code Committee

Judgment of 19 November 1975 (Full Court), *Douaneagent der Nederlandse Spoorwegen* (38/75, [EU:C:1975:154](#))

(Xerographic duplicators)

On 28 April 1971, the applicant in the main proceedings imported from a third country a xerographic duplicator for the reproduction of documents. The Netherlands customs

authorities classified that apparatus under tariff heading 90.07 A, 'photographic cameras', of the CCT ⁵⁵ and charged a duty of 14% on it. That classification corresponds to an additional note incorporated in Chapter 90 of the CCT pursuant to Regulation No 1/71 ('the Additional Note at issue'), amending, with effect from 1 January 1971, the CCT and worded as follows: 'apparatus for the automatic reproduction of documents by means of static electricity, equipped with an optical picture-recording system is also classified under subheading 90.07 A.' That note is consistent with a Classification Opinion issued in December 1965 by the Customs Cooperation Council responsible for ensuring the implementation of the Convention on Nomenclature for the Classification of Goods in Customs Tariffs, signed in Brussels on 15 December 1950 ('the Convention on Nomenclature'). ⁵⁶

However, prior to 1 January 1971, the Netherlands customs authorities had classified the apparatus in question under heading No 84.54 B, 'Other office machines', in order to comply with two decisions of the Tariefcommissie (Tariff Commission) of 2 February 1970.

Since the duty applicable to goods under heading 84.54 B had been reduced, in the context of the multilateral negotiations under the General Agreement on Tariffs and Trade (GATT) to 7%, the applicant took the view that the Additional Note at issue, by 'transferring' the goods at issue from a consolidated heading to 7%, to a tariff of 14% infringed Article II of that agreement. Following the rejection of his complaint, he brought an action before the Tariff Commission, which decided to ask the Court, *inter alia*, whether the Additional Note at issue was in breach of the obligations under the Convention on Nomenclature – in particular Article II(b)(ii) – prohibiting amendments to the notes to the chapters and sections which might alter the scope of the chapters, sections and headings of the Nomenclature.

First of all, the Court clarifies that the European Union replaces the Member States in commitments arising from the Nomenclature Convention and the Convention of the same date establishing a Customs Cooperation Council, ⁵⁷ and is bound by those commitments.

In that regard, the Court rules that, among the commitments embodied in the first of these Conventions is to be found, under Article II(b)(ii), the obligation of each contracting party that 'it will make no changes in the chapter or section notes in a manner modifying the scope of the chapters, sections and headings, as laid down in the Nomenclature'.

Moreover, the classification opinions issued by the Customs Cooperation Council do not bind the Contracting Parties but have a bearing on interpretation which is all the more decisive because they emanate from an authority entrusted by the Parties with ensuring uniformity in the interpretation and application of the CN. When, furthermore, such an

⁵⁵ CCT in Annex I to Regulation No 950/68, as amended by Regulation No 1/71.

⁵⁶ Convention on Nomenclature for the Classification of Goods in Customs Tariffs, signed in Brussels on 15 December 1950.

⁵⁷ Convention establishing a Customs Cooperation Council, signed in Brussels on 15 December 1950.

interpretation reflects the general practice followed by the Contracting States, it can be set aside only if it appears incompatible with the wording of the heading concerned or goes manifestly beyond the discretion conferred on the Customs Cooperation Council.

In the light of those considerations, the Court concludes that in view of the degree of similarity between the photographic processes and the xerographic picture-recording processes, the conditions under which a classification opinion must be rejected as incompatible with the heading in question are not present. Consequently, the Additional Note at issue is not incompatible with the obligations under the Convention on Nomenclature.

Thus, it follows from those considerations that consideration of the file has not disclosed any factors of such a nature as to affect the validity of the Additional Note at issue.

Judgment of 10 November 2011, X and X BV (C-319/10 and C-320/10, [EU:C:2011:720](#))

(Common Customs Tariff – Combined nomenclature – Tariff classification – Boneless, frozen and salted chicken meat – Validity and interpretation of Regulations (EC) Nos 535/94, 1832/2002, 1871/2003, 2344/2003 and 1810/2004 – Additional note 7 to Chapter 2 of the combined nomenclature – Decision of the WTO Dispute Settlement Body – Legal effects)

In the case which gave rise to that judgment, the Court was called upon to answer, inter alia, the question whether, in the context of the interpretation or assessment of the validity of the Additional Note in Regulation No 1810/2004,⁵⁸ it is possible to rely on the decision of the Dispute Settlement Body ('DSB') established within the WTO, in so far as it concerns the interpretation of the term 'salted' referred to in heading 0210, even though the declaration in the customs procedure for release for free circulation was made before that decision was adopted.

The dispute in the main proceedings concerned the customs classification of frozen and boneless chicken meat, with different salt addition levels, between 0.6% and 1%. The applicants in the main proceedings claimed that the meat should be classified under subheading 0210 99 39 of the CN, arguing that the addition of salt, even below 1.2%, alters the character of the meat, an argument based on the decisions of the DSB. However, the customs authorities maintained that the goods should be classified under subheading 0207 14 10, on the basis of the Additional Note at issue. The referring court has stressed the importance of the interpretation of that note and of the validity of the regulations, as well as of the impact of WTO decisions on the outcome of the dispute.

As regards, in the first place, the question whether it is possible to assess the validity of the Additional Note at issue in the light of the DSB decision, the Court recalls that the WTO agreements are not, in principle, among the rules in the light of which the Court is

⁵⁸ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 1810/2004.

to review the legality of measures adopted by the EU institutions. It is only where the European Union intends to implement a particular obligation assumed in the context of the WTO or where, as in the present case, the European Union measure refers expressly to specific provisions of the WTO agreements, that the Court can review the legality of the European Union measure at issue in the light of the WTO rules.

Furthermore, an economic operator cannot claim before a court of a Member State that EU legislation is incompatible with certain WTO rules, even though the DSB has declared that legislation incompatible with those rules. In addition, the reasonable period of time provided for under the dispute settlement system established by the WTO agreements and granted to the Union in order to comply with that decision has expired.

Nor can it be accepted that an economic operator may argue before the Courts of the European Union that its legislation is incompatible with a decision of the DSB. The recommendations or decisions of the DSB finding that the WTO rules have not been complied with cannot, in principle and whatever their legal scope, be fundamentally distinguished from the substantive rules reflecting the obligations agreed to by a member within the framework of the WTO. Thus, a recommendation or a decision of the DSB finding that those rules have not been complied with cannot, any more than the substantive rules contained in the WTO agreements, be relied on before the Courts of the European Union in order to establish whether EU legislation is incompatible with that recommendation or that decision.

In the present case, first, according to the Court, it is not apparent either from the documents before the Court or from the recitals in the preamble to the regulations concerned that, in adopting those regulations, the Commission intended to implement, in the EU legal order, a particular obligation assumed in the context of the WTO. Secondly, none of those regulations refers expressly to specific provisions of the WTO agreements. In addition, the DSB's decision post-dates the facts at issue in the main proceedings and the reasonable period for its implementation did not expire until 27 June 2006.

It follows that, in the context of the assessment of the validity of the Additional Note at issue in Regulation No 1810/2004, it is in any event not possible to rely on the DSB decision in circumstances such as those at issue in the main proceedings.

As regards, in the second place, the question whether it is possible to interpret the Additional Note at issue in the light of the DSB decision, the primacy of international agreements concluded by the European Union over secondary EU legislation requires that the latter be interpreted, as far as possible, in a manner consistent with those agreements. Thus, the Court has already referred to the reports of a Panel or of the Appellate Body of the WTO in support of its interpretation of certain provisions of WTO Agreements.

However, even though it cannot be ruled out that a DSB decision may, in certain circumstances, be relied on for the purposes of interpreting EU law, in the present case,

according to the Court, the interpretation of the DSB decision put forward by the applicants in the main proceedings and the referring court is based on a misreading of that decision.

In that context, the Court concludes that, in circumstances in which the declarations for the customs procedure for release for free circulation were made before 27 September 2005, it is not possible to rely on the decision of the WTO Dispute Settlement Body and on two reports by a special WTO group, either in the context of the interpretation of the Additional Note at issue contained in Regulation No 1810/2004 or in the assessment of the validity of that Additional Note.

3.2. Binding Tariff Informations

Judgment of 2 December 2010, Schenker (C-199/09, [EU:C:2010:728](#))

(Regulation (EEC) No 2454/93 – Provisions for the implementation of the Community Customs Code – Article 6(2) – Application for binding tariff information – Meaning of ‘one type of goods’)

In the case which gave rise to that judgment, the referring court referred to the Court for a preliminary ruling a question on the interpretation of Article 6(2) of Regulation No 2454/93 (‘the Implementing Regulation’), according to which an application for a BTI may relate to only one type of goods. The referring court asked, in particular, whether that provision must be interpreted as meaning that such an application must be confined to goods which are the same and cannot therefore relate to various different goods even if the differences between them are minimal. That question effectively implies an examination as to whether LCD liquid crystal displays, such as those at issue in the main proceedings, constitute ‘one type of goods’ for the purposes of Article 6(2) of the Implementing Regulation.

The Court notes at the outset that neither the Customs Code nor the Implementing Regulation contains a definition of the term ‘one type of goods’, as used in Article 6(2) of that regulation. It is necessary, therefore, when interpreting that term, to take account of the wording, the context and the objectives of that provision.

The Court then observes, first, that, according to the wording of Article 6(2), which refers to ‘one type of goods’, an application for a BTI may relate to various different goods provided that they are all of the same type. In the light of the ordinary meaning of that word, only goods with similar characteristics are likely to constitute ‘one type of goods’.

Secondly, for the purposes of ascertaining which distinguishing features preclude goods with similar characteristics from being regarded as belonging to one type of goods, for the purposes of Article 6(2) of Regulation No 2454/93, the Court recalls that the aim of the system of BTIs is to provide the trader with legal certainty where there is a doubt as to the tariff classification of goods. Thus, the BTI assures the holder of that information

that the goods are classified under a precise tariff heading, making it possible to know in advance the amount of duty payable on completion of the customs formalities in relation to those goods.

In addition, that system facilitates the work of the customs services themselves, since the tariff classification of the goods that are the subject of binding tariff information is set for any future customs declaration relating to those goods while the information is valid.

In the light of the objective pursued by the legislation in question, the Court explains that goods cannot – even if they have similar characteristics – be regarded as belonging to one type of goods for the purposes of Article 6(2) of Regulation No 2454/93 if they are likely to be classified under different headings or the subheadings of the customs nomenclature. In addition to complicating the work of the customs services, the inclusion in the same application for BTI of several goods likely to fall under different headings or subheadings would entail a high risk of error in the assessment of the information provided in the application and, as a consequence, in the determination of the classification of the goods.

In those circumstances, the Court concludes that an application for a BTI cannot relate to different goods, even if they have similar characteristics, if the features which distinguish those goods from one another are likely to have any bearing on their tariff classification.

Consequently, the Court holds that Article 6(2) of Regulation No 2454/93 must be interpreted as meaning that an application for a BTI may relate to different goods provided that these all belong to one and the same type of goods. Only goods which have similar characteristics and whose distinguishing features are completely irrelevant for the purposes of their tariff classification may be regarded as belonging to one type of goods for the purposes of that provision.

Judgment of 15 September 2005, Intermodal Transports (C-495/03, [EU:C:2005:552](#))

(Common Customs Tariff – Tariff headings – Classification in the combined nomenclature – Heading 8709 – "Magnum ET120 Terminal Tractor" – Article 234 EC – Obligation of a national court to refer a question for a preliminary ruling – Conditions – Binding tariff information issued for a third party by the customs authorities of another Member State concerning a similar vehicle)

Intermodal, a Dutch company, declared motor vehicles for the purposes of their release for free circulation, classifying them under tariff heading 8709 of the CN.

Following a check, the Netherlands customs authorities took the view, however, that those vehicles fell under subheading 8701 20 10 of the CN. They therefore sent Intermodal a notice of additional payment. In support of the action which it brought against that notice, Intermodal submitted a BTI issued by the Finnish customs

authorities, which specified a Finnish company as the holder and classified similar vehicles under heading 8709 of the CN. That action was, however, dismissed.

Intermodal brought an appeal on a point of law against that judgment before the referring court. While it considered that Intermodal cannot derive any right from a BTI of which it is not the holder and which relates to other goods, that court was uncertain whether, in circumstances such as those in the main proceedings, a national court which takes the view that such a BTI issued to a third party makes a classification which is manifestly wrong under the CN is required to refer to the Court a question for a preliminary ruling.

In those circumstances, it asked the Court, in the first place, whether a national court before which, in a dispute concerning the classification of goods under the CN, a BTI relating to similar goods issued by the customs authorities of another Member State to a person not party to that dispute is invoked, is under an obligation to refer to the Court questions on interpretation if it takes the view that that BTI is at variance with the CN and it intends to adopt a tariff classification different from the one in the BTI.

As a preliminary point, the Court states that it follows from Article 12 of Regulation No 2913/92 establishing the Community Customs Code that a BTI creates rights only for the holder and in respect only of the goods described therein.

Consequently, in the context of a dispute pending before a court of a Member State, the parties do not have any personal rights to rely on a BTI relating to similar goods issued to third party by the authorities of another Member State.

In those circumstances, the Court concludes that, when, in proceedings relating to the tariff classification of specific goods before a national court or tribunal, a BTI relating to similar goods issued to a person not party to the dispute by the customs authorities of another Member State is submitted, and that court or tribunal takes the view that the tariff classification made in that BTI is wrong, those two circumstances cannot result, in respect of a court or tribunal against whose decisions there is a judicial remedy under national law, in the court or tribunal being under an obligation to refer to the Court questions on interpretation.

As regards a national court or tribunal against whose decisions there is no judicial remedy under national law, those circumstances cannot, in themselves, automatically result in that court or tribunal being under an obligation to refer to the Court questions on interpretation. Such a court or tribunal is, nevertheless, required, where a question of EU law is raised before them, to comply with their obligation to make a reference, unless they have established that the question raised is irrelevant or that the EU provision in question has already been interpreted by the Court or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt. Whether such a possibility exists must be assessed in the light of the specific characteristics of EU law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Union.

In that regard, the existence of a BTI issued by the customs authorities of another Member State must cause that court or tribunal to take particular care in its assessment of whether there is no reasonable doubt as to the correct application of the CN,⁵⁹ taking account, in particular, of the three criteria mentioned above.

In the second place, the national court asked the Court whether heading 8709 of the CN must be interpreted as covering a vehicle with the features of the vehicle at issue in the main proceedings.

In that regard, the Court notes that the wording of heading 8709 of the CN draws a distinction between the two categories of vehicles, each defined in terms of, in particular, certain of their physical features and/or the use which may be made of them. Furthermore, that wording accords decisive importance to the fact that the vehicles concerned must be of the type used for towing purposes in railway stations and, in particular, as some language versions make clear, on railway station platforms. That criterion refers to the objective characteristics of the tractor which have to be such that it is naturally capable of being used in railway stations, in particular on railway station platforms, and that it is identical or similar to the vehicles which are actually used in such places.

According to the Court, it is apparent from the characteristics of the vehicles in question in the main proceedings, that they are clearly neither similar to vehicles actually used for towing purposes in railway stations, including on platforms, nor capable, by their nature, of being so used. Consequently, such vehicles cannot fall within the field of application of heading 8709.

In those circumstances, the Court rules that heading 8709 of the combined CN does not cover a vehicle equipped with a diesel engine having an output of 132 kilowatts at 2 500 revolutions per minute and automatic transmission with four forward gears and one reverse gear, fitted with a closed cab and a fifth wheel allowing a lift height of 60 centimetres, which has a maximum carrying capacity of 32 000 kilograms, a very small turning circle and is designed for moving semi-trailers on industrial premises and in industrial buildings. Such a vehicle is neither a works truck used for the transport of goods nor a tractor of the type used in railway stations, within the meaning of that heading.

Judgment of 7 April 2011, Sony Supply Chain Solutions (Europe) (C-153/10, [EU:C:2011:224](#))

(Regulation (EEC) No 2913/92 – Community Customs Code – Articles 12(2) and (5), 217(1) and 243 – Regulation (EEC) No 2454/93 – Implementing provisions of Regulation No 2913/92 – Articles 10 and 11 – Classification of goods – Binding tariff information – Invocation by a trader other than the holder with respect to the same goods – Legitimate expectation)

⁵⁹ CN in Annex I to Regulation No 2658/87, as amended by Regulation No 2261/98.

Sony Supply Chain Solutions (Europe) BV ('SLE') brought an action against a request for payment of customs duties by the Netherlands customs authorities in respect of the import of games machines, including the game console Playstation 2 Computer Entertainment System ('PS2'). In that appeal, SLE based its arguments on proceedings between Sony Computer Entertainment Europe Ltd (SCEE), part of the same group of companies and the United Kingdom customs authorities. On 19 October 2000, those customs authorities issued SCEE with a BTI for the PS2, classifying it under tariff subheading 9504 10 00 of the CN .⁶⁰

In those circumstances, the referring court asked the Court, *inter alia* whether Regulation No 2913/92 establishing the Community Customs Code, as amended by Regulation No 82/97, and Regulation No 2454/93, as amended by Regulation No 12/97. ('the Implementing Regulation'), must be interpreted as meaning that a person who makes customs declarations in his own name and on his own behalf, may rely on a BTI of which he is not the holder, but which is held by an associated company on whose instructions he made those declarations.

As a preliminary point, the Court recalls that the purpose of a BTI is to provide the trader with legal certainty where there is a doubt as to the tariff classification of goods in the existing customs nomenclature, thereby protecting him against any subsequent change in the position adopted by the customs authorities with regard to the classification of those goods.

Then the Court notes that it is clear from the combined provisions of Article 12(2) of the Customs Code and Articles 10 and 11 of the implementing regulation that a BTI may be relied on only by its holder *vis-à-vis* the customs authorities that issued it and *vis-à-vis* those of other Member States. In that regard, the Court holds that a BTI creates rights only for the holder. However, it follows from Articles 5 and 64 of the Customs Code that the rule that the BTI may be invoked only by its holder does not prohibit the holder from making the declaration through the intermediary of a third party. That Code lays down exhaustive rules regarding the right to representation before the customs authorities.

It was clear both from the order for reference and SLE's submissions to the Court that SLE did not act as SCEE's representative. As a result, it could not rely, *vis-à-vis* the Netherlands customs authorities, on a BTI of which SCEE was the holder. The mere fact that SCEE and SLE were part of the same group of companies or that the second was the fiscal representative of the first in the Netherlands, did not confer on SLE the status of representative within the meaning of Article 5 of the Customs Code.

In the light of those considerations the Court holds that Article 12(2) of the Customs Code and Articles 10 and 11 of the implementing regulation must be interpreted as meaning that a person who makes customs declarations in his own name and on his

⁶⁰ CN in Annex I to Regulation No 2658/87, in the version resulting from Regulation No 2204/1999 and Regulation No 2263/2000, respectively.

own behalf cannot rely on a BTI of which he is not the holder, but which is held by an associated company on whose instructions he made those declarations.

By another question, the referring court asked the Court whether, in proceedings concerning the imposition of customs duties, an interested party may challenge their imposition by producing a BTI issued, for the same goods, in another Member State. The referring court also asked whether account must be taken of that BTI where, at the time of the import, the validity of that BTI was still disputed and it was revised only after those imports.

In that regard, the Court clarifies, first, that Article 12(2) of the Customs Code and Article 11 of the Implementing Regulation a BTI is binding on the customs authorities only where it is invoked by the holder or his representative. If that is not the case, the court, seised in accordance with Article 243(2) of the Customs Code, and to which a BTI is submitted cannot give that BTI the legal effects attaching to it. However, a BTI may be relied on as evidence by a person other than its holder. Indeed, in the absence of EU rules on the concept of proof, all means of evidence which the procedural laws of the Member States admit in proceedings analogous to that laid down in Article 243 of the Customs Code are, in principle, admissible.

Furthermore, the Court recalls its case-law, according to which the fact that the customs authorities of another Member State have issued a BTI for specific goods to a person not party to the dispute, before a court against whose decisions there is no judicial remedy under national law, which seems to reflect a different interpretation of the CN headings from that which that court considers it must adopt in respect of similar goods in question in that dispute, most certainly must cause that court to take particular care in its assessment of whether there is no reasonable doubt as to the correct application of the CN.

The Court concludes from that case-law that a BTI issued to a third party may be taken into consideration as evidence by a court seised of a dispute relating to the classification of goods and the subsequent payment of customs duties.

In the light of those considerations, the Court concludes that Article 12(2) and (5) and 217(1) of the Customs Code and Article 11 of the Implementing Regulation, read in conjunction with Article 243 of the Customs Code, must be interpreted as meaning that, in proceedings relating to the imposition of customs duties, an interested party may challenge that imposition by submitting as evidence a BTI issued in respect of the same goods in another Member State although the BTI cannot produce the legal effects attaching to it. It is, however, for the national court to determine whether the relevant procedural rules of the Member State concerned provide for the possibility of producing such types of evidence.

Moreover, by its third question, the referring court asks essentially, whether the Customs Code and the Implementing Regulation must be interpreted as meaning that a national policy decision, which allows the national authorities to refer, for the purpose of

the tariff classification of declared goods, to a BTI issued to a third party for the same goods, may raise, on the part of those importers, a legitimate expectation that they can rely on that policy.

As a preliminary point, it must be stated that, according to the order for reference, at the material time the Netherlands customs manual provided that ‘only the holder may rely on a BTI. ... [and that i]n every case, the goods offered must correspond in every respect to the description of the goods in the BTI. If an importer refers to a valid BTI of which he is not the holder, but makes a declaration for precisely the same goods as those described in the BTI, the classification must nonetheless correspond to that given in the BTI’.

In that regard, the Court refers to its case-law, according to which the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of EU law; nor can the conduct of a national authority responsible for applying EU law, which acts in breach of that law, give rise to a legitimate expectation on the part of a trader of beneficial treatment contrary to EU law.

Article 12 of the Customs Code regulates very closely the conditions of issue, the legal value and the period of the validity of a BTI. Furthermore, Article 10(1) of the implementing regulation clearly states that the BTI may be invoked only by its holder or the representative acting on behalf of the holder.

It follows that, by attributing to a BTI the same legal value whether it was invoked by a third party or its holder, the Netherlands customs authorities responsible for applying EU law acted in a manner which was inconsistent with that law.

Therefore, the Court responds that Article 12 of the Customs Code and Article 10(1) of the Implementing Regulation must be interpreted as meaning that a national policy which allows national authorities to refer, for the purpose of the tariff classification of declared goods, to a BTI issued to a third party for the same goods, could not give rise, on the part of traders a legitimate expectation that they could rely on that policy.

Judgment of 14 April 2011, British Sky Broadcasting Group and Pace (C-288/09 and C-289/09, [EU:C:2011:248](#))

(Common Customs Tariff – Tariff classification – Combined Nomenclature – Digital satellite television receivers and decoders with a recording function – Community Customs Code – Article 12(5)(a)(i) and (6) – Period of validity of a binding tariff information)

In this judgment, the legal context of which is set out above,⁶¹ the Court was asked whether or not a BTI which no longer conformed to the CN because of the entry into

⁶¹ See Section II. 2.2, entitled ‘Intended use of the product’. That judgment is also presented in Section III. 1.2. ‘Explanatory Notes of the Commission’.

force of an amendment to the law, ceased to be valid after the date of that entry into force.

In the main proceedings in the second joined case, *Pace*, a company established in the United Kingdom, was the manufacturer and importer of set-top boxes with a communication function and a hard disk drive ('STB-HDDs'), intended for providers of pay-television services. *Pace* imported those STB-HDDs to the United Kingdom, including the TDS 470NB SD PVR model (also called 'Sky+ box') produced for Sky, who call it 'model DRX 280'.

On 8 April 2005, the Commissioners for Her Majesty's Revenue & Customs ('the Commissioners') issued to *Pace* a BTI, classifying the Sky+ box under subheading 8528 12 91 of the CN, that is to say the version in Regulation No 1810/2004. Following the entry into force of Regulation No 1549/2006 on 1 January 2007, that subheading became subheading 8528 71 13. The minor differences between the various STB-HDDs in terms of the technical or product specification do not affect their classification.

By letters of 4 December 2006 and 29 January 2007, the Commissioners informed *Pace* that, 'with effect from 1 January 2007 the CN would be subject to significant code changes' and that 'as a result of the code amendments the BTI [of 8 April 2005] would be revoked with effect from 31 December 2006'.

By letter of 8 August 2008, the Commissioners confirmed that model TDS 460 of STB-HDDs, for which there are two models, namely TDS 460NV and TDS 460NS, was also covered by the provisions of the BTI of 8 April 2005 during its period of validity. By another letter, they further confirmed that, pursuant to Article 12(5)(a)(i) of the Customs Code, the BTI of 8 April 2005 had ceased to be valid as of 1 January 2007 as a result of the code changes introduced by the changes to the HS and the annual update of the customs tariffs.

On 17 November 2008, the Commissioners issued to *Pace* a Post Clearance Demand Note in respect of all the STB-HDDs, including the Sky+ box, which were imported from January 2007 to April 2008. That note was issued on the basis that the STB-HDDs had been classified under an incorrect CN heading, namely subheading 8528 71 13 whereas, according to the Commissioners, those products should be classified under subheading 8521 90 00.

Having unsuccessfully requested a review of the Commissioners' decision, *Pace* appealed against that decision, submitting that the BTI on the boxes in question remained valid for a period of six months after the entry into force of Regulation No 1549/2006 and that Article 12(5)(a)(i) of the Customs Code must be interpreted as meaning that that regulation is not a 'regulation' for the purposes of that provision.

In those circumstances, the referring court decided to ask the Court, *inter alia*, whether Article 12(5)(a)(i) of the Customs Code must be interpreted as meaning that Regulation No 1549/2006 must be considered a regulation within the meaning of that provision.

Tariff classification of goods

More specifically, that court asked whether or not a BTI which no longer conformed to the CN because of the entry into force of Regulation No 1549/2006 ceased to be valid after the date of that entry into force.

First of all, the Court cites the wording of Article 12(5)(a)(i) of the Customs Code, according to which BTI is to cease to be valid where, as a result of the adoption of a regulation, the information no longer conforms to the law laid down. The Court clarifies that that article covers not only regulations which, like Regulation No 1549/2006, are adopted in order to apply Article 12(1) of Regulation No 2658/87, but also all regulations affecting or determining the classification of goods in the CN.

Then, the Court notes that, as of 1 January 2007, Annex I to Regulation No 2658/87, which contains the CN, was replaced by the provisions in the Annex to Regulation No 1549/2006, in accordance with Article 1 of that regulation. Indeed, Recital 4 of Regulation No 1549/2006 states that, in accordance with Article 12 of Regulation No 2658/87, Annex I to that regulation should be replaced, with effect from 1 January 2007, by the complete version of the CN.

Finally, the Court states that the wording of the CN contained in the Annex to Regulation No 1549/2006 no longer mentions subheading 8528 12 91. It therefore follows that a BTI classifying a good in that subheading no longer conformed to the CN and thus automatically ceased to be valid of 1 January 2007, in accordance with the provisions of Article 12(5)(a)(i) of the Customs Code.

In the light of those considerations, the Court rules that Article 12(5)(a)(i) of the Customs Code must be interpreted as meaning that Regulation No 1549/2006 must be considered a regulation within the meaning of that provision. Consequently, a BTI which no longer conformed to the CN because of the entry into force of Regulation No 1549/2006 ceased to be valid after that date of entry into force.

4. Other legally binding acts

Judgment of 22 February 2018, SAKSA (C-185/17, [EU:C:2018:108](#))

(Reference for a preliminary ruling – Common Customs Tariff – Classification of goods – Harmonised European standard EN 590:2013 – Subheading 2710 19 43 of the Combined Nomenclature – Relevant criteria for the classification of goods as gas oil)

In 2015, SAKSA, a Bulgarian company, declared mineral oil at the customs office of the port of Varna under tariff subheading 2710 19 43 of the CN, in order to obtain their release for free circulation.

The Varna Customs Office sent two samples of the goods declared to the regional customs laboratory in order to have their nature established and the tariff classification

determined. The distillation characteristics and other defined indicators showed that the sample studied possessed the characteristics of 'medium oils', in accordance with Additional Note 2(c) to Chapter 27 of the CN.

Thus, the customs office considered that the goods ought to have been classified under subheading 2710 19 25 of the CN, subject to customs duties of 4.7% in respect of third countries. Consequently, the head of the Varna Customs Office corrected the tariff code and imposed an additional payment of customs duties.

Moreover, the customs office considered that SAKSA should be held liable for an administrative criminal offence. Consequently, the head of the Varna Customs Office imposed a fine.

SAKSA brought an action against that penalty before the Varnenski Rayonen sad (Varna District Court, Bulgaria) which, by decision of 20 October 2016, annulled the fine, having found that the mineral oil at issue corresponded to the definition of a fuel for diesel engines, intended for arctic climates or severe winter conditions, Class 4, whose characteristics are determined by standard 'EN 590:2014'.

It was in those circumstances that the referring court hearing an appeal on a point of law from the customs office against that decision, asked the Court whether mineral oil may be classified as gas oil under subheading 2710 19 43 of the CN,⁶² when it meets the requirements laid down in standard EN 590:2013⁶³ relating to gas oil for arctic or severe winter climates.

First, the Court notes that subheading 2710 19 43, the wording of which refers to gas oils with a sulphur content not exceeding 0.001% by weight comes under CN heading 2710, which concerns petroleum oils and oils obtained from bituminous minerals, other than crude. For the purposes of that heading, Additional Note 2 to chapter 27 of the CN defines the concept of 'gas oils' in point (e) thereof.

In that regard, it follows from the wording of point (e), read in combination with point (d) of that additional note, that, inter alia, oils and preparations of which less than 65% by volume (including losses) distils at 250 °C and 85% or more at 350 °C, by the ISO 3405 method, are considered to be 'gas oils'. However, for the purpose of the tariff classification of a product as gas oil, the only determining factor in the context of CN heading 2710 is the distillation rate at the temperatures indicated, by the ISO 3405 method.

Consequently, the Court finds that, since more than 65% of the mineral oil in question distils, by the ISO 3405 method, at 250 °Celsius, it does not fall within the definition of 'gas oils' in accordance with Additional Note 2(e) to Chapter 27 of the CN and cannot be

⁶² CN in Annex I to Regulation No 2658/87, in the version resulting from Implementing Regulation No 1101/2014.

⁶³ Harmonised standard EN 590, in the version of September 2013, applicable to the dispute in the main proceedings, entitled 'Automotive fuels — Diesel — Requirements and test methods'.

classified under the subheadings relating to products which fall within the scope of that definition.

Furthermore, the reference to Note (g) to Table 3 of standard EN 590: 2013, according to which the definition of 'gas oil' given in the CN 'may not apply to the grades defined for use in arctic or severe winter climates', is irrelevant in that regard, that standard having been adopted not by an EU body but by the CEN, an organisation governed by private law. Indeed, that standard was drawn up by the CEN on the basis of European Commission mandate M 394 issued on 13 November 2006, which then, by Commission Directive 2014/77, updated the reference to that standard in footnote 1 to Annex II to Directive 98/70.

It is true that it may be inferred from the case-law of the Court that a harmonised standard, drawn up by an organisation governed by private law, may be considered to be part of the EU legal order when that standard was conceived, managed and monitored by the Commission and when it produces binding legal effects following publication of its references in the *Official Journal of the European Union*. However, according to the Court, since Note g to Table 3 of standard EN 590:2013 contains no test method, it cannot be considered to form part of EU law and is irrelevant for the purposes of establishing the tariff classification of goods.

In those circumstances, the Court answers that a mineral oil may not, on account of its distillation characteristics, be classified as gas oil under subheading 2710 19 43, even when it meets the requirements laid down in standard EN 590:2013 relating to gas oil for arctic or severe winter climates.



COURT OF JUSTICE
OF THE EUROPEAN UNION

Research and Documentation Directorate

December 2025