

Judgment of the Court (Seventh Chamber) of 27 November 2008 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Metherma GmbH & Co. KG v Hauptzollamt Düsseldorf

(Case C-403/07) ⁽¹⁾

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Headings 8101 and 8102 — Shattering and breaking-up of bars of tungsten or molybdenum ‘obtained simply by sintering’ — Unwrought tungsten and molybdenum, including bars obtained simply by sintering — Waste and scrap)

(2009/C 19/12)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Metherma GmbH & Co. KG

Defendant: Hauptzollamt Düsseldorf

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of 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) — Change of tariff heading for tungsten or molybdenum bars obtained by sintering when the bars are shattered

Operative part of the judgment

The Combined Nomenclature which is laid down in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the version applicable in 2001, namely that deriving from Commission Regulation (EC) No 2388/2000 of 13 October 2000 amending Annex I to Regulation No 2658/87, must be interpreted as meaning that bars of tungsten or molybdenum ‘obtained simply by sintering’ fall respectively under its subheadings 8101 91 10 and 8102 91 10. Such bars, which consist of the metals in question in their unwrought form and not of articles thereof, cannot be processed, by being broken up or shattered, into scrap falling respectively under subheadings 8101 91 90 and 8102 91 90 of that Combined Nomenclature.

⁽¹⁾ OJ C 283, 21.11.2007.

Judgment of the Court (Fourth Chamber) of 27 November 2008 (reference for a preliminary ruling from the Conseil d’Etat — France) — Société Papillon v Ministère du budget, des comptes publics et de la fonction publique

(Case C-418/07) ⁽¹⁾

(Freedom of establishment — Direct taxation — Corporation tax — Group taxation regime — Resident parent company — Resident sub-subsidiaries held through a non-resident subsidiary)

(2009/C 19/13)

Language of the case: French

Referring court

Conseil d’Etat

Parties to the main proceedings

Applicant: Société Papillon

Defendant: Ministère du budget, des comptes publics et de la fonction publique

Re:

Reference for a preliminary ruling — Conseil d’Etat (France) — Interpretation of Articles 43 and 48 EC — Restriction on freedom of establishment and possible justification for a tax scheme making a distinction depending on whether the French sub-subsidiary of a parent company (also established in France) is held through a subsidiary established in that Member State or established in another Member State and not subject to French corporation tax — Justification based on the coherence of the tax system

Operative part of the judgment

Article 52 of the Treaty (now, after amendment, Article 43 EC) is to be interpreted as meaning that it precludes legislation of a Member State by virtue of which a group tax regime is made available to a parent company which is resident in that Member State and holds subsidiaries and sub-subsidiaries which are also resident in that State, but is unavailable to such a parent company if its resident sub-subsidiaries are held through a subsidiary which is resident in another Member State.

⁽¹⁾ OJ C 283, 24.11.2007.