



## Reports of Cases

### JUDGMENT OF THE COURT (Eighth Chamber)

15 November 2012\*

(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 Case C-558/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Augstākās tiesas Senāts (Latvia), made by decision of 21 October 2011, received at the Court on 7 November 2011, in the proceedings

**SIA Kurcums Metal**

v

**Valsts ieņēmumu dienests,**

THE COURT (Eighth Chamber),

composed of L. Bay Larsen, acting for the President of the Eighth Chamber, A. Prechal (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: V. Trstenjak,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- SIA Kurcums Metal, by I. Faksa, advokāte,
- the Latvian Government, by I. Kalniņš and I. Nesterova, acting as Agents,
- the European Commission, by L. Bouyon and A. Sauka, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: Latvian.

## Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1) ('the CN'), in particular CN subheadings 5607 49 11, 7312 10 98 and 7317 00 90, and of Article 1 of 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).
- 2 The reference has been made in proceedings between SIA Kurcums Metal ('Kurcums Metal') and the Valsts ieņēmumu dienests (the Latvian tax administration, 'the VID') concerning the payment of definitive anti-dumping duties, import duties and value added tax in connection with the import of cables and clips from Russia.

### Legal context

#### *Tariff classification*

- 3 Part One of the CN consists of a number of preliminary provisions. In that part, in Section I containing general rules, subsection A, 'General rules for the interpretation of the [CN]', states:

'Classification of goods in the [CN] shall be governed by the following principles:

...

3. 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.

...'

- 4 In Part Two, 'Schedule of customs duties', the CN mentions *inter alia* headings 5607, 7312, 7317 00 and 7326.

5 In connection with heading 5607 the CN provides:

'5607	Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics:				
...					
	–	Of polyethylene or polypropylene:			
...					
5607 49	–	–	Other:		
	–	–	–	Measuring more than 50 000 decitex (5 g/m):	
5607 49 11	–	–	–	–	Plaited or braided'

6 In connection with heading 7312 the CN provides:

'7312	Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated:				
7312 10	–	Stranded wire, ropes and cables:			
7312 10 20	–	–	Of stainless steel:		
	–	–	Other, with a maximum cross-sectional dimension:		
...					
	–	–	–	Exceeding 3 mm:	
...					
	–	–	–	–	Ropes and cables (including locked coil ropes):
...					
7312 10 98	–	–	–	–	Other'

7 In connection with heading 7317 00 the CN provides:

'7317 00	Nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper:				
...					
	–	Other:			
...					
7317 00 90	–	–	Other'		

8 In connection with heading 7326 the CN provides:

'7326	Other articles of iron or steel:				
...					

7326 90	–	Other:		
...				
	–	–	Other articles of iron or steel:	
...				
7326 90 98	–	–	–	Other'

9 According to point VIII of the explanatory note to the Harmonised Commodity Description and Coding System ('the HS') concerning general rule 3(b), '[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined 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'.

10 The HS explanatory note to heading 7317 states:

'This heading covers:

(A) Nails, tacks, staples (other than those of heading 83.05) and similar articles, usually manufactured by the following methods:

...

(B) Other special types of nails, spikes, etc., such as:

...'

#### *Anti-dumping legislation*

11 In accordance with Article 1(1) of Regulation No 1601/2001:

'A definitive anti-dumping duty is hereby imposed on imports of iron or steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, with fittings attached or not, falling within CN codes [in the version of Commission Regulation (EC) No 2263/2000 of 13 October 2000 amending Annex I to Regulation No 2658/87 (OJ 2000 L 264, p. 1)] 7312 10 82, 7312 10 84, 7312 10 86, 7312 10 88 and 7312 10 99, originating in the Czech Republic, Russia, Thailand and Turkey.'

12 The Latvian language version of Regulation No 1601/2001 was published in the Latvian Special Edition of the *Official Journal of the European Union*, Volume 38, Chapter 11, p. 62. In that language version CN subheading 7312 10 99 is not mentioned in Article 1(1) of the regulation.

13 CN subheading 7312 10 99 in the version of Regulation No 2263/2000 corresponds to CN subheading 7312 10 98 in the version of Regulation No 1549/2006.

#### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

14 According to the order for reference, in 2007 Kurcums Metal imported from Russia into Latvia, for release for free circulation, goods which it declared as cables falling within CN subheading 5607 49 11 and shackles for equipment falling within CN subheading 7317 00 90.

- 15 The cables imported by Kurcums Metal are composite ‘Taifun’ cables manufactured in Russia, using a combination of materials, so that their core is polypropylene covered in a wound steel thread of up to 1 mm diameter; around the core are plaited six cables, the centre of which is polypropylene, but they are covered in a wound steel thread of up to 1 mm diameter and six conductors in a polystyle configuration. The cables are insulated with polypropylene material and may be from 10 mm to 30 mm in diameter. The use to which they are put is to manufacture fishing equipment, in particular deep-sea nets.
- 16 The shackles for equipment imported by Kurcums Metal are manufactured in the form of corrugated clips with rounded tips, which are connected by means of a threaded pin.
- 17 On carrying out an inspection the VID 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 synthetic fabric merely protected the fishing nets from damage, reduced wear and tear, and increased durability.
- 18 The VID 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’.
- 19 By decision of the VID of 25 February 2008, 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.
- 20 Kurcums Metal brought proceedings for the annulment of that decision, arguing that the cables should be regarded both as goods with electrical insulation and as cordage, given that the ‘Taifun’ composite cables were used for the production of fishing equipment (deep-sea nets) and their essential character was determined by the synthetic material. The clips were, in its opinion, to be regarded as shackles for equipment, since CN subheading 7317 00 90 gave a more precise description of the goods.
- 21 The application by Kurcums Metal was dismissed at first instance and on appeal. In its judgment of 27 December 2010 the Administratīvā apgabaltiesa (Regional Administrative Court) (Latvia) found that the parties’ submissions concerning the characteristics of the cables were not sufficiently persuasive for the purpose of assessing the essential character of the goods, so that, by virtue of general rule 3(c) for the interpretation of the CN, the cables had to be classified under the CN heading which occurred last in numerical order among those which equally merited consideration, namely CN heading 7312. As to the clips, it found that they did not possess the characteristics of pointed staples and, as neither they nor any related articles were included in any other heading in Chapter 73 of the CN, the VID had correctly classified them under CN subheading 7326 90 98.
- 22 An appeal on a point of law against that judgment was brought before the referring court, which observes that CN subheadings 5607 49 11 and 7312 10 98 each mention some of the materials used to manufacture the cables, for which reason, by virtue of general rule 3(b) for the interpretation of the CN, the question to be considered is which material confers the essential character on the goods. According to the referring court, it is not clear what the essential character of cordage is, nor how that essential character is to be established. The VID weighed the comparative importance of the various components of the cables and considers that their strength, as an essential characteristic, was provided by the steel thread, whereas Kurcums Metal contends that the strength is provided by the polypropylene.
- 23 The referring court also observes that, if it is considered that the intended purpose of the goods is use in fishing, connecting fishing nets and thereby lifting fish out of the water, that then implies that the cables are cordage and, on the basis of the CN heading description, the cables at issue can be classified under CN code 5607 49 11.

- 24 An additional reason for the referring court's doubts as to whether the composite cable is to be regarded as steel cable is the fact that Article 1 of Regulation No 1601/2001 imposes anti-dumping duties on those steel cables whose maximum transversal section exceeds 3 mm. In the present case, if account is taken of the steel thread used in the composite cable, whose section does not exceed 1 mm, even though the overall section of the cable may vary between 10 mm and 30 mm, doubts arise as to whether the classification of composite cables, such as those in the present case, in CN subheading 7312 10 98 may not constitute a disproportionate measure for the protection of the internal market.
- 25 As to the clips, the referring court considers that the application of CN subheading 7326 90 98 to those goods having the form of corrugated clips, with rounded tips connected by means of a pin, which are used as connectors for equipment, is unfounded because the description of CN subheading 7317 00 90 is sufficiently specific to classify the goods under the latter subheading. The fact that the goods do not display the typical form of a pointed staple and their tips are not sharp but rounded and are connected by a threaded pin may be less than decisive, since they fulfil all the basic functions of a 'pointed staple' and their use is to serve as a connection for two or more elements.
- 26 As it took the view that the resolution of the dispute before it required an interpretation of European Union law, the Augstākās tiesas Senāts (Supreme Court of Latvia) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
1. Are cables made of polypropylene and steel thread such as those at issue in the present case included under subheading 5607 49 11 of the [CN]?
  2. Is it necessary, in order to classify cables such as those at issue in the present case, to apply [general] rule 3(b) ... for the interpretation of the [CN]?
  3. If composite cables, made of polypropylene and steel thread, whose maximum transversal section exceeds 3 mm, like those at issue in this case, are nevertheless included under subheading 7312 10 98 of the [CN], are such cables also covered by Article 1 of [Regulation No 1601/2001]?
  4. Are corrugated clips with rounded tips connected by means of a pin included in subheading 7317 00 90 of the [CN]?

### **Consideration of the questions referred**

#### *Question 1*

- 27 By its first question the referring court asks essentially whether 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, fall as such within that subheading.
- 28 As a preliminary point, it must be borne in mind 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 which will enable that court to classify the goods at issue correctly in the CN, rather than to effect that classification itself, in particular since the Court does not necessarily have available to it all the information which is essential in that regard. In any event, the national court is in a better position to do so. However, in order to give the national 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 (Case C-12/10 *Lecson Elektromobile* [2010] ECR I-14173, paragraph 15 and the case-law cited).

- 29 It is also settled case-law that, in the interests of legal certainty and ease of verification, 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 relevant heading of the CN and of the section or chapter notes (*Lecson Elektromobile*, paragraph 16 and the case-law cited).
- 30 The explanatory notes drawn up by the European Commission as regards the CN and by the World Customs Organisation as regards the HS are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (see, inter alia, Case C-423/10 *Delphi Deutschland* [2011] ECR I-4003, paragraph 24).
- 31 As regards the CN subheadings at issue in the main proceedings, namely subheadings 5607 49 11 and 7312 10 98, it should be noted that the former applies, in accordance with the wording of CN heading 5607 and its relevant subdivisions, to twine, cordage, ropes and cables, whether or not plaited or braided, of polyethylene or polypropylene.
- 32 CN subheading 7312 10 98 applies, in accordance with the wording of CN heading 7312 and its relevant subdivisions, to ropes and cables, including locked coil ropes, of iron or steel, other than stainless steel, with a maximum cross-sectional dimension exceeding 3 mm.
- 33 It follows from those wordings that cables such as those at issue in the main proceedings are not, as such, covered either by CN subheading 5607 49 11 or by CN subheading 7312 10 98. According to the description of the cables in the order for reference, set out in paragraph 15 above, they consist of both polypropylene and wound steel thread, those two materials being combined in such a way that together they make up the cables in question. In those circumstances, the cables are neither, as such, cordage, ropes or cables of polypropylene nor cables of steel.
- 34 Consequently, the answer to Question 1 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.

#### Question 2

- 35 By its second question the referring court asks essentially 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.
- 36 It should be observed, to begin with, that, contrary to the submissions of Kurcums Metal, general rule 3(a) for the interpretation of the CN does not apply to the tariff classification of cables such as those at issue in the main proceedings. Having regard to the second sentence of that general rule and in the light of paragraph 33 above, neither of the two CN subheadings at issue in the main proceedings can be regarded as the more specific, within the meaning of that general rule.
- 37 With respect to general rule 3(b) for the interpretation of the CN, it must be recalled that, under that rule, 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; this may be done by determining whether the goods would retain their characteristic properties if one or other of their constituents were removed (Case C-250/05 *Turbon International* [2005] ECR I-10531, paragraph 21 and the case-law cited, and Case C-173/08 *Kloosterboer Services* [2009] ECR I-5347, paragraph 31).

- 38 In the same way, as stated in point VIII of the explanatory note to the HS on general rule 3(b), 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 material or components, its bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods (*Turbon International*, paragraph 22, and *Kloosterboer Services*, paragraph 32).
- 39 It does not appear from the documents before the Court that, in the case of cables such as those at issue in the main proceedings, either the polypropylene or the wound steel thread gives those cables their essential character. In particular, it does not appear, subject to verification by the referring court in the light of all the elements of fact placed before it, that those cables would, if one or other of those materials were removed, retain their characteristic properties as cables intended for the manufacture of fishing equipment, more particularly deep-sea nets.
- 40 If neither of the two materials of which cables such as those at issue in the main proceedings are composed in itself gives those cables their essential character, in order to carry out the tariff classification of those cables, it is not general rule 3(b) for the interpretation of the CN which must be applied but, as the Latvian Government and the Commission rightly submit, 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, in the dispute in the main proceedings, appears to be CN subheading 7312 10 98.
- 41 Finally, it should be added that the tariff classification of the cables at issue in the main proceedings must be carried out without the effect of the classification on the application of Regulation No 1601/2001 to the cables being of relevance. In accordance with Article 1 of that regulation, the application of the regulation depends on the classification, not the other way round.
- 42 Having regard to the foregoing, the answer to Question 2 is 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.

### Question 3

- 43 By its third question the referring court asks essentially 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.
- 44 It should be recalled that the scope of Article 1 of Regulation No 1601/2001 extends to ‘iron or steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, with fittings attached or not’, falling inter alia within subheading 7312 10 99 of the CN in the version of Regulation No 2263/2000, that subheading corresponding to CN subheading 7312 10 98 at the time of the imports at issue in the main proceedings.
- 45 It follows that, if cables such as those at issue in the main proceedings are covered by CN subheading 7312 10 98, they fall within the scope of Article 1 of Regulation No 1601/2001.
- 46 Kurcums Metal argues, however, that, in the version published in Latvian, Regulation No 1601/2001 does not provide for anti-dumping duties to apply to goods which, in 2007, were covered by CN subheading 7312 10 98. Referring to Case C-161/06 *Skoma-Lux* [2007] ECR I-10841, paragraph 51, it submits that the Act concerning the conditions of accession of the Czech Republic, the Republic of



Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33) precludes obligations laid down in European Union legislation which has not been published in the *Official Journal of the European Union* in the language of a new Member State, where that language is an official language of the European Union, from being imposed on individuals in that State, even though those persons could have acquainted themselves with that legislation by other means.

47 However, the problem to which Kurcums Metal refers is not that of a failure to publish Regulation No 1601/2001 in the *Official Journal of the European Union*, which was indeed published inter alia in Latvian, but that of a divergence between the Latvian language version of Article 1 of that regulation 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.

48 It is settled case-law 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 uniform application of European Union law. Where there is a divergence between the various language versions, the provision in question must thus be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (see, inter alia, Case C-41/09 *Commission v Netherlands* [2011] ECR I-831, paragraph 44 and the case-law cited).

49 Article 1 of Regulation No 1601/2001 not only lists certain subheadings of the CN, in the version of Regulation No 2263/2000, but also contains a description of the goods that fall within its scope. As follows from paragraphs 32 and 44 above, those goods are the same as the cables to which, inter alia, CN subheading 7312 10 98 applies.

50 In those circumstances, in the light of the general scheme of Article 1 of Regulation No 1601/2001, the mere omission in the Latvian language version of that provision of a reference to CN subheading 7312 10 99 in the version of 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.

51 Having regard to the foregoing, the answer to Question 3 is that 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.

#### *Question 4*

52 By its fourth question the referring court 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.

53 It must be observed 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.

- 54 As the Latvian Government and the Commission rightly observe, such goods have pointed tips, as is confirmed by the HS explanatory note to heading 7317, which, in referring to nails, tacks, staples and similar articles, and to other special types of nails and spikes, enumerates goods which naturally 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.
- 55 Consequently, the answer to Question 4 is that 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, do not fall within that subheading.

### **Costs**

- 56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

1. **Subheading 5607 49 11 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006, 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.**
2. **General rule 3(b) for the interpretation of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1549/2006, 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.**
3. **Article 1 of 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 must be interpreted as meaning that cables such as those at issue in the main proceedings, on the assumption that they are covered by subheading 7312 10 98 of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1549/2006, fall within the scope of that provision.**
4. **Subheading 7317 00 90 of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1549/2006, 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, do not fall within that subheading.**

[Signatures]