Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

4 March 2015 *

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Common Customs Tariff — Tariff classification — Combined Nomenclature — Headings 8543, 9018 and 9019 — Laser and ultrasonic appliances and their parts and accessories)

In Case C-547/13,

REQUEST for a preliminary ruling under Article 267 TFEU, from the administratīvā rajona tiesa, Rīgas tiesu nams (Latvia), made by decision of 11 October 2013, received at the Court on 21 October 2013, in the proceedings

'Oliver Medical' SIA

v

Valsts ieņēmumu dienests,

THE COURT (Tenth Chamber),

composed of C. Vajda (Rapporteur), President of the Chamber, A. Rosas and E. Juhász, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure and further to the hearing on 16 October 2014,

after considering the observations submitted on behalf of:

— 'Oliver Medical' SIA, by G. Senkāns, advokāts,

— the Latvian Government, by I. Kalniņš, K. Freimanis and D. Pelše, acting as Agents,

— the Spanish Government, by L. Banciella Rodríguez-Miñón, acting as Agent,

— the European Commission, by A. Caeiros 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 request for a preliminary ruling concerns the interpretation of headings 8543, 9018 and 9019 of the Combined Nomenclature set out 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, successively, by Commission Regulation (EC) No 1214/2007 of 20 September 2007 (OJ 2007 L 286, p. 1), Commission Regulation (EC) No 1031/2008 of 19 September 2008 (OJ 2008 L 291, p. 1), Commission Regulation (EC) No 948/2009 of 30 September 2009 (OJ 2009 L 287, p. 1), Commission Regulation (EU) No 861/2010 of 5 October 2010 (OJ 2010 L 284, p. 1) and Commission Regulation (EU) No 1006/2011 of 27 September 2011 (OJ 2011 L 282, p. 1; 'the CN').

2 The request has been made in proceedings between 'Oliver Medical' SIA ('Oliver Medical') and Valsts ieņēmumu dienests (State tax authority; 'the VID') concerning the tariff classification of appliances for the treatment of dermovascular and dermatological problems in the CN.

Legal context

The Harmonised Commodity Description and Coding System

3 The Customs Cooperation Council, now the World Customs Organisation (WCO), was established by the convention creating that council, concluded in Brussels on 15 December 1950. The Harmonised Commodity Description and Coding System ('the HS') was drawn up by 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 amending protocol of 24 June 1986, on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

4 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 of the headings and subheadings of the HS without addition or modification, together with their related numerical 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.

5 The WCO is to approve, under the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes and Classification Opinions adopted by the HS Committee.

6 On the date when the import declarations at issue in the main proceedings were filed, the HS Explanatory Notes concerning heading 9018 were worded as follows:

'…

This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc. Instruments and appliances for anatomical or autoptic work, dissection, etc., are also included, as are, under certain conditions, instruments and appliances for dental laboratories … The instruments of the heading may be made of any material (including precious metals).

…

The instruments and appliances classified here may be equipped with optical devices; they may also make use of electricity, either as motive power or for transmission, or as a preventive, curative or diagnostic agent.

This heading also covers instruments and appliances operated by laser or other light or photon beam processes and ultrasonic instruments and appliances.'

7 On the date when the import declarations at issue in the main proceedings were filed, the HS Explanatory Notes concerning heading 9019 were worded as follows:

'…

I — Mechano-therapy appliances These appliances are mainly used to treat diseases of the joints or muscles, by mechanical reproduction of various movements. It should be noted that such treatment is usually carried out under medical supervision; the apparatus of this heading should therefore be distinguished from the ordinary physical culture or medical exercising equipment designed for use in the home or in specially equipped premises (heading 95.06) (e.g., elastic cable extenders or exercisers; spring grips of various kinds; "rowing" machines for reproducing rowing movements; stationary one-wheeled cycles for training purposes or for developing leg muscles). …'

The CN

8 The customs classification of goods imported into the European Union is governed by the CN.

9 Article 2 of Regulation No 2658/87, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16; 'Regulation No 2658/87'), reads as follows:

'An Integrated Tariff of the European Communities, hereinafter referred to as the "Taric", which meets the requirements of the Common Customs Tariff, external trade statistics, the commercial, agricultural and other Community policies concerning the importation or exportation of goods, shall be established by the Commission.

The tariff shall be based on the [CN] and include:

…

(d) the rates of customs duty and other import and export charges, including duty exemptions and preferential tariff rates applicable to specific goods on importation or exportation;

…'

10 By virtue of Article 12(1) of Regulation No 2658/87, the Commission is to adopt each year a regulation reproducing the complete version of the CN, together with the rates of duty, as resulting from measures adopted by the Council or the Commission. That regulation is to apply from 1 January of the following calendar year.

11 The versions of the CN applicable to the facts at issue in the main proceedings, which took place between 2008 and 2012, are those resulting from amendment by Regulations Nos 1214/2007, 1031/2008, 948/2009, 861/2010 and 1006/2011.

12 With regard to the wording of the General rules for the interpretation of the CN, the heading of Section XVI of the CN and Note 2 to that section, the tariff headings of Chapter 85 of the CN, the heading of Section XVIII thereof, Note 2 to Chapter 90 of the CN and headings and

subheadings 9018, 9018 11 00, 9018 12 00, 9018 13 00, 9018 14 00, 9018 19, 9018 19 90, 9019, 9019 10, 9019 10 10, 9019 10 90 and 9019 20 00 to which the questions referred relate, those versions do not differ.

13 The general rules for the interpretation of the CN, which are set out in Part One, Title I, A, provide

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

1. 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.

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.

   (b) 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.

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. 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.

…

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.'

14 The second part of the CN includes Section XVI, entitled 'Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles'.

15 Note 2 to Section XVI of the CN states as follows:

'Subject to note 1 to this section, note 1 to Chapter 84 and note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings.

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517.

(c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.'

16 Section XVI of the CN contains Chapter 85, entitled 'Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles'. That chapter contains, inter alia, the following tariff headings:

'8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter:

…

8543 70 – Other machinery:

…

8543 70 90 – – Other

8543 90 00 – Parts'.

17 In accordance with Article 9(1) of Regulation No 2658/87, the Commission may insert explanatory notes into the CN. It follows in particular from the Explanatory notes to the Combined Nomenclature of the European Communities (OJ 2008 C 133, p. 1; 'the explanatory notes to the CN for subheading 8543 70 90') that subheading 8543 70 90 of the CN does not cover 'ultraviolet irradiation equipment for medical purposes, even if a practitioner is not needed to use them (heading 9018)'.

18 Under the heading 'Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments', Section XVIII of the CN includes Chapter 90, entitled 'Optical, photographic, cinematographic, measuring, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof'.

19 Note 2 to that chapter reads as follows:

‘Subject to note 1 …, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind.

(c) All other parts and accessories are to be classified in heading 9033.’

20 Chapter 90 of the CN contains inter alia the following headings and subheadings:

‘9018 Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments:

— Electrodiagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters):

9018 11 00 – – Electrocardiographs

9018 12 00 – – Ultrasonic scanning apparatus

9018 13 00 – – Magnetic resonance imaging apparatus

9018 14 00 – – Scintigraphic apparatus

9018 19 – – Other:

9018 19 10 – – – Monitoring apparatus for simultaneous monitoring of two or more parameters

9018 19 90 - Other’.

21 Subheadings 9018 90 and 9018 90 85 of the CN, in the versions resulting from Regulations Nos 1214/2007, 1031/2008 and 948/2009, read as follows:

‘9018 90 - Other instruments and apparatus

…

9018 90 85 – – Other’.

22 Subheadings 9018 90 and 9018 90 84 of the CN, in the versions resulting from Regulations Nos 861/2010 and 1006/2011, read as follows:

‘9018 90– Other instruments and apparatus:

...

9018 90 84 – – Other’.

23 Chapter 90 of the CN also contains the following tariff headings and subheadings:

‘9019 Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus

9019 10 Mechano-therapy appliances; massage apparatus; Psychological aptitude-testing apparatus

9019 10 10 – – Electrical vibratory-massage apparatus

9019 10 90 – – Other

9019 20 00 Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus.’

24 Commission Regulation (EC) No 119/2008 of 7 February 2008 concerning the classification of certain goods in the Combined Nomenclature (OJ 2008 L 36, p. 3), adopted by virtue of Article 9(1)(a) of Regulation No 2658/87, placed the following product under subheading 8543 70 90 of the CN:

‘A hair removal and skin treatment apparatus working by means of intense pulsed light (IPL) technology with the following dimensions: 34.5 (H) × 30.5 (W) × 50.5 (D) cm and a weight of 25 kilogrammes.

The apparatus is designed for hair removal and for skin treatment ranging from purely cosmetic rejuvenation to removing age spots, uneven pigmentation and thread veins. It is used in beauty parlours.

The apparatus contains an electric motor for cooling; the motor does not play a role in the hair removal or skin treatment process.’

25 The grounds for classification of that product under that subheading are as follows:

‘Classification is determined by the provisions of general rules 1 and 6 for the interpretation of the [CN] and by the wording of CN codes 8543, 8543 70 and 8543 70 90.

As the hair removal process is by means of IPL technology and not by means of gripping the hair and plucking it out at the root with an electric motor involved in this process, classification under heading 8510 as a hair-removing appliance with self-contained electric motor is excluded (see the HS Explanatory Notes to heading 8510).

Classification under heading 9018 as a medical instrument or appliance is also excluded as the apparatus does not provide any medical treatment and is not used in professional practice (see the HS Explanatory Notes to heading 9018).

The device is to be classified under heading 8543 because it is an electrical apparatus, having an individual function, not specified or included elsewhere in Chapter 85.’

26 Commission Implementing Regulation (EU) No 1204/2011 of 18 November 2011 concerning the classification of certain goods in the Combined Nomenclature (OJ 2011 L 305, p. 14), adopted by virtue of Article 9(1)(a) of Regulation No 2658/87, classified the following goods under subheading 8543 90 00 of the CN:

'1. A handheld, interchangeable device comprising a flash lamp, a lens, a trigger button and an indicator light (so-called "intense pulse light (IPL) handpiece").

The device generates intense pulsed light at different pulse widths of up to 100 ms, a wavelength of 650-1200 nm, a spot size of 16 x 46 mm and a maximum fluence of 45 J/cm2.

It works only in conjunction with a machine (the "base unit") from which it receives power, control signals and cooling fluid. The "base unit" comprises a power supply, a control unit with a display and a cooling unit and it is also able to work with "laser handpieces".

When connected to the "base unit", the device is used for specific cosmetic treatments, for example, permanent hair removal.

2. A handheld, interchangeable device comprising a solid state laser, a lens, a spot size selection switch and a trigger button (so-called "laser handpiece").

The device generates laser light at different pulse widths of up to 100 ms, a wavelength of 1064 nm, adjustable spot sizes with a diameter of 1.5, 3, 6 and 9 mm and a maximum fluence of 700 J/cm2.

It works only in conjunction with a machine (the "base unit") from which it receives power, control signals and cooling fluid. The "base unit" comprises a power supply, a control unit with a display and a cooling unit and it is also able to work with "intense pulse light (IPL) handpieces".

When connected to the "base unit", the device is specifically used for cosmetic treatment of leg veins.'

27 The grounds for the classification of IPL handpieces under that subheading are as follows:

'The classification is determined by the provisions of general rules 1 and 6 for the interpretation of the [CN], note 2(b) to Section XVI and by the wording of CN codes 8543 and 8543 90 00.

As the intense pulse light generated by the flash lamp is not a laser beam, classification under heading 9013 as a laser is excluded.

Given its characteristics and objective properties, namely its construction of an electronic nature, the device is not similar to an interchangeable tool (see note 1(o) to Section XVI). The device when working in conjunction with the "base unit" is identifiable as a working machine which performs an individual function not specified or included elsewhere in Chapter 85.

The device is essential for the functioning of the machine as the machine cannot function without it.

The device is therefore to be classified under CN code 8543 90 00 as a part of other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.'

28 The grounds for classification of laser handpieces under subheading 8543 90 00 of the CN are as follows:

'The classification is determined by the provisions of general rules 1 and 6 for the interpretation of the [CN], note 2(b) to Section XVI and by the wording of CN codes 8543 and 8543 90 00.

As the laser is specifically designed for generating laser light with certain pulse widths and spot sizes, the device is adapted to perform a specific function. The device when working in conjunction with the "base unit" is identifiable as a working machine which performs an individual function not specified or included elsewhere in Chapter 85.

Classification under heading 9013 as a laser is therefore excluded (see also HS Explanatory Note to heading 9013(2), fourth paragraph).

Given its characteristics and objective properties, namely its construction of electronic nature, the device is not similar to an interchangeable tool (see note 1(o) to Section XVI).

The device is essential for the functioning of the machine as the machine cannot function without it.

The device is therefore to be classified under CN code 8543 90 00 as a part of other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.'

Directive 93/42/EEC

29 The medical appliances covered by Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1), as amended by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007 (OJ 2007 L 247, p. 21; 'Directive 93/42'), are defined in Article 1(2)(a) of Directive 93/42 as follows:

'"Medical device" means any instrument, apparatus, appliance, software, material or other article, whether used alone or in combination, including the software intended by its manufacturer to be used specifically for diagnostic and/or therapeutic purposes and necessary for its proper application, intended by the manufacturer to be used for human beings for the purpose of:

— diagnosis, prevention, monitoring, treatment or alleviation of disease,

— diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap,

— investigation, replacement or modification of the anatomy or of a physiological process,

— control of conception,

and which does not achieve its principal intended action in or on the human body by pharmacological, immunological or metabolic means, but which may be assisted in its function by such means.'

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

30 Between November 2008 and April 2012, Oliver Medical declared, with a view to the release for free circulation, goods from the manufacturer Lumenis. It declared:

— on 25 November 2008, tips for the laser device 'UltraPulse Encore laser' under subheading 9018 19 90 of the CN;

— on 6 April and 11 November 2009 respectively, the 'Light Sheer ST' laser appliance, the 'IPL Quantum SR' appliance and its accessories 'HR upgd for IPL Quantum' and 'DL upgd for IPL Quantumsystem' under subheading 9018 90 85 of the CN;

— on 21 April 2010 and 14 January 2011, the treatment heads for the 'Ultrashape Contour I' ultrasound appliance under subheading 9019 10 90 of the CN;

— on 14 February 2011, the heads for the 'IPL Quantum SR 560' appliance and its cooling system under subheading 9018 90 84 of the CN;

— on 4 November 2010, the 'Ls-Duet' laser thermotherapy appliance and its specific accessories under subheading 9018 90 85 of the CN.

31 Following an investigation carried out with Oliver Medical, the VID took the view that the 'Light Sheer ST' and 'IPL Quantum SR' appliances should be classified under subheading 8543 70 90 99 of the CN.

32 The VID considered that the heads for the 'IPL Quantum SR' appliance, referred to as 'HR upgd for IPL Quantum' and 'DL upgd for IPL Quantumsystem', and those for the 'IPL Quantum SR 560' and 'Ultrashape Contour I' should be classified under subheading 8543 90 00 90 of the CN.

33 In addition, after having checked that the data in the customs declaration tallied as regards the 'Ls-Duet' laser and its accessories, the VID took the view that those goods should be classified under subheadings 8543 70 90 99 and 8543 90 00 90 of the CN respectively.

34 On the basis of those corrections, the customs duties and VAT claimed by the VID from Oliver Medical were increased and default interest and fines were added.

35 On 13 March 2012, the VID received a request from the applicant for binding tariff information concerning the classification of the 'Lumenis M22' selective photothermolysis appliance, which was given certificate of conformity CE 93/42 as a medical appliance. On 25 April 2012, the VID issued binding tariff information classifying the appliance in question under subheading 8543 70 90 of the CN.

36 Oliver Medical contested the VID's classification decisions before the referring court, submitting that the appliances manufactured by Lumenis were intended for medical centres to be used for medical purposes and that they should, accordingly, be classified under headings 9018 and 9019 of the CN.

37 The VID, however, is of the opinion that those appliances are rather electrical apparatus having an individual function and that accordingly they come under heading 8543 of the CN.

38 In that regard, the referring court is doubtful as to the classification of those appliances under heading 8543 of the CN, in particular in the light of Regulation No 119/2008. In that respect, it cites as an example the 'Light Sheer ST' appliance, the dimensions of which are 44 cm in height, 50 cm in width and 112 cm in depth with a weight of 48 kg and do not correspond to the dimensions of 34.5 cm in height, 30.5 cm in width and 50.5 cm in depth with a weight of 25 kg referred to in that regulation. In addition, it states that the laser system uses irradiation with a wavelength of 900 nm, which is absorbed by melanin, a technology which differs from that of intense pulsed light (IPL) referred to in the regulation. It adds that the 'UltraPulse Encore laser' appliance uses a hermetic type CO_2 laser beam and is cooled using liquid.

39 The referring court notes, as regards the 'IPL Quantumsystem', that that appliance combines on one platform both laser technology and high-intensity light technology using high-power parameters. The 'Ultrashape Contour I' appliance generates high-power waves and low-frequency ultrasounds by an analogue technology which is used in lithotripsy and the treatment of localised tumours.

40 The referring court adds that the appliances covered by Regulation No 119/2008 are intended for use in beauty parlours, while the appliances at issue in the main proceedings and their parts are used in medical centres.

41 With regard to the classification of the 'Lumenis M22' appliance under subheading 8543 70 90 of the CN following a request for binding tariff information, the referring court states that the VID applied Implementing Regulation No 1204/2011, under which it is not possible to classify an appliance including a laser device under heading 9013 of the CN as a laser. On the basis of the explanatory notes to the CN concerning subheading 8543 70 90, the referring court queries the respective scope of the different headings of the CN in that context which are relevant to the main proceedings. It is of the opinion that those headings are not mutually exclusive. It considers that the tariff classification of the goods at issue in the main proceedings depends on the interpretation of EU law.

42 In those circumstances, the Administratīvā rajona tiesa decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must headings 9018 and 9019 of the [CN] be interpreted as meaning that the following devices: "UltraPulse Encore laser" tips, "Light Sheer ST", "IPL Quantum SR" and its "HR upgd for IPL Quantum" and "DL upgd for IPL Quantumsystem" heads, "Ultrashape Contour I" treatment heads, the "IPL Quantum SR 560" device, the "Ls-Duet" device and its accessories, and the "Lumenis M22" appliance, which are used in the practice of medicine, may be classified under those headings?

(2) If headings 9018 and 9019 should not be applicable, may those goods be classified under heading 8543 of the [CN]?

(3) If the reply is negative, what other heading provides the interpretation of the [CN] for the purposes of classification?'

Consideration of the questions referred

43 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether the CN must be interpreted as meaning that the goods at issue in the main proceedings, intended to treat dermovascular and dermatological problems and which use laser technology and high-intensity light technology to function, must be classified as medical instruments or appliances or as mechano-therapy appliances, under headings 9018 or 9019 of the CN, or whether it must be interpreted as meaning that those goods must be classified as electrical apparatus, having an individual function, under heading 8543 of the CN.

44 First of all, it must be borne in mind, as a preliminary point, 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, a fortiori 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 (see judgment in *Data I/O*, C-297/13, EU:C:2014:331, paragraph 36 and the case-law cited).

45 Next, it is settled case-law that, 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 sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and in the section or chapter notes (judgment in *Delphi Deutschland*, C-423/10, EU:C:2011:315, paragraph 23 and the case-law cited).

46 Similarly, it is settled case-law that the explanatory notes drawn up by the Commission as regards the CN and by the WCO 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 (judgment in *Delphi Deutschland*, EU:C:2011:315, paragraph 24 and the case-law cited).

47 Finally, for the purposes of classification under the appropriate heading, it should be recalled that 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 (see judgment in *Olicom*, C-142/06, EU:C:2007:449, paragraph 18).

48 With regard to heading 9018 of the CN, it is apparent from an examination of that heading that it covers, in particular, medical instruments or appliances. The wording of that heading does not give any more details on the characteristics of those instruments or appliances. Included in the list of goods covered by that heading is ultraviolet or infrared irradiation equipment.

49 In that regard, it is necessary to note that, in accordance with the explanatory note to the HS concerning heading 9018, that heading covers a very wide range of instruments and appliances the normal use of which, in the vast majority of cases, requires the intervention of a practitioner, such as a doctor, surgeon, dentist, veterinary surgeon or midwife, to make a diagnosis, to prevent or treat an illness or to operate.

50 It follows therefrom, firstly, that those appliances and instruments are, in most cases, used by a healthcare practitioner, without the intervention of such a practitioner being required in every case, and, secondly, that those appliances and instruments are intended for medical use.

51 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, as set out in the order for reference, to the extent that they are characteristics and objective properties inherent to that product. It is for the importer, at the time of import, to prove that that product is intended for medical use.

52 Among the relevant factors, it is necessary to assess the use for which the product is intended by the manufacturer and the methods and place of its use. Thus, the fact that the product is intended to treat one or more different pathologies and that that treatment must be carried out in a medical centre and under the supervision of a practitioner are indications capable of establishing that that product is intended for medical use. Inversely, the fact that a product mainly brings about aesthetic improvement, that it may be operated outside a medical environment, for example in a beauty parlour, and without the intervention of a practitioner are indications that that product is not intended for medical use.

53 The fact that a product bears a CE mark certifying the conformity of a medical device with the provisions of Directive 93/42 constitutes one factor among others to be taken into consideration in that regard. None the less, since Directive 93/42 pursues objectives different from those of the CN and in order to maintain the coherence between the interpretation of the CN and that of the HS, which is established by an international convention to which the European Union is a contracting party, the fact that a product bears a CE mark cannot be decisive as regards an assessment of whether it is intended for medical use within the meaning of heading 9018 of the CN.

54 The referring court is also doubtful as to the relevance of other factors, such as the dimensions, the weight of the product under consideration and the technology used, in order to assess whether that product comes under heading 9018 of the CN. It takes the view that the goods at issue in the main proceedings must be distinguished on the basis of those factors from those which were covered by Regulation No 119/2008 and in respect of which the Commission excluded, in that regulation, classification under heading 9018 of the CN.

55 It must be borne in mind in that regard 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 (judgment in *Krings*, C-130/02, EU:C:2004:122, paragraph 33 and the case-law cited).

56 It is true that Regulation No 119/2008 is not directly applicable to the goods at issue in the main proceedings. Those goods are not identical to those covered by that regulation, since they differ in size and weight, inter alia, as well as in the technology which they use.

57 Nevertheless, the application by analogy of a classification regulation, such as Regulation No 119/2008, to products similar to those covered by that regulation facilitates a coherent interpretation of the CN and the equal treatment of traders (see, to that effect, judgment in *Krings*, EU:C:2004:122, paragraph 35).

58 In accordance with the reasons given in the third column of the annex to Regulation No 119/2008, classification under heading 9018 of the CN as a medical instrument or appliance of the goods listed in the first column of that annex is excluded as the apparatus does not provide any medical treatment and is not used in the practice of medicine.

59 It is appropriate to deduce therefrom that the dimensions, weight and technology used are not decisive factors for the classification of a product under that heading.

60 With regard to heading 9019 of the CN, that heading covers, inter alia, mechano-therapy appliances. It is apparent from the explanatory note to the HS concerning heading 9019 that those appliances are mainly used to treat diseases of the joints or muscles and that such treatment is usually carried out under medical supervision. It follows therefrom that the criteria set out in paragraphs 51 to 53 of this judgment concerning the intended use of the product for medical purposes are relevant *mutatis mutandis* to the interpretation of heading 9019 of the CN.

61 The order for reference does not contain any facts enabling the reasons for which that heading was regarded as relevant for the purposes of tariff classification of the goods at issue in the main proceedings to be established. At the hearing, Oliver Medical stated that the treatment heads for the 'Ultrashape Contour I' appliance constituted mechano-therapy equipment, used to divide fat cells.

62 Since this is a fact which was not stated in the order for reference but which emerged for the first time at the hearing, it is for the referring court to ascertain, taking account of all the elements of the file and taking into consideration the explanatory note to the HS concerning heading 9019, whether one or several of the goods at issue in the main proceedings fall under heading 9019 of the CN rather than heading 8543 of the CN.

63 As regards heading 8543 of the CN, that heading covers electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. Under Rule 3(a) of the General Rules for the interpretation of the CN, in Part 1, Title I, A, thereof, since that heading is more general in scope than headings 9018 or 9019 of the CN, heading 8543 of the CN is relevant to the classification of the goods at issue in the main proceedings only if they do not fall under headings 9018 or 9019 of the CN, which it is for the referring court to ascertain in the light of the criteria referred to in paragraphs 51 to 59 of this judgment.

64 Taking the view, in the light of the explanatory notes to the CN concerning subheading 8543 70 90, that the different headings of the CN are not mutually exclusive, the referring court is doubtful as to the respective scope of those headings.

65 In that regard, it must be noted, firstly, that those explanatory notes cover ultraviolet irradiation equipment, a technology which does not appear to correspond to that of the goods at issue in the main proceedings, which it is for the referring court to ascertain. Secondly, it must be noted that, according to both those notes and the explanatory note to the HS concerning heading 9018, referred to in paragraph 49 of this judgment, it is the fact that a product is intended for medical use which constitutes the decisive criterion for the purposes of classification of that product under heading 9018 of the CN.

66 Furthermore, the goods at issue in the main proceedings include not only different appliances, but also corresponding handpieces, namely tips and heads.

67 It is apparent from note 2 to Section XVI of the CN that, subject to note 1 to that section, note 1 to Chapter 84 and note 1 to Chapter 85, parts of machines, with certain exceptions not relevant to the main proceedings, are to be classified according to the rules laid down in that note. Similarly, under note 2 to Chapter 90 of the CN, parts and accessories for machines, apparatus, instruments or articles of that chapter are to be classified according to the rules laid down in that note, subject to the provisions of note 1 to that chapter.

68 Accordingly, it is appropriate to ascertain whether the handpieces in question constitute parts and accessories within the meaning of those notes.

69 In that regard, it is clear from the case-law of the Court concerning headings 8473, 8486 and 9018 of the CN that the notion of 'parts' implies a whole for the operation of which the part is essential and that the notion of 'accessories' implies an interchangeable part designed to adapt a machine for a particular operation, or to increase its range of operations, or to perform a particular service relative to the main function of the machine (see judgment in *Rohm & Haas Electronic Materials CMP Europe and Others*, C-336/11, EU:C:2012:500, paragraph 34 and the case-law cited). In order to ensure a consistent and uniform application of the Common Customs Tariff, those definitions of the notions of 'parts' and 'accessories' apply, as appropriate, to headings 8543, 9018 and 9019 of the CN.

70 It is for the referring court to establish, in the light of the indications given in the preceding paragraph of this judgment, whether the handpieces at issue in the main proceedings must be regarded as parts or accessories of one of the appliances under consideration and, in consequence, whether they must be classified in accordance with note 2 to Section XVI of the CN or note 2 to Chapter 90 thereof.

71 It is also for the referring court to ascertain, having regard to the criteria set out in this judgment and on the basis of all the facts in its possession, whether the goods at issue in the main proceedings must be classified under headings 9018 or 9019 of the CN or, failing that, under heading 8543 of the CN.

72 In the light of all the foregoing considerations, the answer to the questions referred is that the CN must be interpreted as meaning that, in order to determine whether goods, such as those at issue in the main proceedings, must be classified as medical instruments or appliances, under heading 9018 of the CN, or as mechano-therapy appliances, under heading 9019 of the CN, or rather as electrical apparatus, having an individual function, under heading 8543 of the CN, it is appropriate to take account of all the relevant factors in the case, to the extent that they relate to characteristics and objective properties inherent to those goods. Among the relevant factors, it is necessary to assess the use for which the product is intended by the manufacturer and the methods and place of its use. Thus, the fact that the product is intended to treat one or more different pathologies and that that treatment must be carried out in an authorised medical centre and under the supervision of a practitioner are indications capable of establishing that that product is intended for medical use. Conversely, the fact that a product mainly brings about aesthetic improvement, that it may be operated outside a medical environment, for example in a beauty parlour, and without the

intervention of a practitioner are indications that that product is not intended for medical use. The dimensions, weight and technology used are not decisive factors for the classification of goods, such as those at issue in the main proceedings, under heading 9018 of the CN.

Costs

73 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 (Tenth Chamber) hereby rules:

The Combined Nomenclature set out 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, successively, by Commission Regulation (EC) No 1214/2007 of 20 September 2007, Commission Regulation (EC) No 1031/2008 of 19 September 2008, Commission Regulation (EC) No 948/2009 of 30 September 2009, Commission Regulation (EU) No 861/2010 of 5 October 2010 and Commission Regulation (EU) No 1006/2011 of 27 September 2011 must be interpreted as meaning that, in order to determine whether goods, such as those at issue in the main proceedings, must be classified as medical instruments or appliances, under heading 9018 of the Combined Nomenclature, or as mechano-therapy appliances, under heading 9019 thereof, or rather as electrical apparatus, having an individual function, under heading 8543 thereof, it is appropriate to take account of all the relevant factors in the case, to the extent that they relate to characteristics and objective properties inherent to those goods. Among the relevant factors, it is necessary to assess the use for which the product is intended by the manufacturer and the methods and place of its use. Thus, the fact that the product is intended to treat one or more different pathologies and that that treatment must be carried out in an authorised medical centre and under the supervision of a practitioner are indications capable of establishing that that product is intended for medical use. Conversely, the fact that a product mainly brings about aesthetic improvement, that it may be operated outside a medical environment, for example in a beauty parlour, and without the intervention of a practitioner are indications that that product is not intended for medical use. The dimensions, weight and technology used are not decisive factors for the classification of goods, such as those at issue in the main proceedings, under heading 9018 of the Combined Nomenclature.

[Signatures]