



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

10 March 2016\*

(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 Case C-499/14,

REQUEST for a preliminary ruling under Article 267 TFEU, from the Hof van Cassatie (Court of cassation, Belgium), made by decision of 4 November 2014, received at the Court on 10 November 2014, in the proceedings

**VAD BVBA,**

**Johannes Josephus Maria van Aert**

v

**Belgische Staat,**

THE COURT (First Chamber),

composed of A. Tizzano, Vice-President of the Court, acting as President of the First Chamber,  
F. Biltgen, E. Levits, M. Berger and S. Rodin (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

- VAD BVBA, by J. Gevers, advocaat,
- the Belgian Government, by S. Vanrie and M. Jacobs, acting as Agents,
- the Spanish Government, by A. Gavela Llopis, acting as Agent,
- the European Commission, by A. Caeiros and W. Roels, acting as Agents,

having regard to the written procedure,

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

\* Language of the case: Dutch.

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Rule 3(b) of the General Rules for 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 1214/2007 of 20 September 2007 (OJ 2007 L 286, p. 1; ‘the CN’).
- 2 The request has been made in proceedings between VAD BVBA (‘VAD’) and its managing director, Mr van Aert, and the Belgische Staat (Belgian State), concerning the tariff classification of combined video-audio systems and loudspeakers.

### Legal context

#### *EU law*

#### The CN

- 3 The CN, established by Regulation No 2658/87, is based on the Harmonised Commodity Description and Coding System (‘the HS’), which was developed by the Customs Cooperation Council, now the World Customs Organisation (‘WCO’), and established in the International Convention on the Harmonised Commodity Description and Coding System (‘the HS Convention’), concluded in Brussels on 14 June 1983, and approved, together with the Protocol of Amendment thereto 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 12(1) of Regulation No 2658/87, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16), the European Commission is required to adopt, each year, a regulation reproducing the complete version of the CN and the rates of customs duty, as they result from measures adopted by the Council of the European Union or by the Commission. That regulation applies with effect from January of the following calendar year.
- 5 The version of the CN applicable to the facts in the main proceedings is the version as amended by Regulation No 1214/2007.
- 6 The CN reproduces the headings and subheadings of the HS to six digits, with only the seventh and eighth figures creating further subheadings which are specific to it.
- 7 Part One of the CN consists of a number of preliminary provisions. In that part, within Section I, which contains the General Rules, Sub-Section A, entitled ‘General rules for the interpretation of the [CN]’ (‘the General Rules’) provides:

‘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.

...

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.

...'

- 8 Part Two of the CN, which contains the table of customs duties, includes Section XVI, entitled 'sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles'.
- 9 Chapter 85 of the CN, included within Section XVI, is headed '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'.
- 10 Heading 8518 of the CN reads as follows:

'8518	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets
8518 10	- Microphones and stands therefor
8518 10 30	- - Microphones having a frequency range of 300 Hz to 3.4 kHz, of a diameter not exceeding 10 mm and a height not exceeding 3 mm, of a kind used for telecommunications
8518 10 95	- - Other - Loudspeakers, whether or not mounted in their enclosures:
8518 21 00	- - Single loudspeakers, mounted in their enclosures
8518 22 00	- - Multiple loudspeakers, mounted in the same enclosure
8518 29	- - Other:
...	...'

11 Heading 8521 of the CN is worded as follows:

'8521	Video recording or reproducing apparatus, whether or not incorporating a video tuner
8521 10	- Magnetic tape-type
8521 10 20	- Using tape of a width not exceeding 1,3 cm and allowing recording or reproduction at a tape speed not exceeding 50 mm per second
8521 10 95	- - Other
8521 90 00	- Other'

*The Guidelines*

12 The Guidelines on the classification in the Combined Nomenclature of goods put up in sets for retail sale (OJ 2013 C 105, p. 1, 'the guidelines'), drawn up by the European Commission, provide inter alia:

'For the purposes of [Rule 3(b) of the General Rules], the term "goods put up in sets for retail sale" shall be taken to mean goods which:

- (a) consist of at least two different articles which are, prima facie, classifiable in different headings;
- (b) consist of products or articles put up together to meet a particular need or to carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

...

All the above conditions should be met.

...'

13 As regards, more specifically, the condition that the goods must be put up in a manner suitable for sale directly to users without repacking, the guidelines state:

'(1) According to this note and in order to be considered as a "set", it is necessary to fulfil all the following conditions:

- (a) all the items of the "set" are presented at the same time and in the same declaration;
- (b) all the items are presented in the same package such as a carrying case, plastic bag, box, netting around, or (whether or not packed) bound together using, for instance, filament reinforced tape, etc.;
- (c) all the items are put up in a manner suitable for sale directly to users without repacking.

(2) However, as an exception to point (1)(b), goods put up in sets for retail sale could be presented in separate packages when justified, for example, due to the composition of the articles (for instance, size, weight, shape, chemical composition), for reasons of transport or for safety reasons, provided that they are suitable for sale directly to users without repacking.

This situation can only be accepted if:

- (a) the goods are presented in “relative proportions”, for example, one dining table (dimensions suitable for four persons), and four dining chairs; as opposed to “non-relative proportions” such as three dining tables (dimensions suitable for four persons), and one dining chair;  
and
- (b) the goods are put up in a form clearly indicating they belong together, for example:
  - (i) the packages clearly have to refer to each other (numbered, with pictures, commercial denomination, etc.); or
  - (ii) the documents mention that the goods at issue are in separate packages but belong together.’

### *The HS*

- 14 Under Article 3(1) of the HS Convention, each Contracting Party undertakes to ensure that its customs tariff and statistical nomenclatures will be in conformity with the HS, to use all of 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. The same provision provides that each Contracting Party must also undertake 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.
- 15 The WCO, established by the International Convention that established the Customs Cooperation Council, concluded at Brussels on 15 December 1950, is to approve, under the conditions laid down in Article 8 of the HS Convention, the explanatory notes adopted by the HS Committee, a body the organisation of which is governed by Article 6 thereof.
- 16 According to the explanatory note relating to the General Rule 3(b) for the interpretation of the HS included in the explanatory notes adopted by the abovementioned Committee, in the version applicable to the facts in the main proceedings (‘the HS explanatory notes’):

‘...

(VI) This second method relates only to:

- (i) Mixtures.
- (ii) Composite goods consisting of different materials.
- (iii) Composite goods consisting of different components.
- (iv) Goods put up in sets for retail sales.

It applies only if Rule 3 (a) fails.

(VII)

In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

...

- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
  - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
  - (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).’

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

- 17 It is clear from the order for reference that VAD, of which Mr van Aert is the managing director, on 10 January 2008, 11 January 2008 and 23 January 2008, in its capacity as a customs agent in its own name but acting on behalf of Zicplay s.a. and under the instructions of Transmar Logistics, submitted three IM4 import declarations for validation by the competent customs authorities in Antwerp for the release into free circulation and the release for consumption of combined video-audio systems named ‘micro Z 99DVBT’ and composed, first, of a system comprising a DVD player, USB connection, FM tuner, a liquid crystal display (LCD) TFT screen, an MP3 player and a TV tuner (‘the audio/video systems’) and, second, removable loudspeakers.
- 18 Those goods had been disassembled for purposes of transport and indicated separately, by component, on the IM4 import declarations.
- 19 The ‘micro Z 99 DVBT’ systems were classified under two separate CN codes, namely, on the one hand, the combined audio/visual systems under CN code 8518 1095 90, subject to the payment of a 2.5% import duty, and, on the other hand, the removable loudspeakers under CN code 8518 2200 90, subject to the payment of a 4.5% import duty.
- 20 Therefore, the audio/visual systems and the removable loudspeakers were not presented as a single unit under CN code 8521 9000 90, subject to the payment of 13.9% import duty.
- 21 VAD and Mr van Aert were summoned on 21 October 2011 to answer charges before the Correctionele rechtbank te Antwerpen (Antwerp Criminal Court) for having submitted three declarations under an incorrect designation and incorrect tariff code for the purpose of release into free circulation or release for consumption of the ‘micro Z 99 DVBT’ systems, within the customs territory of the European Union.
- 22 In its judgment of 6 June 2012, that court held that the audio/visual systems and the loudspeakers should have been regarded as a set of goods and should have been classified together under CN code 8521 9000 90. It ordered VAD and Mr van Aert, jointly, to pay a fine and to pay the import duties which had been evaded.
- 23 On an appeal brought against that judgment, the hof van beroep te Antwerpen (Court of Appeal, Antwerp) that judgment was upheld in a judgment of 11 September 2013.
- 24 In that regard, that court took into account the facts, in particular, that the audio/video systems and the loudspeakers had been presented to customs together in the same IM4 import declarations and that the goods, as was clear from the documentation relating to them, obviously belonged together as a unit to be marketed together.

- 25 The goods constituted, according to the court of appeal, a set for retail sale if it were established that they would be offered for retail sale in a single package, of such a nature that they were intended to be presented together as a unit in the context of that means of marketing. That was so in the present case, as a range of facts demonstrated, namely, the importation, transportation, invoicing and handling together of the goods, the fact that the consignee was identical, the visual presentation of the system and the fact that the number of pairs of loudspeakers imported was exactly the same as the number of audio/visual systems. Thus the audio/visual systems and the loudspeakers constituted, at the time of their classification, a set for retail sale. The fact that those goods were not, at the time of customs clearance, presented in a single package did not affect that finding.
- 26 VAD and Mr van Aert lodged an appeal in cassation against that judgment with the referring court.
- 27 In that context, the referring court wonders, in particular, whether goods put up in sets for retail sale that are correctly presented to customs authorities in separate packages but in respect of which it is clear that they belong together and are intended to be offered as a single unit on the retail market, must be considered to be ‘goods put up in sets for retail sale’, within the meaning of Rule 3(b) of the General Rules for the interpretation of the Combined Nomenclature, even if those goods are packed together only after the declaration with a view to being offered for sale on the retail market.
- 28 Accordingly, the Hof van Cassatie (Court of cassation) decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Are goods put up in sets for retail sale that are presented to customs authorities in separate packages because this is justified, but in respect of which it is clear that they belong together and are intended to be offered as a single unit on the retail market, to be regarded as “goods put up in sets for retail sale”, within the meaning of Rule 3(b) of the General Rules [...], even if those goods are packed together after the declaration with a view to being offered for sale on the retail market?’

### **The question referred for a preliminary ruling**

- 29 By its question, the referring court asks, in essence, whether, and to what extent, Rule 3(b) of the General Rules may be interpreted as meaning that goods, such as those in the main proceedings, 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, that the goods belong together as a unit and are intended to be offered as such for retail sale.
- 30 It should be recalled, first of all, that Rule 3(b), which governs, in particular, the classification of goods put up in sets for retail sale, applies only where, on the one hand, goods are capable of being classified under different CN headings and, on the other hand, classification is not possible under General Rule 3(a) of the General Rules, that is to say, where there is no specific heading taking precedence over more general headings (see, to that effect, judgments in *Telefunken Fernseh und Rundfunk*, 163/84, EU:C:1985:396, paragraphs 36 and 37, and *Kurcums Metal*, C-558/11, EU:C:2012:721, paragraph 36).
- 31 Even if, in the present case, the conditions for the application of Rule 3(b) of the General Rules appear prima facie to be satisfied as regards the goods at issue in the main proceedings, it is for this Court to provide the necessary assessment in that regard and to determine whether the goods can be classified under different CN headings, none of which may be considered to be the most specific within the meaning of Rule 3(a) of the General Rules (see, to that effect, judgments in *Kurcums Metal*, C-558/11, EU:C:2012:721, paragraph 28, and *Vario Tek*, C-178/14, EU:C:2015:152, paragraph 18).

- 32 As regards the question referred, it should be noted that the explanatory notes to the HS and the guidelines provide, as regards Rule 3(b) of the General Rules, in particular that only those goods ‘put up in a manner suitable for sale without repacking’ can be regarded as ‘goods put up in sets’ within the meaning of that Rule. However, in the present case, it was only after their clearance by customs that the goods at issue in the main proceedings were repacked together in order to be sold as belonging together as a unit, the consequence of which, according to the referring court, could be that to exclude them from the definition of ‘goods put up in sets for retail sale’, as clarified by those explanatory notes to the HS and guidelines.
- 33 In that regard, the Court has held that the explanatory notes drawn up by the Commission as regards the CN and by the WCO as regards the HS may be an important aid to the interpretation of the scope of the various tariff headings, but do not have legally binding force (see, inter alia, the judgments in *Digitalnet and Others*, C-320/11, C-330/11, C-382/11 and C-383/11, EU:C:2012:745, paragraph 33, and *Data I/O*, C-297/13, EU:C:2014:331, paragraph 33).
- 34 The wording of those notes must therefore be consistent with the provisions of the CN and cannot alter their scope (judgments in *JVC France*, C-312/07, EU:C:2008:324, paragraph 34, and *Vario Tek*, C-178/14, EU:C:2015:152, paragraph 22). That applies, even more strongly, as regards the guidelines, in so far as, in those guidelines, the Commission clarifies the definition that in its view the terms ‘goods put up in sets for retail sale’, within the meaning of Rule 3(b) of the General Rules, must have.
- 35 Thus it must be held, in the first place, that it is not apparent, in any event, from the wording of Rule 3(b) of the General Rules or, furthermore, from the explanatory notes of the HS or the guidelines, 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.
- 36 In the second place, it should be noted that the Court has held that 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 (see, to that effect, the judgment in *Telefunken Fernseh und Rundfunk*, 163/84, EU:C:1985:396, paragraph 35).
- 37 In that regard, while it is clear from the judgment in *Telefunken Fernseh und Rundfunk* (163/84, EU:C:1985:396) that in order to be capable of being the object of a single classification as a ‘set’ of goods, those goods must be presented together for the purposes of customs clearance, it does not follow from that case, however, that in order to be classified as such, the goods must necessarily be in one and the same package at the time of that transaction. The term a ‘set’ of goods refers rather to a combination of articles that are normally offered, in particular in retail shops, as a unit and in a single package, in order to meet a particular need or in order for a specific activity to be performed.
- 38 Thus, 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.
- 39 To interpret the concept of a ‘set’ otherwise would, in practice, permit importers themselves to choose, by means of a relatively simple manipulation, such as repacking or putting articles together using adhesive tape, the tariff classification of the goods concerned — whether together as a unit, or separately — that is the most favourable for them.



- 40 It is clear from the settled case-law of the Court that such a possibility would be contrary to the principle that the decisive criterion for the tariff classification of goods is in general to be found in their objective characteristics and properties and would therefore undermine the objective of ensuring ease of verification and legal certainty which must govern the tariff classification of imported goods (see, to that effect, in particular, the judgments in *Kurcums Metal*, C-558/11, EU:C:2012:721, paragraph 29, and *Humeau Beaupréau*, C-2/13, EU:C:2014:48, paragraph 45).
- 41 Moreover, it is clear, in essence, from the case-law of the Court that the determination, at the time of the presentation of the goods concerned to customs, of whether the goods belong together as a unit, or, in other words, constitute a ‘set’ within the meaning of Rule 3(b) of the General Rules must, in the final analysis, be made having regard to the manner in which they are intended to be offered for sale to consumers, namely whether they will be presented to consumers as a unit (see, to that effect, the judgment in *Telefunken Fernseh und Rundfunk*, 163/84, EU:C:1985:396, paragraph 35).
- 42 Finally, as submitted by the Belgian Government, it must be held that the fact that, in the case in the main proceedings, the goods at issue were, after customs clearance, repacked into single packages does not necessarily imply that those goods are not suitable for sale directly to users, as a unit, without repacking. In fact, taking into account the information provided by the referring court, it seems to be just as conceivable and justified that the audio/video systems and the corresponding loudspeakers may be sold together to users in separate boxes as in a single package.
- 43 It follows from the foregoing that the fact that the goods were presented to customs in separate packages and were not packed together until after their customs clearance cannot, in itself, preclude those goods from being classified as ‘goods put up in sets for retail sale’, within the meaning of Rule 3(b) of the General Rules, if, at the time of customs clearance, it is clear from other objective factors that the goods belong together as a unit and are intended to be sold as such in the retail trade.
- 44 Such objective factors may be deduced from facts such as those referred to in the order for reference, namely the importation, transportation, invoicing and handling together of the goods, the fact that the consignee was identical, the visual presentation of the system and the fact that the number of pairs of loudspeakers imported is exactly the same as the number of audio/visual systems. It is none the less for the national court to carry out the assessment of the relevant facts in order to determine whether the goods at issue in the main proceedings may be held to have been presented as sets.
- 45 Consequently, the answer to the question referred is that Rule 3(b) of the General Rules must be interpreted as meaning that goods, such as those in the main proceedings, which are presented for customs clearance in separate packages and are packed together only after that transaction may nevertheless be held to be ‘goods put up in sets for retail sale’, within the meaning of that rule and may, therefore, come under a single 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 presented as such in the retail trade.

### **Costs**

- 46 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 (First Chamber) hereby rules:

**Rule 3(b) of the General Rules for 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, as amended by Commission Regulation (EC) No 1214/2007 of 20 September 2007, must be interpreted as meaning that goods, such as those in the main proceedings, which are presented for customs clearance in separate packages and are packed together only after that transaction may nevertheless be held to be ‘goods put up in sets for retail sale’, within the meaning of that rule and may, therefore, come under a single 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 presented as such in the retail trade.**

[Signatures]