



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

22 September 2016*

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

In Case C-91/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Gerechtshof Amsterdam (Amsterdam Regional Court of Appeal, Netherlands), made by decision of 12 February 2015, received at the Court on 25 February 2015, in the proceedings

Kawasaki Motors Europe NV

v

Inspecteur van de Belastingdienst/Douane,

THE COURT (Eighth Chamber),

composed of D. Šváby (Rapporteur), President of the Chamber, J. Malenovský and M. Safjan, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Kawasaki Motors Europe NV, by J. A. H. Hollebeek, M. van der Knaap and E. van Doornik, advocaten,
- the Netherlands Government, by H. K. Bulterman and B. Koopman, acting as Agents,
- the European Commission, by J.-F. Brakeland and A. Caeiros, acting as Agents,

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

gives the following

* Language of the case: Dutch.

Judgment

- 1 This request for a preliminary ruling concerns the validity of Commission Regulation (EC) No 1051/2009 of 3 November 2009 concerning the classification of certain goods in the Combined Nomenclature (OJ 2009 L 290, p. 56).
- 2 The request has been made in proceedings between Kawasaki Motors Europe NV ('KME') and the Inspecteur van de Belastingdienst/Douane (Tax Administration/Customs Inspector, the Netherlands) ('the Inspector') concerning three Binding Tariff Informations ('BTIs') issued by the latter concerning light four-wheeled all terrain vehicles designed to be used as tractors.

Legal context

EU law

Regulation No 2658/87

- 3 In accordance with the first indent of Article 9(1)(a) and Article 10 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and the common customs tariff (OJ 1987 L 256, p. 1), as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16) ('Regulation No 2658/87'), the Commission, assisted by the Customs Code Committee, is to issue measures concerning the application of the Combined Nomenclature, which forms Annex I to Regulation No 2658/87, as regards the classification of goods. It is on the basis on the first of those provisions that Regulation No 1051/2009 was adopted.
- 4 That Combined Nomenclature, as amended by Commission Regulation (EC) No 948/2009 of 30 September 2009 (OJ 2009 L 287, p. 1) ('the CN'), contains in Part One, Section I, Sub-section A, a set of general rules for the interpretation of that nomenclature ('the General Rules'). That section provides:

'Classification of goods in the Combined Nomenclature 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.
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.'

- 5 In Part Two of the CN, entitled ‘Schedule of customs duties’, Chapter 87 relates to ‘Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof’. Under Note 2 to Chapter 87, for the purposes of that chapter, “tractors” means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods’.
- 6 Heading 8701, which is in Chapter 87, reads as follows:

‘8701	Tractors (other than tractors of heading 8709):
8701 10 00	Pedestrian-controlled tractors
8701 20	— Road tractors for semi-trailers
...	
8701 30 00	— Track-laying tractors
8701 90	— Other — Agricultural tractors (excluding pedestrian-controlled tractors) and forestry tractors, wheeled: — — — New, of an engine power:
8701 90 11	— — — Not exceeding 18 kW
8701 90 20	— — — — Exceeding 18 kW but not exceeding 37 kW
8701 90 25	— — — — Exceeding 37 kW but not exceeding 59 kW
8701 90 31	— — — — Exceeding 59 kW but not exceeding 75 kW
8701 90 35	— — — — Exceeding 75 kW but not exceeding 90 kW
8701 90 39	— — — — Exceeding 90 kW
8701 90 50	— — — Used
8701 90 90	— — Other’

- 7 The rate of customs duties on imports applicable to tariff subheading 8701 90 90 is 7%, while appliances under tariff subheadings 8701 90 11 to 8701 90 50 are exempt from duty.

Regulation No 1051/2009

- 8 Regulation No 1051/2009 entered into force on 26 November 2009. It classifies two appliances in accordance with the information included in the annex thereto.
- 9 Those appliances, both described as ‘a new four-wheeled vehicle (so-called ‘All Terrain Vehicle’) with a spark-ignition internal combustion piston engine with a power of approximately 15 kW, and a dry weight of approximately 310 kg’ are classified, respectively, under CN subheadings 8701 90 11 and 8701 90 90.
- 10 According to the specifications given after their descriptions, those two vehicles have the following characteristics in common:
- a single seat of a length of approximately 600 mm accommodating the driver only;
 - motorcar type steering system based on the Ackerman principle controlled by a handlebar;
 - brakes on the front and rear wheels;
 - an automatic clutch and reverse gear;

- an engine specially designed for use in difficult terrain and capable in low ratio of delivering sufficient power;
 - a power transmission shaft drive to the rear wheels;
 - tyres with deep tread design for off-road use;
 - a hole with fittings for attaching various coupling devices; and
 - a towing capacity of approximately 1170 kg (non-braked).
- 11 On the other hand, according to those specifications, only the first vehicle is equipped with a ‘permanently attached winch suitable for hauling logs.’ It is stated that ‘the vehicle is constructed essentially for carrying out forestry work.’
- 12 According to the statement of reasons given in that annex, the classifications thus made are determined by General Rules 1 and 6, Note 2 to Chapter 87 of Part 2 of the CN and by the wording of CN headings 8701, subheading 8701 90 and the eight-digit subheadings corresponding to the respective classification of each vehicle.
- 13 The statement of reasons in respect of the two vehicles includes the following statements:
- ‘As the vehicle is equipped with a hole with fittings for attaching various coupling devices and shaft drive to the wheels, its intended use is to carry out work in difficult terrain and to haul or push other vehicles, appliances or loads (Note 2 to Chapter 87).’
 - ‘Classification under heading 8703 is excluded as the vehicle meets the definition of Note 2 to Chapter 87 and is able to haul or push at least twice its dry weight (non-braked) (see also the CN Explanatory Notes to subheadings 8701 90 11 to 8701 90 90).’
- 14 However, the following distinction is made in the penultimate sub-paragraph of the statement of reasons relating to the classification of each vehicle:
- As regards the first vehicle, classified under CN subheading 8701 90 11, it is stated that ‘the winch gives the vehicle the character of a forestry tractor (see also the CN Explanatory Notes to subheadings 8701 90 11 to 8701 90 50).’
 - As regards the second vehicle, classified under CN subheading 8701 90 90, in contrast, it is stated that ‘classification as an agricultural tractor or forestry tractor is excluded, as the vehicle neither has a power take-off, a hydraulic lifting device, nor a winch (see also the CN Explanatory Notes to subheadings 8701 90 11 to 8701 90 50).’
- 15 On the date of the adoption of Regulation No 1051/2009, 3 November 2009, the Explanatory Notes to the Combined Nomenclature of the European Communities (OJ 2008 C 133, p. 1) were worded as follows as regards the relevant subheadings:
- As regards all of subheadings 8701 90 11 to 8701 90 90:
- ‘These subheadings include so-called “all terrain vehicles”, designed to be used as tractors, with the following characteristics:
- a single seat for the driver;
 - a standard towing hitch;

- steered by means of a handlebar with two grips incorporating the controls;
 - steering is achieved by turning the two front wheels and is based on a motor-cartype steering system (Ackerman principle);
 - brakes on all wheels;
 - an automatic clutch and a reverse gear;
 - an engine specially designed for use in difficult terrain and capable in low ratio of delivering sufficient power to tow attached equipment;
 - the power is transmitted to the wheels by shafts and not with a chain;
 - the tyres fitted to all the vehicles have a deep tread design suitable for rough terrain;
 - a towing capacity of a non-braked trailer of twice their own weight or more. If they meet all of the above characteristics and are in accordance with the Explanatory Notes to subheading 8701 90 11 to 8701 90 50, the vehicles are to be classified as agricultural or forestry tractors. Otherwise they fall under subheading 8701 90 90. If they do not meet all of the above characteristics, the so-called “all terrain vehicles” are to be classified in heading 8703. These subheadings also exclude so-called “Quads” (heading 8703 or subheading 9503 00 10 (see the Explanatory Notes to this subheading)).’
- As regards subheadings 8701 90 11 to 8701 90 50, relating to agricultural tractors (excluding pedestrian-controlled tractors) and forestry tractors, wheeled:

‘These subheadings cover agricultural or forestry tractors having at least three wheels and obviously intended, given their construction and equipment, to be used for agricultural, horticultural or forestry purposes. Vehicles of this type only have a limited maximum speed (in general, not more than 25 km per hour on the highway). Agricultural tractors are generally equipped with a hydraulic device enabling agricultural machinery (harrows, ploughs, etc.) to be raised or lowered, a power take-off enabling the power of the engine to be used to operate other machines or implements, and a coupling device for trailers. They may also be fitted with a hydraulic device intended to operate handling equipment (hay loaders, manure loaders, etc.) when these may be considered to be accessories. These subheadings also cover specially built agricultural tractors such as raised-chassis tractors (straddle tractors) used in vineyards and nurseries, and hill tractors and tool-carrying tractors. Even if mounted on the tractor at the time of presentation, interchangeable agricultural equipment remains classified in its respective heading (heading 8432, 8433, etc.). A further feature of forestry tractors is the presence of a permanently attached winch enabling timber to be hauled. In accordance with note 2 to this chapter, tractors falling in these subheadings may also incorporate certain modifications enabling them, in line with their main purpose, to carry agricultural or forestry machinery, tools, fertilisers, seeds, etc. These subheadings do not include lawnmowers (referred to as ride-on lawnmowers or garden tractors), fitted with a permanent cutting device and no more than one power take-off solely for the purpose of driving the cutting equipment (see the Explanatory Notes to heading 8433).’

- As regards subheading 8701 90 90, entitled ‘Other’:

‘This subheading includes:

1. public works tractors;
2. single-axled tractors for articulated motor vehicles.’

The dispute in the main proceedings and the question referred

- 16 The dispute in the main proceedings concerns the tariff classification of three Kawasaki models of all terrain vehicles (KVF-360 4x4, KVF-650 4x4 and KVF-750 4x4). Those models have the following common characteristics:
- spark-ignition internal combustion piston engine, air-cooled for the first vehicle, liquid-cooled for the other two, with a power of, respectively, 15.7 kW, 30.9 kW and 37.1 kW;
 - single seat and designed for use by one person;
 - net weight, respectively, of 274.5 kg, 273 kg and 275 kg;
 - steering system based on the Ackerman principle and controlled by a handlebar;
 - brakes on the front and rear wheels;
 - an automatic clutch and reverse gear;
 - an engine specially designed for use in difficult terrain and capable in low ratio of delivering sufficient power;
 - propulsion guaranteed by the rear axle or by the four wheels;
 - tyres with a suitable profile for off-road use;
 - towing hitch for towing trailers;
 - non-braked towing capacity of, respectively, 620 kg, 567 kg and 567 kg, and braked towing capacity of, respectively, 1 028 kg, 1 096 kg and 1 098 kg;
 - transmission by drive shafts;
 - stepless gearbox (Continuous Variable Transmission); and
 - no power take-off shaft, hydraulic lift or a winch.
- 17 On 28 April 2010, KME requested BTIs for those three models of all terrain vehicles, requesting that they be classified, respectively, under CN subheadings 8701 90 11, 8701 90 20 and 8701 90 25, relating to agricultural tractors and forestry tractors, the distinction made as regards the classification thus envisaged reflecting the engine power of each model.
- 18 BTIs were issued on 11 May 2010, all the models being classified under subheading 8701 90 90.
- 19 After an unsuccessful objection, KME brought an action against the decisions on which those BTIs were based; that action is pending at the appeal stage before the Gerechtshof Amsterdam (Amsterdam Regional Court of Appeal).
- 20 That court states that the dispute in the main proceedings dates back to 1992, when the competent authority decided to classify similar or identical vehicles to those at issue in this dispute under CN subheading 8703 21 10 as vehicles designed for the transport of persons. The court with jurisdiction at that time to rule on disputes concerning customs tariffs had, however, considered that classification

to be incorrect and took the view that the vehicles concerned had to be classified under subheading 8701 90 11, corresponding to agricultural tractors and forestry tractors, wheeled, new, with an engine power not exceeding 18 kW. BTIs consistent with that decision were issued.

- 21 After the expiry of those BTIs, KME made new requests for BTIs for the same type of vehicles, including the all terrain vehicle model KVF 650 4x4, which is one of the three models at issue in the main proceedings. In the BTIs issued following those requests, the Inspector again classified those vehicles under CN subheading 8703 21 10, relating to ‘motor cars and other motor vehicles, new, principally designed for the transport of persons, of a cylinder capacity not exceeding 1 000 cm³’. That classification was made by reference to Regulation (EC) No 2518/98 of 23 November 1998 concerning the classification of certain goods in the Combined Nomenclature (OJ 1998 L 315, p. 3).
- 22 In the judicial proceedings brought by KME relating to those BTIs, the Gerechtshof Amsterdam (Amsterdam Regional Court of Appeal) questioned the Court as to the validity of that regulation and, if appropriate, under which subheadings it would be appropriate to classify the vehicles concerned.
- 23 By judgment of 27 April 2006, *Kawasaki Motors Europe* (C-15/05, EU:C:2006:259), the Court held that Regulation No 2518/98 was invalid. In paragraph 2 of the operative part of that judgment, it held that new all terrain four-wheeled vehicles with one seat only, fitted with Ackerman steering controlled by a handlebar, equipped with a towing hitch and the technical characteristics of which enable them to push twice their own weight or more, must be classified under CN subheading 8701 90, the final classification of those vehicles having to be made according to the subheadings which correspond to their engine power.
- 24 Following that judgment, on 12 January 2009 the Inspector issued new BTIs classifying the vehicles concerned under CN subheadings 8701 90 11 or 8701 90 20, depending on their respective engine power.
- 25 However, on 3 December 2009, the Inspector indicated that those BTIs had ceased to be valid as a result of the entry into force of Regulation No 1051/2009, and it was on the basis of that regulation that the BTIs at issue in the main proceedings, classifying the vehicles concerned under CN subheading 8701 90 90, were issued.
- 26 Like the parties in the main proceedings, the referring court considers that, while not identical, the vehicle referred to in paragraph 2 of the annex to Regulation No 1051/2009 and those at issue in the main proceedings are similar and that, therefore, that regulation is applicable by analogy to the latter vehicles, by reference to the judgment of 4 March 2004, *Krings* (C-130/02, EU:C:2004:122).
- 27 However, that court questions the validity of that regulation in that it follows from it that those vehicles must be classified under CN heading 8701 90 90 on the ground that they do not have a power take-off shaft, hydraulic lift or winch.
- 28 That court considers that paragraph 2 of the operative part of the judgment of 27 April 2006, *Kawasaki Motors Europe* (C-15/05, EU:C:2006:259), delivered in the context of the national proceedings concerning in particular a vehicle model identical to one of those at issue in the main proceedings here, namely the KVF-650 4x4 model, cannot be interpreted otherwise than as meaning that the Court categorised such vehicles as ‘agricultural tractors and forestry tractors’, for, under CN subheading 8701 90, it is only for that category of tractors that the nomenclature specifies subheadings according to engine power (eight-digit subheadings 8701 90 11 to 8701 90 39).
- 29 Moreover, the Gerechtshof Amsterdam (Amsterdam Regional Court of Appeal) observes that while the Explanatory Notes to subheadings 8701 90 11 to 8701 90 50, to which reference is made in the statement of reasons in paragraph 2 of the annex to Regulation No 1051/2009 — the validity of which the Court is now asked to assess — state that forestry tractors are characterised by the presence of a

winch, they also state that agricultural tractors are ‘generally’ equipped with a hydraulic lifting device and a power take-off shaft, which would not exclude classifying all terrain vehicles such as those at issue in the main proceedings which are not fitted with a hydraulic lifting device or power take-off shaft as agricultural tractors.

30 In those circumstances the Gerechtshof Amsterdam decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘Is Regulation ... No 1051/2009 ... valid?’

Consideration of the question referred

Admissibility of the question

31 The Commission maintains that the question referred is inadmissible, on the ground that Regulation No 1051/2009, the validity of which the Court is asked to assess, is irrelevant to the outcome of the dispute in the main proceedings. As is apparent from the order for reference, the vehicles at issue in that dispute are not identical, but merely comparable to the vehicle referred to in paragraph 2 of the annex to Regulation No 1051/2009, so that that regulation has no direct legal effect on the classification of the vehicles at issue in the main proceedings.

32 In that regard, according to the Commission, the referring court has misread the judgment of 4 March 2004, *Krings* (C-130/02, EU:C:2004:122). It does not follow from that judgment that an application by analogy of a classification regulation to products comparable to those covered by that regulation is mandatory; rather that judgment presents such a regulation as a source of guidance in order to promote a consistent interpretation of the CN and equal treatment of traders.

33 Furthermore, according to the Commission, that court does not justify the claim that the vehicles at issue in the main proceedings are comparable to the vehicle covered in paragraph 2 of the annex to Regulation No 1051/2009.

34 That plea of inadmissibility must be rejected.

35 In that regard, it should be noted, at the outset, that the referring court has used exactly the same word as that used in paragraph 35 of the judgment of 4 March 2004, *Krings* (C-130/02, EU:C:2004:122), in its Dutch language version, namely the adjective ‘vergelijkbaar’, which corresponds to the adjective ‘analogues’ in the French version of the judgment and the verb ‘entsprechen’ in the German version, the language of the preliminary ruling proceedings in which that judgment was delivered.

36 For the remainder, it appears, first, that the referring court has not merely found that the products at issue in the main proceedings are similar to the product in paragraph 2 of the annex to Regulation No 1051/2009, a factual assessment for which it alone has jurisdiction, but, furthermore, has given a precise description of those products, which also corresponds, in essence, to the description given in that annex as regards the product referred to in paragraph 2 thereof. Accordingly, it follows from the descriptions contained in paragraphs 9 to 11 and in paragraph 16 of the present judgment that the vehicles at issue in the main proceedings are similar to the vehicle covered by paragraph 2 of the annex to that regulation. In essence, that court found that all those vehicles have all of the characteristics required to be classified as ‘tractors’ within the meaning of CN heading 8701 and that they do not have a power take-off shaft, a hydraulic lifting device or a winch.

- 37 Thus, the referring court has satisfied the requirements of Article 94(a) and (c) of the Court's Rules of Procedure, by including in the order for reference a summary of the relevant findings of fact determined by the referring court, which makes it possible to ascertain the reasons which prompted it to inquire about the validity of the relevant part of that regulation.
- 38 Second, suffice it to note that, in the judgment of 4 March 2004, *Krings* (C-130/02, EU:C:2004:122), whereas the order for reference related to products which were not identical but merely similar to those referred to in the relevant part of the annex to the classification regulation the validity of which the Court was asked to rule on (see paragraphs 34 and 35 of that judgment), it nevertheless ruled on the validity of that regulation (see paragraph 1 of the operative part of that judgment).
- 39 It follows from the Court's established case-law that if a classification regulation is not directly applicable to products which are not identical, but only similar to the product covered by that regulation, the latter is applicable by analogy to such products (see, to that effect, inter alia, judgments of 4 March 2004, *Krings*, C-130/02, EU:C:2004:122, paragraphs 34 and 35, and 13 July 2006, *Anagram International*, C-14/05, EU:C:2006:465, paragraphs 31 to 33). Therefore, where a national court has doubts as to the validity of a classification regulation which it must apply by analogy to goods which are sufficiently similar to those covered by that regulation, it is justified for that court to submit a request for a preliminary ruling to the Court to assess the validity of that regulation (see, to that effect, inter alia, judgment of 19 February 2009, *Kamino International Logistics* (C-376/07, EU:C:2009:105, paragraph 69).
- 40 An answer must therefore be given to the question referred.

Substance

- 41 It should be borne in mind that, in paragraph 2 of the operative part of the judgment of 27 April 2006, *Kawasaki Motors Europe* (C-15/05, EU:C:2006:259), the Court held that 'new all terrain four-wheeled vehicles with one seat only, fitted with Ackerman steering controlled by a handlebar, equipped with a towing hitch and the technical characteristics of which enable them to push twice their own weight or more, must be classified in subheading 8701 90 of that Nomenclature. It is for the Gerechtshof te Amsterdam (Amsterdam Regional Court of Appeal) to classify such vehicles in the subheadings which correspond to their engine power.'
- 42 CN subheading 8701 90 relating to tractors other than pedestrian-controlled tractors, road tractors for semi-trailers and track-laying tractors, which fall under subheadings 8701 10 to 8701 30, covers two categories of tractors, namely:
- first, agricultural tractors (excluding pedestrian-controlled tractors) and forestry tractors, wheeled, and
 - second, tractors other than both tractors coming within subheadings 8701 10 to 8701 30 and agricultural and forestry tractors ('other tractors').
- 43 Other tractors are covered by an eight-digit subheading, namely subheading 8701 90 90.
- 44 On the other hand, agricultural tractors and forestry tractors are covered by different eight-digit subheadings. First, they are distinguished according to whether they are used, in which case they come under subheading 8701 90 50, or new. Next, new agricultural tractors and forestry tractors are divided into six eight-digit subheadings depending on their engine power, namely subheadings 8701 90 11, 8701 90 20, 8701 90 25, 8701 90 31, 8701 90 35 and 8701 90 39.

- 45 CN subheading 8701 90 has no other eight-digit subheading than those mentioned in the two preceding paragraphs of the present judgment.
- 46 It follows from that observation that paragraph 2 of the operative part of the judgment of 27 April 2006, *Kawasaki Motors Europe* (C-15/05, EU:C:2006:259), concerns only the CN eight-digit subheadings 8701 90 11 to 8701 90 39, relating to new agricultural tractors and forestry tractors, the Court having interpreted those subheadings as meaning that they are relevant for the tariff classification of vehicles such as those described in paragraph 2, the individual subheading being determined by the engine power of the vehicle to be classified. Therefore, subheading 8701 90 90, relating to other tractors, is irrelevant for the classification of such vehicles.
- 47 It should be noted, moreover, that the vehicle described in paragraph 2 of the annex to Regulation No 1051/2009 is similar to those at issue in the case having given rise to the judgment of 27 April 2006, *Kawasaki Motors Europe* (C-15/05, EU:C:2006:259), having regard to the description given in paragraphs 26 to 31 of that judgment. That conclusion is supported by the fact that one of the models of the vehicles at issue in the main proceedings having given rise to that judgment, namely the KVF-650 4x4 model, is also at issue in the present case. As was noted in paragraph 36 of the present judgment, the vehicles at issue in the main proceedings, are, without distinction, similar to those described in paragraph 2 of that annex.
- 48 Therefore, it follows from the findings made in paragraphs 46 and 47 of the present judgment that Regulation No 1051/2009, in so far as it classifies the vehicle described in paragraph 2 of its annex under CN subheading 8107 90 90, and not under one of the subheadings 8701 90 11 to 8701 90 39 thereof, on the basis of the engine power of that vehicle, is incompatible with the scope of those subheadings as established in paragraph 2 of the operative part of the judgment of 27 April 2006, *Kawasaki Motors Europe* (C-15/05, EU:C:2006:259).
- 49 The objections raised by the Commission are not such as to undermine the finding of invalidity which should normally result from that incompatibility.
- 50 In that regard, it must be stated, in the first place, that, in paragraph 2 of the operative part of the judgment of 27 April 2006, *Kawasaki Motors Europe* (C-15/05, EU:C:2006:259), the Court merely interpreted the eight-digit subheadings coming under CN subheading 8701 90 in the light of the characteristics of the vehicles described by the referring court, as it was requested to do by that court in its second question, inviting that court to classify those vehicles itself.
- 51 In the second place, the Commission's argument cannot be accepted that the decisive reason for the classification of the vehicle described in paragraph 2 of the annex to Regulation No 1051/2009 under subheading 8701 90 90, namely that the 'classification as an agricultural or forestry tractor is excluded, as the vehicle neither has a power take-off, a hydraulic lifting device nor a winch', derives from the Explanatory Notes to the CN, in so far as those notes specify, as regards subheadings 8701 90 11 to 8701 90 50, that 'agricultural tractors are generally equipped with a hydraulic device enabling agricultural machinery (harrows, ploughs, etc.) to be raised or lowered, a power take-off enabling the power of the engine to be used to operate other machines or implements, and a coupling device for trailers' and that 'a ... feature of forestry tractors is the presence of a permanently attached winch enabling timber to be hauled.'
- 52 The value of those Explanatory Notes is recognised by the Court's case-law as they may be an important aid to the interpretation of the scope of the various tariff headings, even though they do not have legally binding force (see, to that effect, inter alia, judgment of 17 July 2014, *Sysmex Europe*, C-480/13, EU:C:2014:2097, paragraph 30 and the case-law cited).

- 53 In that regard, it should be noted, first, that the passages of the CN Explanatory Notes to which the Commission refers are not absolute. As regards the presence of a hydraulic device enabling agricultural machinery to be raised or lowered and a power take-off enabling the power of the engine to be used to operate other machines or implements, in so far as concerns agricultural tractors, those passages merely state that such tractors are ‘generally’ equipped with these. However, as noted by the referring court, it follows from that wording that the absence of those elements is not sufficient to rule out the agricultural use of tractors. The explanation given by the Commission, that that wording corresponds to a reversal of the burden of proof of the intended use of the vehicle cannot be accepted. The scope of those passages does not depend on those Explanatory Notes, a conclusion which is, moreover, supported, in the statement of reasons for the classification made in paragraph 2 of the annex to Regulation No 1051/2009, by the fact that nowhere is it stated that the other characteristics of the vehicle concerned do not establish its intended agricultural purpose.
- 54 Second, in accordance with General Rule 1, for legal purposes, the classification is to be determined according to the terms of the headings and any relative section or chapter notes, in addition to other general rules, provided such headings or notes do not otherwise require. General Rule 6 provides that, for legal purposes, the classification of goods in the subheadings of a heading is to be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, according to the other general rules. Finally, it follows from General Rule 3(a), that where goods are *prima facie* classifiable under two headings, the most specific description is to be preferred to headings providing a more general description.
- 55 In the present case, it is undisputed that commercial vehicles such as those referred to in paragraph 2 of the annex to Regulation No 1051/2009 must be categorised as ‘tractors’ within the meaning of subheading 8701 90, which concerns only commercial vehicles. The main distinction within that subheading is based on the intended use — agricultural, forestry or other — of the tractors covered.
- 56 According to the Court’s case-law, the intended use of a product may also 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 (judgment of 17 July 2014, *Sysmex Europe*, C-480/13, EU:C:2014:2097, paragraph 31 and the case-law cited).
- 57 Moreover, in view of the scope of General Rule 3(a), if a tractor has such objective characteristics, it should be classified under the most specific subheading.
- 58 In the present case, as is apparent from the CN Explanatory Notes, the agricultural or forestry use of tractors may derive from their design and the presence of devices or equipment which make them suitable for use in the context of agricultural or horticultural holdings, without there being any need to link *a priori* the presence of certain devices or equipment exhaustively listed to that intended use.
- 59 As is clear from the description of the types of vehicles referred to in the judgment of 27 April 2006, *Kawasaki Motors Europe* (C-15/05, EU:C:2006:259), which corresponds, in essence, to that of the vehicle referred to in paragraph 2 of the annex to Regulation No 1051/2009, the vehicles referred to in that judgment are characterised, in addition to their high towing capacity, by their special design, in particular as regards the engine, tyres and suspension, which allow them to move in difficult natural terrain, in combination with equipment which may be attached to them by means of various coupling devices. All of those characteristics are general, objective and visible.
- 60 In the third place, it is irrelevant that, as mentioned by the Commission, tractors apparently intended for agricultural or forestry purposes may have a recreational use. It should be recalled that if the objective characteristic of a product can be established at the time of customs clearance, the fact that it may also be possible to envisage another use for that product will not preclude its classification for legal purposes. For its classification for customs purposes, that product does not have to be solely or exclusively intended for use corresponding to that objective characteristic. It suffices if that is the

main use for which it is intended (judgment of 13 July 2006, *Anagram International*, C-14/05, EU:C:2006:465, paragraph 26). In any event, that objection cannot justify the classification of the types of vehicles concerned under subheading 8701 90 90, which, like all the subheadings under CN heading 8701, covers commercial vehicles.

- 61 In the fourth and last place, the classification of vehicles such as those referred to in paragraph 2 of the annex to Regulation No 1051/2009 in subheadings 8701 90 11 to 8701 90 50 does not mean that subheading 8701 90 90 is to be interpreted as devoid of content. It is sufficient, in that regard, to note that the CN Explanatory Notes relating to that subheading refer, by way of examples of vehicles coming within that subheading, to public works tractors and single-axled tractors for articulated motor vehicles.
- 62 It follows from all the foregoing considerations that, by adopting Regulation No 1051/2009, in so far as it classifies the vehicle described in paragraph 2 of its annex under CN subheading 8107 90 90, and not under one of the subheadings 8701 90 11 to 8701 90 39, which correspond to the engine power of that vehicle, the Commission altered, by reducing it, the scope of those subheadings and, therefore, exceeded the powers conferred on it in Article 9(1)(a) of Regulation No 2658/87 (see, to that effect, *inter alia*, judgment of 4 March 2004, *Krings*, C-130/02, EU:C:2004:122, paragraph 26).
- 63 Therefore, the answer to the question referred is that paragraph 2 of the annex to Regulation No 1051/2009 is invalid in so far as it classifies the vehicle described in that paragraph under CN subheading 8107 90 90 and not under one of CN subheadings 8701 90 11 to 8701 90 39, which correspond to the engine power of that vehicle.

Costs

- 64 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:

Paragraph 2 of the annex to Commission Regulation (EC) No 1051/2009 of 3 November 2009 concerning the classification of certain goods in the Combined Nomenclature is invalid in so far as it classifies the vehicle described in that paragraph under subheading 8107 90 90 of that Combined Nomenclature, as amended by Commission Regulation (EC) No 948/2009 of 30 September 2009, and not under one of subheadings 8701 90 11 to 8701 90 39 of that Combined Nomenclature, which correspond to the engine power of that vehicle.

[Signatures]