



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

26 May 2016*

(Reference for a preliminary ruling — Common Customs Tariff — Classification of goods — Regulation (EEC) No 2658/87 — Combined Nomenclature — Heading 8710 and Subheading 9305 91 00 — Note 3 to Section XVII and point (c) of note 1 to Chapter 93 — Tanks and other armoured fighting vehicles — Military weapons — Classification of a turret system)

In Case C-262/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Administrative Court, Austria), made by decision of 19 May 2015, received at the Court on 1 June 2015, in the proceedings

GD European Land Systems – Steyr GmbH

v

Zollamt Eisenstadt Flughafen Wien,

THE COURT (Ninth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, E. Juhász and K. Jürimäe, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- GD European Land Systems – Steyr GmbH, by P. Csoklich and R. Schneider, Rechtsanwälte,
- the European Commission, by A. Caeiros and B.-R. Killmann, acting as Agents,

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

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of note 3 to Section XVII and point (c) of note 1 to Chapter 93 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), in the version resulting from Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013 (OJ 2013 L 290, p. 1) ('the CN').
- 2 The request has been made in proceedings between GD European Land Systems – Steyr ('GD') and the Zollamt Eisenstadt Flughafen Wien (Customs Office, Eisenstadt, Vienna Airport; 'the Customs Office'), concerning the classification, within the CN, of a turret system (*Multi Gun Turret System* weapon station).

Legal context

The CN

- 3 The customs classification of goods imported into the European Union is governed by the CN.
- 4 Article 12 of Regulation No 2658/87, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16), requires the European Commission to adopt each year a regulation reproducing the complete version of the CN together with the corresponding autonomous and conventional rates of duty of the Common Customs Tariff, as they result from measures adopted by the Council of the European Union or by the Commission. That regulation is to be published not later than 31 October in the *Official Journal of the European Union*, to apply from 1 January of the following year. It is apparent from the file submitted to the Court that the version of the CN applicable to the facts in the main proceedings is that for the year 2014, resulting from Regulation No 1001/2013.
- 5 Part One of the CN, relating to 'Preliminary Provisions', includes Section I, on 'General Rules', part A of which, entitled 'General rules for the interpretation of the Combined Nomenclature', provides inter alia as follows:

'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.

...'

- 6 Part Two of the CN, entitled 'Schedule of Customs Duties', includes Section XVII, entitled 'Vehicles, aircraft, vessels and associated transport equipment', notes 2(ij) and 3 to which are worded as follows:

'2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

...

- (ij) arms (Chapter 93);

...

3. References in Chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.’

7 Section XVII of the CN includes a Chapter 87, entitled ‘Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof’, which includes heading 8710. That heading reads as follows:

‘8710 00 00	Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons, and parts of such vehicles
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8 Section XIX of Part Two of the CN, entitled ‘Arms and ammunition; parts and accessories thereof’, includes a Chapter 93, which is itself also entitled ‘Arms and ammunition; parts and accessories thereof’, note 1(c) to which states:

‘1. This chapter does not cover:

...

(c) armoured fighting vehicles (heading 8710);

...’

9 Chapter 93 includes headings 9301 to 9305 of the CN:

‘9301 ...	Military weapons, other than revolvers, pistols and the arms of heading 9307
9302 00 00	Revolvers and pistols, other than those of heading 9303 or 9304
9303	Other firearms and similar devices which operate by the firing of an explosive charge ...
...	...
9304 00 00	Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading 9307
9305	Parts and accessories of articles of headings 9301 to 9304
...	...
9305 20 00	Of shotguns or rifles of heading 9303
9305 91 00	Other:
9305 99 00	Of military weapons of heading 9301
	Other ...’

Regulation (EEC) No 2913/92

- 10 Article 12(1) and (2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1), ('the Customs Code') provides:

'1. The customs authorities shall issue binding tariff information or binding origin information on written request, acting in accordance with the committee procedure.

2. Binding tariff information or binding origin information shall be binding on the customs authorities as against the holder of the information only in respect of the tariff classification or determination of the origin of goods.

Binding tariff information or binding origin information shall be binding on the customs authorities only in respect of goods on which customs formalities are completed after the date on which the information was supplied by them.'

The Explanatory Notes to the Harmonised Commodity Description and Coding System

- 11 The Customs Cooperation Council, now the World Customs Organisation (WCO), was established by the convention establishing that body, 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, 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). The CN takes six-digit headings and subheadings from the HS. Only the seventh and eighth figures creating further subheadings are specific to it.
- 12 The Explanatory Notes to the HS are drawn up within the WCO in accordance with the provisions of that convention.
- 13 The Explanatory Note concerning heading 8710 of the HS states:

'This heading covers tanks and other armoured fighting "Vehicles, motorised, whether or not fitted with weapons, and" parts of such vehicles.

Tanks are armoured fighting vehicles mounted on tracks, and armed with various weapons (guns, machine-guns, flame-throwers, etc.) usually housed in a traversing turret. ...

PARTS The heading also covers parts of the abovementioned vehicles provided the parts fulfil both the following conditions:

- (i) They must be identifiable as being suitable for use solely or principally with such vehicles; and
- (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note). Parts of this heading include:
 - (1) Bodies of armoured vehicles and parts thereof (turrets, armoured doors and bonnets, etc.). ...'

14 The Explanatory Note concerning heading 9305 of the HS states:

‘The parts and accessories of this heading include:

(1) Parts for military weapons, e.g., liners (tubes for barrels), recoil mechanisms and breeches for guns of all kinds; turrets, carriages, tripods and other special mountings for guns, machine-guns, sub-machine-guns, etc., whether or not with aiming and loading mechanisms.

...’

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

15 GD is a limited-liability company which is part of an arms-industry group with a worldwide presence and the objects of which include the manufacture of combat tanks. On 25 February 2014, that company declared, at the customs office, goods described as a turret system for armoured fighting vehicles, so that they could be released into free circulation within the European Union.

16 The customs office accepted those goods for free circulation and informed GD of the rate of import duty owed for them, namely 1.7%, resulting from the classification of those goods under heading 8710 of the CN. The customs office concluded that the goods concerned were ‘an armoured turret which, as an identifiable part, will be fitted solely or principally in armoured fighting vehicles’. According to the referring court, that communication is to be regarded as a decision on customs duties.

17 On 11 March 2014, GD challenged that decision of the customs office and requested that the goods in question in the main proceedings be classified under subheading 9305 91 00 of the CN, corresponding to military weapons, thereby involving a customs duty rate of 0%. Following the rejection of its request by the customs office, GD brought an action before the Bundesfinanzgericht (Federal Finance Court, Austria).

18 Before that court, GD produced a binding tariff information issued on 11 April 2014 by the Hauptzollamt Hannover (Principal Customs Office, Hanover), which, according to GD, classified goods identical to those at issue in the main proceedings under subheading 9305 91 00 of the CN.

19 The description of the goods at issue in the main proceedings is included in that tariff information, which the referring court reproduces in the request for a preliminary ruling. That description reads as follows:

‘... [it] is a combination of individual technical elements integrated in a turret-like construction made principally of base metal. The turret system is the basis for a weapons station and is fitted principally with the following subsystems and components: electrical motors, gyro stabilisation, optical and electronic sight instruments including displays and operating units for the crew (gunner and commander), a firing guidance system, several sensors, storage units for munitions and devices for feeding munitions to the weapons. The system is ready to be fitted with an automatic cannon and a machine gun (neither of these military weapons is part of the present BTI). The combined effect of the subsystems mentioned permits the crew to operate the on-board cannon and machine guns and, thus, to fire targeted shots. The turret system is intended to be mounted in a rotatable position on the roof of mobile maritime transport systems and mobile land transport systems or used also in stationary installations.’

20 On 29 October 2014, the Bundesfinanzgericht (Federal Finance Court) dismissed GD’s action. That court classified the turret system at issue in the main proceedings, as being part of an armoured fighting vehicle, under heading 8710 of the CN, and indicated that the tariff information issued by the Principal Customs Office, Hanover, could not have retroactive effect.

- 21 GD brought an appeal before the Verwaltungsgerichtshof (Administrative Court) against the decision of the Bundesfinanzgericht (Federal Finance Court) dismissing its action. The Verwaltungsgerichtshof (Administrative Court) states that, according to the Bundesfinanzgericht (Federal Finance Court), the goods covered by the binding tariff information issued by the Principal Customs Office, Hanover, and submitted by GD are the same as the goods at issue in the main proceedings. It nevertheless takes the view that that BTI cannot apply to the present case as the declaration of 25 February 2014 predates the adoption, on 11 April 2014, of that tariff information.
- 22 The referring court states that the goods at issue in the main proceedings were mounted on a vehicle that must be classified under heading 8710 of the CN as a tank or other self-propelled armoured fighting vehicle. However, there appears, in its view, to be a contradiction between the Explanatory Note concerning heading 8710 of the HS, according to which ‘bodies of armoured vehicles and parts thereof (turrets, armoured doors and bonnets, etc.)’ come under that heading, and the Explanatory Note concerning heading 9305 of the HS, which states that parts for military weapons, such as turrets, machine-guns and sub-machine-guns, come under that latter heading.
- 23 In addition, that court is unsure what interpretation should be given to note 3 of Section XVII of the CN, which provides that only the parts which are suitable for use solely or principally with goods coming under Chapters 86 to 88 of the CN, in particular, heading 8710 of the CN, constitute ‘parts’ within the meaning of those chapters.
- 24 In those circumstances the Verwaltungsgerichtshof (Administrative Court) decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:
- ‘(1) Does the exception specified in point (c) of note 1 to Chapter 93 of the CN, in the version applicable to the facts in the present case, which is worded “armoured fighting vehicles (heading 8710)”, apply also to “parts thereof”?
- (2) Must note 3 to Section XVII of the CN be interpreted as meaning that a “weapons station (armoured turret)” which may be used on armoured fighting vehicles or on “mobile maritime transport systems” or in stationary installations must be classified under heading 8710 of the CN as a part of an armoured fighting vehicle because that weapons station was imported by the manufacturer of armoured fighting vehicles for the production or assembly of armoured fighting vehicles and is used in fact for that purpose?’

The questions referred

- 25 By its questions, which should be examined together, the referring court asks, in essence, whether the CN must be interpreted as meaning that a turret system, such as that at issue in the main proceedings, comes under heading 8710 of the CN or under subheading 9305 91 00 of the CN in view of the fact that it was imported for the production or assembly of armoured fighting vehicles and was indeed used subsequently for that purpose.
- 26 According to that court, were such a system to be regarded as part of an armoured fighting vehicle, it would have to be classified under heading 8710 of the CN, which specifically covers ‘tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons, and parts of such vehicles’. On the other hand, were that system considered to be a part or an accessory of a military weapon, it would come under subheading 9305 91 00 of the CN, which specifically covers such parts or such accessories of a military weapon.
- 27 When the Court is requested to give a preliminary ruling on a matter of tariff classification, its task is to provide the national court with guidance on the criteria which will enable 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 (judgments of 7 November 2002 in *Lohmann and Medi Bayreuth*, C-260/00 to C-263/00, EU:C:2002:637, paragraph 26, and 22 November 2012 in *Digitalnet and Others*, C-320/11, C-330/11, C-382/11 and C-383/11, EU:C:2012:745, paragraph 61).

- 28 The Court has, moreover, held that the general rules for the interpretation of the CN provide that the classification of goods is to be determined according to the terms of the headings and any section or chapter notes, the titles of sections, chapters and sub-chapters being provided for ease of reference only (judgments of 12 June 2014 in *Lukoyl Neftohim Burgas*, C-330/13, EU:C:2014:1757, paragraph 33, and 11 June 2015 in *Baby Dan*, C-272/14, EU:C:2015:388, paragraph 25).
- 29 It also follows from settled case-law of the Court 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 of the notes to the section or chapters (see, inter alia, judgments of 16 February 2006 in *Proxxon*, C-500/04, EU:C:2006:111, paragraph 21, and 5 March 2015 in *Vario Tek*, C-178/14, EU:C:2015:152, paragraph 21 and the case-law cited).
- 30 In the present case, it must be noted that, first, according to note 2(ij) of Section XVII of the CN, concerning, inter alia, heading 8710 of the CN, the weapons coming under Chapter 93 of the CN are not regarded as ‘parts’ and ‘accessories’ of the vehicles covered by that section, even where they are acknowledged as suitable for use with those vehicles. Second, note 1(c) to Chapter 93 of the CN explicitly excludes from that chapter armoured fighting vehicles coming under heading 8710 of the CN.
- 31 Given that that latter heading also refers to the parts of armoured fighting vehicles, that exclusion necessarily covers not only such vehicles but also parts thereof. It is thus necessary to determine whether the turret system at issue in the main proceedings can be regarded as a ‘part’ of an armoured fighting vehicle, within the meaning of heading 8710 of the CN. If that is the case, that system cannot be a weapon within the meaning of heading 9301 of the CN, and cannot, consequentially, be covered by the exclusion provided for by note 2(ij) to Section XVII of the CN.
- 32 It follows from note 3 to Section XVII of the CN that a turret system such as that at issue in the main proceedings can be regarded as a ‘part’ or ‘accessory’ of an armoured fighting vehicle within the meaning of heading 8710 of the CN only if it is suitable for use ‘solely’ or ‘principally’ with such a vehicle.
- 33 The referring court asks, in that regard, whether the end use of the turret system is a decisive element for the purposes of answering the question whether that system should be considered a part ‘solely’ or ‘principally’ for an armoured fighting vehicle.
- 34 It must be possible to verify the ‘sole’ or ‘principal’ intended use of the turret system at the time of customs clearance and, therefore, when the application for release for free circulation of such goods is being considered (see, to that effect, judgment of 23 April 2015 in *ALKA*, C-635/13, EU:C:2015:268, paragraph 37).
- 35 It follows that the fact that a turret system has been imported for the production or assembly of armoured fighting vehicles and is indeed used, subsequently, for that purpose, although it may be an element that is to taken into consideration, does not necessarily mean that that system is ‘solely’ or ‘principally’ intended for use with such vehicles within the meaning of note 3 to Section XVII of the CN or the Explanatory Note to heading 8710 of the HS.

- 36 It is apparent from the order for reference that the turret system at issue in the main proceedings can be mounted in a rotatable position on the roof of mobile maritime and land transport systems or used also in stationary installations. It follows that that turret system cannot be regarded as a part intended 'solely' for an armoured fighting vehicle.
- 37 In those circumstances, it is for the referring court to determine whether, given its characteristics and its objective properties, that turret system is intended 'principally' for use in armoured fighting vehicles. If that is the case, it should be classified under heading 8710, without the end use to which it is put in the present case being determinant in that regard.
- 38 Should that determination establish that that is not the case, it will be for the referring court to examine whether the turret system at issue in the main proceedings, which, according to the information provided by that court is not a 'military weapon', may nevertheless be regarded as a 'part' or 'accessory' of such a weapon within the meaning of subheading 9305 91 00 of the CN.
- 39 The Court has already held, in that regard, in relation to parts and accessories of machines, appliances and instruments, that the notion of 'parts' implies the existence of a whole machine for which those parts are essential for it to function 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. In order to ensure a consistent and uniform application of the Common Customs Tariff, it must be possible to apply those definitions to heading 9305 of the CN, and in particular to subheading 9305 91 00 thereof (see, by analogy, judgment of 4 March 2015 in *Oliver Medical*, C-547/13, EU:C:2015:139, paragraph 69 and the case-law cited).
- 40 It should be noted that, according to the description of the turret system at issue in the main proceedings carried out by the referring court, that system can be regarded as a 'part' or 'accessory' of a military weapon, such as a gun or a machine gun, as defined in subheading 9305 91 00 of the CN. It is apparent from the order for reference that that turret system may be fitted with an automatic cannon and a machine gun. The same turret system forms the basis for a weapons station which is fitted principally with the several subsystems and components such as, inter alia, electrical motors, optical and electronic sight instruments including displays and operating units for the crew (gunner and commander), a firing-guidance system, several storage units for munitions and devices for feeding munitions to the weapons which permit that crew to operate the on-board cannon and machine guns and, thus, to fire targeted shots.
- 41 Thus, having regard to its own objective characteristics, if it turned out that the turret system at issue in the main proceedings is not primarily intended for use with an armoured fighting vehicle, it should be regarded either as a 'part' of a military weapon, to the extent that its presence would prove indispensable in order for the cannon and a machine gun fitted on it to function, or, at the very least, as an 'accessory' to such a military weapon, in so far as it enables that weapon to be adapted to a particular use or confers additional potential on that weapon.
- 42 That assessment is borne out by the Explanatory Note to heading 9305 of the HS, according to which parts of military weapons, such as, in particular, 'turrets, carriages, tripods and other special mountings for guns, machine-guns, sub-machine-guns, etc., whether or not with aiming and loading mechanisms' come under that heading. It therefore follows from that explanatory note, read in conjunction with the Explanatory Note to heading 8710 of the HS, that the turrets, when they are not a part of the bodies of armoured vehicles, are parts of 'military weapons' in so far as they provide support for the operation or use of such weapons.
- 43 In those circumstances, the turret system at issue in the main proceedings should be classified under subheading 9305 91 00 of the CN.

- 44 Having regard to all of the foregoing considerations, the answer to the questions referred is that the CN must be interpreted as meaning that a turret system, such as that at issue in the main proceedings, which was imported for the production of armoured fighting vehicles and was indeed used subsequently for that purpose, comes under heading 8710 of the CN if it is ‘principally’ intended for use on an armoured fighting vehicle, this being a matter for the referring court to determine on the basis of the objective characteristics and properties of the turret system, without the end use to which it is put in the case at hand being determinant for the purpose of its classification. If that is not the case, that turret system must be classified, as a part or accessory of a ‘military weapon’, under subheading 9305 91 00 of the CN.

Costs

- 45 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 (Ninth 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, in the version resulting from Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013, must be interpreted as meaning that a turret system, such as that at issue in the main proceedings, which was imported for the production of armoured fighting vehicles and was indeed used subsequently for that purpose, comes under heading 8710 of the Common Nomenclature if it is ‘principally’ intended for use on an armoured fighting vehicle, this being a matter for the referring court to determine on the basis of the objective characteristics and properties of the turret system, without the end use to which it is put in the case at hand being determinant for the purpose of its classification. If that is not the case, that turret system must be classified, as a part or accessory of a ‘military weapon’, under subheading 9305 91 00 of the Combined Nomenclature.

[Signatures]