



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

26 May 2016*

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Combined Nomenclature — Heading 2711 — Petroleum gases and other gaseous hydrocarbons — Material giving the essential character — Liquefied petroleum gas)

In Case C-286/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa, Administratīvo lietu departaments (Supreme Court, Administrative law division, Latvia), made by decision of 5 June 2015, received at the Court on 12 June 2015, in the proceedings

Valsts ieņēmumu dienests

v

SIA ‘Latvijas propāna gāze’

THE COURT (Seventh Chamber),

composed of C. Toader, President of the Chamber, A. Rosas (Rapporteur) and A. Prechal, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

- the Latvian Government, by I. Kalniņš and A. Bogdanova, acting as Agents,
- the European Commission, by A. Caeiros and I. Rubene, acting as Agents,

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

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the Combined Nomenclature (‘CN’) 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 versions resulting, successively, from Commission Regulation (EC) No 1031/2008 of 19 September 2008 (OJ

* Language of the case: Latvian.

2008 L 291, p. 1) and Commission Regulation (EC) No 948/2009 of 30 September 2009 (OJ 2009 L 287, p. 1), and in particular of heading 2711 of that annex, and of Article 218(1)(d) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

- 2 The request has been made in proceedings between Valsts Ieņēmumu dienests (State Tax Authority, Latvia, 'the Tax Authority') and SIA 'Latvijas propāna gāze' concerning the duty payable on account of the import of liquefied petroleum gas ('LPG') from Russia into Latvia.

EU law

- 3 It is apparent from the documents submitted to the Court that the versions of the CN applicable to the facts of the main proceedings are those relating to the years 2008 and 2009, resulting from Regulations Nos 1031/2008 and 948/2009, respectively. The provisions of the CN applicable to the main proceedings are, however, identical in both versions.
- 4 The first part of the CN, relating to the '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.
2. ...
- (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.
3. When, by application of rule 2(b) or for any other reason, goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:
...
(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.

...

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 The second part of the CN, relating to the ‘Schedule of Customs duties’, includes Section V, entitled ‘Mineral products’, which contains, in particular, Chapter 27 of the CN, entitled ‘Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes’.
- 6 Heading 2711 of that chapter is worded and structured as follows:

2711	Petroleum gases and other gaseous hydrocarbons:
	– Liquefied:
...	...
2711 12	- - Propane:
...	...
	- - - Other:
...	...
	- - - - For other purposes:
2711 12 97	- - - - - Other
2711 13	- - Butanes:
...	...
	- - - For other purposes:
...	...
2711 13 97	- - - - Other
...	...
2711 19 00	- - Other

- 7 Article 62(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) provides:

‘The [Customs] declaration shall be accompanied by all the documents required for implementation of the provisions governing the customs procedure for which the goods are declared.’

- 8 Under Article 218(1) of Regulation No 2454/93:

‘The following documents shall accompany the customs declaration for release for free circulation:

...

- (d) all other documents required for the application of the provisions governing the release for free circulation of the goods declared.’

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

- 9 It is apparent from the documents submitted to the Court that Latvijas propāna gāze classified the LPG which it imported into Latvia from Russia, during the period from 20 March 2009 to 15 January 2010, under the sub-heading 2711 19 00 and, accordingly, applied a rate of import duty of 0% of its customs value. However, based on the information in that company's documents, the Tax Authority took the view that propane and butane were the substances which predominated in that LPG, with a preponderance of propane, and classified the LPG under the sub-heading 2711 12 97.
- 10 As the referring court sets out, the LPG at issue in the main proceedings contains methane, ethane, ethylene, propane, propylene, butane and butylene. However, the certificate of quality for that LPG ('the certificate of quality'), issued by the producer, AAS 'Gazprom', established in Orenburg (Russia), does not indicate separately the percentage, in content by weight, of each of those substances and simply mentions the sum of methane, ethane and ethylene (0.32% of the LPG's content by weight), the sum of propane and propylene (58.32%) and the sum of butane and butylene (no more than 39.99%).
- 11 The referring court states that, in the context of the main proceedings, the Technical University of Riga (Latvia) issued an opinion according to which it was not possible to determine, from the certificate of quality, that one of the substances comprising the LPG at issue in the main proceedings alone gave the LPG its essential character as a source of energy, namely, its calorific capacity and excess pressure. According to that opinion, propane and propylene provided the excess pressure for the LPG, but its calorific capacity is determined jointly by all its components.
- 12 The Tax Authority took the view that the LPG at issue in the main proceedings had to be classified, by the application of rules 2(b), 3(b) and 6 of the General rules for the interpretation of the CN, according to the material which gave it its essential character.
- 13 The Tax Authority considered that, in the present circumstances, the substance which gives the goods their essential character is that present in the largest proportion in their content by weight. Accordingly, after finding that, according to the certificate of quality, the LPG at issue in the main proceedings corresponded to a liquefied gas type СПБТ (SPBT) and that, according to the Russian national standard ГОСТ 20448-90 (GOST 20448-90), liquefied gases the principal components of which are propane and butane may be considered СПБТ(SPBT)-type liquefied gas, the Tax Authority concluded that both those substances gave that LPG its essential character, and that the other components, namely, methane, ethane, ethylene, propylene and butylene, cannot alter that essential character.
- 14 Latvijas propāna gāze brought an action against the Tax Authority's decision before the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia).
- 15 In its judgment of 10 April 2014, that court referred, first, to the case-law of the Court of Justice, according to which in carrying out the tariff classification of goods it is necessary to identify, from among the materials of which they are composed, that which gives them their essential character. This may be done by determining whether the goods would retain their characteristic properties if one or other of their constituents were removed from them. The factor which determines the essential character of the goods may, depending on the type of goods, be determined, for example, by the nature of the constituent material or components, its bulk, quantity, weight or value, or the role of a constituent material in relation to the use of those goods (judgment in *Kloosterboer Services*, C-173/08, EU:C:2009:382, paragraphs 31 and 32).
- 16 Next, in applying those considerations to the main proceedings, the Administratīvā apgabaltiesa (Regional Administrative Court) found that the Tax Authority had neither proved which was the essential character of the LPG at issue in the main proceedings nor shown that the propane or butane

had to be regarded as the substance which give the LPG its essential character. In that regard, after stating that the percentage of propane or butane in the LPG was not indicated separately on the certificate of quality, the Administratīvā apgabaltiesa (Regional Administrative Court) referred to the opinion of the Technical University of Riga according to which it was not possible to determine that one of the substances in that LPG may alone give it its essential character. Lastly, that court observed, on examining the certificates of quality submitted by Latvijas propāna gaze in relation to the LPG which had on another occasion been purchased in Lithuania, that the amount of propylene could, in certain cases, exceed that of propane in the LPG.

- 17 As noted by the referring court, before which the Tax Authority brought an appeal on a point of law, it may be seen from the circumstances of the main proceedings that, even if propane predominates in content by weight in the LPG at issue in the main proceedings, the different substances comprising that LPG together give it its calorific capacity as a source of energy. The referring court is, therefore, uncertain as to the merits of the Latvian Tax Authority's arguments that the substance which is present in the greatest proportion gives the LPG concerned its essential character, and adds that, if such arguments are rejected, LPGs in which propane or butane predominate should always be classified under the tariff sub-heading 2711 19 00, to which a rate of import duty of 0% of the Customs value is applied.
- 18 In addition, according to the referring court, it is apparent from Article 218(1)(d) of Regulation No 2454/93 that a person wishing to import LPG and classify it under a tariff heading which corresponds to a rate of import duty which is favourable to him must, on importing the LPG, adduce evidence to the Customs authorities concerned which removes any doubt as to validity of that classification. In the present case, the referring court states that it is necessary to clarify whether it follows from that provision that the importer of LPG, such as that at issue in the main proceedings, is under an obligation to indicate precisely the percentage amount of the dominant substance in that LPG.
- 19 The referring court notes, lastly, that, it is no longer possible to take samples of the LPG at issue in the main proceedings or, therefore, carry out an analysis of the LPG at the Customs laboratory of the Latvian Tax Authority in order to determine its composition. Consequently, in order to determine correctly the tariff heading applicable, the factual circumstances which have already been clarified in the main proceedings must be taken into consideration.
- 20 In the light of the foregoing considerations, the Augstākā tiesa, Administratīvo lietu departaments (Supreme Court, Administrative law division, Latvia), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 1. Must the general [rules for the interpretation of the CN 2(b) and 3(b)] be interpreted as meaning that if the essential character of the goods [LPG] is determined by all the components of the gas mixture together and no component of that mixture may be identified separately as the factor giving that gas its essential character, it must be presumed that the factor which gives the goods their essential character within the meaning of the general ... rule 3(b) is that substance which is present in the greatest proportion in the mixture?
 2. Does it follow from Article 218(1)(d) of [Regulation No 2454/93] that the declarant of the goods [LPG] is under an obligation to indicate precisely the percentage amount of the substances present in the greatest quantity in the mixture?
 3. If the declarant of the goods has failed to indicate precisely the percentage amount of the substances present in the greatest quantity in the mixture, is it the EU Combined Nomenclature code 2711 19 00, applied by the declarant of the goods in the present case, or code 2711 12 97,

applied by the Valsts ieņēmumu dienests [Latvian State Tax Authority], that must be applied to a gas of which 0.32% is the sum of methane, ethane and ethylene, 58.32% the sum of propane and propylene and no more than 39.99% the sum of butane and butylene?’

Consideration of the questions referred

- 21 The first question must be answered first, then the third question and, lastly, the second question.

The first question, relating to the determination of the substance which gives the goods their essential character

- 22 By its first question, the referring court asks whether rule 2(b) and rule 3(b) of the general rules for the interpretation of the CN must be interpreted as meaning that, where the essential character of an LPG is determined by its components together and none of its components may be identified separately as alone giving it its essential character, it must be presumed that the component which gives that LPG its essential character within the meaning of rule 3(b) is that present in the greatest proportion in the LPG’s content by weight.
- 23 The Court points out that, according to rule 3(b) of the general rules for the interpretation of the CN, ‘mixtures, composite goods consisting of different materials or made up of different components ... 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’.
- 24 In the present case, the referring court states that the LPG at issue in the main proceedings contains methane, ethane, ethylene, propane, propylene, butane and butylene. According to the opinion of the Technical University of Riga, to which the referring court made reference in the request for a preliminary ruling, it is not possible to determine that one of those substances alone gave the LPG its essential character, namely, its calorific capacity or its excess pressure. On the contrary, it is apparent from that opinion that the calorific capacity of the LPG is determined by all the components of the gas mixture together, not by a separate component.
- 25 In so far as that scientific opinion may be taken into account, which it is for the referring court to assess, it should be concluded therefrom that it is not possible to determine, in accordance with rule 3(b) of the general rules for the interpretation of the CN, the substance present in the LPG which gives the mixture its physical and chemical properties and, specifically, its calorific capacity.
- 26 In any event, it is apparent from the order for reference that it is not possible to determine the exact quantity of each of the components of the LPG at issue where, in the certificate of quality for the goods, the percentage of the gases in the LPG is stated by group of gas, the first group comprising methane, ethane and ethylene, the second propane and propylene and the third butane and butylene.
- 27 In addition, in the light of the evidence described by the referring court relating to the purchase of LPG of another origin, it is apparent that, in the group comprising propane or propylene, the amount of propylene may exceed that of propane. It cannot, therefore, be presumed that when the largest group of gas is that comprising propane and propylene, propane should be regarded as the predominant component in the mixture.
- 28 Lastly, the general rules for the interpretation of the CN include rule 3(c), applicable when the goods concerned cannot be classified by reference to rule 3(a) or (b) of those rules, which states that the goods must be classified under the heading which occurs last in numerical order among those which equally merit consideration according to which the goods must be classified.

- 29 It follows that there is no need to have recourse to a presumption aimed at determining the substance giving the mixture its essential character.
- 30 In the light of those factors, the answer to the first question is that rules 2(b) and 3(b) of the general rules for the interpretation of the CN must be interpreted as meaning that, where the essential character of a gas mixture, such as the LPG at issue in the main proceedings, is determined by all the components of that mixture together, so that no component may be identified as the factor giving it its essential character and, in any event, the exact quantity of each of the components of the LPG at issue may not be determined, a presumption that the factor which gives the goods their essential character, within the meaning of rule 3(b) of those general rules, is the substance which is present in the greatest proportion in the mixture must not be used.

The third question, relating to the classification of an LPG mixture

- 31 By the third question, the referring court asks essentially whether, where the Customs declarant has failed to indicate precisely the percentage amount of the substance present in the greatest quantity in an LPG, such as that at issue in the main proceedings, containing 0.32% methane, ethane and ethylene, 58.32% propane and propylene and no more than 39.99% butane and butylene, the CN must be interpreted as meaning that that LPG must be classified under the sub-heading 2711 19 00, as 'Petroleum gases and other gaseous hydrocarbons, Liquefied, Other', or under the sub-heading 2711 12 97, as 'Petroleum gases and other gaseous hydrocarbons, Liquefied, Propane, Other, For other purposes, Other'.
- 32 It is 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 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 sections or chapters (judgments in *Wünsche*, 145/81, EU:C:1982:254, paragraph 12; *Wiener SI*, C-338/95, EU:C:1997:552, paragraph 10; *Intermodal Transports*, C-495/03, EU:C:2005:552, paragraph 47; *Heuschen & Schrouff Oriental Foods Trading*, C-375/07, EU:C:2008:645, paragraph 43; and *TSI*, C-183/15, EU:C:2015:808, paragraph 24).
- 33 The objective characteristics and properties of products must be capable of being assessed at the time of customs clearance (judgments in *Foods Import*, C-38/95, EU:C:1996:488, paragraph 17; *Medion and Canon Deutschland*, C-208/06 and C-209/06, EU:C:2007:553, paragraph 36; and *ALKA*, C-635/13, EU:C:2015:268, paragraph 37).
- 34 In the present case, the sub-heading 2711 12 of the CN relates to propane. However, as is apparent from the answer to the first question, even if propane were the gas present in the greatest proportion in an LPG such as that described by the referring court, it could not be presumed that that gas gives the LPG its essential character.
- 35 The same applies to the other gases comprising that LPG, so that likewise the LPG cannot be classified under the sub-headings 2711 13 ('Butane') or 2711 14 00 ('Ethylene, propylene, butylene and butadiene').
- 36 Since a mixture of LPG gas such as that described by the referring court cannot be classified by reference to rule 3(b) of the general rules for the interpretation of the CN, rule 3(c) of those rules, set out in paragraph 28 above — which states that the goods must be classified under the heading which occurs last in numerical order among those which equally merit consideration according to which the goods must be classified, that is, in the present case, as the Commission proposes, under sub-heading 2711 19 00 of the CN as 'other liquefied petroleum gas' — must be applied.

37 The answer to the third question is, therefore, that the CN must be interpreted as meaning that an LPG, such as that at issue in the main proceedings, containing 0.32% methane, ethane and ethylene, 58.32% propane and propylene and no more than 39.99% butane and butylene, and in respect of which it may not be determined which of its constituent substances gives it its essential character, comes under the sub-heading 2711 19 00, as 'Petroleum gases and other gaseous hydrocarbons, Liquefied, Other'.

The second question

38 By its second question, the referring court asks whether Article 218(1)(d) of Regulation No 2454/93 must be interpreted as meaning that it follows from that provision that a declarant of LPG, such as that at issue in the main proceedings, is under an obligation to indicate precisely the percentage amount of the substance present in the greatest quantity in that LPG.

39 As is apparent from the answer to the first question, it may not be presumed that, where an LPG, such as the LPG at issue in the main proceedings, comprises several substances, the substance which is present in the greatest proportion gives that LPG its essential character.

40 In addition, as is apparent from the answer to the third question, and as noted by the Commission, the failure to indicate precisely the percentage of the substances comprising an LPG, such as the LPG at issue in the main proceedings, does not preclude the tariff classification rules being applied.

41 The answer to the second question is, therefore, that Article 218(1)(d) of Regulation No 2454/93 must be interpreted as meaning that it does not follow from that provision that a declarant of LPG, such as the LPG at issue in the main proceedings, is under an obligation to indicate precisely the percentage amount of the substance present in the greatest quantity in that LPG.

Costs

42 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 (Seventh Chamber) hereby rules:

- 1. Rules 2(b) and 3(b) of the general rules for the interpretation 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, in the versions resulting from Commission Regulation (EC) No 1031/2008 of 19 September 2008 and Commission Regulation (EC) No 948/2009 of 30 September 2009, respectively, must be interpreted as meaning that, where the essential character of a gas mixture, such as the liquefied petroleum gas at issue in the main proceedings, is determined by all the components of that mixture together, so that no component may be identified as the factor giving it its essential character and, in any event, the exact quantity of each of the components of the liquefied petroleum gas at issue may not be determined, a presumption that the factor which gives the goods their essential character, within the meaning of rule 3(b) of those general rules, is the substance which is present in the greatest proportion in the mixture must not be used.**
- 2. That combined nomenclature must be interpreted as meaning that a liquefied petroleum gas, such as that at issue in the main proceedings, containing 0.32% methane, ethane and ethylene, 58.32% propane and propylene and no more than 39.99% butane and butylene, and**

in respect of which it may not be determined which of its constituent substances gives it its essential character, comes under the sub-heading 2711 19 00, as ‘Petroleum gases and other gaseous hydrocarbons, Liquefied, Other’.

- 3. Article 218(1)(d) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code must be interpreted as meaning that it does not follow from that provision that a declarant of liquefied petroleum gas, such as that at issue in the main proceedings, is under an obligation to indicate precisely the percentage amount of the substance present in the greatest quantity in that liquefied petroleum gas.**

[Signatures]