



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

28 October 2021 *

(Reference for a preliminary ruling – Customs union – Common Customs Tariff – Tariff classification – Combined Nomenclature – Tariff subheadings 1521 90 91 and 1521 90 99 – Interpretation of the Explanatory Notes to subheading 1521 90 99 – Beeswax melted down and solidified prior to import)

In Joined Cases C-197/20 and C-216/20,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), made by decisions of 14 April 2020, received at the Court on 7 May 2020, in the proceedings

KAHL GmbH & Co. KG

v

Hauptzollamt Hannover (C-197/20),

and

C. E. Roeper GmbH

v

Hauptzollamt Hamburg (C-216/20),

THE COURT (Ninth Chamber),

composed of K. Jürimäe, President of the Third Chamber, acting as President of the Ninth Chamber, S. Rodin and N. Piçarra (Rapporteur), Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: German.

after considering the observations submitted on behalf of:

- KAHL GmbH & Co. KG, by T. Peterka, Rechtsanwalt,
- C. E. Roeper GmbH, by M. Hackert, Rechtsanwalt,
- the European Commission, by L. Mantl and M. Salyková, acting as Agents,

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

gives the following

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of subheadings 1521 90 91 and 1521 90 99 of the Combined Nomenclature ('the CN') 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 from Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014 (OJ 2014 L 312, p. 1), and from Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 (OJ 2015 L 285, p. 1).
- 2 The requests have been made in two sets of proceedings between, on the one hand, KAHL GmbH & Co. KG ('KAHL') and the Hauptzollamt Hannover (Principal Customs Office, Hanover, Germany) and, on the other hand, C. E. Roeper GmbH ('Roeper') and Hauptzollamt Hamburg (Principal Customs Office, Hamburg, Germany) concerning the tariff classification of melted and solidified beeswax imported into Germany by those companies.

Legal context

International law

- 3 The Harmonised Commodity Description and Coding System ('the HS') was established by the International Convention on the Harmonized Commodity Description and Coding System, concluded in Brussels on 14 June 1983 within the framework of the World Customs Organization (WCO) and approved, together with its Protocol of Amendment 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 The Explanatory Notes to the HS, drawn up within the WCO, in accordance with the provisions of that convention, in the version applicable to the facts in the main proceedings, contain the following information concerning 'beeswax and other insect waxes, whether or not refined or coloured', under subheading 1521 90 of the HS:

'Beeswax is the substance with which bees build the hexagonal cells of the combs in their hives. In the natural state it has a granular structure and is light yellow, orange or sometimes brown, with a particularly agreeable smell; when bleached and purified, it is white or faintly yellow with a very slight smell.'

It is used, inter alia, for the manufacture of candles, waxed cloth or paper, mastics, polishes, etc.

...

Beeswax and other insect waxes are classified in this heading whether in the raw state (including in natural combs), or pressed or refined, whether or not bleached or coloured.’

EU law

The CN

5 As is apparent from Article 1(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 CN, established by the European Commission, governs the tariff classification of goods imported into the European Union. It reproduces the HS six-digit headings and subheadings, with only the seventh and eighth figures creating further subheadings which are specific to it.

6 The general rules for the interpretation of the CN, which are set out in Part One, Section I, A thereof, provide:

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

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

...

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.’

7 Under Article 12(1) of Regulation No 2658/87, as amended by Regulation No 254/2000, the Commission is to adopt each year a regulation reproducing the complete version of the CN, together with the rates of duty, as resulting from measures adopted by the Council of the European Union or the Commission. That regulation is to be published in the *Official Journal of the European Union* not later than 31 October, to apply from 1 January of the following year.

8 Implementing Regulations No 1101/2014 and No 2015/1754 were adopted on the basis of that provision. Each of those regulations amended the CN with effect from 1 January 2015 and 1 January 2016, respectively. The provisions of that nomenclature which are relevant to the cases in the main proceedings have, however, retained the same wording.

9 Part Two of the CN, as set out in each of those implementing regulations, entitled ‘Schedule of customs duties’, contains Section III, headed ‘Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes’.

- 10 That section includes Chapter 15, with the same title, which includes heading 1521 of the CN, structured as follows:

CN code	Description of the goods	Conventional rate of duty (%)
1521	Vegetable waxes (other than triglycerides), beeswax, other insect waxes and spermaceti, whether or not refined or coloured	
1521 10 00	– Vegetable waxes	...
1521 90	– Other	
1521 90 10	– – Spermaceti, whether or not refined or coloured	...
	– – Beeswax and other insect waxes, whether or not refined or coloured	
1521 90 91	– – – Raw	Exemption
1521 90 99	– – – Other	2.5.'

The Explanatory Notes to the CN

- 11 The Explanatory Notes to the CN are adopted by the Commission pursuant to the first indent of Article 9(1)(a) of Regulation No 2658/87, as amended by Regulation No 254/2000.
- 12 Those published in the *Official Journal of the European Union* of 4 March 2015 (OJ 2015 C 76, p. 1) state:

'1521 90 91	Raw This subheading includes waxes in natural combs.
1521 90 99	Other This subheading includes waxes, pressed or refined, whether or not bleached or coloured.'

Regulation (EU) No 142/2011

- 13 Article 25(1)(c) of Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ 2011 L 54, p. 1) makes beeswax in the form of honeycombs subject to a prohibition on import and transit.

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

Case C-197/20

- 14 On 11 December 2015, KAHL, which imports into the European Union and processes waxes, sought binding tariff information ('BTI') from the Principal Customs Office, Hanover, concerning the classification of goods which it designated as 'beeswax, raw', proposing to classify them under subheading 1521 90 91 of the CN, which provides for exemption from customs duties.
- 15 By decision of 10 February 2016, the Principal Customs Office, Hanover, issued KAHL with BTI classifying the goods at issue under subheading 1521 90 99 of the CN, which covers 'other' beeswax, which attracts a customs duty of 2.5%.
- 16 Following the dismissal of its complaint, lodged on 22 February 2016 against that decision, KAHL brought an action before the referring court on 30 August 2017, claiming, in support of its request for classification of the goods at issue under subheading 1521 90 91 of the CN, that the classification of beeswax under that subheading cannot depend on the level of impurities which it contains and that the removal of some foreign matter when the wax is melted down has no bearing in that regard.
- 17 The Principal Customs Office, Hanover, maintains its view that since the goods at issue do not take the form of combs or contain impurities typical of waxes in that form, they come under subheading 1521 90 99 of the CN and not under subheading 1521 90 91 thereof.
- 18 The referring court describes the goods at issue as beeswax which has been melted down and coarsely filtered in the exporting State then solidified before being exported, and which consists of melted pieces of approximately 15 × 5 centimetres (cm) and fragments of approximately 7 × 4 cm, which are easy to cut, honey yellow in colour and smell like beeswax, with cracks and structures that are created when melted wax solidifies, and contain a number of dark impurities which adhere to the exterior. According to that court, it is not possible to determine whether these impurities are foreign substances which were in the wax before it was melted down, or dirt from the moulds in which the liquid wax was cooled, since no foreign bodies were visible in the wax to the naked eye.
- 19 Moreover, the referring court points out that there is divergence between the language versions of the Explanatory Notes to subheading 1521 90 99 of the CN. Whereas the word 'melted' accompanies the words 'pressed or refined' in certain versions of those notes – such as the versions in Dutch, French, German, Italian, Portuguese, Romanian and Spanish – it does not appear beside the latter two terms in other versions of the notes, such as the versions in Czech, Danish, English, Maltese, Polish and Swedish. The referring court considers that it is necessary to refer the matter to the Court of Justice as to whether the Explanatory Notes to subheading 1521 90 99 of the CN must be applied in the language version thereof in which the word 'melted' appears.
- 20 According to that court, if the Court answers that question in the negative, the interpretation of the word 'raw' in subheading 1521 90 91 of the CN becomes decisive for the purposes of the tariff classification of beeswax from which foreign matter has been removed in part. In the light of the usual meaning of that word and the definitions thereof which are specific to the field concerned, the referring court is inclined to classify the goods at issue under subheading 1521 90 91 of the CN, particularly as, in its view, such a classification also chimes with the public perception of such goods.

- 21 In those circumstances the Finanzgericht Hamburg (Finance Court, Hamburg, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Are the Explanatory Notes to subheading 1521 90 99 of the [CN] applicable in so far as the word “*geschmolzen*” [(“melted”)] is used?
- (2) If the first question referred is answered in the negative, is the term “raw” within the meaning of subheading 1521 90 91 of the [CN] to be interpreted as meaning that beeswax which has been melted down in the exporting country and from which foreign bodies have been mechanically separated during the process of melting it down, whereby some foreign bodies still remain in beeswax, must be classified under that subheading?’

Case C-216/20

- 22 Roeper imports beeswax into the European Union with a view to reselling it to undertakings which carry out extensive treatment of that beeswax for the cosmetic, pharmaceutical and food industry. On 7 January 2015, it declared 800 bags of beeswax to the Principal Customs Office, Hamburg, with a view to their release for free circulation.
- 23 After examining the sample, the Principal Customs Office, Hamburg, found that the goods at issue were to be classified as ‘other’ beeswax under subheading 1521 90 99 of the CN. In those circumstances, by decision of 4 November 2015, that customs office charged Roeper a sum of EUR 2 614, corresponding to the customs duty of 2.5% applied to those goods.
- 24 Following the rejection of its complaint, lodged on 1 December 2015, against that decision, Roeper brought an action before the referring court on 25 September 2017. It argued, in support of its view that the goods at issue constitute ‘raw’ beeswax, falling under subheading 1521 90 91 of the CN, that the term ‘*geschmolzen*’ (‘melted’), within the meaning of the Explanatory Notes to subheading 1521 90 99 of the CN, does not simply refer to the heat treatment and mechanical filtering of beeswax, but also covers subsequent processing involving the purification and separation of wax components, since the latter two stages take place only after the beeswax has been imported. In addition, Roeper called into question the degree of impurity of the wax being applied as a criterion for distinguishing between ‘raw’ beeswax and ‘other’ beeswax.
- 25 The Principal Customs Office, Hamburg, maintains its position that the goods at issue fall under subheading 1521 90 99 of the CN, which covers ‘other’ beeswax, and not under subheading 1521 90 91 of the CN, which refers to ‘raw’ beeswax.
- 26 The statement of reasons for the request for a preliminary ruling in Case C-216/20 matches that contained in the request for a preliminary ruling in Case C-197/20, as summarised in paragraphs 18 to 20 of this judgment.
- 27 In those circumstances, the Finanzgericht Hamburg (Finance Court, Hamburg) decided to stay the proceedings and to refer questions to the Court of Justice for a preliminary ruling the wording of which is identical to that of the questions referred in Case C-197/20, set out in paragraph 21 above.

- 28 By decision of the President of the Court of 29 June 2020, Cases C-197/20 and C-216/20 were joined for the purposes of the written and oral parts of the procedure and of the judgment.

Consideration of the questions referred

- 29 By its questions, which it is appropriate to examine together, the referring court is asking, in essence, whether the CN must be interpreted as meaning that beeswax which has been melted down, and from which foreign bodies have been mechanically removed in part during the melting process, then solidified to form blocks or slabs, falls under subheading 1521 90 91 of the CN, which covers ‘raw’ beeswax, or under subheading 1521 90 99 thereof, which covers ‘other’ beeswax.
- 30 As a preliminary point, it must be pointed out that since, in Case C-197/20, the dispute arose from BTI issued by the Principal Customs Office, Hanover, on 10 February 2016, and since, in Case C-216/20, the facts in the main proceedings occurred in 2015, the versions of the CN applicable *ratione temporis* to the disputes in the main proceedings are those resulting, respectively, from Implementing Regulation 2015/1754, which entered into force on 1 January 2016, and from Implementing Regulation No 1101/2014, which entered into force on 1 January 2015 (see, to that effect, judgments of 8 September 2016, *Schenker*, C-409/14, EU:C:2016:643, paragraph 10, and of 2 May 2019, *Onlineshop*, C-268/18, EU:C:2019:353, paragraphs 22 to 24). The provisions of that nomenclature which are relevant to the cases in the main proceedings have, however, retained the same wording, as has been noted in paragraph 8 of the present judgment.
- 31 As regards the interpretation of the CN sought, it should be noted that, in accordance with the general rules for the interpretation thereof, the classification of goods is to be determined according to the terms of the headings and any relative section or chapter notes to that nomenclature. In the interests of legal certainty and ease of verification, the decisive criterion for the tariff classification of goods is generally to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of that nomenclature and in the section or chapter notes. 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 3 June 2021, *Flavourstream*, C-822/19, EU:C:2021:444, paragraph 34 and the case-law cited).
- 32 Furthermore, the Court has repeatedly held that, although they do not have legally binding force, the Explanatory Notes to the HS and CN are an important means of ensuring the uniform application of the Common Customs Tariff and, as such, may be regarded as useful aids to its interpretation (judgment of 18 June 2020, *Hydro Energo*, C-340/19, EU:C:2020:488, paragraph 36 and the case-law cited).
- 33 It is also settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union (see, in particular, judgment of 24 March 2021, *A*, C-950/19, EU:C:2021:230, paragraph 37 and the case-law cited).
- 34 As regards the provisions of the CN that are relevant to the cases in the main proceedings, heading 1521, which includes ‘vegetable waxes (other than triglycerides), beeswax, other insect waxes and spermaceti, whether or not refined or coloured’, is divided into two subheadings,

namely subheading 1521 10 00, entitled ‘vegetable waxes’, and subheading 1521 90, entitled ‘other’. The products covered by the latter subheading include, inter alia, ‘beeswax and other insect waxes, whether or not refined or coloured’. They fall under two subheadings of the CN, namely subheading 1521 90 91, entitled ‘raw’, and subheading 1521 90 99, entitled ‘other’. The latter, as its wording indicates, is a residual subheading covering beeswax or other insect waxes not included in subheading 1521 90 91 of the CN.

- 35 The provisions of the CN do not contain any indication as to the level of processing up to which beeswax or other insect wax remains ‘raw’, for the purposes of classification under subheading 1521 90 91 of the CN, and the level of processing beyond which that wax must be classified under subheading 1521 90 99 of the CN as ‘other’ wax. In the absence of such clarification in the CN, it is necessary to refer to the usual meaning of the word ‘raw’ in everyday language, which designates that which is in its natural state, which has not yet been treated or processed.
- 36 In that connection, an interpretation of subheading 1521 90 91 of the CN to the effect that waxes which have been subjected to heat treatment, during which some of the foreign substances are removed and which constitutes the first stage of the process of processing and refining those waxes, do not fall within the scope of the concept of ‘raw’ waxes – and therefore of that subheading – is necessary on account of the usual meaning of the term ‘raw’ in everyday language, to which reference should be made, in accordance with the case-law cited in paragraph 31 of the present judgment, in the interests of legal certainty and ease of verification.
- 37 Such an interpretation of subheading 1521 90 91 of the CN is supported by the Explanatory Notes to the HS relating to subheading 1521 90 thereof, which state, in their official French-language version – and, inter alia, in the German version – that ‘*les cires d’abeilles ou d’autres insectes peuvent être présentées soit à l’état brut, même sous forme de rayons, soit fondues, pressées ou raffinées, même blanchies ou colorées*’ (‘beeswax and other insect waxes are classified in this heading whether in the raw state, including in natural combs, be it melted, pressed or refined, whether or not bleached or coloured.’). The fact that waxes in melted form are listed amongst other waxes which have been pressed or refined indicates that melted waxes are not regarded as ‘raw’ waxes.
- 38 While it is true that the word ‘*fondues*’ (‘melted’) is not part of the official English-language version of the Explanatory Notes to the HS relating to subheading 1521 90 thereof, which includes only the terms ‘pressed or refined’, it nevertheless follows from the distinction made in that version and in the official French-language version of those notes between, on the one hand, ‘raw’ waxes and, on the other hand, waxes that are ‘pressed or refined, whether or not bleached or coloured’, that untreated or unprocessed waxes are deemed to be different from waxes which have undergone treatment, be it chemical or non-chemical, with a view to their subsequent processing.
- 39 The interpretation set out in paragraph 36 of the present judgment is, moreover, confirmed by the Explanatory Notes to the CN. These specify, first, that subheading 1521 90 91 includes ‘*notamment les cires présentées sous forme de rayons*’ (‘waxes in natural combs’) and, second, that subheading 1521 90 99 includes ‘*les cires fondues, pressées ou raffinées, même blanchies ou colorées*’ (‘waxes, melted, pressed or refined, whether or not bleached or coloured’). It follows from the very wording of those Explanatory Notes, in the language versions in which the word ‘melted’ appears – namely in the Dutch, French, German, Italian, Portuguese, Romanian and Spanish versions, at least – that waxes which have undergone treatment by melting come under subheading 1521 90 99 of the CN.

- 40 Although the word ‘melted’ is missing from other language versions of the Explanatory Notes to the CN – such as the Czech, Danish, English, Maltese, Polish and Swedish versions – subheading 1521 90 91 cannot be interpreted as meaning that beeswax which has undergone the processes mentioned in the questions put by the referring court falls within that subheading, even where there is such divergence between the language versions of those notes.
- 41 First of all, beeswax which has undergone such processes is not in its natural state, unlike waxes ‘in the form of natural combs’ referred to in the Explanatory Notes to subheading 1521 90 91 of the CN, as is required by the wording of that subheading, read in the light of the objective referred to in paragraph 31 of the present judgment.
- 42 Next, the wording of the Explanatory Notes to subheading 1521 90 99 of the CN, which refers to ‘other’ waxes, includes, in all the language versions of those notes, ‘waxes, pressed or refined, whether or not bleached or coloured’, and thus refers to products which have been treated with a view to their subsequent processing. Consequently, contrary to the arguments put forward by the applicants in the main proceedings, that subheading cannot be interpreted restrictively as referring only to treatments which alter the substance or material composition of the wax, which should be distinguished from mere heat treatment, which leaves that substance or material composition unaltered.
- 43 Lastly, there is no indication in the Explanatory Notes to subheadings 1521 90 91 and 1521 90 99 of the CN that, for the purposes of classification under one or other of those subheadings, a distinction must be made between processes altering the substance or material composition of waxes, which are the source of a product falling under the second subheading, and processes which do not entail such alteration, which would yield a product falling under the first subheading. On the contrary, the wording of the Explanatory Notes relating to subheading 1521 90 91 of the CN suggests that it must be interpreted strictly, since waxes having undergone any kind of treatment with a view to their processing or refining are excluded from that subheading, and must therefore be classified under subheading 1521 90 99 of the CN as ‘other’ waxes.
- 44 In the present case, it is apparent from the orders for reference that the goods at issue in the main proceedings are beeswax which has been melted and from which foreign bodies were mechanically removed during the melting process, then heated again to a maximum temperature of 120 °C, before being passed through sieves, mosquito nets or simple cotton cloths into moulds and solidified to form blocks or slabs. Such waxes, which have undergone various processes with a view to their subsequent processing, including melting and filtering processes, are not in their natural state, with the result that their classification under subheading 1521 90 91 of the CN, as ‘raw’ waxes, is precluded. Consequently, such waxes come under subheading 1521 90 99 of that nomenclature.
- 45 In the light of the foregoing, the answer to the questions referred is that the CN must be interpreted as meaning that beeswax which has been melted down, and from which foreign bodies have been mechanically removed in part during the melting process, then solidified to form blocks or slabs, falls under subheading 1521 90 99 of that nomenclature, which refers to ‘other’ waxes, and not under subheading 1521 90 91 of that nomenclature, which refers to ‘raw’ waxes.

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 (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 versions resulting from Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014 and from Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015, must be interpreted as meaning that beeswax which has been melted down, and from which foreign bodies have been mechanically removed in part during the melting process, then solidified to form blocks or slabs, falls under subheading 1521 90 99 of that nomenclature, which refers to ‘other’ waxes, and not under subheading 1521 90 91 of that nomenclature, which refers to ‘raw’ waxes.

[Signatures]