



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

20 October 2022*

(Reference for a preliminary ruling – Customs union – Common Customs Tariff – Combined Nomenclature – Tariff classification – Heading 8517 – Subheadings 8517 70 11 and 8517 70 19 – Router aerials)

In Case C-542/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Senāts) (Supreme Court, Latvia), made by decision of 26 August 2021, received at the Court on 30 August 2021, in the proceedings

‘Mikrotikls’ SIA

v

Valsts ieņēmumu dienests,

THE COURT (Eighth Chamber),

composed of N. Piçarra (Rapporteur) acting as President of the Chamber, N. Jääskinen and M. Gavalec, Judges,

Advocate General: T. Čapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Latvian Government, by J. Davidoviča and K. Pommere, acting as Agents,
- the European Commission, by L. Ozola and M. Salyková, acting as Agents,

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

* Language of the case: Latvian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of tariff subheading 8517 70 11 of the Combined Nomenclature ('the 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), as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16) ('Regulation No 2658/87'), as that annex has been amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 (OJ 2012 L 304, p. 1) and by Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013 (OJ 2013 L 290, p. 1) ('Annex I').
- 2 The request has been made in proceedings between 'Mikrotikls' SIA and Valsts ieņēmumu dienests (National Tax Authority, Latvia) ('the tax authority') concerning the tariff classification under subheading 8517 70 19 of the CN of goods described as 'routing aerials'.

Legal context

The HS

- 3 The Harmonised Commodity Description and Coding System ('the HS') was established by the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983 within the framework of the World Customs Organization (WCO) 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 explanatory notes to the HS are drawn up within the WCO in accordance with the provisions of that convention.
- 4 Under Article 3(1)(a)(ii) of the Convention referred to in the previous paragraph, each Contracting Party undertakes to apply the general rules for the interpretation of the HS and all the section, chapter and subheading notes and is not to modify the scope of the sections, chapters, headings or subheadings.
- 5 The Explanatory Notes relating to heading 8517 of the HS include a Section II, relating to 'other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network).' Paragraph F of that section refers to 'transmitting and receiving apparatus for radio-telephony and radio-telegraphy'. Paragraph G of that section refers to 'other communication apparatus', described as 'apparatus which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such a network.' 'Routers' are expressly mentioned in point 3 of paragraph G.

The CN

- 6 As is apparent from Article 1(1) of Regulation No 2658/87, 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.

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

8 It is apparent from the documents before the Court that the versions of the CN applicable to the case in the main proceedings are those resulting, respectively, from Implementing Regulation No 927/2012, which amended the CN with effect from 1 January 2013, and from Implementing Regulation No 1001/2013, which amended the CN with effect from 1 January 2014. The provisions of the CN relevant to the case in the main proceedings have, however, retained the same wording.

9 According to the General Rules for the interpretation of the CN, which are set out in Part One, Section I, Section A, of Annex I:

‘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 the rule, the relative section and chapter notes also apply, unless the context requires otherwise.’

10 Annex I contains a Part Two, entitled ‘Schedule of Customs Duties’, which includes Section XVI entitled ‘Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.’ Note 2(b) to that section states:

‘Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines ... are to be classified according to the following rules:

...

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading ... are to be classified with the machines of that kind ... However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517 ...’

- 11 That section includes a Chapter 85, entitled ‘Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers and parts and accessories of such articles’. That chapter includes CN heading 8517, which is structured as follows:

| CN code | Description of the goods | Conventional rate of duty (%) | Supplementary unit |
|------------|---|-------------------------------|--------------------|
| 8517 | Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528: | | |
| ... | ... | ... | ... |
| | - Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): | | |
| ... | ... | ... | ... |
| 8517 62 00 | - Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus | Free | – |
| 8517 69 | – – Other: | | |
| ... | ... | ... | ... |
| | Reception apparatus for radio-telephony or radio-telegraphy: | | |
| 8517 69 31 | – – – – Portable receivers for calling, alerting or paging. | Free | p/st |
| 8517 69 39 | – – – – Other | 9.3 | p/st |
| 8517 69 90 | – – – – Other | Free | – |

| | | | |
|------------|---|------|-----|
| 8517 70 | — Parts: | | |
| | — — Aerials and aerial reflectors of all kinds; parts suitable for use therewith: | | |
| 8517 70 11 | — — — Aerials for radio-telegraphic or radio-telephonic apparatus | Free | — |
| ... | ... | ... | ... |
| 8517 70 19 | — — — Other | 3.6 | — |
| 8517 70 90 | — — Other | Free | — |

- 12 The Explanatory Notes to the CN are adopted by the Commission pursuant to the second indent of Article 9(1)(a) of Regulation No 2658/87. In the main proceedings, the relevant notes are those published in the *Official Journal of the European Union* of 6 May 2011 (OJ 2011 C 137, p. 1) concerning, on the one hand, CN subheading 8517 62 00, which refers, in the second paragraph, point 6, to ‘routers’, and, on the other, CN subheadings 8517 69 39 and 8517 69 90, each of which contains a list of radio-telephony or radio-telegraphy apparatus performing the functions, respectively, of receiving voice, images or other data and of emitting or transmitting voice, images or other data.

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

- 13 During the period from 7 January 2013 to 27 October 2014, Mikrotikls declared that the goods presented as ‘router aerials and parts thereof’ came, for the purposes of their release for free circulation, under CN subheading 8517 70 11, relating to ‘aerials for radio-telephony or radio-telegraphy apparatus’, those goods being subject to an import duty rate of 0%.
- 14 On 29 January 2016, the tax authority decided that those goods, taking into account their essential characteristics and the system of CN heading 8517, read in conjunction with the HS Explanatory Notes, could not be classified under CN subheading 8517 70 11. According to the tax authority, both the CN and the HS distinguish between radio-telegraphy or radio-telephony equipment, on the one hand, and routers, on the other, the latter being distinct communication devices configured for use in local area networks (LAN) and/or in wide area networks (WAN). Consequently, the router aerials and parts thereof had to be classified under CN subheading 8517 70 19, as ‘other’ aerials and aerial reflectors and parts suitable for use therewith, and be subject to an import duty rate of 3.6%. Accordingly, the tax authority ordered Mikrotikls to pay import duties in the principal amount of EUR 22 493.03 and a principal amount of value added tax (VAT) of EUR 4 723.51, together with a fine and a late payment surcharge.
- 15 Mikrotikls brought an action for annulment of that decision and subsequently brought an appeal, which the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) dismissed by judgment of 12 February 2018. That court noted that the customs authorities of other Member States also classified router aerials and parts thereof under CN subheading 8517 70 19 and that the Explanatory Notes to the CN relating to subheadings 8517 69 39 and 8517 69 90 confirmed that radio-telephony or radio-telegraphy apparatus had to be classified in the CN as separate apparatus from routing apparatus.

- 16 Mikrotīkls brought an appeal against that judgment before the Augstākā tiesa (Senāts) (Supreme Court, Latvia), the referring court, claiming that the tax authority and the Administratīvā apgabaltiesa (Regional Administrative Court) had incorrectly interpreted, inter alia, Note 2(b) to Section XVI of Annex I, CN subheadings 8517 62 00 and 8517 70 11, as well as the HS and CN Explanatory Notes relating to heading 8517.
- 17 The referring court takes the view, first, that routers, such as those manufactured by Mikrotīkls, come under CN subheading 8517 62 00, as ‘routing apparatus’. On the basis of Note 2(b) to Section XVI of Annex I, it is unsure whether parts of the apparatus covered by that subheading are to be classified with that apparatus under the same subheading.
- 18 Secondly, that court is uncertain, however, whether the router aerials must be classified under CN subheading 8517 70 11 as ‘aerials for radio-telegraphic or radio-telephonic apparatus’, as argued by Mikrotīkls, or whether they must be classified under CN subheading 8517 70 19 as ‘other’ aerials for apparatus coming under CN heading 8517.
- 19 In those circumstances, the Augstākā Tiesa (Senāts) (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must the [CN] be interpreted as meaning that subheading 8517 70 11 ... can include router aerials configured for use in local area networks (LAN) and/or in wide area networks (WAN)?’

Consideration of the question referred

- 20 By its question, the referring court asks whether CN subheading 8517 70 11 must be interpreted as covering router aerials configured for communication in local area networks (LAN) and/or in wide area networks (WAN).
- 21 As a preliminary point, it should be noted that, when the Court is requested to give a preliminary ruling on a matter of tariff classification, its task is to provide the referring court with guidance on the criteria which will enable it to classify the products concerned correctly in the CN, rather than to effect such a classification itself. That classification results from a purely factual assessment which it is not for the Court to make in the context of a reference for a preliminary ruling (see, to that effect, judgment of 18 June 2020, *Hydro Energo*, C-340/19, EU:C:2020:488, paragraph 33 and the case-law cited).
- 22 It should also be noted that, in accordance with General Rule 1 for the interpretation of the CN, the tariff 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 those goods is, in general, to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of that nomenclature and in the corresponding section or chapter notes. The intended use of the product concerned may constitute an objective criterion for classification if it is inherent to that product, and that inherent character must be capable of being assessed on the basis of the product’s objective characteristics and properties (see, to that effect, judgments of 3 June 2021, *Flavourstream*, C-822/19, EU:C:2021:444, paragraph 34, and of 28 October 2021, *KAHL and Roeper*, C-197/20 and C-216/20, EU:C:2021:892, paragraph 31).

- 23 Furthermore, the Court has repeatedly held that, although the Explanatory Notes to the HS and CN do not have binding force, they 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 (see, to that effect, judgments of 18 June 2020, *Hydro Energo*, C-340/19, EU:C:2020:488, paragraph 36, and of 28 October 2021, *KAHL and Roeper*, C-197/20 and C-216/20, EU:C:2021:892, paragraph 32). The Explanatory Notes to the CN, which do not take the place of those of the HS, should be regarded as complementary to the latter and consulted jointly with them (judgment of 13 September 2018, *Vision Research Europe*, C-372/17, EU:C:2018:708, paragraph 23 and the case-law cited).
- 24 Since the dispute in the main proceedings concerns the tariff classification of the goods concerned under six-digit and eight-digit subheadings of CN heading 8517, it must be recalled that such a classification is, under General Rule 6 for the interpretation of the CN, determined according to the terms of those subheadings and of the subheading notes, and that the corresponding section and chapter notes may also be taken into consideration, unless otherwise provided.
- 25 The referring court refers to Note 2(b) to Section XVI of Annex I in order to find that, since the routers manufactured by Mikrotikls come under CN subheading 8517 62 00 as ‘machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus’, the router aerials at issue in the main proceedings must be classified together with those routers, in that subheading.
- 26 It is apparent from Note 2(b) that, where parts of the machine concerned are ‘suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading’, such parts are normally classified in the headings relating to that machine or those machines, or in one of the headings mentioned in that note (see, to that effect, judgment of 15 May 2014, *Data I/O*, C-297/13, EU:C:2014:331, paragraph 46).
- 27 However, it is apparent from CN heading 8517 that the parts of the goods covered by that heading are classified under a specific CN subheading, namely subheading 8517 70 relating to ‘parts’. It follows that the router aerials cannot be classified under CN subheading 8517 62 00, which covers routing apparatus.
- 28 Since those aerials are not expressly mentioned in any eight-digit subheading of CN heading 8517, the question arises as to whether they must be classified as ‘aerials for radio-telephony or radio-telegraphy apparatus’, within the meaning of CN subheading 8517 70 11, or as ‘other’ aerials, within the meaning of CN subheading 8517 70 19, which has a residual character.
- 29 In order to answer that question, it should be noted that the concept of ‘radio-telephony or radio-telegraphy apparatus’, within the meaning of CN heading 8517, does not include ‘routing apparatus’. First, as mentioned in paragraph 27 of the present judgment, such apparatus is classified in CN subheading 8517 62 00. Secondly, ‘reception apparatus for radio-telephony or radio-telegraphy’ is classified, as the case may be, either under CN subheading 8517 69 31 (‘portable receivers for calling, alerting or paging’) or under CN subheading 8517 69 39 (‘other’), while ‘other’ apparatus for radio-telephony or radio-telegraphy, which performs, inter alia, the functions of transmission or reception of voice, images or other data, comes under CN subheading 8517 69 90.

- 30 These findings are corroborated by the Explanatory Notes to the CN. The Explanatory Notes relating to CN subheading 8517 62 00 refer, in the second paragraph, point 6, to ‘routers’, whereas those relating to CN subheadings 8517 69 39 and 8517 69 90 each contain a list of radio-telephony or radio-telegraphy apparatus performing, respectively, functions of receiving voice, images or other data and transmitting or receiving voice, images or other data.
- 31 Similarly, Section II of the Explanatory Notes relating to heading 8517 of the HS refers, in point F, to ‘transmitting and receiving apparatus for radio-telephony and radio-telegraphy’ and, in point G, to ‘other communication apparatus’, described as ‘apparatus which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such a network’, among which ‘routers’ are specifically mentioned in point 3 of that point G.
- 32 Given that subheading 8517 70 11 of the CN cannot be interpreted as covering router aerials, in so far as those aerials cannot be equated with ‘aerials for radio-telephony or radio-telegraphy apparatus’, the residual subheading 8517 70 19 of the CN must be interpreted as meaning that those aerials come under the latter subheading.
- 33 In the light of all the foregoing considerations, the answer to the question referred is that subheading 8517 70 11 of the CN must be interpreted as not covering router aerials configured for communication in local area networks (LAN) and/or in wide area networks (WAN).

Costs

- 34 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:

Subheading 8517 70 11 of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the customs and statistical nomenclature and on the Common Customs Tariff, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000, as that annex has been amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 and by Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013,

must be interpreted as meaning that it does not cover router aerials configured for communication in local area networks (LAN) and/or in wide area networks (WAN).

[Signatures]