



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

9 March 2023*

(Reference for a preliminary ruling – Customs Union – Common Customs Tariff – Tariff classification – Combined Nomenclature – Subheading 9401 90 80 – Parts of seats for motor vehicles – Net for making pockets in the rear part of seats – Protection for the inside of seats)

In Case C-725/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vrhovno sodišče (Supreme Court, Slovenia), made by decision of 10 November 2021, received at the Court on 30 November 2021, in the proceedings

SOMEO S.A., formerly PEARL STREAM S.A.

v

Republika Slovenija,

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of Chamber, I. Jarukaitis and Z. Csehi (Rapporteur), Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Slovenian Government, by N. Pintar Gosenca, acting as Agent,
- the European Commission, U. Babovič, A. Kraner 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: Slovenian.

Judgment

- 1 This request for a preliminary ruling concerns, in essence, the interpretation of tariff heading 9401 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), in the versions resulting from Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014 (OJ 2014 L 312, p. 1), from Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 (OJ 2015 L 285, p. 1), and from Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 (OJ 2016 L 294, p. 1).
- 2 The request has been made in proceedings between SOMEO S.A. and the Republika Slovenija, represented by the Ministrstvo za finance (Ministry of Finance, Slovenia), concerning the tariff classification under subheading 9401 90 80 of the CN of goods imported by that company into Slovenia and declared as being parts of seats for motor vehicles.

The legal framework

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 at Brussels on 14 June 1983, within the framework of the World Customs Organization (WCO), and approved, together 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 In accordance with Article 3(1)(a)(ii) of that convention, each contracting party undertakes to apply the general rules for the interpretation of the HS and all the section, chapter and subheading notes and not to alter the scope of any section, chapter, heading or subheading of the HS.
- 5 The Explanatory Notes to the HS, in their 2012 version, state, with regard to Chapter 94 of the HS, entitled 'Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like; prefabricated buildings':

'1. This Chapter does not cover:

...

3. (A) In headings 94.01 to 94.03 references to parts of goods do not include references to sheets or slabs (whether or not cut to shape but not combined with other parts) of glass (including mirrors), marble or other stone or of any other material referred to in Chapter 68 or 69.

...

GENERAL REMARKS

This Chapter covers, subject to the exclusions listed in the Explanatory Notes to this Chapter:

1) All furniture and parts thereof (headings 94.01 to 94.03).

...

PARTS

This Chapter only covers parts, whether or not in the rough, of the goods of headings 94.01 to 94.03 and 94.05, when identifiable by their shape or other specific features as parts designed solely or principally for an article of those headings. They are classified in this Chapter when not more specifically covered elsewhere.

...'

- 6 Concerning heading 9401, entitled 'Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof', those explanatory notes clarify, with regard to the concept of 'parts', the meaning of that heading:

'The heading also covers identifiable parts of chairs or other seats, such as backs, bottoms and arm-rests (whether or not upholstered with straw or cane, stuffed or sprung), and spiral springs assembled for seat upholstery.

...'

- 7 With regard to that concept, the Explanatory Notes to the HS, in their 2017 version, state that it covers, in addition, 'seat or backrest covers for the permanent attachment to a seat'.

The CN

- 8 As follows 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) ('Regulation No 2658/87'), the CN, established by the European Commission, governs the tariff classification of goods imported into the European Union. According to Article 3(1) of Regulation No 2658/87, the CN reproduces the HS six-digit headings and subheadings, with only the seventh and eighth figures creating further subheadings which are specific to it.
- 9 Pursuant to Article 12(1) of Regulation No 2658/87, the Commission is to adopt each year a regulation setting out the full version of the CN and of the rates of duty in accordance with that Article 1, as they result from measures adopted by the Council of the European Union or by the Commission. That regulation is to be published in the *Official Journal of the European Union* by 31 October at the latest and apply from 1 January of the following year.
- 10 Implementing Regulations No 1101/2014, 2015/1754 and 2016/1821 were adopted on the basis of that provision. Each of those implementing regulations amended the CN with effect from 1 January 2015, 1 January 2016 and 1 January 2017 respectively. The wording of the provisions of that nomenclature relevant to the main proceedings has, however, remained unchanged.

- 11 According to the general rules for the interpretation of the CN, which are set out in Annex I, Part One, Section I(A), in the versions resulting from each of those implementing regulations:

‘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.

...

3. When, by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:
 - (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;
 - (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.

...’

- 12 Part Two of that Annex I, entitled ‘Schedule of customs duties’, includes a Section VII, entitled ‘Plastics and articles thereof; rubber and articles thereof’. That section contains a Chapter 39, entitled ‘Plastics and articles thereof’. According to Note 2(x) to that chapter, the latter does not cover ‘articles of Chapter 94 (for example, furniture, lamps and lighting fittings, illuminated signs, prefabricated buildings)’.
- 13 That Part Two of the CN contains Section XI, entitled ‘Textiles and textile articles’. According to Note 1(s) of that section, the latter does not include ‘articles of Chapter 94 (for example, furniture, bedding, lamps and lighting fittings)’. That section includes Chapter 63, entitled ‘Other made-up textile articles; sets; worn clothing and worn textile articles; rags’. According to Note 1 to Chapter 63, Sub-Chapter I thereof, entitled ‘Other made-up textile articles’, includes ‘goods of any textile fabric’ and ‘applies only to made-up articles’.
- 14 That Part Two also contains a Section XX, entitled ‘Miscellaneous manufactured articles’, which includes Chapter 94, entitled ‘Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like; prefabricated buildings’.

15 Notes 1 and 3 to that Chapter 94 state:

‘1. This chapter does not cover:

...

(d) parts of general use as defined in note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39), or safes of heading 8303;

...

3. (A) In headings 9401 to 9403 references to parts of goods do not include references to sheets or slabs (whether or not cut to shape but not combined with other parts) of glass (including mirrors), marble or other stone or of any other material referred to in Chapter 68 or 69.
(B) Goods described in heading 9404, presented separately, are not to be classified in heading 9401, 9402 or 9403 as parts of goods.’

16 That Chapter 94 includes inter alia heading 9401, which is worded as follows:

‘CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:		
...	
9401 90	– Parts:		
9401 90 10	– – Of seats of a kind used for aircraft	1.7	—
	– – Other:		
9401 90 30	– – – Of wood	2.7	—
9401 90 80	– – – Other	2.7	—’

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

- 17 Between August 2015 and June 2017, the applicant in the main proceedings declared, under subheading 9401 90 80 of the CN, the goods ‘net for making pockets in the rear part of seats – Bend and net’ (‘net for making pockets’) and ‘seat protector – Skirt assy’ (‘seat protector’), classified as parts of seats for motor vehicles, for release into free circulation.
- 18 Following an *ex post facto* examination of the declarations in question, the tax authority of first instance took the view that those goods should not be classified under subheading 9401 90 80 of the CN and, by a decision of 13 July 2018, ordered the applicant in the main proceedings to pay EUR 298 810.52 in customs duties on those goods, together with default interest. According to that authority, the ‘net for making pockets’ should be classified under subheading 6307 90 10 of the CN, which relates to other knitted or crocheted articles, and the ‘seat protector’ should be clas-

sified under subheading 3926 90 97 of the CN, which relates to other articles of plastics, since those products could not be regarded as parts of seats for motor vehicles and should be classified as accessories.

- 19 The Ministry of Finance, as the tax authority of second instance, dismissed the appeal of the applicant in the main proceedings against that decision as unfounded. It stated that heading 9401 of the CN, which includes parts of seats, did not apply to accessories, such as those goods. In its view, first, the seat protector does not constitute a support without which a seat could not fulfil its essential and principal function and, secondly, the net for making pockets, which is fixed to the plastic cover on the rear part of a vehicle seat, has only an accessory function of storing small objects, so that, without that net, a seat retains all its principal functions.
- 20 In a judgment of 23 June 2020, the Upravno sodišče (Administrative Court, Slovenia) confirmed the tariff classification made by the tax authorities. That court held, *inter alia*, that the fact that a good is intended exclusively for a certain model of machine or object is not decisive for the purposes of classifying that good as a ‘part’ or ‘accessory’.
- 21 The applicant in the main proceedings brought an appeal on a point of law against that judgment before the referring court. It submits that the goods at issue in the main proceedings should have been classified under subheading 9401 90 80 of the CN, on the ground that a seat protector is not a product for general use or a similar plastic product which falls within Chapter 39 of the CN. Furthermore, a net for making pockets is not a textile product falling within Chapter 63 of the CN. According to the applicant in the main proceedings, those two products are used exclusively for car seats and, if they are not attached to them, they have no independent use. It also submits that, without the fitting of a protection to the seat, it would be impossible to use the seat, since it is not an aesthetic or fungible accessory, but an additional function of the seat, namely the reinforcement and protection of the structure of the seat itself, which is essential from the point of view of safety. Similarly, the net for making pockets is not an aesthetic or fungible accessory of a seat, but has an additional functionality, namely that of support and protection.
- 22 By an order of 18 November 2020, the referring court authorised the appeal on a point of law of that judgment.
- 23 With regard to the ‘net for making pockets’, that court points out that that good is in the form of an elastic knitted net measuring 30 x 20 cm, made of synthetic filament yarn, black in colour, with a plastic strap sewn longitudinally on one side, with which it is attached to the rear part of a motor vehicle seat. With regard to the ‘seat protector’, that court states that it is made of plastic and covered with felt and that it is mounted on the back and under the seat of a motor vehicle to protect its interior.
- 24 According to that court, the classification of the goods at issue in the main proceedings in the CN depends on the interpretation of the concept of ‘parts’, referred to in heading 9401 of the CN, and thus on the interpretation of EU law. In that regard, the referring court questions whether that concept has the same scope as that referred to in other chapters of the CN which has already been interpreted by the Court, and which would mean that only a good without which the seat could not perform its essential and principal function would constitute a part of the seat. In that context, the referring court observes that a broader interpretation of the concept of ‘parts’ within the meaning of Chapter 94 of the CN than that which emerges from the Court’s case-law could result from the Explanatory Notes to the HS.

25 In those circumstances, the Vrhovno sodišče (Supreme Court, Slovenia) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘(1) In order to classify an individual product as a “part” of a seat for motor vehicles for the purposes of Chapter 94 of the [NC], in the versions applicable to the main proceedings, is it necessary for the seat to be incapable of carrying out its essential and principal function (in the sense of its being a functional unit) without that product, or is it sufficient for the individual part, which is intended solely to be attached to car seats, to be identifiable as part of a seat?
- (2) Does the possibility of a general (non-)autonomous use of the two products at issue have an impact on whether they are classified (or not classified) under subheading 9401 90 80?’

The questions referred for a preliminary ruling

The first question

26 By its first question, the referring court asks, in essence, whether heading 9401 of the CN is to be interpreted as meaning that the concept of ‘parts’ of a motor vehicle seat covers goods which are not essential for such a seat to fulfil its function.

27 As a preliminary point, it should be noted that, when the Court receives a reference for a preliminary ruling on tariff classification, its function is more to advise the referring court on the criteria which, if applied, will enable it to classify the goods concerned correctly in the CN, rather than to carry out such 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 (judgment of 20 October 2022, *Mikrotikls*, C-542/21, EU:C:2022:814, paragraph 21 and the case-law cited).

28 It should also be noted that, in accordance with General Rule 1 for the interpretation of the CN, the tariff classification of goods is determined according to the terms of the headings and section or chapter notes of that nomenclature. In the interests of legal certainty and ease of control, the decisive criterion for the tariff classification of those goods must be sought, in general, in their objective characteristics and properties, as defined by the wording of the relevant heading of that nomenclature and the corresponding section or chapter notes (judgment of 20 October 2022, *Mikrotikls*, C-542/21, EU:C:2022:814, paragraph 22 and the case-law cited).

29 Furthermore, the Court has repeatedly held that, although the Explanatory Notes to the HS and CN do not have binding force, they are important instruments for ensuring the uniform application of the Common Customs Tariff and, as such, provide useful aids to its interpretation (judgment of 20 October 2022, *Mikrotikls*, C-542/21, EU:C:2022:814, paragraph 23 and the case-law cited).

30 With regard to heading 9401 of the CN, it should be noted that its wording includes seats and their parts. The latter fall under subheading 9401 90, headed ‘Parts’, and are classified under one of the three specific eight-digit subheadings provided for that purpose. It must also be noted that the goods at issue in the main proceedings, namely the ‘net for making pockets’ and the ‘seat protector’, are not mentioned in any of those eight-digit subheadings.

- 31 The CN does not define the concept of ‘parts’ within the meaning of heading 9401 of that nomenclature. It should also be noted that Note 3(A) to Chapter 94 of the CN, which concerns sheets or slabs of glass, marble, stone or any other material referred to in Chapters 68 or 69 of the CN, that is to say, goods other than those at issue in the main proceedings, does not provide any useful guidance as to the interpretation of that concept. Furthermore, the Explanatory Notes to the CN relevant to the dispute in the main proceedings, which were adopted by the Commission pursuant to Article 9(1)(a) of Regulation No 2658/87 and published in the *Official Journal of the European Union* of 4 March 2015 (OJ 2015 C 76, p. 1), do not contain any clarification concerning that concept.
- 32 The Explanatory Notes to the HS, in their 2012 version, state that Chapter 94 covers only parts of the goods in headings 9401 to 9403 and 9405 and that articles, whether or not in the rough, which are recognisable by their shape or other characteristics as being designed exclusively or principally for an article of those headings and which are not included more specifically elsewhere, are considered to be such. Furthermore, it is clear from those notes that heading 9401 covers the parts of seats which are recognisable as such and, in particular, the backrests, bottoms and armrests, as well as the spiral spring assemblies used to upholster those seats. The Explanatory Notes to the HS, in their 2017 version, specify that covers intended to be permanently attached to seats or seat backs are also covered by that heading 9401 as ‘parts’ of seats.
- 33 It follows from the Court’s case-law, developed in the context of Chapters 84 and 85 of Section XVI and Chapter 90 of Section XVIII of the CN, that the concept of ‘parts’ implies the presence of an assembly for the functioning of which they are indispensable. It follows from that case-law that, in order to qualify an article as a ‘part’ within the meaning of those chapters, it is not sufficient to show that, without that article, the machine or apparatus is not capable of carrying out its intended functions. It must also be established that the mechanical or electrical functioning of the machine or apparatus in question is dependent on that article (judgment of 8 December 2016, *Lemnis Lighting*, C-600/15, EU:C:2016:937, paragraph 48 and the case-law cited).
- 34 The Court has also held that, in the interests of the consistent and uniform application of the Common Customs Tariff, the concept of ‘parts’ referred to in a given chapter of the CN should be given the same definition as that resulting from the case-law relating to other chapters of the CN (see, to that effect, judgments of 12 December 2013, *HARK*, C-450/12, EU:C:2013:824, paragraph 37; of 8 December 2016, *Lemnis Lighting*, C-600/15, EU:C:2016:937, paragraph 52; and of 15 May 2019, *Korado*, C-306/18, EU:C:2019:414, paragraph 44).
- 35 Moreover, the Court has already had occasion to state that that definition of the concept of ‘parts’ also applies in the context of Chapter 94 of the CN. Thus, the Court has held that the concept of ‘parts’ of lamps and lighting fittings, within the meaning of heading 9405 of the CN, does not cover goods which are not indispensable for the functioning of those lamps and light fittings (see, to that effect, judgment of 8 December 2016, *Lemnis Lighting*, C-600/15, EU:C:2016:937, paragraphs 51 to 53).
- 36 The same applies to ‘parts’ of seats within the meaning of heading 9401 of the CN.
- 37 Therefore, goods can only be considered to be ‘parts’ of seats within the meaning of that heading if they are indispensable for the seats in question to fulfil their function.

- 38 The fact mentioned by the referring court that it is apparent from heading 9401 of the Explanatory Notes to the HS that that heading also covers armrests does not call into question the conclusion set out in the preceding paragraph. As the Commission points out in its written observations, a seat can be designed in various ways and, in principle, comprises not only a part on which the person is actually seated, but also a backrest or armrests supporting the back or arms of the person sitting on that seat. Such elements are therefore integral parts of a specifically designed seat and thus constitute an essential element of its structure. Those elements are therefore essential for a seat to fulfil its function. That also applies to covers intended to be permanently attached to seats or seat backs, which are expressly mentioned in the Explanatory Notes to the HS, in their 2017 version, as being ‘parts’ of seats within the meaning of that heading.
- 39 In the present case, it is not apparent from the factual findings made by the referring court that the goods at issue in the main proceedings are essential for a motor vehicle seat to fulfil its function, which it will nevertheless be for that court to verify. After that verification and having regard to the objective characteristics of those goods, it will be for that court to classify them for tariff purposes.
- 40 In those circumstances, the answer to the first question is that heading 9401 of the CN must be interpreted as meaning that the concept of ‘parts’ of a seat of a motor vehicle does not cover goods which are not indispensable for such a seat to fulfil its function.

The second question

- 41 In view of the answer given to the first question, there is no need to answer the second question.

Costs

- 42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

Heading 9401 of the Combined Nomenclature 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, from Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015, and from Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016,

must be interpreted as meaning that the concept of ‘parts’ of a seat of a motor vehicle does not cover goods which are not indispensable for such a seat to fulfil its function.

[Signatures]