



Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

27 February 2020*

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Regulation (EEC) no 2658/87 — Customs Union and Common Customs Tariff — Tariff classification — Combined Nomenclature — Subheading 8302 41 90 — Metal curtain rods)

In Case C-670/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg, Germany), made by decision of 9 April 2019, received at the Court on 10 September 2019, in the proceedings

Gardinia Home Decor GmbH

v

Hauptzollamt Ulm,

THE COURT (Sixth Chamber),

composed of M. Safjan, President of the Chamber, C. Toader and N. Jääskinen (Rapporteur), Judges,

Advocate General: E. Tanchev,

Registrar: Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 99 of the Rules of Procedure of the Court,

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of subheading 8302 41 90 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), as amended by Commission Regulation (EU) No 861/2010 of 5 October 2010 (OJ 2010 L 284, p. 1).
- 2 This application was made in proceedings between Gardinia Home Decor GmbH and Hauptzollamt Ulm (Ulm Main Customs Office, Germany) ('the Main Customs Office'), concerning the tariff classification of metal products imported as curtain rods.

* Language of the case: German.

Legal context

The HS and the explanatory notes to the HS

- 3 The Harmonised Commodity Description and Coding System ('the HS') drawn up by the World Customs Organisation ('the WCO') was established by the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983 and approved, with its amending protocol of 24 June 1986, on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).
- 4 It is apparent from the case file before the Court that the version of the HS nomenclature relevant to the facts at issue in the main proceedings, which took place between 13 and 26 April 2011, is that which entered into force on 1 January 2007.
- 5 The HS nomenclature contains a subdivision entitled 'General Rules for the Interpretation of the [HS]', which provides:

'Classification of goods in the [HS] Nomenclature 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. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

...'
- 6 Chapter 83 of the HS nomenclature is entitled 'Miscellaneous articles of base metal'. According to Note 1 under this heading, 'for the purposes of this chapter, parts of base metal are to be classified with their parent articles. However, articles of iron or steel of heading No 73.12, 73.15, 73.17, 73.18 or 73.20, or similar articles of other base metal (Chapters 74 to 76 and 78 to 81) are not to be taken as parts of articles of this Chapter.'

7 Heading 8302 of the HS Nomenclature, which is included in this chapter, is structured as follows:

8302		Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal.
	8302 10	– Hinges
	8302 20	– Castors
	8302 30	– Other mountings, fittings and similar articles suitable for motor vehicles
		– Other mountings, fittings and similar articles:
	8302 41	– – Suitable for buildings
	8302 42	– – Other, suitable for furniture
	8302 49	– – Other
	8302 50	– Hat-racks, hat-pegs, brackets and similar fixtures
	8302 60	– Automatic door closers

- 8 The Explanatory Notes to the HS are drawn up within the WCO in accordance with the provisions of the International Convention on the Harmonised Commodity Description and Coding System.
- 9 The HS Explanatory Note to Heading No 8302, as adopted in the course of 2007, states, inter alia, the following:

‘This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading does not, however, extend to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

This heading covers:

...

(D) Mountings, fittings and similar articles suitable for buildings.

This group includes:

...

- (5) Curtain, blind or portière fittings (e.g., rods, tubes, rosettes, brackets, bands, tassel hooks, clips, sliding or runner rings, stops); cleat hooks, guides and knot holders for blind cords, etc.; staircase fittings, such as protectors for staircase treads; stair carpet clips, stair rods, banister knobs.

Rods, tubes and bars, suitable for use as curtain or stair rods, etc., merely cut to length and drilled, remain classified according to the constituent metal.

...'

The CN and the Explanatory Notes to the CN

- 10 The tariff classification of goods imported into the European Union is governed by the CN. The CN reproduces the headings and subheadings of the HS to six digits, with only the seventh and eighth figures creating further subheadings which are specific to it.
- 11 Article 12 of Regulation No 2658/87 provides that the European Commission is to adopt each year, by means of a regulation, a complete version of the CN together with the corresponding autonomous and conventional rates of duty of the Common Customs Tariff, as follows 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* not later than 31 October, to apply from 1 January of the following year.
- 12 It is apparent from the file before the Court that the version of the CN applicable to the facts at issue in the main proceedings is that resulting from Regulation No 861/2010, which entered into force on 1 January 2011.
- 13 Part One of the CN, containing the preliminary provisions, includes a Section I on general rules, under which Subsection A, entitled 'General rules for the interpretation of the [CN]', provides 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 is to 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. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

...'

- 14 Part Two of the CN, entitled 'Schedule of Customs Duties', includes Section XV, concerning 'Base metals and articles of base metal'. Note 2, under the heading of that section, is worded as follows:

'Throughout the nomenclature, the expression "parts of general use" means:

...

(c) articles of headings 8301, 8302 ...

In Chapters 73 to 76 ... (but not in heading 7315), references to parts of goods do not include references to parts of general use as defined above.

Subject to the preceding paragraph and to note 1 to Chapter 83, the articles of Chapter 82 or 83 are excluded from Chapters 72 to 76 ...'

- 15 That section includes Chapter 73, entitled 'Articles of iron or steel'. CN heading 7306, which falls within this chapter, is structured as follows:

7306	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel:
	– Line pipe of a kind used for oil or gas pipelines:
...	
	– Casing and tubing of a kind used in drilling for oil or gas:
...	
7306 30	– Other, welded, of circular cross-section, of iron or non-alloy steel:
	– – Precision tubes, with a wall thickness
7306 30 11	– – – Not exceeding 2 mm
7306 30 19	– – – Exceeding 2 mm
	– – Other:
	– – – Threaded or threadable tubes (gas pipe)
...	
	– – – Other, of an external diameter
	– – – – Not exceeding 168.3 mm:
7306 30 72	– – – – Plated or coated with zinc
7306 30 77	– – – – Other
7306 30 80	– – – – Exceeding 168.3 mm, but not exceeding 406.4 mm

- 16 The same Section XV contains a Chapter 83, entitled ‘Miscellaneous articles of base metal’. CN heading 8302, which falls within that chapter, is structured as follows:

8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal.
8302 10 00	– Hinges
8302 20 00	– Castors
8302 30 00	– Other mountings, fittings and similar articles suitable for motor vehicles
	– Other mountings, fittings and similar articles:
8302 41	– – Suitable for buildings:
8302 41 10	– – – For doors
8302 41 50	– – – For windows and French windows
8302 41 90	– – – Other
8302 42 00	– – Other, suitable for furniture
8302 49 00	– – Other
8302 50 00	– Hat-racks, hat-pegs, brackets and similar fixtures
8302 60 00	– Automatic door closers

- 17 Goods classified in all subheadings of this heading 8302 are subject to a conventional rate of customs duty of 2.7%.
- 18 The CN Explanatory Notes resulting from the Commission Communication published on 6 May 2011 (OJ 2011 C 137, p. 1, ‘the CN Explanatory Notes’) relate to the CN in the version resulting from Regulation No 861/2010. That edition of those Notes contains information relating to CN heading 8302, but only to the concept of ‘castors’ within the meaning of subheading 8302 20 00.

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

- 19 On 13, 15 and 26 April 2011, Gardinia Home Decor imported metal curtain rods of various lengths from China to the European Union, which were hollow and longitudinally welded, had a uniform circular cross-section of 16 or 20 mm and had painted or galvanised surfaces. Those bars had been individually wrapped in film in the country of manufacture, labelled as curtain rods and closed at the ends with a plastic stopper, which served as protection during transport and presentation for sale, but could also be used instead of a decorative end piece that could be purchased separately.
- 20 Those rods were part of a modular system allowing customers to assemble a set of curtain rods from various parts (rod, end piece, connector, support and rings). They had been packed in cartons and imported into the European Union either separately or together with other parts of the system, in different quantities which did not correspond to the number of curtain rods.

- 21 When declaring those products for release into free circulation, Gardinia Home Decor indicated the code number 8302 4200 900 of the national Electronic Customs Tariff ('ECT'), corresponding to 'other mountings, fittings and similar articles suitable for furniture', or the ECT code number 8302 4900 900, corresponding to 'other mountings, fittings and similar articles', all of which are subject to a customs duty of 2.7%.
- 22 Following a customs inspection, the inspector considered that the curtain rods concerned should be classified as 'other tubes or pipes of iron or non-alloy steel' under ECT code number 7306 3077 800, and therefore in principle exempt from customs duty. However, an anti-dumping duty of 90.6% was then applicable, in particular to imports of certain welded tubes and pipes, of iron or non-alloy steel falling within CN code 7306 30 77 and originating in China, pursuant to Article 1 of Council Regulation (EC) No 1256/2008 of 16 December 2008 imposing a definitive anti-dumping duty on imports of certain welded tubes and pipes, of iron or non-alloy steel originating in Belarus, the People's Republic of China and Russia, following a proceeding pursuant to Article 5 of Regulation (EC) No 384/96, originating in Thailand, following an expiry review pursuant to Article 11(2) of that Regulation, originating in Ukraine, following an expiry review pursuant to Article 11(2) and an interim review pursuant to Article 11(3) of that Regulation, and terminating the proceedings with regard to imports of the same product originating in Bosnia and Herzegovina and Turkey (OJ 2008 L 343, p. 1).
- 23 By a decision of 5 March 2014, the Main Customs Office approved, inter alia, the classification indicated by the inspector and fixed, by means of post-clearance recovery, an anti-dumping duty of EUR 7 957.51 on curtain rods imported during the period covered by the inspection. In addition, by decision of 28 November 2016, it dismissed as unfounded the claim brought by Gardinia Home Decor against the fixing of that duty.
- 24 An action against the latter decision has been brought before the Finanzgericht Baden-Württemberg (Finance Court of Baden-Württemberg, Germany).
- 25 It is apparent from the order for reference that, in support of its application, Gardinia Home Decor claims that, at the time of importation, the goods at issue in the main proceedings were presented together with complementary accessories, namely end pieces, brackets and rings, which made it easy to identify their intended use as curtain rods. According to that company, it is irrelevant whether fittings are supplied in a quantity which does not correspond to the number of imported rods, as such a difference is linked to the sale of the rods in a modular system. It adds that the purpose of these rods is also clear from the label on the packaging of each of them. It claims that the 'CN Explanatory Notes to heading 8302' expressly mention curtain rods in the form of metal tubes as falling within that heading and that the exclusion of tubes merely cut to length provided for in those notes is not relevant in the present case, since the tubes concerned are equipped with suitable plastic end pieces.
- 26 The Main Customs Office contends, principally, that classification under CN subheading 8302 41 90 would only have been possible if the bars concerned had been imported, as a whole, together with the necessary brackets for fixing them to the wall or ceiling. According to it, those bars could not be classified as an 'unassembled or disassembled' curtain system within the meaning of the second sentence of Rule 2(a) of the General Rules for the Interpretation of the HS, since at the time of their presentation to customs it was impossible to know with which article they were to be assembled. In addition, certain imports consisted exclusively of rods.
- 27 That office also argues that the tariff classification is based on the objective quality of the goods, and not on their description or packaging. However, it is contended, the imported tubes did not have any specific features — such as drilled holes, milled areas or longitudinal grooves for sliders — which would identify their intended use as curtain rods, and the plastic protective caps placed at their ends

were not used exclusively for those rods. The HS Explanatory Notes to heading 8302 confirm that curtain rods consisting of tubes merely cut to length, whether or not pierced, remain classified according to the constituent metal.

- 28 The national court, for its part, considers that, if the goods at issue in the main proceedings could not be classified under subheading 8302 41 90 of the CN, they should then indisputably be classified under subheading 7306 30 77 of the CN, it being noted that, in its view, the subheadings referred to by Gardinia Home Decor when declaring those goods to customs are irrelevant.
- 29 In that regard, the referring court sets out, in the first place, a series of considerations in favour of classifying under CN subheading 8302 41 90 goods made of metal which have the objective characteristics of those at issue in the main proceedings. It is based, more specifically, on the Notes to the heading of the CN section in which this subheading appears and on the HS Explanatory Notes to heading 8302, in which curtain rods are expressly mentioned.
- 30 In the second place, that court questions whether, if it were held that the characteristics of such goods do not in themselves make it possible to identify their intended use as curtain rods, they could nevertheless be classified under CN subheading 8302 41 90 when imported with complementary parts showing that intended use, even if, on the one hand, they are not packaged in such a way as to form a whole with those other parts and, on the other hand, they are not imported in a quantity corresponding to the number of those other parts, taking into account their use in the context of a modular system.
- 31 In those circumstances, the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘(1) Is subheading 8302 41 90 of the [CN] to be interpreted as also covering metal goods which are imported as curtain rods of a modular construction system in different lengths, have a constant, circular cross section of 16 or 20 mm over the entire length, are hollow and longitudinal seam-welded, the surfaces of which were either painted or galvanised, which are individually packaged in film and provided with a label, from which the intended use as a curtain rod is apparent, and the ends of which are each closed with a plastic stopper, serving to protect the rods from damage during transport and presentation, but also possibly being used instead of a decorative end piece otherwise to be separately acquired?

(2) If the first question is answered in the negative:

Is the first question to be answered differently if the rods are imported together with other parts, from which the intended use as a curtain rod is apparent, even if the parts are not packaged together as a set and are also not imported in corresponding quantity?’

Consideration of the questions referred

- 32 Under Article 99 of the Rules of Procedure of the Court of Justice, where a question referred for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 33 That provision must be applied in the present case.

The first question

- 34 By its first question, the referring court asks the Court whether subheading 8302 41 90 of the CN is to be interpreted as covering metal goods imported in different lengths as curtain rods, such as those at issue in the main proceedings, which are part of a modular construction system, have a constant circular cross-section of 16 or 20 mm, are hollow and longitudinal seam-welded, the surfaces of which were either painted or galvanised, which are individually packaged in film and provided with a label, from which the intended use as a curtain rod is apparent, and the ends of which are each closed with a plastic stopper, serving to protect the rods from damage during transport and presentation for sale, but also possibly being used instead of a decorative end piece otherwise to be separately acquired.
- 35 At the outset, it should be noted that, when the Court is requested to give a preliminary ruling on a matter of classification for customs purposes, its task is to provide the national courts with guidance on the criteria which will enable the latter to classify the products at issue correctly in the CN, rather than to effect that classification itself, a fortiori since the Court does not necessarily have available to it all the information which is essential in that regard. Since the national courts appear, in any event, to be in a better position to do so, it is therefore for them to classify for customs purposes the goods at issue in the main proceedings in the light of the information provided by the Court in response to the questions submitted to it (see, inter alia, judgments of 15 May 2019, *Korado*, C-306/18, EU:C:2019:414, paragraphs 33 and 34, and of 16 May 2019, *Estron*, C-138/18, EU:C:2019:419, paragraphs 67 to 69).
- 36 Secondly, it should be recalled that the general rules for the interpretation of the CN provide, on the one hand, that the classification of goods is determined according to the terms of the headings and section or chapter notes and, on the other hand, that the wording of the titles of sections, chapters or subchapters are provided for ease of reference only. Furthermore, it is established in the case-law that, in the interests of legal certainty and ease of verification, the decisive criterion for the tariff 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 section or chapter notes (see, inter alia, judgments of 3 March 2016, *Customs Support Holland*, C-144/15, EU:C:2016:133, paragraphs 26 and 27; of 16 May 2019, *Estron*, C-138/18, EU:C:2019:419, paragraphs 50 and 51, and of 5 September 2019, *TDK-Lambda Germany*, C-559/18, EU:C:2019:667, paragraph 26).
- 37 It is also clear from the case-law of the Court that, where the classification cannot be made on the sole basis of the objective characteristics and properties of the product concerned, the intended purpose of that product may constitute an objective criterion for classification if it is inherent in the product, it being sufficient to take account of the essential purpose of 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, inter alia, judgments of 17 July 2014, *Sysmex Europe*, C-480/13, EU:C:2014:2097, paragraphs 31 and 32; of 12 May 2016, *Toorank Productions*, C-532/14 and C-533/14, EU:C:2016:337, paragraph 35; and of 5 September 2019, *TDK-Lambda Germany*, C-559/18, EU:C:2019:667, paragraph 27).
- 38 Finally, the Court of Justice has repeatedly held that, although they do not have legally binding force, the CN and HS Explanatory Notes 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, inter alia, judgments of 19 October 2017, *Lutz*, C-556/16, EU:C:2017:777, paragraph 40; of 15 November 2018, *Baby Dan*, C-592/17, EU:C:2018:913 paragraph 55; and of 15 May 2019, *Korado*, C-306/18, EU:C:2019:414, paragraph 35).
- 39 In the present case, it should be observed, at the outset, that, after examining samples of the goods at issue in the main proceedings, the referring court describes them as 'metal goods imported ... as curtain rods', in particular in the first question put to the Court. That description is the consequence of a simple finding of fact which it is not for the Court to call into question in the context of a

reference for a preliminary ruling, especially where the Court is not being asked to rule on such a classification but only on the tariff classification of the goods concerned (see, by analogy, judgment of 16 February 2006, *Proxxon*, C-500/04, EU:C:2006:111, paragraph 25).

- 40 In that context, the referring court questions whether the product at issue in the main proceedings must be classified under subheading 8302 41 90 of the CN, failing which it intends to classify it in subheading 7306 30 77 thereof. As regards the order thus adopted, that court rightly observes that it follows from the third paragraph of Note 2 to Section XV of the CN that articles falling within Chapter 83 of the CN are, as a general rule, excluded from Chapter 73 thereof, so that it is appropriate to consider, first, classification in a subdivision of that first chapter, which is more specific, before examining, in a second stage, possible classification in a subdivision of that second chapter.
- 41 The referring court also correctly assumes that the tariff classification at issue in the main proceedings does not depend on whether the product concerned could be regarded, per se, as an article of base metal or as a mere part of such an article, since, in particular, Note 1 in the introduction to Chapter 83, contained in Section XV of the HS provides that, for the purposes of that chapter, ‘parts of base metal are to be classified with their parent articles’ (see, by analogy, judgment of 16 February 2006, *Proxxon*, C-500/04, EU:C:2006:111, paragraph 32), subject to exceptions which are irrelevant in the present case, having regard to the classification option envisaged by that court.
- 42 In that regard, according to the analytical framework set out in Rule 1 of the ‘General Rules for the Interpretation of the [CN]’, it must be noted that a product such as that at issue in the main proceedings is not explicitly covered by the terms of heading 8302 of the CN or by those of the Notes to Section XV or Chapter 83 of the CN. It is also not included in the headings of this section and chapter.
- 43 However, it is clear from the structure of heading 8302 and the wording of CN subheading 8302 41 90 that the latter has a residual character, since it covers fittings, hardware and similar articles of base metal for buildings ‘other’ than those ‘for doors’ and ‘for windows and French windows’. Consequently, it cannot be excluded that the EU legislature intended to bring within that subheading products such as the product at issue in the main proceedings (see, by analogy, judgement of 12 April 2018, *Medtronic*, C-227/17, EU:C:2018:247, paragraph 43, and of 12 July 2018, *Profit Europe*, C-397/17 and C-398/17, EU:C:2018:564, paragraph 38).
- 44 Furthermore, the HS Explanatory Note to heading 8302 provides significant guidance for the classification of the product concerned. That note states, in the second paragraph of point (D)(5), that ‘Curtain ... fittings ... (e.g., rods, tubes, rosettes, brackets, bands, tassel hooks, clips, sliding or runner rings, ...’ appear among ‘mountings, fittings and similar articles suitable for buildings’ of base metals falling within this heading, but that ‘[r]ods, tubes and bars, suitable for use as curtain or stair rods, etc., merely cut to length and drilled, remain classified according to the constituent metal’.
- 45 It follows that base metal curtain rods are in principle to be classified in CN heading 8302 and, more precisely, in subheading 8302 41 90 thereof, unless they consist of rods, tubes or bars which have been merely cut to the required length.
- 46 That interpretation is supported by Commission Implementing Regulation (EU) 2017/1472 of 11 August 2017 concerning the classification of certain goods in the Combined Nomenclature (OJ 2017 L 210, p. 1), which, although not applicable *ratione temporis* to the main proceedings, nevertheless contains guidance which is relevant, by analogy, to the present case. In fact, the Annex to that Regulation states that a ‘rod of aluminium (so-called “shower curtain rod”) which is used for hanging a curtain’, which consists of two sliding tubes and has a spring mechanism to allow locking between walls, is to be ‘classified under CN code 8302 41 90 as ‘other base-metal mountings, fittings and similar articles suitable for buildings’, on the grounds, in particular, that ‘due to its objective

characteristics ([inter alia] the construction that can only sustain light weights e.g. of a curtain) the article is designed as a curtain rod' and that 'curtain rods are classified in heading 8302 (see also the [HS] Explanatory Notes to heading 8302, second paragraph, (D)(5))'.

- 47 In the present case, the referring court rightly considers that the labelling of the metal tubes at issue in the main proceedings, which indicates their intended purpose as curtain rods, cannot be decisive for the purposes of classifying those tubes under CN subheading 8302 41 90. It is common ground that neither in the terms of heading 8302 nor the notes set out in the introduction to Chapter 83 of the CN is there any reference to the presentation of the product, and therefore such a factor is not decisive as regards classification in the CN (see, by analogy, order of 9 January 2007, *Juers Pharma*, C-40/06, EU:C:2007:2, paragraph 29 and the case-law cited, and judgment of 15 December 2016, *LEK*, C-700/15, EU:C:2016:959, paragraph 45).
- 48 However, according to the factual findings of that court, the product at issue in the main proceedings appears to have the objective characteristics of base metal curtain rods which may fall within CN subheading 8302 41 90. The referral decision indicates that the tubes concerned are individually wrapped in a protective film and closed at their ends by plastic stoppers which may serve as decorative end pieces, which is indicative of an intended use for which the external appearance of the product, or even its ornamental function, is an important criterion, as opposed to what could be found, for example, in the case of use of the product as a pipe. Furthermore, it appears that, even if they are not drilled or milled or provided with grooves for sliders, as the Main Customs Office claimed before the referring court, the surfaces of the tubes concerned are nevertheless galvanised or painted, giving them a copper or coloured appearance, so that they are not tubes merely cut to length, within the meaning of the exception provided for in the second paragraph, point (D)(5), in fine, of the HS Explanatory Note to heading 8302.
- 49 Moreover, contrary to what the Main Customs Office objected to before the referring court, the fact that the product concerned was not systematically imported with the brackets for fixing it to the wall or ceiling cannot, in itself, be such as to deprive that product of its objective characteristics as a base metal curtain rod. It is not apparent from the terms of the CN or the Explanatory Notes thereto, or of the HS that that circumstance could preclude the classification of a product such as that at issue in the main proceedings in subheading 8302 41 90 of the CN.
- 50 In the light of the foregoing considerations, the answer to the first question is that the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 861/2010, is to be interpreted as meaning that curtain rods of base metal fall within subheading 8302 41 90, unless those rods consist of rods, tubes or bars which have merely been cut to the required length, which it is for the referring court to ascertain in order itself to carry out the tariff classification of the goods at issue in the main proceedings, having regard to the information provided by the Court in response to that question.

The second question

- 51 Given the answer to the first question, there is no need to answer the second question.

Costs

- 52 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.

On those grounds, the Court (Sixth 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, as amended by Commission Regulation (EU) No 861/2010 of 5 October 2010, is to be interpreted as meaning that base metal curtain rods fall within tariff subheading 83024190, unless those rods consist of rods, tubes or bars which have been merely cut to the required length, which is for the referring court to ascertain in order to carry out its own tariff classification of the goods at issue in the main proceedings, having regard to the information provided by the Court in response to the first question referred.

[Signatures]