



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

16 May 2019*

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Hearing aid connectors — Parts and accessories — Combined Nomenclature — Subheadings 8544 42 90, 9021 40 00 and 9021 90 10)

In Case C-138/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vestre Landsret (High Court of Western Denmark, Denmark), made by decision of 9 February 2018, received at the Court on 22 February 2018, in the proceedings

Skatteministeriet

v

Estron A/S,

THE COURT (Sixth Chamber),

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

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Estron A/S, by L. Kjær, advokat,
- the Danish Government, by J. Nymann-Lindegren, acting as Agent, and by K. Hagel-Sørensen, advokat,
- the European Commission, by A. Caeiros and S. Maaløe, acting as Agents,

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

gives the following

* Language of the case: Danish.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the Combined Nomenclature ('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 (EC) No 1031/2008 of 19 September 2008 (OJ 2008 L 291, p. 1).
- 2 The request has been made in proceedings between the Skatteministeriet (Ministry of Taxation, Denmark) and Estron A/S concerning the tariff classification of hearing aid connectors.

Legal context

The HS

- 3 The Customs Cooperation Council, now the World Customs Organisation (WCO), was established by the Convention establishing a Customs Cooperation Council, concluded in Brussels on 15 December 1950. The Harmonised Commodity Description and Coding System ('the HS') was drawn up by the WCO and established by the International Convention on the Harmonised Commodity Description and Coding System ('the HS Convention'), 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 Under Article 3(1) of the HS Convention, each Contracting Party undertakes, in particular, to ensure that its customs tariff and statistical nomenclatures will be in conformity with the HS, to use all the headings and subheadings of the HS without addition or modification, together with their related codes, and to follow the numerical sequence of that system. Each Contracting Party also undertakes to apply the general rules for the interpretation of the HS and all the section, chapter and subheading notes of the HS, and not to modify their scope.
- 5 The WCO is to approve, under the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes and Classification Opinions adopted by the HS Committee.
- 6 The Explanatory Note to the HS on heading 8544 states:

'Provided they are insulated, this heading covers electric wire, cable and other conductors (e.g., braids, strip, bars) used as conductors in electrical machinery, apparatus or installations. Subject to this condition, the heading includes wiring for interior work or for exterior use (e.g., underground, submarine or aerial wires or cables). These goods vary from very fine insulated wire to thick cables of more complex types.

Non-metal conductors are also covered by this heading.

...'
- 7 The Explanatory Note to the HS on Chapter 90 provides the following clarification:

'This Chapter covers a wide variety of instruments and apparatus which are, as a rule, characterised by their high finish and high precision. Most of them are used mainly ... for medical purposes.'
- 8 The Explanatory Note to the HS on heading 9021 provides:

'IV. - Hearing aids

These are generally electrical appliances with a circuit containing one or more microphones (with or without amplifier), a receiver and a battery. The receiver may be worn internally or behind the ear, or it may be designed to be held in the hand against the ear.

This group is restricted to appliances for overcoming deafness; it therefore excludes articles such as headphones, amplifiers and the like used in conference rooms or by telephonists to improve the audibility of speech.’

European Union law

- 9 The CN is based on the HS.
- 10 Article 3(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’), provides:

‘Each CN subheading shall have an eight digit code number:

- (a) the first six digits shall be the code numbers relating to the headings and subheadings of the [HS] nomenclature;
- (b) the seventh and eighth digits shall identify the CN subheadings. When a heading or subheading of the [HS] is not further subdivided for Community purposes, the seventh and eighth digits shall be “00”.’

- 11 Under Article 12(1) of Regulation No 2658/87, the European 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 apply from 1 January of the following year.

- 12 The versions of the CN applicable to the facts at issue in the main proceedings, which took place between 8 July 2009 and 29 March 2012, are those resulting successively from Regulation No 1031/2008, from Commission Regulation (EC) No 948/2009 of 30 September 2009 (OJ 2009 L 287, p. 1), from Commission Regulation (EU) No 861/2010 of 5 October 2010 (OJ 2010 L 284, p. 1) and from Commission Regulation (EU) No 1006/2011 of 27 September 2011 (OJ 2011 L 282, p. 1). Since the wording of the provisions of the CN applicable to those facts which are relevant to the questions referred for a preliminary ruling has not been affected by those successive amendments, reference should be made to the version of that nomenclature resulting from Regulation No 1031/2008.

- 13 Part One of the CN contains ‘preliminary provisions’. In that part, under Section I, which contains the general rules, Part A, entitled ‘General rules for the interpretation of the [CN]’, provides:

‘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.’

14 Part Two of the CN, entitled ‘Schedule of Customs Duties’, contains, *inter alia*, 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’.

15 Note 1(m) to that section reads as follows:

‘This section does not cover:

...

(m) articles of Chapter 90’.

16 Section XVI of the CN contains Chapter 85, 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’.

17 Chapter 85 of the CN contains heading 8544, which is structured as follows:

‘8544	Insulated (including enamelled or anodised) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors
...	...
8544 42	- - Fitted with connectors
8544 42 10	- - - Of a kind used for telecommunications
8544 42 90	- - - Other’

18 Part Two of the CN also contains Section XVIII, headed ‘Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof’.

19 That section contains Chapter 90, headed ‘Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof’, Note 2 of which states:

‘Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;

- (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;
- (c) All other parts and accessories are to be classified in heading 9033.'

20 Chapter 90 of the CN contains heading 9021, which is structured as follows:

'9021	Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability:
...	...
9021 40 00	- Hearing aids, excluding parts and accessories
...	...
9021 90	- Other
9021 90 10	- - Parts and accessories of hearing aids
9021 90 90	- - Other'

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

- 21 Estron is a professional supplier in the hearing aid and related industries which supplies connectors to hearing aid producers.
- 22 According to the order for reference, a connector can be described as insulated electrical wire fitted with a connector and forming part of a hearing aid. A hearing aid is an electrical aid device with a circuit, which includes a microphone, a very small speaker and a battery. The microphone captures the sound, which is then amplified and transmitted through the speaker via the connector, which Estron developed specifically for hearing aid models. A connector links the hearing aid's microphone with its speaker and carries the signal from the microphone to the speaker with the acoustic, noise-related, electric and mechanical specifications.
- 23 The connectors at issue in the main proceedings consist of two threads, with each one consisting of seven silver-plated copper threads, twisted together, enamelled and tinned. Electrical sound signals are carried through those connectors to the hearing aid's speaker. The sound captured by the microphone is then converted into electrical impulses at one end and converted into sound at the other end.
- 24 Each end of the connector is fitted with a 'plug' consisting of a number of contact pins which are customised precisely for the electrical connectors for the type of hearing aid for which the connector is specially designed. A connector cannot be moved from one hearing aid model for use in another.
- 25 The connectors at issue in the main proceedings are produced by thermoforming, which is a heated production process allowing the product in question to be shaped into the desired physical shape so that it fits into the ear. These connectors, which connect the hearing aid's speaker and microphone, also serve to hang the hearing aid on the ear in exactly the place where it should be placed thereby ensuring that the hearing aid can be worn functionally by the user. The connectors at issue in the main proceedings are available in several different sizes for each model. The connectors are also shaped specifically to fit the right ear or the left ear.

- 26 Between 8 July 2009 and 29 March 2012, Estron undertook a number of customs clearances according to which it classified the connectors at issue in the main proceedings as ‘Parts and accessories of hearing aids’ under subheading 9021 90 10 of the CN, which is exempt from customs duties.
- 27 Following an inspection, SKAT (Tax Authority, Denmark) issued a decision, on 6 July 2012, to the effect that the connectors at issue in the main proceedings should be classified under subheading 8544 42 90 of the CN which is subject to a customs duty of 3.3%. The Tax Authority thus charged Estron a total of 825 150.74 Danish kroner (DKK) (approximately EUR 110 500) in customs duties on the declared connectors.
- 28 Estron appealed against that decision before the Landsskatteretten (National Tax Appeals Commission, Denmark), which, by order of 10 April 2013, ruled that the connectors had to be classified under subheading 9021 90 10 of the CN and therefore annulled the customs duty debt.
- 29 The Ministry of Taxation challenged that order before the referring court on the ground that the connectors at issue in the main proceedings should have been classified under heading 8544 of the CN. The Ministry of Taxation claims that those connectors should have been classified under subheading 8544 42 90 of the CN, under the heading ‘other’.
- 30 The referring court states that it is common ground between the parties in the main proceedings that the connectors at issue in the main proceedings are ‘part’ of a hearing aid as that concept has been interpreted by the Court.
- 31 According to the order for reference, the Danish Government submits that the fact that the connectors are part of a hearing aid does not mean that they can then be classified under heading 9021 of the CN.
- 32 In that regard, according to the Danish Government, the reference in Note 2(a) to Chapter 90 of the CN to ‘any of the headings of this chapter or of Chapter 84, 85 or 91’ should be understood as a reference to goods included in the four-digit headings in the Common Customs Tariff. Accordingly, that reference does not encompass the six- and eight-digit subheadings in the Common Customs Tariff. Given that the connectors at issue in the main proceedings cannot be classified under a four-digit heading in Chapter 90 of the CN, then under Note 2(a) to that chapter they must be classified under heading 8544 of the CN.
- 33 According to the Danish Government, this interpretation of the wording of Note 2(a) to Chapter 90 of the CN is supported inter alia by General Rule No 6 for the interpretation of the CN, which distinguishes between ‘headings’ and ‘subheadings’ and by the notes to Chapter 85 of the CN. That chapter is divided up into ‘notes’, ‘subheading notes’ and ‘supplementary notes’ pertaining to the four-digit, six-digit and eight-digit code numbers respectively.
- 34 Estron contends that the connectors at issue in the main proceedings form part of a hearing aid within the meaning of the concept of ‘part’ as defined according to settled case-law of the Court, in particular, in the judgment of 15 February 2007, *RUMA* (C-183/06, EU:C:2007:110, paragraph 32). According to that case-law, the connectors at issue in the main proceedings should be classified under heading 9021 40 of the CN.
- 35 However, according to its wording, heading 9021 40 of the CN expressly excludes parts and accessories, which should be classified under heading 9021 90 of the CN. Estron therefore submits that the connectors at issue in the main proceedings should fall under subheading 9021 90 10, which refers to ‘parts and accessories of hearing aids’.
- 36 Estron disputes that the connectors at issue in the main proceedings can be classified under the heading advocated by the Ministry of Taxation as an insulated electrical wire fitted with connectors. The fact that the connectors have been found to be a ‘part’ of a hearing aid, as defined in the settled

case-law of the Court, precludes their classification as ‘electrical wire’. In addition, the shape, the skin-friendly material and customised contact pins support the view that the connectors are ‘part’ of a hearing aid and not insulated electrical wire.

37 Note 2(a) to Chapter 90 of the CN does not lead to a different outcome in that regard. That note is applicable to both the four-digit headings and the six-digit related subheadings in accordance with the provisions of the HS and General Rule No 6 for the interpretation of the CN. Parts which in themselves are goods included in a subheading in Chapter 90, namely 9021 90 of the CN entitled ‘other’, should therefore be classified under that heading.

38 In those circumstances, the Vestre Landsret (High Court of Western Denmark, Denmark) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Note 2(a) to Chapter 90 of the [CN], read in conjunction with General Rules Nos 1 and 6 for the interpretation of the CN, to be interpreted as meaning that “parts and accessories, which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91”, refers to goods in the four-digit headings in those chapters, or is the Note to be interpreted as also referring to the related subheading notes (the first six digits) in Chapters 84, 85, 90 and 91?

(2) Should connectors such as those at issue in the present case be classified under CN subheading 8544 42 90, CN subheading 9021 40 00 or CN subheading 9021 90 10?

(3) Should Note 1(m) to section XVI [of the CN] be interpreted as meaning that where a good is included in Chapter 90, it cannot also be included in Chapters 84 and 85?’

Consideration of the questions referred

The first question

39 By its first question, the referring court wishes to know, in essence, whether Note 2(a) to Chapter 90 of the CN, read in conjunction with General Rules Nos 1 and 6 for the interpretation of the CN, must be interpreted as meaning that the expression ‘Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91’ in that note refers only to the four-digit code numbers of those chapters or also refers to the six- and eight-digit code numbers of those chapters.

40 Note 2(a) to Chapter 90 of the CN provides that ‘Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings’.

41 According to the Danish Government, the connectors at issue in the main proceedings are not in themselves goods which fall within one of the four-digit headings of Chapter 90 of the CN, but are goods falling only within eight-digit subheading 9021 90 10 of the CN, which refers to ‘Parts and accessories of hearing aids’. There is therefore no four-digit heading in Chapter 90 of the CN the wording of which would cover the connectors at issue in the main proceedings. By contrast, the connectors are in themselves goods falling within a four-digit heading of Chapter 85 of the CN, namely heading 8544, which refers to ‘Insulated (including enamelled or anodised) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors’.

- 42 It must therefore be ascertained whether the term ‘heading’ in Note 2(a) to Chapter 90 of the CN refers only to the four-digit code numbers or also refers to the six- and eight-digit code numbers of those chapters.
- 43 In that regard, it must be found that the wording of that note uses the term ‘heading’, and not the term ‘subheading’.
- 44 Article 3 of Regulation No 2658/87 draws a distinction between ‘headings’ and ‘subheadings’ within the CN. It is clear from that provision that the CN uses the six-digit classification of the headings and subheadings of the HS, adding seventh and eighth digits to create its own specific subdivisions (see, to that effect, judgments of 20 November 2014, *Rohm Semiconductor*, C-666/13, EU:C:2014:2388, paragraph 3, and of 28 April 2016, *Oniors Bio*, C-233/15, EU:C:2016:305, paragraph 3).
- 45 That distinction is also clear from the CN itself and, in particular, the general rules for its interpretation. Thus, under General Rule No 6 for the interpretation of the CN, 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 in the sections and chapters.
- 46 The EU legislature thus intended to distinguish headings from subheadings within the CN and the use of the term ‘headings’ in Note 2(a) to Chapter 90 of the CN indicates that that note does not refer to ‘subheadings’.
- 47 It is also clear from the case-law of the Court, first, that the term ‘heading’ refers to the first four digits, whereas six and eight digits are, as far as they are concerned, referred to by the term ‘subheading’. Second, within the CN, a four-digit heading is comprised of six and eight-digit subheadings (see, to that effect, judgments of 9 June 2016, *MIS*, C-288/15, EU:C:2016:424, paragraph 30; of 19 October 2017, *Lutz*, C-556/16, EU:C:2017:777, paragraph 39; of 22 February 2018, *SAKSA*, C-185/17, EU:C:2018:108, paragraph 32; of 12 April 2018, *Medtronic*, C-227/17, EU:C:2018:247, paragraphs 39 and 44; and of 6 September 2018, *Kreyenhop & Kluge*, C-471/17, EU:C:2018:681, paragraphs 8 and 45).
- 48 In the light of the foregoing considerations, the answer to the first question referred is that Note 2(a) to Chapter 90 of the CN, read in conjunction with General Rules Nos 1 and 6 for the interpretation of the CN, must be interpreted as meaning that the expression ‘Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91’ in that note refers only to the four-digit headings of those chapters.

The second question

- 49 By its second question, the referring court wishes to know whether hearing aid connectors, such as those at issue in the main proceedings, must be classified under subheading 8544 42 90, subheading 9021 40 00 or subheading 9021 90 10 of the CN.
- 50 In that regard, it is to be noted, first, as is clear inter alia from paragraph 45 above, that the general rules for the interpretation of the CN provide that, for legal purposes, the classification of goods in the subheadings of a heading is to be determined according to the terms of those subheadings and any related subheading, section or chapter notes, with the wording of section, chapter and subchapter titles being considered to be provided for ease of reference only (see, to that effect, judgment of 12 July 2018, *Profit Europe*, C-397/17 and C-398/17, EU:C:2018:564, paragraph 25).
- 51 Second, according to settled case-law, 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

notes to the sections or chapters (judgments of 12 June 2014, *Lukoyl Neftohim Burgas*, C-330/13, EU:C:2014:1757, paragraph 34, and of 25 February 2016, *G. E. Security*, C-143/15, EU:C:2016:115, paragraph 44).

- 52 In addition, according to the case-law of the Court, the intended use of a product may 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 17 March 2016, *Sonos Europe*, C-84/15, EU:C:2016:184, paragraph 43 and the case-law cited).
- 53 The order for reference states that it is common ground that the connectors at issue in the main proceedings are part of a hearing aid.
- 54 It is clear, in that regard, from the case-law of the Court that the concept of 'parts', within the meaning of the CN, implies a whole for the operation of which its parts are essential (see, to that effect, judgments of 15 February 2007, *RUMA*, C-183/06, EU:C:2007:110, paragraph 31; of 12 December 2013, *HARK*, C-450/12, EU:C:2013:824, paragraphs 36 and 37; and of 20 November 2014, *Rohm Semiconductor*, C-666/13, EU:C:2014:2388, paragraphs 44 and 45).
- 55 As regards subheading 9021 40 00 of the CN, it appears that, in any event, connectors such as those at issue in the main proceedings cannot fall within that subheading in so far as that subheading refers to hearing aids, 'excluding parts and accessories'.
- 56 By contrast, subheading 9021 90 10 of the CN expressly refers to the parts and accessories of hearing aids.
- 57 For the purposes of determining the tariff classification of the connectors at issue in the main proceedings, it should be noted that the explanatory notes to the CN and those to the HS provide useful indications, even though such explanatory notes serve as an aid to interpretation and are not legally binding (see, to that effect, judgment of 26 April 2017, *Stryker EMEA Supply Chain Services*, C-51/16, EU:C:2017:298, paragraph 45).
- 58 Furthermore, it should be made clear that, as noted in paragraph 40 above, Note 2(a) to Chapter 90 of the CN provides that 'Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings'.
- 59 In the light of the answer to the first question, it is necessary to ascertain whether the connectors at issue in the main proceedings must be regarded as included under heading 8544 of the CN, which refers to 'Insulated (including enamelled or anodised) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors', or under heading 9021 thereof, which refers to 'Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability'.
- 60 In that regard, the Court finds, in the first place, that the wording of heading 9021 of the CN does indeed refer expressly only to 'hearing aids' and not to its parts. Nevertheless, as is clear from paragraphs 56 and 57 above, subheading 9021 90 10 of the CN expressly refers to the 'Parts and accessories of hearing aids', which are, furthermore, expressly excluded from subheading 9021 40 00 of the CN. The wording of both subheadings thus appears to be based on the idea that heading 9021 of

the CN covers hearing aid parts and accessories. The wording of Section XVIII and of Chapter 90 of the CN does indeed expressly refer to the ‘parts and accessories’ of the instruments and apparatus to which they refer.

- 61 In the second place, it should be made clear that the explanatory note to the HS on heading 9021 refers to hearing aids. According to that note, hearing aids are generally electrical appliances ‘with a circuit’ containing one or more microphones (with or without amplifier), a receiver and a battery.
- 62 In the third place, as regards heading 9021 of the CN, the Court has previously held, on the basis inter alia of the explanatory note to the HS on Chapter 90, that goods of which the essential characteristics are the finish of their manufacture and their high degree of precision, which distinguish them from ordinary goods are classified under that heading (see, to that effect, judgment of 26 April 2017, *Stryker EMEA Supply Chain Services*, C-51/16, EU:C:2017:298, paragraph 47).
- 63 It would appear from the findings of the referring court, as set out in paragraphs 22 to 25 above, that connectors, such as those at issue in the main proceedings, are distinct, as regards their objective characteristics and properties, from ordinary goods, and inter alia from the insulated wire, cable and other insulated electric conductors in heading 8544 of the CN, by the finish of their manufacture and their high degree of precision in view of their manufacturing process and the specificity of their use.
- 64 In the fourth place, account must be taken of the intended use of the connectors, such as those at issue in the main proceedings, since the intended use may, as appears from paragraph 52 above, 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.
- 65 In the present case, it would also appear from the findings made by the referring court that connectors, such as those at issue in the main proceedings, are specifically customised for hearing aids. In addition, it is common ground that the connectors are developed specifically for hearing aid models.
- 66 It therefore follows from Note 2(a) to Chapter 90 of the CN that connectors, such as those at issue in the main proceedings, are capable of falling under heading 9021 of the CN. In addition, in so far as subheading 9021 90 10 of the CN expressly refers to the parts and accessories of hearing aids, such connectors are capable of being classified under that subheading.
- 67 It should nevertheless be recalled 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 court 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. In any event the national court is in a better position to do so (judgments of 12 June 2014, *Lukoil Neftohim Burgas*, C-330/13, EU:C:2014:1757, paragraph 27, and of 25 February 2016, *G. E. Security*, C-143/15, EU:C:2016:115, paragraph 41).
- 68 The tariff classification of connectors, such as those at issue in the main proceedings, involves the application of EU law to a specific case. It must be borne in mind that, pursuant to Article 267 TFEU, the Court has jurisdiction only to give preliminary rulings concerning the interpretation of the Treaties and on the validity and interpretation of acts of the institutions of the European Union.
- 69 It is therefore for the referring court to classify the connectors at issue in the main proceedings for customs purposes in the light of the indications provided by the Court in answer to the questions that the referring court referred to it for a preliminary ruling.

70 In the light of the foregoing considerations, the answer to the second question referred is that it is for the referring court to classify the hearing aid connectors at issue in the main proceedings for customs purposes in the light of the indications provided by the Court in answer to the questions that the referring court referred to it for a preliminary ruling.

The third question

71 By its third question, the referring court asks, in essence, whether Note 1(m) to Section XVI of the CN must be interpreted as meaning that, where goods are included in Chapter 90, they cannot also be included in Chapters 84 and 85 thereof.

72 Note 1(m) to Section XVI of the CN provides that that section does not cover articles of Chapter 90 of the CN.

73 It must be found that Chapters 84 and 85 of the CN are contained in Section XVI of the CN. On the other hand, Chapter 90 of the CN is contained in Section XVIII thereof.

74 It is clear from the wording of Note 1(m) to Section XVI of the CN that, if goods fall within Chapter 90 of the CN, they cannot fall within that section of the CN.

75 It follows that where goods are included in Chapter 90 of the CN, they are precluded, under Note 1(m) to Section XVI of the CN, from also falling under Chapters 84 and 85 of the CN which are included in Section XVI thereof.

76 In the light of the foregoing, the answer to the third question referred is that Note 1(m) to Section XVI of the CN must be interpreted as meaning that, where goods are included in Chapter 90, they cannot also be included in Chapters 84 and 85 thereof.

Costs

77 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 (Sixth Chamber) hereby rules:

- 1. Note 2(a) to Chapter 90 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, as amended by Commission Regulation (EC) No 1031/2008 of 19 September 2008, read in conjunction with General Rules Nos 1 and 6 for the interpretation of the Combined Nomenclature, must be interpreted as meaning that the expression ‘Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91’ in that note refers only to the four-digit headings of those chapters.**
- 2. It is for the referring court to classify the hearing aid connectors at issue in the main proceedings for customs purposes in the light of the indications provided by the Court in answer to the questions that the referring court referred to it for a preliminary ruling.**

- 3. Note 1(m) to Section XVI of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1031/2008, must be interpreted as meaning that, where goods are included in Chapter 90, they cannot also be included in Chapters 84 and 85 thereof.**

[Signatures]