



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

18 June 2020*

(Reference for a preliminary ruling — Common Customs Tariff — Combined Nomenclature — Tariff classification — Tariff heading 7407 — Copper bars, rods and profiles — Hot-rolled copper or copper alloy ingots in a rectangular shape)

In Case C-340/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Supreme Court, Latvia), made by decision of 18 April 2019, received at the Court on 29 April 2019, in the proceedings

Valsts ieņēmumu dienests

v

SIA ‘Hydro Energo’,

THE COURT (Sixth Chamber),

composed of M. Safjan, President of the Chamber, L. Bay Larsen and N. Jääskinen (Rapporteur), Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Latvian Government, by V. Soņeca and V. Kalniņa, acting as Agents,
- the European Commission, represented initially by E. Kalniņš, A. Caeiros, L. Ozola and M. Salyková, and subsequently by E. Kalniņš, L. Ozola and M. Salyková, acting as Agents,

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

gives the following

* Language of the case: Latvian

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of heading 7407 of the Combined Nomenclature ('the CN') in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), in the version resulting from Commission Regulation (EU) No 1006/2011 of 27 September 2011 (OJ 2011 L 282, p. 1).
- 2 The request has been made in proceedings between the Valsts ieņēmumu dienests (State Tax Authority, Latvia; 'the VID') and SIA 'Hydro Energo' concerning the tariff classification of hot-rolled copper or copper alloy ingots.

Legal context

The HS and the Explanatory Notes to 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 are 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. The same provision obliges each Contracting Party 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 approves, 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 HS Explanatory Note relating to Chapter 74 of that system, entitled 'Copper and articles thereof', provides:

'1. In this Chapter the following expressions have the meanings hereby assigned to them:

...

(d) Bars and rods

Rolled, extruded, drawn or forged products, not in coils, which have a uniform solid cross-section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons (including "flattened circles" and "modified rectangles", of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). Products with a rectangular (including square), triangular or polygonal cross-section may have corners rounded along their whole length. The thickness of such products which have a rectangular (including "modified rectangular") cross-section exceeds one-tenth of the width. The expression also covers cast or sintered products, of the same forms and dimensions, which have

been subsequently worked after production (otherwise than by simple trimming or de-scaling), provided that they have not thereby assumed the character of articles or products of other headings.

Wire-bars and billets with their ends tapered or otherwise worked simply to facilitate their entry into machines for converting them into, for example, drawing stock (wire-rod) or tubes, are however to be taken to be unwrought copper of heading 74.03.

...

This Chapter covers:

- (A) Mattes and other intermediate products of copper metallurgy and unwrought copper and waste and scrap (headings 74.01 to 74.05).
- (B) Copper powders and flakes (heading 74.06).
- (C) Products generally obtained by rolling, extruding, drawing or forging the copper of heading 74.03 (headings 74.07 to 74.10).

...'

- 7 The HS Explanatory Note relating to heading 7403 provides, inter alia:

'This heading further covers cast and sintered slabs, bars, rods and ingots, etc., provided they have not been worked after production otherwise than by simple trimming or de-scaling (to remove the set or top surface consisting largely of cuprous oxide) or by shaving, chipping, grinding, etc., to eliminate setting or other casting defects or which have been machined on one surface for inspection purposes (quality control).

Sintered products are obtained from copper powder or copper alloy powders or from copper powder mixed with other metal powders, by pressing (compacting) and sintering (heating to an appropriate temperature below the fusion point of the metals). In the sintered state the products are porous and of low strength and are normally rolled, extruded, forged, etc., to achieve useful density. These rolled, etc., products are excluded (e.g., headings 74.07, 74.09).

The heading also includes wire bars and billets with their ends tapered or otherwise worked simply to facilitate their entry into machines for converting them into, for example, wire drawing stock (wire-rod) or tubes.

Subject to the above-mentioned conditions concerning working after production, the cast bars and rods of this heading may include, in particular:

- (1) Products (sometimes known as "jets"), accurately cast in special moulds, of round, square or hexagonal section and usually not exceeding 1 m in length.
- (2) Longer products obtained by the continuous casting process in which molten metal is poured continuously into a water-cooled mould where it is rapidly solidified.

Both the "jets" and the continuously cast bars are often used for the same purposes as rolled, drawn or extruded bars.'

- 8 According to the HS Explanatory Note relating to heading 7407:

‘ ...

Bars and rods are defined in Chapter Note 1(d) and profiles in Chapter Note 1(e).

The products of this heading are usually obtained by rolling, extrusion or drawing, but may also be obtained by forging (whether with the press or hammer). They may subsequently be cold-finished (if necessary after annealing) by cold-drawing, straightening, or other processes which give the products a finish of higher precision. They may also be worked (e.g., drilled, punched, twisted or crimped), provided that they do not thereby assume the character of articles or of products of other headings. This heading includes profiles with a closed contour (hollow profiles). The heading also covers hollow profiles including finned or gilled tubes and pipes obtained by extrusion. However, tubes and pipes to which fins or gills have been attached, e.g., by welding, are excluded — generally heading 74.19.

Bars and rods obtained by casting (including the so-called “jets” and continuously cast bars) or by sintering fall in heading 74.03 provided they have not been subsequently worked after production otherwise than by simple trimming or descaling. If, however, they have been worked beyond this stage, they are classified in this heading, provided that they have not thereby assumed the character of articles or of products of other headings.

Wire-bars and billets with their ends tapered or otherwise worked simply to facilitate their entry into machines for converting them into, e.g., wire drawing stock (wire-rod) or tubes, are, however, classified in heading 74.03.’

EU law

- 9 The customs classification for goods imported into the European Union is governed by the CN, which is based on the HS.
- 10 Under Article 12(1) of Regulation No 2658/87, the European Commission adopts, 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 applies from 1 January of the following year.
- 11 The version of the CN applicable to the facts in the main proceedings is, as is apparent from the file submitted to the Court, the version for the year 2012, resulting from Regulation No 1006/2011.
- 12 Part One of the CN, containing the preliminary provisions, includes a Section I on general rules, of 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 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.’

13 Part Two of the CN, entitled ‘Schedule of Customs Duties’, includes, inter alia, Section XV, entitled ‘Base metals and articles of base metal’.

14 That section contains a Chapter 74, entitled ‘Copper and articles thereof’, Note 1 of which provides:

‘In this chapter the following expressions have the meanings hereby assigned to them:

...

(d) Bars and rods:

Rolled, extruded, drawn or forged products, not in coils, which have a uniform solid cross-section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons (including “flattened circles” and “modified rectangles”, of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). Products with a rectangular (including square), triangular or polygonal cross-section may have corners rounded along their whole length. The thickness of such products which have a rectangular (including “modified rectangular”) cross-section exceeds one-tenth of the width. The expression also covers cast or sintered products, of the same forms and dimensions, which have been subsequently worked after production (otherwise than by simple trimming or de-scaling), provided that they have not thereby assumed the character of articles or products of other headings.

Wire-bars and billets with their ends tapered or otherwise worked simply to facilitate their entry into machines for converting them into, for example, drawing stock (wire-rod) or tubes, are however to be taken to be unwrought copper of heading 7403.

...

(h) Tubes and pipes:

Hollow products, coiled or not, which have a uniform cross-section with only one enclosed void along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons, and which have a uniform wall thickness. Products with a rectangular (including square), equilateral triangular or regular convex polygonal cross-section, which may have corners rounded along their whole length, are also to be taken to be tubes and pipes provided the inner and outer cross-sections are concentric and have the same form and orientation. ...’

15 Chapter 74 of the CN contains heading 7403, which is structured as follows:

‘7403	Refined copper and copper alloys, unwrought:
...	...
7403 21 00	- - Of copper-zinc base alloys (brass)
...	...’

16 That chapter also includes heading 7407, which is structured as follows:

'7407	Copper bars, rods and profiles:
7407 10 00	- Of refined copper
	- Of copper alloys
7407 21	- - Of copper-zinc base alloys (brass)
7407 21 10	- - - Bars and rods
7407 21 90	- - - Profiles
...	...'

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

- 17 In April 2012, Hydro Energo declared, with a view to their release for free circulation, the hot-rolled brass sheets it had classified under subheading 7403 21 00 of the CN, which relates to copper-zinc base alloys (brass) and is exempt from customs duties.
- 18 Following a customs inspection, the VID took the view that the product declared by Hydro Energo should not be classified under subheading 7403 21 00, given that heading 7403 excludes rolled products, but under subheading 7407 21 10 of the CN, which covers bars and rods of copper alloys based on copper-zinc alloys (brass), the rate of customs duty for which is 4.8%. On the basis of that finding, the VID, by decision of 10 September 2014, imposed on Hydro Energo a customs duty in respect of that product together with default interest.
- 19 Hydro Energo brought an action against that decision before the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia), which, by judgment of 13 April 2017, annulled that decision.
- 20 That court held, first of all, that the product at issue in the main proceedings could not be classified under one of the subheadings of heading 7407. In view of the irregular pores, holes and cracks which were visible in the cross-section of the product, it did not constitute a finished product and had no uniform solid cross-section along its whole length, such that it could not be regarded as a bar or rod within the meaning of Chapter 74 of the CN.
- 21 Next, that court stated that the metal comprising the product at issue in the main proceedings corresponded, given the respective copper and zinc levels, to the definition of refined copper, not that of copper alloys (brass).
- 22 The VID lodged an appeal on a point of law against that judgment before the Augstākā tiesa (Supreme Court, Latvia).
- 23 As a preliminary point, the VID submits that the question whether the product at issue in the main proceedings is of refined copper or copper alloys is not relevant for the purposes of its classification in the CN, since it must first be assessed whether that product complies with the description of heading 7403 or that of heading 7407. It submits that only subheadings at the same level are comparable.
- 24 The VID submits that the very fact that the product at issue in the main proceedings was hot-rolled means that it cannot be classified under one of the subheadings of heading 7403 of the CN.

- 25 Furthermore, according to the VID, contrary to the findings of the Administratīvā apgabaltiesa (Regional Administrative Court), the fact that Note 1(d) to Chapter 74 of the CN refers, in its definition of the ‘bars and rods’, to the requirement of a ‘uniform solid cross-section along their whole length’ does not mean that the product concerned must always have an ideal shape with no flaws. Moreover, that definition does not list the permissible variations that would suggest that the cross-section of a product is rectangular.
- 26 Lastly, both jets and continuously cast bars and rods are often used for the same purposes as rolled, drawn or extruded bars. Therefore, according to the VID, the subsequent purpose of the product is irrelevant.
- 27 Hydro Energo, for its part, submits that the product at issue in the main proceedings does not fall within the concept of ‘bars and rods’ within the meaning of the CN, on the ground that, because of its giant pores, holes and cracks which are visible in the cross-section, it cannot be regarded as having a uniform solid cross-section along its whole length. Furthermore, the product is rolled in a rectangular shape solely for the purpose of facilitating its transportation and the product is not intended for anything other than re-melting. According to Hydro Energo, which refers in that regard to the second paragraph of Note 1(d) to Chapter 74 of the CN, the classification of a product under heading 7403 or 7407 of the CN depends not only on the shape and preliminary treatment of that product but also its degree of processing and its potential use. Consequently, Hydro Energo claims that the product at issue in the main proceedings should be classified under subheading 7403 21 00 of the CN.
- 28 According to the referring court, although the chemical composition of the product at issue in the main proceedings is a matter of fact which is for the national court to establish, the decisive question in the present case is whether that product may be regarded as a bar or rod within the meaning of Chapter 74 of the CN.
- 29 Although it is true, as the VID observes, that certain characteristics of the product at issue in the main proceedings correspond to those that a bar or rod must have, which would enable it to be classified under CN heading 7407, there are reasonable doubts as to whether that product has a uniform solid cross-section along its whole length, as required by Note 1(d) to Chapter 74 of the CN.
- 30 Although the fact that the product at issue in the main proceedings is rolled could, under the HS Explanatory Notes, be an additional ground for classification of that product under heading 7407 of the CN, those explanatory notes are not, however, sufficient to dispel the doubts as to whether that product has a uniform solid cross-section along its whole length.
- 31 In those circumstances, the Augstākā Tiesa (Supreme Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must the [CN] be interpreted as meaning that heading 7407 (Copper bars, rods and profiles) includes copper or copper alloy ingots in a rectangular shape, the thickness of which exceeds one-tenth of the width and which are hot-rolled, but which have irregular pores, holes and cracks in their cross-section?’

Consideration of the question referred

- 32 By its question, the referring court asks, in essence, whether heading 7407 of the CN must be interpreted as including copper or copper alloy ingots in a rectangular shape, the thickness of which exceeds one-tenth of the width and which are hot-rolled, but which have irregular pores, holes and cracks in their cross-section.

- 33 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 question submitted to it (see, to that effect, judgments of 15 May 2019, *Korado*, C-306/18, EU:C:2019:414, paragraphs 33 and 34; of 16 May 2019, *Estron*, C-138/18, EU:C:2019:419, paragraphs 67 to 69; and order of 27 February 2020, *Gardinia Home Decor*, C-670/19, EU:C:2020:117, paragraph 35).
- 34 Furthermore, 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. Moreover, it is settled 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 in the corresponding section or chapter notes (see, to that effect, 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).
- 35 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 (order of 27 February 2020, *Gardinia Home Decor*, C-670/19, EU:C:2020:117, paragraph 37 and the case-law cited).
- 36 Furthermore, the Court has repeatedly held that, although they do not have legally binding force, the Explanatory Notes to the HS and CN are an important means of ensuring the uniform application of the Common Customs Tariff and, as such, may be regarded as useful aids to its interpretation (see, to that effect, 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). In that regard, the CN takes over the six-digit headings and subheadings of the HS, with only the seventh and eighth figures creating further subdivisions which are specific to it (see, to that effect, judgments of 13 March 2019, *B.S. (Malt in the composition of beer)*, C-195/18, EU:C:2019:197, paragraph 10, and of 16 May 2019, *Estron*, C-138/18, EU:C:2019:419, paragraph 44).
- 37 In the present case, the referring court asks, in particular, whether the ingots at issue in the main proceedings constitute bars or rods within the meaning of Chapter 74 of the CN, such that they could be classified under heading 7407 of the CN entitled 'Copper bars, rods and profiles'.
- 38 In that regard, it should be borne in mind that Note 1(d) to Chapter 74 of the CN provides that bars and rods, within the meaning of that chapter, include, inter alia, rolled products which have a uniform solid cross-section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons.

- 39 As the Commission submitted in its written observations, the requirement for a ‘uniform’ cross-section refers to the shape and cross-sectional dimensions of the product concerned so that ingots, which are rectangular in shape and have the same cross-sectional dimensions at all points along their whole length, fulfil that requirement.
- 40 As regards the requirement of a ‘solid’ cross-section, it must be understood as excluding only hollow products. It follows from Note 1(h) to Chapter 74 of the CN that a hollow product whose cross-section is uniform along its whole length is a tube or pipe within the meaning of that chapter.
- 41 Thus, in the present case, although the ingots at issue in the main proceedings have, as the referring court has pointed out, irregular pores, holes and cracks, such internal imperfections do not, however, make those ingots hollow products, therefore it cannot be ruled out that those ingots, which have been hot-rolled, constitute bars or rods within the meaning of Chapter 74 of the CN and, therefore, fall under heading 7407 of the CN, covering ‘copper bars, rods and profiles’.
- 42 It should also be borne in mind that Note 1(d) to Chapter 74 of the CN provides, as regards the definition of the concept of ‘bars and rods’, within the meaning of that chapter, that the thickness of products which have a rectangular cross-section must exceed one-tenth of the width, which is the case for the ingots at issue in the main proceedings.
- 43 Furthermore, it follows from the HS Explanatory Note relating to heading 7403 that rolled products are excluded from that heading and fall, for example, under headings 7407 or 7409 of the HS, which, as the referring court itself states, constitutes an additional ground for the possible classification of ingots such as those at issue in the main proceedings under heading 7407 of the CN.
- 44 Similarly, the interpretation that ingots such as those at issue in the main proceedings are capable of falling under heading 7407 of the CN is supported by the HS Explanatory Note relating to heading 7407.
- 45 First, although that explanatory note states that bars and rods are defined by Note 1(d) to Chapter 74 of the HS, it is common ground that the wording of that note is identical to that of Note 1(d) to Chapter 74 of the CN.
- 46 Second, the explanatory note relating to heading 7407 of the HS states that those products are usually obtained, among other techniques, by rolling. It is also apparent from the order for reference that bars and rods obtained by casting or sintering fall under heading 7403 of the HS provided that they have not been subsequently worked after production beyond a simple trimming or de-scaling, while those which have been further worked remain, in principle, classified under heading 7407 of the HS. In the present case, the ingots, such as those at issue in the main proceedings, were hot-rolled.
- 47 In the light of all the foregoing considerations, the answer to the question referred is that heading 7407 of the CN must be interpreted as meaning that copper or copper alloy ingots in a rectangular shape, the thickness of which exceeds one-tenth of the width and which are hot-rolled, but which have irregular pores, holes and cracks in their cross-section are capable of falling under that heading.

Costs

- 48 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 (Sixth Chamber) hereby rules:

Heading 7407 of the Combined Nomenclature, as set out in Annex I of 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 1006/2011 of 27 September 2011, must be interpreted as meaning that copper or copper alloy ingots in a rectangular shape, the thickness of which exceeds one-tenth of the width and which are hot-rolled, but which have irregular pores, holes and cracks in their cross-section are capable of falling under that heading.

[Signatures]