



## Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

25 February 2021 \*

(Reference for a preliminary ruling – Common Customs Tariff – Combined Nomenclature – Tariff classification – Tariff heading 8701 and Tariff heading 8705 – Interpretation – Aircraft tractor)

In Case C-772/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), made by decision of 9 October 2019, received at the Court on 22 October 2019, in the proceedings

**Bartosch Airport Supply Services GmbH**

v

**Zollamt Wien,**

THE COURT (Ninth Chamber),

composed of N. Piçarra (Rapporteur), President of the Chamber, S. Rodin and K. Jürimäe, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Bartosch Airport Supply Services GmbH, by U. Schrömbges and J. Gesinn, Rechtsanwälte,
- the European Commission, by R. Pethke 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: German.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of heading 8705 of 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 (OJ 1987 L 256, p. 1), in the version resulting from Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 (OJ 2011 L 294, p. 1; ‘the CN’).
- 2 The request has been made in proceedings between Bartosch Airport Supply Services (‘Bartosch’) and the Zollamt Wien (Customs Office, Vienna, Austria) (‘the customs authority’) concerning the tariff classification of an ‘electrically operated, towbarless aircraft tractor’ designed to tow and push aircraft (‘the aircraft tractor’).

### Legal context

#### *The HS*

- 3 The Harmonised Commodity Description and Coding System (‘the HS’) was established by the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983 within the framework of the World Customs Organisation (WCO), and approved, with its amending protocol of 24 June 1986, on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).
- 4 The nomenclature of the HS includes Section XVII, under the heading ‘Vehicles, aircraft, vessels and associated transport equipment,’ which includes Chapter 87, entitled ‘Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof’. Heading 8701 ‘Tractors (other than tractors of heading 87.09)’ and heading 8705 ‘Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)’ are set out, in particular, in that chapter.
- 5 The HS Explanatory Note to that Chapter 87 is worded as follows:

#### ‘GENERAL

This Chapter covers the following vehicles, with the exception of certain mobile machines of Section XVI (see the Explanatory Notes to headings 87.01, 87.05 and 87.16):

- (1) Tractors (heading 87.01).
- (2) Motor vehicles designed for the transport of persons (heading 87.02 or 87.03) or goods (heading 87.04) or for special purposes (heading 87.05).
- (3) Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods, and tractors of the type used on railway station platforms (heading 87.09).

...’

6 The HS Explanatory Notes to heading 8701 and its subheadings state:

‘For the purposes of this heading, tractors means wheeled or track-laying vehicles constructed essentially for hauling or pushing another vehicle, appliance or load. They may contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods, or provision for fitting with working tools as a subsidiary function.

...

The heading covers tractors (other than tractors of the type used on railway station platforms, falling in heading 87.09) of various types (tractors for agricultural or forestry work, road tractors, heavy duty tractors for constructional engineering work, winch tractors, etc.) ...

The tractors of this heading may be fitted with coachwork (a body) or may have seats for the crew or a driving cab. They may be equipped with a tool box, with provision for raising and lowering agricultural implements, with a coupling device for trailers or semi-trailers (e.g., on mechanical horses and similar tractive units), or with a power take-off for driving machines such as threshers and circular saws.

...

The heading includes tractors fitted with winches (e.g., as used for hauling out bogged-down vehicles; for up-rooting and hauling trees; or for the remote haulage of agricultural implements).

The heading also excludes motor breakdown lorries equipped with cranes, lifting tackle, winches, etc. (heading 87.05).

... 8701.91 to 8701.95

These subheadings include vehicles used to haul semi-trailers over short distances. These types of vehicles are known by various names (e.g., “terminal tractors”, “port tractors”, etc.) and they are intended to position or shuttle trailers within a defined area. They are not suitable for long-haul road use for which road tractors of subheading 8701.20 are designed. They are distinguishable from road tractors in that they are usually equipped with diesel engines with a maximum speed normally not exceeding 50 km/h and are generally equipped with a small, single-seat enclosed cab for the driver only.’

7 The HS Explanatory Notes to heading 8705 and its subheadings state:

‘This heading covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them to perform certain non-transport functions, i.e., the primary purpose of a vehicle of this heading is not the transport of persons or goods.

The heading includes:

- (1) Motor breakdown lorries (trucks) consisting of a lorry (truck) chassis, with or without a floor, equipped with lifting gear such as non-rotating cranes, trestles, pulleys or winches, designed for lifting and towing broken-down vehicles.

...’

## *The CN*

- 8 The tariff classification of goods imported into the European Union is governed by the CN. In accordance with Article 3(1) of Regulation No 2658/87, that nomenclature 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.
- 9 Part One of the CN includes Section I on general rules, under which Subsection A, under the heading ‘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.

...

3. When, by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

- (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

...

- (c) when goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

...

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.’

- 10 Part Two of the CN, under the heading ‘Schedule of Customs Duties,’ includes, in particular, Section XVII, under the heading ‘Vehicles, aircraft, vessels and associated transport equipment’, which includes Chapter 87 relating to ‘Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof’. Note 2 to Chapter 87, concerning heading 8701, states:

‘For the purposes of this chapter, “tractors” means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods.

...'

- 11 Headings 8701 and 8705 set out in that Chapter 87 are worded as follows:

'8701	Tractors (excluding tractors of heading 8709):
8701 10 00	– Single axle tractors
8701 20	– Road tractors for semi-trailers:
8701 20 10	– – New
8701 20 90	– – Used
8701 30 00	– Track-laying tractors
	– Other, of an engine power:
8701 91	– – Not exceeding 18 kW
8701 91 10	– – – Agricultural tractors and forestry tractors, wheeled
8701 91 90	– – – Other
8701 92	– – Exceeding 18 kW but not exceeding 37 kW
8701 92 10	– – – Agricultural tractors and forestry tractors, wheeled
8701 92 90	– – – Other

...'

8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units):
8705 10 00	– Crane lorries
8705 20 00	– Mobile drilling derricks
8705 30 00	– Fire fighting vehicles
8705 40 00	– Concrete-mixer lorries
8705 90	– Other:
8705 90 30	– – Concrete-pumping vehicles
8705 90 80	– – Other'

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

- 12 On 23 February 2017, Bartosch requested from the customs authority the issuance of binding tariff information concerning an aircraft tractor. That aircraft tractor is described in the order for reference as a device capable of towing aircraft weighing up to 54 432 kg and consisting of a metal platform with four wheels, an electric engine with an engine power of 33.8 kW, drive, braking and steering devices and two drivers' seats arranged opposite one another with operating levers on both sides. It is also equipped with a pulling winch with belt pulling device and an electrohydraulic

lifting device. With the winch, the nose wheel of an aircraft is pulled onto the hydraulic lifting device and then lifted by means of that device. Once in that position, the aircraft can be towed or pushed.

- 13 Bartosch has claimed that such a vehicle should be classified under subheading 8705 90 80 of the CN, which corresponds to special purpose motor vehicles, other than those designed for the transport of persons or goods, in respect of which a rate of duty of 3.7% is applicable.
- 14 By decision of 8 May 2017, the customs authority delivered binding tariff information classifying that vehicle as an ‘other’ type of tractor under subheading 8701 92 90 of the CN. A rate of 7% is applicable to the goods falling within that subheading.
- 15 Following the dismissal of its application to have that decision annulled, Bartosch brought an action before the Bundesfinanzgericht (Federal Finance Court, Austria). That court dismissed that action, taking the view that only vehicles whose essential characteristic is to lift and tow broken-down vehicles fall within the classification of ‘breakdown lorries’ within the meaning of heading 8705 of the CN. According to that court, an aircraft tractor falls within heading 8701 of the CN, on the ground that that heading covers ‘tractors’ in a broad and unambiguous manner.
- 16 Bartosch brought an appeal on a point of law against that judgment before the referring court, the Verwaltungsgerichtshof (Supreme Administrative Court, Austria).
- 17 That court states, first of all, that, according to the HS Explanatory Notes, heading 8701 of the CN includes tractors of all kinds and for all intended purposes, regardless of the type of drive. That heading does not include breakdown lorries equipped with cranes, trestles or winches which fall under heading 8705 of the CN. According to that court, heading 8705 of the CN covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them to perform certain functions, distinct from the transport of persons or goods. This includes, in particular, breakdown lorries designed for lifting and towing broken-down vehicles. The referring court thus infers that heading 8705 of the CN refers to a more specific category of vehicles than heading 8701 of that nomenclature.
- 18 That court then adds that an aircraft tractor is not principally designed for the transport of persons or goods in so far as it is intended to tow and push aircraft at airports. Nonetheless, it does not correspond to any of the intended purposes listed as examples in heading 8705.
- 19 That court notes, lastly, that, in the English and French versions of the CN, the vehicles referred to in heading 8705, respectively as ‘breakdown lorries’ and ‘*dépanneuses*’ are intended only for towing broken-down vehicles, which does not argue in favour of classifying aircraft tractors under that tariff heading.
- 20 In those circumstances, the Verwaltungsgerichtshof (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:  
  
‘Is heading 8705 of the [CN] to be interpreted as meaning that towbarless motor vehicles with a pulling winch with belt pulling device for towing aircraft and an electrohydraulic lifting device for pushing aircraft fall under that heading?’

## Consideration of the question referred

- 21 By its question, the referring court asks, in substance, whether the CN must be interpreted as meaning that heading 8705 of that nomenclature covers vehicles designed to tow and push aircraft, referred to as ‘aircraft tractors’.
- 22 It must be borne in mind, in the first place, that, in the interest of legal certainty and ease of verification, the decisive criterion for the tariff classification of goods must be sought, as a general rule, in their objective characteristics and properties, as defined by the wording of the heading and subheading of the CN and by any section or chapter notes, before the other provisions of the General Rules come to bear (see, to that effect, in particular, judgments of 11 December 2008, *Kip Europe and Others*, C-362/07 and C-363/07, EU:C:2008:710, paragraph 39; of 12 July 2012, *TNT Freight Management (Amsterdam)*, C-291/11, EU:C:2012:459, paragraph 31; of 19 December 2019, *Amoena*, C-677/18, EU:C:2019:1142, paragraphs 39 and 40; and of 26 March 2020, *Pfizer Consumer Healthcare*, C-182/19, EU:C:2020:243, paragraph 37).
- 23 In the second place, despite the fact that they are not legally binding, the Explanatory Notes drawn up by the Commission as regards the CN and by the WCO as regards the HS may be an important aid to the interpretation of the scope of the various tariff headings (see, to that effect, judgments of 15 May 2014, *Data I/O*, C-297/13, EU:C:2014:331, paragraph 33, and of 15 May 2019, *Korado*, C-306/18, EU:C:2019:414, paragraph 35).
- 24 In the third place, where the classification cannot be made on the sole basis of the objective characteristics and properties of the product concerned, the intended use of that product may constitute an objective criterion for classification, provided that it is inherent to that product. That inherent character must be capable of being assessed on the basis of the objective characteristics and properties of that product (see, to that effect, judgments of 5 September 2019, *TDK-Lambda Germany*, C-559/18, EU:C:2019:667, paragraph 27, and of 26 March 2020, *Pfizer Consumer Healthcare*, C-182/19, EU:C:2020:243, paragraph 38 and the case-law cited).
- 25 With regard to the referring court’s doubt as to the tariff classification of the aircraft tractor, it should be noted that that doubt is closely linked to the use of the term ‘*Abschleppwagen*’ in the German version of heading 8705 of the CN. That term refers to tractors intended for towing other vehicles, whether broken down or not, while the terms ‘*dépanneuses*’ and ‘breakdown lorries,’ in the French and English versions of that nomenclature, refer only to vehicles used for towing broken down vehicles.
- 26 In accordance with the settled case-law of the Court of Justice, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions. Thus, the need for uniform interpretation and application of each provision of EU law precludes one linguistic version of the text being considered in isolation, but requires that the measure be interpreted by reference to the general scheme and purpose of the rules of which it forms part (see, to that effect, judgments of 27 October 1977, *Bouchereau*, 30/77, EU:C:1977:172, paragraph 14, and of 8 June 2017, *Sharda Europe*, C-293/16, EU:C:2017:430, paragraph 21).
- 27 It follows both from the purpose and the scheme of heading 8705 of the CN, interpreted in the light of the HS Explanatory Notes, that that heading covers only vehicles used for towing broken-down vehicles, while those used for towing vehicles which are not broken down fall within heading 8701 of that nomenclature.

- 28 First of all, note 2 to Chapter 87 of the CN relating to heading 8701 of that nomenclature, like HS Explanatory Note to heading 8701, states that the term ‘tractors’ means motor vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods. The HS Explanatory Note also states that heading 8701 includes tractors of all kinds and for all intended purposes, in particular tractors fitted with trestles or winches, for instance, as used for hauling out bogged-down vehicles or for the remote haulage of agricultural implements. According to that Explanatory Note, on the other hand, breakdown lorries – which are used to tow broken-down vehicles – equipped with cranes, trestles and winches, which fall within heading 8705, are excluded from heading 8701.
- 29 In addition, the HS Explanatory Notes relating, in particular, to subheadings 8701.91 to 8701.95 state that those subheadings include vehicles used to haul semi-trailers over short distances, such as port tractors.
- 30 Next, under general rule 3(a) for the interpretation of the CN, when goods are prima facie classifiable under two or more headings, classification shall be effected by preferring the heading which provides the most specific description to headings providing a more general description.
- 31 It follows from paragraphs 26 to 28 of this judgment that heading 8701 of the CN, which refers to tractors, is more specific than heading 8705 of that nomenclature, which refers, more broadly, to special purpose vehicles other than those principally designed for the transport of persons or goods.
- 32 Such an interpretation of heading 8701 of the CN is, lastly, corroborated by the judgment of 27 April 2006, *Kawasaki Motors Europe* (C-15/05, EU:C:2006:259), concerning the tariff classification of an off-road vehicle. It is apparent from paragraph 46 of that judgment that the towing capacity of a vehicle constitutes the objective property that determines whether it is constructed essentially for hauling or pushing another vehicle, appliance or load or, on the other hand, for transporting persons. The Court thus inferred in paragraph 55 of that judgment that the objective characteristics and properties of such vehicles comply with the terms of note 2 to Chapter 87 of the CN in that they are constructed essentially for hauling or pushing another vehicle. Application of general rule 1 for the interpretation of the CN therefore means that those vehicles should be classified in heading 8701 of that nomenclature.
- 33 In the light of the foregoing, it must be held that a vehicle with the characteristics of the aircraft tractor at issue in the main proceedings falls within heading 8701 of the CN, since that vehicle is not used for towing broken-down vehicles and has no specific function other than that of towing and pushing aircraft over short distances.
- 34 Accordingly, the answer to the question referred is that the CN must be interpreted as meaning that heading 8705 of that nomenclature does not cover vehicles designed to tow and push aircraft, referred to as ‘aircraft tractors’, since those aircraft tractors fall within heading 8701 of that nomenclature.



## Costs

- 35 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 (Ninth 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 Implementing Regulation (EU) 2016/1821 of 6 October 2016, must be interpreted as meaning that heading 8705 of that nomenclature does not cover vehicles designed to tow and push aircraft, referred to as ‘aircraft tractors’, since those aircraft tractors fall within heading 8701 of that nomenclature.**

[Signatures]