



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

12 June 2014*

(Request for a preliminary ruling — Common Customs Tariff — Combined Nomenclature — Classification of goods — Goods described as ‘heavy oils, lubricating oils or other oils for undergoing a specific process’ — Headings 2707 and 2710 — Aromatic and non aromatic constituents — Relationship between the Combined Nomenclature and the Harmonised System)

In Case C-330/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Burgas (Bulgaria), made by decision of 28 May 2013, received at the Court on 18 June 2013, in the proceedings

Lukoyl Neftohim Burgas AD

v

Nachalnik na Mitnicheski punkt Pristanishte Burgas Tsentar pri Mitnitsa Burgas,

THE COURT (Sixth Chamber),

composed of A. Borg Barthet, President of the Chamber, S. Rodin and F. Biltgen (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Lukoyl Neftohim Burgas AD, by S. Andronov, conseil,
- the Bulgarian Government, by E. Petranova and J. Atanasov, acting as Agents,
- the European Commission, by P. Mihaylova and B.-R. Killmann, acting as Agents,

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

gives the following

* Language of the case: Bulgarian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Headings 2707 and 2710 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 (EC) No 1006/2011 of 27 September 2011 (OJ 2002 L 282, p. 1).
- 2 The request has been made in proceedings between Lukoyl Neftohim Burgas AD ('Lukoyl') and Nachalnik na Mitnicheski punkt Pristanishte Burgas Tsentar pri Minitsa Burgas (Head of the 'Port of Burgas Centre' Customs Office; the Nachalnik) concerning the tariff classification of goods described as 'heavy oils, lubricating oils; other oils — for undergoing a specific process'.

Legal context

The Harmonised Commodity Description and Coding System

- 3 The International Convention on the Harmonised Commodity Description and Coding System ('the HS'), concluded at Brussels on 14 June 1983, and the Protocol of Amendment thereto of 24 June 1986, were approved 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 Customs Cooperation Council, now the World Customs Organisation (WCO), set up by the International Convention establishing that council, concluded at Brussels on 15 December 1950, is to approve, under the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes and the Classification Opinions adopted by the HS Committee.
- 5 The general considerations in the Explanatory Notes to the HS on Chapter 27 provide as follows:
'...
The expression "aromatic constituents" as used in Note 2 to this Chapter and in heading 2707 should be taken to refer to entire molecules with an aromatic part irrespective of the number and length of side-chains and not to the aromatic portions of such molecules only.
...'

- 6 Note 2 in Chapter 27 of the HS is worded as follows:

'References in heading 2710 to "petroleum oils and oils obtained from bituminous minerals" include not only petroleum oils and oils obtained from bituminous minerals but also similar oils, as well as those consisting mainly of mixed unsaturated hydrocarbons, obtained by any process, provided that the weight of the non-aromatic constituents exceeds that of the aromatic constituents.

...'

- 7 The Explanatory Notes on Heading 2707 of the HS state, inter alia, as follows:

'This heading covers

...

(2) Similar oils and products with a predominance of aromatic constituents obtained by the distillation of low temperature coal tar or other mineral tar, by the “stripping” of coal gas, by the processing of petroleum or by any other process.

...’

8 The HS Explanatory Notes on Heading 2710 state in Section I:

‘...

The heading includes

...

(B) Similar oils in which the weight of the non-aromatic constituents exceeds that of the aromatic constituents. They may be obtained by the low temperature distillation of coal, by hydrogenation or by any other process (e.g., by cracking, reforming, etc.).

The heading includes mixed alkylenes, called tripropylene, tetrapropylene, di-isobutylene, tri-isobutylene, etc. These are mixtures of unsaturated acyclic hydrocarbons (octylenes, nonylenes, homologues and isomers thereof, etc.) and saturated acyclic hydrocarbons.

They are obtained either by very low polymerisation of propylene, isobutylene or other ethylenic hydrocarbons or by separation (e.g., fractional distillation) from certain products of the cracking of mineral oils.

...

Further, the heading does not include oils with a predominance by weight of aromatic constituents, obtained by the processing of petroleum or by any other process (heading 27.07).’

The CN

9 The customs classification for goods imported into the European Union is governed by the CN, which is based on the HS. The version in force at the material time is that resulting from Regulation No 2658/87, as amended by Regulation No 1006/2011.

10 Part I of the CN consists of a number of preliminary provisions. Under Section I of the CN, setting out general rules, Section A lays down general rules for the interpretation of the CN in accordance with which the classification of goods in the CN is to be governed. It is provided, inter alia, that, for legal purposes, classification is to be determined according to the terms of the headings and any relative section or chapter notes, the titles of sections, chapters and sub-chapters being provided for ease of reference only.

11 In Part II of the CN, entitled ‘Schedule of Customs Duties’, Chapter 27 concerns ‘Mineral Fuels, Mineral Oils and Products of Their Distillation; Bituminous Substances; Mineral Waxes’.

12 Heading 2707 of the CN, in Chapter 27, states:

‘2707 — Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents’.

13 Heading 2710 of the CN reads as follows:

‘2710 — Petroleum oils and oils obtained from bituminous minerals other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous materials, these oils being the basic constituents of the preparations; waste oils’.

14 The Explanatory Notes to the CN, in the version applicable at the material time (OJ 2011 C 137, p. 1) on subheadings 2707 99 91 and 2707 99 99 of the CN, entitled ‘Other’, provide:

‘These subheadings cover principally products consisting of mixtures of hydrocarbons.

These products include:

1. heavy oils (other than crude) obtained from the distillation of high-temperature coal tar or products similar to those oils, provided that:
 - (a) less than 65% by volume distils at up to 250 °C by the ASTM D 86-67 method (reapproved 1972); and
 - (b) they have a density exceeding 1,000 g/cm³ at 15 °C; and
 - (c) they have a needle penetration index of 400 or higher at 25 °C by the ASTM D 5 method; and
 - (d) they have characteristics other than those of the products of heading 2715 00 00.

Products not fulfilling the conditions set out at (a) to (d) above are to be classified according to their characteristics in, for example, subheadings 2707 10 10 to 2707 30 90, 2707 50 10, 2707 50 90, heading 2708, subheadings 2710 19 31 to 2710 19 99, 2713 20 00 or heading 2715 00 00;

...’

15 The CN Explanatory Notes on heading 2707 state:

‘As regards the determination of the content of aromatic constituents, see the explanatory note to note 2 to this chapter’

16 Note 2 of the general considerations in the CN Explanatory Notes on Chapter 27 reads as follows:

‘The content of aromatic constituents is to be determined by the following methods:

- products with a distillation end point not exceeding 315 °C: ASTM D 1319-70 method,
- products with a distillation end point exceeding 315 °C: see Annex A to the explanatory notes to this chapter.’

17 Annex A to the CN Explanatory Notes on Chapter 27, entitled ‘Method of determining the content of aromatic constituents in products with a distillation end point exceeding 315 °C’, states as follows:

‘Principle of the method

The sample, dissolved in *n*-pentane, is allowed to percolate through a special chromatography column packed with silica gel. The non-aromatic hydrocarbons, eluted with *n*-pentane, are collected subsequently and assayed by weighing after the solvent has evaporated.

...

Method

...

The percentage of non-aromatic hydrocarbons by weight (A) is given by the following formula:

$$A = \frac{W}{W_1} \times 100$$

where W_1 is the weight of the sample.

The difference from 100 is the percentage of aromatic hydrocarbons absorbed by the silica gel.

...'

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

- 18 By simplified customs declaration of 2 May 2012, Lukoyl declared for release into free circulation and for final consumption goods described as 'heavy oils, lubricating oils; other oils — for undergoing a specific process'. The goods were declared under tariff heading 2710 19 71 of the CN.
- 19 The customs declaration states a price of USD 24 269 509. On 10 May 2012, Lukoyl paid BGN 7 250 758,54 in respect of value added tax. According to Lukoyl, no customs or excise duties were payable.
- 20 Subsequently, the competent customs authorities inspected the documents relating to the goods, the accompanying documents and the customs declaration. They found that, on the basis of the certificates and documents presented, it was not possible to make a tariff classification of the goods and therefore took samples of them in order to determine the CN code applicable.
- 21 The samples were analysed by the customs laboratory in Ruse (Bulgaria) which found that the sample tested was an oil, which more precisely is a directly distilled petrol oil containing a mixture of hydrocarbons in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents. That oil was not composed of benzol (benzene), toluol (toluene), xylol (xylenes), naphthalene, other aromatic hydrocarbon mixtures, creosote oils or crude oils, sulphuretted toppings, basic products, anthracene or phenols. The analysis was carried out in accordance with the method set out in Annex A to the Explanatory Notes of the CN on Chapter 27 ('the Annex A method').
- 22 By letter of 28 September 2012, the assistant to the director of the Customs Agency in Sofia (Bulgaria) informed the Nachalnik that, given the findings of the customs laboratory in Ruse and points 1 and 6 of the general rules for the interpretation of the CN, the wording of heading 2707 of the CN and the Explanatory Notes to the HS on that heading, the goods concerned were to be classified under subheading 2707 99 99 of the CN.

- 23 Consequently, on 26 October 2012, the Nachalnik adopted a decision requiring Lukoyl to correct the tariff heading by classifying the goods concerned under subheading 2707 99 99 of the CN, which provides for the application of a customs duty of 1.7% and to pay the State a customs debt of BGN 616 314,48 and BGN 123 262,90 by way of value added tax.
- 24 Lukoyl brought an action to challenge that decision before the Administrativen sad Burgas.
- 25 The Administrativen sad Burgas ordered an expert chemical analysis, the findings of which essentially confirmed the findings of the analysis of the customs laboratory in Ruse. However, the expert took the view that the Annex A method, used by the customs laboratory in Ruse is not appropriate to determine the relationship, by weight, of the aromatic constituents as compared with the non-aromatic constituents in products such as that at issue in the main proceedings.
- 26 In that context, the Administrativen sad Burgas decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
1. Is the method for determining the aromatic constituents of substances under Chapter 27 of the CN, set out in Annex A to the Explanatory Notes to Chapter 27 of the CN, inconsistent with the definition of aromatic constituents contained in the general considerations on Chapter 27 of the HS? If so, how are those constituents to be determined and is the ASTM D 2007 method a suitable and appropriate means of doing so?
 2. What is the meaning of the term “non-aromatic constituents” used in the explanatory notes to Chapter 27 of the CN, the Explanatory Notes to Chapter 27 of the HS and note 2 to Chapter 27 of the HS? Is the meaning of that term the same as that of the term “non-aromatic hydrocarbons” or is it broader? If it is broader than the meaning of the latter term, does it include all constituents which, by reference to weight, are not covered by the term “aromatic constituents”, or does it refer to constituents of a substance, such as that at issue in the main proceedings, which, by reference to weight, do not fall under either of those two categories, that is to say “aromatic constituents” or “non-aromatic constituents”?
 3. Is it permissible for one and the same method to be used to determine both aromatic and non-aromatic constituent content for the purposes of Chapter 27 of the CN and Chapter 27 of the HS and, if so, which? If this is not permissible, which method must be used to determine the aromatic constituents and the non-aromatic constituents respectively?
 4. Which of the two headings — 2707 or 2710 — of Chapter 27 of the CN most accurately describes a product with characteristics such as those of the substance at issue in the main proceedings?
 5. In the event that both headings describe with equal accuracy a product having characteristics such as those of the substance at issue in the main proceedings, is it the fact that its weight is made up predominantly of aromatic constituents that gives the product its essential character?
 6. Which of the two headings — 2707 or 2710 — covers products with properties which are most similar to the characteristics of the product at issue in the main proceedings?
 7. Is there an inconsistency between part of the CN Explanatory Notes to subheadings 2707 99 91 and 2707 99 99 and note 2 to Chapter 27 of the HS, or is that note not exhaustive and to be regarded as merely illustrative?

According to the CN Explanatory Notes to subheadings 2707 99 91 and 2707 99 99, “heavy oils (other than crude) obtained from the distillation of high-temperature coal tar or other products similar to those oils” are to be classified according to their characteristics in subheadings “2710 19 31 to 2710 19 99” if they do not fulfil the four cumulative conditions set out in the CN Explanatory Notes to the former subheadings.

Pursuant to note 2 to Chapter 27 of the HS, the description “petroleum oils and oils obtained from bituminous minerals” in heading 2710 is to be understood as also including similar oils, as well as those consisting mainly of mixed unsaturated hydrocarbons, obtained by any process, provided that the weight of the non-aromatic constituents exceeds that of the aromatic constituents.

8. Is there an inconsistency between the CN Explanatory Notes to subheadings 2707 99 91 and 2707 99 99 ... and the Explanatory Notes to heading 2710 of the HS, Part I (B), to which the explanatory notes to Chapter 27 of the CN refer ...?
9. Which are the authentic language versions and what is the true meaning of the second sentence of the CN Explanatory Notes to subheadings 2707 99 91 and 2707 99 99, which, in Bulgarian, reads “mezhdur tezi produkti mogat da se upomenat” [literal translation: “of these products mention may be made of”] and, in English, “[t]hese products are”?
10. How is a product with characteristics such as those of the product at issue in the main proceedings to be classified if the weight of the aromatic constituents in that product exceeds that of the non-aromatic constituents, but the product does not fulfil all four cumulative conditions set out in the first point of the Explanatory Notes to subheadings 2707 99 91 and 2707 99 99 of the CN?

The questions referred for a preliminary ruling

- 27 As a preliminary point, it should be recalled, first of all, 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 (Joined Cases C-260/00 to C-263/00 *Lohman and Medi Bayreuth* EU:C:2002:637, paragraph 26; Case C-12/10 *Lecson Elektromobile* EU:C:2010:823, paragraph 15; and Joined Cases C-320/11, C-330/11, C-382/11 and C-383/11 *Digitalnet and Others* EU:C:2012:745, paragraph 61).
- 28 Therefore, it is for the national court to classify the goods at issue in the main proceedings in the light of the answers given by the Court to the questions referred to it.
- 29 Second, it must be stated that, according to settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. With this in mind, the Court of Justice may have to reformulate the questions referred to it (Case C-334/95 *Krüger* EU:C:1997:378, paragraphs 22 and 23, and Case C-249/11 *Byankov* EU:C:2012:608, paragraph 57).

- 30 In the present case, it is apparent from the order for reference that, by its ten questions, the national court asks, in reality, about the interpretation of headings 2707 and 2710 of the CN for the purpose of the tariff classification of a product with characteristics such as those of the product at issue in the main proceedings, described as ‘heavy oils, lubricating oils; other oils — for undergoing a specific process’.
- 31 In order to give a useful answer to the referring court, those questions must be reformulated and reorganised in such a way as to examine question 2 after questions 4 to 6, then questions 1 and 3, followed by questions 7 to 10.

Questions 4 to 6

- 32 By questions 4 to 6, which it is appropriate to examine together, the referring court asks essentially about the criterion which will determine whether products with characteristics such as those of the product at issue in the main proceedings are to be classified under heading 2707 or heading 2710 of the CN.
- 33 In order to answer that question, it must be stated, first, that the general rules for the interpretation of the CN provide that the classification of goods is to be determined according to the terms of the headings and any section or chapter notes, the titles of sections, chapters and sub-chapters being provided for ease of reference only.
- 34 Second, it is settled case-law that, in the interests of legal certainty and ease of verification, the decisive criterion for the 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 (see, inter alia, Case C-339/98 *Peacock* EU:C:2000:573, paragraph 9; Case C-495/03 *Intermodal Transports* EU:C:2005:105, paragraph 47; Case C-376/07 *Kamino International Logistics* EU:C:2009:105, paragraph 31; and Joined Cases C-288/09 and C-289/09 *British Sky Broadcasting Group and Pace* EU:C:2011:248, paragraph 60).
- 35 As regards the Explanatory Notes to the HS, it must be added that, in spite of the fact that they lack binding force, they 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 (Case C-173/08 *Kloosterboer Services* EU:C:2009:382, paragraph 25, and Case C-568/11 *Agroferm* EU:C:2013:407, paragraph 28). The same is true of the Explanatory Notes to the CN (see, Case C-35/93 *Develop Dr. Eisbein* EU:C:1994:252, paragraph 21, and *British Sky Broadcasting Group and Pace* EU:C:2011:248, paragraph 92).
- 36 In the present case, it is clear from the wording of Heading 2707 of the CN that it includes ‘Oils and other products ... similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents’.
- 37 Furthermore, Note 2 in Chapter 27 of the CN states, in identical terms to those in the Explanatory Notes to the SH on Heading 2710 that the description ‘[p]etroleum oils and oils obtained from bituminous minerals’ used in Heading 2710 also applies to oils ‘consisting mainly of mixed unsaturated hydrocarbons, obtained by any process, provided that the weight of the non-aromatic constituents exceeds that of the aromatic constituents.’ Those notes also state that Heading 2710 does not include ‘oils in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents’.
- 38 Accordingly, as the Bulgarian Government and the European Commission rightly observe, it is clear from Headings 2707 and 2710 of the CN, interpreted in the light of Note 2 in Chapter 27 of the CN and the Explanatory Notes to the HS on Heading 2710, that the decisive criterion for the classification

of goods under Heading 2707 of the CN is the predominance by weight of aromatic constituents. Conversely, the decisive criterion for products under Heading 2710 of the CN is the predominance by weight of non-aromatic constituents.

39 Therefore, the answer to questions 4 to 6 is that the criterion to take into consideration in order to classify products with characteristics such as those of the product at issue in the main proceedings under Heading 2707 or Heading 2710 of the CN is the content by weight of the aromatic constituents in relation to the non-aromatic constituents.

Question 2

40 By its second question, the referring court asks essentially whether the meaning of the words ‘aromatic constituents’ in Chapter 27 of the CN and the Explanatory Notes to the CN and the relevant notes to the HS is identical to the meaning of ‘aromatic hydrocarbons’.

41 In that connection, it must be observed that, even if the CN does not define ‘aromatic constituents’, the answer to that question may be clearly inferred from the wording of the provisions of Chapter 27 of the CN and the relevant Explanatory Notes to the CN and the HS.

42 The wording of Heading 2707 of the CN states that that heading includes products ‘in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents’. It follows from the wording of subheadings 2707 10 to 2707 99 of the CN that, among those products are, inter alia, benzoin, toluol, xylol, naphthalene and other aromatic hydrocarbons mixtures, creosote oils or crude oils.

43 Furthermore, as is clear from the words used in the various language versions of the title of subheading 2707 50 of the CN, and in particular the Bulgarian (‘Drugi smesi na aromatni vuglevodorodi’), Spanish (‘Las demas mezclas de hidrocarburos aromáticos’), German (‘andere Mischungen aromatischer Kohlenwasserstoffe’), English (‘Other aromatic hydrocarbon mixtures’), French (‘autres mélanges d’hydrocarbures aromatiques’) and Italian (‘altre miscele d’idrocarburi aromatici’) versions, and as the Bulgarian Government rightly observes, the CN makes a distinction between ‘aromatic constituents’ and ‘aromatic hydrocarbons’.

44 It is clear that the same distinction follows from the Explanatory Notes to the CN relating to subheadings 2707 99 11 and 2707 99 19 thereof, which state that those subheadings cover ‘similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents’ and provide that those products may have ‘a lower proportion of polynuclear aromatic hydrocarbons’. Likewise, the Explanatory Notes to the CN on subheading 2707 99 30 state that “‘sulphuretted toppings” means only those ... products ... containing sulphur compounds ... and hydrocarbons with a predominance of non-aromatic hydrocarbons’.

45 That distinction also appears in the Explanatory Notes to the HS on Heading 2707, which state that that heading covers ‘[t]he oils and other products ... consisting predominantly of aromatic hydrocarbons and other aromatic compounds’.

46 In those circumstances, it must be concluded that the wording of those provisions clearly makes a distinction between ‘aromatic constituents’ and ‘aromatic hydrocarbons’ and that, therefore, ‘aromatic constituents’ must be interpreted as being wider than ‘aromatic hydrocarbons’.

47 That interpretation is supported by the wording of the general considerations in the Explanatory Notes to the HS on Chapter 27 which states that ‘aromatic constituents’ in Note 2 to Chapter 27 and in the wording of heading 2707 are to be interpreted as ‘entire molecules with an aromatic part irrespective of the number and length of side chains and not to the aromatic portions of such molecules only’.

48 Having regard to the foregoing, the answer to the second question is that the expression ‘aromatic constituents’ in Chapter 27 of the CN must be interpreted as being wider than ‘aromatic hydrocarbons’.

Questions 1 and 3

49 By its first and third questions, which it is appropriate to examine together, the referring court asks essentially, how to determine the content of aromatic constituents in a given product in order to classify it under Heading 2707 or 2710 of the CN.

50 In that connection, it must be observed that Note 2 of the General considerations in the Explanatory Notes to the CN relating to Chapter 27 provides that the Annex A method is to be applied to products with a distillation end point exceeding 315 degrees Celsius.

51 However, as set out in paragraph 35 of the present judgment, the Explanatory Notes to the CN do not have legally binding force (see *Develop Dr. Eisbein* EU:C:1994:252, paragraph 21 and *British Sky Broadcasting Group and Pace* EU:C:2011:248, paragraph 92). Consequently, as the Commission observes, the Annex A method must not be regarded as the only method applicable to determine the content of aromatic constituents in a specific product.

52 Furthermore, it must be stated that, according to the case-law of the Court, where it is apparent that they are contrary to the wording of the headings of the CN and the section or chapter notes, the Explanatory Notes to the CN must be disregarded (see, to that effect, *Case C-229/06 Sunshine Deutschland Handelgesellschaft* EU:C:2007:239, paragraph 31; *Case C-312/07 JVC France* EU:2008:324, paragraph 34, and *Kamino International Logistics* EU:C:2009:105, paragraphs 49 and 50).

53 It follows that, where the customs authorities of a Member State or an economic operator are confronted with a case in which the application of the Explanatory Notes to the CN leads to a result which is incompatible with the CN, they must have the possibility of bringing an action before the competent body.

54 Accordingly, as the Commission observes, if the customs authorities of a Member State or an economic operator take the view that the Annex A method does not lead to a result consistent with the CN, they can bring an action before the competent authority.

55 Thus, it is for the court hearing the dispute to decide the most appropriate method to determine the content of aromatic constituents in the product concerned.

56 Therefore, the answer to the first and third questions is that, in principle, it is for the national courts to establish the most appropriate method to determine the content of aromatic constituents of a specific product in order to classify it under Heading 2707 or Heading 2710 of the CN.

Questions 7 to 10

57 By its seventh to tenth questions, which it is appropriate to examine together, the referring court asks essentially about the interpretation of point 1 of the Explanatory Notes to the CN on subheading 2707 99 91 and 2707 99 99 of the CN.

58 In that connection, it must be recalled at the outset that, contrary to what the referring court states, the English version of the second paragraph of the Explanatory Notes to the CN on subheadings 2707 99 91 and 2707 99 99 states ‘these products include’ and not ‘these products are’.

- 59 In order to give a useful answer to the referring court, it must be recalled that, according to settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, *inter alia*, Case C-533/08 *TNT Express Nederland* EU:C:2010:243, paragraph 44 and the case-law cited, and Case C-219/11 *Brain Products* EU:C:2012:742, paragraph 13 and the case-law cited).
- 60 Furthermore, the need for a uniform interpretation of EU legislation makes it impossible for the text of a provision to be considered, in case of doubt, in isolation; on the contrary, it requires that it be interpreted and applied in the light of the versions existing in the other official languages (see, to that effect, Case C-199/08 *Eschig* EU:C:2009:538, paragraph 54 and the case-law cited).
- 61 In the present case, it is clear from the comparison between the language versions of the second subparagraph of the Explanatory Notes to the CN on subheadings 2707 99 91 and 2707 99 99 of the CN that that provision has the same meaning in the Bulgarian ('mezdu tezi produkti mogat da se upomenat') and English versions ('these products include') as the Spanish ('Entre esos productos se pueden citar'), German ('Von diesen Erzeugnissen sind z. B. zu nennen'), French ('Parmi ces produits, on peut citer') and Italian ('Fra questi prodotti si possono citare') versions, and that, therefore, it must be understood as being non-exhaustive.
- 62 That interpretation is supported by the wording of the final subparagraph of point 1 of the Explanatory Notes to the CN on subheadings 2707 99 91 and 2707 99 99 thereof. The use of the words 'for example' at the end of that subparagraph, clearly demonstrates that the list of headings and subheadings in the CN that it contains, in which products in which the weight of the aromatic constituents predominates and which therefore fall within Heading 2707 of the CN, but which do not fulfil the conditions laid down in point 1(a) to (d) of those notes is not exhaustive.
- 63 Furthermore, it must be stated that, since the Explanatory Notes to the CN are intended to facilitate the interpretation of the CN for the purposes of tariff classification, they must be interpreted in such a way as to ensure that the subheadings of the CN are properly applied.
- 64 If point 1 of the Explanatory Notes to the CN on subheadings 2707 99 91 and 2707 99 99 thereof were to be interpreted as meaning that the list contained in its last subparagraph is exhaustive, the Explanatory Notes would run counter to that purpose, which would have the result that a product such as that at issue in the main proceedings, in which the weight of aromatic constituents exceeds that of the non-aromatic constituents and therefore which falls within Heading 2707 of the CN could not be classified under any subheadings of that heading.
- 65 Furthermore, as the Commission has rightly stated, the interpretation according to which products fulfilling the requirements for classification under heading 2707 of the CN, but which do not fall within any other subheading thereof are to be classified under subheading 2707 99 99 is supported by the fact that subheading 2707 99 99 of the CN is entitled 'Other' and by the fact that that subheading is the final subheading of heading 2707.
- 66 Having regard to the foregoing, the answer to questions 7 to 10 is that point 1 of the Explanatory Notes to the CN on subheadings 2707 99 91 and 2707 99 99 thereof must be interpreted as being non-exhaustive, so that a product falling within Heading 2707 of the CN, which cannot be classified under a specific subheading must be classified under subheading 2707 99 99 of the CN.

Costs

- 67 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. **The criterion to take into consideration in order to classify products with characteristics such as those of the product at issue in the main proceedings under Heading 2707 or Heading 2710 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 1006/2011 of 27 September 2011, is the content by weight of the aromatic constituents in relation to the non-aromatic constituents.**
2. **The expression ‘aromatic constituents’ in Chapter 27 of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1006/2011, must be interpreted as being wider than ‘aromatic hydrocarbons’.**
3. **It is, in principle, for the national courts to establish the most appropriate method to determine the content of aromatic constituents of a specific product in order to classify it under Heading 2707 or Heading 2710 of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1006/2011.**
4. **Point 1 of the Explanatory Notes to the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1006/2011, on subheadings 2707 99 91 and 2707 99 99 thereof must be interpreted as being non-exhaustive, so that a product falling within Heading 2707 of the Combined Nomenclature which cannot be classified under a specific subheading must be classified under subheading 2707 99 99 thereof.**

[Signatures]