Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

23 April 2015 *

(Reference for a preliminary ruling — Common customs tariff — Tariff classification — Combined Nomenclature — Heading 1207 — Oilseeds — Heading 1209 — Seeds for sowing — Heading 1212 — Seeds principally used for human foodstuffs, not specified or included elsewhere — Import of raw shelled pumpkin seeds originating from China)

In Case C-635/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul București (Romania), made by decision of 17 April 2013, received at the Court on 4 December 2013, in the proceedings

SC ALKA CO SRL

v

Autoritatea Națională a Vămilor — Direcția Regională pentru Accize și Operațiuni Vamale Galați, formerly Autoritatea Națională a Vămilor — Direcția Regională pentru Accize și Operațiuni Vamale Constanța,

Direcția Generală a Finanțelor Publice a Municipiului București,

THE COURT (Tenth Chamber),

composed of C. Vajda (Rapporteur), President of the Chamber, A. Rosas and E. Juhász, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 4 February 2015,

after considering the observations submitted on behalf of:

— SC ALKA CO SRL, by C. Dobre, avocat,

— the Romanian Government, by R.H. Radu, V. Angelescu, D.M. Bulancea and C. Sobu, acting as Agents,

— the European Commission, by G.-D. Balan and A. Caeiros, acting as Agents,

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

* Language of the case: Romanian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the Combined Nomenclature ('the CN') 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 versions resulting, successively, from Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1) and Commission Regulation (EC) No 1214/2007 of 20 September 2007 (OJ 2007 L 286, p. 1), and the interpretation of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

2 The request has been made in proceedings between SC ALKA CO SRL ('ALKA') and the Autoritatea Națională a Vămilor — Direcția Regională pentru Accize și Operațiuni Vamale Constanța (National Customs Authority — Regional Directorate for excise and customs operations in Constanța) and the Direcția Generală a Finanțelor Publice a Municipiului București — Serviciul soluționare contestații (Directorate-General of Public Finances of the Municipality of Bucharest — Complaints' service; together 'the customs authority') concerning the tariff classification of pumpkin seeds imported from China in the CN.

Legal context

The Harmonised Commodity Description and Coding System

3 The Customs Cooperation Council, now the World Customs Organisation (WCO), was established by the convention creating that 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 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.

The CN

5 Regulation No 2658/87 established the CN, which is based on the HS, from which it takes the six-digit headings and subheadings, only the seventh and eighth digits forming subdivisions specific to the CN.

6 Under Article 12(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), the European Commission is required to adopt each year a regulation reproducing the complete version of the CN and the rates of customs duty, as they result from measures adopted by the Council of the European Union or by the Commission. They are to apply from 1 January of the following calendar year.

7 The versions of the CN applicable to the imports at issue in the main proceedings, which were made between 19 February 2007 and 29 May 2008, are those resulting from Regulations Nos 1549/2006 and 1214/2007. The relevant provisions of the CN, which are set out below, are worded identically in each of those versions.

8 Part Two of the CN includes a Section II, entitled 'Vegetable products', which contains a Chapter 12, entitled 'Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder', within which are headings 1207, 1209 and 1212 of the CN.

9 CN heading 1207 reads as follows:

CN code	Description	Rate of duty conventional (%)
... 1207	... Other oil seeds and oleaginous fruits, whether or not broken:	...
1207 20	- Cotton seeds:	
1207 20 10	- - For sowing ...	...
1207 20 90	- - Other	...
1207 40	- Sesamum seeds:	
1207 40 10	- - for sowing	...
1207 40 90	- - Other	...
1207 50	- Mustard seeds:	
1207 50 10	- - For sowing ...	...
1207 50 90	- - Other	...
	- Other:	
1207 91	- - Poppy seeds	
1207 91 10	- - For sowing ...	...
1207 91 90	- - - Other	...
1207 99	- - Other:	
1207 99 15	- - For sowing ...	...
	- - - Other:	
1207 99 91	- - - - Hemp seeds	...
1207 99 97	- - - - Other	exemption

10 CN heading 1209 reads as follows:

CN code	Description	Rate of duty conventional (%)
... 1209	... Seeds, fruit and spores, of a kind used for sowing:	...
1209 10 00	- Sugar beet seeds	...

	- Seeds of forage plants	
…	…	..
1209 30 00	- Seeds of herbaceous plants cultivated principally for their flowers	…
	- Other:	
1209 91	– – Vegetable seeds	
1209 91 10	– – – Kohlrabi seeds (Brassica oleracea, var. caulorapa and gongylodes L.)	…
1209 91 30	– – – Salad beet seed or beetroot seed (Beta vulgaris var. conditiva)	…
1209 91 90	– – – Other	3
…	…	…

11 CN heading 1212 reads as follows:

CN code	Description	Rate of duty conventional (%)
… 1212	… Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichorium intybus sativum) of a kind used primarily for human consumption, not elsewhere specified or included:	…
1212 20 00	– Seaweeds and other algae	…
	– Other:	
1212 91	– – Sugar beet	
…	…	…
1212 99	– – Other:	
1212 99 20	– – – Sugar cane	…
1212 99 30	– – – Locust beans (carob)	…
…	…	…
1212 99 70	– – – Other	exemption

12 Part One of the CN consists of a number of preliminary provisions. In that part, under Section I, which contains the general rules, Subsection A, entitled 'General rules for the interpretation of the Combined Nomenclature', provides:

'Classification of goods in the [CN] shall be governed by the following principles:

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.

…'

13 Notes 1 and 3 to Chapter 12 of the CN, which concern headings 1207 and 1209 respectively of that nomenclature, provide:

'1. Heading 1207 applies, inter alia, to palm nuts and kernels, cotton seeds, castor oil seeds, sesamum seeds, mustard seeds, safflower seeds, poppy seeds and shea nuts (karite nuts). It does not apply to products of heading 0801 or 0802 or to olives (Chapter 7 or 20).

…

3. For the purposes of heading No 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species Vicia faba) or of lupines are to be regarded as "seeds of a kind used for sowing".

Heading 1209 does not, however, apply to the following, even if for sowing:

…

(d) products of headings 1201 to 1207 or 1211.'

The explanatory notes to the HS

14 Pursuant to the second indent of Article 9(1)(a) of Regulation No 2658/87, the Commission draws up explanatory notes to the CN, which it publishes regularly in the *Official Journal of the European Union*. Those published on 28 February 2006 (OJ 2006 C 50, p. 1), applicable at the time of the imports at issue in the main proceedings, contain three notes relating to subheadings 1207 99 98, 1209 91 90 and 1212 99 80 of the CN.

15 It must be noted that the numbering of those headings within those explanatory notes referred to the numbering of the CN resulting from Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Regulation No 2658/87 (OJ 2005 L 286, p. 1). The numbering of subheadings 1207 99 98 and 1212 99 80 of the CN was amended by Regulations Nos 1549/2006 and 1214/2007, applicable to the facts of the main proceedings, and thus became subheadings 1207 99 97 and 1212 99 70 of the CN without any change in their scope.

16 The explanatory notes to the CN concerning subheading 1207 99 98 of the CN, which must therefore be read as interpreting the scope of subheading 1207 99 97 to the CN, are worded as follows:

‘1207 99 98 Other … This subheading also includes green soft-skinned pumpkin seeds genetically lacking the suberised outer layer of the seed coat (Cucurbita pepo L. convar. citrullinia Greb. var. styriaca and Cucurbita pepo L. var. oleifera Pietsch). These pumpkins are mainly cultivated for their oil and not for use as a vegetable, the latter seeds coming under subheading 1209 91 90. This subheading does not include roasted pumpkin seeds (subheading 2008 19).’

17 The explanatory notes to the CN concerning subheading 1209 91 90 of the CN are worded as follows:

‘1209 91 90 Other This subheading includes the seeds of pumpkins cultivated as vegetables when used for sowing, for eating (e.g., in salads), in the food industry (e.g., in bakery products) or for medicinal purposes. See also the Explanatory Notes to subheading 1207 99 98.’

18 The explanatory notes to the CN concerning subheading 1212 99 80 of the CN, which must be read as interpreting the scope of subheading 1212 99 70 thereof, state that that subheading does not include the pumpkin seeds covered by headings 1207 or 1209 of the CN.

The explanatory notes to the HS

19 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. The explanatory notes adopted during 2007 apply to the imports at issue in the main proceedings.

20 Notes 1 and 3 in Chapter 12 of the explanatory notes to the HS, entitled ‘Oilseeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder’, read as follows:

‘1. Heading 12.07 applies, inter alia, to palm nuts and kernels, cotton seeds, castor oil seeds, sesamum seeds, mustard seeds, safflower seeds, poppy seeds and shea nuts (karite nuts).

…

3. For the purposes of heading 12.09, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species Vicia faba) or of lupines are to be regarded as “seeds of a kind used for sowing”.

Heading 12.09 does not, however, apply to the following, even if for sowing:

…

(d) Products of headings Nos 12.01 to 12.07 or 12.11.’

21 Furthermore, the general considerations under Chapter 12 of the explanatory notes to the HS are worded as follows:

‘Headings 12.01 to 12.07 cover seeds and fruits of a kind used for the extraction (by pressure or by solvents) of edible or industrial oils and fats, whether they are presented for that purpose, for sowing or for other purposes. …’

22 The explanatory notes concerning heading 1207 of the HS are worded as follows:

‘This heading covers seeds and fruits of a kind used for the extraction of edible or industrial oils and fats, other than those specified in headings 12.01 to 12.06 (see also General Explanatory Note).

…’

23 In accordance with the explanatory notes to the HS concerning heading 1209, the heading excludes oil seeds and oleaginous fruits of headings 1201 to 1207 of the HS.

24 Finally, the explanatory notes concerning heading 1212 of the HS are worded as follows:

‘…

(D) fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichorium intybus sativum) of a kind used primarily for human consumption, not elsewhere specified or included:

This group includes fruit stones and kernels and other vegetable products of a kind mainly used, directly or indirectly, for human consumption, but not elsewhere specified or included in the nomenclature.

…’

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

25 ALKA is an import-export company with its head office in Romania. Its principal activity is wholesale trade in coffee, cocoa and condiments.

26 Between 19 February 2007 and 29 May 2008, ALKA imported into Romania 1 560 bags of raw shelled pumpkin seeds from China, the description of which was as follows: ‘Chinese white pumpkin seeds size: 13 cm’.

27 When carrying out the customs formalities, ALKA classified the imported pumpkin seeds under subheading 1207 99 97 of the CN, in respect of which there is an exemption from customs duty on import.

28 Following an inspection carried out by the customs office of Constanța Sud (Romania), the customs officer took the view that the imported pumpkin seeds ought to have been classified under tariff subheading 1209 91 90 of the CN, for which the customs duty on import is set at 3%. In consequence, on 2 February 2009, the customs office of Constanța Sud adopted a decision pursuant to which the differential customs duties on import were charged to ALKA, namely Romanian lei (RON) 153 748 for customs duties, RON 29 209 for value added tax and RON 77 536 for late-payment interest, giving a total amount of RON 260 493.

29 ALKA brought a claim against that regularisation decision, which was rejected by the customs authority. Following the rejection of that claim, ALKA appealed to the referring court, which upheld its appeal. However, the customs authority appealed against that decision before the Curtea de Apel București (Court of Appeal, Bucharest, Romania), which upheld it on the ground that the referring court had not correctly applied the rules concerning the furnishing of evidence as regards the actual destination of the imported pumpkin seeds. The Curtea de Apel București consequently referred the case back to the referring court to be reheard.

30 Rehearing the dispute, the referring court considers that its resolution requires an interpretation of headings 1207 and 1209 of the CN.

31 In those circumstances the Tribunalul București (District Court, Bucharest) decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must raw shelled pumpkin (vegetable) seeds, intended to undergo heat and mechanical treatment in order to be used for human consumption (as a snack-type food) be classified under heading 1207 … or under heading 1209 … of the [CN]?

(2) Must raw shelled pumpkin (vegetable) seeds, intended to undergo heat and mechanical treatment in order to be used for human consumption (as a snack-type food) be classified, according to the explanatory notes to the [CN], under heading 1207 … or under heading 1209 [of the CN]?

(3) Where there exists a contradiction between the customs classification under the Common Customs Tariff and the customs classification derived from the explanatory notes [to the CN] concerning the same product (raw shelled pumpkin — vegetable — seeds), which of those customs classifications applies in this case?

(4) In the light of Articles 109(a), 110 and 256(3) of [Regulation No 2454/1993], are special administrative procedures necessary, such as submitting an application or presenting a EUR.1 certificate to a specific authority, in order to trigger the specific effect, namely, the concession by the customs authority of the preferential tariff scheme under Article 98 of the same regulation?’

Consideration of the questions referred

The first to third questions

32 By its first three questions, which it is appropriate to examine together, the referring court asks, in essence, whether the pumpkin seeds at issue in the main proceedings should be classified under heading 1207 or 1209 of the CN.

33 As a preliminary point, it must be borne in mind that, when the Court is requested to give a preliminary ruling on a matter of tariff classification, 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 (see, inter alia, judgment in *Panasonic Italia and Others*, C-472/12, EU:C:2014:2082, paragraph 32 and the case-law cited).

34 It will thus be for the referring court to classify the products at issue in the main proceedings in the light of the answers provided by the Court to the questions it has referred (judgment in *Panasonic Italia and Others*, C-472/12, EU:C:2014:2082, paragraph 33 and the case-law cited).

35 Furthermore, it is apparent from the Commission’s written observations and those made by the parties at the hearing that, in the light of the judgment in *Sunshine Deutschland Handelsgesellschaft* (C-229/06, EU:C:2007:239, paragraphs 30 to 32), the classification of the pumpkin seeds at issue in the main proceedings under heading 1212 of the CN might also be relevant.

36 Consequently, it is appropriate to reformulate the first three questions to say that the referring court asks the Court to clarify the criteria which must be applied in order to ascertain whether the pumpkin seeds at issue in the main proceedings should be classified under heading 1207, 1209 or 1212 of the CN.

37 It follows from the Court's settled case-law that, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes 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 section or chapter notes. The objective characteristics and properties of products must be capable of being assessed at the time of customs clearance (see, to that effect, judgment in *Panasonic Italia and Others*, C-472/12, EU:C:2014:2082, paragraphs 35 and 36 and the case-law cited).

38 As regards, firstly, the scope of heading 1207 of the CN, it must be noted that that heading is entitled 'Other oil seeds and oleaginous fruits, whether or not broken', but the CN does not define what is to be understood by 'other oil seeds and oleaginous fruits' within the meaning of that heading.

39 As generally understood, the concept of 'oil' seeds and 'oleaginous' fruits means those from which it is possible to extract an oil.

40 Account must also be taken of the explanatory notes to the CN and to the HS which, in accordance with the Court's settled case-law, are, for their part, an important aid for interpreting the scope of the various tariff headings but do not have legally binding force. The wording of those notes must therefore be consistent with the provisions of the CN and cannot alter their scope (see, inter alia, judgment in *Sunshine Deutschland Handelsgesellschaft*, C-229/06, EU:C:2007:239, paragraph 27).

41 First of all, with regard to the explanatory notes to the HS, the general considerations in Chapter 12 thereof state that headings 1201 to 1207 of the HS cover 'seeds and fruits of a kind used for the extraction (by pressure or by solvents) of edible or industrial oils and fats, whether they are presented for that purpose, for sowing or for other purposes'.

42 Next, in accordance with the explanatory notes to the HS concerning heading 1207, that heading covers 'seeds and fruits of a kind used for the extraction of edible or industrial oils and fats, other than those specified in headings 12.01 to 12.06'.

43 Finally, the explanatory notes to the CN concerning subheading 1207 99 98 of the CN state that that subheading also covers 'green soft-skinned pumpkin seeds genetically lacking the suberised outer layer of the seed coat (Cucurbita pepo L. convar. citrullinia Greb. var. styriaca and Cucurbita pepo L. var. oleifera Pietsch). These pumpkins are mainly cultivated for their oil'.

44 It follows from the foregoing considerations that the concept of 'other oilseeds and oleaginous fruits' under heading 1207 of the CN must be interpreted as meaning seeds or fruits normally used for the extraction of edible or industrial oils and fats, other than those specified in headings 1201 to 1206 of the CN. It is for the referring court to ascertain whether the pumpkin seeds at issue in the main proceedings satisfy those criteria and, in particular, whether they are normally used for the extraction of edible or industrial oils and fats, in which case they must be classified under heading 1207 of the CN.

45 In that regard, it is appropriate to state, as the Romanian Government and the Commission rightly did in response to the written questions posed by the Court, that seeds which are 'oilseeds' within the meaning of heading 1207 of the CN cannot be classified under headings 1209 or 1212 of the CN, even if they are not used for the extraction of edible or industrial oils and fats but for sowing or human consumption.

46 Firstly, heading 1209 of the CN is entitled ‘seeds, fruit and spores, of a kind used for sowing’. Heading 1207 includes subheadings referring expressly to oilseeds for sowing, such as subheading 1207 99 15, and oilseeds not for sowing, such as subheading 1207 99 97.

47 In addition, both note 3 to Chapter 12 of the CN and note 3 to Chapter 12 of the explanatory notes to the HS state that the products covered by headings 1201 to 1207 are excluded from heading 1209 ‘even if for sowing’.

48 Consequently, seeds which are oilseeds within the meaning of heading 1207 of the CN must be classified under that heading and not under heading 1209 of the CN, even if they are not used for the extraction of edible or industrial oils and fats but for sowing or human consumption.

49 Secondly, with regard to heading 1212 of the CN, it follows from its wording that it covers, inter alia, fruit stones and kernels and other vegetable products of a kind used primarily for human consumption, not elsewhere specified or included in the CN.

50 It follows from that wording that heading 1212 of the CN constitutes a residual category which applies only when no other heading of the CN applies. Consequently, seeds which are oilseeds within the meaning of heading 1207 of the CN must be classified under that heading and not under heading 1212 of the CN, even if they are not used for the extraction of edible or industrial oils and fats but for sowing or human consumption.

51 Having regard to the foregoing, it is for the referring court, in order to make a tariff classification of the pumpkin seeds at issue in the main proceedings, to ascertain whether those seeds are normally used for the extraction of edible or industrial oils and fats, but are not covered by headings 1201 to 1206 of the CN. If that is the case those seeds must be classified under heading 1207 of the CN because they are oilseeds, whether or not they are actually used for the extraction of edible or industrial oils and fats or for sowing or human consumption.

52 If it proves to be the case that those seeds are not oilseeds within the meaning of heading 1207 of the CN, it is for the referring court to ascertain whether they are covered by headings 1209 or 1212 of the CN.

53 Accordingly, it is necessary to recall the criteria which enable a distinction to be drawn between the respective scopes of headings 1209 and 1212 of the CN.

54 Having regard to its wording, referred to in paragraph 49 of this judgment, heading 1212 of the CN is intended to apply only when heading 1209 of the CN does not apply to the pumpkin seeds at issue in the main proceedings.

55 The Court has already stated that heading 1209, entitled ‘Seeds, fruits and spores, of a kind used for sowing’, relates only to plant matter having the ability to germinate and create a new plant. By contrast, heading 1212 is a residual category covering plant seeds which are intended, not to be sown, but for human consumption (judgment in *Sunshine Deutschland Handelsgesellschaft*, C-229/06, EU:C:2007:239, paragraph 30).

56 Thus, the Court has held that shelled pumpkin seeds which have lost their ability to germinate and which are intended for use in the baking industry come under subheading 1212 99 80 of the CN (judgment in *Sunshine Deutschland Handelsgesellschaft*, C-229/06, EU:C:2007:239, paragraph 32).

57 It follows from the foregoing that, if the pumpkin seeds at issue in the main proceedings are not oilseeds within the meaning of heading 1207 of the CN, those seeds must be classified under heading 1209 of the CN if they could still be germinated when they were imported, whether or not they are actually used for the extraction of edible or industrial oils and fats or for sowing or human consumption. If that is not the case, those seeds must be classified under heading 1212 of the CN.

58 Having regard to all the foregoing considerations, the answer to the first three questions is that, in order to make a tariff classification of the pumpkin seeds at issue in the main proceedings, it is for the referring court to ascertain whether those seeds are normally used for the extraction of edible or industrial oils and fats, but are not covered by headings 1201 to 1206 of the CN. If that is the case, those seeds must be classified under heading 1207 of the CN because they are oilseeds, whether or not they are actually used for the extraction of edible or industrial oils and fats or for sowing or human consumption. If that is not the case, those seeds will come under heading 1209 of the CN if they could still be germinated when they were imported, whether or not they are actually used for the extraction of edible or industrial oils and fats or for sowing or human consumption, or under heading 1212 of the CN if they could not still be germinated.

The fourth question

59 By its fourth question, the referring court asks whether there are any special administrative procedures which lead to a EUR.1 certificate being effective as regards the customs authorities.

60 The Romanian Government is of the opinion that the fourth question should be rejected as inadmissible, on the ground that the answer is not useful to the resolution of the dispute in the main proceedings.

61 The Romanian Government submits, in that regard, that pumpkin seeds imported from China, such as those at issue in the main proceedings, are not covered by the preferential tariff measures adopted by the European Union. That government adds that, in any event, ALKA did not seek to benefit from preferential customs treatment when making its customs declaration and did not submit any certificate as to the preferential origin of the seeds at issue in the main proceedings.

62 Article 94(a) of the Rules of Procedure of the Court provides that a request for a preliminary ruling is to contain a summary of the subject-matter of the dispute and the relevant findings of fact as determined by the referring court or tribunal, or, at least, an account of the facts on which the questions are based.

63 It must be noted, firstly, that the only relevant findings of fact set out in the request for a preliminary ruling concern the facts, on the one hand, that ALKA did not seek preferential customs treatment when making its customs declaration and, on the other, that ALKA holds the certificates of origin on the basis of which the imported seeds were released.

64 Next, when questioned in that regard by the Court, ALKA, the Romanian Government and the Commission were not able to identify a preferential tariff scheme in EU law which could apply to imports of pumpkin seeds from China.

65 Finally, and notwithstanding a written request from the Court to that effect, ALKA has not even claimed that it sent a certificate proving the preferential origin of the pumpkin seeds at issue in the main proceedings to the national authorities.

66 It follows from the foregoing that the fourth question must be rejected as inadmissible, since the request for a preliminary ruling does not contain sufficient relevant findings of fact on which that question is based.

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 (Tenth Chamber) hereby rules:

It is for the referring court, in order to make a tariff classification of the pumpkin seeds at issue in the main proceedings, to ascertain whether those seeds are normally used for the extraction of edible or industrial oils and fats, but are not covered by headings 1201 to 1206 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, in the versions resulting, successively, from Commission Regulation (EC) No 1549/2006 of 17 October 2006 and Commission Regulation (EC) No 1214/2007 of 20 September 2007. If that is the case, those seeds must be classified under heading 1207 of the Combined Nomenclature because they are oilseeds, whether or not they are actually used for the extraction of edible or industrial oils and fats or for sowing or human consumption. If that is not the case, those seeds will come under heading 1209 of the Combined Nomenclature if they could still be germinated when they were imported, whether or not they are actually used for the extraction of edible or industrial oils and fats or for sowing or human consumption, or under heading 1212 of the Combined Nomenclature if they could not still be germinated.

[Signatures]