Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

3 June 2021 *

(Reference for a preliminary ruling – Common customs tariff – Tariff classification – Combined Nomenclature – Goods made of different materials – Plant fibres – Melamine resin – Headings 3924 and 4419 – Goods described as 'bamboo beakers')

In Case C-76/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad – Varna (Administrative Court, Varna, Bulgaria), made by decision of 5 February 2020, received at the Court on 12 February 2020, in the proceedings

'BalevBio' EOOD

v

Teritorialna direktsia Severna morska, Agentsia 'Mitnitsi',

intervener:

Okrazhna prokuratura – Varnenska,

THE COURT (Eighth Chamber),

composed of N. Wahl, President of the Chamber, F. Biltgen (Rapporteur) and L.S. Rossi, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– 'BalevBio' EOOD, by Y. Yakimov and D. Dimitrova, advokati,

– the Bulgarian Government, by M. Georgieva and L. Zaharieva, acting as Agents,

– the European Commission, by M. Salyková and Y. Marinova, acting as Agents,

* Language of the case: Bulgarian.

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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 (OJ 1987 L 256, p. 1), as amended by Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 (OJ 2016 L 294, p. 1) ('the CN'), in particular headings 3924 and 4419 of that nomenclature, and rule 3 of the General rules for the interpretation of the nomenclature ('the General rules for the interpretation of the CN').

2 The request has been made in proceedings between 'BalevBio' EOOD and the Teritorialna direktsia Severna morska, Agentsia 'Mitnitsi' ('North Coast' Regional Directorate, Customs Agency, Bulgaria) concerning the latter's decision imposing a financial penalty on BalevBio, the 'North Coast' Regional Directorate of the Customs Agency having found that the tariff classification in the CN of goods described in the relevant customs declarations as comprising 'bamboo beaker' was incorrect.

Legal context

The HS

3 The Harmonised Commodity Description and Coding System ('the HS') was drawn up by the Customs Cooperation Council, now the World Customs Organization (WCO), established by the Convention establishing a Customs Cooperation Council, concluded in Brussels on 15 December 1950. The HS was established by the International Convention on the Harmonized Commodity Description and Coding System, concluded in Brussels on 14 June 1983 (*United Nations Treaty Series*, vol. 1503, p. 4, No 25910 (1988)), and approved, with its protocol of amendment 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) ('the HS Convention').

4 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 established by Article 6 of that convention.

5 Under Article 3(1)(a) of the HS Convention, each Contracting Party undertakes that its customs tariff and statistical nomenclatures will be in conformity with the HS, first, by using all the headings and the subheadings of the HS without addition or modification, together with their related numerical codes, second, by applying the 'General rules for the interpretation of the HS' and all the section, chapter and subheading notes without modifying their scope, and, third, by following the numerical sequence of the HS.

6 Classification of goods in the CN is carried out in accordance with the principles laid down by the 'General rules for the interpretation of the HS'.

7 Rule 3 of the 'General rules for the interpretation of the HS' provides:

'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;

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to [rule] 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable;

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

8 The explanatory note relating to rule 3(b) of the 'General rules for the interpretation of the HS' states:

'(VI) This second method relates only to:

(1) Mixtures;

(2) Composite goods consisting of different materials:

…

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

…'

9 Section VII of the HS, entitled 'Plastics and articles thereof; rubber and articles thereof' includes, inter alia, Chapter 39 of the HS, entitled 'Plastics and articles thereof'.

10 Heading 3924 of the HS, entitled 'Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics', includes the following subheadings:

'3924.10 – Tableware and kitchenware

3924.90 – Other'

11 The general considerations set out in the explanatory notes on Chapter 39 of the HS state, inter alia:

'Primary forms

Headings 39.01 to 39.14 cover goods in primary forms only.

The expression "primary forms" … applies only to the following forms:

(1) Liquids and pastes. … In addition to substances necessary for "curing" (such as hardeners … or other co-reactants and accelerators), these liquids or pastes may contain other materials such as plasticisers, stabilisers, fillers and colouring matter, chiefly intended to give the finished products special physical properties or other desirable characteristics. …

(2) Powder, granules and flakes. In these forms they are employed for moulding, for the manufacture of varnishes, glues, etc. These materials may incorporate fillers (e.g., wood flour, cellulose, textile fibres, mineral substances, starch) …'

12 According to the explanatory note relating to heading 3924 of the HS:

'This heading covers the following articles of plastics:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.

…

The heading also covers cups (without handles) for table or toilet use, not having the character of containers for the packing or conveyance of goods, whether or not sometimes used for such purposes. …'

13 Section IX of the HS, entitled 'Wood and articles of wood; wood charcoal; cork and articles of cork; manufactures of straw, of esparto or of other plaiting materials (basketware and wickerwork)', includes, inter alia, Chapter 44, entitled 'Wood and articles of wood, wood charcoal'.

14 The explanatory notes relating to Chapter 44 of the HS state, inter alia:

'…

3. Headings 44.14 to 44.21 apply to articles of the respective descriptions of particle board or similar board, fibreboard, laminated wood or densified wood as they apply to such articles of wood.

…

6. Subject to Note 1 above and except where the context otherwise requires, any reference to "wood" in a heading of this chapter applies also to bamboos and other materials of a woody nature.

…’

15 The general considerations set out in the explanatory notes on Chapter 44 of the HS state:

‘This Chapter covers unmanufactured wood, semi-finished products of wood and, in general, articles of wood.

These products may be grouped broadly as follows:

…

(3) Particle board and similar board, fibreboard, laminated wood and densified wood (headings 44.10 to 44.13).

(4) Articles of wood (except certain kinds specified in Note 1 to this Chapter and which, together with others, are referred to in the explanatory notes to particular headings below) (headings 44.14 to 44.21).

…

Headings 44.14 to 44.21 which cover manufactured articles of wood, apply to such articles whether made of ordinary wood or of particle board or similar board, fibreboard, laminated wood or densified wood (see Note 3 to this Chapter).

…

However, products such as bamboo in chips or particles (used for the manufacture of particle board, fibreboard or cellulose pulp) and articles of bamboo or other woody materials, other than basketware, furniture or other articles specifically included in other Chapters, are classified in this Chapter with the corresponding products or articles of true wood, except where the context otherwise requires (e.g., in the case of headings 44.10 and 44.11) (see Note 6 to this Chapter).’

16 According to the explanatory note relating to heading 4410 of the HS:

‘…

Particle board is a flat product manufactured in various lengths, widths and thicknesses by pressing or extrusion. … It may also be produced from other ligneous materials such as fragments obtained from bagasse, bamboo, … Particle board is normally agglomerated by means of an added organic binder, usually a thermosetting resin, which generally does not exceed 15% of the weight of the board.

…

‘The heading does not cover:

(a) Plates or strips of plastics containing wood flour as a filler (Chapter 39).

…’

17 According to the explanatory note relating to heading 4419 of the HS:

'This heading covers only household articles of wood, whether or not turned, or of wood marquetry or inlaid wood, which are of the nature of tableware or kitchenware. It does not, however, cover goods which are primarily ornamental in character, nor furniture.

The articles of this heading may be made of ordinary wood or of particle board or similar board, fibreboard, laminated wood or densified wood (see Note 3 to this Chapter).

The heading includes: spoons, forks, salad-servers; platters and serving-dishes; jars, cups …

…'

The CN

18 The customs classification for goods imported into the European Union is governed by the CN, which is based on the HS.

19 Part One of the CN, containing the 'preliminary provisions', includes a Section I on 'General rules', subsection A of which, entitled 'General rules for the interpretation of the [CN]', provides:

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

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

2. …
   (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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 …, 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;

(b) mixtures, composite goods consisting of different materials or made up of different components …, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable;

…’

20 Part Two of the CN, entitled ‘Schedule of Customs Duties’, contains, inter alia, Section VII, entitled ‘Plastics and articles thereof; rubber and articles thereof’.

21 Section VII contains, inter alia, Chapter 39 of the CN, entitled ‘Plastics and articles thereof’.

22 Note 1 to Chapter 39 of the CN provides, inter alia:

‘Throughout the nomenclature, the expression “plastics” means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.’

23 Heading 3909 of the CN is worded as follows:

‘Amino-resins, phenolic resins and polyurethanes, in primary forms:

…

3909 20 00 – Melamine resins’

24 Heading 3924 of the CN is worded as follows:

‘Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:

3924 10 00 – Tableware and kitchenware

3924 90 00 – Other.’

25 Part Two of the CN includes Section IX, entitled ‘Wood and articles of wood; wood charcoal; cork and articles of cork; manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork’, which contains, inter alia, Chapter 44, entitled ‘Wood and articles of wood; wood charcoal’.

26 The explanatory notes relating to Chapter 44 of the CN state, inter alia:

‘…

3. Headings 4414 to 4421 apply to articles of the respective descriptions of particle board or similar board, fibreboard, laminated wood or densified wood as they apply to such articles of wood.

…

6. Subject to note 1 above and except where the context otherwise requires, any reference to “wood” in a heading of this chapter applies also to bamboos and other materials of a woody nature.

…’

27 Heading 4410 of the CN is worded:

‘Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances:

Of wood:

4410 11 – – Particle board:

…

4410 12 – – Oriented strand board (OSB)

…’

28 Heading 4419 of the CN is worded:

‘Tableware and kitchenware, of wood:

– Of bamboo:

4419 11 00 – – Bread boards, chopping boards and similar boards

4419 12 00 – – Chopsticks

4419 19 00 – – Other

…’

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

29 During the period 9 December 2016 to 11 October 2017, BalevBio made a total of 18 customs declarations for the purposes of the release for free circulation and use of goods described as ‘bamboo beakers’ originating in China, which it classified under subheadings 4419 00 90 00 and 4419 19 00 00 of the CN, for which the applicable rate of customs duties on imports is 0%.

30 Following one of those customs declarations made on 12 June 2017 (‘the customs declaration of 12 June 2017’), the competent customs authorities carried out an inspection of those goods and took a sample of them which was examined by the central customs laboratory. On 1 November 2017, that laboratory issued a report stating that the sample analysed consisted of bamboo fibres, corn starch and melamine formaldehyde resin. According to that report, the starch and bamboo fibres also played a role as a filler material. That report concluded that those goods constituted beakers and plastic tableware containing melamine.

31 The competent customs authorities found that binding tariff information decisions (BTI) had been issued by the Hauptzollamt Hannover (Principal Customs Office, Hannover, Germany) for goods similar to the goods covered by the customs declaration of 12 June 2017. Those decisions stated that such goods should be classified, in accordance with rule 3(b) of the General rules for

the interpretation of the CN, on the basis of the material or component which gives them their essential character in so far as it is possible to determine it. According to those decisions, the presence of plastic (melamine formaldehyde resin) was decisive and meant that the goods could not be classified under heading 4419 of the CN.

32 In the action brought against the decision of the competent customs authorities relating to the customs declaration of 12 June 2017, BalevBio submitted a report drawn up by the Lesotehnicheski universitet (University of Forestry, Bulgaria), stating that the goods covered by that declaration were made up of 72.33% cellulose, hemicellulose and lignin, that is, plant lignocellulosic fibres, and 25.2% binding substance, namely melamine resin, and therefore constituted a product which should be classified as a plant-based material containing a matrix of synthetic binding substance. That report excluded the classification of those goods as plastic because their synthetic content was significantly less than 50%.

33 The dispute in the main proceedings concerns only the importation of goods which were the subject of a customs declaration made by the applicant in the main proceedings on 28 April 2017 ('the goods concerned'). On the basis of the information gathered during their investigation, the competent customs authorities took the view that those goods were identical to the goods covered by the customs declaration of 12 June 2017 and that, in accordance with the case-law of the Court of Justice, the results of the analyses carried out by the central customs laboratory and the University of Forestry could be transposed to the goods concerned.

34 For the 18 customs declarations made by the applicant in the main proceedings, including the declaration relating to the goods concerned, the competent customs authorities took the view that the tariff classification under subheadings 4419 00 90 00 and 4419 19 00 00 of the CN was incorrect. According to those authorities, it is apparent from rule 1, rule 2(b), rule 3(b) and rule 6 of the General rules for the interpretation of the CN that the plastic component, namely melamine formaldehyde resin, gives the goods concerned their shape, hardness and rigidity and gives them their essential character, so that those goods come under heading 3924 of the CN and, more specifically, in view of the origin of those goods, they come under subheading 3924 10 00 11 of the CN, for which the applicable rate of customs duties is 6.5%. Consequently, to reflect that, those authorities, by the decisions of 23 February and 5 September 2018 ('the correction decisions'), amended the classification of the goods concerned in all the customs declarations made by the applicant in the main proceedings.

35 The applicant in the main proceedings brought two actions against the correction decisions before the Administrativen sad – Varna (Administrative Court, Varna, Bulgaria), which were dismissed as unfounded. That court held that, since the goods concerned were made up of two main components, namely plant fibres and melamine resin, which do not directly come under any heading of the CN, they had to be classified in accordance with rule 3(b) of the General rules for the interpretation of the CN. Furthermore, in the light of the explanatory notes regarding headings 4410 and 4419 in the HS, that court held that, although those goods are made mostly of plants fibres, the plastic content exceeded 15% and, consequently, those goods had to be regarded as plastic tableware.

36 The applicant in the main proceedings brought an appeal on a point of law before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), which, by the decision of 29 October 2019, set aside the judgment delivered by the referring court in one of the two cases relating to the actions referred to in the preceding paragraph. That case does not, however, relate to the goods concerned, and the Supreme Administrative Court took the view that, for the

purposes of the tariff classification of those goods, it was necessary to apply rule 3(a) of the General rules for the interpretation of the CN, which states that the heading which provides the most specific description of the goods is to be preferred to headings providing a more general description. The Varhoven administrativen sad (Supreme Administrative Court) took the view that, even though the plant fibres, namely bamboo, are linked to another component, namely melamine formaldehyde resin, they were present in the goods concerned in a greater quantity and therefore determined the most specific heading. It concluded that the tariff classification of those goods by the applicant in the main proceedings was correct.

37 In addition to the correction decisions, the competent customs authorities issued several decisions imposing on the applicant in the main proceedings administrative penalties for customs fraud under the relevant national law, including the decision of 23 August 2018 ('the penalty decision of 23 August 2018') in which those authorities criticised the applicant in the main proceedings for having, in the customs declaration of 28 April 2017, classified the goods concerned under subheading 4419 19 00 00 and not under subheading 3924 10 00 11 of the CN, thus having avoided paying the corresponding customs duties and a proportion of other fees owed to the State, in the total sum of 6 335.43 leva (BGN) (approximately EUR 3 150).

38 The first decision of the Rayonen sad Devnya (District Court, Devnya, Bulgaria), concerning the lawfulness of the penalty decision of 23 August 2018, was set aside by the referring court, which had sent the case back to it for re-examination. In the course of that examination, a chemical expert report was commissioned by the court and carried out solely on the basis of the information in the file. It is apparent from that expert report that the composition and content of the components of the goods concerned are identical to those of the goods covered by the customs declaration of 12 June 2017, namely a plant fibre content of 75% and a melamine resin content of 25%. According to that report, each of the elements forming the composition of the goods concerned contributes to the properties of the goods. Thus, based on that report, plant fibres are decisive for thermal insulation properties, low density, biodegradability, rigidity, health and safety at work, environmental safety, sustainable resources and price, whereas melamine resin is decisive for protection against outdoors and mechanical shocks, water tightness, shape retention, rigidity and longer product life.

39 In the presentation of that report, the expert stated that the nature of the materials and their quantity depended on the intended use of the product and the conditions under which that product would be used. In his view, the use of melamine resin has a better effect of impregnating the composite material and strengthens some of its properties such as impermeability, resistance to washing, chemical effects and increased density. In addition, in the expert's view, the context in which the use occurs requires a higher binding content, such as melamine resin, in order to ensure the conditions of use, which require, inter alia, good impermeability, an increased density and a smooth surface area.

40 On the basis of that information, the Rayonen sad Devnya (District Court, Devnya), by decision of 14 October 2019, upheld the penalty decision of 23 August 2018, holding that, in the light of the chemical expert's report and the explanatory notes relating to headings 4410 and 4419 of the HS, even though the goods concerned were predominantly made up of plant fibres, those goods could not be classified as articles of wood because the binding material content used in them, namely melamine resin, exceeds 15%. That court concluded that the goods concerned were a composite material containing two main components, namely wood fibres and melamine resin, which do not expressly come under any CN heading, so that their tariff classification, in accordance with

rule 3(b) of the General rules for the interpretation of the CN, had to be based on the material giving the product its essential character. According to that court, the goods were therefore plastic tableware.

41 The applicant in the main proceedings brought an appeal before the referring court against the decision of the Rayonen sad Devnya (District Court, Devnya) of 14 October 2019.

42 The referring court points out that no appeal lies against the judgment which it is called upon to give in the main proceedings. However, in the context of the various actions which it has heard concerning the lawfulness of penalty decisions, its judges have given contradictory decisions: certain judges have held that the goods concerned had to be classified under rule 3(b) of the General rules for the interpretation of the CN, namely according to the material giving the goods their essential character, whereas other judges have held that, in that regard, it was necessary to apply rule 3(a) of the General rules for the interpretation of the CN and to regard the heading covering the component with the predominant quantity as being the 'heading which provides the most specific description'.

43 Thus, the referring court notes that it is not disputed that the goods concerned are made up of several different materials, namely 72.33% plant fibres, in particular bamboo and corn starch, and 25.2% melamine resin, and may therefore be classified under two or more subheadings, but that there is doubt as to whether, for the purposes of the tariff classification of those goods, rule 3(a) or rule 3(b) of the General rules for the interpretation of the CN should be applied, and as to which criteria should be taken into account in that regard, and as to the interpretation of the relevant CN headings.

44 In those circumstances, the Administrativen sad – Varna (Administrative Court, Varna) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is [rule 3(a) of the General rules for the interpretation of the CN] in [Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 amending Annex I to Regulation No 2658/87 (OJ 2015 L 285, p. 1)] to be interpreted as meaning that, for the purposes of the classification of products such as those at issue in the main proceedings, which are made up of different materials, the heading covering the material that outweighs the other materials by quantity (bulk) is the "heading which provides the most specific description" or is that interpretation only possible if the heading itself provides for quantity (bulk) as a criterion that provides the most specific, precise and complete description?

(2) Depending on the answer to the first question and in light of the [HS] explanatory notes on headings 4410 and 4419: Is [Implementing Regulation 2015/1754] to be interpreted as meaning that heading 4419 does not include products of particle board (fibre) in which the weight of the binding substance (thermosetting resin) exceeds 15% of the weight of the board?

(3) Is [Implementing Regulation 2015/1754] to be interpreted as meaning that goods such as those at issue in the main proceedings, that is beakers manufactured from a composite material made up of plant lignocellulosic fibres in a proportion of 72.33% and a melamine resin binding substance in a proportion of 25.2%, are to be categorised under subheading 3924 10 00 of Annex I [to Regulation No 2658/87]?'

Consideration of the questions referred for a preliminary ruling

Admissibility

45 The applicant in the main proceedings disputes the admissibility of the request for a preliminary ruling submitted by the referring court, arguing that, in the light of the case-law of the Varhoven administrativen sad (Supreme Administrative Court) providing precise guidelines applicable to the dispute in the main proceedings, the answer to the questions referred leaves no scope for any reasonable doubt.

46 In that regard it should be recalled that, first, according to the settled case-law of the Court, in proceedings under Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of each case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling. It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraphs 28 and 29, and the case-law cited).

47 In the present case, it is not obvious that the interpretation of headings 3924 and 4419 of the CN and of rule 3 of the General rules for the interpretation of the CN, sought by the referring court, bears no relation to the actual facts of the main action or its purpose or concerns a hypothetical problem. By contrast, it is apparent from the request for a preliminary ruling that the referring court expresses, in a reasoned manner, doubts as to the interpretation to be given to the relevant provisions of EU law and points out that the relevant case-law of its judges is contradictory.

48 Consequently, the request for a preliminary ruling made by the referring court must be declared admissible.

The substance

49 As a preliminary point, it should be noted 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 relevant products correctly in the CN, rather than to effect that classification itself. In any event, the national court is in a better position to do so. 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 (judgment of 25 February 2016, *G. E. Security*, C-143/15, EU:C:2016:115, paragraph 41 and the case-law cited).

50 Consequently, it is for the referring court to classify the goods concerned in the light of the answers given by the Court of Justice to the questions referred.

51 Furthermore, 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. In that light, the Court may have to reformulate the questions referred to it (judgment of 8 September 2016, *Schenker*, C-409/14, EU:C:2016:643, paragraph 72 and the case-law cited).

52 In the present case, it is apparent from the request for a preliminary ruling that the referring court is uncertain as to the interpretation to be given to headings 3924 and 4419 of the CN for the purposes of the tariff classification of the goods concerned.

53 In that regard, it should be noted that, in so far as the penalty decision of 23 August 2018, which is the subject of the dispute in the main proceedings, concerns the customs declaration of 28 April 2017, by which the goods concerned were placed under the procedure for release for free circulation and consumption, the EU law applicable at the material time was not Implementing Regulation 2015/1754, to which the referring court formally refers in the request for a preliminary ruling, but Implementing Regulation 2016/1821, which entered into force on 1 January 2017.

54 Thus, it must be held that, by its questions, which it is appropriate to examine together, the referring court asks, in essence, whether the CN must be interpreted as meaning that goods such as the goods concerned, described as 'bamboo beakers', made up of 72.33% plant fibres and 25.2% melamine resin, come under heading 3924 or heading 4419 of that nomenclature.

55 In that regard, it must be stated that, first, 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 (judgment of 25 February 2016, *G. E. Security*, C-143/15, EU:C:2016:115, paragraph 43).

56 Second, according to the Court's settled case-law, 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 (judgment of 25 February 2016, *G. E. Security*, C-143/15, EU:C:2016:115, paragraph 44 and the case-law cited).

57 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. The same applies to the explanatory notes to the CN (judgment of 25 February 2016, *G. E. Security*, C-143/15, EU:C:2016:115, paragraph 45 and the case-law cited).

58 In the present case, it is apparent from the file before the Court that the goods concerned, namely beakers, are made up of 72.33% plant fibres (bamboo and corn starch) and 25.2% melamine resin (melamine formaldehyde resin). Those goods therefore constitute 'composite goods' within the meaning of rule 3 of the General rules for the interpretation of the HS.

59 As regards the CN headings at issue in the main proceedings, namely headings 3924 and 4419, it must be noted that heading 3924 of that nomenclature, which refers to tableware, kitchenware, and other household articles and hygienic or toilet articles, of plastics, is part of Chapter 39 of that

nomenclature, entitled 'Plastics and articles thereof', and that, in accordance with the definition in note 1 to that chapter, melamine resin is a plastic in so far as it comes under heading 3909 of that nomenclature. Furthermore, the explanatory note relating to heading 3924 of the HS states that that heading also covers cups (without handles) for table or toilet use, not having the character of containers for the packing or conveyance of goods, whether or not sometimes used for such purposes.

60 Heading 4419 of the CN, which forms part of Chapter 44 of that nomenclature, entitled 'Wood and articles of wood; wood charcoal', includes wooden tableware and kitchenware, made of, inter alia, bamboo. The explanatory note relating to that HS heading states that articles referred to in that heading may be made of ordinary wood or of particle board or similar board, fibreboard, laminated wood or 'densified' wood. In addition, the explanatory note relating to heading 4410 of the HS states that particle boards may be produced from ligneous materials such as fragments obtained from bamboo, and that the particle boards are normally agglomerated by means of an added organic binder, usually a thermosetting resin, which generally does not exceed 15% of the weight of the board.

61 It follows that the goods concerned are capable of corresponding to the wording of both heading 3924 and heading 4419 of the CN.

62 It is therefore necessary to classify the goods concerned pursuant to rule 3 of the General rules for the interpretation of the CN, which lays down the classification methods applicable where a composite article appears classifiable under two or more headings.

63 In that regard, it should be noted that rule 3(a) of the General rules for the interpretation of the CN, according to which the heading which provides the most specific description is to be preferred to headings providing a more general description, is not decisive in the present case. In the light of the elements set out in paragraphs 67 to 69 of the present judgment and the second sentence of that general rule, which states that when two or more headings each refer to part only of the materials contained in mixed or composite goods, 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, neither heading 3924 nor heading 4419 of the CN can be regarded as 'the most specific' within the meaning of that general rule.

64 In those circumstances, it is appropriate, for the purposes of the tariff classification of the goods concerned, to apply rule 3(b) of the General rules for the interpretation of the CN.

65 Under that general rule, in carrying out the tariff classification of goods it is necessary to identify, from among the materials of which they are composed, the one which gives them their essential character; this may be done by determining whether the goods would retain their characteristic properties if one or other of their constituents were removed. As stated in point VIII of the explanatory note relating to rule 3(b) of the HS, which supplements the explanatory note to the CN, the factor which determines the essential character of the goods may, depending on the type of goods, be determined for example by the nature of the constituent material or components, its bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods (judgment of 15 November 2012, *Kurcums Metal*, C-558/11, EU:C:2012:721, paragraphs 37 and 38, and the case-law cited).

66 In the present case, it must be noted that, even if the plant fibres are predominant in terms of quantity, the fact remains that the melamine resin contained in the goods concerned is of overriding importance for their use.

67 It is apparent from the order for reference and from the file before the Court that the essential element for the goods concerned to be able to be used as beakers for tableware is the melamine resin, since the latter is used to agglomerate plant fibres and, inter alia, gives those goods impermeability, rigidity or protection against shocks and the outdoors, as well as their shape.

68 Plant fibres in the form of flour or powder give the goods concerned properties such as thermal insulation, low density, biodegradability and resistance to bending, which are ancillary in that, if those goods did not have those components, they would retain their characteristic properties as beakers.

69 It follows that melamine resin must be regarded as the material which gives the goods concerned their 'essential character' within the meaning of rule 3(b) of the General rules for the interpretation of the CN. Those goods must therefore be classified under heading 3924 of that nomenclature, in particular under subheading 3924 10 00.

70 It should be added that it follows from the file before the Court, in particular from the report of the central customs laboratory, that corn starch and bamboo fibres, in other words the plant fibres contained in the goods concerned, play a role as a filler material.

71 It is apparent from the general considerations in Chapter 39 of the HS that plastic materials are likely to contain filler materials, such as wood flour, cellulose, textile materials, mineral substances, starch, etc., and that the filling materials contained in plastic may be 'chiefly intended to give the finished products special physical properties or other desirable characteristics'. In addition, the explanatory notes relating to heading 4410 of the HS state that that heading does not cover 'plates or strips of plastic containing wood flour as a filler', which must be classified under Chapter 39 of the CN.

72 Furthermore, it follows from Commission Implementing Regulation (EU) No 276/2013 of 19 March 2013 concerning the classification of certain goods in the Combined Nomenclature (OJ 2013 L 84, p. 9) that the classification of a component of wood composite made up of, inter alia, waste wood fibres and recycled plastics, as articles of wood under Chapter 44 of the CN, is excluded where wood fibres constitute only filling material and where the plastic material giving the goods their essential character contains those materials. Such an article must be regarded as a plastic material.

73 Consequently, if plant fibres do in fact play a role as a filler material, which it is for the referring court to ascertain, that supports the conclusion set out in paragraph 69 of the present judgment that those goods must be classified under heading 3924 of the CN.

74 In the light of all the foregoing considerations, the answer to the questions referred is that the CN must be interpreted as meaning that goods described as 'bamboo beakers', made up of 72.33% plant fibres and 25.2% melamine resin, must, subject to the referring court's assessment of all the facts available to it, be classified under heading 3924 of that nomenclature, in particular under subheading 3924 10 00.

Costs

75 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 (Eighth 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 2016/1821 of 6 October 2016, must be interpreted as meaning that goods described as 'bamboo beakers', made up of 72.33% plant fibres and 25.2% melamine resin, must, subject to the referring court's assessment of all the facts available to it, be classified under heading 3924 of that nomenclature, in particular under subheading 3924 10 00.

[Signatures]