Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

12 April 2018*

(Reference for a preliminary ruling — Regulation (EEC) No 2658/87 — Customs Union and Common Customs Tariff — Tariff classification — Combined Nomenclature — Subheadings 9021 10 10, 9021 10 90 and 9021 90 90 — Spinal fixation systems — Implementing Regulation (EU) No 1214/2014)

In Case C-227/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany), made by decision of 19 April 2017, received at the Court on 28 April 2017, in the proceedings

Medtronic GmbH

v

Finanzamt Neuss,

THE COURT (Tenth Chamber),

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

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Medtronic GmbH, by J. Meyer-Burow, Rechtsanwalt, and N. Looks, Steuerberaterin,

– the European Commission, by M. Wasmeier and A. Caeiros, acting as Agents,

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

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns, in essence, the interpretation of tariff subheadings 9021 10 10, 9021 10 90 and 9021 90 90 of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 (OJ 2015 L 285, p. 1) ('the CN').

2 The request has been made in proceedings between Medtronic GmbH and Finanzamt Neuss (Tax Office, Neuss, Germany) ('the Tax Office') concerning the applicable turnover tax rate for the supply of spinal fixation systems.

Legal context

The HS Convention

3 The Harmonised Commodity Description and Coding System ('the HS') was drawn up by the World Customs Organisation (WCO) and established by the International Convention on the Harmonised Commodity Description and Coding System concluded at Brussels on 14 June 1983 and the Protocol of Amendment thereto of 24 June 1986, which 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) ('the HS Convention').

4 Under Article 3(1)(a) 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 numerical codes, and to follow the numerical sequence of the HS. That provision also requires the Contracting Parties 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 the scope of the sections, chapters, headings or subheadings of the HS.

5 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.

6 Point I (headed 'Orthopaedic appliances') of the Explanatory Notes to the HS relating to heading 9021 of the system states as follows:

'...Orthopaedic appliances … are appliances for:

– preventing or correcting bodily deformities; or

– supporting or holding parts of the body following an illness, operation or injury.'

7 Under Point II of the Explanatory Notes, headed 'Splints and other fracture appliances':

'Fracture appliances are used either to immobilise injured parts of the body (for extension or protection), or for setting fractures. They are also used in the treatment of dislocations and other joint injuries.

…

Subject to the provisions of Note 1(f) to this Chapter, the heading also includes plates, nails, etc., which are inserted inside the human body by surgeons to hold together the two parts of a broken bone or for similar treatment of fractures.'

8 In accordance with Point V of the Explanatory Notes, the group 'Other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability' includes, inter alia:

'(1) Speech aids for persons having lost the use of their vocal cords as a result of an injury or a surgical operation. …

(2) Pacemakers for stimulating defective heart muscles. These … are implanted beneath the skin of the patient's chest. … Other types of pacemakers are used to stimulate other organs (for example, the lungs, the rectum or the bladder).

(3) Electronic aids for the blind. …

(4) Appliances implanted in the body, used to support or replace the chemical function of certain organs (e.g., secretion of insulin).'

EU law

The CN

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

10 The CN reproduces the HS six-digit headings and subheadings, with only the seventh and eighth figures creating further subheadings which are specific to it.

11 Part One of the CN contains a series of preliminary provisions. In Section I of Part One, which contains general rules, subsection A, 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.

…

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. …

…

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise.'

12 Part Two of the CN is divided into 21 sections. Section XVIII, entitled 'Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof', includes Chapters 90, 91 and 92 of the CN. Chapter 90, entitled 'Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof', covers CN headings 9001 to 9033.

13 Heading 9021 is structured as follows:

'9021	Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability:
9021 10	– Orthopaedic or fracture appliances:
9021 10 10	– — Orthopaedic appliances
9021 10 90	– — Splints and other fracture appliances
	– Artificial teeth and dental fittings: …
	– Other artificial parts of the body: …
9021 40 00	– Hearing aids, excluding parts and accessories
9021 50 00	– Pacemakers for stimulating heart muscles, excluding parts and accessories
9021 90	– Other:
9021 90 10	– — Parts and accessories of hearing aids
9021 90 90	– — Other'

14 Note 2 to Chapter 90 of the CN states:

'Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91 (other than heading[s] 8487, 8548 or 9033) are in all cases to be classified in their respective headings.

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind.

…'

15 Under note 3 to Chapter 90 of the CN:

'The provisions of notes 3 and 4 to Section XVI apply also to this chapter.'

16 Note 6 to that chapter provides:

'For the purposes of heading 9021, the expression "orthopaedic appliances" means appliances for:

– preventing or correcting bodily deformities; or

– supporting or holding parts of the body following an illness, operation or injury.

…'

17 Note 3 to Section XVI of the CN is worded as follows:

'Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.'

18 The Explanatory Notes to the CN relating to CN subheading 9021, in the version applicable at the material time (OJ 2011 C 137, p. 1), provide:

'For the purposes of this heading, the expression "to compensate for a defect or disability" means only appliances which actually take over or substitute for the function of the defective or disabled part of the body.

This heading does not include appliances which simply alleviate the effects of the defect or disability.

This heading also excludes appliances identifiable for ostomy use (subheading 3006 91 00).'

Implementing Regulation (EU) No 1214/2014

19 Commission Implementing Regulation (EU) No 1214/2014 of 11 November 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ 2014 L 329, p. 8), contains, in the annex thereto, a table with three columns, the first containing a description of the goods concerned, the second containing the classification in the CN attributed to the goods and the third concerning the reasons for that classification.

20 It is apparent from that annex that the goods corresponding to the following description are covered by CN code 9021 10 90:

'A solid, cylindrical, threaded product (so-called "pangea dual core screw") made of extra hard titanium alloy, of a length of between 20 and 45 mm.

The shank is wholly threaded with a dual core thread containing a transition zone for the core diameter change. It is of a constant outer diameter of 4,0 mm, with a self-tapping profile and a blunt, threaded tip.

The product has a polyaxial (movable) U-shaped, internally threaded head that offers 25° of angulation around its axis allowing its adjustment.

The product has a specialised saddle in locking cap for fixing a rod (presented separately) in its head.

The product corresponds to the ISO/TC 150 standards for implant screws and is presented for use in trauma surgery as a part of a system for posterior stabilisation of the spine. It is installed using specific tools.

At importation, it is not presented in a sterilised packing. The product is marked with a number and therefore traceable throughout production and distribution.'

21 In the column relating to the reasons for the classification given it is stated, inter alia, that the latter 'is determined by general rules 1 and 6 for the interpretation of the [CN], note 2(b) to Chapter 90 and the wording of CN codes 9021, 9021 10 and 9021 10 90'.

German law

22 Paragraph 12 of the Umsatzsteuergesetz (German law on turnover tax), in the version applicable at the material time ('the UStG') states:

'(1) The rate of tax shall be 19% of the taxable amount in respect of every taxable transaction …

(2) The rate of tax shall be reduced to 7% in respect of the following transactions:

1. supplies, imports and intra-community acquisitions of goods described in Annex 2 save for those goods described in Point 49(f) and Points 53 and 54; …'

23 Point 52 of Annex 2 to the UStG is worded as follows:

'Artificial parts of the body, orthopaedic appliances including appliances, for humans, to compensate for a defect or disability, and namely	
(a) artificial joints, excluding parts and accessories	from subheading 9021 31 00
(b) orthopaedic appliances, including crutches, surgical belts and trusses, excluding parts and accessories	from subheading 9021 10
(c) prostheses, excluding parts and accessories	from subheadings 9021 21, 9021 29 00 and 9021 39
(d) hearing aids, pacemakers for stimulating heart muscles and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability, excluding parts and accessories	from subheadings 9021 40 00 and 9021 50 00 and subheading 9021 90'

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

24 Medtronic supplies, inter alia, spinal fixation systems under the trade mark CD Horizon SOLERA to hospitals and licensed doctors, which consist of, inter alia:

– fixed-angle screws made of titanium and multiaxial screws made of titanium or cobalt chrome/titanium each in a variety of diameters and lengths, colour-coded, with self-cutting threads, each with titanium set screw accessories,

– rods in different materials (titanium alloy or cobalt chrome), pre-bent or straight, with a diameter of 4.75 mm, in a variety of lengths (between 30 mm and 500 mm),

– CD Horizon X10 Crosslink plates made out of titanium in different lengths (fixed or multi-span) including a set screw,

– colour-coded hooks of four different shapes and sizes made of titanium alloy, and

– lateral connectors made from a titanium alloy with a diameter of 4.75 mm.

25 According to the information provided by the referring court, the spinal fixation systems are permanently implanted in the patient's body and assembled according to the needs of each patient.

26 The order for reference also indicates that the spinal fixation systems are to treat degenerative disc diseases, spinal stenoses and spinal dislocations or failures in earlier spinal fusions, tumours, scolioses or bone fractures.

27 On the basis of non-binding tariff information given to Medtronic on 19 June 2013 which indicated that the spinal fixation systems that it supplies are covered by CN subheading 9021 90 90, Medtronic applied the reduced turnover tax rate laid down in Paragraph 12(2)(1) of the UStG for its supplies.

28 Following two on-the-spot audits the Tax Office took the view that the systems should be classified under CN subheading 9021 10 90. Medtronic complied with that assessment and, in its preliminary tax return for May 2016, applied to its supplies the tax rate provided for in Paragraph 12(1) of the UStG.

29 Medtronic nevertheless brought an action before the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany) against the preliminary tax return, in which it claimed that the systems in question should be classified under CN subheading 9021 90 90 and that the supply thereof must therefore be taxed at the reduced tax rate, pursuant to Paragraph 12(2)(1) of the UStG. According to Medtronic, the systems are designed to remain permanently in the patient's body, whereas the fracture appliances referred to in CN subheading 9021 10 90 are inserted only temporarily inside the patient's body. Medtronic argues, moreover, that since the spinal fixation systems are not used solely to treat fractures, a classification under CN subheading 9021 90 90 would be more accurate.

30 The Tax Office contends, on the contrary, that the supply of spinal fixation systems is subject to the turnover tax rate set out in Paragraph 12(1) of the UStG. In its view, it is apparent from Implementing Regulation No 1214/2014 that the systems are covered by CN subheading 9021 10 90 since the multiaxial screws that constitute them are similar to the 'pangea dual core screw' which that regulation classifies under that subheading in accordance with note 2(b) to Chapter 90 of the CN.

31 Since the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) entertains doubts as to the classification of the spinal fixation systems at issue in the main proceedings under the appropriate CN subheading, it has decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is the [CN] to be interpreted as meaning that spinal fixation systems as described in more detail in the order fall under subheading 9021 90 90?'

Consideration of the question referred

32 By its question, the referring court asks, in essence, whether a spinal fixation system such as that at issue in the main proceedings, which is implanted in the patient's body, assembled according to the needs of each patient and intended to treat degenerative disc diseases, spinal stenoses and spinal dislocations or failures in earlier spinal fusions, tumours, scolioses or bone fractures, is covered by CN subheading 9021 90 90.

33 As a preliminary point, it must be pointed out 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 effect the classification in question (judgment of 9 February 2017, *Madaus*, C-441/15, EU:C:2017:103, paragraph 35 and the case-law cited).

34 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 corresponding section or chapter notes (judgment of 26 May 2016, *Invamed Group and Others*, C-198/15, EU:C:2016:362, paragraph 18 and the case-law cited).

35 Under the general rules for the interpretation of the CN, for legal purposes, the classification of goods in the subheadings of a heading is to be determined according to the terms of those subheadings and any related subheading, section or chapter notes, with the wording of section, chapter and subchapter titles being considered to be provided for ease of reference only.

36 According to the Court's settled case-law also, the intended use of a product may constitute an objective criterion for classification, provided that it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties (judgment of 26 May 2016, *Invamed Group and Others*, C-198/15, EU:C:2016:362, paragraph 22 and the case-law cited).

37 Moreover, it must be borne in mind that even though the Explanatory Notes to the HS 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 is true of the Explanatory Notes to the CN (judgment of 12 June 2014, *Lukoyl Neftohim Burgas*, C-330/13, EU:C:2014:1757, paragraph 35 and the case-law cited).

38 According to the wording of CN heading 9021, that heading includes 'orthopaedic appliances …; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability'.

39 As is clear from the wording of that heading, the function to be performed by the appliance concerned is decisive for the purpose of determining the subheading under which the appliance is to be classified.

40 In that regard, the referring court notes that the spinal fixation systems at issue in the main proceedings, as described in paragraph 24 of this judgment, have several functions. They are used for the treatment of bone fractures as well as degenerative disc diseases, spinal stenoses and spinal dislocations or failures in earlier spinal fusions, tumours or scolioses.

41 The referring court concludes that, in the light of the various functions they perform, the spinal fixation systems could, a priori, be classified under (i) CN 9021 90 90 as other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability, (ii) CN subheading 9021 10 90 as fracture appliances, or (iii) CN subheading 9021 10 10 as orthopaedic appliances.

42 With regard, in the first place, to CN subheading 9021 10 10, the referring court considers that it is not necessary to examine whether the spinal fixations systems at issue in the main proceedings may be characterised as orthopaedic appliances within the meaning thereof, since, in all likelihood, they correspond to the type of appliances described in CN subheading 9021 90 90.

43 In that regard, it should however be borne in mind that, as follows from the structure of CN heading 9021 and the wording of CN subheading 9021 90 90, the latter has a residual character compared with the other subheadings at the same level, inasmuch as it covers appliances which do not come within any of the other subheadings of heading 9021.

44 Therefore, classification under that heading may be envisaged only if the systems at issue in the main proceedings do not come within any of the other subheadings of CN heading 9021 (see, to that effect, judgment of 13 July 2006, *Uroplasty*, C-514/04, EU:C:2006:464, paragraph 56).

45 According to the case-law referred to in paragraph 33 of this judgment, it will therefore be for the referring court to assess, first, whether the systems at issue in the main proceedings may be characterised, inter alia, as orthopaedic appliances within the meaning of CN subheading 9021 10 10. To that end, the referring court will have to take into account note 6 to Chapter 90 of the CN, according to which orthopaedic appliances are appliances for either preventing or correcting bodily deformities, or supporting or holding parts of the body following an illness, operation or injury.

46 In that regard, appliances for the treatment of degenerative disc diseases, spinal stenoses and spinal dislocations or failures in earlier spinal fusions, tumours or scolioses could come within CN subheading 9021 10 10, subject, however, to verification by the referring court.

47 In that context, the point should be made that it does not follow from the CN, the Explanatory Notes to the CN or the Explanatory Notes to the HS that the EU legislature intended to exclude from that subheading appliances to be implanted in the human body.

48 With regard, in the second place, to CN subheading 9021 10 90, it should be recalled that the Explanatory Notes to the HS relating to heading 9021 state that 'fracture appliances are used either to immobilise injured parts of the body (for extension or protection), or for setting fractures' and specify that '[those appliances] are also used in the treatment of dislocations and other joint injuries.'

49 In that regard, Medtronic's argument that the spinal fixation systems at issue in the main proceedings cannot be covered by that subheading since, unlike the fracture appliances mentioned therein, they are designed to remain permanently in the patient's body, must be rejected from the outset.

50 Indeed, it does not follow either from the wording of subheading 9021 10 90 or from the Explanatory Notes to the CN relating to heading 9021 that that subheading covers only fracture appliances designed to be inserted temporarily inside the patient's body.

51 It follows that fracture appliances cannot be excluded from CN subheading 9021 10 90 merely because they are designed to remain permanently in the human body.

52 Moreover, the referring court notes that the treatment of fractures is only one of the numerous uses of the spinal fixation systems at issue in the main proceedings and that that use thus cannot be regarded as their principal function, with the result that the systems cannot be classified under CN subheading 9021 10 90 on the basis of an application, by analogy, of note 3 to Section XVI of the CN.

53 According to that note, which applies to Chapter 90 of the CN by virtue of note 3 to that Chapter, in so far as those systems are capable of falling within several CN subheadings because they perform a number of functions, they are to be classified on the basis of 'the principal function' they perform.

54 It follows, as rightly held by the referring court, that the spinal fixation systems at issue in the main proceedings cannot be classified under CN subheading 9021 10 90 if it is established that they are not intended principally for the treatment of fractures.

55 In addition, if classification under CN subheading 9021 10 10 were adopted following verification by the referring court in accordance with paragraph 46 of this judgment, it would have to be determined whether those systems are intended principally for orthopaedic use.

56 The referring court nevertheless asks whether the spinal fixation systems at issue in the main proceedings should in fact be classified under CN subheading 9021 10 90 on the ground that the systems consist partly of multiaxial screws that, according to the Tax Office, are similar to the pangea dual core screws referred to in the annex to Implementing Regulation No 1214/2014, which the Tax Office classifies under that subheading.

57 It is important to note in that respect that, admittedly, note 2(b) to Chapter 90 of the CN provides that 'other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind'.

58 However, even if certain components of the spinal fixation systems at issue in the main proceedings were to correspond to the description of the appliance referred to in the annex to Implementing Regulation No 1214/2014, the systems would still have to be intended principally for use in trauma surgery, which is a matter for verification by the referring court.

59 Moreover, it should be noted that, while the application by analogy of a classification regulation to products similar to those covered by that regulation facilitates consistent interpretation of the CN and the equal treatment of traders, such an application by analogy is neither necessary nor possible where the Court, by its answer to a question referred for a preliminary ruling, has provided the referring court with all the information necessary to classify a product under the appropriate CN heading (judgment of 26 April 2017, *Stryker EMEA Supply Chain Services*, C-51/16, EU:C:2017:298, paragraphs 61 and 62).

60 It follows that if the referring court were to conclude that the spinal fixation systems at issue in the main proceedings, having regard to their objective characteristics and properties as well as their intended and actual use (see, to that effect, judgments of 4 March 2015, *Oliver Medical*, C-547/13, EU:C:2015:139, paragraphs 51 and 52, and of 25 February 2016, *G. E. Security*, C-143/15, EU:C:2016:115, paragraph 55), were not intended principally for the treatment of fractures, then Implementing Regulation No 1214/2014 should not be taken into account for the purpose of their classification under the appropriate CN subheading.

61 In the third place, it is important to note that, if the referring court were to conclude that the spinal fixation systems at issue in the main proceedings do not come within either subheading 9021 10 10 or subheading 9021 10 90, a classification of the systems under residual CN subheading 9021 90 90 would presuppose that the systems are intended not only to be implanted in the body but also to compensate for a defect or disability, which would be a matter for verification by the referring court in the light of the Explanatory Notes to the CN and to the HS relating to heading 9021.

62 According to the Explanatory Notes to the CN relating to heading 9021, only appliances which actually take over or substitute for the function of the defective or disabled part of the body may be considered to compensate for a defect or disability, whereas appliances which simply alleviate the effects of the defect or disability are not covered by that heading.

63 Furthermore, it must be noted that, by way of example of appliances intended to compensate for a defect or a disability, the Explanatory Notes to the HS relating to heading 9021 mention speech aids for persons having lost the use of their vocal cords, pacemaker-type appliances, such as pacemakers for stimulating defective heart muscles, electronic aids for the blind and appliances used to support or replace the chemical function of certain organs, such as secretion of insulin.

64 With regard to spinal fixation systems such as that at issue in the main proceedings, it will be for the referring court, where appropriate, to identify the defective or disabled part of the body as well as the function that those systems are intended to replace.

65 In the light of all the foregoing, the answer to the question referred for a preliminary ruling is that the CN must be interpreted as meaning that spinal fixation systems such as those at issue in the main proceedings may not be classified under CN subheading 9021 90 90 if they are covered by another subheading of CN heading 9021. Whether those systems may be classified under subheading 9021 10 10 or subheading 9021 10 90 of the CN will depend on the principal function they perform, which is a matter for the referring court to determine by having regard to the objective characteristics and properties of such systems as well as to their intended and actual use.

Costs

66 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:

The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015, must be interpreted as meaning that spinal fixation systems such as those at issue in the main proceedings may not be classified under subheading 9021 90 90 of the Combined Nomenclature if they are covered by another subheading of heading 9021 of the Combined Nomenclature. Whether those systems may be classified under subheading 9021 10 10 or subheading 9021 10 90 of the Combined Nomenclature will depend on the principal function they perform, which is a matter for the referring court to determine by having regard to the objective characteristics and properties of such systems as well as to their intended and actual use.

[Signatures]