Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

19 December 2024*

(Reference for a preliminary ruling – Customs union – Common Customs Tariff – Combined Nomenclature – Tariff classification – Headings 8113 and 8209 – Hard metal sticks made of cermets – Implementing Regulation (EU) 2021/910 – Validity – Classification criteria)

In Case C-591/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany), made by decision of 23 August 2023, received at the Court on 25 September 2023, in the proceedings

ZCC Europe GmbH

v

Hauptzollamt Düsseldorf,

THE COURT (Ninth Chamber),

composed of N. Jääskinen, President of the Chamber, S. Rodin (Rapporteur) and O. Spineanu-Matei, Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– ZCC Europe GmbH, by N. Meyer, Rechtsanwalt,

– the European Commission, by B. Eggers and M. Salyková, acting as Agents,

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

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the validity of Commission Implementing Regulation (EU) 2021/910 of 31 May 2021 concerning the classification of certain goods in the Combined Nomenclature (OJ 2021 L 199, p. 4).

2 The request has been made in proceedings between ZCC Europe GmbH, a commercial company established in Germany, and the Hauptzollamt Düsseldorf (Principal Customs Office, Düsseldorf, Germany) concerning the tariff classification of hard metal sticks made of cermets.

Legal context

The CN

3 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) 2020/1577 of 21 September 2020 (OJ 2020 L 361 p. 1) ('the CN'), is based on the Harmonised Commodity Description and Coding System ('the HS'), in accordance with the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983 ('the HS Convention') 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 Pursuant to Article 12 of Regulation No 2658/87, the European Commission is to adopt each year a regulation reproducing a complete version of the CN, together with the corresponding customs rates of duty of the Common Customs Tariff, as resulting from measures adopted by the Council of the European Union or by the Commission.

5 Part One of the CN, entitled 'Preliminary provisions', includes, in Section I, Subsection A, entitled 'General rules for the interpretation of the Combined Nomenclature', which provides as follows for the classification of goods:

'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. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

…

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.'

6 Part Two of the CN, entitled 'Schedule of Customs Duties', includes a Section XV, entitled 'Base metals and articles of base metal', Note 4 of which provides:

'4. Throughout the nomenclature, the term "cermets" means products containing a microscopic heterogeneous combination of a metallic component and a ceramic component. The term "cermets" includes sintered metal carbides (metal carbides sintered with a metal).'

7 Chapter 81 of Part Two of the CN, entitled 'Other base metals; cermets; articles thereof' includes, inter alia, in that Section XV, the following headings:

CN Code	Description	Conventional rate of duty (%)	Supplementary unit
8113 00	Cermets and articles thereof, including waste and scrap:		
8113 00 20	– Unwrought	4	–
8113 00 40	– Waste and scrap	Free	–
8113 00 90	– Other	5	–

8 Chapter 82 of Part Two of the CN, entitled 'Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal' in that Section XV includes, inter alia, the following headings:

CN Code	Description	Conventional rate of duty (%)	Supplementary unit
8209 00	Plates, sticks, tips and the like for tools, unmounted, of cermets:		
8209 00 20	– Indexable inserts	2,7	–
8209 00 80	– Other	2,7	–

9 The World Customs Organization (WCO) approves, under the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes ('the Explanatory Notes to the HS') and Classification Opinions adopted by the HS Committee, established by Article 6 of that convention. Under Article 7(1) of that convention, that Committee has, inter alia, the function of preparing those explanatory notes.

Regulation (EU) No 952/2013

10 Article 57 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1), entitled 'Tariff classification of goods', provides in paragraphs 1 and 4 thereof:

'1. For the application of the Common Customs Tariff, tariff classification of goods shall consist in the determination of one of the subheadings or further subdivisions of the [CN] under which those goods are to be classified.

…

4. The Commission may adopt measures to determine the tariff classification of goods in accordance with paragraphs 1 and 2.'

11 Article 58 of that regulation, entitled 'Conferral of implementing powers', states in paragraph 2 thereof:

'The Commission shall adopt, by means of implementing acts, the measures referred to in Article 57(4).

…'

12 Under Article 285(1) of that regulation, in exercising that power, the Commission is to be assisted by the Customs Code Committee, a committee composed of representatives of the Member States and chaired by a representative of the Commission.

Implementing Regulation 2021/910

13 Implementing Regulation 2021/910 was adopted by the Commission on the basis of Article 57(4) and Article 58(2) of Regulation No 952/2013.

14 Pursuant to Article 1 of that implementing regulation:

'The goods described in column (1) of the table set out in the Annex shall be classified within the [CN] under the CN code indicated in column (2) of that table.'

15 The annex to that implementing regulation reads as follows:

Description of the goods	Classification (CN-code)	Reasons
(1)	(2)	(3)
Cermet sticks with a uniform round cross-section. The articles of varying lengths and diameters can be solid or they can be perforated and have cooling channels, with blunt ends. Some of the articles may also have been chamfered. The articles are made of cermet, namely of sintered metal carbide on the basis of tungsten carbide with cobalt as the binding substance. Based on their low degree of processing, simple form and shape, the articles can be used for a wide range of uses, for example, as reinforcement elements. If further processed, the articles may be used for tools and as tools.	8113 00 90	Classification is determined by general rules 1 and 6 for the interpretation of the [CN], note 4 to Section XV and by the wording of the CN codes 8113 00 and 8113 00 90. Classification under CN code 8209 00 80 as sticks and the like for tools, unmounted, of cermets is excluded as the articles can be used for tools and as tools only if further processed and are also suitable for other uses. The articles fall within the scope of heading 8113, which covers cermets, whether unwrought or in the form of articles not elsewhere specified in the [CN] (see also [HS] Explanatory Notes to heading 8113, sixth paragraph). Consequently, the articles are to be classified under CN code 8113 00 90 as cermets and other articles thereof.

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

16 In August and September 2021, the applicant in the main proceedings declared, for release for free circulation, metal carbide sticks of cermets imported from China under subheading 8209 00 80 of the CN, resulting in the application of a customs rate of 2.7%.

17 The Principal Customs Office, Düsseldorf, decided to classify the goods declared by the applicant in the main proceedings under subheading 8113 00 90 of the CN, on the basis of Implementing Regulation 2021/910. Consequently, it applied customs duties and value added tax (VAT) to the import against the applicant in the main proceedings with a customs rate of 5%.

18 The applicant in the main proceedings lodged a complaint against that decision, arguing that the metal carbide sticks declared could only be used ‘for tools’, and not for other purposes, and that, accordingly, Implementing Regulation 2021/910 was inapplicable to those goods. In any event, it submits that Implementing Regulation 2021/910 is unlawful because it does not merely seek to provide clarification but alters the wording of subheading 8209 00 80 of the CN and thus disregards the guidance from the judgment of the Bundesfinanzhof (Federal Fiscal Court, Germany) of 7 August 2018 (VII R 20/17), which had already provided such clarification.

19 The applicant in the main proceedings submits in that regard that that judgment of the Bundesfinanzhof (Federal Fiscal Court) also concerns metal carbide sticks that it had declared in 2008, for release for free circulation, under subheading 8209 00 80 of the CN, which are similar to those at issue in the main proceedings. Following an on-the-spot check, the Principal Customs

Office, Düsseldorf, had, by a notice of assessment drawn up in 2011, classified the goods under subheading 8113 00 90 of the CN and proceeded with post-clearance recovery of the corresponding customs duties. Since the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany) initially dismissed the action lodged following that recovery, the Bundesfinanzhof (Federal Fiscal Court) had, in the examination of the appeal on a point of law, referred the case back to the referring court on the ground that it was necessary to verify whether the metal carbide sticks concerned possessed the characteristics of heading 8209 of the CN, which is more specific. In the case registered under reference 4 K 3162/18 Z, the referring court had, at that time, ordered an expert report. In his report of 4 December 2019, the expert appointed had come to the conclusion that those metal carbide sticks were usually transformed into tools possessing geometrically defined cutting edges. According to that expert, the sticks with cooling channels were an unequivocal indication of their use for drills or shank-type milling cutters. That expert had found that the other sticks, because of their geometry and the choice of materials, had clear characteristics of shank tools. It is on that basis that, by judgment of 18 March 2020, the referring court had set aside the notice of assessment of 2011.

20 Since, by those decisions, the Bundesfinanzhof (Federal Fiscal Court) and the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) had classified the goods concerned differently to that of the binding tariff information issued by the Irish, Netherlands and Polish customs authorities, clarification was provided, after consultation with the Customs Code Committee, by the adoption of Implementing Regulation 2021/910.

21 After the Principal Customs Office, Düsseldorf, rejected the complaint of the applicant in the main proceedings, on the basis of Implementing Regulation 2021/910, the applicant in the main proceedings brought an action before the referring court.

22 The referring court has no doubt as to the fact that the metal carbide sticks at issue in the main proceedings must be classified under subheading 8209 00 of the CN and, therefore, calls into question only the validity of Implementing Regulation 2021/910. The referring court takes the view that, by adopting that regulation, the Commission altered the subject matter and scope of tariff headings 8113 and 8209 of the CN. It refers, in that regard, to the intended use of those metal carbide sticks, within the meaning of subheading 8209 00 of the CN ('for tools'), and to the expert report of 4 December 2019 referred to in paragraph 19 above that it had requested in the case registered under reference 4 K 3162/18 Z. According to the referring court, it follows that, because of their geometry, the choice of materials and the presence of cooling channels in some of them, the metal carbide sticks at issue in the main proceedings are intended for the manufacture of tools possessing geometrically defined cutting edges. It adds that, for classification under subheading 8209 00 of the CN, it suffices that the main intended use of the metal carbide sticks is for tools. That court further clarifies that classification under subheading 8209 00 80 of the CN is not precluded by the fact that the cermet sticks still require further processing before they can be used for tools. The referring court takes the view, lastly, in the light of the expert report of 4 December 2019, referred to in paragraph 19 above, that the assertion at the end of the description of the goods in the annex to Implementing Regulation 2021/910 that, based on their degree of processing, simple form and shape, the cermet sticks referred to can be used for a wide range of uses, is incorrect.

23 In those circumstances the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Implementing Regulation [2021/910] valid?'

Consideration of the question referred

24 By its question, the referring court asks the Court to rule on the validity of Implementing Regulation 2021/910, adopted in order to ensure the uniform application of the CN, in so far as it classifies cermet sticks, a type of metal stick highly resistant to bending as described in column (1) of the table in the annex to that implementing regulation, under subheading 8113 00 90 of the CN, and not under subheading 8209 00 80 thereof, which disregards the scope and the subject matter of tariff headings 8113 and 8209 of the CN, the Explanatory Notes to those headings and the General Rules for the interpretation of the CN and the HS.

25 The cermet sticks described in column (1) of the table in the annex to Implementing Regulation 2021/910 consist of a mixture of tungsten carbide with a proportion of cobalt as the binding substance. Tungsten carbide is characterised by a particular hardness and is therefore particularly suited to the machining of metals by drilling and milling. The sticks at issue in the main proceedings have different lengths, between 100 and 300 mm. Their diameter also varies between 2 and 40 mm. They have a cross section of uniform diameter and flat ends. Some of them also have one to three cooling channels. It is not disputed that those cermet sticks require further processing, for which the applicant in the main proceedings resells them to tool manufacturers.

26 While the German customs authorities had classified the goods at issue in the main proceedings under CN code 8113, the Bundesfinanzhof (Federal Fiscal Court) found, by judgment of 2018, that those goods came under heading 8209 of the CN.

27 In order to avoid the risk of divergent interpretations of the CN between Member States, on 31 May 2021 the Commission adopted Implementing Regulation 2021/910. That regulation was applied by the German customs authorities to new imports of the goods concerned carried out by the applicant in the main proceedings during the months of August and September 2021, classifying the cermet sticks under CN code 8113, resulting in the application of a customs duty of 5%, whereas the applicant in the main proceedings wishes to benefit from a classification in accordance with the national case-law referred to in the preceding paragraph, under CN code 8209, resulting in the application of a customs rate of 2.7%.

28 In essence, the referring court asks the Court of Justice whether, by the Commission's interpretation of headings 8113 and 8209 of the CN in Implementing Regulation 2021/910, that institution unlawfully changed the CN, rather than just provided a simple clarification of it.

29 As a preliminary point, it should be recalled that the Court has repeatedly held that the Commission, acting in cooperation with the customs experts of the Member States, has broad discretion to define the subject matter of tariff headings to be considered for the classification of particular goods. However, the Commission's power to adopt the measures referred to in Article 57(4) and Article 58(2) of Regulation No 952/2013 does not authorise it to alter the subject matter and the scope of the tariff headings which have been established on the basis of the HS, the scope of which the European Union has undertaken, pursuant to Article 3 of the HS Convention, not to modify (see, to that effect, judgments of 12 February 2015, *Raytek and Fluke Europe*, C-134/13, EU:C:2015:82, paragraph 29; of 19 December 2019, *Amoena*, C-677/18, EU:C:2019:1142, paragraph 37 and the case-law cited; and of 4 February 2021, *JCM Europe (UK)*, C-760/19, EU:C:2021:96, paragraph 34).

30 In order to determine whether, by classifying the goods described in column (1) of the table in the annex to Implementing Regulation 2021/910, under CN heading 8113, and not under heading 8209 thereof, the Commission altered the content or scope of those two tariff headings of the CN, established on the basis of the HS, the Court notes, in the first place, 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 and subheading of the CN and in the corresponding section or chapter notes (judgments of 19 December 2019, *Amoena*, C-677/18, EU:C:2019:1142, paragraph 40; of 18 June 2020, *Hydro Energo*, C-340/19, EU:C:2020:488, paragraph 34 and the case-law cited; and of 4 February 2021, *JCM Europe (UK)*, C-760/19, EU:C:2021:96, paragraph 35).

31 In the second place, where the classification cannot be made on the sole basis of the objective characteristics and properties of the product concerned, its intended purpose, in particular its essential intended use, may constitute an objective criterion for classification, provided that it is inherent to that product. Such an inherent nature must be capable of being assessed on the basis of the product's objective characteristics and properties (see, to that effect, judgments of 5 September 2019, *TDK-Lambda Germany*, C-559/18, EU:C:2019:667, paragraph 27, and of 18 June 2020, *Hydro Energo*, C-340/19, EU:C:2020:488, paragraph 35 and the case-law cited). The objective characteristics and properties of products must be capable of being assessed at the time of customs clearance (judgment of 26 May 2016, *Latvijas propāna gāze*, C-286/15, EU:C:2016:363, paragraph 33 and the case-law cited).

32 In the third place, the Court has repeatedly held that, although they do not have legally binding force, the Explanatory Notes to the HS and CN 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 (judgments of 18 June 2020, *Hydro Energo*, C-340/19, EU:C:2020:488, paragraph 36 and the case-law cited, and of 20 October 2022, *Mikrotīkls*, C-542/21, EU:C:2022:814, paragraph 23).

33 As regards the wording of the tariff headings at issue in the main proceedings, the Court notes that Chapter 81 of Part Two of the CN is entitled 'Other base metals; cermets; articles thereof' and heading 8113 thereof includes, inter alia, 'cermets and articles thereof'. Chapter 82 of Part Two of the CN, entitled 'Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal', includes, inter alia, heading 8209, which covers, inter alia, 'plates, sticks, tips and the like for tools, unmounted, of cermets'.

34 It is specified in the Explanatory Note to the HS on Section XV, as regards the scope of those two chapters, that 'each of the Chapters 72 to 76 and 78 to 81 covers particular unwrought base metals and products of those metals such as bars, rods, wire or sheets, as well as articles thereof, except certain specified articles of base metal which, without regard to the nature of the constituent metal, are classified in Chapter 82 or 83, these Chapters being limited to the specified articles'.

35 The Explanatory Note on Chapter 82 of Part Two to the CN also sets out that 'this Chapter covers certain specific kinds of base metal articles, of the nature of tools, implements, cutlery, tableware, etc., which are excluded from the preceding Chapters of Section XV, and are not machinery or appliances of Section XVI …, nor instruments or apparatus proper to Chapter 90, nor articles of heading 96.03 or 96.04'.

36 It follows that Chapter 82 of Part Two of the CN is limited, since that chapter only covers articles which are expressly referred to therein. The reference to 'cermets' is ancillary, since, on the one hand, that term does not appear in the title of Chapter 82 and, on the other hand, its use under heading 8209 of the CN serves only as a descriptive element of the constituent materials of the plates, sticks, tips and the like, for tools, unmounted, which that heading expressly covers.

37 The Commission Implementing Regulation and the grounds included in the table in the annex state that heading 8113 'covers cermets, whether unwrought or in the form of articles not elsewhere specified'. It may be inferred that heading 8113 of the CN has a potentially broad scope and that it covers all cermet products, while classification under heading 8209 of the CN is reserved for 'plates, sticks, tips and the like for tools'.

38 In the present case, the interpretation of the expression 'for tools' is decisive. In paragraphs 17 to 20 of the request for a preliminary ruling, the referring court interprets that expression as meaning that it also includes goods which, after necessary further processing, can only be used for tools.

39 However, according to the Explanatory Note to the HS on heading 8209:

'The products of this heading are usually in the form of plates, sticks, tips, rods, pellets, rings, etc., and are characterised by great hardness, even when hot, and great rigidity. In view of their special properties these plates, tips, etc., are welded, brazed or clamped on to lathe tools, milling tools, drills, dies, or other high-speed cutting tools used for working metals or other hard materials. They fall in this heading whether sharpened or not, or otherwise prepared, but not if already mounted on tools; in the latter case they fall in the headings for tools, particularly heading 82.07.'

40 It follows from the term 'unmounted' in the wording of heading 8209 of the CN and of that Explanatory Note that that heading includes articles which have already been sufficiently processed to be capable of being simply and directly 'mounted', that is fixed to the tool simply 'by weld[ing], braz[ing] or clamp[ing]'. articles which must undergo further processing, other than their simple fixation, before being capable of being fixed to tools cannot, therefore, come under that heading. The same applies to the cermet sticks at issue in the main proceedings, in respect of which it is common ground that they are only blanks 'for tools'.

41 The general rule set out in Part One, Section I, Subsection A, point 2(a) of the CN for the classification of goods that any reference in a heading to an article 'shall be taken to include a reference to that article incomplete or unfinished', provided that, as presented 'the incomplete or unfinished article has the essential character of the complete or finished article', does not alter that conclusion.

42 It is precisely the condition that the article concerned have the essential character of the complete or finished article which is not fulfilled in the case of the cermet sticks at issue in the main proceedings. It is not disputed that those cermet sticks must, by their very nature, be processed further, for example by boring, notching, narrowing, grooving and curving, to acquire a specific exterior shape which will allow them to be fixed to a tool simply by welding, brazing or clamping.

43 In the present case, on the basis of the objective characteristics and properties of the goods covered, referred to in column (3) of the table in the annex to Implementing Regulation 2021/910, the Commission, pursuant to General Rules 1 and 6 for the interpretation of the CN and with reference to Note 4 of Section XV thereof and the wording of subheadings 8113 00

and 8113 00 90 of the CN, classified goods such as those at issue in the main proceedings under subheading 8113 00 90. Furthermore, the Commission precluded classification of those goods under subheading 8209 00 80 of the CN, as sticks and the like for tools, unmounted, of cermets, 'as the articles can be used for tools and as tools only if further processed and are also suitable for other uses'.

44 In that regard, the referring court has doubts as to the validity of Implementing Regulation 2021/910, referring, in particular, to the fact that that classification altered the scope of heading 8209 of the CN, since, according to the expert report of 4 December 2019 referred to in paragraph 19 above, 'because of their geometry, the choice of materials and the presence of cooling channels in some of them, the [cermet sticks such as those at issue in the main proceedings] are intended for the manufacture of tools possessing geometrically defined cutting edges'. However, those doubts cannot be accepted. Even if, by reason of certain characteristics, those cermet sticks may only be transformed into tools, they do not conform precisely with the requirements set out in the wording of heading 8209 of the CN, as set out in the relevant Explanatory Notes, according to which the goods referred to under that heading must be capable of being fixed to a tool simply by welding, brazing or clamping, without needing further processing.

45 As is also clear from the description of the cermet sticks in column (1) of the table in the annex to Implementing Regulation 2021/910, those sticks are goods of 'simple form and shape', characterised by a 'low degree of processing'. It also follows from Binding Tariff Information Decisions DE BTI 5017/22-1 and DE BTI 2903/22-1, which refer to the cermet sticks concerned as 'blanks' which are simply not yet sufficiently developed to have, at the time of importation, the necessary essential characteristics to come under heading 8209.

46 It is apparent from reading a number of other headings of the CN that, if the blanks of goods are covered by a heading, that heading explicitly mentions those goods:

– heading 8212: 'Razors and razor blades (including razor blade blanks in strips)';

– heading 9606: 'Buttons, press-fasteners, snap-fasteners and press studs, button moulds and other parts of these articles; button blanks';

– heading 9110: 'Complete watch or clock movements, unassembled or partly assembled (movement sets); incomplete watch or clock movements, assembled; rough watch or clock movements'.

47 It is apparent from the order for reference that the applicant in the main proceedings sold the metal carbide sticks at issue to tool manufacturers which, in further processing steps, transformed the sticks into tools for the machining of metals by removal of material. The expert report of 4 December 2019 referred to in paragraph 19 above states that 'the metal carbide sticks such as those at issue were usually transformed into tools possessing geometrically defined cutting edges', which confirms that the geometric shape of the cermet sticks and, accordingly, the specific tool for which they are used and on which they must be simply fixed are not yet identifiable at the time of customs clearance, contrary to the requirements laid down in the case-law of the Court (judgment of 26 May 2016, *Latvijas propāna gāze*, C-286/15, EU:C:2016:363, paragraph 33 and the case-law cited).

48 The reference made by the referring court to paragraph 28 of the judgment of 5 September 2019, *TDK-Lambda Germany* (C-559/18, EU:C:2019:667), does not alter that assessment in any way. In paragraph 33 of that judgment, the Court expressly made clear that, where the tariff heading in question adopts a classification criterion based on a specific use of the goods concerned, that criterion is decisive for the purposes of classification of those goods under that heading.

49 However, it is apparent from the wording of the relevant CN heading and subheading and the corresponding section or chapter notes that the goods at issue in the main proceedings are defined by their objective properties and characteristics and the classification criterion is not based on a specific use. That is confirmed by the text of the table annexed to Implementing Regulation 2021/910.

50 It is therefore merely for the sake of completeness that it is necessary to examine the referring court's statement, in paragraph 20 of the request for a preliminary ruling, relating to the Commission's incorrect assumption in column (1) of the table in the annex to Implementing Regulation 2021/910, that the cermet sticks may 'be used for a wide range of uses'. The cermet sticks described in column (1) are suitable for other uses. The fact that some of the cermet sticks have cooling channels does not justify, in particular, not classifying those sticks under heading 8113 of the CN. According to the technical documentation, the cooling channels are also necessary for thread guides in the textile industry. Therefore, the existence of cooling channels does not mean that the cermet sticks can only be used for tools.

51 For all of those reasons, the Commission did not exceed its discretion by stating, in column (3) of the table in the annex to Implementing Regulation 2021/910, that the goods come under heading 8113 of the CN and cannot be classified under heading 8209 thereof because of their objective characteristics and properties.

52 Consequently, it must be held that, by classifying the cermet sticks described in column (1) of the table in the annex to Implementing Regulation 2021/910 under heading 8113 of the CN, and not under heading 8209 thereof, the Commission did not alter the subject matter or the scope of either of those two tariff headings.

53 In the light of all of the foregoing considerations, the answer to the question referred is that examination of that question has disclosed no factor of such a kind as to affect the validity of Implementing Regulation 2021/910.

Costs

54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Commission Implementing Regulation (EU) 2021/910 of 31 May 2021 concerning the classification of certain goods in the Combined Nomenclature.

[Signatures]