Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

4 February 2021 *

(Reference for a preliminary ruling – Customs union – Common Customs Tariff – Combined Nomenclature – Tariff classification – Headings 8472 and 9031 – Bank note validator and cash boxes – Device intended to be integrated in a host device and connected to an external control centre – Implementing Regulation (EU) 2016/1760 – Validity)

In Case C-760/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the First-tier Tribunal (Tax Chamber), United Kingdom, made by decision of 8 October 2019, received at the Court on 16 October 2019, in the proceedings

JCM Europe (UK) Ltd

v

Commissioners for Her Majesty's Revenue and Customs,

THE COURT (Ninth Chamber),

composed of N. Piçarra (Rapporteur), President of the Chamber, D. Šváby and S. Rodin, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– JCM Europe (UK) Ltd, by S. Cock, and by V. Sloane QC,

– the United Kingdom Government, by S. Brandon, acting as Agent, and by B. McGurk, Barrister,

– the European Commission, by J. Hradil 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: English.

Judgment

1 This request for a preliminary ruling concerns the validity of Commission Implementing Regulation (EU) 2016/1760 of 28 September 2016 concerning the classification of certain goods in the Combined Nomenclature (OJ 2016 L 269, p. 6).

2 The request has been made in proceedings between JCM Europe (UK) Ltd and the Commissioners for Her Majesty's Revenue and Customs concerning the tariff classification of a product imported by that company, namely the iPRO-RC, a device consisting of a bank note validator and cash boxes.

Legal context

Combined Nomenclature

3 The tariff classification of goods imported into the European Union is governed by 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).

4 The combined nomenclature is based on the Harmonised Commodity Description and Coding System ('the HS'), which was drawn up by the Customs Cooperation Council, now the World Customs Organisation (WCO), and established by the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983. That convention, with its amending protocol of 24 June 1986, was approved on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1). In accordance with Article 3(1) of Regulation No 2658/87, the combined nomenclature reproduces the headings and subheadings of the HS to six digits, with only the seventh and eighth figures creating further subheadings which are specific to it.

5 The version of the combined nomenclature applicable to the case in the main proceedings is that for the year 2016, resulting from Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 amending Annex I to Regulation No 2658/87 (OJ 2015 L 285, p. 1) ('the CN').

6 The general rules for the interpretation of the CN, which are set out in Part One, Title I, Section A, thereof, provide as follows:

'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 relevant section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions:

…

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.'

7 Part Two of the CN, entitled 'Schedule of Customs Duties', contains, inter alia, Section XVI, entitled 'Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles'. The CN notes relating to that section state:

'1. This section does not cover:

…

(m) articles of Chapter 90;

…

3. 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.

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85, then the whole falls to be classified in the heading appropriate to that function.

…'

8 That section includes, inter alia, Chapter 84, entitled 'Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof'. That Chapter includes, inter alia, heading 8472, which is worded as follows:

'Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coincounting or -wrapping machines, pencil-sharpening machines, perforating or stapling machines).'

9 CN heading 8472 is structured as follows:

8472 10 00	– Duplicating machines
8472 30 00	– Machines for sorting or folding mail or for inserting mail in envelopes or bands, machines for opening, closing or sealing mail and machines for affixing or cancelling postage stamps
8472 90	– – Other:
8472 90 10	– – Coin-sorting, coin-counting or coin-wrapping machines
8472 90 30	– – Automatic teller machines
8472 90 70	– – Other

10 Pursuant to Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 amending Annex I to Regulation No 2658/87 (OJ 2016 L 294, p. 1), the subheading 'other' in CN heading 8472 was amended from 8472 90 70 to 8472 90 90 from 1 January 2017 until 31 December 2019.

11 Section XVIII of the CN is headed ‘Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof’. It includes inter alia Chapter 90, entitled ‘Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof’.

12 The CN notes relating to Chapter 90 state:

‘1. This chapter does not cover:

…

(g) pumps incorporating measuring devices, of heading 8413; weight-operated counting and checking machinery, or separately presented weights for balances (heading 8423); lifting or handling machinery (headings 8425 to 8428); paper or paperboard cutting machines of all kinds (heading 8441); fittings for adjusting work or tools on machine tools, of heading 8466, including fittings with optical devices for reading the scale (for example, optical dividing heads) but not those which are in themselves essentially optical instruments (for example, alignment telescopes); calculating machines (heading 8470); valves and other appliances of heading 8481; machines and apparatus (including apparatus for the projection or drawing of circuit patterns on sensitised semiconductor materials) of heading 8486;

…

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

…’

13 That chapter also includes heading 9031, which is worded as follows:

‘Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors:

14 CN heading 9031 is structured as follows:

…	…
	– Other optical instruments and appliances:
9031 41 00	– – For inspecting semiconductor wafers or devices or for inspecting photomasks or reticles used in manufacturing semiconductor devices
9031 49	– – other:
9031 49 10	– – – Profile projectors
9031 49 90	– – – other:
…	…

Regulation (EU) No 952/2013

15 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.'

16 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).

…'

17 Article 285(1) of that regulation provides that, in exercising that power, the Commission is to be assisted by the Customs Code Committee.

Implementing Regulation 2016/1760

18 Implementing Regulation 2016/1760 was adopted by the Commission on the basis of Article 57(4) and the first subparagraph of Article 58(2) of Regulation No 952/2013.

19 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.'

20 In accordance with its Article 3, that implementing regulation entered into force on 24 October 2016.

21 The Annex to Implementing Regulation 2016/1760 is worded as follows:

'Description of the goods	Classification CN code	Reasons
(1)	(2)	(3)
An apparatus consisting of a bank note validator and cash boxes (so called "note float unit") with total dimensions of approximately 10 x 24 x 44 cm. The bank note validator uses optical scanning technology to check the authenticity of bank notes according to predefined specifications. Bank notes that are approved by the validator pass to a cash box. When this cash box has reached its capacity (generally 30 bank notes), the bank notes are automatically sorted and distributed towards other cash boxes with a capacity of generally 300 bank notes. The apparatus is used, for example, in gaming, vending, parking machines etc. to pay for the service or for the product obtained. The apparatus is also capable of dispensing bank notes. The apparatus is always connected to a so-called "host-controller" (not present upon presentation) which regulates the predefined bank note specifications and the bank note flow to the different cash boxes. See image (*).	8472 90 70	Classification is determined by General Rules 1 and 6 for the interpretation of the [CN] and by the wording of [CN codes] 8472, 8472 90 and 8472 90 70. Classification under heading 9031 as a measuring or checking instrument is excluded, because the apparatus is more than a checking instrument covered by that heading. In addition to checking the authenticity of bank notes, it also carries out other functions such as sorting and distributing bank notes between different storage boxes and dispensing bank notes. All the functions carried out by the apparatus are covered by heading 8472. The apparatus is therefore to be classified under [CN code] 8472 90 70 as an office machine.

(*) The image is purely for information.



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

22 The applicant in the main proceedings is a company established in the United Kingdom which imports the iPRO-RC.

23 The referring court describes that product as a validator and recycler of banknotes designed to be installed on a host device, such as self-service checkouts, vending machines, ticketing or gaming machines, and takes the view that it is not suitable for use in banking auto teller machines.

24 That court notes that the iPRO-RC consists of three main components, all of which are contained in a frame, namely the verification unit, the recycling unit and the box. The entirety of the product is then placed within the casing of the host device and will be connected to it via electric cabling. The 'mouth' of the verification unit is the only part of the iPRO-RC which is visible to the users of the host device. The iPRO-RC cannot act independently from the host device although it does have some autonomous features.

25 In order to verify the authenticity of the incoming banknotes, the iPRO-RC uses an optical and magnetic detection technique and a microcontroller and compares the data collected from the incoming banknote with all the data stored on the microcontroller's memory. Where the data collected from the incoming banknote correspond to the parameters stored in the microcontroller, the authenticity of the banknote is transmitted to the control centre which communicates where it is an accepted transaction. In contrast, where in the opposite case, the note is not accepted, it is rejected and returned to the customer.

26 The product was initially classified by the tax and customs authorities under CN subheading 9031 49 90.

27 In January 2012, the competent German authorities delivered a binding tariff information ('BTI') decision categorising a 'bank note validator' under CN subheading 8472 90. In February 2012 the tax and customs administration issued a BTI decision for a 'bank note validator and recycler,' classifying it under CN subheading 9031 49 90. In the light of that tariff classification divergence, the Federal Republic of Germany brought the case before the Customs Code Committee referred to in Article 285 of Regulation No 952/2013. On 10 August 2016, it issued a favourable opinion on the draft Commission Implementing Regulation concerning the classification of the product at issue under CN subheading 8472 90 70. Solely the United Kingdom of Great Britain and Northern Ireland did not vote in favour of that classification.

28 On 28 September 2016, the Commission adopted Implementing Regulation 2016/1760.

29 On 3 January 2018, the tax and customs authorities issued, at the request of the applicant in the main proceedings, dated 22 November 2017, a BTI decision re-classifying the iPRO-RC under CN subheading 8472 90 90, in the version resulting from Implementing Regulation 2016/1821, in accordance with Implementing Regulation 2016/1760.

30 The applicant in the main proceedings then challenged that BTI decision before the referring court.

31 After finding that Implementing Regulation 2016/1760 is applicable to the iPRO-RC, the referring court harbours doubts as to the validity of that implementing regulation. First, according to that court, it is not clear from the minutes of the Customs Code Committee that the classification of the goods covered by that implementing regulation under Chapter 90 of the CN had been intended before categorising it under Chapter 84 thereof, since no reference is made in Note 1(m) of Section XVI, in both the HS and the CN. Second, it is also not clear from those minutes that the Customs Code Committee determined the principal function of those goods, in accordance with Notes 3 and 4 of Section XVI, and of Note 3 of Chapter 90, both of the HS and the CN. According to

that court, the principal function of the iPRO-RC is to validate banknotes with a view to securely storing them or paying them out at the direction of the control centre, any other functionality being predominantly irrelevant or at most subsidiary.

32 In those circumstances, the First-tier Tribunal (Tax Chamber) (United Kingdom) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is … Implementing Regulation … 2016/1760 … invalid in so far as it classifies the bank note validator and cash boxes specified in the Regulation under CN Code 8472 90 70, rather than CN Code 9031 49 90?

(2) In particular, is Implementing Regulation 2016/1760 invalid in so far as it:
(a) unduly restricts the scope of CN heading 9031;
(b) unduly extends the scope of CN heading 8472;
(c) takes into account impermissible factors;
(d) does not take proper account of the Explanatory Notes, CN headings, and/or the General Interpretative Rules when classifying the product as described in that Regulation[?]'

Consideration of the questions referred

33 By its questions, which it is appropriate to examine together, the referring court asks the Court to rule on the validity of Implementing Regulation 2016/1760, in so far as it classifies a device consisting of a bank note validator and cash boxes, as described in column 1 of the table set out in the Annex to that implementing regulation, under CN heading 8472 90 70 and not under heading 9031 49 90 thereof, in disregard of the scope of CN headings 8472 and 9031, the Explanatory Notes both of the HS and the CN relating to these headings, and the CN General Interpretative Rules.

34 At the outset it must 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 or 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 Convention mentioned in paragraph 4 above, 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, and of 19 December 2019, *Amoena*, C-677/18, EU:C:2019:1142, paragraph 37 and the case-law cited).

35 In order to determine whether, in classifying the goods described in column 1 of the table set out in the Annex to Implementing Regulation 2016/1760, under CN heading 8472, and not under heading 9031 thereof, the Commission altered the content or scope of those two tariff headings of the CN, established on the basis of the HS, it must be recalled, 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 CN heading and subheading and in the corresponding section or chapter notes (judgments of 19 December 2019, *Amoena*, C-677/18, EU:C:2019:1142, paragraph 40, and of 18 June 2020, *Hydro Energo*, C-340/19, EU:C:2020:488, paragraph 34 and the case-law cited).

36 In the second place, where the classification cannot be made solely on the basis of the objective characteristics and properties of the product concerned, its intended use, in particular its essential intended use, may constitute an objective criterion for classification, provided that it is inherent to that product. The inherent character must be capable of being assessed on the basis of its 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).

37 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, provide useful aids to its interpretation (judgment of 18 June 2020, *Hydro Energo*, C-340/19, EU:C:2020:488, paragraph 36 and the case-law cited).

38 As regards the wording of the tariff headings at issue in the main proceedings, it should be noted that that of CN heading 9031 refers, inter alia, to 'measuring or checking instruments', not specified or included elsewhere in Chapter 90 of the CN, whereas that of CN heading 8472 concerns 'other office machines', including in particular automatic banknote dispensers, coin-sorting machines, coincounting or -wrapping machines.

39 The Court has already held that the Explanatory Notes to the HS describe Chapter 90 thereof as covering a set of instruments and apparatus which, as a general rule, are characterised essentially by the finish of their manufacture and their high degree of precision, which distinguishes them from ordinary goods (see, to that effect, judgments of 7 November 2002, *Lohmann and Medi Bayreuth*, C-260/00 to C-263/00, EU:C:2002:637, paragraph 37, and of 16 May 2019, *Estron*, C-138/18, EU:C:2019:419, paragraph 62 and the case-law cited). As those notes make clear, most of them are used 'mainly for scientific purposes (laboratory research work, analysis, astronomy, etc.), for specialised technical or industrial purposes (measuring or checking, observation, etc.) or for medical purposes'.

40 Moreover, the HS Notes specify, concerning heading 9031 thereof, that that heading includes, in addition to profile projectors, 'measuring or checking instruments, appliances and machines, whether or not optical. It should however, be noted that this group does not include any instruments, apparatus, etc. falling in' the other headings of Chapter 90 of the HS. Finally, the HS Explanatory Notes relating to subheading 9031 49 thereof indicate further that that subheading 'covers not only instruments and appliances which provide a direct aid or enhancement to human vision, but also other instruments and apparatus which function through the use of optical elements or processes'.

41 As regards CN heading 8472, the Court has already held that it covers, on a residual basis, office machines which primarily have a mechanical structure and functioning (see, to that effect, judgment of 9 October 1997, *Rank Xerox*, C-67/95, EU:C:1997:470, paragraph 25).

42 In the present case, on the basis of the objective characteristics and properties of the goods covered by Implementing Regulation 2016/1760, as described in column 1 of the table set out in the Annex to that implementing regulation, the Commission, pursuant to General Rules 1 and 6 for the interpretation of the CN, as stated in the statement of reasons set out in column 3 of that table, first, excludes the classification of those goods under CN heading 9031, since those goods are 'more than a checking instrument covered by that heading' and, second, classified them under CN heading 8472 90 70 as an 'office machine' since 'all the functions carried out by the apparatus are covered by heading 8472' of the CN.

43 The referring court's doubts concerning the validity of Implementing Regulation 2016/1760 relate, in particular, to the fact that the tariff classification determined therein infringed, first, Note 1(m) to Section XVI of the CN and, second, Notes 3 and 4 to that section, read in conjunction with Note 3 to Chapter 90 of the CN, in so far as the reasons given in column 3 of the table set out in the Annex to that implementing regulation do not refer to any of those notes.

44 In the first place, Note 1(m) to Section XVI of the CN, which includes Chapters 84 and 85 thereof, merely provides that that section does not cover articles of Chapter 90 of the CN. It follows that where goods are included in Chapter 90 of the CN, they are precluded from also falling under Chapters 84 and 85 thereof (see, to that effect, judgment of 16 May 2019, *Estron*, C-138/18, EU:C:2019:419, paragraph 75).

45 As the Commission observes in its written observations, it is clear from the second paragraph of column 3 of the table set out in the Annex to Implementing Regulation 2016/1760 that classification under one of the headings of Chapter 90 of the CN, namely heading 9031 thereof, was excluded, which implies that it was envisaged, at the very least, as an alternative to classification under CN heading 8472, which was ultimately adopted.

46 It follows that the goods covered by that implementing regulation have not been classified under CN heading 8472 in infringement of Note 1(m) to Section XVI of the CN.

47 Moreover, the fact that the statement of reasons given in column 3 of the table set out in the Annex to Implementing Regulation 2016/1760 makes no mention of that note cannot, of itself, render that implementing regulation invalid. According to settled case-law of the Court, although the statement of reasons required by the second paragraph of Article 296 TFEU must be appropriate to the measure at issue and must disclose clearly and unequivocally the reasoning followed by the institution which adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent court to review its legality, it is not required to go into all the relevant facts and points of law (judgment of 4 June 2020, *Hungary* v *Commission*, C-456/18 P, EU:C:2020:421, paragraph 57 and the case-law cited).

48 In the second place, as regards Note 3 of Chapter 90 of the CN, it states that the provisions of Notes 3 and 4 to Section XVI of the CN apply also to that chapter.

49 It is apparent from the characteristics and properties of the goods referred to in Implementing Regulation 2016/1760, as described in column 1 of the table set out in the Annex to that implementing regulation, that those goods are presented as consisting of separate elements, namely a banknote validator and cash boxes. The device as a whole is connected to a 'host-controller' and integrated into a host device, such as in gaming, vending or parking machines, to 'pay for the service or for the product obtained' by that equipment.

50 To that end, as is set out in column 3 of that table, that device ensures several functions, namely 'in addition to checking the authenticity of bank notes, it also carries out other functions such as sorting and distributing bank notes between different storage boxes and dispensing bank notes'.

51 It follows that the goods covered by Implementing Regulation 2016/1760 are, on the one hand, a machine designed to perform several different, alternative or complementary functions within the meaning of Note 3 to Section XVI of the CN, so that, in accordance with that note, their classification must be determined, save as otherwise provided, according to the principal function which characterises the whole in the eyes of the consumer (see, to that effect, judgment of 30 April 2020, *DHL Logistics (Slovakia)*, C-810/18, EU:C:2020:336, paragraph 27 and the case-law cited). Secondly, those goods are also a machine consisting of separate components designed to contribute together to a clearly defined function, within the meaning of Note 4 to Section XVI of the CN, their classification having to be determined by that function. The principal function which characterises the whole of the device in question in the eyes of the consumer and for which the individual components of the device are designed is payment for the goods or service provided through the host device in which that device is incorporated.

52 As submitted, in essence, by the United Kingdom Government and the Commission in their written observations, the principal function of the goods referred to in Implementing Regulation 2016/1760 cannot be regarded as the control or validation of bank notes. It is true that the control, by the use of an optical detection technique, of the authenticity of bank notes, in accordance with predetermined characteristics, is one of the functions performed by the device in question, specifically by the bank note validator of which it is composed. The fact remains, however, that that function is not intended as an end in itself.

53 The validation of bank notes following that control is necessary in order to ensure the processing, distribution and storage of banknotes in the various boxes and the distribution of those notes to serve the purpose of the host device in which that device is integrated, namely payment for the goods or service provided by that device.

54 Moreover, it follows from Note 1(g) of Chapter 90 of the CN that certain products that come with measuring or checking equipment, in particular optical reader devices, are not all classified under one of the headings of Chapter 90, but must, in contrast, be classified under different headings of Chapter 84 of the CN. As the Commission claims, it cannot therefore be stated that the products which ensure a certain form of measurement or of checking can be classified only under one of the headings of Chapter 90 of the CN, in particular heading 9031.

55 Furthermore, the scope of CN heading 8472 is wide. That heading concerns 'other office machines' which are therefore not included more specifically in another tariff heading. Moreover, the very wording of that heading expressly mentions office machines handling money, namely 'automatic banknote dispensers, coin-sorting machines, coincounting or -wrapping machines'. In the present case, it is clear from the fourth paragraph of column 1 of the table set out in the Annex to Implementing Regulation 2016/1760 that the goods covered by that implementing regulation are used, for example, in vending machines, themselves covered by CN heading 8472.

56 The broad scope of the concept of 'office machines' within the meaning of CN heading 8472 is supported by the HS Explanatory Notes relating to heading 8472 thereof. Those notes state that the concept of 'office machines', within the meaning of that heading, must be taken in a wide general sense to include not only 'all machines used in offices', but also those used in a wide variety of professional contexts, such as 'shops, factories, workshops, schools, stations, hotels', for doing 'office work', that is to say, 'work concerning the writing, (recording, sorting, filing, etc., of correspondence, documents, forms, records, accounts, etc.)'. Furthermore, it is apparent from the wording of those explanatory notes that the enumerations of a series of 'office machines' are not exhaustive in so far as they are accompanied either by the abbreviation 'etc.' or by the adverb 'inter alia'.

57 Having regard both to the wording of CN heading 8472 and to the HS Explanatory Notes on heading 8472 thereof, it must be held that that heading also covers, as office apparatus or machines, also devices which, not being used in an office, perform office functions. It also follows from those factors that CN heading 8472 covers, as 'office machines or apparatus' in the broad sense, machines handling money used in a wide variety of professional contexts and automatically performing tasks inherent in the handling of cash, namely bank notes and coins, in particular their sorting, counting, storage and distribution, those tasks being traditionally carried out manually by staff performing office work which may inter alia include payment for goods or services.

58 Thus, in the exercise of its broad discretion to define the subject matter of tariff headings, the Commission did not commit a manifest error in considering that the goods covered by Implementing Regulation 2016/1760 are more than a checking instrument, within the meaning of CN heading 9031, having excluded the classification of those goods under that heading, and that the various functions performed by them are covered by CN heading 8472.

59 That conclusion cannot be called into question by the fact that the explanatory notes to the HS relating to heading 8472 thereof add that only office machines and apparatus are classified under that heading 'if they have a base for fixing or for placing on a table, desk, etc. The heading does not cover the hand tools, not having such a base', such as the hand tools referred to in Chapter 82 of the HS. First, that clarification cannot be interpreted as meaning that solely devices including a base to put them on a table or in an office are covered by heading 8472 of the HS. Indeed, it is clear that that tariff heading covers both machines and office apparatus comprising such a base, and those comprising a 'fixing device'. Other means of fixing or placing office machines or apparatus can therefore be envisaged, particularly on the ground in a space where office work is carried out. Secondly, that clarification shows more clearly that the office machines and apparatus coming under heading 8472 of the HS principally have a mechanical structure and functioning in order to distinguish them from 'hand tools', which the goods covered by Implementing Regulation 2016/1760 are not.

60 In the light of the above, it must be concluded that, by classifying the device composed of a banknote validator and cash boxes, such as described in column 1 of the table set out in the Annex to Implementing Regulation 2016/1760 under CN heading 8472 and not under heading 9031 thereof, the Commission did not alter the subject matter or the scope of either of those two tariff headings.

61 Consequently, the answer to the questions referred must therefore be that consideration of them has disclosed no factor capable of affecting the validity of Implementing Regulation 2016/1760.

Costs

62 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 (Ninth Chamber) hereby rules:

The examination of the questions referred has disclosed no factor capable of affecting the validity of Commission Implementing Regulation (EU) 2016/1760 of 28 September 2016 concerning the classification of certain goods in the Combined Nomenclature.

Piçarra Šváby Rodin

Delivered in open court in Luxembourg on 4 February 2021.

A. Calot Escobar
Registrar

N. Piçarra
President of the Ninth Chamber