Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

3 June 2021 *

(Reference for a preliminary ruling – Customs union – Common Customs Tariff – Combined Nomenclature – Tariff classification – Tariff subheadings 1702 90 95, 2912 49 00 and 3824 90 92 – Aqueous solution)

In Case C-822/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania), made by decision of 9 October 2019, received at the Court on 5 November 2019, in the proceedings

Direcția Generală Regională a Finanțelor Publice Brașov,

Agenția Națională de Administrare Fiscală – Direcția Generală a Vămilor – Direcția Regională Vamală Brașov – Biroul Vamal de Interior Sibiu

v

Flavourstream SRL,

THE COURT (Ninth Chamber),

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

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Romanian Government, by E. Gane, O.-C. Ichim and L. Lițu, acting as Agents,

– the European Commission, by A. Armenia 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: Romanian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of subheadings 1702 90 95 and 2912 49 00 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), in the version resulting from Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014 (OJ 2014 L 312, p. 1) ('the CN').

2 The request has been made in proceedings between, on the one hand, the Direcția Generală Regională a Finanțelor Publice Brașov (Regional Directorate-General of Public Finances of Brașov, Romania) and the Agenția Națională de Administrare Fiscală – Direcția Generală a Vămilor – Direcția Regională Vamală Brașov – Biroul Vamal de Interior Sibiu (National Tax Administration Office – Directorate-General of Customs – Regional Directorate of Customs of Brașov – Customs Office of Sibiu, Romania), and, on the other, Flavourstream SRL, concerning the tariff classification of an aqueous solution imported from Canada and marketed under the name 'AURIC GMO FREE', obtained by thermal decomposition of dextrose and used in the food industry to flavour foodstuffs.

Legal context

International law

3 The Harmonised Commodity Description and Coding System ('the HS') was established by the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983 in the framework of the World Customs Organisation (WCO) and approved, together with its Protocol of Amendment of 24 June 1986, on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

4 The Explanatory Notes to the HS are drawn up within the WCO, in accordance with the provisions of the International Convention on the Harmonised Commodity Description and Coding System.

5 According to the general considerations in the HS Explanatory Notes to Chapter 29 of the HS, entitled 'Organic chemicals':

'A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell.

Separate chemically defined compounds containing other substances deliberately added during or after their manufacture (including purification) are excluded from this chapter. …

[These compounds] may contain impurities (Note 1(a)). …

The term "impurities" applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification). These substances may result from any of the factors involved in the process and are principally the following:

(a) Unconverted starting materials.

(b) Impurities present in the starting materials.

(c) Reagents used in the manufacturing process (including purification).

(d) By-products.

It should be noted, however, that [those] substances are not in all cases regarded as "impurities" permitted under Note 1(a). When such substances are deliberately left in the product with a view to rendering it particularly suitable for specific use rather than for general use, they are not regarded as permissible impurities. …'

6 Note 1(a) of the HS Explanatory Notes to that chapter states that the headings of the chapter apply only to 'separate chemically defined organic compounds, whether or not containing impurities'.

7 Note 1(b) of the HS Explanatory Notes to Chapter 38 of the HS, entitled 'Miscellaneous chemical products', states that that chapter does not cover 'mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of human foodstuffs (generally heading 21.06)'.

8 In accordance with the general considerations in the HS Explanatory Notes to Chapter 38 of the HS:

'For the purposes of Note 1(b) to the chapter, the expression "foodstuffs or other substances with nutritive value" principally includes edible products of Sections I to IV.

…

The mere presence of "foodstuffs or other substances with nutritive value" in a mixture would not suffice to exclude the mixtures from Chapter 38, by application of Note 1(b). Substances having a nutritive value that is merely incidental to their function as chemical products, e.g., as food additives or processing aids, are not regarded as "foodstuffs or substances with nutritive value" for the purpose of this Note. The mixtures which are excluded from Chapter 38 by virtue of Note 1(b) are those which are of a kind used in the preparation of human foodstuffs and which are valued for their nutritional qualities.'

EU law

The CN

9 Under Article 1(1) of Regulation No 2658/87, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16), '[a combined nomenclature], which meets at one and the same time, the requirements of the Common Customs Tariff, the external trade statistics of the [European Union] and other [EU] policies concerning the importation or exportation of goods shall be established by the [European] Commission'.

10 The Combined Nomenclature, established by Regulation No 2658/87, governs the customs classification of goods imported into the European Union. It reproduces the HS six-digit headings and subheadings, with only the seventh and eighth figures creating further subheadings which are specific to it.

11 Under Article 12(1) of Regulation No 2658/87, as amended by Regulation No 254/2000, the Commission is to adopt each year a regulation reproducing the complete version of the combined nomenclature, together with the rates of duty, as resulting from measures adopted by the Council of the European Union or the Commission. That regulation is to be published in the *Official Journal of the European Union* not later than 31 October, to apply from 1 January of the following year.

12 Part Two of the CN, entitled 'Schedule of customs duties', contains, inter alia, Section IV, entitled 'Prepared foodstuffs; beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes'.

13 That section includes Chapter 17, entitled 'Sugars and sugar confectionery', additional note 8 of which states that, 'throughout the nomenclature, mixtures of sugar with small amounts of other substances are classified in Chapter 17, unless they have the character of a preparation classified elsewhere'.

14 That chapter includes heading 1702 of the CN, which is structured as follows:

‘1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel
…	…
1702 90	- Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50% by weight of fructose
…	…
	- - Caramel
1702 90 71	– – – Containing 50% or more by weight of sucrose in the dry matter
…	…
1702 90 75	– – – In the form of powder, whether or not agglomerated
1702 90 79	– – – – Other
…	…
1702 90 95	– – Other’

15 Section VI of Part Two of the CN includes Chapter 29, entitled ‘Organic chemicals’.

16 Note 1(a) and (d) to that chapter states:

‘Except where the context otherwise requires, the headings of this chapter apply only to:

(a) separate chemically defined organic compounds, whether or not containing impurities;

…

(d) the products mentioned in (a) … above dissolved in water’.

17 Chapter 29 of the CN contains heading 2912, which is structured as follows:

‘2912	Aldehydes, whether or not with other oxygen function; cyclic polymers of aldehydes; paraformaldehyde
…	…
	– Aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols and aldehydes with other oxygen function
…	…
2912 49 00	- - Other
…	…’

18 Section VI of Part Two of the CN also includes Chapter 38, entitled ‘Miscellaneous chemical products’.

19 Under Note 1(a) and (b) to that chapter:

‘This chapter does not cover:

(a) separate chemically defined elements or compounds with the exception of the following [listed below in points 1 to 5]:

…;

(b) mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of human foodstuffs (generally, heading 2106)’.

20 Chapter 38 of the CN contains heading 3824, which is structured as follows:

'3824	Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included
…	…
3824 90	– Other
	…
	– – Other
	…
	– – – Other
	…
	– – – – Chemical products or preparations, predominantly composed of organic compounds, not elsewhere specified or included
3824 90 92	– – – – – In the form of a liquid at 20 °C
…	…'

Regulation (EC) No 1333/2008

21 Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ 2008 L 354, p. 16), which contains the EU list of food additives approved for use in foods and the conditions of use thereof, includes, in Part B, point 1, entitled 'Colours', 'plain caramel' (E 150a), and states, in footnote 1, relating to that additive, that 'the term caramel relates to products of a more or less intense brown colour which are intended for colouring' and that 'it does not correspond to the sugary aromatic product obtained from heating sugars and which is used for flavouring food (e.g. confectionery, pastry, alcoholic drinks)'.

Regulation (EC) No 1334/2008

22 Article 3(2)(a)(i) and (ii) of Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (OJ 2008 L 354, p. 34) states:

'For the purposes of this Regulation, the following definitions shall also apply:

(a) "flavourings" shall mean products:
   (i) not intended to be consumed as such, which are added to food in order to impart or modify odour and/or taste;
   (ii) made or consisting of the following categories: flavouring substances, flavouring preparations, thermal process flavourings, smoke flavourings, flavour precursors or other flavourings or mixtures thereof'.

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

23 Flavourstream imported from Canada into the European Union a consignment of goods consisting of three containers containing 3 300 kg of an aqueous solution, obtained by thermal decomposition of dextrose used in the food industry and marketed under the name 'AURIC GMO FREE'. On 5 June 2015, that company declared those goods to the Customs Office of Sibiu, with a view to their release for free circulation, as coming under tariff subheading 1702 90 95 of the CN, which includes 'other' sugars referred to in tariff heading 1702 thereof, not classified in other subheadings, in respect of which a rate of customs duty of EUR 0.4 per 100 kg applies.

24 The customs duties payable on that product were calculated on the basis of that tariff subheading.

25 Following a check, the customs authorities took the view, on the basis of laboratory analyses corroborated by certificates of analysis in respect of the product at issue in the main proceedings, that that product came under tariff subheading 2912 49 00 of the CN, which includes 'other' aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols and aldehydes with other oxygen function, not classified in other subheadings. Consequently, on 22 April 2016, those authorities adopted a regularisation decision, by which they reassessed the customs duties and VAT claimed from Flavourstream, together with default interest and penalties, in the total amount of 102 079 Romanian lei (RON) (approximately EUR 23 500) ('the decision of 22 April 2016').

26 By decision of 30 August 2016, the Regional Directorate-General of Public Finances of Brașov rejected the administrative complaint Flavourstream had filed against the decision of 22 April 2016.

27 Flavourstream brought an action against the decisions of 22 April and 30 August 2016 before the Tribunalul Sibiu (Regional Court, Sibiu, Romania). That court annulled those decisions and found that the company was exempt from paying the amount set out in the decision of 22 April 2016, ruling that that company had correctly declared the product at issue in the main proceedings as coming under tariff subheading 1702 90 95 of the CN and that the classification of that product under tariff subheading 2912 49 00 of the CN, carried out by the competent authorities, was therefore incorrect.

28 The referring court, before which an appeal against the judgment of the Tribunalul Sibiu (Regional Court, Sibiu) has been brought, states, first, that, according to Flavourstream, hydroxyacetaldehyde is a key component in giving foodstuffs the flavour and consistency of a grilled foodstuff as well as a brown colour. The foodstuff on which that product is used would, after cooking, have the same appearance as if it had been treated with sugar prior to its preparation. That product, in which the sugar has already been broken down, merely reduces the processing time of foodstuffs. The use of the product at issue in the main proceedings as inferior sugar in the food processing industry would bring it within the scope of Regulation No 1334/2008.

29 Second, the referring court states that, according to the competent customs authorities, the final product, namely hydroxyacetaldehyde, cannot be classified in subheading 1702 90 95 of the CN, which covers the raw material of that product, namely glucose, since it is entirely distinct from that raw material, as a result of two irreversible processing stages to which, according to those authorities, that raw material has been subject. Likewise, the product at issue in the main proceedings, in so far as it does not contain sugar, cannot be classified in that tariff subheading,

which covers products with fructose content, in the dry state, of 50% by weight. That product should therefore, according to those authorities, be classified under subheading 2912 49 00 of the CN.

30 In those circumstances, the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must the nomenclature in Annex I to Regulation No 2658/87, as amended by [Commission] Implementing Regulation [(EU)] 2016/1821 [of 6 October 2016 (OJ 2016 L 294, p. 1)], be interpreted as meaning that the product "AURIC GMO FREE", which is at issue in the [main proceedings], is to be classified under tariff subheading 1702 90 95 or subheading 2912 49 00 of that nomenclature?'

Consideration of the question referred

31 By its question, the referring court asks, in essence, whether the CN must be interpreted as meaning that an aqueous solution obtained by thermal decomposition of dextrose, composed in particular of water-soluble aldehydes and ketones, comes under subheading 1702 90 95 of the CN, which covers inter alia invert sugar and other sugar and sugar syrup blends with fructose content, in the dry state, of 50% by weight, not classified under other subheadings of heading 1702 of the CN, or under subheading 2912 49 00 thereof, which refers to 'other' aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols and aldehydes with other oxygen function.

32 Since Implementing Regulation 2016/1821, which the question referred for a preliminary ruling concerns, did not enter into force until 1 January 2017, whereas the importation at issue in the main proceedings took place in 2015, the version of the Combined Nomenclature applicable *ratione temporis* to the dispute in the main proceedings is that resulting from Implementing Regulation No 1101/2014, which was adopted on 16 October 2014 and entered into force on 1 January 2015 and which corresponds, in essence, to that resulting from the regulation cited by the referring court.

33 At the outset, it should be recalled 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 goods 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 (see, to that effect, judgment of 30 April 2020, *DHL Logistics (Slovakia)*, C-810/18, EU:C:2020:336, paragraph 24 and the case-law cited).

34 According to the general rules for the interpretation of the Combined Nomenclature, the classification of goods is to be determined according to the terms of the headings and any section or chapter notes to that nomenclature. In the interests of legal certainty and ease of verification, the decisive criterion for the tariff classification of goods is, in general, to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of that nomenclature and in the section or chapter notes. The intended use of a product may also constitute an objective criterion for classification if 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 (see, to that effect, judgment of 2 May 2019, *Onlineshop*, C-268/18, EU:C:2019:353, paragraphs 27 to 29 and the case-law cited).

35 It is in the light of that case-law that the CN subheadings at issue must be interpreted.

36 As regards, in the first place, subheading 1702 90 of the CN, which refers to 'other [sugars], including invert sugar and other sugar and sugar syrup blends containing in the dry state 50% by weight of fructose', not classified in other subheadings of heading 1702 of the CN, classification of a product in that subheading is subject to the condition, which follows from the subheading's actual wording, that that product has a fructose content, in the dry state, of 50% by weight.

37 In the present case, it is apparent from the order for reference that the product at issue in the main proceedings is an aqueous mixture of chemical products containing in particular water-soluble aldehydes and ketones obtained from monosaccharides – which are natural food sweeteners – by means of enzymatic oxidation or thermal reactions. That product is used in the food industry as a colouring additive or smoke flavouring. It also follows from the file before the Court that that product contains less than 1% glucose and sucrose, which represents sugar content, in the dry state, of less than 1.6% by weight.

38 It follows that the product at issue in the main proceedings, in so far as it does not have a fructose content, in the dry state, of 50% by weight, does not satisfy the condition for classification in subheading 1702 90 of the CN and, therefore, in subheading 1702 90 95 thereof.

39 That conclusion cannot be invalidated by the argument that the product at issue in the main proceedings is used as 'inferior sugar' in the food processing industry and the foodstuff on which it is used has, after cooking, the same appearance as if it had been treated with sugar prior to its preparation.

40 Even if the product at issue in the main proceedings is regarded as 'inferior sugar' in the food processing industry, that fact cannot of itself suffice for a conclusion that that product comes under subheading 1702 90 95 of the CN, in so far as it does not have a fructose content, in the dry state, of 50% by weight, which is a condition for classification in that subheading.

41 Furthermore, the fact that the product at issue in the main proceedings falls, as the case may be, within the scope of Regulation No 1334/2008, as a flavouring or other food ingredient with flavouring properties, gives no indication as to whether it should be classified under subheading 1702 90 95 of the CN, since the definitions of flavourings and other food ingredients with flavouring properties, referred to in Article 3(2)(a)(i) and (ii) of that regulation, do not make provision for sugar content.

42 It should be added that Regulation No 1333/2008 refers to 'plain caramel' (E 150a), in Part B, point 1, entitled 'Colours', as a food additive, referring to 'products of a more or less intense brown colour which are intended for colouring', and states that 'it does not correspond to the sugary aromatic product obtained from heating sugars and which is used for flavouring food (e.g. confectionery, pastry, alcoholic drinks)'. The fact that the product at issue in the main proceedings falls, according to the information in the order for reference, within that definition is rather an indication that that product falls outside the scope of Chapter 17 of the CN and, therefore, cannot be classified as 'caramel' which is inter alia referred to in CN subheading 1702 90.

43 It follows that subheading 1702 90 95 of the CN, which covers sugars 'other' than those coming under other subheadings included in subheading 1702 90 thereof, must be interpreted as meaning that a product which does not have a fructose content, in the dry state, of 50% by weight does not come under that subheading.

44 In the second place, as regards the interpretation of subheading 2912 49 00 of the CN, which is in Chapter 29 thereof, entitled 'Organic chemicals', Note 1(a) and (d) to that chapter states that, except where the context otherwise requires, the headings of that chapter apply only to 'separate chemically defined organic compounds, whether or not containing impurities' and their water solutions.

45 The HS Explanatory Notes to Chapter 29 of the HS state, in their general considerations, that 'a separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram'. In addition, those explanatory notes provide that such a compound may, in principle, contain impurities. They state, first, that 'the term "impurities" applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification)', and, second, that 'these substances may result from any of the factors involved in the process', which include 'unconverted starting materials', 'impurities present in the starting materials', 'reagents used in the manufacturing process (including purification)' and by-products.

46 As regards, more specifically, heading 2912 of the CN, it refers to 'aldehydes, whether or not with other oxygen function', 'cyclic polymers of aldehydes' and 'paraformaldehyde'. The products that come under that heading include, inter alia, 'other' aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols and aldehydes with other oxygen function, referred to in subheading 2912 49 00 of the CN.

47 In the present case, it is immediately apparent from the file before the Court that the product at issue in the main proceedings contains, in addition to hydroxyacetaldehyde, representing, in the dry state, 73.6% by weight of the product, other aldehydes, levoglucosan, acetol and acetic and formic acids, representing, in the dry state, 26.3% by weight of the product.

48 In so far as the product at issue in the main proceedings contains, in addition to water, substances other than hydroxyacetaldehyde, which it is for the referring court to verify, it is not an aqueous solution of a substance consisting of one molecular species whose composition is defined by a constant ratio of elements and which can be represented by a definitive structural diagram, within the meaning of the HS Explanatory Notes to Chapter 29 of the HS, referred to in paragraph 45 of the present judgment. Those other substances, which are present in significant quantities in the product at issue in the main proceedings, cannot constitute 'impurities' within the meaning of those explanatory notes. As the Commission stated in response to a question put by the Court, it is clear from the patent referred to in the file before the Court that those other substances have been deliberately left, in a significant quantity, in that product so that it can lend itself, as a browning agent, to specific uses for the colouring and flavouring of foodstuffs.

49 Although Note 1 to Chapter 29 of the CN permits the presence of impurities in the products which fall within the scope of that chapter, those impurities are necessarily residual in nature, in order not to affect the 'separateness' of the organic compound at issue. By contrast, where a product contains impurities resulting from the manufacturing process which render it suitable for specific uses, distinct from its general use, such a product cannot be considered to be 'separate' within the meaning of Note 1(a) to Chapter 29 of the CN, since such impurities determine its use (judgment of 20 June 2013, *Agroferm*, C-568/11, EU:C:2013:407, paragraphs 32 and 35).

50 In those circumstances, subheading 2912 49 00 of the CN must be interpreted as meaning that a product in which substances other than hydroxyacetaldehyde are present in significant quantities, some of which appear to have been left in deliberately, in order for that product to lend itself to a specific use, does not come under that subheading as an aqueous solution of a separate chemically defined compound.

51 In the third place, in so far as the Commission has submitted, in its written observations, that the product at issue in the main proceedings is capable of being classified in subheading 3824 90 92 of Chapter 38 of the CN, it should be noted, first, that, according to Note 1(a) to that chapter, entitled 'Miscellaneous chemical products', that chapter does not cover separate chemically defined elements or compounds, other than those listed in point (a)(1) to (5), which are not relevant in the present case. It follows that, since it is not a separate chemically defined compound, the product at issue in the main proceedings may, in accordance with that note, come under Chapter 38 of the CN.

52 Second, it is apparent from Note 1(b) to that chapter that the chapter does not cover 'mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of human foodstuffs'.

53 The HS Explanatory Notes to Chapter 38 of the HS state that the expression 'foodstuffs or other substances with nutritive value' principally includes edible products of Sections I to IV of the HS. It also follows from those notes that 'the mere presence of "foodstuffs or other substances with nutritive value" in a mixture would not suffice to exclude the mixtures from Chapter 38, by application of Note 1(b) [to that chapter]' and that 'substances having a nutritive value that is merely incidental to their function as chemical products, e.g., as food additives or processing aids, are not regarded as "foodstuffs or substances with nutritive value" for the purpose of this Note'. Those explanatory notes state, moreover, that 'the mixtures which are excluded from Chapter 38 by virtue of Note 1(b) are those which are of a kind used in the preparation of human foodstuffs and which are valued for their nutritional qualities'.

54 Chapter 38 of the CN includes, inter alia, heading 3824 thereof, which refers to 'Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included' and, more specifically, subheading 3824 90 92 thereof, which refers to 'Chemical products or preparations, predominantly composed of organic compounds, not elsewhere specified or included', 'in the form of a liquid at 20 °C', and which constitutes a residual category within that heading.

55 In the present case, as is apparent from paragraphs 37 and 39 of the present judgment, the product at issue in the main proceedings is used in the food industry as a colouring additive or smoke flavouring, referred to in point 1 of Part B of Regulation No 1333/2008 by the name 'plain caramel' (E 150a). Such use may indicate that the main function of that product is as a food additive, even if it also has nutritive value. Subject to that verification to be carried out by the referring court, the product at issue in the main proceedings is capable of coming under subheading 3824 90 92 of the CN.

56 In the light of all the foregoing, the answer to the question referred is that the CN must be interpreted as meaning that an aqueous solution obtained by thermal decomposition of dextrose, composed in particular of water-soluble aldehydes and ketones, does not come either under subheading 1702 90 95 of the CN, which covers inter alia invert sugar and other sugar and sugar

syrup blends with fructose content, in the dry state, of 50% by weight, not classified under other subheadings of heading 1702 of the CN, or under subheading 2912 49 00 thereof, which refers to 'other' aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols and aldehydes with other oxygen function, but under subheading 3824 90 92 of the CN, which refers to 'Chemical products or preparations, predominantly composed of organic compounds, not elsewhere specified or included', 'in the form of a liquid at 20 °C', provided that any potential nutritive value of that solution is merely incidental to that solution's function as a chemical product and food additive.

Costs

57 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 Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the version resulting from Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014, must be interpreted as meaning that an aqueous solution obtained by thermal decomposition of dextrose, composed in particular of water-soluble aldehydes and ketones, does not come either under subheading 1702 90 95 of that nomenclature, which covers inter alia invert sugar and other sugar and sugar syrup blends with fructose content, in the dry state, of 50% by weight, not classified under other subheadings of heading 1702 of that nomenclature, or under subheading 2912 49 00 thereof, which refers to 'other' aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols and aldehydes with other oxygen function, but under subheading 3824 90 92 of that nomenclature, which refers to 'Chemical products or preparations, predominantly composed of organic compounds, not elsewhere specified or included', 'in the form of a liquid at 20 °C', provided that any potential nutritive value of that solution is merely incidental to that solution's function as a chemical product and food additive.

[Signatures]