Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

19 December 2019*

[Text rectified by order of 12 July 2021]

(Reference for a preliminary ruling — Common Customs Tariff — Tariff classification — Combined Nomenclature — Headings 6212 and 9021 — Mastectomy bras — Implementing Regulation (EU) 2017/1167 — Validity — Notion of 'accessories' — Sincere cooperation)

In Case C-677/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the First-tier Tribunal (Tax Chamber), United Kingdom, made by decision of 1 November 2018, received at the Court on 5 November 2018, in the proceedings

Amoena Ltd

v

Commissioners for Her Majesty's Revenue and Customs,

THE COURT (Tenth Chamber),

composed of I. Jarukaitis, President of the Chamber, E. Juhász and C. Lycourgos (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Amoena Ltd, by A. Mehlin, Solicitor, E. Brown, Barrister, G. Facenna QC, and A. Davies, Consultant,

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

– the European Commission, by A. Caeiros and J. Hradil, acting as Agents,

* Language of the case: English.

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity of Commission Implementing Regulation (EU) 2017/1167 of 26 June 2017 concerning the classification of certain goods in the Combined Nomenclature (OJ 2017 L 170, p. 50).

2 The request has been made in proceedings between Amoena Ltd and the Commissioners for Her Majesty's Revenue and Customs ('the tax authority') concerning the tariff classification of mastectomy bras.

Legal context

The CN

3 The customs classification of goods imported into the European Union is governed by the combined nomenclature ('the CN') 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). The version of the CN applicable to the case in the main proceedings is that which results from that regulation, as amended by Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 (OJ 2016 L 294, p. 1).

4 Part One of the CN contains preliminary provisions. In Section I of Part One, which contains general rules, subsection A, entitled 'General rules for the interpretation of the Combined Nomenclature', provides:

'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.

…

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.'

5 Part Two of the CN, entitled 'Schedule of customs duties', is divided into 21 sections. Section XI, entitled 'Textiles and textile articles', includes in particular Chapter 62, entitled 'Articles of apparel and clothing accessories, not knitted or crocheted'.

6 Heading 6212 of the CN, to which a conventional rate of duty of 6.5% applies, is structured as follows:

6212	Brassières, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted:
6212 10	– Brassières :
6212 10 10	– – In a set made up for retail sale containing a brassière and a pair of briefs
6212 10 90	– – Other
…	…

7 Section XVIII of Part Two of the CN is entitled 'Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof'. It includes in particular Chapter 90, entitled 'Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof'.

8 Heading 9021 of the CN, the goods covered by which are exempt from conventional duty, is structured as follows:

9021	Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability:
9021 10	– Orthopaedic or fracture appliances
9021 10 10	– – Orthopaedic appliances
…	…
	– Artificial teeth and dental:
…	…
	– Other artificial parts of the body:
9021 31 00	– – Artificial joints
9021 39	– – Other :
9021 39 10	– – – Ocular prostheses
9021 39 90	– – – Other
…	…

9 Note 2(b) to Chapter 90 of the CN provides:

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

…

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

…'

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 [European] 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 Article 285(1) of that regulation states:

'The Commission shall be assisted by the Customs Code Committee. …'

Implementing Regulation 2017/1167

13 In order to ensure the uniform application of the CN, the Commission adopted Implementing Regulation 2017/1167, which, in accordance with Article 3, entered into force on 21 July 2017.

14 Article 1 of that regulation provides:

'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 regulation reads as follows:

'Annex

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
A knitted brassière (61% nylon, 20% elastane, 12% cotton, 7% viscose), with adjustable broad padded shoulder straps, centrally positioned over the breasts, with shaped cups and elastication at the back part of the base. There is an embroidered design on the shoulder straps and cups and a decorative bow at the centre front. The article is closed by means of an adjustable "hook and eye fastening". The brassière has a lining in the cups, with side openings for the insertion of padding for the enhancement of breasts (aesthetic purposes) or for the insertion of breast forms following a mastectomy. See images (*1).	6212 10 90	Classification is determined by general rules 1 and 6 for the interpretation of the [CN] and by the wording of CN codes 6212, 6212 10 and 6212 10 90. The article has the objective characteristics (the form and the construction) of a brassière of heading 6212, which includes brassières of all kinds (see also the Harmonised System Explanatory Notes to heading 6212, second paragraph (1)). Although the article can also be worn by women following a mastectomy, classification under heading 9021 as an orthopaedic appliance or as a part or accessory of an artificial part of the body is excluded because, at the time of importation, the objective characteristics of the product are those of a brassière of heading 6212 and do not give any indication of the final use (for aesthetic or medical purposes). The side openings do not make the brassière a product of heading 9021 as they can serve both for the insertion of breast forms following a mastectomy and for the insertion of padding for the enhancement of breasts (aesthetic purposes). Similarly, the broad shoulder straps, centrally positioned over the breasts are a common feature for bigger cup brassières of heading 6212. Therefore, the article is to be classified under CN code 6212 10 90 as a brassière.

(*1) The images are purely for information.



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Background to the dispute

16 Amoena, a company established in the United Kingdom, imports mastectomy bras that it markets under the name of 'Carmen'.

17 On 1 August 2017, following the importation by Amoena of a consignment of mastectomy bras, the tax authority classified those goods in subheading 6212 10 90 of the CN, in accordance with Implementing Regulation 2017/1167, and applied a rate of customs duty of 6.5%, of which Amoena applied for a refund that same day.

18 On 1 September 2017, the tax authority refused that application, which Amoena contested before the referring court. Amoena claims that Implementing Regulation 2017/1167 is invalid on the grounds that it is the result of a manifest error, that it infringes the limited powers of the Commission in so far as it illegitimately narrows the scope of Heading 9021 of the CN and that it infringes Article 4(3) TEU. It also claims that, in the light of their specific purpose and their objective characteristics, the mastectomy bras must be classified as breast form 'accessories', in accordance with Note 2(b) of Chapter 90 of the CN, and be classified in Heading 9021, thus excluding them from customs duties.

19 The referring court cites, in the first place, a judgment of 13 July 2016 by which the Supreme Court of the United Kingdom held that mastectomy bras, such as those at issue in the main proceedings, should be classified in Heading 9021 of the CN ('the judgment of 13 July 2016').

20 Relying on the findings of fact in that judgment, the referring court describes the brassieres at issue in the main proceedings, without being contested by the parties to the main proceedings, as mastectomy bras designed to be worn by women who have undergone surgical removal of one or both breasts. They are specially designed to hold silicone breast forms and have left and right pockets to hold the breast forms firmly in place. The other characteristics which distinguish a mastectomy bra from ordinary brassieres are the broad padded straps, positioned centrally over the breasts, which help support the weight of the breast form and help to avoid undue stress associated with neck and shoulder problems for the post operated women. They are also designed to ensure the breast form itself does not show and therefore has a special cut and shape dissimilar to a conventional bra.

21 The referring court considers that the brassieres at issue in the main proceedings are thus objectively different by virtue of their design from ordinary brassieres and that the use for which they are designed is clearly apparent from their physical characteristics. Moreover, it notes that the brassieres at issue in the main proceedings, combined with the breast forms which they are designed to hold and support, lessen the psychological impact of having had a mastectomy.

22 It is apparent from the order for reference that it is not disputed that the breast forms that those bras are designed to hold and support are themselves classified in Heading 9021 of the CN as 'artificial parts of the body'.

23 The referring court states, in the second place, that, following the judgment of 13 July 2016, Amoena submitted applications for binding tariff information ('the BTI') with the tax authority with respect to the brassieres at issue in the main proceedings. After having acknowledged receipt of those applications, that authority notified Amoena that the issuing of BTIs in respect of those goods was suspended pending the examination of their classification by the Customs Code Committee ('the CCC') with a view to the possible adoption of a classification regulation.

24 A meeting of the CCC was held from 17 to 19 October 2016 with the participation of the Commission and numerous Member States, including the United Kingdom of Great Britain and Northern Ireland, during which the representative of the latter State provided details about the judgment of 13 July 2016 and the reasoning of the Supreme Court of the United Kingdom which led to the classification of the brassieres at issue in the main proceedings in Heading 9021 of the CN as breast form accessories.

25 According to the referring court, it follows from the minutes of that meeting, first, that several Member States issued BTIs under Heading 6212 of the CN for that kind of products, secondly, that the vast majority of the Member States present during that meeting were of the opinion that a mastectomy bra does not have features which distinguish it significantly from a bra of Heading 6212 of the CN and, thirdly, that it was necessary, as a result of the judgment of 13 July 2016 and so as to ensure a uniform tariff classification, to prepare and to submit a draft classification regulation for discussion during the next meeting of the CCC.

26 A new meeting of the CCC took place from 19 to 21 December 2016, during which the United Kingdom provided further information relating the proceedings which led to the judgment of 13 July 2016. It is apparent from the minutes of that meeting that that judgment was considered to be contrary to the classification practice followed in other Member States, according to which bras such as those at issue in the main proceedings are in Heading 6212 of the CN as a result of their objective characteristics.

27 During a meeting of the CCC which was held from 3 to 5 May 2017, a draft classification regulation relating to goods, such as the brassieres at issue in the main proceedings, was put to the vote of the Member States. Twenty-seven Member States voted in favour of the classification of those goods in subheading 6212 10 90 of the CN, only the United Kingdom having voted against that classification.

28 On 26 June 2017, Implementing Regulation 2017/1167 was adopted by the Commission.

29 Since it considers that the arguments presented before it by Amoena appear defensible, the First-tier Tribunal (Tax Chamber) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Was the CCC and/or the … Commission manifestly wrong to classify the mastectomy bras:
(a) under Chapter 62 of the [CN] with tariff heading 6212, which specifically includes "Brassieres", and CN code 621210 90;

instead of
(b) Chapter 90 with tariff heading 9021 and CN Code 9021 10 10 as accessories to artificial parts of the body within the meaning of Note 2(b) to Chapter 90 of the CN?

(2) Does [Implementing Regulation 2017/1167] illegitimately narrow the scope of the classification for accessories for artificial body parts under tariff heading 9021 and Note 2(b) to Chapter 90 of the CN, thereby making it *ultra vires* the … Commission's powers?

(3) Does [Implementing Regulation 2017/1167] constitute a breach of the principal of sincere cooperation set out in Article 4(3) [TEU] in circumstances where:
(a) the … Commission must respect the decisions of national courts, but must also promote the uniform (and correct) application of the Customs Code [established by Regulation No 952/2013] and the CN;
(b) the United Kingdom Supreme Court came to the unanimous conclusion that the mastectomy bras are properly to be classified under Chapter 90 of the CN with tariff heading 9021; and
(c) the Supreme Court's decision was put before the … Commission and submitted by it to all EU Member States along with a summary of the Supreme Court's reasoning?'

Consideration of the questions referred

30 By its questions, which should be examined together, the referring court asks, in essence, the Court to rule on the validity of Implementing Regulation 2017/1167 in the light, first, of the classification of the goods referred to in column 1 of the table of its annex in Heading 6212 of the CN and not in Heading 9021 thereof and, secondly, of the principle of sincere cooperation set out in Article 4(3) TEU.

31 It should, first of all, be noted that, according to settled case-law, a classification regulation is of general application in so far as it does not apply to an individual trader but, in general, to products which are the same as that examined by the CCC. In the interpretation of a classification regulation, in order to determine its scope, account must be taken, inter alia, of its statement of reasons (judgment of 13 September 2018, *Vision Research Europe*, C-372/17, EU:C:2018:708, paragraph 40 and the case-law cited).

32 Moreover, if a classification regulation is not directly applicable to goods which are not identical, but only similar to the goods covered by that regulation, the latter is applicable by analogy to such goods. In that regard, it suffices that the goods to be classified and those covered by the classification regulation are sufficiently similar (judgment of 13 September 2018, *Vision Research Europe*, C-372/17, EU:C:2018:708, paragraph 44).

33 In accordance with the description in column 1 of the annex to Implementing Regulation 2017/1167, the latter refers to:

'a knitted brassière …, with adjustable broad padded shoulder straps, centrally positioned over the breasts, with shaped cups and elastication at the back part of the base. There is an embroidered design on the shoulder straps and cups and a decorative bow at the centre front. The article is closed by means of an adjustable "hook and eye fastening". The brassière has a lining in the cups, with side openings for the insertion of padding for the enhancement of breasts (aesthetic purposes) or for the insertion of breast forms following a mastectomy.'

34 In the present case, it follows from the description of the brassieres at issue in the main proceedings provided by the referring court, included in paragraph 20 of the present judgment, that they are mastectomy bras specially designed to hold breast forms and with left and right pockets to hold the breast forms in place. They are characterised in particular by broad padded shoulder straps, centrally positioned over each breast.

35 Therefore, in light of those objective characteristics and properties, the brassieres at issue in the main proceedings appear to be identical to the goods referred to in the annex to Implementing Regulation 2017/1167, or, at least, sufficiently similar to those goods so that that regulation is applicable to them by analogy.

36 Since Implementing Regulation 2017/1167 is applicable to the brassieres at issue in the main proceedings, it is necessary to examine the validity of that regulation in the light, first, of the CN and, secondly, of the principle of sincere cooperation enshrined in Article 4(3) TEU.

The validity of Implementing Regulation 2017/1167 in the light of the CN

37 The Court has repeatedly held that the European Parliament and the Council of the European Union have conferred upon the Commission, acting in cooperation with the customs experts of the Member States, broad discretion to define the subject matter of tariff headings falling to be considered for the classification of particular goods. However, the Commission's power to adopt the measures referred to in Article 57(4) of Regulation No 952/2013 does not authorise it to alter the subject matter and the scope of the tariff headings (see, to that effect, judgments of 22 March 2017, *GROFA and Others*, C-435/15 and C-666/15, EU:C:2017:232, paragraph 49, and of 22 February 2018, *Kubota (UK) and EP Barrus*, C-545/16, EU:C:2018:101, paragraph 23).

38 It is therefore necessary to verify whether, in classifying the goods described in column 1 of the table included in the annex to Implementing Regulation 2017/1167 in Heading 6212 of the CN and not in Heading 9021 thereof, the Commission altered the subject matter or scope of those two tariff headings.

39 In that regard, it should be noted that, by virtue of general rule 1 for the interpretation of the CN, the tariff classification of good is in principle determined according to the terms of the headings and any relative section or chapter notes. By virtue of general rule 6 for the interpretation of the CN, the classification of goods in the subheadings of a heading is to be determined according to the terms of those subheadings and any related subheading notes.

40 According to the Court's settled case-law, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and of the notes relating to the sections or chapters (judgment of 15 May 2019, *Korado*, C-306/18, EU:C:2019:414, paragraph 36 and the case-law cited).

41 Those objective characteristics and properties of products must be capable of being assessed at the time of customs clearance (judgment of 22 February 2018, *SAKSA*, C-185/17, EU:C:2018:108, paragraph 31 and the case-law cited).

42 In that regard, it should be noted that Chapter 62 of the CN includes Heading 6212, entitled 'Brassières, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted'. Subheading 6212 10 is entitled 'Brassières'. The wording of subheading 6212 10 90 refers to brassieres 'other' than those 'in a set made up for retail sale containing a brassière and a pair of briefs'.

43 Therefore, on the basis of the description in column 1 of the table in the annex to Implementing Regulation 2017/1167, relating to the objective characteristics and properties of the goods covered by that regulation, the Commission was entitled to consider that, in accordance with general rules 1 and 6 for the interpretation of the CN, as that is set out in the reasoning in column 3 of the table in the annex to that regulation, that product 'has the objective characteristics (the form and the construction) of a brassiere of heading 6212 [of the CN]'.

44 In that regard, it must be noted that although the intended use of a product may, admittedly, constitute an objective criterion for classification, that is only to the extent that that use is inherent in that 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 15 May 2019, *Korado*, C-306/18, EU:C:2019:414, paragraph 37 and the case-law cited). However, even assuming that the bras covered by Implementing Regulation 2017/1167 are, as is claimed by Amoena, exclusively or, at least, principally used by women who have undergone surgical removal of one or both breasts allowing them to insert a breast form, that use is not such as to invalidate the finding made in the previous paragraph of the present judgment.

45 Such a purpose is not intrinsic to those goods, since the objective characteristics and properties of those goods do not appear to be such as to exclude a use thereof as an ordinary brassiere or to impose an exclusive use of those brassieres with a breast form. Although the bras referred to in Implementing Regulation 2017/1167 have particularly broad shoulder straps centrally positioned over each breast with side openings, it is apparent from the grounds in column 3 of the table of the annex to that regulation, without being contested by Amoena, that the specific positioning of shoulder straps is a common characteristic of bigger cup bras and that those side openings can serve to accommodate padding for aesthetic purposes.

46 It follows that the Commission was entitled to consider, as is apparent from column 3 of the table in the annex to Implementing Regulation 2017/1167, that, 'at the time of importation, the objective characteristics of the product … do not give any indication of the final use (for aesthetic or medical purposes)'.

47 In light of the above, the classification of the goods referred to in the annex to Implementing Regulation 2017/1167 in Heading 6212 of the CN, more particularly in subheading 6212 10 90 thereof, appears to be justified and, consequently, it does not seem that, in making that classification, the Commission altered the subject matter or scope of Heading 6212 of the CN.

48 That finding is not called into question by the arguments put forward by Amoena, as presented in the order for reference, in favour of a classification of the brassieres at issue in the main proceedings in Heading 9021 of the CN as breast form 'accessories', as was held by the Supreme Court of the United Kingdom in the judgment of 13 July 2016.

49 In that regard, it is apparent from the file before the Court that it is not disputed that the breast forms capable of being inserted in the brassieres at issue in the main proceedings themselves fall within Heading 9021 of the CN as 'artificial parts of the body'.

50 In accordance with Note 2(b) to Chapter 90 of the CN, other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading of that chapter are to be classified with the machines, instruments or apparatus of that kind.

51 [As rectified by order of 12 July 2021] It follows from the Court's case-law that the notion of 'accessories', for the purposes of Chapter 90 of the CN, implies interchangeable parts or devices designed to adapt a machine for a particular operation, or to increase its range of operations, or to enable it to perform a particular service relative to its main function (see, to that effect, judgments of 16 June 2011, *Unomedical*, C-152/10, EU:C:2011:402, paragraph 29, and of 4 March 2015, *Oliver Medical*, C-547/13, EU:C:2015:139, paragraph 69).

52 In the present case, it must be noted that the goods referred to in the annex to Implementing Regulation 2017/1167 cannot be regarded as breast form 'accessories', for the purposes of Chapter 90 of the CN.

53 Such brassieres do not allow breast forms to be adapted for a particular function, do not increase their range of operations, and do not allow them to perform a particular service relative to their main function, in so far as they add nothing to that function and do not improve their intrinsic function. Therefore, although they can, admittedly, in accordance with the information in the order for reference, serve to hold the breast forms in place thanks to their side openings, they do not however allow those forms to perform a function other than that for which they are designed, consisting in replacing all or a part of one or both breasts which have undergone surgical removal.

54 In the light of the above, it must be concluded that, by classifying the goods described in column 1 of the table in the annex to Implementing Regulation 2017/1167 in Heading 6212 of the CN and not in Heading 9021 thereof, the Commission did not alter the subject matter or the scope of those two tariff headings.

The validity of Implementing Regulation 2017/1167 in the light of the principle of sincere cooperation enshrined in Article 4(3) TEU

55 It should be noted that the principle of sincere cooperation not only obliges the Member States to take all the measures necessary to guarantee the application and effectiveness of EU law but also imposes on the EU institutions mutual duties to cooperate in good faith with the Member States (judgment of 4 September 2014, *Spain* v *Commission*, C-192/13 P, EU:C:2014:2156, paragraph 87).

56 Therefore, according to the Court's case-law, the principle of sincere cooperation can, in certain circumstances, impose procedural obligations on the Commission during the preparation of a legal act, in particular in so far as it can be required to gain knowledge of and to examine the arguments put forward by a Member State against that act (see, to that effect, judgments of 20 September 2001, *Belgium* v *Commission*, C-263/98, EU:C:2001:455, paragraphs 94 to 96, and of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 84).

57 However, in the present case, there are no grounds for finding that the Commission did not fulfil the procedural obligations imposed on it during the procedure for drawing up Implementing Regulation 2017/1167. It is apparent from the order for reference and from the observations submitted to the Court by the United Kingdom and the Commission that, at the time of the meetings of the CCC in October and December 2016, which preceded the adoption of that implementing regulation, the judgment of 13 July 2016 had indeed been brought to the attention both of the Commission and the Member States, that the United Kingdom had the opportunity to clarify the reasoning thereof and the background and that an exchange of views had taken place in that regard. It cannot therefore be claimed that the Commission did not examine and take into consideration the position taken by the United Kingdom prior to the adoption of Implementing Regulation 2017/1167.

58 Moreover, it should be noted that, when adopting a tariff classification regulation, the Commission cannot be bound by a judgment of a court of a Member State, including a supreme court. It is settled case-law that such a regulation is adopted by the Commission, following the opinion of the CCC, when the classification in the CN of a particular product is such as to give rise to difficulty or to be a matter for dispute (judgments of 26 April 2017, *Stryker EMEA Supply Chain Services*, C-51/16, EU:C:2017:298, paragraph 59, and of 15 May 2019, *Korado*, C-306/18, EU:C:2019:414, paragraph 54), since such a situation of legal uncertainty may in particular exist in the event of case-law or administrative divergences between the Member States concerning the tariff classification of the same product.

59 Such was the case following the judgment of 13 July 2016, since it is apparent from the file before the Court that the tariff classification of the brassieres at issue in the main proceedings made by the Supreme Court of the United Kingdom was contrary to that made by the customs authorities of other Member States during the issue of BTIs.

60 In that regard, it should be noted that, according to the Court's case-law, the fact that the customs authorities of another Member State have issued a BTI for specific goods to a person not party to the dispute pending before a national court, against whose decisions there is no judicial remedy under national law, which seems to reflect a different interpretation of the CN headings from that which that court considers it must adopt in respect of similar goods in question in that dispute, most certainly must cause that court to take particular care in its assessment of whether there is no reasonable doubt as to the correct application of the CN (see, to that effect, judgments of 15 September 2005, *Intermodal Transports*, C-495/03, EU:C:2005:552, paragraphs 33 and 34, and of 7 April 2011, *Sony Supply Chain Solutions (Europe)*, C-153/10, EU:C:2011:224, paragraph 42).

61 In the light of the foregoing, it must be held that no elements brought to the attention of the Court allow it to be concluded that, by adopting Implementing Regulation 2017/1167, the Commission infringed the principle of sincere cooperation enshrined in Article 4(3) TEU.

62 It follows that the answer to the questions referred is that the examination thereof has not revealed any elements capable of affecting the validity of Implementing Regulation 2017/1167.

Costs

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

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

The examination of the questions referred has not revealed any elements capable of affecting the validity of Commission Implementing Regulation (EU) 2017/1167 of 26 June 2017 concerning the classification of certain goods in the Combined Nomenclature.

Jarukaitis Juhász Lycourgos

Delivered in open court in Luxembourg on 19 December 2019.

A. Calot Escobar
Registrar

I. Jarukaitis
President of the Tenth Chamber