

ECJ Preliminary Ruling Request (Customs): *BIOR* (Case C-344/23) – *Augstākā tiesa Senāts* Submits Referral on Customs Classification of Fish Tags

14 August 2023

Report from Martha Caziero, VAT Associate, IBFD

On 14 August 2023, a preliminary ruling request lodged on 31 May 2023, was published in the Official Journal of the European Union. By this, the *Augstākā tiesa Senāts* (Senate of the Republic of Latvia) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case of *Pārtikas drošības, dzīvnieku veselības un vides zinātniskais institūts BIOR v. Valsts ieņēmumu dienests* (C-344/23), on the customs classification of fish tags (markers) made of plastic and used for the purposes of scientific research.

More specifically, the doubt is whether plastic fish tags used to monitor fish migration patterns and survival rates for scientific research purposes should be classified as 'scientific instrument or apparatus' and, therefore, exempted from import duties, or as other articles of plastics and articles of other materials, with an import duty of 6.5%.

For these reasons, the referring court requested the ECJ to answer the following questions:

- "(1) Must the expression 'scientific instrument or apparatus' in Article 46(a) of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty [[Regulation Setting Up a Community System of Reliefs from Customs Duty \(2009/1186\)](#)], be interpreted as meaning that it may include objects which, by virtue of their particular technical structure and functioning, themselves serve directly as a means of scientific research?
- (2) Must 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 [[Regulation on the tariff and statistical nomenclature and on the Common Customs Tariff \(87/2658\)](#)], as amended by Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 be interpreted as meaning that subheading 3926 90 92 90 of the combined nomenclature may include fish tags made of plastic?"

