

Case C-312/07

JVC France SAS

v

**Administration des douanes — Direction nationale
du renseignement et des enquêtes douanières**

(Reference for a preliminary ruling
from the Tribunal d'instance du XI^e arrondissement de Paris)

(Common Customs Tariff — Tariff classification — Combined
Nomenclature — Camcorders — Explanatory notes — Body of legal rules)

Judgment of the Court (Seventh Chamber), 5 June 2008 I - 4167

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits — Manifestly irrelevant questions (Art. 234 EC; Council Regulation No 2658/87, Annex I)*
2. *Common Customs Tariff — Tariff headings — Camcorders with DV-in function capable of being activated after customs clearance*
3. *Common Customs Tariff — Interpretation*

1. Where the national court has before it an application for remission of customs duty based on Article 239(1) of the Customs Code and must, on that basis, look for elements likely to constitute a specific circumstance arising from facts which imply neither deception nor obvious negligence on the part of the importer, the question of the legal scope of the explanatory notes to the Combined Nomenclature in Annex I to Regulation No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff is relevant. The question referred, which concerns the legal effect of amendments to those explanatory notes to the Combined Nomenclature, is thus admissible.

is also necessary, first, that, once activated, it functions in a manner similar to that of another camcorder whose DV-in function is active at the time of customs clearance and, second, that it functions independently. The existence of those conditions must be capable of being ascertained at the time of customs clearance. It is for the national court to establish whether those conditions are fulfilled. If those conditions are not fulfilled the camcorder must be classified under subheading 8525 40 91 of the Combined Nomenclature.

(see paras 25-27, operative part 1)

(see paras 28, 32)

2. A camcorder may be classified under subheading 8525 40 99 of the Combined Nomenclature in Annex I to Regulation No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff only if the function for recording images and sounds from sources other than the integrated camera or microphone (DV-in function) is active at the time of customs clearance or if, even though the manufacturer did not intend to promote that characteristic, that function may be activated subsequently by simple modification of the apparatus by a user who does not have special skills, without modification of the camcorder's hardware. Where the camcorder is activated subsequently, it

3. The explanatory notes relating to subheading 8525 40 99, of the Combined Nomenclature in Annex I of Regulation No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, published on 6 July 2001 and 23 October 2002, are interpretative in character and do not have legally binding force. They are in accordance with the wording of the Combined Nomenclature and do not alter its scope. It follows that the adoption of a new classification regulation, as opposed to interpreting the existing regulation, was not necessary.

(see paras 28, 37, operative part 2)