

Case C-376/07

Staatssecretaris van Financiën

v

Kamino International Logistics BV

(Reference for a preliminary ruling
from the Hoge Raad der Nederlanden)

(Common Customs Tariff — Combined Nomenclature — Tariff classification —
Monitors of the liquid crystal display (LCD) type with SUB-D, DVI-D, USB, S-video and
composite-video sockets — Heading 8471 — Heading 8528 — Regulation (EC)
No 754/2004)

Opinion of Advocate General Mengozzi delivered on 10 September 2008 . . . I - 1171

Judgment of the Court (Third Chamber), 19 February 2009 I - 1196

Summary of the Judgment

1. *Common Customs Tariff — Tariff headings — Monitors capable of transmitting signals coming both from an automatic data-processing machine and from other sources (Council Regulation No 2658/87, Annex I; Commission Regulation No 1789/2003)*

2. *Common Customs Tariff — Tariff headings — Monitors capable of transmitting signals coming both from an automatic data-processing machine and from other sources*
(Council Regulation No 2658/87, Annex I)
3. *Common Customs Tariff — Tariff headings — Monitors capable of transmitting signals coming both from an automatic data-processing machine and from other sources — Application by analogy of Classification Regulation No 754/2004 — Conditions — Sufficient similarity of the products — None*
(Council Regulation No 2658/87, Annex I; Commission Regulation No 754/2004)

1. Monitors of the LCD type with SUB-D, DVI-D, USB, S-video and composite video sockets are not excluded from classification in subheading 8471 60 90, as units of the kind used 'principally' in an automatic data-processing system within the meaning of Note 5(B)(a) to Chapter 84 of the combined nomenclature constituting Annex I to Regulation No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Regulation No 1789/2003, solely because they are capable of displaying signals coming both from an automatic data-processing machine and from other sources.

processing, perform 'a specific function other than data processing'. Those monitors, apart from the function of reproduction of images coming from apparatus such as a games console, a video recorder/player or a DVD player, which does not constitute data processing, also display signals coming from automatic data-processing.

Secondly, if, for the purposes of their the classification in subheading 8471 60 90, those monitors are not of a kind solely or principally used in an automatic data-processing system, because they are connectable to the central processing unit, are capable of receiving or delivering data in a form which can be used by the system and are able to display images coming from other sources, an interpretation of Explanatory Note 5(B)(a) to Chapter 84 of the Combined Nomenclature to the effect that the mere fact that the monitors at issue are able to display images

In that regard, first, it is apparent from Note 5(E) to Chapter 84 of the Combined Nomenclature only machines incorporating an automatic data-processing machine or working in conjunction with such a machine, whose function is not data

coming from sources other than an automatic data-processing machine precludes their classification in heading 8471 amounts to removal of the term 'principally' from the text of that note.

Lastly, if the Explanatory Notes relating to heading 8471 of the Harmonised System were to be interpreted as precluding the classification in subheading 8471 60 90 of all monitors capable of displaying signals coming both from an automatic data-processing machine and from other sources, they would have the effect of amending and, in particular, of restricting the scope of Note 5(B)(a) to Chapter 84. Accordingly, even if the Explanatory Notes to the Combined Nomenclature relating to subheading 8471 60 90 and the Explanatory Notes relating to heading 8471 of the Harmonised System were to be interpreted in that manner, those Notes should be considered inapplicable, since that interpretation does not accord with Note 5(B)(a) to Chapter 84 of the Combined Nomenclature.

must refer to the indications given in the Explanatory Notes relating to heading 8471 of the Harmonised System introduced by the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983, and the Protocol of Amendment thereto of 24 June 1986, in particular to points 1 to 5 of Part One, Chapter I(D), relating to display units of automatic data-processing machines. In that regard, the number and type of sockets with which such monitors are equipped cannot, alone, constitute decisive criteria for the tariff classification and, for that purpose, an assessment must be made, in relation also to other criteria and in the light of the characteristics and objective properties of those monitors, both as to the degree to which they are capable of performing a number of functions and as to the standard of performance which they achieve when performing those functions, having recourse to the Explanatory Notes relating to heading 8471 of the Harmonised System.

(see paras 57, 59, 61, operative part 2)

(see paras 39-46, 49-51, operative part 1)

2. In order to determine whether monitors of the LCD type with SUB-D, DVI-D, USB, S-video and composite video sockets are units of the kind used principally in an automatic data-processing system, the national authorities, including the courts,
3. Regulation No 754/2004 concerning the classification of certain goods in the Combined Nomenclature is not applicable for the purposes of tariff classification of monitors of the LCD type with SUB-D, DVI-D, USB, S-video and composite video

sockets. Although the application by analogy of a classification regulation to goods similar to those covered by that regulation facilitates a coherent interpretation of the Combined Nomenclature and the equal treatment of traders, it is still necessary, in such a case, for the goods to be classified and those covered by the classification regulation to be sufficiently similar. Those monitors of the liquid

crystal display LCD type are not identical from a technological point of view to the goods classified under Regulation No 754/2004, which relates to monitors with plasma screens, which also differ in their dimensions and their resolutions.

(see paras 64-70, operative part 3)