



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

11 April 2019 *

(Reference for a preliminary ruling – Common Customs Tariff – Classification of goods – Combined Nomenclature – Subheadings 8528 51 00 and 8528 59 40 – LCD flat panel monitors capable of displaying signals from automatic data-processing systems – Agreement on trade in information technology products)

In Case C-288/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 20 April 2018, received at the Court on 25 April 2018, in the proceedings

X BV

v

Staatssecretaris van Financiën,

THE COURT (Tenth Chamber),

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

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- X BV, by M. Chin-Oldenziel, advocaat,
- the Netherlands Government, by K. Bulterman and P. Huurnink, acting as Agents,
- the European Commission, by A. Caeiros and P. Vanden Heede, acting as Agents,

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

gives the following

* Language of the case: Dutch.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of subheadings 8528 51 00 and 8528 59 40 of the Combined Nomenclature ('the CN') 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), as amended by Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 (OJ 2012 L 304, p. 1).
- 2 The request has been made in proceedings between X BV and the Staatssecretaris van Financiën (State Secretary for Finance, the Netherlands) concerning the tariff classification of five large format information displays with a liquid crystal display (LCD) screen ('the displays at issue').

Legal context

The CN

- 3 The CN, introduced by Regulation No 2658/87, is based on the Harmonised Commodity Description and Coding System ('the HS'), which was drawn up by the Customs Cooperation Council, now the World Customs Organisation ('the WCO'), and established by the International Convention on the Harmonised Commodity Description and Coding System, concluded in Brussels on 14 June 1983. That convention, and the Protocol of Amendment thereto of 24 June 1986, was approved on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1). The CN reproduces the headings and subheadings of the HS to six digits, with only the seventh and eighth figures creating further subheadings which are specific to it.
- 4 The version of the CN applicable to the case in the main proceedings is that resulting from Implementing Regulation No 927/2012.
- 5 The first part of the CN, relating to preliminary provisions, includes Section I, on 'General rules', part A of which, 'General rules for the interpretation of the Combined Nomenclature', provides as follows:

'Classification of goods in the Combined Nomenclature shall be governed by the following principles.

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.'
- 6 Section XVI, in Part Two of the CN, entitled 'Schedule of Customs Duties', includes Chapter 85, which is headed 'Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles'.

7 Chapter 85 of the CN includes the following headings and subheadings:

8528	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus:
	– Cathode-ray tube monitors:
	...
	– Other monitors:
8528 51 00	– – Of a kind solely or principally used in an automatic data-processing system of heading 8471
8528 59	– – Other:
8528 59 10	– – – Monochrome
	– – – Colour:
8528 59 40	– – – – With a screen of the liquid crystal display (LCD) technology
8528 59 80	– – – – Other'

The Explanatory Notes to the HS

- 8 The Explanatory Notes to the HS are drawn up within the WCO in accordance with the provisions of the Convention establishing a Customs Cooperation Council.
- 9 In the version adopted in 2012, the Explanatory Notes to the HS relating to heading 8528 of the HS state, inter alia:

‘ ...

Monitors, projectors and television sets utilise different technologies, such as CRT (cathode-ray tube), LCD (liquid crystal display), DMD (digital micromirror device), OLED (organic light emitting diodes) and plasma, to display images.

Monitors and projectors may be capable of receiving a variety of signals from different sources. However, if they incorporate a television tuner they are considered to be reception apparatus for television.

(A) Monitors of a kind solely or principally used in an automatic data-processing system of heading 8471

This group includes CRT and non-CRT (e.g., flat panel screen) monitors which provide a graphical presentation of the data processed. These monitors are distinguishable from other types of monitors (see (B) below) and from television receivers. They include:

(1) Those monitors which are capable of accepting a signal only from the central processing unit of an automatic data-processing machine and, therefore, are not able to reproduce a colour image from a composite video signal whose waveform conforms to a broadcast standard (NTSC, SECAM, PAL, D-MAC, etc.). They are fitted with connectors characteristic of data-processing systems (e.g., RS-232C

interface, DIN or SUB-D connectors) and do not have an audio circuit. They are controlled by special adaptors (e.g., monochrome or graphics adaptors) which are integrated in the central processing unit of the automatic data-processing machine.

(2) CRT monitors having a display pitch size starting at 0.41 mm for medium resolution, which gets smaller as the resolution increases.

(3) Those CRT monitors which, in order to accommodate the presentation of small yet well-defined images, utilise smaller dot (pixel) sizes and greater convergence standards than those applicable to the monitors described at (B) below and television receivers. (Convergence is the ability of the electron gun(s) to excite a single spot on the face of the cathode-ray tube without disturbing any of the adjoining spots.)

(4) CRT monitors whose video frequency (bandwidth), which is the measurement determining how many dots can be transmitted per second to form the image, is generally 15 MHz or greater. Whereas, in the case of the monitors described at (B) below, the bandwidth is generally no greater than 6 MHz. The horizontal scanning frequency of these monitors varies according to the standards for various display modes, generally from 15 kHz to over 155 kHz. Many are capable of multiple horizontal scanning frequencies. The horizontal scanning frequency of the monitors described at (B) below is fixed, usually 15.6 or 15.7 kHz depending on the applicable television standard. Moreover, the display units of automatic data-processing machines do not operate in conformity with national or international broadcast frequency standards for public broadcasting or with frequency standards for closed-circuit television.

The monitors of this group are characterised by low electromagnetic field emissions and they frequently incorporate tilt and swivel adjusting mechanisms, glare-free surfaces, flicker-free display, and other ergonomic design characteristics to facilitate prolonged periods of viewing at close proximity to the monitor.

(B) Monitors other than those of a kind solely or principally used in an automatic data-processing system of heading 8471

This group includes monitors which are receivers connected directly to the video camera or recorder by means of co-axial cables, so that all the radio-frequency circuits are eliminated. They are used by television companies or for closed-circuit television (airports, railway stations, factories, hospitals, etc.). These apparatus consist essentially of devices which can generate a point of light and display it on a screen synchronously with the source signals. They incorporate one or more video amplifiers with which the intensity of the point can be varied. They can, moreover, have separate inputs for red (R), green (G) and blue (B), or be coded in accordance with a particular standard (NTSC, SECAM, PAL, D-MAC, etc.). For reception of coded signals, the monitor must be equipped with a decoding device covering (the separation of) the R, G and B signals. The most common means of image reconstitution is the cathode-ray tube, for direct vision, or a projector with up to three projection cathode-ray tubes; however, other monitors achieve the same objective by different means (e.g., liquid crystal screens, diffraction of light rays on to a film of oil). These may be in the form of CRT monitors or flat panel displays, e.g., LCD, LED, plasma.

...'

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

¹⁰ The dispute in the main proceedings concerns the tariff classification of the displays at issue. According to the referring court, the diagonal measurements of those screens range from 46 to 70 inches and they vary in weight from 19.3 to 81.7 kilograms. They have various sockets by which they

may be connected, inter alia, to an automatic data-processing machine, sound and video recording and reproducing apparatus or a DVD player, but do not incorporate television reception apparatus. They are sold with a remote control and various cables.

- 11 Again according to the referring court, those displays are able to display, independently of any automatic data-processing system, a colour image from a composite video signal. Given their dimensions, weight and functions, the displays at issue are not suitable for use on a desk or table. The referring court further states that those displays are not sold to consumers but are offered on the business market for use, in particular, in an automatic data-processing system in public spaces such as airports and railway stations to display travel information or in large office spaces to display general information.
- 12 On 24 and 26 April 2013, the inspector issued binding tariff information ('BTI') decisions classifying the displays at issue under subheading 8528 59 40 of the CN as 'other colour monitors with a screen of the liquid crystal display (LCD) technology'.
- 13 The applicant in the main proceedings lodged an objection against that BTI, claiming that the displays at issue should be classified under subheading 8528 51 00 of the CN, on the ground that they were monitors of a kind solely or principally used in an automatic data-processing system coming under heading 8471 of the CN. The inspector rejected that objection as unfounded and upheld the BTI.
- 14 The applicant in the main proceedings brought an appeal against the inspector's decision before the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, the Netherlands), which concluded that the displays at issue were to be classified under subheading 8528 59 40 of the CN. In reaching that conclusion, that court essentially found that, contrary to the requirement laid down by the Court in paragraph 60 of the judgment of 19 February 2009, *Kamino International Logistics* (C-376/07, EU:C:2009:105), the displays at issue were not intended to be viewed close up, a characteristic indicating that there is no interaction between the user of the monitor and the user of the automatic data-processing machine, which explains why there is no use solely or principally in an automatic data-processing system.
- 15 Following the judgment of the Gerechtshof Amsterdam (Court of Appeal, Amsterdam), the applicant in the main proceedings brought an appeal in cassation before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), claiming that the displays at issue should be classified under subheading 8528 51 00 of the CN, on the ground that they had characteristics and properties making them particularly suitable for displaying information from an automatic data-processing machine in large public spaces. Such a classification is supported by the obligations arising under the Agreement of 13 December 1996 on trade in information technology products ('the ITA'), approved by Council Decision 97/359/EC of 24 March 1997 concerning the elimination of duties on information technology products (OJ 1997 L 155, p. 1).
- 16 The referring court states that, before the HS was amended in 2007, monitors of a kind solely or principally used in an automatic data-processing system were classified under subheading 8471 60 90 of the CN, entitled 'output unit for an automatic data-processing machine'. It follows from the explanatory notes applicable prior to 2007 and from the explanatory notes drawn up following the 2007 amendment to the HS that that amendment was intended to classify monitors coming within former subheading 8471 60 90 of the CN under a separate subheading, that of heading 8528 of the HS, and to continue to draw a distinction between those monitors and other types of video monitors and television receivers. In that regard, the referring court considers that the Court's case-law relating to subheading 8471 60 90 of the CN continues to be relevant for the interpretation of subheading 8528 51 00 of the CN.

- 17 The referring court considers that it is clear from the wording of subheading 8528 51 00 of the CN that the fact that a display screen can display images from sources other than an automatic data-processing machine need not necessarily preclude its classification under that subheading.
- 18 As regards the criterion relating to whether a display screen is suitable for viewing close up and the question whether such a criterion presupposes interaction between the user of the automatic data-processing machine and the user of that display, in that the user of the automatic data-processing machine is also able to read that display while processing or entering the information, the referring court points out that the displays at issue were not intended as a means of entering and processing data in an automatic data-processing system. Thus, in the present case, that criterion will not be fulfilled if, for the purposes of classification under subheading 8528 51 00 of the CN, a computer monitor had to have been designed to function in that way within an automatic data-processing system.
- 19 The referring court notes, moreover, that it cannot be inferred from the Explanatory Notes to the HS relating to heading 8528 that subheading 8528 51 of the HS is limited to monitors which are designed and manufactured to be viewed close up or used close up by persons processing or entering data in the automatic data-processing machine. According to that court, those restrictions are not obvious and would mean that monitors which have a socket allowing connection only to an automatic data-processing machine, but which are not suitable for viewing close up, could not be classified under that subheading either. For the referring court, the technical criteria identified by the Court in the judgments of 19 February 2009, *Kamino International Logistics* (C-376/07, EU:C:2009:105), and of 17 July 2014, *Panasonic Italia and Others* (C-472/12, EU:C:2014:2082), are relevant only for cathode-ray tube monitors and therefore do not apply to the displays at issue.
- 20 As a further argument in support of the classification of the displays at issue under subheading 8528 51 00 of the CN, the referring court mentions the obligations imposed by the ITA. Flat panel displays, which are covered by the ITA, are among the products which must be exempted from import duties regardless of the HS heading under which they are classified. While the referring court is aware that the provisions of the ITA cannot create rights for individuals which may be relied upon directly, it considers that the subheadings of the CN must be interpreted in accordance with that agreement.
- 21 The referring court also notes that a number of WTO reports have concluded that the imposition, by EU law, of duties for some flat panel display devices that are capable of receiving and reproducing video images both from an automatic data-processing machine and from another source was incompatible with the General Agreement on Tariffs and Trade 1994 (OJ 1994 L 336, p. 11).
- 22 That court states that, given that the European Union was required to adhere to that conclusion, the Council of the European Union, by Council Regulation (EC) No 953/2013 of 26 September 2013 amending Annex I to Regulation No 2658/87 (OJ 2013 L 263, p. 4), amended the subheadings of heading 8528 of the CN. Since the entry into force of that regulation, ‘flat panel displays ... with a screen of the liquid crystal display (LCD) technology’ have been exempt from import duties.
- 23 The referring court also mentions Commission Implementing Regulation (EU) No 112/2014 of 4 February 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ 2014 L 38, p. 18), Commission Implementing Regulation (EU) No 114/2014 of 4 February 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ 2014 L 38, p. 22) and Commission Implementing Regulation (EU) No 877/2014 of 8 August 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ 2014 L 240, p. 15), which, although not applicable *ratione temporis* to the dispute in the main proceedings, reveal that the Commission, in classifying certain flat panel displays with a screen using the liquid crystal display (LCD) technology, relied on the fact that a series of characteristics and properties of the displays must be taken into account and not merely whether they are suitable for viewing close up.

24 Accordingly, the referring court has doubts as to whether the displays at issue are automatically excluded from classification under subheading 8528 51 00 of the CN, on the ground that they are not intended to be viewed close up.

25 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must subheadings 8528 51 00 and 8528 59 40 of the [CN] (in the version in force from 1 January 2007 to 25 October 2013) be interpreted as meaning that flat panel [LCD] displays ... designed and manufactured for displaying data from an automatic data-processing machine and composite video signals from other sources must be classified, irrespective of the other objective characteristics and properties of the individual monitor, under subheading 8528 59 40 of the CN if, because of their size, weight and functions, they are not suitable for viewing close up? Does it matter in that regard whether the user (the reader) of the display screen and the person who processes and/or enters data in the automatic data-processing machine are one and the same?’

The question referred for a preliminary ruling

26 By its question, the referring court asks the Court, in essence, (i) whether the CN must be interpreted as meaning that, in determining whether LCD flat panel displays designed and manufactured for displaying both data from an automatic data-processing machine and composite video signals from other sources must be classified under subheading 8528 51 00 of the CN or under subheading 8528 59 40 of that nomenclature, the question of whether or not those displays are suitable for viewing close up is decisive, without there being any need to take into account the other objective characteristics and properties of those displays and (ii) whether, for the purpose of that determination, it is relevant that the user of the display and the person who processes and/or enters data in the automatic data-processing machine are one and the same person.

27 In that regard, it should be recalled that, according to 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 in the section or chapter notes (judgment of 22 February 2018, *Kubota (UK) and EP Barrus*, C-545/16, EU:C:2018:101, paragraph 25 and the case-law cited).

28 It is also settled case-law that the explanatory notes adopted by the WCO in respect of the HS are an important aid for interpreting the scope of the various tariff headings but do not have legally binding force (judgment of 13 September 2018, *Vision Research Europe*, C-372/17, EU:C:2018:708, paragraph 23 and the case-law cited).

29 Since those notes are intended to facilitate the interpretation of the CN for the purposes of tariff classification, they must be interpreted in such a way as to ensure that the subheadings of the CN are properly applied. The wording of those notes must therefore be consistent with the provisions of the CN and cannot alter their scope (judgment of 5 March 2015, *Vario Tek*, C-178/14, not published, EU:C:2015:152, paragraph 22 and the case-law cited).

30 As regards the wording of the relevant provisions of the CN, it should be pointed out that heading 8528 of the CN refers, in particular, to monitors and projectors which, like the displays at issue, do not incorporate television reception apparatus. The wording of subheading 8528 51 00 of the CN contains the phrase ‘monitors ... of a kind solely or principally used in an automatic data-processing system [of heading] 8471 [of the CN]’. The wording of subheading 8528 59 40 of the CN includes the phrase ‘other [colour] monitors ... with a screen of the liquid crystal display (LCD) technology’.

- 31 In that regard, although subheading 8528 59 40 of the CN expressly refers to LCD displays, it must be noted that the wording of that subheading is rather general and essentially defines the monitors falling under it as ‘other’ than those falling under subheading 8528 51 00. It follows that subheading 8528 59 40 of the CN is a residual subheading in relation to subheading 8528 51 00 of the CN, in that a monitor with an LCD display may be classified under the first subheading only if it cannot be classified under subheading 8528 51 00 of the CN.
- 32 With regard to the latter subheading, it should be noted that use of the general term ‘monitors’ means that LCD flat panel displays, such as the displays at issue, may, in principle, fall under that subheading.
- 33 Since, in the light of their objective characteristics, that is to say the fact that they are able, inter alia, to display a colour image from apparatus other than an automatic data-processing machine, the displays at issue cannot be regarded as monitors solely used in an automatic data-processing system falling under heading 8471 of the CN, the relevant question in the dispute in the main proceedings is whether monitors such as the displays at issue can be regarded as monitors principally used in such a system and, thus, fall under subheading 8528 51 00 of the CN.
- 34 In order to determine whether a monitor may be classified under that subheading, the Court has held that an assessment must be made, in the light of the characteristics and objective properties of the monitor in question, both as to the degree to which that monitor is capable of performing a number of functions and as to the standard of performance which the monitor achieves when performing those functions (see, to that effect, judgment of 19 February 2009, *Kamino International Logistics*, C-376/07, EU:C:2009:105, paragraph 57). It is thus necessary to compare, on the one hand, whether a monitor is suitable for use as a monitor in an automatic data-processing system and its performance in that area with, on the other, whether it is suitable for use in carrying out other functions and its performance when carrying out those functions, in order to establish its principal function and thereby determine its classification.
- 35 In that context, as regards the characteristics which determine whether a monitor is suitable for use principally in an automatic data-processing system, important guidance is to be found in the Explanatory Notes to the HS relating to heading 8528, part A of which refers to monitors of a kind solely or principally used in an automatic data-processing system of heading 8471 of the HS.
- 36 First of all, it should be noted that, in accordance with the first paragraph of part A, the group of monitors referred to therein includes CRT and non-CRT monitors, including those with a flat panel screen, which provide a graphical representation of the data processed and which include, inter alia, those listed in points 1 to 4 of that part. Accordingly, it follows from the use of the term ‘include’ that the list contained in points 1 to 4 of part A of the kinds of monitors used solely or principally in an automatic data-processing system and from the technical characteristics which make them suitable for the effective presentation of data from an automatic data-processing system is provided for ease of reference only.
- 37 On the other hand, the same is not true of the characteristics listed in the final paragraph of part A, to which the term ‘include’ does not apply. Indeed, that final paragraph is introduced by the words ‘the monitors of this group’, thus indicating that it refers to all monitors covered by part A of the explanatory note relating to heading 8528 of the SH, that is to say monitors used solely or principally in an automatic data-processing system.
- 38 According to the wording of the final paragraph, monitors in that group are characterised by low electromagnetic field emissions and they frequently incorporate tilt and swivel adjusting mechanisms, glare-free surfaces, flicker-free display, and other ergonomic design characteristics to facilitate prolonged periods of viewing at close proximity to the monitor.

- 39 It therefore appears to follow from that paragraph that having been intended to be viewed close up is a necessary characteristic of the monitors which, in that they are designed to be used solely or principally in an automatic data-processing system, must be classified under subheading 8528 51 00 of the CN.
- 40 However, the explanatory notes in question cannot be interpreted as meaning that that requirement is absolute since, if that were the case, those notes would have the effect of altering the scope of the subheadings of the CN. The result of such a requirement would be that monitors which have connectors allowing them to be connected only to an automatic data-processing machine but which are not suitable for viewing close up could not be classified under subheading 8528 51 00 of the CN, even though they are clearly intended for use solely in an automatic data-processing system.
- 41 It must therefore be held that, while the fact that a monitor is intended for viewing close up is a particularly important factor to be taken into consideration in determining whether it can be classified under subheading 8528 51 00 of the CN, that factor cannot, in itself, be decisive. It is in the light of all the objective characteristics and properties of that monitor that its classification must be determined.
- 42 Moreover, although the criterion relating to the possibility of viewing a monitor close up may, as the referring court suggests, imply that the reader of the monitor and the person who processes and/or enters data in the automatic data-processing machine are usually one and the same person, the question whether they are one and the same person is not a relevant factor for the purposes of the tariff classification of that monitor. The identity of the user does not constitute an objective characteristic or property of that monitor.
- 43 As regards the relevance of the ITA for determining the relevant tariff classification, it should be borne in mind that, according to settled case-law, even though the provisions of an agreement such as the ITA are not such as to create rights upon which individuals may rely directly before the courts under EU law, where the European Union has legislated in the field in question, the primacy of international agreements concluded by the European Union over provisions of secondary legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements (judgment of 14 July 2016, *Sprengen v Pakweg Douane*, C-97/15, EU:C:2016:556, paragraph 48 and the case-law cited).
- 44 That said, it should be noted that, while the ITA concerns customs duties relating, inter alia, to monitors under heading 8471 of the HS, it neither affects nor alters the technical characteristics or objective properties on the basis of which goods are classified, in particular, under subheadings 8528 51 00 and 8528 59 40 of the CN. That agreement provides for the exemption of import duties only in relation to certain goods. It follows, as the Netherlands Government rightly points out, that the existence of an obligation to exempt the goods covered by the ITA from import duties cannot alter the scope of those subheadings.
- 45 Lastly, as regards the relevance of Implementing Regulations No 112/2014, No 114/2014 and No 877/2014, classifying certain colour LCD monitors under subheading 8525 59 31 of the CN, it is sufficient to point out that those regulations entered into force after the issuing of the BTI which gave rise to the main proceedings. Accordingly, those regulations are not applicable *ratione temporis* and, therefore, can have no effect on the resolution of the dispute in the main proceedings.
- 46 In the light of all the foregoing considerations, the answer to the question referred is that the CN must be interpreted as meaning that, in order to determine whether LCD flat panel displays designed and manufactured for displaying both data from an automatic data-processing machine and composite video signals from other sources must be classified under subheading 8528 51 00 of the CN or subheading 8528 59 40 of that nomenclature, it is necessary, when examining all their objective characteristics and properties, to assess both the extent to which they are capable of performing several functions and the level of performance attained in performing those functions, in order to determine whether their principal function is to be used in an automatic data-processing system. In

that context, particular significance must be attached to the question whether they are intended for viewing close up. The question whether the user of the display and the person who processes and/or enters data in the automatic data-processing machine are one and the same person is not a relevant criterion for the purposes of that determination.

Costs

- ⁴⁷ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 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, as amended by Implementing Regulation (EU) No 927/2012 of 9 October 2012, must be interpreted as meaning that, in order to determine whether LCD (liquid crystal display) flat panel displays designed and manufactured for displaying both data from an automatic data-processing machine and composite video signals from other sources must be classified under subheading 8528 51 00 of the combined nomenclature or under subheading 8528 59 40 of that nomenclature, it is necessary, when examining all their objective characteristics and properties, to assess both the extent to which they are capable of performing several functions and the level of performance attained in performing those functions, in order to determine whether their principal function is to be used in an automatic data-processing system. In that context, particular significance must be attached to the question whether they are intended for viewing close up. The question whether the user of the display and the person who processes and/or enters data in the automatic data-processing machine are one and the same person is not a relevant criterion for the purposes of that determination.

[Signatures]