



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

13 September 2018*

(Reference for a preliminary ruling — Common Customs Tariff — Tariff headings — Classification of goods — Volatile-memory camera, meaning that recorded images are deleted when the camera is switched off or when new images are captured — Combined Nomenclature — Subheadings 8525 80 19 and 8525 80 30 — Explanatory Notes — Interpretation — Implementing Regulation (EU) No 113/2014 — Interpretation — Validity)

In Case C-372/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Noord-Holland (District Court, North Holland, Netherlands), made by decision of 15 June 2017, received at the Court on 19 June 2017, in the proceedings

Vision Research Europe BV

v

Inspecteur van de Belastingdienst/Douane kantoor Rotterdam Rijnmond,

THE COURT (Ninth Chamber),

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

Advocate General: H. Saugmandsgaard Øe,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 26 April 2018,

after considering the observations submitted on behalf of:

- Vision Research Europe BV, by N. Ooyevaar, D. van Vliet and H. Ooyevaar, tax advisers,
- the Netherlands Government, by M.K. Bulterman, P. Huurnink and J. Langer, 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 subheading 8525 80 30 of 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), in the version resulting from Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013 (OJ 2013 L 290, p. 1), and the validity of Commission Implementing Regulation (EU) No 113/2014 of 4 February 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ 2014 L 38, p. 20).
- 2 The request has been made in proceedings between Vision Research Europe BV ('Vision Research') and the Inspecteur van de Belastingdienst/douane kantoor Rotterdam Rijnmond (Inspector of the Tax and Customs Administration, Rotterdam Rijnmond office, Netherlands) ('the Inspector') concerning the tariff classification of the 'Phantom V7.3' camera.

Legal context

The CN

- 3 The customs classification of goods imported into the European Union is governed by the CN. The version of the CN in force at the time of the facts in the main proceedings is that resulting from Implementing Regulation No 1001/2013.
- 4 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 (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 HS six-digit headings and subheadings, with only the seventh and eighth figures creating further subheadings which are specific to it.
- 5 In accordance with the first indent of Article 9(1)(a) and Article 10 of Regulation No 2658/87, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16) ('Regulation No 2658/87'), the European Commission, assisted by the Customs Code Committee, is required to issue measures concerning the application of the CN, which forms Annex I to Regulation No 2658/87, as regards the classification of goods. It is on the basis of the first of those provisions that Implementing Regulation No 113/2014 was adopted.
- 6 Part One of the CN includes the preliminary provisions, Section I of which, entitled 'General Rules', contains part A, 'General rules for the interpretation of the Combined Nomenclature', which provides:

'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.’
- 7 Section XVI, in Part Two of the CN entitled ‘Schedule of Customs Duties’, which includes Chapter 85, 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’.
- 8 Chapter 85 of the CN includes the following headings and subheadings:
- ‘8525 Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders:
- ...
- 8525 80 – Television cameras, digital cameras and video camera recorders:
- – Television cameras:
- ...
- 8525 80 19 – – – Other
- 8525 80 30 – – Digital cameras
- – Video camera recorders:
- 8525 80 91 – – – Only able to record sound and images taken by the television camera
- 8525 80 99 – – – Other’.

The Explanatory Notes to the HS and the CN

- 9 The Explanatory Notes to the HS for heading 8525 are worded as follows:
- ‘B. Television cameras, digital cameras and video camera recorders
- This group covers cameras that capture images and convert them into an electronic signal that is:
- (1) transmitted as a video image to a location outside the camera for viewing or remote recording (i.e., television cameras); or
- (2) recorded in the camera as a still image or as a motion picture (i.e., digital cameras and video camera recorders).

Many of the cameras of this heading may physically resemble the photographic cameras of heading 90.06 or the cinematographic cameras of heading 90.07. The cameras in heading 85.25 and the cameras in Chapter 90 typically include optical lenses to focus the image on a light-sensitive

medium and adjustments to vary the amount of light entering the camera. However, photographic and cinematographic cameras of Chapter 90 expose images onto photographic film of Chapter 37, while the cameras of this heading convert the images into analogue or digital data.

The cameras of this heading capture an image by focusing the image onto a light-sensitive device, such as a complementary metal oxide semiconductor (CMOS) or charge-coupled device (CCD). The light-sensitive device sends an electrical representation of the images to be further processed into an analogue or digital record of the images.

Television cameras may or may not have an incorporated device for remote control of lens and diaphragm as well as for remote control of the horizontal and vertical movement of the camera (e.g., television cameras for television studios or for reporting, those used for industrial or scientific purposes, in closed circuit television (surveillance) or for supervising traffic). These cameras do not have any inbuilt capability of recording images.

Some of these cameras may also be used with automatic data processing machines (e.g., webcams).

...

In digital cameras and video camera recorders, images are recorded onto an internal storage device or onto media (e.g., magnetic tape, optical media, semiconductor media or other media of heading 85.23). They may include an analogue/digital converter (ADC) and an output terminal which provides the means to send images to units of automatic data processing machines, printers, televisions or other viewing machines. Some digital cameras and video camera recorders include input terminals so that they can internally record analogue or digital image files from such external machines.

Generally, the cameras of this group are equipped with an optical viewfinder or a liquid crystal display (LCD), or both. Many cameras equipped with an LCD can employ the display both as a viewfinder when capturing images and as a screen for displaying images received from other sources or for reproducing images already recorded.'

- ¹⁰ The Explanatory Notes to the CN (OJ 2011 C 137, p. 1) concern the CN in the version resulting from Commission Regulation (EU) No 861/2010 of 5 October 2010 (OJ 2010 L 284, p. 1). CN heading 8525 and subheadings 8525 80 19, 8525 80 30, 8525 80 91 and 8525 80 99 are worded identically in the versions resulting from Regulation No 861/2010 and from Implementing Regulation No 1001/2013. The Explanatory Notes to the CN concerning those headings and subheadings read as follows:

'8525	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders ...
8525 80 11 to 8525 80 99	Television cameras, digital cameras and video camera recorders See the HS Explanatory Note to heading 8525, (B). These subheadings do not cover electronic reading devices for the visually handicapped (see the explanatory note to subheading 8543 70 90).
8525 80 30	Digital cameras Digital cameras of this subheading are always capable of still-image recording, whether on an internal storage medium or on interchangeable media. Most cameras of this subheading have the design of a traditional photographic camera and do not have a foldable viewfinder. These cameras may also have video-capture capability to record sequences of video. Cameras remain classified in this subheading unless they are capable, using the maximum storage capacity, of recording, in a quality of 800 × 600 pixels (or higher) at 23 frames per second (or higher) at least 30 minutes in a single sequence of video. Compared to the video camera recorders of subheadings 8525 80 91 and 8525 80 99, many digital cameras (when functioning as video cameras) do not offer an optical zoom function during video recording. Unaffected by the storage capacity, some cameras automatically terminate the recording of video after a certain period of time.
8525 80 91 and 8525 80 99	Video camera recorders Video camera recorders of these subheadings are always capable of recording sequences of video, whether on an internal storage medium or on interchangeable media. ... These digital video camera recorders may also have still image recording capability. Digital cameras are excluded from these subheadings if they are not capable, using the maximum storage capacity, of recording, in a quality of 800 × 600 pixels (or higher) at 23 frames per second (or higher) at least 30 minutes in a single sequence of video.'

Implementing Regulation No 113/2014

- 11 Implementing Regulation No 113/2014 classifies under the CN goods described in column 1 of the table set out in its annex. In column 2 of that table, the corresponding CN codes are indicated, in accordance with the reasons stated in column 3 of that table. As regards CN subheading 8525 80 19, the table set out in the annex to the regulation provides:

A rectangular shaped apparatus (so-called 'high speed camera') comprising a lens and electronic circuitry with dimensions of approximately 12 × 12 × 11 cm. It incorporates a volatile internal memory of 2 GB able to temporarily store images in a sequence with a maximum duration of 1.54 seconds at 1 000 frames per second (fps) at full resolution. The captured images are lost when the camera is switched off. Connection by a cable to an automatic data-processing (ADP) machine is necessary for operating the camera and recording the images into the ADP machine. It is equipped with a CMOS sensor with a global electronic snapshot shutter, also known as 'short duration flash' or 'stroboscopic imaging'. The camera is designed to capture a sequence of images at a shutter rate from 60 up to 1 000 fps at a full resolution of 1 024 × 1 024 pixels or 109 500 fps at a lower resolution of 128 × 16 pixels. The captured images may be viewed individually or played back as video, for example, in slow motion. The images may be subject to analysis in a laboratory or a similar environment for studying, for example, ultra-high speed phenomena such as automotive crash tests.	8525 80 19	Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 8525, 8525 80 and 8525 80 19. Temporary storage onto volatile memory is not considered recording in the camera as the images are lost after switching off the camera. Consequently, classification either as digital cameras under subheading 8525 80 30 or as video camera recorders only able to record sound and images taken by the television camera under subheading 8525 80 91 is excluded (see also the Harmonised System Explanatory Notes (HSEN) to heading 8525, the first and fifth paragraphs of group (B)). The apparatus is therefore to be classified under CN code 8525 80 19 as other television cameras (see also the HSEN to heading 8525, the fourth paragraph of group (B)).
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The dispute in the main proceedings and the question referred for a preliminary ruling

- 12 On 12 May 2009, Vision Research submitted an application to the Inspector for a binding tariff information ('BTI') for the 'Phantom V7.3' camera. It stated in its application that the camera should be classified under CN subheading 8525 80 30 as a digital camera.
- 13 By the BTI issued on 7 November 2014, the Inspector nevertheless classified the camera in question under CN subheading 8525 80 19 as an 'other television camera'. In that regard, the Inspector based his decision on general rules 1 and 6 for the interpretation of the CN, on Implementing Regulation No 113/2014, which he regarded as applicable by analogy to the camera, and on the wording of CN headings 8525, 8525 80 and 8525 80 19. He took the view that the fact that there was an option of connecting the camera to an external memory was irrelevant to the classification given, because the BTI had been requested for a camera without that optional memory.
- 14 Vision Search lodged a complaint against the BTI with the Inspector, who rejected it as unfounded. The applicant then brought an action before the referring court against the Inspector's decision, seeking a classification of the camera in question under CN subheading 8525 80 30.

- 15 According to the referring court, the camera in question is a ‘high speed camera’. When in use, it is connected to and controlled by an automatic data processing machine. The camera captures a large number of digital photographs per second. These photographs are recorded in the ‘volatile memory’ of the camera after they are captured. This means that, when new photographs are captured or the camera is switched off, the recorded photographs are deleted from that internal memory. The volatile memory has a capacity of at least 1 496 MB, which can also rise to 8, 16 or 32 GB. The camera in question does not have an option, such as an LCD screen, to view the photographs recorded in the memory. When it is imported, the camera has an output terminal to which a non-volatile flash memory, on which the photographs can be stored for a longer period of time, may be connected by means of a cable. The camera can also be connected via a cable to an automatic data processing machine on which the photographs can be recorded. The camera does not have an option to install a (non-volatile) memory card or module.
- 16 The referring court considers, first, that the annex to Implementing Regulation No 113/2014 describes under CN subheading 8525 80 19 a product comparable to the camera in question and that that regulation is therefore applicable by analogy to that camera. It notes that, in the reasons for the classification set out in that regulation, the Commission does not consider temporary storage in volatile memory to constitute recording in the camera, as the images are lost when the camera is switched off. Pursuant to that regulation, the camera in question should, it finds, be classified under CN subheading 8525 80 19 as an other television camera.
- 17 Secondly, the referring court also considers that, pursuant to the Explanatory Notes to the HS and to the CN relating to CN subheading 8525 80 30, the camera in question, the characteristics of which include the storage of images, even in temporary storage, in its volatile memory, should be classified as a digital camera, not a television camera. According to that court, the Explanatory Notes make clear that television cameras differ from digital cameras by reason of the fact that the former cannot store images, whereas the latter can. The referring court also observes that those notes do not set out any requirements as to the length of time for which images must be recorded in the camera.
- 18 Lastly, the referring court considers that the two approaches which it has set out are irreconcilable. It is therefore uncertain whether the Commission restricted the scope of CN subheading 8525 80 30 when it failed to regard, in the statement of reasons in the annex to Implementing Regulation No 113/2014, temporary storage in volatile memory as constituting recording in the camera. If so, it finds, the Commission thus exceeded the authority conferred on it by Article 9(1)(a) of Regulation No 2658/87 to clarify — but not to alter — the content of a tariff heading.
- 19 In those circumstances, the rechtbank Noord-Holland (District Court, North Holland, Netherlands) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is [Implementing Regulation No 113/2014] valid if the [rechtbank Noord-Holland (District Court, North Holland)] is correct in its provisional view that [CN] subheading 8525 80 30 should be interpreted as meaning that the camera [in question], which has a volatile memory whereby the images captured in the camera are lost when subsequent images are captured or when the camera is switched off, can be classified thereunder?’

Consideration of the question referred

- 20 By its question, the referring court asks, in essence, whether CN subheading 8525 80 30 must be interpreted as covering a camera, such as that in question in the main proceedings, which is capable of capturing a large number of photographic images per second and of storing them in its volatile

internal memory — images that are deleted from that memory when the camera is switched off — and, if so, whether Implementing Regulation No 113/2014, in so far as potentially applicable by analogy to that camera, is valid.

- 21 In order to answer that question, it is appropriate, in the first place, to interpret the relevant CN headings and subheadings in order to be able to determine the CN classification of the camera in question.
- 22 In that regard, the Court has consistently held that, in the interests of legal certainty and ease of verification, the decisive criterion for the tariff classification of goods is in general to be sought in their objective characteristics and properties, as defined in the wording of the relevant CN heading and of the notes to the sections or chapters (judgment of 26 April 2017, *Stryker EMEA Supply Chain Services*, C-51/16, EU:C:2017:298, paragraph 39 and the case-law cited).
- 23 The Court has also held that the Explanatory Notes drafted by the Commission, in respect of the CN, and those 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. The Explanatory Notes to the CN do not take the place of those of the HS but should be regarded as complementary to them and consulted jointly with them (judgment of 19 February 2009, *Kamino International*, C-376/07, EU:C:2009:105, paragraphs 47 and 48 and the case-law cited).
- 24 In the present case, it is appropriate first to examine whether the characteristics of the camera in question in the main proceedings, as described in the order for reference, correspond to the characteristics of CN subheading 8525 80 19 or to those of CN subheading 8525 80 30.
- 25 In that regard, it should be borne in mind that Chapter 85 of the CN includes heading 8525, entitled ‘Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders’. CN subheading 8525 80 is entitled ‘Television cameras, digital cameras and video camera recorders’. The wording of CN subheading 8525 80 19 consists of the single word ‘Other’, while the wording of CN subheading 8525 80 30 consists solely of the phrase ‘Digital cameras’.
- 26 As regards the characteristics of the camera in question in the main proceedings, according to the findings of fact made by the referring court, as recalled in paragraph 15 of this judgment, that camera captures a large number of digital photographs per second. Those photographs are recorded in the volatile memory of that camera and are stored there as long as the camera remains switched on or no new photographs are captured.
- 27 The Court therefore finds that, due to its capability of still-image recording, the camera in question has the usual characteristic of digital cameras. As a result, the objective characteristics and properties of that camera correspond to those defined by the wording of CN subheading 8525 80 30.
- 28 Moreover, it must be noted that the Explanatory Notes to the CN concerning that subheading state that digital cameras are always capable of still-image recording, whether on an internal storage medium or on interchangeable media, whereas the Explanatory Notes to the HS state that images are recorded by those devices onto an internal storage device or onto media.
- 29 As regards television cameras, the Explanatory Notes to the CN refer to those to the HS No 8525, (B), which explain that the cameras of the group can capture images and convert them into an electronic signal that is either transmitted as a video image to a location outside the camera for viewing or remote recording (television cameras), or recorded in the camera as a still image or as a motion picture (for example, digital cameras and video camera recorders). The Explanatory Notes to the HS also specify that television cameras do not have any inbuilt capability of recording images.

- 30 It follows that the decisive feature that distinguishes digital cameras under CN subheading 8525 80 30 from television cameras under CN subheading 8525 80 19 is the former's capability of recording still images onto an internal memory or a storage device.
- 31 In the present case, it must be noted that the camera in question is capable of recording images onto a volatile internal memory.
- 32 However, it must be stated that neither the Explanatory Notes to the CN nor those to the HS specify the type, nature or other characteristics of the internal memory or of the storage device to which they refer.
- 33 In the light of the fact that the length of time for which, inter alia, images can be stored in that internal memory or in that storage device is not specifically stated, the recording of images by the camera in question onto a volatile internal memory must therefore be regarded as a recording within the meaning of those Explanatory Notes, with no relevance attaching to the fact that the recorded images are deleted when the device is switched off or new images are captured.
- 34 It follows that cameras, such as the camera in question in the main proceedings, which are capable of recording images onto a volatile internal memory, cannot be classified under CN subheading 8525 80 19 as 'other television cameras', as those latter cameras do not have any inbuilt capability of recording images.
- 35 The Commission submits that the camera in question in the main proceedings must be classified as a television camera, on the ground that the images captured by that camera can be viewed as video.
- 36 In that regard, it must be noted that, in the light of the foregoing analysis, such a classification is excluded. Nonetheless, as the evidence brought to the attention of the Court, during both the written and the oral parts of the procedure, cannot allow it to be ruled out that the images recorded by the camera in question may in fact be viewed as video, it is appropriate to examine whether that camera must be classified under CN subheading 8525 80 91 or 8525 80 99 as a video camera recorder. Although those subheadings are not mentioned by the referring court, it is for the Court of Justice to extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject matter of the dispute (judgment of 19 October 2017, *Otero Ramos*, C-531/15, EU:C:2017:789, paragraph 40 and the case-law cited).
- 37 In that connection, according to the CN Explanatory Notes concerning subheadings 8525 80 91 and 8525 80 99, video camera recorders have an internal memory and are capable of recording still images in addition to video footage.
- 38 However, according to those notes, digital cameras are excluded from those subheadings if they are not capable of recording at least 30 minutes in a single sequence of video. It is apparent from the information provided in the order for reference that the camera in question in the main proceedings does not have such a capability. According to those specifications, the camera at issue can record sequences of images in its internal memory of a maximum duration of 6.12 seconds at a shutter rate of approximately 6 688 frames per second, which is well below that threshold of 30 minutes of video footage. The camera at issue cannot therefore be classified under CN subheading 8525 80 91 or 8525 80 99.
- 39 It follows that that camera must be classified under CN subheading 8525 80 30.
- 40 As regards, in the second place, the examination of the validity of Implementing Regulation No 113/2014, it should be noted, first, that it is settled case-law that a classification regulation is of general application in so far as it does not apply to an individual trader but, in general, to goods

which are the same as that examined by the Customs Code Committee. In the interpretation of a classification regulation, in order to determine its scope, account must be taken of, inter alia, its statement of reasons (see judgment of 22 March 2017, *GROFA and Others*, C-435/15 and C-666/15, EU:C:2017:232, paragraph 35 and the case-law cited).

- 41 In the present case, the subject matter of Implementing Regulation No 113/2014 is the classification under CN subheading 8525 80 19 of goods that have a set of characteristics set out in column 1 of the table in the annex to that regulation. The goods thus described must incorporate a volatile internal memory of 2 GB making it possible temporarily to store images in a sequence with a maximum duration of 1.54 seconds at 1 000 frames per second (fps) and must be capable of capturing images in a sequence with a shutter rate from 60 up to 1 000 fps at full resolution (1 024 × 1 024 pixels) or 109 500 fps at a lower resolution of 128 × 16 pixels, with dimensions of 12 × 12 × 11 cm.
- 42 By contrast, in the case in the main proceedings, the BTI application submitted by Vision Research states that the camera in question has a memory of at least 1 496 MB and can capture a sequence of photographs up to 6 688 fps at a maximum resolution of 800 × 600 pixels and with a maximum depth of 14 bits.
- 43 It follows from the comparison of the characteristics of the devices described by Implementing Regulation No 113/2014 and those of the camera in question in the main proceedings that those devices are not identical and, therefore, that that regulation is not directly applicable to the camera at issue.
- 44 However, it should be noted, secondly, that the Court has consistently held that 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 is sufficient if the goods to be classified and those covered by the classification regulation are sufficiently similar (see, to that effect, judgment of 22 March 2017, *GROFA and Others*, C-435/15 and C-666/15, EU:C:2017:232, paragraphs 37 and 38 and the case-law cited).
- 45 It is apparent from the case-law of the Court that the application by analogy of a classification regulation, such as Implementing Regulation No 113/2014, to goods similar to those covered by that regulation facilitates a coherent interpretation of the CN and the equal treatment of traders (see, to that effect, judgment of 13 July 2006, *Anagram International*, C-14/05, EU:C:2006:465, paragraph 32).
- 46 The devices described in Implementing Regulation No 113/2014 have similar objective characteristics and properties to the camera in question in the main proceedings. Those devices, like the camera in question, are capable of capturing a large number of digital photographs per second, are equipped with a CMOS sensor, have a volatile internal memory from which the images are lost as soon as the device is switched off, and can be used for the study of ultra-high speed phenomena.
- 47 It follows that Implementing Regulation No 113/2014 is applicable by analogy to the camera in question in the main proceedings and, as a result, the validity of that regulation must be examined.
- 48 In that regard, it should be noted that, with respect to the application of the CN, the Council of the European Union has 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 mentioned in Article 9(1)(a) of Regulation No 2658/87 does not authorise it to alter the subject matter of the tariff headings which have been defined on the basis of the HS established by the HS Convention whose scope the European Union has undertaken, under Article 3 thereof, not to modify (judgment of 12 February 2015, *Raytek and Fluke Europe*, C-134/13, EU:C:2015:82, paragraph 29).

- 49 In the present case, Implementing Regulation No 113/2014 classifies ‘high speed cameras’ under CN subheading 8525 80 19. The grounds for that classification are based on the finding that ‘temporary storage onto volatile memory is not considered recording in the camera as the images are lost after switching off the camera’. As stated in paragraphs 30 and 33 of the present judgment, the capability of digital cameras of recording still images onto an internal memory is an essential characteristic of the goods covered by CN tariff subheading 8525 80 30, irrespective of whether that recording capability is temporary or permanent.
- 50 Given that Implementing Regulation No 113/2014 excludes, contrary to what is stated in CN subheading 8525 80 30, devices which temporarily record images in volatile memory from that subheading and therefore classifies ‘high speed cameras’ under CN subheading 8525 80 19, that implementing regulation is incompatible with the scope of CN subheading 8525 80 30.
- 51 It follows from the foregoing that, by adopting Implementing Regulation No 113/2014, the Commission altered the scope of CN subheading 8525 80 30 by restricting it. The Commission consequently exceeded the authority conferred on it by Article 9(1)(a) of Regulation No 2658/87.
- 52 The Court therefore finds that, in so far as Implementing Regulation No 113/2014 is applicable by analogy to goods that have the characteristics of the camera in question in the main proceedings, that regulation is invalid.
- 53 Having regard to all of the foregoing considerations, the answer to the question referred is that CN subheading 8525 80 30 must be interpreted as covering a camera, such as the camera at issue in the main proceedings, that is capable of capturing a large number of photographic images per second and of storing them in its volatile internal memory — images that are deleted from that memory when the camera is switched off — and that Implementing Regulation No 113/2014, in so far as it is applicable by analogy to goods that have the characteristics of that camera, is invalid.

Costs

- 54 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 (Ninth Chamber) hereby rules:

Subheading 8525 80 30 of 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, in the version resulting from Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013, must be interpreted as covering a camera, such as the camera at issue in the main proceedings, that is capable of capturing a large number of photographic images per second and of storing them in its volatile internal memory — images that are deleted from that memory when the camera is switched off — and that Commission Implementing Regulation (EU) No 113/2014 of 4 February 2014 concerning the classification of certain goods in the Combined Nomenclature, in so far as it is applicable by analogy to goods that have the characteristics of that camera, is invalid.

[Signatures]