

JUDGMENT OF THE COURT (Third Chamber)

19 February 2009*

In Case C-376/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 13 July 2007, received at the Court on 3 August 2007, in the proceedings

Staatssecretaris van Financiën

v

Kamino International Logistics BV,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Ó Caoimh, J.N. Cunha Rodrigues, U. Lohmus (Rapporteur) and A. Arabadjiev, Judges,

* Language of the case: Dutch.

Advocate General: P. Mengozzi,
Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 25 June 2008,

after considering the observations submitted on behalf of:

- Kamino International Logistics BV, by H. de Bie and E. Zietse, advocaten,

- the Netherlands Government, by C.M. Wissels and D.J.M. de Grave, acting as Agents,

- the Commission of the European Communities, by G. Wilms, acting as Agent, assisted by F. Tuytschaever, advocaat,

after hearing the Opinion of the Advocate General at the sitting on 10 September 2008,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of the Combined Nomenclature constituting 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 Regulation (EC) No 1789/2003 of 11 September 2003 (OJ 2003 L 281, p. 1; 'the CN'), and the validity of Commission Regulation (EC) No 754/2004 of 21 April 2004 concerning the classification of certain goods in the Combined Nomenclature (OJ 2004 L 118, p. 32).

- 2 The reference has been made in the context of proceedings between the Staatssecretaris van Financiën (Secretary of State for Finance) and Kamino International Logistics BV ('Kamino') regarding the tariff classification, in August 2004, of certain monitors of the liquid crystal display (LCD) type.

Legal context

- 3 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 ('the HS Convention') were approved on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

- 4 Under Article 3(1) of the HS Convention, each Contracting Party undertakes to ensure that its customs tariff and statistical nomenclatures are in conformity with the harmonised system introduced by that convention ('the HS'), to use all the headings and subheadings of the HS without addition or modification, together with their related numerical codes, and to follow the numerical sequence of that system. The same provision provides that the Contracting Party must apply the General Rules for the interpretation of the HS and all the Section, Chapter and Subheading notes of the HS, and not modify their scope.

- 5 Regulation No 2658/87 established the CN, which is based on the HS, from which it takes the six-digit headings and subheadings, only the seventh and eighth digits forming subdivisions specific to the combined nomenclature.

- 6 Under Article 12(1) of that regulation, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000 (OJ 2000 L 28, p. 16), the Commission of the European Communities is required to adopt each year a regulation reproducing the complete version of the CN and the rates of customs duty, as they result from measures adopted by the Council of the European Union or by the Commission. That regulation is to apply from 1 January of the following year.

- 7 Pursuant to Article 2 of Regulation No 1789/2003, which introduced a new version of the CN, that regulation entered into force on 1 January 2004.

- 8 The General Rules for the interpretation of the CN, which appear in Part One, Section I, A, of the CN, state:

‘Classification of goods in the [CN] 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.’

- 9 Part Two of the CN includes Section XVI, covering 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.

10 Section XVI contains Chapters 84 and 85. The first includes nuclear reactors, boilers, machinery and mechanical appliances, and parts thereof. The second concerns 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.

11 Under note 5 to Chapter 84:

‘ ...

(B) Automatic data-processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph E below, a unit is to be regarded as being a part of a complete system if it meets all of the following conditions:

(a) it is of a kind solely or principally used in an automatic data-processing system;

(b) it is connectable to the central processing unit either directly or through one or more other units; and

- (c) it is able to accept or deliver data in a form (codes or signals) which can be used by the system.

- (C) Separately presented units of an automatic data-processing machine are to be classified in heading 8471 [of the CN ('heading 8471')].

...

- (E) Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data-processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.⁷

¹² Tariff heading 8471 is worded as follows:

'8471 Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:

...

8471 60 — Input or output units, whether or not containing storage units in the same housing:

8471 60 10— — For use in civil aircraft

— — Other:

8471 60 40— — — Printers

8471 60 50— — — Keyboards

8471 60 90— — — Other

...'

13 Heading 8528 of the CN ('heading 8528') is worded as follows:

'8528 Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:

...

— Video monitors

8528 21 — — colour:

...

8528 21 90 — — — Other

...'

- 14 In accordance with the second indent of Article 9(1)(a) of Regulation No 2658/87, the Commission provides explanatory notes concerning the CN, which it regularly publishes in the *Official Journal of the European Union*. Those published on 23 October 2002 (OJ 2002 C 256, p. 1) state, under subheading 8471 60 90:

‘This subheading includes visual display units which can only be used as output units for an automatic data-processing machine.

These units cannot reproduce an image from a coded (composite video) signal.’

- 15 The explanatory note to the CN concerning subheading 8528 21 90 refers to the explanatory notes for heading 8528 of the HS, second paragraph, number 6.

- 16 At the time material to the facts in the main proceedings, the rate of customs duty on import applicable to equipment falling within subheading 8528 21 90 was 14%, whereas equipment falling within subheading 8471 60 90 was exempted from duty.

17 In order to ensure uniform application of the CN, the Commission adopted Regulation No 754/2004, which entered into force, pursuant to Article 3 thereof, on 13 May 2004. The Annex to that regulation reads as follows:

Description	Classification (CN code)	Reasons
(1)	(2)	(3)
<p>1. A colour plasma-screen with a diagonal measurement of the screen of 106 cm (overall dimensions 104 (W) × 64.8 (H) × 9.5 (D) cm) with a 852 × 480 pixel configuration.</p> <p>The device has the following interfaces:</p> <ul style="list-style-type: none"> — an RGB connector, — a DVI connector (digital visual interface) — a control connector. <p>The RGB connector enables the device to display data directly from an automatic data-processing machine.</p> <p>The DVI connector enables the device to display signals from an automatic data-processing machine or another source, such as a DVD player or a video game player via a tuner box.</p>	8528 21 90	<p>Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, and by the wording of CN codes 8528, 8528 21 and 8528 21 90.</p> <p>Classification under subheading 8471 60 is excluded as the monitor is not of a kind solely or principally used in an automatic data-processing system (see Note 5 to Chapter 84).</p> <p>Likewise, the product is not classifiable under heading 8531 because its function is not to provide visual indication for signalling purposes (see the HSEN to heading 8531, point D).</p>

<p>2. A colour plasma-screen with a diagonal measurement of the screen of 106 cm (overall dimensions 103 (W) × 63.6 (H) × 9.5 (D) cm) with a 1 024 × 1 024 pixel configuration and detachable loudspeakers.</p> <p>The device has the following interfaces:</p> <ul style="list-style-type: none"> — a DVI connector (digital visual interface), — a control connector. <p>The DVI connector enables the device to display signals from an automatic data-processing machine or another source, such as a DVD player or a video game player via a tuner box.</p>	<p>8528 21 90</p>	<p>Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, and by the wording of CN codes 8528, 8528 21 and 8528 21 90.</p> <p>Classification under subheading 8471 60 is excluded as the monitor is not of a kind solely or principally used in an automatic data-processing system (see Note 5 to Chapter 84).</p> <p>Likewise, the product is not classifiable under heading 8531 because its function is not to provide visual indication for signalling purposes (see the HSEN to heading 8531, point D).</p>
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¹⁸ The Customs Cooperation Council, now the World Customs Organisation ('WCO'), established by the Convention establishing that Council concluded at Brussels on 15 December 1950, is to approve, under the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes and Classification Opinions adopted by the HS Committee, a body the organisation of which is governed by Article 6 thereof. Under Article 7(1) of the HS Convention, the functions of that committee include proposing amendments to that Convention and preparing Explanatory Notes, Classification Opinions and other advice as guides to the interpretation of the HS.

19 The explanatory notes concerning heading 8471 of the HS state as follows:

I.— Automatic data-processing machines and units thereof

...

D.— Individual units

...

Among the constituent units [of a data-processing system] included are display units of automatic data-processing machines which provide a graphical representation of the data processed. They differ from the video monitors and television receivers of heading 8528 in several ways, including the following:

- (1) Display units of automatic data-processing machines are capable of accepting a signal only from the central processing unit of an automatic data-processing machine and are therefore 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 data-processing machine.

- (2) These display units are characterised by low magnetic field emissions. Their display pitch starts at 0.41 mm for medium resolution and gets smaller as the resolution increases.

- (3) In order to accommodate the presentation of small yet well-defined images, display units of this heading utilise smaller dot (pixel) sizes and greater convergence standards than those applicable to video monitors and television receivers of heading 8528. (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) In these display units, the 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 video monitors of heading 8528, the bandwidth is generally no greater than 6 MHz. The horizontal scanning frequency of these display units 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 video monitors of heading 8528 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.

- (5) Display units covered by this heading 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 unit.

...'

20 The explanatory notes concerning heading 8528 of the HS state as follows:

‘...

This heading includes reception apparatus for television, whether or not incorporating radio-broadcasting receivers or sound video recording or reproducing apparatus: video monitors and video projectors.

Apparatus falling under this heading includes:

...

- (6) Video 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, steel plants, 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, etc.

Video monitors of this heading should not be confused with the display units of automatic data-processing machines described in the Explanatory Note to heading 8471.'

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

- 21 In August 2004 Kamino declared, for release into free circulation, a consignment of colour monitors of the LCD type, in which the picture is reproduced with the aid of liquid crystals which reflect light. Those monitors were classified under subheading 8528 21 90.
- 22 The dimensions of their screens are 53.48 x 46.55 x 24.84 cm (w x h x d) with a 58.42 cm (23 inch) diagonal measurement. The maximum resolution is 1 920 x 1 200 pixel points and the screen aspect ratio is 16:10; horizontal picture frequency is 30 to 81 kHz and vertical picture frequency is 50 to 76 Hz, and they have a brightness of 250 candela per square metre, 16.7 million colours and a contrast ratio of 500:1.
- 23 The monitors have D-Sub, DVI-D, USB, S-video and composite-video sockets. As a result the monitor can display pictures from an automatic data-processing machine and pictures from other apparatus. They are also fitted with an audio outlet with a maximum power of 4 watts, to which loudspeakers can be attached.
- 24 Taking the view that those monitors should be classified under subheading 8471 60 90, Kamino appealed against the payment notice. That appeal was dismissed by decision of the Customs Inspector on the ground that those monitors are used to reproduce images and can be attached to DVD players, home cinema projectors, games consoles, video cameras, camcorders and automatic data-processing machines.

- 25 In the appeal lodged before it against that decision, the *Gerechtshof te Amsterdam* (Court of Appeal, Amsterdam) concluded that the characteristics and properties of the colour monitors in question, including the resolution and brightness, meant that they were eminently suitable for use by designers, graphic artists or other such professional users and appropriate in particular for being viewed close up, when placed on a desk or work surface.
- 26 That court found that the monitor was marketed by the manufacturer exclusively in that context and also that the monitor is too expensive to be used solely or principally for games. Accordingly, it held that although use of the monitors by the above-mentioned professional users is not exclusive — since they offer other possibilities — from the point of view of sensible and useful use, they are aimed at them in such a predominant manner that as a whole they satisfy the requirement in Note 5(B) to Chapter 84 of the CN. In the opinion of the *Gerechtshof*, Regulation No 754/2004 does not preclude that conclusion, because it relates to other apparatus with substantially different technical features.
- 27 The *Staatssecretaris van Financiën* appealed against that judgment before the *Hoge Raad der Nederlanden* (Supreme Court of the Netherlands), claiming that, when considering whether Note 5B to Chapter 84 of the CN is satisfied, the *Gerechtshof te Amsterdam* wrongly did not take into account the other possibilities for use of those monitors as part of an automatic data-processing system.
- 28 The *Hoge Raad der Nederlanden* asks, on the one hand, where there is no unambiguous criterion from which to determine, by reference to simple technical characteristics, the main purpose of a particular monitor that can reproduce video images from an automatic data-processing machine and also from other sources, whether the target group of users, as defined by reference to the way in which the apparatus is marketed, as well as the sale price of the apparatus, is also of possibly decisive importance. On the

other, it asks whether the scope of Regulation No 754/2004 extends to the monitors at issue in the main proceedings.

²⁹ Against that background, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘1. Must Note 5 to Chapter 84 of the ... CN ... be interpreted as meaning that a colour monitor which can display both signals from an automatic data-processing machine as referred to in heading 8471 ... and from other sources is excluded from classification under heading 8471 ...?’

2. If classification in heading 8471 ... of the ... monitor referred to in the first question above is not excluded, on the basis of which criteria must it then be determined whether it is a unit of the sort that is solely or principally used in an automatic data-processing system?

3. Does the scope of application of ... Regulation ... No 754/2004 ... extend to the monitor at issue and, if so, in light of the answers to the first and second questions, is that regulation valid?’

The questions referred

The first question

- 30 By that question, the national court is essentially asking the Court whether monitors such as those at issue before the referring court, capable of reproducing signals coming either from an automatic data-processing machine or from other sources, may be regarded as being units of 'a kind ... principally used in an automatic data-processing system' within the meaning of Note 5(B) to Chapter 84 of the CN and classified under subheading 8471 60 90.
- 31 It is appropriate to recall that, in accordance with 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 (see, inter alia, Case C-142/06 *Olicom* [2007] ECR I-6675, paragraph 16 and the case-law cited).
- 32 Both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the Nomenclature of the Customs Cooperation Council are important means of ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation (see Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945, paragraph 12; Case C-382/95 *Techex* [1997] ECR I-7363, paragraph 12; Case C-339/98 *Peacock* [2000] ECR I-8947, paragraph 10; and *Olicom*, paragraph 17).

33 In the present case, the wording of heading 8471, within which, according to Kamino, the monitors at issue in the main proceedings fall, refers, inter alia, to automatic data-processing machines and their components, whereas the wording of heading 8528, in which, according to the Dutch Government and the Commission, those monitors should be classified, relates, inter alia, to television reception apparatus and video monitors. Subheading 8471 60 90 includes in particular data entry or production units other than printers and keyboards which may contain units of memory in the same housing, while subheading 8528 21 90 includes colour video monitors.

34 The Commission takes the view that, because they can display images other than those coming from an automatic data-processing machine, the monitors at issue in the main proceedings perform a specific function other than data processing within the meaning of Note 5(E) to Chapter 84 of the CN. Consequently, Note 5(B) to the same chapter does not apply to those monitors, which should be classified in the heading corresponding to their function, that is to say, heading 8528, which includes, inter alia, video monitors.

35 However, that argument cannot be accepted.

36 Under Note 5(E) to Chapter 84 of the CN, '[m]achines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data-processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings'.

37 It follows from the wording of that note that the 'specific function' performed by a machine working with an automatic data-processing machine must be a function 'other than data processing' (see *Olicom*, paragraph 30).

38 Furthermore, it follows from the general scheme and purpose of Note 5(E) to Chapter 84 of the CN that the expression 'are to be classified in the headings appropriate to their respective functions' does not seek to have one function take priority over others also performed by the apparatus to be classified and which also constitute data processing, but to prevent apparatus whose function has nothing to do with data processing from being classified under heading 8471 for the sole reason that they incorporate an automatic data-processing machine or work in connection with such a machine (Joined Cases C-362/07 and C-363/07 *Kip Europe and Others* [2008] ECR I-9489, paragraph 33).

39 It should be recalled in that regard that, as is apparent from paragraph 36 of the judgment in *Kip Europe and Others*, only machines incorporating an automatic data-processing machine or working in conjunction with such a machine, whose function is not data processing, perform 'a specific function other than data processing' within the meaning of Note 5(E) to Chapter 84 of the CN.

40 In accordance with the undisputed information in the documents submitted to the Court in the present proceedings, 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, the monitors at issue in the main proceedings also display signals coming from automatic data-processing machines.

41 Accordingly, it must be considered whether, as Kamino submits, such monitors fall within heading 8471 as units of an automatic data-processing machine since they meet the three conditions laid down in Note 5(B)(a) to (c) to Chapter 84 of the CN, that is to say, they are of a kind solely or principally used in an automatic data-processing system,

are connectable to the central processing unit either directly or through one or more other units and are capable of receiving or delivering data in a form which can be used by the system.

42 In that regard, it is common ground that those monitors are connectable to the central processing unit, that they receive data in a form which can be used by the system and that, since they are able to reproduce signals which also come from other sources, they are not of a kind used solely in an automatic data-processing system. Accordingly, it is necessary to examine whether they could, nevertheless, be considered to be of a kind used 'principally' in such a system, within the meaning of Note 5(B)(a) to Chapter 84 of the CN.

43 Both the Netherlands Government and the Commission submit that Note 5(B)(a) to Chapter 84 of the CN must be interpreted as meaning that the mere fact that the monitors at issue in the main proceedings are able to display images coming from sources other than an automatic data-processing machine precludes their classification in heading 8471.

44 That interpretation of Note 5(B)(a) to Chapter 84 of the CN, the wording of which expressly takes into consideration two categories of units of automatic data-processing machines, that is to say that relating to the kind used 'solely' in an automatic data processing system and that relating to units used 'principally' in such a system, cannot, however, be accepted.

- 45 As the Advocate General observed in point 33 of his Opinion, such an interpretation would amount to removal of the term 'principally' from the text of that note.
- 46 To support their argument, the Netherlands Government and the Commission rely, inter alia, on the Explanatory Notes to the CN relating to subheading 8471 60 90 and on the Explanatory Notes relating to heading 8471 of the HS, in particular the first sentence of point 1 of Part One, Chapter I(D), regarding display units of automatic data-processing machines.
- 47 In that regard, it is settled case-law 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 (see, inter alia, Case C-311/04 *Algemene Scheeps Agentuur Dordrecht* [2006] ECR I-609, paragraph 27 and the case-law cited).
- 48 The content of the Explanatory Notes to the CN, which do not take the place of those of the HS but should be regarded as complementary to them (see, to that effect, Case C-486/06 *Van Landeghem* [2007] ECR I-10661, paragraph 36), and consulted jointly with them, must accordingly be compatible with its provisions and may not alter the scope of those provisions (see, in particular, *Algemene Scheeps Agentuur Dordrecht*, paragraph 28 and the case-law cited).
- 49 If the Explanatory Notes referred to in paragraph 46 above were to be interpreted, as suggested by the Netherlands Government and the Commission, 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,

those Explanatory Notes would have the effect of amending and, in particular, of restricting the scope of Note 5(B)(a) to Chapter 84 of the CN.

50 It follows that, even if the Explanatory Notes to the CN relating to subheading 8471 60 90 and the Explanatory Notes relating to heading 8471 of the HS were to be interpreted in that manner, in particular the first sentence of point 1 of Part One, Chapter I(D), regarding display units of automatic data-processing machines, those Notes should, in that regard, be considered inapplicable, since that interpretation does not accord with Note 5(B)(a) to Chapter 84 of the CN.

51 In the light of all of the foregoing, the answer to the first question must be that classification of monitors such as those at issue in the main proceedings 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 CN is not precluded on the sole ground that they are capable of displaying signals coming both from an automatic data-processing machine and from other sources.

The second question

52 By that question, the national court asks the Court to define the criteria which make it possible to determine whether monitors such as those at issue in the main proceedings are units of a kind used principally in an automatic data-processing system.

53 The Commission submits that the sockets which the monitors at issue in the main proceedings have, that is to say, DVI-D, S-video and composite-video, are found on monitors intended for use as televisions. For that reason, the monitors at issue in the main proceedings perform a double function, that is to say, the display of signals coming from an automatic data-processing machine and the display of video images.

54 The Netherlands Government submits that, if monitors are equipped with a VGA interface with or without an audio interface, they must be considered to be of the kind used solely in an automatic data-processing system. Except in that situation, it is only if the possibility of using monitors also equipped with other interfaces outside an automatic data-processing system were purely theoretical that those monitors could be considered to be of the kind used principally in such systems.

55 However, those arguments cannot succeed.

56 Although it is true, as the Commission pointed out in its observations, that the criterion set out in Note 5(B)(a) to Chapter 84 of the CN, that a monitor '[be] of the kind used solely or principally in an automatic data-processing system' does not refer to the use of the monitor as such, but the functions which it can perform, the fact remains, as is apparent from paragraph 44 above, that that note expressly takes into consideration both categories of units to which it refers and that that distinction must be applied in practice.

57 In that regard, it must be found, contrary to the submissions of both the Netherlands Government and the Commission, that the number and type of sockets with which monitors such as those at issue in the main proceedings are equipped cannot, alone,

constitute decisive criteria for the tariff classification of such monitors and that, 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.

58 Accordingly, since those monitors cannot be excluded from the concept of units of an automatic data-processing machine within the meaning of Notes 5(B)(a) and 5(C) to Chapter 84 of the CN, it is necessary to identify the criteria which may be relied on to decide whether those monitors are of the kind used principally in an automatic data-processing system or whether their characteristics and technical properties place them among television screens or video monitors.

59 In the present case, for the purposes of the tariff classification of monitors such as those at issue in the main proceedings, it is appropriate to refer to the Explanatory Notes relating to heading 8471 of the HS, in particular to points 1 to 5 of Part One, Chapter I (D), relating to display units of automatic data-processing machines.

60 In that regard, it is apparent from those points that the monitors used principally in an automatic data-processing system can be identified not only by the fact that they are fitted with standard sockets for connection to data-processing systems, but also by other technical characteristics, in particular by the fact that they are intended to be viewed close up, that they cannot display television signals, that they have low magnetic field emissions, that their display pitch starts at 0.41 mm for medium resolution and gets smaller as the resolution increases, that their bandwidth is 15 MHz or greater and that the dimension of the pixels on the screen is smaller than for video monitors in heading 8528, whereas the convergence of the former is greater than that of the latter.

- 61 Consequently, the answer to the second question referred is that, in order to determine whether monitors such as those at issue in the main proceedings are units of a kind used principally in an automatic data-processing system, the national authorities, including the courts, must refer to the indications given in the Explanatory Notes relating to heading 8471 of the HS, in particular to points 1 to 5 of Part One, Chapter I(D), relating to display units of automatic data-processing machines.

The third question

- 62 By this question, the referring court asks whether the scope of Regulation No 754/2004, the Annex to which classifies, in subheading 8528 21 90, two types of plasma screen with technical characteristics enabling them to display data from an automatic data-processing machine or another source, such as a DVD player or a video games player (or console) via a tuner box, extends to monitors such as those at issue in the main proceedings. If the answer is affirmative, it also asks the Court to rule on the validity of that regulation.

- 63 It is apparent from case-law, firstly, that a classification regulation, such as Regulation No 754/2004, is adopted by the Commission when the classification in the CN of a particular product is such as to give rise to difficulty or to be a matter for dispute and, secondly, such a regulation is of general application in so far as it does not apply to an individual trader but, in general, to products identical to the one thus classified (see, to that effect, Case C-119/99 *Hewlett Packard* [2001] ECR I-3981, paragraphs 18 and 19, and *Kip Europe and Others*, paragraph 59).

- 64 Nevertheless, it must be observed that the goods classified under Regulation No 754/2004 are not identical from a technological point of view to the monitors at issue in the main proceedings. The two kinds of apparatus described in the Annex to that regulation are plasma screens, whereas the monitors at issue in the main proceedings are LCD screens.
- 65 They also differ in their dimensions, since the diagonal screen measurement of the apparatus under Regulation No 754/2004 is 106 cm (41.73 inches), while that of the monitors at issue in the main proceedings is 58.42 cm (23 inches).
- 66 In addition, the resolution of the two kinds of apparatus classified under Regulation No 754/2004 is 852 x 480 pixels and 1 024 x 1 024 pixels respectively. However, the resolution of the monitors at issue in the main proceedings is 1 920 x 1 200 pixels.
- 67 It must be added that, although the application by analogy of a classification regulation to goods similar to those covered by that regulation facilitates a coherent interpretation of the CN and the equal treatment of traders (see Case C-130/02 *Krings* [2004] ECR I-2121, paragraph 35, and Case C-14/05 *Anagram International* [2006] ECR I-6763, paragraph 32), 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.
- 68 The mere fact that both the monitors at issue in the main proceedings and the goods covered by Regulation No 754/2000 have a DVI socket and that, for that reason, they are all capable of displaying signals coming from an automatic data-processing machine

and from other sources, leaving aside any assessment of their objective characteristics and their performance of their various functions, cannot be sufficient, in the light of the differences noted in paragraphs 64 to 66 of the present judgment, for that regulation to apply to those monitors by analogy.

69 Since the monitors at issue in the main proceedings are neither identical nor sufficiently analogous to the goods classified under Regulation No 754/2004, it follows that that regulation does not apply to those monitors. Consequently, it is not necessary to assess its validity.

70 In the light of the foregoing considerations, the answer to the third question referred is that Regulation No 754/2004 is not applicable for the purposes of tariff classification of the monitors at issue in the main proceedings.

Costs

71 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 (Third Chamber) hereby rules:

- 1. Monitors such as those at issue in the main proceedings 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 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 Commission Regulation (EC) No 1789/2003 of 11 September 2003, solely because they are capable of displaying signals coming both from an automatic data-processing machine and from other sources.**

- 2. In order to determine whether monitors such as those at issue in the main proceedings are units of the kind used principally in an automatic data-processing system, the national authorities, including the courts, 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.**

- 3. Commission Regulation (EC) No 754/2004 of 21 April 2000 concerning the classification of certain goods in the Combined Nomenclature is not applicable for the purposes of tariff classification of the monitors at issue in the main proceedings.**

[Signatures]