Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

22 March 2017*

(References for a preliminary ruling — Common Customs Tariff — Tariff headings — Classification of goods — Video Camera Recorders — Combined Nomenclature — Subheadings 8525 80 30, 8525 80 91 and 8525 80 99 — Explanatory notes — Interpretation — Implementing Regulations (EU) Nos 1249/2011 and 876/2014 — Interpretation — Validity)

In Joined Cases C-435/15 and C-666/15,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Finance Court, Hamburg, Germany) (C-435/15) and the Rechtbank Noord-Holland (District Court, North Holland, Netherlands) (C-666/15) made by decisions of 19 June 2015 and 8 December 2015, received at the Court on 10 August 2015 and 14 December 2015, respectively, in the proceedings

GROFA GmbH

v

Hauptzollamt Hannover (C-435/15),

and

X,

GoPro Coöperatief UA

v

Inspecteur van de Belastingdienst/Douane kantoor Rotterdam Rijnmond (C-666/15),

THE COURT (Ninth Chamber),

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

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— GROFA GmbH, by G. Eder, Rechtsanwalt,

* Languages of the cases: German and Dutch.

— X and GoPro Coöperatief UA, by H. de Bie, advocaat,

— the Hauptzollamt Hannover, by T. Röper, acting as Agent,

— the Netherlands Government, by M. K. Bulterman and A. M. de Ree, acting as Agents,

— the European Commission, by B.-R. Killmann, 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

Judgment

1 These requests for a preliminary ruling concern, first, the interpretation and, where relevant, the validity of Commission Implementing Regulation (EU) No 1249/2011 of 29 November 2011 concerning the classification of certain goods in the Combined Nomenclature (OJ 2011 L 319, p. 39), and Commission Implementing Regulation (EU) No 876/2014 of 8 August 2014 concerning the classification of certain goods in the Combined Nomenclature (OJ 2014 L 240, p. 12) and, secondly, the interpretation of tariff subheadings 8525 80 30, 8525 80 91 and 8525 80 99 of the Combined Nomenclature ('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 versions resulting, successively, from Commission Regulation (EU) No 1006/2011 of 27 September 2011 (OJ 2011 L 282, p. 1, corrigendum OJ 2011 L 290, p. 6), from Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 (OJ 2012 L 304, p. 1), and from Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013 (OJ 2013 L 290, p. 1).

2 The requests have been made in proceedings between, first, GROFA GmbH and the Hauptzollamt Hannover (Principal Customs Office, Hanover, Germany) ('the Hauptzollamt') (C-435/15) and, secondly, X and GoPro Coöperatief UA and the Inspecteur van de Belastingdienst/Douane kantoor Rotterdam Rijnmond (Inspector of the Tax and Customs Administration, Rotterdam Rijnmond office, Netherlands) (C-666/15) concerning the tariff classification of action cameras intended to record video sequences during sports activities.

Legal context

3 It is apparent from the documents before the Court that the versions of the CN applicable to the facts in the main proceedings are those for the years 2012, 2013 and 2014, resulting from Implementing Regulations Nos 1006/2011, 927/2012 and 1001/2013, respectively. The provisions of the CN applicable to the cases in the main proceedings, however, remained identical from one version of the CN to another.

4 The second part of the CN, entitled 'Schedule of Customs Duties', contains section XVI which includes Chapter 85 headed 'Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.'

5 Note 3, under the heading of that section, is worded as follows:

‘Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.’

6 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:
...	...
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’

7 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), the European Commission, assisted by the Customs Code Committee, is 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 Regulations Nos 1249/2011 and 876/2014 were adopted.

8 The Annex to Implementing Regulation No 1249/2011, adopted pursuant to Article 9(1)(a) of Regulation No 2658/87, as amended by Regulation No 254/2000, classifies under the CN the goods described in the first column of the table set out there under the code given in respect of those goods in the second column of that table. As regards subheading 8525 80 99 of the CN, that table provides:

‘A portable battery-operated apparatus for capturing and recording video, with dimensions of approximately 10 × 5.5 × 2 cm (so-called ‘pocket sized video recorder’) comprising: a camera lens and a digital zoom, a microphone, a loudspeaker, an LCD display with a diagonal measurement of the screen of approximately 5 cm (2 inches), a microprocessor, a memory of 2 GB, and - USB and AV interfaces. The apparatus is only capable of capturing and recording video files in the form of sequences of images in MPEG4-AVI format. Video is recorded in a resolution of 640 × 480 pixels at 30 frames per second for a maximum of 2 hours. Video sequences recorded by the apparatus can either be transferred to an automatic data-processing (ADP) machine, via the USB interface, without modifying the format of the video files, or to a digital video recorder, a monitor or a television set via the AV interface. Video files can be transferred to the apparatus from an ADP machine, via the USB interface.	8525 80 99	Classification is determined by General Rules 1 and 6 for the interpretation of the [CN] and by the wording of CN codes 8525, 8525 80 and 8525 80 99. As the apparatus is only capable of recording video, classification as a digital camera under CN code 8525 80 30 is excluded. Given its characteristics, the apparatus is a video camera recorder. As the apparatus is capable of recording video files from sources other than the incorporated television camera, classification under CN code 8525 80 91 as video camera recorders only able to record sound and images taken by the television camera is excluded. It is therefore to be classified under CN code 8525 80 99 as other video camera recorders.’

9 The Annex to Implementing Regulation No 876/2014, adopted pursuant to Article 9(1)(a) of Regulation No 2658/87, as amended by Regulation No 254/2000, classifies under the CN the goods described in the first column of the table set out there under the code given for those goods in the second column of that table. As regards the subheading 8525 80 99, that table provides:

‘A portable battery-operated apparatus for capturing and recording still and video images (so-called ‘action camera’) with dimensions of approximately 6 × 4 × 2 cm and a weight of approximately 74 g, comprising: an ultra wide angle camera lens, a liquid crystal device (LCD) status indicator, micro USB and micro HDMI interfaces, a slot for micro SD card, built in WiFi, a port for optional accessories. The apparatus does not have a zoom, viewfinder or a screen for displaying recorded images. The apparatus is not designed to be held in the hand but to be mounted on, for example, a helmet. It is presented to be used for capturing dynamic impressions of the environment as experienced during outdoor activities such as biking, surfing and skiing. The video quality can be adjusted ranging from 848 × 480 to 1 920 × 1 080 pixels. Still images can only be recorded in a 5.0 megapixel quality. The quality for still images (such as image sharpness, colour, object composition) cannot be adjusted on the apparatus. The apparatus is capable of capturing and recording video files in MPEG4 format. The highest video recording is in a resolution of 1 920 × 1 080 pixels at 30 frames per second for a continuous period of maximum three hours with a fully charged battery. The capturing can only be stopped by the user. The captured images are recorded in separate files lasting approximately 15 minutes each. Upon presentation files can be transferred to the apparatus from an automatic data-processing machine via the USB interface.	8525 80 99	Classification is determined by General Rules 1 and 6 for the interpretation of the [CN], Note 3 to Section XVI and by the wording of CN Codes 8525, 8525 80 and 8525 80 99. Given the objective characteristics of the apparatus, such as its small size and weight, the fact that it is to be mounted on, for example, a helmet, its capacity to record video for a continuous period of maximum 3 hours, the principal function of the camera is capturing video images. Although the apparatus has the design of a digital camera, it is capable of recording video in a quality of at least 800 × 600 pixels at 30 frames per second for a continuous period of maximum 3 hours. The capturing is not automatically switched off after 30 minutes (see also the Explanatory Notes to the [CN] to subheadings 8525 80 30, 8525 80 91 and 8525 80 99). The fact that the captured images are recorded in separate files that last approximately 15 minutes each does not influence the duration of the continuous video recording capability of the camera. Classification under subheading 8525 80 30 as digital cameras is therefore excluded. As the apparatus is capable of recording video files from sources other than the incorporated camera lens, classification under CN code 8525 80 91 as video camera recorders only able to record sound and images taken by the television camera is excluded. The apparatus is therefore to be classified under CN code 8525 80 99 as other video camera recorders.’

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). The wording of heading 8525 and of subheadings 8525 80 30, 8525 80 91 and 8525 80 99 of the CN is, however, identical in Regulations Nos 861/2010, 1006/2011, 927/2012 and 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 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. In general, the digital video camera recorders of these subheadings have the design which differs from digital cameras of subheading 8525 80 30. They often have a foldable viewfinder and are frequently presented together with a remote control. They always offer an optical zoom function during video recording. 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.
8525 80 99	Other This subheading covers video camera recorders (so-called ‘camcorders’) for the recording not only of sound and images taken by the camera but also of signals from external sources, for example, DVD-players, automatic data-processing machines or television receivers. The images thus recorded can be reproduced by means of an external television receiver or monitor. This subheading also includes “camcorders” in which the video input is obstructed by a plate, or in another way, or in which the video interface can be subsequently activated as video input by means of software. The apparatus is nevertheless designed to record TV programmes and other externally incoming video signals.’ However, ‘camcorders’ with which only the images taken by the camera can be recorded and reproduced by means of an external television receiver or monitor fall in subheading 8525 80 91.’

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

Case C-435/15

11 GROFA is a company which imports cameras from the manufacturer GoPro Coöperatief, which are battery-powered electronic devices particularly suitable for recording sport and leisure activities. The case in the main proceedings concerns three camera models in the GoPro Hero 3 Black Edition range ('the cameras at issue in Case C-435/15').

12 According to the referring court, the cameras at issue in Case C-435/15 have an LCD display but do not have a viewfinder. The cameras have several photographic functions and have a fixed-focus distance lens. The sound and visual data captured by the lens and the built-in microphone are stored on an MP4 H.264 file format on a removable memory card. Those cameras do not have a digital zoom, loudspeaker or built-in internal memory. The software of the cameras at issue in Case C-435/15 encodes the data recorded in such a way that it is possible to distinguish between the files produced by those cameras and those from external sources.

13 The cameras can record up to 120 minutes of video at 30 frames per second with a resolution of at least 1 920 × 1 080 pixels in video in loop mode. Video footage of more than 26 minutes and 3 seconds is stored in a number of MP4 H.264 files, each with a maximum duration of 26 minutes 3 seconds. However, anyone watching the recording will not perceive the transition from one file to the next.

14 The cameras at issue in Case C-435/15 have a memory card slot, a HDMI port, a mini USB port which is compatible with a composite A/C cable and a 3.5 mm stereo microphone adapter and integrated WiFi and a HERO port.

15 The image files and videos stored on the memory card may be displayed on a television or a computer screen via the unidirectional HDMI port and the unidirectional connection with a composite A/C cable.

16 The bidirectional WiFi allows the cameras at issue in Case C-435/15 to be controlled remotely by radio, tablet or smartphone on which the data recorded on the memory card is displayed. The WiFi interface does not allow a screenshot of the video files. Only the image files and videos stored on the memory card and recorded by those cameras can be displayed. Files from other sources are not supported by the cameras and the message 'File not supported' is shown on the monitor or screen.

17 The cameras at issue in Case C-435/15 can be connected to a computer via the mini USB port which recognises the memory card from those cameras as an external hard drive. Thanks to the scanning software of the computer supporting the MP4 format, the image files and videos on the memory card can be reproduced on a screen connected to the computer. Image files or videos on the memory card of the cameras at issue in Case C-435/15 can also be stored on a computer and, conversely, computer data can be transferred on to the memory card of those cameras. That storage process is controlled by the computer's file management software. In those circumstances, the cameras cannot be used. There are no other storage options for image and video data on the memory card of those cameras.

18 On 5 December 2012, GROFA applied to the Hauptzollamt for binding tariff information ('BTI'), proposing that the cameras at issue in Case C-435/15 be classified under subheading 8525 80 91 of the CN.

19 By the BTI of 21 January 2013, the Hauptzollamt classified those cameras under tariff subheading 8525 80 99 of the CN. On 22 February 2013, GROFA lodged a complaint against that BTI, this time requesting a classification under tariff subheading 8525 80 30 of the CN. By decision of 20 August

2014, the Hauptzollamt rejected GROFA's complaint, finding that the cameras at issue in Case C-435/15 are multifunctional machines, within the meaning of Note 3 to Section XVI of the CN, whose main function is that of a video camera recorder. According to the Hauptzollamt, those cameras should be classified as 'other' video camera recorders under tariff subheading 8525 80 99 of the CN. The Hauptzollamt relied, in the first place, on the Explanatory Notes to the CN concerning position 8525, according to which multifunction digital cameras must not be classified as digital cameras if 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. That is the case in respect of the cameras at issue in Case C-435/15. The fact that the video sequences are stored on more than one file on the memory card after 26 minutes and 4 seconds has no effect on the total duration of the recording. In the second place, the Hauptzollamt considered that the fact that those cameras can store video files with sound, transferred from an exterior source via the USB port, is characteristic of a recording of images and sound, within the meaning of tariff subheading 8525 80 99 of the CN.

20 GROFA brought an action before the referring court seeking the classification of the cameras at issue in Case C-435/15 under subheading 8525 80 30 of the CN or, in the alternative, under subheading 8525 80 91 of the CN as video camera recorders which have no autonomous capacity to record signals from external sources.

21 The referring court asks, in the first place, whether Implementing Regulation No 1249/2011, classifying 'pocket sized video recorders' under subheading 8525 80 99 of the CN may be applied by analogy in the present case.

22 In the event that Implementing Regulation No 1249/2011 is applicable by analogy, the referring court questions the validity of that regulation as, according to the annex to that regulation, a camera which can 'record video files from sources other than the incorporated television camera' so that 'the video files can be transferred to the apparatus from an automatic data-processing machine via the USB interface', should be classified under subheading 8525 80 99 of the CN as 'other video camera recorder'. According to the referring court, that interpretation of the concept of 'other recording capability', within the meaning of subheading 8525 80 99 of the CN, is incompatible with the case-law of the Court which requires that the recording process is operated from the video camera recorder itself.

23 In the second place, the referring court considers that Implementing Regulation No 876/2014, classifying 'action cameras' under subheading 8525 80 99 of the CN, might be applicable by analogy to the cameras at issue in Case C-435/15. However, that court also has doubts concerning the validity of that regulation as, first, the annex thereto provides that the transfer of data to the camera from an automatic data-processing machine is considered to be a 'recording capability' which excludes classification under subheading 8525 80 91 of the CN, contrary to the case-law of the Court and that, secondly, Implementing Regulation No 876/2014 does not take into account that the cameras in question cannot reproduce video files from external sources via a connected monitor, contrary to what is set out in the Explanatory Notes to the CN concerning subheading 8525 80 99 of the CN.

24 In the third place, the referring court asks, in the alternative, whether the relevant explanatory notes to the CN preclude the classification of the cameras at issue in Case C-435/15 under subheadings 8525 80 91 and 8525 80 99 of the CN, since after 26 minutes and 4 seconds the video data recorded on those cameras is not stored on a single file, which might call into question whether those cameras are able to make continuous video recordings within the meaning of those explanatory notes.

25 In the fourth place, the referring court is uncertain as to the implications for the classification of the cameras at issue in Case C-435/15 of the fact that those cameras record signals from external sources but are not capable of reproducing them via an external monitor or television. It observes that the Explanatory Notes to the CN concerning subheading 8525 80 99 thereof state that the images recorded must be capable of being reproduced via a television or an external monitor.

26 In those circumstances the Finanzgericht Hamburg (Finance Court, Hamburg, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Is Commission Implementing Regulation No 1249/2011 applicable by analogy to the products which are the subject of the main proceedings (GoPro HERO3 'Black Edition', 'Black Edition Surf', and 'Black Edition Motorsport')?

(b) If the answer to that question is in the affirmative: Is Implementing Regulation (EU) No 1249/2011 valid?

(2) If the answer to question 1(a) or 1(b) is in the negative:

(a) Is Implementing Regulation No 876/2014 applicable by analogy to the products which are the subject of the main proceedings?

(b) If the answer to that question is in the affirmative: Is Implementing Regulation (EU) No 876/2014 valid?

(3) If the answer to question 1(a) or 1(b) is in the negative: Are the Explanatory Notes to subheadings 8525 80 91 and 8525 80 99 of the CN to be interpreted as meaning that a sequence of video recorded in separate files each having a duration of less than 30 minutes is a recording of 'at least 30 minutes in a single sequence of video' if, when the recording is played, the viewer cannot perceive the switch between different files?

(4) If the answer to question 1(a) or 1(b) is in the negative, and the answer to questions 2(a), 2(b) and 3 is in the affirmative: Does the fact that video camera recorders which are able to record signals from external sources are not able to reproduce those signals on an external television receiver or an external monitor preclude their being classified under subparagraph 8525 80 99 CN?'

Case C-666/15

27 This request for a preliminary ruling has been made in the context of proceedings concerning five cases between two companies, X and GoPro Coöperatief, and the Netherlands customs authorities concerning several BTI for five models of camera belonging to the GoPro Hero edition classifying those cameras under subheading 8525 80 91 of the CN or under subheading 8525 80 99 of the CN.

28 The five cases concern camera models GoPro Hero 3 Silver Edition, GoPro Hero 3 + Silver Edition, GoPro Hero 4 Silver Edition, GoPro Hero 4 Black Edition and GoPro Hero ('the cameras at issue in Case C-666/15').

29 Concerning the GoPro Hero 3 Silver Edition camera, one of the applicants in the main proceedings requests its classification under subheading 8525 80 30 of the CN or, in the alternative, under subheading 8525 80 91 of the CN, whilst the national customs authority maintains that that camera must be classified under subheading 8525 80 99 of the CN. As regards the other cameras at issue in Case C-666/15, the applicants in the main proceedings request their classification under subheading 8525 80 30 of the CN, whilst the national customs authority maintains that those cameras should be classified under subheading 8525 80 91 of the CN.

30 According to the referring court, it is not disputed that the cameras at issue in Case C-666/15 can be placed in 'video record' mode for longer than 30 minutes for recordings with a resolution of 800 × 600 pixels (or higher) at 23 frames per second (or higher). In that regard, it states that a recording of more than 30 minutes is stored by those cameras in different video files which are recognised as separate files when they are played back, the playback stopping at the end of each file. The user must click on a new file and press '*play*' in order to play back the next file. The referring court adds that those cameras only allow files that have been recorded on those cameras to be watched. Moreover, the instructions for all the cameras at issue in Case C-666/15 state that they offer a '*looping*' option which permits them to record for longer than 30 minutes before a new video is recorded over the previous video (*overwriting*).

31 The referring court also notes that a particularly important factor for the tariff classification of the cameras at issue in Case C-666/15 is whether they are able to record sound and images taken by the television camera only and whether those cameras can record video of 30 minutes or longer in one recording.

32 In those circumstances, the Rechtbank Noord-Holland (District Court, North Holland, Netherlands) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are the Commission's Explanatory Notes to subheading 8525 80 30 and to subheadings 8525 80 91 and 8525 80 99 of the Combined Nomenclature to be interpreted as meaning that there are also 'at least 30 minutes in a single sequence of video' in the case where, by means of a '*video record*' mode, sequences of video together lasting longer than 30 minutes are recorded, but those sequences of video are recorded in separate files, each with a duration of less than 30 minutes, and the user must, when playing back, open each file with a duration of less than 30 minutes separately, although it is possible, with the aid of the software supplied by GoPro, to place the sequences, which have been incorporated into those files, on a personal computer one after another and thereby save a single video sequence of more than 30 minutes' duration in a single file on a personal computer?

(2) Is classification, under CN subheading 8525 80 99, of video camera recorders which can record sequences from external sources precluded in the case where the sequences cannot be played back via an external TV receiver or an external monitor because those video camera recorders, such as the GoPro Hero 3 Silver Edition, can play back, on an external screen or monitor, only files which they have recorded via their own lenses?'

33 By order of the President of the Court of Justice of 27 January 2016, Cases C-435/15 and C-666/15 were joined for the purposes of the judgment.

Consideration of the questions referred

Consideration of the first question in Case C-435/15

34 By its first question, the referring court in Case C-435/15 asks, in essence, whether Implementing Regulation No 1249/2011 must be interpreted as meaning that it is applicable by analogy to products having the characteristics of the cameras at issue in that case and, if so, whether that regulation is valid.

35 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 products 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, inter alia, of its statement of reasons (see judgment of 15 December 2016, *LEK*, C-700/15, EU:C:2016:959, paragraph 49 and the case-law cited).

36 In the present case, Implementing Regulation No 1249/2011, concerning the classification of 'pocket sized video recorders' under subheading 8525 80 99 of the CN, does not apply directly to the cameras at issue in Case C-435/15. Those cameras are not identical to 'pocket sized video recorders' covered by that regulation, since, as the referring court notes, those products differ, inter alia, in respect of their capacity to take photographs and by the fact that they do not have a digital zoom, a loudspeaker or a built-in internal memory.

37 Secondly, it should be noted that according to the settled case-law of the Court if a classification regulation is not directly applicable to products which are not identical, but only similar to the product covered by that regulation, the latter is applicable by analogy to such products (judgment of 22 September 2016, *Kawasaki Motors Europe*, C-91/15, EU:C:2016:716, paragraph 39 and the case-law cited). The application by analogy of a classification regulation, such as Implementing Regulation No 1249/2011, to products 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).

38 It is still necessary, in order for a classification regulation to be applied by analogy, for the goods to be classified and those covered by the classification regulation to be sufficiently similar (see, to that effect, judgment of 19 February 2009, *Kamino International Logistics*, C-376/07, EU:C:2009:105, paragraph 67). In that regard, it is also necessary to take into account the reasons given for that regulation (see, to that effect, judgments of 13 July 2006, *Anagram International*, C-14/05, EU:C:2006:465, paragraph 34 and of 4 March 2015, *Oliver Medical*, C-547/13, EU:C:2015:139, paragraph 58).

39 In the present case, according to the reasons in the third column of the Annex to Implementing Regulation No 1249/2011, the classification under subheading 8525 80 99 of the CN of 'pocket sized video recorders' is justified inter alia on the ground that the apparatus 'is only capable of recording video'. It follows that the inability to take photographs constitutes one of the decisive factors for the classification used in that regulation. However, it is apparent from the decision to refer in Case C-435/15 that the cameras at issue differ in that respect from 'pocket sized video recorders', which are the subject of Implementing Regulation No 1249/2011, since they can take photographs.

40 Moreover, it should be recalled that the intended use of a product may also constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties (judgments of 20 June 2013 in *Agroferm*, C-568/11, EU:C:2013:407, paragraph 41, and of 4 March 2015 in *Oliver Medical*, C-547/13, EU:C:2015:139, paragraph 47).

41 It is apparent from the findings of fact made by the referring court that the cameras at issue in Case C-435/15 are designed to enable users to film recreation and sport activities which require that the user retains freedom of movement. It follows that the primary purpose of the cameras can be easily differentiated from that of 'pocket sized video recorders' covered by Implementing Regulation No 1249/2011.

42 As the cameras at issue in Case C-435/15 are not sufficiently similar to the products which are classified under Implementing Regulation No 1249/2011, that regulation does not apply to them. Consequently, it is not necessary to assess its validity.

43 In the light of the above considerations, the answer to the first question in Case C-435/15 is that Implementing Regulation No 1249/2011 must be interpreted as meaning that it does not apply by analogy to products with the characteristics of the cameras at issue in that case.

The second question in Case C-435/15

44 By its second question, the referring court in case C-435/15 asks, in essence, whether Implementing Regulation No 876/2014 must be interpreted as meaning that it is applicable by analogy to products having the characteristics of the cameras at issue in that case and, if the answer is in the affirmative, if that regulation is valid.

45 Implementing Regulation No 876/2014 concerns the classification under subheading 8525 80 99 of the CN of 'action cameras'.

46 It is apparent from the findings of fact made by the referring court that the cameras at issue in Case C-435/15 differ from action cameras covered by that regulation, inter alia, in that the former can both be fixed to an object, such as a helmet, or held in the hand, have a recording capacity of shorter duration, two hours maximum, but with better resolution, are able to take better quality photographs and to enable their quality to be checked. It follows that the cameras at issue in Case C-435/15 are not the same as the products which are the subject of Implementing Regulation No 876/2014.

47 Nevertheless, those products are very similar both in their objective characteristics and properties and their intended purpose to the cameras at issue in Case C-435/15. Thus, both 'action cameras', within the meaning of Implementing Regulation No 876/2014, and the cameras at issue in Case C-435/15 are of a reduced size and weight, do not have a zoom function, viewfinder or a built-in internal memory, have a micro HDMI port, a mini USB port and a WiFi connection, allow both the taking of photographs and the recording of video sequences of more than 30 minutes which are, nevertheless, in both cases stored on a number of separate files. Likewise, those two types of product are specially designed for use in sporting activities.

48 It follows that, in accordance with the case-law referred to in paragraphs 37 and 38 of the present judgment, Implementing Regulation No 876/2014 is applicable by analogy to the cameras at issue in Case C-435/15 and that, consequently, it is necessary to examine the validity of that regulation.

49 It should be pointed out in that connection that a classification regulation, such as, in this case, Regulation No 876/2014, is adopted by the Commission on the advice of the Customs Code Committee where the classification in the CN of a particular product is such as to give rise to difficulty or to be a matter for dispute. According to the case-law of the Court, the Council of the European Union has conferred upon the Commission, acting in cooperation with the customs experts of the Member States, a 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 referred to in Article 9 of Regulation No 2658/87, as amended by Regulation No 254/2000, does not authorise it to alter the subject matter and the scope of the tariff headings (see, to that effect, judgment of 4 March 2004, *Krings*, C-130/02, EU:C:2004:122, paragraphs 25 and 26 and the case-law cited).

50 In the present case, Implementing Regulation No 876/2014 classifies, under subheading 8525 80 99 of the CN, 'action cameras', without requiring that those cameras may be used independently to record external video signals, that is to say, without relying on external materials or software with which they were not originally equipped. Such an independent recording capacity is a prerequisite for the classification of goods under tariff subheading 8525 80 99 of the CN. Failing that, the products must be classified not under subheading 8525 80 99 but rather under subheading 8525 80 91 of the CN (judgment of 5 March 2015, *Vario Tek*, C-178/14, not published, EU:C:2015:152, paragraph 32).

51 It follows that Implementing Regulation No 876/2014, in so far as it classifies 'action cameras' under subheading 8525 80 99 of the CN without specifying that they must, for the purpose of that classification, be capable of recording independently from external video signals, is incompatible with the scope of that subheading.

52 It follows from all the foregoing considerations that, by adopting Implementing Regulation No 876/2014, the Commission altered, by extending it, the scope of subheading 8525 80 99 of the CN and, therefore, exceeded the powers conferred on it by Article 9(1)(a) of Regulation No 2658/87, as amended by Regulation No 254/2000 (see, to that effect, judgment of 22 September 2016, *Kawasaki Motors Europe*, C-91/15, EU:C:2016:716, paragraph 62).

53 The answer to the second question in Case C-435/15 is, therefore, that Implementing Regulation No 876/2014 must be interpreted as meaning that it is applicable by analogy to products having the characteristics of the cameras at issue in that case, but that it is invalid.

The fourth question in Case C-435/15

54 In view of the answer to the second question in Case C-435/15, it is not necessary to answer the fourth question referred in that case.

The third question in Case C-435/15 and the first question in Case C-666/15

55 By the third question in Case C-435/15 and by the first question in Case C-666/15, which should be examined together, the referring courts ask, in essence, whether subheadings 8525 80 30, 8525 80 91 and 8525 80 99 of the CN must be interpreted, having regard to the Explanatory Notes to the CN concerning those subheadings, as meaning that video footage of more than 30 minutes, recorded on separate files lasting under 30 minutes each must be considered to be a recording of at least 30 minutes of a single piece of video footage, where the user is not able to perceive the transition from one file to the next when the files are played back or, conversely, where the user must, during that playback, in principle, open each of the files separately.

56 It should be stated as a preliminary point that the Explanatory Notes, drawn up by the Commission as regards the CN are an important aid for interpreting the scope of the various tariff headings but do not have legally binding force (see, to that effect, judgments of 17 February 2016, *Salutas Pharma*, C-124/15, EU:C:2016:87, paragraph 31, and of 15 December 2016, *LEK*, C-700/15, EU:C:2016:959, paragraph 41).

57 According to the Explanatory Notes to the CN on subheading 8525 80 30 of the CN and the Explanatory Notes to the CN on subheadings 8525 80 91 and 8525 80 99 of the CN, the capacity for the product at issue to record 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 is a criterion enabling digital cameras to be distinguished from video camera recorders.

58 Therefore, only the capacity for continuous recording of at least 30 minutes of video footage with a minimum resolution, and not the capacity for the continuous reproduction of that recording, constitutes the characteristic which allows a product to be excluded from classification under subheading 8525 80 30 of the CN. Whether the cameras at issue in cases C-435/15 and C-666/15 are capable of playing video footage of not less than 30 minutes continuously is not, therefore, relevant for the purpose of the tariff classification of those cameras under one of the three subheadings referred to in the paragraph above (see, to that effect, judgment of 5 March 2015, *Vario Tek*, C-178/14, not published, EU:C:2015:152, paragraph 36).

59 It follows that the fact that video footage of more than 30 minutes, recorded by the cameras at issue in Cases C-435/15 and C-666/15, is recorded in separate files does not prevent the exclusion of those cameras from classification under subheading 8525 80 30 of the CN, as such storage in more than one file does not alter the continuous nature of the recording of the footage, but only, in some circumstances, the continuous nature of the playback of that footage and whether the user perceives the transition from one video to the next is not a relevant criterion for the purpose of that tariff classification.

60 The answer to the third question in Case C-435/15 and the first question in Case C-666/15 must therefore be that subheadings 8525 80 30, 8525 80 91 and 8525 80 99 of the CN must be interpreted, having regard to the Explanatory Notes to the CN concerning those subheadings, as meaning that video footage of more than 30 minutes recorded in separate files each lasting less than 30 minutes must be considered to be a recording of at least 30 minutes of a single piece of video footage, irrespective of whether the user is unable to perceive the transition from one file to the next during the playback of those files or, conversely, whether he must, in principle, during that playback, open each of the files separately.

The second question in Case C-666/15

61 By its second question, the referring court in Case C-666/15 asks, in essence, whether the CN must be interpreted as meaning that a video camera recorder which is capable of recording signals from external sources without, however, being able to reproduce them through a television set or external monitor, that video camera recorder being able to play only files that it has itself recorded through its lens on a screen or external monitor, may not be classified under subheading 8525 80 99 of the CN.

62 In that regard, it is appropriate to recall, first, that the essential characteristic of video camera recorders under subheading 8525 80 99 of the CN consists, inter alia, in their ability to record independently external video signals, that is to say, without relying on materials or software with which they are not originally equipped. It is for the national court to assess the complexity of the actions to be undertaken so that the recording may be carried out easily by a user who does not have special skills (judgment of 5 March 2015, *Vario Tek*, C-178/14, not published, EU:C:2015:152, paragraph 32).

63 Failing that, the products must be classified not under subheading 8525 80 99 of the CN but rather under subheading 8525 80 91 of the CN (see, to that effect, judgment of 5 March 2015, *Vario Tek*, C-178/14, not published, EU:C:2015:152, paragraph 32).

64 It is for the referring court to determine whether the cameras at issue in Case C-666/15 have that independent recording capacity. Failing that, their classification under subheading 8525 80 99 of the CN would, in any event, be precluded.

65 Secondly, it should be noted that the Explanatory Notes to the CN on subheading 8525 80 99 state that video camera recorders coming under that subheading must enable the reproduction of audio and video files recorded from external sources by means of an external television receiver or monitor (judgment of 5 March 2015, *Vario Tek*, C-178/14, not published, EU:C:2015:152, paragraph 37).

66 It follows that a video camera recorder which is capable of recording independently from signals coming from external sources, without, however, being able to reproduce them by means of an external television receiver or monitor, cannot be classified under subheading 8525 80 99 of the CN.

67 The answer to the second question in Case C-666/15 is therefore that the CN must be interpreted as meaning that a video camera recorder which is capable of recording from signals from external sources, without, however, being able to reproduce them by means of an external television receiver or

monitor, that video camera recorder being able to play on an external screen or monitor only files which it has itself recorded through its lens, cannot be classified under tariff subheading 8525 80 99 of the CN.

Costs

68 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:

1. **Commission Implementing Regulation (EU) No 1249/2011 of 29 November 2011 concerning the classification of certain goods in the Combined Nomenclature must be interpreted as meaning that it does not apply by analogy to products with the characteristics of the three camera models in the GoPro Hero 3 Black Edition range at issue in Case C-435/15.**

2. **Commission Implementing Regulation (EU) No 876/2014 of 8 August 2014 concerning the classification of certain goods in the Combined Nomenclature must be interpreted as meaning that it is applicable by analogy to products with the characteristics of the three camera models in the GoPro Hero 3 Black Edition range at issue in that case, but that it is invalid.**

3. **Subheadings 8525 80 30, 8525 80 91 and 8525 80 99 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 versions resulting, successively, from Commission Regulation (EU) No 1006/2011 of 27 September 2011, from Commission Implementing Regulation (EU) No 927/2012 of 9 October 2012 and from Commission Implementing Regulation (EU) No 1001/2013 of 4 October 2013, must be interpreted, having regard to the Explanatory Notes to the CN concerning those subheadings, as meaning that video footage of more than 30 minutes recorded in separate files each lasting less than 30 minutes must be considered to be a recording of at least 30 minutes of a single piece of video footage, irrespective of whether the user is unable to perceive the transition from one file to the next during the playback of those files or, conversely, whether he must, in principle, during that playback, open each of the files separately.**

4. **The Combined Nomenclature set out in Annex I to Regulation No 2658/87, in the versions resulting, successively, from Implementing Regulations No 1006/2011, No 927/2012 and No 1001/2013, must be interpreted as meaning that a video camera recorder which is capable of recording from signals from external sources, without, however, being able to reproduce them by means of an external television receiver or monitor, that video camera recorder being able to play on an external screen or monitor only files which it has itself recorded through its lens, cannot be classified under tariff subheading 8525 80 99 of that Combined Nomenclature.**

[Signatures]