

Case T-243/01

Sony Computer Entertainment Europe Ltd

v

Commission of the European Communities

(Action for annulment — Common Customs Tariff — Tariff headings —
Game console — Classification in the Combined Nomenclature)

Judgment of the Court of First Instance (Third Chamber), 30 September
2003 II-4195

Summary of the Judgment

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Customs classification regulation — Applicant 'directly concerned' — Criteria*
(Art. 230, fourth para., EC; Council Regulation No 2658/87, Art. 9(1)(a), first indent)
2. *Common Customs Tariff — Tariff headings — Classification of goods — Commission's regulatory power — Scope — Limits*
(Council Regulation No 2658/87, Art. 9(1)(a), (b), (d) and (e))

3. *Common Customs Tariff — Tariff headings — Classification of goods — Criteria — Objective characteristics and properties of the product*
4. *Common Customs Tariff — Tariff headings — Reliance on the World Customs Organisation's Harmonised System Explanatory Notes — Limits*
5. *Common Customs Tariff — Tariff headings — 'Video games of a kind used with a television receiver' within the meaning of subheading No 9504 10 00 of the Combined Nomenclature — Game console intended to be used mainly for playing video games — Covered*
(Commission Regulation No 1400/2001)
6. *Acts of the institutions — Statement of reasons — Obligation — Scope — Customs classification regulation — Insufficient to refer to a general rule of interpretation*
(Art. 253 EC)
7. *Common Customs Tariff — Tariff headings — 'Video games of a kind used with a television receiver' within the meaning of subheading No 9504 10 00 of the Combined Nomenclature — Inclusion by the Commission of a game console, having regard to the function which gives it its essential character — Classification on the basis of General Interpretation Rule 3(b) of the Combined Nomenclature — Inadmissible*
(Commission Regulation No 1400/2001)

1. Although it is true that the regulations for classifying specific goods in the Combined Nomenclature, adopted by the Commission pursuant to the first indent of Article 9(1)(a) of Regulation No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, are of general application, since they concern all products of the type described, regardless of their individual characteristics and origin, and they take effect, in the interests of the uniform application of the Common Customs Tariff, in relation to all customs authorities in the Community and all importers, such a measure of general application may, however, in certain circumstances, be of direct and individual concern to some

economic operators and, therefore, may be challenged by them under the fourth paragraph of Article 230 EC.

This is so with respect to individual concern when an undertaking which imports a given product has triggered the administrative procedure which led to the adoption of the contested regulation and that procedure has concerned specifically the tariff classification of that product, when that undertaking is the only party whose legal position is affected as a result of

adoption of the regulation, when the contested regulation focuses specifically on the classification of the product imported by the undertaking in question and there are no other products with identical features, it being borne in mind that a possible application by analogy to similar products would not preclude the undertaking from being individually concerned, when the undertaking is the sole authorised importer of that product into the Community.

Coding System whose scope the Community has undertaken not to modify under Article 3 thereof.

(see para. 103)

(see paras 58-59, 63-64, 69, 71, 74-75)

3. The decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the relevant heading of the Common Customs Tariff and in the notes to the sections or chapters.

(see para. 104)

2. The Council 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 mentioned in Article 9(1)(a), (b), (d) and (e) of Regulation No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff does not authorise it to alter the subject-matter of the tariff headings which have been defined on the basis of the Harmonised System established by the 1983 International Convention on the Harmonised Commodity Description and

4. It is true that the Harmonised System Explanatory Notes published by the World Customs Organisation constitute an important means of ensuring the uniform application of the Common Customs Tariff by the customs authorities of the Member States and as such may be considered a valid aid to the interpretation of the tariff. However, those notes do not have legally binding force so that, where appropriate, it is necessary to consider whether their content is in accordance with the

actual provisions of the Common Customs Tariff and whether they alter the meaning of such provisions.

be used mainly for playing video games, even though it may also be used for other purposes, such as playing video DVDs and audio CDs, in addition to automatic data processing.

(see para. 116)

5. It is possible to classify the game console described in the Annex to Regulation No 1400/2001 concerning the classification of certain goods in the Combined Nomenclature under CN Code 9504 10 00: 'video games of a kind used with a television receiver'.

In addition, since neither the wording of subheading 9504 10 nor the section and chapter notes pertaining thereto contain any indications, much less limitations, as to the operation and/or the composition of the products coming thereunder, the mere fact that the console may operate as an automatic data-processing machine and that video games are only one type of file that it can process does not by itself preclude its being classified under subheading 9504 10, since it is quite clear that it is intended mainly to be used to run video games.

Thus, in the absence of a definition of 'video games' in the wording of subheading 9504 10 in the section and chapter notes, in the Harmonised System Explanatory Notes (HSEN) published by the World Customs Organisation, and in the Combined Nomenclature explanatory notes drawn up by the Commission, it is appropriate to consider as video games any products which are intended to be used, exclusively or mainly, for playing video games, even though they might be used for other purposes, as is the console in question here, which, both by the manner in which it is imported, sold and presented to the public and by the way it is configured, is intended to

This finding is, moreover, not affected by HSEN(b) to heading 9504, which, in providing that that heading does not cover products intended to be used mainly for playing video games, would in effect modify and, more specifically, limit the scope of that heading and subheading 9504 10; this cannot be accepted.

Lastly, the classification of an automatic data-processing machine according to the type of file processed does not place an undue limitation on the scope of heading 8471 by introducing a new rule expanding the 'specific function' requirement of Note 5(E) to Chapter 84 to include all functions covered by any other heading or sub-heading of the Combined Nomenclature. Although it is true that the console in question does not perform any 'specific function other than data processing' and that the playing of video games is not one of its specific functions per se, the mere fact that an apparatus fulfils the conditions of Note 5(A) to Chapter 84 and does not perform any specific function other than data processing for the purposes of Note 5(E) to that chapter does not by itself preclude such an apparatus from being classified under another heading.

(see paras 109, 111-112,
114-115, 117-119)

6. The obligation to state reasons which is incumbent on the Commission when it adopts a customs classification regulation requires it to state clearly the legal basis for the classification, in order to inform the persons concerned of the justification for the measure adopted and to enable the Community

Court to exercise its powers of review. A simple reference to a general rule of interpretation of the Combined Nomenclature does not fulfil that obligation.

(see para. 131)

7. Regulation No 1400/2001 concerning the classification of certain goods in the Combined Nomenclature is vitiated by an error of law in so far as it classifies the game console described in the Annex to that regulation under CN Code 9504 10 00 and the accompanying CD-ROM under CN Code 8524 39 90.

Although it is true that such a console can be classified under heading 9504, the Commission committed an error of law by determining, on the basis of general rule 3(b) of interpretation of the Combined Nomenclature, the classification of the console, having regard to the function which gives it its essential character, because that rule covers only the classification of '[m]ixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale', and provides for the classification of mixtures and composite goods according to the material or

component which gives them their essential character.

This interpretation of general rule 3(b) is confirmed by the HSEN to that rule, and by the principle that it is necessary, in carrying out the tariff classification of a product, to identify, from among the materials of which it is composed, the one which gives it its essential character, which may be done by determining whether the product would retain its characteristic properties if one or other of its constituents were removed from it.

Since a possible error in the classification of the console automatically entails the invalidity of the classification of the accompanying CD-ROM, there is also an error in that regard.

Accordingly, the regulation in question must be annulled.

(see paras 119, 123-126, 128, 133-134, operative part 1)