OPINION OF ADVOCATE GENERAL LÉGER

delivered on 11 September 2003 [1]

1. Are national customs authorities entitled to revoke at their own discretion binding tariff information (hereinafter 'BTI') which they issue to traders by way of a tariff classification for goods in cases where those national authorities change their interpretation of the relevant customs nomenclature?

2. That is the question which has been referred by the Gerechtshof te Amsterdam (Regional Court of Appeal, Amsterdam) in proceedings brought by two undertakings, one established in the Netherlands and the other in Cyprus, against the Netherlands customs authorities in connection with the tariff classification of items of furniture and agricultural produce.

3. That question asks the Court to specify the meaning and scope of certain provisions of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2] (hereinafter the 'CCC'), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996. [3]

1 — Original language: French.

2 — OJ 1992 L 302, p. 1.

3 — OJ 1997 L 17, p. 1.

I — Legal framework

4. A BTI notice is a document by which the customs authorities of the Member States of the European Community inform traders, at their request, of the tariff heading (laid down in the customs nomenclature) under which goods which those traders intend to import or export should be classified. That information, which involves a degree of interpretation of the customs nomenclature, allows traders to predict the levels of import and export duty (which they are likely to have to pay) and also to calculate the total amount of export refund (which they are likely to receive under the common agricultural policy).

5. Customs authorities are required to issue the BTI — and, in principle, to comply with it for a certain period of time — on completion of the customs formalities, that is to say when the intended import or export operation is carried out.

6. That twofold obligation was introduced by Council Regulation (EEC) No 1715/90 on the information provided by the customs authorities of the Member States concerning the classification of goods in the customs nomenclature.[4] It meets the need to ensure a measure of legal certainty for traders when carrying on their activities, the need to facilitate the work of the customs authorities and the need to secure more uniform application of Community customs law.[5] The system adopted by the Community Customs Code[6] and its implementing regulation was largely the same.[7]

7. Applications for BTI are made in writing either to the competent customs authorities in the Member State (or Member States) in which the information is to be used, or to the competent customs authorities in the Member State in which the applicant is established.[8] The competent customs authorities' decision to grant an application for BTI is subject to the submission by the person concerned of various pieces of information.[9]

8. BTI is valid for a period of six years from the date of issue.[10] During that period, it is binding on the issuing customs authorities and on the customs authorities of all the other Member States under the same conditions.[11]

9. However, BTI may be annulled where it is based on inaccurate or incomplete information from the applicant.[12]

10. Furthermore, according to Article 12(5) of the CCC — in the version in force at the material time —[13] BTI 'cease[s] to be valid:

(a) in the case of tariff information:

(i) where a regulation is adopted and the information no longer conforms to the law laid down thereby;

4 — OJ 1990 L 160, p. 1.

5 — Third recital in the preamble to the regulation.

6 — Title I, Chapter 2, Section 3.

7 — Title II of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of the CCC (OJ 1993 L 253, p. 1; hereinafter 'the implementing regulation').

8 — Article 12(1) of the CCC and Article 6(1) of the implementing regulation.

9 — Article 6(3) and (4) of the implementing regulation.

10 — Article 12(4) of the CCC.

11 — Article 12(2) of the CCC and Article 11 of the implementing regulation.

12 — Article 12(4) of the CCC.

13 — As amended by Regulation No 82/97, which entered into force on 1 January 1997, as corrected (OJ 1997 L 179, p. 11).

(ii) where it is no longer compatible with the interpretation of one of the nomenclatures...:

— at Community level, by reason of amendments to the explanatory notes to the combined nomenclature or by a judgment of the Court of Justice of the European Communities; [14]

— at international level, by reason of a classification opinion or an amendment of the explanatory notes to the Nomenclature of the Harmonised Commodity Description and Coding System...;

(iii) where it is revoked or amended in accordance with Article 9, provided that the revocation or amendment is notified to the holder...'.

11. Article 9, to which the latter provisions refer, provides:

'1. A decision favourable to the person concerned shall be revoked or amended where, in cases other than those referred to in Article 8 [where the favourable decision is annulled on the ground that it was issued on the basis of incorrect or incomplete information], one or more of the conditions laid down for its issue were not or are no longer fulfilled.

2. A decision favourable to the person concerned may be revoked where the person to whom it is addressed fails to fulfil an obligation imposed on him under that decision....'.

12. The customs authorities are required to send the Commission a copy of the BTI notified to the trader concerned, together with the facts and relevant information, and to inform the Commission in the event that the BTI is void or ceases to be valid. [15]

13. A derogation from the cessation of validity of BTI is specifically provided for the benefit of the holder of that information in certain special circumstances.

14. According to Article 12(6) of the CCC (in the version in force at the material time), '[t]he holder of [BTI] which ceases to

14 — Article 12(4) provides that the date on which the BTI ceases to be valid is to be the date of publication of the said 'measures'.

15 — Articles 8(1) and 13 of the implementing regulation.

be valid pursuant to paragraph 5(a)(ii) or (iii)... may still use that information for a period of six months from the date of publication or notification, provided that he concluded binding contracts for the purchase or sale of the goods in question, on the basis of the [BTI], before that measure was adopted'. However, that paragraph also provides that, 'in the case of products for which an export, import or advance-fixing certificate is submitted when customs formalities are carried out, the period of six months is replaced by the period of validity of the certificate'.

II — Facts and procedure before the national court

A — *Case C-133/02*

15. On 12 January 1999, the company Timmermans Diessen BV (hereinafter 'Timmermans'), which is established in the Netherlands, applied to the Netherlands customs authorities (in the district of Roosendaal) for BTI to be issued in relation to items of furniture (produced by the firm PartyLite Trading SA) described as glass candlesticks, which, in its view, fell under tariff heading 9405 50 00 90. It stated in support of its application that the same type of goods had been classified under that tariff heading by BTI issued previously and submitted a catalogue showing all the products it offered for sale, including photographs of the goods in question.

16. On 15 January 1999, the competent customs authorities issued BTI granting Timmermans' application in full (as regards the description of the goods and their tariff classification).

17. However, on 19 March 1999, they revoked that BTI on the ground that, following a more detailed examination of the matter and after consultation with the customs authorities in a neighbouring district on the interpretation of the relevant nomenclature, it had become apparent that the goods in question should be classified under tariff heading 7013 29 91 00 (rather than under the heading initially selected) as glassware of a kind used for table, kitchen, toilet, office, etc. The decision to revoke the BTI was to take effect on the date of its adoption.

18. On 29 March 1999, Timmermans raised an objection to the decision to revoke the BTI. That objection was dismissed by decision of 20 May 1999. On 12 June 1999, it therefore brought an appeal against the latter decision before the national court.

19. In support of that appeal, it submits that, since the issue of the BTI in question suggested that the tariff classification contained in it would be binding for years to come and would not be changed, its revocation infringed the principle of the protection of legitimate expectations and the principle of legal certainty. According to the competent customs authorities, the revocation at issue was based on the combined provisions of Articles 9(1) and 12(5)(a)(iii) of the CCC, as amended.

B — *Case C-134/02*

20. On 9 October 1997, the company Hoogenboom Production Ltd (hereinafter 'Hoogenboom'), which is established in Cyprus, applied to the Netherlands customs authorities (in the district of Rotterdam) for the issue of BTI in relation to products described as 'preserved apricots containing added sugar', which, in its view, fell under tariff heading 2008 50 61 00.

21. On 5 December 1997, the customs authorities in question issued BTI granting that company's application in full (as regards the description of the goods and their tariff heading).

22. On 6 February 1998, Hoogenbloom applied to the same customs authorities for the issue of four BTI notices in relation to products (similar to those covered by the previous notice) described as preserved apples, hazelnuts and sunflower seeds containing added sugar (which, according to the applicant, fell under tariff headings 2008 99 49 30 00, 2008 19 19 10 00 and 2008 19 19 90 00 respectively) and unroasted peanuts (which, again according to the applicant, fell under tariff heading 2008 11 94 00 00).

23. On 26 February 1998, the customs authorities in question issued four BTI notices granting Hoogenboom's applications in full.

24. However, on 6 October 1998, they revoked all the notices issued (that is to say five in total) on the ground that the products at issue should be classified under tariff heading 1701 [16] and not under the heading initially prescribed, the wording for which precluded classification thereunder. [17] On that occasion, they allowed Hoogenboom to carry on using the revoked BTI until 31 December 1998.

16 — Tariff heading 1701 applies to 'cane or beet sugar and chemically pure sucrose, in solid form'.

17 — Tariff heading 2008 applies to 'fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included'.

25. On 9 November 1998, Hoogenboom raised an objection to the decision to revoke the BTI which was dismissed by decision of 25 March 1999. On 23 April 1999, it therefore lodged an appeal against the latter decision before the national court.

26. In support of that appeal, it submits that there is no legal basis for the revocation decision at issue, either in Article 9 or in Article 12(5) of the CCC. Its interpretation of those provisions is contested by the customs authorities, which take the contrary view that Article 12(5)(a)(iii) explicitly provides for the possibility of such revocation in the event of a blatant error by the customs authorities in the classification of goods for tariff purposes.

III — The question referred

27. In the light of the arguments put forward by the parties, the Gerechtshof te Amsterdam decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Does Article 9(1) of the Community Customs Code, read in conjunction with Article 12(5)(a)(iii) thereof, provide the customs authorities with a legal basis for withdrawing BTI where they change the position adopted in it with regard to the interpretation of the legal provisions applicable to the tariff classification of the goods concerned even where the change is made within the six-year period referred to?'

IV — Observations of the parties

28. According to Timmermans and Hoogenboom, who attended the hearing, it follows from the Court's case-law that BTI may not be unilaterally amended by national customs authorities.[18] The amendment of BTI by national customs authorities does not fall within their own initiative but exclusively within that of the Commission. The contrary situation would have the effect of jeopardising the requirements of legal certainty (in a manner contrary to the objective pursued by the introduction of BTI) and the uniform application of Community law (particularly in circumstances where there was a possibility that the same BTI might be amended at will by the customs authorities in every Member State).

29. According to the Netherlands Government, national customs authorities are entitled to amend BTI where a more

18 — The applicants referred to the judgments in Case C-250/91 *Hewlett Packard France* [1993] ECR I-1819 and Case C-315/96 *Lopex Export* [1998] ECR I-317.

detailed examination leads them to the view that the goods concerned should be classified under a different tariff heading following an error of assessment or a change in thinking in relation to tariff classification.

30. In support of that view, it argues that Article 9(1) of the CCC (to which reference is made by Article 12(5)(a)(iii) of the CCC, as amended) implicitly but necessarily implies that the grant of BTI is subject to its conformity with the customs nomenclature as it should be understood at the time of the customs declaration for the goods in question, that is to say at the time when the import or export operation is carried out. In cases where that condition appeared to be met at the time when the BTI was issued but is no longer met when the economic operation is carried out, customs authorities are entitled to revoke or amend the BTI in question. Ruling out the possibility of such revocation or amendment throughout the period for which the BTI is valid (i.e. for six years) would result in an unacceptable distortion of competition between traders. Furthermore, a measure revoking or amending BTI in this way is not contrary to the principle of the protection of legitimate expectations and the principle of legal certainty because Article 12(6) of the CCC provides that the holder of the BTI in question may continue to use that information for a certain period of time.

31. In the same vein, the Commission submits that the combined provisions of Articles 9(1) and 12(5)(a)(iii) of the CCC authorise national customs authorities to amend or revoke BTI in order to correct errors they have made in classifying goods for tariff purposes. That view, it contends, is not contrary either to the principle that BTI is binding on customs authorities in the determination of customs debts or refunds, or to the principles of legitimate expectations and legal certainty, since, firstly, the possibility of revoking or amending BTI is clearly provided for by the aforementioned provisions of the Community Customs Code and thus precludes any legitimate expectation that the BTI will remain in being and, secondly, the holder of BTI may continue to use that information for six months after its revocation, so that observance of the principle of legal certainty is ensured.

V — Analysis

32. First of all, I would point out that neither of the two orders for reference indicates whether the tariff classification given in the BTI at issue was in fact vitiated by an error in the interpretation of the customs nomenclature. Although the customs authorities claim to have made such an error when issuing the BTI in question, there is nothing in the file to support the view that the alleged error has been established.

33. After all, the customs authorities that issued the BTI merely carried out a more detailed examination of the customs nomenclature and of the resultant tariff classification of the goods concerned and, in the Timmermans case, made consultations on the matter but only with the customs authorities in a neighbouring district. These cannot be considered sufficient grounds on which to be able to say with certainty that an error has been established.

34. In such circumstances, the customs authorities can therefore be said to have revoked the BTI in question at their own discretion, that is to say in accordance with the change in their own interpretation of the customs nomenclature.

35. In my view, the question referred should therefore be understood as seeking to ascertain whether the combined provisions of Articles 9(1) and 12(5)(a)(iii) of the CCC, as amended, are to be interpreted as meaning that customs authorities are entitled, on the basis of those provisions, to revoke BTI issued by them at their own discretion in cases where they (on their assessment alone, in some cases following consultations restricted to the customs authorities in a neighbouring district) change their interpretation of the customs nomenclature.

36. As the Court held in the aforementioned judgment in *Lopex Export*, 'it appeared necessary, in order to ensure a measure of legal certainty for traders when carrying on their activities, to facilitate the work of the customs services themselves and secure more uniform application of Community customs law, to establish rules which oblige customs authorities to provide information which is binding on the administration under certain well-defined conditions'. [19] Those were the objectives which were pursued by Regulation No 1715/90 and by the regulation, which succeeded the former, establishing the Community Customs Code, in particular the version applicable to the dispute in the main proceedings.

37. The question whether the customs authorities of the Member States are entitled, on the basis of the combined provisions of Articles 9(1) and 12(5)(a)(iii) of the CCC, to revoke BTI at their own discretion in cases where they change their interpretation of the relevant customs nomenclature must be determined in the light of those objectives and of the general scheme of the rules introduced. In my view, that question must be answered in the negative.

38. As I have already said, Article 12(2) and (4) of the CCC provides that BTI is binding on the customs authorities as against the holder of that information in respect of the tariff classification of the goods concerned and is in principle binding for a period of six years from its date of issue. That principle satisfies the concern to

19 — Paragraph 19.

provide traders with certain guarantees or assurances as to the future tariff classification of goods which they intend to import or export, in view of the considerable difficulties they may encounter in this area as a result of the highly technical nature of the customs nomenclature.[20] increase in the level of duty payable or a reduction in the amount of refund due) may have a significant impact on the cost of the intended operation, with the result that carrying out that operation may ultimately be of little or no benefit to the undertaking and may even place it in serious difficulties.

39. After all, only binding tariff information is capable of offering such guarantees. It alone allows a trader to predict with sufficient reliability the customs classification relevant to the goods in question and, consequently, the tariff arrangements (duty or refund) likely to apply to the operations by which he intends to import or export those goods.[21] Since BTI is, in principle, binding for a period of six years, the holder of that information is able, at the time of issue, to make forecasts for the long and shorter term, to start from a position of knowledge when positioning himself on a given market for the sale of goods and to make the investments necessary. The ability to make such forecasts is clearly critical, particularly for small and medium-sized undertakings, since a change in the tariff classification given in BTI (if it involves an

40. Given the importance of the tariff classification of goods and the consequences it has for traders, it is incumbent on customs authorities to be particularly diligent when issuing BTI, by ensuring inter alia that they have all the information they require to give an informed opinion on the tariff classification of the goods in question.[22]

41. That duty of diligence is particularly important given that, pursuant to Article 11 of the implementing regulation, BTI supplied by the customs authorities of one Member State is binding on the competent authorities of all the Member States under the same conditions. This principle means that the competent authorities of a Member State in which customs formalities are completed in respect of certain goods are not entitled to depart from the terms of the BTI issued by the competent authorities of

20 — The fifth recital in the preamble to Regulation No 1715/90 stated that information concerning the classification of goods in the customs nomenclature is the most important and most useful category of information for traders because of the highly technical nature of the combined nomenclature and the Community nomenclatures derived from it.

21 — It is important to point out that the tariff classification given in BTI does not affect the rate of duty or refund, based on that classification, that will be applicable on completion of the customs formalities relating to the goods in question. That was stated in the seventh recital in the preamble to Regulation No 1715/90. Practice has shown that rates of duty and refund vary regularly in line with market trends.

22 — See to this effect Article 6(3) and (4) of the implementing regulation.

another Member State in respect of the same goods (particularly if the BTI was issued by the competent authorities of the Member State in which the holder of the information in question is established).[23] It also means that the tariff classification of equivalent goods cannot vary from one Member State to another according to the differing assessments given by the various national customs authorities, as this would fail to take into account the objective of securing the uniform application of the customs nomenclature within the Community, which is intended, inter alia, to avoid the development of discriminatory treatment as between the traders concerned.[24]

42. All of which shows that BTI is inherently binding in relation to its holder, who is entitled to use that information. It is therefore intended to be binding not only on the customs authorities that issued it, but also on the customs authorities of all the other Member States.

43. It is only in certain very specific circumstances that BTI is not binding, because void, or ceases to be so, with the result that the holder of that information is not or is no longer entitled to use it. Those circumstances are listed exhaustively in Article 12(4) and (5)(a) of the CCC, as amended. As those provisions lay down exceptions to the principle that BTI is binding on customs authorities in relation to its holder, they should be interpreted strictly.

44. I would point out that the provisions contained in Article 12(4) and (5)(a)(i) and (ii) of the CCC, as amended, expressly apply to circumstances unconnected with the customs authorities (i.e. involving the holders of BTI or Community institutions), and not to circumstances brought about by those authorities alone. On the other hand, it is clearly impossible, on the basis of their wording, to say whether or not the same is true of Article 12(5)(a)(iii) of the CCC, as amended, and Article 9 thereof, to which Article 12(5)(a)(iii) refers. It is my opinion, therefore, that the provisions in question do not cover a situation, such as that in the disputes in the main proceedings, where the customs authorities change their interpretation of the relevant customs nomenclature on an entirely independent basis (in accordance with their assessment alone). I shall endeavour to demonstrate this now.

45. It should be pointed out first of all that the second sentence of Article 12(4) of the CCC, as amended, provides that BTI is to be annulled where it is based on inaccurate

23 — See Article 6(1) of the implementing regulation, which specifies the customs authorities to which applications for BTI should be directed.

24 — As pointed out in relation to Regulation No 1715/90 by Advocate General Tesauro in his Opinion in *Hewlett Packard France*, cited above (fourth paragraph of point 5).

or incomplete information from the applicant. As I have already said, these provisions apply expressly to circumstances relating essentially to the conduct of the holder of the BTI, not to that of the customs authorities, even though those authorities have a responsibility to exercise a measure of diligence when issuing BTI by ensuring that the file submitted by the applicant is complete. [25]

46. Article 12(5)(a)(i) of the CCC, as amended, provides for the situation where BTI is not in conformity with a Community regulation adopted after the BTI was issued (and while it is still valid, that is to say within six years of its being issued). That situation was examined by the Court in *Lopex Export*, cited above, which concerned a reference for a preliminary ruling on the validity of the provisions of the first indent of the first paragraph of Article 13 of Regulation No 1715/90, which are similar to those in force now, as cited above. [26]

47. On that occasion, the Court was at pains to make it clear that, '[a]s the Council and Commission were right to point out, the aim of binding tariff information is to enable the trader to proceed with certainty where there are doubts as to the classification of goods in the existing customs nomenclature, thereby protecting him against any subsequent change in the position adopted by the customs authorities with regard to the classification of the goods'. [27] The Court held that, '[h]owever, [BTI] is not aimed at, nor can it have the effect of, guaranteeing that the tariff heading to which the trader refers will not subsequently be amended by a measure adopted by the Community legislature'. [28]

48. The Court went on to say that that principle follows clearly and precisely from the wording of the provisions at issue, which are therefore in keeping with the requirements relating to the safeguarding of legal certainty (because they allow traders to be certain of their rights and obligations), and that, accordingly, traders are precluded from being able to entertain, on the sole basis of BTI, a legitimate expectation that the tariff heading in question will not be amended by a measure adopted by the Community legislature. [29] The Court concluded that consideration of the provisions at issue had not disclosed the existence of any factors of such a kind as to affect their validity. [30]

25 — In this case, it is common ground that the information submitted by Hoogenboom in its various applications for BTI was accurate and complete (see paragraph 2.3 of the order for reference and paragraph 18 of the Commission's observations). Although the national court has not said as much, I assume that the same was true of that submitted by Timmermans.

26 — Those provisions state that '[w]here, as a result of the adoption of a regulation amending the customs nomenclature, or a regulation determining or affecting the classification of goods in the customs nomenclature, [BTI] previously supplied no longer conforms to Community laws as thus established, such information shall cease to be valid from the date on which the regulation in question applies.'

27 — Judgment in *Lopex Export*, cited above (paragraph 28).

28 — *Ibidem*.

29 — *Ibidem* (paragraphs 28 and 29).

30 — *Ibidem* (paragraph 31).

49. In my view, the circumstances in which the BTI ceased to be valid in that case are radically different from those described in the disputes in the main proceedings. In the former circumstances, the BTI ceases to be valid where a regulation is adopted by the Community institutions, that is to say where there is an amendment to the law applicable within the Community, rather than a mere change in the individual interpretation of that law — at regional or even national level — given by particular customs authorities, which would not be readily compatible with the objective of the uniform application of the customs nomenclature or with the concern to prevent the introduction of discriminatory treatment as between traders.

50. The first indent of Article 12(5)(a)(ii) of the CCC, as amended, works in the same way. It does provide that BTI must cease to be valid where it is no longer compatible with a particular interpretation of the relevant customs nomenclature. However, the interpretation at Community level to which it refers has nothing to do with that at issue in the disputes in the main proceedings. The difference between the two is one not only of degree but also of substance. After all, the interpretation referred to by the above provisions is based exclusively on amendments to the explanatory notes to the relevant nomenclature or from a judgment of the Court of Justice. Such measures and decisions are necessarily aimed at, and have the effect of, ensuring the correct and uniform application of the customs nomenclature within the Community. They are specifically directed at the customs authorities of all the Member States in order to guide them in their implementation of the customs nomenclature and thus to prevent any errors or differences in the interpretation of that nomenclature.

51. In my opinion, the provisions of Article 12(5)(a)(iii) of the CCC, as amended, must be regarded as pursuing the same aim of ensuring the correct and uniform implementation of the customs nomenclature.

52. Moreover, the Commission has already adopted several decisions on the basis of those provisions (as well as on those of Article 9 of the implementing regulation) [31] in order to put a stop to persistent differences or established errors of interpretation which had given rise to conflicting BTI notices (i.e. conflicts between notices issued by the customs authorities of some Member States without taking account of the general rules on the interpretation of the combined nomenclature or a regulation determining the classification of goods in

31 — I would point out that only the provisions of Article 9(1) are relevant, not those of Article 9(2). As was made clear at the hearing, BTI does not impose obligations on its holder, but the decisions referred to in Article 9(2) do.

the customs nomenclature and those issued correctly by the competent authorities of the other Member States).[32]

53. Those Commission decisions required the customs authorities which had issued incorrect BTI to revoke that information as soon as possible, but at the same time they pointed out that, in accordance with Article 14(1) of the implementing regulation (read together with Article 12(6) of the CCC, as amended), the holder of the BTI in question may, where appropriate, continue to use that information for a certain period of time.

54. Those precedents shed interesting light on the interpretation of the combined provisions of Article 12(5)(a)(iii) and Article 9(1) of the CCC, as amended.

55. They support in part the interpretation put forward by the Netherlands Government and the Commission, in particular as regards Article 9(1) of the CCC, as amended, which states that '[a] decision favourable to the person concerned [such as a BTI notice], shall be revoked or amended where... one or more of the conditions laid down for its issue were not or are no longer fulfilled'.

56. For the tariff classification given in BTI may be assumed to be in conformity with the relevant customs nomenclature since it is determined by the customs authorities, that is to say by the national authorities best placed to appreciate the various technicalities involved. That being the case, the view may be taken, as the Netherlands Government and the Commission do, that the tariff classification in question is valid only in so far as it is in conformity with the relevant customs nomenclature, which means that, where that condition of conformity is not or is no longer fulfilled, the BTI in question must be revoked, in accordance with Article 9(1) of the CCC, as amended.

57. That interpretation is consistent with the meaning of the provisions of Article 12(5)(a)(i) and (ii) of the CCC, as amended, which I examined above, since those provisions state that BTI must cease to be valid where the tariff classification contained in it is no longer in conformity with the relevant legislation or becomes incompatible with the necessary interpretation of the customs nomenclature.

32 — See, inter alia, Commission Decisions 98/405/EC of 16 June 1998 concerning the validity of certain binding tariff information (issued by Danish, French and Netherlands customs authorities (OJ 1998 L 178, p. 42)); 1999/637/EC of 12 July 1999 concerning the validity of certain binding tariff information (issued by United Kingdom customs authorities (OJ 1999 L 251, p. 17)); 1999/747/EC of 8 November 1999 concerning the validity of certain binding tariff information (issued by German and Netherlands customs authorities (OJ 1999 L 298, p. 37)); 2000/41/EC of 29 December 1999 concerning the validity of certain binding tariff information (issued by Irish and United Kingdom customs authorities (OJ 2000 L 13, p. 27)); and 2003/97/EC of 31 January 2003 concerning the validity of certain binding tariff information (BTI) issued by the Federal Republic of Germany (OJ 2003 L 36, p. 40).

58. By extension of those provisions, the view may be taken that BTI must be revoked where the customs authorities have actually made an error (i.e. one established as such rather than one which they merely claim to have committed) in the interpretation of the customs nomenclature and, therefore, in the tariff classification of the goods covered by the BTI in question. The Commission decisions I have referred to support that idea, since they required certain customs authorities to revoke BTI containing a tariff classification which had been proved to be incorrect (inasmuch as it was contrary to the general rules on the interpretation of the combined nomenclature or a regulation on the classification of the goods in question).

59. However, I do not share the opinion, put forward by the Netherlands Government and the Commission, that customs authorities are entitled to revoke BTI in cases where they take the view at their own discretion (i.e. on the basis of their assessment alone) that they have made an error in the interpretation of the customs nomenclature and in the corresponding tariff classification. After all, such revocation is not necessarily justified because the error in question has not necessarily been established as such. Furthermore, the possibility of revoking BTI in this way is not readily compatible either with the objective of the uniform application of the customs nomenclature or with the objective of legal certainty pursued by the introduction of BTI.

60. As regards the objective of the uniform application of the customs nomenclature, I consider that, while a Commission decision ordering the revocation of BTI is necessarily aimed at, and has the effect of, ensuring the correct and uniform application of the customs nomenclature, the same cannot be said of the practice whereby the customs authorities decide at their own discretion to revoke BTI which they have issued following a change in their own interpretation of the relevant nomenclature, even though, in so doing, the authorities in question may be motivated by the desire to align their interpretation with that given by other customs authorities.

61. After all, it should be borne in mind that, unlike the Commission, the customs authorities issuing BTI do not necessarily have an overview of all the BTI notices issued by all the other customs authorities within the Community in respect of identical or similar goods. [33]

62. In my opinion, where customs authorities consider that they have made an

33 — The Commission has all the necessary relevant details, since it is responsible for administering a database containing copies of all the BTI notices issued and the details relating to them (see Articles 6(3)(k) and 8(1) of the implementing regulation). The Commission may send that data to customs authorities which request it to do so (Article 8(2) of the implementing regulation). Customs authorities intending to revoke a BTI notice at their own discretion will not necessarily take the trouble to request such details from the Commission so that they can make their decision on an informed basis.

error in the interpretation of the customs nomenclature when issuing BTI, they should notify the Commission to that effect in order to ensure that it is indeed an error such as to justify revocation of the BTI in question. Only a mechanism such as this would be capable of ensuring that the customs nomenclature is applied correctly, or at least uniformly. In my view, the need for customs authorities to notify the Commission in this way follows both from the objectives of legal certainty and the uniform application of the customs nomenclature pursued through the introduction of BTI, and from the obligation incumbent on Member States, under Article 10 EC, to cooperate dutifully with the Community institutions. [34]

63. Moreover, as the Commission stated at the hearing, it is often approached by the customs authorities of certain Member States contesting the validity of BTI issued by other customs authorities as regards the interpretation of the customs nomenclature given in that information. As it went on to say, it must then assess whether it is necessary to adopt on the validity of the BTI in question a decision ordering the customs authorities against which the complaint has been made to revoke that information.

34 — See, *mutatis mutandis*, the judgment in Case C-234/89 *Delimitis* [1991] ECR I-935, paragraphs 44, 45, 47, 49, 52 and 53, which concerned the respective powers of the national courts and the Commission in the application of Articles 85(1) and 86 of the EC Treaty (now Articles 81 and 82 EC) relating to competition.

64. In my view, the question that arises is whether a decision would also be necessary if the Commission were approached by the customs authorities that had issued the BTI themselves (rather than by other customs authorities) and, if so, whether a simple letter from the Commission to the relevant customs authorities would suffice, that is to say a form of reply the adoption and transmission of which is not subject to excessive procedural constraints.

65. As regards the objective of legal certainty, it is important to point out that the interpretation put forward by the Netherlands Government and the Commission makes the principle that BTI is inherently binding redundant and thus fails to take into account the aim pursued by the Community legislature in introducing the BTI system, as described by the Court in its judgment in *Lopex Export*, cited above. [35] After all, the principle that BTI is binding would be meaningless if customs authorities were entitled to revoke BTI issued by them at their own discretion, on the sole ground that, in their view, they had made an error or had changed their own interpretation of the customs nomenclature.

66. In any event, given that objective of legal certainty, I find it difficult to imagine that the Community legislature would have been content to afford only temporary

35 — Paragraphs 19 and 28.

protection for the interests of BTI holders (in the manner provided for in Article 12(6) of the CCC, as amended) if, which I do not believe they are, customs authorities were entitled (on the basis of Article 12(5)(a)(iii) of the CCC, as amended) to revoke BTI in the circumstances at issue.

67. In this respect, I am not convinced by the explanation given by the Commission at the hearing to the effect that that protection lasts for as long as it usually takes for the goods to be delivered (in its submission, approximately six months), with the result that the holder of BTI does not have to endure the inconvenience of revocation of the information because he can use it for six months and thus complete his marketing operation.

68. First of all, it is not inconceivable that some contracts will carry longer delivery periods. Moreover, even if the protection does last for as long as it takes for the goods in question to be delivered, it is likewise not inconceivable that the revocation of BTI will have a serious impact on the marketing activities of the trader concerned.

69. After all, although, in those circumstances, the holder of the BTI would be able to use that information when completing the customs formalities relating to the goods in question, he would not be able to use it later when marketing identical goods. Revocation of that BTI could put the trader concerned in a difficult position in that it could wreck his tariff classification forecasts for identical goods, and thus to a large extent call into question the wisdom of his commercial policy and his investments, especially if he carries on his activity as part of a small or medium-sized undertaking and the BTI is revoked shortly after it has been issued, that is to say long before the expiry of its six-year period of validity.

70. Such a situation would hardly be compatible with the objective pursued through the introduction of BTI, which was to provide traders with significant guarantees as to the tariff classification of goods so that they could carry on their activities on a satisfactory basis. In this regard, much as I can understand why the Community legislature, after weighing up the interests involved (those of BTI holders and those relating to the correct and uniform application of the customs nomenclature), provided only temporary protection for the interests of BTI holders in cases where the information becomes incompatible with the interpretation of the customs nomenclature given by the Community institutions, and, in particular, by the Court of Justice, I none the less find it difficult to imagine that the Community legislature intended for BTI holders to be subject to the same arrange-

ments in cases where the information is revoked by the customs authorities at their own discretion.

71. Consequently, the answer to the question referred in this case should be that the combined provisions of Articles 9(1) and 12(5)(a)(iii) of the CCC, as amended, are to be interpreted as meaning that customs authorities which have issued BTI are not entitled, on the basis of those provisions, to revoke that information at their own discretion in cases where they change their own interpretation of the relevant customs nomenclature.

VI — Conclusion

72. In the light of all of the foregoing considerations, I propose that the Court answer the question referred for a preliminary ruling by the Gerechtshof te Amsterdam as follows:

'The combined provisions of Articles 9(1) and 12(5)(a)(iii) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 are to be interpreted as meaning that customs authorities which have issued binding tariff information are not entitled to revoke that information at their own discretion in cases where they change their own interpretation of the relevant customs nomenclature.'