JUDGMENT OF THE COURT (First Chamber)

15 September 2005 *

In Case C-495/03,

REFERENCE for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 21 November 2003, received at the Court on 24 November 2003, in the proceedings

Intermodal Transports BV

v

Staatssecretaris van Financiën,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Lenaerts, K. Schiemann (Rapporteur), E. Juhász and M. Ilešič, Judges,

* Language of the case: Dutch.

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Intermodal Transports BV, by R. Tusveld and G. van Slooten, belastingadviseurs,

— the Netherlands Government, by H.G. Sevenster and C. ten Dam, acting as Agents,

— the Austrian Government, by H. Dossi, acting as Agent,

— the Commission of the European Communities, by J. Schieferer and D.W. V. Zijlstra, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 April 2005,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 234 EC and heading 8709 of the combined nomenclature 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), as amended by Commission Regulation (EC) No 2261/98 of 26 October 1998 (OJ 1998 L 292, p. 1) ('the CN').

2 The reference was made in proceedings between Intermodal Transports BV ('Intermodal'), a company established in Rotterdam (Netherlands), and the Staatssecretaris van Financiën (State Secretary for Finance) concerning the classification in the CN of certain vehicles referred to as 'Magnum ET120 Terminal Tractors'. Those vehicles are equipped with a diesel engine having an output of 132 kilowatts at 2 500 revolutions per minute and automatic transmission with four forward gears and one reverse gear, and are fitted with a closed cab and a fifth wheel allowing a lift height of 60 centimetres. They have a maximum carrying capacity of 32 000 kilograms, a very small turning circle and are designed for moving semi-trailers on industrial premises and in industrial buildings.

3 The first question referred for a preliminary ruling relates to the relevance of binding tariff information issued by customs authorities of a Member State for the purposes of assessing whether the national courts of another Member State before which a question of tariff classification is raised are under an obligation to make a reference to the Court for a preliminary ruling. The second question relates to the correct classification of the vehicles in question.

Relevant provisions

The combined nomenclature

4 The CN is based on the worldwide Harmonised Commodity Description and Coding System ('the HS') drawn up by the Customs Cooperation Council (now the World Customs Organisation) and adopted by the International Convention concluded in Brussels on 14 June 1983 ('the HS Convention') which was approved, together with the Protocol of Amendment thereto of 24 June 1986, on behalf of the Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

5 Headings 8701 and 8709 are listed in Chapter 87 in Section XVII of Part Two of the CN. That chapter relates to vehicles other than railway or tramway rolling-stock, and parts and accessories thereof. Note 2 to that chapter states that '(f)or the purposes of this chapter, "tractors" means vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport, in connection with the main use of the tractor, of tools, seeds, fertilisers or other goods. ...'

6 When the customs debt in the main proceedings arose, heading 8701 was worded as follows: 'tractors (other than tractors of heading No 8709)'. Sub-heading 8701 20 10 related to 'new road tractors for semi-trailers'. Heading 8709 related to 'works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles'.

- The general rules for the interpretation of the CN, which are in Part One, Section I, A, of the CN, state in particular:

'Classification of goods in the combined nomenclature shall be governed by the following principles:

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relevant section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

...'

8 Under Article 6(1) of the HS Convention, a committee known as the 'Harmonised System Committee', composed of representatives from each of the Contracting Parties, was established within the Customs Cooperation Council. Under Article 7 (1) of the HS Convention, the functions of the committee include proposing amendments to that convention and preparing Explanatory Notes, Classification Opinions and other advice as guides to the interpretation of the HS.

9 The explanatory note on heading 8701 of the HS states:

'For the purposes of this heading, tractors means wheeled or track-laying vehicles constructed essentially for hauling or pushing another vehicle, appliance or load. ...

The heading covers tractors (other than tractors of the type used on railway station platforms, falling in heading 87.09) of various types (tractors for agricultural or forestry work, road tractors, heavy duty tractors for constructional engineering work, winch tractors, etc.), whatever their mode of propulsion (internal combustion piston engine, electric motor, etc.) ...

The tractors of this heading ... may be equipped with ... a coupling device for trailers or semi-trailers (e.g., on mechanical horses and similar tractive units) ...'

10 The explanatory note on heading 8709 states:

'This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) or, on railway station platforms, to haul small trailers.

...

The main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading 87.01, 87.03 or 87.04 may be summarised as follows:

(1) Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.

(2) Their top speed when laden is generally not more than 30 to 35 km/h.

(3) Their turning radius is approximately equal to the length of the vehicle itself.

Vehicles of this heading do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which he stands to steer the vehicle. Certain types may be equipped with a protective frame, metal screen, etc., over the driver's seat.

The vehicles of this heading may be pedestrian controlled.

...

Tractors of the type used on railway station platforms are designed primarily to tow or push other vehicles, e.g., small trailers. They do not themselves carry goods, and are generally lighter and less powerful than the tractors of heading 87.01. Tractors of this type may also be used on wharfs, in warehouses, etc.

...'

Tariff information

11 Article 4 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1; corrigendum at OJ 1997 L 179, p. 11) ('the CCC') provides:

'For the purposes of this Code, the following definitions shall apply:

...

(5) "Decision" means any official act by the customs authorities pertaining to customs rules giving a ruling on a particular case, such act having legal effects on one or more specific or identifiable persons; this term covers, inter alia, binding information within the meaning of Article 12.

...'

12 Article 9(1) of the CCC states:

'A decision favourable to the person concerned shall be revoked or amended where ... one or more of the conditions laid down for its issue were not or are no longer fulfilled.'

13 Under Article 12 of the CCC:

'...

2. Binding tariff information or binding origin information shall be binding on the customs authorities as against the holder of the information only in respect of the tariff classification or determination of the origin of goods.

...

3. The holder of such information must be able to prove that:

— for tariff purposes: the goods declared correspond in every respect to those described in the information,

...

5. Binding information shall cease 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;

(ii) where it is no longer compatible with the interpretation of one of the nomenclatures referred to in Article 20(6):

— 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,

— at international level, by reason of a classification opinion or an amendment of the explanatory notes to the Nomenclature of the [HS];

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

The date on which binding information ceases to be valid for the cases cited in (i) and (ii) shall be the date of publication of the said measures or, in the case of international measures, the date of the Commission communication in the "C" series of the *Official Journal of the European Communities*;

...'

14 Article 5(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 12/97 of 18 December 1996 (OJ 1997 L 9, p. 1) ('the CCC Implementation Regulation'), defines binding information as 'tariff information ... binding on the administrations of all Community Member States when the conditions laid down in Articles 6 and 7 are fulfilled'.

15 Article 10 of the CCC Implementation Regulation states:

'1. Without prejudice to Articles 5 and 64 of the [CCC], binding information may be invoked only by the holder.

...

3. The holder of binding information may use it in respect of particular goods only where it is established:

(a) tariff matters: to the satisfaction of the customs authorities that the goods in question conform in all respects to those described in the information presented;

...'

16 Article 11 of the CCC Implementation Regulation provides:

'Binding tariff information supplied by the customs authorities of a Member State since 1 January 1991 shall become binding on the competent authorities of all the Member States under the same conditions.'

The main proceedings and the questions referred for a preliminary ruling

17 On 1 March 1999, Intermodal declared for the purposes of their release for free circulation motor vehicles referred to as 'Magnum ET120 Terminal Tractors'. That declaration classified those vehicles under tariff heading 8709 of the CN.

18 Following a check the Netherlands customs authorities took the view, however, that the vehicles fell under sub-heading 8701 20 10 of the CN. They therefore sent Intermodal a notice of additional payment.

19 In support of the action which it brought against that notice before the Gerechtshof te Amsterdam (Regional Court of Appeal, Amsterdam), Intermodal submitted a binding tariff information (BTI) issued on 14 May 1996 by the Finnish customs authorities. That document, which was still valid, specified Sisu Terminal Systems Oy, established in Tampere (Finland), as the holder and classified vehicles referred to as 'Sisu-Terminaaltraktori' under heading 8709 of the CN.

20 The action was dismissed by that court by decision of 21 May 2002. Taking the view that it follows from the general rule for the interpretation of the CN in Part One, Section I, A, point 1, of the CN and from settled case-law of the Court of Justice that the decisive criterion for the classification of goods for customs purposes is in general to be found in their objective characteristics and properties as defined by the wording of the heading of the CN and the section or chapter notes in question, that court held that, as the vehicles were not designed to transport goods or suitable for towing trolleys on railway station platforms, they could not be classified under heading 8709.

21 As it considered, therefore, that sub-heading 8701 20 10 was clearly applicable and found that the fact that the Finnish authorities had issued a divergent BTI for similar goods to a third party was not such as to affect that assessment, the Gerechtshof te Amsterdam held that it was inappropriate to seek a preliminary ruling from the Court of Justice.

22 Intermodal appealed against that decision on a point of law before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

23 While it considers that it follows from Article 4(5) and Article 12(2) and (3) of the CCC and from Article 10 of the CCC Implementation Regulation that Intermodal cannot derive any right from a BTI of which it is not the holder and which relates to other goods, the Hoge Raad der Nederlanden is uncertain whether, in circumstances such as those in the main proceedings, a national court which takes the view that such a BTI issued to a third party makes a classification which is manifestly wrong under the CN is required to refer to the Court a question for a preliminary ruling. According to the Hoge Raad der Nederlanden, the fact that under the first indent of Article 12(5)(a)(ii) of the CCC, a BTI ceases to be valid where, by reason of a judgment of the Court of Justice, it is no longer compatible with the interpretation of the CN, could militate in favour of an answer to that question in the affirmative.

24 The Hoge Raad der Nederlanden wishes, in addition, to know whether heading 8709 must be interpreted strictly, so as to exclude the vehicles in issue in the main proceedings on the ground that they do not transport goods and are not tractors of the type used on railway-station platforms or similar vehicles, or whether that heading must be interpreted more broadly, as suggested by the Explanatory Notes to the HS, which extend the term 'tractors' to include those which are used to haul or push other vehicles not only in railway stations, but also in dock areas, warehouses and so forth.

25 It was in those circumstances that the Hoge Raad der Nederlanden decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

'1. Should a national court refer questions on the interpretation of the CN to the Court of Justice of the European Communities for a preliminary ruling where a party to a dispute brought before it concerning classification in the CN of a certain product invokes a decision by a customs authority laid down in a [BTI] issued to a third party in respect of a similar product and the national court takes the view that that BTI is at variance with the CN?

2. Must heading 8709 of the CN be interpreted as covering vehicles such as those in issue in the present case?'

Consideration of the questions referred for a preliminary ruling

The first question

26 By that question, the court making the reference asks whether a national court before which, in a dispute concerning the classification of goods under the CN, a

BTI relating to similar goods issued by the customs authorities of another Member State to a person not party to that dispute is invoked, is under an obligation to refer to the Court questions on interpretation if it takes the view that that BTI is at variance with the CN and it intends to adopt a tariff classification different from the one in the BTI.

27 It should be stated, first, that the referring court with good reason took the view that it follows from Article 12 of the CCC that a BTI creates rights only for the holder and in respect only of the goods described therein. As is clear from paragraph 23 of this judgment, that court thus rightly deduced that, in the dispute pending before it, Intermodal did not have any personal right to rely on the BTI issued by the Finnish authorities.

28 Regarding the question referred for a preliminary ruling, and in respect of, first, courts or tribunals of a Member State against whose decisions there is a judicial remedy under national law, under the second paragraph of Article 234 EC — as the Netherlands Government and the Commission of the European Communities have noted — such courts may, but are not under an obligation to, refer a question on interpretation to the Court for a preliminary ruling if they consider that a decision on the question is necessary in order to enable them to give judgment.

29 In that regard, it should be observed, in particular, that the obligation to refer a question to the Court for a preliminary ruling laid down by the third paragraph of Article 234 EC in respect of national courts or tribunals against whose decisions there is no judicial remedy is intended in particular to prevent a body of national case-law that is not in accordance with the rules of Community law from being established in a Member State (see, in particular, Case C-393/98 *Gomes Valente* [2001] ECR I-1327, paragraph 17, and case-law cited).

30 This objective is secured when, subject to the limits accepted by the Court (Case 283/81 *Cilfit and Others* [1982] ECR 3415), supreme courts are bound by that obligation to refer as is any other national court or tribunal against whose decisions there is no judicial remedy (see Case C-99/00 *Lyckeskog* [2002] ECR I-4839, paragraphs 14 and 15, and case-law cited).

31 On the other hand, national courts or tribunals against whose decisions there is a judicial remedy under national law are, under the EC Treaty, free to assess whether or not a reference to the Court for a preliminary interpretative ruling is necessary.

32 The fact that the customs authorities of another Member State have issued to a person not party to the dispute before such a court and in respect of similar goods to those at issue in that dispute a BTI as referred to by a provision of secondary legislation such as Article 12 of the CCC cannot limit the freedom of assessment thus vested in that court under Article 234 EC.

33 Secondly, in respect of national courts or tribunals against whose decisions there is no judicial remedy under national law, it should be remembered that the third paragraph of Article 234 EC must, following settled case-law, be interpreted as meaning that such courts or tribunals are required, where a question of Community law is raised before them, to comply with their obligation to make a reference, unless they have established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community.

34 The fact that the customs authorities of another Member State have issued to a person not party to the dispute before such a court a BTI for specific goods, which seems to reflect a different interpretation of the CN headings from that which that court considers it must adopt in respect of similar goods in question in that dispute, most certainly must cause that court to take particular care in its assessment of whether there is no reasonable doubt as to the correct application of the CN, taking account, in particular, of the three criteria cited in the preceding paragraph.

35 On the other hand, contrary to the contentions of Intermodal and the Commission, and as the Netherlands and Austrian Governments have rightly claimed, the existence of such a BTI cannot, in itself, prevent the national court from concluding, after an examination fulfilling the requirements noted in paragraphs 33 and 34 of this judgment, that the correct application, in a given case, of a CN tariff heading is so obvious as to leave no scope, particularly in the light of the settled interpretative criteria identified by the Court with regard to classification in the CN, for any reasonable doubt as to the manner in which the question raised is to be resolved or prevent it, in such a case, from deciding to refrain from seeking a preliminary ruling from the Court and to take upon itself the responsibility for resolving that question (*Cilfit and Others*, cited above, paragraph 16).

36 First, any divergent application of the rules in certain Member States cannot influence the interpretation of the Common Customs Code which is based on the wording of the tariff headings (Case C-120/90 *Post* [1991] ECR I-2391, paragraph 24).

37 Secondly, and without prejudice to the lessons to be drawn from the judgment in Case C-224/01 *Köbler* [2003] ECR I-10239, the case-law as stated in *Cilfit and Others* gives the national court sole responsibility for determining whether the

correct application of Community law is so obvious as to leave no scope for any reasonable doubt and for deciding, as a result, to refrain from referring to the Court of Justice a question concerning the interpretation of Community law which has been raised before it (Case C-340/99 *TNT Traco* [2001] ECR I-4109, paragraph 35).

38 Thirdly, that obligation to refer imposed by the third paragraph of Article 234 EC is based on cooperation, established with a view to ensuring the proper application and uniform interpretation of Community law in all the Member States, between national courts, in their capacity as courts responsible for the application of Community law, and the Court of Justice (see, inter alia, *Cilfit and Others*, paragraph 7, Case C-337/95 *Parfums Christian Dior* [1997] ECR I-6013, paragraph 25, and *Gomes Valente*, cited above, paragraph 17). As has been noted in paragraph 29 of the present judgment, that obligation is intended in particular to prevent a body of national case-law that is not in accordance with the rules of Community law from being established in any Member State.

39 In that respect, the Court has, admittedly, held that, before the national court or tribunal comes to the conclusion that the correct application of a provision of Community law is so obvious that there is no scope for any reasonable doubt as to the manner in which the question raised is to be resolved and therefore refrains from submitting a question to the Court for a preliminary ruling, it must in particular be convinced that the matter is equally obvious to the courts of the other Member States and to the Court of Justice (*Cilfit and Others*, paragraph 16). On the other hand, such a court cannot be required to ensure that, in addition, the matter is equally obvious to bodies of a non-judicial nature such as administrative authorities.

40 Fourthly, the mechanism of the reference for a preliminary ruling created by Article 234 EC is intended, as the very wording of that provision makes clear, in particular to provide a means for a national court before which a dispute has been brought to obtain the clarification necessary for the purposes of deciding it. On the other hand,

a national court cannot be required to have recourse to that mechanism on the sole ground that the interpretation that will be adopted by the Court concerning a given tariff heading might, under a provision of secondary legislation such as Article 12 of the CCC, invalidate a BTI issued by the customs authorities of another Member State or end a practice attributable to those authorities, where neither the BTI nor the practice are the subject-matter of the dispute before that court.

41 With regard to the possibility that an administrative practice and case-law that diverge could co-exist in two Member States, a situation which, as the Commission states, would adversely affect the requirement for the uniform application of the common customs tariff and would mean, as Intermodal states, that similar products have different classifications depending on which of the two Member States the trader concerned imports them into, it should be pointed out, as the Netherlands and Austrian Governments have stated, that various mechanisms exist to ensure that such inconsistencies are of a temporary nature.

42 First, under Article 9 and Article 12(5)(a)(iii) of the CCC, a BTI may be revoked if one or more of the conditions laid down for its issue were not or are no longer fulfilled. It follows that, where the customs authorities take the view that their initial interpretation is wrong, as the result of an error of assessment or evolution in the thinking in relation to tariff classification, they are entitled to consider that one of the conditions laid down for the issue of a BTI is no longer fulfilled and to revoke that BTI with a view to amending the tariff classification of the goods concerned (see, to that effect, Joined Cases C-133/02 and C-134/02 *Timmermans Transport and Hoogenboom Production* [2004] ECR I-1125, paragraphs 21 to 25).

43 Next, under Article 12(5)(a)(i) of the CCC a BTI ceases to be valid, inter alia, where a classification regulation is adopted and the information no longer conforms to the

law laid down thereby. Under Article 9(1) of Regulation No 2658/87, the Commission has the authority to adopt such classification regulations, in accordance with the procedure defined in Article 10 of that regulation.

44 Finally, assuming that the divergences thus observed endure despite everything, proceedings could be brought before the Court on the basis of Article 226 EC. It should be remembered in particular that an administrative practice can be the subject-matter of an action for failure to fulfil obligations when it is, to some degree, of a consistent and general nature (see, inter alia, Case C-387/99 *Commission* v *Germany* [2004] ECR I-3751, paragraph 42, and Case C-494/01 *Commission* v *Ireland* [2005] ECR I-3331, paragraph 28).

45 Having regard to the foregoing, the answer to the first question must be that Article 234 EC must be interpreted as meaning that when, in proceedings relating to the tariff classification of specific goods before a national court or tribunal, a BTI relating to similar goods issued to a person not party to the dispute by the customs authorities of another Member State is submitted, and that court or tribunal takes the view that the tariff classification made in that BTI is wrong, those two circumstances:

— cannot result, in respect of a court or tribunal against whose decisions there is a judicial remedy under national law, in the court or tribunal being under an obligation to refer to the Court questions on interpretation;

— cannot, in themselves, automatically result, in respect of a court or tribunal against whose decisions there is no judicial remedy under national law, in the court or tribunal being under an obligation to refer to the Court questions on interpretation.

A court or tribunal against whose decisions there is no judicial remedy under national law is, however, required, where a question of Community law is raised before it, to comply with its obligation to make a reference, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community; the existence of the abovementioned BTI must cause that court or tribunal to take particular care in its assessment of whether there is no reasonable doubt as to the correct application of the CN, taking account, in particular, of the three criteria mentioned above.

The second question

46 By its second question, the national court asks, essentially, whether heading 8709 of the CN must be interpreted as covering a vehicle with the features of the vehicle at issue in the main proceedings.

47 According to settled case-law, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be found in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and of the notes to the sections or chapters (see, inter alia, Case C-396/02 *DFDS* [2004] ECR I-8439, paragraph 27, and case-law cited).

48 The explanatory notes to the CN and those to the HS are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (see, inter alia, *DFDS*, cited above, paragraph 28). The content of those notes must therefore be compatible with the provisions of the CN and may not alter the meaning of those provisions (see, in particular, Case C-280/97 *ROSE Electrotechnik* [1999] ECR I-689, paragraph 23, and Case C-42/99 *Eru Portuguesa* [2000] ECR I-7691, paragraph 20).

49 In this case, heading 8709 of the CN refers to 'works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods' and 'tractors of the type used on railway station platforms' and their parts.

50 Such wording draws a distinction between the two categories of vehicles, each defined in terms of, in particular, certain of their physical features and/or the use which may be made of them.

51 In respect of 'works trucks', that wording thus contains details which show that the vehicles at issue must be of the type used in factories, warehouses, dock areas or airports, which cannot be fitted with lifting equipment and which are used for the transport of goods. The Explanatory Notes to the SH state in the latter regard, in addition, that those works trucks are fitted with, for example, a platform or container on which the goods are loaded.

52 Although they are used in industrial sites and warehouses, the vehicles at issue in the main proceedings clearly do not therefore meet those objective requirements since, as the Netherlands Government has rightly noted, according to the order for

reference those vehicles cannot, as such, transport goods, but serve solely to tow semi-trailers with the aid of a fifth wheel.

53 Regarding 'tractors', it should be noted, first, that heading 8701 on 'tractors', which are defined in Note 2 to Chapter 87 as 'vehicles constructed essentially for hauling or pushing another vehicle, appliance or load', states that that heading covers all tractors thus defined other than tractors of heading 8709.

54 As for heading 8709, its wording refers to tractors of the type used in railway stations. Some of the language versions, including the English and Dutch versions, refer specifically to railway station platforms.

55 According to the Court's case-law, the intended use of a product may constitute an objective criterion in relation to tariff classification if it is inherent in the product, and such inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties (see, inter alia, Case C-467/03 *Ikegami* [2005] ECR I-2389, paragraph 23, and case-law cited).

56 The wording of heading 8709 accords decisive importance to the fact that the vehicles concerned must be of the type used for towing purposes in railway stations and, in particular, as some language versions make clear, on railway station platforms.

57 That criterion refers to the objective characteristics of the tractor which have to be such that it is naturally capable of being used in railway stations, in particular on railway station platforms, and that it is identical or similar to the vehicles which are actually used in such places.

58 As for the Explanatory Notes to the HS, they confirm that the vehicles thus referred to in heading 8709 are of the type used on railway station platforms to haul small trailers.

59 In this case, as the national court found, the vehicles at issue in the main proceedings are equipped with a diesel engine having an output of 132 kilowatts at 2 500 revolutions per minute and automatic transmission with four forward gears and one reverse gear, and are fitted with a closed cab and a fifth wheel allowing a lift height of 60 centimetres. They have a maximum carrying capacity of 32 000 kilograms, a very small turning circle and are designed for moving semi-trailers.

60 It is apparent from those objective characteristics that the vehicles in question in the main proceedings are clearly neither similar to vehicles actually used for towing purposes in railway stations, including on platforms, nor capable, by their nature, of being so used.

61 It follows, as the Netherlands Government has rightly submitted, and contrary to the argument of Intermodal and the Commission, that such vehicles cannot fall within the field of application of heading 8709.

62 Moreover, it may be observed that that conclusion is reinforced by other details contained in the Explanatory Notes to the HS. The latter indicate that the features which distinguish vehicles under heading 8709 from the tractors referred to in heading 8701 are, inter alia, the limited top speed of the former which is generally not more than 30 to 35 km/h, their turning radius approximately equal to the length of the vehicle itself, the fact that, on account of their special design features and their construction, they cannot be used for the transport of goods by road, and also the fact that they are generally lighter and less powerful than the latter. Those notes also specify that the vehicles of heading 8709 do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which he stands to steer the vehicle.

63 It must be stated that these features listed in the Explanatory Notes to the HS are not found in the case of the vehicles at issue in the main proceedings.

64 In the light of the foregoing, the answer to the second question must be that heading 8709 of the CN must be interpreted as not covering a vehicle equipped with a diesel engine having an output of 132 kilowatts at 2 500 revolutions per minute and automatic transmission with four forward gears and one reverse gear, fitted with a closed cab and a fifth wheel allowing a lift height of 60 centimetres, which has a maximum carrying capacity of 32 000 kilograms, a very small turning circle and is designed for moving semi-trailers on industrial premises and in industrial buildings. Such a vehicle is neither a works truck used for the transport of goods nor a tractor of the type used in railway stations, within the meaning of that heading.

Costs

65 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 (First Chamber) hereby rules:

1. **Article 234 EC must be interpreted as meaning that when, in proceedings relating to the tariff classification of specific goods before a national court or tribunal, a binding tariff information relating to similar goods issued to a person not party to the dispute by the customs authorities of another Member State is submitted, and that court or tribunal takes the view that the tariff classification made in that information is wrong, those two circumstances:**

   — **cannot result, in respect of a court or tribunal against whose decisions there is a judicial remedy under national law, in the court or tribunal being under an obligation to refer to the Court questions on interpretation;**

— cannot, in themselves, automatically result, in respect of a court or tribunal against whose decisions there is no judicial remedy under national law, in the court or tribunal being under an obligation to refer to the Court questions on interpretation.

A court or tribunal against whose decisions there is no judicial remedy under national law is, however, required, where a question of Community law is raised before it, to comply with its obligation to make a reference, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community; the existence of the abovementioned binding tariff information must cause that court or tribunal to take particular care in its assessment of whether there is no reasonable doubt as to the correct application of the combined nomenclature 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, as amended by Commission Regulation (EC) No 2261/98 of 26 October 1998, taking account, in particular, of the three criteria mentioned above.

2. Heading 8709 of the combined nomenclature must be interpreted as not covering a vehicle equipped with a diesel engine having an output of 132 kilowatts at 2 500 revolutions per minute and automatic transmission with four forward gears and one reverse gear, fitted with a closed cab and a fifth

wheel allowing a lift height of 60 centimetres, which has a maximum carrying capacity of 32 000 kilograms, a very small turning circle and is designed for moving semi-trailers on industrial premises and in industrial buildings. Such a vehicle is neither a works truck used for the transport of goods nor a tractor of the type used in railway stations, within the meaning of that heading.

[Signatures]