is concerned, the Community has replaced the Member States, the mandatory effect, in law, of these commitments must be determined by reference to the relevant provisions in the Community legal system and not to those which gave them their previous force under the national legal systems.

4. The Community has replaced the Member States in commitments arising from the Convention of 15 December 1950 on Nomenclature for the Classification of Goods in Customs Tariffs and from the Convention of the same date establishing a Customs Cooperation Council.

5. The classification opinions expressed by the Customs Cooperation Council do not bind the Contracting Parties but they have a bearing on interpretation which is all the more decisive they emanate from an authority entrusted by the Contracting Parties with ensuring uniformity in the interpretation and application of the nomenclature. When such an interpretation reflects the general practice followed by the Contracting States, it can be set aside only if it appears incompatible with the wording of the heading concerned or goes manifestly beyond the discretion conferred on the Customs Cooperation Council.

In Case 38/75

Reference to the Court under Article 177 of the EEC Treaty by the Tariefcommissie (Tariff Commission) for a preliminary ruling in the action pending before it between

DOUANEAGENT DER NV NEDERLANDSE SPOORWEGEN (Customs Agent of the Netherlands Railways), Venlo (The Netherlands)

and

INSPECTEUR DER INVOERRECHTEN EN ACCIJNZEN (Inspector of Customs and Excise), on the validity of an Additional Note to Chapter 90 of the Common Customs Tariff, inderted by Regulation (EEC) No 1/71 of the Council of 17 December 1970 (OJ L 1 of 1. 1. 1971),

THE COURT

composed of: R. Lecourt, President, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen, Lord Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The decision making the reference and written observations submitted under Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

On 28 April 1971, the applicant in the main action imported, from a third country, a xerographic duplicator for the reproduction of documents.

The Netherlands customs authorities classified this apparatus under heading 90.07 A (Photographic cameras) of the Common Customs Tariff (CCT) and charged duty at 14 % thereon. This classification is in accordance with an Additional Note inserted in Chapter 90 of the CCT by Regulation (EEC) No 1/71 of the Council of 17 December 1970 which, with effect from 1 January 1971, amended the Common Customs Tariff in the following terms 'Apparatus for the automatic reproduction of documents by means of static electricity, equipped with an optical picture-recording system, is also classified under subdivision A of heading 90.07'. The note was the same as a classification opinion issued in December 1965 by the Customs Cooperation Council, which was responsible for supervising the implementation of the Convention on Customs Nomenclature signed in Brussels on 15 December 1950.

However, prior to 1 January 1971, the Netherlands customs authorities had classified the apparatus in question under heading 84 54 B (Other office machines) in compliance with two decisions of the Tariefcommissie of 2 February 1970.

As the duty applicable to goods under heading 84.54 B had, in the course of the multilateral negotiations under GATT (Kennedy Round) been reduced to 7·2 %, the importer believed that the Additional Note in Regulation No 1/71 contravened Article II of GATT in 'transferring' the goods in question from a heading bound at 7·2 % to a heading attracting a duty of 14 %. When his objection was dismissed, he brought an action before the Tariefcommissie which has decided, before giving a ruling, to stay the proceedings and to refer to the Court of Justice for a preliminary ruling the following three questions:

1. In the light of *inter alia* the aforementioned considerations is it permissible for apparatus such as that in question in these proceedings — which in the opinion of the Tariff Commission does not come within the description of heading 90.07 but which does in fact completely comply with the literal description of another heading, that is to say heading 84.54, so as to render Note 1 (1) of Classification XVI as it stood at the time of the importation, inapplicable — to be brought by means of a regulation of the Council of the EEC on an additional note to Chapter 90 within heading 90.07 without the text of this heading being appropriately adapted?
   If the answer to this question is in the negative, must this result in legal effect being denied to the Additional Note to Chapter 90 which was inserted as from 1 January 1971 and again withdrawn as from 1 January 1972 and which read:
   'Apparatus for the automatic reproduction of documents by means of static electricity equipped with an

optical picture-recording system is also included in subdivision A of heading 90.07'?

2. In the light of the fact that on the basis of Articles 60 and 65 of the Constitution of the Kingdom of the Netherlands agreements with other powers and with organizations in international law have legally binding force after they have come into existence in the prescribed manner and have been published, further in the light of the fact that the GATT Treaty, to which the Netherlands are a party, constitutes such an agreement and finally in the light of the fact that the aforementioned heading 84.54 together with the duty attaching thereto, was bound on the occasion of the so-called Kennedy Round within the framework of GATT, is it permissible contrary to the aforementioned binding and without any provision being made in relation to the Netherlands, for a higher duty to be charged in respect of the goods falling within this heading by classifying this product under another chapter and another heading by means of a regulation of the Council of the EEC?

   In the light of the priority of the Treaty obligations of the Community over acts of its organs and — independently of the question whether a GATT provision is or is not suited to create rights in relation to the citizen upon which he can rely before a court — is not a Netherlands court bound in cases which are submitted to it to apply GATT provisions which are suitable for direct application even though it may thereby come into conflict with Community law?

3. Does not the Council by the making of an additional note such as is involved in this case come into conflict with the opligations assumed by Member States within the framework of the Convention of 15 December 1950 in the matter of nomenclature for the classification goods in customs tariffs — see in particular Article II (b) (ii) — involving a prohibition on the making of amendments to the notes to the chapters and sections which might change the purport of chapters, sections and heading contained in the nomenclature?

The order of 11 June 1974 making the reference was not communicated to the parties until 15 April 1975 and entered at the Court Registry on 16 April 1975.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided that there was no need for any preparatory inquiry.

Written observations were submitted by the Commission and the Council of the European Communities pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

II — Observations submitted under Article 20 of the Statute of the Court of Justice of the EEC

1. Observations of the Commission

First question

The Commission notes that the first question concerns the validity, under Community law, of the note inserted in Chapter 90 of the CCT (Common Customs Tariff), although the national court has not specified which provision it considers has been infringed.

According to the Commission, the Community legislature is, under Articles 28 and 113 of the Treaty, alone competent to determine or amend the CCT and its nomenclature. The insertion of the disputed note does not conflict with either of these two articles.

The Commission denies that the transfer of one item of goods from one tariff

heading to another simply by means of a note, without any adaptation of the text of the new tariff heading, is, as the Tariefcommissie appears to think, contrary to the principles of good legislation.

The insertion of explanatory notes in the CCT in order to clarify the scope and definition of certain tariff headings is not unusual and its propriety was recognized by the Court (Judgment of 20 June 1973 in Case 80/72, *Koninklijke Lassiefabrieken* v *Hoofdproduktschap voor Akkerbouwprodukten* [1973] ECR 651). The binding force of these notes is, moreover, clearly explained in the 'Rules for the interpretation of the nomenclature of the Common Customs Tariff' (under A of the first part of Section I of the CCT).

Second question

In the Commission's view, the Tariefcommissie believes that, before the contested note came into effect, xerographic duplicators should, at least in the Netherlands, have been classified under tariff heading 84.54 B and that, with effect from 1 January 1971, the Council transferred this apparatus to heading 90.07 A, charging higher duty than that which had been bound under heading 84.54 B during the Gatt negotiations.

Even if the Council had altered the classification of the apparatus involved which, according to the Commission, was not the case, it does not follow that the validity of the contested note can be challenged in proceedings under Article 177 of the Treaty. The provisions of GATT, in particular Article II, governing the binding of customs duties, cannot in fact entitle those subject to Community law to avail themselves of those provisions in the courts. In support of this, the Commission cites the judgments of the Court of 12 December 1972 (Joined Cases 21 to 24/72, *International Fruit Company and Others* v *Produktschap voor Groenten en Fruit,* Rec. 1972, p. 1219) and of 24 October 1973 (Case 9/73, *Schlüter* v *Hauptzollamt Lörrach* [1973] ECR 1135).

The Commission considers, moreover, that in referring to Articles 60 and 65 of the Netherlands Constitution, the Tariefcommissie misunderstands the relationship of the Community and its Member States to GATT. As GATT is part of a common commercial policy within the meaning of Article 113 of the EEC Treaty, the Community has, with the agreement of the other contracting parties, progressively assumed the rights and obligations arising therefrom and, even though the position has not yet been regularized by the Community's joining GATT as repesentative of the Member States, it is responsible for its implementation by the institutions and by Member States. Consequently, any conflict between obligations arising from GATT and measures adopted by the Community institutions must not be resolved in accordance with the (constitutional) law of the various Member States, but only within the framework of the Community legal system.

On the question whether or not the contested note is compatible with the binding under GATT, the Commission points out that the tariff concessions were negotiated as part of the Kennedy Round not by the Member States but by the Community on the basis of Article 111 (2) of the Treaty. Whether or not the scale of tariffs based on the note complies with the Netherlands scale has, therefore, little bearing on the validity of the note.

Moreover, the national schedules of tariffs binding the Member States were replaced by a Community schedule, based on the Common Customs Tariff and by adjustments, agreed in the court of re-negotiations under Article XXIV (6) of GATT, to cover cases where substitution of national tariffs by the

Community tariff would have led to duties being increased. The other contracting parties in GATT can, therefore, no longer set up against the Community or the Member States duties based on previous classifications and tariff headings.

Finally, the Commission points out that the contested note reflects the classification opinion which the Customs Cooperation Council has expressed since 1965.

Third question

The Commission first addresses itself to the question whether the Convention of 15 December 1950 on Nomenclature for the Classification of Goods in Customs Tariffs can be relied upon when a preliminary ruling is being sought concerning the validity of a Community enactment. As a result of the precedent established by the Court in its judgment of 12 December 1972, the first question to be determined is whether the Convention binds the Community and, consequently, whether its provisions are capable of entitling those subject to Community law to avail themselves of it before the courts. The Commission takes the view that, since the nine Member States are party both to the Convention on Nomenclature and to that setting up the Customs Cooperation Council and have established the Common Customs Tariff in accordance with the Brussels Nomenclature, the Community, which alone has competence in the tariff field, assumed all the rights and obligations of the Member States on the basis of the Convention and is, in consequence, bound by it. There can, however, be no question of the Convention on Nomenclature entitling subjects of the Community to avail themselves thereof in the courts. Both its wording which, *inter alia,* provides that disputes the contracting parties concerning the interpretation or application of the Convention shall be settled by negotiations (between the parties involved) and the object of the Convention, which is to promote Cooperation between customs authorities rather than to legislate, with concomitant legal safeguards, on the subject of customs duties for the benefit of the individual prevent it from being recognized as having a direct effect.

The measures adopted by the Community to implement the Convention support this view. Although the nomenclature of the CCT is based on the Brussels Nomenclature, without being identical with it, it is the CCT nomenclature and not the Brussels Nomenclature which the Community uses in its independent system of import and export duties. Similarly, amendments of the Brussels Nomenclature which are recommended by the Customs Cooperation Council and are accepted by the contracting parties are embodied in the CCT nomenclature by means of regulations of the [EEC] Council.

In conclusion, the Commission points out that, even if it were necessary to recognize the Convention on Nomenclature as having direct effect, the Community legislature has in any case acted in accordance with it. The contested note in fact accords with the classification opinion expressed by the Customs Cooperation Council in 1965. Obviously, the classification opinions of the Customs Cooperation Council do not have the binding force of a legal rule but they nevertheless represent a means whereby, in the absence of any relevant Community provisions, tariff headings can be interpreted.

The 1965 classification opinion was, as a general rule, followed within the Community and outside it. The Netherlands authorities themselves classified the apparatus in question under tariff heading 90.07 A until the Tarifcommissie's decision of 2 February 1970, as a result of which it was classified under heading 84.54 B. With effect from 1 January 1971, the authorities went back to classification under tariff heading 90.07 A.

Realizing that the classification suggested in 1965 was not entirely satisfactory, the Customs Cooperation Council recommended that a solution be found which would enable all photo-copying apparatus to be classified under the same heading, whether it was based on an optical system, or was of the contact or thermo-copying type.

This object was achieved by Regulation (EEC) No 1/72 of the Council of 20 December 1971 (OJ L 1 of 1. 1. 1972) which amended tariff heading 90.10 in the manner suggested and cancelled the Additional Note.

In conclusion, the Commission is of the opinion that there is nothing in the questions referred which discloses any factor which might affect the validity of the note inserted in Chapter 90 of the CCT with effect from 1 January 1971 by Regulation No 1/71 of the Council.

2. Observations of the Council

The Council considers that the questions referred are the outcome of a legally incorrect description of the insertion in the Common Customs Tariff of the contested note. The latter must be regarded as an authentic interpretation which does not alter the existing position in law. Under Articles 28 and 113 of the Treaty, the Council is competent to dertemine the classification of goods in the CCT and also to clarify it and give it a binding interpretation. Contrary to the impression created by the wording of the questions referred by the Tariefcommissie, the insertion of the contested note did not change the nomenclature, the duty to be applied or the scope of tariff heading 90.07.

First question

In the Council's view, the insertion of an Additional Note without amending the wording of the nomenclature is a legitimate practice; the note is an integral part of the CCT which forms the Annex to Regulation No 1/71 and it therefore forms part of the provision made by the regulation. The binding force of Additional Notes is clear from the judgment of the Court of 20 June 1973 (Case 80/72, *Koninklijke Lassiefabrieken* v *Hoofdproduktschap voor Akkerbouwprodukten* [1973] ECR 635). Moreover, the classification of goods without amending the nomenclature is current practice, to which there is a reference in Regulation (EEC) No 97/69 of 16 January 1969 on measures to be taken for uniform application of the nomenclature of the Common Customs Tariff (OJ, English Special Edition 1969 (I), p. 12).

The interpretation placed by a national court on the nomenclature of the Customs Tariff cannot affect the power of the Community institutions to lay down an interpretation of their own which, in the present case, accords with the classification opinion of the Customs Cooperation Council. According to the judgment delivered by the Court on 8 December 1970 (Case 14/70, *Deutsche Bakels GmbH* v *Oberfinanzdirektion München* [1970] ECR 1001), these opinions are a great help in interpreting the CCT.

Second question

The second question is without purpose, since the Council did not classify the apparatus in question under a tariff heading other than that to which it previously belonged and, consequently, there has been no increase in duties. The argument based on a binding within subheading 84.54 B under GATT is irrelevant since the apparatus in question was never, since the CCT came into force, within the subheading. The Council would nevertheless like to answer the question whether, by virtue of the Netherlands Constitution, a court of that Member State must refuse to apply a Community law when, in its view, its provisions conflict with the obligations arising from GATT which, under

international law, the country has entered into. The Council states that the discharge of international commitments arising from a binding under GATT has, since the Common Customs Tariff came into force or, at least, since the end of the transitional period, no longer been within the competence of Member States. Only the Community can validly enter into such commitments and only the Community is entitled to discharge them. Regulations establishing or amending the CCT, which are directly applicable in every Member State, represent implementation of the commitment to be bound by heading 84:54 A and, subject to review by the Court of Justice as regards their validity, leave no margin of discretion to the national authorities.

If a national court holds that a provision of Community law conflicts with obligations under international law it can and, if it is the final court of appeal, must refer any question touching its validity to the Court of Justice.

The Council considers that the second question calls for the following reply:

— the Additional Note inserted in Chapter 90 pursuant to Regulation No 1/71, under which 'Apparatus for the automatic reproduction of documents by means of static electricity, equipped with an optical picture-recording system, is also classified under subdivision A of heading 90.07' forms part of the said Regulation; it is therefore binding in its entirety and directly applicable in all Member States; and there can be no doubt about its validity;

— the effect of inserting this Additional Note is not to classify xerographic photo-copying apparatus under a different tariff heading from the one to which it has belonged since the CCT was established; there has been no consequential increase in the duty to be applied and there is therefore no reason for considering whether or not this enactment is compatible with the obligations of the Community under the Geneva Agreements of 30 June 1967;

— since the nature of the Additional Note was not such as to change the scope of heading 90.07, there cannot be any conflict between its insertion and the obligations which may arise from the Convention on Nomenclature for the Classification of Goods in Customs Tariffs.

Third question

The Council once more emphasizes that, since, in its view, the contested note has in no sense changed the scope of the tariff chapters, sections or headings, there can be no question of a breach of the obligation set forth in Article II of the Brussels Convention on Nomenclature which the Council in any case considers itself under an obligation to observe.

The Council suggests that the following replies should be given to the questions referred by the Tariefcommissie:

— the Additional Note inserted in Chapter 90 pursuant to Regulation No 1/71 did not result in any increase in the customs duties applicable to xerographic photo-copying apparatus and this in itself leaves without purpose the question whether or not the alleged increase is valid;

— on the subject of customs duties, which is a matter within the exclusive competence of the Community, the national authorities must apply Community law;

— only the Court of Justice of the European Communities can give a final ruling on the validity of an act of one of the institutions of the Community in the light of commitments entered into in this field under international law.

The Council, represented by its Agent, Mr Peeters and the Commission, represented by its Agent, Mr Fischer,

submitted their oral observations at the hearing on 16 October 1975.

The Advocate-General delivered his opinion on 30 October 1975.

Law

1 By decision of 11 June 1974, received at the Court Registry on 16 April 1975, the Tariefcommissie referred to the Court of Justice under Article 177 of the EEC Treaty three questions concerning the validity of an Additional Note incorporated in Chapter 90 of the Common Customs Tariff (hereinafter referred to as 'the CCT') pursuant to Regulation (EEC) No 1/71 of the Council of 17 December 1970 amending, with effect from 1 January 1971, Regulation (EEC) No 950/68 on the Common Customs Tariff (OJ L 1 of 1. 1. 1971 p. 335).

2 The Note provides as follows: 'Apparatus for the automatic reproduction of documents by means of static electricity, equipped with an optical picture-recording system, is also classified under subdivision A (Photographic cameras) of heading 90.07'.

3 Pursuant to this provision, the Netherlands customs authorities charged duty at 14 %, on the importation on 28 April 1971 from a third country of a xerographic duplicating machine — apparatus of a type which answers to the description given in the Additional Note.

4 The plaintiff in the main action contests the decision of the authorities on the ground that the product in question ought to have been classified under sub-heading 84.54 B (Other office machines) and to have been charged to the 7·2 % duty under the General Agreement on Tariffs and Trade (GATT).

5 The plaintiff relies mainly on the decisions of the Tariefcommissie of 2 February 1970 concerning goods imported into the Netherlands before the entry into force on 1 July 1968 of the CCT, which, interpreting the Benelux Customs Tariff previously in force in the Netherlands, classified the type of apparatus in question under subheading 84.54 B.

6 As a result of these decisions and despite the entry into force meanwhile of the CCT, the Netherlands customs authorities, in view of the identical

wording of the headings concerned in the CCT and in the Benelux Tariff, continued to classify these goods under subheading 84.54 B and to charge duty at 7·2 % until the entry into force on 1 January 1971 of Regulation No 1/71 of the Council amending the CCT and containing the Additional Note in question, as a result of which they applied heading 90.07 A and duty at 14 %.

First question

7 In its first question the Tariefcommissie asks whether it is legal to classify under subheading 90.07 A apparatus which, in its view, comes under subheading 84.54 B by a regulation of the Council by means of an Additional Note to Chapter 90 without a corresponding amendment of the wording of heading 90.07.

8 Under Article 28 of the Treaty, any autonomous alteration or suspension of duties in the Common Customs Tariff is to be decided by the Council.

9 In the version in force at the time when the importation in question took place, Section I A of Part I of the CCT provides, in the Rules for the interpretation of the nomenclature, that for legal purposes the classification of the headings is to be determined according to the terms of the headings and any relative Section or Chapter Notes.

10 The Additional Note in dispute, decided upon by the Council, becomes part of the heading to which it refers and has the same binding effect whether it constitutes an authentic interpretation of the heading or supplements it.

11 It is, accordingly, not possible to impugn this method of legislation which is, moreover, current practice in this field and was provided for under Regulation (EEC) No 97/69 of the Council of 16 January 1969 on measures to be taken for uniform application of the CCT (OJ English Special Edition 1969 (I), p. 12).

12 Thus, the contested Note in itself constitutes either an interpretation which does not call for amendment of the wording of the heading concerned or, if need be, a legitimate supplement to the wording which is thereby adapted to meet the new situation.

Second question

13 The second question is as follows:

In the light of the fact that on the basis of Articles 60 and 65 of the Constitution of the Kingdom of the Netherlands agreements with other powers and with organizations in international law have legally binding force after they have come into existence in the prescribed manner and have been published, further in the light of the fact that the GATT Treaty, to which the Netherlands are a party, constitutes such an agreement and finally in the light of the fact that the aforementioned heading 84.54 together with the duty attaching thereto, was bound on the occasion of the so-called Kennedy Round within the framework of GATT, is it permissible contrary to the aforementioned binding and without any provision being made in relation to the Netherlands, for a higher duty to be charged in respect of the goods falling within this heading by classifying this product under another chapter and another heading by means of a regulation of the Council of the EEC?

In the light of the priority of the Treaty obligations of the Community over acts of its organs and — independently of the question whether a GATT provision is or is not suited to create rights in relation to the citizen upon which he can rely before a court — is not a Netherlands court bound in cases which are submitted to it to apply GATT provisions which are suitable for direct application even though it may thereby come into conflict with Community law?

14 With effect from 1 July 1968 and, moreover, in accordance with Article XXIV of GATT, the CCT replaced the national customs tariffs of the Member States and, subject to review by the courts responsible for applying and interpreting Community law, in particular on questions raised under Article 177 of the Treaty, the Community authorities alone have jurisdiction to interpret and determine the legal effect of the headings which it comprises.

15 Whatever may have been the mandatory force under a national legal system of an interpretation placed up on a heading of a national customs tariff, or of one which was common only to some Member States, by the competent authority of a Member State before 1 July 1968, and even if the wording of the heading in the CCT has remained the same, that interpretation cannot as such hold good under the Community legal system, which is applicable throughout the Member States.

16 Similarly, since so far as fulfilment of the commitments provided for by GATT is concerned, the Community has replaced the Member States, the mandatory effect, in law, of these commitments must be determined by reference to the relevant provisions in the Community legal system and not to those which gave them their previous force under the national legal systems.

17 Furthermore, the Additional Note in dispute is wholly consistent with a classification opinion expressed in 1962 and maintained until 1 January 1972 by the Customs Co-operation Council and, again, with the most common practice in the States which are signatories of GATT and, more particularly, in all the Member States of the Community except the Netherlands.

18 The tariff concessions and bindings achieved under GATT were negotiated before 1 July 1968 by the Community authorities pursuant to Article 111 of the Treaty and related to the CCT which entered into force on 1 July 1968.

19 Accordingly, these concessions and bindings covered headings 84.54 and 90.07, as interpreted and applied in accordance with the opinion of the Customs Cooperation Council, which means that, in maintaining these interpretations and applications after 1 July 1968, the Community authorities have not, in any sense, unilaterally increased a duty bound under GATT.

Third question

20 The third question asks whether the Additional Note infringes the obligations arising from the Convention of 15 December 1950 on Nomenclature for the Classification of Goods in Customs Tariffs, in particular Article II (b) (ii), containing a provision prohibiting the amendment of the notes to the chapters and sections in such a way as to change the purport of the chapters, sections and headings in the Nomenclature.

21 Just as, in the case of commitments arising from GATT, the Community has replaced the Member States in commitments arising from the Convention of 15 December 1950 on Nomenclature for the Classification of Goods in Customs Tariffs and from the Convention of the same date establishing a Customs Cooperation Council, and is bound by the said commitments.

22 Among the commitments embodied in the first of these Conventions is to be found, under Article II (b) (ii) the obligation of each Contracting Party that 'it will make no changes in the chapter or section notes in a manner modifying the scopte of the chapters, sections and headings as laid down in the Nomenclature'.

23 It has already been established that, in including apparatus for the automatic reproduction of documents by means of static electricity equipped with an optical picture-recording system in subdivision A of heading 90.07, the Additional Note in dispute accorded with a classification opinion of the Customs Cooperation Council and with the general practice of States which were signatories of the Convention of 15 December 1950.

24 It is true that these classification opinions do not bind the Contracting Parties but they have a bearing on interpretation which is all the more decisive because they emanate from an authority entrusted by the Contracting Parties with ensuring uniformity in the interpretation and application of the nomenclature.

25 When, furthermore, such an interpretation reflects the general practice followed by the Contracting States, it can be set aside only if it appears incompatible with the wording of the heading concerned or goes manifestly beyond the discretion conferred on the Customs Cooperation Council.

26 In view of the degree of similarity, recognized by the court making the reference, between photographic processes and xerographic picture-recording processes, the conditions under which a classification opinion must be rejected as incompatible with the heading in question are not present, as far as its application under the Community legal system is concerned.

27 It follows from the foregoing that consideration of the file has not disclosed any factors of such a nature as to affect the validity of the Additional Note to Chapter 90 of Section XVIII of the Common Customs Tariff as amended by Regulation No 1/71 of the Council of 17 December 1970.

Costs

28 The costs incurred by the Council and the Commission of the European Communities, which submitted observations to the Court, are not recoverable.

29 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tariefcommissie by decision of 11 June 1974 hereby rules:

Consideration of the questions raised has not disclosed any factors of such a nature as to affect the validity of the Additional Note to Chapter 90 of Section XVIII of the Common Customs Tariff as amended by Regulation No 1/71 of the Council of 17 December 1970.

Lecourt Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 19 November 1975.

A. Van Houtte — Registrar

R. Lecourt — President