

JUDGMENT OF THE COURT (Eighth Chamber)

6 December 2007 *

In Case C-486/06,

REFERENCE for a preliminary ruling under Article 234 EC from the hof van beroep te Antwerpen (Belgium), made by decision of 21 November 2006, received at the Court on 27 November 2006, in the proceedings

BVBA Van Landeghem

v

Belgische Staat,

THE COURT (Eighth Chamber),

composed of R. Silva de Lapuerta, acting as President of the Eighth Chamber, E. Juhász and T. von Danwitz (Rapporteur), Judges,

* Language of the case: Dutch.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- BVBA Van Landeghem, by E. Gevers, advocaat,
- the Belgian Government, by A. Hubert, acting as Agent,
- the Commission of the European Communities, by J. Hottiaux, acting as Agent, assisted by F. Tuytschaever, advocaat,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

¹ This reference for a preliminary ruling relates to the interpretation of the Combined Nomenclature (CN), as set out in Annex I to Council Regulation (EEC) No 2658/87

of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) as amended by the annexes to Commission Regulation (EC) No 3115/94 of 20 December 1994 (OJ 1994 L 345, p. 1), Commission Regulation (EC) No 3009/95 of 22 December 1995 (OJ 1995 L 319, p. 1) and Commission Regulation (EC) No 1734/96 of 9 September 1996 (OJ 1996 L 238, p. 1).

- 2 The reference was submitted in legal proceedings between BVBA Van Landeghem ('Van Landeghem') and the Belgische Staat (Belgian State) concerning the tariff classification of certain pick-up type motor vehicles.

Legal context

International law

- 3 The International Convention on the Harmonised Commodity Description and Coding System ('the HS'), concluded in Brussels on 14 June 1983 and the Protocol of Amendment thereto of 24 June 1986 ('the HS Convention'), were approved on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).
- 4 Under Article 3(1) of the HS Convention, each Contracting Party undertakes to ensure that its customs tariff and statistical nomenclatures will be in conformity with the HS, to use all of the headings and subheadings of the HS without addition or modification, together with their related numerical codes, and to follow the numerical sequence of that system. The same provision provides that each

Contracting Party also undertakes to apply the General Rules for the interpretation of the HS and all the Section, Chapter and Subheading notes of the HS, and not to modify their scope.

- 5 The Customs Cooperation Council, now the World Customs Organisation ('WCO'), established by the International Convention establishing that council, concluded at Brussels on 15 December 1950, is to approve, under the conditions laid down in Article 8 of the HS Convention, the Explanatory Notes and Classification Opinions adopted by the HS Committee, a body the organisation of which is governed by Article 6 thereof. Under Article 7(1) of the HS Convention, the functions of that committee include proposing amendments to that convention and preparing Explanatory Notes, Classification Opinions and other advice as guides to the interpretation of the HS.
- 6 In its 28th session held in 2001, the HS committee adopted several amendments to the Explanatory Notes, including those to headings 87.03 and 87.04 of the HS.
- 7 The Explanatory Note to heading 87.03 of the HS provides:

“The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are principally designed for the transport of persons rather than for the transport of goods (heading 87.04). These design features are especially helpful in determining the classification of motor vehicles which generally have a gross vehicle weight rating of less than 5 tonnes and which have a single enclosed interior space comprising an area for the driver and passengers and another area that may be used for the transport of both persons and goods. Included in this category of motor vehicles are those commonly known as “multipurpose”

vehicles (e.g., van-type vehicles, sports utility vehicles, certain pick-up type vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

- (a) Presence of permanent seats with safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) for each person or the presence of permanent anchor points and fittings for installing seats and safety equipment in the rear area behind the area for the driver and front passengers; such seats may be fixed, fold-away, removable from anchor points or collapsible;
- (b) Presence of rear windows along the two side panels;
- (c) Presence of sliding, swing-out or lift-up door or doors, with windows, on the side panels or in the rear;
- (d) Absence of a permanent panel or barrier between the area for the driver and front passengers and the rear area that may be used for the transport of both persons and goods;
- (e) Presence of comfort features and interior finish and fittings throughout the vehicle interior that are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).'

8 The Explanatory Note to heading 87.04 of the HS reads as follows:

‘The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are designed for the transport of goods rather than for the transport of persons (heading 87.03). These features are especially helpful in determining the classification of motor vehicles, generally vehicles having a gross vehicle weight rating of less than 5 tonnes, which have either a separate closed rear area or an open rear platform normally used for the transport of goods but may have rear bench-type seats that are without safety restraints or passenger amenities and that fold flat against the sides to permit full use of the rear platform for the transport of goods. Included in this category of motor vehicles are those commonly known as “multipurpose” vehicles (e.g., van-type vehicles, pick-up type vehicles and certain sports utility vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

- (a) Presence of bench-type seats without safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) or passenger amenities in the rear area behind the area for the driver and front passengers. Such seats are normally fold-away, removable from anchor points or collapsible to allow full use of the rear floor (van-type vehicles) or a separate platform (pick-up vehicles) for the transport of goods;

- (b) Presence of a separate cabin for the driver and passengers and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles);

- (c) Absence of rear windows along the two side panels; presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);
 - (d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;
 - (e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).'
- 9 During its 23rd session in 1999, the HS committee adopted several amendments to Classification Opinions, including those concerning headings 87.03 and 87.04 of the HS.
- 10 'Pick-up' type vehicles appear in the Classification Opinions concerning subheadings 8703.23, 8704.21 and 8704.31 of the HS adopted by the HS Committee at that session. The type of vehicle dealt with in the second opinion concerning subheading 8704.31 is no different from that dealt with in the first opinion, which is reproduced below, with the exception of the mode of propulsion (two- or four-wheel driven) and the weight, so that there is no need to reproduce that second opinion here.
- '8703.23 2. Two-wheel-driven motor vehicle, with spark ignition internal combustion piston engine of a cylinder capacity of 1 800 cc. The

vehicle has two doors, two front seats, a non-collapsible rear bench for three persons in the passenger area (so-called double cab) and a well-finished interior (e.g. upholstered seats, decorative wall panels). The rear part, which is open and intended for cargo, is separated from the passenger area and has a drop-down tailgate. The total load capacity (persons, including the driver, and cargo) is 495 kg, with a cargo capacity estimated at approximately 145 kg. The g.v.w. (gross vehicle weight) of the vehicle is 1 566 kg.

- 8704.21 1. Four-wheel-driven motor vehicle with a compression-ignition internal combustion piston engine of a cylinder capacity of 2 779 cc, having a double cab and a separate loading platform, built on a separate chassis. The total load capacity (persons, including the driver, and cargo) is 625 kg with a cargo capacity estimated at approximately 350 kg. The vehicle has four doors and a non-collapsible bench for three persons behind the two front seats, and has a well-finished interior, e.g. upholstered seats with headrests and decorative side panels. The loading platform has a drop-down rear tailgate and is covered by a canvas material over a metal frame. A removable board of plastics on which a bench seat is mounted is placed on the loading platform.
- 8704.31 1. Two-wheel-driven motor vehicle with a spark-ignition internal combustion piston engine of a cylinder capacity of 2 254 cc. The vehicle has four doors, two seats in the front and a non-collapsible bench for three persons in the passenger area (so-called double cab). The superstructure of the vehicle consists of two separate bodies, one for the driver and passenger area, and one for the cargo area. The cargo area is open and has a drop-down tailgate to facilitate the loading or unloading of cargo. The total load capacity (persons,

including the driver, and cargo) is 1 140 kg. The g.v.w. (gross vehicle weight) of the vehicle is 2 450 kg.'

Community legislation

- 11 The CN is based on the HS and uses its 6-digit headings and subheadings. The version of the CN applicable at the material time in the main proceedings is contained in Annex I of Regulation No 2658/87, as amended by Regulations Nos 3115/94, 3009/95 and 1734/96. In the versions resulting from these regulations, the wording of the general rules and of the tariff headings of the CN referred to in the national court's question and of those referred to before the Court of Justice is no different for the purpose of the answer to this question.
- 12 In the version resulting from Regulation No 1734/96, Section I A of Part One of the CN, entitled 'General rules for the interpretation of the combined nomenclature', provides:

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

...

3. When by application of rule 2(b) or for any other reason, goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

...

- (c) when goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.'

- ¹³ Part Two of the CN includes a Section XVII, entitled 'Vehicles, aircraft, vessels and associated transport equipment', Chapter 87 of which is for its part entitled 'Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof'. The headings which are relevant for the dispute in the main proceedings are the following:

87.03	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars.
87.04	Motor vehicles for the transport of goods.

- ¹⁴ The foreword to the 'Explanatory Notes to the combined nomenclature of the European Communities' provides that they 'do not take the place of [those of the HS] but should be regarded as complementary to and used in conjunction with them'. At the material time in the main proceedings, the Explanatory Notes to the

CN published by the Commission of the European Communities concerning the classification in sub-headings 8703 21 10 to 8703 24 90 provided in so far as relevant to the present case as follows (OJ 1994 C 342, p. 1; 'CN Explanatory Notes 1994'):

'Provided that they are principally designed for the transport of persons, these subheadings also include dual-purpose motor cars, i.e. motor cars which can transport persons or goods equally well. Vehicles of this type can be distinguished from motor vehicles for the transport of goods, which are often the same size, by:

1. the presence, behind the driver's seat or bench, of fixed folding or removable seats or the specially fitted spaces for them and of side windows; and
2. there may be present a side or rear door or tail-gate and an interior finish similar to that of a vehicle for the transport of passengers.'

¹⁵ The CN Explanatory Notes 1994 were repealed and no longer appeared in the version of the Explanatory Notes to the Combined Nomenclature of the European Communities published by the Commission on 28 February 2006 (OJ 2006 C 50, p. 1; 'CN Explanatory Notes 2006'). The CN Explanatory Notes 2006 to subheadings

8703 21 10 to 8703 24 90 refer to the Explanatory Note of the HS to heading 87.03, cited in paragraph 7 above, and state that the vehicles referred to in the HS Explanatory Notes fall within those subheadings.

- ¹⁶ On 31 March 2007, the Commission published new Explanatory Notes (OJ 2007 C 74, p. 1 ; ‘CN Explanatory Notes 2007’) which provide, with regard to heading 87.03, as follows:

‘1. Of the pick-up type:

This type of vehicle usually has more than one row of seats and is formed by two separate areas, namely a closed cabin for the transport of persons and an open or covered area for the transport of goods.

However, such vehicles are to be classified in heading 87.04 if the maximum inner length at the floor of the area for transport of goods is more than 50% of the length of the wheelbase of the vehicle or if they have more than two axles.’

The dispute in the main proceedings and the question referred for a preliminary ruling

- ¹⁷ Between 10 April 1995 and 4 December 1997, Van Landeghem, acting as customs agent, lodged with the Antwerp Customs Administration 75 IM4 declarations for home use in respect of the import of 96 vehicles intended for an Italian firm.

- 18 As a result of an ex post facto check, the Belgian Customs Administration took the view that the 96 vehicles had been wrongly entered under tariff heading 87.03 of the CN, where the import duty rate is only 10%, instead of heading 87.04, where the import duty rate is 22%. According to the customs administration, the vehicles should have been entered under tariff heading 87.04 as vehicles for the transport of goods, since they had a load space separated from the passenger compartment. Van Landeghem was called upon by order to pay additional customs duties of BEF 8 374 994.
- 19 Van Landeghem contested that order by claiming that the vehicles at issue should have been entered under tariff heading 87.03 of the CN taking into account their technical characteristics and luxurious finish.
- 20 By judgment of 11 January 2002, the rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp) dismissed van Landeghem's application and held that notwithstanding the particular characteristics and properties of 'pick-up'-type vehicles and the fact that the compartment intended for passengers has a very luxurious finish, the load space of the vehicles is the determining factor in functional terms. Such vehicles are therefore designed for the transport of goods and should be entered under tariff heading 87.04 of the CN.
- 21 In the appeal proceedings brought against that judgment, the hof van beroep te Antwerpen decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Should pick-ups — that is to say, motor vehicles consisting, on the one hand, of an enclosed cabin for use as a passenger compartment, there being, behind the driver's seat, folding or removable seats with three-point safety belts, and, on the other hand, of a load space which is separated from the cabin, is not higher than 50 centimetres, can be opened only at the rear and has no facilities for attaching a load — which

were equipped with a highly luxurious, full-option interior (including electrically adjustable leather seats, electrically operated mirrors and windows, a stereo with a CD player, etc.), an ABS braking system, an automatic, 4 to 8-litre, very high-consumption petrol engine, four-wheel drive and de luxe (sports) rims, be classified, if put into circulation and released for home use in the period between 10 April 1995 and 4 December 1997, under heading 87.03 of the then applicable [CN] (originally introduced by Council Regulation (EEC) No 2658/87 ...) as motor cars and other motor vehicles, principally designed for the transport of persons (other than those of heading No 87.02), including motor vehicles of the “station wagon” or “break” type and racing cars, or under heading 87.04 of the then applicable [CN] as motor vehicles for the transport of goods, or under a heading other than headings 87.03 or 87.04 of the then applicable [CN]?’

Question referred for a preliminary ruling

22 The national court asks if pick-ups such as those described in the question referred for a preliminary ruling must be classified as vehicles intended for the transport of persons under heading 87.03 of the CN or as vehicles designed for the transport of goods under heading 87.04 of the CN.

23 First, it is settled case-law that, 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 sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and in the section or chapter notes (see Case C-15/05 *Kawasaki Motors Europe* [2006] ECR I-3657, paragraph 38, and Case C-310/06 *FTS International* [2007] ECR I-6749, paragraph 27).

- 24 Second, the intended use of a product may constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties (see C-400/05 *BAS Trucks* [2007] ECR I-311, paragraph 29; Case C-183/06 *RUMA* [2007] ECR I-1559, paragraph 36; and Case C-142/06 *Olicom* [2007] ECR I-6675, paragraph 18).
- 25 Lastly, according to the Court's case-law, the Explanatory Notes drawn up, as regards the CN, by the Commission and, as regards the HS, by the WCO are an important aid to the interpretation of the scope of the various headings but do not have legally binding force (*BAS Trucks*, paragraph 28). Moreover, although the WCO opinions classifying goods in the HS do not have legally binding force, they amount, as regards the classification of those goods in the CN, to indications which are an important aid to the interpretation of the scope of the various tariff headings of the CN (see *Kawasaki Motors Europe*, paragraph 36).
- 26 Van Landeghem defends the classification of the vehicles at issue in the main proceedings under heading 87.03 of the CN. The Belgian Government and the Commission are in favour of classification under heading 87.04 and rely in particular on the Explanatory Notes to the HS. The Belgian Government also relies on the Classification Opinions of the HS.
- 27 According to the wording of heading 87.03, that is '... motor vehicles principally designed for the transport of persons', the principal intended use of those vehicles is decisive for their classification. It follows from the use of term 'designed', as supported by the settled case-law of the Court referred to in paragraph 24 of this judgment, that the principal intended use of the vehicle is decisive, provided that it is inherent to the product. The intended use is determined by the general appearance of the vehicles at issue in the main proceedings and on the basis of the entirety of the characteristics of those vehicles which give them their essential character (see, to that effect, *BAS Trucks*, paragraph 40).

28 In the present case, according to the findings of the national court, the motor vehicles at issue in the main proceedings have the following characteristics and properties, that is to say they consist, on the one hand, of an enclosed cabin for use as a passenger compartment, there being, behind the driver's seat, folding or removable seats with three-point safety belts, and, on the other hand, of a load space which is separated from the cabin, is not higher than 50 centimetres, can be opened only at the rear and has no facilities for attaching a load. The vehicles concerned have a luxurious full-option interior (including electrically adjustable leather seats, electrically operated mirrors and windows and a stereo with a CD player), an anti-lock braking system (ABS), an automatic, 4 to 8-litre, very high-consumption petrol engine, four-wheel drive and de luxe (sports) rims.

29 Taking those characteristics and properties into account, it must be examined whether such vehicles, in the light of their general appearance and on the basis of their characteristics as a whole, are principally designed for the transport of persons or of goods.

30 Regarding the argument of the Belgian Government to the effect that, in the Classification Opinions of the HS concerning subheadings 8704.21 and 8704.31, pick-ups such as those described in those opinions are classified under heading 87.04, that fact is not decisive for the classification of the vehicles at issue in the main proceedings, since it is established that pick-ups may be classified under heading 87.03 of the CN or under heading 87.04, according to their individual characteristics, as is moreover confirmed by the Classification Opinion of the HS concerning subheading 8703.23, which places pick-ups under heading 87.03.

31 The Commission submits that the structure of the vehicles at issue in the main proceedings, that is to say the existence of a cabin and a separate open rear platform,

points to classification under heading 87.04 of the CN. The Commission points out that vehicles which contain a single enclosed interior space are referred to in the descriptive part of the HS Explanatory Note to heading 87.03, whereas the vehicles having characteristics analogous to those of the vehicles at issue in the main proceedings are referred to in the descriptive part of the HS Explanatory Note to heading 87.04.

- 32 That aspect is, however, of only minor importance. It should be pointed out, in the first place, that the function of the descriptive part of those Explanatory Notes, according to their wording, is merely to identify those vehicles the classification of which is uncertain. On the other hand, the design characteristics of the vehicles relevant for classification purposes are enumerated in points (a) to (e) of the HS Explanatory Notes to headings 87.03 and 87.04. Furthermore, the typical structure of a pick-up consists precisely in a closed cabin and an open rear platform. That is, in addition, confirmed by the CN Explanatory Notes 2007 to heading 87.03, which, despite the use of the expression ‘Du type camionnette’ in the French version, refers to the classification of pick-ups, as clearly emerges from the content of those notes and from the wording of the other linguistic versions (that is to say ‘Vom Typ Pick-up’, ‘Of the pick-up type’, ‘De tipo camionetta (pick-up)’, ‘del tipo pick-up’). In those Explanatory Notes, a pick-up is described as a vehicle having a closed compartment for the transport of persons and an open or covered compartment for the transport of goods, without that precluding classification of such a vehicle under that heading.
- 33 The Commission maintains, furthermore, that a larger number of the design characteristics of the vehicles enumerated in the HS Explanatory Notes to heading 87.04 correspond to the description of the vehicles in question in the main proceedings than those enumerated in the HS Explanatory Note to heading 87.03.
- 34 In that respect, it must first be pointed out that, according to the express wording of those Explanatory Notes, the classification criteria used therein are not exhaustive. Second, those criteria refer to heterogeneous types of vehicles (‘van-type vehicles, sports utility vehicles, certain pick-up type vehicles’). Therefore, it is necessary to

examine whether the classification criteria used by the Explanatory Notes to the HS are relevant and significant for the classification of the type of vehicle concerned. Moreover, the enumeration of the characteristics of the vehicles in the HS Explanatory Notes to headings 87.03 and 87.04 must not be understood as meaning that the mere addition of the characteristics pertaining to the vehicles at issue is, as such, decisive for their classification. As pointed out at paragraph 27 of this judgment, instead it is necessary to assess the general appearance of the vehicles at issue in the main proceedings and the entirety of their characteristics, taking into account, in particular, the relative importance of the criteria used for their classification.

35 Contrary to the argument of the Commission, being equipped with an engine with a large cylinder capacity and very high fuel consumption cannot be regarded as a criterion which implies that a vehicle must be classified under heading 87.04 of the CN. Fuel consumption must be analysed in relation to load capacity for goods and not in absolute figures. In the case of vehicles for the transport of goods, the link between fuel consumption and load capacity is usually relatively weak, whereas that link is considerably stronger in the case of motor cars.

36 With regard to the Commission's argument that a pick-up having an area for the transport of goods the inner length of which, at the floor, represents more than 50% of the length of the wheelbase of the vehicle, must be classified under heading 87.04 of the CN, it should be pointed out that the CN Explanatory Notes 2007 contain such a statement. Nevertheless, that characteristic cannot be the decisive one for classification of such a vehicle. Opposing such an interpretation is the fact that the Explanatory Notes to the CN do not take the place of those of the HS but should be regarded as complementary to them, as stated in the foreword to the Explanatory Notes to the CN. In addition, the CN Explanatory Notes 2006 to subheadings 8703 21 10 to 8703 24 90 refer expressly to the HS Explanatory Note to heading 8703 so that, according to those notes, the criterion stated by the Commission cannot be regarded as the sole classification criterion.

- 37 On the other hand, the presence of seats with three-point safety belts behind the driver's seat is a typical characteristic of vehicles principally designed for the transport of persons. That is confirmed by the CN Explanatory Notes 1994 and in addition by the HS Explanatory Notes. Those notes to heading 87.03 expressly refer to such seats as design characteristics generally applicable to the vehicles for the purposes of their classification under that heading.
- 38 Furthermore, the interior finish of the vehicles at issue in the main proceedings is an element in favour of their classification under heading 87.03 of the CN. Both in the Explanatory Notes to the CN in existence at the material time in the main proceedings and in the HS Explanatory Notes, an interior finish similar to that of the passenger areas of vehicles is expressly mentioned as a design characteristic of vehicles for the purposes of their classification under that heading. That applies all the more to the vehicles at issue in the main proceedings which, according to the description given in the question referred for a preliminary ruling, possess a 'highly luxurious interior'.
- 39 The absence of any facilities for attachments in order to transport goods also indicates that vehicles such as those at issue in the main proceedings are not designed principally for the transport of goods but are rather intended for the transport of persons. The same conclusion can be drawn from their petrol engine, automatic gearbox, anti-lock braking system (ABS) and four-wheel drive. It is evident that such characteristics are typical of motor cars and not of vehicles designed for the transport of goods.
- 40 Finally, the presence of de luxe (sports) rims is an obvious characteristic which demonstrates that the vehicles at issue in the main proceedings are principally designed for the transport of persons. It is true that persons and goods can be transported just as well by using de luxe (sports) rims as by using ordinary rims. Given, however, their lack of practical value, de luxe (sports) rims are rarely placed

on vehicles designed for the transport of goods but are typically used on motor cars. Fitting such rims therefore indicates that vehicles such as those at issue in the main proceedings must be classified under heading 87.03 of the CN. In that regard, it should be pointed out that characteristics which, like the de luxe (sports) rims in the present case, are found either almost exclusively on vehicles designed for the transport of goods or almost exclusively on motor cars are of particular importance for the classification of the vehicles concerned in the CN.

41 It is true that the Explanatory Notes and the Classification Opinions of the HS were not yet adopted at the time when the vehicles at issue in the main proceedings were imported. Nevertheless, in the present case, there is no need to decide whether, having regard to that fact, those documents cannot be taken into account for the purposes of classification. That question is not decisive for the decision in the main proceedings. Even if reference is made to the documents relied upon by the Belgian Government and the Commission to justify a classification of the vehicles concerned under heading 87.04, the above analysis has shown that the vehicles at issue in the main proceedings must be classified under heading 87.03.

42 Therefore, it follows from the examination of the characteristics of the vehicles described by the national court that the principal intended use of the vehicles at issue in the main proceedings is, according to their general appearance and the entirety of their characteristics, the transport of persons, and those vehicles must be classified under heading 87.03 of the CN. Contrary to the Commission's argument, the classification of the vehicles concerned under heading 87.04 of the CN cannot reasonably be envisaged and therefore the application of General Rule 3(c) laid down in Section 1 A of Part One of the CN is excluded on the basis of its very wording.

- 43 Consequently, the answer to the question posed must be that pick-ups such as those at issue in the main proceedings which consist, on the one hand, of an enclosed cabin for use as a passenger compartment, there being, behind the driver's seat, folding or removable seats with three-point safety belts, and, on the other hand, of a load space which is separated from the cabin, is not higher than 50 centimetres, can be opened only at the rear and has no facilities for attaching a load, which have a luxurious full-option interior (including electrically adjustable leather seats, electrically operated mirrors and windows and a stereo with a CD player), and which are equipped with an anti-lock braking system (ABS), an automatic, 4 to 8 litre, very high-consumption petrol engine, four-wheel drive and de luxe (sports) rims, must be classified, according to their general appearance and the entirety of their characteristics, under heading 87.03 of the CN.

Costs

- 44 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 (Eighth Chamber) hereby rules:

Pick-ups such as those at issue in the main proceedings which consist, on the one hand, of an enclosed cabin for use as a passenger compartment, there being, behind the driver's seat, folding or removable seats with three-point safety belts, and, on the other hand, of a load space which is separated from the cabin, is not higher than 50 centimetres, can be opened only at the rear and has no facilities for attaching a load, which have a luxurious full-option interior (including electrically adjustable leather seats, electrically operated mirrors and windows and a stereo with a CD player), and which are equipped with an anti-lock braking system (ABS), an automatic, 4 to 8-litre, very high-consumption petrol engine, four-wheel drive and luxurious (sports) rims, must be classified, according to their general appearance and the entirety of their characteristics, under heading 87.03 of the Combined Nomenclature as set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff as amended by the annexes to Commission Regulation (EC) No 3115/94 of 20 December 1994, Commission Regulation (EC) No 3009/95 of 22 December 1995 and Commission Regulation (EC) No 1734/96 of 9 September 1996.

[Signatures]