08.11 if it appears that the preservation process used has not resulted in making it unsuitable for immediate consumption in that state. Whether or not the goods at issue are to undergo subsequent processing is irrelevant for the purpose of defining the scope of headings 08.11 and 20.06.

3. Fruit put up in a mixture of water and alcohol, which is not unsuitable in that state for immediate consumption, must be classified under subheading 20.06 B I of the Common Customs Tariff.

The validity of Regulation No 1709/74 cannot be affected inasmuch as it makes provision for such a tariff classification of cherries put up in a mixture of water and ethyl alcohol as fruit suitable in that state for immediate consumption.

In Joined Cases 87, 112 and 113/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Seventh Senate of the Bundesfinanzhof [Federal Finance Court] for a preliminary ruling in the actions pending before that court between

GEBRÜDER BAGUSAT KG, Possenhofen

and

HAUPTZOLLAMT BERLIN-PACKHOF (87/79),

EINKAUFSGESELLSCHAFT DER DEUTSCHEN KONSERVENINDUSTRIE MBH, Berlin

and

HAUPTZOLLAMT HAMBURG-WALTERSHOF (112/79),

EINKAUFSGESELLSCHAFT DER DEUTSCHEN KONSERVENINDUSTRIE MBH, Berlin

and

HAUPTZOLLAMT BAD REICHENHALL (113/79)

on the interpretation of heading 08.11 and subheading 20.06 B I of the Common Customs Tariff,

THE COURT (Third Chamber)

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart, Judges,

Advocate General: G. Reischl
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

I — Facts and procedure

1. Tariff headings 08.11 and 20.06 of the Common Customs Tariff (CCT) read as follows:

"08.11 Fruit provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption:

. . .

E. Other."

"20.06 Fruit otherwise prepared or preserved, whether or not containing added sugar or spirit:

. . .

B. Other:

I. Containing added spirit:

. . .

(e) Other fruits:

. . .

2. Other."

Article 1 of Regulation (EEC) No 1709/74 of the Commission of 2 July 1974 relating to the classification of goods under subheading 20.06 B I of the CCT (Official Journal No L 180, p. 15), provides:

"Cherries put up in a mixture of water and ethyl alcohol shall be classified as fruit suitable for immediate consumption in the following subheading of the Common Customs Tariff:

20.06 Fruit otherwise prepared or preserved, whether or not containing added sugar or spirit:

B. Other:

I. Containing added spirit."

2. The firm *Bagusat KG*, the plaintiff in the main action in Case 87/79, imports cherries from Yugoslavia for use in the chocolate industry. On 9 September 1974

it sought from the customs office of Berlin-Packhof customs clearance for release into free circulation of 30 casks of cherries imported from Yugoslavia. So as to preserve them during transportation the cherries were put up in a flavoured mixture of alcohol and water. The casks contained 70% fruit and 30% juice, the latter itself containing 12% alcohol.

In the opinion of Bagusat the cherries in question should have been classified under tariff heading 08.11 of the Common Customs Tariff.

In pursuance of Article 1 of Regulation No 1709/74, referred to above, the Hauptzollamt [Principal Customs Office] took a different view, holding that tariff subheading 20.06 B I (e) 2 of the CCT was to be applied and by communication of 11 September 1974 requested payment of the appropriate duty.

Pursuant to a request for a preliminary ruling received from the Finanzgericht [Finance Court] Berlin, before which the case had been brought, the Court of Justice gave the following ruling in its judgment of 11 November 1975 (Case 37/75 [1975] ECR 1339):

"1. An examination of the question raised has not disclosed any factor such as to affect the validity of Regulation (EEC) No 1709/74 of the Commission;

2. Under Regulation (EEC) No 1709/74 of the Commission, cherries put up in a mixture of water and ethyl alcohol must be classified under subheading 20.06 B I of the Common Customs Tariff."

Following that judgment the Finanzgericht Berlin rejected the main action by judgment of 27 February 1976.

Bagusat appealed on a point of law to the Bundesfinanzhof, claiming that the cherries came under tariff heading 08.11 of the CCT and not subheading 20.06 B I of the CCT. In the opinion of the appellant the Court had not examined the real question which was whether, with regard to the present case, the Commission had not excessively widened the scope of Regulation No 1709/74; the Court had only examined the tariff characteristic "suitable in that state for immediate consumption" and had not said what was covered by the concept of "provisionally preserved".

The Bundesfinanzhof thought that the proposal by the appellant in the main action to refer another request to the Court for a preliminary ruling was justified as the preliminary ruling given in Case 37/75 had not cleared the doubts that had arisen from examination of the case in point. The Bundesfinanzhof assumes that owing to the extent to which the Court was required to go into the matter, it had perhaps been influenced by the formulation of the questions adopted by the Finanzgericht. The latter court had asked whether "cherries put up in a mixture of water and ethyl alcohol" should be classified under tariff heading 08.11 or under tariff subheading 20.06 B I of the CCT, and whether Regulation No 1709/74 was valid inasmuch as it classified "certain products" under tariff subheading 20.06 B I of the CCT while in reality there was no reason to ascertain whether cherries put up "in a mixture of water and ethyl alcohol" (of whatever concentration) came under tariff subheading 20.06 B I and whether Regulation No 1709/74 consequently represented a lawful interpretation of the CCT; the Court should have said whether the cherries, as precisely described above, provisionally preserved

and unsuitable in that state for consumption, came under tariff subheading 20.06 B I and, consequently, whether Regulation No 1709/74 was indeed applicable; and if so, whether it constituted a lawful interpretation of the CCT. As far as the Bundesfinanzhof is concerned it is conceivable, as the Advocate General has already stated in Case 37/75, that not all "cherries put up in a mixture of water and ethyl alcohol", regardless of the concentration of the preserving agent used, come under subheading 20.06 B I and that the regulation did not intend to cover all cherries of that type. In the opinion of the Bundesfinanzhof, the decisive factor to be taken into consideration when making the interpretation is the description of the goods.

By order of 24 April 1979 the Bundesfinanzhof stayed the proceedings and asked the Court the following question:

"Must tariff subheading 20.06 B I of the Common Customs Tariff be interpreted as meaning that it also includes fruit which has been put up in a mixture of alcohol, flavouring and water containing 12% alcohol by weight (in the proportion of 70% fruit, 30% liquid) so as to preserve it during transportation in casks and which is intended for the chocolate industry?"

3. The *Einkaufsgesellschaft der Deutschen Konservenindustrie mbH,* the plaintiff in the main action in Cases 112 and 113/79, released a consignment of cherries into free circulation through the German customs office in November 1974 (Case 112/79) and in September 1974 (Case 113/79). Those cherries were imported from Yugoslavia in casks and so as to preserve them during transportation had been put up in a mixture of alcohol and water with an alcohol content of 15.9% by weight (Case 112/79) and of 12.5 to 16.3% by weight (Case 113/79).

The German customs office classified those goods under tariff subheading 20.06 B I (e) 2 of the CCT.

The claim and the action brought by the plaintiff to obtain classification of the goods under tariff heading 08.11 failed.

In the appeal on a point of law brought before the Bundesfinanzhof, the appellant proposed that the Court of Justice be asked again to give a preliminary ruling on the validity of Regulation No 1709/74 of the Commission. The facts in the present case are different from those in Case 37/75 in which the Court gave its judgment:

— In Case 37/75 flavouring had been added to the cherries. That is the reason why the question of the goods' suitability for consumption had not been settled one way or the other;

— This time the appellant has provided an expert's report based on a representative consumer test which confirms "that the cherries imported by it were unsuitable in that state for immediate consumption and were therefore unsuitable for immediate use";

— Also, the goods had been put up in alcohol which, "according to the German provisions, was impure"; this also affected their suitability for immediate consumption.

By separate orders of 26 June 1979, the Bundesfinanzhof stayed the proceedings in the two cases and asked the Court the following questions:

"Must tariff subheading 20.06 B I of the Common Customs Tariff be interpreted as meaning that it also includes fruit

which has been put up in a mixture of alcohol and water containing 15.9% ethyl alcohol by volume so as to preserve it during transportation in casks?" (Case 112/79)

"Must tariff subheading 20.06 B I of the Common Customs Tariff be interpreted as meaning that it also includes fruit which has been put up in a mixture of alcohol and water containing 12.05% or 16.3% ethyl alcohol by weight so as to preserve it during transportation in casks?" (Case 113/79)

4. The order making the reference in Case 87/79 was received at the Court Registry on 31 May 1979. The orders making the references in Cases 112 and 113/79 were received at the Registry on 25 July 1979.

Written observations have been submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC by Bagusat KG, represented by D. Ehle and V. Feldmann, of the Cologne Bar, by the Einkaufsgesellschaft der Deutschen Konservenindustrie, represented by F. Modest and Associates, of the Hamburg Bar, and by the Commission of the European Communities, represented by its Legal Adviser, R. Wägenbaur.

By order of the Court of 12 September 1979, Cases 112 and 113/79 were joined for the purposes of procedure and judgment. By order of the Court of 19 September 1979 Case 87/79 was assigned to the Second Chamber. In accordance with the transitional rules relating to the assignment of cases to Chambers adopted by the Court in its meeting of 9 October 1979, Case 87/79 was assigned to the Third Chamber. By order of the Court of 21 November 1979, Joined Cases 112/79 and 113/79 were assigned to the Third Chamber. By an order of the Third Chamber of the same date, Cases 87/79, 112/79 and 113/79 were joined for the purpose of the oral procedure and the judgment.

Having heard the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

A — According to *Bagusat*, the appellant in the main action in Case 87/79, the judgment given by the Court of Justice in Case 37/75 does not contain any answer to the question asked by the Bundesfinanzhof. It claims that the Court did not in fact formulate any view regarding the words "provisionally preserved" (heading 08.11) and "otherwise prepared or preserved" (heading 20.06). The present request for a preliminary ruling is solely concerned with defining the classification criteria for subheading 20.06 B I and heading 08.11. The question of the validity of Regulation No 1709/74 is not relevant for the purposes of the present proceedings.

Bagusat maintains that the method of preservation is the essential classification criterion for defining the scope of headings 20.06 and 08.11. This is clearly the effect of Note 1 (a) to Chapter 20 of the CCT which states that "this chapter does not cover: ... fruit, prepared or preserved by the processes specified in Chapters 7 and 8". Edible fruits "provisionally preserved" come under

heading 08.11 only. This conclusion is confirmed by the "Explanatory Notes to the Common Customs Tariff Nomenclature" relating to headings 08.11 and 20.06, which contain information concerning the use of the fruit and the method of packing appropriate thereto. In the particular light of the examples provided by those Notes, it is clear that cherries in *casks* put up in a mixture of water and ethyl alcohol, the alcohol content of which is barely sufficient to preserve the goods during a short storage period and during transportation, do not come under subheading 20.06 B I.

The product added to the cherries in question was not a "spirit" in the sense of subheading 20.06 B I but a mixture of water and ethyl alcohol intended to keep the goods preserved *provisionally* and to prevent them from becoming compressed or crushed in transport.

The words "unsuitable in that state for immediate consumption", which only appear in heading 08.11, constitute a secondary descriptive criterion in relation to the words "provisional preservation". The interpretation given by the Commission to the concept of suitability for consumption in Regulation No 1709/74 is incompatible with the CCT. According to Bagusat, that expression is intended to cover not only suitability for being *"eaten"* ("Verzehr") but also the property of the product, when eaten, to create all those sensations connoted by "consumption" ("Genuß"). In this respect the *"Genußwert"* (consumption value) of a food product depends on a host of factors (appearance, taste, smell, etc.) and is to be determined according to sensorimetric methods. In the proceedings resolved by the Bundesfinanzhof on 16 January 1973 (VII K 18/69) an expert's report signed by the chemist, Mr Köberlein, was produced. It confirmed the unsuitability for consumption of cherries in alcohol. The report made by Mr Pölert in Case 37/75 came to the same conclusion. This shows that the cherries concerned are a *semi-finished product* requiring further processing in order to be fit for consumption. Bagusat proposes that if these findings of fact are judged to be inadequate by the Court it should obtain an expert's report on the matter.

In conclusion, Bagusat suggests that the answer to the question asked should be the following:

"Cherries which are put up in a mixture of water and ethyl alcohol containing 12% alcohol by weight (70% fruit, 30% liquid) so as to preserve them during transportation in casks and which are intended for use in the chocolate industry, come under heading 08.11 of the Common Customs Tariff".

B — *The appellant in the main action in Cases 112 and 113/79* points out that until Regulation No 1709/74 entered into force, the cherries in question were classified under heading 08.11 in accordance with the judgment of the Bundesfinanzhof of 16 January 1973 referred to above. According to the appellant, Regulation No 1709/74, contrary to what the Court decided in Case 37/75, is not valid. It could, however, be considered as valid if its scope were limited to cherries put up in a solution of water and ethyl alcohol having an alcohol content higher than a certain limit. This is what the appellant will maintain.

The two criteria for tariff classification to be considered for the purposes of the

present case are, first, the concept of "provisionally preserved" and, secondly, that of "unsuitable in that state for immediate consumption".

As regards the first criterion, it appears from the "Explanatory Notes" that heading 08.11 encompasses fruit which has been treated for the sole purpose of provisional preservation during transportation and storage before it is put to its final use. Such is the case for the fruit which is the subject of the dispute in the main action.

As regards the second criterion, the appellant is at pains to demonstrate that the interpretation which the Commission defended in its statement of case in Case 37/75 is erroneous. The appellant claims that that interpretation is contrary to:

(a) The general acceptation of the words used: the Commission has confused the concepts of "inedible" and "consumption". Fruits "unsuitable in that state for immediate consumption" are those which are not pleasurable to eat if they have not been processed;

(b) The "Explanatory Notes", according to which fruit used as raw material in various food industries must be classified under heading 08.11;

(c) The spirit and the objective of the CCT: the considerable difference between the duty applicable under heading 08.11 (11%) and under heading 20.06 (32%) may be explained by the desire to protect the national industry; that is why semi-finished products still needing to undergo final processing in the EEC attract a lower rate of duty.

According to the appellant tariff heading 20.06 applies only to fruits requiring preservation, if not for a long period, than at least for a fixed and determinable period. The "Explanatory Notes" relating to heading 20.06 show that products under that heading are generally marketed in boxes, jars or sealed receptacles and so on. In order to be valid, Regulation No 1709/74 should be interpreted in a very precise sense, as follows:

"Cherries put up in a mixture of water and ethyl alcohol come under tariff heading 20.06 in accordance with Regulation No 1709/74 of the Commission if, first, the treatment to which the cherries have been subjected prior to immersion in the alcohol mixture and, second, the alcohol content thereof, are adequate to preserve those fruit for a period which is more than provisional, in other words, for a limited period at least. That period must be longer than "merely provisional" and it must be capable of being determined, that is, be of ascertainable duration.

The alcohol content of the mixture in which the cherries are put up must therefore have sufficient strength to ensure this. The added alcohol must therefore attain a percentage of at least 25 to 30% by volume — unless sugar is added — as is shown by other fruits in alcohol found on the market, such as cherries in rum.

The cherries must furthermore be treated in a manner to enable them to be marketed without any further treatment except packaging or repackaging".

The appellant has produced several experts' reports in support of its argument and invites the Court to obtain its own expert's report.

The appellant concludes that the cherries in question are preserved provisionally only and because of the preservation methods used could not be considered to be suitable in that state for immediate consumption; they therefore come under heading 08.11. The appellant in the main action in Cases 112 and 113/79 therefore proposes the following answer to the questions asked:

"Tariff subheading 20.06 B I, as defined by Regulation No 1709/74, must be interpreted to mean not that it also includes fruit put up in a mixture of water and alcohol having an alcohol content so weak that it is preserved only provisionally, in other words, solely for the duration of transport in casks, but that such fruit comes under heading 08.11 of the CCT".

C — According to the *Commission* the answer to the questions asked are without any doubt to be found in the text of Article 1 of Regulation No 1709/74, the validity of which the Court recognized in Case 37/75. Nothing in the orders of the Bundesfinanzhof leads one to believe that it wishes the validity of Regulation No 1709/74 to be examined again. The Commission therefore refers to the observations submitted by it in Case 37/75.

As regards Cases 112 and 113/79, the Commission wishes firmly to refute the argument that the dispute in the main action is to be distinguished from Case 37/75:

(1) The opinion polls taken on the "edibility" of the goods are not an acceptable means of interpreting the concept of "unsuitable in that state for immediate consumption" or, on the general level, of interpreting the CCT or other Community measures;

(2) The presence of flavouring substances in the mixture in Case 37/75 is irrelevant;

(3) The fact that the goods are put up in "impure alcohol" — a factor which the Commission cannot verify — according to German regulations is not relevant either; in view of the use to which the cherries are to be put, one must assume that the degree of impurity is not such as to make the cherries "unsuitable in that state for immediate consumption."

In conclusion, the Commission proposes the following answer to the questions asked:

"Fruit put up in a mixture of water and alcohol must be classified under subheading 20.06 B I of the Common Customs Tariff".

III — Oral procedure

At the sitting held on 17 January 1980 the appellant in the main action in Case 87/79, represented by Mr Ehle, the appellant in the main action in Cases 112 and 113/79, represented by Mr Festge, and the Commission, represented by Mr Wägenbaur, presented oral argument.

The Advocate General delivered his opinion at the sitting on 14 February 1980.

Decision

1 By three separate orders of 24 April and 26 June 1979 received at the Court on 31 May and 25 July 1979, the Bundesfinanzhof referred questions to the Court under Article 177 of the EEC Treaty for a preliminary ruling upon the interpretation of subheading 20.06 B I of the Common Customs Tariff.

2 These questions are referred to the Court in the context of three disputes between two undertakings, Bagusat KG (Case 87/79) and Einkaufsgesellschaft der Deutschen Konservenindustrie mbH (Cases 112 and 113/79) and the German customs administration on whether cherries immersed in a mixture of water and alcohol in order to preserve them provisionally during transport to the Community and until the time they are used, after draining, in the chocolate industry in the Community, are to be classified under tariff subheading 20.06 B I.

3 The subject-matter of tariff subheading 20.06 B I has been defined by Regulation No 1709/74 of the Commission of 2 July 1974 (Official Journal No L 80, p. 15) the first article of which provides that:

"Cherries put up in a mixture of water and ethyl alcohol shall be classified as fruit suitable for immediate consumption in the following subheading of the Common Customs Tariff:

20.06 Fruit otherwise prepared or preserved, whether or not containing added sugar or spirit:

B. Other:

I. Containing added spirit"

On the basis of that regulation the customs administration had classified the disputed goods under subheading 20.06 B I.

4 The main action in Case 87/79 has already been the subject-matter of a judgment of the Court under article 177: the judgment of 11 November 1975

in Case 37/75, *Bagusat* v *Hauptzollamt Berlin-Packhof*, [1975] ECR 1339, delivered following a request for a preliminary ruling by the Finanzgericht [Finance Court] Berlin.

5 In that judgment the Court held that Regulation No 1709/74 was valid and consequently ruled that under that regulation cherries put up in a mixture of water and ethyl alcohol must be classified under subheading 20.06 B I of the Common Customs Tariff.

6 Following that judgment the Finanzgericht Berlin dismissed the action brought by Bagusat against the classification decision of the customs authorities. Bagusat argued before the Bundesfinanzhof, to which it had appealed on a point of law, that the preliminary ruling delivered by the Court in Case 37/75 had not removed all the doubt about the application of subheading 20.06 B I to the disputed imports and consequently requested that a fresh request for a preliminary ruling be addressed to the Court. The Bundesfinanzhof subsequently referred to the Court the following question in Case 87/79:

"Must tariff subheading 20.06 B I of the Common Customs Tariff be interpreted as meaning that it also includes fruit which has been put up in a mixture of alcohol, flavouring and water containing 12% alcohol by weight, in proportion of 70% fruit, 30% liquid, so as to preserve it during transportation in casks and which is intended for the chocolate industry?"

The questions referred to the Court by the Bundesfinanzhof in Cases 112 and 113/79 are similar to that submitted in Case 87/79 except that the proportions of water and alcohol in the mixture in which the disputed goods are put up are different.

7 Since the subject-matter of subheading 20.06 B I, as regards the fruit concerned in the disputes in the main actions, has been defined by Regulation No 1709/74, the questions referred to the Court are really asking whether goods having the characteristics referred to by the court making the reference come within the scope of Regulation No 1709/74 and, if so, whether Regulation No 1709/74 is valid to the extent to which it classifies such goods under subheading 20.06 B I.

8 The applicants in the main action contended that Regulation No 1709/74 was not meant to cover cherries put up in a mixture of water and ethyl

alcohol whose alcoholic strength is barely sufficient to ensure their provisional preservation. However that interpretation cannot be reconciled with the general words used by Article 1 of Regulation No 1709/74 which classifies under heading 20.06 B I "cherries put up in a mixture of water and ethyl alcohol", without making any distinction as to the alcoholic strength of the mixture. Furthermore it follows from the statement of the grounds on which the regulation is based and in particular from the third and sixth recitals in the preamble thereto that the authors intended precisely to classify under subheading 20.06 B I "cherries which are *provisionally* preserved in a mixture of water and ethyl alcohol for use, *inter alia*, in the manufacture of chocolate products". It therefore follows that goods having the characteristics referred to by the court making the reference must, by virtue of Article 1 of Regulation No 1709/74, be classified under subheading 20.06 B I.

9 The question remains whether, as the appellants in the main actions contend, in making provision for this classification, Regulation No 1709/74 is incompatible with the Common Customs Tariff and is therefore invalid.

10 It should first of all be called to mind that in its Regulation No 97/69 on measures to be taken for the application of the customs tariff (Official Journal, English Special Edition, 1969 (I), p. 12) the Council conferred upon the Commission, acting in co-operation with the customs experts of the Member States, a wide power of discretion in defining the subject-matter of tariff headings coming into consideration for classification. The question which arises is therefore whether Regulation No 1709/74 has exceeded the limits imposed by the terms of the Common Customs Tariff.

11 Whilst it is true, as the appellants in the main actions point out, that Note 1 (a) in Chapter 20 of the Common Customs Tariff states that the chapter does not include fruit prepared or preserved by processes listed in Chapter 8, it still follows from the wording of heading 08.11, the only heading in that chapter which can come into consideration as regards the classification of the goods, that it covers provisionally preserved fruit, provided, however, that in that state it is unsuitable for immediate consumption.

12 It follows that fruit provisionally preserved cannot come under heading 08.11 if it appears that the preservation process used has not resulted in making it unsuitable for immediate consumption in that state. Whether or not the goods at issue are to undergo subsequent processing is irrelevant for the purposes of defining the scope of headings 08.11 and 20.06. It follows from this that fruit preserved in a mixture of water and alcohol must be classified under subheading 20.06 B I if it is not unsuitable for immediate consumption in that state.

13 Following the advice of the Committee on Common Customs Tariff Nomenclature, the Commission took the view that cherries put up in a mixture of water and ethyl alcohol are not thereby rendered unsuitable for immediate consumption in that state.

14 The applicants in the main action have not disclosed any factor enabling it to be thought that the classification made by the Commission in Regulation No 1709/74 is manifestly incorrect.

15 In fact, even though, as the applicants in the main action maintain with the assistance of experts' reports, the goods at issue are not, in the view of consumers at the present time, considered to be appetizing and though it is not usual to consume them as they are, that does not signify that they are thereby unsuitable for consumption as long as they may be consumed in that state without risk to health. It is true that the applicants in the main actions in Cases 112 and 113/79 argued that the degree of impurity of alcohol in which the goods they import are put up is higher than that accepted by German regulations on the subject; but none of the applicants went as far as to argue that the consumption in that state of the goods at issue, which are intended to be used in the food industry, represents a special risk to health. By providing that the goods referred to by the three questions of the Bundesfinanzhof come under subheading 20.06 B I, the Commission has not therefore misinterpreted the provisions of the Common Customs Tariff, having particular regard to the wording of heading 08.11 in the different languages.

16 The reply to the questions referred to the Court should therefore be that fruit put up in a mixture of water and alcohol, which is not unsuitable in that state for immediate consumption, must be classified under subheading 20.06 B I of the Common Customs Tariff. The proceedings in these cases have disclosed no factor of such a kind as to affect the validity of Regulation No 1709/74 of the Commission, which makes provision for such a tariff classification of cherries put up in a mixture of water and ethyl alcohol as fruit suitable in that state for immediate consumption.

Costs

17 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. 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 (Third Chamber),

in answer to the questions referred to it by the Bundesfinanzhof by separate orders of 24 April and 26 June 1979, hereby rules:

Fruit put up in a mixture of water and alcohol, which is not unsuitable in that state for immediate consumption, must be classified under subheading 20.06 B I of the Common Customs Tariff The proceedings in these cases have disclosed no factor of such a kind as to affect the validity of Regulation No 1709/74 of the Commission, which makes provision for such a tariff classification of cherries put up in a mixture of water and ethyl alcohol as fruit suitable in that state for immediate consumption.

Kutscher Mertens de Wilmars Mackenzie Stuart

Delivered in open court in Luxembourg on 20 March 1980.

For the Registrar

J. A. Pompe
Deputy Registrar

H. Kutscher
President