On those grounds,

THE COURT

in answer to the questions referred to it by the Finanzgericht Berlin by order dated 19 March 1975, hereby rules:

In the absence of relevant Community provisions on the subject, the explanatory notes and the classification opinions provided for by the Convention on Nomenclature for the Classification of Goods in Customs Tariffs are an authoritative source for the purposes of the interpretation of the headings to the Common Customs Tariff.

The phrase 'mechanically propelled' in heading 86.04 of the Common Customs Tariff must be interpreted as covering self-propelled vehicles for track maintenance, equipped with one or more engines enabling the vehicle to move about from place to place rapidly on the track and quite independently.

Lecourt Monaco Kutscher Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 23 October 1975.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 14 OCTOBER 1975

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Finanzgericht of Berlin. The question that that Court has to decide is as to the classification under the Common Customs Tariff of a piece of equipment

that was imported from Switzerland into Germany, on 3 June 1971, by the plaintiff, Matisa-Maschinen-GmbH.

That piece of equipment is a machine used in the maintenance of railway lines. It tamps down under the sleepers the ballast on which the track is laid and straightens the rails themselves. It consists of a roofed railway-truck chassis resting on two standard gauge axles, each fitted with a pair of wheels. It has a diesel engine which propels it and also drives its working machinery. For its propulsion it is fitted with, among other things, a driver's seat and controls, an automatic driving mechanism, a speedometer, accoustic and optical signalling equipment, and lights. Its working machinery includes special hydraulic, pneumatic and electrical equipment, in particular tampers and track lifting, shifting and levelling devices. It is 11·20 m long, 2·60 m wide and 3·12 m high, and weighs about 25 metric tons. It is capable of tamping and levelling up to 600 m of railway line per hour. When not in use it can travel about from place to place on the railway network at speeds of up to 80 km/h.

When the machine was first imported, the defendant, the Hauptzollamt Berlin-Packhof, classed it under subheading 84.23 A II (b) of the Common Customs Tariff. Heading 84.23 is as follows:

'Excavating, levelling, tamping, boring and extracting machinery, stationary or mobile, for earth, minerals or ores (for example, mechanical shovels, coal-cutters, excavators, scrapers, levellers and bulldozers); piledrivers; snow-ploughs, not self-propelled (including snow-plough attachments):

A — Excavating, levelling, tamping, boring and extracting machinery for earth, minerals or ores:

I. Self-propelled track-laying or wheeled, not capable of running on rails

II. Other:

(a) Boring and sinking machinery

(b) Other

B — Pile-drivers; snow-ploughs, not self-propelled (including snow-plough attachments).'

Classed under subheading 84.23 A II (b), the machine was liable to customs duty at the rate of 6·6 % and to German import turnover tax.

Subsequently however the defendant came to the conclusion that the machine should have been classed under subheading 86.04 B of the Common Customs Tariff under which the rate of customs duty was 7·8 % and assessed the plaintiff to additional duty accordingly.

It is the correctness of that additional assessment that is in issue in the proceedings before the Finanzgericht of Berlin. In substance that Court asks this Court to resolve the issue.

In so revising its classification of the machine the defendant relied on an Explanatory Note to the Brussels Nomenclature issued by the Customs Cooperation Council under Articles III and IV of the Brussels Convention of 15 December 1950. This Note, referring to heading 86.04 in the Brussels Nomenclature, which corresponds to the same heading in the Common Customs Tariff, says this:

'This heading further covers self-propelled vehicles for track maintenance (in particular, railway trackliners), equipped with one or more engines which not only power the working machines mounted thereon (track-setters, ballast-tampers, etc.), and propel the vehicle while work is in progress but also enable it to travel rapidly along the track, as a selfpropelled unit, when the working machines are not in operation.'(Brussels Nomenclature — Explanatory Notes, Vol. 4, Heading 86.04)

The plaintiff, however, contends that the actual wording of Heading 86.04 is clearly inapt to include vehicles of the

kind mentioned in that Note and that the Customs Cooperation Council did not have power, under the guise of interpretation, to extend the scope of the Heading to such vehicles. The plaintiff relies on the German text of the heading in the Common Customs Tariff, which is as follows:

'Triebwagen (auch für Straßenbahnen); Motordraisinen:
A — elektrische Triebwagen (mit Stromspeisung aus dem Stromnetz)
B — andere.'

The plaintiff says that the word 'Triebwagen' connotes in German a self-propelled vehicle for the conveyance of passengers. His view seems to be supported by German dictionaries — see Wahrig: 'Deutsches Wörterbuch'; 'Der Volks-Brockhaus'; and Mackensen: 'Neues Wörterbuch der deutschen Sprache'.

It was further submitted on behalf of the plaintiff that, since this case arose in Germany, the German text of the Heading should prevail. This submission at least must, my Lords, be rejected, for, clearly, to accede to such a submission could lead to the Common Customs Tariff being interpreted and applied differently in different Member States, and thus to the frustration of one of its essential purposes.

The English text of Heading 86.04 is as follows:

'Mechanically propelled railway and tramway coaches, vans and trucks, and mechanically propelled track inspection trolleys:
A — Electric railway and tramway coaches, vans and trucks (powered from an external source of electricity)
B — Other.'

This, and in particular the collocation of 'coaches, vans and trucks', suggests that the Heading covers vehicles designed for the carriage of passengers or goods, but not mobile machines.

The French text of the Heading, however, reads:

'Automotrices (même pour tramways et draisines à moteur:
A — Automotrices électriques (à source extérieure d'énergie)
B — autres.'

The word 'automotrices' there seems to be apt to cover any sort of self-propelled rail vehicle, including one designed for track-maintenance. A passenger or load carrying self-propelled rail vehicle is, I think, in French, an 'autorail', or perhaps, if this is not being too old-fashioned, a 'micheline'.

The Danish, Dutch and Italian texts are in line with the French text, using respectively, where the French text has 'Automotrices', the terms 'Motorvogne', 'Motorwagens' and 'Automotrici'. The Commission submits that all three of these terms are of broad import and are apt to include a self-propelled track-maintenance vehicle. I understand that that submission is correct.

If the matter rested solely on a consideration of the six authentic texts of Heading 86.04 in the Common Customs Tariff, I should, I think, be inclined to say that Your Lordships should prefer the more precise texts to the more broadly expressed ones and accordingly hold that the Heading did not include a machine of the kind here in question.

But this Court has held, many times, that, in the absence of any authoritative interpretation from a Community source of a provision of the Common Customs Tariff, the Explanatory Notes published by the Customs Cooperation Council under the Brussels Convention are, where they are appropriate, to be regarded as affording an authoritative guide to that interpretation — see Case 14/70 *Bakels* v *Oberfinanzdirektion*

München (Rec. 1970, pp. 1009-1010), Cases 12, 13 and 14/71 *Henck* v *Hauptzollamt Emerich* (Rec. 1971 pp. 751, 775 and 787), Case 30/71 *Siemers* v *Hauptzollamt Bad Reichenhall* (ibid. pp. 928 — 929), Case 77/71 *Gervais-Danone* v *Hauptzollamt München* (ibid. p. 1137) and Case 185/73 *Hauptzollamt Bielefeld* v *König* [1974] ECR p. 619.

I take that to mean that those Explanatory Notes are to be treated as authoritative where there is doubt as to the correct interpretation of the provision in question, for, as Mr Advocate-, General Roemer pointed out in the *Bakels* case (Rec. 1970, pp. 1015-1016), they do not have the force of legislation and so could not be given effect to in so far as they were clearly inconsistent with the actual text of that provision.

Here there is, in my opinion, doubt as to the scope of Heading 86.04.

That doubt is introduced by the apparent divergences between the meanings of its text in the different languages of the Community.

The doubt is enhanced by a close look at the wording of Heading 84.23, the only other Heading under which anyone concerned in this case has suggested that the machine in question could be classified. In particular that machine does not readily answer the description of being for the excavation, levelling, tamping, boring or extraction of 'earth, minerals or ores'.

The doubt is further enhanced by a perusal, as a whole, of the Sections and Chapters of the Common Customs Tariff in which Headings 84.23 and 86.04 are to be found.

In saying this I am not alluding to the titles of those Sections and Chapters, which Rule A (1) of the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff states to be 'provided for ease of reference only'; nor am I alluding to Note 1 (k) of the Notes to Section XVI, which is the Section that includes Chapter 84, although much was said about that Note in argument. Note 1 (k) merely states that Section XVI does not cover 'vehicles, aircraft, ships or boats' covered by Section XVII, which is the Section that includes Chapter 86. To state this provides no answer to the question what Chapter 86, and in particular Heading 86.04, does cover.

What I am referring to is the general impression one gets from reading Sections XVI and XVII through. Such a perusal evinces, to my mind, that Chapter 86 is probably, as the Commission submits, intended to comprise all mobile railway equipment, whereas Chapter 84, in so far as it mentions machinery running on rails, is probably concerned only with comparatively static machinery running on rails only within a particular works or mine. The Commission points out that Heading 86.06 is expressed to cover — 'Railway and Tramway rolling-stock, the following: workshops, cranes and other service vehicles'. It would be odd, suggests the Commission, if a service vehicle such as is in question in the present case were within Chapter 86, by virtue of Heading 86.06, if not self-propelled, but outside it if self-propelled. I am, my Lords, inclined to agree.

But it is, in my opinion, as I have indicated, enough that there is a doubt and that the Explanatory Note issued by the Customs Cooperation Council is designed to resolve that doubt. In those circumstances, the principle established by the decisions of this Court to which I have referred requires that the guidance afforded by the Explanatory Note should be accepted. And there is good reason for this. Just as it is the purpose of the Common Customs Tariff to achieve, within its scope, uniformity of treatment for goods at all the frontiers of the Community, so it is the object of the Brussels Convention to achieve as much

uniformity as is possible in the nomenclature of goods for customs purposes among all the States that are signatories of that Convention. Those signatories include all the Member States of the Community and also many other States that are not members of the Community. It would hardly be fitting for the Community, as a body, to be instrumental in frustrating the achievement of the object of the Convention.

The actual questions referred to the Court by the Finanzgericht of Berlin are, shortly stated, these:

1) Is the machine imported by the plaintiff on 3 June 1971 to be classified under subheading 86.04 B or under subheading 84.23 A II (b) of the Common Customs Tariff?

2) In particular, are the Explanatory Notes on the Brussels Nomenclature binding under Community law for the interpretation of the Common Customs Tariff?

The Commission points out that the first question, as framed, calls upon the Court, not merely to interpret the Common Customs Tariff, which is the Court's role under Article 177 of the Treaty, but to apply it to the facts of the case, and that this would be for the Court to usurp the jurisdiction of the Finanzgericht itself. The point is, I think, in the circumstances of the present case, purely formal. It is nonetheless sound. Secondly the Commission points out that it would be more logical for the Court to answer the second question first. With this too I agree.

In the result I am of the opinion that Your Lordships should answer the questions referred to the Court by the Finanzgericht of Berlin as follows:

1. In the absence of any authoritative interpretation from a Community source of a provision of the Common Customs Tariff, the Explanatory Notes published by the Customs Cooperation Council under the Brussels Convention on Nomenclature for the Classification of Goods in Customs Tariffs afford, where they are appropriate, an authoritative guide to that interpretation;

2. Accordingly, there is to be classified under subheading 86.04 B, rather than under subheading 84.23 A II (b) of the Common Customs Tariff, a machine that comes within the description:

   'self-propelled vehicles for track maintenance (in particular, railway trackliners), equipped with one or more engines which not only power the working machines mounted thereon (tracksetters, ballast-tampers, etc.), and propel the vehicle while work is in progress but also enable it to travel rapidly along the track, as a selfpropelled unit, when the working machines are not in operation.' Brussels Nomenclature — Explanatory Notes, Vol. 4, Heading 86.04).