OPINION OF ADVOCATE GENERAL POIARES MADURO delivered on 7 April 2005 [1]

1. In this reference for a preliminary ruling the Bundesfinanzhof (Federal Finance Court, Germany) seeks guidance from the Court of Justice concerning the interpretation of the concept of 'stop in a third territory' within the meaning of the Article 8(1)(c) of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of Member States relating to turnover taxes — common system for value added tax [2] (the 'Sixth Directive').

I — The relevant Community provisions

2. Article 2 of the Sixth Directive provides that 'the supply of goods ... effected for consideration within the territory of the country by a taxable person acting as such' is to be subject to value added tax.

3. According to Article 3(2) 'the "territory of the country" shall be the area of application of the Treaty establishing the European Economic Community as stipulated in respect of each Member State in Article 227' (now Article 299 EC).

4. Article 8(1)(b) provides that 'the place of supply of goods ... not despatched or transported ... shall be deemed to be ... the place where the goods are when the supply takes place'.

5. Article 8(1)(c) was introduced by Directive 91/680. The version substituted by Directive 92/111, in force in the year in which the dispute arose, provides that the place of supply of goods shall be deemed to be 'in the case of goods supplied on board ships, aircraft or trains during the part of a

1 — Original language: Portuguese.

2 — OJ 1977 L 145, p. 1, as amended by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p.1) and by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax (OJ 1992 L 384, p. 47).

transport of passengers effected in the Community: at the point of departure of the transport of passengers.

In the case of a return trip, the return leg shall be considered to be a separate transport.

...'

For the purposes of applying this provision:

— "part of a transport of passengers effected in the Community" shall mean the part of the transport effected, without a stop in a third territory, between the point of departure and the point of arrival of the transport of passengers,

— "the point of departure of the transport of passengers" shall mean the first point of passenger embarkation foreseen within the Community, where relevant after a leg outside the Community,

— "the point of arrival of the transport of passengers" shall mean the last point of disembarkation of passengers foreseen within the Community of passengers who embarked in the Community, where relevant before a leg outside the Community.

II — Facts, national provisions and the reference for a preliminary ruling

6. In 1994 A. Köhler (the 'claimant') operated a shop on board a cruise ship. The claimant effected supplies in the course of running the shop and a dispute has arisen as to whether or not those supplies are taxable. The cruises in question departed from Kiel, from Bremerhaven and from Travemünde, passing through ports situated outside the territory of the Community, for example in Norway, Estonia, Russia or Morocco, and terminated in Kiel, Bremerhaven or Geneva. Bookings were available only for the entire cruise; it was not possible to book sections of the trip, or to embark for the first time or to disembark finally at ports en route.

7. The Finanzamt (Tax Office) treated the sales made in the claimant's shop during those cruises as being taxable and liable to value added tax in Germany in accordance

with Paragraph 3e of the Umsatzsteuergesetz (Law on turnover tax) 1993 ('UStG') transposing Article 8(1)(c) of the Sixth Directive. Paragraph 3e(1) of the UStG provides that '... if goods, not intended for consumption on board, are supplied on board a ship ... during a transport of passengers within the Community, the point of departure in the Community of the relevant transport shall be treated as the place of supply'.

8. Paragraph 3e(2) of the UStG provides:

'A transport of passengers within the Community, within the meaning of subparagraph (1), shall be deemed to include a transport or part of a transport between the point of departure and point of arrival of the means of transport in the Community without any stop outside the Community. For the purposes of the first sentence, the point of departure shall mean the first point of passenger embarkation foreseen within the Community. For the purposes of the first sentence, the point of arrival shall mean the last point of passenger disembarkation foreseen within the Community. In the case of a return trip, the return leg shall be considered to be a separate transport.'

9. In her action against the decision of the Finanzamt (Tax Office) the claimant argued that, by reason of the stops made in a third territory, the sales at issue were not taxable in Germany; under Paragraph 3e of the UStG the supplies should not be regarded as having been effected during a transport within Community territory.

10. The Finanzgericht (Finance Court) dismissed the action and held that the fact that the ship had made stops in a third territory between the ports of departure and of arrival did not imply that supplies of goods should be regarded as having been effected outside national territory. Only those stops in a third territory where passengers were able to disembark finally or where new passengers were able to embark for the first time should be regarded as 'stops' within the meaning of Paragraph 3e(2) of the UStG.

11. The claimant appealed against that decision to the Bundesfinanzhof (Federal Finance Court), which decided to refer the following question to the Court of Justice for a preliminary ruling:

'Are stops made by a ship in ports of non-member countries, at which passengers may disembark from the vessel only for a short period, for example for sightseeing purposes,

but at which they may not begin or end their journey, "stops in a third territory" within the meaning of Article 8(1)(c) of Directive 77/388/EEC?'

III — Analysis

12. It is more difficult to define the word 'stop' for the purposes of Article 8(1)(c) of the Sixth Directive than might appear from a cursory reading of the provision at issue. The term 'stop' does not in fact have one unambiguous meaning which may be deduced from the text. Several interpretations come to mind, ranging from stops for technical reasons, in particular for refuelling of the vessel or stops simply to allow passengers to enjoy panoramic views, to stops to allow new passengers to embark or to allow others to disembark finally; it also covers stops during which passengers are able to leave the ship to go sightseeing and shopping in the country they are visiting on the understanding that they will subsequently return to the vessel. There might at first appear to be some grounds for considering, as the claimant does to some extent in her written observations, that when the legislature has not drawn a distinction then none should be drawn when the legislation is interpreted. It would, however, be an oversimplification to interpret the term 'stop' within the meaning of Article 8 of the Sixth Directive in its broadest sense without attempting to understand why the question whether or not a stop is made in a third territory should be relevant for the application of the specific system set out in Article 8 (1)(c) of the Sixth Directive.

A — *The nature of Article 8 as a conflict rule for the delimitation of tax jurisdiction as between States*

13. The answer to the question raised by the Bundesfinanzhof first requires an analysis of Article 8 of the Sixth Directive, which incorporates the concept of a stop in a third territory. That article contains various conflict rules designed to delimit rationally, as between the Member States, the respective scope their national law is to have in the matter of VAT as regards the supply of goods. [3] Each of those rules determines which Member State is to have exclusive jurisdiction to impose VAT on a supply of goods, when the relevant connecting factors set out in Article 8 show that the goods were supplied in the territory of that State. In this respect Article 8 must necessarily be considered in parallel with Article 9, which contains conflict rules concerning the provision of services. Those two articles are, moreover, the only two articles in Title VI to the Sixth Directive — 'Place of taxable transactions' [4] — and the seventh recital, to which I have just referred, applies to them both equally.

14. Although it is true that the Court of Justice has not yet had an opportunity to state categorically that Article 8 of the Sixth

3 — See the seventh recital in the preamble to the Sixth Directive.

4 — See in that connection the Opinion of Advocate General Sir Gordon Slynn in Case 283/84 *Trans Tirreno Express* [1986] ECR 231 and 232, especially p. 235 et seq.

Directive is intended to avoid conflicts concerning tax jurisdiction between States, that view has been expressed unequivocally as regards Article 9. In the *Berkholz* judgment of 4 July 1985 the Court stated that Article 9 is 'designed to secure the rational delimitation of the respective areas covered by national value added tax rules by determining in a uniform manner the place where services are deemed to be provided for tax purposes' and thus to establish definitively the exclusive jurisdiction of a Member State to charge VAT on services provided. [5] Those are thus essential rules for avoiding 'conflicts concerning jurisdiction'. [6] The Court also pointed out that a further criterion for the interpretation of Article 9(1) was determination of the most appropriate point of reference in order to avoid creating conflicts concerning tax jurisdiction between the Member States. [7]

15. The parallel nature of the framework of rules for the delimitation of tax jurisdiction provided for in Article 9 of the Sixth Directive and of the framework set out in Article 8 is well known. It therefore seems to me advisable to approach Article 8 in the light of the intention to avoid conflict by avoiding encroachment upon the tax jurisdiction of other States, which the Court considered germane in interpreting the rules laid down in Article 9 on the provision of services.

16. It is therefore within this general framework of the meaning and purpose of Article 8 of the Sixth Directive that we must understand the specific rule contained in Article 8(1)(c) and in particular the significance of the use of the term 'stop in a third territory' in that provision.

B — *The origin and aims of Article 8(1)(c) of the Sixth Directive, in particular the concept of a 'stop in a third territory'*

17. An examination of the origin of Article 8 (1)(c), which was introduced by Council Directives 91/680 and 92/111, does not detract from, but tends rather to strengthen, the general meaning of Article 8 as a provision containing a set of rules designed to avoid conflict between States concerning tax jurisdiction.

18. Council Directive 91/680 on the abolition of fiscal frontiers between the Member States introduced subparagraph (c), which sets out the simplified system of value added tax for goods supplied on board during intra-

5 — Case 168/84 [1985] ECR 1-2251, paragraph 14, and Case C-155/01 *Cookies World* [2003] ECR I-8785, paragraph 46. See also the judgments in Case C-68/92 *Commission* v *France* [1993] ECR I-5881, paragraph 14, Case C-69/92 *Commission* v *Luxembourg* [1993] ECR I-5907, paragraph 15, and Case C-73/92 *Commission* v *Spain* [1993] ECR I-5997, paragraph 12

6 — Case C-30/89 *Commission* v *France* [1990] ECR I-691, paragraph 10, *Berkholz*, paragraph 14, and *Trans Tirreno Express*, paragraph 15.

7 — *Berkholz*, paragraph 17, and, more recently, Case C-260/95 *DFDS* [1997] ECR I-1005, paragraph 19, and Case C-231/94 *Faarborg-Gelting Linien* [1996] ECR I-2395, paragraph 16.

Community transport in accordance with the principle that tax should be levied in the Member State of origin. That subparagraph was designed to introduce simplified VAT measures applicable to journeys beginning and ending within the Community in accordance with the principle of point of origin. Such a solution was of course required as a result of the abolition of fiscal frontiers between the Member States; it was clearly undesirable to apply the general rule set out in subparagraph (b) — basing taxation on the place where the goods were situated when the supply was effected — since that would entail preparing a breakdown of supplies according to the territories of the various Member States which the means of transport had passed through.

19. The wording of the abovementioned subparagraph (c), introduced by Council Directive 91/680, was amended by Council Directive 92/111 since, in the Commission's view, subparagraph (c) was liable to lead to confusion in the terms in which it was drafted.[8] In that respect the preparatory documents for Directive 92/111 show that the expression 'without a stop in a third territory' did not appear in the Commission's proposal for an amendment to subparagraph (c). That was added by the Council without any specific explanation of the underlying reasons. In line with that amendment, the Council also considered that the simplified system for taxation in the State of origin set out in subparagraph (c) should be applicable not to supplies of goods effected during 'transport of passengers within the Community', as proposed by the Commission but, in less broad terms, only to 'the part of a transport [of passengers] within the territory of the Community'.[9]

20. Those final two amendments to the Commission's proposal clearly show, in my view, a concern to ensure that the adoption of the simplified VAT system based on the Member State of origin of the intra-Community transport should not encroach upon the tax jurisdiction of non-member countries within their respective territories. Such an intention explains the inclusion of the concept of 'stop in a third territory' in the wording of the subparagraph in question in terms which are, moreover, fully supported by international law.[10]

21. According to an established principle of international law, an essential feature of a State's sovereignty is that, first, it has absolute and exclusive power to determine taxes within its territory and, second, that

8 — See p. 4 of the explanatory memorandum to the Proposal for a Council Directive amending Directive 77/388 and introducing simplification measures (presented by the Commission to the Council) Brussels, 4 November 1992, COM(92) 448 final.

9 — Emphasis added.

10 — Although the sixth recital in the preamble to Directive 92/111 does not make specific reference to the need to safeguard relations with 'third territories' in the clarification incorporated by the Community legislature regarding determination of tax jurisdiction for certain operations conducted on board ships, aircraft or trains when passengers are carried within the Community, the second, third and fourth recitals clearly show how Directive 92/111 took account of relations with 'third territories' in the drafting of the provisions contained therein for the abolition of fiscal frontiers within the Community.

any exceptions to that principle, in particular where foreign tax laws might be applicable within the territory of a State in place of its own laws, must be made with the sovereign consent of that State. [11] That principle is moreover clearly evident in the case of merchant ships anchored in foreign ports. Inasmuch as they are within the internal waters of the port State [12] they remain totally subject to the fiscal laws of that State. [13] The situation is not affected by the fact that the State may refrain from effectively exercising its tax jurisdiction within the ship, either because it regards that as a matter involving purely 'internal arrangements', [14] or merely because it does not want to take steps which would discourage foreign shipping from seeking to use its ports. [15]

22. The case-law of the Court of Justice also clearly reflects a concern to prevent the implementation of the Sixth Directive from giving rise to encroachment upon the fiscal sovereignty of States within their territory. Thus in *Trans Tirreno Express*, the Court expressly recognised the freedom of a Member State to apply 'its value added tax legislation to a transport operation effected between two points within its national territory, even where a part of that journey is completed outside its national territory, *provided that it does not encroach on the tax jurisdiction of other States*'. [16] The *Trans Tirreno Express* judgment therefore makes

11 — See G. Gest and G. Tixier, *Droit Fiscal international*, 2nd edition, PUF, Paris 1990, p. 17, where reference is made to 'pouvoir fiscal absolu à l'intérieur de son territoire, qui constitue une sorte de chasse gardée'. In the same vein, A.H. Qureshi, *The Freedom of a State to Legislate in Fiscal Matters under General International Law in The Public International Law of Taxation — Text, Cases and Materials*, Graham & Trotman, London 1994, p. 29 to 31, and B. Terra, *The Place of Supply in European VAT*, Kluwer Law, Dordrecht 1998, p. 3. See also M. Rutsel Silvestre, *The Jurisdiction to tax in International Law — Theory and Practice of Legislative Fiscal Jurisdiction*, Kluwer, Deventer, 1989, pp. 7, 15, 16 and 23, and especially p. 37, where the tax jurisdiction of a State is described as stemming from its sovereignty and the limits of that jurisdiction are also defined. Referring specifically to the 'territorial sovereignty' of the State, the author quotes the words of Judge Moore in the case of *The S. S. Lotus* in the judgment of the Permanent Court of International Justice of 7 September 1927, *France* v *Turkey*, Series A, No. 10, p. 69 according to which: '... the principle of absolute and exclusive jurisdiction within national territory applies to foreigners as well as to citizens or inhabitants, and the foreigner can claim no exemption from the exercise of such jurisdiction, except in so far as he may be able to show either: (1) that he is, by reason of some special immunity, not subject to the operation of the local law, or (2) that the local law is not in conformity with international law'.

12 — See R.R. Churchill and A.V. Lowe, *The Law of the Sea*, Juris Publishing, Manchester University Press, 3rd Edition, 1999, p. 61 which states that: '... the coastal State enjoys full territorial sovereignty over its internal waters ... By entering foreign ports and other internal waters, ships put themselves within the territorial jurisdiction of the coastal State. Accordingly, that State is entitled to enforce its laws against the ship and those on board' (ibid., p. 65). On the subject of ports as an integral part of the *internal waters* of the State, not to be confused with its *territorial waters*, see D.P. O'Connell, *The International Law of the Sea*, Vol. I, Clarendon Press, Oxford, 1982, p. 385. D. Vignes points out in 'La juridiction de l'État du port et le navire en Droit international' in *Le navire en Droit International*, Colloque de Toulon, Éditions A. Pedone, Paris, 1993, pp. 127 to 150, especially p. 127, that port States have tended towards expanding jurisdiction (or 'creeping jurisdiction') in recent times.

13 — See, in greater detail, G. Gidel, *Le Droit International Public de la mer – Le temps de paix*, Tome II, Les eaux intérieurs, Topos Verlag and Librairie Edouard Duchemin, Lichtenstein/ Paris, 1981, p. 79 et seq., especially as regards the total subjection of the ship to the fiscal laws of the port State, pp. 119 to 125.

14 — See R.R. Churchill and A.V. Lowe, *The Law of the Sea*, op.cit., p. 68, which states that the port States 'as a matter of strict law' are in any case entitled, as regards internal matters concerning the ship, to exercise jurisdiction simply because such ships enter their internal waters voluntarily.

15 — It is well known in particular that there is commercial competition between ports to attract visiting cruise liners. See J. Combacau and S. Sur, *Droit international public*, 5th edition, Montchrestien, Paris, 2001, p. 461, on the right to refuse entry to a port.

16 — Paragraph 21 of the judgment and more recently the judgment in Case C-30/89 *Commission* v *France*, paragraph 18 (emphasis added). The Court refers in non-specific terms in *Trans Tirreno Express* to 'other States', which of course include non-member countries and not merely other Member States. Although the concern in that case was to safeguard the tax jurisdiction of the other Member States, that same concern to respect the principle of territoriality will logically extend to dealings with non-member countries. That would therefore arise also, as the Greek Government pointed out at the hearing, from the need to respect the scope of the territorial application of the joint VAT system set out in Articles 2 and 3(2) of the Sixth Directive. See also B. Terra, *The Place of Supply in European VAT*, op. cit., pp. 3 and 4.

the application of the common system of value added tax subject to the condition 'that it does not encroach on the tax jurisdiction of other States'. [17] Although it is considered acceptable for a State to extend the field of application of its tax legislation in international waters, that is not the case when the ship passes 'through any area falling under the national sovereignty of another State'. [18] Therefore, according to the principle of territoriality, the Member States cease to have jurisdiction to apply the common system of value added tax at the point where non-member countries' jurisdiction to tax supplies effected within their respective territories begins.

C — Consequences of a stop in a third territory for the taxation of supplies of goods effected on board

23. In order to answer the question submitted by the Bundesfinanzhof it is essential to consider the consequences of a stop in a third territory regarding the taxation of supplies of goods effected on board.

24. As I have already mentioned, Article 8 lays down a simplified VAT system for supplies of goods effected on board during the part of a transport operation carried out within Community territory. Such supplies of goods are thus subject to only one VAT regime: that of the State in which the intra-Community transport operation originates. This avoids a return to the strict general rule on territoriality laid down in Article 8(1)(b), which would entail applying in the course of the voyage the same number of national VAT systems as Member States whose territory was visited. [19]

25. For the reasons mentioned above, stops in a third territory do constitute grounds for suspending, for the duration of those stops in territories where non-member countries have tax jurisdiction, the common VAT system for supplies of goods effected there. There are, however, no grounds for suspending the simplified system for the rest of the journey, whether within Community territory itself or in international waters, or even when the vessel is merely in transit within the territorial waters of non-member countries where there is no actual encroachment upon the fiscal sovereignty of other States.

17 — *Trans Tirreno Express*, paragraph 21.

18 — *Trans Tirreno Express*, paragraph 18.

19 — The opinion expressed in legal literature is also that the rule set out in subparagraph (b) constitutes 'the general rule in the Sixth Directive with regard to the supply of goods' (B. Terra and J. Kajus, *A Guide to the European VAT Directives*, Vol. 1, IBFD Publications, 2005, p. 557, and especially pp. 559 and 560). This is, of course, provided that the goods in question are not goods for despatch or transportation, which are eventualities mentioned in Article 8(1)(a).

26. It would in fact run completely counter to the intention to simplify inherent in subparagraph (c) to divide what is a single intra-Community voyage (inasmuch as it effectively runs between the two most distant points within the Community territory chosen as points of initial embarkation and final disembarkation) into various intra-Community parts — which would be the result of suspending the simplified system because of a stop in a third territory. At the same time the aim of avoiding any encroachment upon the fiscal sovereignty of non-member countries within their ports does not justify sacrificing the application of that simplified system any more than is necessary to achieve that aim. It is sufficient, in order to achieve that end, to suspend application of the VAT system of the State of origin for the duration of the stop in a third territory.

27. Article 8(1)(c) should therefore be interpreted as meaning that the whole of an intra-Community voyage, namely a voyage between the first point at which passengers embark situated within the Community territory and the final point within Community territory where the passengers may end their journey, is subject to the simplified system set out in that article. Any stops in a third territory between those two points would have the effect of suspending the application of that simplified system only for the duration of each stop. [20]

28. There can be no justification — quite the contrary — for applying a succession of different VAT systems each time the vessel returns to its intra-Community route. That would be the result if we were to revert to the application of the territorial system set out in Article 8(1)(b) or were constantly to re-apply the system described in Article 8(1)(c). [21]

29. The interpretation proposed here for Article 8(1)(c), to the effect that a stop in a third territory simply constitutes grounds for suspending the application of the simplified system laid down in that article for the duration of the stop, does not imply that the intra-Community journey cannot form part of a longer voyage which may originate and/or end outside the Community. That is exactly the meaning of the reference to a

20 — Accordingly, during a call at a port of a non-member country, the supplies of goods effected on board will not be subject to the VAT system of the first Member State where the intra-Community voyage began. The means of transport in question is, throughout this period, entirely subject to the tax jurisdiction of a non-member country and, consequently, any supplies of goods effected on board during such stops clearly fall outside the territorial scope of the Sixth Directive.

21 — I do not therefore concur with the interpretation of Article 8 (1)(c) which B. Terra and J. Kajus appear to be following in *A Guide to the European VAT Directives*, op. cit., p. 560, note 552, and the example given therein.

possible 'stop in a third territory' [22] in the last part of the definitions of the point of departure and the point of arrival. During those parts of the voyage, which are not of an intra-Community nature, the simplified rules provided for in Article 8(1)(c) will clearly not apply.

30. In the same way, if the point of departure of a journey is for example in Germany and no point of arrival is envisaged for those passengers within the territory of the Community, such a journey is not of an intra-Community nature and therefore the supplies effected on board will be subject to the strict territorial regime set out in subparagraph (b). In that case VAT will be payable in Germany on supplies of goods that are situated on German territory when the supply is effected.

D — *Interpretation proposed for the concept of 'stop in a third territory'*

31. It would seem that no specific guidance can be gleaned either from the wording used or from the intention underlying the inclusion of the term 'stop in a third territory' in the text of subparagraph (c) as to how that concept should best be interpreted.

32. The available interpretative factors, in particular the teleological approach, merely make it possible first to discard certain interpretations because they are particularly incompatible with the aims pursued and, second, to ascertain that several equally tenable interpretations of that concept are possible.

33. It seems to me that the interpretation suggested by the German Government certainly falls into the first category. In fact such an interpretation would make the common system for VAT applicable to supplies of goods effected during a vessel's stay in the territory of a non-member country when passengers were able to leave the vessel and make purchases in that country. I think that an interpretation of the concept of a stop which produced such a result would be wholly inadvisable since the aim in view is to avoid encroaching upon the tax jurisdiction of non-member countries within their territory. [23]

34. With regard to the possible interpretations that appear to me to be compatible with the purpose of the provision, the Court will finally need to decide between the

22 — It is relevant to point out in this respect that in Germany for example the provision transposing the directive, Paragraph 3e(2) of the UStG, does not even include the final parts of the definitions given in the Sixth Directive: 'point of departure of the transport of passengers' and 'point of arrival of the transport of passengers'.

23 — I would add that, from a literal standpoint, as the Commission pointed out at the hearing, although the legislature made several specific references in subparagraph (c) to the embarkation of new passengers or the final disembarkation of passengers when defining the points of departure and of arrival of the transport operation, they did not do so as regards the concept of a stop.

various equally tenable solutions which differ essentially as to how strictly they achieve the twofold aim pursued by the legislature: simplification of the tax system applicable and avoidance of conflicts concerning the fiscal sovereignty of non-member countries within third territories.

35. Of those teleologically tenable interpretations, the one which most scrupulously avoids encroachment upon the tax jurisdiction of a non-member country where a stop is made is the one which interprets the concept of stop simply as any stop at a place appropriate to that purpose (a port, airport or station), depending on the means of transport in question.[24] Thus, irrespective of whether the passengers are able to disembark, for example, from the ship during a stop at a port in a non-member country, in so far as the ship is entirely subject to the fiscal sovereignty of the port State, the common system of VAT would not apply to supplies of goods effected on board during such a stop. That is, however, an interpretation which, because it so strictly respects the objective of avoiding encroachment upon the territorial jurisdiction of non-member countries, could be open to abuse inasmuch as it makes it legal to suspend application of the regime provided for in Article 8(1)(c) to supplies of goods effected on board during a stop merely because of a decision to stop the vessel in a third territory in the course of an intra-Community voyage.

36. Another teleologically tenable interpretation of the concept of a stop has been proposed by the Commission and, in almost identical terms, by the Greek Government, as well as by the claimant. That is that a stop within the meaning of Article 8(1)(c) must imply that the passengers are able to leave the means of transport in question, even if only for a short period, and to make purchases in the non-member country in question. Only in such circumstances might the application of the common VAT system to supplies effected on board give rise to a conflict, which it is important to avoid, concerning the tax jurisdiction of the non-member country. It should finally be mentioned that only when there is an opportunity to choose between acquiring goods on board the vessel or otherwise would there be any actual conflict of jurisdiction that would be unacceptable in the light of the objectives underlying the inclusion by the legislature of the concept of a stop in Article 8(1)(c). In other words, the undesirable conflict of tax jurisdiction would arise only when in any given place, such as a port that was legally subject to the fiscal sovereignty of the port State, establishments on board ships stopping there, although in fact situated in the same market as establishments outside the vessel, were subject, by virtue of Community

24 — There is moreover some support for this in the English version of the text which refers simply to a 'stop' in a third territory

law, to an indirect system of taxation different from the one applicable to those establishments outside the vessel but situated also in that State.

37. The interpretation just described does not conform so strictly to the principle of making the means of transport entirely subject to the fiscal sovereignty of the State in whose territory it is located and of avoiding conflicts of tax jurisdiction with non-member countries. I therefore think it is to be preferred since, in cases where passengers have no opportunity to go ashore and make purchases, the question of a conflict arising because supplies of goods effected on board might be subject to a tax regime different from the one applicable in the non-member country would tend to be a purely hypothetical one.

IV — Conclusion

38. In the light of the foregoing considerations, I propose that the Court of Justice give the following answer to the question referred to it by the Bundesfinanzhof:

Stops made by ships in ports of non-member countries during which passengers may disembark from the vessel only for a short period, for example for sightseeing purposes, but at which they may not begin or end their journey, constitute 'stops in a third territory' within the meaning of Article 8(1)(c) of Sixth Council Directive 77/388/EEC of 17 May 1977, provided that the passengers have an opportunity to make purchases in that third territory, the application of the regime provided for in that subparagraph thereby being suspended for the duration of the stop.