On those grounds,

THE COURT (Second Chamber)

In answer to the questions submitted to it by the Bundesfinanzhof by an Order of 19 April 1977, hereby rules:

Tariff heading 49.03 and Note 5 to Chapter 49 must be interpreted as referring to children's picture books bound otherwise than in paper in which the pictures cover almost the whole page and constitute the essential means by which the meaning is conveyed whilst the short captions serve merely a simple explanatory purpose.

Sørensen Mackenzie Stuart Touffait

Delivered in open court in Luxembourg on 8 December 1977.

H. J. Eversen
Deputy Registrar

M. Sørensen
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL CAPOTORTI DELIVERED ON 17 NOVEMBER 1977 [1]

Mr President,
Members of the Court,

1. The proceedings pending before the Bundesfinanzhof of the Federal Republic of Germany which have given rise to the present case concern the tariff classification of illustrated books essentially intended for children of less than school age. The books in question each consist of 12 tear-resistent pages of paperboard containing illustrations which almost entirely fill the pages and which are accompanied by captions consisting of a few lines. The latter describe or comment on the pictures above, supplementing them in certain cases with details or ideas which are not directly supplied by the pictures themselves. Certain of these publications also have an educational purpose: for instance, to teach the child to read the face of a clock or to help it to understand the usefulness to society of certain jobs.

1 — Translated from the Italian.

Since in proceedings under Article 177 of the EEC Treaty the Court has power only to interpret Community provisions without being empowered itself to apply them to particular cases I consider it pointless to dwell on the specific characteristics of the various illustrated books, which furthermore have already been fully described in the report for the hearing.

It is sufficient with regard to the facts to add that the dispute before the German court originated in the circumstance that on 30 March 1973 the Oberfinanzdirektion (the Regional Finance Office, hereinafter referred to as 'the OFD') of the Federal Republic classified the publications at issue under tariff heading 49.03 of the Common Customs Tariff. That heading is entitled 'Children's picture books and painting books [bound otherwise than in paper]'

When the OFD rejected the complaint which the undertaking Carlsen Verlag had submitted against the abovementioned classification by the OFD, the undertaking contested that rejection before the Bundesfinanzhof, maintaining that the books in question must be reclassified under tariff heading 49.01, which is entitled 'Printed books, booklets, brochures, pamphlets and leaflets'.

By an order of 19 April 1977 the national court stayed the proceedings and submitted the following question to the Court of Justice pursuant to Article 177 of the EEC Treaty:

'How is Note 5 to Chapter 49 of the Common Customs Tariff to be interpreted? Is the question whether the pictures dominate to be decided purely quantitatively on a visual basis or is the (for example, educational) significance of the pictures to be compared to that of the text? Is it therefore to be understood that the pictures are not subsidiary to the text only if any normal person looking at the pictures can grasp their essential meaning easily even without the text or are the pictures subsidiary to the text whenever the text makes it appreciably easier to understand the pictures?'

2. As we know, the notes to the Common Customs Tariff, decided upon by the Council, are an integral part of the headings to which they relate and have the same binding effect whether they constitute an authentic interpretation of the headings or whether they supplement them (cf. in this connexion the judgment of the Court of 19 November 1975 in Case 38/75, *Nederlandse Spoorwegen* [1975] ECR 1439). It will accordingly be understood that the interpretation of such notes is of decisive weight in properly establishing the scope of the individual tariff headings. At the time when the dispute pending before the national court arose the Italian version of Note 5 to Chapter 49 of the Common Customs Tariff was worded as follows: 'For the purposes of heading 49.03, the expression "children's picture books" means books for children in which the pictures or illustrations constitute the principal interest and the essential character of the publication, whilst the text, if any, serves a simple explanatory purpose'. Although the note, thus worded, emphasizes the condition that the picture should be of greater interest than the text ('the pictures constitute the principal interest'), it was such as to give rise to doubts as to whether, when the text, instead of merely providing an explanation of the picture, adds details or information not included therein, the publication must fall outside the scope of the special heading 49.03 and come under the general heading 49.01.

Subsequently, the Nomenclature Committee of the Customs Cooperation Council, in the course of its 35th Meeting in April 1976, corrected the French wording of the note, without indicating in any way that it intended to alter the meaning thereof, bringing it

into line with the English wording which had already been formulated and brought into force four years before. The English note which was adopted in Regulation No 1/73 of the Council of 19 December 1972 was worded as follows: 'For the purposes of heading 49.03 the expression "children's picture books" means books for children in which the pictures form the principal interest and the text is subsidary'. The new wording of the French text of the note adopted by the Council in Regulation No 2732/76 of 8 November 1976 is as follows: 'On considère comme "albums ou livres d'images pour enfants" au sens du no 49.03, les albums ou livres pour enfants dont l'illustration constitue l'attrait principal et dont le texte n'a qu'un intérêt secondaire'. It is relevant that it is stated *inter alia* in the fourth recital of the preamble to that regulation (which repeats, with some modifications, all the headings and related notes of the Common Customs Tariff) that to improve the wording of certain notes 'a certain number of *drafting* amendments is justified ...'. Naturally the versions in the other languages, which were based on the French version, have been amended.

Having regard both to the fact that the English version had already been in force for some time and that the said amendment was merely intended as a correction of the wording I consider it reasonable to regard the amendment as a measure of linguistic harmonization, since it was considered that the English text expressed more clearly than the others the intention of the legislature and the legal content of the provision at issue. In my view it may thus be maintained that the content has remained unchanged and that accordingly reference may be made to Note 5 as subsequently worded in order to interpret the tariff heading in question, even for the period prior to its amendment, without thereby violating the principle that legislative provisions which impose burdens upon persons concerned shall not be retroactive.

3. The observations submitted in the course of the present procedure by the undertaking Carlsen and by the Commission have further helped to clarify the principal point to be settled: whether illustrated children's books in which the pictures are clearly more important than the text from the point of view of quantity and of their 'interest' for the young reader fall outside the special tariff heading 49.03 and come under the general heading 49.01 if the text does not merely describe the pictures or emphasize details which are already visually apparent, but is to a certain degree independent in that it supplements the pictures with additional information or ideas.

It seems to me that a comparison of the original wording of the said Note 5 to Chapter 49 of the Common Customs Tariff with the present wording shows that, even if the text accompanying pictures in a children's picture book does not merely explain the content of the pictures but adds a new element, this of itself will not lead to the exclusion of the book from heading 49.03, which constitutes the specific tariff heading for illustrated books intended for children. To be so excluded it is necessary that the written text is of interest in itself rather than being subordinated to the pictures, that is, it must also have a value and meaning independent of the pictures.

This view is confirmed by the Explanatory Notes to the Brussels Nomenclature which appear to me to bear the same meaning as Note 5 to Chapter 49 of the Common Customs Tariff, not a different one as the Bundesfinanzhof considered.

The Brussels Explanatory Notes in fact make clear that tariff heading 49.03 covers not only picture books clearly intended for the amusement of children but also those which have an educational aim (examples of the latter are books intended to impart the rudiments of the alphabet or of vocabulary), provided that

the pictures form the principal interest and that the text is only of subsidary interest. The Brussels Explanatory Notes list amongst such publications pictorial alphabet books and books in which the meaning of the narrative is conveyed by a series of pictures illustrating various episodes, accompanied by simple captions or brief explanations relating to each picture. However, the Brussels Explanatory Notes exclude from this heading books, even if profusely illustrated, which are written in the form of a continuous narrative, rather than being purely episodical, in which the pictures illustrate episodes included in that narrative; such books fall within tariff heading 49.01.

It is clear from these explanations that it is irrelevant for the purposes of classification under either of the relevant tariff headings whether the purpose of a book is exclusively to amuse the child or whether its aim is chiefly educational.

The Community provisions and the information derived from the Brussels Explanatory Notes which, although not binding, is persuasive, thus lead to an interpretation of tariff heading 49.03 which classifies under the latter all illustrated books for children in which the text, although not merely providing a description or explanation of the pictures, is none the less not such as to be of individual interest for its readers, as distinct from the pictures.

It should further be observed that this result of a literal and logical interpretation of the provisions accords with considerations of a systematic nature as well as with the practical administrative requirements of the customs authorities. Since the Common Customs Tariff provides an appropriate heading for children's picture books, that heading being distinguished under the tariff from the general heading for printed books, booklets, brochures and pamphlets, the presence of the two elements characteristic of the more specific heading — that the book is intended for children and consists more of pictures than text — must *prima facie* be held sufficient for a publication to be classified under that heading unless it is clear that the text has intrinsic value independently of the pictures. In other words, when the customs authorities are confronted with publications which largely consist of pictures they may presume that those publications fall within heading 49.03, and that presumption may be rebutted only if it is clear that the text is of greater interest than the pictures.

4. For these reasons I suggest in conclusion that the Court should reply to the request for a preliminary ruling on the interpretation of Note 5 to Chapter 49 of the Common Customs Tariff submitted to it by Order of the Bundesfinanzhof of 19 April 1977 with a ruling to the effect that in establishing whether pictures constitute the principal interest of a publication for children for the purposes of tariff classification under heading 49.03 the authorities may rely upon a presumption made according to quantitative criteria on a visual basis, which may be rebutted only if it is clear that the text forms the principal interest, that is, that it has intrinsic value independently of the pictures.