case of the carriage of goods not intended for commercial use, a declaration by the traveller accompanying the goods or in whose luggage they are contained is sufficient for those goods to be considered to be Community goods. However, if there are any objective grounds for doubting the accuracy of that declaration, the traveller must produce an internal Community transport document.

REPORT FOR THE HEARING
delivered in Case C-83/89 *

I — Facts and procedure

1. It appears from the judgment making the reference that on 4 July 1983 Mr Houben, coming from Germany, entered the territory of the Kingdom of Belgium by car having in his possession stereo equipment (made by Pioneer) installed in his car and consisting of a cassette player, an amplifier and two loudspeakers. He was charged with importing those goods into the territory of the Kingdom of Belgium without having made the declaration required by law and without having paid the duties payable by virtue of the importation in question. Criminal proceedings were brought against Mr Houben in which he was acquitted by the Rechtbank van Eerste Aanleg (Court of First Instance), Tongeren. Following his acquittal, the Ministry of Finance, the party conducting the prosecution, and the Public Prosecutor's Office brought an appeal before the Hof van Beroep (Court of Appeal), Antwerp.

2. The outcome of the dispute turns on whether or not the goods, which were made in Japan, were in free circulation in the Community and on where the corresponding burden of proof lay, so as to determine the obligation to pay customs duties.

3. Article 9(2) of the EEC Treaty provides:

'The provisions of Chapter 1, Section 1, and of Chapter 2 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.'

4. Article 10(1) of the EEC Treaty provides:

'Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not

* Language of the case: Dutch.

benefited from a total or partial drawback of such duties or charges.'

5. At the material time the following secondary legislation was in force: Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit (Official Journal 1977, L 38, p. 1) as amended by Council Regulation (EEC) No 983/79 of 14 May 1979 amending Regulation (EEC) No 222/77 on Community transit (Official Journal 1979, L 123, p. 1).

6. Article 1(1) of Regulation No 222/77 provides:

'The Community transit procedure shall apply to movement of the goods referred to in paragraphs 2 and 3 between two points situated in the Community. It includes a procedure for external Community transit and a procedure for internal Community transit.'

7. Internal Community transit covers goods which satisfy the conditions laid down in Articles 9 and 10 of the Treaty. Goods which comply with those provisions are referred to as 'Community goods' (Article 1(3)(a) of Regulation No 222/77).

8. Under Article 1(2)(a) of Regulation No 222/77, external Community transit covers 'goods which do not satisfy the conditions laid down in Articles 9 and 10 of the Treaty'.

9. An external Community transit operation is effected using the forms T1 or T1 *bis* provided for in Article 12 of Regulation No 222/77. An internal Community transit operation is carried out using the forms T2 or T2 *bis* provided for in Article 39 of Regulation No 222/77.

10. Article 1(4) of Regulation No 222/77 provides that:

'Forthe purposes of the provisions of the Treaty establishing the European Economic Community which relate to the free movement of goods, and subject to the provisions of [Article] ... 49(2) of this regulation, goods properly imported into the territory of a Member State across an internal frontier shall be deemed to be Community goods unless an external Community transit document is produced in respect thereof.'

11. According to Article 9 of Regulation No 222/77:

'Where, in the cases provided for in this regulation, the provisions of the Treaty establishing the European Economic Community which relate to free movement of goods are only applied on presentation of an internal Community transit document issued to establish the Community status of the goods, the party concerned may, for any valid reason, obtain that document subsequently from the competent authorities of the Member State of departure.'

12. Article 49(1) of Regulation No 222/77, as amended by Council Regulation No 983/79, cited above, provides that:

'The Community transit procedure shall not be compulsory for the carriage of goods accompanying travellers or contained in

their luggage, if the goods concerned are not intended for commercial use.'

13. Article 45 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (Official Journal 1983, L 105, p. 1), provides that:

'(1) Subject to Articles 46 to 49, goods contained in the personal luggage of travellers coming from a third country shall be admitted free of import duties, provided such imports are of a non-commercial nature.

(2) For the purposes of paragraph 1:

(a) "personal luggage"...

(b) "imports of a non-commercial nature" means imports which:

(i) are of an occasional nature, and

(ii) consist exclusively of goods for the personal use of the travellers or their families, or of goods intended as presents; the nature and quantity of such goods should not be such as might indicate that they are being imported for commercial reasons.'

14. Moreover, Article 49(2) of Regulation No 222/77, as modified by Regulation No 983/79, cited above, provides that:

'The provisions of the Treaty establishing the European Economic Community which relate to the free movement of goods shall apply to goods which, pursuant to paragraph 1, are not carried under the Community transit procedure:

(a) if they are declared as Community goods and there is no doubt as to the accuracy of that declaration;

(b) in other cases, if an internal Community transit document issued to establish the Community status of the goods is produced.'

15. The Court of Appeal, Antwerp, considered that the dispute concerned the interpretation of provisions of Community law and, by judgment of 10 March 1988, decided to refer the following questions to the Court of Justice for a preliminary ruling:

'May goods which have been imported from a non-member country into a Member State be regarded as being "in free circulation" when they are imported into another Member State, even if the import tax in the first Member State was not paid?

If it is assumed that goods cannot be "in free circulation" unless the import formalities have been duly completed and the customs duties paid, is it then to be presumed that those obligations have been fulfilled when the goods are found in a

Member State, or must it be presumed that those obligations are not fulfilled unless the person in possession of the goods adduces proof to the contrary?

More generally, must an importer of goods originating in a non-member country prove, when importing those goods from one Member State into another Member State, that he has paid customs duties in the first Member State so as to establish the presumption that the goods are in free circulation in the EEC?'

16. The judgment of the Court of Appeal, Antwerp, was received at the Court Registry on 14 March 1989.

17. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were submitted on 8 June 1989 by the Belgian Government, represented by Koen Lenaerts, of the Brussels Bar, and on 12 June 1989 by the Commission of the European Communities, represented by R. Barents, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, Wagner Centre, Kirchberg.

18. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. In accordance with Article 95(1) and (2) of the Rules of Procedure, it decided to assign the case to the Sixth Chamber.

II — Written observations submitted to the Court

19. The Kingdom of Belgium summarizes the facts of the case and the procedure before the national court and indicates the Belgian legislation and Community provisions which in its view are applicable.

20. With regard to the first question, the Kingdom of Belgium observes that goods originating in a non-member country which have been imported into a Member State without the import formalities having been completed and the import duties having been paid are not in free circulation.

21. Nor are they in free circulation, according to the Kingdom of Belgium, when they are re-exported to another Member State. Regulation No 222/77 draws a distinction between the internal Community transit procedure and the external Community transit procedure which, in its view, indicates that it is the payment of import duties, and not the crossing of frontiers, which determines whether goods originating in non-member countries are in free circulation.

22. As regards the second question, the Kingdom of Belgium observes that there is an obligation to declare goods under Community law, and that it follows from Article 49(2) of Regulation No 222/77 that Community law does not preclude the burden of proof lying with the importer of the goods. It also emphasizes that the form provided for in Article 49(2)(b) is the 'only' document which is stamped by the customs of the Member State of dispatch.

23. If there are any doubts at the border post about the accuracy of the declaration that the goods meet the conditions laid down in Articles 9 and 10 of the Treaty, the Kingdom of Belgium is of the opinion that the 'Community' status of those goods may be established by presentation of the 'only' document which is stamped by the customs of the Member State of dispatch (Article 49(2)(b) of Reglation No 222/77). The Kingdom of Belgium also observes that if the importer of the goods is not in possession of the document, he can still obtain it subsequently from the customs office of departure in accordance with Article 9 of Regulation No 222/77.

24. From the above, the Kingdom of Belgium concludes that under Community law it is clearly the importer who bears the burden of establishing the 'Community' status of the goods, in other words that they are in free circulation.

25. In conclusion, the Kingdom of Belgium proposes that the Court should answer the two questions referred to it by the Court of Appeal, Antwerp, as follows:

'(1) Goods which have been imported from a non-member country into a Member State are not in free circulation when they are imported into another Member State if import duty has not been paid in the first Member State.

(2) If doubts arise about whether goods which have been imported into a Member State and originate in a non-member country are in free circulation in the EEC, it is the importer who must establish, when he imports those goods from one Member State into another, that customs duties have been paid in the first Member State.'

26. The Commission observes that Regulation No 222/77 draws a distinction between internal Community transit and external Community transit. Internal Community transit covers goods which meet the conditions laid down in Articles 9 and 10 of the Treaty (Article 1(3)(a) of Regulation No 222/77). Goods which originate in Member States or in non-member countries and comply with those provisions are 'Community goods'. External Community transit covers goods which do not meet those conditions (Article 1(2)(a) of Regulation No 222/77). An external Community transit operation is effected using form T1 or T1 *bis* (Article 12 of Regulation No 222/77); an internal Community transit operation is effected using form T2 or T2 *bis* (Article 39 of Regulation No 222/77). In the Commission's view, unless the regulation in question provides otherwise, the Community transit scheme is compulsory for any movement of goods within the Community. The Commission is of the opinion, on the basis of those articles, that a T1 or T2 declaration must be made for any transportation of goods in the Community.

27. With regard to the question of how to determine whether or not goods can be regarded as 'Community' goods, the Commission observes that it follows from Article 1(4) of Regulation No 222/77 that, for the purposes of the application of Articles 9 and 10 of the Treaty, the presumption applies that goods in circu-

lation within the Community under the Community transit scheme are in free circulation, unless a T1 or T1 *bis* form proves otherwise ('principle of negative proof'). According to the Commission, that interpretation is borne out by Article 9 of the regulation which, if the goods are 'Community' goods but are not accompanied by a T2 document, allows the person concerned to obtain that document subsequently from the competent authorities of the Member State of departure.

28. The Commission mentions the case of goods which cross a frontier and come under neither the internal transit scheme nor the external transit scheme. According to the Commission, Article 49(1) of Regulation No 222/77, as amended by Regulation No 983/79, provides that the Community transit scheme is not compulsory for the carriage of goods accompanying travellers or contained in their luggage, provided that the goods concerned are not intended for commercial use, the terms 'luggage' and 'commercial use' being defined in Article 45 of Regulation No 918/83.

29. In the Commission's view, it follows from Article 1(4) of Regulation No 222/77 that the 'principle of negative proof' does not apply to that category of goods. Therefore, by virtue of that provision the 'principle of positive proof' must be applied to the category of goods in question: the traveller must prove that the goods in question are in free circulation.

30. The Commission observes that Article 49(2) lays down rules relating to the cross-frontier movement of travellers. First, travellers may furnish the evidence in question using a document which establishes the Community status of the goods and which has been drawn up for that purpose. There is also a second possibility: a simple declaration by the traveller that the goods are Community goods, without any doubt arising as to the veracity of that declaration.

31. According to the Commission, Article 10(1) of the Treaty lays down three cumulative conditions which must be met for goods coming from a non-member country to be in free circulation in a Member State. If one of those conditions is not met, namely if the customs duties which are payable have not been paid, the goods in question are not in free circulation. They are not therefore Community goods and they can be in circulation in the Community only under the external Community transit procedure. Therefore, when they enter a Member State a T1 or T1 *bis* document must be produced.

32. In the Commission's view, the fact that goods originate in a non-member country is not a reason to regard those goods as not having been placed in free circulation. If there is no T2 L document, it can if necessary be requested subsequently. Although Article 49 of Regulation No 222/77, as amended, is applicable and although the Community transit scheme is not compulsory, a traveller must furnish actual evidence that the goods which he is transporting in his luggage are 'Community' goods. In practice that means that the traveller must have on him supporting documents, for example an invoice, which establish the 'Community' status of the goods in question.

33. The Commission proposes that the Court should reply to the questions referred to it by the Court of Appeal, Antwerp, as follows:

'(1) Goods which originate in a non-member country and which are properly imported from one Member State into another Member State are considered to be in free circulation, unless an external Community transit document is produced for those goods.

(2) (a) The person in possession of such goods is not obliged to furnish evidence that the conditions laid down in Article 10(1) of the EEC Treaty have been met.

(b) If goods are part of a traveller's luggage within the meaning of Article 49(1) of Council Regulation No 222/77, the traveller must furnish evidence that the conditions laid down in Article 10(1) of the EEC Treaty have been met.'

C. N. Kakouris
Judge-Rapporteur