surrounding temperature in a given space and to regulate the degree of humidity of the air in that space, or which are at least intended and make it possible to adjust the level of humidity which is merely the automatic result of the temperature selected. It does not apply to machines made solely for the purpose of changing the temperature of the surrounding atmosphere, where the degree of humidity of that atmosphere changes only as an automatic result, which can neither be regulated nor adjusted, of the temperature.

4. In so far as the concept of relative humidity corresponds to that of the degree of humidity, the expression "for changing the temperature and humidity of air" means changing the relative humidity.

In Case 11/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tariefcommissie, Amsterdam, for a preliminary ruling in the action pending before that court between

J. CLETON EN CO. B.V., Rotterdam,

and

INSPECTEUR DER INVOERRECHTEN EN ACCIJNZEN (Inspector of Customs and Excise), Rotterdam,

on the interpretation of subheading 84.15-B and heading 84.12 of the Common Customs Tariff.

THE COURT (First Chamber),

composed of: J. Mertens de Wilmars, President of Chamber, A. O'Keeffe and T. Koopmans, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The judgment making the reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

At the beginning of 1976 Cleton en Co., the plaintiff in the main action, declared to the customs administration in Rotterdam a number of mechanical appliances from non-member countries under subheading 84.15-B of the Common Customs Tariff.

The tariff subheading in question is part of heading 84.15 (which belongs to Chapter 84 of the Common Customs Tariff: Boilers, machinery and mechanical appliances; parts thereof) and reads as follows:

"84.15: Refrigerators and refrigerating equipment (electrical and other):

A. Evaporators and condensers, excluding those for domestic refrigerators

B. Other . . ."

At that time such classification implied a conventional rate of duty of 5%. The imported appliances, which in the invoices were referred to as "Thermo King Transport Refrigeration Units", are used for cooling and most frequently also for heating the load compartments of lorries and containers. They consist of a compressor, a condenser and a motor, which are mounted in a housing outside the load compartment, and a ventilator and evaporator mounted in a housing within the load compartment whilst the evaporator includes a defrosting unit and a drip pan. Both housings are linked by bolts and leads and thus form a single unit.

The Inspector of Customs and Excise, Rotterdam, the defendant in the main action, after checking, classified the appliances under tariff heading 84.12 (air-conditioning machines, self-contained, comprising a motor-driven fan and elements for changing the temperature and humidity of air). Such a classification makes the imported appliances subject to a conventional rate of duty of 8%.

On 10 November 1976 Cleton brought an action disputing that decision before the Tariefcommissie (Administrative Court of Last Instance in Revenue Matters), Amsterdam, claiming in particular that the purpose of the appliances in question coincides with the object referred to in subheading 84.15-B (Refrigerators and refrigerating equipment (electrical and other)) namely, refrigeration and/or freezing, whilst heading 84.12 (air-conditioning machines) refers to machinery having a quite different purpose, namely air-conditioning.

According to the Inspector it follows from an explanatory note of the Customs Co-operation Council (Brussels Con-

vention) relating to heading 84.12 that the machinery in question must be classified under that heading since the note speaks amongst other things of equipment comprising:

"...

or a cold-water coil or a refrigerator unit evaporator (either of which changes both the temperature and, by condensation, the humidity of the air);

or ..."

The Inspector referred also to a letter from the Staatssecretaris von Financiën" [Secretary of State for Finance] of 5 April 1977 informing the appellant that the Committee on Common Customs Tariff Nomenclature of the European Communities had issued a classification opinion of 2 February 1977 classifying under heading 84.12 appliances of the Thermo King make, type Super N.W.D., for cooling/heating the load compartments of lorries. The Inspector concluded from this that appliances whose purpose is solely to modify the temperature of closed spaces but which at the same time, because of the change of temperature, bring about a change in the humidity of the air, should be considered as "air-conditioning machines" within the meaning of heading 84.12.

However, in his written observations the Inspector points out that the Tariefcommissie was mistaken in attributing the classification opinion in question to the Committee on Common Customs Tariff Nomenclature. It emanated in fact from the Benelux authorities.

The Tariefcommissie, Amsterdam, took the view that the proceedings raised questions concerning the interpretation of Community law and therefore by a judgment of 12 December 1978, received at the Court Registry on 22 January 1979, referred the following questions to the Court of Justice for a preliminary ruling:

"1. Should heading 84.12 of the Tariff be interpreted as meaning that the words 'air-conditioning' in conjunction with the words 'changing the temperature and humidity of air' also include the maintenance by mechanical or other means of a pre-selected temperature, coupled with a change in the humidity which is not intended and cannot be regulated?

If the answer to the first question is in the affirmative:

2. Should heading 84.12 of the Tariff be interpreted as meaning that the words 'air-conditioning' should be understood to include the maintenance by mechanical or other means of only a pre-selected lowering of the temperature, coupled with a change in the humidity which is not intended and cannot be regulated?

If the answer to the first question is in the negative:

3. What is then to be understood under the term 'humidity' used in heading 84.12? Is the term to be understood as meaning relative humidity or absolute humidity?"

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, the defendant in the main action and the Commission of the European Communities submitted written observations.

On 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.

By an order of 30 May 1979 it decided, in pursuance of Article 95 of the Rules of Procedure, to assign this case to the First Chamber of the Court.

II — Observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations of the defendant in the main action (Inspector of Customs and Excise)

The Inspector of Customs and Excise points out that the classification opinion referred to in the letter from the Secretary of State for Finance of 5 April 1977, to which reference is made in the order of the Tariefcommissie referring the matter to the Court of Justice (pp. 8 and 9) did not emanate, as is stated in the order, from the Committee on Common Customs Tariff Nomenclature, but from the Benelux authorities.

According to that classification opinion (Benelux), the following come under heading 84.12:

"An air-conditioning machine for the load compartment of a lorry (in which for example perishable foodstuffs are transported) or for other closed spaces which consists of a sheet steel box in which or on which are attached a motor-driven fan and a refrigeration unit (compressor, condenser and evaporator).

By virtue of its reversible action the machine can both cool and heat the load compartment, whilst through the presence of the evaporator, the humidity of the air may be changed."

The Committee on Common Customs Tariff Nomenclature, for its part, expressed the Community point of view on the classification of the goods in question in the EEC Explanatory Note relating to tariff heading 84.12, contained in the Explanatory Notes to the Common Customs Tariff on the occasion of the 11th amending supplement to such notes on 1 January 1978.[1]

B — Observations of the Commission

First and second questions

The Commission states that it will attempt to reply to the questions which have been submitted not only on the basis of an interpretation related to the wording of the Common Customs Tariff but also of an analysis of the provisions capable of being used as instruments for such an interpretation.

(a) In the Commission's view appliances coming under heading 84.15 are such as are intended solely for refrigeration and/or freezing. If, in addition to producing low temperatures, an appliance fulfils a further function consideration should be given to the question whether it does not come under another heading. In considering heading 84.12 the Commission stresses two factors: a motor-driven fan and a device for changing the temperature, which is also capable of changing the humidity.

1 — The Community Explanatory Note reads as follows:

"84.12 — Air-conditioning machines, self-contained, comprising a motor-driven fan and elements for changing the temperature and humidity of air.

Air-conditioning machines which are not equipped with a device for selecting the degree of humidity of air are included in this heading, provided that the machines comply with the criteria in the Explanatory Notes to the CCC Nomenclature, heading No 84.12.

This heading therefore covers 'cooling/heating units for trailers' which cool or heat the load compartments of lorries as well as change the humidity of the air by condensation."

It takes the view that the purpose of the fan is to propel into the air the result of the process carried out by the machine. If a machine for the production of low temperatures were provided with a fan this would constitute an indication that the machine does more than simply produce and/or maintain low temperatures. As regards a change in humidity which is not intended and cannot be regulated, the Commission observes that subjective factors cannot be taken into account for the tariff classification of goods and that only the objective properties must be considered.

With regard to the question whether the change of temperature must consist solely of cooling or whether there must be also a possibility of heating, in the Commission's view there is no doubt that an appliance which is intended both to refrigerate and to heat and which furthermore is covered by the definition given with regard to heading 84.12 comes under that heading. However, appliances which cannot heat but only refrigerate must also come under that heading because they correspond to the concept of "air-conditioning".

In any event, in this case, application should be made of the rule set out in Title I of the first part of the Annex to Regulation No 950/68 of 28 June 1968 (Journal Officiel L 172, p. 1) on the Common Customs Tariff and more specifically in Chapter A: General Rules for the interpretation of the Nomenclature of the Common Customs Tariff, Rule 3 (a). Under that rule, goods which are classifiable under two or more headings must be classified in such a way that "the most specific description shall be preferred to headings providing a more general description". The Commission takes the view that in this case heading 84.12, which provides the most specific description should be preferred to heading 84.15.

(b) Apart from the wording of the headings of the Common Customs Tariff the Commission refers also to documents which may serve as means of interpretation for the Common Customs Tariff and in particular the Explanatory Notes to the Common Customs Tariff adopted by the Committee on Common Customs Tariff Nomenclature and the Explanatory Notes adopted by the Customs Co-operation Council within the framework of the international Convention on Nomenclature for the Classification of Goods in Customs Tariffs, known as the Brussels Convention.

On 7 November 1977 the Committee on Common Customs Tariff Nomenclature adopted the following Explanatory Note in relation to heading 84.12:

"Air-conditioning machines which are not equipped with a device for selecting the degree of humidity of air are included in this heading, provided that the machines comply with the criteria in the Explanatory Notes to the CCC Nomenclature, heading No 84.12.

This heading therefore covers 'cooling/heating units for trailers' which cool or heat the load compartments of lorries as well as change the humidity of the air by condensation."

From this the Commission deduces that the appliances in question come under heading 84.12.

The Explanatory Notes to heading 84.12, adopted in 1969 by the Customs Co-operation Council, contain in particular the following passages:

"The heading applies *only* to machines which are:

(1) Equipped with a motor-driven fan or blower; *and*

(2) Designed to change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air; *and*

(3) Self-contained, that is, comprise the elements mentioned in (1) and (2) in a common housing, on a common chassis, etc.

In these machines the elements for humidifying or drying the air may be separate from those for heating or cooling it. However, certain types incorporate only a single unit which changes both the temperature and, by condensation, the humidity of the air. These air-conditioning machines cool and dry (by condensation of water vapour on a cold coil) the air of the room in which they are installed, or, if they have an outside air intake (damper), a mixture of fresh air and room air. They are generally provided with drip pans to catch the condensate.

From the structural point of view the air-conditioning machines of the present heading must therefore incorporate, in addition to the motor-driven fan or blower for circulating the air, *at least* the following elements:

...

or a cold water coil or a refrigerator unit evaporator (either of which changes both the temperature and, by condensation, the humidity of the air);

or ..."

It emerges from the above document that machines coming under heading 84.12:

— Need not necessarily refrigerate and heat but that one of the two elements is sufficient;

— Sometimes include a single element, for example the evaporator of a refrigerating machine, which at the same time changes the temperature and, by condensation, the humidity of the air.

Third question

In view of the answer which it suggests should be given to the first two questions the Commission takes the view that there is no need for it to consider the third question submitted.

On the basis of the foregoing, the Commission suggests that the questions submitted by the Tariefcommissie, Amsterdam, should be answered as follows:

"1. Tariff heading 84.12 of the Common Customs Tariff must be interpreted as meaning that the expressions 'elements for changing the temperature and humidity of air' include also an element such as the evaporator of a machine intended to produce low temperatures, which at the same time changes the temperature and, by condensation, the humidity of the air.

2. In this respect it is of no importance that the change of temperature is obtained by an appliance intended for refrigeration and heating or by an appliance intended solely for refrigeration."

III — Oral procedure

At the hearing on 21 June 1979 the plaintiff in the main action, represented by W. Rycken, of the Brussels Bar, and the Commission of the European Communities, represented by its Agent, M. Beschel, assisted by A. Haagsma, presented oral argument. Their comments concerned mainly the technical features of the machines concerned. In reply to the question whether "a simple refrigerator coming

within heading 84.15 changes or is capable of changing the humidity of the air which it contains", the plaintiff in the main action stated that refrigeration units and air conditioners undoubtedly share some common features by virtue of the fact that they both contain cooling elements. Nevertheless it is possible to distinguish between the two types of apparatus on the basis of objective technical features, according to the purpose which they are designed to fulfil.

The Commission, however, concludes from the description given by the plaintiff in the main action in its publicity material concerning the Thermo-King refrigeration unit, which mentions "cooling/heating unit for trailer", that these are in fact refrigeration and heating units.

The Advocate General delivered his opinion at the hearing on 13 September 1979.

Decision

1 By a judgment of 12 December 1978, which was received at the Court Registry on 22 January 1979, the Tariefcommissie referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions concerning the interpretation of heading 84.12 of the Common Customs Tariff.

2 According to the judgment making the reference these questions arose in the course of an action between the Cleton undertaking — the plaintiff in the main action — and the customs authorities of the Netherlands concerning the tariff classification of machines called "Thermo-King Transport Refrigeration Units", imported from a non-member country. These machines, of which there are about 20 types, differing according to their capacity and motor power, were imported, and are used mostly for cooling or heating the load compartments in lorries, containers and other means of transport; only two types (XKW 10 and 20) can be used for cooling alone.

3 The plaintiff in the main action declared the machines under subheading B of tariff heading 84.15 which reads as follows: "Refrigerators and refrigerating equipment (electrical and other): A. Evaporators and condensers, excluding

those for domestic refrigerators; B. Other ...", and gives rise to a conventional rate of duty of 5%. The competent inspector amended the declaration, however, and classified the machines under heading 84.12: "Air-conditioning machines, self-contained, comprising a motor-driven fan and elements for changing the temperature and humidity of air". This heading gives rise to a conventional rate of duty of 8%.

4 The plaintiff in the main action disputed this classification, claiming that the machines were designed purely to regulate the temperature inside the compartments and not the degree of humidity of the air. It is true, it adds, that owing to the laws of physics any change in temperature in the surrounding atmosphere alters the degree of humidity of the air, but so far as the machines in question are concerned this is an unsought effect, which is even considered undesirable, and which the machines in question are not capable of regulating.

5 In order to settle the dispute the national court has referred three questions to the Court.

In the first question it asks:

"1. Should heading 84.12 of the Tariff be interpreted as meaning that the words 'air-conditioning' in conjunction with the words 'changing the temperature and humidity of air' also include the maintenance by mechanical or other means of a pre-selected temperature, coupled with a change in the humidity which is not intended and cannot be regulated?"

If the answer to the first question is in the affirmative, the Tariefcommissie asks:

"2. Should heading 84.12 of the Tariff be interpreted as meaning that the words 'air-conditioning' should be understood to include the maintenance by mechanical or other means of only a pre-selected lowering of the temperature, coupled with a change in the humidity which is not intended and cannot be regulated?"

The third question, to be answered if the reply to the first question is in the negative, is:

"3. What is then to be understood under the term 'humidity' used in heading 84.12? Is the term to be understood as meaning relative humidity or absolute humidity?"

6 The Netherlands customs authorities argue that the question whether the machines in question are specially designed to have this humidifying or dehumidifying effect or, on the contrary, this is merely a result of changes in temperature, has no bearing on their classification. In both cases, the relevant tariff heading is heading 84.12. They base this view on the wording of both the Explanatory Notes of the Customs Co-operation Council relating to heading 84.12 (1975 version) and the Explanatory Notes to the Common Customs Tariff of the European Communities relating to that heading and published in the 12th amending supplement (1 July 1978) to those notes. The competent inspector also drew the attention of the national court to the wording of the minutes of a meeting of the Tariff Commission of the Benelux Economic Union of 20 and 21 December 1966 according to which the machines in question should be classified under heading 84.12, but it is now agreed that this is not decisive although it does give an indication of the practice which has been followed by the customs authorities since 1966.

7 The Commission takes the same view as the Netherlands authorities as regards the conclusions to be drawn from the Explanatory Notes of the Customs Co-operation Council and those of the Common Customs Tariff of the European Communities. It also emphasizes the necessity of establishing simple objective criteria for distinguishing between one customs heading and another. This requirement means that subjective criteria such as whether a machine was designed to produce a particular effect or not, must be avoided in favour of objective criteria which are readily verifiable, such as the fact that a given effect is in fact produced by a machine, whether or not it is intended.

First question

8 According to the wording of heading 84.12 itself, it covers only machines "for changing the temperature and humidity" (voor het wijzigen van temperatuur en vochtigheid). This wording excludes from the ambit of this heading an apparatus which is only designed to regulate temperature, if the alteration in the degree of humidity of the air in the surrounding atmosphere

is merely the result of temperature changes in that atmosphere which is automatic, unsought, and which cannot be regulated. By using the words "for changing the temperature and humidity" the customs heading envisages machines permitting the selection of, on the one hand, a given and suitable temperature and, on the other hand, a given and suitable degree of humidity which is not solely the result of the temperature which has been obtained.

9 This interpretation is confirmed by the Explanatory Notes drawn up by the Customs Co-operation Council which, as the Court has confirmed on a number of occasions, are, in the absence of specific provisions of Community law, an authoritative source for interpreting the headings to the Common Customs Tariff. According to those notes, heading 84.12 "covers certain apparatus for maintaining required conditions of temperature and humidity in enclosed spaces . . .". It explains further that the heading applies only to machines which are "(1) . . . (2) Designed to change both the temperature (a heating or cooling element or both) and the humidity (a humidifying or drying element or both) of air, and (3) . . .". It also states that the heading excludes "apparatus which, although self-contained and incorporating a motor-driven fan, has the sole function of changing either temperature or humidity of the air . . .".

10 It is true that it is stated in the same Explanatory Note that the elements for humidifying or drying the air may or may not, according to the circumstances, be separate from those for heating or cooling it. "Certain types incorporate only a single unit which changes both the temperature and, by condensation, the humidity of the air. These air-conditioning machines cool and dry (by condensation of water vapour on a cold coil) the air of the room in which they are installed . . .". This explanation need not, however, alter the interpretation set out above, for the wording reveals that even if the unit in question is the only one, it must in every case include a special element, for example a cold coil, which is intended in particular to condense the water vapour.

11 The Commission also refers to "the Explanatory Notes to the Customs Tariff of the European Communities" relating to heading 84.12, which were drawn up in 1977 and read as follows:

"Air-conditioning machines, self-contained, comprising a motor-driven fan and elements for changing the temperature and humidity of air.

Air-conditioning machines which are not equipped with a device for selecting the degree of humidity of air are included in this heading, provided that the machines comply with the criteria in the Explanatory Notes to the CCC Nomenclature, heading No 84.12.

This heading therefore covers "cooling/heating units for trailers" which cool or heat the load compartments of lorries as well as change the humidity of the air by condensation".

12 Since, as the Court has stated, the Explanatory Notes drawn up by the Customs Co-operation Council are an authentic source for interpretation only in the absence of specific provisions of Community law, the question might arise whether — subject to the observation that they, too, are merely an interpretative instrument of an administrative nature — the European Communities' Notes on the Common Customs Tariff should not be preferred to those of the Customs Co-operation Council.

13 However, this question does not need to be answered in order to give a reply to the national court. It is expressly stated in the notice which precedes the Explanatory Notes to the Customs Tariff of the European Communities that they are not intended to replace the Explanatory Notes of the Customs Co-operation Council but only to supplement them. Consequently, the note in question must be interpreted in the light of the one which has been commented on above. It follows from both notes that a single device which serves to regulate both the temperature and the degree of humidity comes under heading 84.12 provided that it does enable them both to be regulated. For heading 84.12 to apply it is not necessary to have a special device for regulating the degree of humidity of the air provided that the single device includes an element which at least makes it possible, if necessary, to adjust the degree of humidity which results automatically from the temperature sought and obtained.

14 The foregoing observations also show that the argument put forward by the Commission based on the need to classify goods under the Common Customs Tariff on the basis of their objective characteristics, in the interests of legal certainty and administrative convenience, must be rejected. That principle of interpretation, the importance of which has been acknowledged by the Court, is not called in question by the interpretation which has been adopted because the latter implies that in order to fall within the sphere of heading 84.12 — even if the apparatus does not have separate devices for regulating temperature and humidity — it must at least have an element making it possible to adjust the degree of humidity of the air, resulting automatically from the temperature which the apparatus is intended to establish.

15 Establishing the existence of such elements involves the application by the relevant authorities of objective, not subjective, judgment and presents no more difficulty than that involved in establishing the existence of the other elements described in the notes concerning heading 84.12.

16 The reply to the first question should therefore be that heading 84.12 of the Common Customs Tariff applies only to machines which include elements designed both to alter the surrounding temperature in a given space and to regulate the degree of humidity of the air in that space, or which are at least intended and make it possible to adjust the level of humidity which is merely the automatic result of the temperature selected. It does not apply to machines made solely for the purpose of changing the temperature of the surrounding atmosphere, where the degree of humidity of that atmosphere changes only as an automatic result, which can neither be regulated nor adjusted, of the temperature.

Questions 2 and 3

17 The second question has been put by the national court only in case the first question should be answered in the affirmative. There is accordingly no need to answer it. However, in case the first question should be answered in the negative, the Court is asked how the term "humidity" in heading 84.12 should be interpreted, and in particular whether it is to be understood as meaning absolute humidity or relative humidity.

18 According to the evidence submitted to the Court absolute humidity is the quantity of water vapour actually present per unit of volume of the surrounding atmosphere at a given moment, whereas relative humidity is the ratio between that actual quantity and the maximum quantity of water vapour which that atmosphere is capable of holding, the absolute humidity being the numerator, and the maximum quantity the denominator, of that fraction.

19 It would appear from this explanation that the term "relative humidity" referred to by the national court corresponds to that of the degree of humidity. That being so, the expression "for changing the temperature and humidity of air" in heading 84.12 means changing the relative humidity.

Costs

20 The costs incurred by the Commission of the European Communities which has submitted observations to the Court are not recoverable. As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the questions referred to it by the Tariefcommissie, Amsterdam, by a judgment of 12 December 1978, received at the Court on 22 January 1979, hereby rules:

1. Heading 84.12 of the Common Customs Tariff applies only to machines which include elements designed both to alter the surrounding temperature in a given space and to regulate the degree of humidity of the air in that space, or which are at least intended and make it possible to adjust the level of humidity which is merely the

automatic result of the temperature selected. It does not apply to machines made solely for the purpose of changing the temperature of the surrounding atmosphere, where the degree of humidity of that atmosphere changes only as an automatic result, which can neither be regulated nor adjusted, of the temperature.

2. **In so far as the concept of relative humidity to which the national court has referred corresponds to that of the degree of humidity, the expression "for changing the temperature and humidity of air" means changing the relative humidity.**

Mertens de Wilmars O'Keeffe Koopmans

Delivered in open court in Luxembourg on 4 October 1979.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 13 SEPTEMBER 1979

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Tariefcommissie of the Netherlands. There is pending before that tribunal an appeal by J. Cleton en Co. B.V., of Rotterdam, which I shall call for short "Cleton", against a decision of the Inspector of Customs and Excise at Rotterdam ("Inspecteur der Invoerrechten en Accijnzen te Rotterdam") as to the classification under the Common Customs Tariff, the "CCT", of certain goods imported by Cleton into the Netherlands in March and April 1976.

Those goods were machines, described in the invoices as "Thermo-King transport refrigeration Units", which are used to cool and often also to heat the