JUDGMENT OF THE COURT (Fifth Chamber)
11 July 2002 *

In Case C-371/99,

REFERENCE to the Court under Article 234 EC by the Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the proceedings pending before that court between

Liberexim BV

and

Staatssecretaris van Financiën,

on the interpretation of Article 7(3) of the Sixth Council Directive (77/338/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax (OJ 1992 L 384, p. 47),

* Language of the case: Dutch.

THE COURT (Fifth Chamber),

composed of: P. Jann, President of the Chamber, D.A.O. Edward and A. La Pergola (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Liberexim BV, by R.G.A. Tusveld and G.J. van Slooten, belastingadviseurs,

— the Netherlands Government, by M.A. Fiersta, acting as Agent,

— the Italian Government, by U. Leanza, acting as Agent, and I.M. Braguglia, avvocato dello Stato,

— the Commission of the European Communities, by J.C. Schieferer, acting as Agent, and J. Stuyck, avocat,

having regard to the Report for the Hearing,

after hearing the oral observations of the Netherlands Government, represented by H.G. Sevenster, acting as Agent; of the United Kingdom Government, represented by R. Magrill, acting as Agent, and by M. Hall, barrister; and of the Commission, represented by J.C. Schieferer and J. Stuyck, at the hearing on 13 September 2001,

after hearing the Opinion of the Advocate General at the sitting on 27 November 2001,

gives the following

Judgment

1 By order of 23 June 1999, received at the Court on 4 October 1999, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Article 7(3) of the Sixth Council Directive (77/338/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax (OJ 1992 L 384, p. 47; 'the Sixth Directive').

2 Those questions were raised in proceedings between Liberexim BV ('Liberexim') and the Staatssecretaris van Financiën concerning the obligation on Liberexim to pay value added tax ('VAT') on consignments of milk powder on the ground that they had been imported irregularly into the Netherlands.

Community legislation

Fiscal provisions

3 Under Article 2(2) of the Sixth Directive, the importation of goods is subject to VAT.

4 Article 7 of the Sixth Directive, headed 'Imports', states:

'1. "Importation of goods" shall mean:

(a) the entry into the Community of goods which do not fulfil the conditions laid down in Articles 9 and 10 of the Treaty establishing the European Economic Community...

...

2. The place of import of goods shall be the Member State within the territory of which the goods are when they enter the Community.

3. Notwithstanding paragraph 2, where goods referred to in paragraph 1(a) are, on entry into the Community, placed under one of the arrangements referred to in Article 16(1)(B) [(a), (b), (c) and (d)], under arrangements for temporary importation with total exemption from import duty or under external transit arrangements, the place of import of such goods shall be the Member State within the territory of which they cease to be covered by those arrangements'.

5 The first and second paragraphs of Article 10(3) of the Sixth Directive provide:

'The chargeable event shall occur and the tax shall become chargeable when the goods are imported. Where goods are placed under one of the arrangements referred to in Article 7(3) on entry into the Community, the chargeable event shall occur and the tax shall become chargeable only when the goods cease to be covered by those arrangements.

However, where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and the tax shall become chargeable when the chargeable event for those Community duties occurs and those duties become chargeable.'

Customs provisions

6 The Customs Convention on the international transport of goods under cover of TIR carnets, signed in Geneva on 14 November 1975 ('the TIR Convention'), was approved on behalf of the European Economic Community by Council Regulation (EEC) No 2112/78 of 25 July 1978 (OJ 1978 L 252, p. 1). Article 36 of the TIR Convention states:

'Any breach of the provisions of this Convention shall render the offender liable, in the country where the offence was committed, to the penalties prescribed by the law of that country.'

7 Article 37 of the TIR Convention provides that '[w]hen it is not possible to establish in which territory an irregularity was committed it shall be deemed to have been committed in the territory of the Contracting Party where it is detected'.

8 Article 11(1) of Council Regulation (EEC) No 2726/90 of 17 September 1990 on Community transit (OJ 1990 L 262, p. 1) which comes under Chapter 1, headed 'Procedure', of Title V, headed 'External Community transit', states as follows:

'The principal shall be responsible for:

(a) production of the goods intact and the T1 document at the office of destination by the prescribed time-limit and with due observance of the measures adopted by the competent authorities to ensure identification;

(b) observance of the provisions relating to the Community transit procedure;

(c) payment of duties and any other charges due as a result of an offence or irregularity committed in the course of or in connection with a Community transit operation.'

9 Article 21(1), (2) and (3) of that regulation provide:

'1. If seals are broken in the course of carriage without the carrier's so intending, the carrier shall, as soon as possible, request that a certified report be drawn up by the competent authorities in the Member State in which the means of transport is located. The authorities concerned shall, if possible, affix new seals.

2. In the event of an accident necessitating transfer to another means of transport, Article 20 shall apply.

3. In the event of imminent danger necessitating immediate unloading of the whole load or of part of the load, the carrier may take action on his own initiative. He shall record such action on the T1 document. Paragraph 1 shall apply in such a case.'

10 Article 22 of that regulation provides:

'1. The goods and the T1 document shall be produced at the office of destination.

2....

3. A Community transit operation may be concluded at an office other than that mentioned in the T1 document. That other office shall then become the office of destination.

4. Where the goods are produced at the office of destination after expiry of the time limit prescribed by the office of departure and where this failure to comply with the time limit is due to circumstances which are explained to the satisfaction of the office of destination and are not attributable to the carrier or the principal, the latter shall be deemed to have complied with the time limit prescribed.'

11 Article 23 of Regulation No 2726/90 states: '[t]he Community transit operation shall end when the goods and the corresponding T1 document are produced at the office of destination'.

12 Article 34(1) of that regulation, which comes under Chapter 4, headed 'Irregularities', of Title V, provides:

'1. When it is found that, in the course of a Community transit operation, an offence or irregularity has been committed in a particular Member State, the recovery of duties or other charges which may be chargeable shall be effected by that Member State in accordance with Community or national provisions, without prejudice to the institution of criminal proceedings.'

13 Article 34(2) and (3) of Regulation No 2726/90 sets out the criteria for determining which Member State is competent to effect such a recovery where it is not possible to establish the place where the offence or irregularity has been committed.

14 Article 2(1)(c) and (d) of Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt (OJ 1987 L 201, p. 15) which appears in Part A, headed 'Customs debt on importation', of Title I, headed 'Incurrence of customs debt', is worded as follows:

'A customs debt on importation shall be incurred by:

...

(c) the removal of goods liable to import duties from the customs supervision involved in the temporary storage of the goods or their being placed under a customs procedure which involves customs supervision;

(d) the non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or non-compliance with a condition to which the placing of the goods under that procedure is subject, unless it is established that these failures have no significant effect on the correct operation of the temporary storage or customs procedure in question'.

15 Article 3(c) and (d) of Regulation No 2144/87 state:

'The moment when a customs debt on importation is incurred shall be deemed to be:

...

(c) in the cases referred to in Article 2(1)(c), the moment when the goods are removed from customs supervision;

(d) in the cases referred to in Article 2(1)(d), either the moment when the obligation, non-fulfilment of which causes the customs debt to be incurred, ceases to be met, or the moment when the goods were placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure was not in fact fulfilled'.

The main proceedings and the questions submitted by the national court

16 In October and November 1993 consignments of milk powder originating in Lithuania were shipped to the Netherlands. On two occasions transport from Lithuania was effected under cover of the TIR carnets referred to in Article 3(b) of the TIR Convention ('TIR carnets'), and on seven occasions it was effected from the border of the Community customs area under cover of the T1 documents referred to in Article 15 of Regulation No 2726/90 ('T1 documents').

17 Those consignments were loaded in Lithuania into vehicles consisting of a tractor with a semi-trailer, both registered in that country. The consignments transported under cover of TIR carnets entered the Community customs area in Germany in accordance with the prescribed formalities and then continued under cover of those carnets. After being loaded onto the abovementioned vehicles, the other consignments were brought by ferry into the Community customs area for importation into Germany under customs supervision after arrival. A customs agent established in the port of arrival made a declaration of external Community transit in respect of those latter consignments.

18 In accordance with the relevant provisions, the registration numbers of the tractor and semi-trailer were entered on the TIR carnets and the T1 documents.

19 The TIR carnets and the T1 documents stated that the consignments of milk powder were to be transported to Portugal. However, those goods were taken to a site in Germany, near the Dutch border, where, without the customs authorities

being informed, the semi-trailer was detached from the original tractor and attached to a tractor bearing Dutch number plates.

20 The goods were then taken to the Netherlands. They were not presented, with the TIR carnets or T1 documents pertaining to them, at the customs offices of destination shown on those carnets and documents, as required by Article 22(1) of Regulation No 2726/90, or at an office of destination in the Netherlands.

21 The goods were sold to Liberexim, which resold them to another Dutch company, and were then taken, on behalf of the latter company, to storage facilities in the Netherlands.

22 Taking the view that Article 18(1)(c) of the Wet op de omzetbelasting 1968 (1968 Law on Turnover Tax) was applicable, since the consignments of milk powder had ceased to be covered by a customs arrangement in the Netherlands, the Inspecteur Belastingdienst/Douane district Arnhem (tax and customs inspector, Netherlands) required Liberexim, by letter of 26 January 1996, to pay NLG 70 676.10 by way of VAT.

23 After the objection lodged with that authority by Liberexim was dismissed, it then brought an action before the Gerechtshof te Arnhem (Regional Court of Appeal, Arnhem).

24 By judgment of 18 March 1998, the Gerechtshof dismissed Liberexim's action. It found, first, that under Article 18 of the Wet op de omzetbelasting 1968 the chargeable event for an import of goods occurs, in particular, when the goods

cease to be covered by a customs arrangement in the Netherlands and, second, that the goods at issue in the main proceedings had ceased to be covered by the external Community transit arrangements in the Netherlands and not in Germany, as Liberexim had maintained.

25 Liberexim appealed in cassation to the Hoge Raad der Nederlanden. It claimed that the VAT had become chargeable in Germany because it had been intended from the outset to transport the goods to a destination other than that shown in the TIR carnets and the T1 documents. Consequently, the conditions set out in the external Community transit arrangements had not been met.

26 In those circumstances, the Hoge Raad der Nederlanden decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) What is to be understood by the words "cease to be covered" by the external transit arrangements within the meaning of Article 7(3) of the Sixth Directive, if such cessation does not occur in a regular manner — that is to say, otherwise than by the goods being declared for free circulation:

(a) is this the first operation which is carried out in relation to the goods contrary to any provision connected with those arrangements, and is it relevant whether in this operation there is an intention to bring the goods — *inter alia* through completion of the operation — into circulation within the Community contrary to that provision; or

(b) does such cessation occur (only) once the goods — in the present case following breaking of the seals — have been unloaded from the means

of transport without compliance with the obligation to produce the goods with documentation at the office of destination in accordance with Article 22(1) of Regulation [No 2726/90] on Community transit; is it relevant whether in this operation there is an intention to bring the goods — *inter alia* through completion of the operation — into circulation within the Community contrary to the Community provisions; or

(c) should the words "cease to be covered" be construed as referring to the totality of the operations which result in the goods being brought into circulation within the Community otherwise than in a regular manner?

(2) If the answer to the first question is in accordance with (c) above, where does this cessation occur: at the place where the first irregular operation is carried out, or at the place where a subsequent operation is carried out, in particular the place where the goods — in the present case following breaking of the seals — are unloaded from the means of transport?'

The questions referred by the national court

27 By its two questions, which should be considered together, the national court is essentially asking which operation determines the time and the place at which goods transported by road under the external Community transit arrangements cease to be covered by those arrangements within the meaning of Article 7(3) of the Sixth Directive, where those goods are brought onto the Community market after a number of illegal operations have been carried out in various Member States. The national court also asks whether an operation capable of causing goods to cease to be covered by the external transit arrangements must, in order to have such an effect, be performed with the intention to put the goods into circulation in the Community without observing the applicable provisions of Community law.

28 As a preliminary point, it is clear from the order for reference that the goods concerned in the main proceedings entered the Community under two different arrangements, namely the external Community transit arrangements and the arrangements under the TIR Convention. However, in its questions, the national court refers only to the external Community transit arrangements.

29 As the Advocate General pointed out in that regard in point 92 of his Opinion, the relevant provisions of the TIR Convention are analogous to the corresponding provisions of Regulation No 2726/90. The analysis in this judgment of the provisions of the external Community transit arrangements should therefore be applied to the arrangements under the TIR convention.

The time and place at which goods cease to be covered by the external Community transit arrangements

30 The national court mentions, in particular, three ways of determining the point at which goods cease to be covered by the external Community transit arrangements within the meaning of Article 7(3) of the Sixth Directive. First, the cessation may occur in the Member State where the goods are unloaded from the vehicle — after the seals, if any, have been broken — without complying with the obligation to present the goods at the office of destination, in breach of Article 22(1) of Regulation No 2726/90. Second, the cessation may be deemed to have occurred in the Member State where the first operation in relation to those goods is carried out in contravention of any requirement of those arrangements. Finally, cessation may follow from the completion of all such operations but, if that were to be the case, it would be necessary to determine the place where the cessation occurs.

31 According to Liberexim, goods cease to be covered by the external Community transit arrangements within the meaning of Article 7(3) of the Sixth Directive

upon the performance of the first operation in respect of those goods which contravenes any provision connected with those arrangements. In the case at issue in the main proceedings, the goods ceased to be covered by those arrangements in Germany when the semi-trailer was detached from the tractor.

32 The Netherlands and United Kingdom Governments and the Commission submit that in order to determine the place where goods cease to be covered by the external Community transit arrangements and where the import duty on those goods is incurred for the purposes of Article 7(3) of the Sixth Directive it is necessary to determine the place where the customs debt is incurred.

33 In that regard, they submit that in order to determine the place where the customs debt is incurred, reference must be made to Regulation No 2144/87 and, in particular, to the situations provided for in Article 2(1)(c) and (d) thereof.

34 More specifically, the United Kingdom Government submits that if an operation covered by Article 2(1)(c) or (d) of Regulation No 2144/87 is carried out in respect of the goods, a customs debt is incurred and that fact cannot be affected by any subsequent event. In the case at issue in the main proceedings the customs debt was incurred in Germany and therefore the goods ceased to be covered by the external transit arrangements in Germany, since the change of tractor can be regarded as a removal of the goods from customs supervision just as much as non-compliance with one of the conditions for placing the goods under those arrangements.

35 By contrast, the Netherlands Government considers that points (c) and (d) of Article 2(1) of Regulation No 2144/87 are mutually exclusive alternatives. Once it has been found that an operation constituting removal of the goods from customs supervision within the meaning of Article 2(1)(c) has been carried out, it ceases to be of any relevance whether a later operation could in theory give rise to

a customs debt under Article 2(1)(d). According to the Netherlands Government, it follows that in the case at issue in the main proceedings, the customs debt was incurred in the Netherlands when the goods were unloaded from the vehicle since that operation constituted a removal of the goods from customs supervision.

36 The Italian Government submits that only actions which show an unambiguous intention on the part of the person concerned to dispose of goods subject to particular customs arrangements, without previously carrying out the customs formalities prescribed for that purpose, are such as to cause those goods to cease to be covered by those arrangements. Therefore defects of a purely formal nature, which can be rectified at a later date, cannot give rise to a customs debt or, consequently, to a tax liability. The mere change of tractors cannot, in the absence of unequivocal evidence of an intention to remove the goods from customs supervision and not to present them at the office of destination, be regarded as an operation causing those goods to cease to be covered by the customs arrangements to which they were subject. In the case at issue in the main proceedings, the goods thus ceased to be covered by arrangements under the TIR Convention and the external Community transit arrangements in the Netherlands, where they were unlawfully placed on the market, outside the supervision of the customs authorities.

37 The Commission considers that, first, not every failure to comply with the external Community transit arrangements necessarily results in the goods concerned ceasing to be covered by those arrangements. A failure in compliance which has no significant effect on the correct operation of such arrangements does not give rise to any customs debt or, consequently, to any import duty. Second, the first operation which impairs the customs supervision and which is not remedied in accordance with the provisions of Regulation No 2726/90 causes the goods to cease to be covered by the external Community transit arrangements. If the customs supervision is impaired by a series of irregular operations, the decisive operation is the first one which cannot be regarded as a minor violation of those arrangements.

38 In order to answer the national court's questions and to determine the place and time at which goods cease to be covered by the external Community transit arrangements within the meaning of Article 7(3) of the Sixth Directive following a number of illegal operations in respect of those goods in various Member States, it is first necessary to determine whether that matter is covered by the customs provisions referred to in that provision and in particular by Regulation No 2726/90.

39 The provisions of that regulation, in particular Title V governing the external Community transit procedure, do not specify which irregularities are capable of causing goods to cease to be covered by that customs arrangement.

40 Articles 21 and 22 of Regulation No 2726/90 set out a number of circumstances, generally beyond the control of the transporter or principal, in which, although one of the obligations under the external Community transit arrangements has not been fulfilled, those arrangements nevertheless continue to apply, provided that a specific explanation is given or an additional formality is carried out.

41 Article 34(1) of that regulation merely provides that when in the course of a Community transit operation, an offence or irregularity has been committed and detected in a particular Member State, 'the recovery of duties or other charges which may be chargeable' is to be effected by the Member State on whose territory the offence or irregularity was committed.

42 It follows from that provision that, in principle, where an irregularity falling within the scope of Regulation No 2726/90 is committed on the territory of a Member State and detected by the authorities of that State, those authorities must effect the recovery of duties and other charges.

43 However, as the Advocate General pointed out in point 49 of his Opinion, it is not possible to determine from Article 34 the time or the place at which goods cease to be covered by the customs arrangements or, in consequence, which Member State is competent to recover the resultant duties and charges where, as is the case in the main proceedings, a number of irregularities or offences have been committed successively in more than one Member State.

44 Second, when Article 7(3) of the Sixth Directive — in so far as it refers to the customs arrangements for the suspension of, or exemption from, import duties in order to determine the point at which the tax liability is incurred — is read in conjunction with Article 11(1)(c) and Article 34(1) of Regulation No 2726/90 — in so far as they refer to the obligation to pay duties and other charges which may become due following an offence or irregularity committed in the course of, or in connection with, a Community transit operation — it becomes apparent that the place where the goods cease to be covered by the customs arrangement envisaged by Article 7(3) of the Sixth Directive is not only the place where the tax liability is incurred pursuant to that directive but also the place where the customs debt is incurred.

45 Therefore, in order to answer the national court's questions, reference must be made to Article 2(1) of Regulation No 2144/87, which determines the situations in which a customs debt is incurred, and, in particular, given the circumstances underlying the dispute in the main proceedings, to points (c) and (d) of that provision.

46 Article 2(1)(c) of Regulation No 2144/87 provides that the removal of goods from customs supervision gives rise to a customs debt on importation. Under Article 2(1)(d) of that regulation the non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from the use of the customs procedure or from non-compliance with a condition to which the placing of the

goods under that procedure is subject, has the same effect, unless it is established that those failures have no significant effect on the correct operation of the customs procedure in question.

47 Article 3 of that regulation determines the time and thus the place at which the customs debt is incurred in the cases referred to in Article 2(1)(c) and (d) of Regulation No 2144/87.

48 It follows from those provisions that where an irregularity occurs and is detected on the territory of a Member State, the competent authorities of that Member State must effect recovery of the duties if that irregularity constitutes a removal of the goods from customs supervision.

49 If, on the other hand, the irregularity consists of non-fulfilment of one of the obligations arising under a customs procedure or non-compliance with a condition to which the placing of the goods under that procedure is subject, the competent authorities may examine the transit operation in its entirety in order to determine whether the irregularity has had any significant effect on the correct operation of the customs procedure in question. If there has been no such effect, that irregularity will not necessarily cause the goods to cease to be covered by the transit arrangements.

50 However, where a number of irregularities of the kind which fall within the scope of Article 2(1)(c) and (d) of Regulation No 2144/87 have been committed in various Member States, those provisions do not specify which of those irregularities is decisive for determining the time and place where the customs debt is incurred.

51 In that respect, it must be observed, first, that the fact that goods have been placed under the external Community transit arrangements implies that those goods must be placed under customs supervision from the start of operations on Community territory until the recovery of import duties which fall due as a result of the goods ceasing to be covered by those arrangements.

52 Second, it follows from the provisions of Regulation No 2726/90, in particular Articles 21, 22 and 34, and from Article 2(1)(c) and (d) and Article 3 of Regulation No 2144/87 that the first operation carried out in contravention of the external Community transit arrangements does not necessarily cause the goods to cease to be covered by those arrangements, and that an irregularity which constitutes a removal of the goods from customs supervision always gives rise to a customs debt and, thus, to the goods ceasing to be covered by those arrangements.

53 Accordingly, in a situation such as is at issue in the main proceedings, the time and place at which the goods cease to be covered by the external Community transit arrangements is necessarily the time and place at which the first irregularity which can be regarded as a removal of the goods from customs supervision was committed.

54 In order to determine whether an operation constitutes a removal of the goods in question from customs supervision, reference must be made to Case C-66/99 *D. Wandel* [2001] ECR I-873. The new customs provisions interpreted in that judgment, which are laid down in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), have not affected the interpretation of the expression 'removal from customs supervision' used in Regulation No 2144/87, which was applicable at the material time in the main proceedings.

55 According to paragraph 47 of the judgment in *D. Wandel* that 'removal' must be understood as encompassing any act or omission the result of which is to prevent,

if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from monitoring them as provided for by the Community customs rules.

56 In circumstances such as those in the main proceedings, irregularities committed in a Member State in breach of the provisions of Regulation No 2726/90, consisting of breaking the seals, unloading the goods and placing them on the market, constitute a removal of the goods from customs supervision and therefore cause the goods to cease to be covered by the external Community transit arrangements. On the other hand, as the Advocate General pointed out in point 81 of his Opinion, the fact that the original tractor was previously replaced by a new tractor in another Member State, without the seals being broken and without unloading or transhipment of the goods, would not have prevented the competent customs authority from carrying out, where appropriate, its supervisory function.

57 In view of the foregoing considerations, the reply to the national court on this point must be that where goods, transported by road under the external Community transit arrangements, are placed on the Community market after a number of irregularities have been committed in respect of those goods in various Member States, the goods cease to be covered by those arrangements, within the meaning of Article 7(3) of the Sixth Directive, on the territory of the Member State where the first operation which can be regarded as a removal of the goods from customs supervision was carried out.

Any act or omission which prevents, if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from monitoring them as provided for by the Community customs rules must be regarded as a removal of the goods from customs supervision.

The relevance of intent

58 The national court also asks whether an operation which is capable of causing goods to cease to be covered by the external Community transit arrangements under Article 7(3) of the Sixth Directive must, in order to have that effect, be carried out with the intention of putting the goods into circulation in the Community in contravention of the applicable Community provisions.

59 According to Liberexim, intent is a necessary component. By contrast, the Netherlands and the United Kingdom Governments and the Commission submit that it is of no relevance whether an operation was or was not carried out with the intention of removing the goods from customs supervision and unlawfully putting them into circulation in the Community.

60 Bearing in mind the observations made in paragraph 54 of this judgment, it need simply be noted that at paragraph 48 of the judgment in *D. Wandel* the Court held that removal of goods from customs supervision does not require intent, but only that certain objective conditions be met.

61 The reply to the national court on this point must therefore be that removal of goods from customs supervision does not require intent, but only that certain objective conditions be met.

Costs

62 The costs incurred by the Netherlands, Italian and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Hoge Raad der Nederlanden by order of 23 June 1999, hereby rules:

1. Where goods, transported by road under the external Community transit arrangements, are placed on the Community market after a number of irregularities have been committed in respect of those goods in various Member States, the goods cease to be covered by those arrangements within the meaning of Article 7(3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating

to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax, on the territory of the Member State where the first operation which can be regarded as a removal of the goods from customs supervision was carried out.

Any act or omission which prevents, if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from monitoring them as provided for by the Community customs provisions must be regarded as a removal of the goods in question from customs supervision.

2. Removal of goods from customs supervision does not require intent, but, instead, only that certain objective conditions be met.

Jann Edward La Pergola

Delivered in open court in Luxembourg on 11 July 2002.

R. Grass P. Jann

Registrar President of the Fifth Chamber