In Case 105/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry] for a preliminary ruling in the action pending before that court between

PAKVRIES BV (a limited liability company), carrying on business as a customs agent, which has its registered office at Rotterdam,

and

MINISTER FOR AGRICULTURE AND FISHERIES, The Hague,

on the interpretation of Article 59 of Regulation (EEC) No 542/69 of the Council of 18 March 1969 on Community transit,

THE COURT (Fourth Chamber)

composed: T. Koopmans, President of Chamber, K. Bahlmann, P. Pescatore, A. O'Keeffe and G. Bosco, Judges,

Advocate General: C. O. Lenz
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the 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 written procedure

In December 1976 and January 1977 Pakvries BV, a limited liability company

whose registered office is at Rotterdam, submitted, in its capacity as customs agent, to the Collector of Customs and Excise at Rotterdam T 1 transit declarations, which are documents issued under the external Community transit procedure laid down by Regulation (EEC) No 542/69 of the Council of 18 March 1969 on Community transit (Official Journal, English Special Edition 1969 (I), p. 125), which was applicable at the material time but has now been replaced by Council Regulation (EEC) No 222/77 of 13 December 1976 (Official Journal 1977, L 38, p. 1). The declarations covered the transport by road of six consignments of beef originating in Argentina and stored at Rotterdam, with Rotterdam as the office of departure and Milan as the office of destination.

Title II of Regulation No 542/69 sets out in detail the procedures for external Community transit. In particular Article 12 (1) and (3) provide that goods are to be covered by a T 1 declaration signed by the person who requests permission to carry out the transit operation or by his authorized representative and that at least three copies of the declaration must be produced at the office of departure. Article 17 (1) provides that the office of departure is to register the T 1 declaration and prescribe the period within which the goods must be produced at the office of destination. Article 13 requires the goods to be presented intact at the office of destination within the prescribed period and Article 26 provides that the office of destination is to record the details of controls on the copies of the T 1 document and send a copy to the office of departure.

It is established that the goods for which Pakvries made the declarations were never produced at the office of destination in Milan. An investigation conducted by the Fiscale Inlichtingen en Opsporingsdienst [Netherlands Fiscal Intelligence and Investigation Branch] revealed that the goods and had been put into free circulation irregularly in Belgium and that the documents returned to the Collector at Rotterdam bore false information and forged endorsements.

Article 36 (1) of Regulation No 542/69 provides that:

"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 its provisions laid down by law, regulation or administrative action, without prejudice to the institution of criminal proceedings."

It is clear from that provision that where goods have been unlawfully put into free circulation in a Member State the authorities of that State have the power to take the necessary steps to recover any amounts due.

However, Article 59 of Regulation No 542/69 provides that:

"In derogation from this regulation, Belgium, Luxembourg and the Netherlands may apply to the Community transit documents the agreements concluded or to be concluded between them with a view to reducing or abolishing frontier formalities at the Belgo-Luxembourg and Belgo-Netherlands frontiers."

Article 5 of the Supplementary Protocol, containing special provisions on taxation,

to the Benelux Convention of 29 April 1969 on cooperation in administrative and criminal matters in the context of the arrangements relating to the attainment of the aims of the Benelux Economic Union provides that:

(1) Where a document issued or validated for use in more than one country is not discharged or only incompletely discharged, the goods covered by that document shall be subject to the duties, excise and other charges that are payable on account of the failure to discharge or completely to discharge a national document of that kind in the country for which the Benelux document was issued or validated in which the total amount of those charges is the highest.

(2) The duties, excise and other charges as well as any fines due on account of the non-discharge or incomplete discharge shall be recovered for its own account by the country in which the document was issued or validated.

(3) If it as ascertained in which countries the goods have been placed in the situation of goods in respect of which the relevant dues have been paid, those goods shall, in derogation from paragraph (1), be subject to the duties, excise and other charges applicable in that country. If the document was not issued or validated in that country, the proceeds of the unconsolidated charges shall, in derogation from paragraph (2), be paid to that country.

Hence by virtue of the provisions in force within the Benelux Economic Union it is for the State in which the documents were issued to commence recovery proceedings where goods have been put into free circulation unlawfully.

On 19 September 1979 the Collector of Customs and Excise at Rotterdam, applying uniform Benelux law, sent to Pakvries six requests for payment under the Beschikking Landbouwheffingen- en -restitutieregime [Agricultural Levies and Refunds Rules] 1968 notifying it that it owed agricultural levies totalling HFL 695 945.30.

On 17 October 1979 Pakvries lodged applications with the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry] seeking annulment of those decisions. It does not dispute the fact that the goods were never produced at the office of destination in Milan, or that they were irregularly put into free circulation in Belgium or that the endorsements and declarations on the copies of the T 1 documents returned to the Rotterdam office were false. However, it does contest the authority to act of the Netherlands customs office, relying on Article 36 (1) of Regulation No 542/69; Pakvries submits that the Belgian authorities themselves have in fact commenced recovery proceedings.

The Netherlands Minister for Agriculture and Fisheries, the defendant in the proceedings before the College van Beroep voor het Bedrijfsleven, has submitted that the applications should be rejected. He maintains that the Netherlands authorities have competence by virtue of Article 5 of the Supplementary Protocol to the Benelux Convention in conjunction with Article 59 of Regulation No 542/69.

The College van Beroep voor het Bedrijfsleven considered that in order to rule upon the applications it needed to know the scope of the derogation in favour of Benelux law contained in Article 59 and by order dated 20 May 1983 decided pursuant to Article 177 of the EEC Treaty to stay the proceedings until the Court of Justice had given a preliminary ruling on the following question:

Must Article 59 of Regulation (EEC) No 542/69, as worded and in force before 1 July 1977, be interpreted as meaning that the Netherlands may apply a Benelux agreement to a Community transit document, in so far as that agreement provides, in derogation from Article 36 (1) of Regulation No 542/69, that action to recover charges must be taken by the Benelux country in which the document was issued, even if it is found that an irregularity was committed in the course of Community transit in another Benelux country?

The order for reference of the College was registered at the Court on 3 June 1983.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 17 August 1983 by the Commission of the European Communities, represented by H. van Lier, a member of its Legal Department, assisted by P. V. F. Bos, Advocate at Amsterdam, on 26 August 1983 by Pakvries, represented by J. M. F. Finkensieper, tax consultant, Amsterdam, and on 6 September 1983 by the Government of the Kingdom of the Netherlands, represented by I. Verkade, Secretary General at the Ministry of Foreign Affairs.

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. It did however ask the Commission and the Netherlands Government to reply in writing to a number of questions, which they did within the prescribed period.

By an order of 7 December 1983 pursuant to Article 95 (1) and (2) of the Rules of Procedure, the Court assigned the case to the Fourth Chamber.

II — Written observations submitted to the Court

After pointing out that it is involved in the main proceedings only as holder of the documents and was not associated in any way with the irregularities found, *Pakvries*, the plaintiff in the main proceedings, argues that the proceedings for the recovery of charges brought against it by the Netherlands authorities are contrary to Article 36 (1) of Regulation No 542/69 which confers authority to recover them on the Belgian authorities. Article 59 of the regulation cannot derogate from Article 36 in this case for a number of reasons.

(a) It is clear from the wording of Article 59 itself that its effect is obviously limited to intra-Benelux frontier formalities. The Benelux transit arrangements may derogate from the Community rules only in order to abolish

controls and formalities at intra-Benelux frontiers. There can be no derogation from fundamental rules such as those contained in Article 36 governing the powers of the Member States and the law applicable to recovery.

(b) The T 1 documents were drawn up with Italy as destination and for transit via the Netherlands, Belgium and France; their effect was not confined to the Benelux countries. Article 36 (1) of the regulation therefore overrides Article 5 of the Supplementary Protocol which is by its nature confined to internal Benelux matters.

(c) Article 36 of Regulation No 542/69 regulates exhaustively the powers of the Member States to recover charges. By virtue of the principle of the primacy of Community law confirmed by the case-law of the Court of Justice, the regulation overrides Benelux law unless the regulation itself makes express provision for rules derogating from it: Article 59 does not however contain such a derogation for the recovery of duties. Nor is Article 36 rendered inapplicable by the combined provisions of Article 3 (1) and (3); that article allows goods to be carried under cover of documents other than the Community documents only within the Benelux area itself. As the destination of the consignments in question in this case was Italy and they were despatched under cover of T 1 documents, they are governed entirely by the Community regulation. Moreover, Article 3 (2) provides that the Community measures, and consequently the rules on recovery laid down in Article 36, remain applicable.

(d) The conclusion must be that Article 36 of Regulation No 542/69 prevails over the derogating provisions contained in Article 5 of the Supplementary Protocol to the Benelux Convention of 29 April 1969, containing special provisions on taxation.

Pakvries submits that that conclusion is reinforced by the consideration that for reasons related to the organization of the Netherlands courts the arrangements laid down in the Protocol to the Benelux Convention make judicial process impossible in the event of a dispute with the Netherlands authorities.

The *Netherlands Government* observes that the request for a preliminary ruling raises a question of principle concerning the relationship between Community law and Benelux law regarding the recovery of charges and levies. More specifically, the question is whether the Netherlands is empowered to bring the recovery proceedings in question pursuant to a Benelux agreement and in derogation from the provisions of Community law, in particular Article 36 of Regulation No 542/69.

(a) According to Article 233 of the EEC Treaty, the provisions of the EEC Treaty do not preclude the existence of an economic union between the Benelux countries. Article 59 of Regulation No 542/69 merely applies that principle to a particular field; it allows the Benelux countries to apply the agreements concluded between them to Community transit documents. Article 36 of the regulation is rendered inapplicable by virtue of Article 59 since relevant arrangements have been adopted within the Benelux Union.

(b) To understand the factual and legal background of the case it is necessary to examine the relevant Benelux provisions. In this regard the Netherlands Government points out that the question submitted to the Court concerns solely the applicability of Benelux law and not its interpretation which is exclusively a matter for the national court or the Benelux Court of Justice.

The Benelux Convention to which the Supplementary Protocol is annexed is an agreement within the meaning of Article 59 of Regulation No 542/69. Consequently Article 5 (2) of that protocol applies instead of Article 36 of the regulation.

Article 5 of the Supplementary Protocol contains provisions for the recovery of charges and levies payable in respect of Benelux documents. A Community customs document may also be considered a Benelux document since any document valid in one or more Benelux countries is considered a Benelux document.

Paragraphs (1) and (2) of Article 5 of the Supplementary Protocol determine in which of the Benelux countries and up to what amount dues are to be recovered. In an economic union such arrangements are indispensable to avoid disputes as to which country is empowered to effect recovery.

What is more, Article 5 of the Protocol ensures that there is no advantage to be gained by paying duties in the Benelux country in which they are the lowest. As far as the abolition of customs barriers is concerned, those arrangements clearly go further than the relevant Community legislation.

(c) The Netherlands Government concludes that it is clear from the relevant provisions of Community law, namely Article 233 of the EEC Treaty and Articles 36 and 59 of Regulation No 542/69, and from Article 5 of the Supplementary Protocol, containing special provisions on taxation, to the Agreement on cooperation in administrative and criminal matters as part of the arrangements relating to the realization of the aims of the Benelux Economic Union that the proceedings to recover duties payable in respect of a failure to discharge Community customs documents, which in this case must also be considered Benelux documents, must be brought in accordance with Benelux law.

The *Commission* considers that the question raised by the College van Beroep concerns the relationship between Article 233 of the EEC Treaty and the rules of the Benelux Economic Union. More specifically, the question is whether Article 5 of the Supplementary Protocol to the Benelux Convention of 29 April 1969 overrides Article 59 in conjunction with Article 36 (1) of Regulation No 542/69.

(a) The basis of the Court's jurisdiction to rule upon that question is unquestionably Article 233 of the EEC Treaty; the case involves a conflict between Benelux law and Community law which is implicitly envisaged by that provision.

(b) To determine the relationship between Article 59 of the regulation and Article 5 of the Protocol it is necessary to consider Article 59 and 36 (1) in context and construe them with reference to the Benelux Economic Union and arrangements adopted in implementation thereof.

The aim of the Benelux Union is the unification of the territories of the

three member countries as regards administrative and criminal jurisdiction in several specific fields. The Convention sets out the detailed arrangements for that unification.

In the field of taxation it is accomplished by the Supplementary Protocol, Article 5 of which contains special rules for the recovery of duties, excise and other charges where customs documents are not discharged or only incompletely discharged. It provides that where an irregularity is found, recovery of the duties is a matter for the country in which the documents were issued. The involvement of only one authority simplifies recovery and contributes to the territorial unification of the Benelux countries.

It is illogical to allow the Benelux countries, on the basis of Article 59 of the regulation, to cease to require production of transit documents at intra-Benelux frontiers in conformity with the Benelux provisions and yet not also empower them, when irregularities are discovered, to recover duties in accordance with other Benelux provisions. Although Article 59 does not expressly empower the Benelux countries to apply Article 5 of the Protocol in derogation from Article 36 (1) of the regulation, it does, in view of Article 233 of the EEC Treaty, give them implicit authority to do so for the sake of the territorial unification and administrative simplification which the Benelux Economic Union seeks to achieve.

That interpretation is borne out by the rationale of Article 59 of Regulation No 542/69 itself. That provision attributes greater importance to the documents issued by the Benelux country of departure. Those documents suffice for the entire duration of Benelux transit and the documents required for transit in the rest of the Community are unnecessary for carriage within Benelux. As only one country is responsible for issuing documents for Benelux transit, it is only logical, in view of the administrative purpose of Article 59, to give that country responsibility for recovering any charges due if irregularities are discovered.

(c) The Commission suggests that the question submitted to the Court should be answered as follows:

Article 59 of Regulation No 542/69, as worded and in force before 1 July 1977, must be interpreted as meaning that the Netherlands may apply to a Community transit document Article 5 of the Supplementary Protocol, containing special provisions on taxation, to the Benelux Convention of 29 April 1969 on cooperation in administrative and criminal matters as part of the arrangements relating to the realization of the aims of the Benelux Economic Union if an irregularity is found to have been committed in another Benelux country during Community transit.

III — Answers to questions asked by the Court

In reply to the questions addressed to them by the Court at the end of the written procedure, the Netherlands Government and the Commission submitted the answers summarized below.

The first question concerns the view that Article 59 of Regulation No 542/69 and Article 5 of the Supplementary Protocol to the Benelux Convention can relate only to internal Benelux matters so that when goods are for a destination in

another Member State, in this case Italy, Article 36 of Regulation No 542/69 applies.

(a) In its reply the *Netherlands Government* points out that for the implementation of the Benelux Economic Union, the Convention of 29 April 1969 on the unification of the Benelux customs territory created, as regards import duties, a customs union in which a common tariff of import duties is applied and no import duties are charged on internal trade.

Article 2 of that Convention provides that for the purposes of import duty the customs legislation governing the movement of goods is to apply in the Benelux territory and at its external frontiers. The Convention of 29 April 1969 on cooperation in administrative and criminal matters as part of the arrangements relating to the realization of the aims of the Benelux Economic Union contains general provisions for that common customs territory. The aim of the Supplementary Protocol, which is applicable to customs, excise and turnover-tax legislation, is to establish cooperation in administrative and criminal matters within the Benelux Customs Union. The existence of the Union was taken into account when the EEC Treaty was framed; Article 19, for instance, refers to four customs territories, one of which is the Benelux.

In addition, Article 233 of the EEC Treaty provides that, to the extent to which the objectives of the Benelux regional union are not attained by application of the EEC Treaty, the provisions of the Treaty shall not preclude the existence or completion of the Benelux Union; furthermore, the rules adopted in implementation of the EEC Treaty take account of the application of the Benelux provisions.

Article 3 of Regulation No 542/69, under which each Member State may provide for the application of a national procedure instead of the external or internal Community transit procedure during the carriage of goods within its territory, states that the territory of the Benelux Economic Union is to be considered the territory of one Member State. Consequently, in Community transit operations, no transit advice note is issued when an intra-Benelux frontier is crossed and therefore administrative arrangements have to be adopted between the Benelux countries, especially for the purpose of recovering duties and so forth in the event of irregularities.

Article 5 of the Supplementary Protocol provides that where goods are carried through one or more Benelux countries they must be accompanied by Benelux documents. Any "international" document valid in two or more Benelux countries is considered a Benelux document. Hence in appropriate cases a T document also falls within the ambit of the Benelux arrangements and the provisions of the Protocol apply as regards the recovery of dues within the Benelux area. This means therefore that if goods intended for a destination outside the Benelux area are accompanied by a Community document, that document is also considered a Benelux document during the goods' passage through the territory of the Benelux countries. It therefore makes no

difference whether the destination of the goods was a Benelux country or Italy.

(b) The *Commission* observes that Article 233 of the EEC Treaty and Article 59 of Regulation No 542/69 both constitute recognition in Community law of the unity of the Benelux territory with regard to the reduction or abolition of formalities on crossing frontiers within Benelux. As the Benelux constitutes one single territory for that purpose, documents are no longer required for the transit of goods from one Benelux country to another. Article 59 of the regulation makes this simplification possible by allowing the application of Benelux agreements aimed at reducing or abolishing formalities on crossing frontiers within Benelux.

It would be unacceptable in practice to distinguish, amongst the agreements derogating from the regulation, widely defined is agreements concluded "with a view to reducing or abolishing frontier formalities at the Belgo-Luxembourg and Belgo-Netherlands frontiers", between provisions which strictly are intended only to reduce or abolish formalities at internal frontiers and provisions which regulate responsibility for recovering duties and other charges due in consequence of an infringement or irregularity. In that case Benelux unification could go no further than the application of provisions to reduce or abolish internal frontier formalities in the narrow sense of the word; the procedure within Benelux for the recovery of duties and charges would no longer be carried out in accordance with the Benelux provisions, which are logically applicable, but would have to be carried out in accordance with the Community rules. That cannot be the intendment or logical consequence of Article 59 of Regulation No 542/69, especially when read together with Article 233 of the EEC Treaty.

Basically Pakvries's argument amounts to the application of a test based on the destination of the goods in order to decide whether Article 5 of the Supplementary Protocol may be applied. That test is impracticable. The decisive factor should be, not the goods' destination, which can easily change during transit, but the place where the goods were actually put into circulation, if this was done lawfully, or the place where they are deemed in law to have been put into circulation. Both the Community rules and the Benelux provisions are based on this test. Having to investigate the destination of goods might lead to surprises for the Benelux customs authorities in recovery proceedings; the destination test is an open invitation to abuses.

The argument that Community law overrides Benelux law is immaterial in this case as Article 59 of Regulation No 542/69 specifically provides for a derogation in the case of Benelux law.

Alternatively it could be argued that the provisions laid down by law, regulation or administrative action in accordance with which a Member State must, as provided for in Article 36 (1) of Regulation No 542/69, recover duties or other charges payable include the provisions concerning the recovery of dues set out in Article 5 of the Supplementary Protocol, for Benelux law

forms part of the provisions laid down by law, regulation and administrative action of the Netherlands.

Asked to explain why it considers the application of the provisions contained in Article 5 of the Supplementary Protocol to the Benelux Convention indispensable for the proper functioning of the Benelux Economic Union and why the application in a transit case such as this of Article 36 of Regulation No 542/69 might disturb the normal operation of that union, the *Netherlands Government* points out that the Benelux Convention and the Supplementary Protocol govern administrative cooperation within the Benelux Union. Article 5 of the Protocol determines which of the three countries is to commence recovery proceedings and the national tariffs applicable. In certain circumstances a Netherlands administrative authority might recover national duties and charges on the basis of the Belgian or Luxembourg tariffs, which demonstrates further-reaching cooperation and integration than that existing in the EEC. Article 59 of Regulation No 542/69 recognizes Benelux economic unification and states that, by way of derogation, Benelux arrangements apply to Community documents. The necessary corollary of this is cooperation in administrative and criminal matters within the Benelux Union including regulation of cooperation in matters of administrative law and of supervision of compliance. In particular, close administrative cooperation is necessary since by virtue of Article 3 of Regulation No 542/69 the Benelux is considered a single customs territory.

In reply to the question whether goods imported into one Benelux country and having as their destination another Benelux country are regarded as goods in transit within the meaning of Regulation No 542/69 and are consequently carried under cover of a T 1 document and what the situation would have been if the goods in question had been imported with Belgium or Luxembourg as their destination instead of Italy, the *Netherlands Government* states that in principle such goods are to be regarded as goods in Community transit within the meaning of Regulation No 542/69 and are carried under cover of a T document. However, this also means that Benelux rules are applicable; a T document is considered a Benelux document during carriage through Benelux territory and, for the purposes of the arrangements for the recovery of dues, falls under the Benelux provisions. It makes no difference in this regard whether the destination of the goods is one of the other Benelux countries or Italy.

IV — Oral procedure

At the sitting on 29 February 1984 the Government of the Kingdom of the Netherlands, represented by Adriaan Bos, Deputy Legal Adviser at the Ministry of Foreign Affairs, and the Commission, represented by P. V. F. Bos, assisted by Raymond Genette, Principal Administrator in the Customs Union Service, presented oral argument and answered questions put by the Court.

The Advocate General delivered his opinion at the sitting on 28 March 1984.

Decision

1 By order dated 20 May 1983, which was received at the Court on 3 June 1983, the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 59 of Regulation (EEC) No 542/69 of the Council of 18 March 1969 on Community transit (Official Journal, English Special Edition 1969 (I), p. 125), with a view to obtaining clarification regarding a conflict between the Community transit rules and the Benelux transit arrangements, to which Article 59 of Regulation No 542/69 refers.

2 According to the order for reference, in December 1976 and January 1977 the plaintiff in the main action, Pakvries BV, a limited liability company whose registered office is at Rotterdam, submitted, in its capacity as customs agent, to the Collector of Customs and Excise at Rotterdam T 1 transit documents, as provided for by Regulation No 542/69, covering the transport by road of six consignments of beef originating in Argentina, with Rotterdam as the office of departure and Milan as the office of destination.

3 It is established that the abovementioned goods were never produced at the office of destination in Milan. An investigation conducted by the Fiscale Inlichtingen en Opsporingsdienst [Netherlands Fiscal Intelligence and Investigation Branch] revealed that they had been put into free circulation irregularly in Belgium and that the documents returned to the Collector at Rotterdam bore false information and forged endorsements.

4 The Collector of Customs and Excise at Rotterdam, applying provisions of law in force in the Benelux Economic Union, namely the Convention of 29 April 1969 on cooperation in administrative and criminal matters in the context of the arrangements for the attainment of the aims of the Benelux Economic Union and, more particularly, Article 5 (2) of the Supplementary Protocol thereto, containing special provisions on taxation (Tractatenblad van het Koninkrijk der Nederlanden [Collection of Treaties and Conventions of the Kingdom of the Netherlands] 1969, No 124), took

action to recover agricultural levies from Pakvries and sent it demands for payment amounting in total to HFL 695 945,30.

5 The plaintiff claimed that the Netherlands Customs Office had no authority to recover the levies, relying on Article 36 of Regulation No 542/69, of which paragraph (1) provides as follows:

"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 its provisions laid down by law, regulation or administrative action, without prejudice to the institution of criminal proceedings."

Since the goods were put into free circulation in Belgium, the authorities competent to effect recovery are therefore, in Pakvries's view, the Belgian customs authorities.

6 The Netherlands authorities, on the other hand, relied on Article 59 of the regulation, which is worded as follows:

"In derogation from this regulation, Belgium, Luxembourg and the Netherlands may apply to the Community transit documents the agreements concluded or to be concluded between them with a view to reducing or abolishing frontier formalities at the Belgo-Luxembourg and Belgo-Netherlands frontiers."

7 In their view, duties and charges which have been evaded must therefore be recovered in accordance with the provisions in force within the Benelux Economic Union. These are laid down in Article 5 of the Supplementary Protocol to the Benelux Convention of 29 April 1969. That article provides as follows:

(1) Where a document issued or validated for use in more than one country is not discharged or only incompletely discharged, the goods covered by that document shall be subject to the duties, excise and other charges that are payable on account of the failure to discharge or completely to discharge a national document of that kind in the country for which the Benelux document was issued or validated in which the total amount of those charges is the highest.

(2) The duties, excise and other charges as well as any fines due on account of the non-discharge or incomplete discharge shall be recovered for its own account by the country in which the document was issued or validated.

(3) If it is ascertained in which country the goods have been placed in the situation of goods in respect of which the relevant dues have been paid, those goods shall, in derogation from paragraph (1), be subject to the duties, excise and other charges applicable in that country. If the document was not issued or validated in that country, the proceeds of the unconsolidated charges shall, in derogation from paragraph (2), be paid to that country.

The Netherlands authorities take the view that, according to that provision, they are therefore competent to recover the levies.

8 In Order to resolve the dispute, the College van Beroep submitted the following question to the Court for a preliminary ruling:

Must Article 59 of Regulation (EEC) No 542/69, as worded and in force before 1 July 1977, be interpreted as meaning that the Netherlands may apply to a Community transit document a Benelux agreement which provides, in derogation from Article 36 (1) of that regulation, that action to recover charges must be taken by the Benelux Country in which the document was issued, even if it is found that an irregularity was committed in the course of Community transit in another Benelux Country?

9 The plaintiff in the main proceedings believes that Article 59 of Regulation No 542/69 applies only to internal Benelux matters. The exception provided for therein cannot therefore extend to a case in which goods are in transit to another Member State, in this case Italy. Consequently, the rule in Article 36 of the regulation must be applied. Since the goods were put into circulation in Belgium, only the authorities of that State are authorized to recover the duties and other charges due, in accordance with the applicable provisions laid down by law, regulation or administrative action in that State. It is clear in any case from the very wording of Article 59 that its effect is limited to administrative formalities at intra-Benelux frontiers and cannot be extended to substantive rules governing the powers of the Member States or to legislation applicable to recovery.

10 On the other hand, both the Netherlands Government and the Commission take the view that, when read in the light of Article 233 of the EEC Treaty, Article 59 of Regulation No 542/69 must be understood as recognizing that the Benelux transit rules take precedence over the Community transit rules, irrespective of the destination of the goods. In this regard the Netherlands Government emphasizes in particular two facts: first, that controls at intra-Benelux frontiers have been abolished and, secondly, that formalities have been simplified, which has been made possible by the fact that each Benelux country is authorized and required to carry out controls and recover any taxes found to be due on half of the other Benelux countries. It would appear illogical to draw a distinction between provisions which are, in the strict sense, intended solely to make administrative formalities at intra-Benelux frontiers less burdensome and provisions governing competence and the procedure for recovering duties and charges in the event of irregularities.

11 According to Article 233 of the EEC Treaty, the provisions of Community law are not to preclude the existence or completion of the union between Belgium, Luxembourg and the Netherlands to the extent to which the objectives of that union are not attained by application of the Treaty. The aim of that provision is to prevent the application of Community law from causing the disintegration of the regional union established between those three Member States or from hindering its development. It therefore enables the three Member States concerned to apply, in derogation from the Community rules, the rules in force within their union in so far as it is further advanced than the common market.

12 The question whether it is justified to apply the Benelux transit rules instead of the Community rules must be examined in the light of those considerations.

13 Under Title II of Regulation No 542/69 (Article 12 *et seq.*), the Community transit procedure involves the completion, for all goods in transit, of a T 1 form corresponding to the specimen contained in Annex A to the regulation. That document accompanies the goods to their destination and a copy is

returned to the office of departure, which enables it to verify whether the transit operation was carried out in the proper manner. Article 21 provides that the copies of the T 1 document must be produced at each office of transit and Article 22 that the carrier must give each office of transit a "transit advice note" conforming to the model shown in Annex E. It should be noted that the T 1 document is also used as a transit document within the Benelux Economic Union.

14 The provisions of Article 36, concerning the establishment of offences or irregularities and the recovery of duties or other charges which may be chargeable if irregularities have occurred during transit, apply in the context of that procedure. The article contains a number of alternative provisions depending on whether it is possible to determine the place where the offence or irregularity was committed. It is clear from those provisions, and in particular those dealing with the case in which it is not possible to determine the place where the offence or irregularity was committed, that the division of powers between the Member States is closely linked to the customs controls carried out at the frontiers of those States and to the completion of transit advice notes at those frontiers.

15 If that procedure is examined, it is clear that the scheme of Article 36 cannot function in that form within the Benelux Economic Union, since as a result of the provisions adopted within that union controls at the frontiers between Belgium, Luxembourg and the Netherlands have to a large extent been abolished. Therefore, the checks which need to be made in order for the transit arrangements laid down in the regulation to operate are no longer possible within the territory of the Benelux Union.

16 In view of that circumstance Article (3) of Regulation No 542/69 provides that the territory of the Benelux Economic Union is to be considered the territory of one Member State and Article 59 allows the agreements concluded within that union with a view to reducing or abolishing frontier formalities at the Belgo-Luxembourg and Belgo-Netherlands frontiers to be applied to Community transit documents.

17 Article 59 of Regulation No 542/69 must therefore be interpreted as allowing the rules of the Benelux Union to derogate from Article 36 of that regulation as regards the division of powers and other provisions concerning the recovery of duties and charges due.

18 The answer to the question submitted by the College van Beroep must therefore be that Article 59 of Regulation No 542/69 on Community transit, as worded and in force before 1 July 1977, must be interpreted as meaning that the Netherlands may apply to a Community transit document a Benelux agreement which provides, in derogation from Article 36 (1) of that regulation, that action to recover charges must be taken by the Benelux country in which the document was issued, even if it is found that an irregularity was committed in the course of Community transit in another Benelux country.

Costs

19 The costs incurred by the Netherlands Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of 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 (Fourth Chamber),

in answer to the question submitted to it by the College van Beroep voor het Bedrijfsleven by order of 20 May 1983, hereby rules:

Article 59 of Regulation (EEC) No 542/69 of the Council of 18 March 1969 on Community transit must be interpreted as meaning that the Netherlands may apply to a Community transit document a Benelux agreement which provides, in derogation from Article 36 (1) of that

regulation, that action to recover charges must be taken by the Benelux country in which the document was issued, even if it is found that an irregularity was committed in the course of Community transit in another Benelux country.

Koopmans Bahlmann

Pescatore O'Keeffe Bosco

Delivered in open court in Luxembourg on 16 May 1984.

J. A. Pompe
Deputy Registrar

T. Koopmans
President of the Fourth Chamber

OPINION OF MR ADVOCATE GENERAL LENZ DELIVERED ON 28 MARCH 1984 [1]

Mr President,
Members of the Court,

The reference for a preliminary ruling on which I shall deliver my Opinion today concerns the relationship between the Benelux and Community transit rules. The facts of the case may be summarized as follows:

A — At the end of 1976 and the beginning of 1977 the plaintiff in the main proceedings, Pakvries BV, customs agents established in Rotterdam, declared to the Collector of Customs and Excise at Rotterdam, in accordance with the external Community transit procedure then laid down in Regulation (EEC) No 542/69 of the Council (Official Journal, English Special Edition 1969 (I), p. 125), six consignments of frozen boneless beef from Argentinia which were to be transported by road from Rotterdam, the office of departure, to Milan, the office of destination.

The Netherlands Fiscal Intelligence and Investigation Branch later discovered that the goods had never been produced at the office of destination but had been put into free circulation irregularly in Belgium. On 19 September 1979 the

1 — Translated from the German.