JUDGMENT OF THE COURT
18 FEBRUARY 1976 [1]

Carstens Keramik GmbH and Firma August Hoff v Oberfinanzdirektion Frankfurt am Main (preliminary ruling requested by the Bundesfinanzhof)

'Potteries'

Joined Cases 98 and 99/75

Summary

1. Common Customs Tariff — Interpretation — Absence of Community provisions — Convention on the Brussels Nomenclature — Explanatory Notes — Authority

2. Common Customs Tariff — Subheadings 69.12 A and 69.12 C; 69.13 A and 69.13 C — Interpretation — Distinction

1. It is established that in the absence of Community measures, of explanatory notes and other information supplied by the Community authorities, the Explanatory Notes to the Brussels Nomenclature are an authoritative aid to the interpretation of headings in the Common Customs Tariff.

2. Subheadings 69.12 A and 69.12 C (tableware 'of common pottery' and 'of fine pottery') and subheadings 69.13 A and 69.13 C (statuettes and other ornaments of 'common pottery' and of 'other kinds of pottery') must be interpreted and distinguished in terms of the fineness of the grain and the homogeneity of the structure so that a very fine and homogeneous product cannot be classified as a product of common pottery.
Although the opinion issued in June 1972 by the Committee on Nomenclature, established by Regulation No 97/69 of the Council of the EEC, is not binding and relates to a heading which is not one of those at issue in the present case, it represents a valid evidence for the above purposes.

In Joined Cases 98 and 99/75

Reference to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

CARSTENS KERAMIK GMBH TÖNNIESHOF, Fredelsloh über Northeim (Case 98/75)

FIRMA AUGUST HOFF, Nürnberg-Großgründlach (Case 99/75)

and

OBERFINANZDIREKTION (Regional Finance Office), FRANKFURT AM MAIN

on the interpretation of tariff headings 69.12 A, 69.12 C, 69.13 A and 69.13 C of the Common Customs Tariff (Regulation No 950/68 of the Council of 22 July 1968, JO L 172, 1968, p. 1, as last amended by Regulation No 3000/75 of the Council of 24 November 1975, OJ L 304, 1975, p. 1) concerning the classification of certain ceramic products,

THE COURT

composed of: R. Lecourt, President, H. Kutscher and A. O'Keeffe, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, M. Sørensen and Lord Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The orders for reference and the written observations submitted pursuant to 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

1. In March 1972 the undertaking Carstens Keramik applied to the Oberfinanzdirektion (Regional Finance Office), Frankfurt am Main, for an official tariff classification opinion binding the administration in relation to vases approximately 15 centimetres high with a simple decorative shape imported from Rumania.

In its official opinion the Oberfinanzdirektion classified the products under heading 69.13 C of the Common Customs Tariff as 'articles of furniture or ornaments of fine pottery (vases)'.

In October 1972 the undertaking August Hoff requested from the same

administration an official tariff classification opinion regarding mugs with or without handles, of Hungarian and Bulgarian origin. In its official opinions the Oberfinanzdirektion classified those latter products under tariff heading No 69.12 C II of the Common Customs Tariff as 'tableware of fine pottery of various colours (mugs with or without handles)'.

The importers disputed those classifications by means of complaints submitted to the Oberfinanzdirektion. Carstens Keramik claims that the goods classified under tariff heading 69.13 C should be classified under heading 69.13 A. August Hoff considers that the goods classified under heading 69.12 C come under heading 69.12 A.

2. The tariff headings in question are subdivided as follows:

69.12 Tableware and other articles of a kind commonly used for domestic or toilet purposes, of other kinds of pottery:
- A. Common pottery
- B. Stoneware
- C. Earthenware of fine pottery:
  - I. White or single-coloured
  - II. Other
- D. Other

69.13 Statuettes and other ornaments, articles of personal adornment; articles of furniture:
- A. Common pottery
- B. Porcelain or china
- C. Other

3. The Oberfinanzdirektion rejected the complaints of the importers who then instituted proceedings before the Bundesfinanzhof (Federal Finance Court) against these decisions rejecting their complaints.

By orders of 5 August 1975 the Bundesfinanzhof stayed the proceedings in the two cases and requested the Court of Justice in accordance with Article 177 of the EEC Treaty to give a preliminary ruling on the following questions:

How are the expressions '... other ornaments and ... articles of furniture: ... common pottery' and '... other ornaments ... articles of furniture: ... other' in tariff headings 69.13 A and 69.13 C of the Common Customs Tariff to be interpreted? (Case 98/75)

How are the expressions 'Tableware ... of ... common pottery' and 'tableware ... of ... fine pottery' in tariff headings 69.12 A and 69.12 C of the Common customs Tariff to be interpreted and distinguished from one another? (Case 99/75)

4. It emerges from the two orders of the Bundesfinanzhof that the parties to the main action put forward in particular the arguments summarized hereunder:

The *Oberfinanzdirektion* based its decision upon 'a tariff decision of the Commission' of 19 June 1972 in which wall tiles made from brown ceramic whose body is of marked uniformity and homogeneity were classified under tariff heading 69.08 B II as tiles made from pottery other than common pottery. It follows from this decision that in order to distinguish the terms of the customs tariff products of 'common pottery' and products of 'other kinds of pottery', the determining factor is the objective property of the product, that is to say, the fineness of grain and the homogeneity of the body and not the method of manufacture and, consequently, the refining or preparation of the clay. In the opinion of the Oberfinanzdirektion the words 'common pottery' which are employed in tariff heading 69.08 B I as well as in tariff headings 69.12 A and 69.13 A can only receive a uniform interpretation.

Carstens Keramik claimed that 'the tariff decision' relied upon by the Oberfinanzdirektion is not applicable to the goods produced by hand under tariff heading 69.13. Wall tiles are mass-produced articles not comparable with hand-made pottery products as

regards the quality of clay used. When it is executed in common pottery, that is to say, in clay extracted from a single source hand-made pottery may display a fine body structure.

The body structure has thus no effect on the tariff classification of hand-made pottery. In the present case it is not feasible to classify the product in terms of its objective properties. The determining factor is rather the method of preparation, that is to say, the refining of the clay.

In this connexion the company relies upon a declaration from the country of origin according to which the goods were turned by hand and composed of common clay which was soaked without additivies or the mixture of other materials.

Nevertheless, if it were necessary to classify products in the customs tariff according to objectively ascertainable criteria as to properties it would be necessary to include in such examination all data as to properties relating to the product to be classified and, to this end also to compare a large number of items.

The *Oberfinanzdirektion* argues that the sole factor which is decisive for the outcome of the proceedings is the properties of the sample defined from the customs point of view and submitted at the time with the request for a classification opinion.

August Hoff also argues that the 'tariff decision of the Commission' cannot be relied upon for the purpose of making tariff distinction in question.

In addition it refers to a statement from the country of origin and to a declaration by the supplier according to which the relevant goods do not consist of fine pottery but of common pottery without any additive.

Even if the distinguishing criteria which form the basis of the tariff decision of the Commission are accepted the official information on customs matters binding the administration is incorrect. This is so because the Oberfinanzdirektion has in particular failed to take account of the size and nature of the xenocrysts. Furthermore it is the porosity of the finished products which constitutes the determining criterion for distinguishing 'common pottery' from 'fine pottery'.

The *Oberfinanzdirektion* considers that the undertaking is mistaken in its view that the porosity of the product constitutes an essential factor in distinguishing common pottery from fine pottery.

5. In the orders for reference the Bundesfinanzhof particularly stated:

'The tariff decision of 19 June 1972 ... which is concerned with wall tiles of "common pottery" under tariff heading 69.08 only represents the decision in an individual case, which has no binding effect on the case which is here to be decided. Moreover the distinguishing criteria on which this tariff decision is based do not coincide with the corresponding criteria contained in the Explanatory Notes to the Brussels Nomenclature; it is to these Explanatory Notes that the Explanatory Notes to the Customs Tariff of the European Communities also refer.'

The term 'common pottery' is more closely defined in the Explanatory Notes to Chapter 69 of the Brussels Nomenclature (cf. Subchapter II Section II A...). In dealing with the question what goods constitute the products under tariff heading 69.12 made from ceramic materials other than porcelain or china, we find:

'Pottery with a porous body which, unlike porcelain, is opaque, permeable to liquids, easily scratched with iron and whose fracture sticks to the tongue. Such pottery includes:

1. Pottery made from common clay (brick earth) containing iron and lime;

it has a dull, earthy texture and its colour is generally brown, red or yellow. It may be glazed.[1]

2. Earthenware ...'

The Explanatory Notes stress as particular characteristics of common pottery the porosity, the colour and the dullness of the body and a particular chemical composition of the material ... On the other hand the tariff decision of the Commission emphasizes only the homogeneity and regularity of the grain as factors for distinguishing products of common pottery in relation to other kinds of pottery on the ground that these characteristics are to be ascribed to a more intensive preparation of the material.

6. The orders of the Bundesfinanzhof were registered at the Court Registry on 11 September 1975.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the Commission through its Legal Adviser, Mr Jean Amphoux, assisted by Mr Manfred Beschel, a member of its Legal Service.

By an order of 11 December 1975 the Court, upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, decided to join the cases for the purposes of the oral procedure.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

After describing the criteria given in specialized works for the classification of products and articles of pottery the *Commission* finds that it is scarcely possible to make abstract distinctions between various pottery products.

The Commission recalls that the wording of the questions referred in abstract and general. Nevertheless, in accordance with the objective of that procedure the questions should be answered in the light of the circumstances of the cases which gave rise to them in order to enable the national court in practice to arrive at a decision in accordance with Community law.

The Commission considers the tariff headings of the Common Customs Tariff and the relevant provisions of the Brussels Nomenclature and observes that the concept of 'common pottery' appears in various headings of the Common Customs Tariff. In defining this concept it is necessary, for reasons of legal certainty and clarity, to proceed from the principle that since the same concepts appear several times in the Common Customs Tariff they must be interpreted in the same way and the conceptual bases worked out must be adopted as a general basis for distinction used for the exact tariff classification of a product.

From the point of view of procedure it seems appropriate to reply to the question referred by considering first of all the characteristics of 'common pottery'. In order to clarify this concept reference must be made to the general plan of the Common Customs Tariff and to the factors which must be taken into account in interpreting it.

The Common Customs Tariff by itself does not, apart from certain very general statements, provide any information from which to work out the definition sought.

Reference should be made to the Explanatory Notes to the Brussels Nomenclature which constitute a valid aid to interpretation of the Common Customs Tariff, the more so since the

1 — Translator's note: The words 'It may be glazed' do not occur in the English version of the Explanatory Notes.

explanatory notes of the Community to the Common Customs Tariff expressly refer to it.

Having considered the Explanatory Notes to the Brussels Nomenclature to Chapter 69 (cf. Subchapter II, A, 1) the Commission argues with regard to the concept 'common pottery' that the raw material is a simple substance, normally in the coarse state, containing impurities and termed 'brick earth'. Furthermore the following should be adopted as additional criteria: a porous and coloured body, permeability, opaqueness the fact that the pottery in question is easily scratched with iron, and a dull earthy fracture 'which sticks to the tongue'.

The 'tariff decision' of 19 June 1972 relied upon by the Oberfinanzdirektion does not contradict these criteria; on the contrary it clarifies them and applies them to a particular case. Through a method of reasoning *a contrario* it has rather used the criteria already established so that when characteristics (fineness of grain and homogeneity) are present which differ from those of common clay (coarse and impure) it completely ruled out any possibility of classification amongst products of common clay.

Furthermore the 'tariff decision' does not constitute a decision in the legal sense (having binding effect) but merely an opinion given by the Committee on Nomenclature in reply to a specific question. As far as it is relevant to the present case this 'decision' does not contain any essential factor for the purposes of the interpretation of the Common Customs Tariff.

In the actual case to which the 'tariff decision' related the special features found consist in the fact that the raw material for pottery clay, was subjected to a special process. Nevertheless the converse conclusion may not be drawn from this that the (objective) characteristic of common pottery must always automatically be attributed to the product when no preparation can be discerned.

It is possible to find clay of exceptional purity generally in small quantities. In such a case reference must rather be made to the objective and evident nature of the product in accordance with the general principles of tariff classification.

By applying the criteria set out above it is possible to draw a distinction between products 'of common pottery' and products 'of other kinds of pottery'. However, in order to classify vases of pottery under heading 69.13 C and tableware of pottery under heading 69.12 C it must first of all be confirmed that they do not come under another heading of the Common Customs Tariff.

On the basis of these considerations the Commission suggests to the Court that it should reply as follows to the question referred by the Bundesfinanzhof in Case 98/75:

'(1) Articles of furniture or of personal adornment which are obtained from simple brick clay, and which are porous, permeable, opaque, easily scratched with iron and whose earthy fracture sticks to the tongue must be classified under tariff heading 69.13 A as common pottery.

(2) Articles of furniture or of personal adornment which do not display the essential characteristics of "common pottery" or those which are required for classification under heading 69.13 B come under tariff heading 69.13 C. In this connexion it is of little importance whether the superior quality distinguishing the products in question from products of "common pottery" results from a specific process or from refining the body of the clay.'

In Case 99/75 the Commission suggest the following reply:

'(1) Tableware of pottery made from simple brick clay which is porous,

permeable, opaque, easily scratched with iron, having a rather coarse grain, a non-homogeneous structure and an earthy fracture which sticks to the tongue must be classified under tariff heading 69.12 A as a product of common pottery.

(2) Tableware of pottery which does not display the essential characteristics of "common pottery" or those characteristics required for classification under tariff headings 69.11, 69.12 B or 69.12 D come under tariff heading 69.12 C. In this respect it is of little importance whether the superior quality distinguishing the product in question from products of "common pottery" results from a particular preparation or from refinement of the body of the clay.'

With regard to this last reply the Commission emphasizes the fact that the definition of tableware of porcelain does not in itself raise any problem in the present case since the chemical and physical properties of the raw material and the characteristics of the product properly so-called are relatively clear. The same holds good for products of pottery regarded as stoneware and for tableware of pottery classified under heading 69.12 D.

Carstens Keramik, represented by Rudolf Bibrach, Advocate, of Göttingen, August Hoff represented by Friedrich Vogel, Advocate of Nürnberg, and the Commission, represented by Mr Jean Amphoux, acting as Agent, assisted by Mr Manfred Beschel, submitted their oral observations at the hearing on 14 January 1976.

In the course of this hearing those addressing the Court introduced new factors which may be summarized as follows:

The *plaintiffs in the main action* consider in particular that it is desirable that the expression 'common pottery' which is used in various tariff headings should receive a uniform interpretation. This is, however, difficult because the relevant articles have entirely different uses and in every case require raw materials having different characteristics.

In the form in which it has been developed by the Commission, the concept of 'common pottery' is very difficult to apply since it is nowhere stated what degree of homogeneity of the body and fineness of grain can be attained whilst still enabling the product to remain in this category. The classification would thus be effected in accordance with entirely subjective impressions. Consequently the definition should not take account of such concepts of homogeneity of body and fineness of grain. In addition such concepts do not appear in the Explanatory Notes to the Brussels Nomenclature.

When establishing groups in the Common Customs Tariff the authors no doubt had an entirely different subdivision in view. The designation 'common pottery' can merely indicate a lower quality and a lesser value for articles produced from 'common pottery' as compared with stoneware, earthenware or porcelain.

Stoneware, earthenware and porcelain are harder since they are fired at higher temperatures. Temperature should thus serve as a criterion for determining products covered by the designation 'common pottery'. The body of products of stoneware, earthenware or porcelain is neither permeable nor easily scratched with iron. Such impermeability should consequently be a material factor as should the question whether it is possible to scratch such products with iron.

The plaintiffs in the main action conclude by suggesting that there should be considered as manufactured from 'common pottery' those products made from iron-bearing clay or chalky clay,

whether or not vitrified, that is to say, produced at a relatively low temperature, porous, permeable to gas and liquids and which are capable of being scratched with iron.

With regard to the systematic distinction between pottery materials the Commission argues in particular that such categories overlap and that criteria must be found for each particular case. In addition account should be taken of the fact that the distinction between categories results from the necessary purpose and the use of such a distinction.

Temperature constitutes a secondary factor, according to the material and then to the product which it is desired to obtain.

Porosity constitutes a valid criterion for distinguishing common porcelain clay for example. Clearly, the Explanatory Notes to the Brussels Nomenclature refer to the distinction between porcelain and other kinds of pottery rather than the clear distinction between the various kinds of pottery.

This distinction accordingly requires to be formulated subsequently and there is thus no contradiction between the opinion of the Commission on the one hand and the Explanatory Notes to the Brussels Nomenclature on the other.

As a general rule the graining must be regarded as coarse when there are swellings, xenocrysts and fissures exceeding 0·1 mm that is to say, visible to the naked eye, and when these coarse features are typical of the structure of the general body.

The Commission finally argues that the differences between the six language versions of the Common Customs Tariff have scarcely any importance for the following reason: there is a relationship between the product on the one hand and the materials on the other and it is consequently irrelevant that in one case the final product is emphasized whilst in the others the raw material of this product is stressed.

The Advocate-General delivered his opinion at the hearing on 28 January 1976.

Law

1 By two orders of 5 August 1975 which were received at the Court on 11 September 1975 the Bundesfinanzhof referred, under Article 177 of the EEC Treaty, questions on the interpretation of tariff headings 69.12 A, 69.12 C, 69.13 A and 69.13 C of the Common Customs Tariff (Regulation No 950/68 of the Council of 28 June 1968, JO L 172, 1968, as amended by subsequent regulations).

2 The questions put in the two cases should be joined for the purposes of the judgment since their essential subject-matter is the same.

3 It is clear from the orders for reference that the questions were put in the course of disputes relating to official tariff classification opinions, binding

upon the administration ('verbindliche Zolltarifauskunft') issued by a German customs authority in 1972 and 1973 with regard to the classification of certain ceramic products. In the first official opinion certain ceramic products were classified under heading 69.13 C of the Common Customs Tariff (hereinafter referred to as 'the CCT') as 'articles of furniture or ornaments of fine pottery (vases)'. In the second official opinion other products were classified under heading 69.12 C II as 'tableware of fine pottery'. The importers of those products claimed that they should be classified respectively under heading 69.13 A and heading 69.12 A as products 'of common pottery'.

4 In its question in Case 98/75 the Bundesfinanzhof asks how the expressions '... other ornaments and ... articles of furniture: ... Common pottery' and '... other ornaments ... articles of furniture: ... Other' in tariff headings 69.13 A and 69.13 C of the CCT are to be interpreted and distinguished from one another. In its question in Case 99/75 it asks how the expressions 'Tableware ... of ... common pottery' and 'Tableware ... of ... fine pottery' employed in tariff headings 69.12 A and 69.12 C are to be interpreted and distinguished from one another. The essential problem posed by these questions is thus the interpretation of the expression 'common pottery' as a criterion for tariff classification.

5 The relevant tariff headings are subdivided as follows:

69.12 Tableware and other articles of a kind commonly used for domestic or toilet purposes, of other kinds of pottery:

A. Common pottery

B. Stoneware

C. Earthenware or fine pottery:

I. white or single-coloured

II. Other

D. Other

69.13 Statuettes and other ornaments, articles of personal adornment; articles of furniture:

A. Common pottery

B. Porcelain or china

C. Other

6 It must be considered in the first place whether the expression 'common pottery' must be interpreted exclusively in terms of the nature of the raw

material and perhaps of its preparation in the course of manufacture or whether account should also be taken of the objective characteristics of the product. It is clear from the orders for reference that the German customs authorities proceeded on the basis of an examination of the objective characteristics of the products, primarily the fineness of the grain and the homogeneity of the structure, whilst the plaintiffs in the main action relied on information from the producer countries according to which the objects were produced from natural raw materials which did not undergo any special preparation and whose fineness and homogeneity were due to the characteristics of the clays employed.

7 In the interests of legal certainty and of the administrative procedures, it is the characteristics and objective properties of products which afford the decisive criterion for their classification in the CCT unless there are special facts and circumstances implying other criteria.

8 The problem which presents itself is thus to ascertain the characteristics and objective properties of the relevant products which, for the purposes of their classification in the CCT, distinguish them from each other.

9 The German customs authority, and also the Commission, refer to an opinion issued in June 1972 by the Committee on Nomenclature, established by Regulation No 97/69 of the Council of 16 January 1969 on measures to be taken for the uniform application of the nomenclature of the Common Customs Tariff (JO L 14, 1969, p. 1) in reply to a question on the classification of ceramic wall tiles coming under tariff heading 69.08. This opinion classifies the products in question under subheading B II as 'other' products and not under subheading B I (products of 'common pottery') stating that although the body displays a mixture of various grains and colours it has a high degree of homogeneity and regularity to obtain which the clay employed must have been subjected to a more intensive preparation, and in particular to a refining process, than that required in order to obtain products of common pottery. Nevertheless the plaintiffs in the main action claimed that the regularity and homogeneity of the product cannot serve as a criterion and in this respect they rely on the Explanatory Notes to the Brussels Nomenclature which define the term 'common pottery' without recourse to the criterion of the homogeneity and regularity of the product.

10 With regard to Subchapter II of Chapter 69 of the CCT the Explanatory Notes to the Brussels Nomenclature contain the following 'general' considerations:

'For the purpose of the Nomenclature, these articles are classified according to kind . . ., except in the case of:

(1) . . .

(2) Tableware and other domestic and toilet articles, classified in heading 69.11 when of porcelain or china, and in heading 69.12 if of other kinds of pottery.

(I) — Porcelain or China

For the purposes of heading 69.11, porcelain or china includes . . .

(II) — Pottery, other than porcelain or China

For the purposes of heading 69.12, the term 'other kinds of pottery' includes:

(A) Pottery with a porous body which, unlike porcelain is opaque, permeable to liquids, easily scratched with iron and whose fracture sticks to the tongue. Such pottery includes:

(1) Pottery made from common clay (brick earth). It has a dull earthy texture and its colour is generally brown, red or yellow. It may be glazed.[1]

(2) A wide range of white or coloured pottery . . . more or less fine.[1] The body is porous and must be glazed to make the articles impermeable . . . [Earthenware, etc.] is made from finely sieved clays stirred with water.[1] It has a finegrained body obtained by firing to a higher temperature than in the case of pottery made from common clay; it differs from porcelain or china because it is not completely vitrified.

(B) Stoneware which, though dense, . . . differs from porcelain because it is more opaque . . .

(C) Certain so-called 'semi-porcelains' or 'imitation-porcelains', sometimes prepared, decorated and glazed to give the commercial appearance of porcelain. . . . Tableware, etc., of these imitation 'porcelains' is classified in heading 29.12 and *not* as porcelain or china in heading 69.11.'

The Explanatory Notes to the CCT in their turn refer to those 'general' considerations 'with regard to the scope of the terms "porcelain", "common pottery", "fine pottery", "earthenware" and "stoneware" appearing in the headings and subheadings of Subchapter II of Chapter 69.'

1 — Translator's note: The words 'It may be glazed', 'more or less fine' and 'stirred with water' do not occur in the English version of the Explanatory Notes.

11 It is established that in the absence of Community measures, of explanatory notes or other information supplied by the Community authorities, the Explanatory Notes to the Brussels Nomenclature are an authoritative aid to the interpretation of headings in the CCT. Nevertheless the question must be asked whether the abovementioned notes to the Brussels Nomenclature contain anything which enables a distinction to be drawn between the subheadings 'common pottery' on the one hand and 'fine pottery' and 'other kinds of pottery' on the other hand. According to the wording of these notes they only refer to the distinction between the two headings 69.11 and 69.12, that is to say, between tableware 'of porcelain or china (including biscuit porcelain and parian)' and tableware 'of other kinds of pottery' and contains no reference at all to the subheadings of heading 69.12. This is no doubt to be explained by the fact that Chapter 69 of the Brussels Nomenclature does not contain subheadings. From this it must therefore be concluded that the Explanatory Notes to the Brussels Nomenclature do not preclude taking into consideration the fineness of the grain and the homogeneity of the structure for the purposes of distinguishing between the relevant subheadings of the CCT.

12 In addition, although the abovementioned opinion of the Committee on Nomenclature is not binding and relates to a heading which is not one of those at issue in the present case, it represents a valid indication for the purposes of taking into consideration the fineness of the grain and the homogeneity of the structure of the product as objective characteristics of the product for the purposes of the interpretation and definition of the concept 'common pottery'. This conclusion appears to correspond to the general scheme of the CCT in this sphere which presupposes that objects of little value are produced from common clay, in that it is the simplest raw material, whilst less coarse products are obtained from raw pottery material of higher quality. Although the German version of heading 69.12 does not perhaps bring out this difference clearly, other official versions leave no doubt in this matter since they employ expressions such as 'en poterie fine', 'fine pottery' and 'di terracotta fine' to describe products manufactured from a raw material other than 'common clay'.

13 The plaintiffs in the main action have objected that the fineness of the grain and the homogeneity of the structure are criteria which are too vague and too subjective to be employed to draw a distinction between tariff headings.

14 Nevertheless in this connexion, as the Commission has stated in the course of the proceedings, in professional circles certain trends of opinion have appeared which may be of use to the customs authorities.

15 It must therefore be concluded that subheadings 69.12 A and 69.12 C (tableware 'of common pottery' and 'of fine pottery') and subheadings 69.13 A and 69.13 C (statuettes and other ornaments of 'common pottery' and of 'other kinds of pottery') must be interpreted and distinguished in terms of the fineness of the grain and the homogeneity of the structure so that a very fine and homogeneous product cannot be classified as a product of common pottery. It is for the national court to determine whether the articles in question in fact fulfil the conditions for classification under the one or the other subheading.

Costs

16 The costs incurred by the Commission which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, a step in the action before the national court, costs are a matter for that court.

THE COURT

in answer to the questions referred to it by the Bundesfinanzhof by orders of 5 August 1975, hereby rules:

Subheadings 69.12 A and 69.12 C (tableware 'of common pottery' and 'of fine pottery') and subheadings 69.13 A and 69.13 C (statuettes and other ornaments of 'common pottery' and of 'other kinds of pottery') must be interpreted and distinguished in terms of the fineness of the grain and the homogeneity of the structure so that a very fine and homogeneous product cannot be classified as a product of common pottery.

Lecourt Kutscher O'Keeffe

Donner Mertens de Wilmars Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 18 February 1976.

A. Van Houtte
Registrar

R. Lecourt
President