JUDGMENT OF THE COURT (Fifth Chamber)
7 November 2002 *

In Joined Cases C-260/00 to C-263/00,

REFERENCE to the Court under Article 234 EC by the Hessisches Finanzgericht, Kassel (Germany) for a preliminary ruling in the proceedings pending before that court between

Lohmann GmbH & Co. KG (C-260/00 to C-262/00),

medi Bayreuth Weihermüller & Voigtmann GmbH & Co. KG (C-263/00)

and

Oberfinanzdirektion Koblenz,

on the interpretation of heading 9021 of the Combined Nomenclature, contained in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1734/96 of 9 September 1996 (OJ 1996 L 238, p. 1),

* Language of the cases: German.

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward (Rapporteur), S. von Bahr and A. Rosas, Judges,

Advocate General: A. Tizzano,

Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Lohmann GmbH & Co. KG (C-260/00 to C-262/00), by P. Barth, M. Barth and J. Walda,

— medi Bayreuth Weihermüller & Voigtmann GmbH & Co. KG (C-263/00), by W. Weihermüller, M. Weihermüller and S. Weihermüller,

— the Oberfinanzdirektion Koblenz, by M. Fritz,

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

having regard to the Report for the Hearing,

after hearing the oral observations of Lohmann GmbH & Co. KG (C-260/00 to C-262/00), represented by J. Müller-Lisse, Rechtsanwalt, medi Bayreuth

Weihermüller & Voigtmann GmbH & Co. KG (C-263/00), represented by L. Harings, Rechtsanwalt, and the Commission, represented by J.C. Schieferer, at the hearing on 21 February 2002,

after hearing the Opinion of the Advocate General at the sitting on 25 April 2002,

gives the following

Judgment

1 By orders of 21 February 2000, received at the Court on 28 June 2000 and clarified, at the request of the Court, on 17 October 2001, the Hessisches Finanzgericht, Kassel, referred to the Court for a preliminary ruling under Article 234 EC a number of questions on the interpretation of heading 9021 of the Combined Nomenclature, contained in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1734/96 of 9 September 1996 (OJ 1996 L 238, p. 1) ('the CN').

2 Those questions were raised in proceedings between Lohmann GmbH & Co. KG ('Lohmann') (C-260/00 to C-262/00) and medi Bayreuth Weihermüller & Voigtmann GmbH & Co. KG ('medi Bayreuth') (C-263/00) and the Oberfinanzdirektion Koblenz ('the Oberfinanzdirektion') concerning the tariff classification of certain products as orthopaedic products within CN heading 9021.

Legislative background

3 The CN, established by Regulation No 2658/87, is intended to meet the requirements both of the Common Customs Tariff and of the Community's external trade statistics. It is based on a harmonised commodity description and coding system ('the HS') devised by the Council for Customs Cooperation (now the World Customs Organisation) and established by the international convention concluded at Brussels on 14 June 1983 ('the SH Convention'), which was approved, together with the Protocol of Amendment of 24 June 1986 thereto, on behalf of the Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

4 Chapter 90 of Section XVIII of Part Two of the CN is entitled 'Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof'.

5 Heading 9021 of the CN is worded as follows:

'Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability.'

6 According to Note 1(b) to Chapter 90 of the CN, that chapter 'does not cover... supporting belts or other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, supports for joints or muscles) (Section XI)'.

7 Chapters 61, 62 and 63 of Section XI of Part Two of the CN are entitled respectively 'Articles of apparel and clothing accessories, knitted or crocheted', 'Articles of apparel and clothing accessories, not knitted or crocheted' and 'Other made-up textile articles; worn clothing and worn textile articles; rags'.

8 Note 2 to Chapter 61 of the CN is worded as follows:

'This chapter does not cover:

(a) goods of heading No 6212;

(b) worn clothing or other worn articles of heading No 6309; or

(c) orthopaedic appliances, surgical belts, trusses or the like (heading No 9021).'

9 The wording of Note 2(b) to Chapter 62 of the CN is identical to the wording of Note 2(c) to Chapter 61 of the CN.

10 Rule 2(b) of the General rules for the interpretation of the CN, contained in Part One, Section I(A) of the CN, states:

'Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.'

11 Rule 3(b) of those general rules is worded as follows:

'When by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

...

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable.'

12 Under Article 6(1) of the HS Convention, a committee entitled the 'Harmonised System Committee' composed of representatives from each of the Contracting Parties was established under the auspices of the Customs Cooperation Council. In accordance with Article 7(1) of the HS Convention, its functions include, in particular, proposing amendments to the Convention and preparing explanatory notes, classification opinions or other advice as guides to the interpretation of the HS.

13 With regard to orthopaedic appliances classified under heading 9021, the first explanatory note to heading 9021, taken from the HS Explanatory Notes, second edition (1996) ('the first explanatory note to heading 9021'), states:

'These are appliances for:

(i) preventing or correcting bodily deformities; or

(ii) supporting or holding organs following an illness or operation.

They include:

(1) appliances for hip diseases (coxalgia, etc.).

(2) humerus splints (to enable use of an arm after resection), (extension splints).

(3) appliances for the jaw.

(4) traction, etc., appliances for the fingers.

(5) appliances for treating Pott's disease (straightening head and spine).

(6) orthopaedic footwear, having an enlarged leather stiffener which may be reinforced with a metal or cork frame, made only to measure.

(7) special insoles, made to measure.

(8) dental appliances for correcting deformities of the teeth (braces, rings, etc.).

(9) orthopaedic foot appliances (talipes appliances, leg braces, with or without spring support for the foot, surgical boots, etc.).

(10) trusses (inguinal, crural, umbilical, etc., trusses) and rupture appliances.

(11) appliances for correcting scoliosis and curvature of the spine as well as all medical or surgical corsets and belts (including certain supporting belts) characterised by:

(a) special pads, springs, etc., adjustable to fit the patient.

(b) the materials of which they are made (leather, metal, plastics, etc.); or

(c) the presence of reinforced parts, rigid pieces of fabric or bands of various widths.

The special design of these articles for a particular orthopaedic purpose distinguishes them from ordinary corsets and belts, whether or not the latter also serve to support or hold.

(12) orthopaedic suspenders (*other than* simple suspenders of knitted, netted or crocheted materials, etc.).

...'

Main proceedings and questions referred for a preliminary ruling

14 In 1997, Lohmann and medi Bayreuth applied for the issue of binding tariff information in respect of certain products which they had imported from the United States of America or Mexico and which they considered to fall, as orthopaedic products, within CN heading 9021. The products in question were *epX Wrist Dynamic* wrist orthoses (C-260/00), *epX Back Basic* lumbar support belts (C-261/00), *epX Elbow Basic* and *epX Elbow Dynamic* elbow supports (C-262/00), as well as *Stabimed* functional knee supports with tracking stays and *Collamed* functional knee orthoses (C-263/00).

15 However, the binding tariff information issued classified all those products in CN subheading 6307 90 10, that is to say, as knitted or crocheted made-up textile articles.

16 Their objections having been rejected by the Oberfinanzdirektion, Lohmann and medi Bayreuth brought actions before the Hessisches Finanzgericht seeking the annulment of the binding tariff information and a direction to the Oberfinanzdirektion to issue new binding tariff information classifying those products in CN heading 9021.

17 The Hessisches Finanzgericht is uncertain as to whether the finding made by the Court of Justice, at paragraph 12 of the judgment in Case C-148/93 *3M Medica* [1994] ECR I-1123, according to which the items falling within CN heading 9021 'have in common that they are specially adapted to the handicaps which they are intended to correct, and are specifically designed for a given person', also

applies to the products at issue in the cases pending before it. In addition, it seeks to ascertain, as regards the criterion of elasticity of the material, the scope of Note 1(b) to Chapter 90 of the CN.

18 In those circumstances, the Hessisches Finanzgericht decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

In Case C-260/00

'1. Does the description "orthopaedic appliances" within the meaning of CN heading No 9021 cover a wrist orthosis, called *epX Wrist Dynamic*, size M/L, made of 1.2 mm thick triple-layer material in a single colour, a very thin synthetic central layer, not visible in a transverse cut, being enclosed between two woven elastic outer layers; sewn into a tube, with four slightly curved stays made of rustproof material and approximately 12 cm long incorporated on each side; approximately 19 cm long, with an upper diameter of about 11 cm, a lower diameter of about 9 cm and a circular opening for the thumb?

2. Does the term "solely" in Note 1(b) to CN Chapter 90, read in conjunction with the exceptions referred to in Note 2(c) to CN Chapter 61 and Note 2(b) to CN Chapter 62, permit the elasticity of the material to be regarded as the sole relevant criterion even if the supporting function of the article is at least strengthened not only through being manufactured in accordance with its intended use but also by other factors (in this case the stays)?'

In Case C-261/00

'1. Does the description "orthopaedic appliances" within the meaning of CN heading No 9021 cover a lumbar support belt, called *epX Back Basic*, size S, manufactured by sewing together and consisting primarily of elastic woven mesh up to 1.5 mm thick, approximately 87 cm long and 23 cm wide, closed at the front with a Velcro fastening and with two additional elastic textile straps on the outside which can be pulled forward, stretched and secured on the Velcro patch, and which has a narrow, sewn-in synthetic baton down the (back) centre and a pocket for a padded insert behind?

2. Does the term "solely" in Note 1(b) to CN Chapter 90, read in conjunction with the relevant exceptions referred to in Note 2(c) to CN Chapter 61 and Note 2(b) to CN Chapter 62, permit the elasticity of the material to be regarded as the sole relevant criterion even if the supporting function is at least strengthened through the article being manufactured, in accordance with its intended use, in such a way as to work in materials of varying degrees of elasticity?'

In Case C-262/00

'1. Does the description "orthopaedic appliances" within the meaning of CN heading No 9021 cover an elbow band, called *epX Elbow Basic*, or an elbow support, called *epX Elbow Dynamic*, made of 1 mm thick triple-layer material in a single colour, with a synthetic central layer enclosed between two woven elastic layers; sewn into a tube, with a length of 8 cm (elbow

band) or 22 cm (elbow support, the latter being also sewn in anatomical shape), each being pulled over the lower arm below the elbow and worn as a cuff, incorporating a compression pad, over which is passed a circular strap with an elastic and a non-elastic part and a Velcro fastening?

2. Does the term "solely" in Note 1(b) to CN Chapter 90, read in conjunction with the relevant exceptions in Note 2(c) to CN Chapter 61 and Note 2(b) to CN Chapter 62, permit the elasticity of the material to be regarded as the sole relevant criterion even if the supportive function is strengthened by other factors (in this case the pad)?

3. If Question 2 is answered in the affirmative:

Is rule 3(b) of the General rules for the interpretation of the Combined Nomenclature suitable for determining the question when the supportive function of the other factors, not made of elastic material, is predominant, or what other criteria should be used to determine the question?'

In Case C-263/00

'1. Does the description "orthopaedic appliances" within the meaning of CN Code No 9021 cover functional knee supports with tracking stays and functional knee orthoses with a supportive effect, consisting essentially of fashioned neoprene, with two removable aluminium side stays, 30 cm and 37 cm long respectively, with limited-extension polycentric joints and two

Velcro fastening straps, where proper use of each of the above appliances requires an individual setting of the joints with extension-limiting wedges?

2. Does the term "solely" in Note 1(b) to CN Chapter 90, read in conjunction with the relevant exceptions in Note 2(c) to CN Chapter 61 and Note 2(b) to CN Chapter 62, permit the elasticity of the material to be regarded as the sole relevant criterion even if the supportive function is strengthened by other materials?

3. If Question 2 is answered in the affirmative:

Is rule 3(b) of the General rules for the interpretation of the CN suitable for determining the question when the supportive function of the other materials is predominant, or what other criteria should be used to determine the question?'

19 By order of the President of the Court of 13 September 2000, Cases C-260/00 to C-263/00 were joined for the purposes of the written procedure, the oral procedure and the judgment.

20 In the original version of the second question in each of the four cases, the referring court requested the interpretation of the term 'solely' used, according to it, in Note 2(b) to CN Chapters 61 and 62. However, since that term does not appear there, the Court requested the national court on 3 October 2001, pursuant to Article 104(5) of the Rules of Procedure, to clarify its questions in that regard. By orders of 17 October 2001, received at the Court on 29 October 2001, the national court amended the questions referred for a preliminary ruling in the four cases to read as they are set out in paragraph 18 of this judgment.

The first questions

21 By its first question in each of the cases, the national court seeks to ascertain whether or not certain products, which it describes in detail, must be classified in CN heading 9021.

Observations submitted to the Court

22 Lohmann and medi Bayreuth claim that the products at issue in the main proceedings are of a special design which serves a particular orthopaedic purpose. In particular, in the case of the lumbar support belts, Lohmann adds that, in the light of differing medical requirements, that product is normally provided with additional features (pads) which are shaped to the patient's individual anatomical characteristics before being used.

23 Medi Bayreuth points out that, in the light of technical progress, the requirement for an orthopaedic appliance to be made to measure no longer corresponds to reality: in the medical field, many products which were formerly made to measure have nowadays been replaced by industrial products which need only be adapted before use. Moreover, the wording of CN heading No 9021 does not permit a distinction to be made between products which are made to measure and those which are mass-produced.

24 The Oberfinanzdirektion refers to the interpretation of CN heading 9021 for which it argued in the main proceedings, according to which the products concerned do not fall within that heading. With regard, in particular, to the lumbar support belts at issue in Case C-261/00, it bases its assessment that they

are not orthopaedic appliances within the meaning of that heading on the characteristics of the product concerned on the one hand, and on a decision of the HS Committee to classify similar products in HS subheading 6212 90, on the other. The Oberfinanzdirektion points out that that decision was the subject of a Commission communication in the *Official Journal of the European Communities* (OJ 2001 C 202, p. 8)

25 The Commission is of the opinion that the judgment in *3M Medica*, cited above, indicates that classification of the products at issue in Cases C-260/00 to C-262/00 in CN heading 9021 is out of the question since it was not established, at the time the customs debt arose, that those products were designed or adapted with a specific physical handicap in mind and made to measure for a particular person, or whether they required further intervention by a specialist with a view to individual use by a particular person. It takes the view that that conclusion is also consistent with the HS Explanatory Notes. It would therefore not suffice for the patient to use the product by following, for example, the directions set out in the instruction leaflet. On the other hand, in view of the particular characteristics of the products at issue in Case C-263/00, the Commission is of the opinion that they would fall within CN heading 9021 if an orthopaedist was required to ensure proper fitting and use.

Reply of the Court

26 It must be made clear at the outset that, when the Court is requested to give a preliminary ruling on a matter of tariff classification, its task is to provide the national court with guidance on the criteria which will enable the latter to classify the products at issue correctly in the CN, rather than to effect that classification itself, *a fortiori* since the Court does not necessarily have available to it all the information which is essential in that regard. In any event the national court is in a better position to do so.

27 The procedure for references for a preliminary ruling under Article 234 EC entails close cooperation between the national courts and the Court of Justice based on the assignment to each of different functions (Case C-236/98 *JämO* [2000] ECR I-2189, paragraph 30) and constitutes an instrument by means of which the Court provides the national courts with such interpretation of Community law as is necessary for them to give judgment in the cases upon which they are called to adjudicate (Case C-403/98 *Monte Arcosu* [2001] ECR I-103, paragraph 21).

28 The Court may thus find it necessary, in the context of tariff classification, to determine from the wording of the questions formulated by the national court, having regard to the facts set out in the order for reference, what aspects require an interpretation of Community law to enable that court to effect the tariff classification on which it is asked to adjudicate (see, to that effect, Case C-400/96 *Harpegnies* [1998] ECR I-5121, paragraph 11).

29 The first question in each of the cases must therefore be construed as seeking to ascertain the criteria for determining whether products such as wrist orthoses, lumbar support belts, elbow supports and knee supports can be classified in CN heading 9021.

30 In that respect, it is settled case-law that, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be found in their objective characteristics and properties as defined in the wording of the relevant heading of the Common Customs Tariff and of the notes to the sections or chapters (see *inter alia* Case C-276/00 *Turbon International* [2002] ECR I-1389, paragraph 21).

31 In addition, the Court has consistently held that for the purpose of interpreting the Common Customs Tariff both the notes which head the chapters of the

Common Customs Tariff and the HS Explanatory Notes are important means for ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation (see *Turbon International*, cited above, paragraph 22).

32 The products at issue in the main proceedings are not expressly referred to either in the wording of the relevant CN headings or in that of the notes to the relevant sections or chapters of the CN. On the other hand, the HS Explanatory Notes provide useful guidance as to their classification.

33 According to the first explanatory note to heading 9021, the orthopaedic appliances covered by CN heading 9021 are for 'preventing or correcting bodily deformities' or 'supporting or holding organs following an illness or operation'.

34 The list following that description, and which gives examples of appliances satisfying it, sometimes specifies that the product in question must be made to measure (orthopaedic footwear, special insoles). That has led the Court to find that sandals and shoes which can be assimilated to mass-produced inner soles or to mass-produced footwear the soles of which support the arch do not constitute 'orthopaedic appliances' under CN heading 9021 (*3M Medica*, cited above, paragraph 14).

35 However, no such requirement is laid down for most of the products mentioned in that list.

36 With regard to appliances for correcting scoliosis and curvature of the spine as well as medical or surgical corsets and belts, the first explanatory note to heading 9021 states that that heading covers *inter alia* such appliances as are characterised by the presence of elements which are adjustable to fit the patient. The same note states that the 'special design of these articles for a particular orthopaedic purpose distinguishes them from ordinary corsets and belts, whether or not the latter also serve to support or hold'.

37 The requirement of being made to measure or at least adjustable to fit the patient reflects the desire to avoid classifying in heading 9021 products which are 'ordinary' products, that is to say, simple products which lack the characteristics specific to the products mentioned in the first explanatory note to heading 9021. The HS Explanatory Notes in fact describe Chapter 90 of the CN as covering a category of instruments and appliances of which, as a general rule, the essential characteristics are the finish of their manufacture and their high degree of precision.

38 That is why the first explanatory note to heading 9021 uses the criterion of being made to measure as the basis for differentiating orthopaedic footwear from ordinary footwear, or the criteria of adjustability to fit the patient, the nature of the materials of which the product is made or the presence of reinforced parts as the basis for distinguishing certain corrective appliances from ordinary corsets or belts, or the criterion of specificity of purpose of the products as the basis for distinguishing orthopaedic suspenders from simple suspenders of knitted, netted or crocheted materials.

39 The criteria for distinguishing simple or ordinary products from those serving a medical purpose therefore include the method of manufacture of the product concerned, the nature of the materials of which it is made, its adjustability to the handicaps which it is intended to correct or other special characteristics, in particular the specificity of its purpose.

40 Where a product exists in different versions and where, in its simple or ordinary version, it serves a general purpose, whilst in a different version designed to perform a medical function it is used for orthopaedic purposes, it is only in the latter version and by application of the abovementioned criteria that it is to be classified in CN heading 9021.

41 With regard to adjustment to handicaps, this can be done either at the stage of manufacture of the product or, in the case of a prefabricated product, at a later stage, in particular at the stage of use, by means of special mechanisms afforded by the product itself, whether by a doctor or by the patient himself.

42 Since technical progress in the field of manufacturing orthopaedic appliances increasingly enables such appliances to be mass produced and subsequently adjusted to meet the patient's specific needs, in particular at the time of their use, to insist upon adjustment to the patient's needs at the time of manufacture would be unreasonable and could increase the financial burdens on the social security systems.

43 It follows that the products at issue in the main proceedings fall within CN heading 9021 if they display characteristics which distinguish them, in particular by the materials of which they are made, their method of operation or their adjustability to the patient's specific handicaps, from ordinary belts and supports for general use. In that respect, it is hardly relevant by whom and at what time any such adjustment is made.

44 It is for the national court to ascertain whether that is the case in the main proceedings.

45 The answer to the first question in each of the cases is therefore that CN heading 9021 must be interpreted as meaning that products such as wrist orthoses, lumbar support belts, elbow supports and knee supports fall within that heading if they display characteristics which distinguish them, in particular by the materials of which they are made, their method of operation or their adjustability to the patient's specific handicaps, from ordinary belts and supports for general use. It is for the national court to ascertain whether that is the case in the main proceedings.

The second questions

46 By its second question in each of the cases, the national court seeks in essence to ascertain whether the term 'solely' in Note 1(b) to CN Chapter 90 must be interpreted as meaning that that note excludes from the chapter in question belts and supports of which characteristics other than their elasticity contribute to a significant extent to the intended effect on the organ to be supported or held.

Observations submitted to the Court

47 Lohmann, medi Bayreuth and the Commission are of the opinion that the term 'solely' in Note 1(b) to CN Chapter 90 must be interpreted literally to mean that, if the intended effect on the organ to be supported or held also derives from factors other than the elasticity of the belt or support concerned, that note does not apply.

Reply of the Court

48 It is clear from the wording of Note 1(b) to CN Chapter 90 that, if the elasticity of the belt or support is the sole factor which contributes to the intended effect on the organ to be supported or held, classification in heading 9021 is precluded. Conversely, if other factors contribute to that effect to a significant extent, the note does not apply.

49 That interpretation is supported by the scheme of the notes to CN Chapter 90. Note 2(b) to that chapter contains the phrase 'solely or principally', which permits other factors to be taken into account in the context of that note.

50 It should be added that, since Note 1(b) to CN Chapter 90 mentions only the effect on the organ to be supported or held, the presence of factors producing a stabilising effect only on the belt or support itself, in order in particular to prevent it from creasing or coiling, cannot preclude application of that note.

51 The answer to the second question in each of the cases is therefore that the term 'solely' in Note 1(b) to CN Chapter 90 must be interpreted as meaning that the note does not exclude from that chapter belts and supports of which characteristics other than their elasticity contribute to a significant extent to the intended effect on the organ to be supported or held.

The third questions

52 In view of the answers given to the first and second question in each of the cases, there is no need to answer the third question referred in Cases C-262/00 and C-263/00.

Costs

53 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, 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 Hessisches Finanzgericht, Kassel, by orders of 21 February 2000, hereby rules:

1. **Tariff heading 9021 of the Combined Nomenclature, contained in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and**

statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1734/96 of 9 September 1996, must be interpreted as meaning that products such as wrist orthoses, lumbar support belts, elbow supports and knee supports fall within that heading if they display characteristics which distinguish them, in particular by the materials of which they are made, their method of operation or their adjustability to the patient's specific handicaps, from ordinary belts and supports for general use. It is for the referring court to ascertain whether that is the case in the main proceedings.

2. The term 'solely' in Note 1(b) to Chapter 90 of the Combined Nomenclature must be interpreted as meaning that the note does not exclude from that chapter belts and supports of which characteristics other

than their elasticity contribute to a significant extent to the intended effect on the organ to be supported or held.

Wathelet Timmermans Edward

von Bahr Rosas

Delivered in open court in Luxembourg on 7 November 2002.

R. Grass

Registrar

M. Wathelet

President of the Fifth Chamber