On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the Finanzgericht Bremen by an order of 1 November 1979, hereby rules:

Cuttings of synthetic textile fibres having a length of between 6 and 7 mm fall within subheading 59.01 B I of the Common Customs Tariff as flock and dust of man-made fibres.

Pescatore Touffait Due

Delivered in open court in Luxembourg on 16 October 1980.

The Registrar

by order

H. A. Rühl

Principal Administrator

P. Pescatore

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 18 SEPTEMBER 1980 [1]

Mr President,
Members of the Court,

This reference for a preliminary ruling, brought before the Court by the Finanzgericht [Finance Court] Bremen, concerns the interpretation of subheadings 56.01 A and 59.01 B I of the Common Customs Tariff, which are to be found in Section XI of the tariff (Textiles and Textile Articles).

I — (a) The goods, the tariff classification of which is at issue, were put into free circulation in the Federal

1 — Translated from the French.

Republic of Germany on 4 August 1978, and came from the United States of America. According to the importer, the import-export firm Klaus Mecke & Co of Bremen, they should be classified as flock and dust of man-made fibres as mentioned in subheading 59.01 B I of the Common Customs Tariff, and therefore subject to conventional customs duty at a rate of 4%.

The customs authorities however, after carrying out a random sampling check, considered the goods to be synthetic textile fibres (discontinuous), not carded, combed or otherwise prepared for spinning, falling within subheading 56.01 A, in respect of which conventional customs duty at a rate of 9% applies.

By a notice of assessment of 8 August 1978 the Principal Customs Office (Hauptzollamt), Bremen-East, therefore charged the importing company customs duties and import turnover tax at the rate corresponding to the classification it had adopted. When the official objection lodged by it against the assessment of the Principal Customs Office was rejected, the plaintiff in the main action appealed to the court which has made the reference.

The court exercised the option open to it under the second paragraph of Article 177 of the Treaty and decided by an order of 1 November 1979 to stay the proceedings pending a ruling from this Court on the following question:

Do cuttings of synthetic textile fibres (polyester) of 6 to 7 mm in length fall within subheading 56.01 A of the Common Customs Tariff as synthetic textile fibres (discontinuous), not carded, combed or otherwise prepared for spinning, or within subheading 59.01 B I as flock and dust of man-made fibres?

(b) It appears from the question raised by the national court that the products concerned consist of extremely short fibres of polyester, which is a synthetic textile material.

It may be seen from the order made by the national court that:

— these fibres are obtained by cutting continuous filament tow of man-made textile fibres of tariff subheading 56.02;

— they cannot be distinguished from that continuous filament tow either by their internal struture of by their manufacturing process, but only by the length to which they are cut;

— the products are clean and even and cannot be classified as waste.

In the oral proceedings it was stated by the representative of the plaintiff in the main action that such fibres are known in the trade as short-cut synthetic fibres.

The fibres which are the subject-matter of the present dispute are intended for use, we were told, in manufacturing "bonded fibre fabrics", such as paper handkerchiefs, by the wet process. Bonded fibre fabrics are classified in heading 59.03 of the Common Customs Tariff. We have also been informed that short-cut fibres may be used as padding to reinforce synthetic material, or for lead plates in the manufacture of accumulators.

(c) The Commission and Mecke are of the opinion that the present difficulty in tariff classification is due to the recent appearance, as a result of the advance of technology, of this new product, short-cut fibres. The plaintiff in the main action adds that the difficulty is exacerbated by the fact that there is no heading in the Common Customs Tariff which refers expressly to "short-cut" fibres and that the inclusion of such a reference would probably present the best solution to the problem which has arisen. In the present circumstances, and bearing in mind the wording of the question submitted by the court hearing the case, however, our choice is restricted to one of the two subheadings

referred to in the order making the reference.

Subheading 56.01 A, in which the Principal Customs Office and the Commission suggest that the fibres in question should be classified, is worded as follows, in French:

"Fibres textiles synthétiques et artificielles discontinues en masse:

A. Fibres textiles synthétiques".

"Man-made fibres (discontinuous), not carded, combed or otherwise prepared for spinning:

A. Synthetic textile fibres".

It is not disputed that, as the Commission has emphasized, the use of the French word "discontinues" means that the fibres can only be classified in that subheading if they are of a restricted length. Any doubt there might be on that point must disappear on reading the equivalent terms in the English: ("discontinuous"), and above all in the Danish: "korte".

Similarly, it is not contested that, according to Note 1 to Chapter 51 of the Customs Tariff, for a product to be considered as "man-made fibres", regardless of the tariff section in which the terms are used, it is necessary, and sufficient, that it meets three conditions relating to its structure, manufacturing process, and external appearance.

There is no doubt that the products in dispute, which result from the cutting of continuous filament tow of subheading 56.02, are synthetic textile fibres if the only criteria applied are those concerning structure and the manufacturing process. To reach that conclusion it is necessary, however, that in addition the external appearance of the short-cut fibres enables them to be considered as synthetic textile fibres. As has been said already, it is precisely their length which presents a problem in this respect.

II — One must also be certain that there is no other criterion which should be taken into consideration. The plaintiff suggests the test of whether they are suitable for spinning in order to distinguish products of heading 56.01, which are suitable, from those of heading 59.01, which are not. In view of the fact that, at least in the present state of the art, fibres which are cut to a length as short as those in this case cannot be spun, they cannot be classified in heading 56.01. Seven specialized technical organizations consulted by Mecke likewise broadly adopted the test of suitability for spinning, reaching the same conclusion as the plaintiff.

(a) Before we can examine that in more detail I think the Court should consider the basic objection to that criterion which has been raised by the Principal Customs Office, the defendant in the main action. In the opinion of the latter, suitability for spinning is quite irrelevant to the tariff classification of the products in dispute; only physical features, or, more generally, objective characteristics should be taken into account.

It is true that in a case which is not without similarity to the present one, Case 111/77 *Bleiindustrie* v *Hauptzollamt Hamburg-Waltershof*, the Court held that the use to which the product was to be put was irrelevant (Judgment of 9 March 1978, [1978] ECR 659), despite the opinion of the Advocate General (ibid. at pp. 673 to 675). Nevertheless, it appears from the judgment of the Court of 14 December 1972 in *Arend van de Poll* (Case 38/72 [1972] ECR 1329, at pp. 1337 and 1338, paragraph 5) and from the most recent judgment given by the Court on tariff classifications, *Chem-Tec* of 11 July 1980 (Case 798/79 [1980]

ECR, paragraph 13), that the Court does not refuse to consider the purpose of a product as a criterion for determining tariff classification. The *Arend van de Poll* Judgment shows that that is particularly true when the test of use may be inferred from the Explanatory Notes to the Brussels Convention (now known as the Explanatory Notes to the Customs Co-operation Council Nomenclature). To my mind, there is all the more reason to accept it when it is to be found in the actual wording of the Customs Tariff.

In the present case, moreover, the criterion based on the intended use of the product in dispute, here its suitability for spinning, coincides to some extent with a criterion, its length, based on the objectively ascertainable characteristics of the product.

In favour of the test of the suitability for spinning the fibre, shown by its length which is sufficient for that purpose, Mecke relies on arguments based on both the wording of the Customs Tariff itself and on the form of Chapter 56 thereof, Man-made fibres (discontinuous), and the Explanatory Notes to the Customs Co-operation Council Nomenclature.

(b) The plaintiff relies, first, on the actual wording of heading 56.01 which is, in the German language vesion, as follows:

"Synthetische und künstliche Spinnfasern, weder gekrempelt noch gekämmt:

A. Synthetische Spinnfasern".

The presence of the root "spinn-" of the German verb "spinnen" which means in French "filer" [to spin] shows clearly, in the plaintiff's view, that the product could not be classified in that heading if it were not suitable for spinning. The plaintiff goes on to point out that the same root reappears in the wording of all the headings of Chapter 56, to be precise in the [German] words "Spinnfasern" ["fibres" in the English version] (headings 56.01, and 56.04 to 56.07), "Spinnkabel" ["continuous filament tow"], (heading 56.02) and "Spinnstoffen" ["man-made fibres (continuous or discontinuous)"] (heading 56.03).

In the view of the Principal Customs Office and the Commission, the root "spinn-" does not indicate that these words are used to refer to something which can be spun ("verspinnbar"). The root refers, on the contrary, to the manufacturing process for such products, which are in fact obtained by being spun ("durch ein Spinnverfahren"). Thus polyester fibres, such as those involved in this dispute, are melt spun.

The Commission also draws attention to the fact that that conclusion is further corroborated by the equivalent terms used in the other Community languages for the German word "Spinnfasern" (in French "fibres textiles", in English "fibres", in Italian "fibre tessili", in Dutch "vezels", and in Danish "fibre"), which make no reference whatsoever to suitability for spinning.

On those grounds I am of the opinion that that theory advanced by the plaintiff in the main action should be rejected.

However, the latter has taken a second argument from the wording of the tariff, based on the wording of heading 56.04, which is:

— *in French:* "Fibres ... et déchets de fibres ... cardés, peignés ou autrement préparés pour la filature."

— *in German:* "... Spinnfasern und Abfälle von ... Spinnstoffen, gekrempelt, gekämmt oder anders für die Spinnerei vorbereitet".

in English: "... fibres (... or waste), carded, combed or otherwise prepared for spinning".

The plaintiff's representative explained at the hearing that fibres of heading 56.04 are basically the same as those of heading 56.01, the only difference between them being that the former have been more extensively worked, precisely in order to enable them to be spun. Thus, in order to manufacture fibres for spinning, heading 56.04, fibres of heading 56.01 have to be used which must accordingly themselves be suitable for spinning.

If the technical information which has been supplied is correct — and we have no reason to suppose otherwise — it seems that the conclusions based on it must also be correct. I think, therefore, that the argument inferred from the wording of a heading of the Customs Tariff itself merits consideration.

(c) As far as the plaintiff is concerned the test of suitability for spinning is likewise called for on a systematic examination of Chapter 56, which lists the products which may be manufactured, by spinning, from man-made fibres of heading 56.01. Since they cannot be used for manufacturing any of the products of Chapter 56, the fibres in question likewise cannot be classified therein.

The Commission agrees with the plaintiff in accepting that the products listed under headings 56.05 and 56.07 (Fils et tissus de fibres textiles synthétiques et artificielles discontinues) [yarn and woven fabrics of man-made fibres (discontinuous ...)] are obtained in practice from textile fibres ("Spinnfasern") by means of spinning. The Principal Customs Office, on the other hand, points out that in Chapters 50 to 57 of the Common Customs Tariff goods are grouped according to the kind of textile of which they are made (Chapter 50: silk; Chapter 51: man-made fibres (continuous), Chapter 52: metallized textiles ...). It notes that the chapters generally cover raw materials, waste, yarns and fabrics, in that order.

The Principal Customs Office adds, however, that "certain raw textile materials and most waste cannot be spun" without thereby altering "their classification under the respective headings" in the chapter in question. To illustrate that point of view it mentions as examples the silk-worm cocoons unsuitable for reeling of tariff heading 50.03, flax waste of tariff heading 54.01 and cotton linters of heading 55.02.

In its view there is therefore nothing in the general scheme of Chapter 56 making it a requirement that in order to be classified in heading 56.01 the fibres must be suitable for spinning. This requirement is rendered all the more unnecessary by the fact that the fibres which fall indisputably in heading 56.01 are used for manufacturing bonded fibre fabrics of heading 59.03. That does not appear to be contested by the plaintiff company, moreover, for in its reply to a question which was put to it at the hearing its representative explained that to manufacture bonded fibre fabrics by the dry process, the fibres used may be longer than the very short fibres which are involved in this dispute. The plaintiff in the main action has thereby admitted that the fibres which fall within heading 56.01 may be used to manufacture bonded fibre fabrics of heading 59.03. But such fibres must, necessarily, be longer than the fibres involved in the dispute which can be used to make bonded fibre fabrics only by the wet process, which requires very short fibres.

Consequently, I do not believe that either that example or the argument supporting it throws any conclusive light on the subject.

(d) The point is that no distinction is there made between the methods of manufacturing bonded fibre fabrics, which is essential, however, as we shall see in a moment when we examine the argument which the plaintiff in the main action has based on the Explanatory Notes to the Customs Co-operation Council Nomenclature on heading 56.01.

The importer relies on the following sentence, to be found in the Notes: "the length into which the fibres are cut ... varies according to ... the type of yarn to be manufactured ...". That means, it claims, that when a fibre has been cut to a length so short that it can no longer be used to manufacture yarn of any type whatsoever, that fibre can no longer be classified in heading 56.01.

As to that, the Commission admits that if suitability for spinning were considered to be an indispensable requirement according to the Explanatory Notes, the fibres involved in the dispute could not be classified in heading 56.01. However, it considers that that is not the case.

In its opinion, even though the phrase quoted shows clearly that fibres of heading 56.01 may be used to make yarn, that does not mean that that is the only use to which they may be put. The rest of the passage examined ("The length into which the fibres are cut ... varies according to ... the nature of any other textile fibres with which [they are] to be mixed" shows that the fibres covered by heading 56.01 can be used for many purposes, including, in particular, the manufacture of bonded fibre fabrics. Thus fibres which, like those in this case, are too short to be spun may nevertheless be classified in heading 56.01.

It appears to me, however, that that conclusion fails to take into account all the aspects of the problem. Of course, fibres which fall indisputably within heading 56.01 may be used to manufacture bonded fibre fabrics of heading 59.03, a point which, as we have seen, is conceded by Mecke itself.

Nevertheless, it must not be forgotten that in that case the manufacture can only be accomplished by the dry process: if the fibres used in the wet process are too long they do not spread evenly in the water. So although the plaintiff wrongly inferred from the general scheme of Chapter 56 and the passages from the Explanatory Notes to heading 56.01 on which it comments that the fibres covered by that heading can only be used for manufacturing products of the same chapter, it does not follow that fibres which are too short for that may be classified therein.

In reality both the general scheme of the tariff, and in particular of Chapter 56 thereof, and the phrases quoted from the Explanatory Notes to heading 56.01, appear to indicate that the use to which fibres of that heading are normally to be put is the manufacture of the yarns and fabrics referred to respectively in headings 56.05 and 56.06 on the one hand, and 56.07 on the other. If the Commission's line of reasoning is followed, it must further be accepted that the concept of "fibres textiles synthétiques et artificielles discontinues en masse" ["man-made fibres (discontinuous), not carded, combed or otherwise prepared for spinning"] is not a homogeneous one since it covers fibres which, while sharing the common feature of being short, include some which are sufficiently long to be spun and some which are not.

(e) For that argument, moreover, the Commission found itself obliged to give a general exposition, in its written obser-

vations, on the length of textile fibres in order to justify its suggestion that fibres of between 6 and 7 mm in length should be included in a tariff heading which is described in the Explanatory Notes to the Customs Co-operation Council Nomenclature as concerning fibres the length of which "is usually between 2.5 cm and 18 cm". The Commission rightly observes that "the lengths most commonly encountered vary between 2 and 20 cm, because man-made fibres are often treated at the same time as natural fibres the length of which lies generally within those measurements." But it adds that "the processing industry requires, for the manufacture of synthetic yarns and articles made of woven pile fabric, raw material varying in length from 0.1 mm for the woven pile fabric to 100 mm for spinning carpet thread", and that the same machine can produce fibres of between 6 and 15 mm. It concludes from this that the word "usually" in the phrase quoted should be given a wide interpretation, so that heading 56.01 may include fibres of between 6 and 7 mm.

That conclusion, following on considerations which seem to me somewhat far removed from the precise question with which we are concerned, does not appear to me to have any serious foundation. In the first place, it is doubtful whether fibres which vary considerably in length and which are used for the very wide range of purposes listed by the Commission should all be grouped in heading 56.01. In the second place, even if according to the wording of that heading it is restricted to short fibres, the method of interpretation described above, which is also that of the Principal Customs Office, cannot, in my view, be justified. I do not see why the word "usually" in heading 56.01 should be interpreted widely, but the expression "generally up to 2 mm long" in the same Explanatory Notes on heading 59.01 restrictively, as the Commission and the Principal Customs Office would have it, when the length of the fibres involved in the dispute is clearly closer to 2 mm than to 25 mm.

To conclude, I find it difficult to classify short-cut fibres having a length of between 6 and 7 mm under subheading 56.01 A of the Common Customs Tariff.

III — Still to be considered, however, is the question whether the fibres in dispute may fall within subheading 59.01 A of the Customs Tariff as textile flock and dust of man-made fibres.

That is the opinion of the plaintiff in the main action, in whose view the Customs Tariff, at least as elucidated in the Explanatory Notes to the Customs Co-operation Council Nomenclature, has merely confirmed trade practice in classifying as flock and dust, rather than textile fibres, fibres such as those in this case which are made by cutting textile filaments or fibres into very short lengths.

The plaintiff considers that this cutting into very short lengths removes from the product its character of textile fibre in the same way as, to take just one of the examples given by its representative at the hearing, when a wooden pole is cut into extremely short lengths it produces, not other poles, but wooden discs.

(a) The chapter in which subheading 59.01 A is to be found, Chapter 59, "covers a number of textile products of a special character", according to the

general remarks, quoted by the Commission, in the Explanatory Notes to the Customs Co-operation Council Nomenclature on that chapter. Certainly there is no systematic way of listing together, for example, twine from heading 59.04, lineoleum from heading 59.10 and textile hosepiping from heading 59.15. That disposes of the argument put forward by the plaintiff in the main action to the effect that the fibres concerned should be classified in Chapter 59 because the goods which they are used to manufacture, bonded fibre fabrics, fall within heading 59.03. There is all the less difficulty in rejecting that argument in view of the fact that the plaintiff itself has told us that fibres such as those involved in the dispute can also be used as padding to reinforce synthetic material, or for lead plates in the manufacture of accumulators, all goods which quite definitely do not fall within Chapter 59.

(b) As to subheading 59.01 B, which forms part of heading 59.01: Wadding and articles of wadding; textile flock and dust and mill neps, this is worded, in French, as follows:

"B. Tontisses, noeuds et noppes (boutons):

I. de matières textiles synthétiques ou artificielles

II. d'autres matières textiles".

["B. Flock and dust and mill neps:

I. Of man-made fibres

II. Of other textile materials".]

The German equivalent for the French "tontisse" is "Scherstaub". As that word includes "Staub", which means "dust", both the Principal Customs Office and, curiously enough, the Commission, have concluded that a product cannot be classified as "tontisse" ["textile flock and dust"] if it does not have a powder-like quality.

But that conclusion does not appear to me to take into account the corresponding words for "Scherstaub" in the five other Community languages. The French "tontisse", the Dutch "scheerhaar (tontisse)" and the Italian "borra di cimatura" do not give any indication that the product to which they refer must have the outward appearance of dust. Contrary to what the Commission's view appears to be, that is even clearer in the expressions used in English and Danish, which read, for subheading 59.01 B:

"Flock and dust and mill neps", in English, and "Flok, støv og nopper", in Danish.

In order to translate the German "Scherstaub", recourse is thus had in those languages to two words, "flock and dust" in English, "flok og støv" in Danish, of which the second means precisely "dust", but the first of which signifies a substance which, on the contrary, does not have a powder-like character. There is no doubt that in English the equivalent of the French word "tontisse", and therefore the German word "Scherstaub", embraces not only "dust", but also "flock", for the English text — which is as authentic as the French text — of the Explanatory Notes to the Customs Co-operation Council Nomenclature concerning "tontisses" bears the title "Textile Flock and Dust". Finally, it is clear that the Danish expression corresponds exactly to the English expression.

If these arguments based on the actual wording of the Customs Tariff were not sufficient, there might be added the apposite criticisms levelled by the plaintiff in the main action against the test of the powder-like quality of the substance. The criticisms are based on the Explanatory Notes to the Customs Co-operation Council Nomenclature,

which the defendant in the main action contends have no value whatsoever in the present case as an aid to interpreting the tariff. The Principal Customs Office, following the case-law of this Court (in particular the Chem-Tec judgment, already cited, paragraph 12), reminded the court making the reference that these notes serve merely as a supplementary aid to interpretation, helping to clarify the content of the tariff headings or subheadings, without in any way modifying the wording thereof. In the present case, however, I think there is justification for having recourse to the Notes, for even the interpretation of the word "Scherstaub" adopted by the Principal Customs Office on the basis of the meaning and scope which it has from the purely linguistic point of view has led, as we have seen, to conclusions which are, to say the least, arguable.

As the plaintiff in the main action has said, the Notes describe how the flock and dust (tontisses) are made or manufactured. They distinguish between three types, the first two of which are known in English as "textile flock", as opposed to the third which alone is described as "textile dust". The fibres involved in this dispute can only be flock of the second type because that covers fibres "produced by cutting textile filaments or fibres into very short lengths", which was, as we saw at the outset, the way in which they were made. In contrast "textile dust is obtained ... by grinding textile fibres to a powder".

Lastly, the plaintiff has provided an even more convincing argument, perhaps, in its commentary on the following clause: "These products [flock and dust] are used for a wide variety of purposes (e.g. for blending with other fibres and spinning into yarns ... as a basis for face powder and 'make-up')". For making powder or make-up obviously the powder-like material must be used, whereas it is equally certain that to make yarn it must be in the form of fibres. That is because only material in the form of fibres can be worked on a machine and incorporated into other fibres, for any attempt to incorporate a dust-like substance into the spinning process would inevitably result in the dust falling to the floor where nothing could be done with it except to sweep it up.

The conclusion to be reached from those considerations is clearly, I believe, that the term "tontisses" [flock and dust] within the meaning of subheading 59.01 B does not refer exclusively to powder-like material, contrary to the opinion of the Commission and the Principal Customs Office.

(b) It is too soon, however, to infer from this that short-cut man-made textiles fibres having a length of between 6 and 7 mm can be classified in subheading 59.01 B. According to the order referring the question to this Court, the Principal Customs Office is of the opinion that heading 56.01 of the Common Customs Tariff embraces all short-cut man-made textile fibres, discontinuous and not suitable for spinning, excluding only waste.

The goods in question here are too cleanly cut and even to be classified as waste or flock and dust. Thus, as far as the Principal Customs Office is concerned, the concept of "flock and dust" as used in subheading 59.01 B is restricted to that of "waste".

The plaintiff in the main action has conceded in this regard that in fact flock and dust means strictly waste produced by shearing and other similar operations and that, as such, the particles are not

uniform in length. But it has rightly remarked that that type of flock and dust corresponds only to the first of the three categories described in the Explanatory Notes: "textile flock consists of very short fibres ... obtained as waste during various finishing operations and, in particular, from the shearing of velvets." That quotation shows that fibres having the irregularity found in waste constitute the usual kind of flock and dust, but not that they constitute the only kind. To maintain the contrary amounts, in my opinion, to pretending that the passages already quoted from the Explanatory Notes concerning the flock and dust which is obtained by different processes do not exist.

Can it be argued that such recourse to the Explanatory Notes is not permissible in so far as the Notes modify the actual wording of the tariff, since the French word "tontisse" and its equivalents in the other languages clearly can refer only to waste? I do not think so. Whilst certain words which are used in the tariff are self-evident, such as "live horses" in heading 01.01 (to use the example quoted in General Rule 1 for the interpretation of the Customs Co-operation Council Nomenclature — which is identical to Rule 1 for the interpretation of the nomenclature of the Common Customs Tariff) the same cannot be said of a technical term, such as that in the present case, the significance of which may escape the layman. Moreover, does not the mere existence of the Explanatory Notes reveal the existence of the difficulties which they are destined to get over?

If the Explanatory Notes may be invoked, as I think they may, they enable us to take into consideration likewise the argument based by the plaintiff on an analogy with the substances other than flock and dust which are listed in heading 59.01. Apart from those other substances, the heading includes, as you will recall, wadding and articles of wadding (subheading A) and mill neps of textile materials (subheading B). If one reads the Notes on those products it becomes abundantly clear that neither of these two types of product constitutes waste.

The description of mill neps, for instance, shows that these are "... small ... balls ... generally made by rolling fibres between two discs", and thus that, although their basic material may be waste, they lose that quality on being worked. No doubt that is particularly important with regard to goods which bear the same customs duty as flock and dust because they are classified in the same subheading. In the circumstances it is hard to explain why only flock and dust should be considered as waste in heading 59.01, and even in subheading 59.01 B.

(c) One obstacle still remains to be surmounted where short-cut man-made fibres of between 6 and 7 mm length are concerned if they are to be classified as "flock and dust of man-made fibres" in subheading 59.01 B: the question of their length.

According to the Explanatory Notes, textile flock such as that which is the subject-matter of the main action and is produced by cutting textile filaments or fibres, has a length which is "generally up to 2 mm". The Principal Customs Office and the Commission consider that

that description should be given a restrictive interpretation. However, I have already rejected the reason put forward to justify the restrictive interpretation, based on the requirement that the matter be powder-like in character. Unlike the Commission and the Principal Customs Office I think, therefore, that the remarks on length in the Explanatory Notes to heading 56.01 and those on heading 59.01 should be interpreted in the same manner. My opinion is that both the expression "generally up to 2 mm long" (heading 59.01) and "usually between 2.5 cm and 18 cm" (heading 56.01) indicate the usual length of the fibres which fall within those headings and at the same time make it clear that exceptions can be allowed in those lengths.

That being so, since 6 to 7 mm is far closer to 2 mm, the maximum referred to for flock, than to 25 mm, the minimum mentioned in respect of textile fibres (discontinuous), logic seems to indicate that fibres of that length should be classified in subheading 59.01 B 1 rather than in subheading 56.01 A.

Of course, such a classification does not represent the ideal solution, if only because of the heterogeneous nature of the concept of "tontisse" [flock and dust] used in the tariff which, as we have seen, groups together widely differing products. That is also the opinion of one of the bodies consulted by the plaintiff in the main action, the Öffentliche Prüfstelle und Textilinstitut für Vertragsforschung [Public Inspectorate and Textile Institute for Research under Contract] which, "after an exhaustive examination of both tariff headings", concluded that "short-cut fibres should not be classified in either of the headings referred to". As has been suggested, the best way of filling the present lacuna in the law with regard to fibres between 2 and 25 mm in length would probably be to mention short-cut fibres *expressis verbis* in either an existing tariff heading, or a new one.

Nevertheless, as the law stands at present I must conclude that the Court should decide that:

— short-cut man-made fibres having a length between 6 and 7 mm fall within subheading 59.01 B 1 of the Common Customs Tariff as flock and dust of man-made fibres.