In Case 183/73

Reference to the Court under Article 177 of the EEC treaty by the Bundesfinanzhof (Federal Fiscal Court) for a preliminary ruling in the action pending before that Court between

OSRAM GMBH, Munich

and

OBERFINANZDIREKTION FRANKFURT (Main) (Central Tax Office, Frankfurt-on-Main)

on the interpretation of tariff headings Nos 70.11, 85.20 and 70.21 of the Common Customs Tariff regarding the classification of certain types of reflector intended for the manufacture of lamps

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen (Rapporteur), Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher, C. Ó Dálaigh and A. J. Mackenzie Stuart, Judges,

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

gives the following

JUDGMENT

Facts

The order for reference and the written observations submitted under Article 20 of the EEC Statute of the Court may be summarized as follows:

I — Facts and procedure

1. In June 1969, Osram applied for a binding official customs tariff classification in respect of moulded glass reflectors and lenses intended for the manufacture of shop-window spotlights, infra-red lamps for medical, agricultural or industrial purposes, and photographic floodlamps. The reflectors are coniform and open at both ends. After the inner surface of the reflectors has been silvered and the internal lamp filaments have

been fitted, the lenses are hermetically sealed on to the reflectors. The lamps are filled with an inert gas. Finally, the lamps are capped with a threaded base.

In its official notice of 11 August 1970 the Oberfinanzdirektion at Frankfurt (the Central Tax Office) classified these articles under tariff heading No 70.21 of the Common Customs Tariff (CCT, see Regulation No 950/68, OJ L 172 of 22 July 1968, p. 1, most recently amended by Regulation No 1/73, OJ L 1 of 1 January 1973, p. 1).

The company opposed the Oberfinanzdirektion's point of view. It asked that the reflectors should be classified under tariff heading No 70.11 or alternatively under tariff subheading No 85.20-D under which heading the lenses should also appear, and lodged a protest with this body with a view to having the official tariff classification withdrawn; the Oberfinanzdirektion dismissed this protest. The company instituted an appeal against this decision before the Bundesfinanzhof.

2. The headings in the CCT in dispute are the following:

In Chapter 70: glass and glassware;

70.11: Glass envelopes (including bulbs and tubes) for electric lamps, electronic valves or the like 18 %

70.21: Other articles of glass 21 %

In Chapter 85: Electrical machinery and equipment; parts thereof;

85.20: Electric filament lamps and electric discharge lamps (including infra-red and ultra-violet lamps); arc-lamps; electrically ignited photographic flashbulbs;

A. .....

B. .....

C. .....

D. Parts (as from 1 January 1972: 85.20-C)

(The percentages stated are the autonomous rates of duty. The conventional rates of duty are appreciably lower, but in the same proportion).

3. The Bundesfinanzhof suspended proceedings and applied to the European Court of Justice in accordance with Article 177 of the EEC Treaty for a preliminary ruling on the following questions:

1. What is meant by the term 'glass envelopes' (Glaskolben) in tariff heading No 70.11 of the Common Customs Tariff?

2. What are 'glass envelopes, (including bulbs . . .)' within the meaning of that tariff heading?

3. Do they include coniform articles of glass which are open at both ends, or do these come under tariff heading No 85.20 or No 70.21?

In its order for reference, the Bundesfinanzhof stated in particular:

'Since the reflectors, like the lenses, are used in the manufacture of electric filament lamps it would at first sight seem proper to classify them as parts of such electric lamps, under tariff heading No 85.20-D. But this cannot be done if they are glass articles within the meaning of tariff heading No 70.11, since Note 1 (b) of Chapter 85 states that such articles are not covered by the Chapter.

A decision in the case rests, therefore, primarily on wheter the reflectors are 'glass envelopes (including bulbs . . .)' within the meaning of heading No 70.11 of the CCT. This question cannot be answered, however, until it has been determined what the term 'glass envelopes' comprises. Community law contains no definition of the term . . . In general usage the term 'Kolben' describes a spherical object with a stem. But employed in different technical fields the term gains more specific connotations which are extremly varied . . . This leads, in the present case, to the consideration of whether articles such as

the reflectors can be regarded as 'bulbs' (Kolben) despite the fact that they are open not at one end, but at two. If it is assumed that they do not become bulbs until the lenses are sealed on, then the Notes in Chapter 85 do not preclude them from being classified, like the lenses, as parts of electric filament lamps under tariff heading No 85.20-D. The explanatory notes ... state with regard to tariff heading No 85.20 ... that this heading excludes: 'glass components for bulbs and tubes of electric lamps (tariff heading No 70.21)' Since these notes, too, are not generally binding legal rules, they cannot have the effect of classifying the reflectors under heading No 70.21 rather than heading No 85.20-D.'

4. The Bundesfinanzhof order of 16 October 1973 was registered with the Court on 19 November 1973.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were lodged on behalf of the Commission by its legal adviser J. Amphoux, acting as agent, assisted by D. Oldekop, legal adviser to the Commission, and on behalf of Osram by W. Zimmermann and P. Haase.

Having heard the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory enquiry.

II — Written observations submitted to the Court

The Osram Company assert that the English and French versions of the tariff headings support their view that the articles to be classified, the reflector bulbs (reflectors) and covering glasses (lenses), must be classified as bulbs pursuant to tariff heading No 70.11. The reflector bulb and the covering glass are obviously complementary items making up the glass part of electric filament lamps. These two units are normally presented at the same time for customs clearance.

The French and German wordings of tariff heading No 70.11 refer to 'ampoules et tubes électriques ouverts, non finis' [1] ('open, unfinished electric bulbs and tubes'). The definition of the articles offered by the English wording is a great deal wider as it uses the term 'glass envelopes'. The three wordings are agreed on the fact that such articles (Kolben/ampoules/glass envelopes/bulbs) must be concerned in the manufacture of 'electric lamps and tubes and other similar articles'. The decisive yardstick is not therefore the shape of these articles of glass, but solely the fact that they form the glass envelope of electric lamps.

There is no doubt that the articles are used in the manufacture of lamps as electric filament lamp units. If, therefore, the Company's view is without substance, the articles in dispute must thereupon be classified as 'electric filament lamp units' (No 85.20), since only articles of glass under heading No 70.11 (bulbs/Kolben and glass envelopes) are included under this heading pursuant to the explanatory Note 1 (b) to Chapter 85. Further transfer from No 85.20 to No 70.21, on the basis of tariff heading No 70.11 (other articles of glass), is not permissible.

According to the Company, the definition of glass bulbs under tariff heading No 70.11 must follow from the utilization for which they are normally intended. The concepts in combination of 'glass bulbs', 'open', 'unfinished' and 'glass envelopes' enable it to be determined that the extent to which a bulb is finished cannot in itself have any bearing on its classification.

The Commission points out that the first two questions deal with the

1 — *Translator's Note:* Sic. The words in fact used in the CCT under this heading are as follows: 'ampoules et enveloppes tubulaires en verre, ouvertes, non finies ...' (open, unfinished bulbs and tubular envelopes of glass).

interpretation of tariff heading No 70.11. The problem of interpretation that arises comes down to deciding whether, when the glass envelope of a lamp is formed by the combination of several units welded to each other, reflectors and lenses in the present case, the concept of bulbs should apply solely to the envelope in its completed state or whether it may also extend to cover each unit considered separately or at least to some of them.

In accordance with the general rules for interpreting CCT nomenclature, the precise wording of tariff heading No. 70.11 should first of all be taken into account. The Commission makes particular reference to the English version of this heading: 'Glass envelopes (including bulbs and tubes) for electric lamps, electronic valves or the like'.

It subsequently refers to the Explanatory Notes to the Brussels nomenclature and quotes the Notes relating to tariff heading No 70.11.

It holds that the notes clearly, if not expressly, define the objective characteristics and properties to be used as yardsticks for classifying goods under tariff heading No 70.11. Without reference to the materials that go to make up these goods, such characteristics essentially lie in the intention to use the said goods for the manufacture of electric lamps and tubes. The English wording of this heading is quite clear in this respect. The heading covers all glass envelopes 'for electric lamps, electronic valves or the like'. On the other hand, however, the wording of the tariff heading No 70.11 and the related explanatory Notes clearly show that this is intended to apply only to items that can in themselves compose the glass envelope of the lamps, the manufacture of which they are intended to serve. The Commission states *inter alia* that the Explanatory Notes to the Brussels nomenclature refer to 'bulbs as such'.

To rank for classification under tariff heading No 70.11, an item should therefore in itself be able, once it has been fitted with the necessary devices to transform electrical power into light or other rays, to fulfil the rôle played by the glass envelope in the lamp or valve for the manufacture of which it is intended.

In this context, the Commission refers to the classification adopted by the Customs Cooperation Council with regard to tariff heading No 85.21 (cf. Collected Classifications, page M. J. 1971, 70.13-70.21).

The Commission further wonders whether bulb parts can be ranked with fully made-up bulbs under tariff heading No 70.11. This is what the second of the questions put by the Bundesfinanzhof amounts to.

It appears from the concept of 'open, unfinished bulbs' that a bulb or tubular glass envelope for lamps would fall under tariff heading No 70.11 even if it were only an incomplete article compared with the glass envelopes to which this heading refers or has still to undergo various processes towards this end. This is subject to one condition, however: in line with a classification rule generally adopted when applying the Common Customs Tariff, an incomplete or unfinished article must, as imported, bear the essential characteristics of the complete or finished article if it is to be included under the same tariff heading as the latter (cf. General Rule 2 (a) for the interpretation of the nomenclature of the CCT). It is also obvious that in the possible event of a bulb being made up by assembling various glass units, each of which is of equal importance though none of which yet possesses the essential characteristics of the bulb to be produced, none of such units can be included under tariff heading No 70.11. The concept of unfinished bulbs should not be confused with that of parts of bulbs. This is evident from the general composition of the CCT and the terminology that it employs. As regards the Brussels nomenclature, the CCT draws a clear distinction between incomplete or unfinished articles and

parts or separate components of articles. Wherever it is intended that the tariff should refer to parts or separate components of an article as well as to the article itself it is ensured that this is stated in express terms.

Unless referred to in this way, a part of an article must be allotted to its proper place in the nomenclature and where no specific heading exists to cover it it must be classified under the residual heading relating to the finished article. In fact, this is the principle that the Customs Cooperation Council has adopted in a number of formal classifications (cf. e.g. Collected Classifications, page M. J. 1966, 73.11-73.13). In this context, the Commission further refers to the Explanatory Notes to the Customs Tariff of the European Communities relating to subheadings Nos 85.20-C (85.20-D before 1 January 1972) and 85.21-E. These Notes distinguish clearly between, on the one hand, glass envelopes (including bulbs and tubes) for electric lamps and electronic valves, as under No 70.11, and, on the other hand, other articles of glass intended to form such envelopes, which they allocate to No 70.21

However, the Commission draws attention to a new General Rule 2 (a) of the CCT for the interpretation of nomenclature, added to Regulation No 1/72 of the Council of 20 December 1971 (OJ L 1 of 1 January 1972, p. 1), by virtue of which any reference to an article in a particular heading of the tariff 'shall also be taken to include a reference to that article complete or finished ... imported unassembled or disassembled'. At the present time it should be asked whether the articles of glass under consideration cannot be considered to be bulbs 'imported disassembled' where they are imported at the same time.

In any respect, the above findings apply to the period preceeding the entry into force of Regulation No 1/72.

As regards the third question, the Commission maintains that the reply to the first part of the alternative is in fact implicit in the comments made above. The goods in question are not covered by tariff heading No 70.11. It should therefore be asked whether they may be classified as parts or separate components of lamps under sub-heading No 85.20-D.

If one were to abide strictly by the tariff provisions there would be some temptation to accept this possibility. Subheading No 85.20-D relates to parts and separate components of the lamps under consideration, and draws no distinction on the basis of the nature of such parts or components nor indeed on the basis of whether they are of glass or not. The sole exclusion made is that stated in Note 1 (b) to Chapter 85. This relates to articles of glass under heading No 70.11. One cannot, however, but be struck by the illogicality of the result of such a classification. To accept this would be to ignore the relationship existing between tariff heading No 85.20 and tariff heading No 70.11.

There are in fact grounds for holding that until they become parts of lamps the articles concerned are initially parts of the bulb of such lamps. It is hard to understand how such parts of bulbs can already be included under tariff heading No 85.20 if the bulbs themselves are not. In fact, the exclusion from Chapter 85 contained in Note 1 (b) of the Chapter must be taken to refer not only to articles under tariff heading No 70.11 but also to units intended to make up such articles, even at a stage of production previous to the process whereby the latter were manufactured.

If parts of bulbs are excluded in the same way as the bulbs themselves from sub-heading No 85.20-D this is not to ignore the fact that this subheading covers glass parts as well as parts and separate components of lamps and tubes. But, as the Explanatory Notes to the Customs Tariff of the European Communities show, only 'glass parts... intended to be fitted inside lamps or tubes' are concerned in this case.

The Explanatory Notes, furthermore, expressly confirm that: 'on the other hand, this subheading does not cover the following . . . 1. articles of glass intended to form the envelope of lamps or tubes (No 70.21).'

The Commission further refers to the above-mentioned CCT classification relating to tariff heading No 85.21.

The Commission concludes that the only tariff heading left under which the articles in question can be classified is the residual one relating to other articles of glass, namely tariff heading No 70.21.

After the written procedure had been closed, the oral procedure was commenced on 20 March 1974. The Osram Company was represented by Dr Schweickert and the Commission by its legal adviser, J. Amphoux, assisted by D. Oldekop.

In the course of the oral procedure, the Company and the Commission, in response to a question by the Court, stated their views on the importance in the present case of the General Rule No 2 (a), last sentence, for the interpretation of the nomenclature of the CCT, with regard to articles submitted unassembled or disassembled.

The Commission draws attention to the fact that this Rule was introduced into the CCT on 1 January 1972. Referring to the Explanatory Notes to the Brussels nomenclature, it maintains that the Rule applies on the assumption that all the articles are imported simultaneously, that the fact that they are imported in an unassembled or disassembled state is due mainly to such reasons as special requirements or ease of packaging or transport and not to manufacturing reasons properly speaking, and finally, that the work of assembling them is one of extreme simplicity.

The Commission doubts whether these conditions have been fulfilled in the present case. It considers that the fact that the lenses and reflectors are imported separately is due to the special nature of the manufacturing process. It maintains, furthermore, that the sealing process is much more than a simple matter of assembling the components.

In the Commission's opinion, the first sentence of Rule 2 (a) relating to incomplete or unfinished articles is no more than a codification of previous law, while the second sentence relating to articles submitted in an unassembled or disassembled state applies only in respect of certain specific Chapters; also, in 1972, the whole of the CCT was extended.

The Osram Company considers that the general rule for interpretation supports its view and that this rule states a position that already existed in law.

It demonstrates that for technical reasons the glass envelope has to be divided into two parts and maintains that these two parts constitute a single unit, the bulb unit.

The Company refers to the following comment included in the Commission's observations: 'The characteristics that the article in question must possess in order to fall under tariff heading No 70.11 are determined by the technical requirements for the operation of the said lamp or said tube.' It considers that this comment supports its own point of view.

The Advocate-General presented his opinion at the hearing on 4 April 1974.

Law

1 By order of 16 October 1973, received by the Court on 19 November 1973, the Bundesfinanzhof, by application of article 177 of the EEC Treaty, submitted questions relating to the interpretation of certain provisions of the Common Customs Tariff (hereinafter referred to as the 'CCT').

2 It appears from the order for reference that these questions were submitted in connexion with an action relating to a binding tariff classification ('verbindliche Zolltarifauskunft') issued by a German customs authority on 11 August 1970 concerning the classification of reflectors and lenses made from moulded glass intended for the manufacture of certain special kinds of electric lamp.

3 The manufacturing process for such lamps, unlike that for the traditional electric lamp, does not involve the use of a complete glass bulb but that of open, coniform glass reflectors which, after the electrical components have been assembled, are closed by lenses welded to their sides.

The first and second questions

4 The first two questions submitted require an interpretation of the terms 'glass envelopes, (including bulbs...)' in the sense of tariff heading No 70.11 of the CCT.

5 It appears from the wording of tariff heading No 70.11 in its various linguistic versions that it covers not only glass objects used in the manufacture of electric lamps by traditional processes, but all glass objects intended for the manufacture of such lamps whatever the process used.

This interpretation is confirmed by the Explanatory Notes to the Brussels nomenclature in respect of tariff heading No 70.11, from which it clearly appears that the objective characteristics and properties of the products falling within this heading derive essentially from their utilization in the manufacture of electric lamps and tubes.

6 As worded in the official languages of the Community before 1973, tariff heading No 70.11 applies only to 'unfinished' products.

This term must be interpreted in line with Rule 2 (a), first sentence, of the General Rules for the interpretation of the CCT, in Section I.

According to this Rule, 'any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as imported, the incomplete or unfinished article has the essential character of the complete or finished article'.

The question of ascertaining whether the products with which the main action is concerned in fact meet these requirements concerns the application rather than an interpretation of the CCT and is consequently a matter for the national court.

7 If it is true that the concept of an unfinished product cannot be taken to extend to each of the separate parts that go to make up a product, account should be taken of the General Rule for interpretation No 2 (a), second sentence, in Section I of the CCT, which provides that any reference in a given heading of the tariff 'shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), imported unassembled or disassembled'.

It appears from the wording of this provision that it can apply only provided that the disassembled parts are put forward simultaneously for customs clearance.

Account should further be taken of the Explanatory Note to the Brussels nomenclature relating to this provision, according to which a disassembled article is any article 'the components of which are to be assembled either by means of simple fixing devices (...) or by rivetting or welding, for example, provided that only simple assembly operations are involved'.

It is for the national court to decide whether the welding of lenses to the reflectors in question in fact fulfils these requirements.

8 The two sentences of the Rule for interpretation No 2 (a) in Section I were inserted into the CCT with effect from 1 January 1972, consequent upon a recommendation adopted on 9 June 1970 by the Customs Cooperation Council and accepted by the Member States of the Community pursuant to the Council decision of 21 June 1971 (OJ L 137 of 23 June 1971, p. 10).

There are grounds for considering that these Rules for interpretation were devised with the aim of coordinating, for the tariff as a whole, interpretation practices laid down by special provisions, so that they do not form a legal innovation but apply to imports effected even before 1 January 1972.

The third question

9 The third question asks whether coniform articles of glass open at both ends fall under heading No 70.11 or, on the other hand, under headings Nos 85.20 or 70.21.

10 As already stated, it is for the national court to determine whether the items in question in fact meet the conditions whereby they can be classified under one or other tariff heading, and the Court is competent by application of article 177 of the EEC Treaty to find only as regards the interpretation of the provisions of the tariff.

11 Heading No 70.21 includes 'other articles of glass' and heading No 85.20 'electric filament lamps and electric discharge lamps', including 'parts' (present subheading C).

Note 1 (b) to Chapter 85 of the tariff provides for 'articles of glass of heading No 70.11' to be excluded from this Chapter.

It appears from this that a product that does not fall under heading No 70.11 may fall within Chapter 85.

12 The General Rule for interpretation under 3 (a) to Section I provides that headings which provide the most specific description shall be preferred to headings providing a more general description.

The heading No 85.20-C ('electric filament lamps and electric discharge lamps ...: parts') is more specific than residual heading No 70.21 ('other articles of glass').

The Commission has stated, however, that it has issued an Explanatory Note relating to subheading No 85.20-C which excludes from the latter 'glass components intended to form an envelope for bulbs and tubes of electric lamps (No 70.21)'.

The Commission's Explanatory Notes, while constituting an important factor in interpreting the Common Customs Tariff, cannot modify its text, nor the introductory Notes to the Chapters, which are an integral part of the Tariff.

13 It must therefore be concluded that tariff heading No 85.20-C must be interpreted to mean that it includes articles of glass intended to form an envelope for electric lamps and not falling under tariff heading No 70.11.

Costs

14 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable.

15 As these proceedings are, insofar 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 an order dated 16 October 1973, hereby rules:

1. **The term 'glass envelopes (including bulbs and tubes) for electric lamps' under tariff heading No 70.11 of the Common Customs Tariff must be interpreted to mean that this includes any article of glass intended to form an envelope for electric lamps and tubes and having, as imported, the essential character of the complete or finished article.**

2. **Subheading No 85.20-C of the Common Customs Tariff must be interpreted to mean that it includes any part or component of glass intended to form an envelope for electric lamps and tubes and not falling under tariff heading No 70.11.**

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 8 May 1974.

A. Van Houtte
Registrar

R. Lecourt
President