OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 1 DECEMBER 1977

My Lords,

This case comes before the Court by way of a reference for a preliminary ruling by the Bundesfinanzhof. The appellant before that Court is Fritz Fuss KG, which carries on at Ebingen, in the Federal Republic of Germany, the business of a manufacturer of electrical appliances. The respondent is the Oberfinanzdirektion of Munich.

On 14 January 1975 the appellant applied to the respondent for an official ruling ('Verbindliche Zolltarifauskunft') as to the classification under the Common Customs Tariff of certain goods that it wished to import into the Federal Republic from the USA.

The goods are described in great technical detail in the papers before the Court, and in particular in the Bundesfinanzhof's Order for Reference. It will be enough, I think, if I say that they consisted of somewhat sophisticated 'ultrasonic' detector units designed to form part of burglar alarm systems. They were of two kinds, one called 'Advisor III' and the other 'Advisor VI'. A complete burglar alarm system would include, not only the detector units, but also an alarm signalling device (optical or acoustic), to be actuated by the detectors, and cables linking the detectors *inter se* and the master detector set or control unit to the alarm device.

On 12 May 1975 the respondent issued two official rulings, one relating to the Advisor III and the other to the Advisor VI. In each case the respondent classified the goods under Heading 85.22 of the CCT, which comprises 'Electrical appliances and apparatus, having individual functions, not falling within any other heading of this Chapter'.

Chapter 85 of the CCT is entitled 'Electrical Machinery and Equipment; Parts thereof'. Together with Chapter 84, which is entitled 'Boilers, Machinery and Mechanical Appliances; Parts thereof', it constitutes Section XVI of the CCT, which is itself entitled 'Machinery and Mechanical Appliances; Electrical Equipment; Parts thereof'.

Three observations as to the wording of Heading 85.22 are called for.

The first is that the words 'having individual functions' which are to be found in the English text of it do not have any equivalent in the texts in the other five official languages of the Community. This reflects the fact that those words are to be found in the English text of the Brussels Nomenclature but not in the French. The Explanatory Notes to the Brussels Nomenclature make it clear however that they are implicit in the French text. Those Notes state: 'The electrical and wel-founded. apparatus falling in this heading must have individual functions' – (in French 'une fonction propre'). So the CCT should be interpreted accordingly.

Secondly, the subheadings of Heading 85.22 of the CCT give some indication of the sort of thing that is there meant by an 'individual function'. There are three subheadings:

'A. For the manufacture of the products mentioned in subheading 28.51 A (Euratom)' – i.e. the manufacture of certain isotopes;

B. Specially designed for the separation of irradiated nuclear fuels, for the treatment of radio-active waste or for the recycling of irradiated nuclear fuels (Euratom)'; and

C. Other.'

(It was under C that the respondent classified the goods here in question. The rates of duty applicable to goods within that subheading are: autonomous 13 %, conventional 8 %).

Thirdly, Heading 85.22 is not the only residual Heading in Chapter 85. There is also Heading 85.28, which is the last Heading in the Chapter and which comprises 'Electrical parts of machinery and apparatus, not being goods falling within any of the preceding headings of this Chapter'. Inasmuch as any part of a machine or of an apparatus necessarily has its individual function within that machine or apparatus, this suggests that the 'individual function' that an appliance or apparatus must have in order to fall within Heading 85.22 is something more than a function to be performed as a mere part of a whole. (The rates of duty under Heading 85.28 are: autonomous 14 %, conventional 5·5 %).

By letter dated 4 June 1975 the Appellant protested to the respondent against the classification of the goods under Heading 85.22. The appellant claimed, not that the goods should be classified under Heading 85.28, but that they should be classified under Heading 85.17. This comprises 'Electric sound or visual signalling apparatus (such as bells, sirens, indicator panels, burglar and fire alarms) ...' (The rates of duty there are: autonomous 15 %, conventional 6 %).

The reason why the appellant sought classification of the goods under Heading 85.17 and not under Heading 85.28 lies in the Notes to Section XVI of the CCT.

Note 2 to Section XVI (leaving out references to Chapter 84 and its Headings) provides that, subject to qualifications and exceptions not here material, 'parts of machines ... are to be classified according to the following rules:

(a) Goods of a kind described in any of the headings of Chapter ... 85 (other than heading No ... 85.28) are in all cases to be classified in their respective headings.
(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines falling within the same heading (including a machine falling within heading No ... 85.22) are to be classified with the machines of that kind ...
(c) All other parts are to be classified in heading No ... 85.28.'

Note 5 provides:

'For the purposes of these Notes, the expression "machine" means any machine, apparatus or appliance of a kind falling within Section XVI.'

The appellant's claim was, in my opinion, well-founded. The goods here in question were not themselves of a kind described in any of the Headings of Chapter 85 (other than Heading No 85.28), so that they did not fall within paragraph (a) of Note 2. They were, however, suitable for use solely or principally with a particular kind of apparatus, namely burglar alarm systems, and were therefore, by virtue of paragraph (b) of Note 2, to be classified with apparatus of that kind under Heading 85.17. That being so, paragraph (c) of the Note was inapplicable, with the consequence that Heading 85.28 was excluded. That reasoning appears moreover to be consistent with the Explanatory Notes to the Brussels Nomenclature relating to Note 2 and to Headings 85.17, 85.22 and 85.28.

The respondent however rejected the appellant's claim. On 1 September 1975 the respondent issued a decision ('Einspruchsentscheidung') confirming its earlier rulings. The respondent accepted that the goods were components of burglar alarm systems and that, where all the components of such a system were imported together, they would fall to be classified under Heading 85.17. But the

respondent took the view that, where detector units, designed to form part of such a system, were imported separately, they should be regarded as falling within Heading 85.22, on the ground that they performed the 'individual function' of actuating alarm devices. To my mind, that view was erroneous: an appliance cannot be regarded as having an 'individual function' within the meaning of Heading 85.22 unless the function it performs is by itself useful. The mere detection of the presence of an intruder on premises is useless unless the information thus obtained is passed on to those concerned. Thus the detector units, without the cables and alarm device, perform no useful function.

Against that decision of the respondent, the appellant now appeals to the Bundesfinanzhof and, by Order dated 19 April 1977, the Bundesfinanzhof has referred the following question to this Court:

'Is Note 2 in conjunction with Note 5 to Section XVI of the Common Customs Tariff to be interpreted as meaning that there should also be regarded as being parts of appliances, or parts within the meaning of the first-mentioned Note, individual electric appliances which together are necessary component parts of an electric sound or visual signalling apparatus within tariff heading 85.17 of the Common Customs Tariff but which cannot be classified under that tariff heading because they are to be classified without the cables linking the individual electrical appliances and without the acoustic or optical alarm devices, or does Note 2 only refer to parts of a permanently assembled unit?'

The question reflects an argument that was submitted to the Bundesfinanzhof on behalf of the respondent and which was based on Note 3 to Section XVI and on the Explanatory Notes to the Brussels Nomenclature in so far as they relate to that Note.

Note 3 reads as follows:

'Unless the headings otherwise require, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.'

I should, for my part, have thought it clear, from the wording itself of that Note, that it could have no application in the present case. The goods here in question, the detector units, are not a composite machine or (bearing in mind Note 5) a composite apparatus or composite appliance consisting of two or more machines, apparatuses or appliances 'fitted together to form a whole'. Nor are the detector units machines or apparatus or appliances 'adopted for the purpose of performing two or more complementary or alternative functions', except in the irrelevant sense that the component parts of an apparatus that is itself designed to perform a particular function are, in the nature of things, complementary to each other.

The Explanatory Notes to the Brussels Nomenclature in so far as they relate to Note 3 seem to me to confirm that conclusion, rather than to cast doubt upon it. Even their heading is significant: it is 'Multi-purpose Machines (including those using interchangeable tools) and Combinations of Machines'. Under that heading one finds this:

'In general, multi-purpose machines are classified according to the main purpose or main function of the machine.

Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing *separate* functions which are generally complementary and are

described in different headings of Section XVI, are also classified according to the main purpose or main function of the composite machine.

The following are examples of such composite machines: printing machines with a subsidiary machine for folding the paper (heading 84.35); a cardboard box making machine combined with an auxiliary machine for printing a name or simple design (heading 84.33); industrial furnaces combined with lifting or handling machinery (heading 84.14 or 85.11); cigarette making machinery combined with subsidiary packaging machinery (heading 84.59).

For the purposes of the above provisions, machines of different kinds are taken to be *fitted together to form a whole* when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing.

...

Note 3 to Section XVI *need not be invoked* when the composite machine is covered as such by a particular heading, for example air conditioning machines (heading 84.12).

Furthermore, Note 3 does not apply when a machine or appliance consists of separate components which are designed to contribute together to a single clearly defined function described by one of the headings in Chapter 84 or, more frequently, Chapter 85. The whole then falls to be classified in the heading appropriate to that function, whether the various components are joined together or (for convenience or other reasons) remain separate and are merely interconnected by piping (carrying air, compressed gas, oil, etc.), by devices used to transmit power or by electric cables.

The following are examples of *functional units* of this type:

(1) Refrigerating equipment consisting of components which are not fitted together to form a whole and are interconnected by means of piping through which the coolant circulates.
(2) Milking machines with separate component parts (vacuum pump, pulsator, teat-cups and pails) interconnected by hoses or piping.
(3) Welding equipment consisting of the welding head or tongs, with a transformer, generator or rectifier to supply the current.
(4) Radio transmitters and associated power packs, amplifiers, etc.
(5) Portable radiotelephone transmitters and their associated hand microphone.
(6) Radar apparatus with the associated power packs, amplifiers, etc.
(7) Burglar alarms, comprising, e.g., an infra-red lamp and a photo-electric cell operating a bell, etc.

When all the component parts are *imported together,* these units are classified as refrigerating equipment (heading 84.15); a milking machine (heading 84.26); a welding machine (heading 85.11); radio-communication or radar apparatus (heading 85.15); a burglar alarm (heading 85.17); etc.

When *imported separately,* compressors, vacuum pumps, transformers, generators, rectifiers, power packs, amplifiers, control panels, microphones, infra-red lamps, photo-electric cells, etc. fall to be classified in their own appropriate headings.'

It is that last paragraph that has, as the Order for Reference makes clear, caused the Bundesfinanzhof to have doubts. But that must in my opinion be read in the light of all that precedes it, and also in the light of the contents of Chapters 84 and 85 of the Nomenclature. The essential message of the Notes, so far as relevant, is that 'Note 3 does not apply when a machine or appliance consists of separate components which are designed to contribute together to a single clearly defined function described by one of the headings in ... Chapter 85'.

The seventh example of such a 'functional unit' given in the Notes is 'burglar-alarms'. The Notes then go on to state, perhaps rather unnecessarily, that when the component parts of such a unit are imported together they are to be classified under the heading appropriate to that unit. Finally the Notes state, by way of complement, that certain components, when imported separately, 'fall to be classified in their own appropriate headings'. These components are however all items to which specific Headings relate. In terms of Note 2 to Section XVI they fall within paragraph (a). Thus compressors and vacuum pumps are specified in Heading 84.11, transformers, generators and rectifiers in Heading 85.01, power packs in Headings 85.03 and 85.04, amplifiers and microphones in Heading 85.14, control panels in Heading 85.19, infra-red lamps in Heading 85.20 and photo-cells in Heading 85.21. It does not however follow that every component of a 'functional unit' has its separate Heading. Where such a component is not specifically described in any Heading of Chapter 84 or 85, it falls within paragraph (b) or paragraph (c) of Note 2, according to whether it is or is not 'suitable for use solely or principally with a particular kind' of machine, apparatus or appliance.

I am accordingly of the opinion that the first part of the question referred to the Court by the Bundesfinanzhof calls for an affirmative answer and that there is no warrant for the view that Note 2 applies only to parts of a permanently assembled unit.

That is the opinion of the Commission also, except that the Commission draws attention to General Rule A (2) (a) in the Preliminary Provisions of the CCT, under which '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 Commission suggests that the detector units here in question might be regarded as having the 'essential character' of burglar alarm systems, albeit incomplete or unfinished, and therefore as falling within Heading 85.17 by virtue of that General Rule. The Commission however concedes that, in a case like the present, it is for the national Court concerned to consider whether that General Rule may possibly be applicable. With that, of course, I agree, and I need add only, first, that no question as to the possible application of General Rule A (2) (a) is referred to this Court by the Bundesfinanzhof and, secondly, that that General Rule, if it were to be held applicable here in the way suggested by the Commission, would lead to the same result as Note 2 (b) to Section XVI.

Lastly, I should, I think, mention a point on which the Bundesfinanzhof and the Commission have expressed divergent views. This relates to the 'Nimexe', the nomenclature of goods for the external trade statistics of the Community and statistics of trade between Member States, established by Council Regulation (EEC) No 1445/72 of 24 April 1972 (amended by Council Regulation (EEC) No 3065/75 of 24. 11. 1975).

The Nimexe splits Heading 85.17 of the CCT into three 'statistical subdivisions':

'A. Burglar, fire and similar alarms
B. Other apparatus (electric sound or visual signalling)
C. Parts.'

The Commission says that subdivision C covers those parts that are brought within Heading 85.17 by virtue of Note 2 (b) to Section XVI.

The Bundesfinanzhof expressed the view that the statistical subdivisions of the Nimexe could not be taken into account in interpreting the CCT. The Commission on the other hand submits that they can and indeed that chaos will ensue if the CCT and the Nimexe are interpreted independently of each other. It points to the preamble to Regulation

No 1445/72 (OJ L 161 of 17. 7. 1972), which recites among other things that:

'the Member States are contracting parties to the convention of 15 December 1950 on the nomenclature for the classification of goods in customs tariffs (Brussels Nomenclature); ... furthermore, they have accepted the recommendation of the Customs Cooperation Council of 8 December 1960 on correlation between the Brussels Nomenclature and the standard international trade classification, revised, adopted during 1960 by the Economic and Social Council of the United Nations; ... as a result, the nomenclature of goods for the external trade statistics of the Community and statistics of trade between Member States must conform with the Brussels Nomenclature, in its current or future form, so that the external trade statistical data of the Community and statistics of trade between Member States can be furnished on the basis of those two international nomenclatures.'

The Commission further points to Article 1 (1) (a) of the Regulation, which provides that the Nimexe 'shall comprise ... headings which correspond to the headings of the nomenclature for the classification of goods in customs tariffs (Brussels Nomenclature), or to the subheadings of the nomenclature of the Common Customs Tariff, or to the statistical subdivisions of these headings or subheadings, and also headings which do not so correspond but are introduced for special purposes.'

It is thus only exceptionally that Nimexe headings may be taken not to correspond to CCT headings.

On this point too I agree with the Commission. There might be a technical difficulty in interpreting the CCT in the light of the Nimexe if the legislation establishing the Nimexe were later in date than that establishing the CCT. But the version of the CCT that is relevant in the present case is, as the Bundesfinanzhof itself points out, that which was in force in 1975, i.e. that annexed to Council Regulation (EEC) No 2658/74 of 15 October 1974. There is no difficulty in interpreting that in the light of the Nimexe.

I am therefore of the opinion that, in answer to the question referred to the Court by the Bundesfinanzhof, Your Lordships should rule that Notes 2 and 5 to Section XVI of the Common Customs Tariff should be interpreted as meaning that electrical appliances suitable for use solely or principally as components of an electric sound or visual signalling apparatus within Tariff Heading 85.17 are themselves to be classified under that Heading even when imported without other components of such apparatus.