REPORT FOR THE HEARING
delivered in Case 42/86 *

I — Legal framework

Chapter 39 of the Common Customs Tariff is entitled 'Artificial resins and plastic materials, cellulose esters and ethers; articles thereof'. The title is followed by notes listing the materials and articles which are not covered by the chapter; the notes exclude *inter alia* 'Saddlery or harness (heading 42.01) or travel goods, handbags or other receptacles falling within heading 42.02'. Furthermore, according to the Explanatory Notes of the Customs Cooperation Council, heading 39.07:

'. . . covers a wide variety of other articles, finished or unfinished, in particular flat articles cut in shapes other than rectangular, and hollow or relief articles obtained by stamping, moulding, or any other process.'

The Explanatory Notes also state that heading 39.07 does not include:

'Travel goods (e. g. trunks, suitcases), shopping-bags, handbags, satchels, briefcases, wallets, purses, toilet-cases and toilet-bags, tool-cases, tobacco-pouches, sheaths, cases, boxes (for arms, etc.), and similar containers of heading 42.02, of artificial plastic sheeting.'

Chapter 42 of the Common Customs Tariff is entitled 'Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)'. The heading is followed by notes listing the articles which are not included in Chapter 42; these notes do not mention trunks or attaché cases. The chapter goes on to define tariff heading 42.02 in the following terms: 'Travel goods (for example, trunks, suitcases, hat-boxes, travelling-bags, rucksacks), shopping-bags, handbags, satchels, briefcases, wallets, purses, toilet-cases, tool-cases, tobacco-pouches, sheaths, cases, boxes (for example for arms, musical instruments, binoculars, jewellery, bottles, collars, footwear, brushes) and similar containers of leather or of composition leather, of vulcanized fibre, of artificial plastic sheeting, of paperboard or of textile fabric'.

With reference to heading 42.02, the Explanatory Notes of the Customs Cooperation Council (in their French version) specify that:

'These containers may be soft, lacking any rigid foundation . . . or made rigid by means of a foundation on which the material forming the outer covering is applied . . .'.[1]

It is further stated that:

'Goods of these kinds fall within the heading if made of leather, composition leather, vulcanized fibre, artificial plastic sheeting, paperboard or of textile fabric (including felt and non-woven fabrics), including articles on a foundation of wood, metal, etc., covered or mainly covered with such materials.'

* Language of the Case: French.

1 — Translator's note: the French and English versions of the notes do not correspond; the English version is as follows: 'These containers may be rigid or made up with a rigid foundation or soft and without foundation'.

II — Facts and procedure

The facts of the case go back to 1979, when a declaration was made for the release for consumption in France under subheading 42.02 B of the Common Customs Tariff of suitcases and attaché cases originating in Taiwan and imported by Artimport SA. It is common ground that the products in question are manufactured from artificial plastic sheeting, which is made rigid by moulding or pressing but whose rigidity is not achieved by the use of any foundation. The administration des douanes (Customs Administration) took the view that the products came within subheading 39.07 E IV of the tariff (rate of duty: 17.6%) and not subheading 42.02 B (rate of duty: 7.5%), arguing that this could be inferred *a contrario* from the fact that the goods covered by heading 42.02 are soft articles, either lacking a rigid foundation altogether or owing their rigidity to such a foundation. It concluded that goods such as the suitcases and attaché cases in question, since they derive their rigidity from their intrinsic material, are excluded from that heading. The sum demanded by the administration des douanes from Artimport SA amounts to FF 32 708.18, which is the difference between the rates of duty for the two tariff subheadings concerned.

However, the Commission de conciliation et d'expertise douanière (Committee for conciliation and expert opinions on customs matters), to which the matter was referred, held that the products in question fell within subheading 42.02 B. The matter was then brought before the cour d'appel (Court of Appeal), Rouen, which, in a judgment delivered on 6 March 1984, agreed that the relevant customs subheading was subheading 42.02 B. An appeal against that judgment was brought before the Commercial Chamber of the Cour de cassation by the Directeur général des douanes et droits indirects.

In the proceedings before the Cour de cassation the appellant put forward two arguments. First, it contended that articles made 'of plastic materials', such as the suitcases at issue, fell under heading 39.07, whereas goods made 'of artificial plastic sheeting' came within heading 42.02. It maintained that Chapter 39 expressly excludes 'containers . . . of artificial plastic sheeting' falling under heading 42.02. Secondly, it stressed that the rigidity of the suitcases at issue was achieved by moulding and that such articles were comprised within Chapter 39. By contrast, 'soft articles or those made rigid by means of a foundation on which the material forming the outer covering is applied' come within heading 42.02.

The Cour de cassation decided to stay the proceedings on the substantive issues and referred the following question to the Court of Justice of the European Communities for a preliminary ruling under Article 177 of the EEC Treaty:

'On 23 May 1979, was Regulation No 1/71 of the Council of 17 December 1970 to be interpreted as meaning that suitcases and attaché cases made from plastic sheeting composed of styrene resin, butadiene and acrylo-nitril made rigid by moulding or pressing and not by means of a rigid foundation, originating in Taiwan and imported into a Member State of the Community, fell within subheading 39.07 E IV, subheading 42.02 B, or some other heading of the Common Customs Tariff?'

The judgment of the Commercial Chamber of the Cour de cassation was lodged at the Court Registry on 4 February 1986.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations

were submitted by the Commission of the European Communities, represented by X. Yataganas, a member of its Legal Department, acting as Agent, and by the Kingdom of Spain, represented by F. Mansito Caballero, Director-General for Community Legal and Institutional Cooperation, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. By a decision of 3 February 1987, adopted pursuant to Article 95 (1) and (2) of the Rules of Procedure, the Court assigned the case to the Second Chamber.

III — Written observations submitted to the Court

The Commission and the Kingdom of Spain contend that the suitcases and attaché cases can be classified only under subheading 39.07 E IV. They therefore endorse the appellant's argument before the national courts, on the basis of the Explanatory Notes of the Customs Cooperation Council regarding that tariff heading.

The Commission points out, first, that both the Committee on Common Customs Tariff Nomenclature and the Nomenclature Committee of the Customs Cooperation Council had decided to classify suitcases and attaché cases under heading 39.07. It notes in particular that the latter committee decided as early as 1967 on the classification of such products, emphasizing the method of manufacture by moulding or by vacuum-shaping, which excludes them from the wording of heading 42.02, which speaks of 'travel goods . . . of artificial plastic sheeting'. Secondly, the Commission notes that heading 42.02 covers solely the articles listed thereunder and similar containers. According to the Explanatory Note [in the French version], 'these articles may be soft, lacking any rigid foundation . . . or made rigid by means of a foundation on which the material forming the outer covering is applied . . .'. The suitcases in question do not fall within the scope of that criterion, because their rigidity is inherent in the material of which they are made. The suitcase bodies and lids are obtained by moulding or vacuum-forming, and this therefore excludes them from the wording of heading 42.02.

The Kingdom of Spain takes the view that the fourth paragraph of the Explanatory Note on tariff heading 42.02 shows that it should include articles having physical characteristics similar to leather, namely textiles and plastics. Travel goods manufactured from rigid sheets of artificial plastic which are then moulded should be classified under subheading 39.07 E IV.

The Commission points out that Regulation No. 1/71 of the Council of 17 December 1970, to which reference is made in the preliminary question, is a set of basic provisions subject to annual amendment. The instrument which covers the material time is Council Regulation No 2800/78 of 27 November 1978 amending Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journal 1978, L 335, p. 1). Nevertheless, in the Commission's opinion that misapprehension on the part of the national court has no effect on the question as such, which seeks to ascertain the correct tariff heading for the products in question by reference to Regulation No 2800/78.

The Commission therefore proposes that the Court should give the following answer to the question submitted:

'On 23 May 1979, Council Regulation No 2800/78 of 27 November 1978 was to be interpreted as meaning that suitcases and attaché cases made from plastic sheeting composed of styrene resin, butadiene and acrylo-nitril made rigid by moulding or pressing and not by means of a rigid foundation, originating in Taiwan and imported into a Member State, fell under subheading 39.07 E IV of the Common Customs Tariff.'

T. F. O'Higgins
Judge-Rapporteur