OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 4 APRIL 1974 [1]

Mr President,
Members of the Court,

In this case, referred by the Bundesfinanzhof in respect of the customs classification of glass materials for use in the manufacture of various types of lamp and for other purposes, we shall be concerned with tariff headings Nos 70.11, 85.20 and 70.21 of the Common Customs Tariff.

Tariff heading No 70.11 is entitled 'Glass envelopes (including bulbs and tubes) for electric lamps, electronic valves or the like'. This heading comes under the Chapter covering 'Glass and glassware'. The last heading, No 70.21, of this Chapter covers products not already covered, viz., 'Other articles of glass'.

In Chapter 85 of the Common Customs Tariff, under the title 'Electrical Machinery and Equipment: Parts Thereof', tariff heading No 85.20 refers to 'Electric filament lamps and electric discharge lamps (including infra-red and ultra-violet lamps); arc lamps; electrically ignited photographic flashbulbs'. Item D of this heading covers 'Parts'.

The products whose classification is the subject of argument before the German court consist of reflectors and lenses, both of moulded glass, for use in the manufacture of shop-window spotlights, infra-red lamps for medical, agricultural or industrial use, and photographic flood-lamps. The reflector is coniform in shape and the lens, complete with filament, is hermetically sealed to it. The lamp thus formed is then filled with inert gas and completed by the addition of a threaded base.

With a view to establishing the correct classification of these items, the German court first asks what is meant by the words 'glass envelopes' under heading No 70.11 of the Common Customs Tariff. In its second question, the court asks more specifically what, under the same heading, is meant by the expression 'glass envelopes (including bulbs and tubes) for electric lamps'. The third question goes into further detail by asking whether glass articles which are coniform and open at each end, like the abovementioned reflectors before the lens is soldered on, come within the definition under heading No 70.11 or whether, on the other hand, they are to be classified under heading No 85.70 or heading No 70.21 of the Common Customs Tariff.

The plaintiff in the main action has asked for a ruling that the German customs authorities should classify the reflectors under heading No 70.11 or, alternatively, under heading No 85.20-D, and the lenses under heading No 85.20-D, and disputes the defendant administration's classification of these products under heading No 70.21, which makes them liable to a higher customs duty.

First of all, we must consider whether the reflectors are 'glass envelopes (including bulbs and tubes) for electric lamps' coming under heading No 70.11.

Under a rule in general use when the Common Customs Tariff is applied, reference to an article under a specific heading of the Tariff includes a reference to the article even if it is incomplete or 'unfinished', provided that, as imported, it has the essential character of the complete or finished article. As the Commission has pointed out, the rules on interpretation set out in the Common Customs Tariff annexed to Regulation No 1/72 of the Council of 20 December 1971 (OJ L 1 of 1972, p. 11) and which

1 — Translated from the Italian.

expressly include this rule on the subject of classification, did no more than take official note of a rule which was already of general application and did not represent the slightest departure from previous practice.

According to the Notes to the Brussels Nomenclature published in January 1972, the aforesaid rule on interpretation also embraces articles in their most rudimentary form, unless there is a specific reference to them under another tariff heading. This extension covers articles which cannot be used in their existing state, have roughly the same shape and appearance as the finished component or product and could not normally be used except for making the component or product concerned.

Even by these standards, the Commission would be inclined to regard a reflector which was open at each end as falling outside tariff heading No 70.11 because it lacked the essential characteristics of glass envelopes and bulbs coming under that heading. It would qualify for this classication only after the lens had been soldered on to the reflector.

On the other hand, it is not, in my view, excluded that the coniform reflector involved may come within the description of glass envelope.

The undertaking concerned has explained that, in the case of this type of bulb, the lens cannot be soldered on so as to cover the coniform reflector until the filaments, which must be inserted through the wide end of the cone, have been put into place, the small holes in the lower part being used solely for final adjustment of the lamp after the bulb has been filled with inert gas and sealed by the base. This means that the soldering of the lens to the cone must form part of the finishing process applied to the bulb.

If, in these circumstances, coniform reflectors are regarded as falling outside the ambit of heading No 70.11, its application must, in the case of this type of bulb, be in practice confined to the finished product, but this conflicts with the express provision of the tariff heading.

If the expression 'glass envelopes' (ampolla non finita) is to have a concrete scope and meaning and if, as soon as the lens has been soldered to the coniform reflector, the bulb is in its finished state (ampolla finita) and ready to be made into a lamp by the simple process of adding inert gas and sealing the bulb, there can be no doubt that this expression includes coniform reflectors of glass which (presumably from the economic as well as from any other point of view) are the most important components of the bulb whose shape, in any case, they determine.

This conclusion is supported by another, wider, consideration.

Under the general rule mentioned earlier, every reference under a tariff heading to a specific article comprises the article even in an incomplete or unfinished state. In view of this, it must be recognized that when a tariff heading itself expressly provides that it also covers articles in the category which are 'open, unfinished', as in the case of heading No 70.11 in relation to bulbs for the manufacture of lamps, its application to the type of goods which it covers is given peculiar and specific force [1]. Indeed, an express provision of this kind means nothing if it does not mean that it embraces the situation which, especially for the products it covers, is the normal one as regards their clearance through customs. In other words, this is a case where the legislature has expressly resolved any doubt by including under the tariff heading concerned those items which, in the actual case before us, must normally be regarded as going into the manufacture of the finished product, provided always

1 — Translator's note: This argument, being based on the Italian text of the Common Customs Tariff, is untranslatable in relation to the authentic English text.

that they have not been expressly mentioned under other tariff headings.

For the reasons stated, the broader ambit which must be accorded to a tariff heading of this kind must necessarily apply with equal force to lenses for use as a cover for the coniform reflector, at least in cases where they and the reflectors are imported together, and provided that they cannot be put to any other use. In fact, under these circumstances, the lenses, which are an essential component of the finished article, can be regarded as part of the finished product which they help to complete after the simple assembly operation which converts an article which is unfinished when imported into a finished article, and as such they must be subject to the same tariff provisions as the coniform reflectors.

It is clear that, whether taken by themselves, or in conjunction with the coniform reflector, the lenses do not come under heading No 85.20 as, at least in its first argument, the Osram undertaking has maintained. As a matter of fact, note 1 (b) of the Notes to Chapter 85 of the Common Customs Tariff states that the Chapter does not cover articles of glass of heading No 70.11. As heading No 85.20, which refers to parts and separate sections of electric lamps and tubes, cannot cover glass envelopes which are the component part of the lamps, I agree with the Commission that it would be illogical to put parts and separate components of bulbs under that heading. Nor, moreover, does there appear to be any reason why they should be put under heading No 70.21, which merely deals with anything not covered under other headings, since it is clear that they are imported as a component part of the product covered under heading No 70.11.

To sum up, I submit that the Court should reply as follows to the Bundesfinanzhof:

1. The expression 'glass envelopes... for electric lamps' in heading No 70.11 of the Common Customs Tariff covers glass articles which are coniform, open at each end, and are intended for use as the reflector for a lamp and as a container for the electric filament.

2. Heading No 70.11 also covers glass articles intended for use as lenses to cover this type of reflector when they and the reflectors are imported together.