The second sentence of Rule 2 (a) of the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff must be interpreted as meaning that mahaleb-cherry concentrate and black-currant concentrate, on the one hand, and, on the other, mahaleb-cherry flavour concentrate and black-currant flavour concentrates, extracted from those fruits may not be regarded as articles imported unassembled or disassembled, even if the fruit-juice concentrates and flavour concentrates, dealt in at the same price, are mixed together again immediately before use or bottling.

Due Chloros Grévisse

Delivered in open court in Luxembourg on 30 September 1982.

J. A. Pompe
Deputy Registrar

O. Due
President of the Second Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 15 JULY 1982

My Lords,

in October 1974 International Flavors and Fragrances IFF (Deutschland) GmbH imported into Germany from Yugoslavia a consignment of 40 barrels of mahaleb-cherry concentrate and 4 barrels of mahaleb-cherry flavour concentrate. In March 1975 it imported another consignment, comprising 28 barrels of black-currant concentrate and 4 barrels of black-currant flavour concentrate. The German customs authorities provisionally classified the goods as follows:

(1) the cherry concentrate under sub-heading 20.07 B II a 6 (aa) of the Common Customs Tariff (the CCT);

(2) the black-currant concentrate under sub-heading 20.07 B II a 6 (bb);

(3) the two flavour concentrates under sub-heading 33.04.

Samples of the goods were taken and sent to the customs laboratory for

analysis. The cherry concentrate was found to have a specific gravity of 1.37 at 15 °C and the black-currant concentrate a specific gravity of 1.381. In consequence, on 30 January and 22 May 1975, the customs authorities amended the original notices classifying the goods and charging them to duty, classifying the cherry and black-currant concentrates under sub-heading 20.07 A III (a). IFF appear to have contested the way samples were taken for the purpose of assessing specific gravity but this is not a matter in issue in the present proceedings.

IFF did not produce evidence of entitlement to preferential treatment in respect of the cherry flavour concentrate and the normal rate of duty was applied to that, although the preferential rate laid down in Council Regulation (EEC) No 3054/74 of 2 December 1974 (OJ L 329/70 of 9 December 1974) was applied to the black-currant flavour concentrate. The result was that IFF were subjected to an additional charge for duty of DM 34 791.31 in respect of the cherry concentrate DM 744.59 for the cherry flavour concentrate and DM 28 585.60 for the black-currant concentrate. It objected to the assessment and, when its objection was rejected, commenced proceedings against the customs authorities. The Finanzgericht found in favour of the latter and IFF appealed to the Bundesfinanzhof.

According to the information available to the Bundesfinanzhof, the products in question are manufactured as follows. The fruit is processed and the juice obtained is heated rapidly in a heat exchanger to a temperature higher than boiling point in order to obtain the flavour. The vapour which escapes from the evaporator during this process is drawn into a fractionating column in which the flavour is enriched. By means of fractionating distillation the vapour is separated into fruit concentrate and water. The remaining fruit juice is concentrated in condensers.

It seems that the fruit concentrate so obtained may be used in the preparation of a number of products, such as ice cream and liqueurs. The flavour extracted from the fruit juice by this process may also be used as a separate product for flavouring in e.g. baking, soft drinks, yoghourt.

To obtain the fruit concentrate and the flavour concentrate for separate purposes is not the sole, and may not be the principal reason for using the process described. According to IFF, the cost of transporting fruit juice in bulk is economically prohibitive. For this reason the juice is concentrated. Since the process of concentration would result in the loss of flavour, the latter must be extracted by the process described, stored and transported separately and not mixed with the fruit concentrate until immediately before use or bottling. According to the information before the Court, the fruit juice is reconstituted by mixing the fruit and flavour concentrates with water in their original proportions in a centrifuge. When the fruit and flavour concentrates are intended for different purposes, they may well be marketed separately, but, when they are intended to be reconstituted into fruit juice, they are normally marketed together

In the light of this, the Bundesfinanzhof took the view that the legality of the notices of assessment issued by the customs authorities and challenged by IFF depended upon the correct interpretation to be given to Rule 2(a) of the General Rules for the Interpretation of the CCT Nomenclature, which at all material times provided that "any reference in a heading to an article ... 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" (see Council Regulations No 1/74 of 17 December 1973 (OJ L 1/1, 1. 1. 1974, at page 11) and No 2658/74 of 15 October 1974 (OJ L 295/1, 1. 11. 1974, at p. 11).

The question in the Order for Reference is in these terms: "Is the second sentence of Rule 2 (a) of the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff to be interpreted as meaning that mahaleb cherry concentrate and black-currant concentrate made of mahaleb cherry juice and black-currant juice respectively, on the one hand, and mahaleb cherry flavour concentrate and black-currant flavour concentrate, on the other, are to be regarded as articles imported unassembled or disassembled, if the fruit juice concentrates and flavour concentrates dealt in at the same price are mixed together again immediately before use or bottling?"

If the respective fruit concentrate and the flavour concentrate are not to be regarded as "an article ... imported assembled or disassembled" (namely fruit juice), the fruit concentrates and the flavour concentrates must be classified under separate headings, the former under sub-heading 20.07 A III (a) because they have a specific gravity exceeding 1.33 at 15 ° C, the latter under sub-heading 33.04. If, on the other hand, they are such an article, the parts must, according to IFF, be classified together as fruit juice, under sub-headings 20.07 B II a 6 (aa) and (bb) for the cherry and black-currant juices respectively. The flavour concentrates have a lower specific gravity than the fruit concentrates and cause the specific gravity of the products, when taken as a whole, to be lowered.

The other language versions of the Regulations translate "unassembled or disassembled" as follows:

Danish: "i adskilt eller ikke samlet stand";

German: "zerlegt";

French: "à l'état démonté ou non monté";

Italian: "smontato o non montato";

Dutch: "gedemonteerde of in niet gemonteerde staat".

In Case 165/78 *IMCO* v *Oberfinanzdirektion Berlin* [1979] ECR 1837 at page 1844, the Court held that Rule 2 (a) covers articles not yet assembled as well as articles which have been disassembled.

The Finanzgericht held that the two fruit concentrates could not be classified together with their respective flavour concentrates as a homogeneous entity because they did not constitute an article which was "unassembled or disassembled" or "zerlegt" to use the word in the German texts. "Zerlegt" can, it seems, be used as a matter or ordinary language to refer to the separation of the elements of a liquid by a physical process. The Finanzgericht, however, relied on the English and French texts which, in its view, had a narrower meaning and envisaged goods whose components are taken apart after being mechanically assembled or which were

intended to be assembled. This could not apply to natural products such as fruit juice, which constitutes a natural product from the outset and is not assembled before it is separated into components.

Counsel for the Commission adopted the same approach and said that, on the basis of the different language versions of the Regulations, a literal interpretation of "imported unassembled or disassembled" suggested an article comprising at least two parts which are identifiable both before and after they are assembled into the article in question. This could not apply to the goods in question in the present case because the method of processing fruit juice results in the production of new products. The goods did not, therefore, comprise one article presented in an unassembled or disassembled state but several articles having different properties.

The last sentence of Rule 2 (a) applies to two different types of articles:

(1) a complete or finished article which is imported unassembled or disassembled and

(2) an incomplete or unfinished article which has, as imported, the essential character of the complete or finished article but which is imported unassembled or disassembled.

It is not necessary to decide the category into which the goods in question might fall. It has been queried whether, due to the absence of water, they can be considered to constitute a complete or finished article, i.e. fruit juice. Even if they cannot be considered a complete or finished article for this reason, they can, in my view, be regarded as an incomplete or unfinished article having the essential character of the complete or finished article because the fruit and flavour concentrate together comprise the essential elements of fruit juice. The only problem is whether they are to be considered as constituting that article in an unassembled or disassembled form.

The phrase "imported unassembled or disassembled" (which has its equivalent as I understand it, in the languages which I have quoted other than in the German text) raises initially the question as to what is capable of constituting "assembly". It is arguable that to "assemble" merely involves putting together or merging two or more substances. Even if it means this I would not consider that fruit juice could be said to be "disassembled" into the two constituent parts, the fruit concentrate and the flavour concentrate. In my view disassembling involves the taking apart of things which began separate and which have been put together. The original cherry was never " assembled" and the extraction of fruit concentrate and flavour concentrate cannot possibly, in my view, be regarded as the disassembled parts of the cherry juice produced from crushing cherries, any more than cutting off the branches of a tree and sawing up its trunk constitutes the "disassembly" of a tree.

In my view, however, "assembly" in relation to parts of an article does not have so broad a meaning as merely the merging or putting together of various substances. As a matter of ordinary

language one does not "assemble" a stew or a pudding. The process of assembling essentially is a mechanical one involving the fitting together or joining of separate parts, which normally can be identified after assembly, even if, because of the method of fixing, they cannot be taken apart so as to restore them wholly to their initial state.

There is nothing in the CCT Explanatory Notes which helps on this question. The Customs Cooperation Council (CCC) Explanatory Notes say of the first part of Rule 2 (a) that "in view of the scope of the headings of Sections I to VI of the Nomenclature, this Rule does not normally apply" to goods of these sections. Chapters 20 and 33 of the CCC Nomenclature fall in Sections IV and VI respectively. The second part of the Rule (dealing with articles unassembled or disassembled), it is said, "does not apply to goods of these Sections". The French text, however, says that each part of the Rule does not normally apply to goods in Sections I to VI. It is thus possible (though I doubt it) that there may be items in these headings where Rule 2 (a) can apply. However, paragraph (VI) of the Notes on Rule 2 (a) provides that "for the purposes of the present Rule, 'articles imported unassembled or disassembled' is to be taken to mean articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts and bolts, etc.) or by riveting or welding, for example, provided that only simple assembly operations are involved". Whether, as I think, the reference to simple assembly operations refers to the application of simple fixing devices and to riveting and welding, or only to the riveting and welding, it seems to me that the essential idea is clear. What is required is a simple mechanical means of fitting together. The cases covered by the Rule cited in the General Explanatory Notes, of which examples are to be found in Chapter 44, Section XVI, chapters 86, 87 and 89, support this view.

If the notes are applied, it is clear that the reconstitution of the fruit juice is not by means of a simple fixing device. Nor, even if simple, is it a " simple assembly operation" which in my view is to be read as a simple mechanical assembly operation. Equally, as a matter of ordinary language the fruit concentrate and the flavour concentrate are neither disassembled nor unassembled fruit juice since they have never been "fitted" together, or "taken apart" nor on reconstitution will they be "fitted together" again.

Where there are disparities between the different language versions of a Community text, all must be construed together, not in isolation, and by

reference to the purpose and general scheme of the text taken as a whole (see, for example, the *IMCO* case, per Mr Advocate General Capotorti at page 1849, Case 816/79 *Mecke* v *Hauptzollamt Bremen-Ost* [1980] ECR 3029 at paragraph 7, Joined Cases 824 and 825/79 *Folci* v *Amministrazione delle Finanze dello Stato* [1980] ECR 3053 and Case 160/80 *Smuling-de Leeuw* v *Inspecteur der Invoerrechten en Accijnzen* [1981] ECR 1767).

Following this approach it seems to me that the German word "zerlegt" is to be construed in the more limited sense indicated by "disassembled" and "unassembled" rather than in the broader sense contended for by IFF.

I would not in any event accept that the mere fact that the fruit concentrate and the flavour concentrate are shipped in one consignment (at one combined price) necessarily brings these products within the approach adopted by the Court in Case 165/78 *IMCO* (supra). Since there are different uses for the separate substances it cannot be said that they can only be dealt with after import as one combined article, merely because they are shipped together, even if, as has been stated, they are shipped together as one consignment only if they are to be used to produce reconstituted fruit juice.

For these reasons, it is my opinion that the question referred to the Court should be answered to the effect that mahaleb cherry concentrate and black-currant concentrate made of mahaleb cherry juice and black-currant juice respectively, on the one hand, and mahaleb cherry flavour concentrate and black-currant flavour concentrate, on the other, are not to be regarded as articles imported unassembled or disassembled.