JUDGMENT OF THE COURT (SECOND CHAMBER)
10 FEBRUARY 1983 [1]

Naamloze vennootschap Farr Company v Belgian State (reference for a preliminary ruling from the Rechtbank van Eerste Aanleg, Antwerp)

(Common Customs Tariff — Air filters)

Case 130/82

Common Customs Tariff — Tariff headings — "Textile articles of a kind commonly used in machinery or plant" within the meaning of heading No 59.17 — "Glass fibre (including wool), yarn, fabrics, and articles made therefrom" within the meaning of heading No 70.20 — Air filters — Tariff classification — Criteria

As the essential character of the filters derives from their filtering capacity, their tariff classification is to be determined by reference to the component which is indispensable for the filtering process. It follows that air filters must be classified as articles of textile material of a kind commonly used in machinery or plant under heading No 59.17 of the Common Customs Tariff or as machinery and appliances and parts thereof, of glass, under heading No 70.20 of the Common Customs Tariff, according to whether the filtering component consists of textile material or of glass fibre.

In Case 130/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Rechtbank van Eerste Aanleg [Court of First Instance], Antwerp, for a preliminary ruling in the proceedings pending before that court between

NAAMLOZE VENNOOTSCHAP FARR COMPANY, Brasschaat, Belgium,

and

BELGIAN STATE, represented by the Minister of Finance,

1 — Language of the Case: Dutch.

on the interpretation of various provisions of the Common Customs Tariff and of various explanatory notes thereto,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: G. Reischl
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and national procedure

Since 1973 Farr Company NV, the plaintiff in the main proceedings (hereinafter referred to as "the plaintiff"), has imported air filters intended principally for use in air-purifying and air-conditioning installations, motors and so forth. Until 1976, the filters were imported under tariff subheading 84.18 C II as machinery and apparatus (other than centrifuges) for filtering and purifying liquids or gases, at a rate of duty of 6%. However, by two decisions of 3 February and 12 August 1976, the Belgian customs authority classified some of the filters under tariff subheading 70.20 A (non-textile fibre and articles made therefrom, rate of duty: 11%) and others under subheading 59.17 D (textile fabrics and textile articles, of a kind commonly used in machinery or plant, rate of duty: 9.5%).

The customs authority based its decisions on Note 1 (e) to Section XVI of the

Common Customs Tariff and Note 1 (c) to Chapter 84 of the Tariff, which provide that articles of textile material of a kind commonly used in machinery or plant and machinery and appliances and parts thereof, of glass, are not covered by Chapter 84 and are to be classified according to their particular nature and composition (under tariff headings Nos 59.17 and 70.20).

The objection lodged by the plaintiff against those decisions was rejected and, therefore, it paid the additional duty, which amounted to BFR 512 661. At the same time, the plaintiff brought an action against the Belgian State before the Rechtbank van Eerste Aanleg, Antwerp, for the annulment of the disputed decisions and for the repayment of the duty improperly levied by the customs authority.

The Rechtbank considered that its decision on the case depended upon an interpretation of the Common Customs Tariff and it therefore requested the Court to give a preliminary ruling on the following questions:

A — First question

Should the air filters the composition and form of which are described below be regarded as "machinery and apparatus for filtering air or other gases" (or parts thereof), which are to be classified under tariff subheading 84.18 C II b, or as "articles of textile material of a kind commonly used in machinery or plant", which are to be classified under tariff subheading 59.17 D II b 2?

1. Filter 30/30 (Decision No D.T. 42.586, Model 1)

(a) *Description*

Filter for purifying air consisting of a pleated sheet of textile material reinforced with wire and mounted in a cardboard frame.

(b) *Composition*

(i) Value

Type	Proportion cost price/ cotton fibre	Proportion cost price/ wire	Proportion cost price/ frame
12 × 20 × 2	16%	14%	50%
20 × 25 × 1	17%	14%	31%

(ii) Weight

Components	Grams per square foot	%
Polyvinyl acetate (PVA)	6.0	14.7
Tricresyl phosphate (TCP)	0.07	0.002
Cotton covering	2.0	4.7
Filtering material (cotton)	4.0	9.4
Di-ammonium phosphate (DAP)	0.01	0.0002
Wire	6.0	14.2
Frame		57

2. Filter HP 2 A (Decision No D.T. 42.856, Model 3)
Filter for purifying air consisting of a pleated membrane of textile material fitted above and below with a cardboard sheet.

B — Second question

Should the air filters the composition and form of which are described below be regarded as "machinery and apparatus for filtering air or other gases" (or parts thereof), which are to be classified under tariff subheading 84.18 C II b, or as "machinery and appliances and parts thereof, of glass", which are to be classified under tariff subheading 70.20 AV?

1. HP filter (Decision No D.T. 42.856, Model 2)

(a) *Description*

Filter for purifying air consisting of a pleated sheet of glass wool reinforced with a membrane of synthetic nylon fibre and fitted above and below with a cardboard sheet.

(b) *Composition*

Components	Grams per square foot	%
Filtering material		
Polyvinyl acetate (PVA)	2.0	4.8
Covering in "Lenoweave"	3.0	7
Fibreglass	4.3	10
Bonding agent (UF)	0.5	1
Cresyl diphenyl phosphate (CDP)	6.0	14
Other materials		
Side-panels in asbestos		50
Sealing material		1
Adhesive tape		12
Staples		0.008

2. Type 83 filter (Decision No D.T. 42.856, Model 5)

(a) *Description*

Filter for purifying air consisting of fibreglass matting wound on reels and reinforced on one side by a weave with gauze binding of predominantly synthetic fibre.

(b) *Composition*

Components	Grams per square foot	%
Filtering material		
Adhesive (cresyl diphenyl phosphate)	4.5	8.5
Bonding agent (urea formaldehyde)	5.7	10.7
Covering on reserve side ("Lenoweave"/paste)	4.0	7.5
Fibreglass	9.6	18.2
Other materials		55

3. ECO filter (Decision No D.T. 42.857)

(a) *Description*

Filter for purifying air consisting of a square membrane of fibreglass mounted in a cardboard frame between two thin perforated metal sheets.

(b) *Composition*

Components	Grams per square foot	%
Fibreglass	32	40
Bonding agent (urea formaldehyde)	12	17
Adhesive (cresyl diphenyl phosphate)	6.5	8
Frame		35

II — The rules applicable

The Rules for the Interpretation of the Nomenclature of the Common Customs Tariff provide as follows:

"1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

2. (a) 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. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or unfinished by virtue of this rule), imported unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When for any reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

..."

The Notes to Section XVI of the Common Customs Tariff, which contains Chapter 84, are worded as follows:

"1. This section does not cover:

...

(e) ... articles of textile material of a kind commonly used in machinery or plant (heading No 59.17);

...

2. Subject to Note 1 to this section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines ... are to be classified according to the following rules: ..."

Note 1 (c) to Chapter 84 excludes from that chapter:

"... machinery and appliances and parts thereof, of glass, (heading No 70.20 or 70.21)".

The Explanatory Notes to the Customs Tariff of the European Communities relating to Section XVI refer, on the question of the determination of headings, to the Customs Cooperation Council's Explanatory Notes, which under the heading "General" make the following remarks on the general content of Chapter 84:

"Since ... machinery and appliances and parts thereof, of glass, (heading No 70.20 or 70.21) are excluded from this chapter, it follows that even if a machine or mechanical appliance is covered, because of its description or nature, by a heading of this chapter it is not to be classified therein if it has the character of an article ... of glass.

This applies, for example, to machines, mechanical appliances or apparatus of ceramic material or of glass, incorporating components of minor importance of other materials, such as stoppers, joints, taps, etc., clamping or tightening bands or collars or other fixing or supporting devices (stands, tripods, etc.).

On the other hand, the following are, as a rule, to be taken to have lost the character of ceramic articles, laboratory glassware, or machinery or appliances and parts thereof, of ceramic material or of glass:

(1) combinations of ceramic or glass components with a high proportion of components of other materials (e.g. of metal); also articles consisting of a high proportion of ceramic or glass components incorporated or permanently mounted in frames, cases and the like, of other materials.

..."

The Customs Cooperation Council's Explanatory Notes contain the following observations on subheading 84.18:

"II. Machinery and certain apparatus for filtering or purifying liquids or gases

Much of the filtration or purification plant falling in this heading is purely static equipment with no moving parts. The heading covers filters and purifiers of all types (physical or mechanical, chemical, magnetic, electro-magnetic, electro-static, etc.). The heading covers not only large industrial plant, but also filters for internal combustion engines and small domestic appliances.

...

(B) Filtering and purifying machinery, etc., for gases

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value (e.g. coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate harmful materials (e.g. dust extraction, removal of tar, etc., from

gases or smoke fumes, removal of oil from steam engine vapours).

They include:

(1) Filters and purifiers acting solely by mechanical or physical means; these are of two types. In the first type, as in liquid filters, the separating element consists of a porous surface or mass (felt, cloth, metallic sponge, glass wool, etc.);

. . .

Parts

Subject to the general provisions regarding the classification of parts (see General Explanatory Note to Section XVI), the heading covers parts for the above-mentioned types of filters and purifiers. Such parts include, *inter alia:*

leaves for intermittent vacuum filters; chassis, frames and plates for filter presses; rotary drums for liquid or gas filters; baffles, perforated plates, etc., for gas filters.

It should be noted, however, that filter blocks of paper pulp fall within heading No 48.08 and that many other filtering elements (ceramics, textiles, felts, etc.) are classified according to their constituent material."

The Customs Cooperation Council's Explanatory Notes to Chapter 59 state, *inter alia,* that subheading 59.17 includes:

". . .

(iv) Woven textile fabrics, whether or not felted, impregnated or coated, of a kind commonly used in paper-making or other machinery, tubular or endless with single or multiple warp and/or weft, or flat woven with multiple warp and/or weft;

(v) Textile fabrics, reinforced with metal, of a kind commonly used in machinery or plant;

. . .

(b) Textile articles (other than those of headings Nos 59.14 to 59.16) of a kind commonly used in machinery or plant (for example, gaskets, washers, polishing discs and other machinery parts)."

The Explanatory Notes to subheading 59.17 state as follows:

"The textile products included in this heading present particular characteristics which identify them as being commonly used in machinery or plant.

. . .

B. Textile articles of a kind commonly used in machinery or plant

All textile articles of a kind commonly used in machinery or plant (other than . . .) are classified in the present heading and not elsewhere in Section XI . . .; for example:

. . .

(8) Bags for vacuum cleaners, filter bags for air filtration plant, oil filters for engines, etc.

The textile articles of this heading may incorporate accessories in other material provided the articles remain essentially articles of textile."

III — Procedure before the Court

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were lodged by the plaintiff, Farr Company NV, represented by I. Onkelinx, of the Brussels Bar, by the Belgian Government, represented by W. Collins, Director of Administration at the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, and by the Commission, represented by T. Van Rijn, a member of its Legal Department.

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. However, it decided to ask the plaintiff to bring to the hearing models of all the filters concerned and to state the use to which those filters were normally put, in particular the extent to which they were intended to be a part of a more complex appliance and the extent to which they might be used independently.

By order of 17 November 1982, the Court decided, under Article 95 (1) and (2) of the Rules of Procedure, to assign the case to the Second Chamber.

IV — Written observations

1. The *plaintiff* maintains, in the first place, that the filters concerned correspond fully to the wording of tariff subheading 84.18 C II.

In the second place, it points out that the exceptions provided for in Note 1 (e) to Section XVI and in Note 1 (c) to Chapter 84 of the Common Customs Tariff do not apply.

The individual components of the filter have their own function in the filtering process. Thus the frame, the wire, the bonding agent, the adhesive and the covering are all equally as important in the construction of the filters as the textile material and glass fibre.

The plaintiff submits that Note 1 (e) to Section XVI should be interpreted to mean that articles of a kind commonly used in machinery or plant which contain components of materials other than textile material are still classified under heading No 59.17, provided that those components are merely accessories which do not cause the articles as a whole to lose their character of being articles of a textile material.

Goods which correspond to a description relating to a tariff heading in Section XVI may, therefore, be classified under tariff heading No 59.17 only if the principal component is of textile material.

The description of the composition of the air filters (as reproduced above) shows that the textile material used constitutes only a small part of the appliance and is certainly neither the principal nor the dominant component. Moreover, the Explanatory Notes do not include air filters among the articles which are not covered by Section XVI; they do, however, state that such filters may consist of "felt, cloth or glass wool". On the basis of the Notes, it may be concluded that it is intended that filters made from textile materials or glass wool should in principle be classified under tariff heading No 84.18 unless the dominant material or the principal component is a textile material, and the plaintiff submits that in this case it is not.

As regards Note 1 (c) to Chapter 84, the plaintiff points out that, according to the

Explanatory Notes to Chapter 84, "the following are . . . to be taken to have lost the character of . . . machinery or appliances and parts thereof, . . . of glass:

(i) combinations of . . . glass components with a high proportion of components of other materials (e.g. of metal); also articles consisting of a high proportion of . . . glass components incorporated or permanently mounted in frames, cases and the like, of other materials."

The plaintiff maintains that three conclusions may be drawn from the above:

(1) The articles which correspond to the description relating to a tariff heading in Chapter 84 may be classified under tariff heading No 70.20 only if the principal component of the article is made of glass wool.

(2) Even if the article consists "largely" of glass wool or glass fibre, it may not be classified under tariff heading No 70.20 if the glass components are incorporated or permanently mounted in frames, cases and so forth.

(3) Even if the dominant material is glass fibre and the article is not incorporated in frames and so forth, it may be classified under tariff heading No 70.20 only if that tariff heading provides the most specific description.

It may be seen from the information given on the filters in the judgment making the reference that the glass fibre is not the principal component of the filters in terms either of value or of weight and that it is incorporated in frames.

Finally, the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff suggest that the filters must be classified under heading No 84.18, as that heading provides a more specific description than headings Nos 59.17 and 70.20.

Accordingly, the plaintiff proposes that the questions raised by the national court should be answered as follows:

"1. The air filter of the type 30/30 (Decision No D.T. 42.856, Model 1), consisting of a sheet of textile material of unwoven, reinforced cotton, pleated in rows, supported and reinforced by metal wire and incorporated in a stiff, resistant and water-proof cardboard frame, with diagonal supporting strips attached to the frame, is an apparatus for filtering air and other gases covered by subheading 84.18 C II b of the Common Customs Tariff.

2. The air filter of the type HP, consisting of a pleated membrane of reinforced unwoven cotton, fitted above and below with a cardboard sheet, is an apparatus for filtering air or other gases covered by subheading 84.18 C II b of the Common Customs Tariff.

3. The air filter of the type HP, consisting of a pleated sheet of glass wool reinforced with a membrane of synthetic nylon and fitted above and below with a cardboard sheet or an asbestos plate and the glassfibre content of which represents only 10% of its total weight, is an apparatus for filtering air or other gases covered by subheading 84.18 C II b of the Common Customs Tariff.

4. The air filter of the type 83 Media Roll-Kleen, consisting of fibreglass matting reinforced on one side by a weave with gauze binding of synthetic fibre, on reels, and of which the fibreglass content represents less than 20% of its total

weight, is an apparatus for filtering air or other gases covered by subheading 84.18 C II b of the Common Customs Tariff.

5. The air filter of the type ECO, consisting of a square membrane of fibreglass mounted in a cardboard frame between two thin perforated metal sheets and of which the fibreglass content represents not more than 40% of its total weight, is an apparatus for filtering air or other gases covered by subheading 84.18 C II b of the Common Customs Tariff."

2. The *Belgian Government* agrees that the filters are clearly designed to be used as filtering components in air filters.

It submits that, pursuant to Rule 1 of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, air filters should be classified under tariff subheading 84.18 C II b in so far as that classification is not contrary to the Notes to Section XVI and to Chapter 84.

It points out that Note 1 to Section XVI excludes *inter alia* articles of textile material of a kind commonly used in machinery or plant, whilst Note 1 (c) to Chapter 84 excludes machinery and appliances and parts thereof, of glass.

According to the first paragraph of the Customs Cooperation Council's Explanatory Notes to heading No 59.17, textile articles of a kind commonly used in machinery or plant present particular characteristics which identify them as being commonly used for that purpose.

Rule 2 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff provides that any reference to articles of a specified material or substance is to be taken to include articles composed wholly or partially of that material or substance. The classification of articles consisting of more than one material or substance is to be according to the principles of Rule 3.

The essential character of filtering components is determined by the material which enables them to fulfil their function; in this case it is the textile material or glass fibre from which the article derives its filtering properties; the function of the containers and the reinforcing materials is merely to strengthen the components and to enable or to facilitate their installation in the appliances for which they are intended; they are merely accessories in relation to the filtering material.

The Belgian Government therefore proposes the following answers:

"A. The filters of the types 30/30 and HP2A are filtering components of a textile material and must be regarded as articles of textile material of a kind commonly used in machinery or plant which must be classified under heading No 59.17 D of the Common Customs Tariff.

B. The filters of the types HP, 83 and ECO must be regarded as articles of non-textile glass fibre and must be classified under subheading 70.20 A of the Common Customs Tariff."

3. The *Commission* subscribes to the view of the Belgian Government.

It points out that the filters concerned may not be used in isolation and that they are designed to be installed in batteries of filtering cells. It may be seen from the description of the filters given above that in each case the components of textile material or of glass fibre constitute the filtering material, that is to say, the part of the filter which actually

fulfils the function of purifying the air. The filter becomes unusable after a certain time and has to be replaced. It is therefore the filtering material, consisting of textile materials or glass fibre which actually fulfils the function of extracting the impurities from the air. The other materials of which the filter for purifying air consists have a secondary function. Thus the wire is intended to strengthen the filtering material and to enlarge the total surface. In the same way, the cardboard frame (filter 30/30 and the ECO filter) or the cardboard sheets (HP filters), the cardboard supporting strips (filter 30/30) and the perforated metal sheets placed on both sides (the ECO filter) are designed to strengthen the appliance. Finally, an important component of the filters for purifying air is the bonding agent (polyvinyl acetate or urea formaldehyde), which is used to reinforce the filtering material. However, the bonding agent does not determine the essential function of the filters, namely the filtering of air.

The Commission concludes that it is from the textile material or the glass fibre that the filters for purifying air derive their essential character, that is to say the filtering of air. The other components represent the means of achieving the highest possible level of efficiency. The fact that the cost price and the weight of the textile material or the glass fibre constitute only a small part of the total cost price and the total weight of the filter is of no importance. In each case, the properties which represent the objective characteristics of the products concerned must be determined with reference to their practical function. The cost price or the weight of the components is therefore irrelevant for that purpose. In accordance with Rules 2 (b) and 3 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, the filters may therefore be regarded as articles of textile material of a kind commonly used in machinery or plant (heading No 59.17) or as articles of glass wool or glass fibre (heading No 70.20), according to which substance the filtering material is made of.

The Commission proposes that the following answer be given to the questions raised by the Rechtbank van Eerste Aanleg, Antwerp:

"The air filters as described in the question raised by the national court must be classified under the Common Customs Tariff as articles of textile material of a kind commonly used in machinery or plant (tariff subheading 59.17 D) or as articles of glass wool or glass fibre (tariff subheading 70.20 A), according to whether the filtering material is made of cotton or glass fibre."

V — Oral procedure

At the sitting on 9 December 1982 the plaintiff, represented by I. Onkelinx, the Belgian Government, represented by L. Lernoot, acting as Agent, assisted by W. Van Brussel, an expert, and the Commission, represented by T. Van Rijn, acting as Agent, presented oral argument and replied to the questions put by the Court.

At the sitting, the plaintiff produced models of all the filters in question and stated that they were normally separate components of air-purifying systems. It stated, moreover, that it no longer disputed the Belgian authorities' tariff classification of the Type 83 filter.

The Advocate General delivered his Opinion at the sitting on 27 January 1983.

Decision

1 By judgment of 1 April 1982, received at the Court on 9 April 1982, the Rechtbank van Eerste Aanleg [Court of First Instance], Antwerp, referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty two questions concerning the interpretation of various headings of the Common Customs Tariff.

2 Those questions were raised in the context of an action brought against the Belgian State by a public company which, from 1973 to 1976, imported into Belgium under tariff subheading 84.18 C II ("machinery and apparatus . . . for filtering or purifying liquids or gases") air filters principally intended to be used in air-purifying plants. In 1976, however, the Belgian customs authority, by two decisions, classified some of those filters under tariff subheading 59.17 D (textile fabrics and textile articles, of a kind commonly used in machinery or plant — other) and others under subheading 70.20 A (glass fibre (including wool), yarns, fabrics and articles made therefrom — non-textile fibre and articles made therefrom). The customs authority based its decisions on Note 1 (e) to Section XVI and Note 1 (c) to Chapter 84 of the Common Customs Tariff.

3 The company which imported the filters brought an action against those decisions before the Rechtbank van Eerste Aanleg, claiming that the goods should be classified under subheading 84.18 C II, mentioned above.

4 The Rechtbank stayed the proceedings and referred to the Court two questions as to whether the filters should be classified under tariff subheading 84.18 C II or under tariff subheadings 59.17 D and 70.20 A.

5 The first question, relating to tariff headings Nos 84.18 and 59.17, concerns two air filters known as the 30/30 filter (consisting of a pleated sheet of textile material reinforced with wire and mounted in a cardboard frame) and the HP 2 A filter (consisting of a pleated membrane of textile material fitted above and below with a cardboard sheet).

6 The second question, relating to tariff headings Nos 84.18 and 70.20, concerns three air filters known as the HP filter (consisting of a pleated

sheet of glass wool reinforced with a membrane of synthetic nylon fibre and fitted above and below with a cardboard sheet), the type 83 filter (consisting of fibreglass matting wound on reels and reinforced on one side by a weave with gauze binding of predominantly synthetic fibre) and the ECO filter (consisting of a square membrane of fibreglass mounted in a cardboard frame between two thin perforated metal sheets).

7 As a general rule, parts of machinery or appliances must be classified under the same heading as the machinery or appliances in which they are intended to be fitted, which in the case of the filters in question would lead to their being classified under subheading 84.18 C II.

8 However, it may be seen from Note 1 (e) to Section XVI of the Common Customs Tariff and from Note 1 (c) to Chapter 84 of the Tariff that the above-mentioned general rule does not apply to articles of textile material of a kind commonly used in machinery or plant, which must always be classified under heading No 59.17, or to machinery and appliances and parts thereof, of glass, which must always be classified under heading No 70.20 or 70.21. In view of those specific rules, recourse may not be had, for the classification of those articles, to Rule 3 (a) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, a rule of a general nature which states that the heading which provides the more specific description is to be preferred to headings providing a more general description.

9 The plaintiff in the main proceedings points out that the filters in question have lost their character of articles of textile material or of glass fibre by the addition of other components, for example bonding agents or adhesives and covering materials such as metallic sheets or cardboard frames. Each of those components has its own function, equally as important as that of the textile material or the glass fibre. Moreover, their weight and their value are greater than those of the textile material or the glass fibre. In that regard, the applicant relies on various paragraphs of the Customs Cooperation Council's Explanatory Notes, which in fact amount to specific applications of Rule 3 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, according to which composite goods which consist of different materials or are made up of different components and which cannot be classified by reference to Rule 3 (a) are to be classified as if they consisted of the material or component which gives them their essential character.

10 In that connection, it should be emphasized that the essential character of the filters derives from their filtering capacity. The description given in the questions put to the Court shows that the sheets of textile material or of glass fibre constitute, for all the filters in question, the component which is indispensable for the filtering process. The bonding agent and the adhesives are used to improve the filtering capacity and to retain the impurities. The covering materials are used, in particular, to facilitate the assembly of the filters. Although in some cases their weight and their value exceed those of the sheets of textile material or glass fibre, they are nevertheless accessories in relation to those components. Therefore, they may not be said to deprive the filters of their character of articles of textile material or of glass fibre of a kind commonly used in machinery or plant.

11 Consequently, the Court's reply to the questions referred to it must be that the air filters the composition of which is described in those questions should be classified as articles of textile material of a kind commonly used in machinery or plant under heading No 59.17 of the Common Customs Tariff or as machinery and appliances and parts thereof, of glass, under heading No 70.20 of the Common Customs Tariff, according to whether the filtering component consists of textile material or of glass fibre.

Costs

12 The costs incurred by the Belgian Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Rechtbank van Eerste Aanleg, Antwerp, by a judgment of 1 April 1982, hereby rules:

The air filters the composition of which is described in the questions referred to the Court must be classified as articles of textile material of a kind commonly used in machinery or plant under heading No 59.17 of the Common Customs Tariff or as machinery and appliances and parts thereof, of glass, under heading No 70.20 of the Common Customs Tariff, according to whether the filtering component consists of textile material or of glass fibre.

Pescatore Due Bahlmann

Delivered in open court in Luxembourg on 10 February 1983.

For the Registrar

H. A. Rühl

Principal Administrator

P. Pescatore

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 27 JANUARY 1983 [1]

Mr President,
Members of the Court,

The case which is the subject of this opinion is concerned with the tariff classification of air filters.

Since 1973 Farr Company NV, the plaintiff in the main proceedings, has imported into Belgium air filters, which are manufactured by its parent company in the United States. Initially, the products were imported under sub-heading 84.18 C II b of the Common Customs Tariff, to which, at the material time, a rate of duty of 6% applied. By decisions of 3 February 1976 and 2 August 1976 the Belgian customs authority classified some of the air filters imported by the plaintiff under tariff subheadings 59.17 D II b 2 and 70.20 A V, under which customs duty was payable at the rates of 11% and 9.5% respectively. The customs authority relied on Note 1 (e) to Section XVI of the Common Customs Tariff and Note 1 (c) to Chapter 84 of the Tariff, which provide that *inter alia,* articles of textile material of a kind commonly used in machinery or plant and machinery and appliances and parts thereof, of glass, are not to be classified under Chapter 84 and are to be classified according to their particular nature and composition, namely under tariff headings Nos 59.17 and 70.20.

1 — Translated from the German.