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 the Firma Ludwig Poppe of Hamburg. The Respondent is the Oberfinanzdirektion of Cologne.

On 3 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, which are marketed under the name 'Huron Copysette', and of which samples were supplied to the Court at its request, are a form of stationery. They are designed to make it easier for a typist to produce carbon copies. A 'Copysette' consists of two sheets of paper of the same size (21 × 29·7 cm, i.e. DIN A 4) lightly stuck together at one end. One is a sheet of carbon paper and the other a sheet of ordinary white flimsy paper. The latter faces the coated side of the carbon paper. The two can be inserted together in a typewriter, under the sheet of paper on which the top copy is to be typed. After typing they can be separated and the sheet of carbon paper thrown away. 'Copysettes' are, it appears, marketed in boxes of 500.

On 18 February 1975 the Respondent issued an official ruling classifying the goods under Heading 48.18 of the Common Customs Tariff (OJ L 295 of 1. 11. 1974), which comprises 'Registers, exercise books, notebooks memorandum blocks, order books, receipt books, diaries, blotting-pads, binders (loose-leaf or other), file covers and other stationery of paper or paperboard; sample and other albums and book covers, of paper or paperboard'. The rates of duty under that Heading are: autonomous 21 %, conventional 15 %.

By letter dated 7 March 1975 the Appellant protested to the Respondent against that ruling, claiming that the goods should be classified under Heading 48.13, which comprises 'Carbon and other copying papers (including duplicator stencils) and transfer papers, cut to size, whether or not put up in boxes'. The rates of duty there are: autonomous 19 %, conventional 12 %.

On 28 August 1975 the Respondent issued a decision ('Einspruchsentscheidung') confirming its earlier ruling.

The Appellant now appeals against that decision to the Bundesfinanzhof, where, whilst maintaining its primary claim that the goods should be classified under Heading 48.13, it contends in the alternative that they should be classified under Heading 48.15, which comprises:

'Other paper and paperboard, cut to size or shape:

A. 'Adhesive strips of a width not exceeding 10 cm, the coating of which consists of unvulcanised natural or synthetic rubber;

B. Other'

There also the rates of duty are: autonomous 19 %, conventional 12 %.

The Bundesfinanzhof, in its Order for Reference, points out that carbon paper by itself falls under Heading 48.13 whilst flimsy paper by itself falls under Heading 48.15 B. The problem here is as to the classification of goods that consist in part of the one and in part of the other.

The actual question referred to the Court by the Bundesfinanzhof is in these terms:

'Is tariff heading 48.15 of the Common Customs Tariff to be interpreted as including only paper of a single kind such as the adhesive strips referred to in tariff subheading 48.15 A, and not sets consisting of sheets of different kinds of paper stuck together, each of which is expressly named in or falls under a different tariff heading, such as carbon paper of tariff heading 48.13 and flimsy paper cut to size or shape of tariff subheading 48.15 B, or do such sets automatically fall under tariff heading 48.18 as other stationery of paper?'

Observations have been submitted to the Court by the Appellant and by the Commission.

Essentially the Appellant's argument is that the goods comprised in Heading 48.18 all have the characteristic that they result from the application of a substantial manufacturing process, such as binding or printing, to the paper or paperboard that constitutes their raw material. The goods here in question should accordingly, the Appellant submits, be classified as 'other copying papers' of Heading 48.13 or as 'Other paper ... cut to size or shape' of Heading 48.15. Before the Bundesfinanzhof, though not before this Court, the Appellant relied to some extent on the Explanatory Notes to the Brussels Nomenclature relating to Heading 48.13.

The Commission on the other hand submits that the Respondent was right in classifying the goods under Heading 48.18.

I have, after some hesitation, come to the same conclusion.

It is in my opinion important to bear in mind the structure of Chapter 48 of the CCT. It is divided into two Sub-Chapters, the first entitled 'Paper and Paperboard, in Rolls or in Sheets' and the second entitled 'Paper and Paperboard Cut to Size or Shape and Articles of Paper or Paperboard'. It is common ground that the goods here in question are not within the first Sub-Chapter. The second Sub-Chapter begins with a series of five Headings each comprising a particular kind of paper or paperboard. Briefly, Heading 48.10 comprises cigarette papers, Heading 48.11 wallpapers, Heading 48.12 paper or paperboard floor coverings, Heading 48.13 Your Lordships know about, and Heading 48.14 comprises writing paper and the like. Next comes Heading 48.15 which, in relation to Headings 48.10 to 48.14, is a residual Heading comprising other kinds of paper and paperboard. Articles manufactured from paper or paperboard are comprised in Headings 48.16 to 48.21. I need not set them all out. As regards stationery the residual Heading is 48.18, which expressly refers to 'other stationery of paper or paperboard'.

It seems to me that an article consisting of two different kinds of paper cannot come within any of Headings 48.10 to 48.15, since each of those is worded so as to comprise only one kind of paper. Such an article must come within one of the Headings 48.16 to 48.21, and here the appropriate Heading is 48.18.

That impression is to my mind confirmed by a reading of the Explanatory Notes to the Brussels Nomenclature. Those relating to Heading 48.13 in particular refer several times to 'ordinary paper' in such a way as to make it clear that the authors of the Notes drew a distinction between, on the one hand, paper that had been treated in some way so as to make it 'copying paper' within that Heading and, on the other hand, 'ordinary paper' not so treated and therefore not within that Heading.

An alternative view is suggested by the Bundesfinanzhof, viz. that the goods here in question are *prima facie* classifiable

under any of Headings 48.13, 48.15 and 48.18 so that General Rule 3 in the Preliminary Provisions of the CCT applies. On this view (which, of course, I do not take) the result would, I think, be the same, inasmuch as neither paragraph (a) nor paragraph (b) of General Rule 3 would apply and, under paragraph (c), Heading 48.18 would prevail as being the one involving the highest rate of duty.

Thus I am of the opinion that, in answer to the question referred to the Court by the Bundesfinanzhof, Your Lordships should rule that Heading 48.15 of the Common Customs Tariff is to be interpreted as excluding stationery consisting of sheets of different kinds of paper stuck together, where those kinds of paper themselves fall under different Headings of the Tariff, and that such stationery is comprised in Heading 48.18.