JUDGMENT OF THE COURT (FIRST CHAMBER)
7 OCTOBER 1982 [1]

E. I. Du Pont de Nemours Inc. and Dewfield (an unlimited company trading as C.D. (UK)) v Commissioners of Customs and Excise (reference for a preliminary ruling from the Commercial Court of the Queen's Bench Division of the High Court of Justice)

(Common Customs Tariff — Corian)

Case 234/81

Common Customs Tariff — Tariff headings — "Polymers" and "copolymers" within the meaning of subheadings 39.02 C. XII and 39.07 B.V. (d) — Concept — "Corian" — Inclusion

The provisions of the Common Customs Tariff are to be construed as meaning that the product know as Corian, which consists by weight of approximately 66 % aluminium hydroxide, approximately 33 % polymethyl methacrylate and a very small percentage of catalytic and other curing agents, falls under subheading 39.02 C XII of the Common Customs Tariff when it is imported in the form of slabs, and under subheading 39.07 B V (d) when it is imported in the form of articles made of that material, and is not classifiable under any other heading of the Common Customs Tariff.

In Case 234/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Commercial Court of the Queen's Bench Division of the High Court of Justice of England and Wales for a preliminary ruling in the action pending before that court between

E. I. Du Pont de Nemours Inc.

and

1 — Language of the Case: English.

DEWFIELD (AN UNLIMITED COMPANY TRADING AS C.D. (UK)), on the one hand,

and

COMMISSIONERS OF CUSTOMS AND EXCISE, on the other hand,

on the interpretation of the Common Customs Tariff, in particular heading 68.11 and subheadings 39.02 C XII and 39.07 B IV (d) thereof,

THE COURT (First Chamber),

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

E. I. Du Pont de Nemours Inc. (hereinafter referred to as "Du Pont") is a company established in the United States of America which, *inter alia,* manufactures and markets throughout the world a product known as "Corian".

Dewfield is a company incorporated in England which purchases the product for re-sale in the United Kingdom.

Corian is a building material made to look like marble and is used in a wide range of luxury applications. It is solid, translucent, homogeneous and non-inflammable. On the impact of a hammer it may fracture, but will not shatter. Once cast and set it cannot be moulded, shaped, vacuum-formed or heat-treated but can still be worked with appropriate tools. It consists by weight of about 66 % aluminium hydroxide, obtained from bauxite ore, about 33 % artificial plastic material (polymethyl methacrylate), a small percentage of copper-coloured fibres obtained from an artificial plastic material and a trace of colouring agent.

A dispute arose between Du Pont and Dewfield, on the one hand, and the Commissioners for Customs and Excise, on the other, as to the tariff classification of Corian. That dispute came before the Commercial Court of the Queen's Bench Division of the High Court of Justice, which, by an order of 22 July 1981, requested the Court of Justice of the European Communities to give a preliminary ruling on the following questions:

"(1) Whether upon the true interpretation of the Common Customs Tariff or any other relevant provisions of the law of the European Community the product Corian is to be classified under heading 68.11 of the Common Customs Tariff of the European Economic Community for the purposes of assessment to import duty;

(2) Alternatively, whether the said product is to be classified under the following headings of Chapter 39 of the Common Customs Tariff, namely 39.02 C XII or 39.07 BV (d);

(3) Alternatively, whether the said product is to be classified under any other heading of the Common Customs Tariff."

The order for reference was lodged at the Court Registry on 21 August 1981.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the following: Du Pont, represented by Richard Taylor, Solicitor, of Messrs. McKenna's & Co., London, and by Ian S. Forrester, Advocate of the Scots Bar; by Dewfield, also represented by Mr Taylor and Mr Forrester; by the United Kingdom, represented by J. D. Howes of the Treasury Solicitor's Department, acting as Agent; and by the Commission of the European Communities, represented by Thomas van Rijn and Frank S. Benyon, members of its Legal Department, acting as Agents.

On 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 requested the Commission to produce certain tariff classification opinions issued by the Committee on Common Customs Tariff Nomenclature, by the Nomenclature Committee of the Customs Cooperation Council and by the customs authorities of the Member States, and to reply to a question concerning heading 68.11 of the Common Customs Tariff.

By an order of 3 February 1982, made pursuant to Article 95 (1) and (2) of the Rules of Procedure, the Court assigned the case to the First Chamber.

II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The observations submitted by the parties discuss the possibility of

classifying Corian under various headings or subheadings of the Common Customs Tariff. Having regard, *inter alia*, to the fact that Corian may be imported either in the form of slabs or sheets (which may have to be cut before use) or in the form of articles made of that material (washbasins, in particular), the headings or subheadings of the Common Customs Tariff which fall to be considered for the purpose of classifying in are the following:

"68.11 Articles of cement (including slag cement), of concrete or of artificial stone (including granulated marble agglomerated with cement), reinforced or not."

"39.02 Polymerization and copolymerization products (for example, polyethylene, polytetrahaloethylenes, polyisobutylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, coumarone-indene resins):

...

C. Other:

...

XII. Acrylic polymers, methacrylic polymers and acrylo-methacrylic copolymers."

"39.07 Articles of materials of the kinds described in headings Nos 39.01 to 39.06:

...

B. Other:

...

V. Of other materials:

...

(d) Other."

Du Pont, wholly supported by Dewfield, maintains that Corian should be classified as an article of artificial stone under heading 68.11 of the Common Customs Tariff.

The objective characteristics and properties of Corian, which may easily be determined by a simple inspection of the product, clearly correspond to the obvious connotations of the words "artifical stone" used in heading 68.11 of the Common Customs Tariff . They do not correspond to the connotations of plastic in general, nor to those of polymethyl methacrylate in particular.

As far as the Explanatory Notes of the Customs Cooperation Council on heading 68.11 are concerned, Corian falls within the broad definition of "an imitation of natural stone usually obtained by agglomerating ... powdered natural stone ... with lime or cement or other binders (e.g., artificial plastic material)". Although it is true that Corian is made with a mineral substance which might not be throught of as stone, that is just the sort of variation encompassed by the word "usually".

Du Pont states that the principal components of Corian are a substance whose mineralogical appelation is "gibbsite" and whose chemical designation is aluminium trihydrate or (less precisely) aluminium hydroxide, and an artificial plastic material called polymethyl methacrylate. The gibbsite represents about two thirds by weight of the finished product and the plastic about one third. Their volumes are approximately equal.

As far as gibbsite is concerned, Du Pont explains that it is a crystalline mineral found abundantly in nature, both independently and in association with other crystals contained in bauxite ore mined in Arkansas. The gibbsite used in the manufacture of Corian is extracted from (and only from) this ore by a physical and chemical process of purification which separates out the gibbsite in the same crystalline form as it had in the ore and as it has when found independently in nature. The natural origin of gibbsite is therefore not to be doubted, states Du Pont, and there is nothing about the filler which causes its use in Corian to justify excluding the latter from the category of artificial stone.

Methyl methacrylate is described by Du Pont as a colourless liquid which sets after polymerization into a firm, highly transparent plastic used for spectacles, car windscreens and similar applications.

In Du Pont's opinion, the objective properties and characteristics of Corian preclude its being regarded as a plastic. In support of its views it lists the principal differences between Corian and a plastic such as polymethyl methacrylate:

(i) Corian can be sculpted, but plastic cannot.

(ii) Corian can be cut only by using a water-cooled diamond-tipped saw or by a stone-cutting saw tipped with tungsten carbide, and can be worked only with carbide-tipped tools, whereas plastic is usually cut with an ordinary saw or a hot blade.

(iii) Corian has a mineral, crystalline appearance and its feel is one which cannot be confused with the feel of plastic.

(iv) Corian is non-inflammable, whereas plastic burns very easily.

(v) When struck with a hammer Corian breaks into several pieces but does not shatter, whereas plastic bends, resists or, in the case of certain kinds of plastic, shatters.

(vi) Corian is translucent like alabaster and many fine marbles but a plastic such as polymethyl methacrylate is transparent.

(vii) Corian has a homogeneous structure, whereas in a plastic such as polymethyl methacrylate there is a remarkable difference between the cut surface and the moulded surface.

(viii) Corian has a very low porosity but does absorb humidity, whereas plastic is entirely waterproof.

(ix) Corian is very durable, but plastic will deteriorate with ordinary wear and tear.

Du Pont goes on to note that fillers are often added to plastics used in the building industry in order to achieve different results, for instance to impart colour, opacity or resistance to deformation or to fill out the bulk and weight of the end product. Such an addition does not normally alter the properties of the plastic if the matter added does not exceed the proportion of roughly 50% by weight. However, if the filler is more

than half the weight of the finished product (in the case of Corian it is approximately 66%), that proportion results, in general, in products having properties quite different from those of pure plastic.

The classification of a product solely on the basis of the weight of the plastic incorporated in it, even though the filler significantly alters the characteristics of the product so that they are no longer those of plastic (an alteration which occurs in particular when the filler is an unusual one), would lead, according to Du Pont, to wholly incorrect results. In certain cases, for example, such an approach would require concrete and terrazzo to be regarded as plastic owing to the percentage by weight of plastic which they contain, yet they are expressly referred to in the Explanatory Notes of the Customs Cooperation Council as falling under heading 68.11.

Du Pont contends that in the present case the plain meaning of the words "artificial stone" (in heading 68.11 of the Common Customs Tariff) virtually compels the inclusion of Corian and a plain reading of the words "polymerization products" (which are used in heading 39.02 of the Common Customs Tariff and which include for the purposes of these proceedings products of heading 39.07, "articles of materials of the kinds described in headings Nos 39.01 to 39.06") virtually compels its exclusion.

That interpretation, moreover, corresponds to the criteria laid down in the Rules for the interpretation of the Common Customs Tariff.

Neither Rule 2 (a), which concerns unfinished articles, nor Rule (b) which, according to Du Pont, requires any mixture or combination of materials to be classified under the heading relevant for the material which gives it its essential character, applies to Corian. That is because Corian is a finished product and has, moreover, as Du Pont considers it has already demonstrated, the character of neither of its components.

It is necessary to have recourse to Rule 3, which is applicable when several headings compete for the classification of a given product. It comprises three separate rules.

The rule laid down in subparagraph (a) is that the more specific heading takes precedence over the more general one. In this regard, Du Pont considers that heading 68.11 ("Articles of ... artificial stone") gives an exact description of Corian, which is an imitation of a natural stone, namely marble. Headings 39.02 and 39.07 are, by contrast, far less specific.

The rule contained in subparagraph (b), which states that mixtures or composite goods are to be classified on the basis of the material or component which gives them their essential character cannot apply, for neither the plastic nor the gibbsite gives Corian its essential characteristics and properties.

The rule contained in subparagraph (c), which looks to the later heading, obviously favours heading 68.11 over headings in Chapter 39.

Lastly, if the rule to be applied is Rule 4, whereby goods are to be classified in the same way as goods which are akin to the product in question, Du Pont submits

that there are no products akin to Corian which are made only of plastic or which have even the properties of plastic.

Du Pont cites in support of its opinion a number of decisions of the Court of Justice which attribute decisive influence for the purposes of tariff classification to the criterion based on the essential characteristics and properties of the product.

It considers that the Court's decisions confirm Du Pont's point of view both as to the interpretation of the word "usually" (judgment of 14 July 1981 in Case 205/80, *Elba)* and as to the entirely relative importance of the percentage of a particular material present in the product to be classified *(Elba,* cited above; and judgment of 26 March 1981 in Case 114/80, *Ritter).*

Du Pont points out that if the customs authorities' inclination to classify Corian as a plastic simply because it contains a certain proportion of plastic reflects a wish to keep abreast of technological developments in building materials, where plastic is being used more and more, that approach has been clearly rejected by the Court, which stated in its judgment of 19 November 1981 in Case 122/80, *Analog Devices,* that where technical developments appear to justify the adoption of a new customs classification any amendment of the Common Customs Tariff to take account of the fact is purely a matter for the Community institutions concerned.

Du Pont suggests that one of the factors influencing the customs authorities in their decision to classify Corian as a plastic might be that the value of its plastic component is greater, pound for pound, than the value of the mineral component. Yet the Court's decisions offer no support for any reference to the value of the product as a criterion (judgment of 28 March 1979 in Case 158/78, *Biegi*).

In conclusion, Du Pont submits that the reply to the questions raised in these proceedings should be that Corian must be classified under heading 68.11 of the Common Customs Tariff, regardless of the form in which it is presented, whether as slabs or sheets, or as articles made of that material.

The *United Kingdom* observes that the product known as Corian is made up, apart from the small quantities of colouring agents which may be present, of two main ingredients: polymethyl methacrylate, which is a plastic material, and aluminium hydroxide, which is a substance obtained from bauxite by a chemical process known as the Bayer process.

The United Kingdom does not accept the submission of the plaintiffs in the main action that aluminium hydroxide obtained by the Bayer process is simply pure gibbsite because it is in the same crystalline form as the aluminium hydroxide contained in the ore. The United Kingdom contends, on the contrary, that it is a chemical obtained from bauxite ore by means of two separate chemical reactions and the mineralogical term "gibbsite" is not an appropriate designation for such a substance. It states, however, that its view on the tariff classification of Corian in no way depends upon the answer to the question whether the aluminium hydroxide employed in the manufacture

of that product is or is not of natural origin.

Considering next the difficulty of classifying Corian, the United Kingdom first draws attention to the German version of heading 68.11 of the Common Customs Tariff in which there appears the word "Betonwerksteine", which means "cast stone", and not "artificial stone". In any case, it considers that Corian may be described neither as "artificial stone" nor as "cast stone". Both, according to the Explanatory Notes to the Customs Cooperation Council Nomenclature on heading 68.11, must contain "natural stone". That must refer in this context to natural stone which is a recognized or traditional building stone and it cannot reasonably be held to refer to minerals in general, nor even to bauxite, which, although a natural mineral, is a metal-bearing ore not used as a building stone. More particularly, the description "natural stone" cannot be held to include aluminium hydroxide obtained by the Bayer process, which is a chemical product. Furthermore, a reasonable construction of heading 68.11 must include under that heading products which not only contain natural stone but which also derive their character from their natural stone component.

Having thus excluded the application of heading 68.11, the United Kingdom maintains that Corian should be classified under heading 39.02 in the case of sheets, and heading 39.07 in the case of articles made from it.

In fact, under Rule 2 (b) of the Rules for the interpretation of the Common Customs Tariff, which concerns the classification of mixtures or combinations of materials, aluminium hydroxide might be considered an appropriate classification for Corian, of which it is a component. However, in view of the fact that aluminium hydroxide comes under heading 28.20 of the Common Customs Tariff it must be remembered that according to Note 1 (a) to Chapter 28, that chapter covers only "separate chemical elements". That excludes the need to take into consideration the aluminium hydroxide content of Corian and thus reference must be made solely to the other main element of Corian: polymethyl methacrylate.

In the opinion of the United Kingdom, there is no reason why Corian should not be regarded as polymethyl methacrylate. Corian is a filled plastic, that is to say a plastic substance to which an inert material has been added to modify its properties or to reduce its costs, or both. In the case of Corian the effect of using aluminium hydroxide as a filler is to make the plastic opaque, more fire-resistent, denser, harder and more abrasive to the working edges of tools. Neither the fact that the filler is aluminium hydroxide nor the proportion by weight of that ingredient is sufficient to prevent Corian from being described as a filled plastic.

Rule 2 (b) of the Rules for the interpretation of the Common Customs Tariff states that the classification of goods consisting of more than one material or substance is to be made in accordance with the principle set out in Rule 3, which gives directions for classification where goods are classifiable under two or more headings. In this case, headings 68.11 and 28.20 are obviously not applicable to Corian so that the only

relevant heading is heading 39.02. Therefore it is no longer necessary to apply Rule 3.

The United Kingdom notes also that the Committee on Common Customs Tariff Nomenclature decided in July 1980 that Corian in sheet form should be classified under subheading 39.02 C XII; further, as the plaintiffs in the main action themselves have stated, the German customs authorities classified Corian under Chapter 39 of the Common Customs Tariff in March 1980. The different classification adopted in May 1978 by the Belgian customs authorities, who placed Corian under heading 68.11, may be attributed to the fact that, in the letter requesting a classification opinion, it was stated (erroneously) that aluminium hydroxide is a mineral

product derived from quarries or mines.

The United kingdom concludes that the replies to the first and third questions should be in the negative, and the reply to the second question in the affirmative.

The *Commission of the European Communities* considers first whether Corian should be classified under heading 68.11 of the Common Customs Tariff. Such a classification is possible only if the product in question may be regarded as artificial stone, the other products mentioned in that heading being irrelevant.

In this context the Commission observes that, according to the definitions appearing in several technical dictionaries, an important feature of artificial stone is the presence of small parts (even dust) of natural stone. It points out that the idea that one of the constituent elements of artificial stone must be natural stone is also expressed in the Explanatory Note to heading 68.11 drawn up by the Customs Cooperation Council. Although the Explanatory Notes of the Customs Cooperation Council, to which the Explanatory Notes to the Common Customs Tariff refer, are not legally binding, they are an aid for the interpretation of the original and present meaning and scope of the various tariff headings.

After having thus defined the term "artificial stone" the Commission states that such a definition cannot apply to a product such as Corian which contains no element of natural stone. The aluminium hydroxide cannot be regarded as such because it does not exist as such in nature and is obtained by means of a chemical process from bauxite.

Next, the Commission inquires whether Corian may be classified under Chapter 39 of the Common Customs Tariff, which includes artificial plastic materials, and whether, if so, it falls under heading 39.02, which covers polymerization and copolymerization products, or heading 39.07, which covers articles made of materials described in headings Nos 39.01 to 39.06.

The Commission notes that polymethyl methacrylate is a polymerization product and therefore falls under subheading 39.02 C XII ("methacrylic polymers"), whilst aluminium hydroxide is expressly mentioned in heading 28.20. However, aluminium hydroxide is here mixed with the other constituents of Corian, which excludes entirely any application of heading 28.20, since Note 1 to Chapter 28 of the Common Customs Tariff states that "the headings of this Chapter are to be taken to apply only to: (a) separate chemical elements ...". Consequently, only subheading 39.02 C XII may be considered for the purpose of classifying Corian.

In view of the description of the product known as Corian, the Commission considers that it is the polymethyl methacrylate which gives that product its main characteristics of consistency, beauty, brilliance, transparency and resistence to impact and weathering, whereas the aluminium hydroxide is merely a filler.

The Customs Cooperation Council reached a similar conclusion in two classification opinions concerning tiles which, like Corian, contained a relatively small percentage of plastic and a high percentage of minerals.

The Commission adds that Corian was classified under heading 39.02 by the Committee on Common Customs Tariff Nomenclature.

On the basis of the foregoing considerations the Commission suggests that the reply to the questions submitted should be as follows:

"The heading 39.02 C XII has to be interpreted in such a way as to include a product composed of 66% aluminium hydroxide, 33% polymethyl methacrylate, a small percentage of short copper-coloured fibres and a trace of colouring pigment."

III — Oral procedure

At the sitting on 17 June 1982 oral argument was presented by the following: Ian S. Forrester, Advocate of the Scots Bar, for Du Pont and Dewfield; Frank Benyon, a member of the Legal Department of the Commission of the European Communities, acting as Agent, for that institution.

The Advocate General delivered his opinion at the sitting on 8 July 1982.

Decision

1 By an order of 22 July 1981, which was received at the Court on 21 August 1981, the Commercial Court of the Queen's Bench Division of the High Court of Justice of England and Wales referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions concerning the interpretation of the Common Customs Tariff, in particular heading 68.11 and subheadings 39.02 C XII and 39.07 B V (d) thereof.

2 The questions arose in the course of an action in that court between the companies E. I. Du Pont de Nemours Inc. (hereinafter referred to as "Du Pont") and Dewfield, on the one hand, and the Commissioners of Customs and Excise of the United Kingdom, on the other, concerning the tariff classification of a product known as "Corian", which is made to look like marble and consists by weight of about 66% aluminium hydroxide, obtained from bauxite ore, and about 33% of polymethyl methacrylate, an artificial plastic

material, together with a very small percentage of catalytic and other curing agents.

3 Du Pont and Dewfield maintain that the product should be classified under heading 68.11 of the Common Customs Tariff as an article of "artificial stone". The Commissioners of Customs and Excise, on the other hand, are of the opinion that it should be classified under subheading 39.02 C XII (methacrylic polymers), if it is imported in the form of slabs or sheets, or under subheading 39.07 B V (d) (articles of materials covered by headings 39.01 to 39.06 inclusive), if it is imported already worked.

4 In order to determine the correct tariff classification of Corian regard must be had, first, to Rule 2 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, which provides that: "Any reference in a heading to a material or substance shall be taken to include a 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."

5 Inasmuch as Corian contains a material, namely polymethyl methacrylate, which comes under subheadings 39.02 C XII and 39.07 B V (d), it is *prima facie* classifiable under those subheadings pursuant to Rule 2 (b).

6 By contrast, the presence of the other component, aluminium hydroxide, is not a reason for considering heading 26.01, which covers metallic ores, even if that substance is regarded as gibbsite, and therefore an ore. That is because, according to Note 2 to Chapter 26, that heading includes only metallic ores which have not been "submitted to processes not normal to the metallurgical industry", which is manifestly not true of the gibbsite present in Corian since it is in fact obtained by means of a chemical process. Heading 28.20, which covers *inter alia* aluminium oxide and aluminium hydroxide, must likewise be rejected on the basis of Note 1 to Chapter 28, according to which the chapter covers only "separate chemical elements and separate chemically defined compounds", a description not satisfied by the aluminium hydroxide present in Corian.

7 The other tariff heading which might be considered for the classification of Corian is heading 68.11, provided, however, that that product may be regarded, as Du Pont and Dewfield maintain, as "artificial stone".

8 There is no universally accepted interpretation of that concept in either trade or scientific circles, although the prevailing view is that "artificial stone contains natural stone".

That approach was adopted in the Explanatory Notes of the Customs Cooperation Council, to which reference may be made in order to interpret headings in the Common Customs Tariff. According to those Notes, "artificial stone is an imitation of natural stone usually obtained by agglomerating pieces of natural stone, crushed or powdered natural stone (limestone, marble, granite, porphyry, serpentine, etc.) with lime or cement or other binders (e.g., artificial plastic material)".

9 It was submitted by Du Pont and Dewfield that the word "usually" ("en particulier" in the French version), which was used in the Notes, implies that there may be exceptions and thus allows even products which do not contain natural stone to be regarded as "artificial stone". That argument cannot be accepted, however, for the position of the word "usually", which precedes the words "by agglomerating" and not the words "powdered natural stone", indicates in fact than an exception might be made at most to allow for the possibility of using a manufacturing process other than the agglomeration of binders with powdered natural stone, but not for the case where no natural stone is used.

10 It follows that the only headings of the Common Customs Tariff which may be considered for the classification of Corian are subheadings 39.02 C XII and 39.07 B V (d).

11 The result would in any case be the same, even if it were accepted, for the sake of argument, that Corian may also be classified, *prima facie*, under heading 68.11 of the Common Customs Tariff.

12 If that were so Rule 3 of the General Rules would apply, paragraph (a) of which states that "the heading which provides the most specific description shall be preferred to headings providing a more general description". But heading 68.11, which, according to Du Pont and Dewfield, includes "any material with the characteristics of an imitation of natural stone", is plainly far more general in scope, if thus construed, than subheadings 39.02 C XII and 39.07 B V (d).

13 The reply to be given to the national court must therefore be that the provisions of the Common Customs Tariff are to be construed as meaning that the product known as Corian, which consists by weight of approximately 66% aluminium hydroxide, approximately 33% polymethyl methacrylate and a very small percentage of catalytic and other curing agents, falls under subheading 39.02 C XII of the Common Customs Tariff when it is imported in the form of slabs, and under subheading 39.07 B V (d) when it is imported in the form of articles made of that material, and is not classifiable under any other heading of the Common Customs Tariff.

Costs

14 The costs incurred by the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As the 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 as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Commercial Court of the Queen's Bench Division of the High Court of Justice of England and Wales by an order of 22 July 1981, hereby rules:

The provisions of the Common Customs Tariff are to be construed as meaning that the product known as Corian, which consists by weight

of approximately 66% aluminium hydroxide, approximately 33% polymethyl methacrylate and a very small percentage of catalytic and other curing agents, falls under subheading 39.02 C XII of the Common Customs Tariff when it is imported in the form of slabs, and under subheading 39.07 B V (d) when it is imported in the form of articles made of that material, and is not classifiable under any other heading of the Common Customs Tariff.

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 7 October 1982.

For the Registrar

H. A. Rühl
Principal Administrator

A. O'Keeffe
President of the First Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 8 JULY 1982

My Lords,

The Commercial Court of the Queen's Bench Division of the High Court in England asks for a preliminary ruling, pursuant to Article 177 of the EEC Treaty, as to whether a product called "Corian" falls under heading 68.11 of the Common Customs Tariff which covers, *inter alia,* artificial stone, or under headings 39.02 C XII and 39.07 B V (d), which cover certain polymers and plastics, or under any other heading.

The question is referred in an action before the Commercial Court in which the first Plaintiffs are E. I. Du Pont de Nemours and Company, hereinafter called "Du Pont", a corporation established and resident in Delaware, with a very substantial business in the