OPINION OF MR ADVOCATE GENERAL TESAURO
delivered on 27 January 1994 *

Mr President,
Members of the Court,

1. This case concerns the classification for customs purposes of travel goods — attaché cases, travel bags and suitcases — in cellular plastic (PVC) reinforced inside with synthetic fabric (viscose polyester, cotton polyester) or natural fabric (cotton).

2. When the items in question were imported, they were classified on the basis of declarations made by the customs agent (Danzas) on behalf of the importer (Superior SA France) under subheadings 42.02.12.91, 42.02.12.99 and 42.02.92.91 of the Common Customs Tariff (hereinafter referred to as 'the CCT') relating to travel goods *with outer surface of textile material.*

However, following checks carried out by the customs service, the French authorities reclassified the items in question under CCT subheadings 42.02.22.10, 42.02.12.19 and 42.02.12.11 relating to travel goods *with outer surface of plastic sheeting.* The national authorities then claimed payment of the higher duty and taxes payable under those subheadings.

3. In the action brought by the companies concerned against the reclassification of the goods, the Cour d'Appel, Paris, stayed the proceedings and referred to the Court for a preliminary ruling a question on the interpretation of the provisions of the combined nomenclature.

It is apparent from the order for reference that the items in question, being travel goods, fall indisputably within Chapter 42.02 of the CCT.

The national court states, however, that the external surface of those items is *composed* of plastic (PVC) sheeting, internally reinforced with fabric. Since Chapter 42.02 provides for separate subheadings according to whether the external surface of travel goods is in plastic or textile material, the Cour d'Appel, Paris, considers it necessary to determine into which of those two categories of

* Original language: Italian.

subheadings the items in dispute should fall, since they have a surface of both materials combined.

It follows that the question submitted by the national court must be understood as seeking to ascertain whether, for the purposes of the application of the subheadings in Chapter 42.02 of the CCT, goods such as those described in the order for reference — that is to say, travel goods with outer surface of plastic (PVC) sheeting internally reinforced with fabric — are to be regarded as goods with *outer surface* of plastic or, on the contrary, of textile material.

4. In that connection, it should be borne in mind that, in accordance with General Rule 2(b) on the interpretation of the combined nomenclature, 'any reference in a heading to a material shall be taken to include a reference to mixtures or combinations of that material with other materials'. With reference to mixtures or composite goods consisting of different materials, Rule 3(b) provides that these are to be classified, where possible, 'as if they consisted of the material or component which gives them their essential character'.

5. In accordance with those criteria, it is necessary to determine whether in this case it is the plastic or the textile material that gives travel goods their *essential character*. In that regard, the argument put forward by both the Commission and the French Government, and which I believe should be fully endorsed, is that the textile material does not give the goods in question their essential character since it is present merely in order to reinforce the plastic sheeting used to form the outer surface.

6. Support for that argument is also to be found primarily in the *Sportex* [1] judgment, in which the Court considered, with respect to a product composed of different materials, that the presence of a constituent for the purpose of *reinforcement* only, even if it forms a high percentage of the product, does not give that product its essential characteristics and cannot therefore have any bearing on its classification for customs purposes.

7. Furthermore, that argument is also supported by certain factors which may be deduced from the Explanatory Notes of the Customs Cooperation Council, and from the Explanatory Notes to the CCT, those documents constituting, as is well known, an aid to interpreting the headings of the CCT. [2]

It is apparent from those notes that if goods are made of plastic combined with a textile material which is present merely for reinforcement purposes, the presence of the fabric has no bearing on the classification for

1 — Judgment in Case C-253/87 *Sportex* [1988] ECR 3351.

2 — See the judgment in Case 234/81 *Du Pont de Nemours* [1982] ECR 3515, and in Case 237/81 *Almadent* [1982] ECR 2981.

customs purposes (see the Explanatory Notes of the Customs Cooperation Council on Chapters 39 and 40, and also Note 2(a)(5) to Chapter 59 and Note 3(c) to Chapter 56 of the CCT). As the Commission has pointed out, therefore, it must as a rule be determined, in the context of the CCT, whether or not the textile component merely reinforces the plastic; the classification of the item as a whole as either a textile or a plastic product depends on it. The concept of 'reinforcement' is further defined in the Explanatory Notes of the Customs Cooperation Council on Chapter 40; according to those notes, textile products which are untreated, unbleached, bleached or uniformly dyed, where applied to one surface only of plates, sheets or strips of rubber, are to be regarded as providing reinforcement. There is no reason why that definition, laid down in the context of Chapter 40 (Articles in Rubber), should not apply by analogy in the context of Chapter 39 (Articles in Plastic), all the more so since in a recent amendment, though subsequent to the facts of the case, the Customs Cooperation Council restated in the context of Chapter 39 the definition of 'reinforcement' already provided for in the context of Chapter 40. In this particular case, there can be no doubt that the textile component, which is used exclusively for the purposes of reinforcement and only on the inner surface of the goods in dispute, fully corresponds to the aforesaid definition of 'reinforcement'.

8. In the light of those observations, I consider that the Court should reply to the national court as follows:

For the purposes of the application of the subheadings in Chapter 42.02 of the CCT, goods such as those described in the order for reference — that is to say, travel goods with outer surface of plastic material (PVC) internally reinforced with fabric — are to be regarded as goods with outer surface of plastic and not of textile material.