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.

Following the rejection of an objection lodged against those decisions, the plaintiff paid the duty demanded, which for the period to 1976 amounted to BFR 512 661, and, at the same time, brought an action before the Rechtbank van Eerste Aanleg [Court of First Instance], Antwerp, for the annulment of the disputed decisions and for the recovery of the sums which in the plaintiff's opinion had been levied unlawfully.

The First Chamber of the Rechtbank van Eerste Aanleg, Antwerp, stayed the proceedings by judgment of 1 April 1982 and in accordance with Article 177 of the EEC Treaty referred two questions to the Court of Justice on the tariff classification of the products in question. For the exact wording of the questions I refer to the Report for the Hearing.

The first question submitted by the national court is whether the 30/30 filter, a filter for purifying air consisting of a pleated sheet of textile material reinforced with wire and mounted in a cardboard frame and the HP 2 A filter, a filter for purifying air consisting of a pleated membrane of textile material fitted above and below with a cardboard sheet, should 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" within the meaning of tariff subheading 59.17 D II b 2.

The second question seeks to establish whether the HP filter, a 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, the Type 83 filter, a 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 and the ECO filter, a filter for purifying air consisting of a square membrane of fibreglass mounted in a cardboard frame between two thin perforated metal sheets, are to be regarded as "machinery and apparatus for filtering air or other gases" or parts thereof within the meaning of 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.

My opinion on those questions is as follows:

The parties to the main proceedings and the Commission, which has submitted observations on this case, would appear to agree that the goods in question may in principle be regarded as "machinery and apparatus ... for filtering or purifying ... gases" within the meaning of tariff subheading 84.18 C II b or, at least, as parts thereof. However, whereas the Belgian State and the Commission maintain that, according to Note 1 (e) to Section XVI and Note 1 (c) to Chapter 84, the goods, as articles of textile material of a kind commonly used in machinery or plant within the meaning of tariff heading No 59.17 or as machinery and appliances and parts thereof, of glass, within the meaning of tariff heading No 70.20, are excluded from Chapter 84, the plaintiff in the main proceedings expresses the view that the goods, which can be used solely as air filters, conform absolutely to the wording of tariff subheading 84.18 C II b. The plaintiff maintains that the exceptions referred to in the above-mentioned notes are not applicable as the goods in question may not, in the light of the Explanatory Notes to the Common Customs Tariff, be regarded as "articles of textile material of a kind commonly used in machinery or plant" or as "machinery and appliances and parts thereof, of glass". Even if it is accepted that the goods correspond to the above-mentioned descriptions they must still be classified under tariff heading No 84.18, as, according to Rule

3 (a) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, the heading which provides the most specific description is to be preferred to headings providing a more general description.

Those conflicting submissions show that the essential issue is whether the goods in question are to be regarded as articles of textile material of a kind commonly used in machinery or plant or as articles of glass within the meaning of tariff heading No 59.17 or 70.20, which by virtue of the notes to Section XVI and Chapter 84 are excluded from Chapter 84 of the Common Customs Tariff. In that respect, as the Belgian State and the Commission correctly maintain, according to normal linguistic usage it is difficult to deny that the goods in question are *of a kind commonly used in machinery or plant.* The Customs Cooperation Council's Explanatory Notes add weight to that argument inasmuch as they specify, with reference to heading No 59.17, that "textile products included in this heading present particular characteristics which identify them as being commonly used in machinery or plant". That must also be true of articles of glass used in machinery or plant. In my opinion that view is further supported by the fact that the goods, which are designed to be used for filtering and purifying air in air-conditioning plants, cannot be so used unless other elements are added to them and then only in combination with batteries of filters. That is, in any case, as even the plaintiff concedes, entirely true of the Type 83 filter on account of its design, but it must equally be true of the other filters, which similarly must be regarded as elements of a filtering plant.

If the goods do not fall under tariff heading No 84.18 it is necessary to consider whether they amount to articles of *textile* material of a kind commonly used in machinery or plant, falling under tariff heading No 59.17, or to machinery and appliances and parts thereof, *of glass,* falling under tariff heading, No 70.20.

As the questions raised by the national court show, the goods concerned contain a number of other components in addition to textile materials and glass fibre. In the view of the plaintiff in the main proceedings, goods which correspond to a description in Section XVI are, pursuant to Note 1 (e), to be classified under tariff heading No 59.17 only if their principal component is made of textile material. It maintains that that is not true of the goods in question, as may be seen from the description of their composition. On the other hand, the Customs Cooperation Council's Explanatory Notes to tariff heading No 84.18 show, according to the plaintiff, that also included under that tariff heading are filters made of "felt, cloth, metallic sponge, glass wool, etc.", at least in so far as those materials are not to be regarded as the principal components. Moreover, the plaintiff maintains, the Customs Cooperation Council's Explanatory Notes to Chapter 84 specify that goods which contain glass components combined with a high proportion of components of other materials and also articles consisting of a high proportion of glass components incorporated or permanently mounted in frames, cases and the like, of other materials, have lost the character of glass-ware for the purposes of tariff heading No 70.20.

In that respect it should first be noted that, as the goods in question are combinations of materials, under Rule 2

(b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, they are to be classified according to the principles of Rule 3. However, it is clear from the wording of that rule that it applies merely to those cases where the same goods are classifiable under two or more tariff headings. It does not apply where the question is whether the goods are to be classified unter tariff heading No 84.18 or under tariff heading No 59.17 or 70.20, which according to Note 1 (e) to Section XVI and Note 1 (c) to Chapter 84 are *mutually exclusive.*

The correct interpretation of that rule is that it is relevant only in establishing under which tariff heading filters consisting of various components should be classified. In that respect, none of the tariff headings which fall to be considered can be regarded as more specific on the basis of the various components.

Accordingly, the provision to be applied is Rule 3 (b) rather than 3 (a).

Rule 3 (b) states that, *inter alia,* goods which consist of different materials or which are made up of different components are to be classified according to the *material or substance which gives them their essential character,* if that criterion is applicable. Consequently, it only remains to be seen whether the textile material or the glass fibre contained in the filters may be regarded as the material which gives them their essential character.

I share the opinion of the Belgian State and the Commission that with reference to the function of the filter that question must be answered in the affirmative. Although it must be conceded that the other components, such as the adhesive, the bonding agent, the reinforcing material, the metal wire and the frames, are important elements in the filtering and purifying process, it seems to me that it cannot be denied that in the final analysis those components serve merely to improve in some way the filtering effect of the textile material or glass fibre. A filter consisting only of textile material or glass fibre and without the other components mentioned above is at least conceivable, whilst an article which consisted only of the other components might scarcely be described as a filter.

Moreover, as the proportion of the cost price and the total weight of the filter represented by the other components is of no importance to its function, it may be concluded that it is solely the textile material or glass which is to be regarded as the material which gives the filters their essential character for the purposes of Rule 3 (b) and that the filters are to be classified as articles of textile material a kind commonly used in machinery or plant or as machinery and appliances and parts thereof, of glass.

Finally, the plaintiff in the main proceedings suggests that doubt is cast on that conclusion by the Customs Cooperation Council's Explanatory Notes to Chapter 84, mentioned above, according to which goods with glass components which have a high proportion of components of other materials and also articles consisting of a high proportion of glass components incorporated in cases, frames and so forth as a rule have lost the character of machinery and appliances and parts thereof, of glass. That is not the case. First, the Explanatory Notes, as may be seen from the context, refer to machinery and appliances in their entirety and not merely to parts thereof and, secondly,

the Commission rightly points out that the Explanatory Notes are general in nature and merely provide non-binding guidance for the tariff classification of certain goods, whilst the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, the application of which, as I have shown, produces a different result, constitute binding rules of interpretation.

Finally, in view of the above considerations, I propose that the questions submitted by the Rechtbank van Eerste Aanleg be answered as follows:

The air filters the composition and form of which are described in the questions referred to the Court must be classified as articles of textile material 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 glass fibre.