OPINION OF ADVOCATE GENERAL GULMANN

delivered on 13 May 1993 *

Mr President,
Members of the Court,

1. The background to this case is a dispute between a German undertaking — hereinafter 'Jepsen Stahl' — and the German customs authorities over the classification of a consignment of steel products imported into Germany from Poland by Jepsen Stahl in 1989. The question raised in this case is the extent to which significance, as a criterion for classification for tariff purposes, may be attached to a manufacturing process which is not apparent in the form of an objective characteristic of the products in question. According to the customs heading at issue here, the products must be steel plates 'rolled on four faces', and the decisive question is whether those products must objectively appear to have been 'rolled on four faces', which is the case where all the rolled faces have sharp edges, or whether, for the products to be classified under that heading, it is sufficient for the importer to prove that the products were actually 'rolled on four faces' even though, objectively, they show slightly rounded edges.

2. The latter point of view is defended by Jepsen Stahl, which therefore considers that the products which it imported in this case are to be classified under subheading 7211 21 00 of the Common Customs Tariff, [1] which covers

'7211 Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, ...

— Not further worked than hot-rolled, of a thickness of less than 3 mm ...:

— Other, not further worked than hot-rolled:

7211 21 00 — — Rolled on four faces or in a closed box pass, of a width exceeding 150 mm and a thickness of not less than 4 mm, ...'

The German customs authorities do not agree on that point. They found that the products in question were 'of a width of under 500 mm, with round edges, not rolled on four faces', and that, accordingly, they fell under heading 7211 22 90, which is worded as follows: '7211 22 — Other, of a thickness of 4.75 mm or more. 7211 22 90 — Of a width not exceeding 500 mm'. The customs authorities claim that goods must in principle be classified on the basis of their objective characteristics and properties which are

* Original language: Danish.

1 — See Annex I to Commission Regulation (EEC) No 3174/88 of 21 September 1988 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1988 L 298, p. 1).

apparent on examination and that the manufacturing process can be used as a criterion for classification only where the Common Customs Tariff expressly so provides and where the manufacturing process is apparent from the actual appearance of the product. Accordingly, the customs authorities maintained that only products with sharp edges have the appearance of steel products rolled on four faces and therefore fall under tariff subheading 7211 21 00.

3. In those circumstances the Finanzgericht Düsseldorf referred the following question to the Court for a preliminary ruling:

'Is subheading 7211 2100 of the Combined Nomenclature, as set out in Annex I to Regulation (EEC) No 3174/88, to be interpreted as meaning that the characteristic of having been "rolled on four faces" relates only to the circumstances of the product's manufacture, or is it a further requirement that the rolling on four faces shall result in a distinctive profiling of the product, namely sharp edges to all rolled faces?'

4. The national court considers that the products in question meet the conditions for classification under heading 7211 in every respect. It relies on the fact that the products are manufactured in a universal mill and observes that it follows from the Explanatory Notes to the Harmonized Commodity Description and Coding System (hereinafter 'the Explanatory Notes to the Harmonized System') that heading 7211 covers 'products ... hot-rolled on four faces in a closed-box pass or universal mill'. [2]

The national court states that where a product is manufactured in a universal mill the material is actually rolled on four faces. Unlike rolling in a closed-box pass, where the material is worked on all sides simultaneously, material rolled in a universal mill cannot at any one time be reduced or smoothed on all four sides but can be worked only by one pair of counter-opposed rollers. Since these pairs of rollers cannot be used simultaneously but only consecutively the pressure exerted on the surfaces which are being worked during the rolling cycle necessarily produces 'rough-rolled edges' on the faces not being rolled. Where the vertical rollers are out of action during the last passes — which always happens — the vertical longitudinal sides of the finished product will display the rounding and compression observed by the customs authorities, owing to the horizontal rolling. That compression creates the impression that the product has not been rolled lengthwise on its vertical faces. [3]

The national court wonders whether the concept of 'rolled on four faces' refers solely

2 — The first and second paragraphs of the Explanatory Notes to the Harmonized System relating to heading 7211 are worded as follows:
'This heading covers the same kind of products described in heading 72.08 or 72.09 but, to fall in this heading, they must be of a width of less than 600 mm.
The provisions of the Explanatory Notes to headings 72.08 and 72.09 apply, mutatis mutandis, to products of this heading except those relating to width ...'
The 10th and 11th paragraphs of the Explanatory Notes to the Harmonized System relating to heading 72.08 read as follows:
'For the purposes of this heading, "wide flats" are products of rectangular (*other than* square) cross-section, not in coils, hot-rolled on four faces in a closed box pass or universal mill, of a thickness of not less than 4 mm, and of a width of 600 mm or more but not exceeding 1 250 mm.
Therefore, "wide flats" have much straighter and more accurately finished sides and sharper edges than those of "wide coil", "sheets" or "plates". They are never re-rolled but are used in structural steelwork, etc., without further machining of the edges.'

3 — See order for reference, p. 8.

to the manufacturing process or whether it lays down certain requirements concerning the objective properties of the finished product. It considers that the wording of the Common Customs Tariff, supports the first interpretation since it is primarily based on the manufacturing process which was used, in this case rolling on four faces. On the other hand, it does not think that the Explanatory Notes to the Harmonized System cited above provide any further assistance as to whether reference is to be made only to the manufacturing process, since they simply state that heading 7211 as such also covers products manufactured in a universal mill and do not resolve the question of the subheading of the combined nomenclature under which those products are to be classified.

The national court further states that the decisive criterion for the classification of goods normally lies in their objective properties and that the greatest importance must be attached to that criterion, in the interest of a speedy and accurate classification by the customs authorities. It therefore considers that there are good grounds for arguing that rolling on four faces must be apparent from the actual appearance of the product, even though that interpretation is not wholly free from doubt according to the wording of the Common Customs Tariff.

Can the manufacturing progress be decisive for the tariff classification?

5. The Court has consistently held that the starting point for classification of goods for customs purposes lies in the objective characteristics and properties of the goods at the time at which they are checked for customs purposes, because that criterion takes account both of the interests of legal certainty and ease of verification by the customs. For that reason there is generally no interest in ascertaining precisely how the goods were manufactured. [4]

None the less, the Court has stated on a number of occasions that the manufacturing process might be employed as a criterion for classification for customs purposes. However, the manufacturing processes are decisive only when the relevant subheading expressly so provides. [5]

The first question is therefore whether, as Jepsen Stahl and the Commission state, subheading 7211 21 00 of the Common Customs Tariff expressly mentions the manufacturing process as a criterion for classification.

In my opinion that question must be answered in the affirmative. That heading covers certain products which are 'rolled on four faces or in a closed box pass'. That must be taken to mean products which are manufactured in a universal mill or in a closed-box pass. The heading therefore refers to the manufacturing process. [6] That, in my view, is

4 — Case 40/88 *Weber* v *Milchwerke Paderborn-Rimbeck* [1989] ECR 1395, at paragraph 13, and the judgments cited by Advocate General Tesauro in his Opinion in that case (at p. 1404, point 3).

5 — See Case 40/88 *Weber*, at paragraphs 14 and 15, and Case 38/76 *Luna* v *Hauptzollamt Duisburg* [1976] ECR 2027.

6 — The German customs authorities argued in their written observations that it followed more specifically from the English version that the customs heading regarded the objective properties of the finished product as significant. The English version is worded as follows: '... other, not further worked than hot-rolled: — rolled on four faces or in a closed box pass, ...'. I find it difficult to see how the English version could lead to a different result from the one I have expressed.

confirmed by the Explanatory Notes cited above, where it is expressly stated that heading 7211 covers products manufactured 'in a closed box pass or universal mill'. That description also applies to subheading 7211 21 00.

6. In principle, that finding is sufficient to answer the question referred to the Court. Since, according to what has been said, manufacture in a universal mill necessarily means that there will be a certain rounding of the vertical longitudinal sides, it is necessary to exclude the interpretation of the customs heading according to which, as the German customs authorities claim, it covers only products with sharp edges on all faces.

7. Such a conclusion is not incompatible with the other Explanatory Notes to the Harmonized System. The only mention in the Explanatory Notes cited in footnote 2 above is that the products which form the subject-matter of these proceedings must have 'sharper edges than those of "wide coil", "sheets" or "plates"'. They are not therefore required to have 'sharp edges', only 'sharper edges' than those which might be seen on wide coil, sheets and plates.

8. In my opinion the classification must not take account of the Euronorm cited by the German customs authorities. It is true, of course, that Euronorm 91-81 lays down requirements for products such as those at issue here which are not met by the products actually imported. The Commission is right, however, in my view, to state that the Euronorm in question cannot be decisive for the interpretation of tariff heading 7211. It was a standard adopted in November 1981 by the Commission's Coordinating Committee on the nomenclature of iron and steel products, which determines quality conditions based on the modern production methods employed in the Member States of the Community, and was not intended to alter the content of tariff heading 7211.

9. The Commission observes that classification purely on the basis of the manufacturing process may be precluded 'if the objective characteristics of the product make it clear that the manufacturing process was not consistent with the minimum standards in commercial practice'. It follows that the products in question cannot be classified under subheading 7211 21 00 'if the imported steel products display objective characteristics and properties which do not allow them to be considered, within the meaning of the industrial standards applicable to universal mills, as rolled on four faces'. However, the Commission also rightly observes that manufacture of plates in a universal mill inevitably implies typically and in practice that the products will have more or less rounded vertical faces.

10. It is true, of course, that the fact of attaching importance to the manufacturing process in the application of the customs tariff creates evidential problems. Regard being had to their objective properties, products

manufactured in a universal mill do not necessarily appear to have been rolled on four faces. It is therefore necessary, where those products are concerned, to prove that they were in fact rolled on four faces, which presupposes evidence that the products were manufactured in a universal mill. It is apparent from the information available, however, that there are no actual evidential problems in this case.

11. Accordingly, in my opinion it is sufficient, for classification under subheading 7211 22 00, for the importer to be able to show that the products in question were actually manufactured by being rolled on four faces, whether or not that manufacturing process is apparent from objective characteristics of the products concerned, in so far as their edges are slightly rounded and not sharp edges.

12. I therefore suggest that the Court should answer the question referred to it as follows:

Subheading 7211 21 00 of the Common Customs Tariff is to be interpreted as meaning that that tariff subheading covers steel products which were actually manufactured by rolling on four faces, whether or not that manufacturing process is apparent in the form of sharp edges on all the rolled faces.