

2. 'Pre-impregnated carbon fibres', semi-finished products in sheet form, composed of epoxy resin, carbon fibre and glass-fibre mesh, intended for the

manufacture of tubing, are to be regarded as artificial resins and plastic materials falling under heading 39.01 of the Common Customs Tariff.

## REPORT FOR THE HEARING delivered in Case 253/87 \*

### I — Facts and procedure

In 1983, Sportex GmbH & Co. (hereinafter referred to as 'Sportex'), imported from the United States a product known as 'pre-impregnated carbon fibres', intended for use in the manufacture of fishing rods and tubing. These goods are described in the case file as partially-condensed epoxy resin sheeting in which a layer of carbon-fibre filaments (42% by weight) and a layer of glass fibre (22% by weight) are fully embedded.

By a notice binding on the administrative authorities notified to Sportex on 19 December 1983, the German customs authority classified that product under subheading 39.01 C VII of the Common Customs Tariff ('Other' polycondensation products). It did so on the ground that the carbon and glass fibres were not merely impregnated with epoxy resin, which is a plastic material obtained by polycondensation, or pretreated with that substance, but were completely and permanently embedded in the epoxy resin. This embedding, according to the customs

authority, was essential for obtaining the product qualities sought. Since Chapter 39 also included artificial resins and plastic materials mounted on a foundation, the goods in question had in any event, according to the customs authorities, to be treated as a plastic material, irrespective of the relative value and weight of their constituents.

Sportex brought a complaint against the abovementioned notice, which was dismissed by the Oberfinanzdirektion (Principal Revenue Office), Hamburg.

In support of the appeal which it brought before the Bundesfinanzhof (Federal Finance Court), Sportex claimed that it is in fact the carbon fibres which give the goods their essential character, if only on account of the relationship between the carbon fibres' value and weight, on the one hand, and the value and weight of the epoxy resin used to pre-impregnate, glue and protect the fibres, on the other. Moreover, more than 95% of the product's resistance to bending and breaking is achieved by the carbon fibre, whereas the resin performs no more than an ancillary and subsidiary function. The product should therefore be classified under subheading 68.16 B

\* Language of the Case: German.

('Other', articles of stone or of other mineral substances, not elsewhere specified or included), as is the case in France and Switzerland.

The customs authority maintained its position throughout the proceedings, even after the entry into force of Council Regulation No 750/87 of 16 March 1987 (Official Journal L 76, p. 1), which introduced a new itemization of subheading 39.01 C VII.

The Bundesfinanzhof considered that doubts subsisted as to whether products such as the goods in question, having a high proportion of carbon fibres, were still in the nature of products made of artificial resins or plastic materials, in this case epoxy resin. It added that, if a negative reply were to be given to this question, the goods would have to be classified, in the absence of an express provision for classification, in accordance with the rules for the interpretation of the CCT. They might then be classified under subheading 68.16 B, if it were the carbon fibres which were considered to give them their essential character.

Owing to the aforementioned doubts, the Bundesfinanzhof (VIIth Senate), decided, by an order dated 7 July 1987, to refer the following questions to the court for a preliminary ruling:

'(1) Should the Common Customs Tariff be interpreted as meaning that semi-finished products in sheet form, composed of epoxy resin (36% by weight), carbon fibre (42%) and glass-fibre mesh (22%) and intended for the manufacture of tubing, are to

be regarded as artificial resins and plastic materials falling under Heading No 39.01 of the Common Customs Tariff?

(2) If products of the type described above are excluded from Chapter 39 of the Common Customs Tariff, should the tariff be interpreted as meaning that like products should be classified by reference to their carbon-fibre content, which must then be regarded as giving them their essential character, and that they should accordingly be classified under Heading No 68.16 of the Common Customs Tariff?'

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Commission of the European Communities, represented by its Legal Adviser, Jörn Sack, acting as Agent.

Upon 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. It did, however, ask the Commission to produce certain customs classification decisions, which the latter did within the time allowed. By a decision of 24 February 1988, the case was assigned to the First Chamber.

## II — Observations submitted by the Commission

The Commission of the European Communities observes that, in the present case, the carbon and glass fibres are

completely embedded in the resin and that, in accordance with the Explanatory Notes of the Brussels Tariff Nomenclature, the reinforcement of sheets of an artificial, plastic material by means of metal, glass or other fibres does not preclude classification under Chapter 39 of the CCT. In the Commission's view, the carbon fibres could only be regarded as a component giving the products their essential character if a product composed solely of resin did not possess the same characteristics as resin reinforced by those fibres. That is not the case as regards the product which is the subject of this case. This point of view underlay several tariff classification

decisions adopted by the Commission in respect of other products made of plastic materials.

Finally, the Commission points out that its opinion had been requested with regard to the product in question and that a discussion took place within the Nomenclature Committee, but that no action was taken on the request once it became known that the question had been brought before the German courts.

G. Bosco  
Judge-Rapporteur