2. The expression 'goods put up in sets' in General Rule A 3 (b) implies that the goods are closely linked from the marketing point of view, with the result that they are not only presented together for customs clearance but are also normally supplied together, at the various marketing stages and in particular the retail stage, in a single package in order to satisfy a demand or to perform a specific function. General Rule A 3 (b) applies only where goods are *prima facie* classifiable under two or more headings and classification is not possible under General Rule A 3 (a), that is to say where there is no specific heading taking precedence over more general headings.

3. A combined tuner, record-player and cassette recorder imported together with two loudspeakers intended for use with it constitutes a set of goods falling under Heading No 85.15 of the Common Customs Tariff, where the goods concerned are put up in a single package and are intended to be marketed together in order to satisfy a specific demand.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 26 September 1985 *

Mr President,
Members of the Court,

1. Towards the end of 1978 a German customs office (Zollamt) gave a ruling concerning the tariff classification of certain goods imported from Japan by Telefunken Fernseh und Rundfunk GmbH. The goods consisted of combined tuners, record-players and cassette recorders (hereinafter referred to as 'music centres') imported together with two loudspeakers in a single carton. On the invoices from the Japanese manufacturers the goods were described as follows:

'Telefunken Music Centre 3022 BF, ... complete with two speaker boxes . . . '.

The sales brochure stated that each music centre was supplied with 'two splendidly matching loudspeaker boxes'.

The customs office classified all the goods, including the loudspeakers, under subheading 85.15 A III of the Common Customs Tariff, which covers:

'A. Radiotelegraphic and radiotelephonic transmission and reception apparatus; radio-broadcasting and television transmission and reception apparatus (including receivers incorporating sound recorders or reproducers) and television cameras:

...

* Translated from the French.

III. Receivers, whether or not incorporating sound recorders or reproducers:

...'.

Goods falling under this heading are subject to an autonomous duty of 22% and a conventional duty of 14%.

Telefunken contested that classification in so far as it also applied to the loudspeakers. It claimed that the loudspeakers should be classified under tariff subheading 85.14, which is worded as follows:

'85.14 Microphones and stands therefor; loudspeakers; audio-frequency electric amplifiers . . . '.

Such a classification would lead to an autonomous duty of 18% and a conventional duty of 7%.

The Finanzgericht [Finance Court] Hamburg upheld Telefunken's action; the German customs office, supported by the Federal Ministry of Finance, then appealed to the Bundesfinanzhof [Federal Finance Court]. The Bundesfinanzhof raised the question whether the 'functional unit' principle, referred to in the Explanatory Notes to the Customs Cooperation Council Nomenclature, could be applied in this case and whether that question had already been settled by the Court's previous decisions.

Taking the view that in its previous rulings the Court had not had occasion to examine the concept of the functional unit with direct reference to the provisions of the Common Customs Tariff but only with reference to the Explanatory Notes to the Customs Cooperation Council Nomenclature, which derived their legislative character from the CCT, the Bundesfinanzhof referred to the Court for a preliminary ruling the following question:

'Is the Common Customs Tariff to be interpreted as meaning that a combined tuner, record-player and cassette recorder which is imported together with two loudspeakers specially intended for use with it falls within Heading No 85.15 of the Common Customs Tariff as constituting *one* item of goods?'

2. In addition to Telefunken and the Commission, the Italian and French Governments have submitted observations in this case.

It appears to be common ground that, as the Bundesfinanzhof stated, the goods should not be classified under the same heading merely because they were presented for customs clearance together. Separate classification would be ruled out only if it appeared from the Common Customs Tariff that for tariff classification purposes the music centre and the loudspeakers should be regarded as *a single* product and must therefore fall under a single tariff heading.

Three different solutions have been proposed.

According to Telefunken and the Italian Government, the goods should be classified separately: the music centre under tariff Heading No 85.15 and the loudspeakers under Heading No 85.14.

Telefunken draws attention to the progress in the field of modern electronics and in particular to an important development in modular design which makes possible the progressive acquisition of the individual units; as a result, such units have become separate goods for the purposes of the Common Customs Tariff. The loudspeakers, which are not incorporated in the music centre, cannot in its view be considered to be components of it, since they do not perform a single function but can be used with other apparatus.

The Italian Government maintains in particular that the loudspeakers do not constitute components of the music centre and that, since they can be used with different types of apparatus, they do not form part of a 'functional unit'.

The French Government, on the other hand, considers that the goods should be regarded as a set and that it is therefore unnecessary to have recourse to the functional unit principle mentioned by the national court. It refers to General Rule A 3 (b), which concerns the tariff classification of goods put up in sets. That rule provides as follows:

'Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.'

The French Government concludes that, since the music centre gives the goods their essential character, they should be classified together under tariff subheading 85.15 A III.

The Commission considers that the goods, which are presented together for the purposes of customs clearance and sale, constitute a functional unit within the meaning of the Customs Cooperation Council's Explanatory Notes relating to Note 3 to Section XVI of the CCT.

Note 3 provides as follows:

'Unless the headings otherwise require, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.'

The Explanatory Notes relating to that note state as follows:

'... Note 3 does not apply when a machine or appliance consists of separate components which are designed to contribute together to a single clearly defined function described by one of the headings in Chapter 84 or, more frequently, Chapter 85. The whole then falls to be classified in the heading appropriate to that function, whether the various components are joined together or (for convenience or other reasons) remain separate and are merely inter-connected by ... electric cables.'

According to the Commission, it should be possible to employ the functional unit principle to interpret a tariff heading in Chapters 84 and 85. That principle must however be applied restrictively, because it is defined narrowly in the aforesaid Explanatory Note. The loudspeakers are solely intended to make audible the impulses received from one of the components of the music centre, and the apparatus as a whole has the sole function of reproducing sound from a receiver (tuner) incorporating a sound recorder (cassette recorder) or reproducer (record-player). All the goods in question therefore fall under tariff subheading 85.15 A III. It is immaterial that individual components of that unit can function with another apparatus, provided that those components cannot be used for a different function described by another tariff heading and they are packed together in the same container.

At the sitting, the Commission's representative stated that the goods would still constitute a functional unit if the loudspeakers were imported separately from the

music centre but were intended to supplement it. He added that, should the Court decide that the goods do not constitute a functional unit, the Commission would recommend that General Rule A 3 (b) be applied, as proposed by the French Government. The concept of a set of goods is slightly wider than that of a functional unit and covers the case where a combination of goods is necessary in order to satisfy a particular demand or to perform a specific function.

3. The variety of solutions proposed illustrates the difficulty of the choice which the Court must make. In particular this case requires the Court to specify the legal basis and scope of the functional unit principle.

The Bundesfinanzhof stated that it required a ruling concerning that principle because, although reference was made to it in the Customs Cooperation Council's Explanatory Notes, it was necessary to establish whether it was embodied in the CCT itself, since that was the sole provision which fell for judicial consideration.

It seems to me that the Court's judgment in *Metro* (judgment of 9 February 1984 in Case 60/83 *Metro International Kommanditgesellschaft* v *Oberfinanzdirektion München* [1984] ECR 671) contains a reply to this first question. In order to reply to a question concerning the application of the functional unit principle in a case concerning goods falling under Chapter 84 of the CCT (cash registers), the Court cited without reservation the Customs Cooperation Council's Explanatory Notes, and in particular those relating to Note 3 to Section XVI, and then stated that:

'The Explanatory Notes are intended to allow classification under a given heading of machines and appliances made up of components falling under several tariff headings, in cases where those components as a whole are intended to perform the single clearly defined function referred to in the tariff heading in question'.

Thus the Court, by necessary implication, recognized the normative character of the Explanatory Notes. That interpretation, which has not been the subject of discussion by the parties, need not in my view be reconsidered. So what is the position in this case? The goods constitute neither a composite machine within the meaning of Note 3 to Section XVI (that term covers machines that are fitted together) nor a collection of parts within the meaning of Note 2 (b) to the same section. We are concerned here with a specific case that is not expressly provided for by the relevant Community measure, the CCT. Consequently, as the Court has held in numerous previous decisions, reference may be made to the Explanatory Notes as an authoritative guide to the interpretation of the CCT.

I would agree with the Commission that the functional unit principle underlies a number of the general rules for the interpretation of the CCT and the notes to Section XVI. That applies to General Rule A 2 (a) and Note 3 to Section XVI. Moreover the Court, by basing itself on the Explanatory Notes and by thus treating them as a guide, has applied the functional unit principle.

As regards the scope of that principle, the Commission has rightly emphasized that it must be given a restrictive interpretation in order to prevent one tariff heading from being improperly extended at the expense of others. That is, moreover, the effect of the Court's judgment in *Metro*; there the Court stated that, where one of the separate components of which a product consists 'may be used independently of the other components and for functions other than those which may be performed by all the components together' (paragraph 9, pp. 680

and 681), the Customs Cooperation Council's Explanatory Notes embodying that principle do not apply.

It seems that the Commission departs from that rule of interpretation when it maintains that the specific function in tariff subheading 85.15 A III is that of a 'receiver, whether or not incorporating a sound recorder or reproducer' on the ground that, without loudspeakers, the music centre would not be complete.

Closer examination of that heading leads to the conclusion that, even without loudspeakers, it is perfectly possible, for example, to receive a particular broadcast and to record it (it is merely necessary to know the broadcasting frequency). The function covered by the heading is the *receiving* of broadcasts. Loudspeakers play no part in the performance of that function. They have their own, independent function, which is to make broadcasts audible. The essential function described by tariff subheading 85.15 A III, however, is that of receiving broadcasts, which may be performed without the broadcast being heard.

It seems to me therefore that the functional unit principle is not applicable in this case. It is therefore necessary, in my view, to give a negative reply to the question put by the Bundesfinanzhof.

4. As regards the question whether General Rule A 3 (b) should be applied, I would point out that that question is not raised by the Bundesfinanzhof in its request for interpretation. I would nevertheless add that, even if the goods in question were considered to be a set of goods, that rule contains a clear solution. Goods put up in sets are to be classified according to the material or component which gives them their essential character only if they cannot be classified by reference to Rule A 3 (a), which provides that 'the heading which provides the most specific description shall be preferred to headings providing a more general description'. Loudspeakers are expressly covered by a specific heading.

5. Consequently, I propose that the Court should reply as follows to the Bundesfinanzhof:

Goods which, on importation, consist of a number of components contained in the same packaging, namely a combined tuner, record-player and cassette recorder, on the one hand, and two separate loudspeakers, on the other, cannot be regarded as a functional unit and hence as a single product, namely a receiver incorporating a sound recorder or reproducer falling under subheading 85.15 A III of the Common Customs Tariff.