OPINION OF ADVOCATE GENERAL TESAURO

delivered on 10 June 1993 *

Mr President,
Members of the Court,

1. The Bundesfinanzhof has once again referred to the Court for a preliminary ruling a question on the interpretation of heading 9030 of the Common Customs Tariff (Combined Nomenclature). More specifically, the national court has been called upon to rule on the legality of a binding customs notice issued by the Oberfinanzdirektion Berlin, the defendant in the main proceedings, concerning a thermorecorder which picks up electrical input signals corresponding to certain measured values of non-electrical quantities, converts them by means of an analogue/digital converter (value adjustment), renders them visible and records them on thermal paper.

2. The Oberfinanzdirektion Berlin considered that such a piece of apparatus should be classified under subheading 9030 81 90, which includes (other) apparatus for measuring electrical quantities. The technical structure of the recorder and, in particular, the adjustment of values carried out by the converter, makes it a true instrument of measurement.

The applicant in the main proceedings, Astro-Med GmbH, is of a different opinion. It considers that the apparatus in question does not actually carry out any measurements within the meaning given to this expression in the Common Customs Tariff, but simply renders quantities which have already been measured visible by a process of thermoprinting. Moreover, these quantities may be of very different kinds, given that the recorder may be connected to different instruments of measurement. According to Astro-Med, the thermorecorder should be classified under heading 8479 of the Combined Nomenclature which covers 'machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter', that is Chapter 84.

3. On the other hand, the parties agree that, because of its individual function and nature as an independent article, the thermorecorder cannot be classified under heading 9033 of the Combined Nomenclature which covers 'parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of Chapter 90', which is, however, the way in which certain customs authorities have assessed apparatus with similar characteristics to those of the instrument in question.

4. In the order for reference the national court points out that classification under this

* Original language: Italian.

heading is doubtful because of the wording of heading 9030 and the way in which its definitions have been interpreted in the case-law of the Court, which has held that only apparatus which is specifically intended to measure and display the values of the measured quantity should be regarded as measuring apparatus. In fact, based on this criterion, the thermorecorder lacks the measurement function accompanying its display function. The national court is of the opinion that the Explanatory Notes to the Harmonized System, which include under subheading 9030 81 90 instruments such as certain oscillographs which have some similarity to the piece of apparatus in question, may support the classification by the Oberfinanzdirektion Berlin.

5. In the final analysis, the only point in issue is whether the thermorecorder can be regarded as an instrument of measurement in order to be classified under heading 9030. The parties agree that the apparatus cannot come under heading 9033 and, in the event of a negative reply to the question referred to the Court, they seem to agree that the apparatus should be classified under heading 8479. The same view is expressed in the order for reference.

6. Having said that, I should mention first of all that the customs classification of goods should, in principle, be made by taking into account the characteristics and specific functions of the goods, as defined by the headings and subheadings of the Common Customs Tariff and by the notes to the sections and chapters. The Explanatory Notes to the Harmonized System [1] may be helpful here.

7. According to the wording of customs heading 9030, it should include, as well as apparatus for measuring or detecting ionizing radiations, instruments and apparatus intended for measuring or checking electrical quantities, whether or not equipped with a recording device. The Explanatory Notes to the Harmonized System merely give general information on the nature of the apparatus in question in order to facilitate classification, stating in particular that it is recording apparatus and apparatus for the display of electrical quantities or apparatus capable of providing the user with the quantities required by comparing measured electrical signals with pre-recorded reference values.

8. However, the Court has already had occasion to point out [2] that, according to the literal wording of heading 9030 of the Combined Nomenclature, only apparatus specifically intended to carry out checks on electrical quantities can be regarded as apparatus for checking such quantities. On this basis, apparatus which carries out measurements with the sole purpose of checking

1 — The Court has consistently held that the Explanatory Notes, whilst unable to amend the text of the Customs Tariff, nevertheless constitute an important instrument of interpretation, allowing the contents of the various customs headings and subheadings to be clarified or explained; see, most recently, the judgment in Case C-318/90 *Boehringer Mannheim* [1992] ECR I-3495.

2 — Cases 19/88 *International Container and Transport (ICT) and Others* [1989] ECR 577 (summary publication) and C-218/89 *Shimadzu Europa* [1990] ECR I-4391.

conformity of electronic components or of collecting or developing data in the field of chromatography does not fall within tariff heading 9030. As the Commission has observed, the decisive criterion for classifying a product under this heading is therefore its intended use: consequently the heading does not cover apparatus in which the measurement of electrical quantities represents only an intermediate step in view of the ultimate purposes for which the values thus obtained are to be used.

9. As I have already observed, the function of the apparatus in issue consists in picking up electrical signals corresponding to certain measured values of non-electrical quantities, converting them by means of a converter, rendering them visible and recording them on thermal paper. The values have been measured beforehand and are only rendered visible by the thermorecorder. For this reason it should be excluded from the category of apparatus for measuring electrical quantities referred to in heading 9030 of the Combined Nomenclature.

Furthermore, it does not seem possible to share the Bundesfinanzhof's view that the thermorecorder has some similarity with the oscillographs which, according to the Explanatory Notes, fall within subheading 9030 81 90. As the Commission has observed, these pieces of apparatus measure electrical quantities themselves; this is not the situation in the case in question.

10. In the light of the foregoing, I therefore propose that the Court give the following reply to the Bundesfinanzhof's question:

'The Combined Nomenclature must be interpreted as meaning that thermorecorders of the kind described in the order for reference do not fall within heading 9030 of the Common Customs Tariff.'