OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 6 July 1988 *

Mr President,
Members of the Court,

1. Along with Wilhelm Kiwall KG and the Commission I think that the question put by the Bundesfinanzhof should be reworded in order for it to be answered.

2. In view of the facts as they appear from the documents the national court is asking in essence whether in May 1980 Community law prevented a customs debt from arising in a Member State into which goods originating in a non-member country had been imported where the goods were forwarded from another Member State under a T2 certificate improperly obtained in that State, into which they had previously been smuggled.

3. It seems to me that the answer to that question can be inferred from Article 36 of Council Regulation No 222/77 on Community transit, [1] in the light of and in the direction indicated in particular by the judgment in the *Fioravanti* case. [2]

4. Article 36 (1) provides that 'when it is found that, in the course of a Community transit operation, an offence or irregularity has been committed in a particular Member State, the recovery of duties or other charges which may be chargeable shall be effected by that Member State in accordance with its provisions laid down by law, regulation or administrative action, without prejudice to the institution of criminal proceedings.' In the judgment in the *Fioravanti* case the Court rejected the argument that it is the release for circulation in a Member State of goods from a non-member country and not previously admitted to free circulation which makes customs duties and other charges payable. Thus the Court declared that:

'The internal Community transit system requires a provision governing the case where, as a result of an irregularity in the application of the system, the duties and other charges payable are not collected.' [3]

5. The facts in the main proceedings reveal two offences which were committed originally in the first country of importation: the smuggling of the goods from a non-member State without payment of the duties normally payable and then the improper obtaining of a T2 certificate. It cannot be denied that the second offence was committed 'in the course of a Community transit operation' and in any event at the beginning of that operation, which makes Article 36 of Regulation No 222/77

* Translated from the French.

1 — OJ L 38, 9.2.1977, p. 1.

2 — Judgment of 27 September 1984 in Case 99/83 *Fioravanti* v *Amministrazione delle Finanze dello Stato* [1984] ECR 3939. In that judgment the Court interpreted Article 36 of Regulation No 542/69 of the Council of 18 March 1969 on Community transit (Official Journal, English Special Edition 1969 (I), p. 125), the wording of which is identical to that of Article 36 of Regulation No 222/77.

3 — Paragraph 22.

applicable. However, did not the smuggling itself occur prior to the Community transit?

6. That is, strictly speaking, the case. However, in view of the consequences in relation to the powers of the Member States in this field it seems to me reasonable to regard the first importation as inseparable from the whole transit operation which followed it. That view seems to me justified especially in the case where the goods in question are not released for circulation in the first Member State into which they are imported before being forwarded to the second State. It is when goods enter the Community that duties are payable. The entry took place in the first State.

7. The first offence, the smuggling into the customs territory of the Community of goods from non-member countries, is the origin of the subsequent offences. It would be artificial to regard the first importation as separate from the operations which followed it.

8. Accordingly my opinion is that the Court should hold that Community law as it stood in May 1980 precluded the incurring of a customs debt in a Member State into which goods from non-member countries were imported from another Member State into which they had previously been smuggled.