OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 2 October 1990 *

Mr President,
Members of the Court,

1. I think that I can give my Opinion on the case we have just heard immediately.

2. We were told that the Bundesfinanzhof has to decide whether six customs tariff rulings are correct. The instruments in question carry out measurements of electrical quantities as an essential process in chromatography but do not merely indicate the measurements of these quantities. Chromatography, the Commission has explained, is a method of chemical analysis for determining selected components of a mixture of substances. This is done by means of a colour picture (chromatogram) that furnishes quantitative and qualitative data regarding the composition of a substance; the instrument operates by recording (thus measuring) the quantity of incoming electrical signals and comparing them with memorized values (programmes) and thus evaluating them. The last mentioned process thus goes beyond mere indication of a measured value.

3. The defendant Oberfinanzdirektion considers that these instruments should be classified under subheading 9030 81 90 of the Combined Nomenclature. [1] That tariff subheading refers *inter alia* to instruments — with recording devices — for measuring or checking electrical quantities. The plaintiff on the other hand considers that the appropriate tariff subheading is 8471 20, which refers *inter alia* to digital automatic data-processing machines.

4. The Bundesfinanzhof refers to the wording at issue and general linguistic usage and doubts whether classification under Heading 9030 is appropriate since only instruments intended for measuring and indicating the value of the measured quantity serve for purposes of measurement.

5. The plaintiff in the main proceedings has referred to its arguments before the Bundesfinanzhof. It there contended that the apparatus in question was not suitable for the measurement of an electrical quantity which is used merely to transfer the physical data which are actually of interest. A telephone, for example, also uses electrical current for the transmission of acoustic signals but nobody would describe a telephone as an instrument for measuring electrical voltage. If the defendant's view were followed, in principle in every transmission of data by electrical or electromagnetic means, the receiver would be an instrument for measuring an electrical quantity. That view is plainly divorced from reality.

6. The Commission itself has stated that it would be plausible to interpret the said heading as not including the apparatus to be

* Original language: German.

1 — Commission Regulation (EEC) No 3174/88 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).

classified in the main proceedings. It concedes that it has adopted regulations classifying differently similar and comparable apparatus (Commission Regulations (EEC) Nos 2054/83, 2334/83 and 1368/87) and it has also adopted a different classification decision in accordance with the opinion of the Committee on Common Customs Tariff Nomenclature. [2] In addition as regards two of those regulations [3] which still referred to tariff Heading 90.28 A II (a) of the Common Customs Tariff, Regulation (EEC) No 646/89 provided that the reference is to be replaced by the corresponding heading of the Combined Nomenclature.

7. However, the Commission itself has recognized that that view is no longer tenable in the light of the judgment of the Court of Justice in Case 19/88. [4] In that judgment on the interpretation of tariff subheading 90.28 A of the Common Customs Tariff it was ruled that apparatus for measuring electrical quantities includes only apparatus which has the function of carrying out such measurements but not apparatus which effects such measurement only for the purpose of checking electronic components.

8. On the basis of that judgment the goods imported in this case must be held not to be instruments for checking electrical quantities.

9. Nothing has been adduced in the present proceedings to suggest that the judgment in Case 19/88 might be incorrect. It must therefore indeed be held that the aforesaid classification provisions — as mooted by the Bundesfinanzhof — are invalid on the grounds that they are not covered by Regulation (EEC) No 97/69 of the Council on measures to be taken for uniform application of the nomenclature of the Common Customs Tariff. Under that regulation, provisions specifying the content of the Common Customs Tariff must not conflict with the text thereof. [5]

10. As we have already seen, the operation of the instruments in question is such that electrical signals are measured by analysis apparatus, those signals are converted into digital signals and then compared with pre-programmed data. The electrical measurements are not, however, displayed but are used for other purposes. It cannot therefore be held that those instruments are apparatus for measuring electrical quantities falling under Heading 9030 of the Combined Nomenclature.

11. Similarly, as the Commission stated, it cannot be held that they were intended for checking electrical quantities precisely because their function was not to check the existence of electrical quantities and determine their characteristics.

2 — OJ 1986 C 102, p. 8.

3 — Regulations (EEC) Nos 2054/83 of 17 August 1983 (OJ 1983 L 224, p. 4) and 2334/83 of 26 July 1983 (OJ 1983 L 202, p. 7).

4 — Case 19/88 *ICT and Others* v *Direction général des douanes et droits indirects de Roissy* [1989] ECR 577 (summary publication).

5 — Regulation (EEC) No 97/69 of the Council of 16 January 1969 (OJ, English Special Edition 1969 (I), p. 12).

12. It must therefore be stated in answer to the Bundesfinanzhof's question that on a true construction Heading 9030 of the Combined Nomenclature cannot cover the microprocessor-controlled analysis apparatus for chromatography described in the order for reference.