OPINION OF ADVOCATE GENERAL TESAURO
delivered on 4 May 1995 *

1. Council Regulations (EEC) No 3841 of 8 December 1986, [1] No 1828 of 15 June 1987, [2] No 3747 of 8 December 1987, [3] No 1779 of 9 June 1988, [4] No 3696 of 18 November 1988, [5] No 1656 of 29 May 1989 [6] and No 3393 of 16 October 1989, [7] temporarily suspending the autonomous Common Customs Tariff duty on certain industrial products, provided for the complete suspension of duty in certain cases, and in particular in that of the following product:

'analog-to-digital converter for the calculation of the average value of variable waveforms, in the form of a monolithic integrated circuit, contained in a housing the exterior dimensions of which do not exceed 18x10 mm, with not more than 14 connecting pins and bearing:

— an identification marking consisting of or including the following combination of figures and letters:

AD 536 A

or

— other identification markings relating to devices complying with the abovementioned description'.

Such products formerly fell under tariff heading 85.21 D II of the Common Customs Tariff applicable until 1987; following the adoption of the combined nomenclature, [8] they were listed under subheading 8542 11 99.

2. By its reference for a preliminary ruling in this case, the Bundesfinanzhof (Federal Finance Court) wishes to ascertain whether a definition of that kind also encompasses converters which, while possessing the features described above, are contained in housings which are not polygonal although, in so far as they are no more than 10 mm in diameter, they do not exceed the dimensions of 10x18 mm laid down by the relevant Community legislation.

* Original language: Italian.

1 — OJ 1986 L 362, p. 1.

2 — OJ 1987 L 177, p. 1.

3 — OJ 1987 L 358, p. 1.

4 — OJ 1988 L 164, p. 1.

5 — OJ 1988 L 329, p. 1.

6 — OJ 1989 L 167, p. 1.

7 — OJ 1989 L 332, p. 1.

8 — Council Regulation (EEC) No 2658 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1).

3. In that connection, I should remind the Court that, after the events which gave rise to this case, the legislation whose interpretation is the subject of this reference was amended — in precisely the place where it is concerned with the dimensions of the housing — by Council Regulation (EEC) No 1419 of 25 April 1990, [9] which granted a further extension of the suspension of customs duty in respect of the products in question. The amended version provides that those products may be contained 'in a housing the exterior dimensions of which do not exceed 10x21 mm, or the diameter of which does not exceed 10 mm (...)'.

4. At this point I shall briefly recapitulate the facts in the main action. Relying on the rules governing the suspension of customs duties, Analog Devices GmbH (hereinafter 'Analog Devices') applied to the Hauptzollamt München-West (Principal Customs Office, Munich West; hereinafter 'the HZA') for reimbursement of customs duty paid between 1 January 1987 and 31 January 1990 on imports of monolithic integrated circuits of types AD 536 and 636, contained in round housings having a diameter of 9.4 mm.

Following the HZA's rejection of its application, Analog Devices brought proceedings before the Finanzgericht München (Finance Court, Munich), which made an order for the reimbursement of the payments made by the applicant on the ground that, according to the relevant provisions, the suspension of tariff duty which is granted for imports of the products in question was not rendered inapplicable by the fact that those products were contained in round housing, provided that such housing did not exceed the dimensions specified in the Community legislation for polygonal housing. Accordingly, in the opinion of the Finanzgericht, the provision in the 1990 regulation expressly permitting round housing could be nothing else but declaratory in nature.

The Bundesfinanzhof, before which an appeal against that judgment was brought on a point of law ('Revision'), considered the wording of the provision which it had to apply to be ambiguous and therefore, by the order for reference mentioned above, requested a ruling on the interpretation of that provision.

5. As is well known, and as is, moreover, confirmed in the preambles to those regulations, which are of particular importance in the present case, the main purpose of the tariff suspensions adopted pursuant to Article 28 of the EEC Treaty is to enable Community industries to use raw materials, semi-finished goods or components, production of which within the Community is non-existent, or nevertheless insufficient to meet the existing demand. However, since the regulations temporarily suspending customs duties establish an exception to the principle laid down in Articles 19 and 20 of the Treaty, according to which the duties set out in the Common Customs Tariff must be paid on all products imported from non-member countries, those regulations must be strictly construed.

9 — OJ 1990 L 139, p. 1.

6. On the basis of those observations and taking into account also the requirements of legal certainty and the difficulties confronting national customs administrations owing to the wide range and complexity of the tasks assigned to them, the Court has stated that 'the descriptions of goods on which customs duties have been suspended must be interpreted according to objective criteria derived from their wording and (...) they may not be applied contrary to their wording to other goods even if their properties and application are no different from those covered by the suspension'. [10] Of course, as the Court went on to make clear, that does not mean that an ambiguous provision should not, in full compliance with the criteria governing the interpretation of rules which derogate from a general principle, be interpreted according to the general scheme and purpose of the rules of which it forms part. [11]

7. In that connection it should be noted that there is nothing in the text of the legislation at issue that clearly justifies the conclusion that the interpretation contended for by one or other of the parties to the main proceedings is well founded. Admittedly, the specification of the linear dimensions for the housing of the exempted product conveys the idea of a polygonal surface area. It is also true, however, that the provision does not specify what the shape of the housing must be; it simply lays down the maximum dimensions for the housing and does not preclude the possibility that it may be round, so long as it does not exceed those dimensions.

However, if the provision is interpreted logically — by seeking to reconstruct the intention of the legislature or the purpose of the provision — it becomes clear that it may not be construed in the narrow sense contended for by the HZA in the main proceedings. In that connection, the circumstances giving rise to the regulation which first provided for the tariff suspension in dispute (Regulation (EEC) No 3841/46) assume particular significance. On that occasion the Council had acted at the suggestion of the United Kingdom Government, in whose proposal the product in question was designated by the alphanumeric combination AD 536 A. It is clear from the manufacturer's description attached to the proposal that the device was available in three different models, contained in rectangular housing with 14 connecting pins and designated 'D' (TO-116), or in round housing with 10 connecting pins, designated 'H' (TO-100). Consequently, it seems certain that the United Kingdom's proposal, the wording of which was subsequently reproduced in the text of the regulation, covered analog-to-digital converters of the type described, contained in either polygonal or round housing.

On the other hand, there is nothing in the file to suggest that the shape of the housing was a consideration of any importance at the time when the conditions for the suspension of the tariff were determined.

10 — See the judgment in Case 58/85 *Ethicon* [1986] ECR 1131, paragraphs 11-13. On that point, see also the judgment in Case C-338/90 *Hamlin* [1992] ECR I-2333, in particular paragraphs 8 and 9.

11 — See the judgment in *Hamlin*, cited above, paragraph 12.

8. Lastly, the sole fact that non-polygonal housing has only been expressly mentioned in Regulation (EEC) No 1419/90 cannot support the inference that previously such housing was not covered by the exemption from duty. Although, as is made clear by the case-law of the Court, a later amendment of the description of a product on which duties have been suspended cannot retroactively affect the interpretation of the description previously applied for that purpose, [12] an amendment which merely clarifies the scope of a provision, which could in any event be inferred through the normal process of interpretation, is certainly not substantive in nature.

9. I therefore propose that the Court give the following answer to the question submitted to it by the Bundesfinanzhof:

The suspensions of autonomous Common Customs Tariff duty in respect of analog-to-digital converters for the calculation of the average value of variable wave-forms, in the form of monolithic integrated circuits, contained in housing the dimensions of which do not exceed 10x18 mm, ex tariff heading 85.21 D II of the Common Customs Tariff or, with effect from 1988, ex subheading 8542 11 99 of the combined nomenclature — that is to say, the suspensions of customs duty provided for by Council Regulations (EEC) No 3841 of 8 December 1986, No 1828 of 15 June 1987, No 3747 of 8 December 1987, No 1779 of 9 June 1988, No 3696 of 18 November 1988, No 1656 of 29 May 1989 and No 3393 of 16 October 1989 — are to be interpreted as meaning that the description of the products also encompasses converters of that type which are contained in non-polygonal housing having a diameter of 9.4 mm.

12 — See the judgment in *Ethicon*, cited above, paragraph 13. See also the judgment in Case 158/78 *Biegi* [1979] ECR 1103, in particular paragraph 11.