JUDGMENT OF THE COURT (Third Chamber)
1 June 1995 *

In Case C-467/93,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesfinanzhof for a preliminary ruling in the proceedings pending before that court between

Hauptzollamt München-West

and

Analog Devices GmbH

on the interpretation of Council Regulations (EEC) No 3841/86 of 8 December 1986 (OJ 1986 L 362, p. 1), No 1828/87 of 15 June 1987 (OJ 1987 L 177, p. 1), No 3734/87 of 8 December 1987 (OJ 1987 L 358, p. 1), No 1779/88 of 9 June 1988 (OJ 1988 L 164, p. 1), No 3696/88 of 18 November 1988 (OJ 1988 L 329, p. 1), No 1656/89 of 29 May 1989 (OJ 1989 L 167, p. 1) and No 3393/89 of 16 October 1989 (OJ 1989 L 332, p. 1), temporarily suspending the autonomous Common Customs Tariff duty on certain industrial products,

* Language of the case: German.

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida and J.-P. Puissochet (Rapporteur), Judges,

Advocate General: G. Tesauro,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Analog Devices GmbH, by Peter Schade, Rechtsanwalt, Munich,

— the Commission of the European Communities, by Francisco de Sousa Fialho, of the Legal Service, acting as Agent, assisted by Hans-Jürgen Rabe, Rechtsanwalt, Hamburg and a member of the Brussels Bar,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 4 May 1995,

gives the following

Judgment

1 By order of 4 November 1993, received at the Court on 15 December 1993, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpre-

tation of Council Regulations (EEC) No 3841/86 of 8 December 1986 (OJ 1986 L 362, p. 1), No 1828/87 of 15 June 1987 (OJ 1987 L 177, p. 1), No 3734/87 of 8 December 1987 (OJ 1987 L 358, p. 1), No 1779/88 of 9 June 1988 (OJ 1988 L 164, p. 1), No 3696/88 of 18 November 1988 (OJ 1988 L 329, p. 1), No 1656/89 of 29 May 1989 (OJ 1989 L 167, p. 1) and No 3393/89 of 16 October 1989 (OJ 1989 L 332, p. 1), temporarily suspending the autonomous Common Customs Tariff duty on certain industrial products.

2 That question was raised in proceedings between Hauptzollamt München-West (Principal Customs Office, Munich West, hereinafter 'the HZA') and Analog Devices GmbH (hereinafter 'Analog Devices') concerning the applicability of the aforementioned regulations to certain analog-to-digital converters for the calculation of the average value of variable wave-forms.

3 Those regulations provided for the suspension of customs duties in respect of the following product falling within tariff heading 85.21 D II (1987), subsequently ex 8542 11 99 (1988 to 1990):

'Analogue-to-digital converter for the calculation of the average value of variable wave-forms, in the form of a monolithic integrated circuit, contained in a housing the exterior dimensions of which do not exceed 18 x 10 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'.

4 That description was subsequently partially amended and amplified, as regards the characteristics of the housing, by Council Regulation (EEC) No 1419/90 of 25 April 1990 (OJ 1990 L 139, p. 1), in the following terms:

'(...) contained in a housing the exterior dimensions of which do not exceed 10 x 21 mm, or the diameter of which does not exceed 10 mm (...)'.

5 Analog Devices considered that that regulation was applicable to monolithic integrated circuits contained in a circular housing having a diameter of 9.4 mm with regard to which it had paid customs duties in respect of the period from 1 January 1987 and 31 January 1990 inclusive. It consequently applied to the HZA for the repayment of those duties. Following the refusal of its application, it brought proceedings in the Finanzgericht München (Finance Court, Munich), which ordered the HZA to repay the duties in question. The HZA then brought an appeal before the Bundesfinanzhof.

6 The Bundesfinanzhof has referred to the Court for a preliminary ruling on the following question:

'Are the suspensions of customs duties in respect of analog-to-digital converters for the calculation of the average value of variable wave-forms, in the form of a monolithic integrated circuit, contained in a housing the exterior dimensions of

which do not exceed 10 x 18 mm (ex tariff heading 85.21 D II (1987) and subheading 8542 1199 (1988 to 1990) of the Common Customs Tariff), applied pursuant to Council Regulation (EEC) Nos 3841/86 of 8 December 1986 (OJ 1986 L 362, p. 1), No 1828/87 of 15 June 1987 (OJ 1987 L 177, p. 1), No 3734/87 of 8 December 1987 (OJ 1987 L 358, p. 1), No 1779/88 of 9 June 1988 (OJ 1988 L 164, p. 1), No 3696/88 of 18 November 1988 (OJ 1988 L 329, p. 1), No 1656/89 of 29 May 1989 (OJ 1989 L 167, p. 1) and No 3393/89 of 16 October 1989 (OJ 1989 L 332, p. 1), to be interpreted as meaning that the description of the goods referred to in each of those regulations also covers corresponding converters contained in circular housings having a diameter of 9.44 mm?'

7 That question should, as Analog Devices and the Commission maintain, be answered in the affirmative.

8 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 (Case 58/85 *Ethicon* v *Hauptzollamt Itzehoe* [1986] ECR 1131, paragraph 13). Moreover, where a provision is ambiguous it must be interpreted according to the general scheme and purpose of the rules of which it forms part (Case C-338/90 *Hamlin Electronics* v *Hauptzollamt Darmstadt* [1992] ECR I-2333, paragraph 12).

9 The regulations at issue are intended temporarily to suspend the autonomous Common Customs Tariff duties on products the production of which is inadequate or non-existent within the Community, in order to meet the needs of user industries. In the present case, they apply to a product contained in a housing the form of which is not specified, and which is described only in terms of its maxi-

mum exterior dimensions. As Analog Devices argues, those regulations do not in any way indicate that the housing, the form of which apparently has no bearing on the functioning of the product, must be the subject of any particular protection in terms of Community production.

10 Moreover, the genesis of the provision at issue suggests that it applied from the outset to circular housings as well as rectangular ones. As the Commission observes, the initial version of that provision, which expressly identifies the product by the combination of numbers and letters AD 536 A, resulted from a request made by the United Kingdom delegation. It is apparent from the manufacturer's description annexed to that request that the AD 536 A is produced in three different models, which are available either in rectangular housings with fourteen connecting pins or in circular housings with ten connecting pins.

11 Accordingly, it should be stated in reply to the question from the national court that Regulations Nos 3841/86, 1828/87, 3747/87, 1779/88, 3696/88, 1656/89 and 3393/89 must be interpreted as meaning that the description of the product ex tariff heading 85.21 D II and subsequently ex 8542 1199, defined as an analog-to-digital converter contained in a housing the exterior dimensions of which do not exceed 18 x 10 mm, also covers converters contained in circular housings the diameter of which does not exceed 10 mm.

Costs

12 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Bundesfinanzhof by order of 4 November 1993, hereby rules:

Council Regulations (EEC) No 3841/86 of 8 December 1986, No 1828/87 of 15 June 1987, No 3734/87 of 8 December 1987, No 1779/88 of 9 June 1988, No 3696/88 of 18 November 1988, No 1656/89 of 29 May 1989 and No 3393/89 of 16 October 1989, temporarily suspending the autonomous Common Customs Tariff duty on certain industrial products, must be interpreted as meaning that the description of the product ex tariff heading 85.21 D II and subsequently ex 8542 1199, defined as an analog-to-digital converter contained in a housing the exterior dimensions of which do not exceed 18 x 10 mm, also covers converters contained in circular housings the diameter of which does not exceed 10 mm.

Gulmann Moitinho de Almeida Puissochet

Delivered in open court in Luxembourg on 1 June 1995.

R. Grass C. Gulmann

Registrar President of the Third Chamber