calculator with print-out and a 12-figure luminous display screen (which is capable of addition, multiplication, subtraction, division, calculation of percentages and extraction of roots and calculations with a constant), a lockable steel-plate cash-box with plastic till or drawer in which cash may be kept and accessories (electric cable, double-sheeted roll of paper and dust-cover), cannot be regarded as a functional unit or, therefore, as a single article which may be described as a cash register within the meaning of subheading 84.52 B of the Common Customs Tariff.

2. The articles which together constitute the product referred to in the first question must be regarded as goods put up in sets within the meaning of General Rule 3 (b) for the Interpretation of the Nomenclature of the Common Customs Tariff, the tariff classification of which is based on the component which gives them their essential character.

Koopmans Mackenzie Stuart Bosco

Delivered in open court in Luxembourg on 9 February 1984.

The Registrar by order

H. A. Rühl

Principal Administrator

T. Koopmans

President of the First Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 8 DECEMBER 1983 [1]

Mr President,
Members of the Court,

Heading 84.52 of the Common Customs Tariff is at the centre of this reference for a preliminary ruling pursuant to Article 177 of the EEC Treaty made by the Seventh Senate of the Bundesfinanzhof [Federal Finance Court] by order of 1 March 1983. That tariff heading covers calculating machines, accounting machines, cash registers, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device. Subheading

1 — Translated from the German.

A covers electronic calculating machines which in 1981 were liable to an autonomous duty of 14% and a conventional duty of 13.5%. Subheading B covers other goods falling under that heading, which were liable to an autonomous duty of 12% and a conventional duty of 5.2%.

The Seventh Senate of the Bundesfinanzhof has raised the following questions:

"1. Is the term 'cash register' within the meaning of subheading 84.52 B of the Common Customs Tariff to be interpreted as including an article described as an 'electronic cash register', which on importation consists of several parts separately packed in one carton, namely a multipurpose electronic desk calculator with print-out and a 12-figure luminous display screen (which is capable of addition, multiplication, subtraction, division, calculation of percentages and extraction of roots and calculations with a constant), a lockable steel-plate cash-box with plastic till or drawer in which cash may be kept and accessories (electric cable, double-sheeted roll of paper and dust-cover)? May such parts taken as a whole be regarded as a functional unit and therefore as a single article which may be described as a cash register within the meaning of subheading 84.52 B of the Common Customs Tariff, in view of the fact that, before it can be used as a cash register, the electronic desk calculator must be placed on top of the cash-box and joined to it not by any permanent connection but by means of the accompanying attachments (electric cable with a plug attached to the cash-box, corresponding socket in the calculator, matching rubber pads on both parts)?

2. If the answer to Question 1 is in the negative:

   May such articles consisting of several parts be regarded as 'goods put up in sets' or 'goods . . . made up of different components' within the meaning of General Rule 3 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff?"

Metro International Kommanditgesellschaft, Düsseldorf, the plaintiff in the main action, applied to the Oberfinanzdirektion München [Principal Revenue Office, Munich], the defendant in the main action, for a binding customs tariff ruling for a "PCR 1300 electronic cash register", as described in the first question.

In the binding customs tariff ruling issued on 11 June 1981, the Revenue Office classified the product pursuant to General Rule 3 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff as goods put up in sets, namely, an "electronic calculating machine" falling under subheading 84.52 A of the Common Customs Tariff. By a decision of 18 December 1981, the Revenue Office rejected the objection lodged against that ruling, referring to the description of cash registers contained in Part I (C) of the Customs Cooperation Council's Explanatory Notes relating to heading 84.52.

The plaintiff grounded the action brought against that decision before the Bundesfinanzhof mainly on the contention that the goods to be classified were not goods put up in sets but rather a functional unit as a cash register. The goods were both bought and sold by it under that description. The individual

parts are characterized by special technical attachments and the cash-box in particular is economically worthless unless connected to the electronic calculator. Conversely, the economic value of the calculator lies in its equipment which is adapted to the function of a cash register. A comparable desk calculator without those accessories would be offered for sale at a lower price. The view generally held in the trade must be decisive for tariff classification, since the Customs Cooperation Councils Explanatory Notes are not legally binding and in any event do not prevent the goods in question from being classified as a cash register.

The Seventh Senate first states that it is not clear from the wording of heading 84.52 whether or not goods which are composed of and may be constructed from the following parts — an electronic calculator, cash-box and accessories — may be classified as a cash register. In the national court's view, the fact that electronic calculators and cash registers are different goods for customs purposes does not exclude the possibility that electronic calculators when used by means of their flexible connection to the cash-box, and with the accompanying accessories, as cash registers, should be classified under subheading 84.52 B as functional units which may be described as cash registers. The Senate also considers it possible however that the product to be classified may be treated, as the Revenue Office thinks, rejecting its classification as a functional unit, as a single item made up of different components, or as goods put up in sets within the meaning of General Rule 3 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff. In that case the Senate thinks that there are many arguments in favour of the electronic calculator's being regarded as the component which gives the goods their essential character. Finally, the Senate also doubts whether the description to be found in the Customs Cooperation Council's Explanatory Notes, according to which cash registers can only record the amounts registered, to the exclusion of all other artithmetical operations, is, in the light of technical developments in electronics, a proper interpretation of the wording of the tariff concept "cash register" or whether it constitutes an unacceptable modification of the tariff.

My view on the problems raised by the aforementioned questions is as follows:

1. First question

This question asks whether goods which are composed of and may be constructed from the following parts — an electronic calculator, cash-box and accessories — may be classified as a cash register within the meaning of subheading 84.52 B of the Common Customs Tariff or whether that is possible only when the registering device and cash-box form a construction unit.

As regards the question of physical unity, I agree with the plaintiff in the main action that it is not possible to find anything in the Common Customs Tariff or the Customs Cooperation Council's Explanatory Notes which in principle excludes the possibility of an electronic cash register which is delivered in modules being classified under subheading 84.52 B of the Common Customs Tariff. Such a classification is in any case justified, under Rule 2 (a) of

the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, if the individual components, when assembled, form a cash register and nothing else. On the other hand, if a major component, such as, in this case, the electronic desk calculator, which as such would fall under subheading 84.52 A, can perform functions other than those of a cash register and may be used independently of the other components of the product, then, regardless of the description, the goods must basically be regarded as goods consisting of more than one material or substance within the meaning of General Rule 2 (b) of the Rules for the Interpretation of the Common Customs Tariff and must be classified according to the principles of Rule 3 of the same rules. The determining factor is that the goods to be classified are made up of several components which *per se* may have separate functions and are not to be regarded from the outset simply as individual parts of a cash register, but are rather to be regarded as distinct goods for customs purposes. Such products are in any event to be classified as goods consisting of more than one material or substance if at least one part has an independent function and as such falls under a specific tariff heading.

If that is so, as it is in this case with regard to the separable desk calculator, then, as the court making the reference has pointed out, the goods in question, contrary to the classification principles cited, may be regarded as a single product, namely, a cash register within the meaning of subheading 84.52 B, only if they form a so-called *functional unit.* The second part of the first question is designed to clarify the meaning of this expression which does not appear in the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff.

As the court making the reference has stated, that concept is defined only in the ninth paragraph of the Customs Cooperation Council's Explanatory Notes regarding Note 3 to Section XVI, which, according to the established case-law of the Court, are an authoritative source for the purposes of the interpretation of the headings of the Common Customs Tariff. Note 3 to Section XVI of the Common Customs Tariff, to which Chapter 84 belongs, provides that composite machines and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function. As an exception to this, the relevant paragraph in the aforementioned Explanatory Notes reads:

"Furthermore, Note 3 does not apply when a machine or appliance consists of separate components which are designed to contribute together to a single clearly-defined function described by one of the headings in Chapter 84 ... The whole then falls to be classified in the heading appropriate to that function, whether the various components ... (for convenience or other reasons) remain separate and are merely interconnected ... by electric cables."

This narrowly-defined concept of functional unity thus allows machines consisting of various *components* which may be classified under several tariff headings, to be classified, as an exception to the General Rules, *directly* under a specific tariff heading when such components are, it seems to me, *exclusively* intended to perform together the single clearly-defined function described in that heading. Since this concept of functional unity has for a long time had no binding legal basis and is capable of widening the special

definition of goods to be classified which form a physical unit, I must once again agree with the Commission that a strict test is to be applied as to whether or not such a functional unit is to be assumed. It follows in particular from the above-mentioned definition that the concept of functional unity may not be misused in order to resolve arbitrarily, in a way which departs from the General Rules for the Interpretation of the Common Customs Tariff, which of the *various possible tariff headings* applies.

If we consider the goods in question in the light of these criteria, it must be stated however that at least the separable desk calculator is not, objectively speaking, *exclusively* intended to fulfil, together with the other components, only the function of a cash register within the meaning of subheading 84.52 B but also that of an electronic calculating machine within the meaning of subheading 84.52 A.

As the goods in their composite form may be used both as an electronic calculating machine and as a cash register, and as at least one readily separable part is objectively capable of performing the functions of a calculating machine, a conflict arises which, in my opinion, if the danger of evasion of duty is to be avoided, cannot be solved in the context of the question of functional unity.

I also agree with the Commission in this connection that, contrary to the plaintiff's view, it is possible in the last resort to leave aside the question whether Section C of the Customs Cooperation Council's Explanatory Notes to tariff heading 84.52 which state, amongst other things, that cash registers essentially total the amounts recorded but do not perform more complicated arithmetical operations, is still, in the light of the technical developments in electronics, an acceptable interpretation of the wording of the tariff concept. The decisive factor is rather than an electronic desk calculator which may be used independently of the other components is in any event not a cash register.

In conclusion, one must agree with the Commission therefore that goods which do not constitute a physical unit but are made up of several component parts cannot be regarded as a functional unit or therefore as a single article such as a cash register within the meaning of heading 84.52 B of the Common Customs Tariff, so long as a separable component can perform not only the calculations usually executed by cash registers but also more complicated calculations usually executed by electronic calculators.

2. Second question

If the answer to Question 1 is in the negative the court making the reference wishes to know if such articles consisting of several parts may be regarded as "goods put up in sets" or "goods . . . made up of different components" within the meaning of General Rule 3 (b) of the Rules for the Interpretation of the Nomenclature of the Common Customs Tariff.

The Senate making the reference considers it possible, in the light of paragraph VIII of the Customs Cooperation Council's Explanatory Notes on General Rule 3 (b), that the disputed product might be regarded for tariff purposes as a unit made up of different components within the meaning of that rule. According to that note, composite goods made up of different components are to be taken to mean not only those in which the components are attached to

each other to form a practically inseparable whole but also those with separable components, provided that those components are adapted one to the other and are mutually complementary and that together they form a whole which it would be difficult to sell in separate parts. The latter condition, which as the Commission has rightly pointed out, must apply to all components, might however not be met in the present case, at least as regards the desk calculator, which may be used separately.

The goods at issue should rather be regarded as goods put up in sets within the meaning of General Rule 3 (b) of the Rules for the Interpretation of the Common Customs Tariff. According to paragraph IX of the Customs Cooperation Council's Explanatory Notes on Rule 3 (b), the term "goods put up in sets" is to be taken to mean goods which consist of products or articles having independent or complementary uses, grouped together for meeting a need or carrying out a specific activity, and are put up in retail packings. In my opinion, the goods at issue meet those criteria.

Finally, it is not necessary to decide whether or not the product in question is to be regarded as composite goods made up of different components or goods put up in sets because, according to General Rule 3 (b) of the Rules for the Interpretation of the Common Customs Tariff, both alternatives are in any event to be classified according to the component which gives them their essential character The character of goods may, according to paragraph VII of the Customs Cooperation Council's Explanatory Notes on Rule 3 (b), be determined, for example, by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. I agree with the court making the reference and the Commission that regard being had to those factors, in particular the undeniably higher value of the electronic calculator compared to the other components and the importance of the desk calculator in relation to the intended use of the goods as a whole, the latter is undoubtedly to be regarded as the component which gives the goods their essential character and thus they cannot, even under General Rule 3 (b) of the Rules for the Interpretation of the Common Customs Tariff, be classified as a cash register within the meaning of tariff heading 84.52 B.

3. In conclusion, I propose that the first question be answered in the negative and that the answer to the second question should be that articles such as those described in the first question are to be classified as goods put up in sets pursuant to General Rule 3 (b) of those rules.