OPINION OF ADVOCATE GENERAL JACOBS

delivered on 9 November 2000 [1]

1. In this case, the Finanzgericht (Finance Court) Düsseldorf requests a preliminary ruling on the interpretation of the Combined Nomenclature. [2] It wishes to know whether 'satellite receivers' were included in the definition of 'television receivers' in heading 8528 between 1990 and 1992 — as they have been since 14 May 1994 by virtue of Commission Regulation No 884/94 [3] — or whether another heading was more appropriate.

Description of the goods in issue

2. A helpful explanation of the technical context in which satellite receivers operate is provided in one of the documents produced by the Commission in response to a request from the Court for further information. [4] 'Satellite television signals are beamed towards earth in a process known as downlinking. The downlink signal is collected by the satellite antenna or dish and focused on the feedhorn, the focal point assembly on the dish that collects the signal, changes its polarity and then sends it on to the low noise block down converter. This device [the down converter] amplifies and converts a signal to enable the receiver to utilise it. The receiver processes the signal and allows a viewer to select different channels.'

3. The receivers in issue in the main proceedings are described by the national court in greater detail as:

'devices mounted in separate housings which convert the signals received down to the frequencies of terrestrial antennae, so that the signals may be processed by any television or radio set via the aerial input.

1 — Original language: English.

2 — Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ 1987 L 256, p. 1, as amended for the period in question by Commission Regulation (EEC) No 2886/89 of 2 August 1989, OJ 1989 L 282, p. 1, Commission Regulation (EEC) No 2472/90 of 31 July 1990, OJ 1990 L 247, p. 1, and Commission Regulation (EEC) No 2587/91 of 26 July 1991, OJ 1991 L 259, p. 1.

3 — Commission Regulation (EC) No 884/94 of 20 April 1994 concerning the classification of certain goods in the combined nomenclature, OJ 1994 L 103, p. 10.

4 — Comments submitted by Canada to the Harmonised System Review Sub-Committee of the Customs Cooperation Council (now the World Customs Organisation or 'WCO'), Fifth Session, 29 April 1991, p. I/4.

They possess incorporated tuners which enable a wide variety of programmes (channels) to be selected.

The output provided by these satellite receivers is not a red, green and blue (RGB) colour video signal but a composite video signal; of these, which include PAL, D2-MAC and SECAM signals, the receivers provide only a PAL signal in PAL-G or PAL-I format at a particular frequency, so that the tuner of the television or radio apparatus only has to be tuned to that frequency once in order to be able to use the satellite receiver.

Before the imported satellite receivers can receive satellite-broadcast television and radio signals whose frequencies lie between 4 and 20 GHz, these signals must be received by aerials, usually in the form of parabolic reflectors, or satellite dishes, and lowered by converters (down converters). Such converters both amplify the signal and convert the television and radio programmes to the input frequencies of the satellite receivers, between 950 and 1750 MHz.'

Possible classification headings

4. The Combined Nomenclature is the Community customs tariff nomenclature based on the world-wide Harmonised System, [5] to which it is identical as regards the headings and six-digit subheadings, only the seventh and eighth digits forming subdivisions specific to the Combined Nomenclature. The headings are grouped in chapters, themselves grouped in sections.

5. It is not disputed that satellite receivers fall to be classified in Chapter 85 of that nomenclature — 'Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles' — which is part of Section XVI.

6. Within that chapter, the following headings and subheadings have been variously put forward as the most appropriate. [6]

5 — The Harmonised Commodity Description and Coding System, introduced by the International Convention of 14 June 1983, approved for the Community by Council Decision 87/369/EEC of 7 April 1987, OJ 1987 L 198, p. 1.

6 — The texts cited are those applicable in 1992, as contained in Regulation No 2587/91, cited in note 2. One slight divergence from the text applicable in 1990 and 1991 is indicated, together with a subsequent change to the wording of the heading.

7. Heading 8525: 'Transmission apparatus for ... television, whether or not incorporating reception apparatus ...'. Subheading 8525 20 is for transmission apparatus incorporating reception apparatus.

8. Heading 8528: 'Television receivers (including video monitors and video projectors), whether or not incorporating [7] radio-broadcast receivers or sound or video recording or reproducing apparatus'. [8] This heading is divided into colour and monochrome receivers. The subdivision for colour receivers [9] lists television projection equipment, apparatus incorporating a video recorder or reproducer, video monitors with or without a cathode-ray tube and other equipment with integral tube, before going on to 'other' equipment, which may be with or without a screen. The latter category includes subheadings 8528 10 91, 'video tuners', and 8528 10 98, 'other'.

9. Heading 8529: 'Parts suitable for use solely or principally with the apparatus of heading Nos 8525 to 8528'. This heading covers 'aerials and aerial reflectors of all kinds; parts suitable for use therewith', together with 'other' parts, including three specific categories which are not relevant here and a final residual subheading again entitled 'other'. In the first category (aerials and aerial reflectors), subheading 8529 10 31 has been put forward as a possibly appropriate classification. It is for 'Aerials — Outside aerials for radio or television broadcast receivers — For reception via satellite'

10. Heading 8543: 'Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter'. This heading lists specifically particle accelerators, signal generators, machines and apparatus for electroplating, electrolysis or electrophoresis, before going on to 'Other machines and apparatus', which include subheadings 8543 80 20, 'Aerial amplifiers', and 8543 80 80, 'Other', although up to and including 1990, the contents of those two subheadings were grouped together under subheading 8543 80 90, 'Other'. Finally, subheading 8543 90 is for parts falling under the heading.

11. In 1994, after the period with which this case is concerned, Commission Regulation No 884/94 classified satellite recei-

7 — Up to and including 1991: 'whether or not combined, in the same housing, with'.

8 — In 1996, by Commission Regulation (EC) No 3009/95 of 22 December 1995 amending Annex I to Council Regulation (EEC) No 2658/87, OJ 1995 L 319, p. 1, reflecting a change to the Harmonised System, the wording of heading 8528 was changed to 'Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound and video recording or reproducing apparatus; video monitors and video projectors' and subheading 8528 10 for colour apparatus was renumbered 8528 12.

9 — The dispute in the main proceedings does not appear to concern monochrome apparatus.

vers under subheading 8528 10 91.[10] In 1997, the Harmonised System Committee of the WCO decided to classify such apparatus under subheading 8528 12.[11] There is no suggestion that the goods thus classified are different from those in issue in the present case.

The national proceedings and the questions referred

12. On several occasions in 1991 and 1992 Deutsche Nichimen, the applicant in the main proceedings, declared the release into free circulation of imported satellite receivers under subheading 8543 80 20 (aerial amplifiers), thus paying customs duty at 7%. The goods had been in private customs warehousing since 1990.

13. In 1992, Hauptzollamt (Principal Customs Office) Düsseldorf, the defendant in the main proceedings, amended the assessments relating to those imports and reclassified the receivers under subheading 8528 10 91 (video tuners). This entailed post-clearance recovery of an additional 7 % of duty.

14. In the proceedings before the Finanzgericht, the applicant is challenging that reclassification, claiming that the goods should be classified under either subheading 8543 80 80 (as 'other' apparatus), bearing the rate of duty originally charged, or, in the alternative, subheading 8529 10 31 (satellite aerials), on which the rate of duty would be 7.2 %.

15. The national court, having examined the various Community and WCO explanatory notes to the headings and subheadings contended for, and considering that it cannot apply Regulation No 884/94 retroactively, is in doubt as to the correct classification. It takes the view, however, that it is necessary in this case to determine only the relevant heading and not necessarily the subheading. It has therefore asked the Court to rule on the following questions:

'1. Is the definition of television receivers in heading No 8528 of the Combined Nomenclature in the version in force from 1990 to 1992 to be interpreted as

10 — Cited above in note 2. In 1996, subheading 8528 10 was renumbered 8528 12. In 1998 (by Commission Regulation (EC) No 2086/97 of 4 November 1997 amending Annex I to Regulation No 2658/87, OJ 1997 L 312, p. 1), the subsubheadings of 8528 12 were rearranged, and since Commission Regulation (EC) No 936/1999 of 27 April 1999 amending or repealing certain regulations on the classification of goods in the Combined Nomenclature, OJ 1999 L 117, p. 9, satellite receivers have been classified under subheading 8528 12 95, for video tuners which are not intended to be incorporated into automatic data processing machines and are neither digital nor mixed digital and analogue.

11 — Equivalent to the former subheading 8528 10.

including devices such as the satellite receivers more precisely described in the grounds of this order, even though with those devices television programmes can be made visible and audible only with television receivers of domestic type?

2. If Question 1 is answered in the negative: Is the definition of parts in heading No 8529 of the Combined Nomenclature or in Note 2(b) to Section XVI of the Combined Nomenclature in the version in force from 1990 to 1992 to be interpreted as including devices such as the satellite receivers more precisely described in the grounds of this order, and are those devices then to be classified under heading No 8529 of the Combined Nomenclature despite Note 2(b) to Section XVI of the Combined Nomenclature?'

to be classified during the relevant period (the present classification as reception apparatus for television is not in dispute here) either as television receivers, under heading 8528, or as parts suitable for use solely or principally therewith, under heading 8529?

17. In that regard, the national court is not concerned with subheadings, since it wishes merely to determine the correct rate of customs duty, which was 14% for all the subheadings of heading 8528 and 7.2% for all the conceivable subheadings of heading 8529 throughout the relevant period.

18. In addition to headings 8528 and 8529, however, headings 8525 and 8543 have also been mooted as possible classifications.

Analysis

Headings 8525 and 8543

Scope of the question

19. Although at the national level the applicant has apparently argued principally for classification under heading 8543, it does not do so in its submissions to the Court, nor is the heading referred to in the Finanzgericht's questions. Heading 8525

16. The question put by the national court boils down to this: were the goods in issue

was apparently favoured by the United States of America during discussions within the WCO, and was mentioned by Deutsche Nichimen at the hearing, although again not with a view to urging classification under it.

20. In any event, I consider that those two headings may be ruled out. My reasons may be stated briefly.

21. The ground on which the United States argued in favour of heading 8525 was apparently that a satellite receiver transmits signals to the television set which displays the image and that only the latter, as *final* receiver, should fall under heading 8528. However, that view — shared by no other party within the WCO — seems to me to defy the clear natural logic according to which, where equipment used in television broadcasting is concerned, heading 8525 is designed for apparatus at the transmission end of the broadcast and heading 8528 for apparatus at the reception end.

22. Heading 8543 is a residual heading — in other words, it is for goods not specified or included elsewhere in the chapter. It comprises a number of specific subheadings for named goods and two residual subheadings, one for 'other' machines and apparatus and one for 'other' parts. Satellite receivers are not listed under any of the specific subheadings. The closest is 8543 80 20, for aerial amplifiers; it appears however from the order for reference that satellite receivers do not amplify an aerial signal, a function performed by the down converter, but transform it so that it can be processed for display on a screen. Classification under one of the 'other' subheadings, on the other hand, must logically be dependent on impossibility of classification elsewhere and, as I shall explain below, I do not believe that condition to be met here.

Headings 8528 and 8529

23. There is thus, in my view, no call for the Court to look beyond the scope of the questions as they have been posed by the Finanzgericht.

24. The first of those questions relates to heading 8528, and the second is raised only in the event of a negative answer to the first. Indeed, as the Commission has pointed out, heading 8529 is subsidiary to heading 8528, in that it is first necessary to consider what is meant by a television

receiver before it can be determined whether an item is a part suitable for use with such a receiver. However, if the item is already found to fall within the first category, it is not merely unnecessary but unwarranted to look any further.

— Heading 8528

25. I shall therefore consider first whether, as contended by the defendant Hauptzollamt in the national proceedings, satellite receivers fell under heading 8528 during the relevant period as they have done since 1994.

26. As Deutsche Nichimen has conceded, the items covered by that heading are not necessarily television receivers in the normal acceptance of the term, since there are specific sub-categories for receivers which do not comprise a screen. However, reception of television signals is clearly pointless unless they are at some stage to be displayed. Television receivers within the meaning of heading 8528 are thus devices which receive signals to be displayed on a screen, monitor or cathode-ray tube, whether the latter is incorporated with the receiver (as will often be the case) or not.

27. To that extent, 'reception apparatus for television', a term which replaced 'television receivers' in 1996 in the English version of the heading, seems a better and clearer description. That change of wording has been discussed during the proceedings, but I do not think it can be adduced as evidence that the content of heading 8528 was any narrower before that date. On the contrary, I take it to confirm that the tenor of the broader formulation applied also before 1996.

28. The change was made only to the English version of the nomenclature, bringing it into line not only with the French (the other authentic language of the Harmonised System) of that heading, [12] but also with the English of headings 8525 and 8527. [13] It is clear from that fact, and from the reports of the WCO's Harmonised System Committee produced by the Commission in response to a request from the Court, that the purpose of the amendment was to clarify the content of the heading in English, and not to modify it in any way.

12 — 'Appareils récepteurs de télévision'.

13 — 'Transmission apparatus for ... television' and 'Reception apparatus for radio ...' respectively.

29. As the Court has consistently held, 'in the interests of legal certainty and for ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN'. [14] In addition, 'the intended use of a product may constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties'. [15]

30. The objective characteristics and properties of the satellite receivers in issue are in my view accurately described in heading 8528. Such devices are designed — and this is an inherent feature, capable of being assessed on the basis of their objective characteristics and properties — to receive television signals from aerials and convert them into a form which can be processed for display on a screen.

31. Deutsche Nichimen, however, argues against that view on several grounds, some of which seem to have raised doubts in the mind of the national court.

32. In its observations to the Court, Deutsche Nichimen starts by pointing out that the 'television receivers' referred to in heading 8528 are not 'television receivers' in the everyday sense of the word, since they include goods some of which possess neither screen nor loudspeaker. In order to determine their nature, therefore, recourse must be had to the wording of the subheadings.

33. However, it argues, the satellite receivers in issue cannot conceivably be classified under any of the subheadings of heading 8528 other than, possibly, 8528 10 91 'video tuners' or 8528 10 98 'other'. They are not (and here I agree) video monitors, they are not video recorders or reproducers or apparatus incorporating such, they are not television projection equipment and they do not have an integral tube or a screen of any sort.

34. Deutsche Nichimen then goes on to reason that they cannot be video tuners because they do not produce 'signals usable by video recording or reproducing apparatus or video monitors' as required by Note 3 to heading 8528 in the explanatory notes

14 — See, most recently, the judgment of 26 September 2000 in Case C-42/99 *Fábrica de Queijo Eru Portuguesa* v *Tribunal Técnico Aduaneiro de Segunda Instância*, ECR I-7691, paragraph 13.

15 — Case C-459/93 *Thyssen Haniel Logistic* [1995] ECR I-1381, paragraph 13 of the judgment.

to the Harmonised System. [16] Moreover, the fact that they are described as '*similar to* video tuners' in Note 4 to heading 8528 in the current version of those notes demonstrates that they are *not* video tuners. To that extent, Deutsche Nichimen appears to be arguing that the classification made in Regulation No 884/94, which includes satellite receivers under subheading 8528 10 91 'video tuners', is incorrect. However, it then states that they cannot be included under the following subheading 8528 10 98 'other', because they are classified as 'video tuners' by Regulation No 884/94, thereby apparently assuming that the classification therein is correct (although denying it any retroactive effect). From all of the above, it concludes that the satellite receivers in issue cannot be classified under any of the subheadings of heading 8528 and thus cannot be classified under that heading at all.

35. There appear to me to be a number of flaws in that reasoning.

36. First, the national court wishes to ascertain only the correct heading for classification and not the relevant subheading. The question is whether the satellite receivers in issue are to be classified as 'television receivers' within the meaning of heading 8528; if so, the fact that they are not covered by any of its specific subheadings does not mean that they cannot fall within the residual subheading for 'other' apparatus.

37. Second, it is only if the classification in Regulation No 884/94 is correct, and in particular was correct at the material time, that it can preclude classification under subheading 8528 10 98 'other'; in that case, however, the question is already resolved because the correct classification is by definition subheading 8528 10 91. If, on the other hand, it was incorrect, then subheading 8528 10 98 is the logical classification for any 'television receiver' not identified in any other subheading.

38. Third, in any event, the fact that satellite receivers may be merely 'similar' to video tuners does not preclude their classification under the same subheading; General Rule 4 for the interpretation of the nomenclature [17] provides for goods to be classified 'under the heading appropriate to the goods to which they are most akin' if Rules 1 to 3 cannot provide an answer.

16 — These notes are published by the WCO and have been recognised by the Court as being an important aid to the interpretation of the scope of the various tariff headings, without having legally binding force (see, most recently, *Eru Portuguesa*, cited above in note 14, at paragraph 13 of the judgment).

17 — The Harmonised System and the Combined Nomenclature are each prefaced by the same six general rules for their interpretation which, having in the latter case been enacted by the Community legislature, are binding in Community law.

39. As regards the nature of the signal which a device must pass on in order to be regarded as a 'television receiver', Deutsche Nichimen argues that it must be the same as that provided by video tuners to video monitors which, it considers, must be the basic RGB signal as provided by a television camera and not, as in this case, a PAL standard video signal.

40. Such thinking seems to me to be misguided. The question being whether satellite receivers fall under heading 8528 or not, it makes no difference that they may not be video tuners under subheading 8528 10 91 as long as they can be 'other' apparatus without a screen under subheading 8528 10 98, and I can see no reason to exclude them from that category. In any event, as the national court points out in its order for reference, the terms of the heading and subheadings give no indication that any particular quality of signal is a necessary criterion for classification. The reference in the explanatory notes to the Harmonised System to the frequency of the signals sent by a video tuner to a video monitor need not concern items which are merely similar to (and must thus in some respects differ from) video tuners and there is certainly no reason why it should apply to 'other' equipment under a different subheading.

41. I conclude that heading 8528 was the appropriate classification for satellite receivers of the kind in issue between 1990 and 1992, none of the arguments to the contrary put forward by Deutsche Nichimen being sufficient to cast doubt on that conclusion.

42. Further support may be derived from the subsequent classification under that heading by the Commission in Regulation No 884/94. Whilst a regulation classifying goods under a particular tariff heading or subheading, being of a legislative nature, cannot have retroactive effect, [18] I pointed out in my Opinion in *Siemens* [19] that the form of such regulations, which generally state (as is the case with Regulation No 884/94) that classification is determined by the provisions of the general rules for the interpretation of the nomenclature and by the wording of the relevant headings and subheadings, suggests that the legislature takes the view that the classification enacted in fact follows from the legislation already in force.

43. The support provided by such a subsequent regulation — in so far as it confirms a conclusion already reached as to the proper classification — is of course confined to cases where, as here, there has been no intervening material change to the

18 — See Case 158/78 *Biegi* v *Hauptzollamt Bochum* [1979] ECR 1103, paragraph 11 of the judgment, and Case 196/80 *Anglo-Irish Meat Company* v *Minister for Agriculture* [1981] ECR 2263, paragraph 25.

19 — Case C-11/93 *Siemens Nixdorf* v *Hauptzollamt Augsburg* [1994] ECR I-1945, paragraph 17 of the Opinion.

wording of the nomenclature[20] and the validity of the regulation itself has not been called into question. It is, on the other hand, buttressed in this case by the fact that satellite receivers of the kind in issue have been classified under subheading 8528 12 since February 1998 in the explanatory notes to the Harmonised System. According to documents produced by the Commission, that classification was decided upon by the WCO's Harmonised System Committee after very full and detailed discussion and by the very considerable majority of 22 votes to 1.

— Heading 8529

44. Having reached the view that the national court's first question is to be answered in the affirmative, I consider it unnecessary to examine the second question concerning heading 8529. Moreover, as the national court points out, satellite receivers are not 'parts' in any normal acceptance of the term, but independent appliances.

20 — Although the subheadings of heading 8528 and their wording were quite extensively modified by Commission Regulation (EEC) No 2505/92 of 14 July 1992 amending Annexes I and II to Council Regulation (EEC) No 2658/87, OJ 1992 L 267, p. 1 — between the material period here and the adoption of Regulation No 884/94 — those amendments concerned only the dimensions, width/height ratios and scanning parameters of screen equipment, criteria which have no bearing on the classification in the present case.

45. However, if the Court should decide that goods of the type in issue are not themselves television receivers within the meaning of heading 8528 but 'parts suitable for use solely or principally with' such receivers, the national court's uncertainty as to the correct heading may be resolved as follows.

46. Note 2 to Section XVI states, in so far as is relevant:

'... parts of machines ... are to be classified according to the following rules:

(a) Parts which are goods included in any of the headings of Chapter ... 85 ... are in all cases to be classified within their respective headings.

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of

machines of the same heading... are to be classified with the machines of that kind. ...'

47. Since parts suitable for use solely or principally with television receivers have their own heading (they are goods included in a heading of Chapter 85, namely heading 8529), they fall to be classified under that heading in accordance with Note 2(a) and there is thus no need for recourse to Note 2(b).

Conclusion

48. In my opinion the Court should answer the Finanzgericht Düsseldorf's questions as follows:

Satellite receivers of the kind described in the order for reference were to be classified between 1990 and 1992 under heading 8528 of the Combined Nomenclature.