

OPINION OF ADVOCATE GENERAL JACOBS
delivered on 27 January 1994 *

My Lords,

1. Between 1989 and the end of 1991 Siemens Nixdorf Informationssysteme (hereafter 'Siemens Nixdorf') imported into Germany from an unspecified non-member State 'monitors for electronic data-processing machines, which were intended for displaying text and graphics within automatic data-processing and computer-integrated systems and which were not suitable for displaying images from composite video signals'. The German customs authority (Hauptzollamt Augsburg) classified the goods under heading 8543 of the Combined Nomenclature and charged duty at a rate of 7%. Siemens Nixdorf claimed that the goods should have been classified under heading 8471 of the Combined Nomenclature and that duty should therefore have been charged at a rate of 4.9%.

not elsewhere specified or included'. No one disputes that heading 8471 is the appropriate classification as regards goods imported after the entry into force of Commission Regulation (EEC) No 1288/91 of 14 May 1991 concerning the classification of certain goods in the Combined Nomenclature.¹ Article 1 of that regulation, in conjunction with point (2) in a table annexed to the regulation, removes any doubt that may previously have existed in that regard.
3. The dispute between the parties concerns only the period before the entry into force of Regulation No 1288/91. The issue is whether goods imported in that period should also have been classified under heading 8471, so that Regulation No 1288/91 merely clarified, rather than altered, the situation.
2. Heading 8543 covers 'electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter'. Heading 8471 covers 'automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data,
4. When the Hauptzollamt refused to grant a refund of customs duties in respect of goods imported before the entry into force of Regulation No 1288/91, Siemens Nixdorf appealed to the Finanzgericht München. That court took the view that the outcome

* Original language: English.

¹ — OJ 1991 L 122, p. 11.

of the case depended on the interpretation of Note 5(B) to Chapter 84 of the Combined Nomenclature. Note 5(B) provides as follows:

‘Automatic data-processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all the following conditions:

- (a) it is connectable to the central processing unit either directly or through one or more other units;
- (b) it is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

Such units presented separately are also to be classified within heading 8471.

Heading 8471 does not cover machines incorporating or working in conjunction with an automatic data-processing machine and performing a specific function. Such

machines are classified in the headings appropriate to their respective functions or, failing that, in residual headings.’

5. By order of 9 December 1992 the Finanzgericht München referred the following question to the Court:

‘Was the last paragraph of Note 5(B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff to be interpreted before Regulation No 1288/91 came into force as meaning that colour monitors, capable of accepting a signal only from the central processing unit of an automatic data-processing machine and not capable of reproducing a colour image from a composite video signal, did not perform a “specific function”?’

6. The Combined Nomenclature for the Common Customs Tariff is laid down in 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.² Under Article 12 of that regulation the Commission adopts each year by means of a regulation ‘a complete version of the Combined Nomenclature together with the corresponding autonomous and conventional rates of duty of the Common Customs Tariff, as it results from measures

² — OJ 1987 L 256, p. 1.

adopted by the Council or by the Commission⁷. In the period in which the disputed importations took place the applicable versions of the Combined Nomenclature were contained in the following Commission regulations: Regulation (EEC) No 3174/88 of 21 September 1988,³ Regulation (EEC) No 2886/89 of 2 August 1989⁴ and Regulation (EEC) No 2472/90 of 31 July 1990.⁵ Throughout the relevant period the terms of headings 8471 and 8543 did not vary. They remained as described in paragraph 2 above.

7. Written observations have been submitted by Siemens Nixdorf and the Commission, who are broadly in agreement as to the customs classification of the type of goods in question.

8. Siemens Nixdorf contends that heading 8471 was applicable even before the entry into force of Regulation No 1288/91. It bases that view on the wording of the last paragraph of Note 5(B) to Chapter 84 of the Combined Nomenclature. That paragraph does not exclude monitors of the type in question from heading 8471, since they are not capable of performing a specific function. Those monitors can only be used as part of a data-processing system. They are moreover an essential part of most personal computers, which are of no practical utility without such a monitor. The monitors in question cannot be used for receiving television programmes or for viewing videocassettes.

9. Siemens Nixdorf does not contend that Regulation No 1288/91 should be applied retroactively but regards its adoption as evidence that heading 8471 was appropriate in any event.

10. The Commission states that, according to the case-law of the Court, classification regulations — such as Regulation No 1288/91 — cannot be applied retroactively. The Commission cites *Biegi v Hauptzollamt Bochum*⁶ on that point. The Commission suggests, however, that it might be possible to regard Regulation No 1288/91 as simply having confirmed the pre-existing legal situation. It points out that the annex to Regulation No 1288/91 states that 'Classification is determined by ... Note 5(B) to Chapter 84'. None the less, the Commission observes that the national court regarded Regulation No 1288/91 as irrelevant and therefore asked a question about the interpretation of Note 5(B) to Chapter 84. The Commission accordingly concentrates on the interpretation of that note.

11. The Commission observes that the Explanatory Notes to the Nomenclature of the Customs Cooperation Council (Harmonized System) provide assistance in the interpretation of Note 5(B) to Chapter 84. The Commission refers to Part E of the general notes on Chapter 84 and to Part I(A) and

3 — OJ 1988 L 298, p. 1.

4 — OJ 1989 L 282, p. 1.

5 — OJ 1990 L 247, p. 1.

6 — Case 158/78 [1979] ECR 1103.

(D) of the notes on heading 8471. The first-mentioned provision reads as follows:

perform a specific function other than data-processing, are to be classified as follows:

(E) Machines incorporating or working in conjunction with an automatic data-processing machine and performing a specific function

the automatic data-processing machine must be classified separately in heading 8471 and the other machines in the heading corresponding to the function which they perform ...'

(...)

12. Part I(A) of the notes on heading 8471 states, in material part:

In accordance with the provisions of the last paragraph of Note 5 to Chapter 84, the following classification principles should be applied in the case of a machine incorporating or working in conjunction with an automatic data-processing machine, and performing a specific function:

'Digital data-processing machines usually consist of a number of separately housed interconnected units. They then form a "system".

(i) A machine incorporating an automatic data-processing machine and performing a specific function other than data-processing is classifiable in the heading corresponding to the function of that machine or, in the absence of a specific heading, in a residual heading, and not in heading 8471.

A complete digital data-processing system must comprise, at least:

(ii) Machines presented with an automatic data-processing machine and intended to work in conjunction therewith to

(1) A central processing unit which generally incorporates the main storage, the arithmetical and logical elements and the control elements; in some cases, however, these elements may be in the form of separate units.

- (2) An *input unit* which receives input data and converts them into signals which can be processed by the machine. (A) and (B) above as being parts of a complete system.

- (3) An *output unit* which converts the signals provided by the machine into an intelligible form (printed text, graphs, displays, etc.) or into coded data for further use (processing, control, etc.).
- Apart from central processing units and input and output units, examples of such units include:

- (1) *Additional input and output units* (punched card and punched tape units, printers, graph plotters, input-output terminals, etc.).

Two of these units (input and output units, for example) may be combined in one single unit.

These systems may include remote input or output units in the form of data terminals.'

13. Part I(D) of the notes on heading 8471 states, in material part:

'(D) Separately presented units

This heading also covers separately presented constituent units of data-processing systems. Constituent units are those defined in Parts

14. The Commission deduces from the provisions cited that separately housed units which are integral parts of a data-processing system come under heading 8471 if, by virtue of their design, they are not suitable for using except as part of a data-processing system. The Commission observes that it is clear from the order for reference that the colour monitors imported by Siemens Nixdorf can only be used as an integral part of a data-processing system.

15. The Commission therefore proposes that the answer to the question referred should

be that the last paragraph of Note 5(B) to Chapter 84 was to be interpreted, even before the entry into force of Regulation No 1288/91, as meaning that colour monitors capable of accepting a signal only from the central processing unit of an automatic data-processing machine and not capable of reproducing a colour image from a composite video signal did not perform a 'specific function'.

16. In my opinion, the approach recommended by the Commission is undoubtedly correct.

17. As regards first of all the relevance of Regulation No 1288/91, it is clear from the *Biegi*⁷ case that such a regulation cannot be applied retroactively. However, as Siemens Nixdorf and the Commission suggest, the adoption of Regulation No 1288/91 may be regarded as evidence that heading 8471 was in any event the appropriate classification for the type of goods in question. The third paragraph of Column 3 of the annex to the regulation states that the classification of colour monitors 'capable of accepting a signal only from the central processing unit of an automatic data-processing machine' and 'not capable of reproducing a colour image from a composite video signal' is determined 'by the provisions of general rules 1 and 6 of the Combined Nomenclature, Note 5(B) to Chapter 84 and the texts of CN codes 8471, 8471 92 and 8471 92 90'. That

certainly suggests that the authors of the regulation took the view that it followed from the pre-existing legislation that colour monitors of the type in question fell to be classified under heading 8471.

18. It is not however necessary to dwell at length on the possible relevance of Regulation No 1288/91, as a guide to the interpretation of the pre-existing legislation, since it is clear in my view that colour monitors of the type in question would still be classified under heading 8471 even if the regulation were disregarded entirely.

19. Even without the Explanatory Notes referred to by the Commission, the wording of Note 5(B) to Chapter 84 of the Combined Nomenclature does not leave much room for doubt. The first paragraph of Note 5(B) states that automatic data-processing machines may be in the form of systems consisting of a variable number of 'separately housed units' and that such units are to be regarded as part of the complete system if they are connectable to the central processing unit and specifically designed as part of such a system, meaning that they must be able to accept or deliver data in a form (code or signals) which can be used by the system. If those words are given their natural meaning, it seems to follow that the colour monitors in question are 'separately housed units' which are 'connectable to the central processing unit', are 'specifically designed as part of such a system' and are able to 'accept

⁷ — Cited in paragraph 10 above.

or deliver data in a form (code or signal) which can be used by the system'.

data-processing. Heading 8471 is therefore the correct classification.

20. Any doubts that might exist, on the basis of the wording of Note 5(B) to Chapter 84, would be due to the last paragraph of that note, which provides that heading 8471 does not cover machines incorporating or working in conjunction with an automatic data-processing machine and performing a specific function. A question arises as to the precise meaning of the term 'a specific function'. Does it mean a function not related to data-processing or can it include a function within that field? The issue appears to be resolved by Part E of the general note on Chapter 84 in the Explanatory Notes of the Customs Cooperation Council, which are an authoritative source for interpreting headings of the Combined Nomenclature.⁸ The aforesaid Part E makes it clear that a machine which incorporates or works in conjunction with an automatic data-processing machine is to be regarded as performing a specific function, and thus not classified under heading 8471, only if it performs a function 'other than data-processing'. A colour monitor which is 'capable of accepting a signal only from the central processing unit of an automatic data-processing machine and not capable of reproducing a colour image from a composite video signal', as the terms of the national court's question state, obviously does not perform a function other than

21. That is confirmed by another provision of the Explanatory Notes cited above. Part I(A) of the notes on heading 8471 states that a complete digital data-processing system must comprise, amongst other things, an 'output unit which converts the signals provided by the machine into an intelligible form (printed texts, graphs, displays, etc.)'. The colour monitors at issue in the present case are presumably output units which convert the signals provided by the machine into an intelligible form, namely images on a screen. It is of interest to note that in the German version of the Explanatory Notes, which was issued by the German Ministry of Finance and is presumably not an authentic version,⁹ the word 'displays' is rendered as 'Bildschirmanzeigen', which clearly implies the display of information on a screen.

22. It is in any event abundantly clear, in view of the terms of the Explanatory Notes referred to above, that even before the entry into force of Regulation No 1288/91 colour monitors of the type in question did not perform a specific function within the meaning of Note 5(B) to Chapter 84 of the Combined Nomenclature and that the correct tariff classification was heading 8471.

⁸ — Case 11/79 *Cleton v Inspecteur der Invoerrechten en Accijnzen* [1979] ECR 3069, paragraph 9.

⁹ — The official languages of the Customs Cooperation Council are English and French.

Conclusion

23. I am therefore of the opinion that the question referred to the Court by the Finanzgericht München should be answered as follows:

The last paragraph of Note 5(B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff was to be interpreted, even before the entry into force of Commission Regulation (EEC) No 1288/91, as meaning that colour monitors, capable of accepting a signal only from the central processing unit of an automatic data-processing machine and not capable of reproducing a colour image from a composite video signal, did not perform a 'specific function' and were to be classified under heading 8471.