JUDGMENT OF THE COURT (FIRST CHAMBER)
2 FEBRUARY 1978 [1]

Universiteitskliniek, Utrecht
v Inspecteur der Invoerrechten en Accijnzen, Utrecht
(preliminary ruling requested
by the Tariefcommissie, Amsterdam)

'Scientific apparatus'

Case 72/77

Common Customs Tariff — Importation free of customs duties — Scientific instrument or apparatus — Definition — Criteria
(Regulation No 1798/75 of the Council, Article 3)

The words 'scientific instrument or apparatus' appearing in Article 3 (1) of Regulation No 1798/75 refer to an instrument or apparatus possessing objective characteristics which make it particularly suitable for pure scientific research.

Since such a purpose must be assessed objectively, on the basis only of those characteristics, the fact that the instrument or apparatus is used, in industry or elsewhere, for commercial purposes does not of itself necessarily exclude its being of a scientific nature within the meaning of Regulation No 1798/75, and hence its right to exemption from customs duties under that regulation, provided that the other requirements laid down for those purposes are also satisfied.

In Case 72/77

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tariefcommissie (First Chamber), Amsterdam, for a preliminary ruling in the proceedings pending before that court between

UNIVERSITEITSKLINIEK, UTRECHT,

and

INSPECTEUR DER INVOERRECHTEN EN ACCIJNZEN, UTRECHT,

1 — Language of the Case: Dutch.

on the interpretation of Regulation No 1798/75 of the Council of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials (OJ 1975, L 184) and of implementing Regulation No 3195/75 of the Commission of 2 December 1975 (OJ 1975, L 316),

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. M. Donner and A. O'Keeffe, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The facts, the procedure and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. The Universiteitskliniek voor Hart- en Vaatchirurgie (University Clinic for Cardiac and Vascular Surgery), Utrecht, is part of that city's University Hospital, which is to be regarded pursuant to Article 4 of the Law on university teaching as a 'general hospital entirely attached as such to a Netherlands university for purposes of medical teaching and university medical research'.

On 6 January 1976 the Clinic applied to the Inspecteur der Invoerrechten en Accijnzen (Inspector of Import Duties and Excise), Utrecht, (hereinafter referred to as 'the Inspector' for exemption from import duties for an Acta M VI ultraviolet spectrophotometer under Article 30 (1) (d) of the Tariefbesluit (Tariff Decree) 1960.

In the present case that instrument is intended to be used for the analysis of blood samples. It allows the wavelengths of substances in the blood to be ascertained. The quantity of a particular substance contained in the patient's blood is then ascertained by using another spectrophotometer fitted with a filter made for each of those wavelengths.

The application stated that the instrument in question was a scientific apparatus, but also stated that that apparatus was to be used for the examination and treatment of patients.

2. By a decision of 16 January 1976 the Inspector dismissed the application on the ground that 'articles capable of

more general use cannot be regarded as scientific instruments and apparatus for the purposes of the provisions on duty-free admission'.

On 2 February 1976 the Clinic appealed against that decision, withdrawing what had been declared in its original application and stating that the instrument or apparatus in question was intended for pure scientific research and was not capable of general use.

That appeal was dismissed by a decision of the Inspector dated 27 February 1976, in which it is alleged that the brochure on the instrument made it plain that the instrument could also be used in industry and in laboratories for the purposes of quality control.

On 20 April 1976 the Clinic lodged an appeal before the Tariefcommissie (Administrative court of last instance in revenue matters), Amsterdam, against that dismissal. That court held that the issue was to be decided according to the provisions not of the Tariefbesluit 1960 but of Regulation No 1798/75 of the Council of 10 July 1975 'on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials' (OJ 1976, L 184, p. 1), in particular Article 3 thereof, and of implementing Regulation No 3195/75 of the Commission of 2 December 1975 (OJ 1975, L 316, p. 17). By a judgment of 2 May 1977, the Tariefcommissie decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

'1. Is the provision in Article 3 of Regulation No 1798/75 of the Council of the European Communities of 10 July 1975 solely based on a subjective criterion in respect of the scientific use of scientific apparatus if the question is raised of whether there exists a right to exemption from Common Customs Tariff duties under that regulation?

   If that question is answered in the negative:

2. Does the mere fact that the apparatus is used in industry or elsewhere for commercial purposes exclude the aforementioned right to exemption?

   If that question is also answered in the negative:

3. In the opinion of the Court of Justice do there exist different or additional criteria in the above-mentioned regulations on the basis of which the said right to exemption should be examined?'

In the grounds of the order making the reference, the Tariefcommissie sets out the following findings:

— that the imported apparatus is intended for a public establishment which is principally engaged in education and/or scientific research;

— that, as the Tariefcommissie understands from expert evidence, no apparatus of equivalent scientific value is being manufactured in the Community, which fact has not been contested by the Inspector;

— that therefore it remains to be decided whether the apparatus at issue is a purely scientific apparatus or is open to more general use;

— that it does not automatically follow from the above-mentioned regulations that apparatus which is capable of being used for more general purposes is not scientific apparatus.

3. Article 3 (1) and (4), the second paragraph of Article 4 and Article 5 of Regulation No 1798/75 of the Council provide as follows:

'*Article 3*

1. Scientific instruments and apparatus not included in Article 2 imported exclusively for educational purposes or for pure scientific research may be admitted free of Common Customs Tariff duties provided:

(a) they are intended for:

— either public establishments principally engaged in education or scientific research, including those departments of public establishments which are principally engaged in education or scientific research;

— or private scientific or educational establishments authorized by the competent authorities of the Member States to receive such articles duty-free

and provided:

(b) instruments or apparatus of equivalent scientific value are not being manufactured in the Community.

. . . . . .

. . . . . .

4. Normal equipment shall in all cases be excluded from duty-free admission unless it has certain characteristics not found in equipment manufactured in the Community.

Article 4

. . . . . .

The granting of duty-free admission shall be conditional on its being established, under the conditions laid down by implementing provisions adopted in accordance with the procedure referred to in Article 9, that instruments or apparatus of equivalent scientific value to those instruments or apparatus for which duty-free admission is requested are not being manufactured in the Community.

Article 5

The granting of duty-free admission to scientific instruments and apparatus sent as a gift to the establishments referred to in Article 3 (1) (a) shall not be subject to the conditions laid down in Article 3 (1) (b) and in the second subparagraph of Article 4.

However, it must be established under the conditions laid down by implementing provisions adopted in accordance with the procedure referred to in Article 9, that the gift of scientific instruments or apparatus under consideration has not been prompted by any commercial considerations on the part of the donor'.

4. A copy of the order making the reference was received at the Court Registry on 13 June 1977.

The Commission of the European Communities, represented by its Legal Adviser, Trevor Townsend, submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By an order of 6 October 1977, the Court decided to assign the case to the First Chamber in accordance with Article 95 of the Rules of Procedure.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The *Commission* first of all refers to the Florence Agreement, which was approved by the General Assembly of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its 5th session, in July 1950, and to which all the Member States of the EEC are parties except Ireland, which is expected to accede to it shortly.

The object of that Agreement is to promote the free exchange of ideas and knowledge by means *inter alia* of facilitating the importation of educational, scientific and cultural materials as defined in the preamble.

Thus under Article I of the Agreement, the materials listed in Annexes A to E which are products of the contracting States are not subject to customs duties and other charges on importation into a contracting State. Annex D refers precisely to 'scientific instruments or apparatus'.

Since the time when the Agreement was concluded, there has been considerable technical progress in virtually all the sectors covered by the Agreement. Although that development has not yet given rise to any problem, owing to the Agreement's flexibility, it was none the less specified that it was important that the Agreement should be applied as liberally as possible. That recommendation applies in particular to the scientific instruments and apparatus referred to in Annex D. It was also recommended that the concept of 'pure scientific research' should be so interpreted that only instruments or apparatus imported for commercial purposes should be unentitled to the exemption. Moreover, it has become clear that many countries regard the provisions of the Agreement as 'minimum' provisions and that consequently they frequently adopt a more liberal attitude. Several countries do not stipulate any condition regarding the purpose for which scientific instruments and apparatus are intended, whereas other countries do not lay it down as a condition that no equivalent instrument is being manufactured in their territory.

A Protocol on the Agreement was drawn up and approved by the General Assembly of UNESCO at Nairobi in the autumn of 1976 precisely for the purpose of extending the ambit of the Agreement, taking account of the technical progress achieved since its entry into force. The Commission took part in the preparatory work for that Protocol on behalf of the European Communities.

The Commission then goes on to examine the Community rules applicable in the present case. In this connexion, it points out that according to the Common Customs Tariff certain products falling within the ambit of the Florence Agreement are exempt from payment of customs duties. For the rest, each Member State which is party to the Agreement has applied the Agreement more or less at its discretion. Owing to the flexibility of the Agreement and in view of the fact that it contains no precise definition regarding several important subdivisions, in particular the concept of 'scientific apparatus', it appeared necessary to co-ordinate matters at Community level.

Thus on 10 July 1975 the Council adopted Regulation No 1798/75 'on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials'. The Commission adopted provisions for the implementation of that regulation in Regulation No 3195/75 of 2 December 1975.

The Commission analyses the various articles contained in those regulations, pointing out in particular that, while the Florence Agreement contains no definition of 'scientific instrument or apparatus', it also appeared impossible to incorporate such a definition into the Community regulations. It proved unfeasible even to draw up a list of instruments and apparatus which could be imported free of duty, owing to the continual development in scientific techniques.

Under those circumstances, in Regulation No 1798/75 the Council opted for a procedure for consultation within the framework of a special committee (the Committee on Duty Free Arrangements), with a view to ensuring close and effective collaboration between the Member States and the Commission. The Commission describes the principal stages of that procedure and recalls the decisions — listed in a table annexed to its written observations — which it has adopted in this field up to the present time. In its opinion, it emerges from those decisions that an apparatus is considered as 'scientific' only when, in comparison with apparatus normally used for commercial purposes, it possesses 'particular characteristics which make it an item specifically suited to scientific research'. As to assessing the conditions enabling it to be established whether or not an apparatus of 'equivalent scientific value' is being manufactured in the territory covered by the exemption, the same decisions show that such assessment is not carried out in the abstract but takes into account the actual use for which the articles in respect of which exemption is applied for are intended.

In the light of these points, the Commission endeavours to answer the questions raised, which in its opinion are best dealt with together.

The Commission recalls that the arrangements introduced by Regulation No 1798/75 ensure the implementation at Community level of certain provisions of the Florence Agreement on the duty-free importation of certain educational, scientific and cultural materials. The objectives pursued by that Agreement are reiterated in the first recital in the preamble to the said regulation, and the second recital states that customs duty-free admission of the aforementioned materials must be 'uniform throughout the Community'.

It is appropriate to start from these premises in interpreting Articles 3, 4 and 5 of Regulation No 1798/75 providing for the possibility of exempting two classes of materials from import duties:

— the 'scientific instruments and apparatus' referred to in Articles 3 (1), 4 and 5 (Annex D to the Florence Agreement), and
— the 'normal equipment' referred to in Article 3 (4).

The concept of 'scientific instrument or apparatus' appearing in Article 3 of that regulation is to be interpreted on the basis of an objective criterion. Therefore, in order to assess whether an instrument or apparatus can be regarded as 'scientific', it is necessary to base oneself, according to an objective assessment, on the 'characteristics' of the instrument or apparatus in question and not on the end to which the establishment or institution which has applied for exemption is proposing to use it. The adoption of a different criterion of interpretation would lead to unacceptable results, even on the practical level: in particular it would threaten the uniform application of the duty-free admission system provided for by Community law.

None the less, the assessment of objective characteristics must take into account the purpose for which the instrument or apparatus in question is suited by virtue of its objective characteristics. However, that purpose must also be assessed on the basis of objective criteria.

Under those circumstances, it is impossible for the classification of an instrument or apparatus to be influenced by the 'mere' fact that similar or identical instruments or apparatus are used in fields other than that of science. Thus the following should be regarded as scientific instruments or apparatus within the meaning of Regulations Nos 1798/75 and 3195/75:

— instruments or apparatus designed for scientific or educational purposes;
— instruments or apparatus originally designed for other purposes,

provided that they have been modified or fitted with an additional part for the purpose of making them specifically suitable for scientific or educational purposes.

On the other hand, the following should not generally be regarded as scientific instruments or apparatus within the meaning of the said regulations:

— instruments or apparatus designed for production or commercial purposes;
— household apparatus used in research laboratories.

Only 'scientific' instruments or apparatus as defined above, as well as normal equipment possessing certain characteristics not found in equipment manufactured in the Community, can benefit from the duty-free admission arrangements introduced by Regulation No 1798/75.

On the basis of these observations, the Commission proposes that the questions referred should be answered as follows:

'1. Whether or not an instrument or apparatus is scientific within the meaning of Article 3 of Regulation (EEC) No 1798/75 of the Council must be assessed on the basis of the objective characteristics of the said instrument or apparatus.

2. The mere fact that an instrument or apparatus is used for commercial or production purposes does not imply that there is no right to importation free of Common Customs Tariff duties under Regulation No 1798/75 and Regulation No 3195/75.

3. The expression 'scientific instrument or apparatus' within the meaning of Regulation No 1798/75 should be understood to mean an instrument or apparatus possessing particular characteristics which make it suitable for scientific research.'

III — Oral procedure

The Commission of the European Communities presented oral argument at the hearing on 16 November 1977.

The composition of the Chamber was modified, and it was decided, after hearing the views of the parties to the main action, to re-open the oral procedure at the hearing on 25 January 1978.

The parties to the main action having stated that they adhered to their submissions before the national court, the Advocate General delivered his opinion at that hearing.

Decision

1 By an order of 2 May 1977, which was received at the Court on 13 June 1977, the Tariefcommissie referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty questions on the interpretation of certain provisions of Regulation No 1798/75 of the Council of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials (OJ 1975, L 184, p. 1) and of implementing Regulation No 3195/75 of the Commission of 2 December 1975 (OJ 1975, L 316, p. 17).

2 Those questions have been referred in the context of a dispute between the Universiteitskliniek voor Hart- en Vaatchirurgie, Utrecht, and the Netherlands tax authorities over the importation into the Netherlands of an Acta M VI ultraviolet spectrophotometer.

3 The importer applied for exemption from import duties on the ground that the apparatus in question was intended for pure scientific research and was not capable of general use, but the tax authorities dismissed that application, stating that the instrument in question can also be used in industry and in laboratories for purposes of quality control and therefore, because it can be used in such ways, cannot be regarded as a scientific apparatus within the meaning of the provisions on exemption from customs duties.

4 In its first question the Tariefcommissie asks the Court to state whether the provisions in Article 3 of Regulation No 1798/75 are solely based on a subjective criterion in respect of the scientific use of scientific apparatus.

5 If the first question is answered in the negative, the said court asks whether the mere fact that the apparatus is used in industry or elsewhere for commercial purposes excludes a right to exemption from customs duties.

6 If this second question is answered in the negative, it is finally asked whether there exist different criteria in Regulation No 1798/75 of the Council and implementing Regulation No 3195/75 of the Commission on the basis of which the right to exemption from customs duties should be examined.

7 These questions should be examined together.

8 As stated in the first recital in the preamble to Regulation No 1798/75, that regulation is intended to 'facilitate the free exchange of ideas as well as the exercise of cultural activities and scientific research within the Community'.

9 In pursuit of such objective, that regulation ensures the implementation at Community level of the Florence Agreement, mentioned in the aforesaid recital, which was drawn up under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and entered into force on 21 May 1952.

10 For those purposes, Article 3 (1) of the regulation provides that scientific instruments and apparatus not included in Article 2 and not listed in Annex II, 'imported exclusively for educational purposes or for pure scientific research may be admitted free of Common Customs Tariff duties', provided that they also fulfil the conditions laid down in subparagraphs (a) and (b) of Article 3 (1).

11 The first recital in the preamble to the regulation provides that the importation into a Member State free of Common Customs Tariff duties of educational, scientific and cultural materials is to be allowed 'by all possible means'.

12 For the same purposes, the second recital in the preamble to the regulation at issue states that 'customs duty-free admission of educational, scientific and cultural materials must be uniform throughout the Community'.

13 Hence it follows that the assessment of whether or not an instrument or apparatus capable of being granted exemption from customs duties is of a 'scientific' nature within the meaning of Article 3 (1) of the regulation must be based upon the objective characteristics of that instrument or apparatus.

14 Those characteristics must be such as to make it particularly suitable for pure scientific research.

15 Although the first indent of Article 3 (3) defines the concept of pure scientific research as 'research carried out for non-commercial purposes', it is none the less true that the intended use of the instrument or apparatus in question must be assessed on the basis only of its objective characteristics and not in relation to the particular end to which the institution or establishment which applied for exemption from customs duty intends to use it.

16 For the purposes of such assessment, the fact that the use of the instrument or apparatus requires specific scientific knowledge can be evidence of its being of a scientific nature within the meaning of the aforesaid Article 3 (1).

17 For those reasons the appropriate answer to the questions referred to the Court is that the words 'scientific instrument or apparatus' appearing in

Article 3 (1) of Regulation No 1798/75 refer to an instrument or apparatus possessing objective characteristics which make it particularly suitable for pure scientific research.

18 Since such a purpose must be assessed objectively, on the basis only of those characteristics, the fact that the instrument or apparatus is used, in industry or elsewhere, for commercial purposes does not of itself necessarily exclude its being of a scientific nature within the meaning of Regulation No 1798/75, and hence its right to exemption from customs duties under that regulation, provided that the other requirements laid down for those purposes are also satisfied.

Costs

19 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

20 Since these proceedings are, in so far as the parties to the main action are concerned, in the nature of 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 (First Chamber)

in answer to the question referred to it by the Tariefcommissie by an order of 2 May 1977, hereby rules:

1. **The appropriate answer to the questions referred to the Court is that the words 'scientific instrument or apparatus' appearing in Article 3 (1) of Regulation No 1798/75 refer to an instrument or apparatus possessing objective characteristics which make it particularly suitable for pure scientific research.**

2. **Since such a purpose must be assessed objectively, on the basis only of those characteristics, the fact that the instrument or apparatus is used, in industry or elsewhere, for commercial purposes does not of itself necessarily exclude its being of a scientific nature within the**

meaning of Regulation No 1798/75, and hence its right to exemption from customs duties under that regulation, provided that the other requirements laid down for those purposes are also satisfied.

Bosco Donner O'Keeffe

Delivered in open court in Luxembourg on 2 February 1978.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 25 JANUARY 1978

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Tariefcommissie of the Netherlands, pending before which is an appeal by the Director of the Universiteitskliniek voor Hart- en Vaatchirurgie van het Academisch Ziekenhuis Utrecht (the University Clinic for Heart and Vascular Surgery of the Utrecht Teaching Hospital) against a ruling of the Inspecteur der Invoerrechten en Accijnzen te Utrecht (the Inspector of Import Duties and Excise of Utrecht) as to the liability for duty under the Common Customs Tariff of a piece of equipment imported on behalf of the Universiteitskliniek. That piece of equipment was manufactured by Beckman Instruments International S.A. of Geneva (which I shall call 'Beckman') and is described as an 'ACTA M-VI ultraviolet spectrophotometer'. It was intended for use in the biochemical laboratory of the Universiteitskliniek for the analysis of blood samples. The question at issue before the Tariefcommissie is essentially whether that piece of equipment is entitled to exemption from duty under the Community legislation relating to the importation free of Common Customs Tariff duties of 'educational, scientific and cultural materials', i.e. Council Regulation (EEC) No 1798/75 of 10 July 1975 and Commission Regulation (EEC) No 3195/75 of 2 December 1975.

The preamble to that Council Regulation refers to the Agreement on the Importation of Educational, Scientific and Cultural Materials, generally known as the 'Florence Agreement', drawn up under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO). To that Agreement, which entered into force on 21 May 1952, all the Member States of the Community, with the exception of Ireland, are parties. We