JUDGMENT OF THE COURT (Second Chamber)
29 January 1985 *

In Case 234/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht München [Finance Court, Munich] for a preliminary ruling in the proceedings pending before that court between

Gesamthochschule Duisburg

and

Hauptzollamt München-Mitte [Principal Customs Office, Central Munich]

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 (Official Journal 1975, L 184, p.1),

THE COURT (Second Chamber),

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

**

gives the following

* Language of the Case: German.

** after considering the observations submitted on behalf of the Commission of the European Communities, by Jörn Sack, a member of its Legal Department,

after hearing the Opinion of the Advocate General delivered at the sitting on 25 October 1984,

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 26 September 1983, which was received at the Court on 14 October 1983, the Finanzgericht München referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty four questions 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 (Official Journal 1975 L 184, p.1). That regulation was adopted for the purpose of implementing the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials (United Nations Treaty Series, Volume 131, 1952, No 1734, p. 26).

2 The questions were raised in the context of an application brought before the national court by the Gesamthochschule Duisburg (the plaintiff in the main proceedings) for the annulment of the decision of 17 April 1979 in which the Hauptzollamt München-Mitte (the defendant in the main proceedings) refused to permit importation free of customs duty of a computer system called a microprocessor development system which the plaintiff in the main proceedings imported from the United States of America on 8 August 1978 together with a card-entry programme module which formed part of the system, on the ground that it was not a scientific instrument or apparatus within the meaning of the aforementioned regulation.

3 It appears from the order for reference that the system at issue is composed of several individual elements, notably a mother board with serial interface and resident operating software, a real time adaptor, twin floppy disk drive in separate housing and operating software stored on a diskette. The system is also equipped with an external adaptor, which together with other modules is housed on a separate board, and a blank board connected to the mother board via the data, address and pilot wires. The microprocessor is linked to a display panel console and a programme module to make up the 'Zilog Development System for Microcomputer Z 80'. The system is used by the plaintiff in the main proceedings in a research project on 'non-parametric methods of signal detection'.

4 Before the national court the plaintiff in the main proceedings claimed that the system at issue was particularly suitable for scientific research since it was equipped with a processor which at the time was uniquely suitable for setting up signal detectors for use in its research project. Moreover, it could be adjusted by means of appropriate modifications to the needs of whatever scientific experiment was to be carried out. Substitution of an external circuit for the controlling microprocessor module made it possible to supervise and analyse experiments, which was an essential part of scientific activities. The plaintiff in the main proceedings further claimed that the scientific nature of the system was demonstrated particularly by the fact that special technical knowledge was required for its use. On the other hand, the particular characteristics and properties of the system were of little value to other users, so that it was practically confined to the scientific field. Since, therefore, the exemption to the main item of equipment, it was also applicable to the programme module as an integral part of the whole system.

5 Before the national court the defendant in the main proceedings contended that the system did not possess the characteristics of a scientific instrument or apparatus within the meaning of Article 3 of Regulation No 1798/75. The mere fact that an instrument or apparatus was suitable for carrying out a research project was not enough to give it a scientific nature, in view of the definition given to that term by the Court in its judgment of 2 February 1978 (Case 72/77, *Universiteitskliniek* v *Inspecteur der Invoerrechten en Accijnzen*, [1978] ECR 189). It must display specific characteristics and properties that were typical of scientific use. However, the system at issue did not possess such characteristics; rather, it was an all-purpose system. Similar systems were used for similar purposes both in scientific establishments and in industry. Moreover, use of the microprocessor development system did not in fact require special technical knowledge.

6 In order to resolve that issue the Finanzgericht submitted the following questions to the Court of Justice:

'How is Article 3 (1) of Regulation No 1978/75 of the Council of 10 July 1975 (in its original version) to be interpreted as regards the phrase "scientific instruments and apparatus"?

(1) Does the first indent of Article 3 (3) of Regulation No 1798/75, as amended by Regulation No 1027/79 of 8 May 1979, contain an appropriate interpretation of the words "scientific instruments and apparatus" within the meaning of the original version of Article 3 (1) of Regulation No 1798/75, and is the first-mentioned provision therefore to be regarded as applying in substance even in relation to the period before its entry into force on 1 January 1980?

If Question 1 is answered in the affirmative:

(2) Does the same apply to the interpretation of the words "objective technical characteristics" by Article 5 (1) of Regulation No 2784/79 of 12 December 1979?

(3) What is the correct interpretation of the words "scientific activities" in the first indent of Article 3 (3) of Regulation No 1798/75, as amended by Regulation No 1027/79? Do they also cover, in addition to pure scientific and applied research, activities for developing new products, techniques and processes or improving existing ones on the basis of scientific knowledge and by applying scientific methods, and is it relevant whether such activities are carried on within scientific establishments or elsewhere? What other criteria may be relevant in order to distinguish scientific activities from other activities?

If Question 1 is answered in the negative:

(4) What are the criteria determining whether an instrument or apparatus is particularly suitable, by reason of its objective characteristics, for pure scientific research?'

7 In the statement of reasons for its order, the Finanzgericht indicates that, in its view, the first two questions should be answered in the affirmative. Imported instruments and apparatus must simultaneously satisfy two conditions, namely, they must be scientific in nature and they must be intended for pure scientific research, so that the category of exempt goods may be defined independently of their prescribed use for pure scientific research and solely on the basis of their objective

characteristics. Scientific instruments and apparatus may therefore be distinguished from similar non-scientific articles according to the results which they make it possible to obtain and their scientific nature may be assessed by reference to the extent to which they are mainly or exclusively suited for use in scientific work.

8 With regard to the second question, the Finanzgericht considers that the objective technical characteristics referred to in Article 5 of Regulation No 2784/79 are not just those which result from the construction of the instrument or apparatus or from adjustments to it permitting it to obtain high-level performances above those normally required for industrial or commercial use, but also other properties which are important with regard to the use of such an instrument or apparatus for scientific work, such as the possibility of adjusting it to the requirements of whatever scientific experiment is to be carried out.

9 Finally, in its observations concerning the third question, the Finanzgericht states that instruments and apparatus do not lose their scientific nature merely because they are used not just in scientific research but in industrial and commercial fields as well. The decisive question is whether the activities for which an instrument or apparatus is mainly or exclusively suited by reason of its objective characteristics are scientific by their very nature, that is to say, are such as to require scientific knowledge and involve the application of scientific methods.

10 The parties to the main proceedings did not submit observations to the Court. The Commission submitted observations broadly in agreement with the Finanzgericht.

11 The Commission proposes that the first and second questions should be answered in the affirmative, since the definitions given by the Council were merely intended to clarify the concept of scientific instruments and apparatus in the light of the Court's judgment in the *Universiteitskliniek* case. Both that judgment and the

Council's new regulation state that the scientific nature of an instrument or apparatus is to be determined with reference to its objective characteristics, that is to say, according to the uses to which it may be put rather than the purposes for which it is actually used. If instruments or apparatus must be exclusively or at least mainly suitable for scientific research, it follows that those which are equally suitable for industrial uses cannot be imported free of customs duty.

12 With regard to the second question, the Commission considers that the idea which underlies the definition of the term 'objective technical characteristics' given by Article 5 of Regulation No 2784/79 is also relevant to the interpretation of Article 3 (1) of Regulation No 1798/75 in its unamended version, the more so because such a definition corresponds to the legal practice in most of the States which are parties to the Florence Agreement. No account may be taken for that purpose of characteristics other than those which result from the actual construction of the instrument or apparatus. Those characteristics must make it possible to obtain high-level performances above those normally required for industrial or commercial use. Alternatively, those characteristics must exist with reference to the purpose for which the instrument or apparatus is to be mainly used. On the other hand, the adaptability of the apparatus is not in itself sufficient to establish its scientific nature.

13 With regard to the third question, the Commission considers that the term 'scientific activities' in the first indent of Article 3 (3) of Regulation No 1798/75, in the version in force since 1 January 1980, is broader than the term 'pure scientific research' and must be interpreted as meaning activities intended to further the acquisition, development, exposition or dissemination of scientific knowledge and presupposing the possibility of obtaining high-level performances in terms of precision and comprehensive, in-depth treatment of the subject-matter. On the other hand, the question whether those activities require scientific knowledge or involve the application of scientific methods is not decisive.

14 The Commission considers that in view of the answers it has suggested to the first three questions it is unnecessary to give a separate answer to the fourth question.

The legal provisions relevant to the case

15 Article 3 (1) of Regulation No 1798/75 of the Council, in its original version, was worded as follows:

'(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.'

The first indent of Article 3 (3) of Regulation No 1798/75, in its original version, provided that for the purposes of that article:

' "pure scientific research" shall mean research carried out for non-commercial purposes'.

16 The effect of Council Regulation No 1027/79, amending Regulation No 1798/75, is that the words 'for educational purposes or for pure scientific research' in the introductory passage to Article 3 (1) were replaced by the words 'for non-commercial purposes'.

17 Moreover, the first indent of Article 3 (3) of Regulation No 1798/75, in the form given to it by Regulation No 1027/79, introduced the following definition of a scientific instrument or apparatus which was not to be found in the original version of that regulation:

'(3) For the purposes of this Article:

"a scientific instrument or apparatus" shall mean any instrument or apparatus which by reason of its objective technical characteristics and the results which it makes it possible to obtain is mainly or exclusively suited to scientific activities.'

18 For the implementation of Regulation No 1027/79, the Commission adopted, pursuant to Article 9 (1) of Regulation No 1798/75, adopted Regulation No 2784/79, Article 5 of which defines the concept of 'objective technical characteristics', introduced by Regulation No 1027/79, as follows:

'those characteristics resulting from the construction of that instrument or apparatus or from adjustments to a standard instrument or apparatus which make it possible to obtain high-level performances above those normally required for industrial or commercial use.'

Subsidiarily, reference is to be made, according to the same paragraph,

'. . .
to the general uses in the Community of instruments or apparatus of the type for which duty-free admission is requested. If this examination shows that the instrument or apparatus in question is used mainly for scientific purposes, it shall be deemed to be of a scientific nature.

Retroactive application of provisions of Community law

19 Before replying to the questions submitted by the national court, it may be observed that the questions raise the general issue of whether a provision of

Community law may be relevant to the interpretation of another provision adopted earlier, with regard to facts which arose when the earlier provision was in force.

20 In that connection, it may be recalled that the Court has repeatedly held that the principle of legal certainty requires that a regulation should not be applied retroactively, regardless of whether such an application might produce favourable or unfavourable effects for the person concerned, unless a sufficiently clear indication can be found, either in the terms of the regulation or in its stated objectives, which allows the conclusion to be drawn that the regulation was not merely providing for the future.

21 However, the questions submitted in this case may be understood as meaning that the national court wishes the Court of Justice to consider whether the relevant provisions of Regulation No 1798/75 may be interpreted in the same way as the provisions adopted later. In fact, nothing prevents a court from deciding that a new provision has not modified the substance of an earlier one.

The first and second questions

22 The first two questions are closely related, inasmuch as both refer to the characteristics which constitute a scientific instrument or apparatus, and may therefore be taken together.

23 With regard to the scientific nature, within the meaning of Article 3 (1) of Regulation No 1798/75 in its original version, of an instrument or apparatus which may be imported free of customs duty, the Court points out that it held in the *Universiteitskliniek* case that that criterion must be assessed on the basis of the 'objective characteristics' of the instrument or apparatus and that those characteristics must make it 'particularly suitable for pure scientific research'.

24 That interpretation is based on the objectives defined in the first recital in the preamble to the regulation, which states that importation into a Member State free of Common Customs Tariff duties of educational, scientific and cultural materials

is to be permitted 'by all possible means', and in the second recital, which states that 'duty-free admission of educational, scientific and cultural materials must be uniform throughout the Community'.

25 Consequently, when the Court referred, in the aforementioned judgment, to the 'objective characteristics' of instruments or apparatus, it did not intend to interpret the concept at issue restrictively, but rather was making clear that it must be assessed objectively, that is to say, without any regard to the particular purposes for which the importing body or establishment intends to use the instrument or actually does use it.

26 Since therefore it is the uses to which a scientific instrument or apparatus may objectively be put that determine its scientific character, namely its capacity to perform certain activities, that capacity must be assessed in the light of the way in which it is constructed and the results which it makes it possible to obtain.

27 It must be emphasized in that connection that the criterion of being 'mainly or exclusively suited' corresponds exactly to the criterion of being 'particularly suitable', used by the Court. However, it must be pointed out that that criterion requires only that the instrument or apparatus must be primarily suitable for scientific activity without excluding the possibility that the instrument or apparatus might also be, even if only secondarily, suitable for other purposes, such as, for example, industrial uses.

28 With regard to the fact that, according to the Court's interpretation of it, Regulation No 1798/75 is concerned with the suitability of a scientific instrument or apparatus for 'pure scientific research', while suitability for 'scientific activities' is at first sight a broader term than 'pure research', it must be noted that any possibility of an erroneous interpretation of that term is excluded by the fact that it is defined by the first indent of Article 3 (3) of Regulation No 1798/75 as 'research carried out for non-commercial purposes'.

29 The consequence of the foregoing is that the term 'scientific instruments and apparatus' in Article 3 (1) of Regulation No 1798/75, in its original version, must be defined on the basis of the 'objective technical characteristics' of the instrument or apparatus, including both its construction and the results which it makes it possible to obtain.

30 With regard to the question raised by the national court as to whether the scientific nature of an instrument or apparatus within the meaning of Regulation No 1798/75 may be determined solely by reference to the above-mentioned criteria or whether other properties of the instrument or apparatus may also be taken into account, it must be stated that criteria which do not relate either to the construction or to the performance of an instrument or apparatus are inappropriate for the purpose of assessing the scientific nature of the instrument or apparatus, since that nature can only be assessed by an objective and functional approach.

31 For the reasons set out above, the reply to the first and second questions must therefore be that the term 'scientific instruments and apparatus' in Article 3 (1) of Regulation No 1798/75, in its original version, must be defined on the basis of the 'objective technical characteristics' of the instrument or apparatus in question, having regard both to its construction and to the results which it makes it possible to obtain.

The third question

32 With regard to the third question, which seeks an interpretation of the term 'scientific activities', attention has been drawn above to the fact that that term is equivalent to 'research carried out for non-commercial purposes'. Since scientific research has as its object the acquisition and development of scientific knowledge, it follows that the terms in question must be interpreted as referring to the acquisition and development of scientific knowledge.

33 Consequently, although, as the Court held in the *Universiteitskliniek* case, the fact that it is necessary to possess scientific knowledge in order to use an instrument or apparatus may be an indication of its scientific nature for the purposes of

Article 3 (1) of Regulation No 1798/75, the fact that certain activities presuppose scientific knowledge and involve the application of scientific methods does not automatically give them a scientific nature, because those criteria are only of secondary importance. They are thus only relevant to cases in which, although the objective characteristics of the instrument or apparatus tend to indicate that it is of a scientific nature, they are not sufficient to determine the question unequivocally.

34 With regard to the question raised by the national court as to whether or not the scientific activities need take place in scientific establishments, it must be noted that, according to Article 3 (1) of Regulation No 1798/75, the scientific instruments and apparatus must be intended for scientific establishments and that excludes the possibility of carrying on the scientific activities concerned outside such establishments.

35 The reply to the third question must therefore be that the term 'scientific activities', which refers to research carried out for non-commercial purposes, denotes activities aimed at the acquisition and development of scientific knowledge.

The fourth question

36 Since the fourth question was only submitted in case the first one should be answered in the negative, it no longer has any purpose.

Costs

37 The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Finanzgericht München, by an order dated 26 September 1983, hereby rules:

1. **The term 'scientific instruments and apparatus' in Article 3 (1) 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 must be defined on the basis of the 'objective technical characteristics' of the instrument or apparatus in question, having regard both to its construction and to the results which it makes it possible to obtain.**

2. **The term 'scientific activities', which refers to research carried out for non-commercial purposes, denotes activities aimed at the acquisition and development of scientific knowledge.**

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 29 January 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber