OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 7 March 1985 *

Mr President,
Members of the Court,

1. These proceedings concern a reference for a preliminary ruling by the Finanzgericht [Finance Court] Baden-Württemberg in a dispute pending before it between Deutsche Forschungs- und Versuchsanstalt für Luft- und Raumfahrt [German Aerospace Research and Testing Institute], Cologne, (hereinafter referred to as 'the Institute') and the Hauptzollamt [Principal Customs Office] Stuttgart-West. In particular, the Finanzgericht asks the Court to rule on the validity and effect of a Commission decision concerning the importation of educational, scientific or cultural materials free of Common Customs Tariff duties.

In November 1979 the Institute imported from the United States of America into the Federal Republic of Germany an apparatus described as 'Signal Analyzer HP 5420 A with interface' for use in a project relating to 'research into surge noise, industrial noise, the structure of turbulence and noise production'. The Institute asked the competent customs authorities (Hauptzollamt Stuttgart-West) to grant it an exemption from duty. Initially the Hauptzollamt did so, albeit it on a provisional basis. Subsequently, however, in the light of the findings of the Zolltechnische Prüfungs- und Lehranstalt München [Customs Laboratory and Training College, Munich] the customs authorities withdrew the exemption and, by a notice of rectification of 30 July 1981, charged the Institute import duty of DM 7 240. The ground given for its decision was that the apparatus was not of a scientific nature.

Following the dismissal of its objection, the Institute brought an action before the Finanzgericht Baden-Württemberg claiming that the apparatus made it 'possible to examine with considerable precision the coherence and phase relationship between two signals measured in turbulent currents' and therefore could be used to conduct research into 'the origin and structures of turbulence and into the causes of noise'. The scientific nature of the apparatus, even without the interface imported at the same time, was therefore beyond doubt. However, the customs authorities maintained their position and claimed that they were bound by Commission Decision 82/932/EEC of 20 December 1982 in which the Commission denied the scientific character of an apparatus which was of the same type and make but which was not equipped with an interface (Official Journal 1982, L 383, p. 6).

By an order of 15 March 1984, the Eleventh Senate of the Finanzgericht stayed the proceedings and, pursuant to Article 177 of the EEC Treaty, referred to the Court for a preliminary ruling on the following questions:

(1) Is Commission Decision 82/932/EEC of 20 December 1982 valid?

(2) If the answer to the first question is in the affirmative, does the decision apply not only to the apparatus expressly mentioned therein but also to all other apparatuses of the same type and make?

* Translated from the Italian.

2. The order for reference is extremely short. The Finanzgericht's doubts as to the validity of the contested decision are — as it states — based on 'formal and substantive' grounds and are founded on the Court's judgment of 17 March 1983 in Case 294/81 (*Control Data* [1983] ECR 911). In any event it wishes to know whether the decision applies to all 'Hewlett Packard-Digital Signal Analyzer, Model 5420 A' apparatuses or only to 'the apparatus of that type which is the subject of an application' submitted by the Federal Republic of Germany on 18 June 1982.

Additional light is shed on the two questions by a letter which the Finanzgericht sent on 17 November 1983 to the Hauptzollamt and which is among the papers before the Court. According to the Finanzgericht, where customs authorities apply a Commission decision which can no longer be challenged under Article 173 of the Treaty in respect of a specific imported article, ultimately the legal protection offered to the importer is reduced. Should the customs authorities then wish to obtain a new decision from the Commission, that decision, if it were different to the earlier decision, would take the place of the decision of the court before which the case was pending. The Finanzgericht took the view that the only way out of that *impasse* was to ask the Court of Justice for a preliminary ruling.

3. Let us now consider the first question. It may be noted that neither the plaintiff in the main proceedings nor the Finanzgericht states clearly why there is any doubt as to the validity of the decision. As has been stated, however, it is clear from the order that the Finanzgericht considers that that decision contains formal defects and errors of law and, in particular, that it infringes the rules which define the scientific nature of an apparatus. The Finanzgericht's reference to the judgment in *Control Data* can be read only in that sense.

I will begin by considering the formal objections. It is well known that such decisions are commonly criticized for lack of an adequate statement of grounds. I do not believe, however, that such criticism may be levelled at the decision in question; the statement of the grounds on which it is based is indeed short but not to the point of constituting an infringement of essential procedural requirements. The Court dealt expressly with that problem in its judgment of 25 October 1984 in Case 185/83 ([1984] ECR 3623). The Court held that although the statement of reasons required by Article 190 of the Treaty must disclose clearly the reasoning of the Community authority in such a way as to make the parties concerned aware of the reasons for the measures and thus enable them to defend their rights, it is not necessary for that body to give details of all the factual and legal aspects which it has taken into account.

The Court stated further that the question of whether or not the statement of grounds satisfies those requirements is to be settled by reference not only to the wording of the decision but also to its context and to all the rules governing the matter in question. In this case the brevity of the decision does not prevent the statement of grounds from satisfying the minimum requirements of Article 190. The decision is addressed to the Member States, whose experts took part in the sessions of the Committee on Duty-Free Arrangements and are sufficiently familiar with the subject to be able to assess the scope of the decision. Moreover, the decision contains the essential information which enables the scientific institute concerned or the importing undertaking to assess possible defects such as manifest error or misuse of power (paragraphs 38 and 39 of the decision).

Thus the statement of grounds of a decision relating to exemption from customs duty must be assessed on the basis of those simple principles. Moreover, as has been stated, if they are applied to the decision in question, it must be concluded that it is not open to criticism. Nor would it appear to be vitiated on substantive grounds. As we know, the Finanzgericht believes that it is possible to establish the contrary on the basis of the judgment in *Control Data.* However, I do not consider that the reference to that case is relevant. In that case the Commission had claimed that a calculator could, by definition, never be regarded as a scientific apparatus. It has not, however, made that mistake in this case. In this instance it in no way relied upon generalized definitions; it reached its decision by examining the characteristics of the apparatus in the light of the criteria laid down in the Community rules.

4. In Question 2 the Finanzgericht seeks to establish the effect of the Commission's decisions concerning exemption from customs duties. Such measures are adopted pursuant to Article 7 (6) of Regulation (EEC) No 2784/79 (Official Journal 1979, L 318, p. 32). They are notified to all the Member States within two weeks of their adoption and they are published in the Official Journal (L Series).

The decisions may be positive or negative. Positive decisions contain a statement that the instrument or apparatus satisfies the conditions required for its admission free of duty. It is clear that such a decision is binding on the customs authorities of the States in respect not only of the specific apparatus imported but also for all the apparatuses of the same type and make. On the other hand, since the Commission's choice is determined by technical progress the effect of those decisions must be subject to a time-limit. In that respect it may be possible to apply by analogy Article 8 of Regulation No 2784/79, according to which authorizations for duty-free admission are as a rule valid for six months.

As regards negative decisions, it is common knowledge that duty-free admission may be refused: (a) because the instrument is not of a scientific nature or (b) because apparatuses of equivalent scientific value are manufactured within the Community. What is the scope of such decisions? For those which fall under (b) the reply is relatively easy. As I pointed out in my opinion in Case 4/84 *Goethe Universität,* the Community rules require that the decision as to equivalence is based on consideration of the characteristics of the apparatus in relation to the *specific* work to be carried out or, to use the Court's expression, in relation to the 'expériences auxquelles l'utilisateur (l')a destiné'. It follows that the decision will be individual. It will therefore apply only to the apparatus in question.

It is even easier to resolve the position of decisions under (a). As with the positive decisions, they are effective *erga omnes.* However, since technical progress is not retrograde, their effect is not subject to time-limits. Therefore once an apparatus is declared not to be of a scientific nature, the Member States must refuse to admit free of duty forever all apparatuses of the same type and make. Does that mean that, as the Finanzgericht fears, the legal protection offered to the importer is reduced? In my view these proceedings in themselves already provide a reply to that question. The importer continues to enjoy all his rights.

A final consideration: unlike the apparatus which was the subject of Decision 82/932, the apparatus which is in dispute before the

Finanzgericht is equipped with an 'interface', in other words with an instrument designed to make possible or to facilitate its connection to other apparatuses. However, that fact has no effect whatsoever on the conclusions which I have set out above. There are two possibilities: either the interface is an autonomous instrument and therefore the question may be raised whether it qualifies for duty-free admission; or, as seems more likely, it is an accessory and in those circumstances, in accordance with the Community rules, its treatment is the same as that for the main apparatus (see most recently judgment of 15 November 1984 in Case 236/83 *Universität Hamburg* v *Hauptzollamt München-West* [1984] ECR 3849).

5. In the light of the foregoing considerations, I propose that in reply to the questions referred to it by the Finanzgericht Baden-Württemberg by an order of 15 March 1984 in the proceedings between Deutsche Forschungs- und Versuchsanstalt für Luft- und Raumfahrt, Cologne, and Hauptzollamt Stuttgart-West, the Court should state as follows:

(1) Commission Decision 82/932 of 20 December 1982 establishing that the apparatus described as 'Hewlett Packard-Digital Signal Analyzer, model 5420 A' may not be imported free of Common Customs Tariff duties is valid.

(2) That decision must be interpreted as applying not only to the apparatus which is expressly mentioned therein, but to all the apparatuses of the same type and make.