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

Mr President,
Members of the Court,

1. Once again the Court is called upon to interpret Regulation (EEC) 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).

In 1979 the Land Niedersachsen imported from the United States of America into the Federal Republic of Germany an 'AS-50' auto-sampler manufactured by the Perkin-Elmer Corporation for use at the Institut für tropischen und subtropischen Pflanzenbau [Tropical and Subtropical Plant Institute] in measurements carried out with an atom-absorption spectrophotometer. The spectrophotometer, an 'AAS M 432', was manufactured by Bodenseewerk Perkin-Elmer & Co. GmbH of Überlingen, a German subsidiary of the United States undertaking.

The case was examined by the Zolltechnische Prüfungs- und Lehranstalt [Customs Laboratory and Training College] in Berlin and subsequently the Hauptzollamt [Principal Customs Office] Friedrichshafen refused to grant an exemption from customs duty for the imported apparatus. It found, as is stated in the reasons for its decision, that the spectrophotometer was manufactured in the Community and that the auto-sampler could not be regarded as an independent scientific instrument. The importer then brought an action against that decision before the Finanzgericht [Finance Court] Baden-Württemberg. It maintained that the auto-sampler was an accessory of the spectrophotometer; the Hauptzollamt, however, contended that only products specially designed for the main apparatus could be regarded as accessories and that as such they could not be regarded as independent scientific instruments.

With those arguments before it the Finanzgericht commissioned an expert opinion from Professor H. Sternbach of the Max-Planck Institute for Experimental Medicine in order to establish the precise nature of the auto-sampler. He stated that the auto-sampler was in the mechanical and technical sense an accessory of the spectrophotometer, the scientific nature of which was not in doubt. A large number of measurements were taken with the spectrophotometer and the auto-sampler made it possible for the solutions to be measured to be put in consistently. It therefore performed a function which could not be carried out manually while ensuring the necessary reliability of the measurements. In other words, the spectrophotometer was capable of running without an auto-sampler, but the auto-sampler was necessary for it to perform the specific function for which it had been designed by the manufacturers.

By an order dated 7 February 1984 the national court stayed the proceedings and referred the following questions to this Court for a preliminary ruling under Article 177 of the EEC Treaty:

(1) What are 'accessories' within the meaning of Article 3 (2) of the regulation?

   (a) Must products which were imported before 1 January 1980, in order to

* Translated from the Italian.

be accessories within the meaning of Article 3 (2) of the regulation, be specially designed for the main apparatus (see the definition given by Article 12 of Commission Regulation (EEC) No 2784/79 of 12 December 1979 laying down provisions for the implementation of Council Regulation (EEC) No 1798/75, a provision which did not enter into force until 1 January 1980; Official Journal, L 318, of 13 December 1979, p. 32) and, if so, what determines whether an accessory is 'specially designed' for the main apparatus — objective and technical criteria, or the function envisaged for the accessory by the manufacturer, or the tasks for which it is actually to be used by the user?

(b) Does the concept of accessory in relation to the main apparatus further presuppose its non-autonomous character and, if so, how is that character to be determined — by applying mechanical and technical criteria, or according to the function envisaged for the accessory by the manufacturer, or according to the tasks for which it is actually to be used by the user?

(2) What does 'required for the operation of' in Article 3 (2) of the regulation mean? Does it imply that, without the accessory, the main apparatus does not 'run' in the mechanical and technical sense, or does not properly perform the function envisaged by the manufacturer or does not fulfil the tasks for which it is actually to be used by the user?

(3) How is the phrase '[scientific instruments and apparatus] which qualify for duty-free admission' in Article 3 (2) of the regulation to be understood? Does it imply that a main apparatus may be regarded as qualifying for duty-free admission when it has been manufactured within the customs territory and has therefore not been imported, but would, if imported, have been exempted from customs duty as a scientific apparatus under Article 3 (1) of the regulation, or does the duty-free status of the main apparatus presuppose that it was in fact imported free of duty under Article 3 (1)?

(4) What are 'scientific instruments and apparatus' within the meaning of Article 3 (1) of the regulation? Do those terms require the apparatus to be an autonomous unit, and, if so, how is that characteristic to be determined — by applying mechanical and technical criteria, or according to the function envisaged for the apparatus by the manufacturer, or according to the tasks for which it is actually to be used by the user?

2. There can be no doubt that of all those questions it is Question 3 that is decisive: that is, the question whether Regulation No 1798/75 enables accessories to be imported duty free when the apparatus for which they are intended has not been imported. The answer to that question must logically precede the answers to the others, which concern the definition of an accessory for if Question 3 is answered in the negative, Questions 1, 2 and 4 become redundant or at least irrelevant to this case.

In fact Question 3 cannot be answered otherwise than in the negative. That conclusion is based on the Court's judgment of 15 November 1984 in Case 236/83 *Universität Hamburg* v *Hauptzollamt München-West* [1984] ECR 3849, in which an answer was given to precisely the same question. The Court, which had been asked to construe the phrase 'scientific instruments and apparatus which qualify for duty-free admission' (Article 3 (2) of Regulation No 1798/75) specifically with regard to the

customs treatment of components intended for incorporation in a scientific installation constructed in the Community, answered that it 'must be interpreted as meaning that components, spare parts and *accessories* may be imported free of duty provided that they are intended for scientific instruments or apparatus which are, or have been, admitted free of duty. Duty-free admission may not, however, be granted where the components are intended to be incorporated in a scientific installation constructed in the Community' (paragraph 28 of the decision, emphasis added).

That judgment may appear illogical and even unjust because it favours those who import 'complete' scientific instruments and penalizes those who buy equipment on the Community market and import from outside the Community only those parts which are not otherwise available. The Court gives the following explanation for that decision: 'where it appears that Community industry is capable of constructing a scientific unit of equipment in its entirety, except for certain . . . parts, the duty-free admission of high-value components may, far from promoting technological progress in the Community, instead constitute an incentive to keep outside the Community certain scientifically and technically important production facilities. In those circumstances, the refusal to admit the components in question free of duty may therefore act as a useful incentive to secure the transfer of such production to the Community' (paragraph 27 of the decision).

Thus we have logic and equity on one side and the general interest on the other. The dilemma is as old as the law itself and the Court has resolved it in favour of the interests of the Community, in this case its technological development. If the Community were a complete and firmly established edifice like the States which make it up I might have doubts as to that conclusion. However, as that is not the case — its interests have few allies and they are less powerful than the forces ranged on the other side — I wholeheartedly commend the position adopted by the Court.

3. For the reasons I have stated above, I propose that the Court should give the following answer to Question 3 submitted by the Finanzgericht Baden-Württemberg by order of 7 February 1984 in the proceedings between Land Niedersachsen and Hauptzollamt Friedrichshafen:

The phrase 'scientific instruments and apparatus which qualify for duty-free admission' (Article 3 (2) of Regulation No 1798/75) must be interpreted as meaning that accessories may be imported free of duty provided that they are intended for instruments or apparatus which are, or have been, admitted free of duty. Duty-free admission may not, however, be granted where the accessory in question is intended for an instrument or apparatus constructed in the Community.

Having regard to that answer, I propose that the Court should not rule upon the other questions submitted to it.