UNIVERSITÄT BIELEFELD v HAUPTZOLLAMT GIESSEN

OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 8 October 1987 *

Mr President,
Members of the Court,

1. The Court is requested to give a preliminary ruling on a question submitted to it by the Hessisches Finanzgericht (Finance Court, Hesse) in connection with proceedings between Universität Bielefeld and Hauptzollamt (Principal Customs Office) Gießen. In particular, the referring court asks you to rule as to the validity of a measure whereby the Commission of the European Communities determined that an American-produced laser apparatus did not qualify for exemption from customs duty.

The proceedings were brought as a result of the importation into the Federal Republic of Germany (in December 1979) of a laser system manufactured in the United States of America, which had been ordered by Universität Bielefeld for the purposes of a research project. In order to secure exemption from duty under the Common Customs Tariff the University made application to the competent authority, describing the apparatus as 'YAG-Laser', Model 'Quanta Ray DCR-1A', and stated that the research project was concerned with 'atomic excitation processes in intense photon fields' in which simultaneous electric photon scattering on free atoms was to be investigated. It was also stated in the application that the output of which the American laser system was capable was necessary for the proper implementation of the project and that such output could not be attained using similar systems, including those manufactured in the Community by the undertakings J. K. Lasers and Quantel.

The customs authorities granted a provisional exemption, but subsequently asked the Zolltechnische Prüfungs- und Lehranstalt (Customs Laboratory and Training College) to determine whether the conditions for exemption were satisfied. In its turn, that institution called upon the Federal Minister for Finance to initiate the procedure provided for in Article 7 of Commission Regulation No 2784/79 of 12 December 1979 (Official Journal 1979, L 318, p. 32); and on conclusion of that procedure the Commission determined, by Decision No 82/288 of 13 April 1982 (Official Journal 1982, L 131, p. 27), that the DCR-1A apparatus could not be granted an exemption since '... on the basis of information received from Member States, apparatus of scientific value equivalent to the said apparatus, capable of being used for the same purposes, are currently being manufactured in the Community'. That applied to the 'YG 482' laser apparatus manufactured by Quantel in France and the 'HY series' apparatus produced by J. K. Lasers Ltd in the United Kingdom.

Universität Bielefeld brought an action before the Hessisches Finanzgericht against the German customs administration's measure which reiterated that decision, maintaining that the output of the American laser apparatus was much better suited to the purposes of the research project than that of the Community-produced apparatus. In particular, the plaintiff observed that, in view of the information furnished by it, there was only one possible explanation for the measure of 13 April 1982, namely that the Commission had not taken account of the fact that the instrument at issue was not the standard model — in respect of which the Commission had issued a number of negative decisions in the past (for example,

* Translated from the Italian.

Decision 82/83 in respect of which the Court delivered a judgment on 27 March 1985 in Case 4/84 *Johann-Wolfgang-Goethe-Universität* v *Hauptzollamt Frankfurt* [1985] ECR 991) — but was a special and significantly upgraded version (DCR-1AA 1320).

By order of 13 June 1986, the Seventh Senate of the Finanzgericht stayed the proceedings and submitted the following question to the Court under Article 177 of the EEC Treaty: 'Is Commission Decision 82/288/EEC of 13 April 1982 concerning the "Quanta Ray-Nd: YAG Laboratory Laser System, model DCR-1A" apparatus invalid in view of the fact that although apparatus of that kind were, as the Commission states, manufactured in the Community, their performance was inferior to that of the imported apparatus designated DCR-1AA 1320, regard being had in particular to the special purpose that was contemplated?'

In the proceedings before this Court, written observations were submitted only by the Commission. At the hearing, Universität Bielefeld also took part.

2. As is well known, the rules on the importation of educational, scientific and cultural materials free of Common Customs Tariff duties are contained in Council Regulation No 1798/75 of 10 July 1975 (Official Journal 1975, L 184, p. 1), as amended by Council Regulation No 1027/79 of 8 May 1979 (Official Journal 1979, L 134, p. 1). Those regulations have been supplemented by the Commission regulation mentioned earlier, No 2784/79 of 12 December 1979, which superseded the preceding implementing regulation, No 3195/75 of 2 December 1975 (Official Journal 1975, L 316, p. 17).

For the purposes of this case, Article 3 of Regulation No 1798/75 is particularly important. Paragraph (1) thereof makes duty-free admission conditional upon 'instruments or apparatus of equivalent scientific value . . . not being manufactured in the Community' and the second indent of Article 3 (3) provides that such equivalence is to be assessed 'by comparing the characteristics and specifications of the instrument . . . for which application is made . . . with those of the corresponding instrument . . . manufactured in the Community to determine whether the latter could be used for the same scientific purposes as those for which the [other] instrument . . . is intended and whether its performance would be comparable to that expected of the latter'.

3. It is appropriate to point out at the outset that this dispute displays numerous similarities with the *Johann-Wolfgang-Goethe-Universität* case mentioned earlier, but, by contrast with that case, the solution here depends upon the satisfaction of formal legal requirements. Specifically, this case is not concerned with the interpretation of the legislation to which I have just referred. Rather, we must:

(a) determine whether the Commission took into account and, if it did, attached sufficient importance to, the fact that the imported laser apparatus was a more efficient version of the 'DCR-1A' type, known as the 'DCR-1AA 1320', which was capable of a higher output than the similar apparatus manufactured in the Community; and

(b) determine whether, in setting out the results of its inquiries, the Commission complied with the obligation placed upon it by Article 190 of the Treaty.

As regards the first point, I am of the opinion that the logic of the procedure followed by the Commission is incorrect, albeit for reasons which coincide only in

part with the hypothesis put forward by Universität Bielefeld in the main proceedings and in the proceedings before this Court. It is a fact that the Commission's opinion concerned not — as would seem to be apparent from the decision — the standard model but the improved apparatus: this is proved both by the Commission's reply to a question put to it by the Court in that connection and, in the documents before the Court, by the report of the meetings held by the Committee on Duty-free Arrangements and the letter which Quantel sent to the French Ministry of Industry. However, once the instrument at issue had been correctly identified, the Commission should have appraised the extent to which it was different and should have clearly set out the reasons which, notwithstanding the differences, prompted it to conclude that the instrument was 'equivalent'.

However, whatever the Commission says, none of this was done. The stereotyped text of the decision and the documents to which I have referred do not disclose any grounds for concluding that, although aware of the higher output of the American laser apparatus, the Commission took account of it in making its appraisal. Indeed, both the text of the decision and those documents tend to indicate the contrary. Thus, in the minutes of the meetings of the Committee on Duty-free Arrangements it is stated that the decision was adopted 'après une longue discussion et compte tenu de nombreux précédents'. Here the last phrase would appear to indicate that due attention was not given to the special features of the imported apparatus. Likewise, the comparative table annexed to Quantel's letter does not in any way corroborate the Commission's arguments but seems rather to bring to the fore the superiority of the apparatus in question as regards almost all the performance values and, in particular, the 'crest' values which Universität Bielefeld, without being contradicted, has always described as being of decisive importance to the implementation of its project.

It is appropriate at this stage to draw attention to the Commission's obligation to give an exhaustive statement of the reasons for its measures to give an opportunity to the 'parties of defending their rights, to the Court of exercising its power of review, and to the Member States and to all interested nationals of ascertaining the circumstances in which ... the Treaty has been applied' (see, albeit in connection with an action under Article 173, the judgment of 17 March 1983 in Case 294/81 *Control Data* v *Commission* [1983] ECR 911, paragraph 14). In the light of what I have said so far, it would however seem clear that in the present case that requirement has not been fulfilled and therefore that the outcome of the proceedings must be a declaration of invalidity. The statement of the reasons on which the measure is based in fact lacks the principal feature of the comparative assessment which the Commission is obliged to make, namely a detailed account of the reasons for which apparatus as to whose diversity there is no doubt are to be regarded as equivalent for the purposes of Article 3 (3) of Regulation No 1798/75; nor can it be said that those reasons have emerged in the course of the proceedings (that being, in substance, the situation referred to in paragraph 31 of the judgment in Case 294/81).

This conclusion having been reached, it seems to me to be irrelevant to determine whether, and if so to what extent, the University made proper inquiries regarding the apparatus produced by the Community undertakings before purchasing the American apparatus. However, on that point, the suspicions voiced by the Commission are dispelled by the documents which the applicant in the main proceedings produced after the hearing. They prove that, as the University has always maintained, wide-ranging inquiries were in fact made.

4. In view of all the foregoing considerations, I propose that the Court should give the following answer to the question submitted by the Hessisches Finanzgericht by order of 13 June 1986 in the proceedings pending before that court between Universität Bielefeld and Hauptzollamt Gießen:

'Decision 82/288 adopted by the Commission on 13 April 1982, determining that the apparatus referred to therein as "Quanta-Ray Nd: YAG Laboratory Laser System Model DCR-1A", but in fact corresponding to the "DCR-1AA 1320" model, could not be imported free of Common Customs Tariff duties, is invalid.'