2. For the purpose of the importation free of customs duties of a scientific apparatus the question whether the apparatus in question and similar apparatus made in the Community are equivalent must not be decided solely on the basis of the technical specifications which the user described in his application as being necessary for his research but primarily on the basis of an objective assessment of their capacity to carry out the experiments for which the user intended to use the imported apparatus.

3. Although it is true that the statement of grounds required by Article 190 of the Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question in such a way as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights, and to enable the Court to exercise its supervisory jurisdiction, the authority is not required to give details of all relevant factual and legal aspects. The question whether the statement of the grounds for a decision meets those requirements must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.

However laconic its statement of reasons may be, a Commission decision refusing to allow the importation of a scientific apparatus free of customs duties therefore satisfies the requirements laid down by Article 190 of the Treaty if it is addressed to the Member States which took part in the meetings of the group of experts within the framework of the Committee on Duty-Free Arrangements and contains elements which are indispensable for the purpose of enabling those concerned by it to discover any irregularities which may cast doubt on its validity.

In Case 185/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tariefcommissie [Administrative court of last instance in revenue matters], Amsterdam, for a preliminary ruling in the proceedings pending before that court between

INTERFACULTAIR INSTITUUT ELECTRONENMICROSCOPIE [Interfaculty Institute for Electron Microscopy] OF THE UNIVERSITY OF GRONINGEN

and

INSPECTEUR DER INVOERRECHTEN EN ACCIJNZEN [Inspector of Customs and Excise], GRONINGEN,

on the validity of Commission Decision 81/843/EEC of 8 October 1981 establishing that the apparatus described as "JEOL electron microscope, model JEM-200 CX" may not be imported free of Common Customs Tariff duties (Official Journal 1981, L 314, p. 15),

THE COURT (Second Chamber)

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

Advocate General: P. VerLoren van Themaat
Registrar: D. Louterman, Administrator

gives the following

JUDGMENT

Facts and issues

The facts of the case, the course of the procedure and the 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 — Legal context of the proceedings and facts

1. Legal context

The main proceedings concern the granting of duty-free admission to an apparatus described as "JEOL electron microscope, model JEM-200 CX", imported into the Community from Japan and claimed to be a scientific instrument or apparatus. The legal basis for the importation of scientific instruments and apparatus free of duty is Regulation (EEC) No 1798/75 of the Council of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific or cultural materials (Official Journal 1975, L 184, p. 1), amended by Council Regulation (EEC) No 1027/79 of 8 May 1979 (Official Journal 1979, L 134, p. 1) and Commission Regulation (EEC) No 2784/79 of 12 December 1979 laying down provisions for the implementation of the above-mentioned regulation (Official Journal 1979, L 318, p. 32).

The purpose of those regulations is to ensure the implementation by the Community of the Florence Agreement drawn up under the auspices of the United Nations Educational, Scientific and Cultural Organization (Unesco). Article 1 of the Florence Agreement, which entered into force in 1952, states that:

"The contracting States undertake not to apply customs duties or other charges on, or in connection with, the importation of:

...

(b) . . ..scientific . . . materials, listed in annexes . . . D . . . ".

Annex D to the Florence Agreement includes, subject to certain reservations, "scientific instruments or apparatus, intended exclusively for educational purposes or pure scientific research".

Consequently, in order to facilitate the free exchange of ideas and scientific research within the Community, the Council adopted Regulation No 1798/75, which provides for the possibility of importing into the Community certain educational, scientific and cultural materials free of Common Customs Tariff duties. Whilst Article 1 of Regulation No 1798/75 provides that some of those materials are to be admitted free of Common Customs Tariff duties whatever their intended use, and whilst Article 2 thereof provides that other materials must be intended either for certain public establishments and organizations or for certain establishments or organizations which may be otherwise approved, according to Article 3 (1) thereof, as amended by Article 1 of Regulation (EEC) No 1027/79, a third category of scientific instruments and apparatus not covered by Articles 1 and 2 may benefit from customs exemption provided that they are imported exclusively for educational purposes or for pure scientific research. That provision is stated to apply to instruments and apparatus that:

"(a) . . . 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."

In order to obtain the duty-free admission under Article 3 (1) of Regulation No 1798/75, the recipient establishment or organization must therefore demonstrate that the scientific instrument or apparatus in question is intended exclusively for educational purposes or for pure scientific research.

Article 7 (1) of Regulation No 2748/79 of the Commission provides that the competent national authority is to take a direct decision on applications for exemption from customs duties in all cases where the information at its disposal, if necessary after consultation with the trade circles concerned, enables it to assess whether or not the instrument or apparatus is scientific and whether or not there exist instruments or apparatus of equivalent scientific value which are currently manufactured in the Community. Otherwise the application for exemption from customs duties must be forwarded to the Commission which must then seek the opinions of the Member States and, in the event of an

unfavourable response, submit the matter to a group of experts for examination.

If the Commission's examination reveals that equivalent apparatus is manufactured in the Community, the Commission must adopt a decision declaring that the conditions for duty-free admission of the apparatus in question are not fulfilled. If no equivalent apparatus is manufactured in the Community, the Commission must adopt a decision declaring that those conditions are fulfilled. All the Member States must be notified of the Commission's decision within two weeks.

2. Facts and procedure before the national court

On 20 August 1980, the appellant in the main proceedings, the Interfacultair Instituut Electronenmicroscopie [Interfaculty Institute for Electronic Microscopy] of the University of Groningen (hereinafter referred to as "the Institute") applied to the Inspecteur der Invoerrechten en Accijnzen [Inspector of Customs and Excise], Groningen (hereinafter referred to as "the Inspector") for exemption from import duty in respect of the importation of an apparatus described as "JEOL electron microscope, model JEM-200 CX" with accessories. The apparatus was manufactured by JEOL Ltd in Japan and its price was in the region of HFL 510 000. According to the Institute it was intended for "scientific research on metals and materials" and for "instruction of students reading applied physics and, subsidiarily, pure physics".

In its reply to Question 11 on the questionnaire the Institute named Philips Nederland BV (Eindhoven) as the Community undertaking which had been approached with a view to supplying an instrument or apparatus of scientific value equivalent to that of the article in respect of which the exemption was sought. As regards the outcome of that approach and the reasons for which a comparable instrument or apparatus obtainable in the Community could not be used for the research project, the Institute stated that;

"comparative tests, carried out in Philips' and JEOL's research laboratories in Eindhoven and London respectively, demonstrate that the JEM-200 CX manufactured by JEOL is far superior to the EM 400 manufactured by Philips. The main reason for that superiority appeared to lie in the acceleration capacity, 200 kV in the case of the JEM-200 CX as opposed to 120 kV in the case of the EM 400. As regards the field of application referred to, namely the study of metals and alloys, the only possible choice appears to be the JEM-200 CX. When asked whether it could supply an EM 400 with an acceleration capacity of 200 kV Philips replied that it was unable to do so."

However by decision of 28 October 1980 the Inspector rejected the application for exemption from customs duty on the ground that apparatus of equivalent scientific value was manufactured within the Community. On 6 November 1980 the Institute lodged an objection against that decision; it referred specifically to the fact that the Inspector of Customs and Excise for Enschede had, for his part, granted an exemption to the Mechanical Engineering Department of the Technische Hogeschool [Technical College of Higher Education] of Twente in spring 1980 for the importation of an identical instrument.

In its decision of 26 November 1980 on that objection, the Inspector maintained his point of view, relying in particular on

Commission Decision 80/772/EEC of 18 July 1980 (Official Journal 1980, L 221, p. 20), which was adopted at the request of the French Government and addressed to the Member States of the Community. In that decision, the Commission recognized the scientific character of the apparatus known as the JEM-200 CX but nevertheless refused to allow it to be admitted free of Common Customs Tariff duties on the ground that the conditions laid down for duty-free admission were not fulfilled. Apparatus of equivalent scientific value, capable of being used for the same purposes, was in fact manufactured within the Community, namely the EM 400 which is manufactured by SA Philips Industrielle et Commerciale (Bobigny, France).

On 23 Janaury 1981 the Institute brought an action before the Tariefcommissie for the annulment of the Inspector's decision of 26 November 1980. On 3 April 1981, following discussions with the Institute, the Netherlands Government asked the Commission to re-examine the question whether apparatus equivalent to the imported article was manufactured within the Community, particularly in relation to the importation of the JEM-200 CX. On 25 May 1981 the Commission, this time in response to a request by Belgium, adopted Decision 81/415/EEC (Official Journal 1981, L 158, p. 24), establishing that the apparatus in question could not be admitted free of duty for the same reasons as were set out in its decision of 18 July 1980. On 8 October 1981 the Commission adopted the decision at issue here, Article 1 of which stated that the apparatus in question could not be imported free of Common Customs Tariff duties, for the same reasons as were set out in the two earlier decisions.

On the basis of the Commission's decision the Inspector concluded that at the time he had been right to reject the application for exemption and that the customs administration was bound by the above-mentioned decisions of the Commission.

The Institute, however, produced evidence intended to show that the apparatus known as the EM 400 manufactured within the Community is not of scientific value equivalent to that of the imported article. It claimed that comparative tests showed that the Japanese apparatus was superior to the apparatus manufactured by Philips and that the latter was in fact inadequate for the research to be conducted at the Institute, principally because of the difference in acceleration capacity between the two instruments. In support of its view, the Institute submitted photographs taken and reports written by fellow researchers from Belgium and the Netherlands. In addition the Institute stated that it had not been notified of the considerations underlying the Commission's decision. Moreover it transpires from a letter from the Director of the Customs Department at the Netherlands Ministry of Finance to the Director of the Centre for Medical Electron Microscopy at Groningen that the decision of the committee of experts was based, as far as the technical aspects were concerned, partly on information supplied by Philips Nederland BV. Finally the Institute claimed that the Joint Research Centre at Ispra had itself acquired a JEM-200 manufactured by JEOL.

By order of 31 December 1982 the Tariefcommissie stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

"Has the Commission in its decision of 8 October 1981 (81/843/EEC) correctly interpreted and applied the term 'of equivalent scientific value' contained in Article 3 of Regulation (EEC) No 1798/75?"

II — Written procedure before the Court

The order making the reference was received at the Court Registry on 31 August 1983.

In the grounds on which its order was based, the Tariefcommissie referred *inter alia* to the fact that the Institute had alleged, without being challenged, that the research conducted at the Institute required an electron microscope with an acceleration capacity of 200 kV, a capacity which the apparatus manufactured by Philips did not possess. The Tariefcommissie also noted that no further grounds for the Commission's view, which is contested by the Institute, were given in the decision, and that the Inspector considered that his task was merely to implement the decision.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the appellant in the main proceedings, represented by B. Boom, Secretary of the Interfacultair Instituut Electronenmicroscopie of the University of Groningen, by the Italian Government, represented by P. G. Ferri, Avvocato dello Stato, by the Netherlands Government, represented by I. Verkade, Secretary General in the Ministry of Foreign Affairs, acting as Agent, and by the Commission, represented by A. Haagsma, a member of its Legal Department, acting as Agent.

Upon hearing the report of Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. However the Court asked the Commission to reply in writing before 15 March 1984 to the following question:

"In what way was the specific use envisaged by the University of Groningen taken into consideration in examining the equivalence of the two instruments in question?"

By order of 29 February 1984, the Court assigned the case to the Second Chamber.

III — Written observations

The *appellant in the main proceedings*, the Institute, merely emphasizes the importance of the documents communicated to the Court by the Tariefcommissie and submits a number of additional documents concerning the technical characteristics of the two instruments and the question of their scientific equivalence.

The *Netherlands Government* notes that the examination carried out by the group of experts under the procedure provided for in Article 7 of Regulation No 2784/79 shows that electron microscopes of equivalent scientific value are manufactured in the Community, namely by Philips Nederland BV. In view of the range of its technical capacities, the apparatus produced in the Community can be used for the same scientific purposes as the imported apparatus and its performance could be said to be comparable. In consequence the Netherlands Government submits that the question referred to the Court for a preliminary ruling should be answered in the affirmative.

The *Italian Government* states that the competent national authorities are uncertain as to how to interpret Article 3 of Regulations Nos 1798/75 and 1027/79 in relation to the question of the equivalence of scientific instruments

manufactured in the Community and that uncertainty gives rise to some confusion among the Italian research institutes. In its decision, therefore, the Court should lay down clear and unequivocal criteria.

As regards the substance the Italian Government takes the view that a Commission decision concerning scientific equivalence fulfils a dual function. It ensures uniform treatment in all the Member States of the Community and for all the scientific instruments concerned. It therefore provides guidance for the competent authorities of the Member States (to whom the decision is notified) and the scientists concerned. At the same time it settles a specific case and binds the competent authorities of the Member State that requested it. The decision must therefore provide adequate information as to the reasons for granting or refusing exemption, on the one hand, so that it gives guidance for other similar cases and, on the other hand, so that it is possible to review in each individual case the grounds on which the decision is based.

According to the Italian Government, the requirement of equivalent scientific value must be interpreted as entailing an objective assessment which is not however of absolute and general application. It involves not an abstract comparison of the technical capacities of the instruments but an assessment of their suitability for the experiments for which the body concerned intends to use them.

Although the Commission has a certain discretion in making that assessment, that discretion must be governed by purely scientific and technical considerations. The Commission must compare the essential technical characteristics of the instruments or apparatus for comparison, in other words such characteristics as may decisively influence the outcome of the specific work to be carried out. An opinion regarding equivalence on which a refusal to grant exemption is based must contain a technical assessment different to that of the body seeking exemption and therefore must provide in that respect a statement of the specific grounds on which it is based, again of a technical nature.

In this instance the Italian Government concludes that the Institute had shown that the apparatus manufactured within the Community was in fact inadequate for the analyses envisaged by the Institute. On the other hand the decision ought to have included a statement of the grounds on which it was based inasmuch as it ought to have shown that the alleged difference did not exist or that it was of no significance for the purposes of the Institute's research project.

The *Commission* submits that the point at issue is not whether or not Article 3 of Regulation No 1798/75 has been correctly interpreted or applied but whether the decision at issue is valid in the light of the manner in which the concept of "equivalent scientific value" was interpreted and applied in that decision. A reply to that question cannot be given in the abstract since, according to Article 3 (3) of Regulation No 1798/75, the answer depends on the assessment of whether the instrument or apparatus manufactured within the Community may be used for the same proposed scientific purposes as, and whether its performance would be comparable to that of, the instrument for which exemption has been sought. Article 5 (2) Regulation No 2784/79

stipulates that the comparison may take account only of such technical characteristics as have a decisive influence on the outcome of the specific work to be carried out. The question of equivalence must therefore be considered in relation to the specific case and in the light of the work for which it is sought to acquire the apparatus. However, no account may be taken of the fact that an instrument or apparatus is capable of performances which are superior to those *necessary* for the satifsfactory completion of the specific work to be carried out.

The Commission then turns to this specific case and refers to the examination carried out by the national experts at the 77th meeting of the Committee on Duty-Free Arrangements on 9 and 10 July 1981 (an extract from the minutes of that meeting is attached to the Commission's observations). The object of the examination was to ascertain whether the apparatus produced in the Community could be used for the same specific purposes as the imported apparatus and whether its performance would be comparable. At that meeting the Netherlands expert referrred to a report drawn up by Philips on that point. The group of experts then established on the basis of both the information contained in that report and the information provided by the Institute that the Philips EM 400 apparatus could in fact be used for the purposes for which the Institute wished to acquire an electron microscope and that its performance was comparable to that of the JEM-200 CX. It was on the basis of the conclusions of the group of experts that the Commission adopted Decision 81/843/EEC. On the other hand it was unable to refer to the earlier decisions since the work for which the apparatus was required was of a different nature.

As regards the alleged superiority of the acceleration capacity of the imported apparatus over the Community apparatus, the Commission points out that according to the judgment of the Court of 27 September 1983 (Case 216/82 *University of Hamburg* v *Hauptzollamt Hamburg-Kehrwieder* [1983] ECR 2771) the Court may review the substance of a decision adopted by the Commission in accordance with the opinion of the committee of experts only in cases of manifest error of fact or of law or where there has been a misuse of power. The Commission contends that that is not the case in this instance since the examination of equivalence was not conducted from an abstract point of view but solely in the light of the research work to be carried out. On that point the examination conducted in this instance revealed that an acceleration capacity of 200 kV was by no means necessary for the work planned by the Institute which could very easily be carried out with an acceleration capacity of 120 kV. Moreover in support of its claim that the JEM-200 CX is superior, the Institute referred to certain research projects which it could not undertake by means of a microscope, as for example research into the dislocation of silicon monocrystals.

In consequence the Commission submits that the Court should reply to the question submitted as follows:

"Consideration of the question submitted by the Tariefcommissie has disclosed no factor of such a kind as to affect the validity of Commission Decision 81/843/EEC of 8 October 1981."

IV — The Commission's reply to the question put by the Court

In its reply to the question put by the Court, the Commission states that the study of equivalence was based on the particular use defined in the application for exemption from import duties made by the Institute (*supra*, page 3627). It also points out that it was the Netherlands authorities who, during their examination of the matter, made use of the specialized laboratory of Philips Nederland BV and who subsequently referred the matter to the Commission by a letter of 3 April 1981, which is attached to the Commission's reply. Taking into account the fact that a similar problem was already under discussion at that time within the Committee on Duty-Free Arrangements, on the basis of an application for exemption made in Belgium, the Netherlands authorities asked that a decision on their request be deferred until the outcome of the other case, which also concerned the importation of a JEOL JEM-200 CX electron microscope intended for the same purposes, was known. As a result the applicants in the two cases, the Institute and the Catholic University of Leuven, together with a number of others, drew up "joint submissions on the application for exemption from import duties", attached to the observations of the Institute.

With a view to the consideration of the request in the Committee on Duty-Free Arrangements, the Netherlands authorities asked Philips Nederland BV to carry out a supplementary study of the equivalence of the two electron microscopes in question from the point of view of their suitability for the activities envisaged at the Institute. During the meeting of the Committee on 9 July 1981 the Netherlands delegation referred to that study, which was subsequently supplied to all the members of the Committee.

The Commission notes moreover that this case was the third concerning an application for exemption from import duties for a JEM-200 CX apparatus. The later decisions did not simply refer to the earlier decisions, as was the case for the determination whether the apparatus was of a scientific nature, but in each case the Committee considered whether apparatuses existed in the Community which were equivalent from the scientific point of view for carrying out the research concerned. It may be concluded that in each case the specific characteristics, that is to say the type of research envisaged, were taken into account.

That conclusion is supported by the fact that even in the Belgian and Netherlands cases, which were formally placed on the same footing by the Netherlands delegation and by the applicants in the two cases, who drew up joint submissions, separate examinations were carried out.

It is clear from the supplementary report drawn up by Philips and submitted at that time that the basis of the examination was the particular purpose for which the Institute wished to acquire the electron microscope. The Philips laboratories did not merely consider whether the instrument or the apparatus could be used for the same scientific purposes and offered comparable capabilities, but also refuted certain assertions concerning the

alleged superior performance of the JEM-200 CX compared with the EM 400. They thus did more than is required by Community rules in that respect.

Finally, the Commission emphasizes that the conclusion that the two instruments were of equivalent scientific value for the research envisaged was not reached exclusively and automatically on the basis of the study carried out by the Philips laboratory at the request of the Netherlands authorities. The results of that study were communicated to all the members of the Committe on Duty-Free Arrangements and to the relevant departments of the Commission, and the results were checked, for example, by the Joint Research Centre at Ispra, which confirmed them. The Committee and the Commission then endorsed those results.

V — Oral procedure

At the sitting on 5 April 1984, the appellant in the main proceedings, represented by G. Boom, acting as Agent, the Italian Government, represented by P. G. Ferri, Avvocato dello Stato, and the Commission of the European Communities, represented by A. Haagsma, a member of its Legal Service, acting as Agent, presented oral argument and replied to questions put by the Court.

The Advocate General delivered his opinion at the hearing on 30 May 1984.

Decision

1 By order of 31 December 1982, which was received at the Court on 31 August 1983, the Tariefcommissie [Administrative court of last instance in revenue matters], Amsterdam, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question regarding the validity of Commission Decision 81/843/EEC of 8 October 1981 establishing that the apparatus described as "JEOL electron microscope, model JEM-200 CX" may not be imported free of Common Customs Tariff duties (Official Journal 1981, L 314, p. 15).

2 That question was raised in an action brought before the Tariefcommissie by the Interfacultair Instituut Electronenmicroscopie of the University of Groningen (hereinafter referred to as "the Institute") for the annulment of the decision of the Inspecteur der Invoerrechten en Accijnzen [Inspector of Customs and Excise], Groningen (hereinafter referred to as "the Inspector"), of 26 November 1980 refusing to grant exemption from customs duties for the importation from Japan of the above-mentioned apparatus together with its accessories, on the ground that apparatus of equivalent scientific value was manufactured in the Community.

3 According to the documents before the Court, on 20 August 1980 the Institute applied to import free of customs duties an electron microscope manufactured by the Japanese firm JEOL Ltd and intended, according to the application, for "scientific research on metals and materials" and for "instruction of students reading applied physics and, subsidiarily, pure physics".

4 In its application the Institute also stated that comparative studies had been carried out in the research laboratories of Philips Nederland BV in Eindhoven and of JEOL Ltd in London, which had demonstrated the "clear superiority" of the JEOL JEM-200 CX compared with the Philips EM 400. That superiority was largely due to the acceleration capacity, 200 kV in the case of the JEM-200 CX as against 120 kV in the case of the EM 400. Philips had informed it that it was unable to supply an EM 400 producing 200 kV. As a result the Institute considered that for the field of application envisaged there was only one possible choice, the JEM-200 CX.

5 In refusing exemption the Inspector relied on Commission Decision 80/772 of 18 July 1980 (Official Journal 1980, L 221, p. 20) adopted at the request of the French Government in accordance with the procedure laid down in Article 7 of Commission Regulation No 2784/79 of 12 December 1979 (Official Journal 1979, L 318, p. 32). That regulation contains provisions for the implementation of Council Regulation No 1798/75 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), amended by Regulation No 1027/79 (Official Journal 1979, L 134, p. 1).

6 In that decision, which concerned the use of the JEM-200 CX apparatus for the study of metals and alloys, the Commission found that apparatuses of equivalent scientific value, which could be used for the same purposes, were currently being manufactured in the Community; that was true in particular of the apparatus EM 400 manufactured by SA Philips Industrielle et Commerciale (France). It therefore found that the conditions required for the admission free of Common Customs Tariff duties of the apparatus in question were not fulfilled.

7 After an action had been brought before the Tariefcommissie, however, the Netherlands Government asked the Commission to initiate once more the procedure provided for in Article 7 of Regulation No 2784/79 in order to determine whether or not the said apparatus, "to be used for microstructural research of the transformation and deformation of metallic materials, should be considered to be a scientific apparatus and, where the reply is in the affirmative, whether apparatus of equivalent scientific value is currently being manufactured in the Community".

8 In the contested decision, adopted in reply to that request, the Commission held that the JEM-200 CX apparatus could not be imported free of Common Customs Tariff duties. The last recital in the preamble to the decision states that:

"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; ... this applies, in particular, to the apparatus 'EM 400', manufactured by Philips Nederland BV, Boschdijk 525, NL-Eindhoven".

9 The Tariefcommissie took the view that it was bound by that decision, and therefore referred the following question to the Court:

"Has the Commission in its decision of 8 October 1981 (81/843/EEC) correctly interpreted and applied the term 'of equivalent scientific value' contained in Article 3 of Regulation (EEC) No 1798/75?"

10 It appears from the context of the question posed that it in fact concerns not the interpretation of Regulation No 1798/75 but the validity of the Commission decision of 8 October 1981.

11 In the statement of reasons for its order, the Tariefcommissie expressed doubts as to the validity of the decision, referring to the fact that the Institute disputed the equivalence of the two apparatuses, since the research that it carried out required an electron microscope with an acceleration

capacity of 200 kV, a condition fulfilled by the JEM-200 CX apparatus, whereas the EM 400 apparatus had a capacity of only 120 kV. It stated, moreover, that the Commission had failed to give adequate reasons for its decision that the two apparatuses were of equivalent scientific value and could be used for the same purposes.

12 In its written observations made to the Court, the Institute again denied that the two apparatuses were of equivalent scientific value, and referred *inter alia* to the "joint submissions on the application for exemption from import duties" drawn up in conjunction with the Catholic University of Leuven and attached to the application made to the national court.

13 Reference should first of all be made to the Court's ruling that persons concerned by a decision taken by the Commission under the Community regulations on this matter "may plead the illegality of that decision before the national court in proceedings against the fixing of customs duty and the question of the validity of the decision may therefore be referred to the Court in proceedings for a preliminary ruling" (judgment of 28. 9. 1983, Case 216/82 *Universität Hamburg* v *Hauptzollamt Hamburg-Kehrwieder* [1983] ECR 2771).

14 It was stated in the same judgment however, with regard to the examination of the validity of such a decision, that the Court has only a limited power of supervision since, given "the technical character of that examination [of the question whether or not the apparatuses are equivalent] the Court cannot, save in the event of manifest error of fact or law or misuse of power, find fault with the contents of a decision which the Commission had adopted in conformity with the committee's opinion".

15 As a result it is not for the Court to re-examine the question whether in fact the apparatuses concerned are of equivalent scientific value; it may only examine the question whether the contested decision is vitiated by manifest error of fact or law or misuse of power, committed in the implementation of the procedure provided for in Article 7 of Regulation No 2784/79, or with regard to the substance of the case.

The course of the procedure provided for in Article 7 of Regulation No 2784/79

16 With regard to the procedure, according to Article 7 (1) of Regulation No 2784/79, implementing Articles 4 and 9 of Regulation No 1798/75, the competent national authority must take a direct decision on the application in all cases where the information at its disposal enables it to assess whether or not there exist instruments or apparatuses of equivalent scientific value which are currently manufactured in the Community. Only if the national authority considers that it is not in a position itself to deal with that question, therefore, is it obliged to refer the matter to the Commission.

17 According to Article 7 (3) the Commission must send a copy of the application to the Member States together with the relevant documentation; according to Article 7 (5), if a Member State has sent the Commission objections regarding the duty-free importation of the instrument or apparatus under consideration, the Commission must refer the matter to a group of experts composed of representatives of all the Member States, who meet within the framework of the Committee on Duty-Free Arrangements in order to examine the matter. Under Article 7 (6), the Commission must adopt a decision declaring whether or not the instrument or apparatus in question fulfils the conditions required for duty-free admission, in accordance with the result of the examination by the group of experts.

18 With regard to the implementation of the procedure in this case, it appears from the first and second recitals in the preamble to the decision at issue that the Commission initiated the procedure at the request of the Netherlands and that a group of experts composed of representatives of all the Member States met on 9 July 1981 within the framework of the Committee on Duty-Free Arrangements to examine the matter.

19 Before the Tariefcommissie, however, the Institute pointed out that the reasons on which the decision of the Commission refusing its application was based were not communicated to it.

20 It should be noted that the Commission's implementing Regulation No 2784/79 provides neither for the participation of the applicant for exemption in the examination of equivalence carried out by the Committee on Duty-

Free Arangements, an examination which is basically only an exchange of views between the experts of the Member States, nor for a right on the part of the applicant to make submissions before the Commission adopts the decision declaring whether or not the instrument or apparatus fulfils the conditions required for duty-free admission.

21 That decision is addressed only to the Member States; under Article 191 of the Treaty it is notified only to the Member States and takes effect upon that notification. Conversely it is not notified to the applicant for exemption and is not one of the measures whose publication is required by the Treaty. Even if in practice the decision is in fact published in the Official Journal of the Communities, its wording does not necessarily enable the applicant to ascertain that it was taken with reference to the procedure initiated by him.

22 Consequently, the Institute does not have the right to demand information from the Commission regarding the basis for its decision.

23 At the hearing the Institute also argued that the undertaking which carried out the supplementary study cited by the Netherlands Government during the meeting of the group of experts, Philips Nederland BV, was not an independent expert since it manufactures the apparatus whose equivalence to the imported apparatus was in issue.

24 It should be recalled that the procedure provided for in Article 7 (5) of Regulation No 2784/79 requires that the objections of a Member State regarding the duty-free importation of the instrument or apparatus under consideration must include a statement of the grounds for the objection and that those grounds must indicate the exact type of the instruments or apparatuses manufactured in the Community which are regarded as having a scientific value equal to that for which duty-free admission is requested, together with the name or business name and address of the Community firm or firms who can supply them. In the latter case, the Member State concerned must provide the Commission with technical literature relating to the instruments or apparatuses manufactured in the Community.

25 Those provisions do not, however, require that the author of that literature be an "independent expert". The Member State concerned is entitled to

submit to the Commission such literature as it may see fit, and is not bound by any supplementary conditions regarding the origin or content of that literature.

26 It follows from the foregoing considerations that the manner in which the Commission implemented the procedure laid down by the provisions referred to was in no way improper.

The application of the substantive criteria

27 With regard to the substance of the matter, Article 3 (1) (b) of Regulation No 1798/75, as amended by Article 1 (1) of Regulation No 1027/79, provides that scientific instruments and apparatus not included in Article 2 and imported exclusively for non-commercial purposes may be imported free of Common Customs Tariff duties provided that "instruments or apparatus of equivalent scientific value are not being manufactured in the Community". According to the third indent of Article 3 (3) of the regulation, for the purposes of that provision "equivalent scientific value" is to be assessed "by comparing the essential technical characteristics of the instrument or apparatus in respect of which application is made for the exemption referred to in Article 4 with those of the corresponding instrument or apparatus manufactured in the Community in order to dertermine whether the latter could be used for the same scientific purposes as those for which the instrument or apparatus that is the subject of the application for exemption is intended and whether its performance would be comparable".

28 According to Article 5 (2) of the Commission's implementing Regulation No 2784/79, moreover: "In making the comparison provided for in the third indent of Article 3 (3) of Regulation (EEC) No 1798/75, only such technical characteristics as have a decisive influence on the outcome of the specific work planned may be regarded as 'essential'." In making that comparison no account is to be taken of, *inter alia*, "the fact that an instrument or apparatus is able to achieve performances superior to those which are necessary for a proper execution of the specific work to be carried out".

29 As the Court has previously held, the question whether the instruments in question are equivalent must not be decided solely on the basis of the technical specifications which the user described in his application as being necessary for his research but primarily on the basis of an objective assessment of their capacity to carry out the experiments for which the user intended to use the imported instruments.

30 In that regard the decision in question simply states that apparatuses of scientific value equivalent to that of the JEM-200 CX, capable of being used for the same purposes, are currently being manufactured in the Community, and gives the name and address of the firm able to supply them.

31 In its written observations, however, the Commission indicated that it was precisely on the basis of the criteria mentioned above that it examined the equivalence of the two apparatuses in question in collaboration with the national experts who met within the framework of the Committee on Duty-Free Arrangements during its 77th meeting at Brussels on 9 and 10 July 1981. In particular the comparison carried out for the purpose of assessing whether or not the apparatuses were equivalent was not made in the abstract on the basis of certain characteristics of the apparatuses in question but purely with regard to the research to be carried out and the particular purposes for which the applicant wished to use the microscope; the Commission confirmed that statement in its reply to the question put to it by the Court.

32 During the proceedings before the Court no factor of such a kind as to cast doubt upon the Commission's statement has come to light. In examining the equivalence of the two apparatuses in question the Commission and the group of experts were also right to base themselves on the definition of the experiments given in the application for duty-free admission, since the wording which appears in the first recital to the preamble to the decision in question was only a slightly more precise expression of the same scientific purposes. Since the comparison must be based on the information given in that respect by the applicant at the time of making its application, the different description of the research project presented at the hearing by the Institute cannot be taken into consideration.

33 With regard to the Institute's submission that comparative tests of the two apparatuses in question showed that the imported apparatus was superior to that manufactured in the Community, it is necessary to refer, as the Commission rightly did, to the provisions of Article 5 (2) of Regulation No 2784/79, according to which performances superior to those which are necessary for the proper execution of the specific work to be carried out are not to be taken into account.

34 It follows from the foregoing considerations that examination of the facts presented to the Court with regard to the examination of the equivalence of the two apparatuses in question has disclosed no factor establishing the existence of manifest error or misuse of power affecting the validity of the decision in question.

The failure to state adequate grounds

35 The Tariefcommissie, and the Institute in its observations before that court, pointed out that the statement of the grounds for the decision in question was inadequate inasmuch as the reasons for the Commission's assessment were not explained in greater detail.

36 In its observations the Italian Government emphasized the importance of the Commission's decisions for all the Member States; they serve not only to resolve specific cases but also to ensure uniformity of treatment in all the Member States of the Community. They should therefore provide sufficient information regarding the reasons for the grant or refusal of exemption.

37 In this case the decision should in particular have indicated that the difference between the two apparatuses which was alleged by the Institute either does not exist or is without importance for the research activity envisaged.

38 Although it is true that the Court has consistently held that the statement of grounds required by Article 190 of the Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question in such a way as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights, and to enable the Court to exercise its supervisory

jurisdiction, the authority is not required to give details of all relevant factual and legal aspects. The question whether the statement of the grounds for a decision meets those requirements must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.

39 In this case the Court finds the statement of grounds for the decision in question somewhat laconic but considers that it nonetheless satisfies the minimum requirement of Article 190 of the Treaty taking into account the fact that the deicision is addressed to the Member States which took part in the meetings of the group of experts and are therefore sufficiently familiar with the details of the case to be able to assess the scope of the decision, and that it also contains the indispensable elements which permit the scientific establishment concerned to establish whether the decision is vitiated by a manifest error or by misuse of power.

40 If, moreover, the scientific establishment concerned decides to bring the matter before a national court, that court may always inquire into the possibility of manifest error or of misuse of power and, if that inquiry seems to support the argument of the scientific establishment, refer the matter to the Court of Justice for a preliminary ruling.

41 It follows from the foregoing that the reply to the national court must be that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Commission Decision 81/843 of 8 October 1981.

Costs

42 The costs incurred by the Italian and the Netherlands Governments and 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 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 (Second Chamber)

in answer to the question submitted to it by the Tariefcommissie by order of 31 December 1982, hereby rules:

Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Commission Decision 81/843 of 8 October 1981.

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 25 October 1984.

For the Registrar

H. A. Rühl
Principal Administrator

O. Due
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 30 MAY 1984 [1]

Mr President,
Members of the Court,

1. Introduction

1.1. The basic issue which has led the Tariefcommissie to refer a question to the Court for a preliminary ruling concerns the refusal to grant exemption from import duties for an apparatus called a "JEOL electron microscope, model JEM-200 CX", which has been imported into the Community from Japan. The fact that it is a scientific apparatus is not in dispute. Nor is it contested that the apparatus is exclusively intended for educational purposes or for pure scientific research in a public establishment or establishment

1 — Translated from the Dutch.