JUDGMENT OF THE COURT (First Chamber)
18 December 1997 *

In Case C-382/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesfinanzhof for a preliminary ruling in the proceedings pending before that court between

Techex Computer + Grafik Vertriebs GmbH

and

Hauptzollamt München

on the interpretation of the Combined Nomenclature of the Common Customs Tariff in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by the annexes to Commission Regulation (EEC) No 3174/88 of 21 September 1988 (OJ 1988 L 298, p. 1), Commission Regulation (EEC) No 2886/89 of 2 August 1989 (OJ 1989 L 282, p. 1) and Commission Regulation (EEC) No 2472/90 of 31 July 1990 (OJ 1990 L 247, p. 1),

* Language of the case: German.

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, D. A. O. Edward (Rapporteur) and L. Sevón, Judges,

Advocate General: C. O. Lenz,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Techex Computer + Grafik Vertriebs GmbH, by Wilhelm Jordan, Rechtsanwalt, Munich,

— the Commission of the European Communities, by Francisco de Sousa Fialho, of its Legal Service, acting as Agent, assisted by Hans-Jürgen Rabe and Georg M. Berrisch, of the Brussels and Hamburg Bars,

having regard to the Report for the Hearing,

after hearing the oral observations of the Commission at the hearings on 29 May and 16 September 1997,

after hearing the Opinion of the Advocate General at the sitting on 2 October 1997,

gives the following

Judgment

1 By order of 7 November 1995, received at the Court on 7 December 1995, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of the Combined Nomenclature of the Common Customs Tariff (hereinafter 'the Combined Nomenclature') in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by the annexes to Commission Regulation (EEC) No 3174/88 of 21 September 1988 (OJ 1988 L 298, p. 1), Commission Regulation (EEC) No 2886/89 of 2 August 1989 (OJ 1989 L 282, p. 1), and Commission Regulation (EEC) No 2472/90 of 31 July 1990 (OJ 1990 L 247, p. 1).

2 Those questions have been raised in proceedings between Techex Computer + Grafik Vertriebs GmbH (hereinafter 'Techex') and the Hauptzollamt (Principal Customs Office), Munich, concerning the tariff classification of 'Vista' boards.

3 According to the order for reference, a Vista board consists of printed circuits which are intended to be incorporated into automatic data-processing machines and which have integrated circuits (including, *inter alia*, graphics processors and memories) as well as active and passive processing components. The printed circuits are designed either for the conversion (i. e. data capture), processing and storage of image data received in particular from external video sources in the form of standard television signals, or for the production of graphics.

4 From 1988 to 1991 Techex imported several Vista boards which were released into free circulation and declared under heading No 8473 of the Combined Nomencla-

ture as parts for machines coming under heading No 8471 covering 'Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included.' Customs duty at the rate of 4% was levied on them.

5 By an amendment notice of 7 November 1991 and by a decision of 28 December 1991 following an objection made through administrative channels, the Hauptzollamt, Munich, upon reviewing the matter, excluded the goods in question from classification under heading No 8471 of the Combined Nomenclature on the ground that the processing of image data received from external video sources in the form of standard television signals constituted a 'specific function' within the meaning of the last paragraph of Note 5(B) to Chapter 84 of the Combined Nomenclature.

6 That paragraph is worded as follows:

'Heading No 8471 does not cover machines incorporating or working in conjunction with an automatic data-processing machine and performing a specific function. Such machines are classified in the headings appropriate to their respective functions or, failing that, in residual headings.'

7 The Hauptzollamt, Munich, consequently classified the goods under heading No 8543 of the Combined Nomenclature: 'Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter' and levied customs duty at the rate of 7% on them. It sought post-clearance recovery of the difference.

8 On 6 October 1994, the Finanzgericht (Finance Court) dismissed the action brought against those decisions. Techex then appealed on a point of law to the

Bundesfinanzhof (Federal Finance Court), arguing that a Vista board did not have a 'specific function' since the processing of images was only a category of 'data processing' in a wider technological sense.

9 In those circumstances the Bundesfinanzhof decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Must Note 5(B) to Chapter 84 of the Common Customs Tariff (Combined Nomenclature 1988 to 1991) be interpreted as meaning that image processing, which the "Vista" boards more particularly described in the grounds hereof can perform, is to be regarded as a "specific function" within the meaning of that provision, that is to say as a function other than data processing, so that such goods are not classifiable under heading No 8471?

2. If the answer to Question 1 is in the affirmative:

Must heading No 8543 (in this instance: subheading No 8543 8080 of the Combined Nomenclature 1991, subheading No 8543 8090 of the Combined Nomenclature 1988 to 1990) be interpreted as meaning that the term "(other) electrical machines ... having individual functions, not specified or included elsewhere in this Chapter" covers products such as "Vista" boards (1) even if such boards are by their nature capable of being used not only for image processing but also as graphics cards for automatic data-processing machines?

3. If the answer to Question 2 is in the negative:

Under which other customs tariff heading should products such as "Vista" boards (1) be classified?'

The first question

10 By its first question the national court asks in effect whether image processing, as it can be carried out with an automatic data-processing machine unit which includes, *inter alia*, an analogue/digital converter, a high-quality graphics processor and a digital/analogue converter, must be regarded as the performance of 'a specific function', within the meaning of the last paragraph of Note 5(B) to Chapter 84 of the Combined Nomenclature.

11 As the Court has repeatedly held, the decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the relevant heading of the Common Customs Tariff and in the notes to the sections or chapters (see, in particular, the judgment in Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945, paragraph 11).

12 Both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the Nomenclature of the Customs Operations Council are important means for ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation (see *Siemens Nixdorf*, cited above, paragraph 12).

13 In the present case, it is clear from the wording of heading No 8471 of the Combined Nomenclature that this heading includes automatic data-processing machines and units thereof. According to the first paragraph of the first part of the Explanatory Notes of the Customs Cooperation Council on this heading, 'Data-processing consists in handling information of all kinds, in pre-established logical sequences and for a specific purpose or purposes.'

14 It is clear from the first paragraph of Note 5(B) to Chapter 84 of the Combined Nomenclature that any unit which may be connected to the central unit of a data-processing system and is able to accept or deliver data in a form (code or signals)

which can be used by the system must be regarded as forming part of the complete system of an automatic data-processing machine and must be classified under heading No 8471.

15 According to part E(2) of the general considerations concerning Chapter 84 of the Explanatory Notes of the Customs Cooperation Council, a machine presented with an automatic data-processing machine and intended to work in conjunction therewith may be regarded as performing an individual function only if it performs a function 'other than data processing'.

16 In the main proceedings, the national court considers that image processing constitutes a different function from that of data processing. However, it is clear from the observations of Techex and the Commission lodged with the Court that the three components of a Vista board, comprising an analogue/digital converter, a high-quality graphics processor and a digital/analogue converter, technically do nothing else than process data.

17 For the term 'data-processing' covers the processing of images, which form a data category.

18 The Commission contends, however, that, although it processes information, a Vista board performs a specific function within the meaning of the last paragraph of Note 5(B) to Chapter 84 of the Combined Nomenclature because it enables an automatic data-processing machine to perform a specific technical function, namely process images, which the national customs authorities must take into account on importation of the goods.

19 The Court observes that such an appraisal is not based on the objective characteristics and properties of the unit in question but on the functions which the unit enables an entire automatic data-processing machine to perform.

20 Moreover, it is common ground that the function of a Vista board, which is a unit intended to be incorporated into an automatic data-processing machine, is to convert external analogue signals to make them available in a form enabling that machine to process them and to provide an on-screen representation of the result of the operations carried out by the machine. Vista boards therefore perform no function 'other than data processing'.

21 The reply to the first question must therefore be that image processing, as it can be carried out with an automatic data-processing machine unit which includes, *inter alia*, an analogue/digital converter, a high-quality graphics processor and a digital/analogue converter, is not to be regarded as the performance of a 'specific function' for the purposes of the last paragraph of Note 5(B) to Chapter 84 of the Combined Nomenclature.

The second and third questions

22 Since the second and third questions were submitted only in the event of an affirmative reply to the first question, they are devoid of purpose.

Costs

23 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (First Chamber),

in answer to the questions referred to it by the Bundesfinanzhof by order of 7 November 1995, hereby rules:

Image processing, as it can be carried out with an automatic data-processing machine unit which includes, *inter alia*, an analogue/digital converter, a high-quality graphics processor and a digital/analogue converter, is not to be regarded as the performance of a 'specific function' for the purposes of the last paragraph of Note 5(B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by the annexes to Commission Regulation (EEC) No 3174/88 of 21 September 1988, Commission Regulation (EEC) No 2886/89 of 2 August 1989 and Commission Regulation (EEC) No 2472/90 of 31 July 1990.

Wathelet Edward Sevón

Delivered in open court in Luxembourg on 18 December 1997.

R. Grass M. Wathelet

Registrar President of the First Chamber