JUDGMENT OF THE COURT (Third Chamber)
4 December 1990 *

In Case C-218/89,

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

Shimadzu Europa GmbH

and

Oberfinanzdirection Berlin,

on the interpretation of Heading 9030 of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (Official Journal 1987 L 256, p. 1),

THE COURT (Third Chamber),

composed of: J. C. Moitinho de Almeida, President of Chamber, F. Grévisse and M. Zuleeg, Judges,

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

after considering the observations submitted on behalf of the Commission of the European Communities, by Jörn Sack, Legal Adviser, assisted by Renate Kubicki, official of the Ministry of Justice of the Federal Republic of Germany, seconded to

* Language of the case: German.

the Legal Department of the Commission under the exchange scheme with national civil servants, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Shimadzu Europa GmbH, represented by Peter von Woedtke, of the Düsseldorf Bar, and of the Commission of the European Communities, at the hearing on 2 October 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 2 October 1990,

gives the following

Judgment

1 By order of 16 June 1989, which was received at the Court on 13 July 1989, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Heading 9030 of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (Official Journal 1987 L 256, p. 1).

2 That question arose in the course of a dispute between Shimadzu Europa GmbH (hereinafter referred to as 'Shimadzu') and the Oberfinanzdirektion (Principal Revenue Office) Berlin regarding the tariff classification of apparatus imported by Shimadzu.

3 Four of the pieces of apparatus each consist of a data processor with a control panel, central processor, converter, electrical interfaces and electronic components and a printer/plotter linked to the device by cable. The two other pieces of apparatus each consist of an integrator with control panel, central processor, converter, printer/plotter, electrical interfaces and electronic components.

4 In the Oberfinanzdirektion's customs tariff rulings the pieces of apparatus were described as serving to measure electrical signals from external analysers and convert them into digital signals which are compared with pre-programmed data and further processed. They were regarded as 'apparatus for measuring electrical quantities (with a recording device), not for use in aircraft' and classified under subheading 9030 81 90 of the Combined Nomenclature.

5 Heading 9030 of the Combined Nomenclature is as follows:

'Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities . . . ; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations:

. . .

Other instruments and apparatus:

9030 81 with a recording device:

9030 81 10 for use in civil aircraft

9030 81 90 other

. . .'

6 Shimadzu objected to that classification claiming that the pieces of apparatus in question are used in chromatography and are not intended to measure an electrical quantity, and the electrical quantity (a voltage in this case) is used merely to transfer physical data which is digitalized in the processor and compared, after processing, to pre-programmed data. According to Shimadzu the apparatus should have been classified under subheading 8471 20 covering 'Digital automatic data-processing machines, containing in the same housing at least a central processing unit and an input and output unit, whether or not combined'.

7 The dispute was brought before the Bundesfinanzhof which decided to stay proceedings until the Court of Justice had delivered a preliminary ruling on the following question:

'Is Heading 9030 of the Combined Nomenclature to be interpreted as covering *inter alia* microprocessor-controlled analysis apparatus for chromatography whose characteristics are as described in this request for a preliminary ruling?'

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 It should be noted that apart from instruments and apparatus for measuring or detecting radiations, Heading 9030 of the Combined Nomenclature only covers, according to its very wording, instruments and apparatus for measuring or checking electrical quantities.

10 In its judgment in Case 19/88 *ICT and Others* v *Direction générale des douanes et droits indirects* [1989] ECR 577, with regard to the provisions of subheading 90.28 A II (a) of the Common Customs Tariff, the Court ruled that apparatus for measuring electrical quantities was apparatus specifically intended to carry out such measurement.

11 The same interpretation, based on the purpose of the apparatus in question, must also be applied to define the content of Heading 9030 of the Combined Nomenclature, the provisions of which are in this respect similar to those of subheading 90.28 A II a) of the Common Customs Tariff.

12 Accordingly only apparatus whose very purpose is to carry out checks on electrical quantities can be regarded as apparatus for checking such quantities.

13 It follows that pieces of apparatus like those at issue in the main proceedings, which, according to the information supplied by the Bundesfinanzhof, are intended not to measure or check electrical quantities but, on the basis of measuring and checking an electrical quantity, namely voltage, to present and process chromatograms, cannot be classified as 'instruments and apparatus for measuring or checking electrical quantities'.

14 The answer to the Bundesfinanzhof's question should therefore be that the Combined Nomenclature should be interpreted as meaning that apparatus which measures or checks electrical quantities only for the purpose of collecting, evaluating and processing data in the field of chromatography does not fall within Heading 9030.

Costs

15 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Bundesfinanzhof, by order of 16 June 1989, hereby rules:

The Combined Nomenclature in the Annex to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the

Common Customs Tariff must be interpreted as meaning that apparatus which measures or checks electrical quantities only for the purpose of collecting, evaluating and processing data in the field of chromatography does not fall within Heading 9030.

Moitinho de Almeida Grévisse Zuleeg

Delivered in open court in Luxembourg on 4 December 1990.

J.-G. Giraud
Registrar

J. C. Moitinho de Almeida
President of the Third Chamber