OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 17 January 1985 *

Mr President,
Members of the Court,

1. The cases with which this opinion is concerned are two references to the Court for a preliminary ruling by the Hessisches Finanzgericht [Finance Court, Hesse] in actions pending before it between Nicolet Instrument GmbH and the Hauptzollamt [Principal Customs Office] Frankfurt am Main Airport. In particular the national court is seeking a ruling on the validity of two Commission decisions adopted on the basis of the rules relating to the importation of objects of an educational, scientific and cultural nature free of Common Customs Tariff duties. The two measures held that the Nicolet computers were not of a scientific nature and consequently could not be imported into the Community duty-free. The parties to the two main actions are identical and the observations which they have submitted to the Court are drafted in similar language. I can therefore consider the arguments put forward in a single context and in one opinion.

2. Let me first of all summarize the facts of Case 6/84. During the second half of 1980, Nicolet Instrument GmbH, whose registered office is at Offenbach am Main and which is the German subsidiary of an American undertaking of the same name, imported into the Federal Republic of Germany from the United States four computers described as 'Nicolet Data Acquisition System, model MED-8σ. Two of the computers were intended for the Neurological Department of the University of Erlangen and the others were for the use of the Zoological Institute of the University of Bonn and the Hesse Sports Medical Centre. The importer requested the competent customs office (at Frankfurt airport) for exemption from duty. At first the customs authorities granted the request, albeit provisionally, but subsequently, after investigations by the Zolltechnische Prüfungs- und Lehranstalt [Customs Laboratory and Training College] in Berlin and Munich, it revoked its decision to grant exemption and by notices of amendment dated 8 and 30 September and 5 October 1981 they claimed payment from Nicolet of more than DM 29 000 in customs duties. According to the grounds of its decision the apparatus did not have the objective characteristics making it 'specifically suited to scientific research'.

After the importer had made objections the Commission was invited by the Federal Republic of Germany to initiate the procedure contemplated by Article 7 of Regulation No 2784 of 12 December 1979 (Official Journal, L 318, p. 32). By Decision 82/549 of 27 July 1982 (Official Journal, L 237, p. 41), the Commission determined that the apparatus in question was not of a scientific nature and could not therefore be imported duty-free. Nicolet thereupon brought an action before the Hessisches Finanzgericht against the corresponding decisions by the German customs authorities, maintaining that the decision was invalid because it had been taken on the basis of the opinion of experts who were not competent to assess the apparatus. To that end, the applicant produced an expert opinion given by Professor K. Peper of

* Translated from the Italian.

Saarbrücken University to the effect that the use of the said apparatus for purposes other than its intended use in research laboratories was possible but uneconomic. By an order dated 13 December 1983, the Seventh Senate of the Finanzgericht stayed the proceedings and sought a ruling from the Court on the validity of Decision 82/549.

I turn now to the facts of Case 30/84. Also in 1980, Nicolet imported into the Federal Republic of Germany from the United States a computer described as 'Nicolet Data Acquisition and Processing System, model NIC-1180' which was intended for the Institute for Physical Chemistry of the University of Cologne. In that case, too, the Hauptzollamt agreed to allow exemption from duty only to revoke its decision and claim the payment of more than DM 6 500. The importer lodged an objection against the notice of amendment relating thereto, but the Hauptzollamt rejected it on 16 July 1982 in reliance on Decision 80/716 of 7 July 1980 (Official Journal, L 191, p. 31) in which in a previous case of importation into the Community the Commission had stated that the apparatus was not of a scientific nature.

Nicolet Instrument GmbH then brought an action before the Hessisches Finanzgericht claiming once again that the experts consulted by the Commission did not have the necessary qualifications to assess the scientific nature of the computer. In support of that argument it produced a second expert opinion, given by Professor B. Schrader of the University of Essen in which he stated that the computer was specially suited to scientific research. By an order of 16 January 1984, the Seventh Senate of the Finanzgericht stayed the proceedings and asked the Court to rule on the validity of Decision 80/716.

3. In its written observations the Commission contended:

(a) that Nicolet had no capacity for bringing an action in the German courts;

(b) that since the time-limits laid down for an action for annulment under Article 173 of the EEC Treaty had expired it could not in any event seek a decision on the validity of a Community measure in reliance on Article 177.

However, during the oral procedure the Commission's agent expressly abandoned those arguments of inadmissibility. I therefore consider that it is not necessary to go into them here, although I would point out that in the light of the case-law of the Court both are entirely void of foundation (as regards the first, see the judgment of 7 July 1981 in Case 158/80, *Rewe* v *Hauptzollamt Kiel* [1981] ECR 1805 and as regards the second, the judgment of 27 September 1983 in Case 216/82, *Universität Hamburg-Kehrwieder* [1983] ECR 2771).

I now pass to the consideration of the merits and observe that although the cases are references to the Court for a preliminary ruling, the complaints made by Nicolet against Decisions 82/549 and 80/716 are formulated as submissions in an action. Nicolet claims in respect of the two measures:

(1) that there is no statement of reasons;

(2) that essential procedural requirements are disregarded;

(3) that there are patent mistakes of fact and law.

Let me say straightaway that in my opinion the first two complaints are without foundation whereas the third is well founded.

Here are, in order, my reasons for taking that view.

As regards the absence of reasons, Nicolet claims that the decisions are restricted to citing the opinion of experts consulted by the Commission; on the other hand they do not mention the matters of law and fact which the Commission took into account. In that respect the judgment of this Court of 25 October 1984 in Case 185/83, [1984] ECR 3623 which concerned a similar problem seems to me pertinent. It is there stated that although the statement of reasons required by Article 190 of the Treaty must show clearly and unambiguously the reasoning of the Community authority so as to enable those concerned to know the grounds for the measures taken in order to vindicate their rights, it is not necessary for it to specify all the matters of fact or law taken into account by the authority. The question whether the statement of reasons in a decision satisfies those requirements must be determined in the light not only of its wording but also of its context and all the rules governing the matter in question. In that case, I might add, the Court conceded that the statement of reasons in the contested decision was laconic, but considered that it met the minimum requirements in Article 190 of the Treaty in view of the fact that the decision was addressed to the Member States who had taken part in the meetings of the group of experts and knew sufficiently the details of the case to be able to appreciate the extent of the decision and that it also contained sufficient detail to enable the scientific establishment concerned to determine whether the decision was vitiated on the grounds of patent mistake or misuse of powers (paragraphs 38 and 39). Every one of those words applies to the present case; consequently the argument of Nicolet Instrument GmbH must fail.

In the view of the plaintiff in the main action, the two decisions are also vitiated by breach of essential procedural requirements, in particular 'the right to be heard' which is protected *inter alia* in Article 20 of the German Grundgesetz [Basic Law]. But on that issue, also, the aforesaid judgment of 25 October 1984 gives an unequivocal answer. It was stated there that according to the Community rules on the subject (above all Commission Regulation No 2784/79) the person claiming exemption is not entitled to take part in the investigation carried out by the Committee, which is simply an exchange of views between the experts of the Member States; apart from that he has no right to be heard before the Commission adopts a decision.

4. In its third submission, Nicolet maintains that the Commission decisions are based on a patent mistake in assessing the apparatus and a mistake of law, that is to say disregard of the rules which define the scientific nature of an instrument. In support of that claim Nicolet produces two expert opinions. As I have already said, that of Professor Peper states that the apparatus described as 'Nicolet Data Acquisition System, model MED-80' is conceived for use in research laboratories and although it could be used for other purposes it would be uneconomic to do so. According to Professor Schrader, the work which the apparatus described as 'Nicolet Data Acquisition and Processing System, model NIC-1180' is capable of performing is far

too refined for it to be of any use for industrial and commercial purposes. It is therefore specially adapted for scientific research.

The Commission's opinion is quite different. It states that the experts of the Committee on Duty-Free Arrangements concluded that the computers in question were not 'mainly or exclusively suited to scientific activities' (Article 3 of Regulation No 1798/75 as amended by Regulation No 1027/79 of 8 May 1979). They could in fact be used for purposes other than scientific ones.

Let me say a few words on the rules applicable to the concept of 'scientific instrument or apparatus'. As is known, the original version of Regulation No 1798/75 did not clarify those words which were defined precisely only by Regulation No 1027/79. Nevertheless, in my Opinion in Case 234/83 I maintained that Regulation No 1027/79 added nothing of importance to what was already possible to infer, and which the Court did in fact infer (judgment of 2 February 1978 in Case 72/77, [1978] ECR 189), as to the interpretation of the original wording. In brief, in my opinion, the amendment effected by the regulation does not affect the matter. And if that is so, it makes no sense to inquire into the exact sequence in time of the rules.

On the other hand, it is necessary to establish whether the processors in question may be regarded as 'scientific instruments'. As I have already said, the Commission says no. In reference to Case 30/84, it maintains that a computer is of a scientific nature only if it is intimately connected with a scientific apparatus as, for example, when it controls a telescope. Similarly, in relation to the apparatus in Case 6/84, the fact that it is used in a medical department or a university zoological institute is not sufficient in its opinion for it to be regarded as scientific. It has that nature only in so far as recourse is had to the apparatus for the purpose of research or instruction.

That argument, however, which generally excludes the scientific nature of electronic computers, must be rejected. In that respect, the judgment of this Court of 17 March 1983 in Case 294/81, *Control Data* v *Commission,* ([1983] ECR 911) is decisive. In that case, the Commission had likewise denied that a computer was a scientific instrument because it could not measure, detect, transform or process any physical dimension or characteristic. The Court held, on the contrary, that in many fields the computer constitutues the only effective tool which researchers may use because it alone enables the extremely complicated equations which are necessary for research to be solved within a reasonable period. The Court held that although it is possible for other uses to be made of the computer, that does not affect its scientific nature when it is 'used mainly for scientific purposes'.

It must therefore be concluded that in adopting the two decisions the Commission did not scrutinize the special characteristics of the computers in question, as the Community rules require. On the contrary, it relied on a general thesis to the effect that computers are in principle not of a scientific nature, and that thesis the rules, as interpreted by the Court, do not support.

5. In the light of all those considerations I propose that the Court should answer the questions put by the Seventh Senate of the Hessisches Finanzgericht by orders of 13 December 1983 (Case 6/84) and 16 January 1984 (Case 30/84) as follows:

Decisions 82/549 of 27 July 1982 and 80/716 of 7 July 1980 (Official Journal, L 237, p. 41 and L 191, p. 31), which state respectively that the apparatus described as 'Nicolet Data Acquisition System, model MED-80' and 'Nicolet Data Acquisition and Processing System, model NIC-1180' may not be imported free of Common Customs Tariff duties are void.