JUDGMENT OF THE COURT (Fourth Chamber)
20 January 1989 *

In Case 234/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof (Federal Finance Court) for a preliminary ruling in the proceedings pending before that court between

Casio Computer Co. GmbH Deutschland, whose registered office is in Hamburg,

and

Oberfinanzdirektion München

on the interpretation of the Common Customs Tariff and in particular the criteria for distinguishing between 'calculating machines' falling within heading 84.52 of the Common Customs Tariff and 'automatic data-processing machines' falling within heading 84.53 of the Common Customs Tariff for the purpose of the tariff classification of electronic machines known as programmable calculators,

THE COURT (Fourth Chamber)

composed of: T. Koopmans, President of the Chamber, C. N. Kakouris and G. C. Rodríguez Iglesias, Judges,

Advocate General: M. Darmon
Registrar: B. Pastor, Administrator

* Language of the case. German.

after considering the observations submitted on behalf of:

Casio Computer Co. GmbH Deutschland, the applicant in the main proceedings, represented by Johannes Schellmann, acting as Agent, and Axel Bauer, Rechtsanwalt, at the hearing,

the Commission of the European Communities, represented by its Legal Adviser, Jörn Sack, acting as Agent, assisted by Reinhard Wagner, and, at the hearing, by Hervé Blin, giving expert evidence,

having regard to the Report for the Hearing and further to the hearing on 7 July 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 18 October 1988,

gives the following

Judgment

1 By order of 30 April 1987, which was received at the Court on 30 July 1987, the Bundesfinanzhof referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the Common Customs Tariff, and in particular the distinction between 'calculating machines' of heading 84.52 and 'automatic data-processing machines' of heading 84.53 of the Common Customs Tariff as amended by Council Regulation (EEC) No 3400/84 of 27 November 1984 amending Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journal 1984, L 320, p. 1).

2 The question was raised in proceedings between Casio Computer Co. GmbH (hereinafter referred to as 'Casio') and the Oberfinanzdirektion (Principal Revenue Office), Munich, concerning the tariff classification of four types of electronic machines imported from Japan and known as 'programmable calculators' which, according to their description in the order making the reference, are intended essentially for calculating but also for other operations and which are

programmable by a method which is more simple to use than the programming language BASIC.

3 By binding customs tariff rulings of 9 and 15 November 1984, made upon the application of Casio, the Oberfinanzdirektion classified the goods in question under tariff subheading 84.52 A (electronic calculating machines) of the Common Customs Tariff. Administrative appeals in which Casio sought to have the goods classified under subheading 84.53 B of the Common Customs Tariff (automatic data-processing machines) were rejected on the ground that the programmable calculators did not meet all the conditions set out in Note 3 A (a) of Chapter 84 of the Common Customs Tariff *inter alia* because they were not able to translate a processing program written in a formal programming language into machine language.

4 Casio appealed to the Bundesfinanzhof against that decision. In order to resolve the dispute the Bundesfinanzhof stayed the proceedings and submitted the following question to the Court for a preliminary ruling:

'Where is the distinction to be drawn between the terms "calculating machines" in tariff heading 84.52 and "automatic data-processing machines" in tariff heading 84.53 of the Common Customs Tariff?

Are electronic devices which are intended principally for calculating but also for other operations and are programmable by a method which is more simple to use than, for example, the programming language BASIC calculating machines covered by tariff heading 84.52 or automatic data-processing machines covered by tariff heading 84.53 of the Common Customs Tariff?'

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

6 Note 3 A (a) of Chapter 84 of the Common Customs Tariff reads as follows:

'For the purposes of heading No 84.53, the expression "automatic data-processing machines" means:

(a) digital machines having storages capable of storing not only the processing program or programs and the data to be processed but also a program for translating the formal programming language in which the programs are written into machine language. These machines must have a main storage which is directly accessible for the execution of a program and which has a capacity at least sufficient to store those parts of the processing and translating programs and the data immediately necessary for the current processing run. They must also be able themselves, on the basis of the instructions contained in the initial program, to modify, by logical decision, its execution during the processing run.'

7 It appears from the documents before the Court that the conclusion reached in the experts' reports drawn up for the purposes of the main proceedings was that the machines in question, or at least one of them, met the criteria set out in Note 3 A (a) of Chapter 84 of the Common Customs Tariff.

8 However, the origin of the dispute concerning the classification of the machines in question lies in the fact that the programming language which they use is very simple and their memory is very limited. When Note 3 A (a) of Chapter 84 of the Common Customs Tariff was adopted simple programming languages did not exist and programmable calculators were not manufactured.

9 Having regard to the way in which techniques have developed since that time and have led to the construction of machines such as those at issue in the main proceedings, the national court wishes to know whether Note 3 A (a), *supra*, must be given an interpretation which takes account of new developments.

10 The Commission is of the view that that note must be interpreted dynamically, taking account of the development of techniques, and draws the conclusion that programmable calculators using extremely simple programming languages and which need a very limited memory cannot be regarded as automatic data-processing machines.

11 In this respect it must be stressed that when it adopted the note at issue, the Community legislature was aware of the state of the art and consequently of the market at that time as well as the possibility of rapid development in the sector concerned. However, it opted to select general criteria without linking them to the development of the state of the art. Having regard to the attitude of the legislature technical developments which have occurred in the sector concerned cannot *ipso facto* amend the scope of the provisions of the Common Customs Tariff.

12 As the Court ruled in its judgment of 19 November 1981 in Case 122/80 (*Analog Devices GmbH* v *Hauptzollamt München-Mitte and Hauptzollamt München-West* [1981] ECR 2781), if technical developments justify the drawing up of a new customs classification it is for the competent Community institutions to take account of it by amending the Common Customs Tariff. Failing such an amendment, the interpretation of the tariff cannot be adapted to changing processes.

13 Any other interpretation would not comply with the requirements of legal certainty and the requirement that the checks which must be carried out when clearing customs should be easy to operate.

14 Consequently, the answer to the question submitted by the national court must be that electronic devices which are essentially designed for calculating, but also for other operations, which are programmable by a method that is more simple to use than, for example, the programming language BASIC and which correspond to the criteria set out in Note 3 A (a) to Chapter 84 of the Common Customs Tariff are automatic data-processing machines within the meaning of tariff heading 84.53 of the Common Customs Tariff.

Costs

15 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings 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 (Fourth Chamber),

in answer to the question submitted to it by the Bundesfinanzhof by order of 30 April 1987 hereby rules:

Electronic devices which are essentially designed for calculating, but also for other operations, which are programmable by a method that is more simple to use than, for example, the programming language BASIC and which correspond to the criteria set out in Note 3 A (a) to Chapter 84 of the Common Customs Tariff are automatic data-processing machines within the meaning of tariff heading 84.53 of the Common Customs Tariff.

Koopmans Kakouris Rodríguez Iglesias

Delivered in open court in Luxembourg on 20 January 1989.

J.-G. Giraud
Registrar

T. Koopmans
President of the Fourth Chamber