OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 11 January 1989 *

Mr President,
Members of the Court,

1. The Finanzgericht Baden-Württemberg has submitted a question concerning the validity of the Commission decision of 1 March 1985, as published in abbreviated form in the *Official Journal of the European Communities*,[1] which withheld exemption from customs duties for a simultaneous spectrometer known as the 'Jarrel-Ash-Plasma-Atomcomp Direct Reading Spectrometer System (Model 1125 A)' imported from the United States by the University of Stuttgart; exemption was refused on the ground that equivalent apparatuses existed in the Community, in particular the 'PV 8210/PV 8490' manufactured by Philips (Belgium) and the 'JY 48' and the 'JY 70 P' manufactured by Jobin Yvon (France).

2. The plaintiff in the main proceedings makes two complaints: first, it alleges that the statement of the reasons on which the decision is based is inadequate and, secondly, it contends that the Community apparatuses are not equivalent to the imported apparatus.

3. With respect to the second complaint, it will be recalled that the Court exercises in that regard

'a limited power of supervision since, given "the technical character of that examination [of the question whether or not the apparatuses concerned 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' ".[2]

In the present case, it is apparent from the documents before the Court that the Commission decision is in conformity with the opinion of the Committee on Duty-Free Arrangements.

4. The national court states in its order for reference that the expert appointed by it concluded that the Community apparatuses were equivalent to the imported apparatus, subject to two reservations:

(i) the Community apparatus cannot detect potassium on the basis of the 766.4 nm band;

(ii) the French apparatus cannot detect lithium or sodium.

5. I should point out that the application for exemption from customs duties does not expressly refer to the need to detect potassium. However, the Commission conceded at the hearing that on reading a description of the research project an expert would probably have concluded that it was

* Original language: French.

1 — OJ C 57, 5.3.1985, p. 3

2 — Judgment of 25 October 1984 in Case 185/83 *University of Groningen* v *Inspecteur der Invoerrechten en Accijnzen, Groningen* [1984] ECR 3623, paragraph 14, which refers to the judgment of 27 September 1983 in Case 216/82 *Universität Hamburg* v *Hauptzollamt Hamburg-Kehrwieder* [1983] ECR 2771, paragraph 14.

necessary to be able to measure the presence of potassium on the 766.4 nm wavelength.

6. For my part, I note — as the representative of the Belgian Government emphasized at the hearing — that in fact the expert expressed reservations only about the JY 70 P apparatus, indicating that the question of its equivalence with the imported apparatus depended on whether another network could be delivered at the time of importation. The expert's report ordered by the national court does not place any limitations on the equivalence of the Philips apparatus since it states (on p. 5) that the manufacturer's reply 'in that respect [that is to say with respect to the possibility of adapting the apparatus] is correct and clear'. The Commission and the Belgian Government maintain in that connection that with the help of the 'PV 8291/00' accessory the Philips apparatus can measure potassium on the 766.4 nm wavelength. As regards the French JY 70 P apparatus, the Commission, when questioned on that point at the hearing, stated that it was capable, at the time when the American apparatus was ordered, of detecting the three elements potassium, lithium and sodium using an additional item of equipment.

7. In the absence of the University of Stuttgart, the Court examined the matter in great detail at the hearing. In my opinion, nothing emerged to call in question the clarifications furnished by the Commission. In any event, I did not note anything which might be indicative of a manifest error of appraisal or misuse of powers.

8. For the sake of completeness, it must be stated that if we assume — as the expert did — that the JY 48 I CP apparatus could not be considered for the intended task, the decision is not thereby rendered invalid since the conclusion that the other two apparatus are equivalent was sufficient to found the withholding of exemption.

9. It seems to me that the allegation that the statement of the grounds for the decision is inadequate must also be rejected without much ado.

10. The decision, as published in simplified form,[3] refers to the 'existence of production of other apparatus of equivalent scientific value in the Community at date of order' and then gives the names of the Philips apparatus and the Jobin Yvon apparatus, together with the manufacturers' addresses. The decision addressed to the Federal Republic of Germany gives no further details in that respect, even though it is drafted in a less laconic fashion.

11. Admittedly, the Commission's statement of reasons is particularly 'compact'. But I would point out that in its judgment in *University of Groningen*[4] the Court held that a similarly succinct statement of reasons fulfilled the minimum requirements laid down by Article 190 of the Treaty, in so far as the decision, which was addressed to the Member States that took part in the meetings of the group of experts and were therefore sufficiently familiar with the details of the case to assess its scope, contained 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'.

3 — In accordance with Article 7(6) of Commission Regulation No 2290/83 of 29 July 1983 (OJ L 220, 11 8 1983, p 20)

4 — Supra, at paragraph 39, see also the judgment of 26 June 1986 in Case 203/85 *Nicolet Instrument* v *Hauptzollamt Frankfurt am Main-Flughafen* [1986] ECR 2049, paragraph 11

12. Similar considerations in this case compel the conclusion that the statement of reasons is adequate. In particular it must be noted that the precise identification of the apparatus regarded as equivalent enables the persons concerned to examine and, if necessary, challenge the Commission's analysis.

13. I would also observe that in disregard of its obligations under Article 6(2)(j) of Regulation No 2784/79,[5] the regulation then in force, the University of Stuttgart failed to indicate in its application for exemption the names and addresses of the Community firms approached by it with a view to obtaining apparatus or instruments equivalent to the one for which exemption was requested. If it had done so it would also have been obliged, by virtue of that provision, to state at the outset the detailed reasons for which, in its opinion, the Community apparatus could not be regarded as equivalent to the imported apparatus.

14. And I cannot fail to point out that an applicant for exemption that complies with its obligations under Article 6(2)(j) must be in a position to assess the Commission's analysis, by virtue of the fact that the apparatus considered equivalent, which it must be familiar with even if it has decided that they are not equivalent, are specifically named.

15. Consequently, the form of the statement of reasons adopted by the Commission does not seem to me to be insufficient, since it is precise enough to enable the importer to make use of its right of appeal, particularly if it has investigated the market as required by the applicable rules.

16. I therefore propose that the Court hold that consideration of Decision 85/C 57/03 of 1 March 1985 has disclosed no factor of such a kind as to affect its validity.

5 — Commission Regulation of 12 December 1979 (OJ L 318, 13.12.1979, p. 32), repealed and replaced by Regulation No 2290/83, cited in footnote 3.