JUDGMENT OF THE COURT (Third Chamber)
26 June 1986 *

In Case 203/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hessisches Finanzgericht [Finance Court, Hesse] for a preliminary ruling in the proceedings pending before that court between

Nicolet Instrument GmbH, Offenbach am Main

and

Hauptzollamt [Principal Customs Office] **Frankfurt am Main-Flughafen**

on the validity of Commission Decision No 82/586 of 6 August 1982 establishing that the apparatus described as 'Nicolet — high speed signal averager, Model 1174, with accessories' may not be imported free of Common Customs Tariff duties (Official Journal L 243, p. 30),

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Y. Galmot and J. C. Moitinho de Almeida, Judges,

Advocate General: J. Mischo
Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of

Nicolet Instrument GmbH by Helmut Villaschek, Rechtsanwalt and Notar, Frankfurt am Main,

the Commission of the European Communities by Jörn Sack, a member of its Legal Department, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 29 May 1986,

* Language of the Case: German.

gives the following

JUDGMENT

(The account of the fact and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 11 June 1985, which was received at the Court on 2 July 1985, the Hessisches Finanzgericht referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the validity of Commission Decision No 82/586 of 6 August 1982 establishing that the apparatus described as 'Nicolet — high speed signal averager, Model 1174, with accessories' may not be imported free of Common Customs Tariff duties (Official Journal L 243, p. 30).

2 That question arose in proceedings between Nicolet Instrument GmbH, the German subsidiary of an American manufacturer, and the Hauptzollamt [Principal Customs Office], Frankfurt am Main Airport.

3 It appears from the documents before the Court that in 1982 Nicolet imported from the United States apparatus corresponding to the description set out above together with a NIC-diskette system slide-in unit for the Max Planck Institute for medical research in Heidelberg and the Neuropsychiatric Clinic of the University of Kiel. In accordance with the established practice in such cases, the Hauptzollamt initially permitted importation of the apparatus free of customs duties on a provisional basis.

4 However, following an investigation by the Customs Laboratory and Training College of the Oberfinanzdirektion [Principal Revenue Office], Berlin, and having regard to the aforementioned Commission decision of 6 August 1982, the Hauptzollamt, by amending decisions of 3 September 1982, 28 October 1982 and 10 March 1983, charged a total of DM 7 172.89 in customs duties for the importation of the apparatus in question on the ground that having regard to its characteristics it was not specifically suited to scientific research. The objections lodged by Nicolet against those decisions were rejected by the Hauptzollamt by decision of 9 January 1984.

5 Nicolet brought an action against the latter decision before the Hessisches Finanzgericht, which stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Is Commission Decision No 82/586/EEC of 6 August 1982 (Official Journal L 243, p. 30) relating to the apparatus described as a "Nicolet — high speed signal averager, Model 1174, with accessories" valid?'

6 The validity of the Commission's decision must be considered in the light of the arguments put forward by the parties in the main proceedings, to which the Court has been referred by the national court.

7 Nicolet considers that the Commission's decision is invalid on the grounds that it does not contain an adequate statement of the reasons on which it is based, contrary to Article 190 of the Treaty, that it was adopted in breach of Nicolet's fundamental right to be heard and, finally, that it is based on a manifest error of assessment.

8 In support of its first complaint alleging the absence or the inadequacy of the statement of reasons on which the contested decision is based, Nicolet claims that the Commission confines itself to referring to the opinion of a group of experts, without providing any further details, and to asserting that 'apparatus of the same kind is principally used for non-scientific activities', which is a secondary criterion of assessment to which the Commission may have recourse only if it does not arrive at a clear conclusion on the basis of the principal criterion of assessment, that is to say, whether or not the apparatus in question is of a scientific character.

9 It appears from the second and third recitals in the preamble to the contested decision, on the one hand, that it was adopted in accordance with the opinion of a group of experts composed of representatives of the Member States which met on 2 July 1982 within the framework of the Committee on Duty-free Arrangements and, on the other hand, that 'the apparatus in question is a signal analyser; . . . it does not have the requisite objective characteristics making it specifically suited to scientific research . . . '.

10 Although it is true that the Court has consistently held that the statement of reasons required by Article 190 of the Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question in such a way as to make the persons concerned

aware of the reasons for the measure and thus enable them to defend their rights, and to enable the Court to exercise its supervisory jurisdiction, the authority is not required to give details of all relevant factual and legal aspects. The question whether the statement of the reasons on which a decision is based meets those requirements must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.

11 In this case, it must be pointed out that although the statement of the reasons on which the Commission's decision is based is somewhat laconic, it none the less satisfies the minimal requirement of Article 190 of the Treaty. First of all, the decision is addressed to the Member States which took part in the meetings of the group of experts and are therefore sufficiently familiar with the details of the case to be able to assess the scope of the decision. Furthermore, the said decision also contains the indispensable elements which permit the scientific establishment concerned to establish whether the decision is vitiated by a manifest error of assessment, as Nicolet contends.

12 Nicolet's first submission cannot therefore be accepted.

13 In support of its second submission, Nicolet claims that since it is directly concerned by the contested decision and since the matter requires a complex assessment of the nature of an apparatus which is in fact known only to those who use it,' the Commission should have given it an opportunity to be heard, as is required by the applicable Community rules.

14 It must first be stated that the procedure by which the Commission adopts decisions on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials is initiated by the Commission on the application of the competent authority in the Member State in which is situated the establishment to which the apparatus in question is consigned, in accordance with the provisions of Article 7 (2) of Commission Regulation No 2784/79 of 12 December 1979 (Official Journal L 318, p. 32), adopted for the implementation of Council Regulation No 1798/75 of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific or cultural materials (Official Journal L 184, p. 1), as amended by Council Regulation No 1027/79 (Official Journal L 134, p. 1).

15 Regulation No 2784/79 provides neither for the participation of the person applying for duty-free importation in the examination carried out by the experts from the Member States within the framework of the Committee on Duty-free Arrangements nor for any right on his part to be heard before the Commission adopts the decision establishing whether or not the instrument or apparatus fulfils the conditions required for admission free of customs duties.

16 It must also be emphasized that Commission Decision No 82/586 was adopted on the occasion of the importation of an apparatus into the United Kingdom, with which Nicolet was not concerned. That decision, which was notified to all the Member States in August 1982 in accordance with the third subparagraph of Article 7 (6) (3) of Regulation No 2784/79, was already binding in the territory of the Community by virtue of the fourth paragraph of Article 189 of the Treaty when Nicolet applied to import similar apparatus free of customs duties into the Federal Republic of Germany.

17 Nicolet cannot therefore validly argue that Commission Decision No 82/586 was adopted in violation of its right to be heard.

18 Finally, in support of its submission alleging a manifest error of assessment, Nicolet denies that the Commission sought the opinion of competent experts in assessing the scientific character of the apparatus in question. It relies on the expert's report drawn up on 27 September 1982 by Dr Horst Eberhard Buchwald, a lecturer at the University of Berlin, and emphasizes that the Nicolet 1174 is merely an improved model of the apparatus which the Commission recognized as being mainly suited for scientific activities in Decision No 79/527 of 22 May 1979 (Official Journal L 141, p. 36). The Nicolet 1174 is an extremely sensitive and complex measuring device which is not used for commercial purposes, since the performance of which it is capable was conceived purely for the purposes of scientific research and is of interest only for such research.

19 The Commission contends essentially that the difference between the decision adopted in 1979 and that at issue in this case is due to the rate of development of the equipment at issue, which tends to move very rapidly from the stage of technical innovation to that of everyday equipment. Moreover, the apparatus imported by Nicolet is also used in non-scientific activities such as clinical medicine.

20 It should not be forgotten that according to Article 3 (1) and (3) of Council Regulation No 1798/75, as amended by Council Regulation No 1027/79, the only scientific instruments and apparatus which may be imported free of Common Customs Tariff duties are those imported exclusively for non-commercial purposes which, by reason of their objective technical characteristics and the results which they make it possible to obtain, are mainly or exclusively suited to scientific activities.

21 According to Article 5 (1) of Commission Regulation No 2784/79, the implementing regulation, 'the "objective technical characteristics" of a scientific instrument or apparatus shall be understood to mean those characteristics resulting from the construction of that instrument or apparatus or from adjustments to a standard instrument or apparatus which make it possible to obtain high-level performances above those normally required for industrial or commercial use'.

22 It should be noted in that regard that according to the observations submitted to the Court by the Commission, which were not refuted by Nicolet, the technical characteristics of the apparatus at issue are comparable to those of a great many of the computers used in industry. Those characteristics do not make it possible to obtain a level of performance making the apparatus particularly suitable for scientific research, and certain specific performances referred to by the expert, Dr Buchwald, may only be obtained with the help of an auxiliary apparatus which in this case was not imported.

23 Consequently, the submission alleging a manifest error of assessment cannot be upheld.

24 The reply to the national court must therefore be that consideration of Commission Decision No 82/586 of 6 August 1982 has disclosed no factor of such a kind as to affect its validity.

Costs

25 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 proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Hessisches Finanzgericht by order of 11 June 1985, hereby rules:

Consideration of Commission Decision No 82/586 of 6 August 1982 has disclosed no factor of such a kind as to affect its validity.

Everling Galmot Moitinho de Almeida

Delivered in open court in Luxembourg on 26 June 1986.

P. Heim
Registrar

U. Everling
President of the Third Chamber