OPINION OF MR ADVOCATE GENERAL JACOBS
delivered on 11 July 1991 *

My Lords,

I — The background

1. The Member States of the Community are parties to the Agreement on the importation of educational, scientific and cultural materials, concluded under the auspices of Unesco and opened for signature at Lake Success, New York, on 22 November 1950 (*United Nations Treaty Series*, Volume 131, 1952, No 1734). The parties to that Agreement (known as the Florence Agreement) undertake not to apply customs duties or other charges on the importation of, among other things, scientific instruments or apparatus intended for educational purposes or for pure scientific research, provided among other things that instruments or apparatus of equivalent scientific value are not being manufactured in the country of importation.

2. Effect was given in the Community to that Agreement by Council Regulation (EEC) No 1798/75 of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials (Official Journal 1975 L 184, p. 1). The preamble to that regulation refers to the Florence Agreement; it also states, in its first recital, that 'in order to facilitate the free exchange of ideas as well as the exercise of cultural activities and scientific research within the Community, it is necessary to allow, by all possible means, the admission free of Common Customs Tariff duties of educational, scientific and cultural materials'. Under Article 3 (1)(b) of the regulation, scientific instruments and apparatus may be admitted free of customs duties, provided that 'instruments or apparatus of equivalent scientific value are not being manufactured in the Community'. Regulation No 1798/75 was amended by Council Regulation (EEC) No 1027/79 of 8 May 1979 (Official Journal 1979 L 134, p. 1), but the wording of Article 3(1)(b) was not affected by the amendment.

3. On 21 December 1978 the Technische Universität München (hereafter 'the University') placed an order with a Japanese company called JEOL for an instrument described as a JSM-35 C scanning electron microscope. The instrument was required for the purpose of carrying out research in connection with electrochemical processes, geological, mineralogical and food chemistry problems, plastics, photochemical emulsions and biological systems.

* Original language: English.

4. The University applied for customs clearance of the instrument on 1 June 1979, 5 October 1979 and 23 March 1981. At first the Hauptzollamt München-Mitte took the view that the instrument could be admitted duty-free under Regulation No 1798/75. Subsequently, however, the Hauptzollamt decided that the instrument could not be exempted from customs duties. It did so on the basis of Commission Decision 82/86/EEC of 23 December 1981 (Official Journal 1982 L 41, p. 53), which had held, in connection with a different importation, that the JSM-35 C could not be imported duty-free because an instrument currently being manufactured in the Netherlands by Philips Nederland BV (the PSEM 500 X) was of equivalent scientific value. Accordingly, by notices dated 14 April, 15 April and 22 June 1982, the Hauptzollamt demanded customs duties of DM 31 110.20 together with DM 3 746.50 by way of value-added tax.

5. The University objected to the Hauptzollamt's decision and the German authorities referred the matter to the Commission, pursuant to Article 7(2) of Commission Regulation (EEC) No 2784/79 of 12 December 1979 laying down provisions for the implementation of Regulation No 1798/75 (Official Journal 1979 L 318, p. 32). The Commission then set in motion the procedure laid down in Article 7(3) to (7) of Regulation No 2784/79. (I note, in parentheses, that although the Commission refers in its written observations to Regulation No 2784/79, it suggests, in its answers to questions put by the Court, that the procedure was governed by Commission Regulation (EEC) No 3195/75 (Official Journal 1975 L 316, p. 17), which was the predecessor to Regulation No 2784/79. However, nothing seems to turn on the point, since the relevant provisions of the two regulations are very similar, and the differences are not material in the present case. In what follows, I shall refer to Regulation No 2784/79.)

6. A group of experts composed of representatives of the Member States meeting within the framework of the Committee on Duty-Free Arrangements was consulted, as provided in Article 7(5) of Regulation No 2784/79. It concluded that the Philips PSEM 500 X was an apparatus of scientific value equivalent to the JSM-35 C. Acting in accordance with Article 7(6), second subparagraph, of the regulation, the Commission adopted Decision 83/348/EEC of 5 July 1983 establishing that the apparatus described as 'JEOL — Scanning Electron Microscope model JSM-35 C' may not be imported free of Common Customs Tariff Duties (Official Journal 1983 L 188, p. 22). That decision was again based on the ground that the Philips machine was of equivalent scientific value.

7. It may be noted at this point that, once the group of experts had concluded that the Philips machine was equivalent in scientific value to the JEOL machine, the Commission apparently had no discretion in the matter. Article 7(6), second subparagraph, of Regulation No 2784/79 provides:

'Where this examination [i. e. the examination carried out by the group of experts] shows that the instrument or apparatus for which duty-free admission has been requested is not to be regarded as scientific,

or that there is an instrument, or apparatus of equivalent scientific value currently manufactured in the Community, the Commission shall adopt a decision declaring that the said instrument or apparatus does not fulfil the conditions required for duty-free admission.'

8. As a result of Commission Decision 83/348 the Hauptzollamt confirmed its decision to charge customs duties on the apparatus in question. The University appealed to the competent Finanzgericht. The Finanzgericht took the view that the Philips apparatus was not of equivalent scientific value to the JEOL apparatus and therefore quashed the decision charging customs duties on the latter. The Finanzgericht did not consider itself bound by Commission Decision 83/348, which was, in its view, contrary to Community law and therefore invalid. It also considered that the decision was not a rule of law and was binding only on the Member States as addressees. Presumably it did not regard itself or the Hauptzollamt as part of the German State. It must be pointed out, however, that all Community measures are binding on all the organs of the Member States, unless declared invalid, and that national courts do not have the power to declare Community measures invalid: Case 314/85 *Foto-Frost* v *Hauptzollamt Lübeck-Ost* [1987] ECR 4199.

9. The Hauptzollamt appealed against the Finanzgericht's decision to the Bundesfinanzhof, which has asked for a preliminary ruling on the validity of Commission Decision 83/348.

II — The issue raised by the Bundesfinanzhof: the scope of judicial review

10. The Bundesfinanzhof is aware that the Court has hitherto taken a restrictive attitude as regards the extent to which it is willing to review the substance of a decision refusing to grant exemption from customs duties on the ground that equipment of equivalent scientific value is produced in the Community. The Bundesfinanzhof cites the judgment in Case 303/87 *Universität Stuttgart* v *Hauptzollamt Stuttgart-Ost* [1989] ECR 715, in which the Court held, following its previous case-law, that:

'Given the technical character of the examination to determine whether or not particular apparatus are equivalent, [the Court] cannot, save in the event of manifest error of fact or law or misuse of power, find fault with the substance of a decision adopted by the Commission in conformity with the opinion of the Committee on Duty-Free Arrangements.'

11. The Bundesfinanzhof does not put forward any specific ground for suggesting that Commission Decision 83/348 is invalid. But it invites the Court to reconsider its previous case-law and to depart from its practice of confining judicial review to the question whether the Commission's decision was vitiated by a manifest error of fact or law or misuse of power. In the order for reference it states as follows:

'Limited review in accordance with the previous case-law of the Court of Justice would mean that a legally incorrect decision of the Commission adversely affecting Community citizens would be upheld merely because the mistakes on the part of the Commission were not manifest. The more difficult the technical questions to be decided the more immune from challenge the Commission's decision would be. It is questionable whether such a restriction of the legal protection of Community citizens is compatible with the constitutional principle guaranteeing effective legal protection which is recognized by Community law.'

12. The Bundesfinanzhof points out that questions concerning the customs classification of goods are often of an equally technical nature and yet there is no support for the view that the decisions of the administration in that field are subject to such limited judicial review.

13. There is much force in the observations of the Bundesfinanzhof. Obviously the technical nature of a case should not cause the Court to forsake its duty, under Article 164 of the Treaty, to ensure that the law is observed. The Court cannot shy away from technical questions and must in an appropriate case be prepared to resolve such questions by commissioning an expert's report under Article 49 of the Rules of Procedure. Even in proceedings on a reference for a preliminary ruling such a possibility is available to the Court by virtue of Article 103 of the Rules of Procedure.

14. Moreover, the formula used by the Court in the *Universität Stuttgart* case (cited above, paragraph 10) and in its earlier judgment in Case 216/82 *Universität Hamburg* v *Hauptzollamt Hamburg-Kehrwieder* [1983] ECR 2771 is infelicitous in so far as it suggests that the Court cannot invalidate a Commission decision containing an error of law, unless the error is manifest. That statement of the law should not, I think, be taken too literally. I take it to be the case that any decision of a Community institution that produces binding legal effects, even a decision on a technical question, is liable to annulment on the ground that it contains an error of law, including an error that is not manifest. It may be noted that the French text of the judgment in the *Stuttgart* case (but not in the *Hamburg* case) refers not to a manifest error of fact or law but to an 'erreur manifeste d'appréciation'.

15. On the other hand, there are, in my view, sound reasons of legal policy why the Court should be reluctant to interfere with a decision taken in a technical domain in accordance with the recommendations of a group of experts. A momentary glance at the documents placed before the Court in the present proceedings reveals questions that lie well beyond the ordinary capacities of a court of law. The Court of Justice is not, for example, the appropriate forum in which to determine whether the Philips PSEM 500 X possesses a back-scattered electron detector capable of distinguishing atomic number differences. Nor is the Court well placed to judge whether that machine's eucentric tilting specimen stage is capable of setting the surface of the specimen on the

Rowland circle of the spectrometer faster and more accurately than the light microscope fitted to the JEOL JSM-35 C. Those are questions that only a scientist can answer.

16. Given these conflicting considerations, it is desirable that issues such as the equivalence of two scientific instruments should in principle be submitted to an independent body composed of persons possessing the necessary technical expertise. In so far as those issues are entrusted to such a body and that body conducts its proceedings in accordance with the relevant legislation and whatever general principles of law are applicable, takes into account all relevant matters, disregards all matters that are not relevant and produces a decision that is at least sufficiently reasoned to allow some form of judicial review, then I would accept that the Court should be reluctant to interfere with the resulting decision and should certainly not substitute its own opinion on technical questions for that of the experts. It would, in those circumstances, be legitimate for the Court to confine its role to reviewing whether the decision was vitiated by an error of law, in particular a procedural error, or whether it was manifestly wrong.

III — The procedure leading to the adoption of the contested decision

17. The question that must be considered is therefore whether the circumstances in which Commission Decision 83/348 came to be adopted are such that the Court would be justified in so limiting the scope of judicial review. For that purpose I will summarize the procedure laid down in Regulation No 2784/79 and then examine the working methods of the group of experts meeting within the framework of the Committee on Duty-Free Arrangements and consider how Decision 83/348 came into being.

18. Article 6 of Regulation No 2784/79 provides that in order to obtain duty-free admission of a scientific instrument or apparatus the establishment or organization to which the goods are consigned ('the importing establishment') must submit an application to the competent authority of the Member State in which it is situated. The application must contain various items of information relating to the instrument or apparatus in question, including a description of the objective technical characteristics on the basis of which it is considered scientific. The application must also state the use for which the instrument or apparatus is intended and give a detailed description of the project for which it is intended. Article 6(2)(j) of the regulation requires the importing establishment to state:

'the name or business name and address of the Community firm or firms which have been approached with a view to the supply of an instrument or apparatus of a scientific value equivalent to that for which duty-free admission is requested, the outcome of these approaches and, where appropriate, detailed reasons why an instrument or apparatus which is available in the Community would not be suitable for the particular scientific work to be undertaken.'

In addition, 'documentary evidence providing all relevant information on the characteristics and technical specifications of the instrument or apparatus must be furnished with the application'.

19. Article 7(1) of Regulation No 2784/79 requires the authority to which the application for duty-free admission is submitted to take a decision on the application itself where the information at its disposal enables it to assess whether the instrument is scientific and whether instruments of equivalent value are currently being manufactured in the Community. Where that authority is unable to take a decision it must, under Article 7(2) of the regulation, forward the application to the Commission, together with the relevant technical documents. The Commission must then set in motion the procedure laid down in Article 7(3) to (7). I will quote paragraphs (3) to (5) of Article 7 verbatim:

'3. Within two weeks of the date of receipt of the application, the Commission shall dispatch a copy to each of the other Member States together with the relevant documentation.

4. If, on the expiry of a period of three months from the date of such dispatch, no Member State has sent the Commission objections concerning the duty-free admission of the instrument or apparatus under consideration, the said instrument or apparatus shall be deemed to fulfil the conditions required for duty-free admission. The Commission shall notify the Member States of this circumstance within two weeks following the expiry of the aforesaid period.

5. If, within the period of three months laid down in paragraph 4, a Member State has sent the Commission objections regarding the duty-free importation of the instrument or apparatus under consideration, the Commission shall as soon as possible notify a group of experts composed of representatives of all the Member States, who shall meet within the framework of the Committee on Duty-Free Arrangements in order to examine the matter.

The objections referred to in the preceding subparagraph must include a statement of the grounds therefor. Such grounds must indicate either why the instrument or apparatus concerned should not be regarded as being scientific, or should indicate the exact type of the instruments or apparatus manufactured in the Community which are regarded as having a scientific value equal to that for which duty-free admission is requested, together with the name or business name and address of the Community firm or firms who can supply them. In the latter case, the technical literature relating to the instruments or apparatus under consideration manufactured in the Community should be forwarded to the Commission as soon as possible.

The Commission shall transmit this information to the Member States as soon as it is received.'

20. Article 7(6), of which I have already quoted part, requires the Commission to adopt a decision in accordance with the findings of the group of experts, declaring either that the instrument fulfils the requirements for duty-free admission or that it does not. Article 7(7) provides that if, on the expiry of a period of six months from

the date on which the application was received by the Commission, the latter has not adopted any decision under paragraph (6), the instrument in question shall be deemed to fulfil the conditions required for duty-free admission.

21. As regards the working methods of the group of experts referred to in Article 7(5) of Regulation No 2784/79, the only information available to the Court is that provided by the Commission. The group proceeds in accordance with the Rules of Procedure of the Committee on Duty-Free Arrangements of 17 September 1975. It appears that the Committee's Rules of Procedure are unpublished. It seems that no formal qualifications are required for membership of the Committee. Article 7 of Regulation No 1798/75 merely states that the Committee 'shall consist of representatives of the Member States with a representative of the Commission as chairman'. Article 6 of the Committee's Rules of Procedure provides that each Member State may be represented by a maximum of five officials. The Commission says that the persons appointed are normally officials of the respective Ministries of Science, Industry, Trade or Finance. In fact it seems that the participants at the Committee's 122nd session held on 30 and 31 May 1983, at which the application made by the University was examined and the minutes of which have been provided to the Court by the Commission, were all officials of the Ministries of Finance, Trade or Industry and the like. The Commission accepts that the officials did not have any particular scientific expertise.

22. Decision 83/348 was adopted on 5 July 1983 in accordance with a finding made by the group of experts at the aforesaid 122nd session. The second recital in the preamble states in fact that the group met to examine the matter on 30 May 1983. According to the third recital, that examination showed that the JEOL JSM-35 C was to be considered a scientific apparatus. The fourth recital states that:

'... on the basis of information received from Member States, apparatus of scientific value equivalent to the said apparatus, capable of being used for the same purposes, are currently being manufactured in the Community; whereas this applies, in particular, to the apparatus PSEM 500 X manufactured by Philips Nederland BV'.

23. The minutes of the 122nd session of the Committee on Duty-Free Arrangements do not say much about the examination to which the University's application was subjected. They simply state that the Philips PSEM 500 X was considered to be of equivalent value (see item 2.12 on page 5 relating to procedure 004/83). According to the Commission, applications for duty-free admission are normally dealt with by the Committee at two sessions or more in order to allow sufficient time for further inquiries to be made. The Commission states that in the present case, however, the application was dealt with at one session only because it was simply a question of confirming a previous decision. By that the Commission was presumably referring to Decision 82/86/EEC of 23 December 1981 (already cited in paragraph 4 above), which had held, in relation to a different application,

that the JEOL JSM-35 C could not be imported duty-free because the PSEM 500 X was of equivalent scientific value.

that the Committee collectively discusses the issue of equivalence or asks itself whether the instrument of Community origin is capable of performing the functions for which it is required by the importing establishment.

24. How did the Committee arrive at the conclusion, at its 122nd session, that the conditions for duty-free admission were not satisfied? Did it simply consider that it was bound by the earlier decision or did it genuinely reconsider the matter in the light of the arguments advanced by the University? If it did reconsider the matter, on what evidence did it base its finding? The minutes of the 122nd session are revealing as to the general manner in which the Committee proceeds. At that session 18 applications were dealt with and in four cases the Committee found that an instrument of equivalent value was being manufactured in the Community. One of the four cases concerned the importation made by the University. In the other three the minutes state that one or more national delegations 'confirmed' that an instrument manufactured in the Community was of equivalent value. On the basis of that 'confirmation' the Committee concluded in each case that the conditions for duty-free admission were not satisfied. Although the minutes of a committee meeting do not necessarily reflect the extent of the debate conducted within the committee, the minutes of the 122nd session of the Committee on Duty-Free Arrangements certainly create the impression that, if a single national delegation positively avers that a particular instrument of Community origin is equivalent in value to the instrument for which duty-free admission is sought, the Committee's practice is to accept that averment without further debate. There is nothing in the minutes to indicate

25. If the Committee did discuss such issues in the present case, the question arises on what evidence it based its findings. The Committee was presumably provided with the information that the University enclosed with its application for duty-free admission. It also had information supplied by the Netherlands, the Member State that objected to duty-free admission. That information included a document entitled 'Application for the duty-free importation of JSM-35 C electron microscope into Federal Republic of Germany, file No 283-3618'. That document appears to have been prepared by Philips Nederland BV, the manufacturer of the instrument held to be of equivalent scientific value to the JSM-35 C. The author of the document had clearly had access to the University's application and the accompanying documentation. Not surprisingly, he seeks to refute any argument suggesting that the Japanese instrument was superior and arrives at the conclusion that the two instruments were of equivalent value. That document appears to be the principal item of evidence on the basis of which the Committee could have decided that the conditions for duty-free admission were not satisfied. The Commission says that it does not know whether the document was shown to the University and it is in any event common ground that the University was given no opportunity to challenge the views expressed in the document.

IV — The finding of 'equivalent scientific value'

26. In the light of the above summary of the procedure laid down in Regulation No 2784/79, of the working methods of the Committee on Duty-Free Arrangements and of the genesis of Decision 83/348, I shall now consider whether that decision was vitiated by any error of law or of fact such as to render it invalid. The first question that falls to be examined is whether adequate consideration was given to all the relevant circumstances by the Committee on Duty-Free Arrangements and by the Commission. The essential issue to be considered by that Committee was whether the instruments in question were equivalent having regard to the specific purposes for which the University required an instrument.

27. The second indent of Article 3(3) of Regulation No 1798/75 provides in substance that 'equivalent scientific value' shall be assessed by comparing the characteristics and specifications of the imported instrument with those of the instrument manufactured in the Community in order to determine whether the latter could be used for the same scientific purposes as those for which the imported instrument is intended and whether its performance would be comparable. Following the amendments introduced by Regulation No 1027/79 the corresponding provision is the third indent of Article 3(3), in which the expression 'characteristics and specifications' is replaced by the expression 'essential technical characteristics'. In Case 4/84 *Johann-Wolfgang-Goethe-Universität* v *Hauptzollamt Frankfurt am Main-Flughafen* [1985] ECR 991 the Court ruled as follows:

'. . . the question whether the instruments in question are equivalent must not be decided solely on the basis of the technical specifications which the user described in his application as being necessary for his research but primarily on the basis of an objective assessment of their capacity to carry out the experiments for which the user intended to use the imported instruments.

However, it is clear . . . from the very terms of the second indent of Article 3(3) of Regulation No 1798/75, that the starting point of that objective determination is the specific research project envisaged by the user of the imported apparatus. The group of experts is not therefore free to base its determination on the general nature of the project. If it did so in this case, the contested decision is vitiated by an error of law.'

28. In his Opinion in the same case Advocate General Mancini considered the argument to the effect that apparatus should be compared on the basis of general criteria rather than on the basis of the scientific research project of the importing establishment. He stated as follows:

'I disagree with that argument. In my view, it is contrary both to the very terms of the rules in question, which require an assessment of the particular characteristics of an apparatus in relation to the *specific* work which is to be carried out, and to the purpose for which those rules were adopted. The purpose of Regulation No 1798/75 is in fact to facilitate the free exchange of ideas as well as the exercise of cultural activities and scientific research within the

Community, by allowing "by all possible means" the admission of instruments free of customs duties. It is therefore safe to assume that the legislature did not consider that it was lawful or even proper to make only a summary examination of research projects in order to make customs officers' work easier. On the contrary, everything suggests that the legislature envisaged an extremely thorough examination.'

29. As Advocate General Mancini pointed out in the same Opinion, it would be illogical to require the importing establishment to furnish so much information about the instrument that it wished to import, about the equipment available in the Community and about the nature of its scientific work, if the issue of equivalence were to be resolved by anything less than a thorough examination focusing on the specific work of the importing establishment. It must be remembered that Article 6(2)(j) of Regulation No 2784/79 requires the establishment to state '*detailed* reasons why an instrument or apparatus which is available in the Community would not be suitable for the *particular* scientific work to be undertaken'. (I note in parentheses that the word 'detailed' does not occur in the corresponding provision of Regulation No 3195/75, namely Article 3(2)(g) thereof.)

30. In the present case there is nothing, either in the statement of reasons on which Decision 83/348 was based or in the minutes of the meeting at which the Committee on Duty-Free Arrangements dealt with the case, to suggest that the Committee examined whether the Dutch instrument would be of the same value as the Japanese instrument with regard to the specific purposes for which the University required an instrument. On the contrary, everything suggests that the Committee simply considered itself bound by a previous decision relating to a different importation. The Commission expressly states in its replies to written questions put to it by the Court (see footnote 2 on page 2 of the replies) that, whereas applications are in principle always dealt with at two or more sessions of the Committee, the University's application was dealt with at only one session because *it was a question of confirming an earlier decision*, namely Decision 82/86. That certainly conveys the impression that little attention was paid to the specific scientific purposes for which the University required the instrument, since its work could of course have been very different from that of the importing establishment in the previous case.

31. In fact, a comparison of the preambles to the respective decisions suggests, at least to a layman, that the requirements of the importing establishments in the two cases were indeed different. In the case of Decision 82/86 the instrument was required for 'the qualitative and quantitative analyses of crystal phases brought about by heat treatment in glasses and glass ceramics served (sic) for the solidification of highly radioactive nuclear waste'. In the case of Decision 83/348 the University required the instrument for 'the study of electrochemical processes, plastics, photographic emulsions and biological systems and also for the qualitative and quantitative analysis of inorganic, organic and biological systems involved with high depth of focus and sometimes in very low temperatures (-150°C)'.

32. In view of the apparent failure to have regard to the specific purposes for which the University required the instrument I am of the view that the Court must conclude, as it did in the *Johann-Wolfgang-Goethe-Universität* case, that the contested decision is vitiated by an error of law and must be declared invalid.

33. It is also necessary for me to consider whether there were any other defects in the procedure described above such as to render the contested decision invalid. Although the issues which I propose to consider have not been specifically raised by the Bundesfinanzhof, it seems to me that the answer to the question it has referred, concerning the proper scope of judicial review of a decision involving technical expertise, must depend upon an examination of the nature of the body taking the decision and of the guarantees provided in the procedure leading to the adoption of the decision.

V — The nature of the decision-making body

34. As regards the nature of the body taking the decision, it is desirable that the members of the Committee should be impartial and should either themselves possess the necessary technical expertise or should be advised by impartial persons who possess such expertise. However, it is questionable whether the members of the Committee on Duty-Free Arrangements can be considered truly impartial. There is an obvious danger that officials of the Ministries of Finance or Trade and Industry may be unduly sensitive to the interests of manufacturers established in their respective countries and that the Committee will simply endorse the protectionist tendencies of the national delegate in whose country an instrument of supposedly equivalent scientific value is manufactured. The minutes of the 122nd session of the Committee do little to dispel such fears.

35. The fact that the members of the Committee do not themselves appear to be scientists is not necessarily decisive. As the Commission points out, an expert in one branch of science may not be qualified to speak on issues relating to a different field and it would be impossible to ensure that all areas of specialization were represented; what matters is that the members of the Committee should have access to independent expert assistance within the national administrations or perhaps from universities and similar bodies.

36. But the information before the Court in the present case tends to suggest that the members of the Committee are influenced not so much by that kind of independent advice but rather by the views of manufacturers established in the Community. As I have already observed (see paragraph 25), the principal item of evidence on the basis of which the Committee could have concluded that the Dutch and Japanese instruments were of equivalent scientific value was a report drawn up by the manufacturer of the Dutch instrument, who obviously cannot be regarded as an impartial source of information. Certainly that is the principal document relied on by the Commission to defend the finding of equivalence.

37. That the members of the Committee should, via their national administration, consult manufacturers established in their respective countries is not in itself objectionable; Article 7(1) of Regulation No 2784/79 expressly contemplates 'consultation with the trade circles concerned', and such consultation could clearly be useful or even essential for a well informed decision to be taken. What would be objectionable would be for preponderant weight to be given to the views of the Community manufacturer who has such an obvious interest in the outcome of the proceedings, and the absence of any objective, independent assessment of the respective qualities of the two instruments for the purposes in question by persons possessing the necessary scientific knowledge.

38. In the present case there cannot, I think, be any doubt that preponderant weight was given to the views of Philips, the Community manufacturer. At every stage of the proceedings the written submissions prepared by that company seem to have played a decisive role. Thus, when the Netherlands objected to the duty-free admission of the Japanese instrument (see the letter of 31 March 1983 from the Netherlands Ministry of Finance, annexed to the Commission's observations), it based its objection solely on the aforesaid report prepared by Philips. As I have already observed, that report seems to have been the only item of evidence on which the Committee on Duty-Free Arrangements could have based its finding on the issue of equivalence. Certainly, if there was any other scientific evidence the Commission has not drawn the Court's attention to it (apart, that is, from some vague reference to consultations by telephone with experts at the Joint Research Centre in Ispra). And in the proceedings before the Court the Commission has relied almost totally on documentation supplied by Philips, without even seeming to be aware that any views emanating from such a source must be treated with the caution habitually reserved for the evidence of an interested party.

39. In the circumstances I am not satisfied that Decision 83/348 can be said to have been based on the objective findings of an independent group of persons possessing the necessary technical expertise. On that ground too I reach the conclusion that the decision is so flawed that it must be declared invalid. Moreover, if the view were taken that that defect is not of such a nature as to affect the validity of the decision, it must in any event remove any justification there may otherwise have been for limiting the scope of review by the Court of the substance of the decision.

VI — The right to a fair hearing

40. I now turn to the procedural guarantees afforded under the procedure, and in the first place to the question whether the University's right to a fair hearing was infringed, in particular by the fact that it was given no opportunity to comment on the aforesaid document in which Philips rejected any suggestion that the Japanese instrument was superior to its own.

41. On that point the case-law of the Court is, as it stands, perfectly clear. On several occasions, in cases concerning duty-free importations, the Court has been content to observe, when the principle *audi alteram partem* has been invoked, that the relevant regulations do not grant the importing establishment the right to a hearing or the right to challenge arguments to the effect that the instrument in question is not eligible for duty-free admission: see Case 185/83 *University of Groningen* v *Inspecteur der Invoerrechten en Accijnzen* [1984] ECR 3623, at paragraph 20; Case 2O3/85 *Nicolet Instrument* v *Hauptzollamt Frankfurt am Main-Flughafen* [1986] ECR 2049, at paragraph 15; and Case 43/87 *Nicolet Instrument* v *Hauptzollamt Frankfurt am Main-Flughafen* [1988] ECR 1557, at paragraphs 13 and 14.

42. After some hesitation I am satisfied that the above case-law must be followed. Having regard to the number of decisions that have to be taken, one must be wary of placing on the administration an excessive burden by insisting on a time-consuming *procédure contradictoire* under which the importing establishment would be allowed to counter arguments adduced by the Community manufacturer opposed to duty-free admission. The fact that the regulations do not establish such a procedure is not of course decisive, since it could be argued that a general principle of law requires the importing establishment to be given a hearing even though the legislature has not made any express provision to that effect. Advocate General VerLoren van Themaat appears to have taken such a view in the *University of Groningen* case (cited above in paragraph 41). I can see also that it might be preferable, in the interests of good administration, for an applicant for duty-free admission to receive the information supplied to the Committee, where practicable, before the Committee reaches its decision.

43. However, I do not consider that the right to be heard is required by law in such a case. It seems to me that, whereas such a safeguard is mandatory in judicial proceedings and in administrative proceedings that may lead to the imposition of a fine or other penalty, it is not essential to grant a hearing or the right to challenge opposing arguments in administrative proceedings of the type in issue, where the importing establishment cannot suffer any consequence more serious than the loss of a benefit such as the right to import a piece of equipment duty-free. There is an obvious difference between the present proceedings and proceedings under the competition rules of the Treaty, or indeed anti-dumping proceedings, since in the present proceedings all that is at stake is the possibility of benefiting from relief from a duty which is generally imposed. In the present proceedings the University's right to be heard was in my view therefore sufficiently protected by the fact that the information accompanying its application for duty-free admission, in which it was able to set forth its point of view, was forwarded to the Commission and to the Committee on Duty-Free Arrangements, in accordance with Article 7(2) and (3) of Regulation No 2784/79.

VII — The reasoning of the decision

44. The next issue is whether Decision 83/348 contained an adequate statement of

the reasons on which it was based. Certainly the reasoning found in the preamble to the decision was laconic, to say the least. On the issue of equivalence the fourth recital simply states that 'on the basis of information received from Member States, apparatus of scientific value equivalent to the JEOL JSM-35 C, capable of being used for the same purposes, are currently being manufactured in the Community', in particular the Philips PSEM 500 X. The decision does not indicate why the Philips instrument was equivalent in scientific value to the JEOL instrument and it does not state what 'the information received from Member States', on which the finding of equivalence was based, consisted of. Moreover, the minutes of the 122nd session of the Committee on Duty-free Arrangements are just as silent in that respect.

45. As things stand at present the case-law of the Court is, once again, perfectly clear. On several occasions the Court has held that a statement of reasons similar to the one contained in Decision 83/348, though laconic, was sufficient to comply with the minimum requirements of Article 190 of the Treaty: see *University of Groningen* (cited above in paragraph 41), at paragraph 39; Case 203/85 *Nicolet Instrument* (cited above in paragraph 41), at paragraph 11; and *Universität Stuttgart* (cited above in paragraph 10) at paragraph 14.

46. Notwithstanding the above case-law, I question whether the minimal reasoning used by the Commission in such cases, which seems to consist of the recycling of a standard formula in which only the name of the instrument manufactured in the Community changes, satisfies the requirements of Article 190 of the Treaty. There should at least be a coherent statement of the scientific grounds that justify the finding of equivalence. In this respect it is interesting to compare the fourth recital in the preamble to Decision 83/348, which deals so summarily with the issue of equivalence, and the third recital, which contains a fuller, albeit brief, statement of the reasons for regarding the JSM-35 C as a scientific instrument.

47. The inadequacy of the reasoning might have been compensated for if 'the information received from Member States' (i. e. the report submitted by Philips) had been communicated to the University, which would then have known the scientific grounds on which its application for duty-free admission was refused. Communication of the Philips report to the University would thus have fulfilled one of the essential functions of the requirement of reasoning, inasmuch as it would have enabled the University to ascertain whether the decision was well founded or whether it was vitiated by an error that would allow its legality to be challenged (see Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, at paragraph 22).

VIII — Implications for the scope of judicial review

48. On the view that I have taken it is not necessary in the present case to examine the extent to which the Court should be willing to review the substance of Commission decisions in this type of case. The contested decision cannot survive even a limited judical review. Since, however, that question has been squarely raised by the Bundesfinanzhof and since the Court may choose not to declare the contested decision void

on the grounds that I have suggested, I will briefly state my views on the issue. I will merely observe that in my opinion the policy of confining judicial review to the question whether a decision is vitiated by an error of law or whether it is manifestly wrong would be justified if it were clear that the Committee on Duty-free Arrangements acts on the basis of impartial, expert advice and gives genuine consideration to the evidence adduced in support of an application for duty-free admission and if a satisfactory statement of reasons is given for the ensuing decision. For the reasons given above, I cannot see that those requirements are satisfied at present.

49. On this point it is instructive to compare the Court's case-law on scientific instruments with its case-law concerning the reviewability of the findings of medical committees in the admittedly different field of staff cases. The Court has declined to review the medical appraisals of such committees and has held that review must be confined to questions concerning the constitution and proper functioning of the committees. But the Court justified limiting judicial review in that way by emphasizing that the relevant legislation provides for an appropriate complaints procedure and strives carefully to ensure the balance and objectivity of medical committees: see Case 156/80 *Morbelli* v *Commission* [1981] ECR 1357, at paragraph 19, and Case 265/83 *Suss* v *Commission* [1984] ECR 4029, at paragraph 11. For the reasons given, it is clear that no such justification can be pleaded for limiting the scope of judicial review of decisions on technical questions taken by the Committee on Duty-Free Arrangements.

IX — Conclusion

50. I conclude that the question referred to the Court by the Bundesfinanzhof should be answered as follows:

Commission Decision 83/348/EEC of 5 July 1983 establishing that the apparatus described as 'JEOL-Scanning Electron Microscope model JSM-35 C' may not be imported free of Common Customs Tariff duties is invalid.