COMMISSION

COMMISSION DECISION

of 12 October 1983

establishing that the apparatus described as 'Cyber 170-720 and 170-750' may not be imported free of Common Customs Tariff duties

(83/521/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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 (1), as last amended by Regulation (EEC) No 608/82 (2),

Having regard to Commission Regulation (EEC) No 2784/79 of 12 December 1979 laying down provisions for the implementation of Regulation (EEC) No 1798/75 (3), and in particular Article 7 thereof,

Whereas, by Decision 81/692/EEC of 10 August 1981 (4), the Commission decided that the apparatus described as 'Control Data — Cyber 170-720 and Cyber 170-750' which were the subject of an application by Belgium on 11 March 1981 may not be imported free of Common Customs Tariff duties because they do not have the objective characteristics making them specifically suited to scientific research and apparatus of this kind is generally used for non-scientific purposes ;

Whereas upon submission of the appeal by Control Data Belgium NV-SA to the Court of Justice of the EC, the latter annulled the said Decision by judgment of 17 March 1983 in Case 294/81 ; whereas, while annulling that Decision the Court nevertheless did not comment on whether the computers in question should or should not be considered scientific instruments or apparatus and referred the matter back to the Commission for reassessment ;

Whereas in order to make such reassessment and pursuant to the provisions of Article 7 (5) of Regulation (EEC) No 2784/79, the Commission has on several occasions convened a group of experts consisting of representatives of all Member States within the framework of the Committee on Duty-Free Arrangements ;

Whereas in the course of its examination the group paid close attention to those objective technical characteristics which, according to the user, show that the computers in question are scientific apparatus ; whereas these characteristics can be described as follows :

— word-orientated hardware, the smallest addressable unit being a word of 60 bits,

— floating point arithmetic,

— simple and double precision of 60 and 120 bits respectively,

— individual functional units of the Cyber 170-150 enabling the system to perform complex operations at high speed,

— instruction sets adapted to scientific languages,

— particular effectiveness of distributed (multi-processor) architecture ;

(1) OJ No L 184, 15. 7. 1975, p. 1.
(2) OJ No L 74, 18. 3. 1982, p. 4.
(3) OJ No L 318, 13. 12. 1979, p. 32.
(4) OJ No L 252, 5. 9. 1981, p. 36.

Whereas, with respect to these characteristics, it appears that the first two are in no way specific to the computers in question but are found in all advanced computers, the floating point arithmetic technology, being found even in pocket calculators. As to the third characteristic, the maximum precision values obtainable with these imported computers can, in those extremely rare cases where such precision may be necessary, also be achieved by computers with a small number of bits per word (e.g. 32 and 64) by means of appropriate software. As to the fourth characteristic, neither the use of individual functional units nor the performance of complex operations at high speed can be considered as being requirements specific only to scientific computation. Furthermore comparable performance to both the Cyber systems under consideration is obtainable from other competitive computers, with the Cyber 170-720 fitting into the lower speed category, while the 750 belongs in the middle-high speed category. With respect to the fifth characteristic the manufacturer has provided that the instruction sets can also be used with languages particularly suited to commercial purposes, such as Cobol, Very/Update, Form, CRM, DAL, etc.; As to the sixth characteristic it should be noted that multi-processor computer architectures are also provided by other suppliers of high-performance systems, hence it is not unique to the Cyber computers;

Whereas, as it appears from the observations made, the imported instruments do not have the required objective characteristics making them specifically suited to scientific research, it is *ad abundantiam* considered opportune to examine the provisions of Article 5 (1) (2) of Regulation (EEC) No 2784/79 and to examine the purposes for which in general the instruments for which duty relief was requested at the importation, are used in the Community;

Whereas the computers can be used in a number of areas, it is the applications software which makes this possible;

Whereas the examination made by the aforementioned group of experts has shown that in technical-commercial documentation edited by 'Control Data Corporation' in 1980 it is said that:

— 'the CDC Cyber 170, model 750 computer is a multi-purpose system that provides real-time/time-critical network, commercial, data management and scientific capabilities',

— 'application of the apparatus described as Cyber 170, model 720 include data management, scientific computation, commercial data processing and data communications',

— 'all members of the CDC Cyber 170 Series 700 family are supported by the CDC Cyber 170 Network Operating System — a powerful, multi-mode operating system. This system operates with an extensive software and product set which includes: Compass (assembler language), Fortran, Cobol, Algol, APL, Sort/Merge, Basic, GPSS, Simscript, APT (numerical control for machine tools), and a comprehensive set of basic data management software';

Whereas the computers in question were not designed in order to be mainly or exclusively suited to scientific activities, neither are they particularly inappropriate for work in the commercial or industrial sector nor are they particularly incompatible with commercial language programmes;

Whereas the aforesaid expert group has identified that the Cyber 170-750 and 170-720 can be used in a multi-purpose way with particular programs running concurrently;

Whereas information provided by the applicant showed their intention of using these computers partially for purely administrative work and partially for technical operations but gave no indication as to the library of programs which could demonstrate their use for purely scientific research as opposed to technology for commercial aims; whereas the use to which the apparatus is put in this particular case, even if it had been for scientific activities only could not alone confer upon it the nature of scientific apparatus;

Whereas reference to the general uses in all the Member States of apparatus of this type has shown that they are not mainly used for scientific purposes;

Whereas the totality of these particulars demonstrates that the computers in question cannot be considered as scientific instruments; therefore the duty-free admission of the apparatus in question is not justified,

HAS ADOPTED THIS DECISION :

Article 1

The apparatus described as 'Control data — Cyber 170-720 ; Cyber 170-750', which is the subject of an application by Belgium of 11 March 1981, may not be imported free of Common Customs Tariff duties.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 12 October 1983.

For the Commission

Karl-Heinz NARJES

Member of the Commission