



Court of Justice of the European Union

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Judgments in Cases C-284/05, C-294/05, C-372/05, C-387/05, C-409/05  
C-461/05 & C-239/06

Commission v Republic of Finland, Kingdom of Sweden, Federal Republic of  
Germany, Republic of Italy, Hellenic Republic and Kingdom of Denmark

Press and Information

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**The Court declares that Finland, Sweden, Germany, Italy, Greece and Denmark have infringed Community law by not paying customs duties payable on imports of armaments and material for civil and military use**

*The obligations of joint financing of the Community budget and of cooperation with the Commission require Member states to collect and pay such duties*

The budget of the European Community is funded from own resources, which, in part, come from Common Customs Tariff duties on trade with non-member countries. The Community Customs Code<sup>1</sup> requires Member States to pay to the Community, as own resources, customs duties levied on imports of goods.

By these seven actions, the European Commission asked the Court of Justice to declare that Finland, Sweden, Germany, Italy, Greece and Denmark were in breach of their obligations under the Community Customs Code and under various regulations<sup>2</sup> by refusing to pay as own resources of the Community customs duties levied when armaments were imported (and, in respect of Sweden and Italy, also dual-use material, for civil and military use<sup>3</sup>). Germany, for its part, paid a sum of EUR 10.803 million – on a without prejudice basis and without providing a breakdown of the sum according to imports and periods – and then refused to send such information to the Commission.

The infringements concern the period from 1 January 1998 to 31 December 2002, whereas, from 1 January 2003 – in order to take into consideration the protection of military confidentiality by Member States – specific administrative procedures were provided for in order to allow the suspension of import duties on such material<sup>4</sup>.

Generally, the Member States stated that the justification for their refusal to make payment was the fact that the collection of customs duties would have threatened their essential security interests<sup>5</sup>.

The Court observes that there is no provision of the Community customs legislation which, in respect of the period from 1 January 1998 to 31 December 2002, provided for any specific exemption from customs duties on imports of products of that type. On the contrary, the suspension of customs duties on certain weapons and military equipment from 1 January 2003 confirms that the Community legislature started from the assumption that an obligation to pay those customs duties existed prior to that date.

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<sup>1</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) applicable in the Cases, recently replaced by Regulation No 450/2008 of the European Parliament and of the Council of 23 April 2008.

<sup>2</sup> Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1), as amended by Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996 (OJ 1996 L 175, p. 3;), and the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1).

<sup>3</sup> Cases C-294/05 and C-387/05

<sup>4</sup> Council Regulation No 150/2003 of 21 January 2003 suspending import duties on certain weapons and military equipment (OJ 2003 L 25, p. 1).

<sup>5</sup> Art. 296 EC, which provides that no State is obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.

The Court declares that, while it is true that **it is for Member States to take the appropriate measures to ensure their internal and external security**, those measures are not entirely **outside the scope of Community law**, which provides for **express derogations** applicable in situations which may involve public safety, but **exceptionally** and in clearly defined cases which must be interpreted strictly.

The Court also states that a Member State cannot plead by way of justification the **increased cost** of military material because of the application of customs duties: on the contrary, a Member State cannot avoid compliance with the **obligations of joint financing of the Community budget**.

Further, the justification based on **confidentiality requirements contained in agreements entered into with exporting States** cannot be accepted because the customs procedures involve the active involvement of Community and national officials, who are all bound by an obligation of confidentiality which is capable of protecting the essential security interests of Member States. Moreover, the obligation to facilitate the achievement of the Commission's task - of ensuring compliance with the Treaty – by making available to it the documents necessary to permit inspection to ensure that the transfer of the Community's own resources is correct does not mean that Member States may not, **on a case-by-case basis and by way of exception, restrict the information sent to certain parts** of a document or withhold it completely.

More specifically, in the two cases against Sweden and Italy, which relate to duty-free imports of dual-use material – for both civil and military use – the Court states that the reasons why there is no justification based on the need to safeguard the Member States' interests apply *a fortiori* to imports of material for dual use, whether or not it was imported exclusively for military purposes.

Lastly, the Court rejects the justification based on the Commission's prolonged lack of action<sup>6</sup> and the argument that adoption of the regulation on suspension of duties was tacit acceptance of the existence of an appropriate derogation. The Commission did not at any stage of the proceedings abandon its position in principle, and it always expressed its firm intention to maintain its claim to the collection of customs duties which should have been paid for periods prior to the introduction of the procedures for suspension.

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**NOTE:** An action for failure to fulfil obligations, brought against a Member State which has failed to fulfil its obligations under Community law, may be brought by the Commission or by another Member State. If the Court of Justice finds that a Member State has failed to fulfil an obligation, the Member State concerned must take the necessary measures to comply with the judgment as soon as possible. If the Commission considers that the Member State has not taken the necessary measures to comply with the judgment, the Commission may bring a further action requesting financial penalties.

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*The full text of the judgments [C-284/05](#), [C-294/05](#), [C-372/05](#), [C-387/05](#), [C-409/05](#), [C-461/05](#) and [C-239/06](#) are published on the CURIA website on the day of delivery.*

*Press contact: Christopher Fretwell ☎ (+352) 4303 3355*

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<sup>6</sup> Discussions with the States involved, including infringement proceedings against Germany – later suspended – go back to the 1980s.