

Press and Information Division

PRESS RELEASE No 02/03

15 January 2003

Judgment of the Court of First Instance in Joined Cases T-377/00, T-379/00, T-380/00,
T-260/01 and T-272/01

Philip Morris, Reynolds and Japan Tobacco v Commission

**THE COURT OF FIRST INSTANCE DISMISSES THE ACTIONS BROUGHT
AGAINST THE COMMISSION'S DECISIONS TO BRING PROCEEDINGS
AGAINST CIGARETTE MANUFACTURERS BEFORE AMERICAN COURTS**

A decision by the Commission to bring legal proceedings is not an act which may be challenged by an action for annulment. Only acts which produce binding legal effects for the parties by bringing about a change in their legal position may be the subject of such proceedings.

As part of the European Community's efforts to combat the smuggling of cigarettes into the Community, in November 2000 the Commission brought, on behalf of the Community, a civil action before a federal United States court (United States District Court, Eastern District of New York) against several companies belonging to the Philip Morris and Reynolds groups, and against the company Japan Tobacco.

The Community alleged involvement on the part of those companies in a system of smuggling aimed at bringing cigarettes into the territory of the Community and distributing them there, and asked for compensation for the loss resulting from the smuggling, consisting mainly in lost customs duties and value added tax (VAT) which would have been paid on legal imports.

Following dismissal of those claims, the Commission and 10 Member States brought a fresh action in August 2001, founded on other bases of claim. This was also dismissed, on the grounds that United States courts refrain from enforcing the tax legislation of other States, following which the Commission filed an appeal before the United States Court of Appeals for the Second Circuit.

The cigarette manufacturers asked the Court of First Instance of the European Communities to annul the Commission's decisions to bring the actions before the District Court. Eight Member States and the European Parliament intervened in support of the Commission.

In its judgment, the Court of First Instance states, first, that only measures the effects of which are binding on, and capable of affecting the interests of, a party by bringing about a distinct change in his legal position may be the subject of an action for annulment.

Do the decisions to bring proceedings before the District Court produce such effects for the cigarette manufacturers?

The Court of First Instance states that the decision to bring legal proceedings does not by itself alter the legal position in question. The obligations of the parties can be definitively established only by judgment of the United States courts in the civil actions brought by the Commission. Accordingly, the decisions to bring proceedings before those courts cannot be held to be decisions which are open to challenge.

It concludes, however, that the need for effective judicial protection is not undermined by the dismissal of the actions for annulment because the cigarette manufacturers are not thereby denied access to Community courts. This is because conduct which cannot be the subject of an action for annulment may none the less, subject to certain conditions, entail non-contractual liability for the European Community and the possibility of bringing an action before the Community courts to obtain compensation for loss caused by the conduct remains open, as provided for by the Treaty.

By today's judgment, the Court of First Instance dismisses as inadmissible the actions brought by Philip Morris, Reynolds and Japan Tobacco.

Thus, these cigarette manufacturers cannot prevent the Community from continuing the legal proceedings brought by it before courts in the United States. It will be for the United States courts to determine the outcome of the proceedings.

N.B: The following eight Member States intervened in support of the Commission in the proceedings before the Court of First Instance: Spain, France, Italy, Portugal, Finland, Germany, Greece and The Netherlands.

Note: An appeal, limited to points of law, may be brought before the Court of Justice of the European Communities against the judgment of the Court of First Instance within two months of its notification.

Unofficial document for media use, which is not binding on the Court of First Instance.

Languages available: English, French and German

*For the full text of the judgment, please consult our Internet site www.curia.eu.int
at around 3p.m. today.*

*For further information please contact Isabelle Guibal
Tel: (352) 43 03 3355 Fax: (352) 43 03 2731*

*Pictures of the hearing are available on "Europe by Satellite"
European Commission, Press and Information Service, L-2920 Luxembourg,
Tel: (00 352) 4301 35177, Fax: (00 352) 4301 35249,
or B-1049 Brussels, Tel (00 32) 2 2964106, Fax (00 32) 2 2965956 or (00 32) 2 2301280*