

Case T-329/00

Bonn Fleisch Ex- und Import GmbH

v

Commission of the European Communities

(Customs duty — Import of beef from South America — Article 13(1) of Regulation (EEC) No 1430/79 — Application for remission of import duties — Rights of the defence — Special situation)

Judgment of the Court of First Instance (Third Chamber), 27 February 2003 II - 291

Summary of the Judgment

1. *Own resources of the European Communities — Repayment or remission of import or export duties — Article 13 of Regulation No 1430/79 — Power of decision of the Commission — Right of the trader concerned to be heard (Council Regulation No 1430/79, Art. 13)*

2. *Community law — Principles — Rights of the defence — Administrative procedure for the remission of import duties — Obligation of the Commission, acting on its own initiative, to grant the person concerned access to all the documents on which it based its decision — No such obligation — Person concerned must request such access — Obligation to exercise diligence*
(Art. 255 EC; Council Regulation No 1430/79, Art. 13)
3. *Own resources of the European Communities — Repayment or remission of import or export duties — Observance of the rights of the defence — Access to the file — Limits — Confidential documents — Right to make photocopies — Not included*
(Council Regulation No 1430/79, Art. 13)
4. *Own resources of the European Communities — Repayment or remission of import or export duties — Article 13 of Regulation No 1430/79 — Scope — ‘Special situation’ — Definition — Power of decision of the Commission — Rules for its exercise*
(Council Regulation No 1430/79, Art. 13)
5. *Common Customs Tariff — Community tariff quotas — Application by the Commission — Obligations with regard to cooperation with the Member States*
(Art. 211 EC; Council Regulation No 1468/81, Art. 14a)

1. Observance of the right to be heard must be guaranteed in procedures for the remission of import duties, in particular in view of the power of assessment enjoyed by the Commission when it adopts a decision pursuant to the general equitable provision contained in Article 13 of Regulation No 1430/79 on the repayment or remission of import or export duties.
 2. In the context of an administrative procedure for the remission of import duties, the principle of respect for the rights of the defence implies only that the party concerned be placed in a position in which it may effectively make its views known as regards the evidence, including the documents, on which the Commission has based its decision. That principle therefore does not require the Commission, acting on its own initiative, to grant access to all the documents which may have some connection with the case at issue when an application for remission is referred to it. If the party concerned considers that such documents are relevant for establishing the existence of a special situation and/or the lack of deception or obvious negligence on its part, then
- (see para. 45)

it is for the party concerned itself to request access to those documents in accordance with the provisions adopted by the institutions under Article 255 EC.

ing confidential documents, a party's right of access to the file is limited to access to a non-confidential version or summary of the documents in question.

(see para. 59)

In effect, while the principle of respect for the rights of the defence imposes on the Commission a number of procedural obligations, it also implies a certain amount of diligence on the part of the party concerned. Accordingly, if the party concerned considers that its rights of defence have not been respected, or have not been adequately respected, in the administrative procedure, it is for that party to take the measures necessary to ensure that they are respected or, at the very least, to inform the competent administrative authority of that situation in good time.

(see paras 46-47)

3. The right to access to the file in the context of a procedure for the remission of import duties does not imply, for the interested company, the right to make photocopies of confidential documents. An interested party does not, in principle, even have the right to consult the full text of confidential documents. Generally, regard-

4. Article 13(1) of Regulation No 1430/79 on the repayment or remission of import or export duties, according to which the person liable to pay customs duties who demonstrates both the existence of a special situation and the absence of obvious negligence and deception on his part is entitled to the remission of those duties, constitutes a general equitable provision intended to apply where the circumstances characterising the relationship between a trader and the administration are such that it would be inequitable to require the trader to bear a loss which it normally would not have incurred.

The existence of a special situation is established where it is clear from the circumstances of the case that the person liable is in an exceptional situation as compared with other operators engaged in the same business and that, in the absence of such circumstances, he would not have suffered the disadvantage caused by the entry in the accounts *a posteriori* of customs duties.

In order to determine whether the circumstances of the case in question constitute a special situation within the meaning of that provision, the Commission must assess all the relevant facts. Although in that regard it enjoys a power of discretion, it is required to exercise that power by genuinely balancing, on the one hand, the Community interest in ensuring that the customs provisions are respected and, on the other, the interest of the *bona fide* importer in not suffering harm which goes beyond normal commercial risk. Consequently, when considering whether an application for remission is justified, the Commission cannot take account simply of the conduct of importers. It must also assess the impact on the resulting situation of its own conduct and the conduct of the national customs authorities.

(see paras 61-62, 64, 71)

5. Pursuant to Article 211 EC and the principle of good administration, the Commission is obliged to ensure the proper application of the Community tariff quotas. In order to comply with that obligation, the Commission is

required not only to send the information received under Article 14a of Regulation No 1468/81 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters, to the authorities of other Member States as soon as possible, but also to ensure that the Member States comply with the obligations arising from that provision. In effect, the Commission's role does not merely involve the passive transmission of information that the relevant authorities of a Member State decide to send to it. Consequently, when Member State authorities have informed the Commission of the discovery of forged import licences and/or import licence extracts, the Commission must obtain, as soon as possible, from the authorities of the Member State from which the forged licences and extracts appear to have come, all information which might aid the discovery of other forged documents. The Commission is required to inform the relevant authorities of other Member States as soon as possible of the information thus received.

(see paras 89, 109)