

## Case T-330/99

Spedition Wilhelm Rotermund GmbH

v

Commission of the European Communities

(Community Customs Code — Remission of import duties — Special situation — Fraud in connection with an external Community transit operation)

Judgment of the Court of First Instance (Second Chamber), 7 June 2001 II-1621

### Summary of the Judgment

*Own resources of the European Communities — Repayment or remission of import or export duties — Existence of a special situation, within the meaning of Article 905 of Regulation No 2454/93, making it obligatory for the national customs authorities to forward the file to the Commission — Commission's power to adopt decisions — Detailed rules concerning its exercise — Fraud*  
(Commission Regulation No 2454/93, Art. 905(1) and (2))

Article 905(1) of Commission Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, on the basis of which a request is made to the Commission by the national customs authority which, presented with an application for remission of duties in respect of which it had made an initial assessment, considers that there is evidence of the existence of a special situation justifying the remission of duties, to make a definitive assessment on the basis of the information placed before it as to whether a special situation exists, includes a general equitable provision designed to cover the exceptional situation in which the economic operator concerned might find himself in comparison with other operators engaged in the same business.

In order to determine whether the facts in question constitute a special situation within the meaning of that provision, the Commission must, in the context of the broad margin of assessment it enjoys in that respect, assess all the facts and must balance, on the one hand, the Community interest in ensuring that the customs provisions are respected and, on the other, the interest of the economic operator acting in good faith not to suffer harm beyond normal commercial risk.

Where the factual information constituting the fraud, which has been sent to the Commission by the national authorities, is not questioned or supplemented, because the Commission has not asked for additional information, and where it derives from purely internal operations of the administration of a Member State which the applicant has no right to monitor, and which it can not influence in any way, the Commission cannot merely make a finding that the applicant is not in a special situation since those circumstances go beyond the commercial risk it would normally incur.

In those circumstances, the Commission is not entitled to limit the scope of its assessment to the possibility of active complicity by a particular customs official and to require the applicant to supply, if necessary by producing a document from the competent national authorities, formal and definitive proof of such complicity. By doing so the Commission fails to appreciate both its obligation to assess all the facts itself in order to determine whether they constitute a special situation, and the autonomous nature of the procedure laid down in Article 905 et seq. of the implementing regulation.

(see paras 52-55, 57-58)