

Case T-346/94

France-Aviation v Commission of the European Communities

(Repayment of customs duty — *Audi alteram partem* — Special situation)

Judgment of the Court of First Instance (First Chamber), 9 November
1995 II - 2843

Summary of the Judgment

1. *Own resources of the European Communities — Repayment or remission of import or export duties — Regulation No 1430/79 — General equitable provision — Decision-taking power of the Commission — Right of the economic operator concerned to be heard — Manner of implementation*
(Council Regulation No 1430/79, Art. 13; Commission Regulation No 2454/93, Art. 905(2))
2. *Actions for annulment — Jurisdiction of the Community judicature — Commission decision rejecting an application for repayment of import duties — Submissions seeking a declaration that that application is justified in principle — Inadmissibility*
(EC Treaty, Arts 173 and 176)

1. An economic operator seeking repayment of import duties pursuant to the general equitable provision of Article 13 of Regulation No 1430/79 has a right to be heard in the course of the proceedings in which a decision will be taken on his application.

That right must be secured in the first place in the relations between the person concerned and the national administration, since Regulation No 2454/93, which governs the procedure for dealing with such applications, provides only for contacts to take place between the person concerned and the national administration, on the one hand, and between the national administration and the Commission, on the other. However, the fact that no provision is made for direct contacts between the Commission's departments and the person concerned does not necessarily mean that in every case where an application for repayment has been brought before it the Commission may deem itself satisfied with the information transmitted to it by the national administration, since, moreover, Article 905(2) of Regulation No 2454/93 provides that the Commission may ask the Member State concerned to supply additional information.

The Commission must make such a request in order to ensure that the right of the person concerned to be heard is

respected through the provision of additional explanations first provided by that person to the national administration and subsequently transmitted to the Commission, where the case transmitted to it by the national authorities, albeit containing a proposal to grant the application, does not appear to it to warrant a favourable decision, in particular in so far as the case does not enable it to rule out obvious negligence on the part of the person concerned. The Commission cannot make a complex legal appraisal enabling negligence to be distinguished from obvious negligence without having available to it all the relevant factual data and the explanations of the person concerned concerning them.

2. In an action for annulment, the Community Court cannot, without encroaching on the prerogatives of the administrative authority, order a Community institution to take the measures necessary for the enforcement of a judgment by which a decision is annulled. Article 176 of the Treaty, under which the institution which adopted the measure annulled is required to take the necessary measures, is a limiting provision in this connection. It follows that submissions, made in an application for annulment of a Commission decision rejecting an application for repayment of import duties, which seek a declaration that the application for repayment is justified in principle are inadmissible.