JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
17 September 2003 *

In Joined Cases T-309/01 and T-239/02,

Peter Biegi Nahrungsmittel GmbH, established in Frankfurt am Main (Germany),

Commonfood Handelsgesellschaft für Agrar-Produkte mbH, established in Langen (Germany),

represented by K. Landry and L. Harings, lawyers,

applicants,

v

Commission of the European Communities, represented by J.-C. Schieferer, R. Tricot and X. Lewis, acting as Agents, assisted by M. Núñez-Müller, lawyer, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

APPLICATION for, first, partial annulment of Commission Decision C (2001) 2533 of 14 August 2001 (REC 4/00), finding it appropriate to effect post-clearance recovery of import duties not charged to Peter Biegi Nahrungsmittel GmbH in respect of the importation of poultry meat from Thailand during the period from 13 to 18 July 1995 and from 4 to 22 September 1995 (Case T-309/01), and, second, annulment of Commission Decision C (2002) 857 of 5 March 2002 (REC 4/01), finding it appropriate to effect post-clearance recovery of import duties not charged to Commonfood Handelsgesellschaft für Agrar-Produkte mbH in respect of the importation of poultry meat from Thailand on 24 July 1995 (Case T-239/02),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: V. Tiili, President, P. Mengozzi and M. Vilaras, Judges,

Registrar: I. Natsinas, Administrator,

having regard to the written procedure and further to the hearing on 2 April 2003,

gives the following

Judgment

1 Article 3 of Council Regulation (EC) No 774/94 of 29 March 1994 opening and providing for the administration of certain Community tariff quotas for high-quality beef, and for pigmeat, poultrymeat, wheat and meslin, and brans, sharps and other residues (OJ 1994 L 91, p. 1) opened, as from 1 July 1994, a Community tariff quota of an annual total volume of 15 000 tonnes for poultrymeat falling within CN codes 0207 41 10, 0207 41 41 and 0207 41 71. Within that quota volume, the relevant duty under the Common Customs Tariff was fixed at 0%. That same annual Community quota volume at zero duty was maintained by Article 1 of Commission Regulation (EC) No 2198/95 of 18 September 1995, amending Regulation No 774/94 (OJ 1995 L 221, p. 3), which applied, in accordance with Article 2 thereof, as from 1 July 1995.

2 Article 1 of Commission Regulation (EC) No 1431/94 of 22 June 1994 laying down detailed rules for the application in the poultrymeat sector of the import arrangements provided for in Council Regulation (EC) No 774/94 (OJ 1994 L 156, p. 9), which, in accordance with Article 8 thereof, entered into force on 26 June 1994, reads:

'All imports into the Community under the tariff quotas opened in Articles 3 and 4 of Regulation (EC) No 774/94 of products in the groups referred to in Annex I to this Regulation shall be subject to the presentation of an import licence.

The quantities of products to which these arrangements apply and the rate of reduction in the levy shall be those listed for each group in Annex I.'

3 In Annex I to Regulation No 1431/94, a rate of levy of 0% was applied in respect of up to 5 100 tonnes per annum of chicken meat under CN codes 0207 41 10, 0207 41 41 and 0207 41 71 coming from Thailand (Group 2). The same rate of levy was applied to an annual quantity of 7 100 tonnes of chicken meat, falling under the CN codes referred to above, coming from Brazil (Group 1), and to an annual quantity of 3 300 tonnes coming from other non-member countries (Group 3).

4 Article 1 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) established a new goods nomenclature, called the 'combined nomenclature', or, in abbreviated form, 'CN'. The combined nomenclature appears in Annex I to that regulation, in which the rates of duty applicable and other required information are fixed.

5 Commission Regulation (EC) No 1359/95 of 13 June 1995 amended Annexes I and II to Regulation (EEC) No 2658/87 and repealed Regulation (EEC) No 802/80 (OJ 1995 L 142, p. 1). In accordance with Article 3 thereof, Regulation No 1359/95 entered into force on 1 July 1995.

6 In its version thus amended, the same Annex I 'Combined Nomenclature' contained, in Part Three 'Tariff Annexes', Section III 'Quotas', an Annex 7

headed 'WTO tariff quotas to be opened by the competent Community authorities'. Order No 18 of that annex contains the following:

Order No	CN code	Description	Quota quantity	Rate of duty (%)	Other terms and conditions
1	2	3	4	5	6
...	...	...	...	...	...
18		Cuts of fowls of the species Gallus domesticus, frozen:	15 500 t	0	
	0207 41 10	Boneless			
	0207 41 41	Breasts and cuts thereof			
	0207 41 71	Other			

7 Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; 'the CCC') provides:

'2.... subsequent entry in the accounts shall not occur where:

...

(b) the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration;

...'.

Facts and procedure

8 Peter Biegi Nahrungsmittel GmbH and Commonfood Handelsgesellschaft für Agrar-Produkte mbH (hereinafter referred to as 'Biegi' and 'Commonfood' respectively, and together as 'the applicants') are German companies, linked with one another, operating in the poultrymeat trade. The applicants are among the main importers of poultrymeat in Germany.

9 By a decree of 29 June 1995 (known as 'Eilverteiler'), the German Federal Minister of Finance amended the working tariff of the German customs authorities by inserting, *inter alia*, the tariff quota K 4047 (chicken meat) at zero duty as from 1 July 1995. That quota corresponds to CN codes 0207 41 10, 0207 41 41 and 0207 41 71 referred to above. The Eilverteiler did not contain any indication as to the requirement of an import licence for the importation of products falling within the tariff quota abovementioned.

10 During the period from 13 to 18 July 1995 and from 4 to 22 September 1995, Biegi declared the importation, in various consignments, of frozen chicken pieces

(CN Code No 0207 41 10) originating in Thailand. On 24 July 1995, Commonfood declared the importation, in various consignments, of frozen chicken pieces under the same CN Code originating in Thailand. The applicants did not attach import licences to their customs declarations.

11 However, following the amendment of the German customs authorities' working tariff introduced by the Eilverteiler, the competent customs office used the Community tariff quota referred to above and allowed the applicants the benefit of exemption from customs duties.

12 During August 1995, the applicants, having had doubts as to the duties applied at the time of the customs clearance operations of July 1995, telephoned the Federal Ministry of Finance and the central service for monitoring tariff quotas, through the intermediary of their manager responsible for the management of import licences, in order to obtain clarifications as to the system applicable to imports of the products in question. Initially, the officials of whom enquiry was made stated by telephone that the duties applied were correct even without the presentation of an import licence in support of the customs declaration. The applicants then asked for confirmation of that information in writing.

13 However, the written response of the German customs administration, sent to the applicants by letter of 22 August 1995, indicated that use of the quota required the presentation of an import licence in support of the customs declaration. On the same day, the Federal Minister for Finance amended the working tariff of the German customs authorities with retrospective effect. That amendment had the effect of making it necessary, as from 1 July 1995, to present an import licence when using the tariff quota in question.

14 By two amending tax decisions, adopted on 12 and 13 August 1996, the competent customs office, namely the Hauptzollamt Bremen-Freihafen, then undertook post-clearance recovery of the import duties, totalling DEM 222 116.06 in respect of Commonfood's imports (decision of 12 August 1996), and DEM 259 270.23 in respect of Biegi's imports, of which DEM 218 605.64 related to the imports of July 1995 and DEM 40 664.59 to the imports of September 1995 (decision of 13 August 1996).

15 Relying on their good faith, the error on the part of the German authorities and the fact that the latter was undiscoverable, the applicants claimed that the import duties should not be taken into account post-clearance.

16 Their claims having been rejected by the competent customs office on 30 July 1997, the applicants referred the matter to the Finanzgericht Bremen (Germany). The minutes of the hearing of 14 December 1999 show that, after investigating the matter, that court took the view that Biegi's action had little chance of success in relation to its customs declarations of September 1995, as Biegi had been duly informed of the exact legal situation by the German customs administration's letter of 22 August 1995, referred to above. The Finanzgericht Bremen therefore recommended to Biegi that it should consider withdrawing its action in relation to those declarations. Regarding the customs declarations of July 1995, however, the court took the provisional view that it was possible to grant the applicants protection of their legitimate expectations for the purposes of Article 220(2) of the CCC, and suggested to the competent customs office that it find out whether it was possible to withdraw the amending tax decisions of 12 and 13 August 1996, referred to above, in relation to the declarations in question.

17 Pursuant to Article 871 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), the Federal Republic of Germany asked the Commission,

by letters of 2 August 2000 and 17 April 2001, to decide under Article 220(2)(b) of the CCC whether it would be justifiable to waive retrospective accounting for the import duties in the administration's disputes with Biegi and Commonfood.

18 Taking the view that the circumstances did not reveal an error by the customs authorities themselves, not detectable by an operator acting in good faith within the meaning of Article 220(2)(b) of the CCC, the Commission decided, by decisions adopted on 14 August 2001 (Case T-309/01) and 5 March 2002 (Case T-239/02) [together referred to below as 'the contested decisions'] and respectively notified to Biegi on 5 October 2001 and to Commonfood on 25 June 2002, that the import duties forming the subject-matter of the Federal Republic of Germany's requests, referred to above, should be taken into account.

19 By applications lodged at the Registry of the Court of First Instance on 12 December 2001 and 8 August 2002, the applicants brought the present actions, registered, respectively, under case numbers T-309/01 and T-239/02.

20 In Case T-309/01, the written procedure was closed on 1 July 2002.

21 In Case T-239/02, the Court of First Instance (Fourth Chamber) decided on 10 December 2002, in accordance with Article 47(1) of the Rules of Procedure of the Court of First Instance, as amended on 6 December 2000 (OJ 2000 L 322, p. 4), that a second exchange of pleadings was unnecessary because the documents before the court were sufficiently comprehensive to enable the parties to elaborate their pleas and arguments in the course of the oral procedure. Commonfood having not submitted any request for the documents to be supplemented, the written procedure in Case T-239/02 was closed on 17 December 2002.

22 By order of the President of the Fourth Chamber of 17 January 2003, Cases T-309/01 and T-239/02 were joined for the purposes of the oral procedure and the judgment, pursuant to Article 50 of the Rules of Procedure of the Court of First Instance.

23 In the context of measures of organisation of procedure, the Commission was asked to produce a document, and did so within the prescribed time-limit.

24 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure, and the parties presented oral argument and answered questions put to them by the Court at the public hearing on 2 April 2003.

Forms of order sought

25 In Case T-309/01, Biegi claims that the Court should:

— partially annul the Commission's decision of 14 August 2001 (REC 4/00), in so far as it orders the subsequent entry in the accounts of import duties amounting to DEM 218 605.64;

— order the Commission to pay the costs.

26 In Case T-239/02, Commonfood claims that the Court should:

— annul the Commission's decision of 5 March 2002 (REC 4/01), ordering the subsequent entry in the accounts of import duties amounting to DEM 222 116.06;

— order the Commission to pay the costs.

27 In the two cases T-309/01 and T-239/02, the Commission contends that the Court should:

— dismiss the applications;

— order the applicants to pay the costs.

Law

28 In support of their actions, the applicants raise three pleas in law, claiming infringement, first, of Article 220(2)(b) of the CCC, second, of the principle of proportionality, and, third, of the principles of sound administration and equal treatment.

The first plea, claiming infringement of Article 220(2)(b) of the CCC

Arguments of the parties

29 The applicants maintain that the conditions for applying Article 220(2)(b) are fulfilled in this case, as regards the disputed imports in July 1995. There was therefore no justification for taking subsequent account of the import duties relating thereto, and the contested decisions should therefore be annulled.

30 In that respect, the applicants argue, first, that the error committed by the competent German customs authorities is undeniable. The Eilverteiler, whereby the German Federal Minister for Finance altered the working tariff of the German customs authorities with effect from 1 July 1995, made no mention of the need to submit an import licence in order to use the tariff quota K 4047 to which it referred. The same error was made by the German authorities in charge of customs clearance, such as the Hauptzollämter Bremen-Freihafen, Bremerhaven and Hamburg-Ericus (henceforth 'Hamburg-Freihafen'), and the central services for monitoring tariff quotas at the Oberfinanzdirektion Köln, which were of the opinion that use of the quotas was not conditional upon the presentation of import licences.

31 In that context, the applicants state that their manager responsible for import licences, Mr Steiner, had received telephone information from a competent official at the central service for tariff quotas, at the beginning of July 1995, to the effect that tariff quota K 4047 of the Eilverteiler constituted an additional special quota which did not require the presentation of import licences. That same information was also supplied to the applicants by the Federal Ministry of

Finance and the central service for monitoring tariff quotas after the disputed imports in the course of a telephone communication of 18 August 1995, which prompted the applicants to request written confirmation of that information. In that respect, the applicants request the Court of First Instance to allow their managers Mr Steiner and Mrs Paparatti to be heard on those points.

32 In reply to the Commission's argument that the telephoned information allegedly communicated to the applicants before the contested imports was unsupported by evidence, irrelevant, and belatedly relied on for the first time in the application, Biegi refers to the letter of 2 June 2000, sent by the German customs authorities to the Commission, and to the minutes of the hearing of 14 December 1999 before the Finanzgericht Bremen, referred to above, which confirm the genuineness of that information.

33 Second, the applicants argue that they could not detect the error of the customs authorities, referred to above, even though they are active in the import business.

34 According to the applicants, the undiscoverable nature of the error in question arises, first, from the complexity of the applicable legislation. Even if Commission Regulation No 1431/94 did state that use of the preferential tariff quota opened by Council Regulation No 774/94 was subject to presentation of an import licence, the tariff quota appearing in Order No 18, of Annex 7, of Part Three, of Annex I to Regulation No 2658/87, as amended by Regulation No 1359/95, which introduced the new combined nomenclature for the goods, contained no reference to that effect in its sixth column headed 'Other terms and conditions'. This was therefore a case of a new tariff quota, governed by Regulation No 1359/95 and dissociated from Regulations Nos 774/94 and 1431/94, making it impossible for the applicants to establish the necessary link and draw the necessary conclusions.

35 In addition, the undiscoverable nature of the error arises from the fact that the working tariff of the German customs authorities, as amended by the Eilverteiler of 29 June 1995, did not contain any reference to Regulation No 1431/94.

36 Finally, the various errors made, before and after the disputed imports, by the various competent German authorities dealing with the problem confirmed both the lack of clarity and transparency of the legal situation and the undiscoverability of the error by the applicants.

37 In those circumstances, the applicants maintain that they were not in a position to detect the error of the competent customs authorities, despite their experience in the poultry trade. Biegi adds that, since it does not have a legal service, it was impossible for it to embark upon legal considerations as to the interrelationship of the various regulations. By contrast, it was entitled to rely in that respect on the indications contained in the working tariff of the German customs authorities and on the information supplied at the highest level of the administration to which the question was referred.

38 Third, the applicants maintain that they complied with their duty of care and acted in good faith. Biegi adds that, by repeatedly requesting information from the highest competent German customs authorities, it acted in accordance with the case-law of the Court of Justice, whereby it is for the trader, as soon as he has doubts as to the application of customs law, to seek the greatest clarification possible in order to ascertain whether his doubts are well founded or not (Case C-64/89 *Deutsche Fernsprecher* [1990] ECR I-2535, paragraph 22).

39 In order to demonstrate the care that they took, the applicants argue that they did not rely solely on the working tariff of the German customs authorities, but that they also sought information from the competent national authorities up to the

German Federal Ministry of Finance. The telephoned information supplied by all those authorities as to the absence of any obligation to present an import licence for the tariff quota in question gave rise to a legitimate expectation on the part of the applicants which authorised them to act. The applicants also complied with their obligation to read the official journals which, in themselves, contained neither any indication as to the need for an import licence nor any link with Regulations Nos 774/94 and 1431/94. They submit that their case is therefore to be distinguished from the context of the judgment of the Court of Justice in Case C-370/96 *Covita* [1998] ECR I-7771, wrongly relied on by the Commission.

40 The applicants also argue that, since many quotas in the poultrymeat industry operate on a 'first come, first served' basis, economic decisions concerning the importation of those products have to be taken rapidly. It was therefore impossible for the applicants to ask the various authorities in advance, in writing, to clarify the situation. Such a request would make it impossible for them to carry out imports by reason of the time that would elapse before obtaining a reply.

41 Moreover, Biegi argues that it was thanks to its conduct that the German customs administration became aware of its error and amended the working tariff of the German customs authorities on 22 August 1995 and that the Commission was able to avoid further losses of import duties. The company adds that, contrary to what the Commission argues, it was under no obligation to request information from the Commission since the application of customs law falls within the competence of the national customs authorities, the party concerned itself having only the right to be heard. Biegi also argues that the Commission is wrong to blame it for not sending a written request to the Federal Office for Agriculture and Food (Bundesanstalt für Landwirtschaft und Ernährung — BLE), since questions concerning the treatment of a newly introduced WTO tariff quota do not fall within the competence of that office but within that of the central service for tariff quotas.

42 Finally, Biegi argues that its good faith cannot be called into question by the fact, relied on by the Commission, that its manager, Mr Peter Biegi, has knowledge and experience of the poultrymeat industry, in his capacity as long-standing chairman of the German Federation for Wholesale and International Trade in Game and Poultry, which could be attributed to Biegi. The chairmanship of that federation is an honorary position, the administration and current business of the federation being carried out by its professional manager. Mr Peter Biegi never took part in the meetings of various 'committees' in Brussels and therefore did not have any special or specific knowledge on the subject of the disputed tariff quota or possible links between Regulations Nos 1431/94 and 1359/95. Biegi asks that Mr Peter Biegi and Mr Caspar von der Crone, the Secretary General of the German Federation referred to above, should be heard in evidence on that point before the Court of First Instance.

43 Finally, the applicants argue that they have complied with all the provisions in force concerning customs declarations.

44 The Commission replies that the conditions for applying Article 220(2)(b) of the CCC are not met in this case, and that subsequent accounting for the import duties is therefore justified.

45 First, concerning the errors made by the German customs services, the Commission argues that the only relevant errors for the purposes of Article 220(2)(b) of the CCC arise from the erroneous version of the German customs authorities' working tariff drafted by the Federal Ministry of Finance, and the repeated clearance of goods imported by the applicants in July 1995 with the granting of the tariff preference without the presentation of an import licence.

46 By contrast, the Commission expressly rejects the applicants' contention, made for the first time in the applications, that, before the disputed imports were made,

the applicants received erroneous telephone information from the central tariff quota service at the Oberfinanzdirektion Köln through the applicants' manager, Mr Steiner.

47 Contrary to what the applicants maintain, the Commission argues that the documents of 2 June 2000 and 2 August 2000 sent to it by the German customs authorities, the observations of 8 June 2001 sent by Biegi to the Commission and the observations of 25 July 1997 sent by the applicants to the Hauptzollamt Bremen-Freihafen do not in any way refer to telephone information before the disputed imports but only to telephone calls concerning the legal situation as at 18 August 1995, after the disputed imports. The same applied to the minutes of the hearing of 14 December 1999 of the Finanzgericht Bremen and the witness statements of Mr Steiner and Mrs Paparatti before that court. In those circumstances, the Commission maintains that the applicants' request that Mr Steiner and Mrs Paparatti should be heard as witnesses is superfluous, and should be rejected.

48 In any event, the Commission argues, the alleged telephone communications before the disputed imports, belatedly relied on by the applicants, are of no consequence in the present disputes even if they were to be established, because the applicants did not rely on them during the administrative procedure. As for the erroneous information supplied to the applicants over the telephone by the German customs services in August 1995, the Commission maintains that they are irrelevant in the context of the present actions, the subject-matter of which is limited to the imports carried out in July 1995.

49 Second, the Commission argues that the errors made by the German customs authorities were easily detectable by the applicants.

50 In the first place, the Commission maintains that the law applicable in this case is neither obscure nor complex. Regulation No 1359/95, mentioned by the applicants, constitutes only a regulation amending general regulation

No 2658/87, concerning the tariff and statistical nomenclature, and was purely declaratory in scope (Opinion of Advocate General Roemer in Case 9/73 *Schlüter* [1973] ECR 1135, at p. 1163). That regulation was clearly not intended to open a new tariff quota or to remove the requirement for an import licence, that requirement being governed by Regulation No 774/94 and the implementing regulation No 1431/94, Article 1 of which had required since June 1994, more than a year before the disputed imports, that an import licence be presented.

51 Second, the Commission argues that the applicants did not comply with the duty of care placed upon them by consistent case-law, but relied solely on the working tariff of the German customs authorities and information given over the telephone, generally not binding, allegedly communicated by the national authorities, without ever consulting, or obtaining consultation of, the relevant official journals of the European Communities and the legal measures which are published therein.

52 In that respect, the Commission begins by underlining the extensive experience of the applicants, who have been marketing and importing the goods concerned for several decades. The applicants were therefore particularly well placed to know the legal rules applicable on the subject.

53 The Commission then argues that, since Regulations No 1431/94 and 1359/95 were published in the *Official Journal of the European Communities* on 22 June 1994 and 26 June 1995 respectively, the applicants had plenty of time, before the import declarations, to send a written request to the German customs services or to the Commission in order to remove their doubts as to the requirement of an import licence for the disputed imports.

54 Finally, the Commission argues that the applicants cannot deduce any particular good faith from the repeated clearance of the goods by the customs offices despite the absence of import licences. It is settled case-law that an error of the customs authorities cannot generally arise from the acceptance of a customs declaration at the point of import (Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465, paragraph 93).

Findings of the Court

55 Under Article 220(2)(b) of the CCC, three cumulative conditions must be met for the competent authorities to be able to waive subsequent accounting for import duties. Non-collection must have been due to an error by the authorities themselves; their error must be of such a kind that it could not reasonably have been detected by a taxable person acting in good faith; and, finally, the latter must have complied with all the provisions laid down by the legislation in force so far as his customs declaration is concerned (see, by analogy, the judgments of the Court of Justice in Case 161/88 *Binder* [1989] ECR 2415, paragraphs 15 and 16, Case C-348/89 *Mecanarte* [1991] ECR I-3277, paragraph 12, Case C-292/91 *Weis* [1993] ECR I-2219, paragraph 14, and *Faroe Seafood*, paragraph 83; the orders of the Court of Justice in Case C-299/98 P *CPL Imperial 2 and Unifrigo* v *Commission* [1999] ECR I-8683, paragraph 22, and Case C-30/00 *William Hinton and Sons* [2001] ECR I-7511, paragraphs 68, 69, 71 and 72; and the order of the Court of First Instance in Case T-75/95 *Günzler Aluminium* v *Commission* [1996] ECR II-497, paragraph 42).

56 To begin with the first of the conditions referred to above, it should be noted that two errors by the German customs authorities, namely the erroneous version of the Eilverteiler and the clearance of the goods imported by the applicants in July 1995 with the granting of the tariff preference, without presentation of an import licence, are undisputed in this case.

57 As for the error consisting in the communication by the German Federal Ministry of Finance and by the central service for monitoring tariff quotas of inaccurate information over the telephone to one of the applicants' managers during August 1995, in this case on 18 August 1995, this should be set aside at the outset as irrelevant to the present actions, which concern only imports carried out in July 1995. Moreover, following a written request sent by the applicants to the Federal Ministry of Finance on 18 August 1995, the German customs administration, in its reply of 22 August 1995, did not confirm that information over the telephone and clearly indicated that use of the disputed quota required an import licence to be presented in support of the customs declaration.

58 In the applications, the applicants refer to another error, consisting in the alleged communication by an official of the central service for monitoring tariff quotas, to Biegi's manager, Mr Steiner, of inaccurate information over the telephone as to the requirement of an import licence, such information having been allegedly communicated before 13 July 1995, that is to say before the disputed imports. The Court finds, however, that, quite apart from the lateness of its production and the question of its relevance, which the Commission disputes, this information over the telephone is not in any way demonstrated by documents placed with the Court's files.

59 In the documents to which the applicants refer, namely the letters with identical content of 2 June 2000 and 2 August 2000, referred to above, sent by the German customs authorities to the Commission, reference is made only to the telephone communication of 18 August 1995. The same applies to the observations of 8 June 2001 sent by Biegi to the Commission, and to the observations, dated 25 July 1997, sent by the applicants to the principal customs office of Bremen-Freihafen. Moreover, as the Commission rightly points out, these allegations are not confirmed either by the minutes of the hearing of 14 December 1999 of the Finanzgericht Bremen or by the witness statements of Mr Steiner and Mrs Paparatti before that court. It is clear from those minutes, which, moreover, were not sent to the Commission during the administrative procedure, that Mr Steiner indicated 'July/August 1995' as the approximate date of a telephone communication with the tariff quota services in Düsseldorf, while

Mrs Paparatti has stated that she drafted a note on 21 August 1995 'some days after the telephone communications referred to therein'. In those circumstances, there is no need to order the measure of preparatory enquiry requested by the applicants, in order that Mr Steiner and Mrs Paparatti be heard by the Court of First Instance on that point.

60 Second, it should be noted that, in the contested decisions, the Commission took the view that the second condition for applying Article 220(2)(b) of the CCC, referred to in paragraph 55 above, was not fulfilled in this case. It therefore needs to be examined whether the Commission was right in thinking that the errors made by the German customs authorities could reasonably have been detected by the applicants.

61 The Court of Justice has consistently held that whether an error by the competent customs authorities was detectable must be determined having regard to the nature of the error, the professional experience of the traders concerned and the degree of care which they exercised (*Faroe Seafood*, paragraph 99; *Covita*, paragraph 26; Case C-371/90 *Beirafrio* [1992] ECR I-2715, paragraph 21; Case C-187/91 *Belovo* [1992] ECR I-4937, paragraph 17; Case C-250/91 *Hewlett Packard France* [1993] ECR I-1819, paragraph 22; Case 15/99 *Sommer* [2000] ECR I-8989, paragraph 37; Case C-251/00 *Illumitrónica* [2002] ECR I-10433, paragraph 54).

62 As regards the nature of the error, the Court has held that it is to be determined in the light of the complexity or otherwise of the rules concerned (*Deutsche Fernsprecher*, paragraph 20, *Belovo*, paragraph 18, *Hewlett Packard France*, paragraph 23, and *Faroe Seafood*, paragraph 100) and of the period of time during which the authorities persisted in their error (Case C-38/95 *Foods Import* [1996] ECR I-6543, paragraph 30; *Illumitrónica*, paragraph 56).

63 In these cases, the rules applicable to the use of the disputed Community tariff quota are defined by the regulations on the opening and management of that quota and laying down the detailed rules for applying it, namely Regulation No 774/94, as amended by Regulation No 2198/95, and Regulation No 1431/94. Article 1 of Regulation No 1431/94, the application of which is not limited in time, clearly provides that every importation into the Community carried out in the context of that long-term tariff quota is subject to presentation of an import licence. In addition, Article 2 of the same regulation governs the spread of the quantity fixed for 1994 and subsequent years, and Articles 3 and 4 lay down the detailed rules for applying for import licences. That legislation does not therefore appear to be complex, and neither has the sufficiently simple nature of those rules been challenged by the applicants.

64 The applicants argue, however, that the complexity of the applicable legislation arises from Commission Regulation 1359/95 and, more particularly, from the fact that that regulation inserted, in Order No 18 of Annex 7, cited above, as from 1 July 1995, a new zero-duty WTO tariff quota of 15 500 tonnes of chicken meat falling within the same CN codes, without referring to Regulation No 1431/94 and to the obligation to present an import licence established by that regulation.

65 In that respect, it should be noted that Regulation No 1359/95, whereby the Commission published a new version of the combined nomenclature for goods applicable as from 1 July 1995, set out in Annex 7 a list of WTO tariff quotas to be granted by the competent Community authorities. As the Commission rightly points out in the contested decisions, there was no obligation for that list to refer to the regulations applicable to the quotas there mentioned, the references to other rules of customs law appearing in regulations concerning the combined nomenclature and the common customs tariff being, moreover, of declaratory value only, and not making those rules the subject-matter of the common customs tariff (see, to that effect, the Opinion of Advocate General Roemer in *Schlüter*, at p. 1169).

66 Thus, contrary to what the applicants argue, Regulation No 1359/95 did not open as from 1 July 1995 a new preferential tariff quota claiming to be separate from that of Regulation No 774/94, as amended, but simply indicated, in Annex 7, the tariff quota of a volume of 15 500 tonnes which, save for the French version of Regulation No 774/94, erroneously referring to a volume of 15 000 tonnes, already appeared in all the other language versions, and in particular the German version, of that regulation and also in Annex I to Regulation No 1431/94. That same preferential tariff volume was subsequently maintained by Regulation No 2198/95, following the agreement concluded in the context of the Uruguay Round negotiations (see the second recital in the preamble to that regulation), which came into force at the same time as Regulation No 1359/95. It is common ground that that latter regulation neither amended, nor, *a fortiori*, repealed Regulation No 774/94, as amended, and Regulation No 1431/94. In those circumstances, it is hardly conceivable that two preferential Community quotas, of the same volume, falling under the same CN codes and having the same provenance, could have been opened with effect from the same date, namely 1 July 1995, the first of them, under Regulation No 774/94 as amended, being subject to the obligation to present an import licence, but the second, under Regulation No 1359/95, not being so subject.

67 In assessing the nature of the error, account should also be taken of the fact that the competent customs authorities did not persist in their error but corrected it within a very short period, namely a month after making it. That factor suggests that the problem in question was not difficult to resolve (see, *a contrario*, *Belovo*, paragraph 18, *Faroe Seafood*, paragraphs 7 and 104, *Foods Import*, paragraph 30, and *Illumitrónica*, paragraphs 56 to 58).

68 In any event, even if Regulation No 1359/95 could be regarded as an indicator of a certain complexity in the applicable legislation, which misled the applicants as to the need to present an import licence in order to use the disputed quota, it needs to be examined whether that error could reasonably have been discovered

by the applicants, bearing in mind their professional experience and the duty of care they are under by virtue of the case-law cited in paragraph 61 above.

69 As regards the professional experience of the trader concerned, the question to be determined, according to consistent case-law, is whether or not the trader involved is a professional economic trader, whose business essentially consists in import and export operations, and whether he already had some experience of trading in the goods in question (*Deutsche Fernsprecher*, paragraph 21; *Belovo*, paragraph 19; *Hewlett Packard France*, paragraph 26; Case C-80/89 *Behn Verpackungsbedarf* [1990] ECR I-2659, paragraph 14).

70 In this case, there is no doubt that the applicants fall into that category of experienced traders. They are indeed amongst the principal importers of chicken meat in Germany and state that they have experience in the poultry trade. Moreover, they do not deny the Commission's statement that they have been very active in that area for several decades.

71 The applicants argue, however, that, despite their professional experience, they had limited knowledge of the regulation on the quota in question which did not enable them to establish the link between, on the one hand, Regulations No 774/94 and 1431/94, and, on the other, the new version of the CN adopted by Regulation No 1359/95. By so arguing, however, the applicants acknowledge that they were aware of the rules connected with that quota. Moreover, in so far as, first, the applicants had already carried out similar operations and were therefore experienced in the importation of the goods in question, and, second, the importation of those goods had been subject to the presentation of an import licence since 1994, it must be held that the applicants were aware of the importance of that licence in order to obtain the benefit of the long-term tariff quota concerning those goods.

72 That conclusion, that the applicants were not only in a position to establish a link between Regulations Nos 774/94 and 1431/94 and Regulation No 1359/95, but had actually established such a link, is corroborated by the doubts they had in that respect and by the steps which they took with various German customs authorities during August 1995 in order to remove those doubts and obtain clarifications as to the content of the legislation concerned. In those circumstances, it is not necessary to order the measure of preparatory enquiry requested by the applicants, namely that Mr Peter Biegi and Mr Caspar von der Crone should be heard by the Court of First Instance in order to demonstrate the allegedly limited knowledge of the applicants on the matter.

73 As regards the degree of care shown by the trader concerned, it is clear from the case-law that, as soon as he has doubts as to the need for an import licence in order to benefit from a preferential tariff quota, it is for the trader himself to make inquiries and seek the greatest clarification possible in order to ascertain whether or not those doubts are well founded (*Deutsche Fernsprecher*, paragraph 22; *Hewlett Packard France*, paragraph 24).

74 In this case, the applicants claim, first, that they showed due care by consulting the working tariff of the German customs authorities, as amended by the Eilverteiler, which contained no indication as to the requirement of an import licence in order to use the disputed tariff quota.

75 On that point, it is clearly established in the case-law that the applicable Community tariff provisions constitute the sole relevant positive law as from the date of their publication in the *Official Journal of the European Communities*, and everyone is deemed to know that law. A customs tariff manual like the German one, drawn up by the national authorities, is therefore merely a guide for customs operations, with purely indicative value. It follows that a trader whose business essentially comprises import and export transactions and who has accumulated some experience in that area must, by reading the relevant issues of

the Official Journal, acquaint himself with the Community law applicable to the transactions which he undertakes. Such a trader may not, therefore, rely solely on the statement of rates contained in a national customs tariff manual in order to determine the applicable rate of duty (*Binder*, paragraph 19; *Behn Verpackungsbedarf*, paragraphs 13 and 14; *William Hinton and Sons*, paragraph 71).

76 The applicants then argue that they showed care by contacting various customs services which gave them incorrect information over the telephone as to the requirement for an import licence both before and after the disputed imports. The applicants maintain that that information created a legitimate expectation on their part which authorised them to act.

77 That argument must be rejected, having regard to the arguments and considerations set out in paragraphs 57 to 59 above. Moreover, apart from the question of its reality and probative value, the alleged information over the telephone would simply have confirmed the Eilverteiler and could not be relevant in relation to the obligation on the applicants to consult attentively the relevant legislation published in the *Official Journal of the European Communities* and to seek, in case of doubt as to its meaning, the greatest clarification possible in order to ascertain whether or not those doubts were well founded

78 Finally, the Court must reject the argument that the applicants did not have the necessary time to ask the competent authorities to clarify the legal situation in writing, given the long time likely to be taken in replying to such a request and the fact that many quotas in the meat and poultry business operate according to the 'first come, first served' rule.

79 First, if the conduct of the traders concerned were to be guided solely by economic considerations such as those relied on by the applicants, their duty of care, as defined by the case-law, would be devoid of all content.

80 Second, the relevant provisions of Regulations Nos 774/94 and 1431/94, concerning the import licence, were published and applicable a year before the disputed imports. Regulation No 1359/95 was itself published on 26 June 1995, three weeks before the disputed imports of July 1995 by Biegi and four weeks before the imports by Commonfood. The applicants therefore had sufficient time, before the disputed imports, to write to the competent German customs services, or to the Commission, in order to dispel their doubts and obtain clarifications concerning the applicable legislation. In this case, it is undisputed that the applicants did not take any such steps at the appropriate time.

81 Third, the applicants' claim that the reply to a written request would necessarily take a lot of time, thereby preventing them from meeting the time-limits which flow from the 'first come, first served' system is irrelevant in assessing the care which the applicants, as experienced traders, should have shown in this case. Moreover, that same claim by the applicants as to length of time taken for a reply to a written request is not borne out in this case. It is undisputed that the written request sent by the applicants to the German Federal Ministry of Finance after the disputed imports, on 18 August 1995, received a written reply within four days, by the letter of 22 August referred to above.

82 In those circumstances, the Court finds that the applicants have not shown the care that they were under a duty to show as experienced operators in the importation of the goods in question.

83 It follows from the whole of the above considerations that the Commission was right to take the view that the second of the cumulative conditions laid down by Article 220(2)(b) of the CCC was not fulfilled in this case, and that it was justified in taking subsequent account of the import duties for the disputed imports.

84 Consequently, the first plea in law must be rejected as unfounded.

The second plea in law, alleging infringement of the principle of proportionality

Arguments of the parties

85 The applicants argue that the contested decisions infringe the principle of proportionality because the Commission imposes excessive duties of care on traders while itself failing to clarify the situation by a simple reference, in Regulation No 1359/95, to Regulations Nos 774/94 and 1431/94.

86 The Commission replies that the applicants' argument merges with the argument alleging that Regulation No 1359/95 was obscure, put forward in the context of the first plea in law. In any event, the Commission argues, where, as in this case, the conditions for applying Article 220(2)(b) of the CCC are not met, the fact that import duties are subsequently taken into account cannot constitute an infringement of the proportionality principle.

Findings of the Court

87 Where the conditions for applying Article 220(2)(b) of the CCC are not met, the fact that action for post-clearance recovery of customs duties is taken does not constitute an infringement of the proportionality principle (*Faroe Seafood*, paragraph 115).

88 In this case, since the conditions for applying Article 220(2)(b) of the CCC are not met, the fact that the contested decisions take subsequent account of the duties in respect of the disputed imports cannot, in itself, constitute an infringement of the principle of proportionality.

89 The second plea in law must therefore be dismissed.

The third plea in law, alleging infringement of the principles of sound administration and equal treatment

Arguments of the parties

90 The applicants argue that, by adopting the contested decisions, the Commission infringed the principles of sound administration and equal treatment laid down by Community law. The contested decisions departed, to the detriment of the applicants, from a previous decision, of 24 March 2000, adopted in a similar case (REC 11/98).

91 The Commission maintains that the applicants have not stated sufficient grounds for their allegation that the principle of sound administration has been infringed, and that the allegation is therefore irrelevant.

92 Concerning the infringement of the principle of equal treatment or non-discrimination, the Commission argues that proceeding REC 11/98 and the disputed proceedings (REC 4/00 and 4/01) are not comparable. The error of the customs services in proceeding REC 11/98 did not consist solely in the publication of an erroneous national customs tariff but also, and above all else, in the fact that the French customs authorities had, over a period of two years, accepted an extremely large number of import declarations containing an incorrect rate of duty. Therefore, neither the nature of the error, nor its duration, nor the number of imports concerned were comparable with those in the proceedings currently in dispute.

Findings of the Court

93 The Court finds, first, that the plea alleging infringement of the principle of sound administration is not in any way supported and must therefore be dismissed.

94 Concerning, second, the plea alleging infringement of the principle of equal treatment, it is settled case-law that that principle requires that comparable situations should not be treated differently, unless such a difference in treatment is objectively justified (Case 283/83 *Racke* [1984] ECR 3791, paragraph 7; Case C-442/00 *Fogasa* [2002] ECR I-11915, paragraph 32).

95 In this case, the applicants claim that the contested decisions depart from a previous decision of the Commission, adopted on 24 March 2000 in a proceeding

REC 11/98, which they say is similar, in which the Commission took the view that subsequent accounting for import duties was not justified.

96 However, as the Commission has observed, without being in any way contradicted by the applicants during the written procedure or at the hearing, proceeding REC 11/98 is not comparable with the present proceedings. Therefore, this claim must be dismissed as irrelevant.

97 Therefore, the third plea in law must be dismissed.

98 Having regard to the whole of the above considerations, these applications must be dismissed.

Costs

99 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber),

hereby:

1. **Dismisses the applications;**

2. **Orders the applicants to pay the costs.**

Tiili Mengozzi Vilaras

Delivered in open court in Luxembourg on 17 September 2003.

H. Jung
Registrar

V. Tiili
President