

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

**Peter Biegi Nahrungsmittel GmbH
and Commonfood Handelsgesellschaft für Agrar-Produkte mbH**

v

Commission of the European Communities

(Subsequent accounting for import duties — Conditions — Article 220(2)(b) of Regulation (EC) No 2193/92 — Detectable error — Duty of care — Regulation (EC) No 774/94 — Combined nomenclature — WTO tariff quotas)

Judgment of the Court of First Instance (Fourth Chamber), 17 September
2003 II-3149

Summary of the Judgment

*Own resources of the European Communities — Post-clearance recovery of import or export duties — Conditions under Article 220(2)(b) of Regulation No 2913/92 for the waiver of import duties — Whether error detectable by the trader — Criteria for assessment — Proportionality principle
(Council Regulation No 2913/92, Art. 220(2)(b))*

Concerning the second of the cumulative conditions, laid down by Article 220(2)(b) of Regulation No 2913/92 establishing the Community Customs Code, which have to be met for the competent authorities to be able to waive subsequent accounting for import duties, according to which condition the error by the competent customs authorities must be of such a kind that it could not reasonably have been detected by a taxable person acting in good faith, the question whether such an error 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.

in order to benefit from a preferential tariff quota, to make enquiries and seek the greatest clarification possible in order to ascertain whether or not those doubts are well founded. On that point, such a trader must ascertain the Community law applicable to the transactions which he undertakes by reading the relevant issues of the Official Journal. As from the date of their publication in the *Official Journal of the European Communities*, the applicable Community tariff provisions constitute the sole relevant positive law on the matter and all persons are deemed to be aware of them; a customs tariff manual drawn up by the national authorities, by contrast, is merely a guide for customs operations, with purely indicative value.

The nature of the error is to be determined in the light of the complexity or otherwise of the rules concerned and the period of time during which the authorities persisted in their error. As regards the professional experience of the trader concerned, it needs to be determined whether he 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. As regards the degree of care shown by the trader concerned, the latter is under a duty, as soon as he himself has doubts as to the need for an import licence

Where the conditions for applying Article 220(2)(b) of that regulation 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.

(see paras 55, 61-62, 69, 73, 75, 87)