

Case T-282/01

Aslantrans AG

v

Commission of the European Communities

(Customs duties — Repayment of import duties — Shipment of cigarettes stolen during transport — Concept of special situation within the meaning of Article 905 of Regulation (EEC) No 2454/93 — Compliance with the time-limit)

Judgment of the Court of First Instance (Fifth Chamber), 12 February 2004 II-696

Summary of the Judgment

1. *European Communities' own resources — Repayment or remission of import or export duties — Submission of application for reimbursement to the Commission — Information supplied by the national authorities not sufficient — Request for*

additional information — Extension of time-limit applicable to the Commission's decision — Condition — Potential impact of that information on the decision — Commission required to assess all the relevant facts
 (Commission Regulation No 2454/93, Arts 905(2), third subpara., and 907, second para.)

2. *European Communities' own resources — Repayment or remission of import or export duties — Fairness clause established by Article 905 of Regulation No 2454/93 — Scope — Commission's decision-making power — Procedures for exercising — 'Special situation' — Concept — Theft of goods during transport — Not covered*
 (Council Regulation No 2913/92, Art. 239; Commission Regulation No 2454/93, Art. 905)

1. When the customs authorities of a Member State have submitted an application for reimbursement of customs duties based on the existence of a special situation within the meaning of Article 239 of Regulation No 2913/92 establishing the Community Customs Code and it is found that the information supplied is not sufficient to enable a decision to be taken by it on the case concerned in full knowledge of the facts, the Commission, according to the third subparagraph of Article 905(2) of Regulation No 2454/93 laying down provisions for the implementation of the Customs Code, is entitled to ask for additional information to be supplied.

the implementing regulation, the period provided for the Commission to adopt a position on the application for reimbursement, it is necessary to examine whether the information sought by that request was likely to have an effect on that adoption of a position. In order to determine whether the circumstances of the case constitute a special situation, the Commission is required to assess all the relevant facts.

(see paras 37-39)

In order to ascertain whether such a request validly extended, pursuant to the second paragraph of Article 907 of

2. Article 905 of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, which explains and expands the

rule relating to the reimbursement or remission of import or export duties contained in Article 239 of the Customs Code, constitutes a general fairness clause intended, *inter alia*, to cover exceptional situations which, in themselves, do not fall within any of the cases provided for in Articles 900 to 904 of the implementing regulation. Since the repayment of import duties is subject to two cumulative conditions, namely, first, the existence of a special situation and, secondly, the absence of deception or obvious negligence on the part of the economic operator, repayment of duties must be refused if either of those conditions is not met.

Circumstances which constitute a special situation within the meaning of Article 905 of the implementing regulation exist where, having regard to the objective of fairness underlying Article 239 of the Customs Code, factors liable to place the applicant in an exceptional situation as compared with other operators engaged in the same business are found to exist. The theft of goods during transport must be regarded as one of the most frequently reported incidents, against which traders are normally insured, in particular those which specialise in the haulage of 'high-risk' goods, that is to say those which are heavily taxed.

The Commission enjoys a power of assessment when it adopts a decision pursuant to that general equitable provision. Moreover, since the repayment or remission of import duties, which may be granted only subject to certain conditions and in cases which have been specifically provided for, constitute an exception to the usual body of rules governing import and export, the provisions providing for such repayment or remission are to be interpreted strictly.

(see paras 52, 53, 55, 56, 65)