

Case T-104/02

Société française de transports Gondrand Frères SA

v

Commission of the European Communities

(Remission of import duties — Article 1(3) of Regulation (EC) No 3319/94 —
Meaning of 'special situation' under Article 905 of Regulation (EEC) No 2454/93 —
Anti-dumping duty on imports of urea ammonium nitrate solution originating in
Poland — Direct invoicing of the importer)

Judgment of the Court of First Instance (Fifth Chamber, Extended Composi-
tion), 21 September 2004 II - 3214

Summary of the Judgment

1. *Own resources of the European Communities — Repayment or remission of import or export duties — Article 239 of the Community Customs Code — Fairness clause — Purpose*

II - 3211

— Consideration of special circumstances justifying repayment of those duties — Challenge as to the existence of an anti-dumping debt — Not permissible

(Council Regulations Nos 2913/92, Art. 239, and 384/96; Commission Regulation No 2454/93, Art. 905)

2. *Own resources of the European Communities — Repayment or remission of import or export duties — Fairness clause introduced by Article 905 of Regulation No 2454/93 — Conditions for repayment — Existence of 'special circumstances' — Definition — Consequences of potential difficulties in the interpretation of the provisions introducing anti-dumping duty — None*

Council Regulations Nos 2913/92, Art. 239, and 3319/94, Art. 1(3); Commission Regulation No 2454/93, Art. 905)

1. Applications for repayment or remission of import duties on grounds of fairness made to the Commission pursuant to Article 239 of Regulation No 2913/92 establishing the Community Customs Code in conjunction with Article 905 of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 do not concern the question as to whether or not an anti-dumping debt exists, but seek solely to establish whether or not there are special circumstances which may, from the point of view of fairness, justify repayment of import or export duties. The making of such an application to the Commission presupposes that the debt in question exists, since the applicant has other legal remedies to challenge the existence of the debt, in particular under Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community, as amended.

(see para. 25)
2. Under Article 905 of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 the repayment of import duties is dependent on the fulfilment of two concurrent conditions, (i) the existence of a special situation and (ii) the absence of obvious negligence or deception on the part of the person concerned. A special situation exists where factors

liable to place the applicant in an exceptional situation as compared with other operators engaged in the same business are found to exist.

Any difficulties in interpreting Article 1 (3) of Regulation No 3319/94 would not, however, show that circumstances imposing a definitive anti-dumping duty on imports of urea ammonium nitrate solution originating from Bulgaria and Poland existed such as to create a special situation with regard to the applicant. First the rule laid down by Article 1(3), second subparagraph, which is aimed at situations in which the exporter or

producer has not directly invoiced an unrelated importer, in order to exclude all forms of triangular arrangement, which could entail a wish that the anti-dumping measures would be circumvented, presents no particular interpretative difficulty. Second, those interpretative difficulties would affect in the same way all traders importing urea ammonium nitrate solution from Poland and would not place the applicant in an exceptional situation by comparison with many other traders.

(see paras 57, 58, 62, 66, 67)