ORDER OF THE COURT (Third Chamber)

15 September 2004 *

In Case T-178/98 DEP,

Fresh Marine Co. A/S, established in Trondheim (Norway), represented by J.-F. Bellis and B. Servais, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by V. Kreuschitz and T. Scharf, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for taxation of the costs to be paid following the judgment of the Court of First Instance of 24 October 2000 in Case T-178/98 *Fresh Marine* v *Commission* [2000] ECR II-3331,

* Language of the case: English.

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

composed of: J. Azizi, President, M. Jaeger and O. Czúcz, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 By judgment of 24 October 2000 in Case T-178/98 *Fresh Marine* v *Commission* [2000] ECR II-3331 ('the judgment in the main proceedings'), the Court of First Instance ordered the Commission to pay NOK 431 000 to the applicant by way of compensation for the losses suffered as a result of errors committed by the Commission when imposing provisional duties on imports of farmed Atlantic salmon into the Community. The Court also ordered the Commission to bear its own costs and to pay three quarters of the applicant's costs.

2 By letter of 29 November 2000, the applicant informed the defendant that the total amount of its recoverable costs in the main proceedings amounted to BEF 2 200 000. The applicant requested the defendant to transfer to its bank account the sum of BEF 1 650 000, representing three quarters of those costs.

3 On 13 December 2000, the defendant requested the applicant to provide it with a breakdown of its recoverable costs. On 20 December 2000, the applicant sent the defendant a breakdown of the hours worked as billed by its lawyers and asked for payment of its costs as provided for in the judgment in the main proceedings.

4 On 29 December 2000, the defendant lodged an appeal against the judgment in the main proceedings. On 11 January 2001, the Commission made a proposal to pay EUR 18 592.01 in respect of costs in the main proceedings. The applicant maintains, however, that it did not receive that proposal before it was sent by the Commission again on 9 September 2003. By judgment of 10 July 2003 in Case C-472/00 P *Commission* v *Fresh Marine* [2003] ECR I-7541, the Court dismissed the Commission's appeal and ordered the Commission to pay the costs relating to the main appeal and Fresh Marine to pay the costs relating to the cross-appeal. On 28 July 2003, the applicant requested the defendant to pay to it, as costs relating to the main proceedings, the sum of EUR 40 902.43 (approximately BEF 1 650 000), together with EUR 7 444.24 as interest, calculated at the legal rate of 7% per annum as from the date of judgment in the main proceedings, that is to say, for a period of two years, seven months and nine days.

5 By letter of 1 September 2003, the defendant refused to pay the full costs and interest claimed by the applicant, as it took the view that they were not justified, and it referred to its offer to pay EUR 18 592.01 set out in its letter of 11 January 2001. By letter of 10 September 2003, the applicant withdrew its claim for interest but maintained its claim for payment of EUR 40 902.43.

6 By document lodged with the Registry of the Court on 15 September 2003, the applicant lodged an application for taxation of costs pursuant to Article 92(1) of the Rules of Procedure of the Court of First Instance.

By document lodged at the Registry of the Court on 5 November 2003, the Commission submitted its observations on that application.

Forms of order sought

8 The applicant claims that the Court should fix the amount of recoverable costs owed by the Commission at EUR 41 791.96.

9 The Commission contends that the Court should fix the amount of recoverable costs at EUR 18 592.01.

Law

Arguments of the parties

10 Referring to its fax of 20 December 2000, the applicant gives the following details of its recoverable costs:

— For the application: 61 hours 45 minutes in total, of which 18 hours 30 minutes for J.-F. Bellis at an hourly rate of BEF 15 000, 6 hours for B. Servais at an hourly rate of BEF 12 000 and 37 hours 15 minutes for R. Granberg at an hourly rate of BEF 8 000;

— For the reply: 76 hours in total, of which 14 hours 30 minutes for Mr Bellis at an hourly rate of BEF 15 000, 15 hours for Mr Servais at an hourly rate of BEF 12 000 and 46 hours 30 minutes for Mr Granberg at an hourly rate of BEF 8 000;

— For the preparation for the hearing and for the hearing: 73 hours 15 minutes in total, of which 17 hours 45 minutes for Mr Bellis at an hourly rate of BEF 15 000, 24 hours 15 minutes for Mr Servais at an hourly rate of BEF 12 000 and 31 hours 15 minutes for Mr T. Louko at an hourly rate of BEF 8 000.

11 The main proceedings thus required, according to the applicant, 211 hours of work and the recoverable costs total BEF 2 224 250. That amount was rounded down to BEF 2 200 000, three quarters of which, that is, BEF 1 650 000 or EUR 40 902.43 were claimed from the Commission in accordance with the judgment in the main proceedings.

12 In the present proceedings the applicant also asks for an additional amount of EUR 889.53 to cover the costs of travel between Brussels and Luxembourg and hotel accommodation in Luxembourg prior to the hearing on 10 May 2000.

13 After referring to the principles applicable to recoverable costs (order in Case T-290/94 DEP *Kaysersberg* v *Commission* [1998] ECR II-4105, paragraph 17) and stating that it had not received the Commission's letter of 11 January 2001 at that time, the applicant puts forward a number of arguments in support of its application.

14 The applicant refers, first, to the purpose and nature of the main proceedings and stresses the importance of the case from the point of view of Community law. It

states that the case was the first case in relation to anti-dumping measures which had led to a finding of non-contractual liability on the part of the Commission and which had established the standard of care and proper administration owed by the Commission where it is considering whether to adopt anti-dumping measures. The nature of the case as a precedent, the fact that it has been the subject of comment by distinguished academics and its effect on the future working practices of the institutions all attest, in the applicant's view, to its importance.

15 The applicant adds that the main proceedings dealt with complex legal principles and raised difficult and novel points which generated a substantial amount of work.

16 The applicant refers in particular to the lack of case-law dealing with similar circumstances, the evolving nature of the case-law on the standard of care and administration required of the Commission when it adopts legislative acts and, lastly, the length of its submissions on the admissibility of the action for damages and on the quantification of the damage incurred.

17 In addition, in the applicant's view, the complexities of the main proceedings meant that more than one lawyer was required to work on the case. The applicant states in this regard that, according to the case-law, the primary consideration in the determination of the recoverable costs is the total number of hours of work objectively necessary for the purpose of proceedings before the Court, irrespective of the number of lawyers who may have provided the services in question (*Kaysersberg* v *Commission*, cited in paragraph 13 above, paragraph 20). The applicant adds that the time spent on preparing for the hearing was justified by the need to master the issues raised by the Commission in its pleadings and to foresee possible questions which might be raised by the Court.

18 Lastly, the applicant states that it had a vital interest in bringing the main proceedings. The applicant refers to the significant financial losses caused to it by the provisional duties imposed by the Commission, its withdrawal from the Community market for as long as those duties were maintained, and the jeopardy to its business relations with its customers in the Community.

19 The defendant begins by stating, first, that on 11 January 2001 a letter was sent in which it contested the well-foundedness of the total costs claimed by the applicant and offered to pay EUR 18 592.01 and, second, that the applicant unreasonably refused its two offers to pay higher amounts, one dated 1 September 2003 for two times the amount of EUR 18 592.01 in respect of costs relating to the main proceedings before the Court of First Instance and the appeal before the Court of Justice, and the other dated 24 September 2003 offering EUR 50 000 for costs relating to both the proceedings before the Court of First Instance and the proceedings before the Court of Justice.

20 The defendant does not deny the importance of the main proceedings from the point of view of Community law, since it is the first case relating to anti-dumping duties in which a finding of non-contractual liability on the part of the Commission has led to an award of damages. It does not agree, however, that all of the costs claimed by the applicant are necessary and therefore recoverable.

21 The defendant submits that the applicant has not demonstrated that it encountered particular difficulties in the main proceedings. In this case the Court of First Instance merely applied to the facts the established case-law relating to non-contractual liability, also as regards the standard of care and administration required of the Commission. It adds that the need for detailed argument on the admissibility of the case and the quantification of the loss incurred are part of any application for compensation. Lastly, the defendant submits that the brevity of the pleadings exchanged attests to the lack of extraordinary complexity of the main proceedings.

22 The defendant also submits that the applicant has not demonstrated how the main proceedings required more than 209 hours by specialised lawyers. In its view, this case did not require more extensive research than any other anti-dumping case; nor did it require the involvement of three lawyers throughout the written stage, or the use of a fourth lawyer or a replacement for the third lawyer in preparing for the hearing. The defendant submits that preparation for the hearing could not have required 72 hours of work by three lawyers, two of whom were experienced partners and anti-dumping specialists (Messrs Bellis and Servais), under the pretext that it was necessary to master the issues raised by the defendant in its submissions and prepare answers for possible questions raised by the Court of First Instance. Such steps are merely standard preparation necessary for any court hearing. The defendant adds that whilst the rates charged by the applicant's lawyers are not unreasonable as such, they are nevertheless substantial and reflect their experience. Contrary to the applicant's claim, such experienced lawyers should have been able to deal with the case quite swiftly.

23 The defendant adds that the applicant has not demonstrated to what extent it had a significant financial interest, let alone a vital interest, in the main proceedings. It has failed to quantify and prove its real financial interest.

24 The defendant further submits that the additional claim for EUR 889.53, submitted for the first time only before the Court of First Instance, is inadmissible and unfounded. That amount has not been 'in dispute'. Referring to Article 92(1) of the Rules of Procedure of the Court of First Instance and the case-law on Article 74 of the Rules of Procedure of the Court of Justice, which is worded in a manner similar to Article 92(1) of the Rules of Procedure of the Court of First Instance (see the order in Case 25/65 *Simet* v *High Authority* [1967] ECR 113), the defendant states that only a claim for costs 'in dispute' may be the subject of proceedings before the Court of First Instance. Accordingly, it submits that that claim is inadmissible. The defendant adds that, in any event, the additional claim is unfounded, since no details

or receipts have been provided relating to actual amounts incurred. The defendant submits that, if those costs relate to the attendance of more than one lawyer, the applicant has failed to explain why more than one lawyer was required at the hearing.

25 Lastly, the defendant submits, by way of reference, that in Case T-97/95 *Sinochem* v *Council* [1998] ECR II-85, which was of particular importance and was complex, the Court of First Instance found EUR 23 637.02 (approximately BEF 953 515) to be a fair assessment of the Council's recoverable costs (order in Case T-97/95 DEP II *Sinochem* v *Council* [2000] ECR II-1715, paragraphs 33 and 35). Consequently, it maintains that fixing the amount of recoverable costs at EUR 18 592.01 is reasonable in the present case.

Findings of the Court

26 Under Article 91(b) of the Rules of Procedure, 'expenses necessarily incurred by the parties for the purpose of the proceedings, in particular travel and subsistence expenses and the remuneration of agents, advisers or lawyers' are to be regarded as recoverable costs. It follows from that provision that recoverable costs are limited, first, to those incurred for the purpose of the proceedings before the Court of First Instance and, second, to those which were necessary for that purpose (orders in Case T-38/95 DEP *Groupe Origny* v *Commission* [2002] ECR II-217, paragraph 28; and in Cases T-226/00 DEP and T-227/00 DEP *Nan Ya Plastics* v *Council* [2003] ECR II-685, paragraph 33).

27 It is settled case-law that, in the absence of Community provisions laying down fee scales, the Court must make an unfettered assessment of the facts of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of Community law, as well as the difficulties presented by the case, the

amount of work generated by the case for the agents or advisers involved and the financial interest which the parties had in the proceedings (orders in Case T-2/93 DEP *Air France* v *Commission* [1995] ECR II-533, paragraph 16; and Case T-64/99 DEP *UK Coal* v *Commission* [2001] ECR II-2547, paragraph 27). The ability of the Court to assess the value of the work carried out is dependent on the accuracy of the information provided (orders in Case T-120/89 DEP *Stahlwerke Peine-Salzgitter* v *Commission* [1996] ECR II-1547, paragraph 31; and Case T-337/94 DEP *Enso-Gutzeit* v *Commission* [2000] ECR II-479, paragraph 16).

28 It is also settled case-law that the Court is not empowered to tax the fees payable by the parties to their own lawyers but it may determine the amount of those fees which may be recovered from the party ordered to pay the costs. In ruling on the application for taxation of costs the Court is not obliged to take account of any national scales of lawyers' fees or any agreement in relation to fees concluded between the party concerned and his agents or advisers (orders in *Stahlwerke Peine-Salzgitter* v *Commission*, cited in paragraph 27 above, paragraph 27; and *UK Coal* v *Commission*, cited in paragraph 27 above, paragraph 26).

29 The recoverable costs in the present case must be assessed on the basis of those criteria.

30 Turning, first, to the amount of recoverable lawyers' fees, the Court notes, first of all, that the main proceedings were of particular significance from the point of view of Community law.

31 In the judgment in the main proceedings, it was held that although the measures of the Community institutions in connection with a proceeding relating to the possible adoption of anti-dumping measures must in principle be regarded as constituting

legislative action involving choices of economic policy, so that the Community can incur liability by virtue of such measures only if there has been a sufficiently serious breach of a superior rule of law for the protection of individuals, nevertheless, when the measures at issue are merely administrative, do not involve any economic policy choices and confer only very little or no discretion, the finding of an error which, in analogous circumstances, an administrative authority exercising ordinary care and diligence would not have committed will support the conclusion that the conduct of the Community institution was unlawful in such a way as to render the Community liable under Article 288 EC.

32 In addition, in that judgment, the Commission was for the first time ordered to pay compensation to an undertaking affected by the irregular adoption and maintenance by the Commission of anti-dumping measures concerning that undertaking.

33 Regarding the difficulties in question in the main proceedings, the Court recognises that the lack of case-law dealing with similar circumstances led to greater uncertainty as to the outcome of the case for the applicant and thus may have called for more extensive and in-depth research than normal. Moreover, the analysis of the complex features of a case involving anti-dumping measures jointly with those of an action for non-contractual liability is also indicative of the difficulties of the main proceedings.

34 It must also be remembered, however, that, those considerations apart, the main proceedings raised a series of questions that are similar to those raised by any other case involving anti-dumping matters or non-contractual liability.

35 Regarding the amount of work which the main proceedings may have generated for the applicant's lawyers, the Court points out that although in principle only payment of the fees of a single lawyer is recoverable, it may be that, depending on the specific

circumstances of each case, most notably its complexity, payment of the fees of more than one lawyer may be found to be necessarily incurred (order in Case C-104/89 DEP *Mulder and Others* v *Council and Commission*, not published in the ECR, paragraph 62). The primary consideration is none the less the total number of hours of work which may appear to be objectively necessary for the purpose of the proceedings before the Court, irrespective of the number of lawyers who may have provided the services in question (order in *Kaysersberg* v *Commission*, cited in paragraph 13 above, paragraph 20).

36 In the present case, the 211 hours of work carried out by the applicant's lawyers in the main proceedings do not appear to be objectively necessary. In particular, it appears that the total amount of time spent on drafting pleadings by two experienced, specialised lawyers and a less experienced lawyer is excessive. In addition, the 73 hours spent on preparing for the hearing and on attendance at the hearing by two experienced, specialised lawyers as well as by a third, less experienced lawyer who had not yet worked on the case, on the ground that it was necessary to master the issues raised by the defendant in its submissions and prepare for possible questions from the Court, are excessive.

37 However, it is also necessary to consider the economic interest which the proceedings represented for the parties. It is apparent from the judgment in the main proceedings, first, that the applicant, which was active principally in the Community market, had to withdraw temporarily from that market following the imposition of the provisional anti-dumping measures by the Commission and that its business activities during that period were extremely reduced. Moreover, the financial loss sustained by the applicant was quantified in the judgment in the main proceedings to be NOK 431 000. Accordingly, the financial importance of the case for the applicant cannot be disputed.

38 Having regard to all the aspects of the present case, it appears that the number of hours of work carried out by the applicant's lawyer in the main proceedings is too high. In those circumstances, it is appropriate to fix the total amount of lawyers' fees for the present case at EUR 30 000.

39 Turning, second, to costs of travel and accommodation, the Court observes that, under Article 92(1) of the Rules of Procedure, the Court is to rule on recoverable costs in the event of a dispute.

40 In this case, the applicant's claim for costs was disputed by the Commission on 11 January 2001 and on 1 September 2003. Whilst it is true that that claim initially dealt only with lawyers' fees and was expanded, during the present proceedings for taxation of costs, to include travel costs, there was nevertheless disagreement between the parties as to the recoverable costs at the time when the present proceedings were brought. When the present proceedings were brought, the applicant's claim for lawyers' fees was being disputed by the Commission. Thus the Commission wrongly relies on *Simet* v *High Authority*, cited in paragraph 24 above. In that case there was no dispute between the parties as to the amount of recoverable costs and how they were to be settled, whereas in this case the claim for recoverable costs brought by the applicant was disputed by the Commission. Accordingly, the applicant's claim for travel and accommodation costs is admissible.

41 In the same way as for the other costs, the travel and accommodation costs relating to the main proceedings before the Court of First Instance are to be included in recoverable costs, provided they were necessary. However, in the absence of a more detailed explanation as to how those expenses, amounting to EUR 889.53, were incurred and for what purpose, it is appropriate to estimate those recoverable costs for travel and accommodation, *ex aequo et bono*, to be EUR 150.

42 In light of all the foregoing considerations, a fair assessment of all of the applicant's recoverable costs in the main proceedings is made by fixing a total of EUR 30 150. Since in the judgment in the main proceedings the Court ordered the Commission to pay three quarters of the costs incurred by the applicant, the total amount to be paid by the Commission is EUR 22 612.50.

43 Since that amount takes account of all of the circumstances of the case to date, it is not necessary to rule separately on the costs incurred by the parties for the purposes of the present proceedings concerning taxation of costs (see, to that effect, order in Case T-80/97 DEP *Starway* v *Council* [2002] ECR II-1, paragraph 39).

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

The total costs payable by the Commission to the applicant are fixed at EUR 22 612.50.

Luxembourg, 15 September 2004.

H. Jung — Registrar

P. Lindh — President