JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
9 November 1995 *

In Case T-346/94,

France-Aviation, a company incorporated under French law, established at Châteaufort (France), represented by Jean-Claude Cavaillé, of the Lyon Bar, with an address for service in Luxembourg at the Chambers of Guy Arendt, 62 Avenue Guillaume,

applicant,

v

Commission of the European Communities, represented by Richard Wainwright, Principal Legal Adviser, and Jean-Francis Pasquier, a national civil servant seconded to the Commission, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for the annulment of Commission Decision REM 4/94 of 18 July 1994 holding in response to a request from the French Government that repayment of import duties was not justified in the applicant's case,

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

composed of: H. Kirschner, acting as President, A. Kalogeropoulos and V. Tiili, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 27 September 1995,

gives the following

Judgment

Relevant legislation and facts

1 The applicant, whose principal business is the maintenance of light civil and military aircraft, has been importing aircraft components and spare parts into France since 1980. The imported goods come under various subheadings of the Common

Customs Tariff depending on whether they are intended for civil use (in which case they are exempt from customs duty) or military use (in which case they are subject thereto).

2 It is common ground that when most of the components in question are imported it is impossible for the applicant to tell in advance to what use they will be put, that is to say, to indicate whether they will be fitted to civil or military aircraft. For that reason, it never obtained or applied for in respect of the components in question the written authorization prescribed by Article 3(1) of Commission Regulation (EEC) No 4142/87 of 9 December 1987 determining the conditions under which certain goods are eligible on import for a favourable tariff arrangement by reason of their end-use (OJ 1987 L 387, p. 81), on which the importation free of customs duty of components used by the applicant by reason of their 'civil' use is alleged to be dependent.

3 In these circumstances, the French customs administration initially tolerated all components imported by the applicant, irrespective of their end-use, being declared as 'civil' subject to the periodical regularization *ex post* of the situation of components used for military purposes and hence subject to customs duty.

4 It appears from the case file that in 1988 the French customs administration informed the applicant that the practice of duty-free importation and paying the duty due by subsequent settlement did not appear satisfactory. It pointed out that the applicant had undertaken in early 1988 to set up a computerized private customs warehouse which would enable it to declare each component as being intended for civil or military use when it was taken out of store. Under Council Regulation (EEC) No 2503/88 of 25 July 1988 on customs warehouses (OJ 1988

L 225, p. 1), customs warehouses are intended *inter alia* to assist economic operators who do not know the end-use of non-Community goods or do not yet wish to associate an end-use with such goods.

5 By letter dated 26 December 1988, the applicant did in fact apply to open a private customs warehouse at its premises at the airport. A year later, when that application had still not been accepted, the French customs administration confirmed, by letter dated 28 November 1989, the application of the method of the *ex post* settlement of customs duty used in the preceding years, adding that 'in view of the difficulties encountered ... in setting up an individual private warehouse, no penalty will be applied on this occasion'.

6 By letter dated 25 June 1991, the applicant re-applied to the competent customs office to open a private customs warehouse. By letter of 2 October 1991, the regional director of customs drew attention to difficulties connected with the amendment of the rules relating to warehouses. Lastly, by letter dated 16 April 1992, the regional director of customs notified to the applicant authorization to operate the warehouse applied for. However, following the transferral of the customs office hitherto responsible, the regional director sent it by letter of 20 October 1992 an additional clause to the authorization initially given. It was not until 1 January 1993 that the customs warehouse was set up, the slowness being attributed by the applicant to the 'administrative delays' described above.

7 Previously, by letter dated 12 June 1990, the competent customs office had informed the applicant that the preferential customs treatment hitherto granted to it would be withdrawn from 1 July 1990 on the ground that it had not complied with its undertakings to set up the aforementioned customs warehouse in 1990. As a result, the applicant was obliged to conduct all its import operations in free

circulation and to pay the relevant customs duty immediately, including that on components which would ultimately be put to 'civil' use. In this connection, the letter made the following stipulation: 'Henceforward, at the end of the accounting year you will have to submit an application for the repayment of duty and taxes in respect of aircraft parts put to civil use.'

8 Following an initial application for repayment lodged by the applicant in October 1991, the regional director of customs responded by letter of 23 December 1991 by stating that 'repayment is authorized in principle', while specifying that some documentary evidence had still to be lodged for the purposes of verification by the competent department. Subsequently, by letter dated 12 July 1993, the applicant applied to the customs administration for the repayment of the customs duty which it had paid in respect of imports carried out in 1990, 1991 and 1992 of components which had ultimately been fitted to civil aircraft. The exact amount sought, which was not specified until later, was FF 1 610 338. Neither the French authorities nor the Commission have taken issue with that amount or with the method used to calculate it.

9 By letter dated 4 January 1994, the Directorate-General of Customs and Indirect Taxes drew the applicant's attention to the fact that, at the time when the imports in question were entered for consumption, it did not have authorization qualifying it for the favourable end-use tariff arrangement with the result that the customs duty which it had paid was legally due under the provisions of Regulation No 4142/87. The Directorate-General also informed the applicant that, in view of the particular circumstances of the case, it had decided to forward the application for repayment to the Commission of the European Communities pursuant to Article 13(1) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), which, in the version resulting from Council Regulation (EEC) No 3069/86 of 7 October 1986

amending Council Regulation (EEC) No 1430/79 (OJ 1986 L 286, p. 1) (hereinafter 'Article 13'), reads as follows:

'Import duties may be repaid or remitted in special situations other than those referred to in Sections A to D, which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned. ...'

10 By letter dated 4 February 1994, the French Ministry for the Budget transmitted the applicant's case to the Commission in accordance with the procedural rule set out in Article 905 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 (OJ 1993 L 253, p. 1) laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1). That provision appears in a chapter which lists a number of specific standard situations in which the requirements for qualifying for repayment are regarded as being satisfied or not satisfied automatically. When faced with one of those situations, the national authorities are competent to decide whether or not to grant repayment. In contrast, where they cannot take such a decision and the application is supported by evidence which might justify granting repayment, the national authorities must transmit the case to the Commission for it to take a decision; the case transmitted to the Commission must include all the facts necessary for a full examination of the case presented.

11 Should it be found that the information supplied by the Member State to the Commission is insufficient, the Commission may ask for additional information to be supplied. After consulting a group of experts composed of representatives of all Member States meeting within the framework of the Committee on Duty Free Arrangements to consider the case in question, the Commission decides whether

or not the special situation which has been considered justifies repayment (Article 907). The decision has to be notified to the Member State concerned and it is on the basis of that decision that the national authorities are to decide on the application of the person concerned (Article 908).

12 The French Ministry for the Budget appended to its letter of 4 February 1994 a case consisting of two pages in which it described the applicant's situation in the 1990 to 1992 period without describing the tariff system applied to it prior to 1990, the change in the system imposed in July 1990 or the correspondence exchanged with the applicant between 1988 and 1992 concerning possible repayment and the setting-up of a customs warehouse. The case contains *inter alia* the following observations:

— the applicant was unable to tell when the goods arrived which components would be fitted to civil and which to military aircraft and this was the reason for which it had not lodged a request for authorization to qualify for the end-use arrangement;

— as a result, the applicant placed its imports in free circulation and paid the relevant customs duty even though it could have qualified for exemption under that arrangement;

— since 1993, on the advice of the customs departments, the applicant has placed its imports in a customs warehouse.

The accounting and customs documents appended to the aforementioned case include a letter sent by the applicant on 12 July 1993 to the Directorate-General of Customs and Indirect Taxes in which it gave an account of the fact that the benefit

of the special tariff arrangement formerly applied had been withdrawn as of 1 July 1990, that the establishment of its customs warehouse on 1 January 1993 had been delayed by various amendments of the applicable legislation and that it had been given confirmation that it could apply for repayment of the duty paid in 1990, 1991 and 1992.

13 In the case transmitted on 4 February 1994, the French administration proposed granting repayment of the customs duty paid on the components for 'civil' use. It did so on the ground that it had been impossible for the applicant to distinguish such components in advance, since they were the same regardless of the nature of the aircraft. For the sake of greater efficiency, the applicant grouped its imports rather than making separate imports for civil aircraft. The components in question were dealt with in accordance with the end-use arrangement. The French administration took the view that 'no negligence or deception could be imputed to the company'.

14 Further to a request made by the Commission, the Ministry supplemented the case in May 1994 by forwarding figures and a copy of the customs declaration.

15 On 18 July 1994, on the basis of the case and after consulting the group of experts set up under the legislation in force, the Commission, pursuant to Article 13(1), adopted Decision REM 4/94, according to which repayment of customs duty was not justified on the grounds that:

— none of the conditions laid down by Regulation No 4142/87 for the grant of the favourable tariff arrangement on the import of goods by reason of their end-use had been fulfilled by the applicant, in particular the requirement for prior written authorization, since such authorization was not retroactive;

— failure to comply with rules did not constitute a special situation within the meaning of Article 13;

— many import operations were carried out and the error had been repeated;

— the applicant displayed obvious negligence.

16 The Commission notified that decision to the French administration, which, by letter dated 13 August 1994, informed the applicant of the decision and its main grounds. It appears from the date stamp on the letter that it was received at the applicant's premises on 23 August 1994.

Procedure

17 It was in those circumstances that the applicant brought these proceedings by application received at the Court Registry on 18 October 1994.

18 The written procedure followed its normal course. By order of 9 March 1995, the Court assigned the case to the First Chamber, composed of three judges, after hearing the parties' observations. Upon hearing the report of the Judge-Rapporteur, the Court (First Chamber) decided to open the oral proceedings without any preparatory inquiry. However, it did adopt certain measures of organization of procedure. At the hearing on 27 September 1995, the parties presented oral argument and answered questions put by the Court. At the end of the hearing, the President closed the oral proceedings.

Forms of order sought

19 The applicant claims that the Court should:

— annul Commission Decision REM 4/94 of 18 July 1994, addressed to the French Republic, Directorate-General of Customs and Indirect Taxes;

— declare that the application for repayment sent through the Directorate-General of French Customs is justified in principle, subject to verification by that Directorate of the amount of duty to be repaid;

— order the defendant to pay the costs.

20 The Commission claims that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Submissions seeking the annulment of the decision

21 The applicant submits in support of its submissions seeking the annulment of the decision three pleas alleging, respectively, infringement of the principle *audi alteram partem* inasmuch as it did not have an opportunity to put its arguments to

the Commission, infringement of the principle of protection of legitimate expectations in so far as the contested decision frustrated its legitimate expectations as regards the indications given by the French customs administration concerning the repayment of the customs duty which it had paid, and misinterpretation of the expression 'special situation' within the meaning of Article 13 inasmuch as the Commission manifestly did not consider its actual situation in the light of all the relevant possibilities. The Court takes the view that it should first consider the plea alleging infringement of the principle *audi alteram partem*.

Plea alleging infringement of the principle **audi alteram partem**

Arguments of the parties

22 The applicant argues that the principle *audi alteram partem*, a necessary component of compliance with the rights of the defence — which have been held to be a fundamental principle of Community law — is a generally applicable rule according to which addressees of decisions by a public authority whose interests are perceptibly affected must have been enabled to express their views effectively (judgments of the Court of Justice in Case 17/74 *Transocean Marine Paint* v *Commission* [1974] ECR 1063, paragraph 15, and Case 322/81 *Michelin* v *Commission* [1983] ECR 3461, paragraph 7). The principle *audi alteram partem* applies not only in proceedings which may culminate in the imposition of sanctions but also in those which may involve unfavourable consequences for undertakings, which is the case here.

23 The applicant points out that it had no opportunity to put its own arguments either to the group of experts or to the Commission's departments. In this connection, it argues that the infringement of the principle *audi alteram partem* caused the Commission to make an error of appraisal and to apply Regulation No 4142/87 in a way which in no way corresponded to its actual situation. The French customs administration failed to bring out in the case transmitted to the Commission the role which it itself had played in the events underlying the application for repayment.

Consequently, the applicant was deprived of the opportunity of asserting arguments essential for defending its case before the Commission and the group of experts.

24 Whilst admitting the importance of the principle *audi alteram partem*, the Commission refers to the case-law of the Court of Justice to the effect that the procedure for the adoption of repayment decisions — which involves various stages, some at national level (lodging of an application by the undertaking, initial examination by the customs administration), some at Community level (submission of the application to the Commission, consideration of the case by the Committee on Duty Free Arrangements, consultation of a group of experts, decision by the Commission, notification to the Member State concerned) — affords every legal safeguard to interested parties (judgments in Case 294/81 *Control Data* v *Commission* [1983] ECR 911, Joined Cases 98/83 and 230/83 *Van Gend & Loos* v *Commission* [1984] ECR 3763 and Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam) and JCT Benelux* v *Commission* [1993] ECR I-3873, paragraph 48).

25 It avers that in this case that procedure was followed correctly, enabling the applicant to put its arguments to the French authorities, which supported its application for repayment before the Commission and the group of experts. If the French authorities had not disclosed the role which they might have played in this case, that is doubtless because they took the view that it was not appropriate to mention that point on the ground either that it was not proven or that it had no bearing on the substantive consideration of the application. Moreover, the Commission had not seen a need, in the light of the case transmitted by the national authorities, to seek supplementary particulars, which, in any event, could not have altered the position taken in the decision.

26 In answer to a question put by the Court with regard to the possible relevance of the judgment of the Court of Justice in Case C-269/90 *Technische Universität München* [1991] ECR I-5469, the Commission stated that it considered that it was

not possible to transpose that case-law to the present dispute. The reasons for which the matters were brought before the Commission were not comparable in the two cases: in *Technische Universität München* it was a matter of raising the technical appraisal of an application for exemption from duty in respect of scientific instruments to the most appropriate decision-taking level, since the national authority considered that the Commission, assisted by the Member States, was in a better position than it was to make technical comparisons and to check whether equivalent instruments existed anywhere in the Community; in contrast, in this case — which was concerned with the repayment of customs duty — determining the level of competence depended on what decision was taken and its consequences for the Community's own resources, since the Commission became competent where it was a question of deciding on possible repayment whereas the Member State retained the power to take the decision where it was a matter of refusing repayment. The Commission reiterated that, in any event, the further particulars which the applicant considered itself to have provided in support of its action could not have changed the position taken in the contested decision.

27 In answer to a question put by the Court about the end-use arrangement, the Commission stated that obtaining authorization was a necessary condition for qualifying for that arrangement. It went without saying that, at the authorization stage but, above all, at the stage of the declaration of entry into free circulation, the beneficiary of the arrangement had to be able to identify the goods as being likely to fulfil the conditions in order to qualify for the end-use arrangement. As far as the applicant was concerned, the only lawful solution would therefore have been to effect that identification no later than the time of the declaration of entry into free circulation. However, it was clear that if the applicant considered that it was impossible for it to divide up the products, at the time when they entered into free circulation, depending on whether they were for civil or military use, this made obtaining a prior end-use authorization lose all interest. The Commission infers from this that in any event, even if it had wished to, the applicant could not have obtained an end-use authorization or, as a corollary, obtained the benefit of it.

Findings of the Court

28 The Court finds *in limine* that, in accordance with the relevant legislation described above, the administrative procedure which culminated in the adoption of the

contested decision involved various stages, on the one hand, at national level, since the applicant submitted its application for repayment, together with supporting documents, to the French administration and, on the other, at Community level, since the French administration drew up the applicant's case and transmitted it to the Commission, which, after consulting a group of experts, declared the application for repayment to be unjustified.

29 In this connection, the Commission — referring to the judgments in *Control Data* v *Commission*, *Van Gend & Loos* v *Commission* and, in particular, *CT Control (Rotterdam) and JCT Benelux* v *Commission*, cited above, — maintains that the applicant's right to be heard was complied with in so far as the procedure at issue enabled the applicant to put all its arguments to the French authorities and its case, which was transmitted by those authorities, was available both to the group of experts and to the Commission.

30 In this regard, the Court finds that the applicant's right to be heard in a procedure such as that to which these proceedings relate must actually be secured in the first place in the relations between the person concerned and the national administration. Regulation No 2454/93 provides only for contacts to take place between the person concerned and the administration, on the one hand, and between the administration and the Commission, on the other. Although that legislation does not provide for direct contacts between the Commission's departments and the person concerned, it does not necessarily mean that the Commission may deem itself satisfied in every case where an application for repayment has been brought before it with the information transmitted to it by the national administration. Suffice it to say, in this connection, that Article 905(2) of Regulation No 2454/93 provides that the Commission may ask the Member State concerned to supply additional information. Consequently, the Court should consider whether in the instant case the Commission should have made such a request in order to ensure that the applicant's right to be heard was respected through the provision of additional explanations first provided by the applicant to the French administration and subsequently transmitted to the Commission.

31 In this context, it should be stressed that the facts of the instant case differ substantially from the cases cited in paragraphs 24 and 29. In this case, the applicant relies on the incompleteness of the case drawn up and transmitted by the national authorities, whereas no such complaint was raised in the three cases cited above. In *CT Control (Rotterdam) and JCT Benelux* v *Commission*, the applicants actually admitted that all the arguments which they could have put forward had been mentioned in their application and that there was no new factor which they might have incorporated in their arguments (paragraph 49 of the judgment). In this case, by contrast, the applicant stated, in response to the measures of organization of procedure ordered by the Court, that it had not helped to draw up the case, did not have an opportunity of consulting it before it was transmitted and did not in fact ever consult it.

32 It should further be recalled that in the judgment in *Technische Universität München*, cited above, on the grant of exemption from customs duty in respect of the import of a scientific instrument, the Court of Justice held that, since an administrative procedure entailing complex technical evaluations was involved, the Commission had a power of appraisal, while stressing that, as corollary of that power of appraisal, respect for the rights guaranteed by the Community legal order in administrative procedures was of fundamental importance and that those guarantees included, in particular, the right of the person concerned to make his views known (paragraphs 13 and 14). Since the relevant Community legislation did not provide any opportunity for the importer to explain his position to the Commission, even though information from him about the characteristics of the scientific instrument imported and its intended use could be very useful, the Court held that the right to be heard in such a procedure required that the person concerned should be able, during the actual procedure before the Commission, to put his own case and properly make his views known on the relevant circumstances and, where necessary, on the documents taken into account by the Community institution (paragraphs 23, 24 and 25).

33 It should be considered whether the reasoning of the Court of Justice set out above may also be relevant to a procedure under Article 13 such as the one in this case. In this connection, the Commission has objected, certainly correctly, that it

scarcely makes 'complex technical evaluations' when it takes decisions on whether or not customs duty should be repaid. The Court takes the view, however, that it is not only the particularly technical nature of a case which is liable to give rise to a right on the part of the person concerned to be heard before the Commission, but the latter's power of appraisal in this connection.

34 However, the Court finds that the Commission has, in many respects, a margin of assessment in applying Article 13, which the Court of Justice has described as 'a general equitable provision' (judgment in Case 283/82 *Schoellershammer* v *Commission* [1983] ECR 4219, paragraph 7). On the one hand, the provision covers 'special situations', which necessarily presupposes that the Commission should take into consideration, and weigh in the balance, those of a multitude of factual and legal data which are likely to be relevant to its final decision. On the other hand, the Commission has to check whether the person concerned is guilty not simply of negligence, but of 'obvious negligence'. Lastly, before it takes its decision, the Commission has to consult a group of experts under Article 907 of Regulation No 2454/93, which implies that it has a choice whether or not to follow the opinion of that group. In the light of all those factors, the Court considers that, in a procedure under Article 13, the Commission has a discretion at least equivalent to that which the Court of Justice recognized it as having in the judgment in *Technische Universität München*, cited above. It follows that respect for the right to be heard must be guaranteed in procedures for the repayment of customs duty.

35 As far as the instant case is concerned, the Court finds that the case transmitted to the Commission by the French authorities contains a letter sent by the applicant on 12 July 1993 to the customs administration in which it refers to the difficulties in setting up its customs warehouse and to 'confirmation' of the possible repayment of customs duty paid between 1990 and 1992. Yet the correspondence exchanged between the applicant and the French customs administration on those two points is not incorporated in the case. It appears therefore that the Commission took the contested decision on the basis of an incomplete case.

36 It should be added that in their case the French authorities proposed that repayment should be granted and stressed that 'no negligence' could be imputed to the applicant. In so far as the Commission contemplated diverging from that position and rejecting the application for repayment on the ground that the applicant was even guilty of 'obvious negligence' — the adjective 'obvious' having been expressly added by Regulation No 3069/86 of 7 October 1986, cited above — it had a duty to arrange for the applicant to be heard by the French authorities. Such a decision on the degree of negligence involved a complex legal appraisal which could be effected only on the basis of all the relevant facts, including the decisions and statements of the national administration vis-à-vis the applicant. The Court considers that in such a situation in which the Commission made a serious accusation of 'obvious negligence' against the applicant, it was even more necessary for the applicant to be heard by the national administration than it was in the *Technische Universität München* case, in which the Court of Justice held that the importer had to be heard in the procedure before the Commission when that which was at issue was merely the objective technical appraisal of a scientific instrument.

37 Moreover, the fact that, as the Commission pointed out, even the French member of the group of experts consulted before the contested decision was adopted came out against repayment is irrelevant. It has not been proven or even argued that that member was aware of all the circumstances of the case.

38 It follows that the contested decision was adopted by means of an administration procedure in which the applicant's right to be heard was infringed.

39 In so far as the Commission contends that even if the supplementary information provided by the applicant before the Court were to be taken into consideration, this could not have a bearing on the contested decision, that argument, by which the Commission seems to be seeking to deny the relevance of the procedural defect found above, cannot be upheld. The Court is not empowered to take the place of the competent administrative authority or to anticipate the result which it will

reach following a fresh administrative procedure in the light of a case supplemented by the French authorities and the applicant. Moreover, the group of experts which the Commission is obliged to consult under Article 907 of Regulation No 2454/93 before it takes its decision has not yet had sight of such a supplemented case and has therefore not yet been able to give its views in full knowledge of the facts.

40 It follows from the whole of the foregoing that the plea alleging infringement of the principle *audi alteram partem* must be upheld. Consequently, the contested decision should be annulled, it being unnecessary to rule on the other pleas raised by the applicant.

Submissions seeking a declaration that the application for repayment is justified

41 In answer to a question put by the Court, the applicant stated that it would adhere to its claim for a declaration even if the contested decision were to be annulled. In that connection, the applicant stressed that it founded its claim for repayment principally on the legitimate expectation which it had placed in the statements made by the French authorities regarding the repayment of the customs duty paid. It maintains that that legal cause, which falls outside the normal procedure introduced by Article 905 et seq. of Regulation No 2454/93, falls within the judicial competence of the Court alone and authorizes it to give a decision of immediate effect with regard to the applicant in relation to the repayment sought.

42 Suffice it to recall in this connection that it has been consistently held that, in an action for annulment brought under Article 173 of the EC Treaty, the Community Court cannot, without encroaching on the prerogatives of the administrative authority, order a Community institution to take the measures necessary for the enforcement of a judgment by which a decision is annulled (see, for example, the order in Case T-5/94 *J* v *Commission* [1994] ECR II-391, paragraph 17, and the

judgment in Case T-73/89 *Barbi* v *Commission* [1990] ECR II-619, paragraph 38). Article 176 of the EC Treaty, under which the institution which adopted the measure annulled is required to take the necessary measures, is a limiting provision in this connection. It should be added that, in any event, the administrative procedure must be reopened in this case by the Commission, with the result that it would be premature for the Court to rule on the plea alleging infringement of the principle of protection of legitimate expectations.

43 It follows that the submissions seeking a declaration that the application for repayment is justified must be declared inadmissible.

Costs

44 Under the first subparagraph of Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been essentially unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Annuls Commission Decision REM 4/94 of 18 July 1994, addressed to the French Republic, Directorate-General of Customs and Indirect Taxes;**

2. Dismisses the remainder of the application;

3. Orders the Commission to pay the costs.

Kirschner Kalogeropoulos Tiili

Delivered in open court in Luxembourg on 9 November 1995.

H. Jung H. Kirschner

Registrar For the President