

Joined Cases T-134/03 and T-135/03

Common Market Fertilizers SA

v

Commission of the European Communities

(Remission of import duties — Article 1(3) of Regulation (EC) No 3319/94 — Direct invoicing of the importer — ‘Group of experts’ within the meaning of Article 907 of Regulation (EEC) No 2454/93 — Rights of the defence — ‘Obvious negligence’ within the meaning of Article 239 of Regulation (EEC) No 2913/92 — Duty to state reasons)

Judgment of the Court of First Instance (First Chamber, Extended Composition), 27 September 2005 II - 3930

Summary of the Judgment

1. *Plea of illegality — Plea raised at the stage of the reply — Inadmissibility (Rules of Procedure of the Court of First Instance, Arts 44(1) and 48(2))*

2. *Actions for annulment — Pleas in law — Lack of competence of the institution which adopted the contested measure — Ground involving a matter of public policy — Lack of competence of the institution which adopted the measure constituting the legal basis for the contested measure — Not a matter of public policy*
(Art. 230 EC)

3. *Own resources of the European Communities — Repayment or remission of import or export duties — Distinction between 'group of experts' within the meaning of the first paragraph of Article 907 of Regulation No 2454/93 and 'regulatory committee' within the meaning of Article 5 of Decision 1999/468*
(Arts 7 EC and 249 EC; Commission Regulation No 2454/93, Art. 907, first para.; Council Decision 1999/468)

4. *Actions for annulment — Pleas in law — Infringement of essential procedural requirements — Infringement by an institution of its rules of procedure — Plea raised by a natural or legal person — Not permissible*
(Art. 230 EC)

5. *European Community — Language regime — Document sent by the Commission to a Member State in a language other than its official language — Not permissible — Document addressed to representatives of Member States constituting a group of experts required to rule on an individual's application — Applicant unable to rely on a possible infringement of the language regime*
(Council Regulation No 1, Art. 3)

6. *Own resources of the European Communities — Repayment or remission of import or export duties — Commission's decision-making power — Observance of the rights of the defence — Right of the economic operator concerned to be heard — Scope — Right to a hearing — None*
(Council Regulation No 2913/92, Art. 239; Commission Regulation No 2454/93, Art. 906a)

7. *Own resources of the European Communities — Repayment or remission of import or export duties — Circumstances in which 'no deception or obvious negligence' may be attributed to the person concerned — Concept of obvious negligence — Strict interpretation — Criteria*
(Council Regulation No 2913/92, Arts 220 and 239(1))

8. *Common commercial policy — Protection against dumping practices — Review procedure — Subject-matter*
(Council Regulation No 384/96, Art. 11(8))
9. *Own resources of the European Communities — Repayment or remission of import or export duties — Existence of a special situation — Circumstances in which 'no deception or obvious negligence' may be attributed to the person concerned — Cumulative conditions*
(Commission Regulation No 2454/93, Art. 905)
10. *Acts of the Institutions — Statement of reasons — Obligation — Scope — Decisions to refuse applications for repayment or remission of import duties*
(Art. 253 EC; Council Regulation No 2913/92, Art. 239)

1. Unless a plea of illegality is based on a matter of law or of fact which came to light in the course of the procedure within the meaning of Article 48(2) of the Rules of Procedure of the Court of First Instance, it is inadmissible at the stage of the reply, since an action is defined by the application initiating proceedings.

own motion whether the institution which adopted the provision constituting the legal basis for the contested decision exceeded its authority.

(see para. 52)

(see para. 51)

2. Although the Court must establish of its own motion any lack of competence by the party adopting the contested measure, it is not required to consider of its
3. The group of experts which, pursuant to the first paragraph of Article 907 of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, meets 'within the framework of the [Customs Code] Committee', does not constitute a regulatory committee within the meaning of Article 5 of Decision 1999/468 laying down the procedures for the exercise of implementing powers conferred on the Commission.

It follows from the seventh recital in the preamble to and Article 5 of Decision 1999/468 that the regulatory procedure is to be used for ‘measures of general scope designed to apply essential provisions of basic instruments’.

individual remission or repayment procedures, it would have used the phrase ‘after consulting the committee’.

(see paras 55, 57-59)

To consider that the regulatory committee — within the meaning of Article 5 of Decision 1999/468 — is empowered to give an opinion on a proposal for an individual decision as to repayment or remission of customs duties would amount purely and simply to conflating the notions of decision and measure of general scope, which are, however, fundamentally distinct according to Article 249 EC and would, therefore, be in breach of Article 249 EC and also of Article 7 EC and Decision 1999/468.

4. The purpose of the Customs Code Committee’s rules of procedure is to ensure the internal working of that committee while fully respecting the prerogatives of its members. It follows that natural or legal persons may not rely on an alleged breach of those rules, since it is not intended to ensure protection for individuals.

(see para. 79)

That conclusion is supported by the wording of the first paragraph of Article 907 of Regulation No 2454/93. The phrase ‘within the framework of the Committee’ reflects the fact that the group of experts referred to in Article 907 is clearly a distinct entity in functional terms from the Customs Code Committee. If the legislature had intended the Customs Code Committee to be consulted in the context of

5. The purpose of Article 3 of Regulation No 1 is to ensure that documents which are addressed by an institution to a Member State or to a person falling within the jurisdiction of a Member State are drafted in the language of that State. Where documents are addressed by the Commission to a group of experts consisting of Member States’ representatives who are responsible for determining the merits of an application by

an individual, that individual cannot rely on an alleged breach of Article 3, since the documents were not addressed to him.

the specific provision concerning that procedure nor the general principle of observance of the rights of the defence gives him the right to such a hearing.

(see para. 86)

Furthermore, the specific nature of the decision taken by the Commission pursuant to Article 239 of the Customs Code does not make it at all necessary for the applicant for remission to be given the opportunity to express his observations orally in addition to the written submission of his point of view

6. The principle of observance of the rights of the defence requires that any person who may be adversely affected by a decision must be placed in a position in which he may effectively make his views known, at least as regards the evidence on which the Commission has based its decision.

(see paras 105-106, 108-109)

Where decisions on the repayment or remission of import duties are taken by the Commission pursuant to Article 239 of Regulation No 2913/92 establishing the Community Customs Code, the procedure provided for in Article 906a of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 ensures that the rights of the defence of the applicant for remission are observed.

7. In order to assess whether there is obvious negligence within the meaning of Article 239 of Regulation No 2913/92 establishing the Community Customs Code, account must be taken in particular of the complexity of the provisions non-compliance with which resulted in the customs debt being incurred, as well as the professional experience of the economic operator and the degree of care which he exercised.

As regards the right of the applicant for remission to be given a hearing, neither

In that respect, the Commission has a discretion when adopting a decision pursuant to Article 239. The repayment or remission of import duties, which can be granted only subject to certain

conditions and in specific circumstances, is an exception to the general system of import and export arrangements, and the provisions which govern such repayment are therefore to be interpreted strictly. In particular, as the absence of obvious negligence is an essential prerequisite for being able to claim repayment or remission of import duties, it follows that that concept must be interpreted in such a way that the number of cases of repayment or remission remains limited.

As regards the care taken by the operator, where doubts exist as to the exact application of the provisions non-compliance with which may result in a customs debt being incurred, the onus is on the operator to make inquiries and seek all possible clarification to ensure that he does not infringe those provisions.

(see paras 135-137, 139-142)

As regards any mistake that resulted in the customs debt being incurred, the operator cannot avoid its own liability by relying on the mistake, genuine or otherwise, of its agents. In any event, such a mistake cannot be borne by the Community budget.

8. The review procedure laid down under Article 11(8) of the basic antidumping Regulation No 384/96 applies if there is a change in the circumstances on the basis of which the values applied in the regulation imposing the anti-dumping duties were established. The purpose of the review procedure is therefore to adapt the duties imposed to take account of an evolution in the factors which gave rise to them, and the procedure therefore presupposes that those factors have altered.

(see para. 145)

As regards the economic operator's professional experience, it must be examined whether the operator concerned is one whose business activities consist mainly in import and export transactions and whether he has already gained some experience in the conduct of such transactions.

9. It is clear from the wording of Article 905 of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code that the repayment of import duties is subject to

the fulfilment of two cumulative conditions, namely the existence of a special situation and the absence of obvious negligence or deception on the part of the person concerned. Consequently, repayment of duties must be refused if either of those conditions is not met.

reasoning to go into all the relevant points of fact and law. Whether the statement of reasons for a decision meets those requirements must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.

(see para. 148)

10. The statement of reasons required by Article 253 EC must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Community Court to exercise its power of review. However, it is not necessary for the

In the case of decisions to refuse the applications for remission pursuant to Article 239 of Regulation No 2913/92 establishing the Community Customs Code, the Commission's duty to state reasons consists in explaining why the conditions laid down in that provision have not been fulfilled.

(see paras 156-157)