JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)

7 June 2001 *

In Case T-330/99,

Spedition Wilhelm Rotermund GmbH, a company in judicial liquidation, established in Flensburg (Germany), represented by A. Suhr, lawyer, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by J.-C. Schieferer, acting as Agent, assisted by M. Núñez-Müller, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of the Commission decision of 22 July 1999 (reference: REM 22/98) which stated that the remission of import duties sought was not justified,

* Language of the case: German.

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

composed of: A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 22 February 2001,

gives the following

Judgment

Legal framework

External Community transit procedure

1 Under Articles 37, 91 and 92 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, 'the Customs Code'), non-Community goods brought into the Community which, instead of being immediately subject to import duties, are placed under the external Community transit procedure (the ECT) may, under customs supervision, move within the Community customs territory and will not be

released for free circulation until they reach the customs office of their place of destination.

2 The 'holder' of the ECT procedure is defined in the Customs Code as being 'the principal'. As such, he is responsible for production of the goods intact at the customs office of destination by the prescribed time-limit and with due observance of the procedure (Article 96 of the Customs Code). Those obligations end when the goods and the corresponding documents are produced at the office of destination (Article 92 of the Customs Code).

3 Pursuant to Articles 341, 346, 348, 350, 356 and 358 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of the Customs Code (OJ 1993 L 253, p. 1), as amended ('the implementing regulation'), the goods concerned must first of all be presented at the customs office of departure accompanied by a T1 declaration. The office of departure prescribes the period within which the goods must be presented at the office of destination, enters the necessary particulars on the T1 declaration, retains its own copy and returns the others to the principal. The goods are transported under cover of the T1 document. Following presentation of the goods, the office of destination records on the copies of the T1 document it receives the details of controls carried out and sends a copy of that document to the office of departure without delay through a central office.

4 The customs supervision to which goods transported under the ECT procedure are subject ends when the goods are released for free circulation, in particular when the import duties are paid (Article 37(2) and Article 79 of the Customs Code). If the goods are removed from customs supervision, the customs debt on importation is incurred immediately (Article 203(1) and (2) of the Customs Code). Besides the person who removed the goods from customs supervision, the person jointly and severally liable for such debt is, *inter alia*, the person required

to fulfil the obligations arising from the use of the customs procedure under which those goods were placed (Article 203(3) and Article 213 of the Customs Code), that is to say, the principal.

Remission of import duties

5 Article 239(1) of the Customs Code states with regard to the possibility of remission of import duties:

'Import duties... may be... remitted in... situations... resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned. The situations in which this provision may be applied and the procedures to be followed to that end shall be defined in accordance with the Committee procedure'.

6 The situations referred to in the abovementioned article are described in, and regulated by, Articles 899 to 909 of the implementing regulation.

7 Article 905(1) of the implementing regulation provides:

'Where the decision-making customs authority to which an application for... remission under Article 239(2) of the Code has been submitted cannot take a

decision on the basis of Article 899, but the application is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, the Member State to which this authority belongs shall transmit the case to the Commission to be settled under the procedure laid down in Articles 906 to 909.... In all other cases, the decision-making customs authority shall refuse the application'.

8 Pursuant to the first paragraph of Article 907 of the implementing regulation the Commission, 'after consulting a group of experts composed of representatives of all Member States... shall decide whether or not the special situation which has been considered justifies... remission.'

Facts

Fraud

9 During 1994 and 1995 the applicant, a customs agent, sought and obtained on 93 occasions from the German customs office at Oberelbe (the office of departure) application of the ECT procedure for non-Community goods. On each occasion the relevant company, either the German company Food Trading or the Spanish company Maerkaafrika, the declared recipient of the goods, acted as principal. All the goods were to be transported to Spain and presented to the customs office of destination at Las Palmas. The applicant used the T1 documents under which the goods were to be transported to Spain for that purpose. With regard to the

completion in Spain of the transit operations concerned, the office of departure received from the office of destination, in apparent conformity with Article 356(1) and (2) of the implementing regulation, the fifth copy of each T1 document. In all cases the documents were sent back by the main customs office in Madrid, which was the relevant central office.

10 It emerged that the copies of the T1 document sent back to the office of departure bore false signatures and forged customs cachets and that none of the goods had ever been transported to Spain.

11 It became apparent that immediately after the goods were placed under the ECT procedure two employees of Food Trading were exchanging with the drivers of the trucks loaded with the goods concerned (as the trucks belonged to two separate companies owned by the applicant) the initial transit documents for the transport documents indicating destination points in Germany. The initial transit documents were then either sent once a month to the alleged consignee of the goods based in Spain, Maerkaafrika, or handed to a Spanish national who was an accomplice in the fraud when he went on business trips to Germany.

12 In Spain the initial transit documents were being handed to another accomplice, who was responsible for obtaining the presentation of goods certificate from the office of destination in Las Palmas. According to the information given by the abovementioned employees, those certificates were being supplied by a Spanish customs official named 'José Luis', whose full identity remains unknown and who is said to have been transferred and to be working now at the customs office in Lanzarote. The official's wife is alleged still to be working in the registration department at the customs office in Las Palmas.

13 In addition, in reply to a written question sent to the Spanish office of destination regarding the fate of various T1 documents, the German office of departure received a letter dated 26 September 1995 which was a total forgery. The letter, written on the official headed notepaper of the Spanish customs office, 'certified' that the documents concerned were in order. It was sent out with the official mail from the customs office. The postage was paid using a franking machine belonging to the Spanish customs office. The cachet shows 4 October 1995 as the return date. The registration number 1880 appearing on the abovementioned letter was also given to another document, a record of overtime, by the customs office on the day the letter was sent.

14 It was only after complaints were made by German poultry importers about the unusually low prices being charged by Food Trading in Germany that the investigation was begun and the fraud detected.

The administrative procedure

15 The German customs authority took issue with the applicant, in its capacity as principal, and claimed the contested import duties. Since the applicant had applied for remission of those duties, the German authorities (the Hauptzollamt (Principal Customs Office) Hamburg-St Annen and the Federal Ministry of Finance) sent the file to the Commission in accordance with Article 905 of the implementing regulation. In their correspondence they stated that this was a special situation resulting from circumstances in which no deception or obvious negligence could be attributed to the applicant.

16 By letter of 20 April 1999, the Commission sent a summary of the facts to the applicant and a provisional assessment indicating that it intended to adopt an

unfavourable decision. In the Commission's view remission was not justified in the absence of evidence of the active complicity of one or more Community customs officials, since the documents sent by the German authorities did not support the conclusion that such complicity existed. Lastly, the applicant had perhaps not been sufficiently diligent in its supervision of the undertakings responsible for transporting the goods concerned.

17 In reply, the applicant, in a letter of 4 May 1999, set out the reasons why it considered that the success of the fraud could only be attributed to active complicity on the part of Spanish customs officials. Furthermore, it denied that it was required to supervise the transporters of the goods.

18 The Commission then consulted a group of experts, as provided for in Article 907(1) of the implementing regulation. It asserted, before the Court of First Instance, that the representative of the Kingdom of Spain stated at a meeting of that group on 11 June 1999 that there was no evidence whatsoever of complicity by Spanish customs officials. The same representative also stated that, even if there had been corruption on the part of Spanish customs officials, that fact was not sufficient to explain the train of events in question.

Contested decision

19 On 22 July 1999 the Commission adopted a decision which maintained that there was no special situation justifying remission of duties ('the contested decision'). That decision was notified to the applicant by the Hauptzollamt Hamburg-St Annen on 27 September 1999.

20 In the contested decision, the Commission contends, in essence, that the applicant, in its capacity as principal, must assume responsibility for the proper conduct of ECT operations, even where it is the victim of fraud on the part of third parties. Such a situation was a business risk which a principal would normally be required to bear. No other assessment was possible unless it could be proved that representatives of the customs administration had contributed to the perpetration of that fraud, since the person concerned might legitimately expect that the operation of the public service would not a priori be impaired by corrupt customs agents. The evidence on the file provided by the German authorities does not support the conclusion that a duly-empowered authority had found there was definite involvement of one or more customs officials in the fraud. There was therefore no special situation justifying remission of duties.

21 Since the Commission had found against remission of import duties, the Hauptzollamt Hamburg-St Annen dismissed the application for remission by decision of 21 September 1999.

Procedure and forms of order sought

22 By application lodged at the Registry of the Court of First Instance on 23 November 1999, the applicant brought the present action seeking, in essence, annulment of the contested decision.

23 In addition, it requested the Court, first, to order the German authorities to produce more files as evidence of the involvement of Spanish officials in the fraud

in question and, second, to rule that a legal representation was required already at the stage of the preliminary administrative procedure. In view of the observations submitted on those points by the Commission in its defence, the applicant stated in its reply that it would withdraw the last two claims.

24 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure and to adopt measures of organisation of procedure by putting a number of questions to the parties in writing.

25 The parties presented oral argument and replied to the questions put to them orally at the hearing on 22 February 2001.

26 The applicant claims that the Court should:

— annul the contested decision;

— require the defendant, pursuant to Article 233 EC, to grant its applications for remission of import duties;

— order the defendant to pay the costs.

27 The Commission claims that the Court should:

— dismiss the application as inadmissible in so far as it seeks that the Commission should be required to grant the applicant's applications for remission of import duties;

— for the rest, dismiss the application as unfounded;

— order the applicant to pay the costs;

— in the alternative, if the applicant is successful in its application, order it to pay the costs under the first subparagraph of Article 87(5) of the Rules of Procedure of the Court of First Instance, since it has partly withdrawn its claims.

28 At the hearing the applicant stated that it was withdrawing its second head of claim. The Commission therefore again sought application of the first subparagraph of Article 87(5) of the Rules of Procedure.

Law

29 The applicant relies, in essence, on a single plea, alleging misapplication by the Commission of Article 239(1) of the Customs Code and Article 905(1) of the implementing regulation. It states that it does not deny that the unlawful completion of an ECT procedure gives rise to a customs debt on the part of the principal. However, it considers that the conditions for remission of the import duties due are met in this case.

30 It is therefore necessary to consider whether the Commission erred in its assessment that the applicant's case does not constitute a special situation, since such a situation must result from circumstances in which no deception or obvious negligence may be attributed to the applicant.

31 In this context it is common ground between the parties that the documents on the file do not lead to the conclusion that the applicant was guilty of fraud.

32 The question whether the other conditions for the application of the relevant regulations are met in this case is, however, a matter of dispute.

Arguments of the parties

Absence of obvious negligence

33 The applicant argues that the absence of improper behaviour on its part led the German authorities to decide to forward its applications for remission to the

Commission. The authorities concerned therefore came to the conclusion, during the initial administrative investigation, that remission of duties was justified. Although the Commission accuses it of having failed to comply with its obligations under the ECT procedure in respect of the 93 transit operations at issue, the applicant points out that during the contested period it submitted well over 93 applications under the ECT procedure. It contacted the transport undertakings and drivers concerned at varying intervals, asking for detailed information concerning the transport process. Not finding any irregularities on those occasions, the applicant concluded either that none of the 93 transit operations concerned had been included in those checks or that the drivers questioned, from whom the transit documents had been taken, supplied incorrect information for fear of losing their jobs or for some other reason.

34 In the Commission's view, one might wonder whether the applicant was not guilty of obvious negligence, with the consequence that remission of import duties is to be excluded a priori. In its capacity as principal, the applicant was required to comply with the provisions of the ECT procedure. However, there is no evidence that the applicant had taken any measures whatsoever, if only by spot checks, to supervise the transport operations and the presentation of the goods concerned to customs. Once the goods were placed under the ECT procedure the applicant was clearly no longer concerned about anything. Such behaviour is, to say the least, negligent. However, it is not necessary to consider whether the applicant's behaviour constituted obvious negligence within the meaning of Article 239 of the Customs Code and Article 905 of the implementing regulation. The Commission did not base the contested decision on the applicant's negligence but on the fact that no special situation existed.

35 At the hearing the Commission again argued that the applicant's negligence, shown in particular by the fact that it failed to send any faxes to the Spanish customs authorities to enquire about the progress of the transit operations in

Spain, increased the commercial risk usually incurred, namely that of falling victim to fraud on the part of others. According to the Commission, such negligence precluded recognition that the applicant was in a special situation.

The existence of a special situation

36 The applicant considers that the results of the inquiries conducted by the German authorities prove that infringements were committed in Spain and that at least one Spanish customs official must have been involved in the fraud. In the applicant's view, the evidence of the involvement of such an official is apparent above all from the course of events as determined by the German authorities.

37 To the Commission's argument that the competent national authority must have made a formal finding that customs officials have been involved in frauds, the applicant's response is that evidence of such involvement can only be adduced if the official concerned is identified by name. Furthermore, even if the official is identified, no formal evidence is possible where, for example, the official avoids prosecution by flight, is not criminally liable or dies during the course of the investigation, or where no civil or criminal judgment may be given because the period of limitation has expired.

38 Although the Commission adduces as formal evidence recognition by the Member State concerned of the criminal involvement of a customs agent working within its administration, the applicant considers that it is unrealistic to believe that a Member State would accept such recognition. The applicant contends that a Member State would refuse to recognise such a fact, relying in particular on the presumption of innocence in a case where no formal evidence was adduced,

especially since that State would know that in the event of recognition it would be open to an action by the Commission for payment of the duties which had been evaded.

39 Lastly, the applicant disagrees with the Commission's argument that it could have made a complaint in Spain or brought an action for damages against the Spanish State. It considers that the legality of the contested decision does not depend on what other opportunities for judicial protection were or were not taken. Furthermore, it assumed that the Spanish authorities would conduct an investigation themselves in view of the conclusions of the German inquiry which had been brought to their knowledge. However, this either did not take place or was fruitless, according to the information supplied to the Commission by the Kingdom of Spain. The applicant assumes that if it had brought a complaint itself this would have had the same result.

40 The Commission makes the preliminary remark that the remission of import duties provided for in Article 239(1) of the Customs Code constitutes a special case as regards the situations referred to in Articles 236 to 238 of the Code. With regard to that special case, the remission of duties under Article 905(1) of the implementing regulation also constitutes a derogation in relation to the situations provided for in Articles 900 to 903 of that regulation. That derogation must be interpreted strictly.

41 In the present case, the applicant bases the alleged existence of a special situation solely on the fact that Spanish customs officials were involved in the offences. However, the Commission should take into account not only the interests of a bona fide economic operator and that of the Community in ensuring compliance with customs legislation, but also the interests of the customs officials charged, whose innocence is to be presumed. This is all the more necessary where those officials have not been heard in the course of the administrative procedure relating to the application for the remission of duties. The Commission cannot, therefore, base the existence of a special situation on offences committed by

customs officials unless those offences are proven, which depends essentially on the inquiries conducted by the Member State for which the officials in question work.

42 The Commission adds that passive corruption on the part of customs officials and the forgery of customs documents are criminal offences in all the Member States. It is also possible in all the Member States to bring proceedings based on such evidence and to rely on the results of formal inquiries. In this case, however, the applicant did not bring a complaint in Spain or an action for damages against the Spanish State for the loss it sustained as a result of the alleged infringement of Community law by Spanish customs officials.

43 The Commission points out that Article 96(1) of the Customs Code imposes extensive obligations on the principal to exercise supervision. Those obligations would be rendered meaningless in practice if a principal could base an application for the remission of duties on mere asseverations. A favourable response to that application based on purely circumstantial evidence could moreover harm, perhaps irreparably, the Community interest in collecting the import duties due. If the Commission were to approve remission of duties on the basis of circumstantial evidence and it subsequently emerged that the customs debt was not incurred as a result of criminal involvement by customs officials, collection of the import duties would be seriously undermined.

44 The Commission states that, for the abovementioned reasons, the involvement of customs officials in offences under customs legislation must be shown not merely by allegations but by formal evidence, such as a criminal conviction, the judgment of a civil court or a disciplinary measure against the official concerned, or the fact that the official has been directed to pay the import duties in question himself. According to the Commission, it is also possible to take into account, as

evidence, formal and reasoned recognition by the Member State for which the customs official is working that the official has been involved in infringement of the customs legislation.

45 In this particular case, criminal involvement by Spanish customs officials has not been proven. The applicant and the German authorities, which consider remission of duties to be justified, are relying essentially on statements by persons against whom proceedings have been brought in connection with inquiries conducted in Germany. Those statements, however, cannot take the place of an act of recognition, or a statement to similar effect, issued by the Spanish authorities or Spanish officials considered to have been involved in fraud. They constitute no more than circumstantial evidence which may give rise at most to inferences, but cannot stand in the stead of evidence which the Spanish Government itself has not been able to adduce in the context of the consultation procedure provided for in Article 907 of the implementing regulation.

Findings of the Court

46 It should be stated at the outset that the contested decision, in which the Commission ruled against remission of the contested import duties, is not based on the existence of obvious negligence on the part of the applicant. As the Commission has itself pointed out, the decision contains no reference to that concept and merely finds that no special situation exists in this particular case.

47 The Commission submitted to the Court, however, that the applicant's negligence precluded recognition that it was in a special situation.

48 That argument cannot be upheld.

49 In that regard, suffice it to say that the question of possible negligence on the part of the applicant had in fact been raised by the Commission in its letter of 20 April 1999 containing a provisional assessment of the application for remission. However, having become aware of the applicant's criticisms of 4 May 1999 on this point, and following the meeting of the group of experts on 11 June 1999 on the matter, the Commission deliberately refrained from relying in the contested decision on negligence, obvious or not, on the applicant's part.

50 It follows that the contested decision, taken after receiving the opinion of the group of experts set up for the purpose and in the context of the broad margin of assessment it enjoys in that respect (Case T-346/94 *France-Aviation* v *Commission* [1995] ECR II-2841, paragraph 34), cannot be used to support the Commission's contention in these proceedings that the applicant's conduct, which was considered in the contested decision, was negligent. The written and oral explanations given by the Commission representatives to the Court of First Instance with regard to the applicant's alleged negligence cannot validly constitute additional reasons for that decision (see to that effect Joined Cases T-371/94 and T-394/94 *British Airways and Others and British Midland Airways* v *Commission* [1998] ECR II-2405, paragraph 116, and Case T-77/95 *Ufex and Others* v *Commission* [2000] ECR II-2167, paragraph 54).

51 The only question to be resolved in this case is therefore whether the applicant's situation should be regarded as being a special situation within the meaning of Article 905(1) of the implementing regulation.

52 According to settled case-law, Article 905 includes a general equitable provision designed to cover the exceptional situation in which the economic operator concerned might find himself in comparison with other operators engaged in the same business (Case C-86/97 *Trans-Ex-Import* [1999] ECR I-1041, paragraph 18, and Case C-61/98 *De Haan* [1999] ECR I-5003, paragraph 52). It is intended to apply, *inter alia*, where the circumstances characterising the relationship between a trader and the administration are such that it would be inequitable to require the trader to bear a loss which it normally would not have incurred (Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401, paragraph 132).

53 In the context of the broad margin of assessment it enjoys in that respect (*France-Aviation* v *Commission*, cited above, paragraph 34), the Commission must also assess all the facts in order to determine whether they constitute a special situation and must balance, on the one hand, the Community interest in ensuring that the customs provisions are respected and, on the other, the interest of the trader acting in good faith not to suffer harm beyond normal commercial risk (*Eyckeler & Malt*, cited above, paragraph 133). Provided that the conditions for applying the general equitable provision are satisfied, the person liable is entitled to remission of the import duties, since to hold otherwise would deprive that provision of its effectiveness (*Eyckeler & Malt*, paragraph 134, and the case-law cited therein).

54 Lastly, as regards the procedures laid down in Articles 905 et seq of the implementing regulation concerning relations between the Commission and national customs authorities, it should be noted that a national customs authority presented with an application for remission must make an initial assessment as to whether there is any evidence of the existence of a special situation. If that authority considers there is reason to answer that question in the affirmative, it must forward the file to the Commission which will on the basis of the information placed before it make the definitive assessment as to whether a special situation exists such as to justify the remission of duties (Opinion of Advocate General Jacobs in Case C-253/99 *Bacardi* [2001] ECR I-6493, I-6497, paragraph 98, referring to *Trans-Ex-Import*, cited above, paragraphs 19 to 21),

where appropriate after asking for additional information to be supplied under Article 905(2) of the implementing regulation.

55 In this case, the factual information sent to the Commission by the German authorities was not questioned or supplemented, since the Commission did not ask for additional information. The contested decision is expressly based on the information contained in the file supplied by those authorities, and the Commission merely had doubts as to whether that information provided proof of active complicity by a Spanish customs official.

56 On the basis of that file, it is common ground that the fifth copies of the T1 documents were returned to the German office of departure through the official channels of the Spanish customs administration in all cases (see paragraph 9 above). It is also common ground that, in response to the request from the German office of departure, that office received a letter written on the official headed notepaper of the Spanish office of destination, with a registration number which was apparently in order, namely 1880. Furthermore, that letter had been sent with the official mail from the Spanish office of destination and the postage had been paid using a franking machine from that office (see paragraph 13 above).

57 The facts set out above relating to the fraud at issue can only reasonably be explained by the active complicity of an employee of the Spanish office of destination or by a failure of organisation on the part of that office which allowed a third party to use the equipment of the Spanish customs administration. Only someone who had access to the official incoming and outgoing mail of the Spanish office of destination and who was familiar with the day-to-day activities of that office would be in a position, as in this case, to carry out the customs formalities relating to a particular transit procedure and to send an apparently official letter in reply to a formal request from another office. Since these were purely internal operations of the administration of a Member State which the applicant had no right to monitor, and which it could not influence in any way, the Commission could not merely make a finding that the applicant was not in a

special situation since those circumstances were beyond the normal commercial risk it would normally incur.

58 In those circumstances the Commission was not entitled to limit the scope of its assessment to the possibility of active complicity by a particular customs official and require the applicant to supply, if necessary by producing a document from the competent Spanish authorities, formal and definitive proof of such complicity. By doing so the Commission failed to appreciate both its obligation to assess all the facts itself in order to determine whether they constituted a special situation, and the autonomous nature of the procedure laid down in Article 905 et seq. of the implementing regulation. On completion of that procedure, it is for the Commission alone, on a proposal from the applicant national authority and after consulting a group of experts, to give a decision, and according to the relevant provisions that decision is dependent on the outcome of any prior national proceedings.

59 In view of the autonomous nature of the procedure for the remission of duties, there was no requirement either for the applicant to approach the competent Spanish authorities and, if appropriate, bring a claim for damages against the Spanish State; it was open to it merely to initiate the remission procedure available at Community level. Furthermore, since the applicant had the choice between bringing proceedings in Spain or bringing an action for annulment of the decision of a Community institution under Article 230 EC, the fact that it opted for the second course of action cannot be regarded as an abuse of process.

60 Lastly, since the Commission cites in a general way the Community's pecuniary interests, it should be pointed out that those interests must give way to recognition of the fact that the applicant is in a special situation, as provided for in Article 239(1) of the Customs Code and Article 905(1) of the implementing regulation. Recognition of the existence of a special situation, as defined by the Community legislature, would not damage the pecuniary interests of the

Community to an unacceptable extent. First, such recognition is limited to an individual case in which an exceptional commercial risk has arisen. Second, it would be unreasonable to contend that recognition would cause other economic operators besides the beneficiary to be lax as regards compliance with customs provisions.

61 It follows that the Commission erred in considering in the contested decision that the applicant was not in a special situation within the meaning of Article 905(1) of the implementing regulation. The decision must therefore be annulled.

Costs

62 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. The first subparagraph of Article 87(5) provides that a party who discontinues or withdraws from proceedings is to be ordered to pay the costs if they have been applied for by the other party.

63 In this case the Commission has been unsuccessful for the main part and the submissions and claims abandoned by the applicant during the course of the proceedings were purely technical and did not unduly complicate the Commission's preparation of its defence. In those circumstances, the Commission must be ordered to bear its own costs and nine tenths of the costs of the applicant.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. Annuls the Commission decision of 22 July 1999 (reference: REM 22/98) which found that the remission of import duties sought was not justified;

2. Orders the Commission to bear its own costs and to pay nine tenths of the costs incurred by the applicant, which shall bear one tenth of its own costs.

Meij Potocki Pirrung

Delivered in open court in Luxembourg on 7 June 2001.

H. Jung
Registrar

A.W.H. Meij
President