

Decision of the Opposition Division:	Refusal of the Opposition.
Decision of the Board of Appeal:	Rejection of the Appeal.
Pleas in Law:	Infringement of Article 8(1)(b) of Regulation No. 40/94.

Action brought on 18 April 2003 by Common Market Fertilizers (CMF) against the Commission of the European Communities

(Case T-134/03)

(2003/C 158/44)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 April 2003 by Common Market Fertilizers (CMF), a company established in Brussels, represented by Alastair Sutton and Nathalie Flandin, lawyers.

The applicant claims that the Court should:

- annul Commission Decision REM 02/02;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is a wholesaler of chemical products and in particular nitrogen solutions. It applied to the French customs authorities, under Article 239 of Regulation (EC) No 2913/92⁽¹⁾, for remission of duties in accordance with Article 3(1) of Regulation (EC) No 3319/94⁽²⁾. That application was forwarded by the French authorities to the defendant which, by its contested decision, refused remission.

In support of its action, the applicant relies on pleas in law based both on alleged infringements of essential procedural requirements and on the substance. With regard to essential procedural requirements, the applicant first alleges infringement of Article 7 of the EC Treaty and of Article 5 of Council Decision No 468/1999⁽³⁾. The applicant argues that application of the principle of weighting of votes, provided for by Article 205 EC, to the final vote within the Customs Code Committee, repayment section, resulted in no qualified

majority being obtained and that therefore no opinion was delivered by the Committee, which precluded the defendant from itself taking a decision as it did. The applicant also alleges infringement of Article 906 of Regulation No 2454/93⁽⁴⁾, inasmuch as the defendant did not forward to the Member States a copy of the case documents received by the French Customs Authorities, within 15 days following their receipt, as well as infringement of the rules of procedure of the Customs Code Committee, inasmuch as the applicant's submissions were not sent to the permanent representations and to the members of the Committee within 14 days prior to the date of the meeting. It also alleges infringement of Article 3 of Regulation No 1/1958⁽⁵⁾, maintaining that certain representatives of the Member States did not receive a copy of the case documents in their own national language, as well as breach of the right to a fair hearing in so far as the defendant refused the applicant the right to a hearing and did not give it access to the documents required under Regulation No 1049/2001⁽⁶⁾. Finally, the applicant alleges failure to state reasons for the contested decision.

With regard to the substance, the applicant maintains that the defendant made a manifest error of assessment in considering that the requirements of Article 239 of Regulation No 2913 were not satisfied. The applicant considers that it is in a special situation by reason of the fault committed by its customs agent, who employed a fictitious bonded warehouse without the applicant's knowledge, and the absence of circumvention of the provisions of Regulation No 3319/94. It also states that no dishonest conduct can be imputed to it and that it has not displayed any manifest negligence.

⁽¹⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

⁽²⁾ Council Regulation (EC) No 3319/94 of 22 December 1994 imposing a definitive anti-dumping duty on imports of urea ammonium nitrate solution originating in Bulgaria and Poland, exported by companies not exempted from the duty, and collecting definitively the provisional duty imposed (OJ L 350, 31.12.1994, p. 20).

⁽³⁾ 1999/468/EC: Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

⁽⁴⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

⁽⁵⁾ EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59).

⁽⁶⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).