

Action brought on 23 December 2004 by NORTRAIL Transport GmbH against the Commission of the European Communities

(Case T-496/04)

(2005/C 93/58)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 December 2004 by NORTRAIL Transport GmbH of Kiel (Germany), represented by J Krause, lawyer.

The applicant claims that the Court should

— annul the decision of the Commission dated 1 October 2004 (REM 15/02) on the application by the company NORTRAIL Transport GmbH for repayment of import duties pursuant to Article 239 of the Customs Code Regulation (EEC) No 2913/92;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Since July 1995, the applicant has continuously imported consignments of various fishery products from Norway. In the context of tariff quotas opened pursuant to Council Regulation (EC) No 3061/95⁽¹⁾, the applicant applied for the duty-free release of the goods for free circulation with effect from 1 September 1995. The competent customs office determined that the customs exemption which the applicant had applied for could not be granted in respect of a certain number of consignments, and that the standard tariff rate applied. On that basis, the relevant customs office demanded that the applicant pay import duties for the release for free circulation of the goods concerned. The applicant paid part of the import duties.

The applicant argues that there are special circumstances within the meaning of Article 239 of Regulation (EEC) No 2913/1992⁽²⁾, as a result of which it is entitled to repayment and remission of import duties.

The applicant bases this assertion, among other, on the argument that a Community measure had been adopted with retrospective effect. German customs offices were informed of the opening of tariff quotas with effect from 1 September 1995 by a notice from the German Federal Ministry of Finance on 31 August 1995. On 4 October 1995, however, German customs offices were notified that those quotas had in fact been opened retrospectively with effect from 1 July 1995. In the period

from 1 September 1995 when the applicant applied for the duty-free release for free circulation of the goods concerned, some of those quotas had already been used up, which to some extent was the case even before 1 September 1995, given the retrospective opening of quotas with effect from 1 July 1995.

The applicant further submits that the measure adopted is inadequate and misleading, and that the discrepancy between the date the Community measure was published and the opening date of the tariff quotas which the measure regulates and which take effect retrospectively, is misleading. This makes it possible for national customs authorities to interpret the opening date of the tariff quotas differently, which infringes the principle of non-discrimination.

⁽¹⁾ Council Regulation (EC) No 3061/95 of 22 December 1995 amending Regulation (EC) No 992/95 opening and providing for the administration of Community tariff quotas for certain agricultural and fishery products originating in Norway (OJ 1995 L 327, p. 1).

⁽²⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Action brought on 18 January 2005 by Wieland Werke AG, Buntmetall Amstetten Ges.m.b.H. and Austria Buntmetall AG against the Commission of the European Communities

(Case T-11/05)

(2005/C 93/59)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 January 2005 by Wieland Werke AG, Ulm (Germany), Buntmetall Anstetten Ges.m.b.H., Amstetten (Austria), and Austria Buntmetall AG, Enzesfeld (Austria), represented by R. Bechtold and U. Soltész, lawyers.

The applicants claim that the Court should:

— annul the decision of the Commission of 3 September 2004, amended on 20 October 2004 (Case COMP/E-1/38.069 – Copper plumbing tubes);