

4. Community law does not preclude the national court from proceeding on the assumption, based on the declaration by the customs authorities, that the 'entry in the accounts' of the amount of import or export duty within the meaning of Article 217 of Regulation No 2913/92 took place before that amount was communicated to the debtor, provided that the principles of effectiveness and equivalence are observed;
5. Article 221(1) of Regulation No 2913/92 must be interpreted as meaning that the communication of the amount of duty to be recovered must have been preceded by the entry in the accounts of that amount by the customs authorities of the Member State concerned and that, if it has not been entered in the accounts in accordance with Article 217(1) of Regulation No 2913/92, that amount may not be recovered by those authorities, which however remain entitled to proceed with a new communication of that amount, in accordance with the conditions laid down by Article 221(1) of Regulation No 2913/92 and the limitation rules in force at the time the customs debt was incurred;
6. Although the amount of import duty or export duty remains 'legally owed' within the meaning of Article 236(1), first subparagraph, of Regulation No 2913/92, even where that amount was communicated to the person liable without having been entered in the accounts beforehand in accordance with Article 221(1) of that regulation, the fact remains that, if such communication is no longer possible because the period laid down in Article 221(3) of that regulation has expired, that person must in principle be able to obtain repayment of that amount from the Member State which levied it.

(<sup>1</sup>) OJ C 247, 27.9.2008.

**Judgment of the Court (Third Chamber) of 21 January 2010 (reference for a preliminary ruling from the Tribunal de première instance de Mons — Belgium) — Société de Gestion Industrielle (SGI) v État belge**

(Case C-311/08) (<sup>1</sup>)

*(Freedom of establishment — Free movement of capital — Direct taxation — Income tax legislation — Determination of the taxable income of companies — Companies having a relationship of interdependence — Unusual or gratuitous advantage granted by a resident company to a company established in another Member State — Addition of the amount of the advantage in question to the profits of the resident company which granted it — Balanced allocation of the power to tax between Member States — Combating tax avoidance — Prevention of abuse — Proportionality)*

(2010/C 63/11)

Language of the case: French

**Referring court**

Tribunal de première instance de Mons

**Parties to the main proceedings**

Applicant: Société de Gestion Industrielle (SGI)

Défendant: État belge

**Re:**

Reference for a preliminary ruling — Tribunal de première instance de Mons (Belgium) — Interpretation of Articles 12, 43, 48 and 56 EC — Permissibility of a national law providing for the taxation of a resident company on an unusual or gratuitous advantage granted to a non-resident company with which it has a relationship of interdependence but which does not provide for such taxation where the same advantage is granted to a resident company

**Operative part of the judgment**

Article 43 EC, read in conjunction with Article 48 EC, must be interpreted as not precluding, in principle, legislation of a Member State, such as that at issue in the main proceedings, under which a resident company is taxed in respect of an unusual or gratuitous advantage where the advantage has been granted to a company established in another Member State with which it has, directly or indirectly, a relationship of interdependence, whereas a resident company cannot be taxed on such an advantage where the advantage has been granted to another resident company with which it has such a relationship. However, it is for the referring court to verify whether the legislation at issue in the main proceedings goes beyond what is necessary to attain the objectives pursued by the legislation, taken together.

(<sup>1</sup>) OJ C 260, 11.10.2008.

**Judgment of the Court (Third Chamber) of 28 January 2010 — European Commission v French Republic**

(Case C-333/08) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Free movement of goods — Articles 28 EC and 30 EC — Quantitative restriction on imports — Measure having equivalent effect — Prior authorisation scheme — Processing aids, and foodstuffs whose preparation involved the use of processing aids, from other Member States where they are lawfully manufactured and/or marketed — Procedure allowing economic operators to obtain the entry of such substances on a 'positive list' — Mutual recognition clause — National legislative context creating a situation of legal uncertainty for economic operators)*

(2010/C 63/12)

Language of the case: French

**Parties**

Applicant: European Commission (represented by: B. Stromsky, Agent)