

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)

18 September 1996 *

In Case T-22/96,

J. Langdon Limited, a company governed by Irish law, established in Dublin, represented by Patrick O'Brien, Solicitor, with an address for service in Luxembourg at the Chambers of Faltz & Associés, 6 Rue Heine,

applicant,

v

Commission of the European Communities, represented by Richard Wainwright and Fernando Castillo de la Torre, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision C(95) 2726 of 3 November 1995 finding that it is justified to take action for the post-clearance recovery of import duties and that the remission of these duties is not justified,

* Language of the case: English.

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

composed of: H. Kirschner, President, C. W. Bellamy and A. Kalogeropoulos,
Judges,

Registrar: H. Jung,

makes the following

Order

- 1 During the period from May 1992 to May 1994 the applicant imported into Ireland certain goods which it declared under an incorrect code of the Combined Nomenclature, as a result of which the Irish customs authorities did not levy certain import duties.
- 2 Those authorities referred the matter to the Commission by fax of 26 April 1995 and the latter adopted Decision C(95) 2726 of 3 November 1995 ('the contested decision') on the basis of Article 13(2) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), as amended, in conjunction with Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1), Articles 220(2)(b) and 239(2) of Council Regulation (EEC)

No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), and Articles 873 and 907 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1).

- 3 Article 1 of the contested decision provides that the import duties in question are to be recovered and that their remission is not justified.
- 4 By an application lodged at the Registry of the Court of First Instance on 22 February 1996, the applicant claimed that the Court should annul the decision and order the Commission to pay the costs. It asserts, *inter alia*, that the principle of *audi alteram partem* was breached (Case T-346/94 *France-Aviation v Commission* [1995] ECR II-2841).
- 5 On 6 May 1996, the Commission adopted Decision C(96) 1135 in the preamble to which it explains that it is necessary to revoke the contested decision since, first, in the *France-Aviation* case the Court ruled that the administrative procedure laid down in Article 905 et seq. of Regulation No 2454/93 did not comply with the right of the interested party to be heard, secondly, that procedure was followed in adopting the contested decision and, finally, the procedure laid down in Article 871 et seq. of the aforementioned regulation, which was also followed in adopting the contested decision, is identical to that laid down in Article 905 et seq. of the regulation.
- 6 Article 1 of Decision C(96) 1135 provides that the contested decision is revoked.
- 7 By a letter sent to the Court Registry on 14 May 1996, the Commission sought an order of the Court declaring that there is no need to give a decision in this case. It

states that the contested decision has been revoked, after commencement of the action, by Decision C(96) 1135.

8 By document lodged at the Court Registry on 12 June 1996, the applicant opposed the Commission's request. It further asked that it be permitted to replace the claims in its application by new ones. The new claims are that the Court should

(i) declare the contested decision null and void from the time of its purported adoption;

(ii) declare that the Commission failed to take a decision within a period of six months from the time it received the case submitted by the Irish customs authorities within the meaning of Commission Regulation (EEC) No 2164/91 of 23 July 1991 laying down provisions for the implementation of Article 5(2) of Council Regulation (EEC) No 1697/79 (OJ 1991 L 201, p. 16), and/or Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 (OJ 1986 L 352, p. 19), and/or Regulation No 2454/93;

(iii) declare that the Irish customs authorities should either waive or remit customs duties, as appropriate, as provided for in Regulation No 1697/79 and/or Regulation No 1430/79 and/or Regulation No 2913/92; and

(iv) order the Commission to pay the applicant's costs to date and such further costs as it may incur before the final determination of the Court.

9 The applicant points out that, after the contested decision was revoked, the Commission asked the Irish authorities to re-submit a 'fresh case' so that a new decision could be taken relating to the customs duties. The applicant considers that if the contested decision is not annulled, it will be unable to claim, in order to

prevent the Commission from taking a new decision, that in the absence of a decision validly adopted within six months following receipt of the original case by the Commission, the national customs authorities were already obliged either to waive or remit the customs duties.

- 10 The Court finds that the Commission's letter of 14 May 1996 raises a procedural issue which should be settled without an oral procedure, pursuant to Article 114(3) of the Rules of Procedure.
- 11 In the *France-Aviation* case, the Court held that the importer has a right to be heard during the procedure to adopt a decision pursuant to Article 13 of Regulation No 1430/79 and that infringement of that right entails the annulment of the decision (see paragraphs 34 to 40).
- 12 In the present case, the contested decision was revoked on the ground that the procedure followed was the same as that held contrary to the principle of *audi alteram partem* in the *France-Aviation* case. This revocation occurred after an action was brought in which the applicant claimed that the decision was unlawful precisely on that ground. In the circumstances, the Court considers that revocation of the contested decision, before its implementation, has produced effects equivalent to those of a judgment by the Court annulling it.
- 13 As to the applicant's argument that it retains an interest in seeking the annulment of the contested decision in order to be able to rely on the fact that it was void in the event that the Commission should contemplate adopting a second decision on the same import duties, the Court considers that the legal consequences which the contested decision could have in such an event cannot be examined in the context of the present action which seeks only its annulment. Moreover, any plea in law concerning the illegality of any subsequent decision of the Commission could be made, if necessary, in a further action for the annulment of such a decision.

- 14 It follows that the present action has become devoid of purpose (see the order in Case C-123/92 *Lezzi Pietro v Commission* [1993] ECR I-809, paragraphs 8 to 11).
- 15 The applicant's request regarding the introduction of new claims is based only on the contingency of a second decision and is therefore outwith the scope of the present action.
- 16 Although it may exceptionally be possible for new claims to be admissible where they seek the annulment of a second decision which, during the proceedings, replaces a decision with the same subject-matter (Case 14/81 *Alpha Steel v Commission* [1982] ECR 749, paragraph 8), such a solution cannot authorize the speculative review of the legality of a hypothetical second decision which has not yet been adopted. It follows that the new claims brought by the applicant are inadmissible inasmuch as they modify the subject-matter of the action (see Case T-28/90 *Asia Motor France and Others v Commission* [1992] ECR II-2285, paragraph 43, and the case-law cited).
- 17 Moreover, the Court has no jurisdiction, in the context of an action under Article 173 of the Treaty, to issue declarations such as those sought by the new claims in question (see Cases T-94/92 *X v Commission* [1994] ECR-SC II-481, paragraph 33, and T-583/93 *P v Commission* [1995] ECR-SC II-433, paragraph 17). So far as concerns, in particular, the new claim (iii), the Community judicature does not have jurisdiction in actions under Article 173 of the Treaty to rule on the possible obligations of the national authorities even where a decision of the Commission has been declared void (Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam) and JCT Benelux v Commission* [1993] ECR I-3873, paragraph 57).
- 18 There is, therefore, no need to give a decision.

Costs

- 19 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are in the discretion of the Court of First Instance.
- 20 In the present case, the Commission withdrew the contested decision after the bringing of the action and for a reason relied on by the applicant therein. None the less, the applicant has failed in its claims on the need for a decision. The Court accordingly finds that the Commission should be ordered to bear its own costs and four-fifths of the applicant's costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. There is no need to give a decision.
2. The Commission shall bear its own costs and four-fifths of the applicant's costs.

Luxembourg, 18 September 1996.

H. Jung

Registrar

H. Kirschner

President