

## Case T-51/07

**Agrar-Invest-Tatschl GmbH**

**v**

**Commission of the European Communities**

(Post-clearance recovery of import duties — Sugar originating from Croatia — Article 220(2)(b) of Regulation (EEC) No 2913/92 — Notice to importers published in the Official Journal — Good faith)

Judgment of the Court of First Instance (Eighth Chamber), 8 October 2008 . . . II - 2828

### Summary of the Judgment

1. *Actions for annulment — Jurisdiction of the Community judicature — Claim seeking a direction to adopt specific measures — Inadmissibility*  
(Arts 231 EC and 233 EC)
2. *Own resources of the European Communities — Post-clearance recovery of import or export duties*

3. *Procedure — Measures of inquiry — Late offer of evidence — Conditions (Rules of Procedure of the Court of First Instance, Art. 48(1))*
4. *Own resources of the European Communities — Remission of import duties (Council Regulation No 2913/92, Arts 220(2)(b) and 239; Rules of Procedure of the Court of First Instance, Art. 44(1)(c))*

1. The Court of First Instance has no jurisdiction to issue directions to the Community institutions. Under Article 231 EC, the Court may only declare the contested act to be void. It is then for the institution concerned, in application of Article 233 EC, to take the measures needed to comply with the Court's judgment. That limitation of the scope of judicial review applies to all types of contentious matters that might be brought before the Court.

(see paras 27, 28)

Therefore, the decisive date for taking into account the good faith of the person liable is the date of importation. The applicant cannot claim that its good faith was retroactively restored as a result of events subsequent to imports of goods originating in a third country, such as checks which, several months after those imports took place, confirmed the authenticity and accuracy of the EUR.1 certificates issued in relation to them. In fact, the concept of good faith 'with regard to the authenticity and accuracy of the preferential certificates inspected and confirmed subsequently' makes no sense.

2. The fourth subparagraph of Article 220(2)(b) of Regulation No 2913/92 establishing the Community Customs Code provides that the person liable may plead his good faith only 'when he can demonstrate that, during the period of the trading operations concerned, he has taken due care to ensure that all the conditions for the preferential treatment have been fulfilled'. It follows from that that the person liable must imperatively have been of good faith during the period of the trading operations concerned.

(see paras 47, 49, 51)

3. In accordance with Article 48(1) of the Rules of Procedure of the Court of First Instance, while the parties may offer further evidence in support of their arguments in reply or rejoinder, the Court allows the lodging of evidence offered

after the rejoinder only in exceptional circumstances, that is, if the person offering the evidence was unable, before the end of the written procedure, to obtain possession of the evidence in question, or if evidence produced belatedly by the other party justifies completing the file so as to ensure observance of the rule that both parties should be heard.

(see para. 57)

4. While it is true that Article 220(2)(b) and Article 239 of Regulation No 2913/92 establishing the Community Customs Code pursue the same goal, the two provisions are not coterminous. The first article has a more limited objective than the second, since it aims only to protect the legitimate expectation of the person liable that all the information and criteria used in the decision whether or

not to make a subsequent entry in the accounts of import duties are correct. By contrast, Article 239 is a general hardship clause.

Since those two articles are discrete provisions the criteria for the application of which are different, applying Article 44(1)(c) of the Rules of Procedure of the Court, the applicant may not confine himself to referring back to explanations relating to Article 220(2)(b) of Regulation No 2913/92 in order to justify its arguments regarding Article 239 of that regulation.

(see paras 58, 59)