Questions referred

(a) Must Article 4(4) of the 1980 Convention on the law applicable to contractual obligations ([1]) be construed as meaning that it relates only to voyage charter parties and that other forms of charter party fall outside the scope of that provision?

(b) If Question (a) is answered in the affirmative, must Article 4(4) of the 1980 Convention then be construed as meaning that, in so far as other forms of charter party also relate to the carriage of goods, the contract in question comes, so far as that carriage is concerned, within the scope of that provision and the applicable law is for the rest determined by Article 4(2) of the 1980 Convention?

(c) If Question (b) is answered in the affirmative, which of the two legal bases indicated should be used as the basis for examining a contention that the legal claims based on the contract are time-barred?

(d) If the predominant aspect of the contract relates to the carriage of goods, should the division referred to in Question (b) not be taken into account and must then the law applicable to all constituent parts of the contract be determined pursuant to Article 4(4) of the 1980 Convention?

With regard to the ground set out in 3.6.(ii) above:

(e) Must the exception in the second clause of Article 4(5) of the 1980 Convention be interpreted in such a way that the presumptions in Article 4(2), (3) and (4) of the 1980 Convention do not apply only if it is evident from the circumstances in their totality that the connecting criteria indicated therein do not have any genuine connecting value, or indeed if it is clear therefrom that there is a stronger connection with some other country?

([1]) Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980.

Appeal brought on 7 April 2008 by Foshan Shunde Yongjian Housewares & Hardware against the judgment delivered on 29 January 2008 in Case T-206/07, Foshan Shunde Yongjian Housewares & Hardware v Council of the European Union

(Case C-141/08 P)

(2008/C 158/16)

Language of the case: French

Parties

Appellant(s): Foshan Shunde Yongjian Houewares & Hardware Co. Ltd (represented by: J.-F. Bellis, avocat, G. Vallera, barrister)

Other party/parties to the proceedings: Council of the European Union

Form of order sought

— Annul the judgment under appeal;

— Grant the forms of order sought in the proceedings before the Court of First Instance in Case T-206/07, that is to say, annulment of Regulation (EC) No 452/2007 ([1]) insofar as it applies to the appellant;

— Order the Council to pay the costs incurred before the Court of First Instance and the Court of Justice.

Pleas in law and main arguments

The appellant relies on two pleas in law in support of its appeal.

By its first plea, the appellant complains that the Court of First Instance did not address the first plea which it raised in support of annulment in rejecting that plea on the basis of a finding which was manifestly not supported by the documents on the file, that is to say, that the discussion concerning the interpretation of Article 2(7)(c) of the Basic Regulation ([2]) and of paragraph 44 of the judgment of the Court of First Instance of 14 November 2006 in Case T-138/02 *Nanjing Metalink* v *Council* [2006] ECR II-4347 was without relevance. As the Council itself observed in its defence, it is precisely because the Commission considered that the necessary conditions for the amendment of the initial determination, as set out in that judgment, were not met that it revoked its final decision granting the appellant market economy treatment. Therefore, the Court of First Instance based its reasoning on inaccurate findings and failed to rule on the interpretation of Article 2(7)(c) of the Basic Regulation and on the question whether or not that article allows the Commission to revise, in the course of the procedure, its initial position on the subject of the grant of market economy treatment.

By its second plea, the applicant submits that the Court of First Instance wrongly concluded that the infringement of its rights to a fair hearing, despite having been established and declared by that court, cannot entail the annulment of the contested regulation on the ground that there is no possibility that the administrative procedure could have led to a different result. The debate concerning the interpretation of Article 2(7)(c) of the Basic Regulation and of paragraph 44 of the judgment in *Nanjing Metalink* played a decisive role in the administrative

procedure and, if the Commission had complied with the procedural requirements of Article 20(5) of the Basic Regulation, the appellant could have validly put forward its own interpretation of Article 2(7)(c) of the Basic Regulation.

(1) Council Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine (OJ 2007 L 109, p. 12).
(2) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña, Spain lodged on 14 April 2008 — N.N. Renta, S.A. v Generalitat de Catalunya

(Case C-151/08)

(2008/C 158/17)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña, Spain

Parties to the main proceedings

Applicant: N.N. Renta, S.A.

Defendants: Generalitat de Catalunya

Question referred

Is it compatible with Article 33 of the Sixth Council Directive 77/388/EEC (1) of 17 May 1977 to maintain the variable or proportional amount of the duty on documented legal transactions when the latter is chargeable on the conclusion of a purchase by an undertaking whose business activity consists of buying and selling immovable property or purchasing immovable property for development or letting, the chargeable event or transaction, the basis of assessment and the taxable person in respect of the duty on documented legal transactions being the same as those in respect of value added tax, which is chargeable simultaneously in respect of the same purchase?

(1) OJ L 145, p. 1; EE 09/01, p. 54.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 16 April 2008 — X v Staatssecretaris van Financiën

(Case C-155/08)

(2008/C 158/18)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: X

Respondent: Staatssecretaris van Financiën

Questions referred

1. Must Articles 49 EC and 56 EC be interpreted as meaning that, in cases where foreign savings balances, or income therefrom, are not disclosed to the tax authorities of a Member State, those articles do not prevent that Member State from applying a statutory rule which, in order to compensate for the lack of effective means of monitoring foreign credit balances, provides for a recovery period of twelve years, whereas a recovery period of five years applies in the case of savings balances, or income therefrom, held in that Member State, in which such effective means do exist?

2. Does it make a difference to the answer to Question 1 whether the credit balances are held in a Member State in which banking secrecy applies?

3. If the answer to Question 1 is affirmative, do Articles 49 EC and 56 EC similarly not preclude a fine for failure to disclose income or capital on which tax has been subsequently recovered from being determined as a proportion of the amount recovered over that longer period?