

## Case C-494/09

**Bolton Alimentari SpA**

**v**

**Agenzia delle Dogane – Ufficio delle Dogane di Alessandria**

(Reference for a preliminary  
ruling from the Commissione tributaria  
provinciale di Alessandria)

(Preliminary ruling — Admissibility — Customs duty — Tariff quota — Customs  
Code — Article 239 — Regulation (EEC) No 2454/93 — Articles 308a, 308b  
and 905 — Regulation (EC) No 975/2003 — Tuna — Exhaustion of quota —  
Date of opening — Sunday)

Judgment of the Court (Third Chamber), 17 February 2011 . . . . . I - 651

### Summary of the Judgment

1. *Own resources of the European Union — Customs-approved treatment — Release for free circulation — Administration of tariff quotas*  
(Commission Regulation No 2454/93, as amended by Regulation No 214/2007, Arts 308a to 308c)

2. *Own resources of the European Union — Customs-approved treatment — Release for free circulation — Administration of tariff quotas*  
(Commission Regulation No 2454/93, as amended by Regulation No 214/2007, Arts 308a to 308c)
3. *Own resources of the European Union — Repayment or remission of import or export duties — Application to the national customs authorities for repayment*  
(Council Regulation No 2913/92, as amended by Regulation No 1791/2006, Art. 239(2); Commission Regulation No 2454/93, as amended by Regulation No 214/2007, Arts 899 and 905(1))
4. *Own resources of the European Union — Repayment or remission of import or export duties — General principle of equity established by Article 239 of the Community Customs Code*  
(Council Regulation No 2913/92, as amended by Regulation No 1791/2006, Art. 239)

1. Articles 308a to 308c of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, as amended by Regulation No 214/2007, must be interpreted as not precluding the Commission from being able to adopt a decision excluding an operator from a tariff quota by reason of the fact that that quota was exhausted on the day on which it was opened, namely a Sunday, that being a day on which the customs offices in the Member State in which the operator in question is established are closed.

In that regard, the Sunday closing of customs offices in Italy cannot be attributed

to the Commission and the Commission is not, by that fact alone, obliged to remedy the different treatment of Italian operators resulting from the fact that the opening days of customs offices in Italy differ from those in other Member States.

(see paras 36-37, operative part 1)

2. Articles 308a to 308c of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, as amended by Regulation No 214/2007, must be interpreted as

not requiring a Member State to request the Commission to suspend a tariff quota in order to ensure fair and non-discriminatory treatment of importers when the opening of that tariff quota falls on a Sunday, that being a day on which the customs offices in the Member State in question are closed, and when that quota is liable to be exhausted on the day on which it is opened, given that the customs offices in other Member States are open on Sundays.

view that no irregularity can be attributed to the Commission and that the application in question does not come within any of the other circumstances contemplated in Article 905(1) of Regulation No 2454/93.

(see para. 47, operative part 3)

Such a suspension cannot be accepted since it would of necessity require the opening of such a quota to depend, throughout the European Union, on particular circumstances existing in only one Member State.

(see paras 41, 43, operative part 2)

3. In circumstances other than those contemplated in Article 899(1) of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code, as amended by Regulation No 214/2007, the customs authority of a Member State has the power itself to rule on the application for repayment referred to in Article 239(2) of Regulation No 2913/92, as amended by Regulation No 1791/2006, if that authority takes the

4. Article 239 of Regulation No 2913/92 establishing the Community Customs Code, as amended by Regulation No 1791/2006, must be interpreted as meaning that it can refer to the exclusion of a European Union importer from a tariff quota, the opening date of which falls on a Sunday, by reason of the Sunday closing of the customs offices in the Member State in which that importer is established.

Since it is impossible for importers established in a Member State in which the customs offices are closed on the day on which a tariff quota is opened to have declarations for release for free circulation accepted on the same day as operators established in other Member States, it is in keeping with principles of fairness to remedy that unfavourable situation by the application of Article 239 of the Community Customs Code.

As regards the conditions to which application of Article 239 is subject, in accordance with Article 239(1), read in conjunction with the first subparagraph of Article 899(2) of Regulation No 2454/93 laying down provisions for the implementation of Regulation No 2913/92, repayment of import duties may be made when the facts of the case constitute a special situation resulting from circumstances in which no deception or obvious negligence can be attributed to the

person concerned. Such a special situation presupposes that the person liable is in an exceptional situation as compared with other operators engaged in the same business.

(see paras 55, 58-60, 64, operative part 4)