

Moreover, when appraising the evidence, the Court of First Instance did not rule coherently, but inconsistently in that, on the one hand, it regarded that evidence as sufficient to satisfy the Commission's burden of proving that incorrect certificates had been issued because of an incorrect account of the facts by the exporter but, on the other hand, in regard to the same rules, rejected it as insufficient to satisfy the proof required of the appellant that the Thai customs authorities knew, or at least reasonably ought to have known, that the goods were not eligible for preferential treatment.

The Court of Justice should rule that the errors of the Court of First Instance when considering and appraising the documents adduced as evidence constitute a failure to state reasons. ⁽³⁾

2. With regard to Article 239 of the Customs Code

Sole ground of appeal: On the basis of a misapplication of Article 220(2)(b) of the Customs Code and/or the errors in appraising the documents submitted as evidence, the Court of First Instance wrongly held that the circumstances in which the appellant finds itself is not a special situation for the purposes of Article 239 of the Customs Code.

⁽¹⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p.1).

⁽²⁾ Case C-293/04 Beemsterboer [2006] ECR I-2263.

⁽³⁾ Ibid.

⁽⁴⁾ Order in Case C-325/94 P An Taisce and WWF UK v Commission [1996] ECR I-3739, paras. 28 and 30.

⁽⁵⁾ Case C-32/95 P Commission v Lisrestal and Others [1996] ECR I-5399, para 40.

Reference for a preliminary ruling from the Amtsgericht Bonn (Germany) lodged on 9 September 2009 — Pfleiderer AG v Bundeskartellamt

(Case C-360/09)

(2009/C 297/23)

Language of the case: German

Referring court

Amtsgericht Bonn

Parties to the main proceedings

Applicant: Pfleiderer AG

Defendant: Bundeskartellamt

Question referred

Are the provisions of Community competition law — in particular Articles 11 and 12 of Regulation No 1/2003 ⁽¹⁾ and the second paragraph of Article 10 EC, in conjunction

with Article 3(1)(g) EC — to be interpreted as meaning that parties adversely affected by a cartel may not, for the purpose of bringing civil-law claims, be given access to leniency applications or to information and documents voluntarily provided in that connection by applicants for leniency which the national competition authority of a Member State has received, pursuant to a national leniency programme, within the framework of proceedings for the imposition of fines which are (also) intended to enforce Article 81 EC?

⁽¹⁾ OJ 2003 L 1, p. 1.

Reference for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) of 8 September 2009 — Belgisch Interventie- en Restitutiebureau v SGS Belgium NV, Firme Derwa NV and Centraal Beheer Achmea NV

(Case C-367/09)

(2009/C 297/24)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Appellant: Belgisch Interventie- en Restitutiebureau

Respondents: SGS Belgium NV

Firme Derwa NV

Centraal Beheer Achmea NV

Questions referred

1. Do the provisions of Articles 5 and 7 of Council Regulation (EC, Euratom) No 2988/95 ⁽¹⁾ of 18 December 1995 on the protection of the European Communities' financial interests have direct effect in the national legal orders of the Member States without any discretion on the part of those Member States and without the national authorities being required to adopt any measures for their implementation?
2. Can an international control and supervisory agency approved by the Member State in which the export declaration was accepted — in this case, Belgium — which has submitted a false certificate of unloading within the meaning of Article 18(2)(c) of Regulation (EEC) No 3665/87 ⁽²⁾ be deemed to be an economic operator within the meaning of Article 1 of Regulation No 2988/95, or a person who has taken part in the irregularity or is under a duty to take responsibility for the irregularity or to ensure that it is not committed, within the meaning of Article 7 of Regulation No 2988/95?