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. ([5])

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?

3. Can a communication derived from an investigative report drawn up by the Economic Inspection Board, or a letter requesting the production of additional documents as evidence of the release for consumption, or a registered letter imposing a sanction, be deemed to be investigation or legal proceedings within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95?

(1) OJ 1995 L 312, p. 1.
(2) Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products.

Reference for a preliminary ruling from the Sąd Najwyższy (Republic of Poland), lodged on 23 September 2009 — Prezes Urzędu Ochrony Konkurencji i Konsumentów v Tele2 Polska sp. z o.o., now Netia S.A.

(Case C-375/09)

(2009/C 297/25)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Appellant: Prezes Urzędu Ochrony Konkurencji i Konsumentów

Respondent: Tele2 Polska sp. z o.o., now Netia S.A.

Questions referred

1. Is Article 5 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (1) to be interpreted as meaning that a national competition authority cannot take a decision stating that a practice does not restrict competition within the meaning of Article 82 EC in a case in which it has found, after conducting proceedings, that the undertaking did not breach the prohibition of abuse of a dominant position under that Treaty provision?
2. If the answer to the first question is in the affirmative: in a situation in which, under national competition law — if it should be established that the practice of an undertaking does not infringe the prohibition in Article 82 EC — a national competition authority may bring cartel proceedings to an end only by taking a decision which states that the practice does not restrict competition, is the third sentence of Article 5 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty to be interpreted as constituting a direct legal basis for that authority to 'decide that there are no grounds for action on [its] part'?

(1) OJ 2003 L 1, p. 1.

Reference for a preliminary ruling from the Augstākās tiesas Senāta Administratīvo lietu departaments lodged on 28 September 2009 — Stils Met SIA v Valsts ieņēmumu dienests

(Case C-382/09)

(2009/C 297/26)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāta Administratīvo lietu departaments

Parties to the main proceedings

Applicant: Stils Met SIA

Defendant: Valsts ieņēmumu dienests

Questions referred

1. Are TARIC codes 7312 10 82 19, 7312 10 84 19 and 7312 10 86 19 to be interpreted as meaning that, in 2004 and 2005, steel articles –ropes and cables not coated or only plated or coated with zinc– and, in particular, alloy steel not consigned from Moldova or Morocco, ought to have been classified under these codes, depending on their cross-sectional dimensions, irrespective of their chemical composition (excluding stainless steel)?
2. Is Article 14(1) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community to be interpreted as precluding a penalty (fine) calculated on the amount of anti-dumping duties which is imposed on the basis of national legislation (Article 32(2) of the Law 'Par nodokļiem un nodevām') governing breaches of tax law?