

5. By increasing the costs for users of mobile telephone services who have concluded subscription contracts, does the Italian Tassa di Concessione Governativa deter entry to the Italian market, thereby prohibiting, to the prejudice of consumers, the formation of a competitive market, in breach of the principles laid down in Directive 2002/21/EC?
6. Does the Tassa di Concessione Governativa infringe the principle laid down in Article 25 of the Treaty, which provides that '[c]ustoms duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature'?

<sup>(1)</sup> OJ 2002 L 108, p. 21.

<sup>(2)</sup> OJ 2002 L 108, p. 33.

<sup>(3)</sup> OJ 2002 L 249, p. 21.

**Reference for a preliminary ruling from the Commissione Tributaria Provinciale di Alessandria (Italy) lodged on 1 December 2009 — Bolton Alimentari SpA v Agenzia Dogane Ufficio delle Dogane Di Alessandria**

(Case C-494/09)

(2010/C 24/76)

*Language of the case: Italian*

**Referring court**

Commissione Tributaria Provinciale di Alessandria

**Parties to the main proceedings**

*Applicant:* Bolton Alimentari SpA

*Defendant:* Agenzia Dogane Ufficio delle Dogane Di Alessandria

**Questions referred**

1. Is Article 239 CCC to be interpreted as meaning that, in a case such as that at issue here, where the Member State takes the view that the European Commission cannot be criticised for having committed any irregularity and none of the other circumstances contemplated in Article 905(1) (of Regulation No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code) ('ICCC') obtain, that same Member State may decide independently on an application for repayment to the debtor within the meaning of Article 899(2) ICCC?
2. If the answer to the preceding question is in the affirmative, may the expression 'special situation' used in (Article 905(1) ICCC with reference to) Article 239 of the Common Customs Code refer to the exclusion of a Community importer from a tariff quota whose opening date falls on

a Sunday because of the Sunday closing of the customs offices of the Member State in question?

3. Are Article 308a to 308c ICCC and the relevant provisions of the Administrative Arrangement on the management of tariff quotas to be interpreted as meaning that, in a case such as that at issue here, the Member State should have asked the Commissione Tributaria beforehand to suspend the tariff quota in question in order to enable Italian importers to receive equal and non-discriminatory treatment in comparison with importers from other Member States?
4. Are the exclusion of Bolton s.p.a. from the quota, as decided by the Commissione Tributaria and the TAXUD note, measures taken in compliance with Article 308a to 308c ICCC, as well as with the relevant provisions of the Administrative Arrangement on the management of tariff quotas adopted by the Customs Code Committee (TAXUD/3439/2006-rev.1-[EN]), and therefore valid?

**Action brought on 2 December 2009 (faxed on 30 November 2009) — European Commission v Italian Republic**

(Case C-496/09)

(2010/C 24/77)

*Language of the case: Italian*

**Parties**

*Applicant:* European Commission (represented by: L. Pignataro and E. Righini, agents)

*Defendant:* Italian Republic

**Form of order sought**

- Declare that, by failing to adopt all the measures necessary to comply with the judgment delivered by the Court of Justice of the European Communities on 1 April 2004 in Case C-99/02 concerning the recovery from beneficiaries of aid considered unlawful and incompatible with the common market by Commission Decision 2000/128/EC <sup>(1)</sup> of 11 May 1999 concerning aid granted by Italy to promote employment, the Italian Republic has failed to fulfil its obligations under that decision and under Article 228(1) EC;
- Order the Italian Republic to pay to the Commission a daily penalty payment of EUR 285 696 for the delay in implementing the judgment in Case C-99/02 concerning Decision 2000/128/EC, from the date on which judgment is delivered in the present case until the judgment in Case C-99/02 is complied with;