system applicable to the common fisheries policy (OJ 1993 L 261, p. 1), Article 11(2) of Regulation No 2241/87 or Article 21 of Regulation No 2847/93, Article 1(2) of Regulation No 2241/87, or Article 31 of Regulation No 2847/93, the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, A. La Pergola (Rapporteur), P. Jann and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, has given a judgment on 14 November 2002, in which it:

1. *Declares that, in respect of each of the years 1991 to 1996, by:*

   — *failing to put in place appropriate detailed rules for the utilisation of the quotas allocated to it and to carry out the inspections and other controls required by the relevant Community regulations,*

   — *failing provisionally to close certain fisheries when quotas were exhausted,*

   — *failing to take administrative or penal action against the masters of vessels infringing those regulations or against any other person responsible for such infringement,*

   the United Kingdom of Great Britain and Northern Ireland has failed to comply with its obligations under Article 5(2) of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources and, with effect from 1 January 1993, Article 9(2) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture, as well as Article 1(1) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities and, with effect from 1 January 1994, Article 2 of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, Article 11(2) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 21 of Regulation No 2847/93, and Article 1(2) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 31 of Regulation No 2847/93;

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

(1) OJ C 176 of 24.6.2000.

JUDGMENT OF THE COURT

of 5 November 2002

in Case C-208/00 (Reference for a preliminary ruling from the Bundesgerichtshof): Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC) [1]

(Articles 43 EC and 48 EC — Company formed in accordance with the law of a Member State and having its registered office there — Company exercising its freedom of establishment in another Member State — Company deemed to have transferred its actual centre of administration to the host Member State under the law of that State — Non-recognition by the host Member State of the company's legal capacity and its capacity to be a party to legal proceedings — Restriction on freedom of establishment — Justification)

(2002/C 323/13)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-208/00: Reference to the Court under Article 234 EC by the Bundesgerichtshof (Germany) for a preliminary ruling in the proceedings pending before that court between Überseering BV and Nordic Construction Company Baumanagement GmbH (NCC), on the interpretation of Articles 43 EC and 48 EC, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet (Rapporteur) and R. Schintgen (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 5 November 2002, in which it has ruled:

1. *Where a company formed in accordance with the law of a Member State ('A') in which it has its registered office is deemed, under the law of another Member State ('B'), to have moved its actual centre of administration to Member State B, Articles 43 EC and 48 EC preclude Member State B from denying the company legal capacity and, consequently, the capacity to bring legal proceedings before its national courts for the purpose of enforcing rights under a contract with a company established in Member State B.*

2. *Where a company formed in accordance with the law of a Member State ('A') in which it has its registered office exercises its freedom of establishment in another Member State ('B'), Articles 43 EC and 48 EC require Member State B to recognise the legal capacity and, consequently, the capacity to be a party to legal proceedings which the company enjoys under the law of its State of incorporation ('A').*

(1) OJ C 233 of 12.8.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 14 November 2002

in Case C-251/00 (Reference for a preliminary ruling from the Tribunal Tributário de Primeira Instância de Lisboa): Ilumitrónica — Iluminação e Electrónica L^{da} v Chefe da Divisão de Procedimentos Aduaneiros e Fiscais/Direcção das Alfândegas de Lisboa, third party: Ministério Público (1)

(EEC-Turkey Association Agreement — Importation of television sets from Turkey — Determination of the person liable for the customs debt — Post-clearance recovery of customs duties)

(2002/C 323/14)

(Language of the case: Portuguese)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-251/00: Reference to the Court under Article 234 EC by the Tribunal Tributário de Primeira Instância de Lisboa (Portugal) for a preliminary ruling in the proceedings pending before that court between Ilumitrónica — Iluminação e Electrónica L^{da} and Chefe da Divisão de Procedimentos Aduaneiros e Fiscais/Direcção das Alfândegas de Lisboa, third party: Ministério Público, on the interpretation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and on the validity of a Commission decision, the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges; J. Mischo, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 14 November 2002, in which it has ruled:

1. *Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties must be interpreted as meaning that:*

— *in order to determine whether there is an 'error made by the competent authorities themselves', account must be taken both of the conduct of the customs authorities which issued the certificate permitting the application of preferential treatment and of that of the central customs authorities;*

— *the routine issuing by the authorities of the exporting country of certificates permitting the application of preferential treatment under association rules constitutes evidence of such an error when those authorities must have been aware, on the one hand, of the existence in the exporting country of a policy of encouraging exports, involving the duty-free importation of components originating in third countries for incorporation in goods intended for export to the Community and, on the other hand, of the absence in the exporting country of provisions enabling collection of the compensatory levy to which the application of preferential treatment to exports to the Community of goods thus obtained was subject;*

— *the fact that some of the relevant provisions of the association rules were not published in the Official Journal of the European Communities and the circumstance that those provisions were not implemented, or were implemented incorrectly, in the exporting country over a period of more than 20 years constitute evidence that such an error could not reasonably have been detected by the person liable.*

2. *The conduct of the authorities of the exporting country does not affect the determination of the person by whom the customs debt is payable or the right of the authorities of the importing country to take action for post-clearance recovery thereof.*

3. *Articles 22 and 25 of the Agreement establishing an association between the European Economic Community and Turkey do not require the national customs authorities of a Member State, acting on the Commission's advice, to have recourse to the procedure provided for by those articles before taking action for post-clearance recovery of import duties.*

(1) OJ C 233 of 12.8.2000.