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JUDGMENT OF THE COURT

(Fifth Chamber)

of 17 March 1998

in Case C-45/96 (reference for a preliminary ruling from the Bundesgerichtshof): Bayerische Hypotheken- und Wechselbank AG v Edgar Dietzinger [1]

(Protection of the consumer in respect of contracts negotiated away from business premises — Guarantees)

(98/C 166/01)

(Language of the case: German)

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

In Case C-45/96: reference to the Court under Article 177 of the EC Treaty by the Bundesgerichtshof (Germany) for a preliminary ruling in the proceedings pending before that court between Bayerische Hypotheken- und Wechselbank AG and Edgar Dietzinger — on the interpretation of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372 of 31.12.1985, p. 31) — the Court (Fifth Chamber), composed of: M. Wathelet, President of the First Chamber, acting for the President of the Fifth Chamber, J. C. Moitinho de Almeida, D. A. O. Edward, P. Jann and L. Sevón (Rapporteur), Judges; F. G. Jacobs, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 17 March 1998, in which it has ruled:

On a proper construction of the first indent of Article 2 of Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, a contract of guarantee concluded by a natural person who is not acting in the course of his trade or profession does not come within the scope of the directive where it guarantees repayment of a debt contracted by another person who, for his part, is acting within the course of his trade or profession.

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[1] OJ C 95 of 30.3.1996.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 17 March 1998

in Case C-387/96 (reference for a preliminary ruling from Svea Hovrätt): criminal proceedings against Anders Sjöberg [1]

(Social legislation relating to road transport — Exception granted for vehicles used by public authorities to provide public services which are not in competition with professional road hauliers — Obligation on the driver to carry an extract from the duty roster)

(98/C 166/02)

(Language of the case: Swedish)

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

In Case C-387/96: reference to the Court under Article 177 of the EC Treaty from Svea Hovrätt (the Svea Court of Appeal), for a preliminary ruling in the criminal proceedings pending before that court against Anders Sjöberg — on the interpretation of Articles 13 and 14 of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ L 370 of 31.12.1985, p. 1) — the Court (Fifth Chamber), composed of: C. Gulmann, President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida, P. Jann (Rapporteur) and L. Sevón, Judges; P.

Léger, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 17 March 1998, in which it has ruled:

1. *The exception in respect of vehicles used by public authorities to provide public services which are not in competition with professional road hauliers, provided for in Article 13(1)(b) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport, does not apply to vehicles belonging to an undertaking which is wholly owned by a public authority and which operates a public passenger service under a contract granting it an exclusive right for a specified period following a call for competing tenders.*

2. *The requirement in Article 14(5) of Regulation (EEC) No 3820/85, that each driver assigned to a service referred to in Article 14(1) must carry an extract from the duty roster and a copy of the service timetable, is not satisfied where the extract from the duty roster relates only to the day on which it is checked.*

(1) OJ C 26 of 25.1.1997.

JUDGMENT OF THE COURT

of 19 March 1998

in Case C-1/96 (reference for a preliminary ruling from the High Court of Justice, Queen's Bench Division): The Queen v Minister of Agriculture, Fisheries and Food, *ex parte* Compassion in World Farming Limited (1)

(Articles 34 and 36 of the EC Treaty — Directive 91/629/EEC — European Convention on the Protection of Animals Kept for Farming Purposes — Recommendation concerning Cattle — Export of calves from a Member State maintaining the level of protection laid down by the Convention and the Recommendation — Export to Member States which comply with the Directive but do not observe the standards laid down in the Convention or the Recommendation and use intensive farming systems prohibited in the exporting State — Quantitative restrictions on exports — Exhaustive harmonisation — Validity of the Directive)

(98/C 166/03)

(Language of the case: English)

In Case C-1/96: reference to the Court under Article 177 of the EC Treaty from the High Court of Justice (England and Wales), Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between The Queen and the Minister of Agriculture, Fisheries and Food, *ex parte* Compassion in World Farming Limited — on the interpretation of Articles 34 and 36 of the EC Treaty and the validity of Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves (OJ L 340 of 11.12.1991, p. 28) — the Court, composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm, M. Wathelet (Presidents of Chambers), G. F. Mancini (Rapporteur), J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann and L. Sevón, Judges; P. Léger, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 19 March 1998, in which it has ruled:

1. *Consideration of Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves has disclosed no factor of such a kind as to affect its validity.*

2. *A Member State which has implemented the 1988 Recommendation concerning Cattle, drawn up to apply the principles of the European Convention on the Protection of Animals kept for Farming Purposes, cannot rely on Article 36 of the EC Treaty and, in particular, on the grounds of public morality, public policy or the protection of the health or life of animals laid down in that article, in order to justify restrictions on the export of live calves with a view to preventing those calves from being reared in the veal crate systems used in other Member States which have implemented Directive 91/629/EEC but which do not apply that recommendation.*

(1) OJ C 46 of 17.2.1996.

Action brought on 2 March 1998 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-63/98)

(98/C 166/04)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 2 March 1998 by the Commission of the European Communities, represented by Wouter Wils, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

— declare that, by failing to take appropriate steps, in managing fishing for shellfish in the Waddenzee, to avoid deterioration of the habitats of certain types of

birds or any disturbances affecting the birds, in breach of Directive 79/409/EEC [1], in particular Articles 2 and 4 thereof, and Directive 92/43/EEC [2] the Kingdom of the Netherlands has failed to fulfil its obligations under the Treaty; and

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments:

— a general obligation is imposed on the Member States by Article 2 of Directive 79/409/EEC on wild birds to take the requisite measures to maintain the bird population at a level which corresponds to ecological, scientific and cultural requirements, or to adapt the population to that level. In so doing Member States may take account of economic and recreational requirements. The severe decline in certain types of bird which feed on cockles or mussels or have an effect on fishing of shellfish in some other way is an indication that the Netherlands policy does not satisfy that general requirement, since the measures necessary to maintain the bird population at a satisfactory level are still lacking.

It appears from the recommendations from various parties that even bearing in mind the economic importance of shellfish fishing, it is none the less possible to restrict the environmental effects to a greater extent than is attainable with the current policy of the Netherlands Government. The possibilities of taking account of the interests of the fishing industry in a manner which has less effect on the environment have clearly not been studied by the Netherlands authorities. The Commission concludes therefore that the Netherlands Government has not complied with Article 2 of the directive on wild birds.

Article 4 of the directive on wild birds does not contain any provision of the same kind as that in Article 2 which makes it possible to take account, *inter alia,* of economic requirements. The Netherlands Waddenzee, which is designated a special protection area for the purposes of the directive is a wet zone of international importance for water birds, in respect of which the Netherlands therefore bears a particular responsibility. According to Article 4(1) the Netherlands is required to adopt special conservation measures in respect of the species mentioned in Annex I in order to ensure the survival and reproduction of those species. Certain birds mentioned in Annex I can be found in the Netherlands part of the Waddenzee and nest there. Similar measures must be taken for regularly occuring migratory species not listed in Annex I as regards their breeding, moulting and wintering areas and staging posts along their migration routes. A number of species of migratory birds regularly call in at the Netherlands part of the Waddenzee. The Commission concludes from the information available to it that the protective measures adopted by the Netherlands authorities for the birds mentioned in Annex I of the directive and for migratory birds are inadequate to enable those birds to continue to exist and to reproduce. The Commission consequently considers that the Netherlands authorities have failed to comply with Article 4(1) and (2).

— In accordance with Article 6(2) of Directive 92/43/EEC on habitats, the Netherlands must take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, insofar as such disturbance could be significant in relation to the objectives of the directive. According to Article 7 of that directive, that obligation replaces the obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC and thus applies to the Waddenzee. The policy implemented by the Netherlands Government results in a deterioration of the quality of the habitat of the species of birds concerned in the special conservation area of the Waddenzee; the disturbances for those species are significant in relation to the objectives of the directive. The Commission therefore considers that the Netherlands authorities have failed to comply with Article 6(2) of the directive on habitats.

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[1] Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds, OJ L 103 of 2.4.1979, p. 1.

[2] Directive 92/43/EEC of the Council of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206 of 21.5.1992, p. 7.

References for a preliminary ruling by the Arbeitsgericht, Wiesbaden, by orders of that court of 27 February 1998 in the cases of Urlaubs- und Lohnausgleichskasse der Bauwirtschaft against Duarte dos Santos Sousa (C-68/98), Urlaubs- und Lohnausgleichskasse der Bauwirtschaft against Santos & Kewitz Construções Lda (C-69/98), Portugaia Construções Lda against Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (C-70/98) and Engil Sociedade de Construção Civil S.A. against Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (C-71/98)

(Cases C-68/98 to C-71/98)

(98/C 166/05)

Reference has been made to the Court of Justice of the European Communities by orders of the Arbeitsgericht (Labour Court), Wiesbaden, of 27 February 1998, received at the Court Registry on 13 March 1998, for a preliminary ruling in the cases of Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (Holiday and Wage Equalisation Fund of the Construction Industry) against Duarte dos Santos Sousa (C-68/98), Urlaubs- und Lohnausgleichskasse der Bauwirtschaft against Santos & Kewitz Construções Lda (C-69/98), Portugaia Construções Lda against Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (C-70/98) and Engil Sociedade de Construção Civil S.A. against Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (C-71/98) on the following questions:

1. Are Articles 48, 59 and 60 of the EC Treaty to be interpreted as infringed by a provision of national law — the first sentence of Paragraph 1(3) of the Arbeitnehmerentsendegesetz (Law on the Posting of Workers) — which extends the application of provisions of collective agreements which have been declared generally binding concerning the collection of contributions and the grant of benefits in connection with workers' holiday entitlements by joint bodies of parties to collective agreements, and thus the provisions of those agreements concerning the scheme to be complied with in that regard, to employers resident abroad and their workers who have been posted to the area within which those collective agreements apply?

2. Are Articles 48, 59 and 60 of the EC Treaty to be interpreted as infringed by the second sentence of Paragraph 1(1) and the first sentence of Paragraph 1(3) of the Arbeitnehmerentsendegesetz which result in the application of provisions of collective agreements declared to be generally binding which:

   (a) provide for a length of leave which exceeds the minimum length of annual leave laid down in Council Directive 93/104/EC of 23 November 1993 [1] concerning certain aspects of the organisation of working time; and/or

   (b) allow employers resident in Germany to claim the reimbursement of expenditure on holiday pay and holiday allowances from joint bodies of the parties to the collective agreements whereas, in the case of employers resident abroad, they do not provide for such a claim but instead for a direct claim by the posted workers against the joint bodies of the parties to the collective agreements; and/or

   (c) in connection with the social fund scheme to be complied with under those collective agreements, impose on employers resident abroad obligations to provide information to the joint bodies of the parties to the collective agreements whereby the amount of information to be given exceeds the amount required from employers resident in Germany?

3. Are Articles 48, 59 and 60 of the EC Treaty to be interpreted as infringed by Paragraph 1(4) of the Arbeitnehmerentsendegesetz under which — for the purposes of classifying businesses as covered by a collective agreement which has been declared generally binding and which, under the first sentence of Paragraph 1(3) of that Law, also applies to employers resident abroad and their workers who have been posted to the area within which that collective agreement applies — all workers posted to Germany, but only those workers, are treated as a business, while a different definition of a business applies to employers resident in Germany which in certain cases results in different businesses falling within the field of application of the generally binding collective agreement?

4. Is Article 3(1)(b) of Directive 96/71/EC [2] of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services to be interpreted as in any event, having regard to the correct interpretation of Articles 48, 59 and 60 of the EC Treaty, neither requiring nor permitting the rules at issue in Questions 1, 2 and 3?

[1] OJ L 307 of 13.12.1993, p. 18.
[2] OJ L 18 of 21.1.1997, p. 1.

Reference for a preliminary ruling by the Østre Landsret by order of 12 March 1998 in the case of DAT-SCHAUB a.m.b.a. v Ministeriet for Fødevarer, Landbrug og Fiskeri

(Case C-74/98)

(98/C 166/06)

Reference has been made to the Court of Justice of the European Communities by order of 12 March 1998 from the Østre Landsret (Eastern Regional Court), which was received at the Court Registry on 17 March 1998, for a preliminary ruling in the case of DAT-SCHAUB a.m.b.a. v Ministeriet for Fødevarer, Landbrug og Fiskeri (Ministry of Food, Agriculture and Fisheries) on the following question:

Having regard to the Cooperation Agreement between the European Economic Community and the countries parties to the Charter of the Cooperation Council for the Arab States of the Gulf, approved by Council Directive 89/147/CEE of 20 February 1989 [1], must the term 'non-member country' in the second subparagraph of the Article 17(2) of Regulation (CEE) No 3665/87 [2] laying down common detailed rules for the application of the system of export refunds on agricultural products be construed as meaning that countries parties to the Charter are treated as one single non-member country, with the result that a product which, after processing in the Jebel Ali Free Zone in the United Arab Emirates, is imported into and released for free circulation in another of the countries parties to the Charter is to be regarded as having been imported in the unaltered state within the meaning of Article 17 of the regulation?

[1] OJ L 54 of 25.2.1989, p. 1.
[2] OJ L 351 of 14.12.1987, p. 1.

Appeal brought on 20 March 1998 by Mario Costacurta against the judgment delivered on 22 January 1998 by the Third Chamber of the Court of First Instance of the European Communities in Case T-98/96 between Mario Costacurta and the Commission of the European Communities

(Case C-75/98 P)

(98/C 166/07)

An appeal against the judgment delivered on 22 January 1998 by the Third Chamber of the Court of First Instance of the European Communities in Case T-98/96 between Mario Costacurta and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 20 March 1998 by Mario Costacurta, represented by Albert Rodesch, Avocat-avoué, with an address for service in Luxembourg at 7—11 Route d'Esch.

The appellant claims that the Court should:

— annul the judgment delivered on 22 January 1998 by the Court of First Instance in Case T-98/96 Costacurta v Commission ([1]);

— annul the appointing authority's decision of 31 May 1996 reassigning the appellant to the Office for Official Publications of the European Communities;

— order the Commission to pay the costs of proceedings before both the Court of Justice and the Court of First Instance;

— reserve to the appellant all other rights and entitlements, including the right to put forward pleas in law or bring proceedings, particularly regarding compensation for damage.

Pleas in law and main arguments:

— Lack of competence on the part of the appointing authority, infringement of Articles 2 and 4 of the Staff Regulations and of Article 5(4) of Decision 69/13/Euratom/EEC setting up the Office for Official Publications of the European Communities ([2]): the Court of First Instance erred in dismissing as irrelevant the plea in law alleging infringement of Article 4 of the Staff Regulations. Since the appointing authoritiy which adopted the contested decision was in no way a budgetary authority and since it was not empowered to amend the lists of authorised posts, it could not assign the appellant to the Official Publications Office together with his post;

— Infringement of Article 6 of the Staff Regulations, infringement of the Council regulation on the budget of the European Communities: the Court of First Instance was wrong to state in paragraph 34 of the judgment under appeal that, as a matter of law, 'as the Commission has pointed out, the posts with the Office for Official Publications are, in budgetary terms, part of the Commission's total staff', since that has not been the case since 1970;

— Infringement of Article 7 of the Staff Regulations;

— Contravention of the principle of the protection of legitimate expectations and the duty to have regard for the welfare of officials;

— Infringement of Articles 25 and 101a of the Staff Regulations.

([1]) OJ C 94 of 28.3.1998, p. 20.
([2]) OJ L 13 of 18.1.1969, p. 19.

Appeal brought on 20 March 1998 by Ajinomoto Co. Inc. against the judgment delivered on 18 December 1997 by the Fifth Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined Cases T-159/94 ([1]) between Ajinomoto Co. Inc. and the Council of the European Union, supported by the Commission of the European Communities, and T-160/94 ([2]) between The NutraSweet Company and the Council of the European Union, supported by the Commission of the European Communities

(Case C-76/98 P)

(98/C 166/08)

An appeal against the judgment delivered on 18 December 1997 by the Fifth Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined Cases T-159/94 between Ajinomoto Co. Inc. and the Council of the European Union, supported by the Commission of the European Communities, and T-160/94 between The NutraSweet Company and the Council of the European Union, supported by the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 20 March 1998 by Ajinomoto Co. Inc., of 15-1, Kyobashi itchome, Chuo-ku, Tokyo 104, Japan, represented by Mario Siragusa, of the Rome Bar, Till Müller-Ibold, of the Frankfurt Bar, and Victoria Donaldson, *Solicitor* of the Supreme Court of England and Wales, instructed by Cleary, Gottlieb, Steen & Hamilton, Brussels, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11, Rue Goethe.

The Appellant claims that the Court should:

— quash the judgment of the Court of First Instance in joined Cases T-159/94 and T-160/94 and annul Council Regulation (EEC) No 1391/91 ([3]) of 27 May 1991 in so far as it applies to the Appellant;

— in the alternative, quash the judgment of the Court of First Instance in joined cases T-159/94 and T-160/94 in so far as it does not annul Article 2 of Council Regulation (EEC) No 1391/91 of 27 May 1991 ordering the definitive collection of the amounts secured by way of provisional anti-dumping duty and annul Article 2 of that Regulation in so far as it applies to the Appellant;

— order such other or further relief as may be lawful or equitable; and

— order the Council to pay the Appellant's costs.

Pleas in law and main arguments:

The Appellant submits that the judgment of the Court of First Instance contains fundamental errors of law and must be set aside.

First, the Court of First Instance erred in finding that patent-protection in the exporter's domestic market alone is irrelevant to the price comparability requirement contained in Article 2(3) of Council Regulation (EEC) No 2423/88 ([4]), hereinafter 'the Basic Regulation'. The ordinary meaning of the word 'comparable' within Article 2(3), the overall scheme of the Basic Regulation and of the process for establishing and comparing normal value and export price, GATT law, U.S. law, and the aims and objectives of *anti-dumping* law and of intellectual property law all lead to the conclusion that patent-protection is a matter affecting price comparability within the meaning of Article 2(3) and that normal value may not be established on the basis of actual domestic prices when those prices (but not export prices) are the result of patent-protected sales.

Second, the Court of First Instance erred, for the same reasons, in basing normal value for Japanese origin aspartame on U.S. patent-protected prices. Articles 2(3) and 2(6) of the Basic Regulation preclude the determination of normal value on the basis of actual prices in a country (other than the country of origin) from which a product is shipped to the Community when there is no 'comparable price' in that intermediate market. Patent-protected prices are not comparable prices.

Third, the Court of First Instance erred in finding that a failure by the Commission to grant any disclosure of its determinations prior to the imposition of provisional duties is a defect which can be remedied after the imposition of provisional duties and does not, therefore, affect the validity of the defintive collection of the provisional duties. The fundamental principles of Community law — in particular the right to be heard — and the practice of the Commission in other cases required the Commission to disclose essential facts and considerations to the Appellant prior to the adoption of the Provisional Duty Regulation. The Commission's failure to make timely disclosure of such matters to the Appellant amounted to a breach of this fundamental principle as well as to discrimination. This fundamental breach rendered the Provisional Duty Regulation invalid, and this defect in the Provisional Duty could not be and was not remedied in the Definitive Duty Regulation.

([1]) OJ C 291 of 8.11.1991, p. 8.
([2]) OJ C 291 of 8.11.1991, p. 9.
([3]) Council Regulation (EEC) No 1391/91 of 27 May 1991 imposing a definitive *anti-dumping* duty on imports of aspartame originating in Japan and the United States of America (OJ L 134 of 29.5.1991, p. 1).
([4]) Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (OJ L 209 of 2.8.1988, p. 1).

Appeal brought on 20 March 1998 by the NutraSweet Company against the judgment delivered on 18 December 1997 by the Fifth Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined Cases T-159/94 ([1]) between Ajinomoto Co. Inc. and the Council of the European Union, supported by the Commission of the European Communities, and T-160/94 ([2]) between The NutraSweet Company and the Council of the European Union, supported by the Commission of the European Communities

(Case C-77/98 P)

(98/C 166/09)

An appeal against the judgment delivered on 18 December 1997 by the Fifth Chamber (Extended Composition) of the Court of First Instance of the European Communities in joined Cases T-159/94 between Ajinomoto Co. Inc. and the Council of the European Union, supported by the Commission of the European Communities, and T-160/94 between The NutraSweet Company and the Council of the European Union, supported by the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 20 March 1998 by The NutraSweet Company, of 1751, Lake Cook Road, Deerfield, Illinois 60015, United States of America, represented by Jean-François Bellis, of the Brussels Bar, and Fabrizio Di Gianni, of the Rome Bar, of Van Bael & Bellis, Brussels, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 11, Rue Goethe.

The Appellant claims that the Court should:

— quash the judgment of the Court of First Instance in joined cases T-159/94 and T-160/94 and annul Council Regulation (EEC) No 1391/91 ([3]) of 27 May 1991 in so far as it applies to the Appellant;

— in the alternative, quash the judgment of the Court of First Instance in joined cases T-159/94 and T-160/94 in so far as it does not annul Article 2 of Council Regulation (EEC) No 1391/91 of 27 May 1991 ordering the definitive collection of the amounts secured by way of provisional *anti-dumping* duty and annul Article 2 of that Regulation in so far as it applies to the Appellant;

— order such other or further relief as may be lawful or equitable; and

— order the Council to pay the Appellant's costs.

Pleas in law and main arguments:

The Appellant submits that the judgment of the Court of First Instance contains fundamental errors of law and must be set aside.

First, the Court of First Instance erred in finding that patent-protection in the exporter's domestic market alone is irrelevant to the price comparability requirement contained in Article 2(3) of Council Regulation (EEC) No 2423/88 [4], hereinafter 'the Basic Regulation'. The ordinary meaning of the word 'comparable' within Article 2(3), the overall scheme of the Basic Regulation and of the process for establishing and comparing normal value and export price, GATT law, U.S. law, and the aims and objectives of *anti-dumping* law and of intellectual property law all lead to the conclusion that patent-protection is a matter affecting price comparability within the meaning of Article 2(3) and that normal value may not be established on the basis of actual domestic prices when those prices (but not export prices) are the result of patent-protected sales.

Second, the Court of First Instance erred in finding that a failure by the Commission to grant any disclosure of its determinations prior to the imposition of provisional duties is a defect which can be remedied after the imposition of provisional duties and does not, therefore, affect the validity of the definitive collection of the provisional duties. The fundamental principles of Community law — in particular the right to be heard — and the practice of the Commission in other cases required the Commission to disclose essential facts and considerations to the Appellant prior to the adoption of the Provisional Duty Regulation. The Commission's failure to make timely disclosure of such matters to the Appellant amounted to a breach of this fundamental principle as well as to discrimination. This fundamental breach rendered the Provisional Duty Regulation invalid, and this defect in the Provisional Duty could not be and was not remedied in the Definitive Duty Regulation.

[1] OJ C 291 of 8.11.1991, p. 8.
[2] OJ C 291 of 8.11.1991, p. 9.
[3] Council Regulation (EEC) No 1391/91 of 27 May 1991 imposing a definitive *anti-dumping* duty on imports of aspartame originating in Japan and the United States of America (OJ L 134 of 29.5.1991, p. 1).
[4] Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (OJ L 209 of 2.8.1988, p. 1).

Action brought on 24 March 1998 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-79/98)

(98/C 166/10)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 24 March 1998 by the Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

— Declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Commission Directive 94/69/EC of 19 December 1994 adapting to technical progress for the twenty-first time Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances [1], the Kingdom of Belgium has failed to fulfil its obligations under that directive; and

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments:

The pleas in law and main arguments are analogous with those submitted in Case C-66/98 [2]; the time-limit provided for in the directive expired on 1 September 1996.

[1] OJ L 381 of 31.12.1994, p. 1.
[2] OJ C 137 of 2.5.1998, p. 12.

Reference for a preliminary ruling by the Sø- og Handelsret by order of 18 March 1998 in the case of 3Com Corporation v Bluecom Danmark A/S and KISS Nordic A/S

(Case C-80/98)

(98/C 166/11)

Reference has been made to the Court of Justice of the European Communities by order of 18 March 1998 from the Sø- og Handelsret (Maritime and Commercial Court), which was received at the Court Registry on 25 March 1998, for a preliminary ruling in the case of 3Com Corporation v Bluecom Danmark A/S and KISS Nordic A/S on the following question:

Does it follow from Article 7(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the

laws of the Member States relating to trade marks (1) ('the Trade Mark Directive') that Member States are precluded from introducing or maintaining a legal position whereby trade mark rights are exhausted where the trade mark is marketed outside the Community under that mark?

(1) OJ L 40 of 11.2.1989, p. 1.

Reference for a preliminary ruling by the Divisional Court, Queen's Bench Division, by order of that court of 31 July 1997, in the case of The Queen against The Licensing Authority Established by the Medicines Act 1968 (acting by the Medicines Control Agency), *ex parte:* 1) Rhône-Poulenc Rorer Ltd 2) May & Baker Ltd.

(Case C-94/98)

(98/C 166/12)

Reference has been made to the Court of Justice of the European Communities by an order of the Divisional Court, Queen's Bench Division, of 31 July 1997, which was received at the Court Registry on 1 April 1998, for a preliminary ruling in the case of The Queen against The Licensing Authority Established by the Medicines Act 1968 (acting by the Medicines Control Agency), ex parte: 1) Rhône-Poulenc Rorer Ltd 2) May & Baker Ltd, on the following questions:

1. In a case where medicinal product X is sought to be imported from Member State A into Member State B, is it permissible for the person who proposes to place the imported product upon the market in Member State B to seek and obtain a marketing authorisation from the competent authority in Member State B without complying with the requirements of Council Directive 65/65/EEC (1) (as amended) if:

   (i) medicinal product X is the subject of a marketing authorisation granted in Member State A and was the subject of a marketing authorisation which has ceased to have effect in Member State B; and

   (ii) medicinal product X has the same active ingrediens and therapeutic effect as medicinal product Y, but is not manufactured according to the same formulation as medicinal product Y; and

   (iii) medicinal product Y is the subject of a marketing authorisation granted in Member State B, but is not the subject of a marketing authorisation granted in Member State A; and

   (iv) the marketing authorisations referred to in (i) and (iii) above were granted to different members of the same group of companies and the manufacturers of medicinal products X and Y are also members of that group of companies; and

   (v) companies within the same group as the holder of the marketing authorisation for product X continue to manufacture and market product X in Member States other than Member State B?

2. To what extent is it relevant to the answer to Question 1 that:

   (i) the marketing authorisation for medicinal product X ceased to have effect in Member State B as a result of voluntary surrender on the part of the person to whom it had been granted; and/or

   (ii) the formulation of medicinal product Y was developed and introduced in order to provide a benefit to public health which medicinal product X (manufactured according to a different formulation) does not provide; and/or

   (iii) that benefit to public health would not be achieved if product X and product Y are both on the market in Member State B at the same time; and/or

   (iv) the differences between the formulations of medicinal product X and medicinal product Y are such that neither product may lawfully be marketed under the marketing authorisation applicable to the other; and/or

   (v) the competent authority possesses the relevant data required under Directive 65/65/CEE in relation to both product X and product Y; and/or

   (vi) the competent authority considers that the prohibition on imports of product X from Member State A would have the effect of partitioning the market; and/or

   (vii) the competent authority considers that there are no grounds within Article 36 of the EC Treaty which would justify a prohibition on imports and sales of product X?

(1) Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products (OJ 22 of 9.2.1965, p. 369 (SE SER1 (65—66) p. 20)).

Appeal brought on 3 April 1998 by Edouard Dubois et Fils SA against the judgment delivered on 29 January 1998 by the Fifth Chamber of the Court of First Instance of the European Communities in Case T-113/96 between Edouard Dubois et Fils SA, on the one hand, and Council of the European Union and Commission of the European Communities, on the other

(Case C-95/98 P)

(98/C 166/13)

An appeal against the judgment delivered on 29 January 1998 by the Fifth Chamber of the Court of First Instance

of the European Communities in Case T-113/96 between Edouard Dubois et Fils SA, on the one hand, and Council of the European Union and Commission of the European Communities, on the other, was brought before the Court of Justice of the European Communities on 3 April 1998 by Edouard Dubois et Fils SA, represented by Pierre Ricard, *avocat* before the French Conseil d'État and Cour de Cassation, and Alain Crosson de Cormier, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Marc Feiler, 67 Rue Ermesinde.

The appellant claims that the Court should:

— set aside the judgment of the Court of First Instance, with all the legal consequences entailed thereby;

— declare the defendants liable under the second paragraph of Article 215 of the Treaty for the damage caused to it by the repercussions on its activities as an authorised customs agent;

— order the defendants jointly and severally to pay the sum of FF 112 339 702 by way of compensation for that damage;

— order the defendants to pay the costs.

Pleas in law and main arguments:

On the question of no-fault liability, the Court of First Instance erred in holding that the cause of the damage was the Single European Act and the establishment of an area without internal frontiers to which it led. New obligations to act were imposed at the time on the Community institutions, particularly in respect of the introduction of compensatory support measures to facilitate the adaptation of the profession of customs agent.

On the question of liability for fault, the Court of First Instance erred in holding that there was no legal obligation to act incumbent on the institutions and that, therefore, the failure to take appropriate measures could not give rise to liability and on the part of the Community. The institutions chose to act by adopting Council Regulation (EEC) No 3904/92 of 17 December 1992 to adapt the profession of customs agent to the internal market [1]. That action on the part of the institutions was, however, very piecemeal and inadequate. The Court of First Instance also erred in holding that there was, in any event, no breach of a higher rule of the law for the protection of individuals. There was a breach of the principle of vested rights as the profession of customs agent had been recognised by Community legislation.

[1] OJ L 394 of 31.12.1992, p. 1.

Action brought on 3 April 1998 by the Commission of the European Communities against the French Republic

(Case C-96/98)

(98/C 166/14)

An action against the French Republic was brought before the Court of Justice of the European Communities on 3 April 1998 by the Commission of the European Communities, represented by Paolo Stancanelli, of its Legal Service, and Olivier Couvert-Castera, national civil servant on secondment to that service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The Commission of the European Communities claims that the Court should:

— declare that, by failing to adopt the special measures necessary for the conservation of bird *habitats* in the Marais Poitevin and the appropriate steps to avoid deterioration of those *habitats*, the French Republic has failed to fulfil its obligations under Article 4 of Directive 79/409/EEC [1];

— order the French Republic to pay the costs.

Pleas in law and main arguments:

Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds lays down the obligation to classify the most suitable territories as Special Protection Areas (SPAs) for the conservation of the *habitats* of the species to which the Directive applies; Article 4(4) lays down the obligation to take appropriate steps to avoid deterioration of the *habitats* in the protection areas. According to the case-law of the Court [2], the latter obligation applies not only to territories actually classified as SPAs, but also to territories which should have been so classified.

The territory of the Marais Poitevin classified as an SPA is insufficient. An area of 29 790 hectares is currently classified as such. That classification took place late, in stages and after 1991. According to the most relevant scientific data available, however, namely the inventory of Zones Importantes pour la Conservation des Oiseaux (important areas for the conservation of birds) (ZIOC), published in 1994 by the French Ministry of the Environment, 77 980 hectares exhibit the objective characteristics justifying classification as an SPA. The inadequate nature of the appropriate steps intended to avoid deterioration of the *habitats* is due to the absence of suitable protective measures and to interference with and disturbances of natural *habitats*, in particular, the disappearance of natural water meadows as they are

cultivated and disturbances caused by motorway and road schemes.

(1) OJ L 103 of 25.4.1979, p. 1.
(2) Case C-355/90 Commission v Spain [1993] ECR 4221.

Reference for a preliminary ruling from Pargas Tingsrätt of 25 March 1998 in the case of Peter Jägerskiöld v Torolf Gustafsson

(Case C-97/98)

(98/C 166/15)

Reference has been made to the Court of Justice of the European Communities by an order of the Pargas Tingsrätt (District Court) of 25 March 1998, which was received at the Court Registry on 6 April 1998, for a preliminary ruling in the case of Peter Jägerskiöld v Torolf Gustafsson on the following questions:

— Are fishing rights or spinning licenses 'goods' in accordance with the judgment in Case 7/68 Commission v Italian Republic [1968] ECR 423?

— Does the amendment in Finland of the Law on Fishing 1045/1996 constitute an obstacle to the free movement of goods according to the criteria laid down in Case 8/74 Dassonville [1974] ECR 837?

— Does a leisure angler's recreational interest constitute a permissible ground under Article 36 of the European Community's basic treaty?

— Does the present case involve agricultural products within the meaning of Article 37(4) of the Treaty of Rome?

— Does the aforementioned legal rule have direct legal effect in accordance with the judgment in Case 6/64 Costa v ENEL (1)?

— Has sufficient account been taken of farmers' interests?

— Does such an amendment of the Law on Fishing 1045/1996 concerning spinning contravene or not contravene the rules governing the free movement of goods (or the free provision of services) laid down in the European Community's basic treaty?

(1) ECR 1964, p. 614.

Reference for a preliminary ruling by the Divisional Court, Queen's Bench Division, by order of that court of 31 July 1997, in the case of the Commissioners of Customs and Excise against Midland Bank plc

(Case C-98/98)

(98/C 166/16)

Reference has been made to the Court of Justice of the European Communities by an order of the Divisional Court, Queen's Bench Division, of 31 July 1997, which was received at the Court Registry on 3 April 1998, for a preliminary ruling in the case of the Commissioners of Customs and Excise against Midland Bank plc, on the following questions:

On the proper interpretation of Council Directive 67/227/EEC (1) of 11 April 1967, in particular Article 2, and Council Directive 77/388/EEC (2) of 17 May 1977, in particular Article 17(2), (3) and (5), and having regard to the facts of the present case:

(1) Is it necessary to establish a direct and immediate link between a particular input obtainable by a taxable person acting as such and a particular transaction or transactions made by that person in order to:

   (a) establish the existence of an entitlement to deduct tax charged in respect of the input; and

   (b) determine the extent of that entitlement?

(2) If the answer to (1)(a) or (b) is in the affirmative, what is the nature of the direct and immediate link and, in particular, in the case of a taxable person making both transactions in respect of which VAT is deductible and transactions in respect of which it is not:

   (a) is the test for determining the amount of input tax that is deductible any different as between Article 17(2), (3) and (5) (and, if so, in which respects is it different); and

   (b) is such a person entitled to deduct all the input tax charged in respect of an input on the ground that the input was utilised as a consequence of making a transaction falling within Articles 17(2) or 17(3), in particular Article 17(3)(c)?

(3) If the answer to 1(a) or (b) is in the negative:

   (a) what is the link that has to be established; and

   (b) in the case of a taxable person making both transactions in respect of which VAT is deductible and transactions in respect of which it is not:

(i) is the test for determining the amount of input tax that is deductible any different as between Article 17(2), (3) and (5) (and, if so, in which respects is it different); and

(ii) is such a person entitled to deduct all the input tax charged in respect of an input on the ground that the input was utilised as a consequence of making a transaction falling within Article 17(3)(c)?

(1) First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ 71 of 14.4.1967, p. 1301 (SE SER1 67 p. 14)).

(2) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145 of 13.6.1977, p. 1).

Appeal brought on 14 April 1998 by Smanor SA, Hubert Ségaud and Monique Ségaud against the order made on 16 February 1998 by the Second Chamber of the Court of First Instance of the European Communities in Case T-182/97 between, on the one hand, Smanor SA, Hubert Ségaud and Monique Ségaud and, on the other, the Commission of the European Communities

(Case C-103/98 P)

(98/C 166/17)

An appeal against the order made on 16 February 1998 by the Second Chamber of the Court of First Instance of the European Communities in Case T-182/97 between, on the one hand, Smanor SA, Hubert Ségaud and Monique Ségaud and, on the other, the Commission of the European Communities was brought before the Court of Justice of the European Communities on 14 April 1998 by Smanor SA, Hubert Ségaud and Monique Ségaud, represented by Laurence Roques, of the Val de Marne Bar, with an address for service at 9 Rue du Général de Larminat, Créteil.

The appellants claim that the Court should:

— rule that the order made by the Court of First Instance on 16 February 1998 is vitiated by a manifest error of assessment;

— rule that the Commission made an error of assessment in the conclusions contained in its letter of 21 May 1997;

— grant the appellants' application for an order that the documents in the Smanor case held by the French authorities in their administrative archives be communicated to the Commission and to the Court of Justice, so that all the evidence may be made available on an equal footing.

Pleas in law and main arguments:

— Breach of the principle of the protection of legitimate expectations;

— Breach of the principle of equality of arms, by virtue of the piecemeal approach to the evidence;

— Breach of the principle of equality of treatment, whereby comparable situations are not to be treated differently and different situations are not to be treated alike;

— Violation of the case-law established by Community law.

Reference for a preliminary ruling from the Tribunal Administratif de Dijon by judgment of that court of 24 March 1998 in the case of CRT France International SA v Directeur Régional des Impôts de Bourgogne

(Case C-109/98)

(98/C 166/18)

Reference has been made to the Court of Justice of the European Communities by a judgment of the First Chamber of the Tribunal Administratif de Dijon (Administrative Court, Dijon), of 24 March 1998, which was received at the Court Registry on 15 April 1998, for a preliminary ruling in the case of CRT France International SA v Directeur Régional des Impôts de Bourgogne on the following question:

Whether the provisions of Articles 9, 12 and 95 of the Treaty of 25 March 1957 establishing the European Economic Community preclude the national authorities from imposing on manufacturers, importers and persons making supplies in France of transmitting/receiving sets operating on two-way channels a tax, the rules for which are laid down by Article 302 bis (X) of the Code Général des Impôts.

Removal from the register of Case C-50/97 (1)

(98/C 166/19)

By order of 14 October 1997, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-50/97: (Reference for a preliminary ruling from the Arrondissementsrechtbank te Almelo): Jan Blauw and Others v Gavema BV.

(1) OJ C 94 of 22.3.1997.

Removal from the register of Case C-251/96 [1]

(98/C 166/20)

By order of 29 October 1997, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-251/96: (Reference for a preliminary ruling from the Pretura Circondariale di Rovigo): Criminal proceedings against Giuseppe Cordella.

[1] OJ C 294 of 5.10.1996.

Removal from the register of Case C-224/96 [1]

(98/C 166/21)

By order of 13 November 1997, the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-224/96: Promotion Léopold SA v European Parliament.

[1] OJ C 269 of 14.9.1996.

Removal from the register of Case C-91/97 [1]

(98/C 166/22)

By order of 27 January 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-91/97 (reference for a preliminary ruling from the Bundessozialgericht): Arif Altiney v Bundesanstalt für Arbeit.

[1] OJ C 131 of 26.4.1997.

Removal from the register of Case C-142/97 [1]

(98/C 166/23)

By order of 27 January 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-142/97: Commission of the European Communities v Italian Republic.

[1] OJ C 181 of 14.6.1997.

Removal from the register of Case C-305/95 [1]

(98/C 166/24)

By order of 29 January 1998 the President of the Sixth Chamber of the Court of Justice of the European Communities has ordered the removal from the register of Case C-305/95 (reference for a preliminary ruling from the Cour du Travail, Mons): Université Catholique de Louvain v Francine Plapied and Danielle Gallez.

[1] OJ C 299 of 11.11.1995.

Removal from the register of Case C-325/97 [1]

(98/C 166/25)

By order of 11 February 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-325/97: Commission of the European Communities v Federal Republic of Germany.

[1] OJ C 331 of 1.11.1997.

Removal from the register of Case C-238/97 [1]

(98/C 166/26)

By order of 18 February 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-238/97: Commission of the European Communities v Kingdom of Spain.

[1] OJ C 252 of 16.8.1997.

Removal from the register of Case C-146/96 [1]

(98/C 166/27)

By order of 3 March 1998 the President of the Sixth Chamber of the Court of Justice of the European Communities has ordered the removal from the register of Case C-146/96: Commission of the European Communities v Federal Republic of Germany.

[1] OJ C 197 of 6.7.1996.

Removal from the register of Case C-56/97 [1]
(98/C 166/28)

By order of 6 March 1998 the President of the Sixth Chamber of the Court of Justice of the European Communities has ordered the removal from the register of Case C-56/97: Commission of the European Communities v French Republic.

[1] OJ C 108 of 5.4.1997.

Removal from the register of Case C-339/95 [1]
(98/C 166/29)

By order of 11 March 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-339/95 (reference for a preliminary ruling from the High Court of Justice, Queen's Bench Divison, Commercial Court): Compagnia di Navigazione Marittima and Others v Compagnie Maritime Belge and Others.

[1] OJ C 351 of 30.12.1995.

Removal from the register of Case C-310/96 [1]
(98/C 166/30)

By order of 11 March 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-310/96: Commission of the European Communities v Kingdom of the Netherlands.

[1] OJ C 354 of 23.11.1996.

Removal from the register of Case C-264/97 [1]
(98/C 166/31)

By order of 20 March 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-264/97 (reference for a preliminary ruling from the Tribunale Amministrativo per la Sardegna): Società Appia Srl v Comune di Cagliari and Società Cagliari Calcio SpA.

[1] OJ C 271 of 6.9.1997.

Removal from the register of Case C-352/97 [1]
(98/C 166/32)

By order of 23 March 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-352/97: Commission of the European Communities v Ireland.

[1] OJ C 357 of 22.11.1997.

Removal from the register of Case C-353/97 [1]
(98/C 166/33)

By order of 23 March 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-353/97: Commission of the European Communities v Ireland.

[1] OJ C 357 of 22.11.1997.

Removal from the register of Case C-101/97 [1]
(98/C 166/34)

By order of 26 March 1998 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-101/97: Commission of the European Communities v Italian Republic.

[1] OJ C 142 of 10.5.1997.

Removal from the register of Case C-286/96 [1]
(98/C 166/35)

By order of 30 March 1998 the President of the Fifth Chamber of the Court of Justice of the European Communities has ordered the removal from the register of Case C-286/96: Commission of the European Communities v Italian Republic.

[1] OJ C 294 of 5.10.1996.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE
of 31 March 1998
in Case T-129/96: Preussag Stahl AG v Commission of the European Communities [1]

(State aid to the steel industry — Notification of planned aid — Expiry of the validity of the relevant provisions of the ECSC Aid Code — Grant of the planned aid — Decision finding the aid to be incompatible and ordering its repayment — Legitimate expectations)

(98/C 166/36)

(Language of the case: German)

In Case T-129/96: Preussag Stahl AG, established in Salzgitter (Germany), represented by Jochim Sedemund, Rechtsanwalt, Berlin, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue, supported by Federal Republic of Germany (Agents: Ernst Röder, Bernd Kloke, Holger Wissel and Oliver Axster), against Commission of the European Communities (Agents: Dimitris Triantafyllou and Paul Nemitz) — application for the annulment of Commission Decision 96/544/ECSC of 29 May 1996 concerning State aid to Walzwerk Ilsenburg GmbH (OJ L 233 of 14.9.1996, p. 24) — the Court of First Instance (Third Chamber, Extended Composition), composed of: V. Tiili, President, C. P. Briët, K. Lenaerts, A. Potocki and J. D. Cooke, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 31 March 1998, in which it:

1. *Dismisses the application;*

2. *Orders the applicant to bear its own costs and those of the Commission;*

3. *Orders the Federal Republic of Germany to bear its own costs.*

[1] OJ C 318 of 26.10.1996.

JUDGMENT OF THE COURT OF FIRST INSTANCE
of 2 April 1998
in Case T-86/97: Réa Apostolidis v Court of Justice of the European Communities [1]

(Officials — Suspension of promotion procedure — Disciplinary proceedings)

(98/C 166/37)

(Language of the case: French)

In Case T-86/97: Réa Apostolidis, an official of the Court of Justice of the European Communities, residing at Béreldange (Luxembourg), represented initially by Alain Levy, of the Paris Bar, and subsequently by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson, 30 Rue de Cessange, v Court of Justice of the European Communities (Agents: Timothy Millett and Aloyse May) — application for annulment of the decision of the Court of Justice of 11 July 1996 suspending the procedure for filling one of the three positions declared vacant by vacancy notice CJ 91/95, as confirmed by the decision of 10 December 1996 expressly rejecting the complaint lodged by the applicant against the first decision, for the destruction of an alleged parallel file and for payment of BFR 1 000 000 by way of compensation for the non-material damage suffered — the Court of First Instance (Fourth Chamber), composed of P. Lindh, President, and K. Lenaerts and J. D. Cooke, Judges; A. Mair, Administrator, for the Registrar, has given a judgment on 24 April 1998, in which it:

1. *Dismisses the action;*

2. *Orders the parties to bear their own costs.*

[1] OJ C 181 of 14.6.1997.

ORDER OF THE COURT OF FIRST INSTANCE
of 24 March 1998
in Case T-175/94 (92):International Procurement Services SA v Commission of the European Communities [1]

(Taxation of costs)

(98/C 166/38)

(Language of the case: French)

In Case T-175/94 (92): International Procurement Services SA, established in Brussels, represented by Peter de Troyer, of the Oudenaarde Bar, and Lydie Lorang, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 6 Rue Heine, v Commission of the European Communities (Agent: Étienne Lasnet) — application for taxation of costs made pursuant to the judgment delivered by the Court of First Instance on 11 July 1996 in Case T-175/94 International Procurement Services SA v Commission [1996] ECR II-729 — the Court of First Instance (Fifth Chamber), composed of J. Azizi, President, and R. García-Valdecasas and M. Jaeger, Judges; H. Jung, Registrar, made an order on 24 March 1998, the operative part of which is as follows:

The total amount of the costs to be reimbursed by International Procurement Services SA to the Commission shall be FF 50 000.

(1) OJ C 174 of 25.6.1994.

Action brought on 15 December 1997 by Hermínia Fernanda dos Santos Morais Antas against Council of the European Union and Commission of the European Communities

(Case T-316/97)

(98/C 166/39)

(Language of the case: Portuguese)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 December 1997 by Hermínia Fernanda dos Santos Morais Antas, residing at Vila Nova de Gaia, represented by Cristina Ferreira, Francisco Espregueira Mendes, Teresa Fonseca and Rui Guimarães Lopes, of the Oporto Bar.

The applicant claims that the Court should:

— declare the Council and the Commission jointly and severally liable, pursuant to Articles 215 and 178 of the EC Treaty, for the damage caused by virtue of the transitional and training measures necessary in the sector to which the applicant belongs;

— order the Council and the Commission jointly and severally to pay ESC 3 126 768 by way of compensation for the abovementioned damage, together with the interest accrued, at the rate of 10 %, as prescribed by law, from the date of the summons to the date on which payment is actually made;

— order the Council and the Commission to pay the costs.

Pleas in law and main arguments:

From 31 December 1992, the applicant was employed as a customs agent in the Oporto Customs Authority area. She claims to have suffered abnormal, particular and direct damage as a result of the progressive realization of the internal market, established by the Single European Act. The applicant points out that the causal factor of the damage is not held to be, in the present action, the Single Act itself but the fact that the Community institutions did not fulfil their obligation under the Single European Act, namely the obligation to introduce the appropriate compensatory and transitional measures for the retraining of customs agent in view of the new Community circumstances.

According to the applicant, by the clearly indadequate and insufficient measures adopted, the Community breached the general principles of equal treatment, protection of legitimate expectations, legal certainty, proportionality and non-discrimination.

In the applicant's view, the adoption of such measures so completely unrelated to circumstances in Portugal is tantamount to a total failure to take account of the situation there. By not taking account of the specific conditions affecting Portuguese customs officials, the Community did not act in such a way as to ensure that the damage caused to them was compensated, by way of more flexible rules, in the same way as that suffered by officials in northern European countries. In view of the conditions affecting their work as customs officials, which differ greatly from those affecting Portuguese conditions, the latter were able to take full advantage of some of the measures put in place and thus gained a competitive advantage in the market by means of the Community funds from which they were able to benefit.

Furthermore, by requiring the applicant to maintain its professional organization fully in force in order to carry out its duties until 31 December 1992, the Community did not enable the organization to be dismantled or retrained timeously in view of the circumstances of the single market and, secondly, 'fed' its hopes that its inglorious efforts would be 'rewarded'.

Finally, the applicant states that, although the Single Act constitutes an overriding Community interest, that does not justify customs officials, including the applicant, having inflicted upon them damage which is undeniably abnormal and specific without providing for them transitional and training measures which might be considered adequate.

Action brought on 15 December 1997 by David Manuel de Abreu and Others against Council of the European Union and Commission of the European Communities

(Cases T-317/97 to T-508/97)

(98/C 166/40)

(Language of the case: Portuguese)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 December 1997 by David Manuel de Abreu and Others, residing in Portugal, represented by Cristina Ferreira, Francisco Espregueira Mendes, Teresa Fonseca and Rui Guimarães Lopes, of the Oporto Bar.

The applicants claim that the Court should:

— declare the Council and the Commission jointly and severally liable, pursuant to Articles 215 and 178 of the EC Treaty, for the damage caused by virtue of the transitional and training measures necessary in the sector to which the applicant belongs;

— order the Council and the Commission jointly and severally to pay ESC 3 126 768 by way of compensation for the abovementioned damage, together with the interest accrued, at the rate of 10 %, as prescribed by law, from the date of the summons to the date on which payment is actually made;

— order the Council and the Commission to pay the costs.

Pleas in law and main arguments:

The pleas in law and main arguments are identical with those relied upon in Case T-316/97 Hermínia Fernanda dos Santos Morais Antas v Council and Commission.

Action brought on 15 December 1997 by Maria de Lurdes Esteves Afonso and Ana Paula Afonso Lourenço de Oliveira and Others against Council of the European Union and Commission of the European Communities

(Cases T-509/97 to T-517/97)

(98/C 166/41)

(Language of the case: Portuguese)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 December 1997 by Maria de Lurdes Esteves Afonso and Ana Paula Afonso Lourenço de Oliveira and Others, residing in Portugal, represented by Cristina Ferreira, Francisco Espregueira Mendes, Teresa Fonseca and Rui Guimarães Lopes, of the Oporto Bar.

The applicants claim that the Court should:

— declare the Council and the Commission jointly and severally liable, pursuant to Articles 215 and 178 of the EC Treaty, for the damage caused by virtue of the transitional and training measures necessary in the sector to which the applicant belongs;

— order the Council and the Commission jointly and severally to pay ESC 3 126 768 by way of compensation for the abovementioned damage, together with the interest accrued, at the rate of 10 %, as prescribed by law, from the date of the summons to the date on which payment is actually made;

— order the Council and the Commission to pay the costs.

Pleas in law and main arguments:

The pleas in law and main arguments are identical with those relied upon in Case T-316/97 Hermínia Fernanda dos Santos Morais Antas v Council and Commission.

Action brought on 15 December 1997 by Fernando Eugénio de Abreu and Others against Council of the European Union and Commission of the European Communities

(Cases T-518/97 to T-564/97)

(98/C 166/42)

(Language of the case: Portuguese)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 December 1997 by Fernando Eugénio de Abreu and Others, residing in Portugal, represented by Cristina Ferreira, Francisco Espregueira Mendes, Teresa Fonseca and Rui Guimarães Lopes, of the Oporto Bar.

The applicants claim that the Court should:

— declare the Council and the Commission jointly and severally liable, pursuant to Articles 215 and 178 of the EC Treaty, for the damage caused by virtue of the transitional and training measures necessary in the sector to which the applicant belongs;

— order the Council and the Commission jointly and severally to pay ESC 3 126 768 by way of compensation for the abovementioned damage, together with the interest accrued, at the rate of 10 %, as prescribed by law, from the date of the summons to the date on which payment is actually made;

— order the Council and the Commission to pay the costs.

Pleas in law and main arguments:

The pleas in law and main arguments are identical with those relied upon in Case T-316/97 Hermínia Fernanda dos Santos Morais Antas v Council and Commission.

Action brought on 15 December 1997 by João Luís de Sousa Abreu and Others against Council of the European Union and Commission of the European Communities

(Cases T-565/97 to T-595/97)

(98/C 166/43)

(Language of the case: Portuguese)

An action against the Council of the European Union and the Commission of the European Communities was

brought before the Court of First Instance of the European Communities on 15 December 1997 by João Luís de Sousa Abreu and Others, residing in Portugal, represented by Cristina Ferreira, Francisco Espregueira Mendes, Teresa Fonseca and Rui Guimarães Lopes, of the Oporto Bar.

The applicants claim that the Court should:

— declare the Council and the Commission jointly and severally liable, pursuant to Articles 215 and 178 of the EC Treaty, for the damage caused by virtue of the transitional and training measures necessary in the sector to which the applicant belongs;

— order the Council and the Commission jointly and severally to pay ESC 3 126 768 by way of compensation for the abovementioned damage, together with the interest accrued, at the rate of 10 %, as prescribed by law, from the date of the summons to the date on which payment is actually made;

— order the Council and the Commission to pay the costs.

Pleas in law and main arguments:

The pleas in law and main arguments are identical with those relied upon in Case T-316/97 Hermínia Fernanda dos Santos Morais Antas v Council and Commission.

Action brought on 11 March 1998 by Krupp Thyssen Stainless GmbH against the Commission of the European Communities

(Case T-45/98)

(98/C 166/44)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 March 1998 by Krupp Thyssen Stainless GmbH, Bochum (Federal Republic of Germany), represented by Otfried Lieberknecht, Karlheinz Moosecker and Martin Klusmann, Rechtsanwälte, of Messrs Bruckhaus Westrick Heller Löber, Düsseldorf (Federal Republic of Germany), with an address for service in Luxembourg at the Chambers of Axel Bonn, of Messrs Bonn & Schmitt, 7 Val Ste Croix.

The applicant claims that the Court should:

— annul, in so far as it concerns the applicant, the defendant's decision of 21 January 1998, as amended by the defendant's decision of 2 February 1998, communicated to the applicant on 6 February 1998, concerning a concerted practice engaged in by European producers of stainless steel with regard to alloy surcharges;

— alternatively, annul the fine imposed on the applicant by Article 2 of the decision together with Article 4 in conjunction with Article 1 of the decision;

— in the further alternative, reduce the fine imposed on the applicant by Article 2 of the decision and annul Article 4 in conjunction with Article 1 of the decision;

— order the defendant to pay the costs.

Pleas in law and main arguments:

By the contested decision, which is addressed inter alia to the applicant, the Commission found that, following a meeting in Madrid in December 1993, the applicant, along with other European producers of stainless steel, had infringed Article 65(1) of the ECSC Treaty by modifying and by applying in a concerted fashion the reference values used to calculate the alloy surcharge (the 'alloy surcharge formula') (Article 1 of the decision). In the Commission's view, that practice had been served to bring about a price increase.

The applicant was fined ECU 8 100 000 on account of that infringement (Article 2 of the decision).

Furthermore, the applicant and four other undertakings involved in the concertation were required to put an end to the infringements of Article 65(1) of the ECSC Treaty and to refrain from repeating the acts or conduct complained of and from adopting any measure having an equivalent effect (Article 4 of the decision).

The applicant contests in its entirety that decision imposing a fine. In support of its claim, it pleads non-compliance with essential procedural requirements laid down by the ECSC Treaty and by the applicable legislation implementing that Treaty.

In its first head of claim (alleging formal defects and erroneous findings of fact), the applicant complains of the following:

— it was not given adequate access to the files in the pre-litigation procedure;

— there was no pre-litigation procedure with regard to the activities of Thyssen AG in the flat stainless steel sector;

— errors in the adoption of the decision;

— erroneous assumptions concerning the application of the alloy surcharge formula;

— the matters discussed at a meeting in Madrid between various producers were incorrectly described;

— erroneous assessment of the practice followed in fixing prices;

— incorrect assumptions in the various language versions;

— inaccurate translation of items of evidence

— erroneous assessment of the effects of the formula on prices;

— the decision ignored the fact that the concerted practice was admitted.

In its second head of claim, the applicant advances the following arguments in support of its plea alleging defective legal assessment of the infringement:

— the infringement was referable to a specific point in time and was not continuous;

— (in the alternative) for the purposes of assessing the fine, the period during which the proceeding took place should have been left out of account.

In its third head of claim, the applicant complains that the fine was incorrectly assessed; it advances the following arguments in support of its plea:

— insufficient weight was attached to the fact that the defendant's legal submissions were not contested;

— failure to take account of the fact that a group of undertakings was involved;

— failure to have regard to the principle of the protection of legitimate expectations;

— a token fine was not imposed;

— the infringement was erroneously regarded as having taken place over a lengthy period;

— the applicant was placed in a particularly disadvantageous position;

— erroneous assessment of the cooperation afforded by the applicant, having regard to the scope thereof; and

— the same aspects concerning the apportionment of blame were taken into account several times over.

Finally, in its fourth head of claim, the applicant asserts that the provisions of Article 1 in conjunction with Article 4 of the decision are unlawful; in particular, it pleads:

— that they are nugatory;

— that the provision contained in Article 1 in conjunction with Article 4 of the decision is imprecise; and

— that Article 65 of the ECSC Treaty affords no sufficient legal basis for the provision requiring a particular type of conduct in the future.

Summing up, the applicant therefore asserts that the decision imposing the fine is wholly unlawful; it claims that, in any event, the operative part of the decision, as regards Articles 1 and 4 thereof, should be annulled in its entirety and that the fine imposed on the applicant by Article 2 of the decision should be substantially reduced.

Action brought on 1 April 1998 by the Netherlands Antilles against the Commission of the European Communities

(Case T-53/98)

(98/C 166/45)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 1 April 1998 by the Netherlands Antilles, represented by P. Bos and M. Slotboom, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of M. Loesch, 11 Rue Goethe.

The applicant claims that the Court should:

— annul Commission Regulation (EC) No 2553/97 of 17 December 1997 on rules for issuing import licences for certain products covered by CN codes 1701, 1702, 1703 and 1704 and qualifying as ACP/OCT originating products (OJ L 349 of 19.12.1997, p. 26);

— order the Commission to pay the costs.

Pleas in law and main arguments:

The applicant seeks annulment of the sugar implementation regulation, which lays down the detailed implementing rules for imports of sugar qualifying under the rules relating to ACP/OCT cumulation of origin in accordance with Article 108b of the OCT decision.

The sugar implementation regulation is intended to secure the limitation by the Community of imports of sugar originating, in particular, in the Netherlands Antilles. The Commission has restricted trade between the Netherlands Antilles and the Community, contrary to Community law. Those restrictions must be lifted for the remaining duration of the OCT decision. The application also includes a claim that the legal infringements complained of should not be repeated in the future. Lastly, the contested regulation imposes serious restrictions on, and thus severely affects, an important 'infant industry' in the Netherlands Antilles, namely the sugar refining sector.

The pleas in law advanced in opposition to the contested regulation allege lack of competence, infringement of essential procedural requirements and infringement of the Treaty or of rules for the implementation thereof and/or breach of general principles of Community law, in particular: illegality of Article 101(1) of the OCT decision, illegality of the origin rules contained in Title I of Annex II to the OCT decision, illegality of the amending decision on which the sugar implementation regulation is based, the fact that the sugar implementation regulation is ultra vires, infringement of Article 234 of the OCT decision,

infringement of Article 133(1) of the Treaty, infringement of Article 132(1) of the Treaty in conjunction with Article 102 of the OCT decision, infringement of Article XIII of GATT 1994 and of the WTO Agreement on import licensing procedures, infringement of Article 228(7) of the Treaty and breach of the principle of proportionality.

Action brought on 1 April 1998 by Aruba against the Commission of the European Communities

(Case T-54/98)

(98/C 166/46)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 1 April 1998 by Aruba, represented by P. Bos and M. Slotboom, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of M. Loesch, 11 Rue Goethe.

The applicant claims that the Court should:

— annul Commission Regulation (EC) No 2553/97 of 17 December 1997 on rules for issuing import licences for certain products covered by CN codes 1701, 1702, 1703 and 1704 and qualifying as ACP/OCT originating products (OJ L 349 of 19.12.1997, p. 26);

— order the Commission to pay the costs.

Pleas in law and main arguments:

The applicant seeks annulment of the sugar implementation regulation, which lays down the detailed implementing rules for imports of sugar qualifying under the rules relating to ACP/OCT cumulation of origin in accordance with Article 108b of the OCT decision.

The sugar implementation regulation is intended to secure the limitation by the Community of imports of sugar originating, in particular, in Aruba. The Commission has restricted trade between Aruba and the Community, contrary to Community law. Those restrictions must be lifted for the remaining duration of the OCT decision. The application also includes a claim that the legal infringements complained of should not be repeated in the future. Lastly, the contested regulation imposes serious restrictions on, and thus severely affects, an important 'infant industry' in Aruba, namely the sugar refining sector.

The pleas in law advanced in opposition to the contested regulation allege lack of competence, infringement of essential procedural requirements and infringement of the Treaty or of rules for the implementation thereof and/or breach of general principles of Community law, in particular: illegality of Article 101(1) of the OCT decision, illegality of the origin rules contained in Title I of Annex II to the OCT decision, illegality of the amending decision on which the sugar implementation regulation is based, the fact that the sugar implementation regulation is ultra vires, infringement of Article 234 of the OCT decision, infringement of Article 133(1) of the Treaty, infringement of Article 132(1) of the Treaty in conjunction with Article 102 of the OCT decision, infringement of Article XIII of GATT 1994 and of the WTO Agreement on import licensing procedures, infringement of Article 228(7) of the Treaty and breach of the principle of proportionality.

Action brought on 3 April 1998 by VTech Electronics (UK) plc against the Commission of the European Communities

(Case T-56/98)

(98/C 166/47)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 April 1998 by VTech Electronics (UK) plc, represented by David Milne and Rupert Baldry, with an address for service in Luxembourg at the offices of Wilson Associates, 9, Avenue Guillaume.

The applicant claims that the Court should:

— declare void the Commission decision of 26—27 January 1998 to issue a regulation which purports to reclassify for customs duty purposes a product imported by VTech from China known as the 'Smart Start Premier' and/or to declare void the ensuing regulation;

— take such further action as the Court may deem appropriate; and

— order the Commission to pay the costs.

Pleas in law and main arguments:

The applicant is a company incorporated in the United Kingdom and belongs to the worldwide VTech Group of Companies. VTech's principal activity is the sale of electronic products, in particular learning pads, electronic keyboard units programmed with a number of activities for children. The object of its application is a Commission

decision of 26—27 January 1998 ('the Decision') to issue a regulation (the Regulation) which purports to reclassify for customs duty purposes a product imported by VTech from China known as the 'Smart Start Premier'. The purported effect of the Regulation is to classify the Smart Start Premier for customs duty purposes as a 'toy' as opposed to a 'game'.

The applicant submits in this regard that prior to the Commission's decision in this case it had twice successfully appealed to the Value Added Tax and Duties Tribunal in the United Kingdom against decisions of HM Customs and Excise that products sold by the company should be classified as 'toys'. Following the outcome of those proceedings, the Tariff and Statistical Nomenclature Section (T&SNS) of the Customs Code Committee of the Commission considered the Smart Start Premier, a similar product marketed by VTech, and announced its intention to issue the Regulation.

The applicant submits that, in adopting the Decision, the Commission acted in breach of the EC Treaty, in particular Articles 28 and 29, and of the Community Customs Code, and also in breach of Community law, as regards both substance and procedure.

It understands that the Commission has referred to the Harmonised System Explanatory Notes (HSEN) as a justification for the Regulation's classifyng the product as an 'educational toy'. It submits that the HSEN do not have binding force and that they cannot override the provisions of the Common Customs Tariff (CCT) and its General Interpretative Rules. Accordingly, inasmuch as the Commission is purporting to classify a product in breach of the Community Customs Code it is thereby also purporting to alter autonomously the duties in the CCT and acting in breach of Article 28 of the EC Treaty which expressly provides that any such alteration of duties can only be decided by the Council.

From a procedural point of view, the applicant submits that:

— the reasons for the issue of the Regulation have not been adequately explained;

— it was given no opportunity to make representations concerning the Regulation before the Nomenclature Committee; and

— the Decision effectively overturns the decisions of the Tribunal which is the duly constituted court established by the United Kingdom. In so doing, it infringes the principles of legitimate expectations and legal certainty.

Removal from the register of Case T-7/97 [1]

(98/C 166/48)

By order of 25 March 1998 the President of the First Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-7/97: Miguel Vicente-Nuñez v Commission of the European Communities.

[1] OJ C 108 of 5.4.1997.

Removal from the register of Case T-170/97 [1]

(98/C 166/49)

By order of 30 March 1998 the President of the Fourth Chamber of the Court of First Instance of the European Communities has ordered the removal from the register of Case T-170/97: Michaël Tavernier v European Court of Auditors.

[1] OJ C 7 of 10.1.1998.