Action brought on 23 December 2004 by NORTRAIL Transport GmbH against the Commission of the European Communities

(Case T-496/04)

(2005/C 93/58)

(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 23 December 2004 by NORTRAIL Transport GmbH of Kiel (Germany), represented by J Krause, lawyer.

The applicant claims that the Court should

— annul the decision of the Commission dated 1 October 2004 (REM 15/02) on the application by the company NORTRAIL Transport GmbH for repayment of import duties pursuant to Article 239 of the Customs Code Regulation (EEC) No 2913/92;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Since July 1995, the applicant has continuously imported consignments of various fishery products from Norway. In the context of tariff quotas opened pursuant to Council Regulation (EC) No 3061/95 [1], the applicant applied for the duty-free release of the goods for free circulation with effect from 1 September 1995. The competent customs office determined that the customs exemption which the applicant had applied for could not be granted in respect of a certain number of consignments, and that the standard tariff rate applied. On that basis, the relevant customs office demanded that the applicant pay import duties for the release for free circulation of the goods concerned. The applicant paid part of the import duties.

The applicant argues that there are special circumstances within the meaning of Article 239 of Regulation (EEC) No 2913/1992 [2], as a result of which it is entitled to repayment and remission of import duties.

The applicant bases this assertion, among other, on the argument that a Community measure had been adopted with retrospective effect. German customs offices were informed of the opening of tariff quotas with effect from 1 September 1995 by a notice from the German Federal Ministry of Finance on 31 August 1995. On 4 October 1995, however, German customs offices were notified that those quotas had in fact been opened retrospectively with effect from 1 July 1995. In the period from 1 September 1995 when the applicant applied for the duty-free release for free circulation of the goods concerned, some of those quotas had already been used up, which to some extent was the case even before 1 September 1995, given the retrospective opening of quotas with effect from 1 July 1995.

The applicant further submits that the measure adopted is inadequate and misleading, and that the discrepancy between the date the Community measure was published and the opening date of the tariff quotas which the measure regulates and which take effect retrospectively, is misleading. This makes it possible for national customs authorities to interpret the opening date of the tariff quotas differently, which infringes the principle of non-discrimination.

---

[1] Council Regulation (EC) No 3061/95 of 22 December 1995 amending Regulation (EC) No 992/95 opening and providing for the administration of Community tariff quotas for certain agricultural and fishery products originating in Norway (OJ 1995 L 327, p. 1).

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

Action brought on 18 January 2005 by Wieland Werke AG, Buntmetall Amstetten Ges.m.b.H. and Austria Buntmetall AG against the Commission of the European Communities

(Case T-11/05)

(2005/C 93/59)

(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 18 January 2005 by Wieland Werke AG, Ulm (Germany), Buntmetall Anstetten Ges.m.b.H., Amstetten (Austria), and Austria Buntmetall AG, Enzesfeld (Austria), represented by R. Bechtold and U. Soltész, lawyers.

The applicants claim that the Court should:

— annul the decision of the Commission of 3 September 2004, amended on 20 October 2004 (Case COMP/E-1/38.069 – Copper plumbing tubes);

— in the alternative, reduce the fines imposed in the decision;

— order the Commission to pay the costs of the applicants.

Pleas in law and main arguments

In the contested decision the Commission imposed a fine on the applicants on the ground that they had infringed Article 81(1) EC by participating in a series of agreements and concerted practices consisting of price-fixing and market-sharing in the copper plumbing tubes sector.

The applicants object to that decision and argue that the renewed imposition of fines in the present case offends against the basic principle *ne bis in idem*, as the applicants had already been found by the Commission to have committed a largely similar infringement in the case of industrial tubes (COMP/E-1/38.240). The applicants submit that, in determining the amount of the fines, the Commission should have at least taken the fines which had already been imposed into account and that it is impermissible to divide up the single set of copper tubes proceedings into separate industrial tubes proceedings and plumbing tubes proceedings.

Furthermore, the applicants argue that the fine is excessive and that mandatory procedural principles, such as the duty under Article 253 EC to state the reasons on which a decision is based and the principles of proportionality and equal treatment were disregarded when the amount of the fine was being determined. The applicants base their arguments inter alia on the following provisions:

— in assessing the gravity of the infringement, the Commission based its conclusions on an inaccurate and insufficient assessment of the type of infringement, its effects on the market and the geographical scope of the agreements,

— in differentiating between the undertakings concerned, the Commission should not only have taken their market share into consideration, but also the size of the undertakings in absolute terms,

— in its decision, the Commission did not give any indication as to which principles it applied in determining the specific basic amount of the fines and did not make it unambiguously clear in its notice of objections that it was working on the premise that the rules on competition had been infringed in a particularly serious manner,

— in increasing the fine on account of the duration of the agreements, the Commission incorrectly applied its guidelines on the method of setting fines ([1]) and additionally, misjudged the fact that the limitation period of the right of recourse for important issues raised in the case had already expired,

— the Commission failed to take account of fundamental attenuating circumstances, such as the difficult state of the market, the low percentage return on sales in the copper piping market sector or the fact that the agreements were terminated immediately after the searches.

In addition, the Commission infringed the principle of equal treatment in that, inter alia, it unlawfully discriminated between undertakings involved in the cartel by applying a greater fine reduction to certain undertakings on account of cooperation outside the Leniency Notice.

Finally, the applicants claim that in terms of determining the starting amount of the fine Article 23(2) of Regulation (EC) No 1/2003 ([2]) infringes the principle of legal certainty and consequently, overriding Community law in that it grants the Commission a virtually unfettered discretion.

([1]) Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ C 9, 14.1.1998, p. 3).

([2]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition under Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 25 January 2005 by Sergio Rossi S.p.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-31/05)

(2005/C 93/60)

(Language in which the application was lodged: English)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 25 January 2005 by Sergio Rossi S.p.A., established in San Mauro Pascoli (Italy), represented by A. Ruo, lawyer.

K & L Ruppert Stiftung & Co. Handels-KG, established in Weilheim (Germany) was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the contested decision;

— order the Office for Harmonisation in the Internal Market to pay the applicant's costs.