# ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
29 April 1999 *

In Case T-120/98,

**Alce Srl**, a company incorporated under Italian law and established in Novara (Italy), represented by Celestino Corica, of the Novara Bar, with an address for service in Luxembourg at the Chambers of Franco Colussi, 36 Rue de Wiltz,

applicant,

v

**Commission of the European Communities**, represented by Paolo Stancanelli, of its Legal Service, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Italian.

APPLICATION for annulment of Commission Regulation (EC) No 1160/98 of 2 June 1998 on the classification of certain goods in the Combined Nomenclature (OJ 1998 L 160, p. 20),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges,

Registrar: H. Jung,

makes the following

## Order

### Facts of the case

1 The applicant manufactures and sells lactic ferments, of which it is the leading manufacturer in Italy, and supplies 50% of all lactic ferments used in Italy. In the manufacturing process it uses the product 'Lyostart', which is capable of supplying lactic ferments with the nourishment which they need to reproduce. That product, which the applicant imports from non-member countries, is subject to the Common Customs Tariff. In 1995 the total value of the amount which the applicant imported came to ITL 5 463 646 480, in respect of which customs duty of ITL 259 545 040 was payable.

2 Commission Regulation (EC) No 1160/98 of 2 June 1998 concerning the classification of certain goods in the Combined Nomenclature (OJ 1998 L 160, p. 20, hereinafter 'Regulation No 1160/98'), amending Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) classified the products whose composition is similar or analogous to Lyostart under tariff heading 0404 90 21 of the Combined Nomenclature (hereinafter 'CN').

3 The applicant considers that this classification is incorrect and that Lyostart comes under tariff heading 3821 00 00 of the CN. It claims that as a result of this incorrect classification it is obliged to pay an additional amount of ITL 1 769 542 240 by way of customs duty.

**Procedure and forms of order sought by the parties**

4 By application lodged at the Court Registry on 3 August 1998 the applicant brought the present action.

5 By a separate document lodged at the Registry on 7 October 1998 the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure. The applicant lodged its observations on the objection of inadmissibility on 1 December 1998.

6 In its application, as further particularised by its observations on the objection of inadmissibility, the applicant claims that the Court should:

— annul Regulation No 1160/98;

— order the unsuccessful party to pay the costs.

7 The Commission contends that the Court should:

— dismiss the application as inadmissible;

— order the applicant to pay the costs.

8 In its observations on the objection of inadmissibility the applicant claims that the Court should:

— dismiss the objection of inadmissibility raised by the Commission.

**Admissibility**

*Arguments of the parties*

9 The Commission submits that the action, which is based on the fourth paragraph of Article 173 of the EC Treaty, is inadmissible, since the applicant is neither directly nor individually concerned by Regulation No 1160/98.

10 It submits that the applicant is not individually concerned by Regulation No 1160/98 since that regulation applies to objectively determined situations and entails legal effects *vis-à-vis* a category of persons envisaged generally and in the abstract. The regulation cannot, therefore, be held to constitute a decision that was adopted in the form of a regulation.

11 Next, the Commission observes that the applicant is not adversely affected by Regulation No 1160/98 by reason of factual circumstances which cause it to be differentiated from all other persons and identify it individually like a decision would do in the case of the person to whom it is addressed. It concludes that, by its nature and its scope, the contested regulation is of a general and abstract nature and, accordingly, cannot be regarded as being of individual concern to the applicant.

12 Furthermore, according to the Commission, the applicant is not directly concerned by Regulation No 1160/98. For that to be the case, it would have to produce its effects automatically, without any need for an independent decision to be taken subsequently by a Community institution or a Member State in the exercise of a discretion. The regulation is addressed directly only to the national authorities with specific responsibility for applying the nomenclature, which in turn adopt individual decisions *vis-à-vis* importers whenever customs import declarations are drawn up. Only those decisions are of direct concern to operators importing products which come within the categories classified in the nomenclature by that regulation.

13 The applicant refers to a line of authority according to which the Community judicature must not interpret the Treaty provisions on judicial remedies restrictively.

14 It points out that even where a measure is addressed exclusively to the Member States the persons to whom it is really directed may be individuals.

15 Regulation No 1160/98 applies to importers of the products referred to therein, a general category to which the applicant belongs. A regulation relating to imports of certain products can be the subject of an action for annulment by all the importers of those products.

*Findings of the Court*

16 Under Article 114 of the Rules of Procedure, the Court may, upon application by one of the parties, adopt a decision on admissibility without examining the substance of the case. In the present case the Court considers that it has sufficient information from the documents before it and decides that it can determine the application without opening the oral procedure or examining the substance of the case.

17 Under the fourth paragraph of Article 173 of the Treaty, the admissibility of an action for annulment brought by a natural or legal person against a regulation is subject to the condition that the contested regulation is in reality a decision which is of direct and individual concern to the applicant. It is settled case-law, moreover, that the criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the measure in question (see, for example, order in Case C-168/93 *Government of Gibraltar and Gibraltar Development* v *Council* [1993] ECR I-4009, paragraph 11, and order in Case T-107/94 *Kik* v *Council and Commission* [1995] ECR II-1717, paragraph 35). An act has general application if it applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract (Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463, paragraph 9, and Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651, paragraphs 27 and 28; and order in *Kik* v *Council and Commission*, paragraph 35).

18 Regulation No 1160/98 provides that the goods described in the annex thereto are to be classified in the Combined Nomenclature under the corresponding CN codes, which are also indicated in the annex. Such a measure applies to an

objectively determined situation and entails legal effects for categories of persons regarded generally and in the abstract, in particular the importers of those products.

19 However, it is settled case-law that in certain circumstances a provision in a measure of general application may be of individual concern to certain of the economic operators concerned (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19). In such a case a Community measure may be of a legislative nature and, at the same time, *vis-à-vis* some of the individuals concerned, in the nature of a decision (Joined Cases T-481/93 and T-484/93 *Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50). That is the case where the provision in question affects natural or legal persons by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (*Codorniu* v *Council*, paragraph 20; Case T-12/93 *Comité Central d'Entreprise de la Société Anonyme de Vittel and Others* v *Commission* [1995] ECR II-1247, paragraph 36).

20 In the light of that line of decisions, it is appropriate to ascertain whether in the present case the applicant is concerned by Regulation No 1160/98 by reason of certain attributes which are peculiar to it or by reason of circumstances in which, for the purposes of that regulation, it is distinguished from all other persons.

21 The Court finds that even though the regulation is of a nature such as to affect the applicant's situation, that circumstance is not sufficient to differentiate the applicant from all other persons. The regulation concerns the applicant only by reason of its objective attribute as an economic operator importing products referred to in the regulation, in the same way as any economic operator pursuing the same activity in the European Community.

22 That finding is not invalidated by the fact that the applicant is the leading Italian producer of lactic ferments. Such a circumstance is not sufficient to cause the

applicant to be differentiated from all other operators with respect to the contested regulation, which is intended to determine generally the customs tariff classification of the products in question by reason of their importation from non-member countries into all Member States without distinction.

23 It follows from all those considerations that Regulation No 1160/98 cannot be regarded as being of individual concern to the applicant. Since the applicant fails to satisfy one of the conditions of admissibility laid down in the fourth paragraph of Article 173 of the Treaty, there is no need to consider whether it is directly concerned by that regulation.

24 The Court would observe, finally, that it is always possible for an economic operator who imports one of the products referred to in the contested regulation into the Community from a non-member country and finds that the competent authorities of the Member State into which the product is imported apply customs duties calculated on the basis of the classification, by that regulation, of the product in the CN to challenge the validity of the regulation by initiating proceedings before the courts of that Member State against the decision imposing those duties. Such proceedings could give rise to a request to the Court for a preliminary ruling under Article 177 of the Treaty on the validity of the relevant provision.

25 It follows from all the foregoing that the action must be dismissed as inadmissible.

## Costs

26 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

**1. The application is dismisssed as inadmissible.**

**2. The applicant is ordered to bear its own costs and pay those incurred by the Commission.**

Luxembourg, 29 April 1999.

H. Jung — Registrar

M. Jaeger — President