OPINION OF ADVOCATE GENERAL LÉGER

delivered on 11 July 2002 [1]

1. By this action, based on the provisions of Article 230 EC, the Kingdom of the Netherlands requests the Court of Justice to annul Commission Decision C (2000) 485 final of 23 February 2000 determining in a particular case that an application for remission of import duties is inadmissible in a specified amount and that there is no justification for remission of import duties in a separate amount. [2]

I — Legal background

A — *The relevant provisions of Regulation (EEC) No 2913/92*

3. Regulation (EEC) No 2913/92 [3] assembles in a code the provisions of Community customs law which were previously dispersed amongst a large number of Community regulations and directives. It sought furthermore to amend the customs legislation then in force in order to make it more consistent, to simplify it and to remedy certain omissions which still existed. The aim was thereby to adopt complete Community legislation in that area. [4]

2. The case relates to products falling within the inward processing customs procedure.

4. According to Article 114(1)(a) of the Code, the inward processing procedure

1 — Original language: French.

2 — Hereinafter 'the contested decision'.

3 — Regulation of the Council of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, hereinafter 'the Code').

4 — See the first and second recitals.

allows the use in the customs territory of the Community, in one or more processing operations, of non-Community goods which are intended for re-export from the customs territory of the Community in the form of compensating products, without those goods being subject to import duties.

5. Under the second indent of Article 114(2)(c) of the Code, processing operations include the processing of goods.

6. Article 114(2)(d) of the Code provides that compensating products are all those resulting from processing operations.

7. Under Article 114(2)(e) of the Code, equivalent goods are Community goods which are used instead of the import goods for the manufacture of compensating products.

8. Article 115 of the Code establishes that:

'1. Where the conditions laid down in paragraph 2 are fulfilled..., the customs authorities shall allow:

(a) compensating products to be obtained from equivalent goods;

(b) compensating products obtained from equivalent goods to be exported from the Community before importation of the import goods.

2. Equivalent goods must be of the same quality and have the same characteristics as the import goods. However, in specific cases..., equivalent goods may be allowed to be at a more advanced stage of manufacture than the import goods.

3. Where paragraph 1 applies, the import goods shall be regarded for customs pur-

poses as equivalent goods and the latter as import goods.'

9. Article 220 of the Code provides for the possible subsequent entry in the accounts of a customs debt. According to Article 220(2)(b) of the Code, there shall be no subsequent entry in the accounts of a customs debt, save in certain situations specified in that provision, where 'the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration'.

10. Article 221 of the Code provides:

'1. As soon as it has been entered in the accounts, the amount of duty shall be communicated to the debtor in accordance with the appropriate procedures.

...

3. Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred. However, where it is as a result of an act that could give rise to criminal court proceedings that the customs authorities were unable to determine the exact amount legally due, such communication may, in so far as the provisions in force so allow, be made after the expiry of such three-year period.'

11. Article 235(b) of the Code defines the concept of the 'remission' of duties.

12. According to that provision, 'remission' means 'either a decision to waive all or part of the amount of a customs debt or a decision to render void an entry in the accounts of all or part of an amount of import or export duty which has not been paid.'

13. The second indent of Article 239(1) of the Code establishes that import duties may be remitted in situations 'resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.' Remission may be made subject to special conditions.

14. Article 239(2) of the Code stipulates that '[d]uties shall be repaid or remitted for the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within 12 months from the date on which the amount of the duties was communicated to the debtor.'

B — *The relevant provisions of Regulation (EEC) No 2454/93*

15. Regulation (EEC) No 2454/93 [5] is the implementing Regulation which seeks to bring together in a single regulation the implementing provisions of Community customs law until then scattered over a large number of Community regulations and directives. Additionally, it modifies those rules in order to adapt them to the provisions of the Code and to extend their scope to take into account the comprehensive application of the Code and to formulate certain rules more precisely in order to achieve greater legal certainty in their application. Those amendments relate mainly to the provisions on customs debt. [6]

16. Article 549 of the implementing Regulation defines the principal terms used in relation to the inward processing relief arrangements.

17. Under Article 549(g):

'equivalent compensation means: the system which... allows the compensating products to be obtained from equivalent goods, which must fulfil the conditions laid down in Article 569(1)'. [7]

18. Article 589 of the implementing Regulation relates to the payment of compensatory interest. It stipulates as follows:

'1. Where a customs debt is incurred in respect of compensating products or goods in the unaltered state, [8] compensatory interest shall be paid on the import duty applicable.

2. Paragraph 1 shall not apply:

...

5 — Regulation of the Commission of 2 July 1993 laying down provisions for the implementation of [the Code] (OJ 1993 L 253, p. 1, hereinafter 'the implementing Regulation').

6 — See the second and third recitals.

7 — That provision requires that 'where use is to be made of equivalent compensation, the equivalent goods must fall within the same eight-digit subheading of the CN code, be of the same commercial quality and have the same technical characteristics as the import goods.'

8 — According to Article 84(3) of the Code, goods in the unaltered state are 'import goods which, under the inward processing procedure... have undergone no form of processing.'

— where the holder of the authorisation requests release for free circulation[9] and supplies proof that particular circumstances not arising from any negligence or deception on his part make it impossible or uneconomic to carry out the export operation under the conditions he had anticipated and duly substantiated when applying for the authorisation.

3. The request for consideration of a case under the terms of the fifth indent of paragraph 2 shall be submitted to the customs authorities indicated by the Member State which issued the authorisation. It shall be admissible only if accompanied by all the supporting documents needed for a full examination of the case.'

19. Article 589(3) of the implementing Regulation states, in essence, that, above a certain sum, customs authorities which intend to grant the request shall forward the request with a complete file to the Commission. The latter shall acknowledge receipt thereof within two months. If the Commission has not informed the Member State of any objection within two months from the date of acknowledgement of receipt, the Member State shall not charge compensatory interest.

9 — According to Article 79 of the Code, '[r]elease for free circulation shall confer on non-Community goods the customs status of Community goods.'

20. Articles 905, 907 and 908 of the implementing Regulation relate to decisions taken by the Commission pursuant to a request for remission of customs duties forwarded by a Member State under Article 239 of the Code.

21. The first subparagraph of Article 905(1) of the implementing Regulation provides that:

'[w]here the decision-making customs authority to which an application for... remission under Article 239(2) of the [Code] has been submitted cannot take a decision... , but the application is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, the Member State to which this authority belongs shall transmit the case to the Commission to be settled under the procedure laid down in Articles 906 to 909.'

22. Under Article 905(2) of the implementing Regulation, the Commission may ask for additional information to be supplied, where it is found that the information supplied by the Member State is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts.

23. According to Article 907 of the implementing Regulation, the Commission shall then decide whether or not the special situation which has been considered justifies remission.

24. Article 908(2) of the implementing Regulation provides that, on the basis of the Commission's decision, the decision-making authority shall decide whether to grant or refuse the application made to it.

II — Factual and procedural background

25. The Netherlands company Cargill BV, [10] whose business activities consist of the production of starch and glucose syrup, holds authorisation for inward processing. That authorisation allows it to import maize from third countries free of duties subject to the maize being processed into glucose, the main compensating product, [11] as well as into a number of secondary compensating products. [12] Under the terms of that authorisation Cargill must, furthermore, export those products out of the customs territory of the Community after the processing operations.

26. Over the period from 1992 to 1994, Cargill placed 65 000 t of maize under the inward processing customs procedure.

27. Cargill, by virtue of its inward processing authorisation, is entitled to use, for the production of glucose intended for export, Community goods equivalent to the imported maize and to export them before the importation.

28. In the course of inspections carried out in 1994 and 1995, the inspection department of the Netherlands Ministry of Agriculture, Nature Management and Fisheries found that the main compensating product imported by Cargill had not been obtained entirely from imported maize, but as to 25% from imported maize and as to 75% from wheat of Community origin. The two products are not classified under the same tariff heading in the combined nomenclature code.

10 — Hereinafter 'Cargill'.

11 — Under Article 549(a) of the implementing Regulation, 'main compensating products' shall mean 'the compensating products for the production of which the use of the inward processing procedure was authorised'.

12 — According to Article 549(b) of the implementing Regulation, 'secondary compensating products [are] compensating products other than the main compensating products which are a necessary by-product of the processing operation'. They are, in the case under consideration, residues from the starch industry under CN code 2303 10 11 and maize gluten animal feed under CN code 2303 10 19.

29. As a result of those inspections, the Netherlands authorities enquired of the Commission whether it authorised equivalence between the imported maize and wheat of Community origin. On 23 November 1995, the Commission responded that it could not allow such equivalence and referred, in particular, to differences in tariff protection between the two products.

30. On 18 November 1996, the Commission asked the Netherlands authorities to draw up a list of all goods placed under the inward processing procedure for the benefit of Cargill during the period 1992 to 1995 and again to report to it on notifications of irregularities or fraud.

31. The competent Netherlands authorities concluded, after making enquiries, that only part of the main compensating products exported under the inward processing procedure should be treated as having been manufactured from imported maize. They found, therefore, that the party concerned had not failed to comply with its obligations under the inward processing procedure in respect of 48 400 t of goods placed under that procedure in the period 1992 to 1994.

32. On 3 December 1996, the Netherlands authorities accordingly claimed payment from Cargill of a customs debt of NLG 17 491 244.45, corresponding to the import duties plus compensatory interest. That sum reflects the customs debt deriving from Cargill's erroneous application of the provisions relating to the inward processing procedure over the period 1992 to 1994.

33. Cargill lodged a complaint against the imposition of the customs debt. It also applied to the competent national authorities to suspend recovery of that debt in consideration of it providing a security for the amount owing. That request was granted.

34. On 2 December 1997, Cargill applied to the competent Netherlands authorities for remission of import duties.

35. On 22 April 1999, the Netherlands Government forwarded that application to the Commission. Pursuant to the application in question, the Commission adopted the contested decision.

III — The contested decision, the action and the arguments of the parties

A — *The contested decision*

36. By the contested decision, the Commission determined, first, that the application for remission of import duties was inadmissible in so far as it related to compensatory interest in the sum of NLG 732 093.78 owing under Article 589 of the implementing Regulation. In the view of the Commission, compensatory interest did not form an integral part of the customs debt. It found, accordingly, that it was not for it to rule on the matter, but that it fell to the competent national authorities alone to take a decision in that regard.

37. Second, the Commission held that the application in question was inadmissible where it related to duties on imports made before 3 December 1993. According to the Commission, those duties were time-barred, in accordance with Article 221(3) of the Code, and could no longer be claimed from the undertaking concerned. The amount in question in the case under consideration was NLG 15 679 301.49.

38. Third, the Commission found the application for remission of import duties to be unfounded to the extent that it related to the duties not forming part of the time-barred customs debt. The Commission held that the practice followed by Cargill complied with neither the regulations in force nor the terms themselves of its authorisation for inward processing. Community wheat could not be used as equivalent compensation under an authorisation for inward processing relating to the processing of maize into glucose.

39. The Commission conceded that, with the exception of the goods which could be the subject of equivalent compensation under the authorisation granted, there had been compliance with the various customs rules involved. It also found that, for several years and in relation to considerable quantities of goods, the competent customs authorities had not objected to the practice followed by Cargill. The Commission took the view, therefore, that all those circumstances together were such as to give rise to a special situation within the meaning of Article 239 of the Code. It pointed out none the less that such a situation could only lead to remission of import duties if there was no deception or obvious negligence attributable to the person concerned.

40. The Commission states that, although Cargill has not committed any deception, it has shown obvious negligence.

B — *The action and the arguments of the parties*

41. The application of the Kingdom of the Netherlands was lodged at the Registry of the Court of Justice on 27 April 2000.

42. The Kingdom of the Netherlands claims that the Court should:

— Annul the contested decision;

— Order the Commission to pay the costs.

43. The Commission claims that the Court should:

— Dismiss the action;

— Order the applicant to pay the costs.

IV — The pleas in law raised by the Netherlands Government

44. The Netherlands Government raises six pleas in law in support of its action, grouped into three heads of claim:

— first, the contested decision infringes Article 589 of the implementing Regulation and, in the alternative, the obligation to state reasons laid down in Article 253 EC, in so far as the contested decision declared inadmissible that part of the application for remission which seeks to recover compensatory interest.

— second, the contested decision infringes Article 221 of the Code, in so far as the contested decision declared part of the application in question inadmissible on the grounds that it was time-barred.

— third, the contested decision infringes Article 239 of the Code and Article 905 of the implementing Regulation, the principle of proportionality and, lastly, the duty to state reasons set out in Article 253 EC.

V — The first head of claim regarding inadmissibility of the application for remission of compensatory interest

45. The Netherlands Government submits two pleas in law in support of that head of claim. It contends primarily that, by finding its application for remission of compensatory interest to be inadmissible, the Commission infringed Article 589 of the implementing Regulation. In the alternative, it alleges that the Commission infringed the duty laid down in Article 253 EC.

Infringement of the obligation to state reasons

46. The Netherlands Government charges the Commission with failing to comply with the procedural requirements relating to the statement of reasons. According to the Government, the contested decision does not enable it to ascertain the reasons which led the Commission to hold that the part of the application for remission of customs duties relating to compensatory interest was inadmissible.

47. The Court of Justice has established the following principles in relation to the statement of reasons required under Article 253 EC. [13]

48. The statement of reasons must be appropriate to the nature of the act and must disclose clearly and unequivocally the reasoning followed by the institution in such a way as to enable the persons concerned to ascertain the reasons for the measure taken and to enable the competent court to exercise its power of review. The requirement to state reasons must be evaluated according, amongst other criteria, to the content of the measure and the interest which the addressees thereof or other parties to whom it is of concern may have in obtaining explanations. It is not necessary for the reasoning to specify all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.

49. In paragraph 14 of the contested decision, the Commission stated as follows:

'The application for remission, sent by the Netherlands authorities to the Commission

13 — Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, paragraph 19; Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraphs 15 and 16; Case C-367/95 P *Commission* v *Systraval and Brink's France* [1998] ECR I-1719, paragraph 63 and Case C-265/97 P *VBA* v *Florimex and Others* [2000] ECR I-2061, paragraph 93.

by the aforementioned letter of 22 April 1999, relates to the sum of NLG 17 491 244.45. That sum includes the compensatory interest owed under Article 62 of Regulation (EEC) No 2228/91 [14] and Article 589 of the [implementing] Regulation (NLG 732 093.78).

That compensatory interest, as taxation within the ambit of national law, does not form part of the customs debt and the Commission cannot, therefore, rule on any remission thereof. It is accordingly for the national authorities to determine that question. The application for remission is therefore inadmissible in respect of that compensatory interest.'

50. It is apparent from paragraph 14 of the contested decision that the Commission set out concisely, but clearly, the reasons in fact and law which led it to find that the application for the remission of compensatory interest incurred in respect of the customs debt was inadmissible.

51. As regards the facts, the Commission stated that the application for remission related to compensatory interest in the sum of NLG 732 093.78, arising from a customs debt in connection with the inward processing relief arrangements.

52. In relation to points of law, the Commission stated that the compensatory interest at issue should be classified as taxation. As such, it is a matter of national law and does not form part of the customs debt. The Commission concluded therefrom that it fell to the national authorities to determine whether that application was founded.

53. The Commission admittedly did not set out formally the legal texts on which it based its arguments. It should be pointed out, however, that the decision in question is directed at the national authorities responsible for customs. Given the nature of the addressees of the contested decision, the fact that there was no formal reference to the legal texts on which the Commission founded its arguments does not seem to me such as to prevent those addressees from understanding the Commission's legal arguments. The contested decision is directed, that is, at the national customs authorities, namely, professionals with a full knowledge of the subject and who are, moreover, the competent authorities under the general law.

54. I take the view, accordingly, that the contested decision does satisfy the requirements of Article 253 EC. The plea in law alleging infringement of that provision must therefore be dismissed.

14 — Regulation of the Commission of 26 June 1991 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements (OJ 1991 L 210, p. 1). That instrument was repealed and replaced by Article 589 of the implementing Regulation.

Infringement of Article 589 of the implementing Regulation

55. The Netherlands Government asserts that it is apparent from the wording of Article 589(1) of the implementing Regulation that compensatory interest must be classified as a 'customs debt', within the meaning of the Code. It points out that, under Article 589(3) of the implementing Regulation, the customs authorities must, in certain circumstances, forward the request for remission of compensatory interest to the Commission. According to the Netherlands Government, it follows from those provisions that the Commission could not refuse to determine the application for remission of compensatory interest.

56. It should be borne in mind that, according to Article 589(1) of the implementing Regulation, all customs debts give rise to the payment of compensatory interest. Article 589(2) of that Regulation sets out the exceptions to the principle that such interest is payable. Article 589(3) of the implementing Regulation details the procedure to be followed in order for the provisions of Article 589(2) of the implementing Regulation to apply.

57. It is apparent from the wording of Article 589(1) of the implementing Regulation that the compensatory interest is inseparable from the customs debt. Under that provision, '[w]here a customs debt is incurred in respect of compensating products... , compensatory interest *shall be paid* on the import duty applicable'. [15] The corresponding French expression 'donner lieu' means 'to lead to', 'to cause', implying that the compensatory interest is closely bound up with the customs debt. It is only payable if the customs debt is payable. Accordingly, if there is remission of the customs debt, as defined in Article 235(b) of the Code, the compensatory interest incurred in respect of that customs debt is not payable.

58. It follows from the foregoing that, where there is no application in the main proceedings for remission of a customs debt, the court cannot examine an application for remission of the compensatory interest arising therefrom.

59. There are, however, exceptions to that principle. Under Article 589(3) of the implementing Regulation, the Commission can, under certain circumstances, determine an application for the remission of compensatory interest.

60. Article 589(2) of the implementing Regulation establishes that the exceptions to the rule that compensatory interest is

15 — Emphasis added.

paid relate in essence to situations where goods or compensating products are 'released for free circulation'.

61. Under Article 24 EC, '[p]roducts coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State and if they have not benefited from a total or partial drawback of such duties or charges.' Under the first paragraph of Article 79 of the Code, release for free circulation confers on non-Community goods the customs status of Community goods. The second paragraph of Article 79 of the Code establishes that the customs procedure in question 'shall entail application of commercial policy measures, [16] completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due'.

62. The third subparagraph of Article 589(3) of the implementing Regulation stipulates that the Commission's competence in relation to requests for the non-payment of compensatory interest is strictly confined to situations in which, above a certain sum established in the aforementioned Article 589(3), the customs authorities intend to grant the request submitted on the basis of one of the situations listed in Article 589(2) of the implementing Regulation, that is, where there is release for free circulation of goods or compensating products.

63. In the present case, the documents before the Court show that the maize imported by Cargill is not intended for release for free circulation, but comes under the inward processing procedure.

64. It is common ground that the maize imported by Cargill was re-exported outside the Community after being processed into glucose and that no customs duty or any charge having equivalent effect was levied in a Member State when the maize was brought into the Community customs territory. Since they were not placed under the procedure for free circulation, the compensating products in question did not fall within the scope of the provisions of Article 589 of the implementing Regulation.

65. Having regard to the foregoing considerations, I am of the view that the Commission could not, on the basis of Article 589(3) of the implementing Regulation, rule on the application for non-

16 — Under Article 1(7) of the implementing Regulation, 'commercial policy measures' means non-tariff measures established, as part of the common commercial policy, in the form of Community provisions governing the import and export of goods, such as surveillance or safeguard measures, quantitative restrictions or limits and import or export prohibitions.

payment of compensatory interest submitted by Cargill to the Netherlands customs authorities. The Commission was therefore fully entitled to declare the application for non-payment of compensatory interest under Articles 589(1) and 589(3) of the implementing Regulation to be inadmissible.

66. For the sake of completeness, it should be pointed out that the national authorities have powers under the general law in relation to individual decisions on customs rules. In the present context, the Commission enjoys delegated powers strictly defined by the Code and the implementing Regulation.

67. Article 4(3) of the Code thus provides that the customs authorities [17] are the authorities competent to apply customs rules. In that capacity, they have general prima facie powers for surveillance and monitoring of the correct application of those rules by private natural or legal persons.

68. Under Article 6 of the Code, requests for individual decisions are addressed to the customs authorities.

17 — The latter are necessarily national authorities.

69. In the absence of any legal basis, it is therefore not for the Commission to rule on the application for non-payment of compensatory interest.

70. The plea in law alleging infringement of Article 589 of the implementing Regulation must therefore be dismissed.

VI — The second head of claim alleging infringement of Article 221 of the Code

71. The Netherlands Government maintains that the Commission reviewed the legality of the communication of the customs debt [18] by the national authorities. It takes the view that the Commission could not, without infringing Article 221 of the Code and the principles governing the matter, substitute its finding for that of the national authorities. The Netherlands Government contends that those authorities had, moreover, explicitly informed the Commission that the issue of prescription was the object of proceedings between the competent authorities and Cargill.

72. The Commission accepts that it is not for it to determine whether the debt is

18 — Communication of the customs debt consists, for the competent customs authorities, of notifying the debtor, in accordance with the procedures set out in the Code, of the amount of the duties to be paid (Article 221 of the Code).

time-barred, but justifies its refusal to consider the application for remission of the customs debt which arose prior to 3 December 1993 by the fact that it is apparent from the documents forwarded by the Netherlands authorities that those debts are clearly time-barred. It claims, further, that, in the context of the procedure for remission of a customs debt, submission of the matter to the Commission is conditional on the customs debt being 'effectively' recoverable. Since the debt is clearly time-barred, it is no longer effectively recoverable. The application for remission is therefore, according to the Commission, inadmissible.

73. A preliminary point to note is that, in the context of an action for annulment under Article 230 EC, the sole task of the Court of Justice is to examine whether the pleas in law raised in support of that application are well-founded. It is not for the Court to substitute its own findings for those of the maker of the decision in dispute nor to issue directions to the Community institutions.

74. Further, as has been seen,[19] the national authorities have powers under the general law in relation to individual decisions on customs rules. In that field, the Commission enjoys delegated powers, strictly defined by the Code and the implementing Regulation.

75. In common with the Netherlands Government, I believe that the Commission did exceed its powers by finding the application for remission to be inadmissible in that it was, in part, time-barred.

76. The last sentence of Article 221(3) of the Code provides expressly that, where the customs authorities have been unable to determine the exact amount of duties legally due, as the result of an act that could give rise to criminal court proceedings, those authorities may communicate the customs debt to the debtor after expiry of the period laid down in the aforementioned Article 221(1) (that is, a period of three years from the date on which the debt arose). It follows from that provision that the involvement of the criminal courts may be relevant to the time-barring of the customs debt. Prescription and, in particular, the ability to stop time running and the manner it which it may be stopped, are the exclusive preserve of national law and the powers of review of the national court. Accordingly, only the national court, hearing an action contesting communication of a customs debt, is competent to determine whether the requirements are satisfied to allow the debt to be communicated after expiry of the three-year period established in the last sentence of Article 221(3) of the Code.

77. The Netherlands Government also disputes the premiss on which the Commis-

19 — Paragraphs 58 to 61 of this Opinion.

sion bases its arguments. In its view, the Commission cannot claim that the customs debt at issue is time-barred since the national authorities expressly informed it that the issue of prescription was the object of proceedings between the customs authorities and Cargill.

78. I likewise take the view that the Commission was not entitled to find the customs debt which arose before 3 December 1993 to be manifestly time-barred. By ruling thus, the Commission therefore substituted its finding for that of the national authorities and exceeded the powers conferred on it by the Code.

79. Unlike the Commission, I do not believe that submission of the matter to the Commission, in the context of the remission procedure, is conditional on proving that the customs debt is 'effectively' recoverable. The Commission's stance amounts to making the right to bring a case before it, in the context of an application for the remission of customs duties, subject to a condition not laid down in Article 239 of the Code or Article 905 of the implementing Regulation. [20]

80. It is apparent from the wording of Article 239 of the Code and Article 905 of the implementing Regulation that only two conditions must be satisfied in order for a party to submit to the Commission an application for remission of customs duties by the Member State to which the competent national authority belongs. On the one hand, the competent national authority must be unable itself to determine the merits of the application. On the other, the application must be supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

81. Article 905 of the implementing Regulation does not set a time-limit for submitting the matter to the Commission, any more than it defines when that submission must take place. One must conclude that, in the context of Article 905 of the implementing Regulation, it is for the Member State to which the competent national authority belongs to decide the appropriate time to bring the matter before the Commission. Accordingly, where there is an action relating to the prescription of a customs debt, the Member State in question must be able to submit the matter to the Commission before final disposal of that action.

82. It emerges from the foregoing considerations that the Commission, by finding the part of the application for remission of the customs debt relating to the debt arising prior to 3 December 1993 to be inadmiss-

20 — Article 239 of the Code states, it should be noted, that the competent customs authority may remit import duties (paragraph 2) in circumstances in which there is no deception or obvious negligence attributable to the person concerned (paragraph 1, second indent). Article 905 of the implementing Regulation stipulates that, where the decision-making customs authority to which an application for remission under Article 239(2) of the Code has been submitted cannot take a decision and the application is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, the Member State to which that authority belongs shall transmit the case to the Commission to be settled under a specific procedure.

ible on the grounds that it was time-barred, infringed the provisions of the last sentence of Article 221(3) of the Code. I therefore propose that the Court should annul the contested decision in that regard.

VII — Third head of claim relating to the unfounded nature of the application for remission of the customs duties not forming part of the time-barred customs debt

83. The Netherlands Government submits three pleas in law in support of this head of claim. It contends that the Commission infringed Article 905 of the implementing Regulation by finding the application for remission of the customs duties not forming part of the time-barred customs debt to be unfounded. In the alternative, it asserts that the Commission infringed the principle of proportionality. In the further alternative, it submits that the Commission breached the duty under Article 253 EC by failing to comply with the procedural requirements relating to the statement of reasons.

The plea in law alleging infringement of the duty to state reasons (Article 253 EC)

84. The Netherlands Government accuses the Commission of failing to comply with the procedural requirements relating to the statement of reasons. In its view, the contested decision does not enable it to ascertain the reasons which led the Commission to hold that the part of the application for remission of customs duties relating to the part of the customs debt which was not time-barred was unfounded. It charges the Commission in particular with failing to state the grounds on which it determined that the penalty complied with the principle of proportionality.

85. As regards the statement of reasons required by Article 253 EC, the Court of Justice has, as we have seen, established a number of principles.

86. According to the settled case-law of the Court, a decision complies with the requirements of Article 253 EC even if it does not specify all the relevant facts and points of law on which the author based its decision. Compliance with the requirements of Article 253 EC must also be assessed on the basis of the context and the legal rules governing the matter.

87. Admittedly, the contested decision does not mention the grounds on which its author considers the penalty to be proportionate. However, paragraphs 24 to 35 of that decision show that the Commission dwelt at length on the reasons which led it to hold that Cargill had shown obvious negligence. Thus, in paragraph 26, it set out in what way Cargill revealed itself to

have professional expertise in the field. Likewise, in paragraph 27, it stated in what respects the customs rule which gave rise to the error was not complex. Cargill's lack of diligence was also set out in detail in paragraphs 30 to 35. The Netherlands Government was therefore in a position to know the grounds in fact and law on the basis of which the Commission found to be ill-founded the application for remission of customs duties in relation to the part of the debt which was not time-barred and drew the consequences of that finding laid down by the Code, namely that it should require payment of the customs duties due irrespective of the advantage the infringer actually obtained.

88. The plea in law alleging infringement of Article 253 EC should therefore be dismissed.

The plea in law alleging infringement of Article 905 of the implementing Regulation

89. According to the Netherlands Government, the Commission misapplied the concept of 'obvious negligence' referred to in Article 905 of the implementing Regulation. The Government takes the view that Cargill did indeed have extensive professional experience in the agricultural products sector, but that it would be wrong to conclude that, as a result of that experience, Cargill should have realised that it could not use wheat in place of maize for the manufacture of the exported glucose. It submits three arguments seeking to establish that the Commission was wrong to find Cargill had been obviously negligent.

90. First, it contends that the contested decision shows that the Commission imposed more stringent requirements on the party concerned than those which the competent authorities were capable of satisfying. As the Commission itself stated, the competent customs authorities raised no objection to the transactions of the party concerned, even though they had been carried out for many years.

91. Second, the Netherlands Government submits that Cargill was entitled to take the view that the products used were equivalent products, on the basis of the arguments set out by the Commission in a letter of 15 December 1994 sent to the Netherlands authorities responsible for issuing inward processing authorisations. It emerges from that letter, the Netherlands Government argues, that Waxy maize and standard quality maize could be treated as equivalent:

'... even if maize of that particular quality [the Waxy maize] is used, that maize,

mixed with standard quality maize, may be accepted to the extent that the quality benefits, as regards part at least, even if not entirely, have been waived.'

92. According to the Netherlands Government, the Commission accepts that various varieties of maize are equivalent in so far as the maize is processed into a number of categories of compensating products. Pursuing that line of argument, the Netherlands Government maintains that it was permissible to deem maize and wheat to be interchangeable raw materials for the purposes of the manufacture of an identical compensating product, that is, glucose.

93. Third, the Netherlands Government draws attention to the fact that the practice adopted by the party concerned is a common practice in Europe. In view of the circumstances one cannot therefore, it asserts, describe the conduct of the party concerned as 'negligent' and even less charge it with obvious negligence.

94. In the alternative, the Netherlands Government maintains that, in any event, the application of Article 905 of the implementing Regulation in the contested decision contravenes the principle of proportionality. The procedure resulted in a total customs debt of NLG 17 491 244.45 whilst, for the whole of the period in question, the company made a relatively modest profit estimated at NLG 710 700. Under those circumstances, and bearing in mind the facts of the case, the Government argues that it would be disproportionate not to remit the customs debt, that debt being higher than the advantage obtained by the party concerned, as Cargill stated in its application to the customs authorities.

95. The Netherlands Government adds that the Commission did not formally rule on the aforementioned claim and that, for that reason also, the contested decision cannot stand.

96. As the Commission quite rightly indicated, the concept of 'obvious negligence' within the meaning of the Code and the implementing Regulation has been addressed in abundant case-law of this Court. That case-law delineates the following principles.

97. First, the concept must be interpreted in such a way that the number of cases of remission remains limited. In *Söhl & Söhlke*,[21] the Court of Justice accordingly held that 'the repayment or remission of import... duties, which may be made only

21 — Case C-48/98 *Firma Söhl & Söhlke* v *Hauptzollamt Bremen* [1999] ECR I-7877.

under certain conditions and in cases specifically provided for, constitutes an exception to the normal import and export procedure and, consequently, the provisions which provide for such repayment or remission are to be interpreted strictly. Since a lack of "obvious negligence" is an essential condition of being able to claim repayment or remission of import or export duties, it follows that that term must be interpreted in such a way that the number of cases of repayment or remission remains limited'. [22] It is in the light of the foregoing considerations that one must interpret the concept of obvious negligence.

98. Second, in order to assess whether there is 'obvious negligence' within the meaning of Article 239 of the Code and Article 905 of the implementing Regulation, regard must be had to the precise nature of the error and the professional experience of, and the care taken by, the trader. [23]

99. Those three cumulative criteria have likewise been the subject of abundant case-law which can be summarised in outline as follows.

100. As regards the first criterion relating to the precise nature of the error, the Court of Justice has held that this amounts in fact to assessing the complexity of the provisions non-compliance with which resulted in the customs debt being incurred. [24]

101. As regards the second criterion relating to the professional experience of the trader, it is necessary to examine whether or not he is a trader whose business activities consist mainly in import and export transactions and whether he had already gained some experience in the conduct of such transactions. [25]

102. Further, in relation to the third criterion of the care taken by the trader, the Court of Justice has held that, wherever he has doubts as to the exact application of the provisions non-compliance with which may result in a customs debt being incurred, the onus is on the trader to make inquiries and seek all possible clarification to ensure that he does not infringe the provisions in question. [26]

103. It is for the relevant competent authorities to determine whether there is no obvious negligence on the part of the trader. Since the Netherlands Government forwarded the application for remission of

22 — Ibid. (paragraph 52).
23 — Ibid. (paragraph 55).
24 — Ibid. (paragraph 56).
25 — Ibid. (paragraph 57).
26 — Ibid. (paragraph 59).

customs duties to the Commission, it falls to the Commission to determine whether the conditions enabling it to find that there was no obvious negligence are fulfilled.

104. In the context of an action under Article 230 EC, the Court of Justice must examine whether the Commission erred in its assessment of the facts, having regard to the evidence produced. In any event, the party alleging it must prove any such erroneous assessment.

105. The second criterion presents no difficulty. The Netherlands Government acknowledges that Cargill is a major undertaking with extensive experience in the field of inward processing. It is common ground that it participates in, or has participated in, numerous procedures, including customs procedures, in connection with the common agricultural policy. Cargill was therefore adjudged, rightly, to be a trader whose activities consist, mainly, in import and export transactions and which had acquired undisputed experience in the conduct of such transactions.

106. As regards the first criterion relating to the nature of the error, the Commission explained, in paragraph 27 of the contested decision, that the rules whose erroneous application gave rise to the customs debt were not at all complex. Under Article 549(g) and Article 569(1) of the implementing Regulation, compensating products can only be obtained from equivalent goods if the latter fall within the same eight-digit subheading of the CN code, are of the same commercial quality and have the same technical characteristics as the import goods.

107. In the case under consideration, Cargill had to ascertain whether the wheat could be treated as goods equivalent to the maize intended for processing for which the inward processing authorisation had been granted. To do so, Cargill had only to check whether the two products fell within the same eight-digit subheading of the CN code. In fact, that condition is not satisfied, since the two products in question are not within the same subheading of the CN code.

108. It is apparent from the foregoing that the Commission did not commit an error of assessment in finding that the rules which Cargill failed to apply, and which gave rise to the customs debt, were not complex. The Code's definition of equivalent goods is, in fact, clear and simple.

109. The Netherlands Government's argument based on the Commission's letter regarding equivalence between Waxy

maize and standard quality maize does not seem to me such as to justify Cargill's error. In contrast to the terms of that letter, the issue, in the present case, is not one of assessing the equivalence between two types of maize, but of ascertaining the equivalence between maize and wheat which are, intrinsically, different products. As regards the concept of 'equivalence', one should note that the equivalence between two products is determined on the basis of the import goods and not of the finished product. Article 115(1) of the Code and Article 549(g) of the implementing Regulation leave no room for ambiguity on that point. According to those provisions, there can only be equivalent compensation where the compensating products are obtained 'from equivalent goods'. The fact that the products once processed may have the same characteristics and be interchangeable is therefore irrelevant for the purposes of their classification as 'equivalent products'. Furthermore, it seems to me surprising, to say the least, given its experience and knowledge of the customs procedure in question, that a trader such as Cargill, in doubt as to the interpretation of the concept of 'equivalent goods' in Article 115(1) of the Code and Article 549(g) and 569 of the implementing Regulation, did not see fit to dispel that purported ambiguity by making more specific enquiries of the competent authorities. Cargill's failure to do so thus indicates that it did not act with the diligence which this Court requires in that regard.

110. Nor do I consider well-founded the argument that an importer cannot be required to have more extensive knowledge than the customs officials. This Court has in fact explicitly rejected such a view on the grounds that to establish any such principle 'would have the consequence that it would be practically impossible to effect post-clearance recovery since the error will inevitably always have been committed by the official concerned failing to examine all the aspects of a factual or legal situation'. [27] It has accepted none the less that it was necessary to look specifically at all the circumstances of the case in order to determine whether or not the error was detectable by the trader in question. [28] In that regard, the competent authority charged with assessing the circumstances had to take into account the nature of the error and the professional experience of, and the care taken by, the trader. [29]

111. Having regard to the fact that the applicable rules were not complex and Cargill's experience in the field, I take the view that the Commission did not err in finding that such a trader was unjustified in treating maize and wheat as equivalent products.

112. As regards the third criterion, I have already stated that Cargill's conduct did not seem to me to be the diligent conduct required by the case-law of this Court.

27 — Case C-64/89 *Hauptzollamt Gießen* v *Deutsche Fernsprecher* [1990] ECR I-2535, paragraph 17.

28 — Ibid. (paragraph 18).

29 — Ibid. (paragraphs 19 and 23).

113. It emerges from all the foregoing considerations that the Commission did not, in dismissing the application for the remission of duties not forming part of the time-barred debt, infringe the provisions of Article 239 of the Code and Article 905 of the implementing Regulation.

The plea in law alleging infringement of the principle of proportionality

114. The Netherlands Government submits, in the alternative, that, by reason of the discrepancy between the amount of the duty claimed by the customs authorities and the modest financial advantage which, in its view, Cargill obtained, the contested decision infringes the principle of proportionality.

115. In that regard, the Court of Justice has invariably held that Article 859 of the implementing Regulation establishes an exhaustive set of rules on failures to fulfil obligations, within the meaning of Article 204(1)(a) of the Customs Code, which 'have no significant effect on the correct operation of the... customs procedure in question'. [30] It is apparent from that case-law that failure to perform one of the obligations laid down by the customs procedure under which the goods are placed does not give rise to a customs debt provided the failure in question does not have a significant effect on the correct operation of the procedure. That condition is only fulfilled if the failure at issue is contained in the list set out in Article 859 of the implementing Regulation.

116. In this case, Cargill's failures to fulfil its obligations do not appear in the list of those which 'have no significant effect on the correct operation of the customs procedure in question' according to Article 859 of the implementing Regulation. The penalty imposed by the Commission as a result of Cargill's failure to comply with the customs requirements cannot, therefore, be adjudged disproportionate.

VIII — Costs

117. Under Article 69(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.

118. Since the Kingdom of the Netherlands has been unsuccessful in the essential aspects of its submissions and the Commission has applied for an order for costs against that Member State, I take the view that the Court should make such an order.

30 — *Söhl & Söhlke*, cited above (paragraph 43).

IX — Conclusion

119. In view of the foregoing, I therefore propose that the Court should:

— annul Commission Decision C (2000) 485 final of 23 February 2000 determining in a particular case that an application for remission of import duties was inadmissible in a specific amount and that there was no justification for remission of import duties in another amount, in that it finds the application for remission to be inadmissible in so far as it relates to duties in connection with imports made prior to 3 December 1993, in the sum of NLG 15 679 301.49, which duties it found to be time-barred, under Article 221(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, and no longer recoverable from the Netherlands company Cargill BV;

— dismiss the action in all other respects, and

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