# JUDGMENT OF THE COURT (Sixth Chamber)

27 September 2001 *

In Case C-253/99,

REFERENCE to the Court under Article 234 EC by the Finanzgericht Bremen (Germany) for a preliminary ruling in the proceedings pending before that court between

**Bacardi GmbH**

and

**Hauptzollamt Bremerhaven,**

on the interpretation of Articles 236 and 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), and of Article 905(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 1676/96 of 30 July 1996 (OJ 1996 L 218, p. 1),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet, R. Schintgen (Rapporteur), F. Macken and N. Colneric, Judges,

Advocate General: F.G. Jacobs,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Bacardi GmbH, by H. Wrobel, Diplom-Finanzwirt, and F. Boulanger, Rechtsanwältin,

— Commission of the European Communities, by J.C. Schieferer, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Bacardi GmbH, represented by H. Wrobel, F. Boulanger and J. Lüdicke, Rechtsanwalt, and the Commission, represented by J.C. Schieferer, at the hearing on 23 November 2000,

after hearing the Opinion of the Advocate General at the sitting on 25 January 2001,

gives the following

## Judgment

1 By order of 1 June 1999, received at the Court on 7 July 1999, the Finanzgericht (Finance Court) Bremen referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Articles 236 and 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, 'the Customs Code'), and of Article 905(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 1676/96 of 30 July 1996 (OJ 1996 L 218, p. 1, 'the implementing regulation').

2 Those questions were raised in proceedings between Bacardi GmbH, an importer of alcoholic drinks, and the Hauptzollamt (Principal Customs Office) Bremerhaven ('the Hauptzollamt') concerning the repayment of import duties.

### The relevant Community provisions

3 Article 20 of the Customs Code provides as follows:

'1. Duties legally owed where a customs debt is incurred shall be based on the Customs Tariff of the European Communities.

...

3. The Customs Tariff of the European Communities shall comprise:

(a) the combined nomenclature of goods;

(b) ...

(c) the rates... normally applicable to goods covered by the combined nomenclature...;

(d) the preferential tariff measures contained in agreements which the Community has concluded with certain countries or groups of countries and which provide for the granting of preferential tariff treatment;

(e) the preferential tariff measures adopted unilaterally by the Community in respect of certain countries, groups of countries or territories;

(f) ...

(g) other tariff measures provided for by other Community legislation'.

*Favourable tariff treatment*

4 In accordance with Article 21 of the Customs Code:

'1. The favourable tariff treatment from which certain goods may benefit by reason of their nature or end-use shall be subject to conditions laid down in accordance with the Committee procedure. Where an authorisation is required Articles 86 and 87 shall apply.

2. For the purposes of paragraph 1, the expression "favourable tariff treatment" means a reduction in or suspension of an import duty as referred to in Article 4(10), even within the framework of a tariff quota.'

5 Article 26(1) of the implementing regulation provides:

'Classification under the tariff subheadings listed in column 2 of the table below of the goods listed against each subheading in column 3, imported from the countries shown in column 5, shall be subject to the presentation of certificates meeting the requirements specified in Articles 27 to 34.

...

Certificates of authenticity apply to grapes, whisky and tobacco, certificates of designation of origin to wine, and certificates of quality to sodium nitrate.'

6 It follows from the table annexed to Article 26 of the implementing regulation that Bourbon whiskey, in containers holding 2 litres or less, may be classified under Combined Nomenclature ('CN') subheading 2208 30 11, provided that the declarant presents a valid certificate of authenticity.

7 Article 29(1) of the implementing regulation provides *inter alia* that, in respect of certain products, including Bourbon whiskey, the certificate is to be presented to the customs authorities of the importing Member State, together with the goods to which it relates, within three months of the date of its issue.

*Preferential tariff treatment*

8 Article 27 of the Customs Code provides:

'The rules on preferential origin shall lay down the conditions governing acquisition of origin which goods must fulfil in order to benefit from the measures referred to in Article 20(3)(d) or (e).

Those rules shall:

(a) in the case of goods covered by the agreements referred to in Article 20(3)(d), be determined in those agreements;

(b) in the case of goods benefiting from the preferential tariff measures referred to in Article 20(3)(e), be determined in accordance with the Committee procedure.'

9 The provisions implementing Article 27, second subparagraph, (b) of the Customs Code are to be found in Chapter 2, entitled 'Preferential origin', of Title IV, entitled 'Origin of goods', of Part I entitled 'General Implementing Provisions' of the implementing regulation. Section 1 of that Chapter which is entitled 'Generalised system of preferences' contains in Subsection 2 (Articles 77 to 91) special provisions on the proof of preferential origin for the purposes of the 'Generalised system of preferences'.

10 Article 77(1) of the implementing regulation is worded as follows:

'Originating products within the meaning of this Section shall be eligible, on importation into the Community, to benefit from the tariff preference... on production of a certificate of origin Form A... issued either by the customs authorities, or by other competent governmental authorities of the exporting beneficiary country...'.

11 Article 82 of the implementing regulation provides:

'1. A certificate of origin Form A must be submitted, within 10 months of the date of issue by the competent governmental authority of the exporting beneficiary country, to the customs authorities of the importing Member State where the products are presented.

2. Certificates of origin Form A submitted to the customs authorities in the Community after expiry of the period of validity stipulated in paragraph 1 may be accepted... where the failure to observe the time-limit is due to force majeure or to exceptional circumstances.

3. In other cases of belated presentation, the customs authorities of the importing Member State may accept the certificates where the products have been presented to them within the period laid down in paragraph (1).'

*Customs declarations*

12 Under Article 59(1) of the Customs Code, all goods intended to be placed under a customs procedure are to be covered by a declaration for that customs procedure. For customs declarations made in writing, the normal procedure is defined in Articles 62 to 75 of the Customs Code, while the simplified procedure is defined in Article 76.

13 Article 76(1) of the Customs Code provides:

'In order to simplify completion of formalities and procedures as far as possible while ensuring that operations are conducted in a proper manner, the customs authorities shall, under conditions laid down in accordance with the committee procedure, grant permission for:

(a) the declaration referred to in Article 62 to omit certain of the particulars referred to in paragraph 1 of that Article for some of the documents referred to in paragraph 2 of that Article not to be attached thereto;

...

The simplified declaration, commercial or administrative document or entry in the records must contain at least the particulars necessary for identification of the goods. Where the goods are entered in the records, the date of such entry must be included.'

14 Article 253(1) of the implementing regulation provides:

'The procedure for incomplete declarations shall allow the customs authorities to accept, in a duly justified case, a declaration which does not contain all the particulars required, or which is not accompanied by all documents necessary for the customs procedure in question.'

15 Article 255 of the implementing regulation is worded as follows:

'1. Declarations for release for free circulation which the customs authorities may accept at the declarant's request without their being accompanied by certain of the necessary supporting documents shall be accompanied at least by those documents which must be produced before the goods declared can be released for free circulation.

2. By way of derogation from paragraph 1, a declaration not accompanied by one or more of the documents required before the goods can be released for free circulation may be accepted once it is established to the satisfaction of the customs authorities that:

(a) the document concerned exists and is valid;

(b) it could not be annexed to the declaration for reasons beyond the declarant's control;

(c) any delay in accepting the declaration would prevent the release of the goods for free circulation or make them liable to a higher rate of duty.

Data relating to missing documents shall in all cases be indicated in the declaration.'

*Repayment and remission of duties*

16 With regard to the repayment and remission of duties, Article 236 of the Customs Code provides:

'1. Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

...

No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.

2. Import duties or export duties shall be repaid or remitted upon submission of an application to the appropriate customs office within a period of three years from the date on which the amount of those duties was communicated to the debtor.

...'

17 Article 239 of the Customs Code states:

'1. Import duties or export duties may be repaid or remitted in situations other than those referred to in Articles 236, 237, and 238:

— to be determined in accordance with the procedure of the committee;

— resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned. The situations in which this provision may be applied and the procedures to be followed to that end shall be defined in accordance with the Committee procedure. Repayment or remission may be made subject to special conditions.

2. Duties 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.

...'

18 Article 890 of the implementing regulation, which lays down implementing provisions common to Articles 236 and 239 of the Customs Code, provides:

'Where a certificate of origin, movement certificate, internal Community transit document or other appropriate document is produced in support of an application for repayment or remission, indicating that the imported goods were eligible, at the time of acceptance of the declaration for free circulation, for Community treatment or preferential tariff treatment, the decision-making customs authority shall grant such application only where it is duly established:

— that the document thus produced refers specifically to the goods in question and that all the conditions relating to acceptance of the said document are fulfilled,

— that all the other conditions for the granting of the preferential tariff treatment are fulfilled.

Repayment or remission shall take place upon presentation of the goods. Where the goods cannot be presented to the implementing customs office, the latter shall grant repayment or remission only where it has information indicating unequivocally that the certificate or document produced post-clearance applies to the said goods.'

19 Articles 900 and 905 of the implementing regulation contain implementing provisions specific to Article 239 of the Customs Code.

20 Article 900(1)(o) of the implementing regulation provides:

'1. Import duties shall be repaid or remitted where:

...

(o) the customs debt has been incurred otherwise than under Article 201 of the Code and the person concerned is able to produce a certificate of origin, a movement certificate, an internal Community transit document or other appropriate document showing that if the imported goods had been entered for free circulation they would have been eligible for Community treatment or preferential tariff treatment, provided the other conditions referred to in Article 890 were satisfied.'

21 In accordance with the first subparagraph of Article 905(1) of the implementing regulation:

'Where the decision-making customs authority to which an application for repayment or 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.'

## The dispute in the main proceedings

22 On 10 September 1996 Bacardi declared to the Hauptzollamt 12 960 bottles of 'Jack Daniel's Whiskey' from the United States of America, each containing 0.7 litres, packed in cases of 6 bottles, for release into free circulation in the Community. The goods were declared under CN subheading 2208 30 82, which refers to whiskies 'other' than Bourbon whiskey or Scotch whisky in containers holding 2 litres or less.

23 After accepting the customs declaration, the Hauptzollamt by decision of 11 September 1996 set the import duties at DEM 2 786.92 customs duty on importation into the Community customs territory and DEM 25 117.88 import turnover tax.

24 By letter of 2 October 1996 Bacardi submitted a certificate of authenticity relating to the goods in question and applied for them to be reclassified under CN subheading 2208 30 11, which refers to 'Bourbon whiskey' in containers holding 2 litres or less. The reclassification requested by Bacardi would have led to a repayment of DEM 1 045.10 customs duty. As Bacardi indicated at the hearing, the certificate of authenticity in question had been applied for in July or August 1996 but was not issued by the US authorities until 17 September 1996, that is to say, after the customs declaration had been accepted by the Hauptzollamt.

25 The Hauptzollamt rejected that application for repayment by decision of 19 September 1997. Bacardi lodged an objection which the Hauptzollamt dismissed as unfounded by decision of 28 November 1997.

26 On 23 December 1997 Bacardi instituted proceedings before the Finanzgericht Bremen, claiming in particular that the Community customs legislation permits a

post-clearance presentation of a certificate of authenticity in order to obtain favourable tariff treatment. It argued that Article 21 of the Customs Code supplemented the other favourable tariff measures, such as those laid down in Article 20(3)(d) and (e) of the Customs Code, and that, in short, a certificate of authenticity played the same part as a certificate presented for the purposes of the application of preferential tariff treatment.

27 In this connection, Bacardi also maintained that an error had crept into the wording of Article 29(1) of the implementing regulation. The requirement to 'present' (in the German, 'vorzulegen') the certificate of authenticity to the customs authorities of the importing Member State 'with' (in the German, 'zusammen mit') the goods was not only at variance with the wording of the Customs Code and elsewhere in the implementing regulation, but also unfeasible in practice. Article 29(1) of the implementing regulation must in any event be interpreted in the light of Article 82(1) and (3) of the same regulation, by virtue of which it was not necessary to produce the certificate of origin Form A at the same time as the goods it covered in order to obtain preferential tariff treatment.

28 Bacardi added that the customs declaration of 10 September 1996 was an incomplete declaration within the meaning of Article 254 of the implementing regulation which had been completed within both the period allowed for the simplified procedure and the period during which the certificate of authenticity remained valid. The goods in issue in the main proceedings ought consequently to be eligible for the favourable tariff treatment sought.

29 Taking the view, therefore, that the duties in question were not legally owed, Bacardi argued that they must be repaid pursuant to Article 236(1) of the Customs Code and Article 890 of the implementing regulation. Since the certificate of authenticity constituted, in its opinion, an 'other appropriate document' within the meaning of Article 890 of the implementing regulation, its

production within the period of three years from the date on which the amount of the import duties claimed was communicated ought to make it possible to obtain repayment of duties overpaid.

30 In the alternative, Bacardi sought repayment of the import duties on the basis of the second indent of Article 239(1) of the Customs Code and Article 905 of the implementing regulation, on the ground that it was placed in a 'special situation resulting from circumstances in which no deception or obvious negligence may be attributed' to it, within the meaning of Article 905(1) of the implementing regulation.

31 The Hauptzollamt replied that, according to the second indent of Article 29(1) of the implementing regulation, the certificate of authenticity must be produced 'together with the goods to which it relates'. Given that that did not happen in the circumstances of the case in the main proceedings, the goods in issue were not, in its view, eligible for the favourable tariff treatment sought, and the import duties paid by Bacardi were lawfully payable at the time they were set. Consequently, Bacardi was not placed in one of the situations referred to in Articles 236 to 239 of the Customs Code.

32 The Hauptzollamt maintained that only if the goods in issue had been declared as 'Bourbon whiskey' without presentation of a certificate of authenticity could the customs declaration have been regarded as incomplete, which was not the case. Moreover, it would have been impossible for it to have accepted such an incomplete declaration since the certificate of authenticity did not exist at the time the goods were released into free circulation.

33 Finally, in the circumstances of this case any repayment under Article 239 of the Customs Code was excluded also, according to the Hauptzollamt, and there was no need to transmit the case to the Commission under Article 905 of the

implementing regulation since the evidence relied upon did not amount to a special situation for the purposes of that provision.

34 Considering that the outcome of the dispute depended on the interpretation of Articles 236 and 239 of the Customs Code and of Article 905(1) of the implementing regulation, the Finanzgericht Bremen has decided to stay proceedings and refer the following two questions to the Court for a preliminary ruling:

'1. Can import duties be repaid under Article 236 of the Customs Code in the case where the importer of Bourbon whiskey imported from the USA entered the Code Number 2208 30 82 in the customs declaration of 10 September 1996, and only on 2 October 1996, on submission of a certificate of authenticity corresponding to Annex 5 to the regulation implementing the Customs Code, applied for classification under subheading 2208 30 11 of the Combined Nomenclature, which would result in application of a lower rate of customs duty?

2. If the answer to Question 1 is in the negative:

Can it be concluded that these circumstances constitute "a special situation" which — if the other legislative conditions are satisfied — may lead to repayment of the import duties under Article 239 of the Customs Code in conjunction with Article 905(1) of the regulation implementing the Customs Code?'

## The first question

35 As a preliminary point, it must be found, as the national court has done, that inasmuch as, in the case in the main proceedings, Bacardi did not, when making the customs declaration, declare the imported goods as 'Bourbon whiskey' eligible for favourable tariff treatment or indicate that a certificate of authenticity in respect of those goods was still outstanding, there was no presentation of an incomplete customs declaration. Accordingly, in order to answer the first question there is no need to take into account the Community legislation concerning incomplete customs declarations.

36 In consequence, by its first question the national court seeks in substance to ascertain whether Article 236(1) of the Customs Code must be interpreted as permitting the repayment of import duties where, after a complete customs declaration has been accepted by the customs authorities and the goods covered by it have been released into free circulation, the declarant presents a certificate of authenticity by virtue of which the goods would, supposing the certificate to have been produced with the goods, have been eligible for favourable tariff treatment.

37 First, it is clear that, as the national court has pointed out, a literal interpretation of Article 236(1) of the Customs Code does not permit repayment of import duties in a situation such as that in issue in the main proceedings. It is apparent from reading Article 26(1) of the implementing regulation in conjunction with Article 29(1) thereof that a certificate of authenticity does not serve merely to prove that the goods to which it relates satisfy the necessary conditions for eligibility for favourable tariff treatment, but also that its production 'together with' those goods is a precondition for the existence of the right to favourable tariff treatment.

38 If, therefore, because the certificate of authenticity has not been presented together with the goods to which it relates, import duties are levied but it is impossible to take into consideration any favourable tariff treatment, those duties are legally owed within the meaning of Article 236(1) of the Customs Code and so may not in principle be repaid pursuant to that provision.

39 Next, contrary to Bacardi's contention, Article 890 of the implementing regulation, which is a provision implementing Article 236(1) of the Customs Code, is not apt to be applied where the tariff treatment sought is favourable tariff treatment ('zolltarifliche Abgabenbegünstigung' in the German) within the meaning of Article 21 of the Customs Code.

40 It would appear that, unlike the German version of Article 890 of the implementing regulation, which uses, as well as the term 'Gemeinschaftsbehandlung' (Community treatment), the phrase 'Anwendung eines ermässigten Zollsatzes oder der Zollfreiheit' (literally, 'application of a reduced import duty or exemption from duty') which is not to be found in either Article 20 or Article 21 of the Customs Code, all the other language versions use, beside the term 'Community treatment', the term 'preferential tariff treatment' ('Zollpräferenzbehandlung' in the German), synonymous with the term 'preferential tariff measures' ('Zollpräferenzmassnahmen' in the German version) used in Article 20(3)(d) and (e) of the Customs Code.

41 According to settled case-law, the need for a uniform interpretation of Community regulations makes it impossible, where uncertainty exists, for the text of a provision to be considered in isolation but requires, on the contrary, that it should be interpreted and applied in the light of the versions existing in the other official languages (see in particular Case C-48/98 *Söhl & Söhlke* [1999] ECR I-7877, paragraph 46).

42 In those circumstances, Article 890 of the implementing regulation must be construed as being apt to be applied only where the goods could have been eligible for Community treatment ('Gemeinschaftsbehandlung' in German) or for preferential tariff treatment ('Zollpräferenzbehandlung' in German) within the meaning of Article 20(3)(d) and (e) of the Customs Code, and the direct application of Article 236(1) of the Customs Code in conjunction with Article 890 of the implementing regulation cannot therefore give rise to repayment of import duties where the goods imported could have been eligible for favourable tariff treatment ('zolltarifliche Abgabenbegünstigung' in the German) within the meaning of Article 21 of the Customs Code.

43 That interpretation is supported by the fact that the documents listed by way of examples in Article 890 of the implementing regulation, namely, certificates of origin, movement certificates and internal Community transit documents, have in common the fact that they are intended to establish the preferential origin or Community nature of the goods to which they relate. By contrast, none of the documents required in order to prove that imported goods are eligible for favourable tariff treatment for the purposes of Article 21 of the Customs Code appears in that list.

44 That interpretation is also in keeping with that placed on Article 900(1)(o) by the Court in *Söhl & Söhlke*. In paragraph 86 of that judgment, the Court held in essence that that provision, which in all language versions except German refers precisely to the same tariff treatments as Article 890 of the implementing regulation, namely, Community treatment and preferential tariff treatment, applies only to cases in which the goods would have been eligible for Community treatment or preferential tariff treatment, but not to cases in which the goods would have been eligible for other tariff measures.

45 It should be observed, as the Advocate General has in paragraph 79 of his Opinion, that while the term 'Zollbehandlung mit Abgabenbegünstigungen' (literally, 'favourable customs treatment with regard to duties') used in the

German-language version of the judgment in *Söhl & Söhlke* corresponds to the wording used in the German-language version of Article 900(1)(o) of the implementing regulation, it differs both from the terms used in all the other language versions of that provision, which clearly refer to 'preferential tariff treatment' within the meaning of Article 20(3)(d) and (e) of the Customs Code, and from the term used in the German version of Article 890 of the implementing regulation. It follows that, for the reasons set out in paragraph 41 above, the term 'Zollbehandlung mit Abgabenbegünstigung' used in the German version of Article 900(1)(o) of the implementing regulation and in the German version of the judgment in *Söhl & Söhlke*, paragraph 86, must be understood to refer to 'preferential tariff treatment' within the meaning of Article 20(3)(d) and (e) of the Customs Code.

46 Last, it must be held that application by analogy of Article 890 of the implementing regulation to requests for repayment of import duties based on the fact that the goods imported could have been eligible for favourable tariff treatment is also excluded.

47 It is clear that, while it is unarguable that a certificate of authenticity such as that in issue in the dispute in the main proceedings possesses features similar to those of a certificate of origin form A and that the subsequent alteration of the tariff classification of the goods in the combined nomenclature does not exclude application by analogy of Article 890 of the implementing regulation, the roles played by a certificate of origin and a certificate of authenticity in the procedures for obtaining preferential tariff treatment and favourable tariff treatment respectively are, as the Advocate General has observed in paragraphs 84 to 86 of his Opinion, quite different and the regime governing certificates of authenticity is much stricter than that governing certificates of origin.

48 Accordingly, in contrast to the situation with regard to certificates of authenticity, the production of a certificate of origin before the goods to which it relates are

released into free circulation is not required in order to be entitled to preferential tariff treatment and the duties levied before such a certificate is presented cannot be regarded as being legally owed within the meaning of Article 236(1) of the Customs Code. It was therefore possible for Article 890 of the implementing regulation validly to provide that repayment or remission may be granted where a certificate of origin is produced after the customs declaration has been accepted and the goods released into free circulation.

49 Having regard to the fact that the consequences connected to the moment at which the certificates in question are presented vary considerably from one of the two regimes to the other, Article 890 of the implementing regulation cannot be applied by analogy in a situation such as that in issue in the main proceedings.

50 That interpretation is confirmed by, in particular, the third recital in the preamble to Commission Regulation (EEC) No 3040/83 of 28 October 1983 laying down provisions for the implementation of Articles 2 and 14 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties (OJ 1983 L 297, p. 13), Article 1(3) of which has been substantially reproduced in Article 890 of the implementing regulation. According to that recital, the provisions on the repayment or remission of import duties 'may not *inter alia* permit the post-clearance production of documents which are required to be produced under the rules... at the time of acceptance of the entry for release for free circulation'.

51 In the light of all the foregoing, the answer to be given to the first question must be that Article 236(1) of the Customs Code does not permit the repayment of import duties where, after a complete customs declaration has been accepted by the customs authorities and the goods covered by it have been released into free circulation, the declarant presents a certificate of authenticity by virtue of which

the goods would, supposing the certificate to have been produced with the goods, have been eligible for favourable tariff treatment.

## The second question

52 In order to give a helpful answer to the second question, it first falls to be considered whether repayment of import duties by virtue of Article 239(1) of the Customs Code in conjunction with Article 905(1) of the implementing regulation is possible where repayment of those duties by virtue of Article 236 of the Customs Code is not permitted.

53 It must be noted that, under Article 239(1) of the Customs Code, 'import duties or export duties may be repaid or remitted in situations other than those referred to in Articles 236, 237, and 238...'.

54 It follows that the fact that repayment or remission of duties pursuant to, for example, Article 236(1) of the Customs Code is excluded because one of the legal conditions laid down for that repayment or remission has not been satisfied does not, of itself, exclude repayment or remission of those duties on the basis of Articles 239(1) of the Customs Code and Article 905(1) of the implementing regulation, provided that the legal conditions for the application of those provisions are satisfied.

55 It must next be established what factors might constitute a 'special situation' within the meaning of Article 905(1) of the implementing regulation with respect to a trader.

56 On this subject, it should be noted that the Court has held that factors 'which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned' for the purposes of that provision exist where, having regard to the objective of fairness underlying Article 239 of the Customs Code, factors liable to place the applicant in an exceptional situation as compared with other operators engaged in the same business are found to exist (Case C-86/97 *Trans-Ex-Import* [1999] ECR I-1041, paragraph 22).

57 It must, however, be noted that, although national customs authorities are in certain circumstances required to ascertain whether there is any evidence which might constitute a special situation within the meaning of Article 905(1) of the implementing regulation, it is not for those authorities to determine whether the situation in question does in fact constitute a special situation justifying a remission of duties by the Commission, which alone is empowered to take such a decision (*Trans-Ex-Import*, paragraphs 19 and 20).

58 Finally, it is necessary to bear in mind the consistent case-law relating to the division of functions provided for by Article 234 EC, under which the role of the Court is limited to providing the national court with the guidance on interpretation necessary to resolve the case before it, while it is for the national court to apply the rules of Community law, as interpreted by the Court, to the facts of the case under consideration (Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 11).

59 It follows that, in the main proceedings, it is for the national court to decide whether the facts giving rise to the dispute in the main proceedings are, in the light of the criterion referred to in paragraph 56 above, such as might constitute a

'special situation' within the meaning of Article 905(1) of the implementing regulation necessitating examination of the file by the Commission.

60 In that regard, it will fall to the national court to determine, more particularly, to what extent the fact that the United States authorities did not issue the certificate of authenticity relating to the goods until 17 September 1996 is capable of placing Bacardi in a special situation *vis-à-vis* other importers and to examine the relevance of the reasons which prompted Bacardi not to lodge an incomplete customs declaration in accordance with Articles 76(1) of the Customs Code and 253(1) and 255 of the implementing regulation.

61 In the light of those considerations, the answer to the second question must be that the fact that repayment or remission of duties pursuant to Article 236(1) of the Customs Code is excluded because one of the legal conditions laid down for that repayment or remission has not been satisfied does not, of itself, exclude repayment or remission of those duties on the basis of Article 239(1) of the Customs Code and Article 905(1) of the implementing regulation, provided however that the legal conditions for the application of those provisions are satisfied.

Factors 'which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned' for the purposes of Article 905(1) of the implementing regulation exist where, having regard to the objective of fairness underlying Article 239 of the Customs Code, factors liable to place the applicant in an exceptional situation as compared with other operators engaged in the same business are found to exist. It is for the national court to assess, on the basis of that criterion, whether factors which might constitute such a special situation do exist, necessitating examination of the file by the Commission.

## Costs

62 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Finanzgericht Bremen by order of 1 June 1999, hereby rules:

**1. Article 236(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code does not permit the repayment of import duties where, after a complete customs declaration has been accepted by the customs authorities and the goods covered by it have been released into free circulation, the declarant presents a certificate of authenticity by virtue of which the goods would, supposing the certificate to have been produced with the goods, have been eligible for favourable tariff treatment.**

2. The fact that repayment or remission of duties pursuant to Article 236(1) of Regulation No 2913/92 is excluded because one of the legal conditions laid down for that repayment or remission has not been satisfied does not, of itself, exclude repayment or remission of those duties on the basis of Articles 239(1) of Regulation No 2913/92 and Article 905(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 1676/96 of 30 July 1996, provided however that the legal conditions for the application of those provisions are satisfied.

Factors 'which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned' for the purposes of Article 905(1) of Regulation No 2454/93, as amended by Regulation No 1676/96, exist where, having regard to the objective of fairness underlying Article 239 of Regulation No 2913/92, factors liable to place the applicant in an exceptional situation as compared with other operators engaged in the same business are found to exist. It is for the national court to assess, on the basis of that criterion, whether factors which might constitute such a special situation do exist, necessitating examination of the file by the Commission.

Gulmann Puissochet

Schintgen Macken Colneric

Delivered in open court in Luxembourg on 27 September 2001.

R. Grass C. Gulmann

Registrar President of the Sixth Chamber