JUDGMENT OF THE COURT (Sixth Chamber)

11 November 1999 *

In Case C-48/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Finanzgericht Bremen, Germany, for a preliminary ruling in the proceedings pending before that court between

Firma Söhl & Söhlke

and

Hauptzollamt Bremen,

on the interpretation of Articles 49, 204 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 Article 212a of Regulation No 2913/92, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1) and on the validity and interpretation of Article 859 and the interpretation of Articles 900 and 905 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by

* Language of the case: German.

Article 1(29) of Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ 1994 L 346, p. 1),

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber acting for the President of the Sixth Chamber, P.J.G. Kapteyn and H. Ragnemalm, Judges,

Advocate General: F.G. Jacobs,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Firma Söhl & Söhlke, by H. Glashoff, Financial Adviser, and H.-J. Stiehle, Rechtsanwalt, Frankfurt am Main,

— Hauptzollamt Bremen, by M. Tischler, Zolloberamtrat at the Hauptzollamt Bremen, acting as Agent,

— the German Government, by E. Röder, Ministerialrat at the Federal Ministry of the Economy, and C.D. Quassowksi, Regierungsdirektor at the same Ministry, acting as Agents,

— the United Kingdom Government, by D. Cooper, of the Treasury Solicitor's Department, acting as Agent, and S. Moore, Barrister,

— the Commission of the European Communities, by R. Tricot, of its Legal Service, and K. Schreyer a national civil servant on secondment to the Legal Service, acting as Agents, and R. Bierwagen, of the Brussels Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Firma Söhl & Söhlke, represented by H.-J. Stiehle, of the German Government, represented W.-D. Plessing, Ministerialrat at the Federal Ministry of Finance, acting as Agent, and of the Commission, represented by K. Schreyer and R. Bierwagen, at the hearing on 11 February 1999,

after hearing the Opinion of the Advocate General at the sitting on 29 April 1999,

gives the following

Judgment

1 By order of 2 December 1997, received at the Court on 24 February 1998, the Finanzgericht (Finance Court) Bremen referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) seven questions on the interpretation of Articles 49, 204 and 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, hereinafter 'the Customs Code') and Article 212a of Regulation No 2913/92, as amended by Regulation (EC) No 82/97 of the

European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1) and on the validity and interpretation of Article 859 and the interpretation of Articles 900 and 905 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Article 1(29) of Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ 1994 L 346, p. 1, hereinafter 'the implementing Regulation').

2 Those questions were raised in proceedings between the German undertaking Firma Söhl & Söhlke (hereinafter 'Söhl & Söhlke'), a textile business, and Hauptzollamt (Principal Customs Office) Bremen (hereinafter 'the Hauptzollamt') concerning several notices of assessment in respect of customs clearances relating to the period from February to December 1994.

The relevant Community provisions

3 Article 49 of the Customs Code states:

'1. Where goods are covered by a summary declaration, the formalities necessary for them to be assigned a customs-approved treatment or use must be carried out within:

(a) ...

(b) 20 days from the date on which the summary declaration is lodged in the case of goods carried otherwise than by sea.

2. Where circumstances so warrant, the customs authorities may set a shorter period or authorise an extension of the periods referred to in paragraph 1. Such extension shall not, however, exceed the genuine requirements which are justified by the circumstances.'

4 Article 204(1) of the Customs Code provides:

'A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed,

or

(b) ...

in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.'

5 Article 203 of the Customs Code refers to the unlawful removal from customs supervision of goods liable to import duties.

6 Regulation No 82/97, which entered into force on 1 January 1997, inserted into the Customs Code a new Article 212a which reads as follows:

'Where customs legislation provides for partial or total exemption from import or export duties pursuant to Articles 18[4] to 187, such partial or total exemption shall also apply in cases where a customs debt is incurred pursuant to Articles 202 to 205, 210 or 211 where the behaviour of the declarant implies neither fraudulent dealing nor manifest negligence and he produces evidence that the other conditions for the application of relief or exemption have been satisfied.'

7 Article 239 of the Customs Code provides:

'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.

However, the customs authorities may permit this period to be exceeded in duly justified exceptional cases.'

8 Articles 236, 237 and 238 of the Customs Code concern the situations in which, respectively, duties were not legally owed, the customs declaration is invalidated and the goods concerned have been rejected by the importer because they are defective or do not comply with the terms of the contract.

9 Under Article 243 of the Customs Code:

'1. Any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.

Any person who has applied to the customs authorities for a decision relating to the application of customs legislation and has not obtained a ruling on that request within the period referred to in Article 6(2) shall also be entitled to exercise the right of appeal.

The appeal must be lodged in the Member State where the decision has been taken or applied for.

2. The right of appeal may be exercised:

(a) initially, before the customs authorities designated for that purpose by the Member States;

(b) subsequently, before an independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States.'

10 Article 245 of the Customs Code states:

'The provisions for the implementation of the appeals procedure shall be determined by the Member States.'

11 Under Article 249 of the Customs Code:

'1. The provisions required for the implementation of this Code, including implementation of the Regulation referred to in Article 184, except for Title VIII and subject to Articles 9 and 10 of Council Regulation (EEC) No 2658/87 and to paragraph 4, shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3, in compliance with the international commitments entered into by the Community.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft

within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

(b) If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the provisions to be adopted. The Council shall act by a qualified majority.

(c) If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

4. The provisions necessary for implementing Articles 11, 12 and 21 shall be adopted by the procedure referred to in Article 10 of Regulation (EEC) No 2658/87.'

12 The seventh and eighth recitals in the preamble to the Customs Code provide:

'... it is important to guarantee the uniform application of this Code and to provide, to that end, for a Community procedure which enables the procedures for its implementation to be adopted within a suitable time; ... a Customs Code

Committee should be set up in order to ensure close and effective cooperation between the Member States and the Commission in this field;

... in adopting the measures required to implement this Code, the utmost care must be taken to prevent any fraud or irregularity liable to affect adversely the General Budget of the European Communities'.

13 Article 859 of the implementing Regulation states:

'The following failures shall be considered to have no significant effect on the correct operation of the temporary storage or customs procedure in question within the meaning of Article 204(1) of the Code, provided:

— they do not constitute an attempt to remove the goods unlawfully from customs supervision,

— they do not imply obvious negligence on the part of the person concerned, and

— all the formalities necessary to regularise the situation of the goods are subsequently carried out:

1. exceeding the time-limit allowed for assignment of the goods to one of the customs-approved treatments or uses provided for under the temporary

storage or customs procedure in question, where the time-limit would have been extended had an extension been applied for in time;

2. in the case of goods placed under a transit procedure, exceeding the time-limit for presentation of the goods to the office of destination, where such presentation takes place later;

3. in the case of goods placed in temporary storage or under the customs warehousing procedure, handling not authorised in advance by the customs authorities, provided such handling would have been authorised if applied for;

4. in the case of goods placed under the temporary importation procedure, use of the goods otherwise than as provided for in the authorisation, provided such use would have been authorised under that procedure if applied for;

5. in the case of goods in temporary storage or placed under a customs procedure, unauthorised movement of the goods, provided the goods can be presented to the customs authorities at their request;

6. in the case of goods in temporary storage or placed under a customs procedure, removal of the goods from the customs territory of the Community or their entry into a free zone or free warehouse without completion of the necessary formalities;

7. in the case of goods having received favourable tariff treatment by reason of their end-use, transfer of the goods without notification to the

customs authorities, before they have been put to the intended use, provided that:

(a) the transfer is recorded in the transferor's stock records; and

(b) the transferee is the holder of an authorisation for the goods in question.'

14 Under Article 860 of the implementing Regulation:

'The customs authorities shall consider a customs debt to have been incurred under Article 204(1) of the Code unless the person who would be the debtor establishes that the conditions set out in Article 859 are fulfilled.'

15 Article 899 of the implementing Regulation provides that 'where the decision-making customs authority establishes that an application for repayment or remission submitted to it under Article 239(2) of the Code:

— is based on grounds corresponding to one of the circumstances referred to in Articles 900 to 903, and that these do not result from deception or obvious

negligence on the part of the person concerned, it shall repay or remit the amount of import duties concerned.

"The person concerned" shall mean the person or persons referred to in Article 878(1), or their representatives, and any other person who was involved with the completion of the customs formalities relating to the goods concerned or gave the instructions necessary for the completion of these formalities,

— is based on grounds corresponding to one of the circumstances referred to in Article 904, it shall not repay or remit the amount of import duties concerned.'

16 Article 900(1)(o) of the implementing Regulation, as inserted by Article 1(29) of Regulation No 3254/94 with effect from 1 January 1994, states:

'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.'

17 Under 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 on the basis of Article 899, 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 term "the person concerned" shall be interpreted in the same way as in Article 899.

In all other cases, the decision-making customs authority shall refuse the application.'

18 The 14th and 15th recitals in the preamble to Regulation No 3254/94 provide:

'... Article 890 of Regulation (EEC) No 2454/93 provides that duties may be repaid or remitted on imports eligible for Community treatment or preferential

tariff treatment, where a customs debt has been incurred as a result of release for free circulation;

... there are also cases in which the importer is able to produce a document showing entitlement to such preferential treatment but the customs debt has been incurred for reasons other than release for free circulation; ... the obligation to pay duty in such cases, where no deception or obvious negligence is involved, is disproportionate to the need for protection which the common customs tariff is intended to provide'.

The dispute in the main proceedings

19 Söhl & Söhlke imports goods under outward processing arrangements and re-exports some non-Community goods introduced into the customs territory of the Community. In 1994 non-Community goods were regularly dispatched to Bremen under the transit procedure, presented at the Hauptzollamt and released for temporary storage with Söhl & Söhlke.

20 In August 1993 Söhl & Söhlke informed the Hauptzollamt that computerisation of its customs calculations, which would enable clearance to be effected more rapidly, had not yet been completed and consequently it would not always be possible to meet the 20-day time-limit for customs clearance laid down in Article 49(1) of the Customs Code.

21 In January 1994 the Hauptzollamt informed Söhl & Söhlke that, having regard to the entry into force of the Customs Code on 1 January 1994, it would no longer

draw its attention to the expiry of time-limits in respect of goods released to it for temporary storage. At the same time Söhl & Söhlke was informed that a customs debt on importation had been incurred under Article 204(1)(a), read in conjunction with Article 49, of the Customs Code.

22 From mid-February to the end of 1994 Söhl & Söhlke regularly failed to meet the prescribed time-limits for assigning to goods a customs-approved treatment or use. By a letter of 12 October 1994, the Hauptzollamt pointed out to Söhl & Söhlke the consequences of that behaviour in terms of customs debts and requested it to set out its reasons for failing to meet the deadlines. Söhl & Söhlke did not reply to that letter but subsequently made several requests for the time-limits to be extended, referring to the considerable backlog of work that had unforeseeably arisen as a result of the computerisation of its accounting procedure and staff shortages due to illness. The Hauptzollamt refused several of those requests by a decision of 20 December 1994.

23 Between 20 October 1994 and 15 February 1995 the Hauptzollamt issued 125 notices of assessment on the basis of Article 204(1)(a) of the Customs Code concerning customs clearances carried out between February and December 1994.

24 Söhl & Söhlke lodged objections against all the notices of assessment, essentially arguing that no customs debt had been incurred under Article 204(1)(a) of the Customs Code because its failures had had no significant effect on the correct operation of the temporary storage or customs procedure in question. In the alternative, it applied, pursuant to Article 239 of the Customs Code, read in conjunction with Article 900(1)(o) of the implementing Regulation, for repayment of the import duties that had been paid.

25 By two decisions of 23 May 1995 the Hauptzollamt rejected the objections lodged by Söhl & Söhlke and dismissed its application made in the alternative for

repayment. By a decision of 12 May 1997 it dismissed the appeal which Söhl & Söhlke had lodged against the Hauptzollamt's refusal of its application for repayment.

26 In June 1995 Söhl & Söhlke brought an action before the Finanzgericht seeking the annulment of the duties fixed in the decision of 23 May 1995 issued in response to its objections to the notices of assessment. In June 1997 it brought an action before the same court challenging the decision of 12 May 1997 dismissing its appeal against the decision to refuse its application for repayment.

27 The Finanzgericht Bremen, which ordered that the two cases should be joined, decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Does Article 859 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) ("the implementing Regulation") contain a validly constituted and exhaustive set of rules on failures, within the meaning of Article 204(1)(a) 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"), which "have no significant effect on the correct operation of the temporary storage or customs procedure in question"?

2. If Question 1 is to be answered in the affirmative:

(a) Where an application is made in time for an extension of the time-limit referred to in Article 859(1) of the implementing Regulation, is the

national court precluded from examining of its own motion the criteria for the grant of such an extension where it has been refused by a now unappealable decision of the customs authority?

(b) Is it permissible for an application for an extension to relate not to declarations to be listed individually but instead globally to all declarations to be made within a given period (in this case, several months), where reference is made, by way of justification, to special problems existing during that period in the applicant's business (for example, the fact that employees have suddenly fallen ill or have been absent on leave, the induction of new employees, problems with the application of a data processing system developed for the purposes of carrying out customs formalities or, in cases involving outward processing, the excessive work involved in the preparation of attributions which should in fact have been prepared by the customs authorities), without obvious negligence arising under the second indent of Article 859 of the implementing Regulation?

3. If Question 1 is to be answered in the negative:

Must it be assumed that the numerous instances of failure to comply in time with the obligation to assign to goods presented to customs a customs-approved treatment or use are to be considered to "have no significant effect on the correct operation of the temporary storage or customs procedure in question" where such treatment or use is assigned to the goods after the time-

limit has expired and an extension of the time allowed for such assignment would not have been justified under Article 49(2) of the Customs Code?

4. If Question 2(b) or Question 3 is to be answered in the negative:

   Is Article 900(1)(o) of the implementing Regulation, as inserted by Article 1(29) of Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ 1994 L 346, p. 1), concerning eligibility for preferential rates or Community treatment, also applicable to the grant of other forms of preferential tariff treatment?

5. If Question 4 is to be answered in the negative:

   Where a claim is made for repayment, are the customs authorities and courts required to examine of their own motion whether all relevant criteria for repayment are fulfilled, even in the event that the claimant expressly bases his claim for repayment on one legal criterion only, thus rendering it necessary, in circumstances such as those of the present case, to examine whether the conditions laid down in the second indent of Article 239(1) of the Customs Code in conjunction with the first sentence of Article 905(1) of the implementing Regulation are fulfilled with regard to declarations for entry into free circulation in which valid movement certificates on Form EUR.1 or certificates of origin on Form A have been produced, and where there exists the possibility of total or partial exemption from import duties of goods which have been re-imported following outward processing (differential customs clearance) or goods returned following repair?

6. Where the repayment criteria laid down in Article 900(1)(o) of the implementing Regulation are fulfilled, can it ordinarily be assumed that the person concerned has not acted with any fraudulent intent or in a manner which is obviously negligent?

7. If Question 6 and/or Question 4 are to be answered in the negative:

Should the term "offensichtliche Fahrlässigkeit" (obvious negligence) in the second indent of Article 239(1) of the Customs Code be defined according to objective and/or subjective criteria, and does it have the same meaning as the term "grobe Fahrlässigkeit" (obvious negligence) in the second indent of Article 859 of the implementing Regulation and the term "offenkundige Fahrlässigkeit" (manifest negligence) in Article 212a? Can no "obvious negligence" be said to exist within the meaning of Article 239 of the Customs Code where customs debts on importation have been incurred under Article 204(1)(a) because, for reasons such as those given by way of example in Question 2(b), there has been non-compliance over a period of many months with the time-limit laid down in Article 49(1) of the Customs Code and no circumstances justifying extensions of time existed, with the result that there was also obvious negligence under the second indent of Article 859 of the implementing Regulation?'

28 As a preliminary point, it would appear expedient to deal with the third question after the first and to answer the seventh question before the second.

First question

29 By its first question, the national court asks essentially whether Article 859 of the implementing Regulation contains a validly constituted and exhaustive set of rules on failures, within the meaning of Article 204(1) of the Customs Code,

which 'have no significant effect on the correct operation of the temporary storage or customs procedure in question'.

30 Söhl & Söhlke and the German Government argue that the Commission did not have a sufficient legal basis to list exhaustively, in the implementing Regulation, the situations liable to be covered by the proviso at the end of Article 204(1) of the Customs Code.

31 However, the Commission submits that by Articles 204 and 249 of the Customs Code the Council provided it with a sufficient legal basis on which to enact, in agreement with the Customs Code Committee (hereinafter 'the Committee'), exhaustive rules such as those contained in Article 859 of the implementing Regulation. In its view, the objective of uniform application of the Customs Code in all the Member States necessitated the adoption of such exhaustive rules.

32 In that context it should be borne in mind, first of all, that it follows from the case-law of the Court that where a provision of the EC Treaty, such as Article 28 of the EC Treaty (now, after amendment, Article 26 EC) on the basis of which the Customs Code was adopted, in principle gives the Council power to adopt, on a proposal from the Commission, rules on a specified matter, Articles 145 and 155 (now Articles 202 EC and 211 EC) allow the Council to confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. Article 145 nevertheless provides that the Council may also reserve the right, in specific cases, to exercise those powers itself (see in particular, with regard to agriculture, Case C-240/90 *Germany* v *Commission* [1992] ECR I-5383, at paragraph 35).

33 However, the fact remains, first, that the Council did not, in Article 204 of the Customs Code, reserve the right to list exhaustively the categories of failures referred to in that article and, secondly, that by Article 249 of the Customs Code

it conferred on the Commission the task of adopting, in accordance with a prescribed procedure closely involving the Committee, the 'provisions required for the implementation of [the Customs] Code', except for certain specific provisions which do not include Article 204.

34 Secondly, according to the case-law of the Court, since the Council has laid down in its basic regulation the essential rules governing the matter in question, it may delegate to the Commission general implementing power without having to specify the essential components of the delegated power; for that purpose, a provision drafted in general terms provides a sufficient basis for the authority to act (see in particular, with regard to agriculture, *Germany* v *Commission*, cited above, at paragraph 41).

35 Furthermore, Article 249 of the Customs Code constitutes a sufficient basis for the Commission to adopt a set of rules for the implementation of the Customs Code and Article 204 in particular.

36 Lastly, it follows from the case-law of the Court that the Commission is authorised to adopt all the measures which are necessary or appropriate for the implementation of the basic legislation, provided that they are not contrary to such legislation or to the implementing legislation adopted by the Council (see in particular, with regard to agriculture, Case 121/83 *Zuckerfabrik Franken* [1984] ECR 2039, at paragraph 13; Case C-478/93 *Netherlands* v *Commission* [1995] ECR I-3081, at paragraph 31; and Joined Cases C-9/95, C-23/95 and C-156/95 *Belgium and Germany* v *Commission* [1997] ECR I-645, at paragraph 37).

37 Therefore, it is necessary to ascertain whether the exhaustive set of rules laid down by Article 859 of the implementing Regulation is necessary or appropriate for the implementation of the Customs Code and whether it is contrary to that Code.

38 It must be observed, first, that since neither Article 204 nor any other provision of the Customs Code preclude the Commission from adopting exhaustive rules on failures which 'have no significant effect on the correct operation of the temporary storage or customs procedure in question', the exhaustive set of rules laid down by Article 859 of the implementing Regulation is not contrary to the Customs Code.

39 Secondly, it is evident from the seventh and eighth recitals in the preamble to the Customs Code that the Council sought to 'guarantee the uniform application' of the Code in the Member States by establishing, to that end, a specific procedure enabling the procedures for its implementation to be adopted within a suitable time, and to ensure that 'in adopting the measures required to implement' the Customs Code, the utmost care was taken 'to prevent any fraud or irregularity liable to affect adversely the General Budget of the European Communities'.

40 Having regard to those objectives and the need to treat equally all traders in all the Member States, Article 859 of the implementing Regulation must be regarded not only as appropriate but also as necessary for the implementation of the basic legislation in that it guarantees the uniform application of a provision of the Customs Code in all the Member States.

41 Moreover, since, under the fifth recital in the preamble to the implementing Regulation, 'the measures provided for by this Regulation are in accordance with the opinion of the Customs Code Committee', it should be noted that Article 249 of the Customs Code establishing the procedure for adopting the implementing Regulation has been complied with and that that regulation has been adopted with valid effect.

42 Therefore, the objection raised by Söhl & Söhlke and the German Government cannot be sustained.

43 In the light of the foregoing considerations, the answer to the first question must be that Article 859 of the implementing Regulation contains a validly constituted and exhaustive set of rules on failures, within the meaning of Article 204(1)(a) of the Customs Code, which 'have no significant effect on the correct operation of the temporary storage or customs procedure in question'.

Third question

44 Having regard to the answer given to the first question, there is no need to answer the third question.

Seventh question

45 By its seventh question the national court asks essentially, first, whether the terms 'offenkundige Fahrlässigkeit', 'offensichtliche Fahrlässigkeit', and 'grobe Fahrlässigkeit', which appear respectively in the German version of Article 212a of the Customs Code, as amended by Regulation No 82/97, Article 239 of the Customs Code and Article 859 of the implementing Regulation and correspond to the terms 'manifest negligence' and 'obvious negligence' in the English version, have the same meaning. Secondly, the national court asks what are the criteria for determining whether or not there is obvious negligence within the meaning of Article 239 of the Customs Code. Lastly, it asks whether it is possible to conclude that there was no obvious negligence ('offensichtliche Fahrlässigkeit') within the meaning of the second indent of Article 239(1) of the Customs Code where non-compliance with the time-limit laid down in Article 49(1) of the Customs Code, which is regarded as constituting obvious negligence ('grobe Fahrlässigkeit') within the meaning of the second indent of Article 859 of the implementing

Regulation, results in a customs debt being incurred pursuant to Article 204(1)(a) of the Customs Code.

First and third parts of the seventh question

46 As regards the first part of the question, it should be borne in mind first of all, that, according to settled case-law, the need for a uniform interpretation of Community regulations makes it impossible 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, to that effect, Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, at paragraph 36).

47 Secondly, as the Advocate General notes at paragraphs 72 and 73 of his Opinion, unlike the German version, in which the second indent of Article 239(1) of the Customs Code, the first indent of Article 899 and Article 905(1) of the implementing Regulation use the term 'offensichtliche Fahrlässigkeit', whereas the second indent of Article 859 of the implementing Regulation uses the term 'grobe Fahrlässigkeit' and Article 212a of the Customs Code, as amended by Regulation No 82/97, 'offenkundige Fahrlässigkeit', the French, Danish, Italian, Portuguese and Spanish versions use the same terms in all those provisions. As for the other language versions, some use two terms and others three or four, but not in the same places.

48 Thus, as the Advocate General points out at paragraph 73 of his Opinion, a comparison of all the language versions of the abovementioned provisions indicates that the terms qualifying negligence are not used consistently. It must therefore be concluded that the legislature was not pursuing a particular objective

by using different terms in the German version. Accordingly it must be considered that the terms which qualify negligence in the abovementioned rules all have one and the same meaning and must be understood as referring to obvious negligence ('offensichtliche Fahrlässigkeit' in the German version).

49 It follows from the foregoing considerations that the terms used to qualify negligence in the German version of Article 212a of the Customs Code, as amended by Regulation 82/97, Article 239 of the Customs Code and Article 859 of the implementing Regulation have one and the same meaning. In the German version those terms must be understood as referring to 'offensichtliche Fahrlässigkeit' (obvious negligence).

50 As regards the third part of the seventh question, since the same term, that is to say 'obvious negligence' is used in the second indent of Article 859 of the implementing Regulation and the second indent of Article 239(1) of the Customs Code, it is not possible to conclude that there was no obvious negligence within the meaning of the second indent of Article 239(1) where a customs debt is incurred pursuant to Article 204(1)(a) of the Customs Code as a result of behaviour which constitutes obvious negligence within the meaning of the second indent of Article 859 of the implementing Regulation.

Second part of the seventh question

51 As regards the second part of the seventh question, it should be observed first of all that, as is evident from paragraphs 46 to 49 of this judgment, the second indent of Article 239(1) of the Customs Code and the other provisions of the

Customs Code or the implementing Regulation which form the subject-matter of this judgment refer to the same concept of 'obvious negligence'.

52 Secondly, the repayment or remission of import and export duties, which may be made only 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.

53 Thirdly, it appears that the Customs Code brought together the provisions of customs law which had previously been dispersed in a large number of Community regulations and directives. When that happened Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1) was essentially reproduced in Article 239 of the Customs Code. Therefore, the case-law of the Court concerning the former must also apply to the latter.

54 It follows from the judgment in Case C-250/91 *Hewlett Packard France* [1993] ECR I-1819, paragraph 46, that Article 13 of Regulation No 1430/79 and Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1), pursue the same aim, namely to limit the post-clearance payment of import and export duties to cases where such payment is justified and is compatible with a fundamental principle such as that of the protection of legitimate expectations. It follows that the conditions to which the application of those articles is made subject, that is to say that no negligence or deception may be attributed to the

person concerned in the case of Article 13 of Regulation No 1430/79 and that no error has been made by the customs authorities which could reasonably have been detected by the person liable in the case of Article 5(2) of Regulation No 1697/79, must be interpreted in the same manner.

55 Moreover, in its judgment concerning Article 5(2) of Regulation No 1697/79 in Case C-64/89 *Deutscher Fernsprecher* [1990] ECR I-2535, paragraph 19, the Court held that the question whether or not an error committed by the customs authorities was detectable by a trader had to be examined taking account in particular of the precise nature of the error, the professional experience of, and the care taken by, the trader.

56 By analogy with those criteria, in order to determine whether or not there is 'obvious negligence' within the meaning of the second indent of Article 239(1) of the Customs Code, account must be taken in particular of the complexity of the provisions non-compliance with which has resulted in the customs debt being incurred, and the professional experience of, and care taken by, the trader.

57 As regards 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.

58 As regards the care taken by the trader, it must be noted that, where doubts exist 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 those provisions.

59 It is for the national court to determine, on the basis of those criteria, whether there is obvious negligence on the part of the trader.

60 In those circumstances, the answer to the second part of the seventh question must be that in order to determine whether or not there is 'obvious negligence' within the meaning of the second indent of Article 239(1) of the Customs Code, account must be taken in particular of the complexity of the provisions non-compliance with which has resulted in the customs debt being incurred and the professional experience of, and the care taken by, the trader. It is for the national court to determine, on the basis of those criteria, whether there is obvious negligence on the part of the trader.

Second question

61 The second question comprises two limbs.

First limb of the second question

62 By this question the national court asks essentially whether Community law precludes a court from determining independently whether the criterion laid down in Article 859(1) of the implementing Regulation, namely that the time-limit ought to have been extended, is fulfilled where an application for an

extension made in time has been refused by a now unappealable decision of the customs authority.

63 As the Commission has noted, in a case such as that in the main proceedings, in which the customs authorities are alleging a failure on the part of the trader in that he did not comply with the time-limit laid down in Article 49(1) of the Customs Code after they had refused an extension of that time-limit by a now unappealable decision, no provision of the Customs Code or the implementing Regulation precludes a national court from determining independently whether the said failure is covered by Article 859(1) of the implementing Regulation.

64 Contrary to the contentions of the United Kingdom Government, no such prohibition is apparent from the wording of Article 859(1) of the implementing Regulation. That provision constitutes just one of the failures set out in Article 859 of the implementing Regulation which may, under certain conditions, be considered to have no significant effect on the correct operation of the temporary storage or customs procedure in question within the meaning of Article 204(1) of the Customs Code.

65 Furthermore, although Article 243 of the Customs Code grants all traders a right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern them directly and individually, Article 245 of the Customs Code leaves it to the Member States to determine the provisions for the implementation of the appeals procedure.

66 It should be added that in any event the Court has held that in the absence of Community rules governing a matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights

which individuals derive from the direct effect of Community law, it being understood that such rules must not be less favourable than those governing similar domestic actions nor render virtually impossible or excessively difficult the exercise of rights conferred by Community law (see, in particular, Case 33/76 *Rewe* [1976] ECR 1989, at paragraph 5; Case 45/76 *Comet* [1976] ECR 2043, at paragraphs 12 to 16, and Case C-312/93 *Peterbroeck* [1995] ECR I-4599, at paragraph 12).

67 In the light of the foregoing considerations, the answer to the first limb of the second question must be that Community law does not preclude a national court from determining independently whether the criterion laid down in Article 859(1) of the implementing Regulation, namely that the time-limit ought to have been extended, is fulfilled where an application for an extension made in time has been refused by a now unappealable decision of the customs authority.

Second limb of the second question

68 By this question, the national court asks essentially, first of all, what circumstances can justify an extension of the time-limit referred to in Article 49(1) of the Customs Code and whether problems peculiar to an undertaking, such as the fact that employees have suddenly fallen ill or have been absent on leave, the induction of new employees, problems with the application of a data processing system developed for the purposes of carrying out customs formalities or, in cases involving outward processing, the excessive work involved in the preparation of attributions which ought normally to be prepared by the customs authorities, might constitute such a circumstance. Secondly, the national court seeks to ascertain whether an application for an extension must be made in respect of each declaration or whether a single application may be made in respect of several declarations to be made within a given period, that is to say a period of several months in the main proceedings. Lastly, the national court asks whether there is obvious negligence within the meaning of the second indent of

Article 859 of the implementing Regulation where the criteria justifying an extension are not satisfied and applications for an extension are submitted late.

69 As regards the circumstances which may justify an extension of the time-limit, it should be noted that Article 49(2) of the Customs Code allows customs authorities to extend the time-limit for carrying out the formalities required to assign to goods covered by a summary declaration a customs-approved treatment or use '[w]here circumstances so warrant', but such extension may not exceed 'the genuine requirements which are justified by the circumstances'.

70 Since it is not possible to determine the circumstances which can justify an extension from the wording of that Article, it is necessary to examine whether those circumstances may be determined from the purpose of that provision.

71 It should be noted that Article 49(1) of the Customs Code lays down short time-limits to ensure that goods presented to customs are quickly assigned a customs-approved treatment or use. Until such time as they are assigned such a customs-approved treatment or use, goods presented to customs have the status of goods in temporary storage.

72 The objective of Article 49(1) of the Customs Code would not be achieved if traders were able to rely on circumstances which were in no way exceptional in order to obtain an extension. Such an interpretation of the term 'circumstances' contained in that provision would lead to the result that temporary storage could

be regularly extended and the temporary storage procedure might, in time, be transformed into a customs warehousing procedure.

73 Therefore, the term 'circumstances' within the meaning of Article 49(2) of the Customs Code must be interpreted as referring to circumstances which are liable to put the applicant in an exceptional situation in relation to other traders carrying on the same activity.

74 Exceptional circumstances which, although not unknown to the trader, are not events which normally confront any trader in the exercise of his occupation, may constitute such circumstances.

75 It is for the customs authorities and the national courts and tribunals to determine in each case whether such circumstances exist.

76 It should, however, be added that in any event circumstances such as those given by way of example by the national court do not constitute circumstances which may justify an extension of the time-limit referred to in Article 49(1) of the Customs Code.

77 In the light of the foregoing considerations, the answer to the first part of the second limb of the second question must be that only circumstances liable to put the applicant in an exceptional situation in relation to other traders carrying on the same activity can justify an extension of the time-limit referred to in Article 49(1) of the Customs Code. Exceptional circumstances which, although

not unknown to the trader, are not events which would normally confront any trader in the exercise of his occupation may constitute such circumstances. It is for the customs authorities and the national courts to determine in each case whether such circumstances exist.

78 As regards the question whether an application for an extension must be made for each declaration or whether a single application may be made for several declarations to be made within a given period — a period of several months in the main proceedings — it must be noted, first, that the wording of Article 49(2) of the Customs Code does not preclude a trader from lodging a single application for several summary declarations.

79 Secondly, as is apparent from the sixth recital in the preamble to the Customs Code, a particular objective thereof is to ensure that 'customs formalities and controls should be ... kept to a minimum'. The fact that a trader may lodge a single application for an extension of the prescribed time-limit for assigning to goods covered by several summary declarations a customs-approved treatment or use limits the customs formalities which that trader has to carry out.

80 Therefore, nothing precludes, in principle, a trader from lodging a single application for an extension of the prescribed time-limit for assigning to goods covered by several summary declarations a customs-approved treatment or use.

81 However, it follows from Article 49 of the Customs Code, read in conjunction with Article 859(1) of the implementing Regulation, that an application for an extension of the prescribed time-limit for assigning to goods in temporary storage a customs-approved treatment or use cannot be lodged with valid effect before

that time-limit has expired. Therefore, in the case of a single application a time-limit may be extended only in respect of goods in relation to which the prescribed time-limit for assigning a customs-approved treatment or use has not yet expired.

82 In the light of the foregoing considerations, the answer to the second part of the second limb of the second question must be that Community law does not preclude a trader from lodging a single application for an extension of the prescribed time-limit for assigning to goods covered by several summary declarations a customs-approved treatment or use. However, even in the case of a single application, the time-limit may be extended only in respect of goods in relation to which the prescribed time-limit for assigning a customs-approved treatment or use has not yet expired.

83 As regards the third part of the second limb of the second question, it is for the national court to determine whether, having regard to the criteria set out in paragraphs 51 to 60 of this judgment, there is obvious negligence within the meaning of the second indent of Article 859 of the implementing Regulation.

Fourth question

84 As regards the fourth question, it is sufficient to point out that it is quite clear from the wording of Article 900(1)(o) of the implementing Regulation that that provision is designed to apply only to a case in which it is established 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'. Since that provision

refers clearly to 'Community treatment' and 'preferential tariff treatment', it cannot apply to other forms of favourable treatment such as, for example, complete or partial exemption from import duties for goods reimported following outward processing or goods returned following repair.

85 That interpretation is supported by the 15th recital in the preamble to Regulation No 3254/94 which added Article 900(1)(o) to the implementing Regulation. It is clear from that recital that the Article is designed to apply only to cases in which the importer is able to produce a document showing entitlement to such 'preferential treatment' but the customs debt has been incurred for reasons other than release for free circulation.

86 In the light of the foregoing considerations, the answer to the fourth question must be that Article 900(1)(o) of the implementing Regulation applies 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 forms of favourable treatment.

Fifth question

87 By its fifth question the national court asks essentially whether the customs authority or national court to which an application has been submitted for the repayment or remission of duties referred to in Article 239 of the Customs Code

is required, where that application is based on Article 900(1)(o) of the implementing Regulation and repayment cannot be made pursuant to that provision, to examine of its own motion the merits of that application in the light of the other provisions of Article 900 and Articles 901 to 905 of the implementing Regulation.

88 In that context, it should be noted, first, that it is apparent from the wording of Article 899 of the implementing Regulation that the decision-making customs authority must examine whether an application for repayment or remission submitted to it under Article 239(2) of the Code 'is based on grounds corresponding to one of the circumstances referred to' in Articles 900 to 904 of the implementing Regulation. Therefore, in order to rule on that application the customs authority is required to examine the grounds on which that application is based in the light of all the circumstances provided for in Articles 900 to 904 of the implementing Regulation.

89 The fact that an applicant has based his application on a precise provision, without being required to do so by the legislation, even though the grounds adduced do not correspond to the circumstances referred to in that provision, does not release the authority to which the application has been made from its duty to ascertain whether those grounds correspond to one of the circumstances referred to in Articles 900 to 904 of the implementing Regulation. Since an application for repayment or remission referred to in Article 239 of the Customs Code does not have to specify the provision of the implementing Regulation on which the applicant intends to rely, an application which does refer to a specific legal basis must be subjected to as exhaustive an examination as other applications.

90 That interpretation is supported by the wording of Article 905(1) of the implementing Regulation, from which it is clear that the implementation of the

procedure provided for in Articles 905 to 909 of the implementing Regulation is subject, in addition, to the precondition that the decision-making authority 'cannot take a decision on the basis of Article 899' to grant or refuse an application for the repayment or remission of import or export duties.

91 Secondly, the Court has held that where the customs authority is not in a position, on the basis of the grounds adduced, to take a decision to repay or remit duties on the basis of Article 899 of the implementing Regulation, it is then required to verify whether there is any evidence of the existence of a special situation within the meaning of Article 905(1) of the implementing Regulation, which does not entail any deception or manifest negligence on the part of the person concerned and, if need be, to forward the file to the Commission, which will, on the basis of the information placed before it, consider whether a special situation exists such as to justify the repayment or remission of duties (judgment in Case C-86/97 *Trans-Ex-Import* [1999] ECR I-1041, at paragraph 19).

92 In the light of the foregoing considerations, the answer to the fifth question must be that the customs authority or national court to which an application is submitted for repayment on the basis of Article 900(1)(o) of the implementing Regulation is required, where it is unable to grant the repayment applied for pursuant to that provision, to examine of its own motion the merits of that application in the light of the other provisions of Article 900 and Articles 901 to 904 of the implementing Regulation. Where the decision-making authority is not in a position, on the basis of the grounds adduced, to take a decision to repay or remit duties on the basis of Article 899 of the implementing Regulation, it is required to examine of its own motion whether there is any evidence 'which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned'

within the meaning of Article 905(1) of the implementing Regulation which would necessitate examination of the file by the Commission.

Sixth question

93 By its sixth question the national court asks essentially whether, in the situation referred to in Article 900(1)(o) of the implementing Regulation, the condition that there be no obvious negligence on the part of the trader, to which Article 899 of the implementing Regulation makes repayment or remission of duties subject, is always satisfied.

94 In that context it is sufficient to point out that Article 899 of the implementing Regulation states 'where the decision-making customs authority establishes that an application for repayment or remission submitted to it under Article 239(2) of the [Customs] Code:

— is based on grounds corresponding to one of the circumstances referred to in Articles 900 to 903, and that these do not result from deception or obvious negligence on the part of the person concerned, it shall repay or remit the amount of import duties concerned.'

95 As the Commission and the Hauptzollamt have rightly observed, it is quite clear from the wording of Article 89 of the implementing Regulation that the repayment or remission referred to in Article 239(2) of the Customs Code may be made only if two cumulative conditions are satisfied, that is to say, first, that 'one of the circumstances referred to in Articles 900 to 903' applies and,

secondly, 'that [those circumstances] do not result from deception or obvious negligence on the part of the person concerned'.

96 That interpretation is supported in particular by the 15th recital in the preamble to Regulation No 3254/94 which added Article 900(1)(o) to the implementing Regulation. According to that recital, there are 'cases in which the importer is able to produce a document showing entitlement to such preferential treatment but the customs debt has been incurred for reasons other than release for free circulation' and 'the obligation to pay duty in such cases, where no deception or obvious negligence is involved, is disproportionate to the need for protection which the common customs tariff is intended to provide'.

97 Therefore, the answer to the sixth question must be that, where an application is submitted for the repayment or remission of import or export duties, the customs authority or national court cannot assume that the person concerned has not acted with any fraudulent intent or in a manner which is obviously negligent on the sole ground that he is in a situation referred to in Article 900(1)(o) of the implementing Regulation.

Costs

98 The costs incurred by the German and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings 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 2 December 1997, hereby rules:

1. **Article 859 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code contains a validly constituted and exhaustive set of rules on failures, within the meaning of Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code which 'have no significant effect on the correct operation of the temporary storage or customs procedure in question'.**

2. (a) **The terms used to qualify negligence in the German version of Article 212a of Regulation No 2913/92, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, Article 239 of Regulation No 2913/92 and Article 859 of Regulation No 2454/93 have one and the same meaning. In the German version those terms must be understood as referring to 'offensichtliche Fahrlässigkeit' (obvious negligence).**

   (b) **It is not possible to conclude that there was no obvious negligence within the meaning of the second indent of Article 239(1) of Regulation**

No 2913/92 where a customs debt is incurred pursuant to Article 204(1)(a) of Regulation No 2913/92 as a result of behaviour which constitutes obvious negligence within the meaning of the second indent of Article 859 of Regulation No 2454/93.

(c) In order to determine whether there is 'obvious negligence' within the meaning of the second indent of Article 239(1) of Regulation No 2913/92, account must be taken in particular of the complexity of the provisions non-compliance with which has resulted in the customs debt being incurred and the professional experience of, and the care taken by, the trader. It is for the national court to determine, on the basis of those criteria, whether there is obvious negligence on the part of the trader.

3. Community law does not preclude a national court from determining independently whether the criterion laid down in Article 859(1) of Regulation No 2454/93, namely that the time-limit ought to have been extended, is fulfilled where an application for an extension made in time has been refused by a now unappealable decision of the customs authority.

4. (a) Only circumstances liable to put the applicant in an exceptional situation in relation to other traders carrying on the same activity can justify an extension of the time-limit referred to in Article 49(1) of Regulation No 2913/92. Exceptional circumstances which, although not unknown to the trader, are not events which would normally confront any trader in the exercise of his occupation may constitute such circumstances. It is for the customs authorities and the national courts to determine in each case whether such circumstances exist.

(b) Community law does not preclude a trader from lodging a single application for an extension of the prescribed time-limit for assigning to

goods covered by several summary declarations a customs-approved treatment or use. However, even in the case of a single application, the time-limit may be extended only in respect of goods in relation to which the prescribed time-limit for assigning a customs-approved treatment or use has not yet expired.

5. Article 900(1)(o) of Regulation No 2454/93, as amended by Article 1(29) of Commission Regulation (EC) No 3254/94 of 19 December 1994, applies 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 forms of favourable treatment.

6. The customs authority or national court to which an application is submitted for repayment on the basis of Article 900(1)(o) of Regulation No 2454/93, as amended by Article 1(29) of Regulation No 3254/94, is required, where it is unable to grant the repayment applied for pursuant to that provision, to examine of its own motion the merits of that application in the light of the other provisions of Article 900 and Articles 901 to 904 of Regulation No 2454/93. Where the decision-making authority is not in a position, on the basis of the grounds adduced, to take a decision to repay or remit duties on the basis of Article 899 of Regulation No 2454/93, it is required to examine of its own motion whether there is any evidence 'which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned' within the meaning of Article 905(1) of Regulation No 2454/93 which would necessitate examination of the file by the Commission.

7. Where an application is submitted for the repayment or remission of import or export duties, the customs authority or national court cannot assume that

the person concerned has not acted with any fraudulent intent or in a manner which is obviously negligent on the sole ground that he is in a situation referred to in Article 900(1)(o) of Regulation No 2454/93, as amended by Article 1(29) of Regulation No 3254/94.

Schintgen Kapteyn Ragnemalm

Delivered in open court in Luxembourg on 11 November 1999.

R. Grass — Registrar

J.C. Moitinho de Almeida — President of the Sixth Chamber