

@import url(../../../../css/generic.css); EUR-Lex - 61994C0317 - EL

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/

61994C0317

????????? ??? ?????? ?????????? Fennelly ??? 27?? ?????? 1996. - Elida Gibbs Ltd ???
Commissioners of Customs and Excise. - ?????? ??? ?? ?????? ?????????????? ??????????
Value Added Tax Tribunal, London - ?????? ??????. - ?????? ?????????????? ????? - ???
????? - ?????? ?????????????? ??? ?????? ?????? - ??? ?????? ??? ??????. -
????? C-317/94.

????? ??? ?????????? ??? ?????????? 1996 ?????? I-05339

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1 H Elida Gibbs ?????????? ??? ??? ?????????? ?? ??????? ??? ?? ?????????? ??? ???? ?????????? ???
????????? ?????????? ??? ??? ?????????????? ?????????? ??? ?????????? ?????????? ??????????
????????????? . ?????? ? ?????????? ?????????? ?????????? ??? ?????????? ?????????? ??????????
????????? , ? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????. ?????? ? ??????????
????????? ??? ?????? ?????? ?????? ?????? ?????????? ??????????, ?? ?????? ??? ???
????????? ??? ?????? ?????? ?????? ?????? ?????????? ??????????????, ?? ?????? ??? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? Value
Added Tax Tribunal, London, ??? ??? ??? ??? ?????????? ?????? ?? ?????? ?????? ??????????
????????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????, ??? ??? ?????? ??????????????
??? ??? ?????? ??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????????
? ?????? . ?? Tribunal ??? ?????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??????????.

? - ?????????? ??? ?????? ???????

? - ? ?????? ??????????

2 ?? ??? 2 ??? ?????? 77/388/??? ??? ??????????, ??? 17?? ??? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ?????? ??????
????????? - ?????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ??? (???
???: ??? ?????) (1) ?????? ?? ???:

«????? ??? ?????????????? ??? ?????? ??????????:

1. ?? ?????????? ??? ?????? ??? ?? ?????? ?????????? ??? ?????????????? ?? ??? ??????
????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???, ??? ?????? ??? ???
????? ??? ??? ???.

(...).»

?? ?????? 11, ?, ??????????? 1, ?????????? ??, ??????? ?? ????:

«???? ?????????? ??? ??? ????»

1. ????? ?????????? ??? ?????? ?????;

?) ??? ??? ?????????? ?????? ??? ??? ?????? ??????????, ?????? ??? ??????????????
????????? ??? ?????????????? ??, ?? ??? ??, ?????????? ?????????? ??? ??????????, ??? ????
????? ? ?????????? ?? ?????? ??? ??? ?????? ?????? ?????? ?????????????? ? ? ???????? ??
????????? ??? ??? ????????, ??? ?????? ? ?????? ????????, ?????????????????????? ???
????????????? ??? ?????????? ?????? ?? ??? ??? ?????? ????????. »

?? ?????? 11, ?, ??????????? 2 ??? 3, ?????????? ?? ???????? ??? ?????? ?? ??????????????????
?? ???? ??????? ?? ???? ?? ???? ?? ???? ?? ??????????. ??? ?? ?????? 11, ?,
?????????? 3, ??????? ??, ??? ??? ?????????? ?? ???? ?? ?????????????? «??
????????? ?? ?????????? ???????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????? ?????????????? ??? ??????».

3 ?? ?????? 11, ?, ?????????????? 1, ?????????????????? «?????????? ??????????», ??????? ?? ????:

«1. ?? ?????????? ??????????, ????????????, ???????, ?????? ? ??????? ?? ?????????? ?
????????? ???. ??????, ?????????????? ????. ????. ?????????????? ????. ?????????????? ????. ??. ????. ??????????
????. ?????? ?????????? ???????, ????. ????. ?????????????? ????. ?????????????? ????. ????. ????. ????.
????.

?? ???????, ?? ?????????? ?????? ? ??????? ?? ?????????? ??? ??????, ?? ?????? ???
?????? ?? ??????????? ??? ??? ?????? ????.» (2)

? - ??????????

4 ? Elida Gibbs (??? ????: Gibbs) ?????????????? ??? ?????????? ?????????????? ??? ???
????????? ??? ?????? ?????????? Unilever. ?? 70 % ??? ??? ?????????? ???
????????????????? ??? ?????????? ??? ?????????? ?????????- ?? ?????? ??????????
????????????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ??? ?? ??????
«cash and carry», ??? ??? ?????? ?? ?????? ?????????? ?????????? ?? ?????????? ??????????
Gibbs. ? Gibbs ??????? ??? ?????????? ?????????? ??? ?????????? ??? ?????????????? ???
????????? ?????????? ?????????? ??? ??? ?????????? ?????????? ??????????????

i) ??????? ????????

5 ??? ??????? ??? ???, ?????? ?????????? ?????????? ?????????? ??????????, ? Gibbs ??????????
?????? ?????????????? ??????? ??? ?????????? ?????? ????????. ? Gibbs ???????
????????? ??? ??? ???????????, ??? ?????????? ??? ??? ?? ?????? ?????????? ??? ??????
?? ?????? ??? ?????????? ??? ????????. ??? ?????? ??? ?????????? ??? ??? ??
??????????? ?????? ??? ??? ?? ?????? ?????????? ?????? ??? ??? ?? ??? ?????? ???????
????????? ????????. ?? ?????? ?????? ?????? ?????????? ?????????????? ??? ? Gibbs ??
????????? ??? ??? ?????????? ??? ??? ?? ????????, ??? ??? ?????????? ??? ??? ??
?????? ?? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????????? ??? ??? ??
????????? ??? ?????????? ??? ??????????

6 ??? ??????? ??? ??????? ???????????, ??? ?????????? ?????????????? ???????
???????, ? Gibbs, ?? ?????????? ?? ?????????? ?????? ???????, ??????????
????????????? ??????? ?????????? ?????????? ?????? ?????? ???????, ? ??????
?????? ?????? ??? ??????? ?????? ??????. ??? ?????? ??? ?????????? ??????, ?
?????? ??????? ??????? ?? ??????? ??? ?? ??????? ?? ??????? ???????.

7 ?????????? ??? ?? ? ??????? ??? ??????? ??? ??? Gibbs ?????? ?????? ?????????? ?
???????, ?????????? ??? ?? ??????? ??? ?????? ??? ??? ??? ?????? ?????????????? ?
????? ?????????? ?????? (???: ??), ?????? ?????? ?????? ?????? ?????? ??????
????????? ?????????? ??? ???????, ??? ?????? ??????, ??? ??? ?????? ????
??????, ??? ?? ??????? ?? ??????? ?????? ??? ?????? ??? ?????????? ??? ???????, ??
????????? ??? ?? ??????? ??????? ?????? ??? ?????? ?????? ?????????? ??? ???????, ??
????????? ??? ?? ??????? ??????? ?????? ??? ?????? ?????? ?????? ?????? ??????. ??
????????? ??? ?? ??????? ??????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????.
????????? ??? ?? ??????? ??????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????
????????? ??? ??????? ?? ??????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ??? ??????
????????? ???????.

8 ??? ?? ?????? ???????, ? ?????????? ?????? ?? ?????????? ??? ??????? ?? ??????
???????, ??? ??????? ?????? ??? ?? ?????????? ??????. ? ??????? ??????? ???
????????? ?? ??????? ??????? ???, ?????? ?? ??????, ?????? ?? ?????????? ??? ??????
????????? ??? ?? Gibbs, ?????????? ??? ?? ?????? ?????????? ?????????? ?? ???????,
Gibbs ?? ?????? ?????? ??????. ??? ?? ?????? ?????????? ?????? ?????? ???????, ?
?????? ??????? ?????????? ?????????? ?????? ??? ?????? ?? ???????.

ii) ??????? ????????????

9 ??? ?? ?????? ???, ?? ??????? ?????????? ?????????? ??? ?????????? ??? ??????????
Gibbs. ?? ?????? ?????? ?????? ?????????? ?????????? ?????????? ?????? ???
????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ??? ?? ?????? ?????????? ??? ??
?????? ??????? ??? ?????? ?????????? ??? ?????? ?????? ??? ??????. ??? ?????????? ???
?????? ?????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????????? ???
Gibbs (? ??? ?????????? ???) ??? ?? ?????? ?? ?????? ???, ?? ?????? ???, ???
????????? ??? ?? ??????? ??? ??????????, ?????????? ??? ?? ?????????? ??? ?????? ???
?????? ?? ??????? ?????????? ?????????? ??? ?? ?????? ?????????? ??? ?????? ???
????????? ??? Gibbs.

iii) ? ?????? ??? Gibbs

10 ??? 24 ??????? 1992 ? Unilever, ? ?????? ?????? ??? Gibbs, ?????? ??? ???
Commissioners of Customs and Excise (???: Commissioners) ??? ?????????? ??? ???
??? 883 894 ?????? ?????????? (U?£) ?? ?????, ???' ?????, ?????????? ??? ??? ???
?????? ??? ?? ?? 1984, ?? ?????? ?????? ?? ??????? ?????????? ??? ??? ?? ??
??????????, ?????????? ??? ?? ?????????? ??? ?????????? ??? ?????? ??? ?? ??
?????????? ?????????? ???????, ?????????? ?? ?? ?????? ?????????? ??? ?????? ??? ?? ??
????????? ??? ?????? ??? 5 ??? 1993 ?? ?????? ??? ?????????? ??? ?? ?? ?????????? ??? ??
????????? ??? ??????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?? ??
????????? ??? ???????, ??? ?????????? ??? ?????? ??? ?????????? ??? ?? ?? ?????? ??? ??
??? ?????? ??????? ??? ?????? ??? ?????? «????????? ?? ?? ?????? ?????? ?????? ???» ???
??? ?????? ??? ?????? 11, ?, ?????????? 1. ??????, ?? Commissioners ??????????
????????? ??? ?????? «????? ?????? ?????? ??? ?????? ?????????? ??? (??? ???
????????????? ??? ??? ?????? ?????? ??????) ??? ??? ?????????? ?????????? (???)
??? ?????????? ??? ??? ?????? ?????? ??????».

? - ? ????? ???????? ??? ????????? ?????????????

11 ? Gibbs ?????????? ??? ???????? ?????? ?????? ?????? ??? Value Added Tax Tribunal, London
(????? ????: Tribunal). ? Gibbs ?????????? ??? ?????? ??? ?????? 11, ?, ?????????? 1,
????????? ??, ??? «?????????» ??? ?????? ?????????? ??? ??? ?????? ??? ?? ??????
????????? ??????? ?? ??? ?? ?????? ?????????? ?????????? ??? ??? ?????? ??? ?? ??????
???? ?? ??? ?????? ?????????? ??? ??? ?????????? ??? ??? ??????????. ??????????, ? Gibbs
????????? ??? ?? ??? ?????? ??? ?????????? ??? ??? ?????????? ??? ??? ?????????? ?????? ??
????????? ?? ?????????? ?????????? ??? ??? 11, ?, ?????????? 1.

12 ?? Commissioners ?????????????? ??? ?? ?????????? ?? ?? ?????????? ?????????????? ???
????????????? ?????? ??? ??? ?? ?????????? ??? ?????? ??? ?????????????? ??? ?????? ??? ? Gibbs,
??? ??? ?????? ?????????? ?? ??? ?????? ??? ?????? ?? ?????????????? ??? Gibbs ?? ??????? ??????????
????????? ??? ?? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ??????????. ?? ?? ?????? ??? Gibbs
????????? ??? ??????????, ??????? ??? ?? ??? ?????? ??????????, ??????? ?????????? ???
?????? ?????? ?????????? ??? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ??
?????. ??? ?? ?????? ?? ?????? ??????????, ?? Commissioners ?????????????? ???
????????? ?????????? ?????????? ?????????????? ??? ?????????????? ??? ?? ??? ???, ?????? ??? ??
????????? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??
????????? ??? ?????? ??? Gibbs. ?? Commissioners ?????????????? ??? ?? ?????????? ??? ??
????????? ?????? ??? ?? ?????? ?????? ?????????? ?????????? ?? ??? ?? ??? ? ?????? ??? ??????
????????? ??? ?????????? ??? ?????? Gibbs ?, ??? ? ?????????? ?????? ?????????????????? ???
????????? ??????????, ?? ??? ?? ?????? ??? ?????? ?????????? ?????????? ?????????? ??? ?? ??? ??
????????? ? ?? ??? ?? ?????? ?????? ?????????? ? ?????? ?????????? ??? ?? ??? ?? ??? ??
?????????. ??? ?????? ?? ?????? ?????????? ?????????????? ?????????????? ??? ?????????????? ??? ??
????????? ?????? ??? ??? Gibbs ??? ?? ?????? ?????????? ???, ??? ?????? ???, ???
????? ??????????, ? ?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ?????? ??? ??
????????? ?????????? ??? ??????

13 ????? ?? ??????? ?????????? ??????????, ? ??????? ??????? ??????? ??????? ??????? ??????? ?? ??
?????? ?? ?? ??????????. ? ??????? ??????? ?? ?????????? ?? ?? ?????????? ?? ?? ?? ??????????
????????????? ?? ?? ????? ??????? ?? ?? ?? ??????? ?? ?? ?? ??????? ?? ?? ?? ??????? ?? ?? ??
Commissioners ?????????? ??, ?????????? ?? ?? ??????? ??????? ??????? ??????? ?????????? ?? ?? ??
????????? ??????? ?? ?? ?? ????? ??????? ??????? ??????? ??????? ???????, ? Gibbs ?? ?? ?? ??
????????? ?? ?? ????? ?????????? ?? ?? ?? ?????????? ??????? ?????????? ??????? ?? ?? ?? ?????
????????? ?? ?? ????? ?????????? (?? ?? ????? ??????????).

14 ?? Tribunal ??????? ??? ?? ?????????? ??????????? ?????????? ??? ??????????? ??? ??
?????????? ??? ?? ?????? ??? ?????????? ??? ?? ?????? ??????? ?? ??? ?? ?????? ??? ?? ???????????
???? ??????? Boots Company (3) ??? ?? ?????? ??? ??????? ?? ?????????? ??????? ?? ?????????? ??? ??
?? ?????? ??? Gibbs ??????? ??? ?????????? ??? ?? ??????? ??? ??????? ??? ?????????? ??? ??
???? ?????????? ?? ?????? ?? ?????? ?????? ?????? ??? ?? ?????????? ?? «?????? ??????? ??
????» ?? ??? ?? ?????? ??? ?????????? ??? ?????????? ??? ?? ?????????? ??? ??????. ??????????,
?? Tribunal ??????? ??? «?? ?????? ?????? ??????» ?? ?????????? ??? ?????????? ??? ??
?????? Glawe (4) ?????? ?? ?????????? ??? ?????????? ??? Gibbs. ?? Tribunal, ??????????
?????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ???????, ?????????? ??
?????? ??? ?????? ?????????? ??? ?????????? ??? ??????????;

«1) ?????????? ??????????

???? ??????, ??? ??? ??? ????? ?????? ??? ?????? 11, ?, ??????????? 1, ??????????? ?, ??? 11, ?,
?????????? 1, ? "???? ??????? ??? ??????" ??? ?????? ?????????? ??? ??????
?????????? ??? ? Elida Gibbs ??? ??????? ??? ?????????? ??? ?????????? ??? ?????? 4 ??? ??
????????? ???????, ?????? ??????:

) ? ??????? ??????????? ????"?????????????" ? ??????? ??????? ??????? ??????? ?????????? ???
?????????? ??? "?????????????" (?) ??? ?????? ?????? ??????? ??? ???????, ???
??? ??????????? ? ?? ?????????? ??? ???????????, ??? ??? ?????? ???????, ???

) ?? ???????, ?? ??? ?????? ?????????? ????"?????????????" ??? ??????? ??????? ??? ??????? ?????????? ???
?????????? ??? ???????, ?????? ?? ??????? ??? ?????? ??? ??? ?????? ??????? ??? ??
?????? ??????? ??? ??????????? ??? ??????? ??? ???????, ???

) ? ??????????? ????"???? ?????? ?? ??????????? ????"???? ?????? ??? ??
?????????" ????"???? ?????? ??? ?????? ?????? ??? ?? ?????? ???????, ???

) ? ??????? ??????? ????"???? ?? ??????? ??? ?????? ??? ?????? ??? ??????? ??? ??????? ??? ??
??????, ?? ?????????? ??? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ???;

???? ??? ?????????? ?? ??? ?????? ??????? ??? ?????? ??? ?????? ?????? ?????????? ? ???????????????, ?
???? ??? ?????????????? ?? ??? ?????? ?????? ?????? ??? ?? ?????????? ??? ?????? ???;

????????? ? ??????? ??? ?????? ??????? ?? ? ?????????????? ?????????? ??? ??????? ?? ???????
?????? ?? ?????? ??????? ??? ??? ?????? ??? ?? ?????? ???????;

2) ??????? ????????????

???? ??????, ??? ??? ??? ?????? ??? ?????? 11, ?, ??????????? 1, ??????????? ?, ??? 11, ?,
?????????? 1, ? "???? ??????? ??? ??????" ??? ?????? ?????????? ??? ??????
?????????? ??? ? Elida Gibbs ??? ??????? ??? ?????????? ??? ?????????? ??? ?????? 5 ??? ??
????????? ???????, ?????? ??????:

) ??? ??????? ?????????? ?????????? ??? ???????, ? ??????? ???????????
("?????????????") ????"?? ??????? ????"???? ?? ?????? ??????????" ????"????????? ????"
????? ?????? ??????? ??? ??????? ??? ?????? ?????????? ????"????? ?????? ?????????? ????"????? ????"
????? ??? ??????? ?? ??????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ?? ?????????? ????"
????? ??? ?????? ?????????? ????"????? ????"

) ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??????? ?????????? ????"????? ????"
"????????????? ????" ????"????? ?? ????"????? ????"????? ????"????? ????"????? ????"????? ????"
????? ????"????? ????"????? ????"????? ????"????? ????"????? ????"????? ????"????? ????"
????? ????"????? ????"????? ????"????? ????"????? ????"????? ????"????? ????"????? ????"
????? ????"????? ????"????? ????"????? ????"????? ????"????? ????"????? ????"

) ??? ??????? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???????, ?????????? ?? ???????
????? ??????????? ??? ?????????? ??? ?????????? ??? ?????????? ????"

???? ??? ??????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ? ???????????????, ?
???? ??? ??????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????"

????????? ? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ????"
????? ??? ?????? ??????? ??? ??? ?????? ??? ?????? ??? ?????? ????"

? - ??????????? ??? ?????????? ??? ???????????

15 ??????? ?????????? ??? ?????? ? Gibbs, ?? ??????? ??????? ??? ?????? ?????????? ??? ???????
??? ??????? ???????, ? ?????? ???????, ? ?????? ???????, ? ?????? ??????? ??? ???????, ??? ???????,

? ??????? ?????????? ??? ? ???????, ??? ? Gibbs, ?? ?????? ???????, ? ??????, ?
????? ??? ? ??????? ??????? ??????? ?????????? ??????????.

??? - ??????? ??? ?????????? ??? ?????????? ??????????

16 ?? ??????? ??? ???? ?? ?????? ???????, ?? ?????? ?????? ?? ??????? ??????????
???????, ??????? ??? ?????????? ??? ?????? ??? ?????? ??? ??????? ??? ? ??????? ???
?????? ??? ?????? ?? ??????? ??? ?????? ??? ?????? ??? ??????.

? - ??????? ??????????

17 ?? ?? ??????? ??????? ?? Tribunal ?????? ???' ?????? ?? ? ??? ?????????? ??? ????,, ??
??? ?????? ??? ???? ???????, ??? ????? ?????????? ??? ?????????? ??? ?????????? ??? ????
?????? ??? ??? ?????????? ??? ?????? ??? ?????? ?????? (???, ?? ????????)
???????????, ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???????
????????? ??? ?????????? ?????????? ??? ?????? ?? ?????????? ??? ??? ?? ?????? ??? ?????? ???
????????? ??? ?????????? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ??????.

18 ? Gibbs ??????? ?????????? ??? ??? ? ?? ???? ?????? ??? ???? ?????? ??? ???? ?????? ???????,
??? ? ??? ?????? ?????? ?? ??????? «??? ??????? ?????????? ??? ?????? ??????» ??? ??
? ??? ?????? ?????????? ??? ?????? 2 ??? ?????? ?????? 67/227/??? ??? ?????????? ???
11?? ??????? 1967, ??? ???? ?????????? ??? ?????????? ??? ?????? ??? ?????? ???
????????? ?? ??? ?????? ?????? ?????? (??? ????: ??? ?????) (5), ??? ?????? ???
«????????? ??? ?????? ?????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ???
???????????, ??? ?????? ?????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? ??? ?????????? ??? ??? ?????? ?????? ??? ?????? » (6). ?????? ? ?????????? ???
????????? ??? ?????? ??? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ???
????????? . ? Gibbs ?????????? ??? «?? ?????????? ?????? ??? ?????? ??? ?????? ???
????????? ?????????? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (????????? ??????). ? Gibbs
????????? ??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??????, ??????? ?? ?? ?????? 11, ?, ?????????? 1, ??? ?????? ??????. ? ???????, ???
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
Gibbs, ? ??? ?????? ??? ?????? «????? ??? ?????????? ??? ??????»,
??? ??? ?????? ??? ?????? ???.

19 ?????? ??????? ?? ???????, ???????, ??? ??? ?????? ??? ???? ??? ?????????? ???
??? ??????????. ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ???
????????? ??? Gibbs, ??? ?????????? ??? ??? ?????? ??? ?????? ??? ?????? ???
??????, ??? ??? ?????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
??? «????????? ???» ??? ?????????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
??? ?????? ??? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
Naturally Yours Cosmetics (7). ??????, ??? ?????????? ??? ?????? ??? ?????? ???

????????????? ??? ???? ?????? ?????????? ?????????????? ?? ?????????? ? ???????
????????????? ??? (8). ????? ? ?????? ?????????? ?????????? ?? ??????, ??? ?????????? ?? ?
??????, ?? ??? ?????????? ??? ??????, ?? ?????? ?? ?????? ?? ?????? ? ?????????? ?? ??????
???? ?????? ??? ?????? Gibbs ??? ??? ??????. ????? ?????????????? ?????? ? ?????? ???,
???? ??? ?????? ??? ?????? ?????????? ?????????? ?? ?????? ??? Gibbs, ????? ?????? ?? ??????????
????? ??? ?????? ??? ?????? ?????????? ?????????????? ?? ?????????? ??? ??????????.

20 ??????????, ? Gibbs, ?????????? ??? ?????? 11, ?, ?????????? 1, ??? ?????? ???????,
????????? ??? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?? ?????? ?????? ?????? ?????? ???
????????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ?????? . ? ?????? ??? ??????, ??? ?????? ?????? ??????, ??? ?????? ???, ??
????? ?????? ?? ?????? ??????????????????, ??? ?????? ?????? ??????, ??? ??????.
??? ?????? ?????? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ??????.
????? ?????? ?????????? ? ??????, ??? ?????? ??? ?????? 11, «? ?????? (?????) ???
????? ?????? ??? ?????? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????
????????? ?? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ???
????? ??? ? ??????» (9). ?? ??? ?????? ???ts, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? (?? ??????????)
????? ??? ?????? ??????), ??? ?????? ??? ?????? ?????? ?????? (?? ??????????) ??? ???
????????? ??????), ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??????
?????????.

21 ???????, ??? ? ?????????? ?????? ?? ?????????? ??? ???????, ??? ? ???????
?????? ?????? ??? ? ?????????????? ?????? ?? ?????? ?? ?????????? ??? ? ?????? ??? ? ??????
?????????? ?????? ????????, ??? ?????? ???, ??? ?????? ??? ?????????? ?????? ???????, ??? ????
?????????? ?????? ????????, ??? ?????? ???, ??? ?????? ??? ?????????? ??? Gibbs, ??
?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? (10). ??? ?????? ??? ? Gibbs ??????? ??
????????? ?????????? ??? ?????? ??? ?????? Glawe ??? ?? ?????????? ??? ???????
????????? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ?????? ??????????
????????? ?? ??????. ? ?????? ??? ?????????? ?? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ?????????? ??? ?????????? ?????? ?????????? ?????????? ?????????? ??????????,,
????????????? ?? ?????????? ?????? ?????? ?????? ?????????? ?????????? ?? 60 % ??? ?????? ???
????????? ???- ???, ??? ?????? ??? ? ?????????? ??? ?????????? ??? ?????????? ??? ??????????,,
????????? ?? ??? ?????? ??? ?????????? ?? ?????????? ?????? ?????? ??? ?????? ??? 40 % ???
????? ????. ??????????, ? ?????? ?????? ?????? ?????? ?????????? ?????????? ?? ??? ??????
??? ??????? ??? ????????, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
????????? ??? ?? ?????????? ??? ?????? ?????? ?????? ??? ?????? ?????????? ??? ?????????? ?? ???
????????? ?????? ?????? ?????? ??? ?? ?????????? ?? ?????? ?????????? sui generis
????????? ??????. ? ?????????? ??? ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???
????????? ?????? ?????????? ?????? ?????? ?????? Glawe ??? ?????? ?? ?????????? ???
?? ?????????? ?????? ???, ?????????? ?? ??? ?????????? ?????? ?????????? ?????? ??????
????????? ?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ?????? ??????
?????????. ? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ?????? ??? ??????????
?? ??? ??????? ??? ????????, ??? ?????? ?????????? ?? ?????????? ?????????? ?????????? ???????.
? ?????????? ??? Gibbs ??? ? ?? ?????? ??? ?????? ?????? ?????? ?????? ??? ??????????
?? ?????? «?????????» ?????? ?? ?????? ?????? ?????? ??? ?????? ??? ?????? ?? ?????????? ??
????????? ?????? ??? ?????????? ?????? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ???
?? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???
????????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???

22 ?? ??????? ??????? ??????????? ??? ?? ??? ?? ?????? ?? ??????????? ? ?????????? ???????
??? ?? Gibbs, ??? ??????? ??? ?????????? ?????????? ??????????, ?????????? ??
?????????. ?? ??????? ??????? ?????????? ???' ?????? ??? ? ?????????? ??? ???????
????????? ?? «????????? ???» ???? ??? ??????? ?????? ???? ?? ??????? ??????, ???

??? ??????? ??? ?????? 11, ?, ??????????? 1, ??????????? ??, ???, ?? ?? ??????, ?? ?????? ???
?????????? ??' ??????. ????? ? ??????????? ??? ??? ????????? ??????????. ??????????? ??
????????? ??? ????? ??????????? ??? ?????????? ?????, ?? ??????????? ?????? ??
?????????????? ??? ????? ??????????? ??? ?????? «? ??????????? ?? ??????? ??
?????????». ?? ??????????, ?? ??? ?????????????? ??? ??????????. ?? ????? ?????????? ??
????????? ??? ????? ?????????????? ?? ??? ????? ?????????? ??? ??? ?????????? ??
????????? ??? ??? ????? ?????????? ??? ?????????? ??? ??????????.

23 ?? ?????? 11, ?, ?????????? 1, ?????????? ??, ?????? ??? ??? ?????? ??? ?????? ??? ??
????????? ??? ?????? «????????? ?????? ??? ?????????, ??? ?????? ??? ?????? ??
????????? ?? ?????? ??? ??? ?????? ?????? ?????? ?? ?????????? ?? ?????????? ??? ?????? ??
?? ????????, ??? ?????? ??? ?????? ?????? (...)». ?? ??? ?????? ???ts ?? ?????????? ??? ??????
?? «?? ?????????? 2 ??? 3 ??? ????? [11, ?] ?????????? ?????????? ?????????? ??? ?????? ??
????????? ??? ??? ????? ?????????? ??? ?????? ??? ??? ?????? ?? ?????????? ?? ?????????? ??
????. (...) ?????, ?? ?????????? ??? ?????????? 2 ?????????? ??? ??? ?????? ??? ?????? ??
????????? ??? "?????????" ???, ???????, ??? ?????? ??????? ??? ?????, ?? ??
????????? ??? ?????????? 3 ???????????, ?????? ex lege, ??? ??? ?????? ??
?????????» (11). ?? ?????????? ?????????? ???, ??? ??? ?????? ??? ?????? ??????????????
?????????, ?????? ??? ?????? ?? ?????????? ?? ?????????? 2 ??? 3 ??? ?????? 11, ?,
????????? ?? ?????????? ??? ?????? ?????? ??? ?????? ?????? «????? ?? ?????? ?????? ???
????????? ??? ?????? 1, ?????????? ?».

24 ????? ?????? ??? Gibbs ??? ?????????? ??? ?????? ??? ?????? ?????????? ??? ?????? ???
????????? ??? ??? ?????? ?? ???????, ??? ?? ??? ?????? ??? ?????????? ??? ??????, ?
????????? ??? ?????? ?????????? ??? ?????????? ??? ?? ?????????? ??? ?????????? ?? ???
????????? ??? ?????? ?????, ? Gibbs ?????????? ??? ?? ?????????? ???
????????????? «????????? ?????????? ??? ?????? ?????? ??????». ? ??? ?????????? ??
????? ?????? ?? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?? ??? ?????????? ??? ?????? ??
????? 11, ?, ?????????? 3. ? ?????????? ?????? ??? ??????, ??? ??? ?????? ???, ??
????????? ?? ?????? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? 3, ???????
??, ?????? ?????? ?????? ??? ????? «????????? ??? ??????», ? ?????? ?????? ??? ??
?????????, ??? ?????????? «??? ??? ?????? ?????????? ??? ??????». ???
????????? ?????? «??? ?????????? ??? ??????». ??? ??? ?????? ??? ?????? 11, ?,
????????? 3, ????????. ?? ??? ?????? ???, ?? ?????? 11, ?, ?????????? 3, ????????, ??, ??
????????? ??? «????????? ??? ??????», ??? ??? ?????? ??? ??? ?????? ??? ?????? ??
????????? Van Gerven ??? ?????????? ??? ??? ?????? ?????? ???ts (12), ?? ??????
????????? ?????? ??? ?????????? ??? ?????? ?? ?????? ?????? ??? ?????? ??? ?????? ??
????? ??? ?????? ??? ??????????. ??? ?????? ?????? ??? ?? ?????? ??? Gibbs ??????
??? ?????? 11, ?, ?????????? 1, ????????, ??? ?????? ?????? ?? ?????? ??? ?????? ??
????????? ?? ??? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??
?? ?????????? ?????? ??? ?????????? ?? ?????? ??? ?????? ?????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?????? ??? ??????
??? ?????????? ??? ?????? ??? ?????? ??? Gibbs.

25 ??? ?????? ?????????? ??? ?????????? ??? ?????? 11, ?, ?????????? 1, ?????????? ???
Gibbs, ?? ??? ?????? ?????????? ??? ? ???????, ??? ? ?????? ??? ?????????? ??? ?????? ??
????????? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ??
????????? ??? ?????? ?????????? ?????? ??? ?????? ?? ?????? ?? ex post facto
????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?? ?????????? ??? ?????? ??? ??????
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??? ?????? ??? ??????
??????, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????????? ?????????? ??? ??
????? 11, ?, ?????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???

? ?????????? ?????? ? ??? ?????? ?????????? ?????? ??? ?????????????? ?????????? (13). ???
??? ?????? ???, ? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ???
?????????? ??? ?????? ?? ??????? ??? ?????? 11, ?, ?????????? 1, ?????? ??? ??????????
?????? ?????? ?????? ?????? ??? ?????????????? ?????????????? ?????????? ??? ??? ???
????????????? ?????????????? ?????????? ??? ?????????? ?????? ??? ?????? ?????? ??????.
??? ??? ??????????, ? Gibbs ?????????? ???, ?????? ?? ?????? ?????????, ???
????????????? ?????????? ?? ?????? ??? ???????????, ??? ?? ??? ?????????? ??? ??? ???
?????? ?????? ??? ?????????????? ?????????? ??? ??? ?????? ?????????? ??? ??? ??? ?? ???
??? ??? ?????? (????? ??? ???' ?????? ??? ???) ?????? ??????.

26 ?????? ?????? ??? ?????? ??? ? ?????????? ?????? ??? ?????????????? ?????????? ??? ??
???? ??????? ??? ?????, ??? ?????????????? ?? ?????? ?????? ?????? ?????????? ??? ???
????????, ?? ??????? ?? ?????????? ?????????? ?? ?????? ??? ??? 2,
?????????? 1, ??? ?????? ?????? ?????? ??? ?? ?????????? ?????? ??? ?? ???????
????????? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ?????? ??? ?? ???????
????????? ??? ?????????????? ??? ?????? ??? ?????? ?????? ??? ?????????? ??? ??? ??? ???
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? «?? ?????????? ?? ???»
????? «????????????? ???», ?????? ?? ?????? ?? ?????? «????????? ??????????» ??? ??
?????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? «??? ??? ? ??? ? ???»
????????? ?????? ?? ?????????????? ??????» (15). ? ?????? ??? ??? «?????????????»
????? ?? ?????????? ?????? ???, ??? ??? ?????? ???, ?????? ??? ?? ?????????? ???
????????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? (16). ??
?????? ??? ?? «?????????????» ??? ??? ?????????? ?? ?????????? ??
????????????? ?????? ?? ?????????????? ?????? ??? ?????? ??? ?????????? ??????????
????? ??? ??? ?????????????? ??? ?????? ??? ?????? ?? ?????????? ??? ???????, ??? ???
????????? ?? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ???????.

27 ?????????? ?????????? ?????? ? ?????????? ??? ?????????? ??????????, ??? ?????????? ???
??? ?????? ???, ?? ?????? ?????? ? ?????????? ??? Gibbs ??? ??? ?????????? ??? ?? ???
????? ??? ?????????? ?????????? ?????? ?? ?????????? ??? ?? ??? ?????? ?????? ??? ???
??? ??? ?????? ???????, ??? ?? ?????? 11, ?, ?????????? 1, ?????? ?? ??? ??????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ??? ??? ??????. ?
????????? ?????????? ??? ? ?????? ??? Gibbs (????? ?????? ? ?????? ?????? ??????) ???
????? ?????? ?????? ??? ?????? ??? ?????? ?????? (?) ?????????? ?? ??????) ??
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????????? ? Gibbs ??? ??? ?????? (????? ??? ?????? ?????? ??????). ?? ?????? ??????
????????? ? ?????????? ??? ?????? ?????? ?????? ??? ??? ???' ?????????? ?????? ??? ??
????: «(...) ?????? ??? ?????? ??????????, ??????, ? ?????? ?????? ?????? ?????? ??? [??
????? ??? ??????] ?? ??? ??? ??? ?????? ?????? ?????? ?????? ???, ???????, ?
????????, ??? ?????????? ?? ???, ?????? ?????? ??? ??? ?????? ??? ?????? ??? ??? ?? ??? ???
?????????;» (17) ??????, ? Gibbs ?? ?????? ?? ?????????? ??? ?????? ?????? ?????? ???
????????? ?? ??? ??? ?????? ?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????????? ??? ??? ?????? ?????? ??? ?????? ??? ??
????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??
????? ??? ?????? Chaussures Bally (18), ?? ?????????? ??? ?????????? ?????? ??? ??
????????? ?????????? ??? ??????????, ??????, ??? ?? ??? ?????? ?????? ??? ?? ??? ??
Gibbs (????? ??? ??? ?????? ??? ?????? ???) ???, ???????, ??? ??? ?????? ??? ??
????????? (????? ??? ?????? ??????). ?? ??? ?????? Chaussures Bally ?? ??????????
????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ??
??? ?????????? ??? ??? ?????? ?????? ?????? ?????? ?????? ???, ?????? ??? ??
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???, ?? ??? ??? ??? ??? ??
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ??? ?????? ??? ??

??? ??? ?????? ??????? ???? ?? ?????? ?????? ?????????? ??? ???????????????. ??? ?? ????
????????? ???? ?, ?? ?????? ?????? ?????????? ?????? ??? ????? ?? ?????????? ??? ??.

28 ??? ?? ??' ?????????? ???????, ? ??????? ?????????? ??? ?????????? ??? ?????????? ???
????????? ??? ? ?????????? 1, ??????? ??, ??? ?????? 20, ?? ?????? ??? ??
«????????? ??? ???? ??????», ?????????? ??? ?????? ??? ?????????? ??? ??? ?? ?????? ???? ??
????????? ??? ?? ??????? ??? ?????? ??? ???????. ?? ?????????? ??? ??? ?? ?????? ???
????????? ??? ?? ??????? ??? ?????? ??? ???????. ?? ?????????? ??? ??? ?? ?????? ???
????????? ??? ?? ??????? ??? ?????? ??? ?????? 11, ?, ?????????? 1. ??????, ?? ??? ??????????
?? ??? ?? ??? ?? ?????? ?? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ???
???? ??? ?? ??? ??, ??? ?????? ??? ?????? 11, ?, ?????????? 1, ? ??? ?????? ?????????? ???
?? ?????? 11, ?. ?? ?????? ?? ?????? ??? ?????? ?????? ??? ?????????? ?????????? ???
????? ?????? ? ?????????? ?? ?????? ??? ?????? ?????? ?????? ?????????? ?????????? ???
????????? ??? ?? ?????? ??? ?????????? ??? ?????? ??? (19).

29 ??????, ??? ?? ?????????? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??
?ribunal ??? ?????? ??? ???? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
?? ?????????? ??? ???? ??? ?????? ?????? (? ??????) ??? ?????????? ??? ??
????????? ?????????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ??? ?ribunal ??? ?????? ?? ??????
?????????.

? - ?????? ??????

30 ? Gibbs ?????????? ???, ??? ?? ?????? ???? ?????? ?????? ?????? ??? ?? ?????? ???
??????, ? ??? ?????? ??? ?????? ?? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ? ?????????? ???, ???, ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ??? ?????? ??? ?????? ??? ???????. ? Gibbs ?????????? ??? ?? ??????????
???? ?????? ??? ?? ?????? 11 ??? ?????? ?????? ?? ?????????? ??? ?????? ??? ?????? ???
?????????: ??? ?????? ?? ?????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? 11, ?,
????????? 1, ??????? ?, ?? ?????? ?????? ??? ?????? ??????????, ??? ?????????? ?? ???
??? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ???
11, ?, ?????????? 1, ?????????? ??? ?????? ??? ??????.

31 ?????? ??? ?? ?????? ???????, ? Gibbs ?????????? ?????? ??? ?????? ???ts.
????????? ? Gibbs ?????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ???ts ??????
????????? ?????? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???,
????????? ??? ???? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ??? ??????
?? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ?, ? Gibbs ?????????? ??
????????? ??? ?????????? ??? ?????? Conseil d'?tat ??? ?????? ??? ?? ??????????
Berthier-Sav?co (20). ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ?
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? Gibbs ??????????,,
???? ?????????? ??? ??? Commissioners, ??? ?????? ??? ?????? ??? ?????? ???
?????????, ??? ?????? ??? ?????? ??? ?????? «????????? ???», ??? ?????? ???
????? 11, ?, ?????? 1, ?????? ??, ??? ?????? ?????? ??? ?? ?????????? ??? ??
??? ?????? ??? ?????? ?, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??
????????? ??? ??? ?????? ???, ?????? ?? ?????? 11, ?, ?????????? 1.

32 ? ?????? ?????????? ??? ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??
????????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ?????? ????. ??' ?????? ??? ?? ?????? 11, ?, ?????????? 3,
????????? ??, ?? ?????? ?????????? ??? ?????? ? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????????? ??? ?????? ?, ?????? ?????? ?????? ??? ?????? ??? ??????
????????? ??? ?????? ?????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? 11,

? , ?????????? 1, ????? ???? ? ???? ? ?????????? ???? ? ???? ? ???? ? ???? ? ???? ?
???????. ????, ????? ???? ?????????? ?????? ?????? ?????? ?????? ?????? ???? ???? ???? ???? ?
? ?????????? ?????? ?????? ???? ???? ???? ? ???? ???? ???? ???? ???? ???? ???? ?
?? ?????? ?????? ??? ???? ???? ???? ???? .

33 ?? ?????? ???????, ?????????????? ?? ???' ?????? ?????? ?????????? ?????????? ??? ??
?????? (21), ??? ?????? ??? ?? ?????, ?????????? ?? ?? ?????? ?????? ?????? ?????? ??????
?????? ??? ?? ?????? ?????? ??? ?????? ?? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ?????? ??? ?????????? ??? ?????? ?????? ?????? . ?????????? ??? ? ??????????
???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?? Gibbs, ? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??
?? ?????? ??? ?????? ???' ?????? ?????????? , ?????????? , ??? ?????? ??? ??
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? Gibbs.
?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? . ?????????? ??? ???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????
????????? ??? ?????????? ??? Gibbs, ? ?????? ?????? ?? ?????????? ?????? ?????? ??????
????????? ?????? ?? ??? ?????? ?????? . ?????? ?????? ?????? ?????? ??? ?????? ???ts, ? ??????
????????? ??? ?????? ??? Gibbs ??? ?????????? ??? ???? ?????? ??? ?????? ??? ?????? ??? ??
????????? ??? , ???, ?? ??? «????? ?? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ?
??? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? , ?? ??? ???? ?
??? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ».

34 ????? ?????? ?????? ??? ???? ???? ?????? ??? Gibbs ?? ?? ??? ?????????? ?
?????? ? ??? ???? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???
????? ?????? ??? ?????? ??? Gibbs. ??? ? ?????? ??? ?? ??????
????????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ???,
????? ?????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? . ? Gibbs, ???
????????? ??? ?????? ?? ?????? ?????? ??? ?????? ?????? , ?????? ??? ???? ???? ??????
????????? ??? ?? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ???,
??? , ??? ???? ???? ???, ?????????? ?????? ?????? ?????? ? Gibbs ?? ?????????? ??? ?
????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ??????
??? ?????? ?????? ??? ?????? ?????? , ?????? ??? ???? , ? ?????? ??? ???? ???? ???? ???? ?
????????? ?? ??? ?????? ???ts, ?????? ?? ?????? ??? ???? ???? ???? ???? ???? ???? ?
????????? ?? ?????? ??? ?????? ??? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ?
????????? ?????? . ? ???ts ?????? ??? ?????? ?????? ?????? ??? ???? ???? ???? ???? ?
????????? ??? ??? ?? , ?? ?? ?????? , ?????? ??? ?????? ?????? ??? ???? ???? ???? ???? ?
??? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? . ? ?????? ??? ???? ???? ?
??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ???? ???? ???? ???? ???? ???? ?
????? ?? ?????? , ??? ???? ?????? ??? ?????? ??? ?????? ?????? ??? ???? ???? ???? ?
??? ?????? ?????? ??? ???? ?????? (22). ? ?????????? ??? Gibbs ?????????? ??? ??
? ???ts ?????? ?????? ??? ?????? ??? ?????? ??? ???? ???? ???? . ?????? ??? ???? ????ts
????????? ?????? ?? ??? ???? ?????? ??? ?????? 11, ?, ?????????? 1, ?????? ??.

35 ?? ?????????? ?????? ??? ?????? ? Gibbs ?????????? ?? ?????????? ???
????????? ??? ???? ?????? ? ?????? ?????? ??? ?????? . ?? ?????? , ??????????
????? ??? ?????? , ?????? ?????? ???? ?????? ?????? ??? ?????? ?????? ??? ??????
????????? ??? Gibbs. ?????? , ?????? ??? ?????? ?????? ?????? ???? ???? ???? ?
????????? . ? Gibbs ?????? ??? ???? ?????? ?????? ??? ???? ?????? ??? ?????? ??? ?
????????? . ? ?????? ?????? ?????? ?????? ??? ???? ?????? ??? , ??? ???? , ? Gibbs
?? ??? ?????? ??? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

???????, ? ?????????? ??? Gibbs ??? ?? ?????? ?????????? ?????????? ?????? ??? ??????
????????? ??? ??????????. ??? ?? ?????? 11, ?, ?????????? 1, ?????????? ?, ?????????? ???
??? ?????????? ??? ?? ?????? ?????????? ? ?????? ?????????? ??? ?? ?????????? ??? ??????.
??? ?????????? «??? ?? ?????? [?] ??? ?????» ??? ?? «????? ?????? [??] ???
????????? ???]». ?? ??? ?? ?????? ?? ?????????? ?????? ?????? ?? ?????????? ?? ?????????? «???
????????? ??? ?? ??? ?? ?????? ?????? ?????? » (23). ?????????? ??? ?? ?????? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ????????????, ??? ?? ?????????? ??? ??
????? ?????????? ??? ?????????? (24).

36 ?? ?? ??? ?? ?????????? ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ?????? ???
????????? ??? ?? ?????? ?????????? ?, ??????????, ??? ?? ?????? ?????????, ?????????? ?? ??
????????? ??? ?? ?????? ?????????? ?? ?????????? ?????? ?????????? ??? ?????? ??? ??????
????????? ??? ?? ?????? ??? ?????? ?????? ?????? ??? ?? ?????????? ??? ?? ?????????? ?
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?? ?????? ???'
????, ??? ?? ?????? ?????? ?????? ??? ?????? ?? ??? ?????? ?????????? ??? ?? ??????. ??????
???? ? ?????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ? Gibbs
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?? ??????????, ? ??? ?? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????????? ??? ?? ?????? ??? ?? ?????? ??? ?? ??????
????????? ??? ?? ?????? ??? ?????????? ??? ?? ?????? ??? ?????? ?? ??????. ?? ??????
?????????, ??? ?? ??' ?????????? ??? ??????, ??? ?????? ??? ?????? ??? ?????? ??? ??????
????????? ??? ?? ?????? ??? ?????????? ??? ?? ?????????? ??? ?? ?????????? ?????????? ???
????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? ??? ?? ?????????? 10 ?????? ???
??? ?? ?????????? ??? ?????????? ???, ?? ?????????? ??? ?????? ?????? ?????? ??? ??????
??? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ??????
??? ?????? 30 % ??? ?? ?????? ??? Gibbs ?????? ??? ?????? ?????? ?????? ??? ?????? ???
???? ??????????, ??? ?????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ???? ?? ??????
?? ??????, ??? ?? ?????? ??? ?????? ?????? ?????????? ?????????? ??? ?????? ??? ??????
????????? ??? ?? ?????? ??? ?????????? ??????.

37 ??? ?? ?????? ??? ?? ?????????? ??? ?? ?????????? ?????????? ??? ?? ??? ?? ?????? ?????????? ???
??' ?????? ??? ?? ?????????? ??? ?? ??? ?? ?????????? ??? ?? ??? ?? ??? ?? ?????? ??????
Gibbs ??? ?????? ?????????? «????? ??? ?????????? ??? ?? ??????», ??? ??
????? ??? ?? 11, ?, ?????????? 1.

38 ? ?????? Berthier-Sav?co ??? ???????, ??? ?? ?????? ???, ??? ?????????? ??? Gibbs.
????? ?? ???????, ????, ??? ?? ?????? Berthier-Sav?co ?? Conseil d'?tat ??????????
?? ?????? ??? ?? ???, ??? ???????, ??? ?? ?????? ??? ?????? ??? ?? ?????? ??? ??????
????????? ??? ?? ???, ?? ?????? ??? ?? ?????? ??? ?????? ??? ?? ?????? ??? ??????
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????
????? ??? ?? ?????? ??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? Gibbs.
?? ??? ??????????, ??? ?? ??? ?? ?????? ??? commissaire du gouvernement, Schmeltz, ????
????????? ??? ?????? ??? ?? ?????? ??? ?????? 11, ?, ??? ?????? ?????? (25).

39 ??????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????????? ??
????????? ??? ?????? ?????????? ?????????? ??? Gibbs ??? ?????? ?????????? ??? ??
????????? ??? ?????? ?????? ?????? ??? ??????, ??? ?? ??? ?? ?????? ??? ?????? ??? ?????? ???
??? ?? ?????? ?????? ??? Gibbs. ?????? ??? ?????? ??? ?????? ???ts, ?? ?????? ???
????????? ??? ?? ?????? ?????? ?????????? ?????? ??? ?? ??? ?????? ?????? ??? ??????
?? ?????? ??? Gibbs ??? ?? ??? ?? ??????.

?V - ??????

?? ?????? 11, ?, ??????????? 1, ????????? ??, ??? ?, ??????????? 1, ??? ????? ??????
77/388/??? ??? ??????????, ??? 17?? ??? 1977, ??? ?????????????? ??? ?????????? ???
????? ????, ??? ??????? ?? ??? ????? ?????? ?????? - ??? ?????? ?????? ???
????????????? ????: ?????????? ?????? ???, ??? ??? ?????????? ??????:

(1) - ?? ??. ???. 09/001, ?. 49.

(2) - ? ?????????????? ????, ????, ?????? ??? ?????? ?????????????? ??? ?????????? ???.

(3) - ??????? ?? 27?? ??????? 1990, C-126/88 (?????? 1990, ?. ?-1235, ??? ????: ??????? ??ts).

(4) - ??????? ?? 5?? ??? 1994, C-38/93 (?????? 1994, ?. ?-1679).

(5) - ?? ??. ???. ???. 09/001, ?. 3.

(6) - ? ???????????? ??? Gibbs.

(7) - ??????? ?? 23?? ?????????? 1988, 230/87 (?????? 1988, ?. 6365, ?????? 16 ?? 17, ??? ???: ?????? Naturally Yours).

(9) - ? ?????????????? ????. ??? ???. ??????????.

(10) - ? ?????????? ??????? ?????? ?????????? ?????? ?????? ?????? ??????????????
????????? ?????? ??? ?????????? ??? ?? ?????? ??????????. ??????, ??? ?? ??'
????????? ?, ? ?????????? ??? Gibbs ?????? ?????? ??? ?? ?????????? ??
????????? ??? ?????? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ??????
?????????. ?????????? ??? ??? ??? ?????????? ?????????? ??? Tribunal ?????????? ??
?? ?????????? ??? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ??????
????? ?????????? ?? ???????, ??? ??? ?? ?????????? ??? ?????? ??? ??? ??????????
????????? ??? ??? ?????? ???????.

(11) - ???. ????? 15.

(12) - ???. ?????? 11 ??? ???????????.

(13) - ??., ??? ????????????, ??????? ?? 5?? ?????????? 1981, 154/80, Co?peratieve Aardappelenbewaarplaats (?????? 1981, ?. 445, ??? ????: ??????? «?????????? ???????», ??? 12), ??? ?????? Naturally Yours, ??? 12.

(14) - ?????????? ??????? ??????? ??? ?????? 2, ? ?????????? ??????? ???.

(15) - ???. ??????? «?????????? ??????», ?????. 13.

(16) - ???. ??????? ???. ?????????? ??? ???. 27???. ??????? 1996 ??? ???. ?????????? C-288/94,
Argos Distributors, ?????? 21.

(18) - ??????? ?? 25?? ??? 1993, C-18/92 (?????? 1993, ?. ?-2871, ????. 12).

(19) - ??, ??????? ??????? 24.

(20) - ??????? ?? 20?? ?????? 1974, ?????? ????. 85.681.

(21) - ???????, ? ??????? ???????????? ??? ? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
????????????? ?????? ?? ??????, ??? ?????? ??? ?????????? ?????????? ?????????? ??????????
?????????????, ?????? ??? ? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ???
????????????, ?????? ??? ? ?????? ?????????? ?? ?????? ?????????? ??? ?????? ?????????? ???
????????????? ??? ??? ??????????, ?? ?????? ?? ?????? ?? ?????????? ??? ?????????? ??? ??????, ??????????
????????? ?? ??????, ??? ?? ?????????????? ??????? ?????????? ?????????? ??????????
????????????? ?????????? ?????????? ?? ?????? ??? ?????? ?????????? ?????????? ?? ??? ??? ??? ???
????????? ??? ?????? ?????? ??????????. ?????? ?????? ?? ?????????? ??? Gibbs, ? ??????????
???????????, ?????????? ??? ?????? 22 ??? ?????????? ??? ?????????? ?????????? ?????????? ??? ??????
???ts, ??? ? ?? ?????? ??? Gibbs ???????? ??? ?????????? ?????????? ?????????? ??? ?????? ???
?????? ? ?????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ??? ? ?? ?????? ???
????????????? ?????? ?????????.

(22) - ?. ??????? ??ts, ?????? ?????????? (?????? 1990, ?. ?-1235, ?-1236 ??? ?-1238, ?????????? 5, 7 ??? 12): ?????????? ??? ?????? ?????????? Van Gerven, ?????? 2.

(23) - ?????????? ??? ?????????? ??? ?????????????? ??? ?????????????? ??? ?????????? ??? ??????????
 ?????????? ????????, ?? ?????????? ??? ???????, ??? ?????????? ?????????? ?????????? ?????? ??
 ????? ??????????, ??? ??? ?????? ???????, ??? ?????????? ??? ??????, ??? ????? ??????
 ??? ?????????? ?? ?????????? ??? ??????????.

(24) - ??., ??? ????????????, ?? ?????? ??? ??? ??????? «?????????? ?????» ???
Naturally Yours, ??? ????????????, ???????, ??? ??????????? 13.

(25) - «?? ??? ????? ???????????, ? ?????????? ?????????? ?? ?????? ??? ?????????? ??? ?????? ??
????????? ??? ?????????????? ?????????? ?????? ?????????????? ??? ??????, ?????????? ??? ?
????????? ??? ?????????? ??? ?? ??????? ????? ???????????, ??? ?????? ?? ?????? ???
??????????, ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ? ??????? ???,
??????? ???????, ??? ?????? ??? ?????? ??? ?????? ?????????????? ?? ?????? ? ?????? ??? ?????? ???
????? ??? ?????????? ??????????????» (????????? ?????????????? ??? Droit Fiscal,

1974, ?. 37). ? ??????? ??? Conseil d'etat ??????????? ??? ???. ??? ?????????? ??? Droit
Fiscal, ? ?????? ??????? ??? ??????????? ?? ?????? «??????» ??? ???. ??? ?????? ?????? ???
????, ? ?????? ??? ????? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ???
??????, ?????? ?? ????? ??? ?????????? ??? ?????? Berthier-Sav?co, ??? ?????? ?
????????????? ?????? ??? ?????? ?? ?? ?????????? ??? (?.. 34).