JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

10 May 2001 *

In Joined Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99,

Kaufring AG, established in Düsseldorf, Germany, represented by D. Ehle and V. Schiller, lawyers, with an address for service in Luxembourg,

applicant in Case T-186/97,

Crown Europe GmbH, established in Gelsenkirchen, Germany, represented by D. Ehle and V. Schiller, lawyers, with an address for service in Luxembourg,

applicant in Case T-187/97,

Profex Electronic Verwaltungsgesellschaft mbH, established in Tiefenbach, Germany, represented initially by G. Sobotta and subsequently by E.O. Rau, lawyers, with an address for service in Luxembourg,

applicant in Case T-190/97,

* Languages of the case: German, English, French and Dutch.

Horten AG, established in Düsseldorf, represented by D. Ehle and V. Schiller, lawyers, with an address for service in Luxembourg,

applicant in Case T-191/97,

Dr. Seufert GmbH, established in Karlsruhe, Germany, represented by D. Ehle and V. Schiller, lawyers, with an address for service in Luxembourg,

applicant in Case T-192/97,

Grundig AG, established in Fürth, Germany, represented by D. Ehle and V. Schiller, lawyers, with an address for service in Luxembourg,

applicant in Case T-210/97,

Hertie Waren- und Kaufhaus GmbH, established in Frankfurt am Main, Germany, represented by D. Ehle and V. Schiller, lawyers, with an address for service in Luxembourg,

applicant in Case T-211/97,

Lema SA, established in Gennevilliers, France, represented by F. Goguel, lawyer, with an address for service in Luxembourg,

applicant in Case T-216/97,

Masco SA, formerly Seiga SA (High Tech Industries), established in Thiais, France, represented by F. Goguel, lawyer, with an address for service in Luxembourg,

applicant in Cases T-217/97 and T-218/97,

DFDS Transport BV, established in Venlo, Netherlands, represented by C. Grisart, lawyer, with an address for service in Luxembourg,

applicant in Case T-279/97,

Wilson Holland BV, established in Hoogvliet Rotterdam, Netherlands, represented by C. Grisart, lawyer, with an address for service in Luxembourg,

applicant in Case T-280/97,

Elta GmbH, established in Dreieich-Sprendlingen, Germany, represented by G. Breit and A. Breit, lawyers,

applicant in Case T-293/97,

Miller NV, established in Willebroek, Belgium, represented by Y. Van Gerven and I. Bernaerts, lawyers, with an address for service in Luxembourg,

applicant in Case T-147/99,

supported by

United Kingdom of Great Britain and Northern Ireland, represented, in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-279/97, T-280/97 and T-293/97, by M. Ewing, R.V. Magrill and D. Wyatt QC, acting as Agents, and, in Cases T-216/97 to T-218/97, by D. Cooper and D. Wyatt, acting as Agents, with an address for service in Luxembourg,

intervener in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97 and T-293/97,

by

Federal Republic of Germany, represented initially by E. Röder and C.-D. Quassowski and subsequently by W.D. Plessing and C.-D. Quassowski, acting as Agents,

intervener in Cases T-186/97, T-187/97, T-190/97 to T-192/97 and T-210/97,

and by

French Republic, represented initially by K. Rispal-Bellanger, G. Mignot and F. Pascal and subsequently by K. Rispal-Bellanger and C. Vasak, acting as Agents, with an address for service in Luxembourg,

intervener in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97 and T-216/97 to T-218/97,

v

Commission of the European Communities, represented in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97 and T-293/97 by R.B. Wainwright, assisted initially by K. Schreyer and subsequently by G. zur Hausen, acting as Agents, in Cases T-216/97 to T-218/97 initially by M. Nolin and subsequently by R. Tricot, acting as Agents, and by A. Barav, lawyer and Barrister, in Cases T-279/97 and T-280/97 by R.B. Wainwright and R. Tricot,

acting as Agents, and in Case T-147/99 by R. Tricot, acting as Agent, and J. Stuyck, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-279/97, T-280/97 and T-293/97 for annulment of the decisions of the Commission of 19 February, 25 March and 5 June 1997 finding that the remission of import duties is not justified, and in Cases T-216/97 to T-218/97 and T-147/99 for annulment of the decisions of the Commission of 24 April 1997 and 26 March 1999 finding that import duties must be recovered and that the remission of those duties is not justified,

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

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

Registrar: P. de Bandt, Legal secretary,

having regard to the written procedure and further to the hearing on 10 July 2000,

gives the following

Judgment

Legal background

I — *Legislation concerning the compensatory levy*

A — *EEC-Turkey Association Agreement*

1 These cases arose in the context of the Agreement establishing an Association between the European Economic Community and Turkey (hereinafter 'the Association Agreement'), signed in Ankara by the Republic of Turkey and the Member States of the EEC and the Community (hereinafter 'the contracting parties'). The Association Agreement was approved by Council Decision 64/732/EEC of 23 December 1963 (OJ 1977 L 361, p. 29). It entered into force on 1 December 1964.

2 The aim of the Association Agreement, according to Article 2 in Title I, headed 'Principles', is to promote the continuous and balanced strengthening of trade and economic relations between the parties.

3 It provides for a preparatory stage to allow the Republic of Turkey to strengthen its economy with aid from the Community (Article 3), a transitional stage in which a customs union will be progressively established and economic policies will be aligned (Article 4), and a final stage which is based on the customs union and entails closer coordination of economic policies (Article 5). Under Article 28 the Association Agreement is in the long term to allow for examination of the possibility of the accession of the Republic of Turkey to the Community.

4 Under Article 7, the contracting parties are to take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from the Association Agreement and are to refrain from any measures liable to jeopardise the attainment of the objectives of that agreement.

5 Articles 22 and 23 in Title III, which contains general and final provisions, provide for the establishment of an Association Council, consisting of members of the governments of the Member States, the Council and the Commission and members of the Turkish Government, and which, acting unanimously, has power to take decisions in order to attain the objectives of the Association Agreement. Article 25 gives the Association Council the power, on referral from any contracting party, to settle any dispute relating to the application or interpretation of the Association Agreement or to submit the dispute to the Court of Justice.

6 Finally, Article 1 of the agreement on measures to be taken and procedures to be followed to apply the Association Agreement (*Journal Officiel* 1964, 217, p. 3703) lays down the rules for the adoption of the common position of the representatives of the Community and the Member States in the Association Council.

B — *Article 3(1) of the Additional Protocol*

7 To establish the conditions, arrangements and time-tables for the completion of the transitional stage provided for by the Association Agreement, the contracting parties signed an Additional Protocol on 23 November 1970 in Brussels. That protocol was approved by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1977 L 361, p. 60).

8 As the final stage envisaged by the Association Agreement did not begin until 31 December 1995 (Decision No 1/95 of the Association Council of 22 December 1995 on implementing the final phase of the Customs Union, OJ 1996 L 35, p.1), the provisions of the Additional Protocol were applicable at the time of the imports concerned by the Commission decisions annulment of which is sought in the present proceedings.

9 In particular, Article 3(1) of that protocol was applicable. It states that the provisions of the Additional Protocol on the elimination of customs duties and quantitative restrictions (hereinafter 'preferential treatment') are to 'likewise apply to goods obtained or produced in the Community or in Turkey, in the manufacture of which were used products coming from third countries and not in free circulation either in the Community or in Turkey'.

10 However, it also states that such goods may be given preferential treatment only if the exporting State charges a compensatory levy, the rate of which is a percentage of the common customs tariff duties for third country products used in their manufacture ('the compensatory levy').

11 It is also provided that the Association Council is to determine the percentage of the compensatory levy and the arrangements for its collection. Finally, the Association Council is to decide on methods of administrative cooperation to be used in implementing Article 3(1) of the Additional Protocol (Article 4 of the Additional Protocol).

12 In implementation of those provisions, the Association Council took a number of decisions concerning the compensatory levy.

13 By Decision No 2/72 of 29 December 1972 (not published in the Official Journal) the Association Council fixed the percentage of common customs tariff duties to be used in calculating the compensatory levy for goods obtained in Turkey at 100.

14 By Decision No 3/72 of 29 December 1972 (not published in the Official Journal), the Association Council established the rules relating to the procedure for the collection of the compensatory levy. The levy is to be calculated according to the type and customs value of products from third countries not members of the association (hereinafter 'components from third countries') used in the manufacture of goods on the territory of the contracting parties (Article 1). In the case of exemption or partial or complete abolition of customs duties on such components, a compensatory levy equivalent to the amount of the duties not collected must be paid (Article 3). The Community and Turkey are to inform one another and the Association Council of the measures they take to ensure the uniform implementation of the decision (Article 4).

15 Finally, the Association Council adopted Decision No 5/72 of 29 December 1972 on methods of administrative cooperation for implementation of Articles 2 and 3 of the Additional Protocol to the Ankara Agreement (OJ 1973 L 59, p. 74), under

which the presentation of a certificate issued at the request of the exporter by the customs authorities of the Republic of Turkey or of a Member State is necessary in order to obtain preferential treatment. For goods transported directly from the Community to Turkey this is the A.TR.1 movement of goods certificate (hereinafter 'A.TR.1 certificate'), a specimen of which is attached to the decision (Article 2). That specimen was replaced by the form attached to Decision No 1/78 of the Association Council of 18 July 1978 amending Decision No 5/72 (OJ 1978 L 253, p. 2).

16 The reverse of that form gives details of 'goods for which [an A.TR.1 certificate] may be endorsed'. Under I(1)(c) these include 'goods obtained or produced within the exporting state, and in the manufacture of which have been used products on which the applicable customs duties or charges having an equivalent effect have not been levied or which have benefited from a total or partial drawback of such duties or charges, subject to the collection, where appropriate, of the compensatory levy prescribed for them'.

17 Article 11 of Decision No 5/72 provides that the Member States and the Republic of Turkey are to assist each other, through their respective customs administrations, in checking the authenticity and accuracy of the certificates 'in order to ensure the proper application of the provisions of this decision'. Article 12 of Decision No 5/72 goes on to provide:

'[The Republic of] Turkey, the Member States and the Community shall each take the steps necessary to implement this decision'.

C — *The transposition of the legislation concerning the compensatory levy by the Turkish authorities*

1. The period before the adoption of the decree of January 1994

18 Before 15 January 1994 the Turkish Government had not introduced any general legislation providing for the collection, pursuant to Article 3(1) of the Additional Protocol, of a compensatory levy for goods using components from third countries which were not in free circulation in Turkey. It had, however, set up a programme of export aid and, in June 1992, had adopted two decrees relating to the collection of a compensatory duty and the abolition of certain import duties respectively.

(a) The export aid programme

19 To encourage the export of Turkish products to the Community and to third countries, the Turkish authorities set up an export aid programme ('the export incentive scheme') providing for exemption from customs duties on importation of components from third countries on condition that they were used in the manufacture of products which were then exported to the Community or third countries. Turkish companies who wished to benefit from the exemption had to have an export aid certificate issued by the Turkish authorities. The names of companies benefiting from the export incentive scheme were published annually

in the Turkish Official Gazette. Exemption from customs duties on importation was available only if the products incorporating those components were exported within a certain time after their importation into Turkey. On importation the duties normally due were calculated and deposited at banking establishments. Subsequently, following manufacture and export, the company provided evidence of the exports in order to recover the money deposited.

(b) The decrees adopted by the Turkish Government in June 1992

20 By letter of 28 July 1992, the Turkish Permanent Delegation to the European Community informed the Association Council of the adoption of two decrees by the Turkish Government of 16 June 1992.

21 The first was Decree 92/3177 of 16 June 1992, published in Turkish Official Gazette No 21277 of 7 July 1992, which entered into force the same day. It provides that exporters wishing to export colour television sets using A.TR.1 certificates must obtain an expert's report from their Chamber of Commerce certifying that the value of components from third countries does not exceed 56% of the total fob (free on board) value of the television sets. The customs authorities must collect a compensatory levy if the expert's report shows that the value of components from third countries is more than that percentage. The compensatory levy thus collected is paid into the Support and Price Stabilisation

Fund. The Minister to which the Undersecretariat for Treasury and External Commerce is attached is responsible for implementation of the decree.

22 On the same day the Turkish Government adopted Decree 92/3127, published in Turkish Official Gazette No 21277 of 7 July 1992, which entered into force on that date. It provides for the abolition of import duties on cathode ray tubes for colour television sets imported into Turkey, whatever their origin (EEC or third country) or destination (used in television sets intended for the domestic market or exported to the EEC or a third country).

2. Decree adopted by the Turkish Government in January 1994

23 On 12 January 1994, the Turkish Government adopted Decree 94/5168, published in Turkish Official Gazette No 21832 of 28 January 1994. Article 1 of that decree provides for the collection of a compensatory levy on components from third countries used in colour television sets determined for export to the Community. The amount of the levy corresponds to the rate set by the Community customs tariff for that type of product. The amounts collected are paid into the Fund for the Promotion of Investments and Foreign Exchange Earnings Services. Article 2 of the decree repeals Decree 92/3127, cited above. Decree 94/5168 was the subject of a notice in Turkish Official Gazette No 21845 of 10 February 1994.

24 In addition, the Turkish Government adopted on 16 August 1994 Decree 94/5782, published in the Turkish Official Gazette of 26 August 1994, which extends the collection of the compensatory levy to all products containing components from third countries which have not been released for free circulation in Turkey.

II — *Legislation concerning remission or non-recovery of customs duties*

A — *Basic provisions on post-clearance remission or non-recovery of customs duties*

1. The provisions applicable to the imports at issue

25 As stated in the second recital of the contested decisions, they concern imports of colour television sets from Turkey between 1991 and 1993 and early in 1994 (hereinafter 'the material time'). Nearly all those imports were thus covered both by 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), as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986 (OJ 1986 L 286, p. 1), and by 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).

26 As regards the imports made after the entry into force, on 1 January 1994, 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'), the relevant provisions of Regulations No 1430/79 and No 1697/79 were replaced by the almost identical provisions of the Customs Code. For that reason, the case-law of the Court of Justice and the Court of First Instance regarding the former

also applies to the latter (Case T-195/97 *Kia Motors and Broekman Motorships* v *Commission* [1998] ECR II-2907, paragraph 33, and Case C-48/98 *Söhl & Söhlke* [1999] ECR I-7877, paragraph 53). Accordingly it is not necessary to make a distinction in respect of imports subject to the Customs Code. The relevant provisions of that Code will therefore only be cited as necessary.

2. The difference between remission and non-recovery

27 The essential difference between remission and non-recovery of customs duties is that in the case of remission customs duties have already been entered in the accounts by the customs authorities, while that is not the case with non-recovery. 'Entered in the accounts' is to be understood to mean the entry by the customs authorities of the amount of import duty or export duty resulting from a customs debt in the accounting records or in any other equivalent medium (Article 217 of the Customs Code).

3. The conditions for remission of customs duties

28 Until 1 January 1994 the conditions for the remission of customs duties were laid down by Article 13(1) of Regulation No 1430/79, as amended. That article provides:

'Import duties may be... remitted in situations... which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.'

29 Under Article 4(2)(c) of Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 (OJ 1986 L 352, p. 19), 'the production, even in good faith, for the purpose of securing preferential tariff treatment of goods entered for free circulation, of documents subsequently found to be forged, falsified or not valid for the purpose of securing such preferential tariff treatment' is a situation which is not in itself a special situation within the meaning of Article 13 of Regulation No 1430/79.

30 With the entry into force of the Customs Code, Regulation No 1430/79 was repealed (Article 251 of the Customs Code). Article 13(1) of that regulation was reproduced in Article 239(1) of the Customs Code, which provides in almost identical terms:

'Import duties or export duties may be... remitted in situations... resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned...'.

31 Regulation No 3799/86 was repealed by Article 913 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of the Customs Code (OJ 1993 L 253, p. 1).

32 Article 4(2)(c) of Regulation No 3799/86 was replaced by Article 904 of Regulation No 2454/93, which provides:

'Import duties shall not be... remitted where the only grounds relied on in the application for... remission are:

... (c) presentation, for the purpose of obtaining preferential tariff treatment of goods declared for free circulation, of documents subsequently found to be forged, falsified or not valid for that purpose, even where such documents were presented in good faith.'

4. Conditions for non-recovery of customs duties after clearance

33 Prior to the entry into force of the Customs Code the conditions for non-recovery of customs duties after clearance were laid down in Article 5(2) of Regulation No 1697/79, which provides:

'The competent authorities may refrain from taking action for the post-clearance recovery of import duties or export duties which were not collected as a result of an error made by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having for his part acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration is concerned...'.

34 With the repeal of Regulation No 1697/79 following entry into force of the Customs Code, the wording of Article 5(2) of Regulation No 1697/79 was incorporated in Article 220(2)(b) of the Code, which provides in almost identical terms:

'Except in the cases referred to in the second and third subparagraphs of Article 217(1), subsequent entry in the accounts shall not occur where:

(b) the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration... '.

B — *The procedural provisions relating to post-clearance remission or non-recovery of customs duties*

1. The procedural provisions applicable to the imports at issue

35 Given that it has been consistently held that procedural rules apply to all the proceedings pending at the time when they enter into force (Joined Cases 212/80 to 217/80 *Salumi and Others* [1981] ECR 2735, paragraphs 9 to 14, and, specifically on the subject of remission and non-recovery, Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam) and JCT Benelux* v *Commission* [1993] ECR I-3873, paragraph 22), it is the procedural rules laid down in the Customs Code and in Regulation No 2454/93 which apply to applications for remission made after the entry into force of those regulations. The relevant rules here are Articles 236 to 239 of the Customs Code and Articles 878 to 909 of Regulation No 2454/93.

36 However, until the entry into force of the Customs Code, the procedure for the remission and repayment of customs duties was laid down, in almost identical terms, in Articles 16 and 17 of Regulation No 1430/79 and by Commission Regulation (EEC) No 1574/80 of 20 June 1980 laying down provisions for the implementation of Articles 16 and 17 of Council Regulation (EEC) No 1430/79

(OJ 1980 L 161, p. 3). The procedural rules for non-recovery were contained in Commission Regulation (EEC) No 2380/89 of 2 August 1989 laying down provisions for the implementation of Article 5(2) of Regulation No 1697/79 (OJ 1989 L 225, p. 30).

2. The procedure for remission of customs duties

37 Any remission of customs duties must be the subject of a specific application by the person concerned ('application for remission') (Article 878(1) of Regulation No 2454/93), to be submitted to the appropriate customs office (Article 879(1) of Regulation No 2454/93). To facilitate processing the application must be made on the form shown in Annex 111 to the Customs Code. When the appropriate customs authority has all the necessary particulars, it gives its decision in writing on the application for remission (Article 886(1) of Regulation No 2454/93).

38 However, where the customs authority is unable to make a decision on the basis of Article 899 et seq. of Regulation No 2454/93, which describe a number of situations in which remission may or may not be granted, and 'the application is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned', the Member State to which the authority belongs is to transmit the case to the Commission (Article 905(1) of Regulation No 2454/93). The file sent to the Commission must include all the facts necessary for a full examination of the case (Article 905(2)). Within 15 days of receipt of the file the Commission must forward a copy to the Member States (first paragraph of Article 906). Subsequently, after consulting a group of experts composed of representatives of all the Member States, meeting within the framework of the Customs Committee to consider the case in question, the Commission 'shall decide whether or not the special situation which has been considered justifies... remission' (first paragraph of Article 907). That decision must be taken within

six months of the date on which the file transmitted by the Member State is received by the Commission (second paragraph of Article 907) and the Member State concerned must be notified of that decision as soon as possible (Article 908(1)). Finally, the decision-making authority decides whether to grant or refuse the application made to it on the basis of the Commission's decision (Article 908(2)).

39 It should be noted that the procedural rules described in the proceeding paragraphs were modified somewhat following the entry into force, on 6 August 1998, of Commission Regulation (EC) No 1677/98 of 29 July 1998 amending Regulation No 2454/93 (OJ 1998 L 212, p. 18). The new rules were applied in the context of Case T-147/99 (*Miller*).

40 Regulation No 1677/98 inserts *inter alia* a new Article 906a, which provides: 'Where, at any time in the procedure provided for in Articles 906 and 907, the Commission intends to take a decision unfavourable towards the applicant for repayment or remission, it shall communicate its objections to him/her in writing, together with all the documents on which it bases those objections. The applicant for repayment or remission shall express his/her point of view in writing within a period of one month from the date on which the objections were sent. If he/she does not give his/her point of view within that period, he/she shall be deemed to have waived the right to express a position.' The period of six months prescribed in Article 907 of Regulation No 2454/93 is replaced by a period of nine months.

3. The procedure for non-recovery of customs duties after clearance

41 Unlike remission, non-recovery of customs duties is not necessarily the result of an application by an interested party. It is for the customs authorities to decide

not to recover duties when the conditions laid down for each of the cases listed exhaustively in Article 869 of Regulation No 2454/93 are met.

42 However, where the competent authorities either consider that 'the conditions laid down in Article 220(2)(b) of the [Customs] Code are fulfilled or are in doubt as to the precise scope of the criteria of that provision with regard to a particular case, those authorities shall submit the case to the Commission', and the file submitted must contain all the information required for a full examination (first paragraph of Article 871 of Regulation No 2454/93). Within 15 days of receipt of the file, the Commission must forward a copy to the Member States (first paragraph of Article 872). Then, after consulting a group of experts composed of representatives of all the Member States, meeting within the framework of the Customs Committee to consider the case in question, the Commission 'shall decide whether the circumstances under consideration are, or are not, such that the duties in question need not be entered in the accounts' (first paragraph of Article 873).

43 That decision must be taken within six months of the date on which the file submitted by the Member State is received by the Commission (second paragraph of Article 873) and the Member State concerned must be notified of the decision as soon as possible (first paragraph of Article 874).

44 It should be noted that the procedural rules for non-recovery described in the preceding paragraphs, like those applicable to the remission of customs duties, were amended following the entry into force of Regulation No 1677/98. The new rules were applied in the context of Case T-147/99 (*Miller*).

45 Thus, Regulation No 1677/98 inserts *inter alia* a new Article 872a, which provides: 'Where, at any time in the procedure provided for in Articles 872 and 873 [of Regulation No 2454/93], the Commission intends to take a decision unfavourable towards the person concerned by the case presented, it shall communicate its objections to him/her in writing, together with all the documents on which it bases those objections. The person concerned by the case submitted to the Commission shall express his/her point of view in writing within a period of one month from the date on which the objections were sent. If he/she does not give a point of view within that period, he/she shall be deemed to have waived the right to express a position.' The period of six months prescribed in Article 873 of Regulation No 2454/93 is replaced by a period of nine months.

Facts

I — *General*

46 These cases concern the importation into the Community of colour television sets assembled in Turkey at the material time. They were produced by various Turkish companies, including Vestel, Meta, Profilo, Bekoteknik and Cihan, which employed in their manufacture, besides components of Turkish origin, components of Community origin and components from third countries (generally from Korea, Japan, Hong Kong and Singapore).

47 At the material time, colour television sets manufactured in Turkey were imported into the Community under A.TR.1 certificates and thus qualified for the exemption from customs duties provided for by the Association Agreement and the Additional Protocol.

48 Following a number of complaints and notifications of irregularities, the Commission undertook a fact-finding mission to Turkey between 18 October and 9 November 1993 in which two representatives of the Commission and five representatives from the Belgian, French, Dutch, German and United Kingdom customs services took part. The mission produced a report ('the mission report'). In the course of the mission it was ascertained that the Turkish authorities were validating A.TR.1 certificates without any compensatory levy being collected.

49 The Commission concluded in the mission report that the certificates were invalid because they related in fact to colour television sets manufactured in Turkey in which the components originating in third countries had not been released for free circulation or made subject to a compensatory levy and, accordingly, they could not be released for free circulation on importation into the Community.

50 Accordingly, by letters of 2 March and 21 April 1994, it instructed the Member States concerned to seek payment of the customs duties laid down by the Common Customs Tariff (that is to say, 14% of the total value of the television sets at the time of their importation into the Community) from the companies which had imported the television sets from Turkey at the material time, taking account of the three-year time-limit for recovery. However, the Commission authorised the Member States who wished to do so to waive or postpone the recovery of duties until it had made a final appraisal of the result of the fact-finding mission.

51 Finally, the Commission confirmed, by letter of 25 November 1994, that it was necessary to proceed without delay to recover customs duties on imports of colour television sets made under A.TR.1 certificates issued before 15 January 1994, taking account of the three-year time-limit for recovery.

II — *Specific*

A — *Facts in the German Cases (T-186/97, T-187/97, T-190/97, T-191/97, T-192/97, T-210/97, T-211/97 and T-293/97)*

1. Orders for recovery issued by the German authorities

52 Kaufring AG (hereinafter 'Kaufring') (T-186/97), Crown Europe GmbH (hereinafter 'Crown') (T-187/97), Profex Electronic Verwaltungsgesellschaft mbH (hereinafter 'Profex') (T-190/97), Horten AG (hereinafter 'Horten') (T-191/97), Dr. Seufert GmbH (hereinafter 'Dr. Seufert') (T-192/97), Grundig AG (hereinafter 'Grundig') (T-210/97), Hertie Waren- und Kaufhaus GmbH (hereinafter 'Hertie') (T-211/97) and Elta GmbH (hereinafter 'Elta') (T-293/97), (hereinafter 'the German applicants'), imported at the material time several consignments of colour television sets from Turkey. All the imports were accompanied by an A.TR.1 certificate and were therefore covered by the provisions on preferential treatment. The A.TR.1 certificates were all endorsed by the Turkish customs authorities.

53 Following the Commission's instructions (see paragraphs 50 and 51 above), the German customs authorities sent tax amendment notices (Steueränderungsbescheide) to the German applicants, claiming payment of customs duties amounting to DEM 545 727.35 from Kaufring, DEM 238 352.97 from Crown, DEM 2 269 866.84 from Profex, DEM 123 809.12 from Horten, DEM 126 828.26 from Dr. Seufert, DEM 6 596 210.31 from Grundig, DEM 593 110.16 from Hertie and DEM 113 875.49 from Elta.

2. Applications for remission and/or non-recovery made to the German authorities by the German applicants

54 The German applicants challenged those notices. They asked the customs offices concerned to grant them a remission of customs duties. Dr. Seufert, Crown and Grundig also requested that those duties should not be recovered.

3. Applications for remission sent to the Commission by the German authorities

55 After studying the applications made by the German applicants, the Bundesministerium der Finanzen (German Ministry of Finance), to which the customs offices concerned had forwarded the cases, decided that the conditions for remission of customs duties laid down in Article 13(1) of Regulation No 1430/79 and Article 239 of the Customs Code were met in those cases.

56 In accordance with Article 905 of Regulation No 2454/93, the Bundesministerium der Finanzen therefore submitted the cases to the Commission, informing it of its view that the conditions laid down for the remission of customs duties were met.

57 It should be noted that before the cases were submitted the Bundesministerium der Finanzen had asked each of the German applicants, first, to comment on the draft application it intended to send to the Commission and second, to provide a

written declaration confirming that the application took account of all the circumstances of the case and all their arguments and that the file was complete.

58 Kaufring, Horten, Hertie, Profex and Elta agreed to provide such a written declaration. However, Grundig, Dr. Seufert and Crown informed the Bundesministerium der Finanzen that they would not do so. They asked for their applications for remission and enclosures to be attached to the files submitted by the Bundesministerium der Finanzen, which it agreed to do. The Bundesministerium der Finanzen also agreed, as regards those parties, to include the following passage in its covering letters to the Commission:

'The interested party asks the Commission to take as the basis for its decision the detailed application for remission attached to this letter with its appendices. The interested party also asks to be heard directly by the Commission before the adoption of a decision, in order to safeguard its rights of defence *vis-à-vis* the Commission. The interested party considers that it should be informed by the Commission of the essential facts and documents on the basis of which the Commission intends to take its decision on the remission of customs duties'.

59 Before taking a final decision on each of the applications for remission, the Commission consulted the group of experts provided for in the first paragraph of Article 907 of Regulation No 2454/93, which considered the cases at its meeting of 10 January 1997. All the representatives of the Member States present at that meeting, apart from those from the Republic of Austria and the Portuguese Republic, expressed themselves to be in favour of the remission.

60 Subsequently, by Decisions REM 14/96, REM 15/96, REM 16/96, REM 17/96, REM 18/96, REM 19/96 and REM 20/96 of 19 February 1997 relating to Horten, Kaufring, Elta, Grundig, Hertie, Crown and Profex respectively and

REM 21/96 of 25 March 1997 relating to Dr. Seufert, the Commission found that the grant of the remissions applied for was not justified. Those individual decisions were notified to the German applicants by their national authorities.

B — *Facts in the French cases (T-216/97 to T-218/97)*

1. Orders for recovery issued by the French authorities

61 Lema SA (hereinafter 'Lema') (T-216/97) and Masco SA (hereinafter 'Masco') (T-217/97 and T-218/97), (hereinafter 'the French applicants'), imported consignments of television sets from Turkey at regular intervals. All the imports were accompanied by an A.TR.1 certificate and therefore were covered by the provisions on preferential treatment. The A.TR.1 certificates were all endorsed on export by the Turkish customs authorities, and subsequently, on importation into France, by the French customs authorities.

62 Following the Commission's instructions (see paragraphs 50 and 51 above), the French customs authorities, in this instance the Direction Nationale du Renseignement et des Enquêtes Douanières (National Customs Information and Enquiries Directorate, hereinafter 'DNRED'), found that Lema and Masco were in breach of the rules in importing television sets under A.TR.1 certificates. They therefore claimed payment of customs duties amounting to FRF 12 201 564 from Lema and to FRF 32 966 173 (Case T-217/97) and FRF 4 192 502 (Case T-218/97) from Masco.

2. Consideration by the French authorities of the applications for remission and non-recovery made by the French applicants

63 Lema and Masco challenged the claims for post-clearance recovery of customs duties. They asked DNRED either not to recover the duties in question, or to grant them a remission of them. Those individual applications were based, first, as regards non-recovery, on Article 5(2) of Regulation No 1697/79 and Article 220(2)(b) of the Customs Code and, second, as regards remission, on Article 13(1) of Regulation No 1430/79 and Article 239 of the Customs Code.

3. Applications for non-recovery and remission made to the Commission by the French authorities

64 After considering the various applications made by the French applicants, the French Ministry of Economic Affairs and Finance (hereinafter 'the Ministry') decided that the conditions laid down in Article 5(2) of Regulation No 1697/79 were met in this case. It sent to each of the French applicants a draft of the application for examination which it intended to make to the Commission on the subject. In their replies Lema and Masco asked for a copy of the full applications which they had sent to DNRED to be attached to the file. They pointed out that they had also made an application for remission on the basis of Article 13(1) of Regulation No 1430/79 and stated that they maintained that application in the alternative.

65 The Ministry then submitted the cases to the Commission, attaching the files sent by the French applicants to DNRED.

66 The Ministry pointed out that the conditions laid down for the non-recovery of duties were met in these cases.

67 It also asked the Commission to consider the applications in the alternative for remission of duties.

68 Before taking a final decision, the Commission consulted the group of experts provided for by Articles 873 and 907 of Regulation No 2454/93, which considered the cases at its meeting of 10 January 1997. All the representatives of the Member States present at that meeting, apart from those from the Republic of Austria and the Portuguese Republic, expressed themselves to be in favour of non-recovery and remission.

69 Subsequently, by Decisions REC 7/96 and REC 9/96, relating to Masco, and REC 8/96, relating to Lema, of 24 April 1997 the Commission declared that the customs duties should be recovered and that the remission of those duties was not justified.

70 Those decisions were forwarded by the General Secretariat of the Commission to the Permanent Representation of the French Republic to the European Union. The national authorities then notified them to the French applicants.

C — *Facts in the Netherlands cases (T-279/97 and T-280/97)*

1. Orders for recovery issued by the Netherlands authorities

71 DFDS Transport BV (hereinafter 'DFDS') (T-279/97) and Wilson Holland BV (hereinafter 'Wilson') (T-280/97), (hereinafter 'the Netherlands applicants'),

imported several consignments of colour television sets from Turkey. All the imports were accompanied by an A.TR.1 certificate and were therefore covered by the provisions on preferential treatment. The A.TR.1 certificates were all endorsed in Turkey by the Istanbul customs office, and subsequently in the Netherlands by the Rotterdam office.

72 Following the Commission's instructions (see paragraphs 50 and 51 above), the Netherlands customs authorities sent a collection notice (uitnodiging tot betaling) to DFDS and Wilson. They claimed payment of customs duties amounting in total to NLG 212 657 from DFDS and NLG 30 712.50 from Wilson.

2. Applications for remission made to the Netherlands authorities by the Netherlands applicants

73 The Netherlands applicants challenged the collection notices. They asked the customs offices concerned to grant remission of the customs duties.

3. Applications for remission made to the Commission by the Netherlands authorities

74 Having considered the applications submitted by the Netherlands applicants, the Belastingdienst (Netherlands tax administration), to which the customs offices

concerned had forwarded the cases, decided that the conditions for remission of customs duties laid down in Article 13(1) of Regulation No 1430/79 and in Article 239 of the Customs Code had been met in those cases.

75 Accordingly the Belastingdienst transmitted the case to the Commission pursuant to Article 905 of Regulation No 2454/93, informing it of its view that the conditions laid down for the remission of customs duties were met.

76 It should be noted that before the cases were transmitted the Netherlands applicants had, at the request of their national authorities, informed the latter that they had taken note of the content of the file concerning them and that the file was complete.

77 Before taking a final decision, the Commission consulted the group of experts provided by the first paragraph of Article 907 of Regulation No 2454/93, which considered the cases at its meeting of 7 March 1997. All the representatives of the Member States present at that meeting, apart from those from the Republic of Austria and the Portuguese Republic, expressed themselves to be in favour of remission.

78 Finally, by Decisions REM 26/96 and REM 27/96 of 5 June 1997, relating to DFDS and Wilson respectively, it declared that the grant of the remissions applied for was not justified. Those decisions were forwarded to the national authorities, which notified them to the Netherlands applicants.

D — *Facts in the Belgian case (T-147/99)*

1. Order for recovery issued by the Belgian authorities

79 At the material time, Miller NV (hereinafter 'Miller') (T-147/99) imported several consignments of colour television sets from Turkey. All the imports were accompanied by an A.TR.1 certificate and were therefore covered by the provisions on preferential treatment. The A.TR.1 certificates were all endorsed in Turkey by the Istanbul customs office and subsequently in Belgium by the Antwerp office.

80 Following the instructions of the Commission (see paragraphs 50 and 51 above), the Belgian customs authorities issued a recovery notice (uitnodiging tot betaling) to Miller. They demanded payment of customs duties amounting in total to BEF 11 381 735.

2. The application for non-recovery made to the Belgian authorities by Miller

81 Miller challenged the recovery notice. It asked the customs office concerned not to recover the customs duties. The request was based on Article 5(2) of Regulation No 1697/79 and Article 220(2)(b) of the Customs Code.

3. Application for non-recovery and for remission made to the Commission by the Belgian authorities

82 Having considered the applications submitted by the applicant, the Customs and Excise Department of the Ministry of Finance, to which the customs office concerned had forwarded the case, decided that the conditions for non-recovery laid down in Article 5(2) of Regulation No 1697/79 and Article 220(2)(b) of the Customs Code were met in this case. In the alternative, the Ministry of Finance considered that the conditions for remission laid down in Article 13(1) of Regulation No 1430/79 and in Article 239 of the Customs Code were also met.

83 Accordingly, the Ministry of Finance forwarded the case to the Commission pursuant to Articles 871 and 905 of Regulation No 2454/93, informing the Commission that in its opinion the conditions laid down for non-recovery and for remission were met.

84 It should be noted that before the case was forwarded, the Belgian authorities had asked Miller for its observations on the draft of the application for non-recovery and remission which they intended to forward to the Commission and to confirm that the file was complete. Miller replied by letter of 24 April 1998 that the file was complete. Attached to that letter was a statement by its lawyer describing the various documents which had been forward to it by the Ministry of Finance attached to the draft letter to the Commission, summing up its essential arguments and reiterating its wish to be allowed to consult the institution's file.

85 The Commission considered the case pursuant to Articles 871 and 905 et seq. of Regulation No 2454/93.

86 By letter of 24 November 1998, the Commission sent Miller a copy of the case, in accordance with Articles 872a and 906a of Regulation No 2454/93. It also informed it of its intention to instruct the Belgian customs authorities to recover the customs duties at issue after clearance and to refuse remission of those duties. In that letter the Commission explained that it doubted that the conditions laid down in Article 5(2) of Regulation No 1697/79 had been met. Moreover, it took the view that the circumstances of the case did not constitute a 'situation resulting from special circumstances' within the meaning of Article 13(1) of Regulation No 1430/79. However, the Commission asked Miller to inform it of its observations within a month of receiving the letter.

87 The applicant replied by letter of 2 December 1998, asking the Commission to allow it to consult all the documents on its file in order to be able to formulate its observations in full knowledge of the facts, referring to the case-law of the Court of First Instance (Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401, paragraphs 78 to 88).

88 By letter of 22 December 1998, the Commission refused that request on the ground that Miller had already been able to acquaint itself with the file, which contained only the data forwarded by the Belgian authorities. It acknowledged that the mission report was not included in it but explained that, in so far as that report merely confirmed the facts and, therefore, the invalidity of the certificates at issue, it did not consider that there was any point in forwarding it to Miller.

89 By letter of 7 January 1999, the applicant objected to the Commission's refusal and stated that, in the event that the Commission's final decision was not in its favour, it reserved the right to bring an action for annulment of the decision before the Court of First Instance pleading breach of its rights of defence. It therefore requested, once again, access to the documents on which the

Commission might base its final decision and to all other documents, including administrative documents, relating to the case.

90 Miller also replied to the Commission's letter of 24 November 1998 by letter of 22 January 1999, stating the reasons for its view that the conditions for the application of Article 5(2) of Regulation No 1697/79 were in fact met. It also stated that it considered that the situation was one resulting from special circumstances and that no deception or negligence within the meaning of Article 13(1) of Regulation No 1430/79 could be attributed to it.

91 The Commission noted Miller's observations, and before taking a final decision consulted the group of experts provided for by the first paragraphs of Articles 873 and 907 of Regulation No 2454/93, which examined the case at its meeting of 25 February 1999. All the representatives of the Member States present at that meeting, apart from those from the Republic of Austria and the Portuguese Republic, expressed themselves to be in favour of non-recovery and remission.

92 Subsequently, by Decision REC 3/98 of 26 March 1999 it declared that the import duties must be recovered and that remission of those duties was not justified. The Belgian authorities served that decision on Miller by letter of 21 April 1999.

III — *The grounds for the contested decisions*

93 The contested decisions are based on almost identical grounds. There is no substantive difference between the decisions solely concerning applications for

remission on the basis of Article 13(1) of Regulation No 1430/79 and those concerning applications for remission made jointly with applications for non-recovery on the basis of Article 5(2) of Regulation No 1697/79.

94 Having observed that, according to settled case-law, the legitimate expectations of a trader warrant protection only if the competent authorities themselves created the basis for those expectations, the Commission went on to state in the contested decisions that the Turkish exporters had declared in section 13 of the A.TR.1 certificates that the goods described therein met the conditions for obtaining that certificate. That was in fact not the case, since, as was discovered during the fact-finding mission in Turkey, the television sets manufactured in Turkey contained components from third countries which had not been released for free circulation or made subject to a compensatory levy in accordance with Article 3(1) of the Additional Protocol.

95 The Commission accordingly took the view that the competent Turkish authorities were misled by the inaccurate statements made by the exporters. No positive error could thus be attributed to those authorities, and therefore the fact that the Turkish authorities had issued the contested certificates on the basis of statements made by the exporters was not sufficient to justify a legitimate expectation on the part of the importers as to the validity of those certificates.

96 The Commission also observed that the legislation at issue was well known and relatively simple as regards the conditions for issue of an A.TR.1 certificate and that the importers could not, therefore, have been unaware of it. It also pointed out that a diligent trader should have had doubts about the validity of the A.TR.1 certificates.

97 In the light of those findings, the Commission found that the conditions for remission and/or non-recovery of the customs duties were not met.

98 As regards the conditions for remission, the Commission also pointed out that the facts of the case and the alleged deficiencies in the application of the Additional Protocol did not constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79, since the free circulation regime could be obtained simply by releasing components from third countries into free circulation in Turkey.

Procedure

99 By separate applications lodged at the Registry of the Court of First Instance between 20 June 1997 and 18 June 1999 the applicants brought these actions for annulment.

100 By orders of 25 May 1998, the Federal Republic of Germany was granted leave to intervene in support of the forms of order sought by the applicants in Cases T-186/97, T-187/97, T-190/97 to T-192/97 and T-210/97.

101 By orders of 25 May 1998, the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in support of the forms of order sought by the applicants in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97 and T-293/97.

102 By orders of 25 May 1998, the French Republic was granted leave to intervene in support of the forms of order sought by the applicants in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97 and T-216/97 to T-218/97.

103 By separate letters lodged at the Registry of the Court of First Instance in May, June and July 1998, Grundig, Dr. Seufert, Crown, Hertie, Horten and Kaufring asked the Court of First Instance to order the Commission to produce a number of documents relating to the substance of the dispute. The Commission and the interveners were asked to submit their observations in that regard.

104 As a measure of organisation of procedure, the Court of First Instance asked the Commission on 29 October 1999 to produce a number of documents concerning the application of the provisions of the Association Agreement and the Additional Protocol to imports of colour television sets from Turkey. The Commission complied with that request by lodging, on 29 November 1999, a file made up of 24 folders containing approximately 7 000 pages. It supplemented that file by sending, on 22 December 1999, a number of additional documents and, on 13 January 2000, an unofficial translation into English of the Turkish import and export declarations included in the file.

105 At the request of the Court of First Instance, all the applicants (apart from Elta) and the Commission and the French Republic attended an informal meeting on 6 December 1999 with a view to arranging for the file lodged on 29 November 1999 to be consulted, and organising the hearing.

106 Subsequently, the parties having been heard on the matter, the President of the Third Chamber of the Court of First Instance joined the present cases for the purposes of the oral procedure and judgment by order of 10 January 2000.

107 The consultation of the file lodged on 29 November 1999 at the Registry of the Court of First Instance by the applicants and the French Republic began on 17 January 2000 and ended on 28 February 2000. Following that consultation, those parties lodged their observations in January, February and March 2000. The Commission replied to those observations in writing on 24 March 2000.

108 Following the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure. By way of measures of organisation of procedure, it asked the parties to reply to certain questions. The parties complied with those requests.

109 The parties presented oral argument and replied to the questions put by the Court of First Instance at the hearing on 10 July 2000.

Forms of order sought

110 Kaufring (T-186/97) claims that the Court should:

— annul Decision REM 15/96;

— order the Commission to pay the costs.

111 Crown (T-187/96) claims that the Court should:

— annul Decision REM 19/96;

— order the Commission to pay the costs.

112 Profex (T-190/97) claims that the Court should:

— annul Decision REM 20/96;

— order the Commission to grant the application for remission of duties;

— declare the judgment provisionally enforceable, if necessary on provision of security;

— order the Commission to pay the costs.

113 Horten (T-191/97) claims that the Court should:

— annul Decision REM 14/96;

— order the Commission to pay the costs.

114 Dr. Seufert (T-192/97) claims that the Court should:

— annul Decision REM 21/96;

— order the Commission to pay the costs.

115 Grundig (T-210/97) claims that the Court should:

— annul Decision REM 17/96;

— order the Commission to pay the costs.

116 Hertie (T-211/97) claims that the Court should:

— annul Decision REM 18/96;

— order the Commission to pay the costs.

117 Elta (T-293/97) claims that the Court should:

— annul Decision REM 16/96;

— order the Commission to pay the costs.

118 Lema (T-216/97) claims that the Court should:

— annul Decision REC 8/96;

— declare the applicant entitled to post-clearance non-recovery of the duties at issue;

— in the alternative, declare the applicant entitled to the remission of those duties;

— order the Commission to pay the costs.

119 Masco (T-217/97 and T-218/97) claims that the Court should:

— annul Decisions REC 7/96 and REC 9/96;

— declare the applicant entitled to post-clearance non-recovery of the duties at issue;

— in the alternative, declare the applicant entitled to the remission of those duties;

— order the Commission to pay the costs.

120 DFDS (T-279/97) claims that the Court should:

— annul Decision REM 26/96;

— order the Commission to pay the costs.

121 Wilson (T-280/97) claims that the Court should:

— annul Decision REM 27/96;

— order the Commission to pay the costs.

122 Miller (T-147/99) claims that the Court should:

— in the main:

— annul Decision REC 3/98;

— order the Commission to pay the costs;

— in the alternative, order the Commission to pay the costs;

— in the further alternative, order the Commission to bear its own costs.

123 The Federal Republic of Germany claims that the Court of First Instance should annul the decisions which are the subject of the actions in Cases T-186/97, T-187/97, T-190/97 to T-192/97 and T-210/97.

124 The United Kingdom of Great Britain and Northern Ireland claims that the Court should annul the decisions which are the subject of the actions in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211-97, T-216/97 to T-218/97, T-279/97, T-280/97 and T-293/97.

125 The French Republic claims that the Court should annul the decisions which are the subject of the actions in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97 and T-216/97 to T-218/97.

126 The Commission contends that the Court should:

— as regards Case T-190/97, dismiss as inadmissible the applicant's claims that the Court should order it to grant the application for remission and declare the judgment provisionally enforceable, if necessary on provision of security;

— as regards Cases T-216/97 to T-218/97, dismiss as inadmissible the claim that the Court should declare the applicants entitled to post-clearance non-recovery of customs duties or, in the alternative, to the remission of those duties;

— for the rest, dismiss as unfounded these actions for annulment;

— order the applicants to pay the costs.

127 At the hearing, Profex stated that it withdrew its claim that the Court should order the Commission to grant its application for remission and declare the judgment to be provisionally enforceable, if necessary on provision of security.

128 Similarly, Lema and Masco stated that they withdrew their claim that the Court should declare them entitled to post-clearance non-recovery of customs duties or, in the alternative, to the remission of those duties.

129 Accordingly, there is no need to rule on the admissibility nor, *a fortiori*, on the substance of those claims.

Law

130 In support of their actions the applicants raise numerous complaints relating to breach of both procedural and substantive rules. However, in view of the particular circumstances of the case the Court of First Instance has decided to consider in turn the plea of breach of the rights of the defence and the plea of breach of Article 13(1) of Regulation No 1430/79.

I — *The plea of breach of the rights of the defence during the administrative procedure*

A — *Consideration of that plea in the context of the present actions*

1. Arguments of the parties

131 Crown, Dr. Seufert, Grundig and Miller submit that their rights of defence were not observed in the course of the administrative procedure leading to the adoption of the decisions which they contest. At the hearing, Kaufring, Profex, Horten, Hertie and Elta stated that they were also relying on that plea of public interest in support of their actions.

132 The plea is also relied on by the French Republic in the cases in which it has lodged a statement in intervention, that is to say Cases T-186/97, T-187/97, T-191/97, T-192/97, T-210/97, T-211/97, T-216/97, T-217/97 and T-218/97.

133 However, the Commission raises an objection of inadmissibility in Cases T-186/97, T-191/97, T-211/97 and T-216/97 to T-218/97 on the ground that the plea was not raised by the applicants, so that the French Republic cannot rely on it without infringing Article 37 of the EC Statute of the Court of Justice. It also contends that it would be odd if an intervener were allowed to raise such a plea when it was not raised by the party which is supposed to be protected by the principle in question. In that regard it cites Case C-155/91 *Commission* v *Council* [1993] ECR I-939 and the Opinion of Advocate General Lagrange in Case 30/59 *De Gezamenlijke Steenkolenmijnen in Limburg* v *High Authority* [1961] ECR 1, at 34.

2. Findings of the Court

134 It is sufficient to note in this regard that it is settled case-law that observance of the rights of the defence is an essential procedural requirement breach of which may be raised by the Court of its own motion (Case C-291/89 *Interhotel* v *Commission* [1991] ECR I-2257, paragraph 14, and Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 67; see also Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others* v *Commission* [2000] ECR II-491, paragraph 487).

135 It therefore falls to the Court of First Instance to consider of its own motion, in all the cases, whether the Commission observed the applicants' rights of defence during the administrative procedure leading to the adoption of the contested decisions.

136 The Court also considers that the Commission's argument that the plea relating to breach of those rights relied on by the French Republic is inadmissible cannot be upheld.

137 As provided by Article 116(4) of the Rules of Procedure, an intervener may not go beyond the form of order sought by the party in support of whom it is intervening, but it may freely choose its pleas and arguments in support of that form of order (Case T-37/97 *Forges de Clabecq* v *Commission* [1999] ECR II-859, paragraph 92).

B — *The plea of breach of the applicants' rights of defence in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97 and T-293/97*

1. Arguments of the parties

138 Grundig, Dr. Seufert and Crown submit that the Commission breached their rights of defence inasmuch as in disregard of their express request it did not hear their views before adopting the decisions declaring that the remission of duties in their case was not justified. Observance of the rights of the defence is, in all proceedings liable to culminate in a measure adversely affecting a person, a general principle of Community law which the Commission must observe even in the absence of specific rules (Joined Cases C-48/90 and C-66/90 *Netherlands and Others* v *Commission* [1992] ECR I-565, paragraph 44, Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885, paragraphs 39 and 40, and Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, paragraph 21).

139 The French Republic also considers that the Commission breached the rights of defence of Kaufring, Crown, Horten, Dr. Seufert, Grundig, Hertie, Lema and Masco inasmuch as, first, it did not indicate clearly to them in what respect it considered that they had not been diligent and, second, it did not give them an opportunity to express their views on that complaint. The intervener refers in that regard to Case T-346/94 *France-Aviation* v *Commission* [1995] ECR II-2841 and to *Eyckeler & Malt*, cited above at paragraph 87 (paragraph 78).

140 The Commission denies that it should have heard the applicants before adopting the contested decisions.

141 In the first place the procedure for remission of customs duties does not provide for formal participation by the interested party in the procedure for adopting the decision and in the second place the Court has confirmed on several occasions that the procedure affords the persons concerned all the necessary legal safeguards (Case 294/81 *Control Data* v *Commission* [1983] ECR 911, paragraph 17, Joined Cases 98/83 and 230/83 *Van Gend and Loos and Bosman* v *Commission* [1984] ECR 3763, paragraph 8 et seq., and *CT Control (Rotterdam) and JCT Benelux*, cited above at paragraph 35, paragraph 48). The reference to the procedures applicable in anti-dumping cases is likewise not such as to call into question the procedural rules applicable in this case, given the differences between these types of procedure.

142 Secondly, the Commission considers that the principles developed in *Lisrestal* (cited above at paragraph 138) are of no relevance to the present cases because they concern a different set of circumstances. The contested decision in that case was adopted by the Commission without the undertaking concerned having been heard beforehand either by the national administration or by the Commission. In the present cases the applicants were heard by their national administration and

had access to all the essential factual data. Moreover, it based the contested decisions on the files forwarded by the national authorities, that is to say on factual elements which were known to the applicants and on which they could have given their views.

143 The Commission observes, thirdly, that in *France-Aviation* (cited above at paragraph 139) the Court of First Instance has already given thorough consideration to the question of the need for both parties to be heard in the course of the procedure for the remission of customs duties and did not find that the failure to provide for a hearing of the interested party by the Commission was improper. Moreover, in that judgment the Court of First Instance merely stated that the Commission is in breach of the *audi alteram partem* principle where it takes its decision on the basis of an incomplete file or where it does not take account of all the relevant facts because the national administration has not conducted a full hearing. According to the Commission such a situation did not arise in the various cases at issue here in so far as, first, the procedure prior to the adoption of the contested decisions was conducted properly, the applicants having been given every opportunity to express their views before the national administration, and second, all the elements which they considered essential were included in the files.

144 Following the judgment in *France-Aviation*, cited above in paragraph 139, the Commission introduced the system of declarations to be made by the interested party. Under that system, the national authorities must ask the interested party to confirm that he has taken cognisance of the file which they are to forward to the Commission and that he has nothing to add to it. In the absence of such a declaration, the application for remission cannot be considered. The Commission points out that in the present case all the applicants, apart from Grundig, Dr. Seufert and Crown, made such a declaration. As regards Grundig, Dr. Seufert and Crown, it is of no importance that they refused to make such a declaration since it is clear on comparison of the applications for remission which they submitted in the course of the administrative procedure and their applications for annulment of the decisions adopted following that procedure that, at the time of the adoption of those decisions, all the relevant facts were known both by the Commission and the national authority.

145 The Commission considers, fourthly, that the reference made by the French Republic to the principles outlined by the Court of First Instance in *Eyckeler & Malt*, cited above at paragraph 87, is not relevant because that judgment was based on facts different from those in the present cases. In that case the Court of First Instance found that the Commission was, in the event, the only party to have at its disposal all the necessary data to monitor the provisions on preferential treatment. That was not so in the present cases. Moreover, the Commission considers that observance of the rights of the defence does not necessarily require that a person who is likely to be adversely affected by the decision to be taken must be heard by the institution itself.

146 The Commission observes in that regard that there are many procedures in which the interested party is heard only by the national authorities and not by Commission staff. It cites by way of example the procedure for exemption from customs duties for imports of scientific apparatus and the case-law of the Court of Justice on observance of the rights of the defence in such a procedure (*Control Data*, cited above at paragraph 141, and Case 43/87 *Nicolet Instrument* [1988] ECR 1557).

147 The Commission observes, finally, that, as regards the remission of customs duties, observance of the rights of the defence during the national procedure should not be confused with observance of those rights during the Community procedure. If the interested party intends to contest the evidence forwarded by national authorities to the Commission, it is for that party to bring the matter before the national courts.

2. Findings of the Court

148 As a preliminary point, it should be noted that the administrative customs procedure for the remission of import duties, as laid down by Regulation

No 2454/93, takes place initially at national level. The person liable must submit his application for remission to the national administration, which must take a decision pursuant to Articles 899 et seq. of Regulation No 2454/93, which define a number of situations in which remission may or may not be granted. Such a decision may be reviewed under Article 243 of the Customs Code by the national courts, which may refer questions to the Court of Justice under Article 177 of the EC Treaty (now Article 234 EC) (see in particular Case C-64/89 *Deutsche Fernsprecher* [1990] ECR I-2535, paragraph 13).

149 However, where the national authority considers that it is unable to make a decision on the basis of the above provisions and the application for remission is accompanied by evidence which might indicate the existence of a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, it transmits the case to the Commission (Article 905 of Regulation No 2454/93). In this second stage, which takes place exclusively at Community level, the Commission, after consulting a group of experts composed of representatives from all the Member States, decides whether remission is justified. That decision may be subject to review by the Court of Justice under the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC).

150 Thus, Regulation No 2454/93 provides only for contact between the applicant for the remission and the national authority on the one hand and between the national authority and the Commission, on the other. There is no provision for direct contact between the applicant for remission and the Commission (*France-Aviation*, cited above at paragraph 139, paragraph 30).

151 However, it should be borne in mind that, according to settled case-law, observance of the rights of the defence in all proceedings which are initiated against a person and are liable to culminate in a measure adversely affecting that

person is a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the procedure in question (*Netherlands*, cited above at paragraph 138, paragraph 44, *Fiskano*, cited above at paragraph 138, paragraph 39, and *Lisrestal*, cited above at paragraph 138, paragraph 21).

152 In view of the power of assessment enjoyed by the Commission when it adopts a decision pursuant to the general equitable provision contained in Article 13 of Regulation No 1430/79, it is all the more important that observance of the right to be heard be guaranteed in procedures for the remission or repayment of import duties (*France-Aviation*, cited above at paragraph 139, paragraph 34, *Eyckeler & Malt*, cited above at paragraph 87, paragraph 77; Case T-50/96 *Primex Produkte Import-Export and Others* v *Commission* [1998] ECR II-3773, paragraph 60, and Case T-290/97 *Mehibas Dordtselaan* v *Commission* [2000] ECR II-15, paragraph 46; see also to that effect the Opinion of Advocate General Mischo in Case C-15/99 *Hans Sommer* [2000] ECR I-8989, I-8992, paragraphs 78 to 86). That conclusion is particularly apt where, in exercising its exclusive authority under Article 905 of Regulation No 2454/93, the Commission proposes not to follow the opinion of the national authority as to whether the conditions laid down by Article 13 of Regulation No 1430/79 have been met (*France-Aviation*, cited above at paragraph 139, paragraph 36).

153 The principle of observance of the rights of the defence requires that any person who may be adversely effected by a decision be placed in a position in which he may effectively make his views known, at least as regards the evidence on which the Commission has based its decision (see to that effect *Fiskano*, cited above at paragraph 138, paragraph 40, and *Lisrestal*, cited above at paragraph 138, paragraph 21).

154 It is clear that in the present cases none of the applicants was placed in a position, before the contested decisions were adopted, to take a stance and make known its views adequately on the evidence relied upon by the Commission in deciding that remission was not justified.

155 That is all the more regrettable because the Commission proposed not to follow the view of the national authorities as to whether the conditions laid down in Article 13(1) of Regulation No 1430/79 had been met, in particular as to whether any obvious negligence could be attributed to the applicants.

156 In the file which they transmitted to the Commission, following the applications submitted by Masco and Lema, the French authorities made clear that the error could not have been detected by those importers, so that they had to be considered to have acted in good faith. Similarly, in Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97 and T-293/97 the German authorities had taken the view that no deception or obvious negligence could be attributed to the applicants. Finally, in Cases T-279/97 and T-280/97, the Netherlands authorities took the view that the applicants acted in good faith and no negligence could be attributed to them.

157 The Commission stated for the first time in the contested decisions both that 'the legislation in question was known and relatively straightforward concerning the conditions for the issue of an A.TR.1 certificate and the firm concerned could not therefore have been unfamiliar with it' and that 'a diligent operator should have had serious doubts as to the validity of the [A.TR.1] certificates.' In reply to a written question from the Court of First Instance the Commission indicated that it considered that all the applicants had clearly been negligent in that respect.

158 The Commission also stated for the first time in the contested decisions that it considered that the Turkish customs authorities which issued the A.TR.1 certificates had been misled by the erroneous declarations made by the Turkish exporters without the applicants in question having been informed beforehand of that key finding.

159 In adopting the contested decisions without the applicants in question here having been placed in a position beforehand to make known adequately their views regarding those complaints, the Commission breached their rights of defence.

160 That conclusion is not affected by the fact that most of the applicants made a declaration that the file which the national authorities transmitted to the Commission was complete and they had nothing to add. As the Court of First Instance held in *Mehibas Dordtselaan* (cited above at paragraph 152), paragraph 44, 'whilst that mechanism effectively enables the person concerned to exercise his right to be heard during the first stage of the administrative procedure, which takes place at national level, it in no way guarantees his rights of defence during the second stage of the procedure, which takes place before the Commission once the national authorities have communicated the case to it. The statement is made at a stage when the Commission has not yet had an opportunity to consider the position of the person concerned, let alone come to a provisional view on his application for repayment'.

161 Further, it must be emphasised that it matters little whether, as the Commission contends, the contested decisions are solely based on the files forwarded by the national authorities, that is to say on facts which were known to the applicants and on which they had been able to express their views. Even if that contention is correct, the mere fact that the defendant proposed not to follow the view of the national authorities and to decide that the remission of duties was not justified in the case of the applicants placed it under an obligation to inform them of the reasons why it intended to make that decision and to place them in a position to make known their views on those reasons.

162 In the light of the foregoing, it must be concluded that, since none of the applicants was placed in a position to take a stance and to make known its views on the relevance of the evidence used against it, the procedure leading to the

adoption of the contested decisions in Cases T-186/97, T-187/97, T-190/97, T-191/97, T-192/97, T-210/97, T-211/97, T-216/97, T-217/97, T-218/97, T-279/97, T-280/97 and T-293/97 was flawed.

163 The plea of breach of the rights of the defence is therefore well founded as regards those decisions.

C — *On the breach of the rights of the defence as regards Case T-147/99*

1. Arguments of Miller

164 It is common ground between Miller (T-147/99) and the Commission that, unlike the contested decisions in the other joined cases, the contested decision in this case was adopted under the new procedure laid down in Articles 872a (as regards non-recovery) and 906a (as regards remission) of Regulation No 2454/93, which provides for the interested party to be heard prior to the adoption of a decision which is not in its favour (see above, paragraphs 40 and 45). It was in accordance with those provisions that the Commission communicated to Miller, by letter of 24 November 1998, the evidence in the light of which the non-recovery and remission of the import duties claimed by that company appeared to it to be unjustified. By letter of 22 January 1999, the company made known its views on that evidence.

165 However, Miller submits that its rights of defence were breached in the administrative procedure in that the Commission refused it access to certain documents. This plea is in two parts.

166 In the first part, Miller submits that the Commission breached its rights of defence in so far as it did not give it access, in the administrative procedure, to the documents on which it was to base the contested decision.

167 Miller argues that in *Eyckeler & Malt* (cited above at paragraph 87), paragraph 80, the Court of First Instance confirmed that the principle of observance of the rights of the defence requires not only that the person concerned be placed in a position in which he may effectively make known his views on the relevance of the facts held against him to justify the contested decision, but also that he be able to put his own case on the documents on which the Community institution based that decision.

168 In particular, Miller takes the view that the Commission breached those requirements in not allowing it access to the mission report and the other documents relating to that mission. It submits that it is clear from the fourth and fifth recitals of the contested decision that it is based on the results of that mission. It observes, moreover, that the ground relied on in support of that refusal to allow access, that is to say that disclosure of the mission report was not necessary in that it merely confirmed that the A.TR.1 certificates were invalid, a fact which was not disputed by the national authorities, is not a valid one. Miller alleges that this ground is not based on fact. Contrary to what is suggested by the Commission, the facts on which it based its assessment (that is to say, that the Turkish customs authorities were misled by the false statements made by exporters) were not apparent from other documents which Miller might have seen and those facts were clearly disputed by the Belgian authorities. It was also mistaken in law in so far as it is settled case-law that it is not open to the Commission to refuse access to documents on the ground that it considers such access to be of no interest (*Eyckeler & Malt*, cited above at paragraph 87, paragraph 81).

169 In the second part of the plea, Miller submits that its rights of defence were also breached in so far as, despite its request, the Commission did not grant it access to other non-confidential administrative documents relating to the case.

2. Arguments of the Commission

170 The Commission accepts that observance of the rights of the defence is a fundamental principle of Community law and that the right of access to a file is closely bound up with that principle, but denies that it breached Miller's rights of defence in the administrative procedure.

171 The Commission contends that, in a procedure concerning remission, it can base its decision only on the documents which are forwarded to it by the national authorities and to which the interested party has had access through those authorities.

172 In *France-Aviation* (cited above at paragraph 139) the Court of First Instance held that the right to be heard in a procedure concerning remission must be secured in the first place in the relations between the person concerned and the national administration, and that the institution's only obligation towards that person is to ensure that the file transmitted by the national authorities is complete and that the person concerned has been able to take cognisance of it. Miller has confirmed that it had had access to the file held by the Belgian authorities in this case.

173 The Commission therefore considers that, since it based the contested decision on documents of which Miller had taken cognisance or, at the least, had been able to take cognisance, its rights of defence were observed.

174 As regards the mission report, the Commission observes that, in general, it forwards such internal reports to interested parties prior to the adoption of decisions where it intends to rely on them in the grounds for those decisions.

175 However, in the present case it did not communicate the mission report because it contained only facts which had already been brought to the attention of the interested party when it was given access to the file held by the national authorities.

176 The Commission also takes the view that Miller cannot claim that it should have had access to all the non-confidential administrative documents relating to the case.

3. Findings of the Court

177 Only the first part of the plea raised by Miller concerning breach of its rights of defence need be considered.

178 It is common ground between the parties that in its letter of 24 November 1998 the Commission invited Miller to state its views on the grounds on which the Commission intended to base the contested decision, and that Miller did so by letter of 22 January 1999.

179 However, observance of the rights of the defence requires not only that the person concerned be placed in a position in which he may effectively make known his

views on the relevant circumstances, but also that he should at least be able to put his own case on the documents taken into account by the Community institution (Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 25, Case C-462/98 P *Mediocurso* v *Commission* [2000] ECR I-7183, paragraphs 36 and 37; *France-Aviation*, cited above at paragraph 139, paragraph 32, *Eyckeler & Malt*, cited above at paragraph 87, paragraph 80, and *Primex Produkte Import-Export*, cited above at paragraph 152, paragraph 63).

180 It should therefore be ascertained whether Miller had in fact the opportunity to state its views on the documents on which the Commission based the contested decision.

181 The Commission states that it based the contested decision solely on the file which was forwarded to it by the Belgian authorities and of which the applicant was able to take cognisance, as indicated by its statement of 24 April 1998.

182 However, as Miller points out, the file held by the Belgian authorities did not include either the mission report or the annexes thereto.

183 It is clear from the contested decision that it is based at least in part on findings made during the fact-finding mission and set out in that report. The fifth and sixth recitals of the contested decision state that:

'In the course of an enquiry carried out in Turkey by representatives of the departments of the Commission of the European Communities and the Customs

services of several Member States it was found at the end of 1993 that the competent Turkish authorities were validating certificates without any compensatory levy being collected. Indeed Turkey never made provision in its legislation for the collection of any compensatory levy and that was the case from 1973 to 1994.

On the basis of the results of that enquiry, it was found that, in the present case, the certificates submitted, and endorsed by the Turkish customs, were invalid because they related in fact to colour television sets manufactured in Turkey in which the components originating in third countries had not been released for free circulation or made subject to the said compensatory levy. Accordingly, those products should not benefit from the free circulation regime on importation into the Community.'

184 The Commission does not deny that this is the case. However, it takes the view that it was not necessary to forward the mission report to the applicant since it merely confirmed the facts which the latter had been able to ascertain in the course of the administrative procedure before the Belgian authorities.

185 That argument cannot be accepted. It is not for the Commission to determine the relevance or interest which certain documents might have for a party's defence. As the Court of First Instance held in *Eyckeler & Malt* (cited above at paragraph 87), paragraph 81, it is possible that documents considered irrelevant by the Commission may be of interest to the applicant. If the Commission could unilaterally exclude from the administrative procedure documents which might be detrimental to it, that might constitute a serious breach of the rights of defence

of a person seeking remission of import duties (see, to that effect, Case T-36/91 *ICI* v *Commission* [1995] ECR II-1847, paragraph 93).

186 Moreover, the Commission's statement that the mission report merely confirmed facts of which the applicant had acquired knowledge in the course of the administrative procedure before the Belgian authorities and which were not disputed cannot, even if true, justify the institution's refusal to disclose that report. The mission report may well contain a number of facts which would enable the applicant to demonstrate that it could claim remission of duties in this instance.

187 Finally, since the Commission intended to base the contested decision at least in part on the mission report, it was incumbent upon it to ensure that Miller was able to make known adequately its views on that document, in the course of either the national procedure or the procedure before the Commission. It is clear from the file that Miller did not have access to that report in either of those procedures.

188 As regards the defence argument based on Miller's statement that the file forwarded to the Commission by the Belgian authorities was complete and that it had nothing to add to it, it is sufficient to observe that, as was noted above at paragraph 160, such an approach is not compatible with the need to safeguard the rights of the defence in the course of the procedure before the Commission.

189 In the light of the foregoing it must be concluded that, as Miller was not placed in a position to make known its views on the mission report and its annexes, the Commission breached that party's rights of defence.

II — *The plea of breach of Article 13(1) of Regulation No 1430/79 inasmuch as the Commission found in the contested decisions that the remission of duties was not justified*

A — *Arguments of the parties*

190 All the applicants and the interveners submit that the Commission made a manifest error of assessment in finding in the contested decisions that the conditions laid down by Article 13(1) of Regulation No 1430/79 for remission of customs duties, that is to say, first, the existence of a special situation and, second, the absence of deception or obvious negligence on the part of the person concerned were not met in this case.

191 The defendant denies that it made a manifest error of assessment in finding in the contested decisions that the conditions laid down by Article 13(1) of Regulation No 1430/79 were not met in this case.

192 As is clear from the case-law, Article 13(1) of Regulation No 1430/79 and Article 5(2) of Regulation No 1697/79 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, namely the protection of legitimate expectations. Thus, obvious negligence or deception under Article 13(1) of Regulation No 1430/79 corresponds to the concept of the detectability of the error under Article 5(2) of Regulation No 1697/79 (see Case C-250/91 *Hewlett Packard France* [1993] ECR I-1839, paragraph 46, and Case T-75/95 *Günzler Aluminium* v *Commission* [1996] ECR II-497, paragraph 55). Moreover, since the conditions laid down by Article 13(1) of Regulation No 1430/79 are cumulative, the existence or otherwise of special situations is

of little relevance if there is obvious negligence or deception on the part of the person concerned. Finally, the error made by the customs authority may, in certain circumstances, constitute a special situation within the meaning of Article 13 of Regulation No 1430/79 (*Hewlett Packard France*, cited above, paragraphs 42 to 44).

193 In the light of that case-law, the defendant contends, first, that, contrary to the claims of the applicants and the interveners, failure to collect the compensatory levy is not due to an error attributable to acts of the competent authorities themselves, with the result that this fact does not constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

194 As stated in the contested decisions, the Turkish customs authorities, which are to be regarded as the competent authorities within the meaning of Article 5(2) of Regulation No 1697/79 (Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465, paragraph 88), were misled by the inaccurate statements made by the Turkish exporters, who confirmed in box 13 of the A.TR.1 certificates that the conditions for obtaining those certificates were met. As is clear from the case-law (*inter alia Faroe Seafood*, cited above, paragraph 92) and Article 4(2)(c) of Regulation No 3799/86 or, as the case may be, Article 904 of Regulation 2454/93, the presentation in good faith of falsified certificates does not in itself constitute a circumstance justifying remission.

195 Similarly, the fact that the customs authorities did not dispute the documents cannot give rise to a legitimate expectation unless those authorities were aware of all the relevant circumstances and the importer was relying on that knowledge (*Faroe Seafood*, cited above at paragraph 194, paragraphs 93 to 95). The applicants were not able to establish that that was so in the present case.

196 Contrary to the assertions of some of the applicants and interveners, the fact that the export incentive scheme was administered by the Turkish customs authorities does not imply that those authorities issued the contested certificates knowing that the television sets contained components from third countries which had not been released for free circulation in Turkey. The defendant contends that since Turkish manufacturers could import components of Community origin as well as components from third countries under the export incentive scheme, the Turkish customs authorities were entitled to issue A.TR.1 certificates for goods which included such components. It observes, moreover, that the documents relating to the export incentive scheme, that is to say the 'export promotion document' and the 'export declarations', contained no precise indication of the type, origin or value of the actual components of the television sets. Unlike the Turkish exporters, the Turkish customs authorities could not, therefore, have had knowledge of all the relevant facts.

197 The Commission observes in that connection that, since the existence of false declarations by the Turkish exporters was established and a customs debt had arisen, it was not for it but for the applicants to prove that the Turkish customs authorities had not been misled by those declarations.

198 The Commission goes on to argue that the failure by the Turkish legislature to transpose the legislation concerning the compensatory levy could not give rise to a legitimate expectation on the part of the applicants that the A.TR.1 certificates were properly issued. That fact could not prevent the exporters from either deciding not to obtain such certificates or, as the Commission pointed out in the contested decisions, from meeting the conditions for obtaining them in another way, that is to say by releasing components from third countries for free circulation on their importation into Turkey.

199 Similarly, the Commission takes the view that to accept that the endorsement of the A.TR.1 certificates by the Turkish customs authorities could give rise to

legitimate expectations for the applicants would make it impossible to recover customs duties post-clearance, on the one hand, and would deny the existence of commercial risk for traders, on the other.

200 Finally, the Commission considers that, as regards the term 'competent authorities' within the meaning of Article 5(2) of Regulation No 1697/79, the Turkish authorities in general and the Turkish customs authorities should not be confused. It explains that the above article concerns only the error made by the 'competent authorities themselves', that is to say the customs authorities (Case C-348/89 *Mecanarte* [1991] ECR I-3277). It also contends that it is clear from the grounds of the contested decisions that they concern only the error made by the Turkish customs authorities. Finally, it denies that there was tacit connivance between the Turkish customs authorities and the Turkish political authorities.

201 The Commission considers, second, that, as it found in the contested decisions, the error made by the Turkish customs authorities, that is to say the failure to collect the compensatory levy, was clearly detectable by the applicants with the result that obvious negligence must be attributed to them.

202 It argues that it is clear from the Additional Protocol and the provisions on the reverse of the A.TR.1 certificates that certain conditions must be met in order to obtain those certificates.

203 Moreover, under Article 9 of Decision No 5/72, cited above, the customs authorities of the importing country may require, apart from the certificate, a statement from the importer to the effect that the goods meet the conditions required for the implementation of the Additional Protocol.

204 In the light of those provisions and by virtue of their duty of diligence, the applicants should have endeavoured to ascertain whether the above conditions had been met and compelled their suppliers to indicate the origin and customs status of the components of the televisions in question by making that requirement a condition subsequent of the contracts.

205 According to the Commission this is the obvious conclusion, particularly as all the applicants had fairly wide professional experience of importing television sets of Turkish origin.

206 In this context the Commission disputes the argument of the German Government that the exporters and importers could not be required to be better informed and show proof of greater diligence than the Turkish State, the defendant or the Association Council. It points out that these are traders who must accept responsibility for the commercial transactions they carry out because they alone know the composition and the customs status of the products they import or export or must obtain information on such matters.

207 It cites in that connection Case C-97/95 *Pascoal & Filhos* [1997] ECR I-4209, paragraph 59, in which the Court held that 'in calculating the benefits from trade in goods likely to obtain tariff preferences, a prudent trader aware of the rules must assess the risks inherent in the market which he is considering and accept them as normal trade risks'. It considers that, contrary to the assertions of the French Republic, the reference to that judgment is relevant because in it the Court answered the question whether requiring an importer who has acted in good faith to pay duties due on goods in respect of which the exporter committed an infringement of customs rules in which the importer played no part is contrary to the principles of justice, the prohibition on enrichment at the expense of others, proportionality, legal certainty and good faith.

208 Since it was established that one of the conditions laid down by Article 13(1) of Regulation No 1430/79, that is to say the absence of obvious negligence, was not met, the Commission takes the view that it was right to hold in the contested decisions that remission of import duties was not justified.

209 It is, therefore, in the alternative that the Commission disputes the applicant's arguments as to the existence of special situations resulting from circumstances other than the error of the Turkish customs authorities.

210 It points out in that regard that for a circumstance to be regarded as a 'special situation' within the meaning of Article 13(1) of Regulation 1430/79, there must be a causal link between that circumstance and the issue or recognition of the movement certificates for goods which is the basis for the legitimate expectations of the person liable to pay. In the present case, the failure to collect the compensatory levy and, therefore, the invalidity of the A.TR.1 certificates result solely from the fact that the Turkish customs authorities were misled by the inaccurate statements made by the Turkish exporters. They therefore have no causal link with the other circumstances relied on by the applicants, *inter alia* the alleged deficiencies of the Turkish authorities, the Commission and the Association Council or the post-clearance payment of the compensatory levy by the Turkish exporters.

211 Moreover, the Commission disputes the accuracy of those assertions.

212 It takes the view that, contrary to the assertions of some of the applicants, it did not fail to fulfil its obligation in the implementation of the Association Agreement and the Additional Protocol.

213 It observes that its first communication to the Member States on 'Mutual Assistance' was sent in January 1989, following a complaint by an association of Community manufacturers alleging that subsidies were being given to Turkish producers, the non-payment of customs duties on components from third countries and possible dumping practices. In the absence of any reply from the Member States the Commission sent them a second communication on 'Mutual Assistance' in February 1991 and called the Member States concerned to a meeting which was held in Brussels in March 1991 and at which the possibility of a fact-finding mission to Turkey was discussed. A second meeting was held in Brussels in February 1992 at which it was recorded that certain components used in the manufacture of television sets were of South Korean or Japanese origin. Subsequently, by letter of 9 August 1992, the Commission formally requested the assistance of the Turkish authorities and the organisation of a meeting to prepare for a fact-finding mission which was to be undertaken in Turkey before the end of the year. At that meeting, which took place in February 1993, the Commission was informed for the first time that the compensatory levy had never been introduced by the Republic of Turkey. At the same time, the Commission sent a third communication on 'Mutual Assistance' to the Member States asking them to check the validity of the A.TR.1 certificates. Finally, the Community mission, initially planned for April 1993, took place in October and November 1993.

214 It therefore considers that it took with due dispatch all the measures necessary and possible which were called for in the case, whereas the Member States alone had the requisite authority to implement the Community customs legislation and monitor its implementation, which fell within their remit.

215 As regards the fact that the Turkish manufacturers paid compensatory levies post-clearance following a demand from their national authorities, the defendant contends, first, that this fact did not extinguish the customs debt arising on importation of the television sets and, second, that the payment does not seem to have been organised in a satisfactory manner by the Turkish authorities.

B — *Findings of the Court*

1. Preliminary observations

(a) The scope of Article 13(1) of Regulation No 1430/79

216 It is settled case-law that Article 13(1) of Regulation No 1430/79 constitutes a general equitable provision (see in particular Case 283/82 *Schoeller & Söhne* v *Commission* [1983] ECR 4219, paragraph 7).

217 According to that provision the person liable to pay customs duties who demonstrates both the existence of a special situation and the absence of obvious negligence and deception on his part is entitled to the remission of those duties (see *Eyckeler & Malt*, cited above at paragraph 87, paragraph 134).

218 The case-law indicates that the existence of a special situation is established where it is clear from the circumstances of the case that the person liable is in an exceptional situation as compared with other operators engaged in the same business (see Case C-86/97 *Trans-Ex-Import* [1999] ECR I-1041, paragraphs 21 and 22, and Case C-61/98 *De Haan* [1999] ECR I-5003, paragraphs 52 and 53) and that, in the absence of such circumstances, he would not have suffered the disadvantage caused by the entry in the accounts *a posteriori* of customs duties (Case 58/86 *Coopérative Agricole d'Approvisionnement des Avirons* [1987] ECR 1525, paragraph 22).

219 As regards the condition concerning the absence of obvious negligence or deception on the part of the interested party, the Court held in *Hewlett Packard France* (cited above at paragraph 192), paragraph 46, that Article 13(1) of Regulation No 1430/79 and Article 5(2) of Regulation No 1697/79 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. Seen in that light, the question whether the error was detectable, within the meaning of Article 5(2) of Regulation No 1697/79, is linked to the existence of obvious negligence or deception within the meaning of Article 13 of Regulation No 1430/79, and therefore the conditions laid down by the latter provision must be assessed in the light of those laid down in Article 5(2) of Regulation No 1697/79.

220 Finally, since, according to settled case-law, the conditions laid down by Article 13(1) of Regulation No 1430/79 are cumulative (*Günzler Aluminium*, cited above at paragraph 192, paragraph 54, and Case C-370/96 *Covita* [1998] ECR I-7711, paragraph 29), remission must be refused if one of those conditions is not met.

(b) The power of assessment of the Commission when deciding whether the conditions laid down by Article 13(1) of Regulation No 1430/79 have been met

221 Any Community body which intends to adopt a decision must, when doing so, take account of all the relevant facts of which it has become aware in the performance of its tasks, failing which the decision will be unlawful for error of assessment. In a specific case, the relevant facts are those liable to be taken into account in implementing the legislation concerned.

222 Thus, it is clear from the case-law that, in order to determine whether the circumstances of the case constitute a special situation in which no deception or obvious negligence may be attributed to the person concerned within the meaning of Article 13(1) of Regulation No 1430/79, the Commission must assess all the relevant facts (see, to that effect, Case 160/84 *Oryzomyli Kavallas and Others* v *Commission* [1986] ECR 1633, paragraph 16, and *France-Aviation*, cited above at paragraph 139, paragraphs 34 and 36).

223 That obligation implies that, in cases such as those at issue, in which the persons liable have relied, in support of their applications for remission, on the existence of serious deficiencies on the part of the contracting parties in implementing an agreement binding the Community, the Commission must base its decision as to whether those applications are justified on all the facts relating to the disputed imports of which it gained knowledge in the performance of its task of supervising and monitoring the implementation of that agreement.

224 Similarly, the Commission cannot, in the light of the obligation described above in paragraphs 221 and 222 and of the principle of equity which underlies Article 13(1) of Regulation No 1430/79, disregard relevant information of which it has gained knowledge in the performance of its tasks and which, although not forming part of the administrative file at the stage of the national procedure, might have served to justify remission for the interested parties.

225 Moreover, as is clear from *Eyckeler & Malt* (cited above at paragraph 87), paragraph 133, although the Commission enjoys a discretionary power in applying Article 13 of Regulation No 1430/79 (*France-Aviation*, cited above at paragraph 139, paragraph 34), it is required to exercise that power by genuinely balancing, on the one hand, the Community interest in ensuring that the customs provisions are respected and, on the other, the interest of the importer acting in good faith in not suffering harm which goes beyond normal commercial risks. Consequently, when considering whether an application for remission is justified,

it cannot take account only of the conduct of importers. It must also assess the impact on the resulting situation of its own conduct, which may itself have been wrongful.

226 Accordingly, in order to determine whether the Commission made a manifest error of assessment in finding in the contested decisions that the conditions laid down in Article 13(1) of Regulation No 1430/79 were not met, reference must be made to all the documents relating to the implementation of the provisions of the Association Agreement and the Additional Protocol as regards the importation of colour television sets from Turkey at the material time and of which the Commission had knowledge when it took those decisions.

227 It is in the light of those documents, which were produced by the Commission pursuant to a measure of organisation of the procedure of 29 October 1999, that it must be determined whether, first, the circumstances of the case constitute a special situation and, second, whether the applicants were guilty of any obvious negligence or deception.

2. Compliance with the conditions laid down by Article 13(1) of Regulation No 1430/79

(a) The existence of a special situation

228 In the present case, all the applicants pleaded in support of their application for remission that serious errors were made by the contracting parties in implementing the Association Agreement and the Additional Protocol. Those errors, they

submitted, constituted a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

229 The Commission does not deny that there were a number of deficiencies in the implementation by the Turkish authorities of the Association Agreement and the Additional Protocol. However, it considers that those deficiencies were not the cause of the irregularities regarding the imports in question. The Commission contends that the error made by the Turkish customs authorities arose because those authorities were misled by the Turkish exporters.

230 However, it must be observed, as a preliminary point, that the fact that the Turkish customs authorities were misled by the Turkish exporters does not, in itself, rule out the possibility that the circumstances of the case may constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

231 It is true that, as the Court held in *Mecanarte* (cited above at paragraph 200), paragraphs 23 and 24, the legitimate expectations of the person liable to pay only qualify for the protection provided for in Article 5(2) of Regulation No 1697/79 only if it was the competent authorities themselves which created the basis for the expectations of the person liable. Thus, only errors attributable to acts of the competent authorities which could not reasonably have been detected by the person liable to pay create entitlement to the waiver of post-clearance recovery of customs duties. That condition cannot be regarded as fulfilled where the competent authorities have been misled, in particular as to the origin of the goods, by incorrect declarations made by the person liable, the validity of which those authorities do not have to check or assess. In such circumstances, the Court has consistently held that it is the person liable to pay who must bear the risks arising from a commercial document which is found to be false when subsequently checked.

232 However, it must be emphasised that those observations apply specifically to Article 5(2) of Regulation No 1697/79.

233 As the Court of First Instance observed in *Eyckeler & Malt* (cited above at paragraph 87), paragraphs 136 to 139, although Article 5(2) of Regulation No 1697/79 and Article 13(1) of Regulation No 1430/79 pursue the same aim the provisions are not the same. The first has a more limited objective than the second, in so far as it is intended solely to protect the legitimate expectation of the person liable to pay that all the elements on which the decision whether or not to proceed with the recovery of customs duties is based are correct (*Faroe Seafood*, cited above at paragraph 194, paragraph 87). On the other hand, as noted above, Article 13(1) of Regulation No 1430/79 is a general equitable provision.

234 Thus, where the competent authorities, in this case the Turkish customs authorities, did not enter the customs duties in the accounts because they were misled by statements made by the Turkish exporters, the person liable cannot rely on Article 5(2) of Regulation No 1697/79. Similarly, as is clear from Article 4(2)(c) of Regulation No 3799/86 and Article 904(c) of Regulation No 2454/93, the person liable cannot argue that the presentation of invalid certificates and the consequent error of the competent authorities are sufficient to constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79 (see also to that effect *Van Gend & Loos*, cited above at paragraph 141, paragraph 16, and *Pascoal*, cited above at paragraph 207, paragraphs 57 to 60).

235 On the other hand, those provisions do not prevent the person liable to pay from relying on other matters in support of his application for remission under Article 13(1) of Regulation No 1430/79 (see to that effect *Eyckeler & Malt*, cited above at paragraph 87, paragraphs 163 and 164). The error of the competent authorities may itself have been made possible by inadequate monitoring by the Commission of the implementation of the provisions of the Association

Agreement. As is clear from *Eyckeler & Malt*, such circumstances may constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

236 Since it has been established that the fact that the Turkish customs authorities were misled by the Turkish exporters does not, in itself, rule out the existence of a special situation within the meaning of Article 13(1) of Regulation No 1430/79, it must be determined whether the circumstances of the present case constitute such a situation.

The deficiencies attributable to the Turkish authorities

237 Article 7 of the Association Agreement provides that the contracting parties are to take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from the Agreement and to refrain from any measures liable to jeopardise the attainment of its objectives. The provision expresses the *pacta sunt servanda* principle and the principle of good faith which must govern the conduct of the parties to an agreement in public international law (Case T-115/94 *Opel Austria* v *Council* [1997] ECR II-39, paragraph 90).

238 It must be observed, first, that for more than 20 years the Turkish authorities did not transpose legislation on the compensatory levy laid down in Article 3(1) of the Additional Protocol and Decision No 2/72, cited above. Since the legislation was not transposed, the Turkish customs authorities could not legitimately issue A.TR.1 certificates for goods, such as colour television sets, containing components from third countries which were not in free circulation in Turkey.

239 Secondly, at the material time the Turkish authorities introduced measures which either did not comply with the provisions of the Association Agreement or the Additional Protocol or did not allow the correct implementation of those provisions as regards the exportation of goods (including colour television sets) to the Community.

240 For instance, it is not disputed that in June 1992 the Turkish Government adopted two decrees whose provisions were clearly contrary to the Association Agreement and Additional Protocol.

241 Decree 92/3177 (cited above) provided, in breach of Article 3(1) of the Additional Protocol and Decision No 2/72 (cited above), that a compensatory levy was to be collected on components from third countries included in television sets destined for the Community only if an expert's report showed that the value of those components was greater than 56% of the total fob value of the television sets.

242 It matters little in that connection that, as the Commission states, that decree was never implemented by the Turkish authorities. The deliberate adoption of a measure contrary to the provisions of the Additional Protocol and to a decision of the Association Council in itself constitutes a breach of the obligation laid down in Article 7 of the Association Agreement, a conclusion reinforced by the fact that, as is clear from the letter of 28 July 1992 by which the Turkish authorities forwarded a copy of that decree to the Association Council, the adoption of that decree was intended to alleviate the concerns expressed by the Community as regards the application of the Association Agreement and the Additional Protocol to exports of colour television sets from Turkey.

243 As regards Decree 92/3127 (cited above), which introduced a zero rate on imports of cathode ray tubes for colour television sets from the Community or

from third countries, the mission report indicates that, contrary to the provisions of the Association Agreement, the Republic of Turkey did not inform the Community of its intention to adopt such a measure.

244 Moreover, it is not disputed that the Turkish authorities had at the material time set up the export incentive scheme which allowed duty-free imports of components from third countries on condition that those components were included in goods subsequently exported to the Community or third countries. Since the legislation on the compensatory levy was not transposed by the Turkish authorities, no component of third country origin imported under that programme could be included in goods intended for the Community since the Turkish customs authorities were not able to collect the compensatory levies on such components.

245 The mission report indicates that the main components from third countries included in television sets intended for the Community at the material time were imported free of duty under the export incentive scheme.

246 Moreover, the Commission has emphasised several times in its submissions and at the hearing that, despite their responsibility for supervising and monitoring the export incentive scheme, the Turkish customs authorities which issued A.TR.1 certificates had no precise information on the type, origin or value of the components actually included in the television sets intended for the Community. According to the Commission, the export incentive scheme applied to the total value of imported components and there was no documentation allowing a direct link to be established between the different imported parts and the appliance assembled from them and intended for export.

247 This fact deserves particular attention. It confirms that the Turkish authorities had set up an aid scheme which did not allow their customs authorities,

notwithstanding that they had been given responsibility for supervising and monitoring that scheme, to ensure that its implementation did not breach the provisions of the Association Agreement and the Additional Protocol. That undoubtedly contributed to the fact that, as the Commission states, the Turkish customs authorities which issued A.TR.1 certificates might have been misled by the statements made by the Turkish exporters.

248 However, it seems doubtful that those customs authorities were in fact misled by the statements made by exporters.

249 Contrary to the Commission's assertions, the mere fact that the Turkish exporters confirmed in box 13 of the A.TR.1 certificates that the conditions for obtaining those certificates were met does not in itself constitute proof that the Turkish customs authorities which issued the certificates were misled. As is also clear from *Faroe Seafood* (cited above at paragraph 194), paragraph 95, in order to determine whether the competent authorities were misled by the exporters' declarations, it must be ascertained whether the exporters made those declarations in reliance on the assumption that the competent authorities had all the information necessary for applying the customs rules in question and whether, notwithstanding such knowledge, those authorities raised no objection concerning those declarations. If it is established that the competent authorities had all the information necessary for applying the customs rules, it is clear that they could not have been misled by the exporters' declarations.

250 A number of applicants have provided plausible evidence to show that those authorities were or at least should have been aware of the presence in the colour television sets of components from third countries imported under that scheme, in particular on the basis of information given in the export declarations and the A.TR.1 certificates and by virtue of their task of supervising the implementation of the export incentive scheme.

251 That is borne out by the fact that, as the mission report states, it was on the basis of customs import and export documents that the fact-finding mission was able to establish that components from third countries were imported free of duty and the finished products exported under the export incentive scheme. *A fortiori*, the Turkish customs authorities which endorsed those documents could have made the same finding. The fact that they did not have import declarations, as the Commission states, merely confirms the inadequacy of their methods.

252 Moreover, the Commission expressly recognised at the hearing that the central Turkish customs authorities were aware of the presence of components from third countries imported under the export incentive scheme in the colour television sets exported free of duty to the Community on the basis of A.TR.1 certificates. Contrary to the Commission's assertion, the term 'competent authorities' is not limited to the customs authorities which issued the A.TR.1 certificates. As is clear from the judgment in *Mecanarte* (cited above at paragraph 200), paragraph 22, 'since no precise and exhaustive definition of "competent authorities" is provided in Regulation No 1697/79 or in Regulation No 1573/80 adopted in implementation thereof and in force at the material time, any authority which, acting within the scope of its powers, furnishes information relevant to the recovery of customs duties and which may thus cause the person liable to entertain legitimate expectations must be regarded as a competent authority within the meaning of Article 5(2) of Regulation No 1697/79. This applies in particular to the customs authorities of the exporting Member State which deal with the customs declaration'.

253 Finally, it is clear from the file that it was a long time before the Turkish authorities cooperated actively with the defendant in tackling the problems relating to the importation of television sets from Turkey.

254 Thus, the mission report indicates that, despite an official request for administrative cooperation sent on 12 August 1992 to the Turkish authorities,

the organisation of the fact-finding mission to Turkey was postponed on several occasions as a result of the opposition of those authorities. The mission did not finally take place until the end of 1993, a year and half later.

255 Similarly, although it is clear from the letter of 28 July 1992 sent to the Association Council by the Turkish authorities that they knew that their legislation was not consistent with the Association Agreement in so far as it did not make provision for a compensatory levy, the necessary measures were not adopted and implemented until 1994.

256 In the light of the foregoing it must be held that the Turkish authorities were responsible for serious deficiencies in the implementation of the Association Agreement and Additional Protocol. Those deficiencies undoubtedly contributed to the occurrence of irregularities in connection with exports of television sets from Turkey to the Community. They also give rise to doubts about the will of the Turkish authorities to ensure the proper implementation of the provisions of the Association Agreement and the Additional Protocol as regards those exports.

The deficiencies attributable to the Commission

257 Pursuant to Article 155 of the EC Treaty (now Article 211 EC) and the principle of good administration, the defendant had a duty to ensure the proper application of the Association Agreement and the Additional Protocol (see, to that effect, *Eyckeler & Malt*, cited above at paragraph 87, paragraph 165 (obligation to monitor the 'Hilton beef' quota) and, less explicitly, Case 175/84 *Krohn* v *Commission* [1987] ECR 97, paragraph 17 (regarding the manioc import quota under the EEC-Thailand Agreement)).

258 That duty also resulted from the Association Agreement (see *inter alia* Articles 6, 7 and 25) and the various decisions adopted by the Association Council on the application of Articles 2 and 3 of the Additional Protocol. Thus Article 4 of Decision No 3/72 (cited above), establishing the rules relating to the collection of the compensatory levy, provides that 'the Community and the [Republic of] Turkey are to inform one another and the Association Council of the measures they take to ensure the uniform implementation of the decision'. Similarly, Article 12 of Decision No 5/72 (cited above) provides that '[the Republic of] Turkey, the Member States and the Community shall each take the steps necessary to implement this decision'.

259 Furthermore, the Commission is represented on the Association Council (Article 23 of the Association Agreement) and it participates, as the representative of the Community, in various committees, including the customs cooperation committee, set up by that Council (Article 24). Moreover, the Commission has a permanent representation in Turkey which enables it to be reliably informed of political, legal and economic developments in that State.

260 The information before the Court indicates that clear deficiencies can be attributed to the Commission as regards the monitoring of the implementation of the Association Agreement and the Additional Protocol.

261 In the first place it was for the Commission to verify, in carrying out its role of monitoring the implementation of the Association Agreement, that the Turkish authorities had correctly transposed the provisions of the Additional Protocol relating to the compensatory levy. As observed above at paragraph 238, the Turkish authorities waited more than 20 years before transposing those provisions into their legislation.

262 Similarly, it was for the Commission to ensure that all the legislation was brought to the attention of Community traders so that it could be brought into force with regard to them. As a number of the applicants and interveners observed, neither Decision No 2/72, cited above, (fixing the rate of the compensatory levy) nor Decision No 3/72, cited above, (establishing the rules for the collection of the compensatory levy) was published in the Official Journal, a fact which the defendant does not deny.

263 Second, it is clear from the documents before the Court that, although it had information consistently indicating the existence of problems in the implementation of the Association Agreement and the Additional Protocol by the Turkish authorities, it was slow to react.

264 For instance, the Commission was informed as early as 1987, or at the latest by the complaint lodged on 5 October 1988, by the European Association of Consumer Electronics Manufacturers (EACEM) that the provisions of the Association Agreement and the Additional Protocol were apparently not being respected in connection with exports of colour television sets from Turkey.

265 Having sent an initial notice on 'Mutual Assistance' to the Member States in January 1989, the Commission waited two years before taking any further measures, in the form of a second notice on 'Mutual Assistance' in February 1991, and organising a meeting with representatives of the Member States concerned in March 1991.

266 It then waited until August 1992 to inform the Turkish authorities of the existence of problems in connection with exports of colour television sets from Turkey and to request administrative cooperation from those authorities on the matter.

267 Moreover, in response to a question from the Court of First Instance, the Commission stated that it first became aware that the legislation on the compensatory levy had not been transposed by the Turkish authorities at a meeting with those authorities in February 1993, that is to say 20 years after the adoption of the Additional Protocol. It must be noted, however, that, as stated above, the Turkish authorities had informed the Association Council and the Commission as early as July 1992 of the adoption of measures providing for the collection of a compensatory levy on components from third countries incorporated in television sets intended for the Community in breach of the Additional Protocol and Decision No 2/72 (cited above). That information should have led the Commission to examine, finally, the implementation by the Turkish authorities of the legislation on the compensatory levy.

268 Third, the Commission failed to fulfil its obligation of diligence in not informing Community importers (including the applicants) at the earliest possible date of the potential risks they incurred in importing colour television sets from Turkey. It is clear from the documents before the Court that until the end of 1992 the applicants were never informed of the problems regarding the implementation of the Additional Protocol in connection with the importation of colour television sets from Turkey and the doubts which the various Community and national bodies had about the validity of the A.TR.1 certificates.

269 Finally, it is obvious that the Commission failed to fulfil its obligations in not contacting the Association Council and the various bodies falling within its remit, in particular the customs cooperation committee, in good time in order to clarify the situation and to take, if necessary, the measures required to ensure that the Turkish authorities respected the terms of the Association Agreement and the Additional Protocol. For instance, it is clear from the documents before the Court that the problems concerning exports of colour television sets from Turkey were first raised at the meeting of the customs cooperation committee held on 3 December 1992 and that that meeting was the first after an interval of nearly ten years. Similarly, the reply of the Commission to a written question from the Court indicates that the Association Council did not, apparently, meet before February 1993.

270 Furthermore, the Commission failed to make use of the procedure for settling disputes laid down in Article 25 of the Association Agreement. As envisaged by that agreement, the defendant should first have made use of that procedure, before declaring that the A.TR.1 certificates issued by the Turkish customs authorities were invalid, a conclusion borne out by the fact that, as the Commission confirmed in reply to a written question from the Court, the Association Agreement does not provide for the possibility of a contracting party declaring invalid the certificates issued by the customs authorities of the other contracting party. Furthermore, such a manner of proceeding seems difficult to reconcile with the division of responsibility between the customs authorities of the parties to the agreement and the principle that the customs administration of the importing State accepts the determinations legally made by the authorities of the exporting State (see to that effect Case 218/83 *Les Rapides Savoyards* [1984] ECR 3105, paragraph 26, and Case C-12/92 *Huygen and Others* [1993] ECR I-6381, paragraphs 24 and 25).

271 In that regard, the argument put forward by the Commission that its position was explained by the tensions in relations between the Community and the Republic of Turkey over a certain period cannot be accepted.

272 The existence of such tensions does not exonerate the Commission as guardian of the Treaty and of the agreements concluded under it from ensuring the correct implementation by a third country of the obligations it has contracted to fulfil under an agreement concluded with the Community, using the means provided for by the agreement or by the decisions taken pursuant thereto. If, as a result of tensions, it is unable to meet that obligation, *inter alia* because the means at its disposal prove to be inoperative or ineffective, it is incumbent upon it, at the very least, to inform the Member States as soon as possible of the measures to be taken to prevent damage to the Community and Community traders. In no case can the Commission use its exclusive authority as regards the recovery and remission of import duties to remedy failures in the implementation of an agreement concluded between the Community and a third country.

273 It is clear from the foregoing that the Commission has been seriously remiss in monitoring the implementation of the Association Agreement and the Additional Protocol and that that contributed to the occurrence of irregularities concerning imports of colour television sets from Turkey at the material time.

The deficiencies attributable to the Association Council

274 As regards the Association Council, it is sufficient to note that, under Article 22 of the Association Agreement, its main task is to adopt the measures necessary to ensure the smooth functioning of that agreement and compliance with it by the contracting parties.

275 However, it is clear that for more than 20 years the Association Council took no measures at all to ensure the respect by the Republic of Turkey of the provisions concerning the compensatory levy.

(b) The absence of obvious negligence or deception

276 It is common ground between the parties that there was no deception on the part of the applicants.

277 On the other hand, the applicants consider that the Commission made an error of assessment in finding in the contested decisions that they were guilty of obvious negligence in so far as the legislation was well known and relatively simple as

regards the conditions for issue of an A.TR.1 movement certificate, so that they could not have been unaware of it and that, as diligent traders, they should have had serious doubts as to the validity of the certificates at issue.

278 In that regard, it must be borne in mind that, as noted above, it is clear from the case-law that the notion of detectability of the error, within the meaning of Article 5(2) of Regulation No 1697/79, corresponds to the obvious negligence or deception referred to in Article 13 of Regulation No 1430/79.

279 It is also clear from the case-law that, in order to determine whether an error was detectable within the meaning of Article 5(2) of Regulation No 1697/79, account has to be taken *inter alia* of the precise nature of the error, the professional experience of and the care taken by the trader (see, also to that effect, *Deutsche Fernsprecher*, cited above at paragraph 148, paragraph 24, Case C-371/90 *Beirafrio* [1992] ECR I-2715, paragraph 21, Case C-187/91 *Belovo* [1992] ECR I-4937, paragraph 17, and *Hewlet Packard France*, cited above at paragraph 192, paragraph 22; see, as regards Article 13(1) of Regulation No 1430/79, *Söhl & Söhlke*, cited above at paragraph 26, paragraphs 51 to 60). That assessment must be made in the light of the particular circumstances of the case (*Faroe Seafood*, cited above at paragraph 194, paragraph 101).

280 It is in the light of those principles that the question whether the Commission was entitled to consider that the applicants were guilty of obvious negligence must be examined.

281 In that context it must be observed, first, that the applicants are companies with a certain amount of experience of importing electronic equipment.

282 Second, according to the case-law, the nature of the error should be assessed *inter alia* in the light of the amount of time during which the authorities persisted in their error (Case C-38/95 *Foods Import* [1996] ECR I-6543, paragraph 30) and the complexity of the provisions at issue (Case C-292/91 *Weis* [1993] ECR I-2219, paragraph 17).

283 In the present case, it is clear that the Turkish customs authorities issued A.TR.1 certificates for goods which did not meet the conditions for delivery of such certificates for at least the whole of the material period, that is to say for more than three years.

284 Next, contrary to the Commission's assertion, the legislation in question was particularly complex.

285 Merely reading the legislation concerning preferential treatment, that is to say Articles 2 and 3 of the Additional Protocol and the decisions of the Association Council on the implementation of those provisions, was not sufficient to enable the applicants to realise that the Turkish customs authorities had made an error in issuing A.TR.1 certificates for the colour television sets (see, to that effect, *Faroe Seafood*, cited above at paragraph 194, paragraph 100).

286 As observed above, neither Decision No 2/72 nor Decision No 3/72, cited above, were published in the Official Journal, a fact which the defendant does not deny.

287 The fact that those two decisions were not published is particularly serious. It is somewhat surprising that the defendant accuses the applicants of not having

taken cognisance of the provisions concerning the compensatory levy when some of those provisions were not published. For instance, since Decision No 2/72 was not published, Community and non-Community traders could not be deemed to know that a rate had been fixed by the Association Council for the compensatory levy (see, as regards the introduction of a countervailing charge, *Covita*, cited above at paragraph 220, paragraphs 26 and 27). In any event, since Decisions No 2/72 and No 3/72 were of a general legislative nature, their publication in the Official Journal was, as a matter of principle, an essential pre-condition for their having binding effect on their addressees.

288 Furthermore, even if the applicants knew that a rate had been fixed for the compensatory levy, they could not know, merely by reading the conditions set out on the reverse of the A.TR.1 certificate, that the Turkish customs authorities were making an error in issuing such a certificate for the goods at issue. The customs authorities could validly issue A.TR.1 certificates without collecting a compensatory levy if the components of the television sets concerned were of Turkish or Community origin or, if from third countries, had been released for free circulation in Turkey.

289 Moreover, in order to detect the error made by the Turkish customs authorities, it was necessary not only to have thorough knowledge of the general legislation concerning preferential treatment, but also to know that that legislation had not been transposed by the Republic of Turkey. It was only by knowing that the Turkish customs legislation contained no provisions concerning the collection of a compensatory levy that importers could know that they needed to ascertain that the components from third countries which had been included in the television sets had been released for free circulation in Turkey. Not only did the Commission itself — despite having been entrusted with the role of monitoring the implementation of the Association Agreement and the Additional Protocol — wait more than 20 years before ascertaining that the Turkish authorities had not transposed the legislation on the compensatory levy, but in addition it took more

than five years and the organisation of the fact-finding mission on the spot for it to ascertain the state of the Turkish legislation on the importation of components from third countries.

290 That legislation was, moreover, very complex. First, the Turkish authorities had set up the export incentive scheme and, second, they had adopted a scheme suspending import duties for certain essential components, such as cathode ray tubes. As is clear from the Commission's letter of 22 March 1995, components imported under such a scheme could, under certain conditions, be considered to be in free circulation in Turkey, in accordance with the Association Agreement and the Additional Protocol. Accordingly the use of such components did not necessarily mean that a compensatory levy had to be collected.

291 Third, the Commission's argument that, in the light of the relevant provisions, the applicants should have had doubts as to the validity of the A.TR.1 certificates and should therefore either have obtained information from the Turkish manufacturers/exporters or stipulated in their contracts with the latter that only components from third countries released for free circulation in Turkey could be used in the manufacture of colour television sets must be rejected.

292 As most of the applicants and interveners pointed out, the defendant does not explain why the applicants should have had doubts as to the validity of the A.TR.1 certificates. However, the above argument of the defendant could only be upheld if it were in a position to demonstrate that the applicants had or should have had knowledge that the legislation on the compensatory levy had not been transposed by the Turkish authorities.

293 As has already been observed, the defendant itself only became aware that the legislation had not been transposed after some 20 years had elapsed.

294 Moreover, although the Commission has repeatedly referred to the prices at which the importers had bought the colour television sets from Turkey, it has not established that those prices were such that the importers should have had doubts as to whether the conditions for obtaining preferential treatment had been met.

295 In that context, it must be noted that the Commission opened an anti-dumping enquiry in November 1992 regarding imports of colour television sets from Turkey. As indicated in Commission Regulation (EC) No 2376/94 of 27 September 1994 imposing a provisional anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand (OJ 1994 L 255, p. 50), the enquiry did not lead to the imposition of duty on imports of appliances from Turkey whereas a duty was imposed on colour television sets from those other countries.

296 The Commission's argument that the fact that the Turkish customs authorities can require, under Article 9 of Decision No 5/72 (cited above), that the import declaration include a statement by the importer that the goods meet the conditions required for the application of the provisions of the Additional Protocol implies that the applicants were under an obligation to obtain information about the origin and customs status of the components of the colour television sets must likewise be rejected. It is only in case of doubt that the importers should have obtained such information. As has been pointed out above, the Commission did not explain why the applicants should have had such doubts. Moreover, a number of the applicants stated, without being contradicted by the Commission, that the origin and customs status of the components incorporated in the television sets were covered by the manufacturers' right to commercial confidentiality, so that they would have refused to give such information.

297 Fourth, all the applicants pointed out at the hearing that the manner in which they entered into purchase contracts and carried out the imports at issue was in

conformity with standard trade practice. In those circumstances, it was for the Commission to prove obvious negligence on their part (see *Eyckeler & Malt*, cited above at paragraph 87, paragraph 159).

298 The Commission did not attempt to furnish such proof. Indeed, in response to a question raised by the Court to that effect at the hearing, it merely repeated the allegations contained in the contested decisions to the effect that the applicants had failed to act with due care by failing to obtain information from the exporters as to whether the components from third countries had been released for free circulation in Turkey.

299 Finally, the Commission's argument based on the judgment in *Pascoal* (cited above at paragraph 207) must be considered. The Commission points out that in paragraph 59 of that judgment the Court held that 'the European Community cannot be made to bear the adverse consequences of the wrongful acts of suppliers of importers, second, that the importer may seek compensation from the perpetrator of the fraud, and, finally, that, in calculating the benefits from trade in goods likely to obtain tariff preferences, a prudent trader aware of the rules must assess the risks inherent in the market which he is considering and accept them as normal trade risks'.

300 That does not, however, apply in a case such as the present, in which it is as a result of serious deficiencies on the part of the parties to an Association Agreement that irregularities have occurred in connection with imports of goods under a preferential tariff regime. In such a case, in the absence of clear and precise information on the part of the national or Community authorities as to the nature of the irregularities in the operation of the agreement, a diligent importer cannot be required to remedy the deficiencies of the parties to that agreement.

301 In the light of the foregoing, it must be held that the Commission made an error of assessment in finding in the contested decisions that the applicants were guilty of obvious negligence.

3. The claims relating to compliance with the conditions laid down in Article 13(1) of Regulation No 1430/79

302 The serious deficiencies attributable to the contracting parties had the effect of placing the applicants in a special position in relation to other traders carrying out the same activity. The deficiencies undoubtedly helped to bring about irregularities which led to customs duties being entered in the accounts post-clearance in respect of the applicants.

303 Moreover, in the circumstances of the present case there was no obvious negligence or deception on the part of the applicants.

304 Consequently, the Commission made a manifest error of assessment in finding in the contested decisions that the conditions for remission of customs duties laid down in Article 13(1) of Regulation No 1430/79 or, as appropriate, in Article 239 of the Customs Code were not met. This plea is therefore well founded.

305 Since the pleas of breach of the rights of the defence and breach of Article 13(1) of Regulation No 1430/79 or, in the alternative, of Article 239 of the Customs Code are well founded, the contested decisions must be annulled, without its being necessary to rule on the other pleas relied on by the applicants in support of their applications.

Costs

306 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must, in accordance with the forms of order sought by the applicants, be ordered to pay the costs.

307 The United Kingdom of Great Britain and Northern Ireland, the French Republic and the Federal Republic of Germany, interveners, will bear their own costs, pursuant to the first subparagraph of Article 87(4) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Annuls Decisions REM 14/96, REM 15/96, REM 16/96, REM 17/96, REM 18/96, REM 19/96 and REM 20/96 of 19 February 1997 and Decision REM 21/96 of 25 March 1997 addressed to the Federal Republic of Germany concerning applications for the remission of import duties;**

2. Annuls Decisions REC 7/96, REC 8/96 and REC 9/96 of 24 April 1997 addressed to the French Republic concerning applications for non-recovery and remission of import duties;

3. Annuls Decisions REM 26/96 and REM 27/96 of 5 June 1997 addressed to the Kingdom of the Netherlands concerning applications for remission of import duties;

4. Annuls Decision REC 3/98 of 26 March 1999 addressed to the Kingdom of Belgium concerning an application for non-recovery and remission;

5. Orders the Commission to pay the costs;

6. Orders the United Kingdom of Great Britain and Northern Ireland, the French Republic and the Federal Republic of Germany to bear their own costs.

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 10 May 2001.

H. Jung J. Azizi

Registrar President

Legal background