JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
17 September 1998 *

In Case T-50/96,

Primex Produkte Import-Export GmbH&Co. KG, a company incorporated under German law, established in Bad Homburg, Germany,

Gebr. Kruse GmbH, a company incorporated under German law, established in Hamburg, Germany,

Interporc Im- und Export GmbH, a company incorporated under German law, established in Hamburg,

represented by Georg M. Berrisch, Rechtsanwalt, Hamburg and Brussels, with an address for service in Luxembourg at the Chambers of Guy Harles, 8-10 Rue Mathias Hardt,

applicants,

supported by

United Kingdom of Great Britain and Northern Ireland, represented initially by Stephanie Ridley, of the Treasury Solicitor's Department, acting as Agent, and subsequently by John E. Collins, of the Treasury Solicitor's Department, acting as Agent, and by David Anderson, Barrister, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

intervener,

* Language of the case: German.

Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of the Commission decision of 26 January 1996 (Document K(96) 180 final) addressed to the Federal Republic of Germany and concerning the remission of import duties,

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

composed of: B. Vesterdorf, President, R. M. Moura Ramos and P. Mengozzi, Judges,

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 31 March 1998,

gives the following

Judgment

Legal background

1 Article 13(1) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), as amended by Article 1(6) of Council Regulation (EEC) No 3069/86 of 7 October 1986 (OJ 1986 L 286, p. 1), provides:

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

2 According to 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), '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 not by itself a special situation within the meaning of Article 13 of Regulation No 1430/79.

3 Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required

of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1) 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 ...'

4 On 12 October 1992 the Council adopted Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1992 L 302, p. 1, hereinafter 'the Customs Code'), which entered into force on 1 January 1994. Article 251(1) of the Customs Code repealed, *inter alia*, Regulations Nos 1430/79 and 1697/79.

5 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 Regulation No 2913/92 (OJ 1993 L 253, p. 1), with effect from 1 January 1994, the date on which Regulation No 2454/92 entered into force.

6 Article 907 of Regulation No 2454/93 provides:

'After consulting a group of experts composed of representatives of all Member States, meeting within the framework of the Committee to consider the case in question, the Commission shall decide whether or not the special situation which has been considered justifies repayment or remission.

That decision shall be taken within six months of the date on which the case referred to in Article 905(2) is received by the Commission. Where the Commission has found it necessary to ask for additional information from the Member State in order to reach its decision, the six months shall be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received that information.'

7 Article 909 of the regulation states:

'If the Commission fails to take a decision within the time-limit set in Article 907, or fails to notify a decision to the Member State in question within the time-limit set in Article 908, the decision-making customs authority shall grant the application.'

8 Article 904 provides:

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

...

(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.'

Background to the dispute

9 In 1991 and 1992, imports of high-quality beef from Argentina were subject to customs duty at the rate of 20%, within the framework of the Common Customs Tariff [see Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as subsequently amended].

10 An import levy also applied in addition to that customs duty. The amount of the levy was fixed at regular intervals by the Commission, in accordance with Article 12 of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition 1968 (I) p. 107, as subsequently amended). At the time when the imports at issue took place, it was in the region of DM 10 per kilogram.

11 Since 1980, the Community had been required, under the General Agreement on Tariffs and Trade (GATT), to open an annual Community tariff quota exempt from import levies in respect of beef and veal from, *inter alia*, Argentina.

12 Pursuant to those obligations, the Council adopted Regulations (EEC) No 3840/90 of 20 December 1990 (OJ 1990 L 367, p. 6) and No 3668/91 of 11 December 1991 (OJ 1991 L 349, p. 3) opening a Community tariff quota for high-quality, fresh, chilled or frozen meat of bovine animals (so-called 'Hilton beef') falling within CN codes 0201 and 0202 and for products falling within CN codes 0206 10 95 and 0206 29 91 (hereinafter 'Hilton beef') in respect of 1991 and 1992. Only the applicable Common Customs Tariff rate of 20% was payable in respect of meat imported under that quota (hereinafter 'the Hilton quota') (Article 1(2) of both regulations).

13 In respect of the same two years, the Council also adopted Regulations (EEC) No 2329/91 of 25 July 1991 (OJ 1991 L 214, p. 1) and No 1158/92 of 28 April 1992 (OJ 1992 L 122, p. 5) opening, as an autonomous measure, a special import quota for high-quality, fresh, chilled or frozen meat of bovine animals falling within CN codes 0201 and 0202 as well as products falling within CN codes 0206 10 95 and 0206 29 91. Those regulations increased the quantities which could be imported under the Hilton quota.

14 Finally, for the same period, the Commission adopted Regulation (EEC) No 3884/90 of 27 December 1990 laying down detailed rules for the application of the import arrangements provided for by Council Regulations (EEC) No 3840/90 and (EEC) No 3841/90 in the beef and veal sectors (OJ 1990 L 367, p. 129) and Regulation (EEC) No 3743/91 of 18 December 1991 laying down detailed rules for the application of the import arrangements provided for by Council Regulations (EEC) No 3668/91 and (EEC) No 3669/91 in the beef and veal sectors (OJ 1991 L 352, p. 36) (hereinafter 'the implementing regulations').

15 Under the Hilton quota, certain quantities of Hilton beef could thus be imported into the Community from Argentina free of levies. Grant of that benefit was subject to production, at the time of importation, of a certificate of authenticity issued by the competent body in the exporting country.

16 Until the end of 1991, the Junta Nacional de Carnes (National Meat Board) was responsible for issuing certificates of authenticity in Argentina. In late 1991/early 1992, responsibility for issuing certificates of authenticity was transferred to the Secretaría de Agricultura, Ganadería y Pesca (Department for Agriculture, Livestock and Fisheries). Only beef exporters recognised by the Argentine authorities received such certificates of authenticity.

17 The Commission was informed, in 1993, of the possibility that certificates of authenticity were being falsified and initiated investigations in cooperation with the Argentine authorities.

18 On several occasions, Commission officials visited Argentina to carry out investigations, in cooperation with national officials.

19 The first mission took place from 8 to 19 November 1993. The results of that mission were recorded in a report dated 24 November 1993 (hereinafter 'the 1993 report'), which confirmed the existence of irregularities.

20 According to that report, the Argentine authorities raised the question why those irregularities had not been detected when the Hilton beef was imported into the Community. Point 11 of the report stated: '... the Argentine authorities emphasised that, for many years, they had submitted to the Commission [Directorate-General for Agriculture] (DG VI) on a more or less regular basis, a list of all the certificates of authenticity for [Hilton beef] issued in the preceding 10 days setting out certain particulars such as the Argentine exporter, the recipient in the Community, the gross and net weight etc. According to the persons interviewed, it would easily have been possible, on the basis of such a list, to compare the data with the details on the certificates produced when the goods at issue were imported and to identify those which did not correspond with the data on the list.'

21 A second mission to Argentina took place from 19 April to 6 May 1994. According to the report of that mission, dated 17 August 1994 (hereinafter 'the summary report'), more than 460 Argentine certificates of authenticity presented in 1991 and 1992 had been falsified.

22 The applicants Primex Produkte Import-Export GmbH&Co. KG (hereinafter 'Primex'), Gebr. Kruse GmbH (hereinafter 'Gebr. Kruse') and Interporc Im- und Export GmbH (hereinafter 'Interporc') are German companies operating, *inter alia*, in the field of the importation of meat and meat products. For a number of years they have also been importing meat under the Hilton quota.

23 When the beef imported by the applicants was put into free circulation in the Community, it was granted an exemption from levies under the tariff quotas opened on presentation of the certificates of authenticity.

24 After the aforementioned falsifications were detected, the German authorities sought post-clearance payment of the import duties by the applicants. Between 3 March and 10 June 1994, the applicants received demands for payment totalling DM 90 975.30 (Primex), DM 174 286.46 (Gebr. Kruse) and DM 99 966.63 (Interporc) respectively.

25 By letters of 1 February, 24 February and 22 March 1995, the applicants thereupon submitted applications to the competent German customs authorities for remission of the import duties (hereinafter 'the applications for remission'). The reasons for the applications were set out in statements dated 6 April 1995. In accordance with national law they also applied for, and were granted, an extension of the time-limit for payment.

26 The applications for remission were submitted to the Federal Ministry of Finance, which asked the Commission to decide whether grant of remission of import duties was justified pursuant to Article 13 of Regulation No 1430/79. Its request was submitted in the form of letters received by the Commission on 1 August (Case REM 8/95 Primex) and 21 August 1995 (Cases REM 11/95 Gebr. Kruse, and REM 12/95 Interporc) respectively.

27 On 4 December 1995 a group of experts composed of representatives of all the Member States met in order to give an opinion on whether the applications for remission of import duties were well founded in accordance with Article 907 of Regulation No 2454/93.

28 By decision of 26 January 1996 addressed to the Federal Republic of Germany, the Commission considered that the applications for remission were not justified (hereinafter 'the contested decision'). The applicants were informed of that decision on 7 February 1996.

Procedure and forms of order sought by the parties

29 By application lodged at the Registry of the Court of First Instance on 12 April 1996, the applicants brought an action for the annulment of the contested decision.

30 By a separate document lodged at the Registry of the Court of First Instance on 25 June 1996, they asked the Court to order the Commission to produce certain documents considered relevant for the outcome of the proceedings, pursuant to Articles 64(4) and 114 of the Rules of Procedure.

31 By a document lodged at the Registry of the Court of First Instance on 4 July 1996, the Commission asked the Court to dismiss the application for measures of inquiry.

32 Meanwhile, by letter dated 23 February 1996, Interporc applied to the Commission for access to certain documents concerning the supervision of imports of Hilton beef pursuant to Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (OJ 1994 L 46, p. 58).

33 The Directors-General of DG VI and DG XXI (Customs and Indirect Taxation) largely rejected the application for access to the documents by letters of 22 and 25 March 1996. By letter of 27 March 1996, Interporc confirmed its application of 23 February 1996. By decision of 29 May 1996, the Secretary-General of the Commission rejected that confirmatory application.

34 By application lodged at the Registry of the Court of First Instance on 9 August 1996, Interporc brought an action for the annulment of the decision of 29 May 1996. By judgment of 6 February 1998 (Case T-124/96 *Interporc* v *Commission* [1998] ECR II-231), the Court of First Instance annulled the Commission's decision of 29 May 1996 on the ground that the statement of reasons was inadequate.

35 By application lodged at the Registry of the Court of First Instance on 8 October 1996, the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in support of the applicants. By order of 30 January 1997, the President of the Third Chamber granted that request.

36 By decision of the Court of First Instance of 2 July 1997, the Judge-Rapporteur was assigned to the First Chamber and the case was, consequently, assigned to that chamber.

37 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure without any preparatory inquiry. By letter of 15 December 1997, however, it requested the parties to produce certain documents and to reply to certain questions in writing. The Commission and the applicants complied with that request by letters lodged at the Registry of the Court of First Instance on 13 and 14 January 1998 respectively.

38 The applicants claim that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

39 The Commission contends that the Court should:

— dismiss the application;

— order the applicants to pay the costs.

40 The United Kingdom, the intervener, claims that the Court should annul the contested decision.

Substance

41 In support of their application, the applicants essentially raise five pleas in law alleging, first, breach of the rights of the defence, second, breach of essential procedural requirements, in so far as the Commission failed to grant the representative of the Federal Republic of Germany the opportunity to express his views orally during the meeting of the group of experts composed of representatives of the Member States on 4 December 1995, third, infringement of Article 13 of Regulation No 1430/79, fourth, breach of the principle of proportionality and, fifth, inadequate statement of reasons. At the hearing, they withdrew a further plea, initially relied upon, alleging that the Commission had based the contested decision on an incorrect legal basis.

The first plea, alleging breach of the rights of the defence

Arguments of the parties

42 The applicants claim that the contested decision is vitiated by a procedural flaw in that they were not given the opportunity to be heard and to defend themselves directly before the Commission.

43 It is clear from the case-law that respect for 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 (Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885, paragraph 39).

44 Furthermore, the rights of the defence comprise not only the right of the person concerned to make known his views, but also the right to be informed, before the adoption of the decision, of all the important facts (Case C-49/88 *Al-Jubail Fertilizer* v *Council* [1991] ECR I-3187) and of the legal considerations on which the Commission intends to base its decision. In the present case, the summary report was communicated only after the administrative procedure was closed, even though it appears that the Commission based its finding that the applicants had failed to act with due care on that report.

45 The Commission fails to appreciate the purpose of the procedural guarantees when it observes that the sole purpose of those guarantees is to bring to the attention of the decision-making authority the facts and arguments considered relevant by the applicant. It is also essential that the applicants should be fully aware of the relevant facts, in order to be able effectively to support their applications for remission.

46 It is true that the Court has held compatible with Community law the old rules of procedure, which did not provide any opportunity for the persons liable to be heard by the Commission, (Joined Cases 98/83 and 230/83 *Van Gend & Loos and Expeditiebedrijf Wim Bosman* v *Commission* [1984] ECR 3763). None the less, Article F(2) of the Treaty on European Union, which has since been adopted, provides, *inter alia*, that the Union is to respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. The procedure in the present case is not consistent with Article 6 of that Convention, in particular paragraph 3(c), according to which every person has the right 'to defend himself'. In that context, the Commission is wrong to rely on the judgments in Cases C-121/91 and C-122/91 (*CT Control (Rotterdam) and JCT Benelux* v *Commission* [1993] ECR I-3873, paragraph 52) since that case-law no longer corresponds to the current state of Community law.

47 Respect for the rights of the defence is all the more important in circumstances such as those of the present case where the Commission is alleged to have acted as both judge and party. It carried out its own assessment of the extent to which it acted improperly and the consequences thereof.

48 The Commission denies infringing the rights of the defence. It recalls that the procedural rules do not currently provide for participation of the person liable in the administrative procedure before the Commission. In that respect, it should be noted that, in its judgment in Case T-346/94 *France-Aviation* v *Commission* [1995] ECR II-2841, the Court of First Instance did not criticise the provisions of Regulation No 2454/93 or even consider them to be inadequate.

49 As the Court of Justice held in *CT Control (Rotterdam) and JCT Benelux* v *Commission* (paragraph 52), the procedure applicable with regard to anti-dumping duties differs considerably from that followed with regard to the remission of import duties. Reference cannot therefore be made to procedural rights in respect of anti-dumping proceedings in order to criticise the rules which apply to the procedure in the present case.

50 That being so, the Commission considers that, in contrast to the situation considered in *France-Aviation* v *Commission*, cited above, the contested decision was based on a complete file. Both the Commission and the members of the group of experts provided for by Article 907 of Regulation No 2454/93 had at their disposal not only the file submitted by the Member State but also the applications for remission, and the reasons for them.

51 In accordance with the requirements laid down in the case-law, all the information which the applicants themselves considered essential was on the file at the time when the contested decision was adopted (Case 294/81 *Control Data Belgium* v *Commission* [1983] ECR 911, *Van Gend & Loos and Expeditiebedrijf Wim Bosman* v *Commission*, cited above, paragraph 9, and *CT Control (Rotterdam) and JCT Benelux* v *Commission*, cited above, paragraph 48).

52 According to the Commission, in this plea, the applicants fail to appreciate the purpose of the procedural guarantees concerning remission of import duties. The sole purpose of those guarantees is to bring to the attention of the Commission the facts and arguments considered relevant by the applicant in order to determine whether its application for remission is well founded, and not to inform the person concerned of the reasons on which the Commission might subsequently base its decision.

53 It is true that the person liable must be given an opportunity to put his case on the documents relied on by the Community institution (Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 25, and *France-Aviation* v *Commission*, cited above, paragraph 32). That does not, however, mean that he should also be able to put his case on documents other than those relied upon by the Commission in adopting the contested decision.

54 As regards the argument that the Commission acts as both judge and party, the institution submits that it is entirely normal for an administrative authority to decide whether duties should be recovered.

55 Finally, the Commission points out that the applicants' lawyer discussed the case with it on several occasions before the adoption of the contested decision.

56 This plea should therefore be rejected.

Findings of the Court

57 First, it should be pointed out that the administrative customs procedure for the remission of import duties involves two separate stages. The first is at national level. The person liable must submit his application for remission to the national administration. If the national administration considers that the remission should not be granted, it may, according to the rules, adopt a decision to that effect without submitting the application to the Commission. Such a decision may be reviewed by the national courts. In contrast, if the national administration either has doubts concerning the remission, or believes that the remission should be granted, it must submit the application to the Commission for a decision. The second stage of the procedure is thus at Community level and the national authorities submit the file relating to the person liable to the Commission. After consulting a group of experts composed of representatives of all the Member States, the Commission then decides whether the application for remission is justified.

58 Regulation No 2454/93 provides only for contact to take place between the person concerned and the national administration, on the one hand, and between the national administration and the Commission, on the other (*France-Aviation* v

Commission, cited above, paragraph 30). Thus, according to the rules in force, the Member State concerned is the Commission's only interlocutor. In particular, the procedural provisions in Regulation No 2454/93 do not confer any right on the person liable to be heard during the administrative procedure before the Commission.

59 However, according to settled case-law, respect for 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 (Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, paragraph 21, Joined Cases C-48/90 and C-66/90 *Netherlands and Others* v *Commission* [1992] ECR I-565, paragraph 44, and *Fiskano* v *Commission*, cited above, paragraph 39).

60 In view of the margin of assessment enjoyed by the Commission in adopting a decision pursuant to the general equitable provision contained in Article 13 of Regulation No 1430/79, it is all the more important that respect for the right to be heard is guaranteed in procedures for the remission or repayment of import duties (*France-Aviation* v *Commission*, cited above, paragraph 34, and, to the same effect, *Technische Universität München*, cited above, paragraph 14).

61 The principle of respect for the rights of the defence requires that any person who may be adversely affected by a decision should be placed in a position in which he may effectively make his views known, at least as regards the matters taken into account by the Commission as the basis for its decision (see, to this effect, *Commission* v *Lisrestal and Others*, cited above, paragraph 21, and *Fiskano* v *Commission*, cited above, paragraph 40).

62 In competition matters, it is settled case-law that access to the file is itself closely bound up with the principle of respect for the rights of the defence. Indeed, access to the file is one of the procedural guarantees intended to protect the right to be

heard (Joined Cases T-10/92, T-11/92, T-12/92 and T-15/92 *Cimenteries CBR and Others* v *Commission* [1992] ECR II-2667, paragraph 38, and Case T-36/91 *ICI* v *Commission* [1995] ECR II-1847, paragraph 69).

63 That case-law can be applied to the present case. The principle of respect for the rights of the defence thus requires not only that the person concerned should 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 (*Technische Universität München*, cited above, paragraph 25, and *France-Aviation* v *Commission*, cited above, paragraph 32).

64 Furthermore, since the applicants allege that the Commission committed serious breaches of its obligations to monitor the Hilton quota, the Court considers that in order for the right to be heard to be exercised effectively the Commission must provide access to all non-confidential official documents concerning the contested decision, if requested to do so. Indeed, documents which the Commission does not consider to be relevant may well be of interest to the applicants. If the Commission could unilaterally exclude from the administrative procedure documents which might be detrimental to it, that could constitute a serious breach of the rights of the defence of a person seeking remission of import duties (see, to the same effect, *ICI* v *Commission*, cited above, paragraph 93).

65 In the present case, the Federal Ministry of Finance concluded in its opinion on the applications for remission, issued when the files were submitted to the Commission, that there was neither negligence nor deception on the part of the applicants.

66 It is alleged for the first time in the contested decision that the applicants failed to exercise due care by omitting to adopt all the necessary safeguards concerning their contractors and intermediaries in Argentina. In particular, the applicants did not

themselves check the circulation of the certificates of authenticity issued to them (22nd recital in the preamble to the decision) even though they had the resources to take precautions (16th recital).

67 In that respect it should be recalled that, in paragraph 36 of its judgment in *France-Aviation* v *Commission*, cited above, the Court considered that when the Commission contemplated diverging from the position taken by the competent national authorities on whether the person concerned was guilty of obvious negligence, it had a duty to arrange for the applicant to be heard. Such a decision involves a complex legal appraisal which can be effected only on the basis of all the relevant facts.

68 That case-law can be applied to the present case, even though it is only alleged that the applicants failed to act with due care. Indeed, the Commission relied, *inter alia*, on that allegation in rejecting the applications for remission pursuant to Article 13 of Regulation No 1430/79 which, however, requires the absence of any 'obvious negligence' by the person concerned.

69 It is apparent from the documents on the file that during the procedure before it, the Commission did not give the applicants an opportunity to put their own case and effectively make their views known on the allegations concerning the lack of due care.

70 Although the applicants' lawyer did have discussions with the Commission, those discussions did not concern the allegations raised in the 16th and 22nd recitals in the preamble to the contested decision. In response to a question from the Court on that point, the applicants stated, without being contradicted by the Commission, that the questions concerning the lack of care or obvious negligence by the applicants or by importers in general were not addressed during those discussions.

71 It follows that the contested decision was adopted following an administrative procedure which was vitiated by a breach of essential procedural requirements.

72 The first plea, alleging breach of the rights of the defence, is therefore well founded.

The third plea, alleging infringement of Article 13 of Regulation No 1430/79

Arguments of the applicants and the intervener

73 The applicants claim that the Commission infringed Article 13 of Regulation No 1430/79 by considering that there was no 'special situation' within the meaning of that provision. In adopting the contested decision, the institution failed, *inter alia*, to appreciate the extent of its own serious misconduct as regards the supervision of imports under the Hilton quota and the legal consequences thereof.

74 To the extent that Article 13 of Regulation No 1430/79 constitutes a general equitable provision, the recovery of import duties should be limited to cases where the payment of those duties is justified and is compatible with fundamental legal principles (Case C-250/91 *Hewlett Packard France* [1993] ECR I-1819, paragraph 46). The Commission has no discretion in the application of Article 13 (see, as regards Article 5(2) of Regulation No 1697/79, Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 23).

75 The Commission was under an obligation to monitor the imports made under the Hilton quota. That obligation stemmed, in particular, from the implementing

regulations. Article 6(1) of both regulations required the Member States to communicate to the Commission, on a regular basis, the imports made under the Hilton quota. Only the Commission was in a position to determine the quantity of Hilton beef actually imported and to ensure that it did not exceed the quota.

76 The applicants allege that both the Argentine authorities and the Commission failed to discharge their obligations.

— Obligations allegedly not discharged by the Commission

77 The applicants allege, in particular, that the Commission failed to update the quantities which could be imported under the Hilton quota throughout the year and to compare the regular communications from the Member States relating to imports of Hilton beef with those of the Argentine authorities relating to exports.

78 Moreover, it failed to forward to the national authorities either the names and specimen signatures of the persons empowered to issue certificates of authenticity or the details concerning the exports from Argentina. Those failures prevented the national authorities from effectively checking the validity of the certificates of authenticity when the goods at issue were imported.

79 Furthermore, in 1989 the Commission was already able to establish that the quota was being exceeded to a significant extent. If it had investigated those irregularities

at that stage, it would have been possible to prevent the importation of excess quantities linked to the falsification of the certificates of authenticity in 1991 and 1992.

80 Furthermore, the Commission itself acknowledged that there had been negligence in monitoring the quota. In support of that contention, the applicants rely, *inter alia*, on the 1993 report and a note dated 8 April 1994 from the Director-General of DG VI to the Director-General of DG XXI, in which the shortcomings of the old system of monitoring were acknowledged.

81 The failures by the Commission created conditions which enabled the falsifications to reach the level currently observed. They constitue a 'special situation' within the meaning of Article 13 of Regulation No 1430/79.

— Obligations allegedly not discharged by the Argentine authorities

82 The applicants claim that the Argentine authorities also committed errors in supervising and monitoring implementation of the Hilton quota. First, they used forms which were not protected against falsification when drawing up certificates of authenticity and, second, they provided Argentine exporters with blank forms. Furthermore, the transfer of authority from the Junta Nacional de Carnes to the Secretaría de Agricultura, Ganadería y Pesca resulted in confusion, lasting several months, as to their respective powers and areas of responsibility, which facilitated the irregularities.

83 The Commission is responsible for the improper conduct of the Argentine authorities, since it knowingly delegated responsibility for administering the Hilton quota to them.

84 Contrary to its assertion, reference to Article 904(c) of Regulation No 2454/93 is not relevant in the present case. The applicants are not relying solely on the fact that they submitted the falsified certificates in good faith; they also invoked a number of other factors, in particular that the Commission acted improperly.

85 Normal commercial risk does not encompass the falsifications at issue. In the present case the Commission incorrectly relies on the judgment in Case 827/79 *Acampora* [1980] ECR 3731. That case concerned a single import, and thus it would not have been reasonable to criticise the Commission for failing to detect the irregularities in question. In the present case, by contrast, the failures on the part of the Commission enabled the process of falsification to continue for several years. For that reason, the falsifications detected go beyond normal commercial risk.

86 The applicants submit that, in its defence, the Commission attempts to introduce additional grounds and/or to replace the statement of reasons in the contested decision by a new set of reasons. On the one hand, it puts forward new legal reasoning concerning the conditions which must be satisfied in order to obtain remission of duties pursuant to Article 13 of Regulation No 1430/79. On the other, it raises new allegations against the applicants concerning the existence of obvious negligence within the meaning of that provision. Since those allegations do not appear in the contested decision, they should be rejected as inadmissible.

87 As to the substance, the applicants submit that the Commission is wrong to assimilate the concept of 'obvious negligence' within the meaning of Article 13 of Regulation No 1430/79 with that of good faith referred to in Article 5(2) of Regulation No 1697/79. It is true that the two provisions pursue the same aim. The aforementioned concepts are not, however, identical, if only in that the scope of the former is considerably broader than that of the latter (see, in that respect, Case 283/82 *Schoellershammer* v *Commission* [1983] ECR 4219).

88 In any event, the applicants deny that there was any obvious negligence on their part. They had no doubts as to the validity of the certificates of authenticity. Nor did they have any reason to entertain such doubts, since there was nothing to suggest that any irregularities had been committed. Furthermore, this is not so much an isolated incident as falsification on a large scale. In that respect, the undertakings involved in the falsifications did not supply high quality meat only with falsified certificates of authenticity. Most of the time they also supplied large quantities with valid certificates.

89 Contrary to the Commission's contention, the applicants were unable, in practice, to take any precautions or safeguards with regard to their contractual partners. Nor was it possible for the applicants, who were established in Europe, to determine from whom the exporters had obtained the certificates of authenticity.

90 Although it is in possession of all the relevant documents, the Commission has not put forward any arguments which support its allegation that the applicants failed to exercise due care.

91 The applicants conclude that the recovery of the duties from them was not justified, since all the conditions for the application of Article 13 of Regulation No 1430/79 were satisfied. The contested decision should therefore be annulled.

92 The United Kingdom claims that the Commission committed an error of law by considering that Article 13 of Regulation No 1430/79 was not applicable or, in the alternative, that it used the discretion granted to it under that provision in a manifestly erroneous manner.

93 The contested decision is undoubtedly vitiated, since the Commission failed to take sufficient account of the fact that it had itself contributed to the applicants' problems. The reasoning and the conclusions in the contested decision are manifestly incorrect inasmuch as the Commission owed a duty to traders to detect fraud and had failed to discharge its duty of supervision under the implementing regulations.

94 In view of the responsibility assumed by the Commission in supervising and monitoring the quota, and its failure to discharge its obligations in the exercise of that responsibility, there was no legal justification for the refusal to grant remission. The effect of that refusal was to penalise wholly innocent traders, which is directly contrary to the general equitable purpose of Article 13 of Regulation No 1430/79.

Arguments of the defendant

95 The Commission contends that it had good reason to consider that the facts in the present case did not constitute a special situation justifying remission of the import duties.

96 It refers to the judgments in *Hewlett Packard France*, cited above (paragraph 46), and in Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465, paragraph 83, and claims that the conditions set out in Article 13 of Regulation No 1430/79 must be assessed in the light of Article 5(2) of Regulation No 1697/79.

97 It is clear that remission of import duties is justified only if the three cumulative conditions set out in that provision are satisfied: the duties must not have been

collected as a result of an error made by the competent authorities, the person liable must have acted in good faith — that is to say, he could not reasonably have detected the error made by the competent authorities — and he must have observed all the provisions laid down by the rules in force as far as his customs declaration is concerned (see also Article 220(2)(b) of the Customs Code). In that context, contrary to the opinion of the applicants, those two provisions are altogether comparable since they pursue the same aim (*Hewlett Packard France*, cited above, paragraph 46), or are even interchangeable (Case T-75/95 *Günzler Aluminium* [1996] ECR II-497, paragraph 55).

98 Those conditions must be interpreted strictly in order to ensure the uniform application of Community law (Case C-348/89 *Mecanarte* [1991] ECR I-3277, paragraph 33).

99 As regards the allegation of an error on the part of the competent authorities, the Commission submits that the arguments relating to that plea are inadmissible since they were put forward for the first time in the reply.

100 Furthermore the competent authorities did not make any error within the meaning of Article 5(2) of Regulation No 1697/79. The legitimate expectations of the person liable attract protection only if the competent authorities themselves created the basis for his expectations. The error must be attributable to acts of the competent authorities (*Hewlett Packard France*, cited above, paragraph 16; *Faroe Seafood and Others*, cited above, paragraph 91; and *Mecanarte*, cited above, paragraph 23). That is not the case where the competent authorities have been misled by incorrect declarations by the exporter whose validity they do not have to check or assess.

101 That conclusion also follows from Article 4(2)(c) of Regulation No 3799/86 and Article 904(c) of Regulation No 2454/93. According to those provisions, the presentation in good faith of falsified documents does not in itself constitute a special

circumstance justifying remission. The fact that the German customs authorities initially accepted the certificates of authenticity as valid could not have led the applicants to entertain legitimate expectations (*Faroe Seafood and Others*, cited above, paragraph 93).

102 The Commission goes on to point out that it is clear from the case-law, on the one hand, that the Community does not have to bear the adverse consequences of the wrongful acts of the suppliers of its nationals and, on the other, that in calculating the benefits from trade in goods likely to enjoy tariff preferences, a prudent trader aware of the rules must be able to assess the risks inherent in the market which it is considering and accept them as normal trade risks (*Acampora*, cited above, paragraph 8). In claiming that the Commission acted improperly, the applicants are thus wrongly attempting to avoid the consequences of that case-law.

103 The grounds of challenge relied on by the applicants are not such as to eliminate or restrict the commercial risk to which they are exposed (see, in particular, *Van Gend & Loos and Expeditiebedrijf Wim Bosman* v *Commission*, cited above, paragraphs 16 and 17). The sole aim of the system of supervision was to ensure that only meat imported within the quotas benefited from the exemption from levies. In so far as there was no threat to the Community beef market, the fact that the quota was exceeded did not necessarily result in the Commission adopting measures in that regard immediately.

104 The aim of the system of supervision was, in particular, not so much to inform the persons concerned about possible fraud, or even to protect them, as to ensure that the quotas were properly applied. The Commission was therefore under no obligation towards the persons concerned.

105 The Commission's conduct in supervising the use of the Hilton quota, which is criticised by the applicants, cannot be considered to be a special situation within

the meaning of the relevant rules. The Commission expressly rejects the allegations that it was itself responsible for enabling the certificates of authenticity to be falsified. Nor is there any causal link between its conduct and the origin of the import levies.

106 In response to the allegations that it failed to do all that it could to prevent irregularities, the Commission contends that it is not required to take financial responsibility for falsifications which might have been avoided, had the competent authorities acted faster in adopting more stringent measures. In virtually every sector there are rules requiring the competent authorities to carry out certain supervisory duties. The risk of being placed at a disadvantage in ways which might not have become apparent if the supervision had been entirely effective, is however always borne by the person concerned.

107 Moreover, under the system in force during the period in question, the Commission was not informed of the number of certificates of authenticity issued by the Argentine authorities until the end of the calendar year. Therefore, any excess over the quotas could only have been detected towards the end of the year in question or at the beginning of the following year, and could no longer have been prevented.

108 Furthermore, a comparison would not have been easy. On the one hand, exports did not necessarily take place at the same time as the notification was made by the Argentine authorities. On the other, the indication on the certificate of the anticipated importing Member State was not binding, meaning that goods were often imported into a Member State other than that indicated on the certificate.

109 Quotas were indeed exceeded in 1989. However, that could have been due to confusion with certificates of authenticity relating to other imports of meat. When the Commission received information, in 1993, concerning falsification of certificates of authenticity, it reacted immediately. There can therefore be no question of gross negligence on its part. Furthermore, the quotas were only slightly exceeded in 1991 and 1992.

110 In the absence of error by the competent authorities, therefore, the first of the three cumulative conditions set out in Article 5(2) of Regulation No 1697/79 is not satisfied.

111 The second condition, namely that the person liable acted in good faith, is not satisfied either. The Commission points out that although the contested decision does not accuse the applicants of 'obvious negligence', it none the less mentions a lack of care (see the 16th and 22nd recitals in the preamble). The 22nd recital states that the applicants themselves omitted to adopt all the necessary safeguards concerning their contractors and intermediaries in Argentina and, in particular, did not themselves check the channels through which they received the certificates of authenticity.

112 In view of their familiarity with the quota system as well as their trade experience, the applicants were in a position to take steps to prevent the use of falsified certificates of authenticity. They failed to do so, even though they should have been aware of the risk of manipulation, in the light of the financial interests at stake. They relied largely on intermediaries in Argentina to carry out their transactions. In that respect, the involvement of an additional trading partner, between the slaughterhouse and the importer, should thus have prompted the latter to be more vigilant.

113 The falsification of the certificates of authenticity could have been detected if the applicants had examined them carefully. The applicants obtained the original certificates of authenticity. If there was any doubt as to their validity, they had a duty to ascertain that they were valid (*Hewlett Packard France*, cited above, paragraph 24, and *Faroe Seafood and Others*, cited above, paragraph 100).

114 The Commission contends that this plea should be rejected, since the conditions for remission of import duty laid down in Article 13 of Regulation No 1430/79 were not satisfied in the present case inasmuch as the competent authorities had not made any error within the meaning of Article 5(2) of Regulation No 1697/79 and the applicants had not acted in good faith.

Findings of the Court

115 According to settled case-law, Article 13 of Regulation No 1430/79 constitutes a general equitable provision designed to cover situations other than those which arose most often in practice and for which special provision could be made when Regulation No 1430/79 was adopted (Joined Cases 244/85 and 245/85 *Cerealmangimi and Italgrani* v *Commission* [1987] ECR 1303, paragraph 10, and Case C-446/93 *SEIM* [1996] ECR I-73, paragraph 41). It is intended to apply, *inter alia*, where the circumstances characterising the relationship between a trader and the administration are such that it would be inequitable to require the trader to bear a loss which it normally would not have incurred (Case 58/86 *Coopérative Agricole d'Approvisionnement des Avirons* [1987] ECR 1525, paragraph 22).

116 The Commission must therefore assess all the facts in order to determine whether they constitute a special situation within the meaning of that provision (see, to that

effect, Case 160/84 *Oryzomyli Kavallas and Others* v *Commission* [1986] ECR 1633, paragraph 16). Although it enjoys a margin of assessment in that respect (*France-Aviation* v *Commission*, cited above, paragraph 34), it is required to exercise that power by actually 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 not to suffer harm beyond normal commercial risk. Consequently, when examining whether an application for remission is justified, it cannot simply take account of the conduct of importers. It must also assess the impact of its own conduct — and possible fault — on the resulting situation.

117 Provided that the two conditions laid down in Article 13 of Regulation No 1430/79 are satisfied, namely the existence of a special situation and the absence of any deception or obvious negligence by the person concerned, the person liable is entitled to reimbursement or remission of the import duties, since to hold otherwise would deprive that provision of its effectiveness (see, as regards the application of Article 5(2) of Regulation No 1697/79, *Mecanarte*, cited above, paragraph 12; Case C-292/91 *Weis* [1993] ECR I-2219, paragraph 15; and *Faroe Seafood and Others*, cited above, paragraph 84).

118 Therefore, the Court must reject the Commission's argument that remission of import duties is justified only if the three cumulative conditions laid down in Article 5(2) of Regulation No 1697/79 are satisfied, namely that the duties must not have been collected as a result of an error made by the competent authorities, that the person liable must have acted in good faith — that is to say, he could not reasonably have detected the error made by the competent authorities — and that he must have observed all the provisions laid down by the rules in force as far as his customs declaration is concerned.

119 Although the Court held that Article 13 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 or export duties to cases where such payment is justified and is compatible with a fundamental principle such as the protection of

legitimate expectations (*Hewlett Packard France*, cited above, paragraph 46), it did not consider that the two provisions could be equated.

120 It simply considered that the question whether the error by the competent authorities was capable of being detected within the meaning of Article 5(2) of Regulation No 1697/79 was linked to the existence of obvious negligence or deception within the meaning of Article 13 of Regulation No 1430/79, and that the conditions laid down by the latter provision must therefore be assessed in the light of those laid down in Article 5(2).

121 Even if the competent authorities did not make an error within the meaning of Article 5(2) of Regulation No 1697/79, therefore, that does not automatically preclude the person concerned from relying, in the alternative, on Article 13 of Regulation No 1430/79 and claiming that there is a special situation justifying remission of the import duties.

122 The Commission's argument disregards the purpose of the two provisions. Whilst Article 5(2) of Regulation No 1697/79 is intended to protect the legitimate expectation of the person liable that all the information and criteria on which the decision whether or not to proceed with recovery of customs duties is based are correct (*Faroe Seafood and Others*, cited above, paragraph 87), Article 13 of Regulation No 1430/79 constitutes a general equitable provision, as recalled above. That article would cease to be a general equitable provision if the conditions laid down in Article 5(2) had to be satisfied in every case.

123 In order to determine whether the Commission committed a manifest error of assessment by considering that the conditions laid down in Article 13 of Regulation No 1430/79 were not satisfied in the present case, it is first necessary to examine the second condition concerning the absence of any deception and obvious negligence by the applicants, and then the first condition concerning the existence of a special situation.

— Absence of any deception and obvious negligence

124 The applicants are not accused of any deception or obvious negligence within the meaning of Article 13 of Regulation No 1430/79 in either the contested decision or the Commission's written submissions. In response to a question from the Court, the Commission expressly confirmed at the hearing that it was not its contention that the applicants were guilty of obvious negligence.

125 In addition, contrary to the Commission's submission, it cannot even be held in the present case that the applicants failed to exercise due care.

126 In the first place, it is apparent from the documents on the file that the applicants were not aware of the falsifications or irregularities in the certificates of authenticity until the Commission initiated investigations in 1993 (see paragraph 17 above).

127 Next, as regards the manner in which the certificates were falsified, it should be noted, as already stated in Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401, paragraphs 143 and 144, that, as a general rule, two versions of the certificate of authenticity were drawn up in respect of any given export, both bearing the same serial number. In accordance with Article 4 of the two implementing regulations, both bore a signature and a stamp, apparently from the same competent issuing authority, either the Junta Nacional de Carnes, or the Secretaría de Agricultura, Ganadería y Pesca.

128 Furthermore, a comparison of the signatures on the different versions of a given certificate shows that they are, at first sight, identical, or at least very similar.

129 Finally, the two versions contained identical information concerning the date and place of issue, the Argentine exporter, the recipient in the Community and the vessel on which the goods were to be exported. The only difference in the information on the two versions related to the weight indicated. The version entitled 'duplicado', which was intended for the Argentine authorities, showed a substantially lower weight than the original certificate delivered to the importer. Whilst the 'duplicado' version referred to weights in the order of 600 to 2 000 kg, the weight indicated on the original, which corresponded to the quantities actually exported to the Community, was in the region of 10 000 kg. In that respect, the Court notes that, during the period in question, Hilton beef was normally transported in containers with a capacity of approximately 10 000 kg.

130 According to the summary report drawn up by the Commission, 'the fact that the forms were not numbered in advance, that the number of forms was not taken into account and that exporters completed the forms themselves encouraged' falsification of the documents. In addition, according to the 1993 report, during a period of several months following the replacement of the Junta Nacional de Carnes by the Secretaría de Agricultura, Ganadería y Pesca as the competent body for issuing certificates of authenticity (see paragraph 16 above), some traders took advantage of the fact that the powers and procedures were not clearly set out by abusing the provisions in force.

131 Various details in the documents before the Court therefore suggest that the competent Argentine authority drew up a certificate bearing a serial number for a low weight, filed that certificate and delivered a certificate bearing the same number, together with the stamps and signature, but no mention of the quantity, to some Argentine slaughterhouses. The slaughterhouses were then able to insert higher quantities corresponding to the tonnage actually exported. The summary report also concluded that employees of the Argentine customs and veterinary services must have 'closed their eyes' when the goods were being loaded.

132 In the circumstances of the present case, it must be acknowledged that the applicants could not reasonably have detected the falsifications in question, since they were unable to carry out such a check. As they have rightly pointed out, the falsified certificates of authenticity were incapable of being recognised as such. Furthermore, there is nothing in the documents before the Court to suggest that the applicants had any reason to entertain doubts as to the validity of the certificates of authenticity.

133 Finally, two observations are called for concerning the prices paid by the applicants for the meat at issue.

134 In the first place, it is not disputed that, since no import levies were payable under the Hilton quota, the prices paid for the Hilton beef were higher than those for beef sold without a certificate of authenticity. In that respect, the applicants claimed, without being contradicted by the Commission, that the difference between the prices for the two sorts of meat corresponded approximately to the levies payable on the importation of beef other than Hilton beef.

135 Second, the Commission did not challenge the applicants' claim that the prices paid for the beef imported with certificates of authenticity later found to be falsified were of approximately the same level as those paid for Hilton beef accompanied by valid certificates.

136 Those findings demonstrate the good faith of the applicants at the time of the contested imports.

137 Since the manner in which they entered into purchase contracts and carried out the importations at issue formed part of standard trade practice, it was for the Commission to prove that the applicants were guilty of obvious negligence.

138 However, the Commission did not even attempt to furnish such proof. Indeed, in reply to a question raised by the Court to that effect at the hearing, it merely repeated the allegations contained in the contested decision, that the applicants had failed to act with due care by omitting to take all necessary measures with regard to their contractual partners and their intermediaries in Argentina and by not themselves checking the circulation of the certificates of authenticity received by them.

139 In view of all the foregoing, it must be held that the applicants' conduct did not constitute either a lack of care, or deception or obvious negligence, within the meaning of Article 13 of Regulation No 1430/79.

— Existence of a special situation

140 According to the relevant rules and settled case-law, the presentation, for the purpose of obtaining preferential tariff treatment of goods declared for free circulation, of documents subsequently found to be falsified, does not in itself constitute a special situation justifying remission of import duties even where such documents were presented in good faith [Articles 4(2)(c) of Regulation No 3799/86 and 904(c) of Regulation No 2454/93; *Van Gend & Loos and Expeditiebedrijf Wim Bosman* v *Commission*, cited above, paragraph 16; *Acampora*, cited above, paragraph 8; and Case C-97/95 *Pascoal & Filhos* [1997] ECR I-4209, paragraphs 57 to 60].

141 In the present case, however, the applicants do not merely claim that, at the time of the importations at issue, they presented falsified documents in good faith. They base their applications for remission primarily on serious failures by the Commission among others in supervising application of the Hilton quota, which facilitated the falsifications.

142 It follows that, contrary to the Commission's contention, the aforementioned provisions do not preclude remission of import duties.

143 Pursuant to Article 155 of the Treaty and the principle of good administration, the Commission was obliged to ensure the proper application of the Hilton quota and make sure that it was not exceeded (see, to this effect, Case 175/84 *Krohn* v *Commission* [1987] ECR 97, paragraph 15).

144 That duty of supervision also derived from the implementing regulations. Article 6(1) of both regulations provided that: 'The Member States shall communicate to the Commission, in respect of each period of 10 days, not later than 15 days after that period, the quantities of products referred to in Article 1 that have been put into free circulation, broken down by their country of origin and combined nomenclature code'. Such a requirement would have been meaningless if it could not be regarded as being coupled with the obligation, on the Commission, to check that the quota was properly applied.

145 Furthermore, it is apparent from the documents produced by the Commission at the request of the Court that, in 1991 and 1992, the Argentine authorities sent to the Commission, on a regular basis, lists of the certificates of authenticity issued during a period of 10 days before they were sent, setting out, *inter alia*, the number of the certificate, the Argentine exporter, the recipient in the Community and the net weight of the goods exported. The Argentine authorities also sent the Commission the names and specimen signatures of Argentine officials empowered to sign the certificates of authenticity.

146 It must therefore be held that only the Commission had the necessary data in order effectively to monitor use of the Hilton quota. In those circumstances, the obligation to ensure that the quota was properly applied was even greater.

147 It is clear, however, from the documents on the file that serious failures by the Commission in monitoring application of the Hilton quota occurred during the period at issue.

148 In the first place, for 1991 and 1992, the Commission failed regularly and properly to check the information provided by the Argentine authorities concerning the volumes of goods exported under the quota and the certificates of authenticity issued against equivalent information sent to it by the Member States. If the Commission had carried out such a check, the existence of the fraud could probably have been detected much earlier.

149 In reality, importations were only monitored by the Commission in an approximate and incomplete manner.

150 Thus, it was only at the beginning of the following year that the Commission summarised on lists the information which had been sent to it so that differences in quantities and, where appropriate, any excess over the quotas could only be detected at that time. For that reason, in any given year, it was unable to inform the Member States that the quota for that year might have been exhausted.

151 Furthermore, the lists were only handwritten. The Commission would have been able to monitor the data provided much more effectively if it had processed them by computer. Moreover, without any particular difficulty, it could have overcome the problems linked to the fact that the indication, on the certificates of authenticity, of the anticipated importing Member State was not binding, so that the goods could be exported to a Member State other than that shown on the certificate.

152 Second, the Commission omitted to circulate to the Member States the specimen signatures of the Argentine officials authorised to sign the certificates of authenticity or to publish them in the *Official Journal of the European Communities*. The national authorities were therefore denied a potentially effective means of detecting falsifications in good time.

153 Third, the Commission failed to react to findings that the Hilton quota had previously been exceeded.

154 In that respect, it is clear from the summary report that the investigation carried out in Argentina in 1993 revealed that more than 460 certificates of authenticity presented in 1991 and 1992 had been falsified. Consequently, during those two years, 4 500 tonnes of beef entered the Community with forged certificates and the uncollected levies on those imports amounted to some ECU 18 million.

155 It is not disputed that the Commission had become aware of a comparable excess over the quota as early as 1989. As is clear from paragraph 178 of *Eyckeler & Malt* v *Commission*, the Commission acknowledged that, in that year alone, the Hilton quota had been exceeded by more than 3 000 tonnes.

156 The failure to react to that finding constitutes a serious infringement by the institution. The irregularities detected should have drawn its attention to the need to carry out more detailed checks. From that time onwards, it should therefore have carried out investigations in order to establish the precise reasons why the quotas were being exceeded.

157 If the Commission had used more effective methods of monitoring at the appropriate time in order to overcome the problems linked to the fact that the quota was exceeded in 1989, the falsifications which took place in 1991 and 1992 would probably not have been able to reach the level subsequently detected, that is to say, approximately 10% of the volume of the Hilton quota. Furthermore, the losses incurred by the traders could therefore have been limited for certain.

158 Failure to implement an effective monitoring system, coupled with the other failures in respect of supervision of the Hilton quota, created conditions which enabled the falsifications to persist and to reach the scale observed in the present dispute.

159 At this stage, it should also be borne in mind, as already stated at paragraph 134 above, that the market price for Hilton beef sold with a valid certificate of authenticity was normally significantly higher than that of meat sold without a certificate; the difference in price was explained by the fact that levies in the order of DM 10 per kilogram had to be paid in respect of beef imported outside the Hilton quota (see paragraph 10 above).

160 The Commission does not dispute that the prices paid by the applicants for the beef imported with falsified certificates of authenticity were of approximately the same level as those charged for Hilton beef accompanied by valid certificates (see also paragraph 135 above).

161 The applicants therefore claim that, in financial terms, they have already paid a price for the imports at issue which, broadly speaking, includes the contested import levy, because the purchase price for Hilton beef is higher; that is not disputed by the Commission.

162 It is true that Community law does not normally protect the expectations of a person liable as to the validity of a certificate of authenticity, which is found to have been forged when subsequently checked, since such a situation forms part of commercial risk (*Van Gend & Loos and Expeditiebedrijf Wim Bosman* v *Commission*, cited above, paragraph 17; *Acampora*, cited above, paragraph 8; *Mecanarte*, cited above, paragraph 24; and *Pascoal & Filhos*, cited above, paragraphs 59 and 60).

163 However, in the present case, the falsifications made it possible for the Hilton quota to be exceeded to a significant extent only because the Commission had failed to discharge its duty of supervising and monitoring application of the quota in 1991 and 1992. In those circumstances, the falsifications, which, moreover, were carried out in a very professional way, exceeded the normal commercial risk which must be borne by the applicants, in accordance with the case-law cited in the preceding paragraph.

164 Since Article 13 of Regulation No 1430/79 is intended to be applied when circumstances characterising the relationship between a trader and the administration are such that it would be inequitable to require the trader to bear a loss which he normally would not have incurred (*Coopérative Agricole d'Approvisionnement des Avirons*, cited above, paragraph 22), it must be held that, in view of all the foregoing, the circumstances of the present case amount to a special situation within the meaning of that provision and justify remission of the import duties.

165 The Commission thus committed a manifest error of assessment in considering that failures in monitoring the application of the Hilton quota could not in any circumstances constitute a special situation.

166 It follows from the foregoing that, like the first plea, the third plea, alleging infringement of Article 13 of Regulation No 1430/79, is well founded.

167 Consequently, without it being necessary to rule on the second, fourth and fifth pleas, alleging breach of essential procedural requirements, breach of the principle of proportionality and breach of the obligation to state reasons, respectively, the contested decision must be annulled.

Costs

168 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 be ordered to pay the costs in accordance with the form of order sought by the applicants.

169 The United Kingdom, which has intervened, must bear its own costs pursuant to the first subparagraph of Article 87(4) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. Annuls the Commission's decision of 26 January 1996 addressed to the Federal Republic of Germany and concerning an application for remission of import duties;

2. **Orders the Commission to pay the costs;**

3. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

Vesterdorf Moura Ramos Mengozzi

Delivered in open court in Luxembourg on 17 September 1998.

H. Jung B. Vesterdorf

Registrar President