JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

6 February 2007 *

In Case T-23/03,

CAS SpA, established in Verona (Italy), represented by D. Ehle, lawyer,

applicant,

v

Commission of the European Communities, represented by X. Lewis, acting as Agent, and M. Nuñez Müller, lawyer,

defendant,

ACTION for annulment in part of the Commission's decision of 18 October 2002 (REC 10/01) concerning an application for remission of import duties,

* Language of the case: German.

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

composed of M. Vilaras, President, M.E. Martins Ribeiro and K. Jürimäe, Judges,

Registrar: K. Andová, Administrator,

having regard to the written procedure and further to the hearing on 15 November 2005,

gives the following

Judgment

Legal context

A — *Legislation relating to the system of preferential treatment*

1 This case arose in the context of the Association Agreement establishing an Association between the European Economic Community (EEC) and the Republic of Turkey ('the Association Agreement'), signed in Ankara by the Republic of

Turkey, of the one part, and the Member States of the EEC and the Community, of the other part ('the Contracting Parties'). The Association Agreement was approved by Council Decision 64/732/EEC of 23 December 1963 (JO 1964 217, p. 3685; English version published in OJ 1973 C 113, p. 1). It entered into force on 1 December 1964.

2 The aim of the Association Agreement, as set out in Article 2 in Title I, which is concerned with principles, is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties.

3 It involves a preparatory stage to enable the Republic of Turkey, in accordance with Article 3, to strengthen its economy with the aid of the Community, a transitional stage during which, in accordance with Article 4, a customs union is progressively to be established and economic policies more closely aligned, and a final stage which, in accordance with Article 5, is to be based on the customs union and to entail closer coordination of economic policies.

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

5 Articles 22 and 23 in Title III, which is concerned with general and final provisions, provide for the establishment of an Association Council to be composed, of the one part, of Members of the Governments of the Member States, the Council and the Commission and, of the other part, Members of the Turkish Government ('the Association Council'), which, acting by unanimity, is to have the power to take decisions to achieve the objectives referred to in 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 The final phase of the customs union came into force on 31 December 1995 (Articles 1 and 65(1) of 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)) ('Decision No 1/95' or 'the basic Decision').

7 Pursuant to Article 11 of the Association Agreement, the association scheme is to include agriculture and agricultural trade, subject to special rules and procedures which take account of the Community's common agricultural policy.

1. *Legislation in force during the transitional stage*

8 By Decision No 1/80 of 19 September 1980 on the development of the Association, the Association Council decided to abolish customs duties which were still applicable to imports into the Community of agricultural products originating in Turkey which it had not previously been possible to import into the Community free of customs duty.

9 In accordance with Article 1(1) of Council Regulation (EEC) No 4115/86 of 22 December 1986 on imports into the Community of agricultural products originating in Turkey (OJ 1986 L 380, p. 16), products originating in Turkey which are listed in Annex II to the EEC Treaty, other than those listed in the annex to that regulation, were put into free circulation in the Community free of customs duty. In accordance with Article 2(2) of Regulation No 4115/86, products originating in

Turkey means products fulfilling the conditions laid down in Decision No 4/72 of the Association Council of 29 December 1972 on the definition of the concept of 'originating products' from Turkey for the implementation of Chapter I of Annex 6 to the Additional Protocol to the Association Agreement annexed to Regulation (EEC) No 428/73 of the Council of 5 February 1973 on the application of Decisions Nos 5/72 and 4/72 of the Association Council (OJ 1973 L 59, p. 73), as amended by Decision No 1/75 of the Association Council of 26 May 1975 annexed to Regulation (EEC) No 1431/75 of the Council amending Regulation No 428/73 (OJ 1975 L 142, p. 1).

10 Article 1 of Decision No 4/72 provides that the following are to be considered as originating products from Turkey:

'(a) vegetable products harvested in Turkey,

...

(f) goods obtained in Turkey by working or processing the products referred to under (a) to (e), even if other products are used in their manufacture, on condition that products obtained outside Turkey or the Community are only used on an accessory basis in the manufacture'.

11 Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ 1988 L 331,

p. 1) is applicable to the system of certificates established by the rules laid down in Article 1 thereof. Article 28(4) of that regulation provides:

'(4) Member States shall also forward to the Commission impressions of the official stamps and, where appropriate, of the embossing presses of authorities empowered to act. The Commission shall immediately inform the other Member States thereof.'

12 By 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 Association Agreement (OJ 1973 L 59, p. 74), the Association Council laid down the rule under which, in order to obtain preferential treatment, it was necessary to present a certificate issued at the request of the exporter by the customs authorities of the Republic of Turkey or of a Member State. For goods transported directly from Turkey to a Member State, this is the A.TR.1 movement of goods certificate ('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). That specimen was, in turn, slightly modified by Decision No 4/95 of the Association Council of 22 December 1995 amending Decision No 5/72 (OJ 1996 L 35, p. 48).

13 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'.

14 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.'

15 Article 2(3) of Regulation No 4115/86 provides that the methods of administrative cooperation for ensuring that imports of the products referred to in Article 1 benefit from the reduced customs duties are those laid down in Decision No 5/72, as last amended by Decision No 1/78.

2. *Legislation in force during the final stage*

16 Decision No 1/95 lays down detailed rules for the implementation of the final phase of customs union. Article 29 of that decision provides:

'Mutual assistance on customs matters between the administrative authorities of the Parties shall be governed by the provisions of Annex 7, which on the Community side, covers those matters falling under the Community competence.'

17 With regard to mutual assistance on customs matters, Article 2(1) of Annex 7 to Decision No 1/95 provides:

'The Parties shall assist each other, within their competence ... in ensuring that customs legislation is correctly applied, in particular by the prevention, detection and investigation of operations in breach of that legislation.'

18 Article 3(6) of Decision No 1/95 provides that the Customs Cooperation Committee is to determine the methods of administrative cooperation.

19 Article 5(2) of Decision No 1/96 of the Customs Cooperation Committee of 20 May 1996 laying down detailed rules for the application of Decision No 1/95 (OJ 1996 L 200, p. 14) provides that the validation of the document necessary to enable the free circulation of the goods concerned causes a customs debt on importation to be incurred. In accordance with Article 6 of that decision, preferential treatment for agricultural products imported from Turkey is subject to the issue of documentary evidence in the form of an A.TR.1 certificate. A specimen of that certificate is produced in Annex I but Article 7(1) of that decision stated that it was possible for the forms shown in Decision No 5/72 to continue to be used until 30 June 1997.

20 Article 15 of Decision No 1/96 provides as follows:

'In order to ensure the proper application of the provisions of the present Decision, the Member States and [the Republic of] Turkey shall assist each other, through their respective customs administrations and within the framework of mutual assistance provided for in Article 29 of and Annex 7 to the basic Decision, in checking the authenticity and accuracy of the certificates.'

21 Article 13(2) of Decision No 1/96 states:

'... Box 12 of the extract shall show the registration number, date, office and country of issue of the initial certificate ...'

22 Paragraph 12 of point II of Annex II to Decision No 1/96 states that the particulars to be entered in Box 12 of the A.TR.1 certificate are to be completed by the competent authorities.

23 Finally, Article 4 of Decision No 1/96 provides:

'Without prejudice to the provisions on free circulation laid down in the basic Decision, the Community customs code and its implementing provisions, which are applicable in the customs territory of the Community, and the Turkish customs code and its implementing provisions, which are applicable in the customs territory of [the Republic of] Turkey, shall apply in trade in goods between the two parts of the customs union under the conditions laid down in the present Decision.'

B — *Customs legislation*

1. *Legislation on remission of customs duties*

24 Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the CCC') states, with regard to the possibility of remission of import duties:

'Import duties ... may be ... remitted in situations ... resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned. The situations in which this provision may be applied and the procedures to be followed to that end shall be defined in accordance with the Committee procedure.'

25 Article 905(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1) ('the CCC implementation regulation') provides as follows:

'Where the decision-making customs authority to which an application for repayment or remission under Article 239(2) of the [CCC] has been submitted cannot take a decision on the basis of Article 899, but the application is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, the Member State to which this authority belongs shall transmit the case to the Commission to be settled under the procedure laid down in Articles 906 to 909 ...'

26 Article 904(c) of the CCC implementation regulation provides:

'Import duties shall not be repaid or remitted where the only grounds relied on in the application for repayment or 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.'

27 Article 236 of the CCC provides:

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

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

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

...'

28 Article 220(2)(b) of the CCC provides that subsequent entry in the accounts of duty resulting from a customs debt is not to occur where 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.

2. *Legislation on rules on origin*

29 Article 20 of the CCC provides, inter alia:

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

2. The other measures prescribed by Community provisions governing specific fields relating to trade in goods shall, where appropriate, be applied according to the tariff classification of those goods.

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

...

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

30 Article 27(a) of the CCC provides as follows:

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

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

31 The CCC implementation regulation, in the version applicable to the present dispute (Article 93, amended and numbered Article 92 by Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ 1994 L 346, p. 1) ('Article 93 of the CCC implementation regulation') provides:

'1. The beneficiary countries shall inform the Commission of the names and addresses of the governmental authorities situated in their territory empowered to issue certificates of origin Form A, together with specimens of stamps used by those authorities. The Commission shall forward this information to the customs authorities of the Member States.

2. The beneficiary countries shall also inform the Commission of the names and addresses of the governmental authorities empowered to issue the certificates of authenticity referred to in Article 86, together with specimens of the stamp they use. The Commission shall forward this information to the customs authorities of the Member States.

3. The Commission shall publish in the *Official Journal of the European Communities* (C series) the date on which the new beneficiary countries referred to in Article 97 have met the obligations laid down in paragraphs 1 and 2.'

C — *Legislation on the confidentiality of certain documents*

32 Article 8(1) of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136, p. 1) provides as follows:

'Confidentiality and data protection

1. Information obtained in the course of external investigations, in whatever form, shall be protected by the relevant provisions.'

33 Article 9(2) of that regulation states:

'Investigation report and action taken following investigations

...

2. In drawing up such reports, account shall be taken of the procedural requirements laid down in the national law of the Member State concerned. Reports drawn up on that basis shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports.'

34 Article 8(1) of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ 1996 L 292, p. 2) provides:

'Information communicated or acquired in any form under this Regulation shall be covered by professional secrecy and protected in the same way as similar information is protected by the national legislation of the Member State that received it and by the corresponding provisions applicable to the Community institutions.'

35 Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) provides:

'Exceptions

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards

— public security,

— defence and military matters,

— international relations,

— the financial, monetary or economic policy of the Community or a Member State;

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

— commercial interests of a natural or legal person, including intellectual property,

— court proceedings and legal advice,

— the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.'

Background to the dispute

A — *The contested importations*

36 The applicant, CAS SpA, is a company incorporated under Italian law and a 95.1% subsidiary of Steinhauser GmbH ('Steinhauser'), established in Ravensburg (Germany). The applicant's core business consists in processing imported fruit juice concentrates and it is also an importer of such products in Italy. It is essentially Steinhauser which maintains a business relationship with foreign suppliers.

37 Between 5 April 1995 and 20 November 1997, the applicant imported and put into free circulation in the Community apple and pear juice concentrates declared as being from and originating in Turkey. That type of product was imported into the Community using A.TR.1 certificates with the effect that those products qualified for the exemption from customs duties provided for by the Association Agreement and the Additional Protocol.

38 In accordance with Article 29 of Decision No 1/95, the customs services in Ravenna (Italy) carried out a post-clearance documentary check on the authenticity of A.TR.1 certificate D 141591 submitted by the applicant in the course of one of the import operations for the period from 5 April 1995 to 20 November 1997. In accordance with the relevant provisions, the request for verification of the authenticity of that certificate was sent to the Turkish authorities.

39 By letter of 15 May 1998, the Turkish authorities notified the Ravenna customs services that the checks carried out showed that that certificate was not authentic since it had not been issued by the Turkish customs authorities. They stated, moreover, that further checks were to be carried out.

40 Consequently, the Italian authorities carried out post-clearance checks on 103 A.TR.1 certificates submitted by the applicant in the course of various import operations.

41 By letter of 10 July 1998, the Permanent Representation of the Republic of Turkey to the European Union ('the Turkish Permanent Representation') notified the Commission that 22 A.TR.1 certificates submitted by the applicant, listed in an annex to that letter and concerning exports by the Turkish company Akman to Italy, were 'false'. The Commission forwarded that letter to the Italian customs authorities by letter of 20 July 1998.

42 Between 12 and 15 October 1998 and between 30 November and 2 December 1998, the European Commission's Unit for the Coordination of Fraud Prevention ((UCLAF), predecessor to OLAF) carried out checks in Turkey.

43 By letter of 8 March 1999, the Turkish Permanent Representation notified the customs services in Ravenna that 32 A.TR.1 certificates submitted by the applicant ('the certificates at issue'), including 18 of the certificates listed in the annex to the letter of 10 July 1998, had been neither issued nor validated by the Turkish authorities. Those certificates are identified in the annex to that letter.

44 The Italian customs authorities took the view that it was clear from all the correspondence exchanged among themselves, the Commission, UCLAF and the Turkish authorities that the latter considered 48 A.TR.1 certificates, including the certificates at issue, relating to exports to Italy by the applicant through the Turkish company Akman, to be either forged or irregular.

45 In the present case, the 32 certificates at issue (corresponding to customs duties totalling ITL 3 296 190 371 or EUR 1 702 340.25) were considered to be forged, given that they had been neither issued nor validated by Turkish customs offices. On the other hand, the 16 other certificates (corresponding to customs duties totalling ITL 1 904 763 758 or EUR 983 728.38) were classified as invalid, given that, whilst they had been issued by the Turkish customs authorities, the goods concerned did not originate in Turkey.

46 Since all 48 certificates had been classified as either forged or invalid, the goods to which they related could not qualify for the preferential treatment accorded to imported Turkish agricultural products.

47 Accordingly, the Italian customs administration demanded the sum of ITL 5 200 954 129 or EUR 2 686 068.63 from the applicant by way of unpaid customs duties.

B — *Criminal and administrative proceedings before the Italian and Community authorities*

48 By letter of 28 March 2000 to the Ravenna customs services, the applicant, relying on Article 220(2)(b) and Articles 236 and 239 of the CCC, claimed that import duties should not have been entered in the accounts post-clearance and that the import duties claimed should be repaid. In support of its claim, the applicant pleaded its good faith, errors on the part of the competent authorities that could not have been detected and deficiencies attributable to those authorities.

49 By letter of 15 May 2000, the Italian customs authorities notified the public prosecution service in Ravenna of the facts surrounding the imports effected by the applicant using forged certificates. Having been apprised of those facts, the public prosecution service in Ravenna initiated an investigation.

50 By judgment of 20 December 2000, the Tribunale civile e penale (Civil and Criminal District Court) in Ravenna discontinued the criminal proceedings brought against Mr B. Steinhauser, the applicant's manager, as it considered that the charges brought against him had not been proved.

51 By letter of 30 November 2001, received by the Commission on 12 December 2001, the Italian Republic asked the Commission to decide whether it was appropriate to waive subsequent entry in the accounts of the import duties claimed from the applicant pursuant to Article 220(2)(b) of the CCC, or to repay those duties under Article 239 of the CCC.

52 In accordance with Articles 871 and 905 of the CCC implementation regulation, the applicant indicated that it had inspected the file the Italian authorities had sent to

the Commission. The applicant also set out its position and comments, which were sent to the Commission by the Italian authorities in an annex to their letter of 30 November 2001.

53 By letter of 3 June 2002, the Commission requested certain additional information from the Italian authorities, which replied by letter of 7 June 2002.

54 By letter of 25 July 2002, the Commission informed the applicant of its intention not to consent to its claim. Before taking a final decision, however, the Commission invited the applicant to advise it of any observations it may have and to have access to the file so that it may inspect the non-confidential documents.

55 On 6 August 2002, the applicant's representatives consulted the administrative file at the Commission's offices. They also signed a declaration confirming that they had had access to the documents listed in an annex to that declaration.

56 By letter of 15 August 2002, the applicant submitted its observations to the Commission. It maintained, in particular, its position that the competent customs authorities had committed factual errors that it could not have detected, errors which it also likened to failings capable of giving rise to a special situation within the meaning of Article 239 of the CCC.

57 On 18 October 2002, the Commission adopted Decision REC 10/01 ('the contested decision'), which was notified to the applicant on 21 November 2002.

58 Firstly, the Commission concluded that it was appropriate to enter in the accounts the import duties that were the subject-matter of the claim.

59 Secondly, however, the Commission concluded that it was appropriate to repay import duties in respect of the part of the claim relating to the 16 invalid certificates since, in that regard, the applicant was in a special situation within the meaning of Article 239 of the CCC.

60 Thirdly, with regard to the 32 certificates at issue, the Commission concluded, on the other hand, that the circumstances relied on by the applicant could not give rise to a special situation within the meaning of Article 239 of the CCC. Consequently, in Article 2 of the contested decision, the Commission decided that it was not appropriate to repay the import duties relating to those certificates, amounting to EUR 1 702 340.25.

61 Lastly, by letter of 20 June 2003, the applicant made a request to the Commission for access to other documents in the file. The Commission granted that request by letter of 10 July 2003. However, the applicant did not consult the file further.

C — *Certificate D 437214*

62 By letter of 17 December 2002, the applicant pointed out to the Commission that A.TR.1 certificate D 437214, one of the certificates at issue, had not been classified as forged by the Turkish authorities but simply as invalid. The Commission sent that letter to the Italian customs authorities on 6 January 2003.

63 By letter of 24 January 2003, the Italian customs authorities, referring to the letter from the Turkish customs authorities of 8 March 1999 and a letter from UCLAF of 6 May 1999, stated that that certificate was forged.

64 By letter of 4 March 2003, the Commission requested the Italian customs authorities to notify the applicant of the outcome of the enquiries concerning A.TR.1 certificate D 437214. By letter of 18 March 2003 to the applicant, the Italian customs administration confirmed that that certificate was forged because it had not been issued by the Turkish authorities.

Procedure and forms of order sought by the parties

65 By application lodged at the Registry of the Court of First Instance on 29 January 2003, the applicant brought the present action.

66 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure. By way of measures of organisation of procedure, the parties were asked to produce certain documents and reply to certain written questions by the Court. The parties complied with those requests.

67 The parties presented oral argument and their answers to the questions put by the Court at the hearing on 15 November 2005.

68 The applicant claims that the Court should:

— annul Article 2 of the contested decision;

— order the Commission to pay the costs.

69 The Commission contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Law

70 The applicant puts forward three pleas in law in support of its action, alleging, firstly, infringement of the rights of the defence, secondly, infringement of Article 239 of the CCC and, thirdly, infringement of Article 220(2)(b) of the CCC.

A — *The first plea in law, alleging infringement of the rights of the defence*

1. *Arguments of the parties*

71 The applicant maintains that its rights of defence were infringed during the administrative procedure. It claims, in essence, that, although it had access to the file containing the documents on which the Commission based the contested decision, it did not have access to documents which had a decisive influence on the Commission's overall assessment of the situation. Moreover, according to the applicant, a number of documents that it was able to consult were incomplete. Finally, the examination of the file did not enable it to distinguish documents regarded as confidential from those not so regarded or to ascertain the criteria used to that end.

72 Firstly, the applicant submits that it was not given notice of the following documents in the file: (1) the complete reports of UCLAF's missions in Turkey; (2) all of the correspondence exchanged by UCLAF and the Commission with the Turkish Permanent Representation and the competent authorities in Turkey; (3) all of the correspondence between the Commission and/or UCLAF and the national customs authorities, in particular the Italian customs authorities; and (4) the minutes of the meetings of the Customs Cooperation Committee concerning the A.TR.1 certificates that were considered to be irregular or forged when fruit juice concentrates and other goods originating in Turkey were exported.

73 In its reply, the applicant submits, moreover, that it was not able to gather information on the UCLAF mission in Turkey during October 1998, to which the Commission alludes at recital 32 of the contested decision. According to the applicant, all that can be inferred from a consultation of the file is that a meeting took place between UCLAF and the Turkish Permanent Representation on 13 and 14 October 1998, that meeting having been referred to in a letter from UCLAF dated

21 October 1998. The applicant claims that it had not been aware, either, of the letters UCLAF sent to the Turkish Permanent Representation dated 1 and 9 December 1998 referred to by the Commission in its defence.

74 The applicant submits that the documents in question do not have a merely casual but, on the contrary, a direct and close connection with the question of whether the certificates at issue are indeed forged or simply irregular.

75 Secondly, the applicant challenges the Commission's argument that the fact that its representative had signed a declaration confirming that disclosure had been given of all the documents relating to the case confirmed that it had indeed had access to all the documents in the file. In that respect, the applicant states that that declaration is a standard form and that, unless he is apprised of all of the documents in the file, the person who consults it cannot in fact be satisfied that full disclosure has been given. The applicant thus claims that it had become aware of that declaration, which covered list of documents REC 10/01 and was annexed to the Commission's defence, only when that annex was disclosed.

76 Thirdly, the applicant maintains that a number of the documents to which it had access were incomplete and that it therefore did not have access to all the documents annexed to that declaration. On that basis, the applicant rejects the Commission's assertion that it was able to consult all the reports of the UCLAF mission in Turkey and claims that it had been able to consult only documents relating to the mission reports of 9 and 23 December 1998, consisting of two or three pages.

77 Fourthly, in its reply, the applicant disputes the Commission's argument that it did not, in any event, have right of access to certain documents, including UCLAF mission reports, since those documents were confidential. The applicant argues not

only that those reports are not confidential, since the Commission has in any event failed to prove their confidentiality, but also that similar reports have been made available for consultation in comparable proceedings before the Court.

78 It is apparent from the provisions of Regulation No 1073/1999 that investigation reports are non-confidential. According to the applicant, under Article 9(2) of that regulation, investigation reports constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors, and the same should apply a fortiori to proceedings brought before the European courts.

79 Finally, the applicant states that, by letter of 20 June 2003, it made a further request for access to the file in accordance with Article 255 EC after the present proceedings had been initiated. However, in response to the Commission's written reply dated 10 July 2003, it did not consult the file since the Commission stated that the consultation would relate only to documents to which the applicant had already had access, in particular documents relating to the UCLAF mission reports.

80 The Commission essentially rejects the applicant's arguments.

81 Firstly, it submits that the contested decision is based exclusively on material that the applicant was able to consult, which had already been referred to in the Commission's provisional view expressed in its letter of 25 July 2002. Moreover, the Commission submits that, on 6 August 2002, the applicant had access to the file which was used as the basis for the adoption of the contested decision and that it

expressly acknowledged by written confirmation that it had been able to consult all the documents directly or indirectly connected with the matter. The Commission states that the list of documents to which the applicant had access includes the UCLAF mission reports, the voluminous correspondence of UCLAF and various Turkish authorities, as well as the correspondence exchanged by the Commission and/or UCLAF with national customs authorities.

82 In its rejoinder, the Commission disputes the applicant's assertion that the file it consulted on 6 August 2002 did not contain the UCLAF mission reports but only documents relating to the mission reports. The Commission maintains that the documents in question were in fact brief original reports drawn up by UCLAF, dated 9 December 1998 (No 8279) and 23 December 1998 (No 8673), and not merely summaries.

83 Secondly, the Commission states that it is not required, acting on its own initiative, to grant access to all the 'context documents' which may only have some connection with the case at issue but, on the contrary, it is for the party concerned to request, where appropriate, access to such documents in accordance with Article 255 EC.

84 In the present case, the documents the applicant was unable to consult were context documents. The Commission observes that the further request to consult the file made by the applicant on 20 June 2003, that is, after the contested decision had been adopted, which was granted by letter of 10 July 2003, cannot have any bearing in law. Not only did the applicant fail to follow up that request but, in any event, the consequence of a request made after an administrative procedure has concluded and while proceedings in a case are pending cannot, a priori,, be that procedural rights were infringed during the administrative procedure preceding that request.

85 Thirdly, the Commission maintains that, in any event, the documents in question are not covered by the right of access to the file since they are confidential. In that connection, the Commission notes that the right of access to the file does not extend to access to confidential documents, such as UCLAF or OLAF reports, the Commission's correspondence with non-member States, minutes of meetings attended by non-member States or correspondence exchanged between the Commission and the authorities of the Member States.

86 Moreover, the Commission disputes the relevance of the applicant's interpretation of Article 9(2) of Regulation No 1073/1999. According to the Commission, that provision refers to the final report drawn up by UCLAF in accordance with Article 9(1) of the regulation, whereas Article 8 of the regulation is concerned with the confidentiality and data protection of the documents drawn up by OLAF.

2. *Findings of the Court*

87 It is to be noted, at the outset, that observance of the right to be heard must be guaranteed in procedures for the remission of import duties, in particular 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 239 of the CCC (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 and Others* v *Commission* [2001] ECR II-1337, paragraph 152, 'the *Turkish televisions* judgment', and Case T-329/00 *Bonn Fleisch Ex- und Import* v *Commission* [2003] ECR II-287, paragraph 45).

88 However, it is also to be noted that, in that context, the principle of respect for the rights of the defence implies only that the party concerned be placed in a position in

which it may effectively make its views known as regards the evidence, including the documents used against it by the Commission as a basis for the decision. That principle therefore does not require the Commission, acting on its own initiative, to grant access to all the documents which may have some connection with the case at issue when an application for remission is referred to it. If the party concerned considers that such documents are relevant for establishing the existence of a special situation and/or the lack of deception or obvious negligence on its part, then it is for the party concerned itself to request access to those documents in accordance with the provisions adopted by the institutions under Article 255 EC (Case T-205/99 *Hyper* v *Commission* [2002] ECR II-3141, paragraph 63, and *Bonn Fleisch Ex- und Import* v *Commission*, paragraph 46).

89 It is also to be noted, as regards the administrative procedure for remission of customs duties, that the Court has clearly stated that it is at the request of the party concerned that the defendant is required to provide access to all non-confidential official documents concerning the contested decision. If no such request is made, it follows that there is no automatic access to the documents held by the Commission (Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401, paragraph 81; Case T-50/96 *Primex Produkte Import-Export and Others* v *Commission* [1998] ECR II-3773, paragraph 64; and *Bonn Fleisch Ex- und Import* v *Commission*, paragraph 46).

90 It is in the light of those principles that the plea in law alleging infringement of the rights of the defence must be examined.

91 It is clear from the outset that the applicant expressly acknowledges in its application that it had access to all the documents used by the Commission as the basis for its decision. However, it claims that did not have access to documents which had a decisive influence on the Commission's overall assessment of the situation. In that connection, it states that the documents that were presented to it when access to the file was granted are incomplete. The applicant thus claims that it was not able to consult the two UCLAF mission reports of 9 and 23 December 1998

in their entirety but only 'reports relating to the mission reports'. Similarly, it states that it was unable to consult the Community mission report of October 1998, referred to at recital 32 of the contested decision, or the letters from UCLAF dated 1 and 9 December 1998 to the Turkish Permanent Representation referred to by the Commission in its defence.

92 The documents to which the applicant refers are not expressly mentioned in the contested decision. That does not preclude the fact that the contested decision may have been based on some of those documents. However, it cannot be accepted that the same applies for all of the voluminous correspondence to which the applicant refers. They are therefore, at the very least as far as some of them are concerned, documents which simply relate to the background to the case at issue.

93 In particular, it cannot be accepted, and there is nothing in the contested decision to suggest otherwise, that the minutes of the meetings of the Customs Cooperation Committee concerning A.TR.1 certificates that were considered to be irregular or forged on the export of fruit juice concentrates and other goods originating in Turkey were used as a basis for the contested decision. The same conclusion can be drawn with regard to an opinion of the Ravenna customs services of 12 June 1998 referred to by the Commission in its defence, which the applicant claims it was unable to consult.

94 In any event, where documents which have not been used as the basis of a contested decision are not communicated, any failure to communicate them is irrelevant, given that such documents cannot, in any case, have any bearing on the contested decision. Accordingly, this plea in law, in so far as it concerns the failure to communicate such documents, must be rejected as irrelevant.

95 On the other hand, the same is not true of a failure to communicate documents used by the Commission as the basis for a contested decision.

96 When examining those documents, it is to be noted that, in the present case, the Commission notified the applicant by letter of 25 July 2002 of its provisional assessment that the requirements for granting remission of import duties were not fulfilled. It cannot therefore be disputed that, as a result of that letter from the Commission, the applicant was able, before the contested decision was adopted, to state its position and to make its views known on the evidence which, in the Commission's view, justified the rejection of its application for remission.

97 Indeed, the applicant does not dispute that fact but maintains that the principle of respect for the rights of the defence was breached to the extent that it was refused access to certain documents on which the Commission based its decision or, at the very least, to the extent that those documents were incomplete.

98 It is clear, however, that in response to the Commission's letter of 25 July 2002, the applicant's representative consulted the file relating to the contested decision at the Commission's offices on 6 August 2002. At that consultation, that representative signed a written declaration expressly confirming that access had been granted to all documents directly or indirectly connected with the matter at issue. Furthermore, a list was annexed to that declaration setting out all the documents which that representative had had access to.

99 That list refers to the UCLAF mission reports of 9 and 23 December 1998, bearing numbers 8279 and 8673 respectively. In response to a written question from the Court, the Commission lodged two reports bearing those numbers. At the hearing, the Commission informed the Court that those reports were, in fact, the complete

brief reports, the first one, dated 9 December 1998, on the mission undertaken from 12 to 15 October 1998 (No 8279), and the second, dated 23 December 1998, on the investigative mission carried out between 30 November and 2 December 1998 (No 8673), and that no other report had been drawn up on the two UCLAF missions. The Court considers that the fact that the numbers on the first page of the reports are the same as the numbers that were indicated on the list annexed to the declaration of applicant's representative, dated 6 August 2002, demonstrates that, contrary to its assertion, the applicant did have access to the mission reports. With regard to the applicant's request for access to the report of the Community mission in October 1998, suffice it to state that such a report does not exist. Firstly, as the Commission stated at the hearing, report No 8279 is the only report that was drawn up in respect of the mission undertaken between 12 and 15 October 1998 and, secondly, no reference was made in the contested decision to such a report.

100 Next, with regard to the letters from UCLAF dated 1 and 9 December 1998 relied on by the applicant, it is to be noted, firstly, that the list of 6 October 2002 setting out the documents it had access to refers to letter No 8281 dated 9 December 1998 from UCLAF to the Turkish Permanent Representation. It must therefore be concluded that the applicant did indeed have access to that letter. Secondly, concerning the letter dated 1 December 1998, the Commission stated, in response to a written question from the Court, that that letter did not exist and that the reference in the defence to a letter from UCLAF dated 1 December 1998 was a mistake. That statement is confirmed by the list of 6 August 2002, which, for 1 December 1998, refers only to a letter from the Turkish Ministry of Justice to UCLAF.

101 As for the correspondence exchanged by the Commission and UCLAF with the Turkish authorities and the national customs authorities of the Member States, it need merely be observed that there is no evidence to suggest that the Commission based the contested decision on any documents other than those in the file to which the applicant had access at the consultation on 6 August 2002.

102 The applicant did not make any further request for access to other evidence in the file during the administrative procedure. With regard to the request for access made by the applicant after the contested decision had been adopted and the present proceedings initiated, that is clearly irrelevant for the purposes of determining whether the applicant's rights of defence may have been adversely affected during the administrative procedure and can have no bearing on the legality of that decision. In any event, the Commission advised the applicant, by letter of 10 July 2003, that it was entitled to consult the documents in question in accordance with the request made under Article 255 EC. The applicant did not act in response to that invitation.

103 The first plea in law must therefore be dismissed.

B — *The second plea in law, alleging infringement of Article 239 of the CCC*

104 This plea is composed of four parts. The first part concerns incorrect classification of A.TR.1 movement of goods certificate D 437214. The second and third parts relate, respectively, to serious deficiencies attributable to the Turkish authorities and those attributable to the Commission. Lastly, the fourth part concerns lack of obvious negligence on the part of the applicant and the assessment of commercial risks.

1. *A.TR.1 movement of goods certificate D 437214*

(a) Arguments of the parties

105 The applicant claims that the Commission committed an error in the disputed part of the contested decision by including A.TR.1 certificate D 437214 among the

certificates classified as inauthentic. According to the applicant, it is apparent from the evidence in the case-file that that certificate should have been regarded as merely invalid and that, as a consequence, the related import duties should have been repaid. A number of documents in the case demonstrate that the Turkish authorities did not classify certificate D 437214 as inauthentic. The applicant pointed out that error to the Commission by letter of 17 December 2002.

106 Firstly, the applicant maintains that only the letter from the Turkish customs authorities (Prime Minister, Undersecretariat for Customs) of 8 March 1999 to the Italian customs administration might support the argument that that certificate was inauthentic. However, that letter does not make it clear whether the certificate was irregular or inauthentic but simply states that it 'was not issued and endorsed by our customs office'.

107 Secondly, the applicant submits that that letter was, however, invalidated by the Turkish authorities, in particular in the letter from the Turkish Permanent Representation of 22 April 1999, which clearly states that the certificate in question '[was] not correct and [was] not issued according to the rules', that is to say, it had been issued incorrectly.

108 In its reply, the applicant observes that the words 'not correct' clearly mean that the certificate in question was irregular. The addition of 'not issued according to the rules' can allow only one interpretation, namely that the Turkish customs authorities had completed and issued the certificates in contravention of the rules governing the origin of goods in Turkey. That argument is supported by the phrase 'it has been understood that these documents had been issued for transit trade', which appears in the same letter. The Turkish customs authorities therefore acknowledged that they had also issued movement of goods certificates under a transit procedure, namely in respect of apple juice concentrates from Iran which had not been processed under the inward processing procedure in Turkey.

109 Thirdly, the applicant notes that the Turkish Permanent Representation's letter of 22 April 1999 refers, in addition to A.TR.1 certificate D 437214, to two other movement of goods certificates, namely those bearing references C 982920 and C 982938. The Turkish Permanent Representation considered that those certificates '[were] not correct and were not issued according to the rules', without making any distinction between them. The applicant claimed repayment of import duties relating to those two certificates. The Italian customs authorities classified them as invalid and they were included in the batch of certificates in respect of which repayment of duties was granted in the contested decision. The applicant claims that it can therefore see no reason why, from a legal or factual point of view, certificate D 437214 was assessed differently from certificates C 982920 and C 982938. Contrary to the Commission's assertion, the letter of 22 April 1999 did not make any express correction to the letter of 8 March 1999 since it did not expressly refer to it but merely referred to earlier correspondence.

110 Fourthly, the applicant submits that the accuracy of its argument is also confirmed by a letter dated 10 August 1999 from the Turkish Permanent Representation. Under point X at page 3 of that letter, it is again confirmed that the movement of goods certificates referred to in the letter of 22 April 1999, including certificate D 437214, were issued under the transit procedure in respect of apple juice not originating in Turkey. That letter does not, moreover, state that the certificates in question were inauthentic or forged. UCLAF's letter to the Turkish Permanent Representation of 9 December 1998 contains the same assessment, classifying A.TR.1 certificate D 437214 as 'not correct'.

111 Lastly, in the reply, the applicant disputes the Commission's argument that the letter from the Italian customs administration of 24 March 2003 confirms that the certificate in question was inauthentic. According to the applicant, in that letter, the Italian authorities refer only to the letter from the Turkish customs administration of 8 March 1999 without, however, commenting on the letter from the Turkish Permanent Representation of 22 April 1999, which was also annexed thereto. Moreover, a letter of 18 May 1999 from the Italian Finance Ministry, listed in an annex to the case-file, is in all likelihood concerned with the letter from the Turkish

Permanent Representation of 22 April 1999 and with certificate D 437214, in that it states that it is an irregular certificate. The Italian customs authorities even made a further request to the Turkish customs administration for details concerning the classification of certificate D 437214, but the latter has not yet replied.

112 The Commission notes, firstly, that, in accordance with the rules applicable in the present case under the Association Agreement, it is the Turkish authorities which have competence to determine whether or not Turkish certificates of origin are authentic. In that connection, the Commission points out that the Court of First Instance held in *Bonn Fleisch Ex- und Import* v *Commission*, paragraph 77, that the Commission was entitled to accept the declarations of the Spanish authorities that extracts of import certificates were not authentic and that no further enquiry on its part was necessary. According to the Commission, if it can have faith in the declarations of the authorities of Member States concerning the authenticity of such documents, then that must apply all the more so with regard to the authorities of a non-member State, which is not a party to the EC Treaty and is not subject to the Commission's powers in that field.

113 Next, the Commission disputes the applicant's interpretation of the various items of correspondence that have been referred to and maintains that, since the certificate in question was classified as a forgery by the Turkish authorities, no fault can be attributed to it.

114 The Commission submits that the letter of 8 March 1999 from the Turkish customs administration must be read as meaning that the certificate at issue was considered to be a forgery because it had not been issued by the Turkish customs authorities. According to the Commission, at no time and in no document have the Turkish authorities reversed the decision of 8 March 1999 that the movement of goods certificate in question was not issued by their services.

115 Firstly, the Commission states that, in its letter of 22 April 1999, the Turkish Permanent Representation did not reverse the earlier decision establishing that the certificate was a forgery but simply stated that it was not correct and had not been issued in accordance with the applicable rules.

116 Secondly, the fact that that certificate was forged was confirmed by UCLAF in a letter of 6 May 1999 and by the Italian central administration responsible for customs in a letter of 18 May 1999, two letters which the Italian customs authorities refer to in a letter of 24 January 2003 to the Commission. The applicant was informed of those matters by letter of 18 March 2003.

117 Thirdly, in their letters of 7 June 2002 and 10 September 2003, the Italian customs authorities also confirmed to the Commission that the Turkish customs authorities had concluded that the certificate was forged.

118 Fourthly, the Commission states that, in its letter of 22 August 2003 to the Italian customs administration, the Turkish customs administration once again confirmed its conclusion of 8 March 1999 and stated that the certificate was forged. It was also stated that the competent controller of the Turkish customs administration had reconsidered the matter and concluded that the certificate was forged.

119 Lastly, the Commission stresses that the applicant's argument that the Turkish customs authorities also issued movement of goods certificates for transit trade is irrelevant. According to the Commission, the applicant is referring to incorrect movement of goods certificates, which are not the subject-matter of these

proceedings. Moreover, the incorrect certificates the applicant refers to were not issued by the Turkish authorities for transit trade but, on the contrary, related to goods coming from transit trade.

(b) Findings of the Court

120 It is settled case-law that determination of the origin of goods is based on a division of powers between the authorities of the exporting country and those of the importing country, inasmuch as origin is established by the authorities of the exporting country and the proper working of that system is monitored jointly by the authorities concerned on both sides. That system is justified by the fact that the authorities of the exporting country are in the best position to verify directly the facts which determine origin (Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465, paragraph 19).

121 That mechanism can function only if the customs authorities of the importing country accept the determinations legally made by the authorities of the exporting country (*Faroe Seafood and Others*, paragraph 20). The recognition of such decisions by the customs authorities of the Member States is necessary in order that the Community can, in turn, demand that the authorities of other countries with which it has concluded free-trade agreements accept the decisions taken by the customs authorities of the Member States concerning the origin of products exported from the Community to those non-member countries (Case 218/83 *Les Rapides Savoyards* [1984] ECR 3105, paragraph 27).

122 In the present case, in order to determine whether the Commission was entitled to conclude that certificate D 437214 was forged, it is necessary to examine the correspondence it exchanged with the Italian customs authorities and the competent Turkish authorities. With regard to the part of the contested decision

concerning the forged certificates, it is to be noted that the Commission based its decision essentially on the Turkish authorities' letter of 8 March 1999 to the Ravenna customs services.

123 Annexed to that letter is the list of the 32 certificates the Turkish authorities considered to have been forged, including certificate D 437214. The words used by the Turkish authorities in that letter, namely 'the certificates that have been listed in annex are not correct and were not issued and endorsed by our customs office', clearly show that they had come to the conclusion that the certificates listed had been forged.

124 It is clear, however, that a comparison between the wording of the letter of 8 March 1999 and the wording of subsequent communications from the Turkish authorities discloses ambiguities as to the classification of certificate D 437214. Thus, the letter from the Turkish Permanent Representation to UCLAF of 22 April 1999, which is written in English, refers to six certificates, including the certificate in question, classifying them as 'not correct and ... not issued according to the rules'. According to that letter, those six certificates were issued for transit trade.

125 It is therefore apparent that the difference between the conclusions set out in the letter of 8 March 1999 and those of 22 April 1999 derives from the interpretation to be given to the words 'not correct ... and not issued according to the rules'. Even if the use of the expression 'not correct', which is repeated in UCLAF's letters of 9 December 1998, does not resolve the question of whether the certificates may have been forged, the fact remains that that expression could have been interpreted as meaning that the certificates in question had not been forged.

126 In the light of such ambiguity, it could not have been inferred with certainty from the information available to the Commission before the contested decision was adopted whether certificate D 437214 was forged or merely irregular. The Commission's arguments which rely on the content of the letters from the Italian authorities dated 24 January 2003 and 7 June 2002 cannot in any way affect that finding.

127 Firstly, the letter of 24 January 2003 refers to two items of correspondence, namely a letter from UCLAF of 6 May 1999 and a letter from the central customs directorate in Rome of 18 May 1999. It is clear that those two letters are based on the conclusions set out in the letter from the Turkish authorities of 22 April 1999. Next, the letter of 7 June 2002 evidently merely lists the certificates considered to have been forged on the basis, in particular, of the letter from the Turkish authorities of 8 March 1999, and does not add anything new. The applicant pointed out to the Commission, by letter of 12 November 2001, that it was apparent from the letter from the Turkish Permanent Representation of 22 April 1999 that certificate D 437214 should be classified as incorrect and not as forged.

128 It is clear from the foregoing that, in the light of the differences identified, the Commission was not in a position properly to conclude that certificate D 437214 had been forged prior to the adoption of the contested decision.

129 It is to be noted, however, that in response to a request made by the applicant in a letter of 17 December 2002, that is, after the contested measure had been adopted, the Commission once again questioned the Italian authorities on the classification of the certificate in question. The latter considered it necessary to seek further clarifications from the Turkish authorities. By letter of 22 August 2003, the Turkish authorities not only confirmed the conclusions set out in their letter of 8 March 1999 but also stated that their customs controller had concluded that the certificate had been forged, thus removing any doubt on that issue as far as certificate D 437214 was concerned.

130 It is apparent that it is only after the confirmation in the latter communication had been received that the Commission was in a position, on the basis of the evidence in the administrative file, to state with certainty that the certificate in question was a forgery. Consequently, in view of the foregoing factors, the Commission could not properly have refused repayment of customs duties relating to the goods covered by certificate D 437214 at the time when the contested decision was adopted, but should merely, in the light of those factors, have suspended repayment.

131 However, that consideration does not, of itself, suffice to annul the contested decision.

132 An applicant has no legitimate interest in the annulment of a decision on the ground of a procedural defect, where annulment of the decision can only lead to the adoption of another decision identical in substance to the decision annulled (see Case T-16/02 *Audi* v *OHIM (TDI)* [2003] ECR II-5167, paragraphs 97 and 98, and the case-law cited). In the present case, it is clear from paragraph 129 above that certificate D 437214 must be classified as a forgery.

133 The applicant cannot therefore be regarded as having any legitimate interest in the annulment in part of the contested decision in so far as such annulment can only lead to the adoption of another decision identical in substance. Accordingly, this part of the second plea in law must be rejected as ineffective.

2. *Deficiencies attributable to the Turkish authorities*

134 In essence, the applicant submits that the Turkish authorities are in serious breach of their obligations under the Association Agreement and its implementation provisions. Not only did they conceal the truth by classifying the 32 certificates at issue as forgeries but they also engaged systematically in unlawful conduct by issuing movement of goods certificates in respect of goods which were not of Turkish origin. According to the applicant, the system of preferential treatment established by the Association Agreement was misused with the aim of exporting significant quantities of goods originating in non-member countries to the European Union at preferential rates by presenting them as Turkish products via the issue of movement of goods certificates. That policy is apparent from the very high rate at which the number of Turkish imports and exports increased between 1993 and 1996. In the present case, the certificates at issue were authentic documents since they were registered and issued by the customs office in Mersin (Turkey).

135 The Commission essentially rejects the applicant's arguments and submits that the entire action is based on the assertion that the 32 certificates at issue are not forgeries but, on the contrary, were issued by the Turkish customs authorities in Mersin, which made untrue statements about them. According to the Commission, however, the applicant cannot adduce the slightest proof to substantiate that assertion, which is, moreover, rebutted by the clear and precise statements of the Turkish authorities.

(a) Specimens of customs stamps and signatures

Arguments of the parties

136 Firstly, the applicant maintains that the stamps and signatures applied to the certificates at issue demonstrate that they were in all likelihood issued and authenticated by the Turkish authorities.

137 According to the applicant, the Turkish central customs administration confirmed that it sent to the Commission specimen impressions of stamps, which were forwarded to all Community national customs authorities before 1995. In support of that assertion, the applicant states that the Italian Finance Ministry allowed it to take photocopies of five documents, which are also held by the Commission, attesting to the fact that the Turkish authorities sent copies of the specimens in question to the Italian authorities and to the Commission.

138 The Italian customs authorities, which therefore had copies of the original stamps, compared those with the stamps and signatures on the certificates at issue and, none the less, accepted the latter. Moreover, the copies of the certificates at issue, which are regarded as inauthentic or forged, cannot be distinguished from other certificates that were classified as being in order. Furthermore, the stamps used on the certificates or, at the very least, on the copies, were in parts badly printed and barely legible. The customs in Mersin confirmed to the applicant that the stamps they used were barely legible.

139 Secondly, the applicant states that the requirement for the Turkish authorities to send to the Commission specimens of the stamps and signatures used by their customs offices to endorse movement of goods certificates stems from both the system of preferential treatment established with the Republic of Turkey and Article 93 of CCC implementation regulation. Contrary to what the Commission contends, Article 4 of Decision No 1/96 refers to Article 93 of the CCC implementation regulation and amends it in so far as the words 'Form A' found there are to be replaced by the words 'A.TR.1'. There is therefore no need for the requirement to send specimens to be expressly set out in the decisions of the Association Council. The Commission is wrong to claim, with regard to rules on origin, that the reference to the Association Agreement and to the relevant provisions of the Association Council in Article 27(a) and Article 20(3)(d) of the CCC preclude the requirement to send those specimens.

140 Moreover, the requirement to send specimens not only applies in respect of certificates issued in accordance with the simplified procedure provided for in Article 12(5) of Decision No 1/96 but is also of general application and is the basis for checking the authenticity and accuracy of those certificates. That requirement also stems from Article 26 of Decision No 1/95 in that it seeks progressive improvements in the preferential arrangements for trade in agricultural products.

141 With regard to the Commission's argument that the Republic of Turkey is not a member of the Community and it is therefore within its sovereign power whether or not to impose such a communication obligation, the applicant submits that there are many other sovereign States with which it has been agreed that stamps and signatures are to be sent in the context of intra-administration cooperation. By way of example, the applicant refers to the Euro-Mediterranean Agreement concluded with the State of Israel on 21 June 2000 (OJ 2000 L 147, p. 1).

142 Lastly, the applicant states that if, in the context of certificates that were issued in accordance with the General Agreement on Tariffs and Trade (GATT) of 1994, the requirement to send the stamps and signatures of the national customs authorities to the Commission exists even within the European Union itself, with its customs union and single agricultural market, the same requirement should apply a fortiori, on the basis of the abovementioned provisions, to relations between the Community and the Republic of Turkey.

143 The Commission states, firstly, that the Turkish authorities were not required to send to it specimens of the stamps and signatures used by their customs offices. According to the Commission, Article 93 of the CCC implementation regulation is not applicable in the present case since, firstly, it concerns only Forms APR and certificates of origin 'Form A', which relate only to importation of goods originating in developing countries and, secondly, Article 20 of the CCC does not state that it is applicable, by analogy, under the Association Agreement.

144 Next, the Commission submits that Article 28(4) of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ 1988 L 331, p. 1), as interpreted in the judgment in *Bonn Fleisch Ex- und Import* v *Commission*, does not impose such a communication requirement either, since Article 1 of that regulation limits its field of application. In fact, the customs union and/or the Association Agreement are not mentioned in that regulation, whilst the decisions of the Association Council and/or Community regulations approving those decisions do not state that Regulation No 3719/88 is applicable by analogy in that context.

145 Moreover, the Commission considers that it is not possible to conclude from the analogy with the Mediterranean agreement linking the European Union with the State of Israel that Article 93 of the CCC implementation regulation is applicable. Indeed, the clear wording of the Association Agreement and the decisions of the Association Council preclude any such conclusion.

146 Furthermore, the Commission considers that the applicant disregards the fact that, under the system established by the Association Agreement, it is for the competent Turkish authorities and not the Community institutions to check A.TR.1 movement of goods certificates and ascertain whether they are inauthentic. According to the Commission, the Turkish authorities clearly stated on a number of occasions, in particular in the letter of 8 March 1999 referred to above, that the 32 certificates at issue were not authentic as they had been forged. The applicant's assumptions concerning the authenticity of the certificates at issue are therefore irrelevant.

147 Lastly, with regard to the applicant's assertions that the stamps are barely legible or that they are worn, the Commission submits that, to the extent that the applicant is referring to copies, it does not necessarily follow that the stamps used by the Turkish authorities on the originals were worn or illegible. In addition, even though the stamps may be old and their impressions barely legible, that does not in any way mean that the certificates in question were issued by the Turkish authorities.

Findings of the Court

— Preliminary observations

148 As a preliminary observation, it is well-established case-law that, in order to ascertain whether any failure by the authorities of a non-member country and/or the Commission to fulfil obligations is liable to constitute a special situation within the meaning of Article 239 of the CCC, the true nature of the obligations imposed on those authorities and the Commission by the applicable legislation must be examined for each case at issue (*Hyper* v *Commission*, paragraph 117).

149 The applicant's argument is essentially based on the proposition that the Turkish authorities did in fact issue and endorse the certificates at issue. The various failings alleged by the applicant against the Turkish authorities are circumstantial factors indicating that its proposition is well founded. The applicant thus argues that the special situation it is placed in is a result of all the circumstances of the case, and in particular those relating to the deficiencies it attributes to the Turkish authorities.

— Substance

150 With regard to the failings attributed to the Turkish authorities in relation to stamps and signatures, the applicant's arguments claiming that the stamps and signatures on the certificates at issue are original are irrelevant. It lies within the exclusive competence of those authorities to determine whether documents they have issued are original or forged, as pointed out at paragraphs 120 and 121 above. In the present case, the Turkish authorities concluded that the certificates at issue were

forged. Therefore, even if the original stamps held by the customs authorities in Mersin were barely legible, the fact that the stamps on the certificates at issue are also barely legible is irrelevant. The same conclusion is to be drawn with regard to the applicant's arguments relying on the fact that the copies of the certificates at issue in its possession are similar to certificates that have not been forged.

151 Lastly, the applicant's argument that the fact that the Italian customs authorities compared the specimen impressions of stamps it held with the certificates at issue before accepting them allows the conclusion that the latter were authentic must also be rejected. According to established case-law, the person liable cannot entertain a legitimate expectation with regard to the validity of certificates by virtue of the fact that they were initially accepted by the customs authorities of a Member State, since the role of those authorities in the initial acceptance of declarations in no way prevents subsequent verifications from being carried out (see *Faroe Seafood and Others*, paragraph 93, and the case-law cited).

152 The applicant has therefore been unable to demonstrate by its arguments concerning this issue that there are grounds capable of constituting a special situation and, accordingly, those arguments must be rejected.

(b) The registration of the certificates by the Turkish authorities

Arguments of the parties

153 The applicant claims that the fact that the certificates at issue were officially registered confirms that they are authentic. The applicant states that the customs office in Mersin has a register containing the registration numbers of the 32

certificates at issue. In support of that assertion, the applicant states that its representatives saw those records at the Mersin customs office and asked a Turkish official employed there to provide them with a copy. Although initially willing to comply with that request, that official subsequently refused after receiving threats.

154 With regard to the requirement on the part of the Turkish authorities to enter A.TR.1 certificate numbers in customs registers, the applicant rejects the Commission's argument that such a requirement was not imposed by any decision of the Association Council. According to the applicant, it is a matter for the Turkish domestic legal system to determine whether such numbers are to be recorded. It is so obvious that such records should be kept that no decision of the Association Council is required.

155 However, proper mutual assistance not only requires A.TR.1 certificates to be registered but also for them to be filed in Turkey. In this connection, the applicant refers to Article 7(2) of Annex 7 to Decision No 1/95, which provides that requests for assistance are to be executed in accordance with the laws of the requested party. That provision also requires the Turkish customs authorities to register the certificates they issue by recording, at the very least, the information that must be shown in Box 12 of A.TR.1s. Cooperation between the Turkish and Community authorities concerning preferential arrangements is based primarily on registration of certificates, without which it would be quite impossible to provide information as to their authenticity and accuracy.

156 Moreover, according to the applicant, Article 8(1) of Decision No 1/96 requires A.TR.1 movement of goods certificates to be endorsed by the customs authorities of the exporting State. Paragraph 12 of point II of Annex II to Decision No 1/96 requires Box 12 to be completed by the competent authorities. In the present case, Box 12 on each of the 32 A.TR.1s at issue bears not only a stamp accompanied by a signature but also a special registration number under a specific date, which must be transferred to a register kept by the competent customs authorities.

157 Finally, the applicant maintains that an examination of the 32 certificates at issue shows that they correspond with the specimen that was to be followed at that time (the second paragraph of Article 10(2) of and Annex I to Decision No 1/96). In this instance, the certificates refer in the bottom left-hand margin to an approved printer and bear the printer's name, address and distinguishing mark in the form of a serial number so that they can be identified. As for the Commission's argument that those responsible for the forgery could have followed the numbers on original certificates as closely as possible, the applicant states that that is pure speculation.

158 The Commission observes, as a preliminary point, that neither the Association Agreement nor the decisions of the Association Council required registers to be kept for the entry of customs certificates.

159 Even if it were accepted that such registers existed, it is conceivable that the Turkish customs authorities issued the applicant with 32 A.TR.1 certificates in respect of batches other than the supplies at issue. It is therefore possible that forgers made copies of 32 authentic certificates which were not related to the supplies at issue delivered to the applicant so that they could subsequently be used in respect of those supplies.

160 Lastly, the Commission states that the applicant's assertion that the forged certificates correspond with the lawful specimens is irrelevant as the latter are a matter of public knowledge. As for the assertion that the certificates at issue also bore the names, addresses, distinctive particulars and serial numbers of the approved printers in Turkey, the Commission submits that only a few of the 32 certificates at issue contained such particulars and that it is difficult clearly to determine whether those printed particulars in fact give the actual particulars of the printers or whether those details have simply been made up. The Commission observes that, even if they were the details of approved printers, it could equally well be supposed that a sufficiently large number of authentic certificates from approved printers were in circulation, enabling a forger to obtain a specimen or a copy in order to make a forgery.

Findings of the Court

161 With regard to the registration of certificates by the Turkish authorities, it is to be observed that neither the Association Agreement nor the implementation provisions expressly provide that such registers are to be kept. However, paragraph 12 of Point II of Annex II to Decision No 1/96 requires the document number to be entered in Box 12 of A.TR.1 certificates. In addition, Article 13 of that decision provides that, where a certificate is divided, Box 12 of the extract is to show, inter alia, the registration number of the initial certificate. It is therefore possible for A.TR.1 certificates to be registered by the authorities issuing them, although the applicant has failed to adduce any evidence capable of demonstrating that such registers exist.

162 Nevertheless, even if it were accepted that the numbers in Box 12 of the certificates at issue were recorded in registers held by the Turkish customs offices, that would not make them authentic certificates. As the Commission rightly observed, forgers would have every interest in using on forged certificates a registration number which corresponded with a lawful certificate.

163 The applicant has not adduced any conclusive evidence establishing that the numbers recorded in those registers correspond with the certificates at issue. It merely states that its representatives observed that such registers existed and proposes to adduce their evidence.

164 It follows that the applicant's arguments are without merit and must therefore be rejected.

(c) The assistance provided by the Turkish customs authorities

Arguments of the parties

165 The applicant claims that it would have been impossible to obtain an A.TR.1 certificate to accompany the goods in question without the assistance of the Turkish customs authorities. The relevant legislation to a large extent guards against the risk of misuse of A.TR.1 certificates; not only are such certificates endorsed by the customs authorities of the exporting State and, at the same time, registered, but also the goods to which they relate are checked to ensure that those goods are actually exported. A.TR.1 certificates are made available to the exporter until the goods have been exported and it is only in exceptional circumstances that a certificate may be issued after exportation (see Article 8(1) of Decision No 1/96 and Article 4(1) of Decision No 5/72). Those provisions ensure that when an A.TR.1 certificate is made available to the exporter, the competent customs authorities still have the opportunity to verify whether it corresponds with the origin of the goods.

166 The Commission counters by saying that the applicant's arguments concerning the assistance provided by the Turkish authorities in issuing the certificates at issue are not relevant. The Commission states that it is undisputed that legislation should preclude A.TR.1 certificates being presented in respect of products that are not Turkish in origin. In the present case, the fact that A.TR.1 certificates were presented in respect of the exportations at issue does not mean that there was collusion with the Turkish customs authorities.

Findings of the Court

167 With regard to the argument concerning the assistance provided by the Turkish authorities, it is sufficient to observe that the certificates at issue have proved to be

forged. Presentation of documents which prove to be forgeries does not of itself permit it to be concluded that there was some kind of collusion between the exporters and the customs authorities which issued them.

168 That argument is therefore without foundation and must consequently be rejected.

(d) Infringement of the rules on administrative assistance

Arguments of the parties

169 The applicant submits, firstly, that the Turkish customs authorities are under a duty to provide administrative assistance in accordance with the implementation provisions of the Association Agreement. In that regard, the applicant relies on Article 15 of Decision No 1/96 and Article 26 of and Annex 7 to Decision No 1/95. As to the Commission's argument that Decisions Nos 1/95 and 1/96 applied only with effect from 31 December 1995, the applicant states, firstly, that the administrative assistance scheme was already applicable by virtue of previous decisions and, secondly, that Decisions Nos 1/95 and 1/96 laid down a formal right which also applied with regard to the past.

170 In the present case, the Turkish customs authorities breached the obligation to provide swift and effective assistance in the investigation into the movement of goods certificates and, in particular, their obligation swiftly to communicate precise information as to the authenticity of the certificates at issue. As a result of those breaches, it is justifiable to consider it highly likely that they were involved in issuing those certificates.

171 Next, the applicant sets out the principles which the Turkish authorities would appear to have followed in order to classify A.TR.1 certificates as irregular or forged. Thus, fruit juice concentrates originating in non-member countries which were processed in Turkey under the inward processing procedure and then exported were judged to be irregular as they were not properly endorsed. On the other hand, A.TR.1 certificates issued in respect of fruit juice concentrates under the transit trade procedure in Turkey were considered to be forgeries. That distinction can be discerned in the letters from the Turkish Permanent Representation of 10 July 1998 and 1 October 1999 addressed, respectively, to the Commission and OLAF, and in the letter of 12 October 1999 which UCLAF sent to the Guardia di Finanza (body responsible for the prevention of infringements of a financial nature). The applicant's contention is borne out by the UCLAF mission report of 21 December 1998, which states that the exporters were not the only ones responsible for the situation and that in-depth enquiries at the Mersin office were necessary.

172 In order to demonstrate the lack of cooperation on the part of the Turkish authorities in providing administrative assistance, the applicant refers, firstly, to a letter of 9 January 1998 from the Turkish Permanent Representation to UCLAF in which the Turkish authorities stated that there was no need, at that time, for the UCLAF representatives to go to Turkey. The applicant disputes the Commission's assertion that that letter was not concerned with the export of apple juice concentrates.

173 Secondly, the applicant maintains that the letter from the Turkish Permanent Representation of 10 July 1998, referred to at paragraph 41 above, did not state whether, according to the particulars that must be entered in Box 14 of all A.TR.1 certificates, the 22 certificates it mentions were inauthentic or irregular, but merely describes them as 'false', a word encompassing both possibilities. The applicant submits that, although Box 14 of each A.TR.1 certificate is headed 'Verification' and Box 15 'Results of verification', the documents relating to the specific response to the requests for verification of the certificates at issue were not produced.

174 Thirdly, the applicant states that, at point C of a letter of 26 August 1999 addressed to the Customs Police in Cologne (Germany), the Commission referred to the fact that OLAF was to ask the Turkish authorities to clarify, in relation to each invalid certificate, whether it was forged or an irregular certificate. The applicant states, however, that it is unaware whether that request was made.

175 With regard to the Turkish authorities' contradictory assertions, the applicant submits that certificates which were identical in content were judged, in certain cases, to be in order and, in other cases, to be irregular and, lastly, that certificates which had previously been classified as forgeries were subsequently classified as irregular. The list of documents annexed by the Commission to its defence show that 28 letters were exchanged between 1998 and 1999 with the Turkish authorities without it being possible definitively to establish the facts and that the correspondence with the Turkish Permanent Representation ceased in 1999, the Turkish authorities having refused to cooperate in any way with the Commission as of 2000.

176 By way of example, the applicant refers to A.TR.1 certificate D 437214, which was described as a forgery in the letter of 8 March 1999 and subsequently as irregular.

177 Similarly, between 16 July and 27 September 1999, A.TR.1 certificate D 412662 was, in three separate communications, classified by the Turkish authorities, in turn, as not correct, partially correct and, finally, authentic (letters of 16 July, 19 August and 27 September 1999).

178 Moreover, A.TR.1 certificate D 141591 was initially classified as a forgery (letter of 15 May 1998), and then as not correct (letter of 19 August 1999) on the basis of the fact that the goods to which it related were not Turkish in origin. According to the applicant, A.TR.1 certificate D 141591 must be likened to A.TR.1 certificates

C 982920 and C 982938, which were classified as not correct, and in relation to which the Commission abandoned any claim to post-clearance recovery of customs duties. The applicant's response to the Commission's assertion that the Ravenna customs services stated, in an opinion of 12 June 1998, that A.TR.1 certificate D 141591 was a forgery is to say that it was not able to consult that document in the course of the procedure for access to the file.

179 The fact that the information provided was contradictory was confirmed by the Tribunale civile e penale in Ravenna. The applicant submits that the public prosecution service in Verona (Italy) also terminated the criminal investigation concerning the applicant, having concluded, inter alia, that the repeated requests of the police for evidence remained unanswered. According to the applicant, the public prosecutor with competence in the matter in Verona asked the Guardia di Finanza to state on the basis of which documents and evidence the certificates issued by the Turkish authorities were considered substantively to be forged, but the Italian authorities were not able to obtain any response.

180 Furthermore, the applicant considers that the fact that the Turkish customs authorities accepted that, of the 103 certificates that were checked, 17 — or 16 if A.TR.1 certificate D 437214 is excluded — were irregular means that they knowingly wrongly endorsed them and, therefore, that fact is sufficient to call into question the quality control for those certificates and the accuracy of the information provided by way of mutual administrative assistance.

181 In that regard, the applicant draws a parallel with the cases which gave rise to the *Turkish televisions* judgment, with which the present case, contrary to the Commission's assertions, is closely connected. Such a connection is to be found, inter alia, in the fact that the Turkish authorities never stated that they had been duped by third parties and in the fact that, as a result of their contradictory statements, they prevented facts being established.

182 With regard to the Commission's argument that the applicant was attempting to sow the seeds of confusion by referring to the Turkish authorities' statements concerning the certificates considered to be irregular which are not the subject of the present case, the applicant claims that the contradictory nature of the information provided by various Turkish authorities on certificates other than those at issue is essential for the analysis of all the Turkish authorities' statements, including those relating to the certificates at issue.

183 Lastly, with regard to the Commission's argument that certain communications from the Turkish authorities were only interim conclusions, the applicant submits that the provisions on mutual assistance do not envisage the communication of either interim conclusions or provisional reports.

184 The Commission rejects the applicant's assertions seeking to establish that the Turkish authorities breached their obligation to cooperate in a number of respects and disputes that those authorities made contradictory statements.

185 With regard to the obligation to cooperate, the Commission observes, firstly, that Decisions Nos 1/95 and 1/96, which the applicant relies on as the basis of a mandatory obligation to cooperate on the part of the Turkish authorities, were in force only at the final stage of the association scheme and did not apply to the certificates at issue, which were issued during the transitional stage. In that respect, those certificates are covered only by Article 2(3) of Regulation No 4115/86 and Article 11 of Decision No 5/72, as amended by Decision No 1/78, as previously set out at paragraph 12 above.

186 Next, the Commission submits that the analogy drawn with the *Turkish televisions* judgment is not relevant in the present case, which is based on totally different facts. The Commission points out that the cases which gave rise to that judgment did not concern forged certificates but certificates issued by the Turkish authorities which

had proved to be invalid since they did not meet the statutory requirements. In that judgment, the Court found that the Turkish authorities had delayed in clarifying the situation, since their own infringements became clear when they did cooperate. In the present case, it is not possible that the Turkish authorities intended to cover up any infringements on their part since they were not involved in issuing the certificates at issue. Moreover, the Court did not hold that a lack of cooperation on the part of the Turkish authorities was a significant pointer to their involvement in unlawful activities, as the applicant maintains.

187 Moreover, as regards the applicant's argument that the Turkish authorities knew that they had wrongfully issued 16 or 17 A.TR.1 certificates, the Commission maintains that it is of no relevance since those certificates are not the subject-matter of these proceedings and the relevant import duties have already been repaid to the applicant in accordance with Article 239 of the CCC. On the contrary, the fact that the Turkish authorities acknowledged that they had knowingly wrongfully issued 16 or 17 certificates indicates that they helped to clarify the facts without any concern for their reputation and constitutes evidence of the credibility of their statements concerning the inauthenticity of the certificates at issue.

188 Furthermore, with regard to the applicant's argument that the Turkish authorities failed to complete Boxes 14 and 15 of the certificates at issue, the Commission submits that those boxes were provided solely for cases where checks are carried out on the content of the certificates, that is, the actual origin of the goods to which they relate. Since the certificates at issue were forged, the Turkish authorities had no reason subsequently to authenticate them by completing Boxes 14 and 15.

189 Lastly, the Commission takes issue with the applicant's proposition that the Turkish authorities' statement in the letter of 9 January 1998 to UCLAF that it was not necessary for UCLAF to undertake an investigation in Turkey constitutes evidence of their complicity. According to the Commission, that letter does not refer to the post-clearance checks of the certificates at issue, which, at that time, had not yet

been carried out. In addition, the Commission observes that, after preliminary ad hoc investigations had been undertaken, UCLAF made an inspection visit to Turkey in December 1998 and, moreover, the investigations very quickly made it possible for it to be stated, as of 8 March 1999, that the certificates at issue were not authentic because they had been forged.

190 Secondly, the Commission maintains that the applicant's assertions that the Turkish authorities made contradictory statements are equally devoid of relevance.

191 The Commission states, firstly, that the correspondence referred to by the applicant concerns certificates considered to be invalid but none the less authentic, which are not at issue in the present case. Next, it contained interim conclusions communicated during the initial stage of the investigation, which could only be provisional. The Turkish authorities never reversed their conclusion set out in the letter of 8 March 1999 that the certificates at issue were forgeries because they had not been issued by them.

192 Lastly, with regard in particular to the applicant's assertions concerning certificate D 141591, the Commission maintains that they are not relevant since that certificate is not on the list of forged certificates which is referred to in the letter from the Turkish authorities of 8 March 1999 and is therefore not the subject-matter of these proceedings. The Commission observes, however, that by letter of 3 June 2002 it specifically asked the Italian customs authorities whether the certificate in question was forged or simply inaccurate as to its content. By letter of 6 June 2002, forwarded to the Commission by letter of 7 June 2002, the Ravenna customs services informed their superiors in Bologna and Rome that the movement certificate had been classified as a forgery by the Turkish authorities in a memorandum of 15 May 1998.

The fact that it was a forgery was also confirmed by UCLAF following an investigative mission to Ankara in October 1998. Moreover, the Ravenna customs services stated that the applicant had neither appealed against the tax that was subsequently levied following the finding of forgery nor submitted a claim for reimbursement, thus clearly acknowledging that that certificate was a forgery.

Findings of the Court

193 It is to be noted that the relevant legislation applicable to the facts of the case provides that the parties to the Association Agreement are to assist each other in ensuring that customs legislation is correctly applied. Mutual assistance is directed in particular at ensuring that the authenticity and accuracy of movement of goods certificates are checked (as regards the transitional stage of customs union, see Article 2(3) of Regulation No 4115/86 and Article 11 of Decision No 5/72, as amended by Decision No 1/78; as regards the final stage of customs union, see Article 2 of Annex 7 to and Article 29 of Decision No 1/95 and Article 15 of Decision No 1/96).

194 Firstly, with regard to the applicant's argument that failure by the Turkish authorities to provide swift and effective assistance to the investigation suggests that they were implicated in the preparing and issuing of the forged certificates, it is to be noted, firstly, that the post-clearance checks of the certificates relating to importations effected by the applicant were triggered by the letter of 15 May 1998 from the Turkish authorities to the Ravenna customs services stating that certificate D 141591 was a forgery. Following that discovery, UCLAF undertook an initial investigative mission in Turkey during the period from 12 to 15 October 1998, that is, barely five months after information had been received from the Turkish authorities. A second mission was undertaken during the period from 30 November to 2 December 1998. According to the applicant, a letter from the Turkish

authorities of 9 January 1998 stating that that there was no need for a UCLAF mission is an indication of their failure to cooperate. However, it is not disputed, firstly, that the investigations into the certificates at issue were triggered only after 15 May 1998 and, secondly, that the UCLAF missions were undertaken within a reasonable period following the discovery of the initial forgery.

195 Moreover, the Turkish authorities examined a very large number of certificates — running to several hundred, 103 of which had been presented by the applicant — but the list of certificates considered by those authorities to be forged was sent to the Ravenna customs services by letter of 8 March 1999, that is, less than three months after the second UCLAF mission to Turkey had concluded.

196 Lastly, the voluminous correspondence between the Community authorities and the Turkish authorities concerning the certificates at issue must be noted. In that regard, the applicant's claim alleging that the Turkish authorities, and in particular the Turkish Permanent Representation, refused to cooperate with the Commission as of 2000 is not in any way substantiated. In the same way, the wording of the decision of the public prosecutor of Verona terminating the investigation opened against the applicant does not permit the latter to draw any inferences that are valid in the present case. In fact, in that decision, the competent prosecutor merely refers to the difficulties experienced in obtaining evidence but does not, however, identify who is responsible for those difficulties. Accordingly, that argument is unfounded and must be rejected.

197 Secondly, the applicant claims that, by providing contradictory information on the checks carried out on the accuracy and authenticity of movement certificates, the Turkish authorities made it impossible for the facts to be established. In that connection, the applicant refers to three specific certificates, namely A.TR.1s D 437214, D 141591 and D 412662, which were attributed different classifications in successive communications from the Turkish authorities.

198 It is true, as the Commission observes, that only A.TR.1 certificate D 437214 is included among the certificates at issue, the two others not being the subject of these proceedings. However, it is equally to be noted that the applicant relies on any contradictions there may be concerning the three certificates in question with a view to demonstrating that the checks carried out by the Turkish authorities were insufficiently rigorous in relation to all the movement certificates presented. Given that a procedure that makes inadequate provision for the checking of the accuracy of certificates may constitute a serious breach on the part of the Turkish authorities of their obligations under the Association Agreement, it is necessary to consider whether the applicant's assertions are relevant also in relation to the certificates which are not at issue in the present case.

199 With regard to certificate D 141591, it is apparent from the correspondence in the file that, initially, the Turkish authorities classified it as a forgery and, subsequently, as incorrect. It was the awareness of that ambiguous classification that led the Commission on 3 June 2002 to seek clarification. It is clear from the reply to that request, provided by the Italian authorities by letter of 7 June 2002, that the finding that the certificate in question had been forged was subsequently confirmed by the Turkish authorities in their letter of 8 March 1999, which communicated the final conclusions of the investigations carried out in Turkey. It is also clear from that letter of 7 June 2002 that the finding that that certificate had been forged was also based on the conclusions of the investigative mission carried out by UCLAF in Turkey in October 1998. It must therefore be concluded that any contradictions there may have been concerning the classification of that certificate may be disregarded as of October 1998 and that, as of 8 March 1999, there was no longer any doubt that it was inauthentic. Lastly, it is to be noted that that certificate is not one of the certificates at issue in the present case. The applicant has neither appealed against the duties that were levied following the finding of forgery nor applied for repayment of the duties paid, implicitly acknowledging that the certificate in question was inauthentic.

200 With regard to certificate D 412662, by letter of 16 July 1999, the Turkish authorities classified it as incorrect on the basis of the fact that the goods to which it related did not originate in Turkey. Subsequently, the Turkish authorities informed OLAF, by letter of 10 August 1999, that they had made an error and that the certificate in

question should be classified as partially incorrect since only part of the goods to which it related were not of Turkish origin. That conclusion was confirmed by a letter of 19 August 1999 to the Ravenna customs services. It is apparent from these three communications that the Turkish authorities did not contradict themselves in the course of administrative cooperation with the Community authorities but that they simply supplemented and partially amended the initial communication of 16 July 1999.

201 The contradiction identified by the applicant is a result of a subsequent communication of 27 September 1999 addressed to its parent company, Steinhauser, in which the Turkish authorities state that certificate D 412662 is correct. It is to be noted, firstly, that that letter was not sent in the context of cooperation between customs administrations and does not therefore constitute an official outcome of the procedure for checking movement of goods certificates. Moreover, it is possible that the Turkish customs authorities may not have been particularly zealous in their dealings with the applicant and thus failed to inform it that the certificate in question was only partially correct. It is therefore to be concluded that the applicant cannot draw from this any inferences that are valid in the present case. That conclusion is not altered by the fact that, in its judgment of 20 December 2000, the Tribunale civile e penale in Ravenna referred to the error committed by the Turkish authorities in the initial classification of that certificate.

202 With regard to certificate D 437214, it emerges from the considerations set out at paragraph 120 above and those to follow that, at a certain point, the Turkish authorities would appear to have reversed their initial conclusion that that certificate was a forgery. It is to be observed, however, that such a contradiction does not emerge clearly due to the lack of precision in the words used in the written communications of the Turkish authorities. Moreover, the ambiguous information sent by the Turkish authorities was the subject of a request for clarification by the Commission. However, a subsequent check made it possible to confirm beyond any possible doubt that the initial classification of that certificate was correct and that it was indeed a forgery.

203 It is apparent from the foregoing that the contradictions alleged by the applicant do not permit the conclusion that the procedure implemented by the Turkish authorities for checking the authenticity of certificates was manifestly irregular. The ambiguities that arose in the course of cooperation between customs authorities concerned only two certificates, namely, A.TR.1s D 437214 and D 141591. Furthermore, the ambiguous statements concerning the classification of those certificates were the subject of requests for clarification and it was ultimately possible for them to be classified with certainty. In relation to the overall number of certificates checked, the Turkish authorities made specific ambiguous statements concerning only a very small percentage of these. Consequently, those statements, which were subsequently clarified, cannot of themselves be regarded as constituting serious failures on the part of the Turkish authorities to fulfil the obligations of administrative assistance arising under the Association Agreement and its implementation provisions. Accordingly, no failure of that kind can be attributed to the Turkish authorities.

204 Thirdly, concerning the applicant's argument that the Turkish authorities failed to complete Boxes 14 and 15 of the movement certificates, it suffices to point out that those boxes relate to checks on the actual origin of the goods and to whether the goods correspond with what is stated on the certificate. Since the Turkish authorities had concluded that the certificates were forged, they were not required to complete Boxes 14 and 15 since the question whether goods correspond with inauthentic documents cannot, by definition, arise.

205 Finally, the applicant posits a theory as to the method adopted by the Turkish authorities in classifying certain certificates as incorrect and other, albeit identical, certificates as forged. The applicant's argument is not at all substantiated, with the effect that it must be rejected for lack of evidence.

206 In the light of the foregoing, all of the applicant's arguments relating to alleged infringements by the Turkish authorities of the rules on administrative assistance must be rejected as unfounded.

(e) Additional factors

The applicant's arguments

207 The applicant states that other factors demonstrate further failures on the part of the Turkish authorities, the effect of which is to place it in a special situation.

208 Firstly, the applicant contends that the individual failure on the part of the customs authorities in Mersin was the consequence of a general structural failure on the part of the Turkish authorities. In support of those contentions, it puts forward, firstly, the fact that, at a meeting in Ankara with an official of the Turkish central customs administration, its representative, Mr Nothelfer, was informed that a criminal investigation had been ordered in order to verify all movement of goods certificates. With regard to the Commission's argument that such a criminal investigation only enhanced the credibility of the Turkish customs administration, the applicant observes that the Commission should have known that that was merely one of the excuses provided by that administration to give the impression that action had been taken. The certificates issued were not, in fact, subject to any criminal investigation.

209 Next, it is apparent from what was said at another meeting that took place between the applicant's representatives and Mr Dogran of the Turkish Prime Minister's Office of Economic Affairs that the Republic of Turkey was essentially concerned with the economic development of its undertakings and was unaware of the content and importance of the rules on preferential treatment and the origin of goods. Such an attitude echoed the findings made in the cases which gave rise to the *Turkish televisions* judgment and it was only subsequently that UCLAF informed the Turkish authorities of the importance of the obligation to comply with the rules governing

preferential arrangements. In that regard, the applicant states in its reply that, contrary to what the Commission asserts, the Turkish Prime Minister's Office should have been aware of the conditions for issuing movement certificates.

210 Secondly, the applicant states that it lodged a complaint against Mr Akman, the manager of the company of the same name, through a lawyers' office in Ankara. However, the public prosecutor in Mersin stayed the proceedings in 2001 and the applicant's representatives have yet to be informed of the reasons for this, in spite of repeated requests. The applicant assumes that it was concluded that the 32 A.TR.1 certificates at issue had been endorsed with authentic Turkish customs authorities' stamps and, as a consequence, the competent prosecutor received an order from Ankara to terminate the proceedings.

211 In its reply, the applicant rejects the Commission's argument that the criminal proceedings against Mr Akman were terminated because he had no part in the forgeries. The applicant submits, firstly, that it is not certain whether those proceedings were in fact actually initiated. Next, the applicant observes that, if there had been forgery, Mr Akman would have been the principal beneficiary. Finally, the applicant submits that it is apparent from the UCLAF mission report of 23 December 1998 that Commission officials met Mr Bolat of the Mersin public prosecutor's office, who provided them with a copy of all the certificates on which Mr Akman's name appeared. According to the applicant, the Commission did not receive a reply to the request it made at that meeting to be kept informed of the result of the investigations.

212 Thirdly, the applicant states that the Commission would appear to have gone 'as far as it was possible' with its investigations in Turkey into how the certificates at issue had been issued. The applicant states that UCLAF was not able to consult the customs records at the Mersin office or speak to the competent officials. According

to the applicant, the reason why UCLAF was not able to carry out a more thorough investigation is that it would have revealed that a large number of products originating in non-member countries had, for reasons of economic development, and with collusion at the highest political level in Turkey, been exported from Mersin into the European Community using A.TR.1 certificates.

213 The Commission rejects, firstly, the arguments put forward by the applicant concerning its discussions with the Turkish authorities. The Commission submits that the admission by the central customs administration in Ankara that all A.TR.1 certificates had been the subject of a criminal investigation enhanced the credibility of the conclusions set out in the abovementioned letter of 8 March 1999 that those certificates had not been issued by the Turkish customs authorities. Moreover, the Commission submits that the applicant's claim that Mr Dogran was unaware of either the content or the importance of the rules on origin and on preferential treatment is equally devoid of relevance since Mr Dogran, who was a member of the department responsible for economic affairs in the Turkish Prime Minister's Office, was not required to know those rules.

214 Secondly, the Commission states that the fact that the criminal proceedings brought against Mr Akman were stayed may be due to the fact that he had acted in good faith and was not involved in the forgeries. Furthermore, there are very few penal procedure codes which require reasons to be given to the complainant why an investigative procedure is to be stayed.

215 Thirdly, with regard to the applicant's assertion that the Commission and UCLAF pursued their investigation only 'as far as it was possible' due to a lack of cooperation from the Turkish authorities, the Commission states that the latter cooperated fully and that UCLAF was able properly to carry out its investigations in Turkey and did not discover any false declarations, as evidenced by the mission reports of 9 and 23 December 1998.

Findings of the Court

216 Firstly, the applicant's assertions concerning the content of its representatives' discussions with Mr Dogran of the Turkish Prime Minister's Office of Economic Affairs are of no relevance. Indeed, the question whether an official such as Mr Dogran was aware of the rules governing preferential treatment and the issuing of movement certificates cannot have any bearing on the facts of the case. Likewise, as regards the applicant's claim that an official of the Turkish central customs administration stated that a criminal investigation had been ordered to verify movement certificates, it is sufficient to note it is not only irrelevant but also unsubstantiated.

217 Next, the applicant's arguments relating to the staying of the criminal proceedings against Mr Akman, the manager of the Turkish company of the same name, ordered by the public prosecutor in Mersin, cannot be accepted either. Even if it were to be established that the applicant was not informed of the underlying reasons for that stay, that would not, in any event, permit the conclusion that its complaint came to nothing because the public prosecutor in Mersin realised that the certificates at issue were not forged. It is to be noted in that regard, firstly, that that is a matter of Turkish criminal law and, secondly, that the applicant did not even attempt to demonstrate that it was entitled, in its capacity as a complainant and under the Turkish law applicable, to be informed of the grounds on which the order to terminate the proceedings was based. In the same way, the applicant has failed to adduce any evidence to enable it to be established that the Turkish authorities did not respond to the Commission's request to be kept informed of the results of the criminal investigations.

218 Lastly, the applicant's argument that, in its investigations in Turkey, UCLAF came up against a number of obstacles created by the Turkish authorities is not in any way substantiated. In fact, the applicant has not put forward any evidence to enable it to be concluded that UCLAF was not able to carry out a thorough investigation, in

particular into the customs administration in Mersin. The alleged lack of cooperation is, moreover, contradicted by the content of the mission reports of 9 and 23 December 1998, which set out the cooperation given by the Turkish authorities.

219 In the light of the foregoing, it must be concluded that none of the factors relied on by the applicant is capable of constituting a serious failure on the part of the Turkish authorities to fulfil their obligations under the Association Agreement and its implementation provisions.

220 It follows from the foregoing that the second part of the second plea in law must be rejected as unfounded.

3. *Failings attributable to the European Commission*

221 The applicant states, in essence, that the Commission seriously failed to discharge its duty to protect both the applicant and the other importers concerned. The failings attributable to the Commission derive from: (1) the failure to supervise and monitor the Turkish authorities' implementation of the system of preferential treatment; (2) the failure to send to national customs authorities specimens of stamps and signatures used by the Turkish authorities; (3) breach of the obligation to warn importers in good time; and (4) an incorrect assessment of the facts during the investigations carried out in Turkey.

(a) Failure properly to monitor the system of preferential treatment

Arguments of the parties

222 Firstly, the applicant submits that the Turkish authorities did not understand the rules on the origin of goods. In support of that submission, it refers to the observations made by its representatives at their meetings in Ankara and in Mersin with the Turkish authorities. According to the applicant, whenever an A.TR.1 certificate was issued, consent of various kinds was issued by the Turkish Prime Minister's Office for Economic Affairs. Moreover, also in other cases, the competent Turkish authorities endorsed A.TR.1 certificates without taking account of the origin of the goods, clearly unaware that such practices were unlawful. In that regard, the applicant draws a parallel with the cases which gave rise to the *Turkish televisions* judgment, in which the Court found that, during a period almost identical to that covering the facts in the present case, the competent Turkish authorities had failed to observe the customs legislation applicable, with a view to taking advantage of the nascent customs union with the European Community in order to benefit their own economy.

223 According to the applicant, the provisions on the preparation and issue of A.TR.1 movement of goods certificates are today essentially applied correctly and more strictly. That change came about, however, only after the investigations carried out by UCLAF in Turkey and, no doubt, also as a result of discussions between the Commission and the Turkish authorities following the cases which gave rise to the *Turkish televisions* judgment, and as a result of the present case.

224 Secondly, the applicant submits that the Commission failed to ensure that the rules applying under the Association Agreement were observed, which it was required to

do under Article 211 EC and in accordance with the principle of sound administration. The Commission is under a special duty to monitor preference agreements and origin agreements concluded between the Community and non-member countries.

225 The applicant points out that Article 26 of Decision No 1/95 expressly provides that it is necessary to ensure the effective functioning of the customs union and improvements in the preferential arrangements, the Association Council itself having undertaken regularly to examine the improvements made to those arrangements. Moreover, in establishing the customs union, the Commission was to be in constant contact with the competent authorities in Turkey through the intermediary of the Association Council and the Customs Committee, on which it was represented. The essential purpose of those bodies should have been to ensure that the provisions relating to the origin of goods were understood, properly introduced and continuously monitored in Turkey.

226 The applicant states that, by neglecting to refer in reasonable time to the Customs Cooperation Committee in order to clarify the situation and to take measures to ensure compliance by the Turkish customs administration with decisions of the Association Council, the Commission failed to discharge its duty of diligence. In that regard, the applicant states that it does not understand the Commission's argument that the Association Council and the Joint Customs Committee could act only by unanimous decision. Given that the Association Council makes decisions which the Turkish and European customs administrations are obliged to comply with, the Commission's serious failure derives, firstly, from the fact that it did not apprise itself of whether the decisions of the Association Council were being complied with, either within the Customs Committee or in Turkey, and, secondly, the fact that it failed to take the opportunity presented by the cases which gave rise to the *Turkish televisions* judgment to make more rigorous checks, as of 1993 or 1994, to ensure that the rules on the origin of agricultural products were being complied with.

227 Thirdly, the applicant adds that the Commission had a greater duty of diligence with regard to the Republic of Turkey, on account in particular of the previous failings by the Turkish authorities established in the *Turkish televisions* judgment. Moreover,

the applicant submits that exports of Turkish goods to the Community increased greatly during the period that coincided with the importations at issue. The Commission was not in a position to accept that significant increase in exports without requiring, firstly, specimen stamps and signatures to be produced and, secondly, certificates of origin to be adequately checked as part of the monitoring procedure.

228 Furthermore, the fact that contradictory and misleading information was sent in the course of that monitoring procedure should have required the Commission to carry out further checks. Lastly, that requirement to monitor was made even more pressing on account of the fact that the Turkish authorities did not use the reverse side of the A.TR.1 certificates to give a clear response as to whether they were valid.

229 Firstly, the Commission disputes the analogy drawn with the cases giving rise to the *Turkish televisions* judgment in its entirety. The Commission submits, firstly, that there is a major difference between the present case and those cases, namely that the present case is concerned with forgery by third parties of certificates of origin in which the Turkish authorities had no involvement. The Turkish authorities' failure to provide information and to comply with the rules are therefore not relevant since those authorities were not involved in the forgery of the 32 certificates at issue. However, the Commission considers it necessary, in order to demonstrate the error of the applicant's case, to set out the differences between the present case and the facts underlying the *Turkish televisions* judgment.

230 Thus, according to the Commission, it is noted in the *Turkish televisions* judgment (paragraph 261) that the Turkish authorities had waited more than 20 years before transposing the provisions in the Association Agreement and the Additional Protocol relating to the compensatory levy. Moreover, the Commission had not properly monitored that transposition. On the contrary, in the present case, the certificates of origin in question were forged without any involvement on the part of

the Turkish authorities. Next, in the same judgment (paragraph 262), the Court found that the relevant decisions of the Association Council had not been published in the Official Journal, whereas in the present case all the relevant measures were properly published. Lastly (paragraph 263), the Commission reacted only four years after the first complaint had been lodged concerning problems relating to the implementation of the provisions in question, whereas, in the present case, the Commission did not delay in taking action in relation to the Turkish authorities.

231 Secondly, the Commission submits that the voluminous correspondence exchanged with the competent Turkish authorities together with the fact that UCLAF carried out an investigative mission in Turkey a relatively short time after the initial suspicions of forgery had arisen demonstrate in themselves that the Commission did not fail to discharge its duty to examine and monitor the preferential arrangements.

232 Thirdly, the Commission states that the applicant failed to have regard to the fact that, under the Association Agreement and the relevant decisions of the Association Council and the Joint Customs Committee, it was the Republic of Turkey and not the Commission which had competence to ensure that the rules on origin were complied with in Turkey. The Commission states that, whilst it did not in any case let the Republic of Turkey act as it saw fit, it merely sought the views of the Turkish Government and, where necessary, carried out on-the-spot checks. Similarly, the Association Council and the Joint Customs Committee — even if they had had competence in the matter, which was not the case — were joint bodies which could act only by unanimity (Article 23(3) of the Association Agreement) and therefore the Commission could not in those fora have imposed any decision against the will of the Turkish representatives. Nevertheless, all the decisions of the Association Council were implemented and spot checks were carried out on the customs administrations of the Member States. Moreover, the Commission states that it properly apprised the Turkish authorities of all the problems that arose concerning the preferential arrangements and that those authorities clarified all the circumstances.

233 Lastly, with regard to the applicant's argument that the Turkish authorities' contradictory statements concerning the certificates at issue would have justified more rigorous monitoring on its part, the Commission states that, as there were no contradictory statements, that argument is not relevant.

Findings of the Court

234 With regard to the alleged failures relating to the supervision and monitoring of the implementation of the Association Agreement, it is to be noted that, pursuant to Article 211 EC and the principle of good administration, the Commission had a duty to ensure the proper application of the Association Agreement (see the *Turkish televisions* judgment, paragraph 257, and the case-law cited). That duty also resulted from the Association Agreement itself and the various decisions adopted by the Association Council (the *Turkish televisions* judgment, paragraph 258).

235 In the present case, the applicant has failed to demonstrate that the Commission did not do what was necessary to ensure the proper implementation of the Association Agreement.

236 Firstly, as regards the applicant's argument that the Turkish authorities did not understand the rules on the origin of goods that could benefit from the preferential tariff measures, it suffices to state that it is irrelevant, since the certificates at issue were not issued by those authorities. As is apparent from paragraph 150 et seq., the applicant has not been able to establish that the Turkish authorities were involved in issuing those certificates.

237 Next, with regard to the applicant's argument that the Commission should have carried out more rigorous checks on the implementation by the Republic of Turkey of the rules on issuing certificates of origin on account, firstly, of the considerable increase in imports from Turkey and, secondly, of the findings in the cases which gave rise to the *Turkish televisions* judgment, it suffices to point out that that argument is also irrelevant.

238 The applicant relies on general assertions referring to systematic infringements of the Association Agreement by the Turkish authorities without, however, substantiating these. Moreover, the applicant cannot, by references to the findings made by the Court in the *Turkish televisions* judgment, validly reach the general conclusion that the entire procedure of the Turkish authorities for issuing movement certificates systematically infringed the rules on origin. Even if it were conceded that the Commission was required to carry out more rigorous monitoring of the implementation of the Association Agreement, it must be noted, as is apparent from paragraph 194 above, that UCLAF conducted investigations in Turkey as soon as the initial indications arose that movement certificates had been forged and, accordingly, the Commission did in fact ensure that the Association Agreement was properly implemented.

239 The applicant's arguments concerning the Commission's obligation to refer to the Association Council or the Customs Union Joint Committee, which was established by Article 52 of Decision No 1/95, are irrelevant. In fact, under Article 22 of the Association Agreement, the main task of the Association Council is to adopt the measures necessary to ensure the smooth functioning of that agreement and compliance with it by the Contracting Parties (*Turkish televisions* judgment, paragraph 274). Similarly, under Article 52(1) of Decision No 1/95, the task of the Customs Union Joint Committee is to ensure the proper functioning of the customs union, inter alia by formulating recommendations to the Association Council. Moreover, Article 52(2) of Decision No 1/95 provides that the Contracting Parties are to consult within the Joint Committee on any point relating to the implementation of that decision which gives rise to a difficulty for either of them.

240 Clearly, in the light of the foregoing, the applicant has not been able to establish that the Commission encountered difficulties concerning the administrative assistance agreed upon with the Republic of Turkey which would have justified discussion within those bodies of the adoption of specific measures to combat such difficulties. With regard in particular to the ambiguous statements made by the Turkish authorities concerning three movement certificates, it is sufficient to observe that it is apparent from paragraph 203 above not only that those certificates were not of such a kind as to call into question the validity of the monitoring procedure but also that the Turkish authorities cooperated with the Commission when it requested clarifications concerning those certificates.

241 With regard to the analogy the applicant attempts to draw with the facts which gave rise to the *Turkish televisions* judgment, it is to be noted that those facts are not comparable with the facts under examination in the present case. Indeed, in the cases which gave rise to the *Turkish televisions* judgment, the Court found that the Turkish authorities were responsible for serious deficiencies, including, in particular, the failure to transpose the provisions of the Association Agreement, which affected all exports of television sets from Turkey. Those deficiencies contributed to the occurrence of irregularities in connection with exports, placing exporters in a special situation within the meaning of Article 239 of the CCC (*Turkish televisions* judgment, paragraphs 255 and 256).

242 In the present case, it has not been established that there were such deficiencies affecting all exports of fruit juices as far as the certificates at issue are concerned. It is to be noted that the deficiencies of the Turkish authorities set out in the contested decision that might constitute a special situation concern solely the movement certificates presented by the applicant which had been incorrectly issued by the Turkish customs administration. It is in relation to those certificates that the Commission considered that the competent Turkish authorities knew or should have known that the goods in respect of which they issued certificates of origin did not meet the requirements necessary to qualify for preferential treatment. On the other hand, as stated above, no deficiency on the part of the Turkish authorities contributed to the drawing-up of the 32 certificates at issue.

243 In the light of the foregoing, the applicant's arguments must be rejected as unfounded.

(b) Failure to send specimen stamps and signatures

Arguments of the parties

244 The applicant states that, by failing to send to the Member States, and in particular the Italian Government, specimens of the stamps and signatures used by the Turkish customs offices of export, in particular those in Mersin, the Commission was in serious breach of its duty to importers such as the applicant. According to the applicant, Article 93 of the CCC implementation regulation, which also applies in the context of the Association Agreement by virtue of Article 20 of the CCC, required the Commission to ensure that the Turkish customs administration sent those specimens to it.

245 The applicant submits that the Turkish authorities acknowledged that they were under an obligation to send such specimens to the Commission and stated that they had in fact at least sent the stamps used in Mersin. That failure was all the more serious since the official stamps used by the Mersin customs office were very worn and the impression was therefore very faint. The applicant points out that stamps and signatures are the vital means of establishing, including within the Community, whether or not the Turkish customs administration had a part in issuing the certificates at issue and at the same time facilitate improved monitoring of certificates presented by importers.

246 In the present case, the competent Italian customs authorities would have been in a better position to make comparisons if the Commission had sent to them all the

stamps and specimen signatures of the Mersin customs office and had ensured that the stamps were renewed within the specified period. In effect, either the complaint alleging forgery would not have been made or, if there had been forgery, it could have been discovered and investigated at the time of the initial importations at issue.

247 The Commission simply states that the Republic of Turkey was not required to send to it the original signatures and stamps of the Mersin customs authorities on account of the fact that, as it explained previously (see paragraph 143 above), Article 93 of the CCC implementation regulation is not applicable in the present case.

Findings of the Court

248 The applicant charges the Commission with having breached its obligations under the applicable legislation by failing to send to the Italian customs authorities specimens of the stamps and signatures used by the Turkish customs administration. The Commission thereby facilitated the movement of forged certificates. The question therefore arises whether the Commission was required to obtain the specimens in question and subsequently to send them to the customs authorities of the Member States.

249 Contrary to what the applicant claims, Article 93 of the CCC implementation regulation is not applicable in the present case. That article did not therefore require either the Turkish authorities to send specimens of the stamps and signatures used by their customs offices or the Commission to forward them to the Member States. That conclusion follows from the position of Article 93 in the scheme of the CCC implementation regulation, namely under Subsection 3, entitled 'Methods of administrative cooperation', of Section 1, entitled 'Generalised system of preferences', of the chapter dealing with the preferential origin of goods. That chapter forms part of Title IV of the CCC implementation regulation, which is

concerned with the origin of goods. As is clear from Article 67, read in conjunction with Article 93, of the CCC implementation regulation, the latter provision lays down methods of administrative cooperation applying to trade between the Community and developing countries to which the Community grants tariff preferences. It is therefore clear that Article 93 of the CCC implementation regulation does not affect goods originating in Turkey.

250 Moreover, it can be concluded from Article 20(3)(d), read in conjunction with Article 27(a), of the CCC that, in agreements establishing systems of preferential tariff treatment concluded between the Community and non-member countries, rules on the origin of goods are to be determined in those agreements themselves. In the present case, it is clear that the Association Agreement establishes such a system. It is to be observed that neither the agreement in question nor the decisions of the Association Council implementing its provisions laid down any obligation for specimens of stamps and signatures to be sent from one Contracting Party to another.

251 As for the final stage of customs union, that is, the period after 31 December 1995, Article 29 of Decision No 1/95 provides that mutual assistance between the customs authorities of the contracting parties is governed by the provisions in Annex 7 thereto, which, as far as the Community is concerned, cover matters falling within its competence. The provisions in Annex 7, which lay down exhaustive rules on the methods of administrative cooperation, do not make any reference whatsoever to any obligation to send specimen stamps and signatures. Moreover, Decision No 1/96 of the EC-Republic of Turkey Customs Cooperation Committee, which sets out the implementation provisions for Decision No 1/95, does not impose such an obligation either.

252 That finding is not affected by the applicant's argument that Article 4 of Decision No 1/96 refers to Article 93 of the CCC implementation regulation. Article 4 merely establishes that Community and Turkish customs legislation is to apply in trade in

goods between the two parties, in their respective territories, under the conditions laid down in Decision No 1/96. Chapter 2 of that decision, entitled 'Provisions concerning the administrative cooperation for the movement of goods', sets out the basic conditions and formal requirements to be satisfied by movement of goods certificates issued in commercial trade between the Community and the Republic of Turkey but does not, however, impose an obligation to send stamps and signatures. Moreover, Article 15 of Decision No 1/96 provides that the authenticity and accuracy of certificates are to be checked within the framework of mutual assistance provided for in Article 29 of and Annex 7 to Decision No 1/95.

253 Finally, the only situation in which such a requirement to send the specimens in question is expressly provided for is under the simplified procedure for the issue of certificates (see Article 12(5)(b) of Decision No 1/96 and Article 9a(5)(b) of Decision No 5/72, as amended by Decision No 2/94). Under the provisions applicable, certificates issued in accordance with the simplified procedure must specifically make reference to the simplified procedure (see Article 9a(6) of Decision No 5/72, as amended by Decision No 2/94). The certificates at issue do not mention the simplified procedure at all.

254 With regard to goods imported during the transitional stage of customs union, that is, up to 31 December 1995, neither Decision No 5/72 nor Decision No 4/72 lays down an express requirement that specimen stamps and signatures are to be sent.

255 Clearly, during the entire period covering the importations in question, the Republic of Turkey and the Commission were not under any obligation to send specimens of the stamps and signatures used by their customs authorities. Accordingly, the Commission could not have been required to send the specimens in question to the customs authorities of the Member States.

256 That finding is not affected by the applicant's argument concerning the applicability of Regulation No 3719/88. In that connection, it is sufficient to observe that Article 1 of Regulation No 3719/88, concerning its scope, provides that the regulation applies to certificates provided for in regulations that are specifically listed in that article. Clearly, neither the Association Agreement nor its implementation provisions are referred to. Similarly, none of the relevant provisions for the implementation of the Association Agreement refers to that regulation.

257 Since the Commission is not under any actual obligation to send specimens of stamps and signatures to the Member States, it must be concluded that this complaint is unfounded.

258 In any event, this complaint is also irrelevant since, as the Commission observed at the hearing, the Republic of Turkey sent the stamps used for A.TR.1 certificates voluntarily.

259 This complaint must therefore be rejected.

(c) Breach of the obligation to warn importers in good time

Arguments of the parties

260 The applicant criticises the Commission for having breached its obligation to warn importers in good time deriving from the *De Haan* case-law (Case C-61/98 *De Haan*

[1999] ECR I-5003, paragraph 36). That case-law imposed on the Commission an obligation to warn importers in good time where it has been informed of irregularities concerning imports of goods from a non-member country. The applicant acknowledges that, in *Hyper* v *Commission*, paragraph 126, the Court of First Instance held that, as there is no such provision in Community law, there is no obligation to warn importers of any doubts as to the validity of customs transactions effected by those importers under the system of preferential treatment. However, such an obligation arises where the Commission obtains specific information on a failure to comply with the rules on origin in an exporting country, even if it does not take steps immediately.

261 In the present case, in 1994 or 1995, the European Parliament drew the Commission's attention to irregularities concerning certificates of origin issued in Turkey relating to a number of products, including fruit juice preserves. However, the Commission did nothing about this for years, taking steps only after 20 years in the case of Turkish television sets (the *Turkish televisions* judgment, paragraphs 261 and 262), and even then only after UCLAF had been established and carried out its first on-the-spot investigations.

262 Moreover, the applicant submits that it is clear from the content of a letter from UCLAF of 9 December 1998 to the Coordination Directorate of the European Community in Ankara that the Commission undoubtedly knew as of 1993 that apple juice concentrates were being exported to the European Union with the aid of illegal certificates of origin. In any event, the Commission should have known as a result of the 1993 mission report, which was lodged in connection with the cases which gave rise to the *Turkish televisions* judgment, that similar infringements of the rules on origin were being committed in exports from Turkey of other products, such as fruit juices.

263 Lastly, the applicant submits that, along with the requirement to issue a warning, the Commission was required to provide national authorities with the means to enable

them to check the authenticity of certificates issued by the Turkish authorities, in the same way as was done recently in the case of imports of sugar from Serbia and Montenegro (Notice to importers, OJ 2003 C 177, p. 2).

264 The Commission observes, as a preliminary point, that it was not under any obligation to warn importers in good time. The Commission refers, firstly, to the principles laid down in that regard by the Court of First Instance in *Hyper* v *Commission*, paragraphs 126 to 128, according to which there is no provision in Community law which expressly obliges the Commission to warn importers of doubts as to the validity of customs transactions effected by those importers under the system of preferential treatment. As the Court also stated in *Hyper* v *Commission*, the Commission can be obliged, by virtue of its general duty of diligence, to issue a general warning to Community importers only when it has serious doubts as to the legality of a large number of exports effected under a system of preferential treatment.

265 In the present case, the Commission argues that, contrary to the applicant's assertions, the Commission did not have serious doubts of that nature in 1993 and that it was only as of 1998, after an investigation procedure had been initiated, that it had available to it more specific information on incorrect and forged certificates. With regard to the alleged warning from the European Parliament, the Commission observes that the applicant cannot refer to a single European Parliament resolution on that matter that was published in the Official Journal. Moreover, the Commission states that, firstly, the purpose of parliamentary questions is not to provide the Commission with information but, on the contrary, to seek information from it and, secondly, the applicant did not even state that the European Parliament had taken a view on whether certificates of origin relating to imports of apple juice from Turkey had been forged.

266 Next, the Commission disputes any analogy between the facts in the present case and those in *De Haan*. In that case, according to the Commission, the competent

Netherlands customs authorities were already aware of, or at least seriously suspected, fraud even before the customs transactions giving rise to the import levy had been effected. In the present case, on the contrary, the first suspicions as to the inauthenticity or invalidity of the certificates of origin arose only after the importations at issue had been carried out. The applicant's last importations were carried out on 20 November 1997, whereas the Commission and the Italian customs authorities became aware of the first indications of irregularities only during 1998.

267 Moreover, the Commission states that, even if it had been under an obligation in the present case to warn importers in good time, its failure to issue a warning would not have caused the damage alleged by the applicant, namely that it incurred import duties, since its importations had already ceased by the time the Commission could have begun to warn it. The Commission states that the applicant's argument amounts to an assertion that the Commission should in a general manner have suspected the Republic of Turkey of infringing the Association Agreement, which is not a task that can fall to it.

268 Lastly, the Commission rejects the analogy with the situation concerning imports of sugar from Serbia and Montenegro. The Commission's warning to importers in that case was issued expressly on account of deficiencies in administrative cooperation with the authorities of Serbia and Montenegro. That is not the case with the Turkish authorities, which, on the contrary, cooperated fully with the Commission.

Findings of the Court

269 The applicant criticises the Commission for failing in its duty to warn importers in good time when it was aware of irregularities concerning exports of products originating in Turkey.

270 It is to be noted that, according to well-established case-law, there is no provision in Community law which expressly obliges the Commission to warn importers of doubts as to the validity of customs transactions effected by those importers under the system of preferential treatment (*De Haan*, paragraph 36, and *Hyper* v *Commission*, paragraph 126).

271 It is true that in paragraph 268 of the *Turkish televisions* judgment the Court found that such an obligation on the Commission may, in certain specific cases, be inferred from its general duty of diligence toward traders. In the cases giving rise to that judgment, the Commission was aware of the fact that, or seriously suspected that, the Turkish authorities had made serious errors in their application of the Association Agreement (in particular, by failing to transpose the legislation on the compensatory levy) and that those errors affected the validity of all exports of television sets to the Community.

272 However, it is to be noted that the Court also held in *Hyper* v *Commission* that the Commission can be obliged, under its general duty of diligence, to issue a general warning to Community importers only when it has serious doubts as to the legality of a large number of exports effected under a system of preferential treatment (*Hyper* v *Commission*, paragraph 128).

273 In the present case, the applicant has failed to demonstrate conclusively that the Turkish authorities made serious errors affecting all exports of fruit juice concentrates which contributed to the movement of forged certificates. As is apparent from paragraph 242 above, no analogy can therefore be drawn with the facts which gave rise to the *Turkish televisions* judgment.

274 Moreover, at the time of the importations at issue, the Commission could not have entertained serious doubts concerning imports of fruit juice concentrates from Turkey. It is clear from the correspondence exchanged by the Commission, the Italian authorities and the Turkish authorities that it was only as of the end of 1998, after the Italian customs authorities had discovered the first forged certificate and an investigation procedure had been initiated, that the Commission was in a position to be aware of the existence of forged certificates. Therefore, as the Commission rightly observes, even if the Commission had been required to issue a warning to importers as soon as the initial doubts arose as to the legality of the certificates at issue, it would not have been able to avert the damage suffered by the applicant, given that the last of the importations at issue was effected on 20 November 1997.

275 The applicant has not substantiated its argument that the Commission undoubtedly knew, as of 1993 or 1994, that fruit juice concentrates were being exported from Turkey by means of illegal movement certificates and that argument must therefore be rejected.

276 The same applies to the argument concerning the alleged warning from the European Parliament enjoining the Commission to investigate irregularities in movement certificates issued by the Republic of Turkey affecting a large number of products. In the absence of evidence, that argument must be rejected.

277 Also to be rejected is the applicant's assertion that the Commission should have known, as a result of the UCLAF mission report in the cases which gave rise to the *Turkish televisions* judgment, that similar infringements of the rules on origin had been committed in relation to exports of other products, such as those in the present case. Firstly, the applicant fails to substantiate that assertion and, secondly, the facts investigated by UCLAF in the course of that mission were not connected

with certificates that had been forged by a third party but, rather, with certificates unlawfully issued by the Turkish authorities.

278 Furthermore, with regard to the applicant's assertion that it is clear from the content of a letter of 9 December 1998 to the Coordination Directorate of the European Community in Ankara that the Commission knew, as of 1993, that apple juice concentrates were being exported with the aid of illegal certificates of origin, it is to be noted that that letter, which was lodged by the Commission in response to a written request from the Court, does not contain anything to substantiate that assertion. In fact, in that letter, the Commission requests verification of all exports of fruit juice concentrates for the period from 1993 to 1998 inclusive, but does not, however, express any view as to when it had become aware of the existence of irregularities.

279 Finally, the analogy with the warning issued by the Commission to importers in the context of imports of sugar from Serbia and Montenegro is irrelevant. That warning was based, firstly, on the fact that there were well-founded suspicions that fraud was being perpetrated on a massive scale and, secondly, on deficiencies in administrative cooperation with the competent authorities. However, in the present case, the applicant has not been able to establish similar facts.

280 It follows from the foregoing that the Commission did not breach its obligations by failing to warn the applicant, before the importations at issue were effected, of doubts it may have had as to the legality of the certificates at issue.

281 It follows that this complaint is unfounded and must therefore be rejected.

(d) Incorrect assessment of the facts during the investigations carried out in Turkey

Arguments of the parties

282 The applicant submits that it is apparent from the defence that the Commission did not properly investigate the facts during the mission carried out in December 1998, or that it was not able to carry out a proper investigation as a result of a lack of cooperation on the part of the Turkish authorities, or that it refuses to disclose the results of any such investigation. According to the applicant, the provisions on mutual assistance, in particular Articles 3, 6, 7 and 8 of Annex 7 to Decision No 1/95, provide the Commission with an adequate legal basis for conducting an investigation enabling it properly to establish the facts. The Commission would thus have been able to establish whether the certificates at issue had been issued by the Turkish authorities, registered with the Mersin customs office and bore the latter's stamps, in the same way as if a criminal investigation had been undertaken in respect of any persons responsible for the forgeries. By failing to do so, the Commission committed a serious error.

283 The Commission submits that, contrary to the applicant's assertions, it carried out a proper examination and assessment of all the relevant facts. The applicant fails generally to have regard to the fact that the Republic of Turkey is not a Member State of the Union and that, accordingly, the Commission does not have any powers in Turkey other than those expressly conferred on it by that country.

Findings of the Court

284 With regard to the alleged deficiencies attributable to the Commission resulting from the fact that UCLAF failed to conduct a proper investigation in Turkey, it suffices to state that the applicant is not able to substantiate its argument. Moreover, there is no provision applicable in the present case which obliged UCLAF to adopt

the methods of investigation advocated by the applicant. Lastly, even if it were accepted that UCLAF did not carry out a full investigation in the course of its missions in Turkey, the applicant has failed to demonstrate the need for such an investigation by adducing evidence capable of calling into question the validity of the checks carried out by the Turkish authorities on the accuracy of the certificates at issue.

285 Accordingly, the applicant's complaints concerning the alleged deficiencies attributable to the Commission are unfounded and must therefore be rejected.

4. *Lack of obvious negligence on the part of the applicant and the assessment of risks*

(a) Arguments of the parties

286 Firstly, with regard to lack of negligence on its part, the applicant begins by stating that, in the contested decision (points 53 to 56), the Commission rightly concluded that it had acted in good faith and taken all due care in relation to the A.TR.1 certificates considered to be illegal. The same conclusions apply with regard to the certificates at issue since there is no apparent difference between them and the certificates considered to be illegal. Furthermore, in the contested decision, the Commission did not, rightly, criticise the applicant in any way for failing to act prudently and with due care also in relation to the certificates at issue.

287 Next, the applicant denies that it displayed obvious negligence by failing to ensure that the certificates at issue that were used in the course of its trade relations were

authentic and valid. The applicant states that there were no signs to prompt fears that certificates may have been forged or to lead it to believe that the Turkish authorities were issuing A.TR.1 certificates in relation to goods which were not of Turkish origin. It concluded that the Turkish authorities had, over a long period of time, seriously infringed the rules on certificates of origin only as a result of meetings its representatives held in Turkey, correspondence exchanged by the Commission and the Italian authorities with the Turkish authorities, and the partial access it had to the file.

288 Moreover, the applicant submits that the import transactions effected with the Turkish company Akman were normal business transactions. According to case-law, where imports form part of normal trade practice, it is for the Commission to prove that importers are guilty of obvious negligence (*Eyckeler & Malt* v *Commission*, paragraph 159, and the *Turkish televisions* judgment, paragraph 297).

289 Lastly, in its reply, the applicant disputes the Commission's argument that, were the Court to find that the applicant was in a special situation, the Commission would have to carry out a new assessment as to whether there was no obvious negligence on the part of the applicant. According to the applicant, since the Commission did not adopt a position in the defence on the conditions pertaining to it in the application of Article 239 of the CCC, it is now barred from availing itself of that argument not only in the present proceedings but also in the event that the present action is held to be well founded. Moreover, the applicant considers that if the Commission had concluded in its rejoinder that there had been obvious negligence, either such an argument should have been rejected on the ground that it is time-barred or the applicant should have been given the opportunity to submit further observations. Any other solution would confer an unfair advantage upon the Commission.

290 Secondly, concerning the assessment of risks, the applicant states that it is clear from the circumstances that have been set out that both the Commission and the

Turkish authorities were in serious breach of their obligations and thereby contributed to the fact that allegedly forged but, in reality, irregular certificates were stamped and issued. Those breaches created a situation which was no longer within the realm of normal risk to be borne by any importer but which, on the contrary, justified the conclusion that the applicant was in a special situation within the meaning of Article 239 of the CCC.

291 Moreover, the Commission must, when exercising its powers under Article 239 of the CCC, take account not only of the Community interest in ensuring that the customs provisions are respected, but also of the interest of an importer acting in good faith not to suffer harm which goes beyond its normal commercial risk (*Eyckeler & Malt* v *Commission*, paragraph 133, and *Hyper* v *Commission*, paragraph 95).

292 Firstly, the Commission submits that the part of the contested decision dealing with the certificates at issue which were considered to be forged does not refer at all to the issue of due care or negligence on the applicant's part. According to the Commission, that issue ceased to be relevant once it had been established that there was not a special situation within the meaning of Article 239 of the CCC, in conjunction with Article 905 of the CCC implementation regulation. However, the Commission states that if the Court were to find in the present case that there was a special situation, the Commission would have to carry out an assessment of the factual conditions for the application of Article 239 of the CCC, since the parts of the contested decision (recital 52 et seq.) dealing with the applicant's due care and good faith in relation to the certificates considered to be illegal are not necessarily transposable.

293 Next, the Commission submits that, were they to be true, the applicant's arguments concerning serious errors by the Turkish authorities would disclose a breach of the duty to exercise due care or obvious negligence on the part of the applicant, such as to exclude any reimbursement under Article 239 of the CCC. If the applicant had suspected the Turkish authorities of serious infringements of the rules on certificates

of origin, it should have ensured that the certificates it used in its trade relations were authentic. It was only as of April 1999, that is, almost two years after the last importations at issue had been carried out, that the applicant apprised itself of the manner in which the Republic of Turkey implemented the system of preferential treatment.

294 Lastly, with regard to an examination of the risks, the Commission submits that it is clear from its account that the applicant presented forged certificates of origin, which the Turkish authorities were not involved in producing. In accordance with Article 904(c) of the CCC implementation regulation, that situation does not constitute a special circumstance within the meaning of Article 239 of the CCC but, rather, the realisation of a normal commercial risk against which the applicant should have taken out insurance. The Commission therefore considers that the applicant has not suffered unacceptable discrimination in comparison with other importers.

(b) Findings of the Court

295 The Commission rejected the application for remission of import duties on the ground that 'the circumstances relied on ... [could] not in [its] view ... give rise to a special situation within the meaning of Article 239 of ... Regulation No 2913/92 with regard to that part of the application relating to forged certificates' (recital 39 of the contested decision). As the Commission correctly observes in its written pleadings, in order to conclude that there was not a special situation, it did not, in the part of the contested decision dealing with forged certificates (recitals 18 to 41), express its view on the issue of the applicant's due care or negligence.

296 It follows that the part of the second plea in law alleging that there was no obvious negligence on the part of the applicant is of no consequence and must therefore be rejected (see, to that effect, *Bonn Fleisch Ex- und Import* v *Commission*, paragraph 69).

297 In the light of the foregoing, the second plea in law must be rejected in its entirety.

C — *The third plea in law, alleging infringement of Article 220(2)(b) of the CCC*

1. *Arguments of the parties*

298 The applicant states, firstly, that in the contested decision (recital 18 et seq.) the Commission considered principally whether Article 220(1)(b) of the CCC was applicable, concluding that there were no deficiencies attributable to the Turkish authorities and that Article 220(2)(b) of the CCC was not therefore applicable. According to the applicant, the Commission's conclusions are inaccurate since the Turkish customs administration was well aware of the fact that the 32 certificates at issue, which it had been instrumental in issuing and registering, were illegal.

299 Moreover, the applicant submits that the meetings held by its representatives and the UCLAF investigations in Turkey attest to the fact that, even if it were established that the certificates at issue were not knowingly issued by the Turkish authorities, at the very least they knew or should have known that those certificates existed. As the applicant considers that there can be no doubt that it acted in good faith, it follows that the import duties that were recovered post-clearance must be reimbursed to it.

300 The Commission states as a preliminary point, with regard to the certificates considered to be forged, that it is clear from the contested decision that the conditions for the application of Article 220(2)(b) of the CCC were not met in the present case as it has not been established that the Turkish authorities committed any error, since the certificates at issue were not issued or signed by those authorities but, on the contrary, were forged by third parties (recitals 18 to 28 of the contested decision).

301 The Commission submits, moreover, that, according to established case-law, the fact that the Italian customs authorities initially accepted the forged certificates of origin does not of itself constitute an error within the meaning of Article 220(2)(b) of the CCC.

302 Lastly, the Commission states that since the applicant simply makes assertions that have already been rebutted in connection with the plea in law relating to the application of Article 239 of the CCC, it may refer to its earlier considerations. The Commission concludes that the conditions for the application of Article 220(2)(b) of the CCC are not met in the present case, with the effect that the import duties at issue may be entered in the accounts post-clearance. As a consequence, the action is also unfounded in that regard.

2. *Findings of the Court*

303 Under Article 220(2)(b) of the CCC, three cumulative conditions must be met for the competent authorities to be able to waive subsequent accounting for import duties. Non-collection must have been due to an error by the competent authorities themselves; their error must be of such a kind that it could not reasonably have been detected by a person liable, acting in good faith; and, finally, the latter must have complied with all the provisions laid down by the legislation in force so far as his customs declaration is concerned (see, by analogy, the judgments of the Court of

Justice in Case 161/88 *Binder* [1989] ECR 2415, paragraphs 15 and 16; Case C-348/89 *Mecanarte* [1991] ECR I-3277, paragraph 12; Case C-292/91 *Weis* [1993] ECR I-2219, paragraph 14; and *Faroe Seafood and Others*, paragraph 83; the orders of the Court of Justice in Case C-299/98 P *CPL Imperial 2 and Unifrigo* v *Commission* [1999] ECR I-8683, paragraph 22, and Case C-30/00 *William Hinton & Sons* [2001] ECR I-7511, paragraphs 68, 69, 71 and 72; and the judgment of the Court of First Instance in Case T-75/95 *Günzler Aluminium* v *Commission* [1996] ECR II-497, paragraph 42).

304 It is also to be noted that, according to settled case-law, Article 220(2)(b) of the CCC is intended to protect the legitimate expectation of the person liable that all the factors on which the decision whether or not to proceed with recovery of customs duties is based are correct. However, the legitimate expectations of the person liable attract the protection afforded by that provision only if it was the competent authorities themselves which created the basis for his expectations. Thus, only errors attributable to acts of the competent authorities which could not reasonably have been detected by the person liable create entitlement to the waiver of post-clearance recovery of customs duties (*Mecanarte*, paragraphs 19 and 23).

305 In the present case, it is to be observed that the Commission concluded, in the disputed part of the contested decision, that the conditions for the application of Article 220(2)(b) of the CCC were not met on the ground that no positive error could be discerned on the part of the competent authorities (recitals 25 to 27).

306 It follows from the foregoing that the applicant has not been able to demonstrate that the acts of the competent authorities contributed to the issue or acceptance of the certificates at issue which proved to be forged.

307 Accordingly, this plea in law must be rejected as unfounded.

308 In the light of the foregoing, the action must be dismissed in its entirety.

Measures of organisation of procedure and measures of inquiry required

309 The applicant asks the Court to order a number of measure of inquiry pursuant to Article 64(4) and Article 65 of the Court's Rules of Procedure.

A — *The production of documents contained in the administrative file*

1. *Arguments of the parties*

310 The applicant asks the Court to call upon the Commission to produce all the documents which the applicant considers it was not able to consult when it was given access to the administrative file (see paragraph 72 et seq. above).

311 In order to demonstrate the lack of cooperation by the Turkish authorities, their failure properly to implement the Association Agreement, and the inadequacy of the investigations carried out by the Commission, it seeks, inter alia, production of UCLAF mission reports. In particular, the applicant wishes to obtain the UCLAF report of 23 December 1998, or another date, on the nature, content and results of the investigations carried out in Turkey, in particular at the Mersin customs office.

312 The Commission submits, in essence, that the applicant has been able to consult all the relevant documents and that those requests are therefore of no effect.

2. *Findings of the Court*

313 It is clear from paragraph 99 above that the applicant had access to the UCLAF mission reports of 9 and 23 December 1998 before the contested decision was adopted. Furthermore, those reports were lodged by the Commission in response to a written question from the Court. In those circumstances, that request has no purpose and must therefore be refused.

B — *Other measures of inquiry*

1. *Arguments of the parties*

314 Firstly, in order to demonstrate the requirement to send specimens of the stamps and signatures used by the Turkish customs administration, in particular the stamps and signatures used by the Mersin customs office, and the fact that those specimens were officially sent to the Commission by the Turkish authorities and subsequently forwarded to the authorities of the Member States, the applicant asks the Court to order the Commission and the Italian customs administration to add those specimens to the case-file, together with documents showing that copies of stamps and authorised signatures were sent to the competent authorities of the Member States.

315 Secondly, in order to demonstrate that the 32 A.TR.1 certificates at issue are not forgeries, the applicant asks the Court to instruct an expert, such as the German Customs Police Service in Cologne, to check the authenticity of the original certificates by comparing them with the appropriate original impressions of stamps and signatures.

316 To that end, the applicant also asks the Court either to order the Commission to request or itself directly to request the Ravenna customs authorities to send to the expert appointed the originals of the 103 A.TR.1 certificates referred to in the letter from the Italian administration annexed to the application. The applicant's representative ad litem should also have the opportunity to consult those certificates.

317 The Court should also request the Turkish Government, possibly through the Commission, to send original copies of the certificates at issue in its possession so that they can be compared with the original certificates in the context of the administrative assistance scheme agreed upon.

318 Thirdly, in order to demonstrate that the certificates at issue are authentic documents and were registered by the Mersin customs office, the applicant asks the Court to request the Turkish central customs administration to appoint an official who should bring to the hearing specimens of the stamps and signatures that were used by the Mersin customs office during the period in question, together with the records, and provide information as to whether the certificates at issue are inauthentic or irregular.

319 The applicant relies, in that regard, on the mutual assistance agreed between the Contracting Parties to the Association Agreement. It draws attention, in particular, to the fact that under Article 29 of Decision No 1/95, read in conjunction with Annex 7 thereto and Article 15 of Decision No 1/96, the Community authorities and

the Turkish authorities are to assist each other in checking the authenticity and accuracy of A.TR.1 certificates. Furthermore, Article 12 of Annex 7 to Decision No 1/95 provides that officials of the requested authority are to appear as experts or witnesses before the courts of the other Contracting Party and are to produce documents or certified copies which may be necessary for the proceedings.

320 The Commission considers that the applicant's request for the certificates at issue to be produced and checked by an expert must be refused since the Turkish authorities alone have competence to determine whether certificates are authentic.

321 In the same way, the request for a Turkish customs official to produce evidence should also be considered to be inadmissible since, according to the Commission, the Turkish customs administration has already, on a number of occasions, confirmed its statement concerning the certificates at issue.

322 With regard to the request that documents from the records of the Mersin customs office should be sent, the Commission submits that that is also inadmissible as it is of no consequence, the Commission having stated that it is possible that there were 32 authentic certificates and they served as a model for those responsible for the forgery in order to produce the certificates at issue.

2. *Findings of the Court*

323 With regard to the measures of inquiry requested, according to settled case-law, it is for the Court to appraise the usefulness of measures of inquiry for the purpose of resolving the dispute (Case T-68/99 *Toditec* v *Commission* [2001] ECR II-1443, paragraph 40).

324 In the present case, as the Commission observed, the Turkish authorities clearly stated that the certificates at issue had been forged. Accordingly, in the light of the case-file and in view of the applicant's claims, measures intended to demonstrate that the documents are authentic are neither relevant nor necessary for the purpose of ruling in the present case. It is therefore not appropriate to have recourse to them. The applicant's requests for the certificates at issue to be presented and checked by an expert must therefore be refused.

C — *Evidence offered in support*

1. *Arguments of the parties*

325 In order to substantiate the various facts alleged, the applicant offers the oral testimony of the witness Mr Thomas Nothelfer, employee of Steinhauser, who was responsible during the period in question, inter alia, for purchasing fruit juice concentrates in Turkey, and who had a number of meetings with the Turkish authorities in the course of his visit to Turkey during the first two weeks of April 1999. It also puts forward the statements of Professor Gerd Merke, who accompanied Mr Nothelfer on his trip to Turkey.

326 Firstly, in order to demonstrate that the certificates at issue are authentic documents, the applicant offers the testimony of Mr Nothelfer, according to whom the competent customs officials in Mersin acknowledged that the stamps used were barely legible and that, in spite of their requests, the Turkish central customs authorities had failed for more than a year to supply them with new stamps.

327 Next, in order to demonstrate that the certificates at issue were registered by the Mersin customs office, the applicant offers the testimony of Mr Nothelfer to the effect that he saw those records. Mr Nothelfer could also give evidence that, at a meeting with the competent customs official in Mersin, he asked for a copy of the pages of the register which refer to the numbers of the 32 allegedly forged A.TR.1 certificates to be made available to him but that, after agreeing to do so, the customs official failed to provide him with any copies at all.

328 Furthermore, in order to demonstrate that the certificates at issue are authentic documents, the applicant offers the testimony of Mr Nothelfer and Mr Merke that, at a meeting with the central customs administration in Ankara in April 1999, Mr Nothelfer stated that, according to the information available to him, all the A.TR. 1 certificates (irregular or forged) had been issued and registered by the customs authorities. The representative of the central customs authorities in Ankara replied that a criminal investigation had been ordered in order to verify the documents.

329 Moreover, in order to demonstrate that the Turkish authorities did not understand the content or importance of rules relating to the system of preferential treatment and on the origin of goods, the applicant offers the testimony of Mr Nothelfer and Mr Merke concerning their meeting with Mr Dogran of the Turkish Prime Minister's Office of Economic Affairs. That testimony also serves to demonstrate that UCLAF informed the Turkish authorities only belatedly of the importance of the rules on preferential treatment and the need to comply with them.

330 Lastly, in order to demonstrate that the Commission failed in its duty to warn importers, the applicant puts forward by way of evidence a 'Notice of the European Commission and [a] Notice of the European Parliament' concerning irregularities with certificates of origin in Turkey relating to various products.

331 The Commission considers the evidence offered relating to the records kept by the Mersin customs office is irrelevant. Firstly, the relevant parts of the Association Agreement do not lay down rules on the content of such records. Secondly, the Commission submits that the Turkish customs authorities may have issued the 32 A.TR.1 certificates in respect of batches other than the supplies at issue in the present case.

332 With regard to the discussions the applicant's representatives had with the Turkish authorities, the Commission considers that they enhance the credibility of the conclusions sent by those authorities and are therefore irrelevant. Moreover, the Commission considers that Mr Nothelfer's statement that some of the members of the Prime Minister's staff were not familiar with the legislation on origin and preferential tariffs is irrelevant, the essential point being that the customs services were familiar with those rules.

2. *Findings of the Court*

333 With regard to the evidence offered by the applicant, it suffices to state that, in the light of the foregoing (see, in particular, paragraph 150 et seq., paragraph 161 et seq., and paragraphs 216 and 276 above), it is irrelevant. There is therefore no need to admit it.

Costs

334 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses the action;

2. Orders the applicant to pay the costs.

Vilaras Martins Ribeiro Jürimäe

Delivered in open court in Luxembourg on 6 February 2007.

E. Coulon M. Vilaras

Registrar President

Table of contents