JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
14 December 2004 *

In Case T-332/02,

Nordspedizionieri di Danielis Livio & C. Snc, established in Trieste (Italy),

Livio Danielis, residing in Trieste,

Domenico D'Alessandro, residing in Trieste,

represented by G. Leone, lawyer,

applicants,

v

Commission of the European Communities, represented initially by X. Lewis and R. Amorosi, acting as Agents, and subsequently by X. Lewis, assisted by G. Bambara, lawyer, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

ACTION principally for annulment of decision of the Commission REM 14/01 of 28 June 2002 refusing to accede to the Italian Republic's application for a remission of import duties in favour of the applicants and, in the alternative, for a declaration of remission of part of the customs debt corresponding to those duties,

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

composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 29 June 2004,

gives the following

Judgment

Legal background

1 Community transit is a customs scheme the purpose of which is to facilitate the movement of goods within the Community. The scheme includes an external Community transit procedure and an internal Community transit procedure and,

inter alia, enables goods entering the customs territory of the Community to be transported from the place of introduction into that territory to the place of destination without repeating the customs formalities when moving from one Member State to another. It is clear from Article 1(2) of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit (OJ 1977 L 38, p. 1), which applied at the time of the facts in this case, that essentially it is goods originating in non-member States which are not in free circulation in the Member States within the meaning of Articles 9 and 10 of the EC Treaty (now Articles 23 EC and 24 EC) which move under the external Community transit procedure.

2 Pursuant to Article 12 of that regulation, any goods to be carried under the external Community transit procedure must be covered by a T1 declaration. At least three copies of that declaration, signed by the person who requests permission to carry out that operation or by his authorised representative, the transport document and other supplementary documents must be produced at the office of departure. The copies of the T1 document delivered to the principal or to his representative by the office of departure are to accompany the goods (Article 19(1)).

3 Article 11(a) of Regulation No 222/77 defines 'principal' as the person who, in person or through an authorised representative, requests permission, in a declaration in accordance with the required customs formalities, to carry out a Community transit operation and thereby makes himself responsible to the competent authorities for the execution of the operation in accordance with the rules. The principal is to be responsible for the production of the goods intact at the office of destination within the prescribed time-limit and with due observance of the measures adopted by the competent authorities to ensure identification and the observance of the provisions relating to the Community transit procedure and to transit in each of the Member States in the territory of which carriage of the goods is effected (Article 13(a) and (b)).

4 Article 36(1) of Regulation No 222/77 provides that when it is found that, in the course of a Community transit operation, an offence or irregularity has been

committed in a particular Member State, the recovery of duties or other charges which may be chargeable shall be effected by that Member State in accordance with its provisions laid down by law, regulation or administrative action, without prejudice to the institution of criminal proceedings.

5 Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt (OJ 1987 L 201, p. 15) establishes that a customs debt on importation is incurred, inter alia, by the removal of goods liable to import duties from the customs supervision involved in the temporary storage of the goods or their being placed under a customs procedure which involves customs supervision (Article 2(1)(c)).

6 Article 4 of Council Regulation (EEC) No 1031/88 of 18 April 1988 determining the persons liable for payment of a customs debt (OJ 1988 L 102, p. 5) provides that:

'1.Where a customs debt has been incurred pursuant to Article 2(1)(c) of Regulation ... No 2144/87, the person who removed the goods from customs supervision shall be liable for payment of such debt.

Under the provisions in force in the Member States, the following shall also be jointly and severally liable for payment of such debt:

(a) any persons who participated in the removal of the goods from customs supervision and any persons who acquired or held them;

(b) any other persons who are liable by reason of such removal.

2. The person required to fulfil, in respect of goods liable to import duties, the obligations arising from their temporary storage, or from the use of the customs procedure under which they have been placed, shall also be jointly and severally liable for payment of the customs debt.'

7 The Community customs rules provide for the total or partial repayment of import or export duties which have been paid or for the remission of a customs debt. The conditions for the remission of duties applicable in the present case were laid down by Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986 amending Regulation (EEC) No 1430/79 (OJ 1986 L 286, p. 1). That provision states as follows:

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

...'

8 Article 8(1)(b) of Regulation No 2144/87 provides that, subject to certain exceptions which do not apply in the present case, the customs debt is extinguished by confiscation of the goods.

Facts

9 The applicant, Nordspedizionieri di Danielis Livio & C. Snc ('Nordspedizionieri') is a partnership in liquidation made up of customs agents, with its registered office in Trieste (Italy). The applicants L. Danielis and D. D'Alessandro are two of the partners of that partnership who are jointly liable therewith in an unlimited amount.

10 On 30 October 1991, Nordspedizionieri, at the request of Cumberland Ltd, made a declaration of external Community transit to the customs office at Fernetti (Italy). That declaration concerned the shipment of 1 400 packs, or 12 620 kg, of cardboard boxes, purchased from the Slovenian company Proexim Export-Import, for delivery in Spain. On 5 November 1991, Nordspedizionieri made a declaration of external Community transit identical to that of 30 October, with the exception of the number of packs of cardboard boxes sent, which this time amounted to 1 210, weighing 12 510 kg. On 16 November 1991, that partnership made a third declaration of transit in respect of 1 500 packs of cardboard boxes, weighing 12 842 kg. In all three transactions the goods were transported in a Slovenian lorry bearing the same registration plate.

11 Upon completion of the customs formalities in respect of the third transaction referred to above, the lorry was allowed to continue on its way. Shortly afterwards, the director of the customs office in Fernetti requested the customs police of the parking platform for that area to inspect that lorry's load. The lorry, which had already left the customs zone, was followed and stopped by the customs police several kilometres after crossing the border. The lorry was escorted back to the Fernetti customs post for inspection. The inspection revealed that the cardboard boxes were not empty, as stated in the transit declaration, but filled with cigarettes.

In particular, 8 190 kg of foreign cigarettes originating from outside the Community were discovered, in 819 boxes. The driver of the lorry, C, was arrested and the lorry and its load were impounded, together with the documents found in the driver's possession.

12 The investigation carried out by the Italian customs authorities with the cooperation of the Slovenian authorities revealed that C had taken part in three other similar cigarette-smuggling operations, using the transit declarations completed by Nordspedizionieri on 30 October and 5 November 1991 and one lodged on 16 September 1991 by Centralsped Srl. In the case of the consignments of 30 October and 5 November 1991, the investigation found that, after loads primarily made up of manufactured tobacco had been declared to the Slovenian customs authorities, the same loads were brought into Italy as cardboard boxes. Once the customs formalities had been completed at the Fernetti customs post, the lorry continued its journey to a place of destination different from that stated in the customs declarations, the cargoes having been clandestinely unloaded in Italy.

13 In the course of their investigation into the smuggling operations in question, the Italian authorities discovered a warehouse in Bareggio (Milan, Italy) containing manufactured tobacco. On 8 April 1992, during a search of that warehouse, the police seized 801 boxes of cigarettes, weighing 8 010 kg, which were impounded.

14 On 16 October 1992, the revenue department of the central customs office in Trieste ordered the applicants, in their capacity as principal of the Community transit for the operations of 30 October and 5 November 1991, to pay ITL 2 951 462 300, made up of ITL 2 501 239 200 in duties and ITL 450 223 100 in interest, in respect of 1 700 boxes (17 000 kg) of foreign manufactured tobacco illegally imported and offered for sale in the Community customs territory. Since the

consignment of 16 November 1991 was seized by the Italian customs authorities before it was offered for sale no customs duties were imposed on the applicants in that regard.

15 On 28 October 1992, the applicants challenged the Italian customs authorities' order of 16 October 1992. In a judgment delivered on 12 September 1994, the Tribunale civile e penale di Trieste (Trieste Civil and Criminal District Court) annulled the contested order. By a judgment of 5 September 1996, the Corte d'appello di Trieste (Trieste Court of Appeal) reversed that judgment and ordered Nordspedizionieri and, in the alternative, its partners between them jointly to pay the sum of ITL 2 951 462 300 specified in the contested order. By judgment of 26 January 1999, the Corte suprema di cassazione (Supreme Court of Cassation) dismissed the applicants' appeal against the judgment of the Corte d'appello.

16 On 14 January 1994, the judge of the Tribunale civile e penale responsible for preliminary investigations made an order withdrawing the criminal proceedings which had been brought for trafficking smuggled cigarettes against Mr G. Baldi, a partner of Nordspedizionieri and the author of the three transit declarations issued by that partnership which were used in the smuggling operations in question.

17 On 14 November 2000, the applicants applied to the Commission for a remission of the duties demanded by the Italian customs authorities. On 4 June 2001, the Italian authorities submitted to the Commission an application for the remission of customs duties in the sum of ITL 497 589 687 (EUR 256 983.63).

18 By letter of 18 December 2001, the Commission requested further information from the Italian authorities. By letter of 11 February 2002, the Italian customs authorities confirmed that the duties in respect of which remission had been applied for amounted to ITL 497 589 687.

19 On 28 June 2002, the Commission adopted a decision rejecting the Italian Republic's application of 4 June 2001 for the remission of the customs debt payable by the applicants ('the contested decision'). The Commission found that in the present case there was no special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, within the meaning of Article 13 of Regulation No 1430/79, and therefore the remission of import duties in the sum of EUR 256 983.63 (ITL 497 589 687) was not justified.

Procedure and forms of order sought

20 By application lodged at the Registry of the Court of First Instance on 30 October 2002, the applicants brought the present action.

21 Upon hearing the Report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure. By way of measures of organisation of procedure, the Court requested that the Commission produce certain documents. The Commission complied with that request within the prescribed period.

22 The parties presented oral argument and their replies to the Court's questions at the hearing in open court on 29 June 2004.

23 The applicants claim that the Court should:

— primarily, annul the contested decision and declare that the remission of import duties applied for is admissible in the present case;

— in the alternative, declare that the remission of duties is due in respect of the customs debt relating to the 8 010 kg of foreign manufactured tobacco confiscated by the Italian authorities on 8 April 1992 in the clandestine warehouse in Bareggio;

— order the Commission to pay the costs.

24 The Commission contends that the Court should:

— declare the applicants' claim inadmissible in so far as they challenge the precise amount of the customs debt and ask the Court to uphold their right to the remission of the customs duty in respect of the 8 010 kg of confiscated tobacco;

— dismiss the remainder of the action as unfounded;

— order the applicants to pay the costs.

Law

I — *The claim seeking the annulment of the contested decision*

25 In support of their claim for annulment the applicants put forward, first, a plea in law alleging several material errors in the contested decision and, second, a plea in

law alleging the existence of a special situation and the absence of deception or obvious negligence, within the meaning of Article 13 of Regulation No 1430/79.

A — *The first plea in law, alleging several material errors in the contested decision*

26 The applicants submit that the contested decision contains several errors. Thus they allege, first, that the description of the inspection of the consignment corresponding to the customs declaration of 16 November 1991 and, second, that the assertion that the applicants only applied for the remission of the customs duties in the sum of ITL 497 589 687, are incorrect.

1. The inspection of the operation of 16 November 1991

Arguments of the parties

27 The applicants point out that the fourth paragraph of the contested decision states that the Fernetti customs office caused the customs officers to inspect the consignment corresponding to the declaration of 16 November 1991. They submit that in fact the customs authorities did not carry out the inspection of the goods in the customs zone when the transit declaration was presented but decided to do so after the lorry had left, that is, after the customs formalities had been completed.

28 The Commission states that the lorry transporting the goods which were the subject of the customs declaration of 16 November 1991 was not followed by the Italian police straight after completion of the customs formalities but only when the police realised that the lorry had left.

Findings of the Court

29 It should be pointed out that paragraph 4 of the contested decision merely states: 'The [Fernetti] customs office requested the customs police to inspect the consignment corresponding to [the declaration of 16 November 1991], which turned out to be made up exclusively of cigarettes. The goods were seized and the driver of the vehicle was arrested.' That short statement does not indicate whether the inspection of the consignment took place when the declaration was presented or in the customs zone or before the completion of the customs formalities. Since it is not in dispute that the customs police carried out the inspection at the request of the director of the Fernetti customs post it must be found that paragraph 4 of the contested decision is not vitiated by any error of fact.

30 Therefore, that complaint must be rejected.

2. The amount of the remission of duties applied for

Arguments of the parties

31 The applicants submit that the contested decision erroneously states that they applied for a remission of customs duties in the sum of ITL 497 589 687. In their view, it is clear from their application of 14 November 2000 to the Commission that

they sought the remission of the full amount that they had been ordered to pay on 16 October 1992 by the Italian customs authorities in the sum of ITL 2 951 462 300. The applicants submit in this respect that the material error committed by the Commission is capable of influencing the scope of the dispute in that one of the reasons for granting the remission applied for is precisely the significant size of the customs debt in question and the financial burden it imposes on them. That error does therefore have a bearing on the statement of reasons for the decision. The applicants also submit that the precise determination of the subject-matter of a dispute cannot be the subject of arbitrary assessment and that the precise amount in issue must be correctly identified at all stages of the proceedings.

32 The Commission submits that the complaint alleging an error in the calculation of the customs debt is inadmissible in so far as the applicants use it to challenge the amount of the customs debt assessed by the Italian authorities.

Findings of the Court

33 It is clear from settled case-law that the sole aim of Article 13(1) of Regulation No 1430/79 is to enable traders, when certain special conditions are satisfied and in the absence of deception or obvious negligence, to be exempted from payment of duties due from them and not to enable them to contest the actual principle of a customs debt's being due (see Joined Cases 244/85 and 245/85 *Cerealmangimi and Italgrani* v *Commission* [1987] ECR 1303, paragraph 11; Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam) and JCT Benelux* v *Commission* [1993] ECR I-3873, paragraph 43; and Case T-205/99 *Hyper* v *Commission* [2002] ECR II-3141, paragraph 98).

34 The determination of the existence and precise amount of the debt falls within the competence of the national authorities. Applications submitted to the Commission under Article 13 of Regulation No 1430/79 are not concerned with whether or not the provisions of substantive customs law have been correctly applied by the national customs authorities. The Court notes that the decisions adopted by the national customs authorities may be challenged before the national courts, which may make a reference to the Court of Justice pursuant to Article 234 EC (Case T-195/97 *Kia Motors and Broekman Motorships* v *Commission* [1998] ECR II-2907, paragraph 36, and *Hyper* v *Commission*, paragraph 98).

35 The preceding considerations are not undermined by the applicants' arguments to the effect that, essentially, the precise determination of the financial claim which is the subject-matter of any litigation must be open to debate at any stage of the proceedings. That argument disregards both the division of competences in customs matters between the national authorities and the Commission and the specific rules and limitations on the remission or repayment of customs duties laid down by Article 13(1) of Regulation No 1430/79.

36 In the light of the foregoing, it must be concluded that the complaint alleging an error in the contested decision concerning the amount of the remission applied for by the applicants is inadmissible since by that complaint the applicants challenge the calculation of the precise amount of the customs debt.

37 It must be found that, in any event, the contested decision does not contain any material error in that it states that the applicants sought the remission of ITL 497 589 687, corresponding to the customs duties which the Italian authorities claimed from them. The amount in question is that shown in the Italian Republic's request of 4 June 2001, that sum having been subsequently confirmed, at the Commission's request, by letter of the Italian authorities of 11 February 2002. Contrary to the applicants' submission, the fact that the contested decision did not point out that they had applied for the remission of the full amount of the customs debt demanded of them by the Italian authorities can have no bearing on the

assessment of whether there was a special situation or on the statement of reasons for the contested decision. First, in addition to the customs duties, that customs debt included VAT and consumer tax, which are not covered by the remission procedure laid down by Article 13 of Regulation No 1430/79. Second, since the national authorities made an application to the Commission, and given the exclusive competence of those authorities in fixing the customs debt, the relevant amount in respect of customs duties of which remission was sought was that stated by the national authorities.

38 Accordingly, that complaint must be rejected.

39 Consequently, the first plea in law must be rejected.

B — *The second plea in law, alleging the existence of a special situation and the absence of deception or obvious negligence, within the meaning of Article 13 of Regulation No 1430/79*

1. Preliminary observations

40 It should be noted that, according to settled case-law, Article 13(1) of Regulation No 1430/79 constitutes a general equitable provision designed to cover situations other than those which arose most often in practice and for which special provision could be made when the regulation was adopted (Case 283/82 *Schoellershammer* v *Commission* [1983] ECR 4219, paragraph 7; *Cerealmangimi and Italgrani* v *Commission*, paragraph 10; Case 58/86 *Coopérative agricole d'approvisionnement des Avirons* [1987] ECR 1525, paragraph 22; Case C-446/93 *SEIM* [1996] ECR I-73, paragraph 41; and Case T-239/00 *SCI LIK* v *Commission* [2002] ECR II-2957,

paragraph 44). That provision is intended to be applied where the circumstances characterising the relationship between an operator and the administration are such that it would be inequitable to require the operator to bear a loss which it normally would not have incurred (*Coopérative agricole d'approvisionnement des Avirons*, paragraph 22, and *SCI UK* v *Commission*, paragraph 50).

41 Article 13 of Regulation No 1430/79 makes the remission of import duties subject to the fulfilment of two cumulative conditions, namely the existence of a special situation and the absence of deception or obvious negligence on the part of the economic operator (Case C-370/96 *Covita* [1998] ECR I-7711, paragraph 29; Case C-61/98 *De Haan* [1999] ECR I-5003, paragraph 42; and *SCI UK* v *Commission*, paragraph 45).

42 It should also be noted that it is settled case-law that the Commission has a margin of discretion in adopting a decision applying the general equitable provision under Article 13 of Regulation No 1430/79 (Case T-346/94 *France-aviation* v *Commission* [1995] ECR II-2841, paragraph 34; Case T-50/96 *Primex Produkte Import-Export and Others* v *Commission* [1998] ECR II-3773, paragraph 60; and Case T-290/97 *Mehibas Dordtselaan* v *Commission* [2000] ECR II-15, paragraphs 46 and 78). It must also be pointed out that repayment or remission of import duties, which may be granted only subject to certain conditions and in cases which have been specifically provided for, constitute an exception to the usual body of rules governing import and export and, consequently, that the provisions providing for such repayment or remission are to be interpreted strictly (Case C-48/98 *Söhl & Söhlke* [1999] ECR I-7877, paragraph 52, and Case T-282/01 *Aslantrans* v *Commission* [2004] ECR II-693, paragraph 55).

2. The existence of a special situation

43 The applicants submit that they were in a special situation within the meaning of Article 13 of Regulation No 1430/79. They submit, first, that the Italian authorities deliberately let the smuggling operations in question be committed in order to dismantle the smuggling network; second, that they were the victims of a fraud which exceeded the commercial risks inherent in their professional activities; third, that the customs authorities failed to fulfil their obligations to supervise customs operations; fourth, that it was impossible for them to supervise the transport operations; fifth, and finally, that in the contested decision the Commission did not weigh up the interests at stake.

a) The allegation that the Italian authorities had prior knowledge of the smuggling operations

Arguments of the parties

44 The applicants point out that the obligation in question originates in an investigation carried out by the customs authorities, which were probably aware of the facts.

45 The applicants point out that on 16 September 1991 C carried out an initial journey to Irun (Spain) on the basis of a Community transit document issued by Centralsped. That transit document was discharged upon receipt by the Fernetti customs office, on 20 September 1991, of the fifth copy of the T1 document, and was sent to the Trieste customs district on 5 December 1991. The applicants submit that that first discharge is plainly false.

46 The applicants also note that the consignment of 16 November 1991 was inspected at the request of the Fernetti customs office once the lorry had left the customs zone, which first required the pursuit and interception of the lorry. The applicants submit that consignments are never stopped after leaving the customs zone, except where the customs police are already aware of the existence of smuggling. The applicants point out that that fact leads to the conclusion that the discovery of the cigarettes was not made fortuitously during a random check of the goods, but that the customs police were informed of the true nature of the consignment in question.

47 The applicants also state that on Sunday 17 November 1991, that is, less than 24 hours after the inspection of the lorry, and before C had been questioned, the customs police went to Brescia (Italy) where they searched a building occupied by someone who was subsequently charged for participation in the cigarette-smuggling operations.

48 Moreover, the applicants note that the consignments carried on 30 October and 5 November 1991 were duly declared to the Slovenian customs authorities as boxes of foreign manufactured tobacco. The applicants submit that the Slovenian authorities, in the context of the mutual administrative assistance agreement of 16 November 1965 between Italy and Yugoslavia then in force, informed the Italian authorities of the presence of those sensitive goods in the consignments transported by C.

49 The applicants infer from the circumstances set out above that the Italian authorities were aware that C was smuggling, and that in order to trace and apprehend all the members of that smuggling network they deliberately let offences be committed, allowing two transport operations to be carried out for which the applicants had, in ignorance of the facts and therefore in good faith, issued Community transit certificates. The applicants submit in this respect that the Court of First Instance has held that the remission of import duties was justified where there was fraud in connection with an external Community transit operation in which the customs administration was aware of the illegal act in question (Case T-330/99 *Spedition*

Wilhelm Rotermund v *Commission* [2001] ECR II-1619). Similarly, they point out that the Court of Justice has held that the demands of an investigation conducted by the customs authorities or the police constitute, in the absence of any deception or negligence on the part of the person liable, and where that person has not been informed that the investigation is being carried out, a special situation within the meaning of Article 13(1) of Regulation No 1430/79 (*De Haan*, paragraph 53).

50 The Commission maintains that the appellants' situation is not comparable with that of the applicant in *De Haan*. In that case, the customs authorities were aware of the smuggling and deliberately organised a delivery under surveillance, whereas in the present case, by contrast, the smuggling operation was discovered following a routine customs check upon presentation of the transit declarations to the customs authorities.

Findings of the Court

51 It should be noted that the demands of an investigation aimed at identifying and apprehending the persons who have carried out or are planning a fraud, or the accomplices of those persons, may justify a deliberate omission to inform the principal about the investigation fully or at all, even where the principal is in no way implicated in the perpetration of the fraud (*De Haan*, paragraph 32). It is therefore legitimate for the national authorities deliberately to allow offences or irregularities to be committed, in order better to dismantle a network, identify perpetrators of fraud and obtain or consolidate evidence. However, to place on the person liable the burden of a customs debt arising from those choices relating to the prosecution of offences is inimical to the objective of the equitable provision, in that it puts the person liable in an exceptional situation by comparison with other operators engaged in the same business. Accordingly, the failure to warn the person liable, for

the demands of an investigation conducted by the customs authorities or the police, that such an investigation is taking place constitutes, in the absence of any deception or negligence on the part of the person liable, a special situation within the meaning of Article 13(1) of Regulation No 1430/79 (see *De Haan*, paragraph 53).

52 It is therefore necessary to consider whether there is evidence, as the applicants submit, that the Italian authorities were aware of the cigarette smuggling in question, and nevertheless allowed the operations of 30 October and 5 November 1991 to be carried out.

53 First, the Court considers that the fact that, once the customs formalities in relation to the operation of 16 November 1991 had been completed, the director of the Fernetti customs office requested the customs police to search the lorry, which necessitated its pursuit and interception, is insufficient in itself to prove that the authorities were informed of the true nature of the load. The record of the arrest, made by the Fernetti customs authorities on 16 November 1991, shows that the director of the customs office ordered the vehicle to be searched because he suspected that the cargo transported differed from that which had been declared. The fact that that search occurred after the lorry had left the customs zone does not justify the conclusion that it was not a random search.

54 Next, the Court considers that the investigations and searches carried out by the Italian police at Brescia do not prove either that the Italian authorities had been informed beforehand of the smuggling. It is clear from the record of the search prepared by the Trieste customs police on 17 November 1991 that the police interventions in question followed the discovery of the cigarettes in the lorry searched in Fernetti, the preliminary investigations of the police and the examination of the documentation seized belonging to the driver of the lorry. It should also be noted that, contrary to the applicants' assertion, the driver of the lorry was briefly questioned on 16 November 1991 following his arrest.

55 Furthermore, the duties of which remission was requested do not correspond to that customs operation of 16 November 1991, but to the earlier operations of 30 October and 5 November 1991. The authorities' alleged knowledge of the smuggling must therefore have existed before those dates in order for the *De Haan* case-law to apply.

56 The fact that the declaration of 16 September 1991 was falsely discharged does not prove that the authorities were aware of the smuggling operations of 30 October and 5 November 1991. The contents of the file do not support the conclusion that the Italian customs authorities were aware of that alleged falsification before 16 November 1991. By contrast, the record made by the Fernetti customs authorities of 16 December 1991 states that the smuggling corresponding to the operation of 16 September 1991 was discovered following the statements made by C on 16 November 1991 and the inspection, following those statements, of the Fernetti customs register.

57 As for the argument that the Slovenian authorities informed their Italian counterparts in advance of the presence of cigarettes in the consignments which were the subject of the declarations of 30 October and 5 November 1991, it should be noted that the applicants adduce no evidence in that regard, beyond the existence of an administrative assistance agreement between Italy and Yugoslavia of 16 November 1965 for the prevention and suppression of customs fraud. That agreement did not require the Slovenian authorities to inform the Italian authorities without delay each time a consignment of tobacco left their territory (see paragraph 79 below). Furthermore, in the record made by the Fernetti customs on 16 December 1991, it is stated that on 7 December 1991 the Italian authorities requested information from the Slovenian authorities and that it was following that request that, on 13 December 1991, the Slovenian authorities confirmed the dates on which the consignments in question had left Slovenian customs and informed the Italian authorities that the goods declared were primarily foreign manufactured tobacco.

58 Lastly, the applicants' reference to the judgment in *Spedition Wilhelm Rotermund* v *Commission* is not relevant in the present case. In that case, the special situation arose from the existence of fraudulent practices which could only reasonably be explained by the active complicity of an employee of the customs office at the destination, since the Court concluded in that regard that the Commission was not entitled to confine itself to requiring that the applicant adduce formal and definitive proof of such complicity (*Spedition Wilhelm Rotermund* v *Commission,* paragraphs 56 to 58). The facts were therefore different to those in the present case.

59 It is clear from the foregoing that the applicants have not shown that the Italian authorities were aware of the cigarette smuggling beforehand and that they deliberately permitted the fraud corresponding to the transit operations of 30 October and 5 November 1991 to be committed.

b) The allegation that the smuggling operations of which the applicants were the victims exceeded the commercial risks inherent in their professional activity

Arguments of the parties

60 The applicants submit that they were the victims of a cleverly executed smuggling operation, involving huge sums of money, carried out by an international group of fraudsters. They assert that the exceptional nature of the situation arises also from the seriousness of the facts, the sums of money involved in the crime and the existence of at least four offences carried out in succession by the smugglers. The applicants point out that no irregularity or error was detected in the transport documents or the invoices submitted by the driver of the lorry in order to obtain the

T1 transit documents. They note that the present case is the first and only time that their good faith was not justified in relation to the issue of transit certificates: they had issued hundreds of T1 documents previously in the course of decades of activity involving customs declarations.

61 The applicants point out that the contested decision is flawed in that it describes their business as 'carriers' or 'customs agents'. They assert that transport was not included in the business carried out by Nordspedizionieri and that they could not be described as customs agents or 'agenti in dogana', within the meaning of a contract of agency under Italian law. The applicants thus state that they carried on the business of representation only for customs purposes, acting as customs brokers or 'spedizionieri doganali', in accordance with Italian customs law, in particular Articles 40 and 47 et seq. of Presidential Decree No 43 of 23 January 1973.

62 The applicants note that the capacity to represent others for customs purposes has been recognised by the Community customs rules and they invoke the sixth recital in the preamble to, and Article 3(3) of, Council Regulation (EEC) No 3632/85 of 12 December 1985 defining the conditions under which a person may be permitted to make a customs declaration (OJ 1985 L 350, p. 1), and Article 5 of the Customs Code. They point out that those provisions enable representatives to be instructed to make customs declarations, acting either in their own name but on behalf of others or in the name and on behalf of others and that, pursuant to Article 3 of Italian Law No 1612 of 22 December 1960 on the recognition of customs brokers, such a representative cannot unjustifiably refuse to act.

63 The applicants challenge the argument contained in the contested decision that fraudulent acts committed by third parties are part of the normal commercial risks facing the customs broker and cannot constitute a special situation within the meaning of Article 13 of Regulation No 1430/79. They submit that Article 4(1) of Regulation No 1031/88, which provides that persons who removed the goods from

customs supervision or who participated in that removal are liable for the payment of the customs debt, establishes a liability in tort, which does not apply to the applicants since in the criminal proceedings they were entirely absolved of responsibility. The applicants submit that only Article 4(1) of Regulation No 1031/88 applies in the present case, and not Article 4(2), which applies only where the owner of the goods fails to perform its obligations, such as where it is in liquidation.

64 The applicants note that a professional representative for customs purposes does not assume any commercial risks and therefore that the assertion that the fraudulent operations of third parties are part of the normal commercial risks incurred by the representative for customs purposes has no meaning in law. Moreover, they point out that the case-law of the Court of First Instance, in particular since Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401, is that the innocent use of false customs documents cannot constitute a normal commercial risk. They point out that the Court held in that judgment that, in circumstances in which the Commission had failed to discharge its duty of supervising and monitoring, falsifications carried out in a very professional way exceeded the normal commercial risk which must be borne by the operator (*Eyckeler & Malt* v *Commission*, paragraphs 188 and 189).

65 The applicants submit that *Eyckeler & Malt* v *Commission* constitutes a departure from earlier case-law and the start of new case-law more in line with the need to protect international trade. The applicants refer in that connection to *Primex Produkte Import-Export and Others* v *Commission*, paragraphs 163 and 164, and 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. The *Kaufring* judgment in particular stresses the fundamental principle of legitimate expectations in relation to documents prepared by foreign authorities (paragraphs 216, 218 and 219).

66 The Commission contends that the use of false documents, even in good faith, cannot in itself constitute a special situation and constitutes one of the normal commercial risks inherent in the trader's business. Thus, the fact that the applicants are not responsible for organising the smuggling does not exonerate them from payment of the customs debt.

Findings of the Court

67 It should be noted at the outset that whilst the applicants describe themselves as 'spedizionieri doganali' (customs brokers), paragraph 3 of the contested decision describes Nordspedizionieri as a 'società di trasporti, agente in dogana' (carrier, customs agent). In their letter of 6 May 2002 in reply to the Commission's preliminary objections to the remission of duties applied for, the applicants pointed out that customs brokers only deal with the commercial documents and that, unlike customs agents, they do not organise the transport of the goods and have no power to inspect the consignment. However, whilst the contested decision is flawed in respect of the description of the applicants' profession, the Commission did not rely in its reasoning on any argument relating to the supply of services for the transport of goods. Therefore, the inaccuracy in the decision could not in practice have affected the procedure for the remission of the customs debt.

68 It should be noted that the obligations on the applicants in the present case apply to them not so much because they are customs brokers as because they were the principal for the two external transit operations in question. Under Article 11(a) of Regulation No 222/77, the principal is responsible to the competent authorities for the execution of the Community transit operation in accordance with the rules, and, under Article 13(a) and (b) of that regulation, the production of the goods intact at the office of destination within the prescribed time-limit and with due observance of

the measures adopted by the competent authorities to ensure identification and to observe the provisions relating to the Community transit procedure. In that sense, by assuming the status of principal by their customs declarations of 30 October and 5 November 1991, the applicants assumed a particular responsibility under the Community customs legislation.

69 The applicants' arguments based on their own interpretation of Article 4(1) of Regulation No 1031/88, concerning the determination of the persons obliged to pay a customs debt, cannot be upheld. The applicants submit, essentially, that since they did not participate in the removal of the goods, they are not jointly liable for the payment of the customs duties in question. It suffices to note in this regard that Article 13 of Regulation No 1430/79 does not permit the fact that a customs debt is due to be challenged (*Cerealmangimi and Italgrani* v *Commission*, paragraph 11; *CT Control (Rotterdam) and JCT Benelux* v *Commission*, paragraph 43; and *Hyper* v *Commission*, paragraph 98), since the determination of the existence of the debt lies with the national authorities. Applications submitted to the Commission under Article 13 of Regulation No 1430/79 are not concerned with whether or not the provisions of substantive customs law have been correctly applied by the national customs authorities (*Kia Motors and Broekman Motorships* v *Commission*, paragraph 36).

70 As for the applicants' argument that the innocent and involuntary participation in fraudulent operations carried out by third parties constitutes a special situation within the meaning of Article 13 of Regulation No 1430/79, it should be noted that according to settled case-law the presentation, even in good faith, of documents subsequently found to be falsified does not in itself constitute a special situation justifying remission of import duties (see, to that effect, *Eyckeler & Malt* v *Commission*, paragraph 162; *Primex Produkte Import-Export and Others* v *Commission*, paragraph 140; and *SCI UK* v *Commission*, paragraph 58). In particular, the Court of First Instance has held that the fact that the invoices submitted to a customs broker were fraudulent did not amount to a special situation for the purposes of Article 13 of Regulation No 1430/79, considering that that fact was a commercial risk accepted by a customs broker, who by the very nature of his work,

assumes liability for the validity of the documents which he presents to the customs authorities and, therefore, that any loss caused by wrongful conduct on the part of his clients cannot be borne by the Community (*Mehibas Dordtselaan* v *Commission*, paragraphs 82 and 83).

71 The specific circumstances and characteristics of the offence which were alleged by the applicants, such as the degree of organisation of the wrongdoers, the seriousness of the acts, the sums of money involved or the existence of four offences committed in succession do not undermine that finding (see, to that effect, Joined Cases 186/82 and 187/82 *Magazzini Generali* [1983] ECR 2951, paragraphs 14 and 15; see also *Aslantrans* v *Commission*, paragraph 58). Similarly, the applicants' arguments that Italian customs brokers cannot adjust their fees in line with their assessment of the risk of fraud or refuse, without justification, to act when instructed to do so do not place the applicant in an exceptional situation as compared with other operators in so far as those circumstances affect an indefinite number of operators, namely all Italian customs brokers (see, to that effect, Case C-86/97 *Trans-Ex-Import* [1999] ECR I-1041, paragraph 22; Case C-253/99 *Bacardi* [2001] ECR I-6493, paragraph 56; and *De Haan*, paragraph 52). Finally, the fact that this was the first case of fraud of which the applicants were the victims also does not suffice to give rise to exceptional circumstances within the meaning of Article 13 of Regulation No 1430/79.

72 A different conclusion, namely that there was a special situation, must apply however if there are serious failures by the Commission or the national customs authorities, facilitating the fraudulent use of the documents (*SCI LIK* v *Commission*, paragraph 59; see also, to that effect, *Eyckeler & Malt* v *Commission*, paragraphs 189 and 190; *Primex Produkte Import-Export and Others* v *Commission*, paragraph 163; and *Kaufring and Others* v *Commission*, paragraphs 235 and 302). Since Article 13 of Regulation No 1430/79 is intended to apply where the circumstances characterising the relationship between an operator and the administration are such that it would be inequitable to require the operator to bear a loss which he normally would not have incurred (*Coopérative agricole d'approvisionnement des Avirons*, paragraph 22),

it must be held that such circumstances amount to a special situation within the meaning of that provision and justify remission of the import duties (see, to that effect, *Primex Produkte Import-Export and Others* v *Commission*, paragraphs 163 and 164).

73 Therefore, in the present case, it is necessary to consider whether the applicants have demonstrated the existence of such failures on the part of the Commission or the national customs authorities.

c) The lack of supervision on the part of the customs authorities

Arguments of the parties

74 The applicants point out that the customs authorities did not check the consignments of 30 October and 5 November 1991 and that they stamped the transit certificates with their visa of conformity without inspecting the lorries, thereby giving credence to the veracity of the documents presented by the driver. They submit, in particular, that if the customs authorities suspected the existence of irregularities in the operations of 30 October and 5 November 1991, as they did for the operation of 16 November 1991, they were under a duty to inspect the goods. They also point out that an appropriate deposit, in the sum of ITL 100 000 000, was lodged when the two certificates guaranteeing payment of the customs duties owing in respect of the declared consignment of cardboard boxes were issued. Whether that deposit was appropriate should have been assessed, if necessary, by the customs authorities, which could have inspected the lorry when the transit certificates were issued. Thus, even if the customs authorities and the customs police were not aware of the smuggling, they were also liable by reason of their failure physically to inspect the goods.

75 The applicants also invoke a principle of confidence on the part of the operator in the proper application of Community legislation. They submit that, given the existence of the administrative assistance agreement between Italy and Yugoslavia, referred to above, the Slovenian customs authorities were under a duty to alert the Italian authorities that the consignments in question were sensitive goods, because they are the subject of a valuable monopoly, and that the consequences of any shortcomings in the system for notifying the existence of and preventing smuggling should not have to be borne by the person making the customs declaration. Thus, even if the line of case-law following the judgment in *De Haan* does not apply in the present case, the principle laid down in *Eyckeler & Malt* v *Commission* and Case C-250/91 *Hewlett Packard France* [1993] ECR I-1819 should apply since the applicants have a legitimate expectation that the Community institutions will carry out preventive checks of sensitive goods.

76 The Commission maintains that, whilst it is true that, in certain situations, a fraud committed by the presentation, in good faith, of false documents may justify a remission of the debt, in particular when the Commission or the customs authorities have demonstrated serious shortcomings facilitating the fraudulent use of those documents, in the present case the applicants have adduced no evidence of fault on the part of the Italian authorities.

Findings of the Court

77 The applicants' argument amounts in essence to submitting, first, that the Italian authorities should have physically inspected the goods which were the subject of the transit operations of 30 October and 5 November 1991, and, second, that the Slovenian customs authorities were required to alert their Italian counterparts of the transport of the tobacco in question.

78 First, the Court observes that it is not reasonable to require the national customs authorities to carry out a physical inspection of all cargoes which cross Community borders. The reality of international carriage of goods makes it impossible in practice physically to check all cross-border transport. Similarly, as the contested decision states in paragraph 36, the acceptance of a transit declaration does not preclude the relevant customs authority from carrying out subsequent checks (see, to that effect, Joined Cases 98/83 and 230/83 *Van Gend & Loos* v *Commission* [1984] ECR 3763, paragraph 20). Lastly, contrary to the applicants' submission, the evidence in the file does not lead to the conclusion that the Italian authorities suspected the existence of irregularities in the operations of 30 October and 5 November 1991.

79 Second, the administrative assistance agreement for the prevention and suppression of customs fraud between Italy and Yugoslavia of 16 November 1965 did not require the Slovenian customs authorities to inform the Italian customs authorities without delay of all consignments of tobacco leaving their territory for Italy. The agreement merely provides for mutual assistance and the establishment of close cooperation between the two authorities (Articles 1 and 3), the implementation 'where possible' of special surveillance of the movements of goods and vehicles identified as constituting a significant smuggling operation (Article 4) and the exchange of information in particular in relation to the categories of goods which are the subject of customs infringements (Article 5).

80 In the light of the foregoing, the Court considers that the applicants have not shown that the national customs authorities were guilty of serious shortcomings which facilitated the fraudulent use of the transit certificates in question. Accordingly, it must be held that, in the present case, the presentation by the applicants, in good faith, of documents which were subsequently shown to have been false does not constitute a special situation justifying a remission of customs duties.

d) The impossibility of the applicants inspecting the lorries

Arguments of the parties

81 The applicants state that they operate on the border between Italy and Slovenia, that they delivered Community transit certificates after the lorry left Ljubljana and, consequently, that it was impossible for them to inspect the consignment. The applicants add that the persons making customs declarations cannot ask to inspect the vehicles, primarily because of the speed with which transit operations must be carried out for obvious reasons connected with cross-border trade.

82 The Commission points out that the assessment of whether or not there is a special situation cannot depend on the place, which is an objective factor likely to apply, actually or potentially, to a large number of operators (*Coopérative agricole d'approvisionnement des Avirons*, paragraph 22).

Findings of the Court

83 It is settled case-law that circumstances which might constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79 exist where, having regard to the objective of fairness underlying that provision, factors liable to place the applicant in an exceptional situation as compared with other operators engaged in the same business are found to exist (*Trans-Ex-Import*, paragraph 22; *Bacardi*, paragraph 56; and *De Haan*, paragraph 52).

84 It must be stated that neither operating at a border, rather than at the place of departure of the consignment, nor the alleged impossibility of inspecting the lorry constitutes a factor liable to place the applicants in an exceptional situation as compared with other operators, since those factors affect an indefinite number of operators. Accordingly, they cannot give rise to a special situation within the meaning of Article 13 of Regulation No 1430/79. It should be noted for the sake of completeness that customs brokers, before presenting a customs declaration, are able to request that the customs services check the goods, even if they only do so rarely.

e) The balancing of the interests involved

Arguments of the parties

85 The applicants point out that the Court of Justice has accepted that there is a special situation compared with that of other operators carrying out the same business where the collection of the duties would have financially crippled the operator in question given the extent of the customs claim (*Trans-Ex-Import*). The applicants also observe that the Commission must assess all the facts in order to determine whether they constitute a special situation and must balance the Community interest in ensuring that the customs provisions are respected against the interest of the operator acting in good faith not to suffer harm beyond the normal commercial risk (*Spedition Wilhelm Rotermund* v *Commission*, paragraph 53). The contested decision did not compare the interests at stake, but merely excluded the application of Article 13 of Regulation No 1430/79.

86 The Commission submits that the applicants' argument implies that, before rejecting an application for remission, the Commission should draw up a sort of credit and debit account of the risks for the Community's own resources and those incurred by the operators. However, according to the case-law, the analysis to be carried out is in order to determine whether or not the Commission or the customs authorities committed an error such as to impose an unreasonable burden on the operator.

Findings of the Court

87 It should be noted that, contrary to the applicants' assertion, the Court did not hold in *Trans-Ex-Import* that the fact that the levying of the duties risked the financial destruction of the operator given the amount of customs duties claimed gave rise to a special situation. Whilst the referring court did indeed refer to the Court for preliminary ruling a question as to whether the fact that the levying of customs duty would destroy the operator's business gave rise to a special situation under Article 905(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) (*Trans-Ex-Import*, paragraph 13), the Court merely replied that a finding of a special situation presupposes the existence of factors liable to place the applicant in an exceptional situation compared with that of other operators engaged in the same business (*Trans-Ex-Import*, paragraph 22).

88 Similarly, the applicants' argument that the contested decision is not based on a comparison of the interests at stake cannot be upheld. It should be noted that in applying Article 13 of Regulation No 1430/79 the Commission enjoys a margin of discretion which it must exercise by balancing the Community interest in ensuring that the customs provisions are respected against the interest of the operator acting in good faith not to suffer harm beyond the normal commercial risk (*Eyckeler &*

Malt v *Commission*, paragraph 133, and *Mehibas Dordtselaan* v *Commission*, paragraph 78). It should be noted that, contrary to the applicants' submission, the Commission did not, in the contested decision, merely exclude the application of Article 13 of Regulation No 1430/79, but assessed whether the facts of the case fell within the commercial risk normally faced by customs brokers, and concluded that they did not go beyond the normal commercial risk for that business (see, in particular, paragraph 30 of the contested decision).

89 It follows from the foregoing that the applicants have not succeeded in demonstrating, whether their arguments are considered in succession or as a whole, that the Commission committed a manifest error of assessment in considering that the circumstances of the case did not constitute a special situation within the meaning of Article 13 of Regulation No 1430/79.

3. The existence of negligence or deception

Arguments of the parties

90 The applicants submit at the outset that the order of the preliminary investigating judge of the Tribunale civile e penale di Trieste of 14 January 1994 dismissing the criminal proceedings proves that there was no deception or negligence on their part within the meaning of Article 13 of Regulation No 1430/79. They point out that this is the first and only time that their good faith was not justified in relation to the issue of transit certificates, whereas they had previously issued hundreds of T1 documents in the course of decades of activity involving customs declarations. The applicants state that the transit certificates in question were issued in accordance with standard trade practice, which the customs authorities had never challenged in the past, and

that therefore it was for the Commission to prove obvious negligence on their part (see *Primex Produkte Import-Export and Others* v *Commission*, paragraph 136), as well as to prove that the applicants had acted differently in this case in terms of the procedures for drawing up and issuing the two certificates in question.

91 The applicants challenge the argument in the contested decision that, given their status as habitual makers of customs declarations, they were under an obligation to take all appropriate precautions in connection with the consignment in transit, in particular the obligation, before making the declaration, to check the nature of the goods contained in the lorries. The applicants point out in that respect that the operations were processed at the customs post at the border and therefore 'in line', that is, one lorry behind another at the border crossing, and that, consequently, if the goods were unloaded in the customs area that would hinder the ease of movement of the goods. The applicants also point out that the person making the customs declaration can only request that the goods be inspected if there are specific doubts as to the nature of the goods, because of errors or contradictions in the documents produced, and that it must be authorised by the customs authorities. They also point out that the weight of the lorry carrying the cigarettes was similar to what it would have been if it had in fact been carrying cardboard boxes and was therefore compatible with the nature of the consignment declared in the accompanying transport documents and invoices.

92 The applicants submit that, so far as they were able to do so, on the basis of their professional experience, and by exercising particular care in examining the documents submitted to them, they considered that the lorries were carrying cardboard boxes, as had been the case on numerous other occasions, since those goods were commonly in transit at the Fernetti customs post. Moreover, the applicants submit that the documents in which the transit declarations were made appeared to be in good order, as is confirmed by the fact that the customs authorities stamped them with their visas of conformity.

93 The Commission submits that the applicants' arguments amount to a claim that, notwithstanding that they made the customs declarations, they should not incur any liability. Such a view amounts to a denial of the duty of care owed by the person making the customs declaration and is contrary to the requirements of equity on which the remission procedures are based. The Commission notes that the Court has pointed out the importance of the duty of care of the operator making a customs declaration (*Hewlett Packard France*, paragraph 27), since that duty is essential for determining whether the operator was obviously negligent (Case T-75/95 *Günzler Aluminium* v *Commission* [1996] ECR II-497, paragraph 43). The Commission concludes that the analysis of the contested decision shows that the applicants did not exercise the standard of care required of an experienced operator.

Findings of the Court

94 Article 13 of Regulation No 1430/79 makes the remission of import duties subject to the fulfilment of two cumulative conditions, namely the existence of a special situation and the absence of deception or obvious negligence on the part of the economic operator (*Covita*, paragraph 29; *De Haan*, paragraph 42; and *SCI UK* v *Commission*, paragraph 45). Consequently, it suffices that one of the two conditions is not satisfied for the repayment of the duties to be refused (*Günzler Aluminium* v *Commission*, paragraph 54; *Mehibas Dordtselaan* v *Commission*, paragraph 87; and *Kaufring and Others* v *Commission*, paragraph 220).

95 The Court of First Instance has held that in the present case the Commission did not commit a manifest error of assessment in considering that the circumstances of the case did not constitute a special situation within the meaning of Article 13 of Regulation No 1430/79. Therefore, it is not necessary to examine the condition relating to the absence of deception or obvious negligence.

96 It follows from all the foregoing that the second plea in law is unfounded.

97 Accordingly, the applicants' claim seeking an order annulling the contested decision must be rejected.

II — *The order sought in the alternative, for the remission of part of the customs duties*

Arguments of the parties

98 In the alternative the applicants challenge the rejection, in the contested decision, of their application that part of the customs debt in question be regarded as extinguished following the confiscation of part of the goods subject to customs duties, as provided for by Article 8(1)(b) of Regulation No 2144/87. They point out that in the course of its investigations on 8 April 1992 the Trieste customs police confiscated 8 010 kg of foreign manufactured tobacco in a warehouse in Bareggio, and submit that it is highly probable that the confiscated goods were those which had been transported under cover of the transit declarations issued by the applicants on 30 October and 5 November 1991. The applicants submit that the challenge to the amount of the customs debt constitutes the issue of fact underlying the proceedings, and therefore it cannot be declared inadmissible, in so far as it constitutes the objective issue of the proceedings.

99 The Commission submits that that application is inadmissible in that, according to settled case-law, in an action for annulment the Community Courts can only order a Community institution to adopt measures for the enforcement of a judgment ordering the annulment of a decision.

Findings of the Court

100 By the complaint alleging infringement of Article 8(1)(b) of Regulation No 2144/87 the applicants ask the Court to find, in particular, 'so far as may be relevant', that there should be a remission of duties in respect of the 8 010 kg of foreign manufactured tobacco confiscated in Bareggio.

101 It is settled case-law that Article 13(1) of Regulation No 1430/79 is not intended to be used to challenge the very principle that the customs debt is due (*Cerealmangimi and Italgrani* v *Commission*, paragraph 11; *CT Control (Rotterdam) and JCT Benelux* v *Commission*, paragraph 43; and *Hyper* v *Commission*, paragraph 98). The question of the extinguishment of all or part of the customs debt by confiscation of the goods subject to customs duties, within the meaning of Article 8(1)(b) of Regulation No 2144/87, necessarily relates either to the question of the very existence of the customs debt, or to the determination of its amount. Similarly, it should be noted that applications submitted to the Commission under Article 13 of Regulation No 1430/79 are not concerned with whether or not the provisions of substantive customs law have been correctly applied by the national customs authorities (*Kia Motors and Broekman Motorships* v *Commission*, paragraph 36).

Accordingly, it must be concluded that the question of the extinguishment of the customs debt by confiscation of part of the goods subject to customs duties does not arise under that provision.

102 That conclusion is not undermined by the applicants' argument to the effect that dispute over the amount of the customs debt constitutes the issue of fact underlying the proceedings. That argument fails to take account of the limits and specificity of the mechanism for the remission or repayment of customs debts laid down by Article 13(1) of Regulation No 1430/79.

103 In the light of the foregoing, it must be found that the order sought by the applicants for a declaration that the remission of duties is due in respect of the customs debt in respect of the 8 010 kg of confiscated tobacco must be declared inadmissible.

104 Consequently, the action must be dismissed in its entirety.

Costs

105 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 applicants have been unsuccessful, and the Commission has applied for costs, the applicants must be ordered to bear their own costs and those of the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the applicants to bear their own costs and to pay those of the Commission.**

Lindh García-Valdecasas Cooke

Delivered in open court in Luxembourg on 14 December 2004.

H. Jung P. Lindh

Registrar President

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