JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
19 February 1998 *

In Case T-42/96,

Eyckeler & Malt AG, a company incorporated under German law, established in Hilden (Germany), represented by Dietrich Ehle and Volker Schiller, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Marc Lucius, 6 Rue Michel Welter,

applicant,

supported by

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

intervener,

v

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

defendant,

* Language of the case: German.

APPLICATION for annulment of the Commission decision of 20 December 1995 (K(95) 3391 final) addressed to the Federal Republic of Germany and concerning an application for remission of import duties,

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

composed of: A. Saggio, President, B. Vesterdorf and R. M. Moura Ramos, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 26 November 1997,

gives the following

Judgment

Legal background

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

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

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

3 Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1), provides:

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

4 According to Article 2(1)(a) of Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt (OJ 1987 L 201, p. 15), as amended by Council Regulation (EEC) No 4108/88 of 21 December 1988 (OJ 1988 L 361, p. 2), a customs debt on importation is incurred when goods liable to import duties are placed in free

circulation in the customs territory of the Community. Article 3(a) states that that debt is incurred at the moment when the competent authorities accept the entry of the goods for free circulation.

5 On 12 October 1992 the Council adopted Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1992 L 302, p. 1, hereinafter 'the Customs Code'), which entered into force on 1 January 1994. Article 251(1) of the Customs Code repealed, in particular, Regulations Nos 1430/79, 1697/79 and 2144/87.

6 Article 239(1) of the Customs Code provides:

'Import duties or export duties may be repaid or 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. Repayment or remission may be made subject to special conditions.'

7 Regulation No 3799/86 was repealed by Article 913 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), with effect from 1 January 1994, the date on which Regulation No 2454/92 entered into force.

8 Article 907 of Regulation No 2454/93 provides:

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

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

9 Article 904 of the Regulation provides:

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

...

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

Background to the dispute

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

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

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

13 Pursuant to those obligations, the Council adopted Regulations (EEC) No 3840/90 of 20 December 1990 (OJ 1990 L 367, p. 6) and No 3668/91 of 11 December 1991 (OJ 1991 L 349, p. 3) opening a Community tariff quota for high-quality, fresh, chilled or frozen meat of bovine animals (so-called 'Hilton beef') falling within CN codes 0201 and 0202 and for products falling within CN codes 0206 10 95 and 0206 29 91 (hereinafter 'Hilton beef') in respect of 1991 and 1992.

Only the applicable Common Customs Tariff rate of 20% was payable in respect of meat imported under that quota (hereinafter 'the Hilton quota') (Article 1(2)) of both regulations).

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

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

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

17 Until the end of 1991, the 'Junta Nacional de Carnes' (National Meat Board) was responsible for issuing certificates of authenticity in Argentina. In late 1991/early 1992, responsibility for issuing certificates of authenticity was transferred to the 'Secretaría de Agricultura, Ganadería y Pesca' (Department for Agriculture,

Livestock and Fisheries). Only beef exporters recognised by the Argentine authorities received such certificates of authenticity.

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

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

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

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

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

23 The applicant is a German company which has been importing, *inter alia*, Hilton beef from Argentina for many years. Its commercial interests were represented in Argentina by an independent agency, Multiagrar Representaciones del Exterior (hereinafter 'the agency'). The agency's task was to gather offers from the various slaughterhouses and forward them to the applicant. During the period at issue, the applicant purchased Hilton beef from several Argentine abattoirs, including the undertaking Manufactura de Carnes Vacunas, which was one of its largest suppliers. The investigations subsequently carried out by the Commission apparently revealed, however, that a large proportion of the certificates of authenticity accompanying the goods delivered by that undertaking had been falsified.

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

25 After the aforementioned falsifications were detected, the German authorities sought post-clearance payment of the import duties by the applicant. Between 7 March and 23 August 1994, the applicant received demands for payment totalling DM 11 422 736.45.

26 By letter of 1 March 1995 the applicant thereupon submitted an application to the competent German customs authorities for remission of the import duties (hereinafter 'the application for remission').

27 That application was submitted to the Federal Ministry of Finance. By letter of 25 June 1995, the Ministry asked the Commission to decide whether grant of remission of import duties was justified pursuant to Article 13 of Regulation No 1430/79. Its request was received by the Commission on 5 July 1995.

28 On 2 October 1995 a group of experts composed of representatives of all the Member States met in order to give an opinion on whether the application for remission of import duties was well founded in accordance with Article 907 of Regulation No 2454/93. Since a copy of the applicant's application of 1 March 1995 had not been sent to all the representatives of the Member States before that meeting, the matter was dealt with only provisionally at the meeting. The Commission therefore asked the members of the group of experts to inform it in writing of their definitive position by 25 October 1995 at the latest.

29 By decision of 20 December 1995, addressed to the Federal Republic of Germany, the Commission considered that the application for remission was not justified (hereinafter 'the contested decision').

Procedure and forms of order sought by the parties

30 By application lodged at the Registry of the Court of First Instance on 22 March 1996, the applicant brought an action for the annulment of the contested decision.

31 By application lodged at the Registry of the Court of First Instance on 2 October 1996, the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in support of the applicant. By order of 9 December 1996, the President of the Third Chamber granted that request.

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

33 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure. By letter of 13 October 1997, in the context of a measure of organisation of procedure, it requested the parties to produce certain documents and to reply to certain questions in writing. The applicant and the Commission complied with that request by letters lodged at the Registry of the Court of First Instance on 29 October and 5 November 1997 respectively.

34 The parties presented oral argument and replied to the Court's questions at the hearing on 26 November 1997.

35 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

36 The Commission contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

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

Substance

38 In support of its application, the applicant raises five pleas in law alleging, respectively, erroneous legal basis for the contested decision, breach of the rights of the defence, infringement of Article 239 of the Customs Code, or, in the alternative, of Article 13 of Regulation No 1430/79, breach of the obligation to state reasons and breach of the principle of proportionality.

The first plea alleging erroneous legal basis for the contested decision

Arguments of the parties

39 The applicant claims that the Commission incorrectly based the contested decision on Article 13 of Regulation No 1430/79 when it should have been based on Article 239 of the Customs Code.

40 In the present case, the 'entry in the accounts', that is to say the act by which the competent authorities determined the amount of the import duties, took place after the Customs Code entered into force on 1 January 1994, since the notices of recovery were dated March 1994. It was only after the Customs Code entered into force that the Commission and the German customs authorities became aware that certificates of authenticity had been falsified and, consequently, sought post-clearance recovery of the import duties.

41 Furthermore, it is apparent from the judgment in Joined Cases 212/80 to 217/80 *Salumi and Others* [1981] ECR 2735 that new substantive rules apply to proceedings pending in so far as it follows from their terms and objective that they should apply. By repealing Regulation No 1430/79, the Community legislature intended only the Customs Code to apply from 1 January 1994, even to earlier conduct in respect of which no decision had yet been taken.

42 The choice of the applicable legal rule is important from the point of view of substantive law. Whilst Article 13 of Regulation No 1430/79 requires the existence of 'special situations', Article 239 of the Customs Code also applies in situations resulting from mere 'circumstances'. The conditions for remission on equitable grounds were thus relaxed in keeping with the case-law according to which a decision on grounds of equity should not be subject to excessively strict conditions.

43 Finally, the applicant recalls that, in its application for remission dated 1 March 1995, it claimed that Article 239 of the Customs Code was applicable. Since the Commission had not adopted a decision that was valid from a procedural point of view within the six-month period provided for by Article 907 of Regulation No 2454/93, the German customs authorities should have granted the application for remission in accordance with Article 909 of that regulation.

44 The Commission contends that Article 13 of Regulation No 1430/79 was in force at the material time. The decisive moment for determining the temporal scope of the substantive provision is the initial 'entry in the accounts' (Articles 2 of Regulation No 1430/79 and 236 of the Customs Code).

45 Since that event dates back to the dates of the importations, which took place in 1991 and 1992 respectively, that is to say before the Customs Code entered into force, the contested decision was correctly based on Article 13 of Regulation No 1430/79.

Findings of the Court

46 It is common ground that the importations which gave rise to the dispute took place during 1991 and 1992.

47 According to the rules in force at that time, namely Regulation No 2144/87 (see paragraph 4 above), the customs debt on import was incurred on the dates when the competent authorities accepted the entry of the goods concerned for free circulation.

48 When each importation was made the applicant presented an import declaration to the German customs authorities and paid customs duties at the rate of 20% in accordance with Article 1(2) of Regulations No 3840/90 of 20 December 1990 and No 3668/91 of 11 December 1991, cited above. Initial entries were accordingly made in the accounts of the amount of the import duties, within the meaning of Article 2 of Regulation No 1697/79, in respect of the importations made during 1991 and 1992 and initial clearance was received.

49 The customs debt comprised not only the customs duties, but also the levies at issue (see paragraph 11 above), in so far as the exemption from those levies had indirectly been obtained by presentation, at the time when the import declaration was made, of falsified certificates of authenticity.

50 As the Commission correctly pointed out, the date on which the competent national authorities decided to proceed with post-clearance recovery of the levies is not relevant.

51 Indeed, if reference were made to such a date it would result in similar import operations being treated differently, which would be incompatible with the principle of equal treatment (*Salumi and Others*, cited above, paragraph 14).

52 Furthermore, the effects of any remission of import duties go back to the time when the customs debt was incurred, that is to say the moment when the import declarations were originally accepted.

53 It follows that the application for remission should have been examined in the light of the substantive rules in force at the time when the importations at issue were made and the entry of the goods for free circulation accepted (see, to the same effect, Case C-97/95 *Pascoal & Filhos* [1997] ECR I-4209, paragraph 25). It should thus have been examined in the light of Article 13 of Regulation No 1430/79, notwithstanding the fact that that regulation was repealed when the Customs Code entered into force on 1 January 1994.

54 Since the Customs Code did not provide for any transitional measures, general principles of interpretation must be applied in order to determine its temporal effect.

55 In that respect, the Court has held, *inter alia*, that although procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, this is not the case with substantive rules. On the contrary, the latter are

usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them (*Salumi and Others*, cited above, paragraph 9).

56 There is nothing in the Customs Code to suggest that the substantive rule contained in Article 239 thereof had retroactive effect.

57 It follows from the foregoing that the first plea must be rejected.

The second plea alleging breach of the rights of the defence

Arguments of the parties

58 The second plea has two limbs. In the first limb, the applicant claims that the contested decision is vitiated by breach of an essential procedural requirement in that the Commission failed to grant it the right to be heard during the administrative procedure.

59 In order to ensure legal protection for the applicant, it was not sufficient that it was able to put forward its arguments via the national authorities. It should have been able, during the procedure before the Commission, to put its own case and properly make its views known on the relevant circumstances and, where necessary, on the documents taken into account by the Community institution (Case T-346/94 *France-Aviation* v *Commission* [1995] ECR II-2841, paragraph 32).

60 The applicant first learnt that the Commission had accused it of obvious negligence within the meaning of Article 13 of Regulation No 1430/79 when the defence was submitted. It is clear from the judgment in *France-Aviation* v *Commission*, cited above, that such an allegation involves a complex legal appraisal requiring the Commission to give the applicant the possibility of submitting its views on the matter before a decision is adopted; that was not done in this case.

61 The possibility of exercising the rights of the defence directly before the Commission is particularly important in circumstances such as those in this case where it is alleged that the person concerned is at fault.

62 In the second limb to the plea, the applicant claims that, when a hearing took place, the Commission should have placed on the file all the documents in its possession which might be considered relevant so as to make it possible subsequently to determine whether the allegations that the Commission and the Argentine authorities had failed to comply with their obligations were well founded.

63 According to the applicant, the procedural provisions in Article 878 et seq. of Regulation No 2454/93 reveal serious gaps from the point of view of legal protection, since those provisions do not provide for the following rights and obligations: the applicant's right to enforce its rights directly before the Commission at a hearing, the Commission's obligation to inform the applicant, before adopting its decision, of the basic facts and considerations in order for it to be able to raise arguments to the contrary, and the applicant's right to require production of all the necessary documents.

64 In view of those gaps, the applicant considers that a procedure similar to that provided for in anti-dumping matters should be applied in the present case.

65 Finally, it notes that the meeting between its lawyer and the Commission was merely an informal meeting and, furthermore, that it took place before the application for remission of import duties was submitted to the Commission. That meeting therefore did not offer the same guarantees of legal protection as a proper hearing.

66 Since the contested decision was adopted in breach of the rights of the defence, it should therefore be annulled.

67 The Commission denies infringing the rights of the defence. It recalls that the Rules of Procedure do not currently provide for participation of the person liable in the administrative procedure before the Commission. In that respect, it should be noted that, in its judgment in *France-Aviation* v *Commission*, cited above, the Court did not criticise the provisions of Regulation No 2454/93 or even consider them to be inadequate.

68 A similar procedure to that laid down in respect of anti-dumping measures cannot be applied. The Court has already held that the procedure followed in this field differs considerably from that applicable with regard to anti-dumping duties (Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam)* and *JCT Benelux* v *Commission* [1993] ECR I-3873, paragraph 52).

69 None the less, it should be pointed out that, in contrast to the situation considered in *France-Aviation* v *Commission*, cited above, the contested decision was not based on an incomplete file. Both the Commission and the members of the group of experts provided for by Article 907 of Regulation No 2454/93 had at their disposal not only the file submitted to the Commission by the Member State concerned, in accordance with Article 905(1) of that regulation, but also the applicant's application for remission.

70 In accordance with the requirements laid down in the case-law, all the information which the applicant itself considered essential was on the file at the time when the contested decision was adopted (Case 294/81 *Control Data Belgium* v *Commission* [1983] ECR 911, Joined Cases 98/83 and 230/83 *Van Gend & Loos and Expeditiebedrijf Wim Bosman* v *Commission* [1984] ECR 3763 and *CT Control (Rotterdam) and JCT Benelux* v *Commission*, cited above).

71 In this plea, the applicant fails to appreciate the purpose of the procedural guarantees concerning remission of import duties. The sole purpose of those guarantees is to bring to the attention of the Commission the facts and arguments considered relevant by the applicant and not to inform the latter of the reasons on which the Commission might subsequently base its decision.

72 It is true that the person liable must be given an opportunity to put his case on the documents relied on by the Commission in adopting its decision (Case C-269/90 *Technische Universität München* [1991] ECR I-5469 and *France-Aviation* v *Commission*, cited above), but that does not mean that he should also be able to put his case on other documents.

73 In any event, the applicant's lawyer discussed the case with the Commission on several occasions before it was submitted to the latter by the Federal Republic of Germany. During those discussions, the applicant had already expressed its view on the remission of import duties in the light of its own special situation.

Findings of the Court

74 First, it should be pointed out that the administrative customs procedure for the remission of import duties involves two separate stages. The first is at national

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

75 Regulation No 2454/93 provides only for contact to take place between the person concerned and the national administration, on the one hand, and between the national administration and the Commission, on the other (*France-Aviation* v *Commission*, cited above, paragraph 30). Thus, according to the rules in force, the Member State concerned is the Commission's only interlocutor. In particular, the procedural provisions in Regulation No 2454/93 do not confer any right on the person liable to be heard during the administrative procedure before the Commission.

76 However, according to settled case-law, respect for the rights of the defence in all proceedings which are initiated against a person and are liable to culminate in a measure adversely affecting that person is a fundamental principle of Community law which must be guaranteed, even in the absence of any rules governing the procedure in question (Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, paragraph 21, Joined Cases C-48/90 and C-66/90 *Netherlands and Others* v *Commission* [1992] ECR I-565, paragraph 44, and Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885, paragraph 39).

77 In view of the margin of assessment enjoyed by the Commission in adopting a decision pursuant to the general equitable provision contained in Article 13 of Regulation No 1430/79, it is all the more important that respect for the right to be heard is guaranteed in procedures for the remission or repayment of import duties

(*France-Aviation* v *Commission*, cited above, paragraph 34, and, to the same effect, *Technische Universität München*, cited above, paragraph 14).

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

79 In competition matters, it is settled case-law that access to the file is itself closely bound up with the principle of respect for the rights of the defence. Indeed, access to the file is one of the procedural guarantees intended to protect the right to be heard (Joined Cases T-10/92, T-11/92, T-12/92 and T-15/92 *Cimenteries CBR and Others* v *Commission* [1992] ECR II-2667, paragraph 38, and T-36/91 *ICI* v *Commission* [1995] ECR II-1847, paragraph 69).

80 That case-law is capable of being applied to the present case. The principle of respect for the rights of the defence thus requires not only that the person concerned should be placed in a position in which he may effectively make known his views on the relevant circumstances, but also that he should at least be able to put his own case on the documents taken into account by the Community institution (*Technische Universität München*, paragraph 25, and *France-Aviation* v *Commission*, paragraph 32).

81 Furthermore, since the applicant alleges that the Commission committed serious breaches of its obligations to monitor the Hilton quota, the Court considers that in order for the right to be heard to be exercised effectively the Commission must provide access to all non-confidential official documents concerning the contested decision, if requested to do so. Indeed, documents which the Commission does not consider to be relevant may well be of interest to the applicant. If the

Commission could unilaterally exclude from the administrative procedure documents which might be detrimental to it, that could constitute a serious breach of the rights of the defence of a person seeking remission of import duties (see, to the same effect, *ICI* v *Commission*, cited above, paragraph 93).

82 In the present case, the Federal Ministry of Finance concluded in its opinion on the application for remission, issued when the file was submitted to the Commission, that there was neither negligence nor deception on the part of the applicant.

83 It is alleged for the first time in the contested decision that the applicant failed to exercise due care by omitting to adopt all the necessary safeguards concerning its contractors and intermediaries in Argentina. In particular, the applicant did not itself check the circulation of the certificates of authenticity issued to it (22nd recital in the preamble to the decision) even though it had the resources to take precautions (16th recital).

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

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

86 During the procedure before it, the Commission did not give the applicant an opportunity to put its case and effectively make its views known on the relevant circumstances relied on against it as the basis for the contested decision.

87 Although the applicant's lawyer did have discussions with the Commission, those discussions took place before the application for remission was submitted to the Commission. They were not, therefore, capable of satisfying the fundamental purpose of the right to be heard, since the Commission had not adopted a provisional position on the application at the time.

88 It follows that the contested decision was adopted following an administrative procedure which was vitiated by a breach of essential procedural requirements. The plea alleging breach of the rights of the defence is therefore well founded.

The third plea alleging infringement of Article 239 of the Customs Code or, in the alternative, Article 13 of Regulation No 1430/79

Arguments of the applicant and the intervener

89 The applicant claims that the Commission committed manifest errors of assessment when applying the concept of 'circumstances' within the meaning of Article 239 of the Customs Code or 'special situations' within the meaning of Article 13 of Regulation No 1430/79.

90 It considers that the Commission failed to take sufficient account of the flagrant breaches by the Argentine authorities and the Commission of their obligations concerning the application and supervision of the Hilton quota.

91 Both Article 13 of Regulation No 1430/79 and Article 239 of the Customs Code constitute general equitable provisions designed to cover situations other than those which arose most often in practice and for which special provision could be made when Regulation No 1430/79 and the Customs Code were adopted (Joined Cases 244/85 and 245/85 *Cerealmangimi and Italgrani* v *Commission* [1987] ECR 1303, paragraph 10, and C-446/93 *SEIM* [1996] ECR I-73, paragraph 41).

92 The applicant alleges that both the Argentine authorities and the Commission failed to comply with their obligations.

— Obligations allegedly not fulfilled by the Argentine authorities

93 The applicant claims that, under the implementing regulations, the Argentine authorities were required to issue certificates of authenticity guaranteeing the origin of the products at issue. Those certificates should have been issued by an issuing body with all the guarantees necessary to ensure the proper operation of the Hilton quota.

94 Since they were the subject of an international agreement signed by the Community, the guarantees provided by the Argentine authorities as regards the drawing up of certificates of authenticity form part of the Community legal order. The applicant, as an importer, was therefore entitled to assume that they would be respected.

95 The applicant criticises the Argentine authorities *inter alia* for (1) designating a new body empowered to issue certificates of authenticity in 1991, thus creating confusion as to the respective powers of the old and the new bodies, (2) providing slaughterhouses with blank, unnumbered certificates of authenticity, (3) failing to issue forms printed on watermarked paper, which made falsification easier, (4)

failing to check the certificates of authenticity for quantity and conformity of signature when the goods were exported, and (5) failing to check that the meat was, in fact, Hilton beef.

— Obligations allegedly not discharged by the Commission

96 The applicant claims that the Council entrusted the Commission with the task of properly organising and monitoring the operation of the Hilton quota and, in particular, laying down in the implementing regulations, provisions guaranteeing the nature, origin and source of the goods.

97 Three obligations arise from this main duty. According to the applicant, the Commission should, first, have ensured that the undertakings given by the Argentine authorities concerning the issue of certificates of authenticity were respected (see, for example, Article 2(5) and Articles 3 and 4 of Regulation No 3884/90 of 27 December 1990, cited above), which it failed to do. Second, it should have involved the Member States to as great an extent as possible in monitoring the system. Third, it was itself obliged to ensure that the import system was respected, in accordance with the principle of good administration and the duty of care.

98 The applicant claims, *inter alia*, that the Commission failed to forward to the national authorities the names and specimen signatures of the persons empowered to issue certificates of authenticity. Nor did it publish those details in the *Official Journal of the European Communities*. Finally, it failed to inform the national authorities of the serial numbers of the certificates of authenticity which should have been notified to it by the Argentine authorities.

99 Those failures prevented the competent national authorities from effectively checking the validity of the certificates of authenticity when the goods were imported. In the majority of cases, the falsifications could have been detected by simply comparing the signatures.

100 Furthermore, the Commission itself failed properly to monitor imports of Hilton beef. Both the Argentine authorities and the competent authorities of the Member States provided the Commission every 10 days or at the latest, after 14 days, with information concerning the quantities of Hilton beef exported and imported respectively with certificates of authenticity. On the basis of those lists, the Commission would have been able to carry out a regular comparison of the quantities exported from Argentina with a certificate of authenticity and the quantities placed in free circulation in the Community. However, it failed to do so.

101 Furthermore, in 1989 it was already able to establish that the quota was being exceeded to a significant extent. If it had investigated those irregularities at that stage, it would have been possible to prevent the importation of excess quantities linked to the falsification of the certificates of authenticity in 1991 and 1992. Its lack of care at the time is confirmed by the fact that it did not react to suspicions concerning irregularities which, according to the Director of the Zollkriminalamt Köln (Customs Fraud Office, Cologne), already existed in 1985.

102 The failure by the Commission and the Argentine authorities to comply with those obligations constitutes either a circumstance within the meaning of Article 239 of the Customs Code, or a special situation within the meaning of Article 13 of Regulation No 1430/79, which should result in remission of the import duties.

103 Commercial risk does not encompass the falsifications at issue in the present case. The infringements attributable to the Argentine authorities and the Commission are, individually and as a whole, so serious that they far exceed such a risk. The judgment in *Van Gend & Loos and Expeditiebedrijf Wim Bosman* v *Commission*, cited above, cannot be applied to the present case for several reasons. First,

falsification of certificates of authenticity was made possible as a result of those infringements. Second, even by exercising the greatest care, the applicant would have been unable to protect itself against falsification by exporters. Third, it was entitled to assume that the certificates of authenticity were valid.

104 It is also incorrect to claim, with reference to Article 904(c) of Regulation No 2454/93, that expectations as to the validity of a certificate of authenticity were not protected. That provision simply states that import duties will not be remitted if the only ground in support of the application is the presentation of documents subsequently found to be forged or falsified even where such documents were presented in good faith. In any event, that is not the case here, since the applicant has relied on several other grounds. In that context the Commission incorrectly relies on the judgment in Case 827/79 *Acampora* [1980] ECR 3731.

105 The rules at issue only granted the Commission a margin of assessment, and not a discretion (*Van Gend & Loos and Expeditiebedrijf Wim Bosman* v *Commission*, cited above, paragraph 17). That margin of assessment should be applied very restrictively in the present case since the circumstances relied on by the applicant constitute, *inter alia*, infringements attributable to the Commission.

106 In response to the Commission's allegation in its defence that the second condition in Article 13 of Regulation No 1430/79 was not satisfied, the applicant claims that it is a new plea which should, as such, be rejected.

107 In any event, it denies that there was any obvious negligence on its part. It considers that it was not able to check the validity of the certificates of authenticity. Since the certificates bore a stamp and were signed, there was no doubt as to their

authenticity. The possibility of falsifications in Argentina had not even been mentioned at the material time. Moreover, the agency which acted as the applicant's intermediary in Argentina was in no way involved in lodging the applications or the issue of the certificates of authenticity.

108 The applicant's trade experience does not mean that it has an obligation to seek out and detect falsified documents. As regards the transfers to an account in the Netherlands, it is customary, in export trade, for sums to be paid into a foreign account specified by the supplier. On that basis, therefore, the conclusion could not have been reached that the goods were accompanied by a falsified certificate of authenticity.

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

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

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

Arguments of the defendant

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

113 It refers to the judgments in Case C-250/91 *Hewlett Packard France* [1993] ECR I-1819, paragraph 46) and in Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465, paragraph 83) and claims that the conditions set out in Article 13 of Regulation No 1430/79 must be assessed in the light of Article 5(2) of Regulation No 1697/79.

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

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

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

117 That approach also follows from Article 4(2)(c) of Regulation No 3799/86 and Article 904(c) of Regulation No 2454/93. According to those provisions, the presentation in good faith of falsified documents does not in itself constitute a special circumstance justifying remission. The fact that the German customs authorities initially accepted the certificates of authenticity as valid could not have led the applicant to entertain legitimate expectations (*Faroe Seafood and Others*, cited above, paragraph 93).

118 The Commission points out that it is clear from the case-law, on the one hand, that the Community does not have to bear the adverse consequences of the wrongful acts of the suppliers of its nationals and, on the other, that in calculating the benefits from trade in goods likely to enjoy tariff preferences, a prudent trader aware of the rules must be able to assess the risks inherent in the market which it is considering and accept them as normal trade risks (*Acampora*, paragraph 8, and *Pascoal & Filhos*, paragraph 59, cited above). In claiming that the Argentine authorities have a 'duty to guarantee', the applicant is thus wrongly attempting to avoid the consequences of that case-law.

119 The grounds of challenge relied on by the applicant are not such as to eliminate or restrict the commercial risk to which it is exposed (see also *Van Gend & Loos and Expeditiebedrijf Wim Bosman* v *Commission*, cited above, paragraphs 16 and 17). The sole aim of the system of supervision was to ensure that only meat imported

within the quotas benefited from the exemption from levies. As regards the obligation to guarantee the origin of the goods and the competent authority's obligation to provide guarantees as to the proper operation of the rules at issue, those obligations cannot be considered a guarantee enjoyed by the importer against any risk of falsification. The Commission was therefore under no obligation *vis-à-vis* traders.

120 The Commission's conduct in supervising the use of the Hilton quota, which is criticised by the applicant, cannot be considered to be a special situation within the meaning of the relevant rules. The Commission expressly rejects the allegations that it was itself responsible for enabling certificates of authenticity to be falsified. Nor is there any causal link between its conduct and the origin of the import levies.

121 In response to the allegations that it failed to do all that it could to prevent irregularities, the Commission also contends that under the system in force during the period in question, it was not informed of the number of certificates of authenticity issued by the Argentine authorities until the end of the calendar year. Therefore, any excess over the quotas could only have been detected towards the end of the year in question or at the beginning of the following year, and could no longer have been prevented.

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

123 Quotas were indeed exceeded in 1989. However, that could be explained by confusion with certificates of authenticity relating to other imports of meat. When the Commission received information, in 1993, concerning falsification of certificates of authenticity, it reacted immediately. There can therefore be no question of gross negligence on its part.

124 In the absence of error by the competent authorities, therefore, the first of the three cumulative conditions set out in Article 5(2) of Regulation No 1697/79 (see paragraph 113 above) is not satisfied.

125 The second condition, namely that the person liable acted in good faith, is not satisfied either. Contrary to what the applicant claims, the 17th and 21st recitals in the preamble to the contested decision already mention lack of care on the applicant's part.

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

127 The Commission has doubts as to the accuracy of the applicant's claim that it had no possibility at all of checking the validity of the certificates. First, it points out that the applicant was represented in Argentina by an agency. Next, having regard to its trade experience as an importer of beef and its familiarity with the quota system in force, the applicant was in a position to take steps to prevent the use of falsified certificates of authenticity.

128 Finally, the Commission points out that the applicant made several transfers to a company established in the Netherlands, a subsidiary of an Argentine company which has now disappeared. Admittedly, the suppliers may have wished for payment to be made to foreign bank accounts. However, it is unusual for an importer to pay for goods delivered by an exporter by transfers to an account held by another person, when it is not certain that the recipient of the payment actually exists. Furthermore, the falsifications were, to a great extent, attributable to the undertaking Manufactura de Carnes Vacunas, one of the applicant's largest suppliers (see paragraph 23 above). In view of those observations, the Commission is doubtful whether the applicant exercised all due care.

Findings of the Court

129 The applicant has claimed that there were not only 'circumstances' within the meaning of Article 239 of the Customs Code, but also, in the alternative, 'special situations' within the meaning of Article 13 of Regulation No 1430/79, which would have justified the Commission granting remission of the import duties.

130 Since Article 13 of Regulation No 1430/79 was in force at the material time (see paragraph 53 above) it is necessary, in the context of this plea, to establish whether the contested decision was adopted in breach of that provision.

131 Article 13(1), as amended by Regulation No 3069/86, provides that 'import duties may be repaid or remitted in special situations other than those referred to in Sections A to D, which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned'.

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

133 The Commission must therefore assess all the facts in order to determine whether they constitute a special situation within the meaning of that provision (see, to that effect, Case 160/84 *Oryzomyli Kavallas and Others* v *Commission* [1986] ECR 1633, paragraph 16). Although it enjoys a margin of assessment in that respect (*France-Aviation* v *Commission*, cited above, paragraph 34), it is required to exercise that power by actually balancing, on the one hand, the Community interest in ensuring that the customs provisions are respected and, on the other, the interest of the importer acting in good faith not to suffer harm beyond normal commercial risk. Consequently, when examining whether an application for remission is justified, it cannot simply take account of the conduct of importers. It must also assess the impact of its own conduct on the resulting situation even if it is at fault.

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

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

136 Although the Court held that Article 13 of Regulation No 1430/79 and Article 5(2) of Regulation No 1697/79 pursue the same aim, namely to limit the post-clearance payment of import or export duties to cases where such payment is justified and is compatible with a fundamental principle such as the protection of legitimate expectations (*Hewlett Packard France*, cited above, paragraph 46), it did not consider that the two provisions could be equated.

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

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

139 The Commission's argument disregards the purpose of the two provisions. Whilst Article 5(2) of Regulation No 1697/79 is intended to protect the legitimate expectation of the person liable that all the information and criteria on which the decision whether or not to proceed with recovery of customs duties is based are

correct (*Faroe Seafood and Others*, cited above, paragraph 87), Article 13 of Regulation No 1430/79 constitutes a general equitable provision, as recalled above. That article would cease to be a general equitable provision if the conditions laid down in Article 5(2) had to be satisfied in every case.

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

— Absence of any deception and obvious negligence

141 The applicant is not accused of any deception. In response to a question from the Court, the Commission expressly confirmed at the hearing that it was not claiming that the applicant was in any way involved in the falsifications at issue.

142 Furthermore, it cannot be held that there was any obvious negligence either. Indeed, it is apparent both from the documents on the file and the oral arguments before the Court that the applicant was not aware of the falsifications or irregularities in the certificates of authenticity until the Commission initiated investigations in 1993 (see paragraph 18 above).

143 As regards the manner in which the certificates were falsified, it should be noted that, as a general rule, two versions of the certificate of authenticity were drawn up in respect of any given export, both bearing the same serial number. In accordance

with Article 4 of the two implementing regulations, both bore a stamp, apparently from the same competent issuing authority, and a signature.

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

145 Furthermore, at the hearing, the Commission cast doubt on the identity of the signatures on the two versions of the certificate.

146 However, a comparison of the signatures in question shows that they are, at first sight, identical, or at least very similar. Likewise, the signatures on the certificates of authenticity delivered to the applicant seem at first sight to correspond to the specimen signatures of the persons empowered to sign which were sent to the Commission by the Argentine authorities in 1991 and 1992. In any event, since the Commission had not circulated those specimen signatures to the Member States or the importers, nor had it published them in the Official Journal, the applicant had no effective means of checking the validity of the signature on the certificate of authenticity upon receipt.

147 According to the summary report drawn up by the Commission, 'the fact that the forms were not numbered in advance, that the number of forms was not taken into account and that exporters completed the forms themselves encouraged' falsification of the documents. In addition, according to the 1993 report, during a period of several months following the replacement of the Junta Nacional de Carnes by the Secretaría de Agricultura, Ganadería y Pesca as the competent body for issuing certificates of authenticity (see paragraph 17 above), some traders took advantage of the fact that the powers and procedures were not clearly set out by abusing the provisions in force.

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

149 As regards the applicant's agency in Argentina, whose task consisted of gathering offers from the various abattoirs and forwarding them to the applicant for approval, it is apparent from the oral argument before the Court that it did not have access to the 'duplicado' version showing lower weights. It only had the certificates accompanying the goods which had, at first sight, been drawn up in due and proper form.

150 In response to the written questions of the Court, the applicant provided an extract from the statements made by the owner of the agency to the Landgericht (Regional Court), Hamburg. According to that document the owner was, at the time, 'entirely unaware of the origin and use of falsified and/or forged certificates of origin by ... Hilton beef exporters', or 'of the existence of periods of conjecture' as regards falsification.

151 In view of all the foregoing, it must be acknowledged that the applicant's failure to detect the falsifications at issue was reasonable, since it was unable to carry out such a check.

152 As regards the methods of payment relied on by the Commission in support of the view that the applicant had acted in bad faith, it appears from the statements made by the owner of the agency to the Landgericht, Hamburg, that the transfers were made by the applicant after the agency had confirmed by fax that it had obtained all the documents for the purpose of dispatch in the prescribed manner.

153 Furthermore, the applicant has established that the transfers to the accounts in the Netherlands were not exceptional. It maintained, without being contradicted by the Commission, that it is customary in international trade for an exporter in a third country to ask for payment to be made to accounts in the Netherlands, Switzerland or the United States.

154 Finally, two observations must be made concerning the prices paid by the applicant for the meat at issue.

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

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

157 Those findings demonstrate the good faith of the applicant at the time of the contested imports.

158 Although it is true that an initial division of the quotas between Argentine abattoirs was published in Argentina, the system of dividing the Hilton quota was not transparent to third parties. According to the summary report, there was a quota market on which the various abattoirs could purchase unused quotas; that was acknowledged by the Commission at the hearing. It has therefore not been established that the applicant was in a position to ascertain the precise quotas allocated to its contractual partners.

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

160 The Commission did not even attempt to furnish such proof. Indeed, in a response to a question raised by the Court to that effect at the hearing, it merely repeated the allegations contained in the contested decision, that the applicant had failed to act with due care by failing to take all necessary precautions with regard to its contractual partners and its intermediaries in Argentina and by not itself checking the circulation of the certificates of authenticity received by it.

161 In view of all the foregoing, it must be held that the applicant's conduct did not constitute obvious negligence, within the meaning of Article 13 of Regulation No 1430/79.

— Existence of a special situation

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

163 In the present case, however, the applicant does not merely claim that, at the time of the importations at issue, it presented falsified documents in good faith. It bases its application for remission primarily on serious failures by the Commission and the Argentine authorities in supervising application of the Hilton quota, which facilitated the falsifications.

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

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

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

167 Furthermore, it is apparent from the 1993 report that the Argentine authorities sent to the Commission, on a more or less regular basis, the lists of certificates of authenticity issued during a period of 10 days before they were sent, setting out, *inter alia*, the Argentine exporter, the recipient in the Community and the gross and net weights. The Argentine authorities also sent the names and specimen signatures of Argentine officials empowered to sign the certificates of authenticity.

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

169 It is clear from the documents on the file and the hearing before the Court that serious failures by the Commission in monitoring application of the Hilton quota occurred during the period at issue.

170 In the first place, for 1991 and 1992, the Commission failed properly and regularly to check the information provided by the Argentine authorities concerning the volumes of goods exported under the quota and the certificates of authenticity issued against equivalent information sent to it by the Member States.

171 Even supposing that such verification was not possible in so far as the Member States' lists did not indicate the serial numbers of the certificates of authenticity in question, the Commission should have asked the Member States to provide that information. In reply to a question from the Court at the hearing, it acknowledged that the existence of the fraud could probably have been detected much earlier, if it had regularly compared the data relating to the importations.

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

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

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

175 Second, as already noted at paragraph 146 above, the Commission omitted to circulate to the Member States the specimen signatures of the Argentine officials authorised to sign the certificates of authenticity or to publish them in the Official Journal. The national authorities were therefore denied a potentially effective means of detecting falsifications in good time. It is clear from the documents before the Court that the Commission itself acknowledged, at the meeting of the group of experts on 2 October 1995, that that omission constituted an error on its part.

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

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

178 It is not disputed that the Commission had become aware of a comparable excess over the quota as early as 1989. At the hearing, it acknowledged that, in that year alone, the Hilton quota had been exceeded by more than 3 000 tonnes.

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

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

181 Finally, it was only after the investigation carried out in 1993 that the Commission took measures in order to improve and strengthen the system of monitoring application of the Hilton quota by adopting Regulation (EC) No 212/94 of 31 January 1994 laying down detailed rules for the application of the import arrangements provided for by Council Regulations (EC) No 129/94 and (EC) No 131/94 for high-quality beef and frozen buffalo meat (OJ 1994 L 27, p. 38).

182 From now on, pursuant to Article 4(1)(c) of Regulation No 212/94, the authority which issues certificates of authenticity in Argentina must undertake to communicate to the Commission each week any information enabling it to verify the entries made on those certificates. Furthermore, pursuant to Article 5(1)(c) of that regulation, the competent authorities for the management of the organisation of the markets in the Member States may only issue an import licence after they are satisfied that all information on the certificate of authenticity corresponds to the information received by the Commission through the weekly communications on the matter. Those new rules thus make regular comparisons of import declarations and export declarations possible.

183 At the hearing, the Commission admitted that, if those new rules had been brought into force after it found that the quota had been exceeded in 1989, it would have been possible to prevent, or at least to limit the extent of, the excess over the quotas in 1991 and 1992.

184 Thus, failure to implement an effective monitoring system in sufficient time, coupled with the other failures in respect of supervision of the Hilton quota in 1991 and 1992, created conditions which enabled the falsifications to persist and to reach the scale observed in the present dispute.

185 It has already been pointed out (see paragraph 155 above) that the market price for Hilton beef sold with a valid certificate of authenticity was normally significantly higher than that of meat sold without a certificate; the difference in price was explained by the fact that levies in the order of DM 10 per kilogram had to be paid in respect of beef imported outside the Hilton quota (see paragraph 11 above).

186 It has also been established (see paragraph 156) that the prices paid by the applicant for the beef imported with falsified certificates of authenticity were of approximately the same level as those charged for Hilton beef accompanied by valid certificates.

187 The applicant therefore claims that, in financial terms, because the purchase price for Hilton beef is higher, even for meat imported with falsified certificates, it has already paid a price which, broadly speaking, includes the contested import levy; that is not disputed by the Commission.

188 It is true that Community law does not normally protect the expectations of a person liable as to the validity of a certificate of authenticity, which is found to

have been forged when subsequently checked, since such a situation forms part of commercial risk (*Van Gend & Loos and Expeditiebedrijf Wim Bosman* v *Commission*, cited above, paragraph 17, *Acampora*, cited above, paragraph 8, *Mecanarte*, cited above, paragraph 24, and *Pascoal & Filhos*, cited above, paragraphs 59 and 60).

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

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

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

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

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

Costs

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

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

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Annuls the Commission's decision of 20 December 1995 addressed to the Federal Republic of Germany and concerning an application for remission of import duties;**

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

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

Saggio Vesterdorf Moura Ramos

Delivered in open court in Luxembourg on 19 February 1998.

H. Jung

Registrar

A. Saggio

President