JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
29 January 1998 *

In Case T-113/96,

Édouard Dubois et Fils, a company incorporated under French law, whose registered office is in Roubaix (France), represented by Pierre Ricard and Alain Crosson du Cormier, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Marc Feiler, 67 Rue Ermesinde,

applicant,

v

Council of the European Union, represented by Guus Houttuin and Maria Christina Giorgi, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Director-General of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

Commission of the European Communities, represented by Hendrik van Lier, Legal Adviser, and Fernando Castillo de la Torre, of its Legal Service, acting as Agents, with an address for service at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendants,

* Language of the case: French.

APPLICATION for compensation under Article 178 and the second paragraph of Article 215 of the EC Treaty and for an order requiring the Community to make good the damage allegedly suffered by the applicant owing to the completion, as of 1 January 1993, of the internal market in accordance with the Single European Act, and the consequent abolition of the customs agency work in which it had been engaged until that date on French territory,

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

composed of: R. García-Valdecasas, President, J. Azizi and M. Jaeger, Judges,

Registrar: J. Palacio Gonzalez, Administrator,

having regard to the written procedure and further to the hearing on 16 September 1997,

gives the following

Judgment

Facts and legislation applicable

1 Article 13 of the Single European Act (hereinafter 'the Single Act'), which was signed in Luxembourg on 17 February 1986 and in the Hague on 28 February 1986, and came into force on 1 July 1987, supplemented the EEC Treaty by inserting an Article 8a, which, pursuant to paragraph 9 of Article G of the Treaty on European Union, became Article 7a of the EC Treaty, which provides:

'The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article ...

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.'

2 The completion of the internal market required the creation amongst the Member States of the EEC of 'an area without internal frontiers' and thus entailed abolition of frontiers for tax purposes and customs controls within the Community upon expiry of the period fixed by that provision, that is to say by 1 January 1993.

3 It was bound to have a serious effect on the continued exercise of certain economic activities directly connected with the existence of customs and tax controls at internal Community borders.

4 For that reason, it had a particular impact on customs agents who, for reward, carry out on behalf of others the customs formalities required for goods to be taken across borders. In France, 'agents en douane' carry out those formalities on behalf of and in the name of others. 'Commissionnaires en douane' carry out the same formalities on behalf of others but in their own name.

5 As is clear from a Commission Communication to the Council, Parliament and the Economic and Social Committee entitled 'Customs agents: adapting the profession to advent of the single market' (SEC (92) 887 final, hereinafter 'the Commission Communication') various support measures have been taken to take account of the socio-economic consequences of the creation of the internal market for this profession.

6 First, the Member States have consulted, albeit to differing extents, with the professionals concerned and, in many cases, proposed social measures (such as early retirement, retraining, compensation for loss of earnings, relocation assistance and technical assistance with the search for employment) or economic measures (such as allowing employers to set redundancy payments off against tax, allowing longer periods for the payment of value added tax or aid for some firms) (Commission Communication, pages 11 to 13, section III).

7 Second, after the Commission commissioned a study financed by the European Social Fund in 1991 (Commission Communication, pages 6 to 11, section II), the Community adopted three categories of measures.

8 First, the European Social Fund classified customs agents as long-term unemployed, thereby allowing them to benefit from schemes for training and employment support and specific measures, including assistance with career guidance, which it funded (Commission Communication, pages 14 to 16, section IV.1).

9 Second, the Interreg scheme supported the restructuring of the firms affected, the training and reorganisation of their staff, the conversion and refitting of goods-handling sites at frontiers and the creation of replacement jobs (Commission Communication, pages 16 and 17, section IV.2).

10 Third, and in addition to the measures described above, which all fall under the structural funds, measures not financed under the structural funds have been proposed and adopted. For instance, the Council adopted Regulation (EEC) No 3904/92 of 17 December 1992 to adapt the profession of customs agent to the internal market (OJ 1992 L 394, p. 1, hereinafter 'Regulation No 3904/92').

11 The applicant, a public limited company incorporated under French law, whose share capital is FF 47 850 000, employs 1 400 people and has 40 branches and agencies. Its principal business is in the area of freight forwarding and related sectors and, before the completion of the internal market, it acted as an authorised customs agent in 16 establishments at various points on French territory.

12 It states that, in order to prepare itself for the repercussions on its activities as customs agent of the completion of the internal market after 1 January 1993, it has made a considerable effort to implement a development and redeployment strategy.

13 In particular, it has taken advantage of Regulation No 3904/92 and benefited from a decision to grant it ECU 100 000, which enabled it to take over another company in compulsory liquidation (Société Adrien Martin, which then became Adrien Martin International). That acquisition was part of its strategy of redeployment of its activities as customs agent towards other activities, in this case towards services connected with goods coming from and destined for non-Community countries.

14 It claims that, following the completion of the internal market on 1 January 1993, it suffered the almost total and definitive cessation of its activities as a customs agent. It estimates the resultant material damage at FF 112 339 703.

Procedure and forms of order sought by the parties

15 It was against that background that, by application lodged at the Registry of the Court of First Instance on 24 July 1996, the applicant brought this action for damages.

16 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure without any preparatory inquiry.

17 The parties presented oral argument and gave replies to the Court's questions at the hearing in open court on 16 September 1997.

18 The applicant claims that the Court should:

— declare the Council and the Commission liable under the second paragraph of Article 215 of the EC Treaty for the damage caused by the repercussions on its activities as a customs agent of the implementation of the Single Act establishing an area without frontiers between the Member States of the Community from 1 January 1993;

— order the Council and the Commission jointly and severally to pay it the sum of FF 112 339 702 by way of compensation for that damage;

— order the Council and the Commission to pay the costs.

19 The Council contends that the Court should:

— dismiss the application as clearly inadmissible;

— in the alternative, dismiss the application as unfounded;

— order the applicant to pay the costs.

20 The Commission contends that the Court should:

— declare the application inadmissible or dismiss it as unfounded;

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

21 The defendants have three objections of inadmissibility to the application, the first two of which have been raised by the Commission and the Council and the third by the Council.

22 By their first objection of inadmissibility, the defendants argue that the application seeks to impute liability to the Community for damage caused by a treaty concluded between Member States. The defendants cite case-law (Case 169/73 *Compagnie Continentale France* v *Council* [1975] ECR 117, paragraph 16; and Joined Cases 31/86 and 35/86 *LAISA and CPC España* v *Council* [1988] ECR 2285, paragraphs 18 to 22) according to which actions seeking compensation for damage which may have been caused by an agreement concluded between Member States or by the Treaties themselves are inadmissible. They take the view that, in this case, the action seeks compensation for damage caused by the implementation of the Single Act.

23 By their second objection of inadmissibility, the defendants argue, first, that, since the application does not identify the act giving rise to the damage, it does not comply with the requirements of Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance in so

far as the subject-matter of the proceedings is not defined sufficiently precisely. Second, since the application does not concern the Single Act alone, it does not make its legal basis clear.

24 By a third objection of inadmissibility, the Council argues that the alleged damage is imputable to the Member States. Inasmuch as the application is to be interpreted as alleging failure to act on the part of the Community institutions, it is inadmissible in that the alleged damage can be attributed, at least to a not insignificant extent, to the Member States, whereas the second paragraph of Article 215 of the Treaty, on which the application is based, allows the issue of liability of only the Community institutions or its servants to be raised.

25 As regards the first objection of inadmissibility, the applicant contends that, although the application refers to the Single Act, it does so not so much as the source of the damage suffered directly by the applicant but as the legislation whose entry into force constituted, for the Community institutions, the source of new obligations to take action essentially in the form of compensatory measures and appropriate measures of adaptation for customs agents. Those measures were either not taken at all or taken only to an insufficient extent.

26 The applicant considers that the second objection of inadmissibility is insubstantial. The defendants have managed perfectly well to identify the harmful act and have rebutted the pleas put forward by the applicant.

27 The applicant does not put forward any argument as regards the third objection of inadmissibility.

Findings of the Court

28 The second objection of inadmissibility should be considered before the first and third objections.

The second objection of inadmissibility

29 Under the first paragraph of Article 19 of the Statute of the Court of Justice, applicable to the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute, and under Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, all applications are to contain the subject-matter of the dispute and a brief statement of the grounds on which the application is based. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary, without any further information. In order to guarantee legal certainty and sound administration of justice it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (order of 28 April 1993 in Case T-85/92 *De Hoe* v *Commission* [1993] ECR II-523, paragraph 20).

30 In order to satisfy those requirements, an application seeking compensation for damage caused by a Community institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons for which the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraph 107; Case T-195/95 *Guérin Automobiles* v *Commission* [1997] ECR II-679, paragraph 21; and Case T-38/96 *Guérin Automobiles* v *Commission* [1997] ECR II-1223, paragraph 42).

31 In this case, the application does meet those minimum requirements. There is no doubt that the application seeks to establish the non-contractual liability of the Community so as to obtain compensation for alleged damage, namely the loss by the applicant of its activities as customs agent, identifiable as business goodwill, and the exceptional development costs associated with that loss. The damage allegedly suffered owing to the disappearance of activities as intra-Community customs agent can be imputed to the Community, the applicant argues. The Community caused the damage, first, by abolishing tax and customs frontiers in implementing the Single Act, and, second, by failing to adopt adequate compensation and support measures to allay the impact of such abolition on the profession in question.

32 According to the applicant, the Community has thereby committed a breach of the principle of equal distribution of public burdens, interference, amounting to expropriation, with property entailing a right to compensation and a sufficiently serious breach of higher-ranking rules of law for the protection of individuals, namely the principle of respect for vested rights and the principle of protection of legitimate expectations.

33 Contrary to the defendants' contention, the application does, therefore, provide formally sufficient details of the harmful act and the legal basis of the claim, so that this objection of inadmissibility is unfounded.

The first and third objections of inadmissibility

34 The Court finds that these two objections of inadmissibility essentially raise the question whether the alleged damage is imputable to the Member States or to the Community institutions. They thus refer to the conditions necessary for Community liability to be incurred, namely the existence of an event giving rise to liability and of a causal link between that event and the alleged damage. Consideration of those points is thus linked to consideration of the substance of the case.

Substance

35 In support of its application, the applicant relies principally on a claim based on the Community's strict liability and, in the alternative, on a claim based on its liability for fault.

Strict liability

Arguments of the parties

36 In support of the main claim based on the strict liability of the Community, the applicant puts forward two pleas.

37 The first plea alleges a breach of the principle of equal distribution of public burdens, derived from French administrative law. Under this principle, compensation may be paid to a person who can prove that, although there is no illegality, he has suffered abnormal, particular and direct damage. In the applicant's view, the implementation of the Single Act led to a breach of the principle of equal distribution of public burdens which caused it to suffer abnormal, particular and direct damage. The implementation of that international treaty entailed the cessation of the specific activities of customs agents in intra-Community trade, and, consequently, the irrevocable loss of the applicant's business and exceptional social, technical and administrative costs. Citing the Commission Communication (page 1, third paragraph) and Regulation No 3904/92, which states in its fifth recital that 'the abolition of customs formalities at the Community's internal borders will abruptly end the intra-Community activities of this profession', it argues that this causal link can hardly be disputed.

38 The second plea alleges interference amounting to expropriation of property, derived from German law: as far as it was concerned, implementation of the Single Act constituted interference amounting to expropriation of property. It refers to the Opinion of Advocate General Sir Gordon Slynn in Case 59/83 *Biovilac* v *EEC* [1984] ECR 4057, at 4091, in which he expressed the view that 'if it were possible for the Community lawfully to expropriate property, then the owner would be entitled to compensation; such compensation could then be awarded in an action based on the second paragraph of Article 215'. The applicant claims that this principle is applicable in its case.

39 The defendants contend that the principal claim is not well founded.

Findings of the Court

40 Under the second paragraph of Article 215 of the EC Treaty, the non-contractual liability of the Community covers damage caused by its institutions or by its servants in the performance of their duties.

41 Primary Community law consists of the Treaties establishing the European Coal and Steel Community, the European Community and the European Atomic Energy Community, and the agreements which supplemented or amended those Treaties, such as the Convention on certain institutions common to the European Communities, the treaties concerning the accession of new Member States, the Single Act and the Treaty on European Union. Those treaties, including the Single Act, are agreements concluded between the Member States in order to establish or modify the European Communities. The Single Act thus constitutes neither an act of the institutions nor an act of the servants of the Community. It cannot, therefore, give rise to non-contractual liability on the part of the Community (Case 169/73 *Compagnie Continentale France* v *Council*, cited above at paragraph 22,

paragraph 16, and Joined Cases 31/86 and 35/86 *LAISA and CPC Espãna* v *Council*, cited above at paragraph 22, paragraphs 18 to 22). Article 178 and the second paragraph of Article 215 of the Treaty, which govern the non-contractual liability of the Community, are also primary law. Under the hierarchy of rules, those provisions cannot be brought to bear on instruments belonging to an equivalent level where this is not expressly provided for.

42 Without there being any need to answer the question whether in Community law the Community can incur non-contractual liability without any fault, it is sufficient to observe in this case that, despite the applicant's assertion that the damage it alleges does not arise from the Single Act but from the failure of the Community institutions to adopt adequate compensation and adaptation measures, the actual thrust of the application is to impute liability to the Community on account of the Single Act itself.

43 It is only the completion of the internal market, with the consequent abolition of customs and tax frontiers and the demise of the profession in question which could possibly be liable to cause abnormal, particular and direct damage to the applicant, and it is the establishment of the internal market which might constitute a breach of the principle of equal distribution of public burdens or interference, amounting to expropriation, with property, entailing the nearly total and definitive loss of this activity and exceptional development costs associated with that loss.

44 That conclusion is inescapable, particularly as the principal claim posits a causal link between the abolition of customs and tax frontiers pursuant to the Single Act and the damage alleged.

45 The pleas relied on in support of the principal claim, alleging strict liability on the part of the Community, are thus based on the abolition of customs and tax frontiers which put an end to the intra-Community activities of customs agents. That causal link is, moreover, not disputed. In fact it is both expressly invoked by the applicant in its application, acknowledged by the Commission and noted by the Council in the fifth recital of Regulation No 3904/92 according to which the abolition of customs formalities at the Community's internal borders will abruptly end the intra-Community activities of this profession.

46 The abolition of customs and tax frontiers, then, is a direct result of Article 13 of the Single Act, which became Article 7a of the EC Treaty, which provides that 'the internal market shall comprise an area without internal frontiers'. It is thus a direct and necessary consequence of that provision. So, the direct and determining cause of the damage occasioned by the abolition of customs and tax frontiers is to be found in Article 13 of the Single Act. However, the measures abolishing customs and tax frontiers taken by the Community or individual states to implement the Single Act do not constitute an independent cause of the alleged damage.

47 It follows that the claim based on the strict liability of the Community seeks to impute liability to the Community for damage whose source is to be found in the Single Act, which is an instrument of primary Community law. It is thus neither an act of the Community institutions nor an act of the servants of the Community in the performance of their duties and cannot, therefore, give rise to strict non-contractual liability on the part of the Community.

48 The main claim, alleging strict liability of the Community is, therefore, inadmissible.

Liability for fault

Arguments of the parties

49 In support of its alternative claim, alleging liability for fault, the applicant argues that the defendants, in implementing the Single Act and in considering the measures taken in the light of its effects or to control certain consequences, committed clear breaches of higher-ranking rules of law protecting individuals. It points, in that connection, to the allegedly inadequate nature of the Community's compensatory measures provided for by Regulation No 3904/92.

50 The higher-ranking rules of law protecting individuals allegedly disregarded by the defendants are the principles of respect for vested rights and protection of legitimate expectations.

51 The applicant points out that the profession of customs agents was specifically recognised by Community law in 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, hereinafter 'Regulation No 3632/85'). Those vested rights were not directly called into question by primary Community law. They were called into question only indirectly, by provisions of secondary Community legislation, in particular those amending the formalities for the declaration of value added tax (hereinafter 'VAT'), the consequence of which in practice was, it is claimed, the abolition of the professional activity of customs agents in intra-Community trade.

52 The applicant considers that in this case the principle of protection of legitimate expectations was contravened in three ways. First, the applicant's fundamental right to exercise its profession was infringed. Second, there were no transitional measures to enable the profession of customs agents to prepare and adapt itself to

the new circumstances resulting from the completion of the single market on 1 January 1993. That failure was, it argues, all the more serious in that the profession had legal obligations to pursue all its old activities right up that date. Third, the Community institutions failed to adopt appropriate measures to make good the specific damage caused to the profession, thereby disregarding the legitimate expectations of those concerned. There was nothing to suggest that, when the measures necessary for the completion of the internal market were adopted, the Community institutions would not adopt specific compensation and support measures.

53 The defendants contend that the second plea is unfounded.

Findings of the Court

54 According to established case-law, in order for the Community to incur non-contractual liability, the applicant must prove the unlawfulness of the alleged conduct of the Community institution concerned, actual damage and the existence of a causal link between that conduct and the alleged damage (Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16; Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 80; Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729, paragraph 44; Case T-336/94 *Efisol* v *Commission* [1996] ECR II-1343, paragraph 30; and Case T-267/94 *Oleifici Italiani* v *Commission* [1997] ECR II-1239, paragraph 20).

55 A closer analysis of the condition requiring unlawful conduct reveals that the application is unfounded for two reasons.

56 First, it should be remembered that omissions by the Community institutions give rise to liability on the part of the Community only where the institutions have infringed a legal obligation to act under a provision of Community law (Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraph 58; and *Oleifici Italiani* v *Commission*, cited above at paragraph 54, paragraph 21).

57 On which legal basis and to which extent, therefore, would the Community be obliged to act and compensate the applicant? First, there is no obligation to do so under the Single Act itself or under any other formal rule of Community law. Second, in the present case, there is likewise no need to investigate whether there is any general principle of law by virtue of which the Community would be obliged to compensate a person who has been subject to a measure expropriating his property or restricting his freedom to enjoy his right to property in such a way as to entitle him to bring an action on the basis of the second paragraph of Article 215 of the EC Treaty. Such an obligation to grant compensation would be conceivable only in relation to acts of expropriation emanating from the Community institutions themselves, since the Community cannot be obliged to make good damage caused by acts which cannot be imputed to it. As explained above, the demise of the profession of intra-Community customs agent is a result of the Single Act, an international treaty adopted and approved by the Member States. Consequently, the conditions for liability to be incurred by the Community have not been met. However, the possibility cannot be excluded that an obligation to provide compensation might arise under the domestic law of the Member State on whose territory the intra-Community customs agent carried out his activities.

58 Second, even if a legal obligation to act had been infringed in this case, that failure would certainly not, in the circumstances, be such as to entail the liability of the Community.

59 In that connection, it should be borne in mind that, if the unlawful act complained of concerns a legislative measure, the liability of the Community can be incurred only if there has been a breach of a higher-ranking rule of law for the protection of individuals. Moreover, if the institution has adopted the measure in the exercise of a broad discretion, the Community cannot be rendered liable unless the breach is clear, that is to say, if it is of a manifest and serious nature (see, for example, Case 5/71 *Zuckerfabrik Schöppenstedt* v *Council* [1971] ECR 975, paragraph 11; Joined Cases 83/76 and 94/76, 4/77, 15/77 and 40/77, *HNL* v *Council and Commission* [1978] ECR 1209, paragraph 6; Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, paragraph 12; Case T-572/93 *Odigitria* v *Council and Commission* [1995] ECR II-2025, paragraph 34; *Exporteurs in Levende Varkens and Others* v *Commission*, cited above at paragraph 54, paragraph 81; and *Oleifici Italiani* v *Commission*, cited above at paragraph 54, paragraph 22).

60 Those criteria also apply in the case of a wrongful omission (Case 50/86 *Grands Moulins de Paris* v *EEC* [1987] ECR 4833, paragraphs 9 and 16; and Case T-571/93 *Lefebvre and Others* v *Commission* [1995] ECR II-2379, paragraph 39).

61 In seeking compensation for damage arising from the alleged insufficiency of the Community's action to assist the profession of customs agents when the single market was established, this application clearly concerns acts of a legislative nature which concern economic policy decisions and allow the Community institutions a broad discretion.

62 It must thus first be determined whether the defendants have acted in breach of a higher-ranking rule of law for the protection of individuals and then, if necessary, whether that breach was sufficiently clear.

63 As regards the principle of the protection of vested rights, it should be noted, first, that Regulation No 3632/85 cited by the applicant merely defines the conditions under which a person may be permitted to make a customs declaration. The Regulation states that the conditions under which a person is entitled to make a customs declaration vary appreciably from one Member State to another, in particular as regards the possibility of making a customs declaration on behalf of another person (second recital). It refers to the existence, in certain Member States, of rules limiting pursuit of the occupation of making customs declarations, either in the name of another person or in one's own name but on behalf of another person, to persons fulfilling certain conditions (sixth recital). On that point it confines itself to stating that it does not prevent such rules' being maintained in force insofar as they concern access to and the pursuit of a specific occupation (sixth recital).

64 It follows that, far from defining and clarifying, in Community law, the pursuit of the profession of customs agent, Regulation No 3632/85 is therefore confined to not altering the relevant rules existing in certain Member States. So, if there are any vested rights, they derive not from Regulation No 3632/85, but possibly only from the relevant rules of some Member States which, in signing and subsequently ratifying the Single Act, have called those rights into question. It should be noted here that the applicant states that it had French Ministerial accreditation pursuant to the French Customs Code, allowing it to exercise the profession of authorised customs agent, as last regulated in French law by a decree of 24 December 1986.

65 Regulation No 3632/85 does not therefore create for the applicant a clear advantage which could be defined as a vested right.

66 Secondly, in cases where the Community authorities have a broad discretion, traders cannot claim a vested right in the maintenance of an advantage which they obtained from the Community rules in issue and which they enjoyed at a given

time (see, for example, Case 230/78 *Eridania* [1979] ECR 2749, paragraph 22; *Biovilac* v *EEC*, cited above at paragraph 38, paragraph 23; Joined Cases 133/85, 134/85, 135/85 and 136/85 *Rau and Others* [1987] ECR 2289, paragraph 18; and Case C-69/89 *Nakajima All Precision* v *Council* [1991] ECR I-2069, paragraph 119).

67 It follows that, even if Regulation No 3632/85 did in practice grant a specific advantage to the professional category of customs agents, the applicant is still not justified in claiming a vested right in the maintenance of that advantage, since the Community institutions are entitled to adapt rules and regulations to the necessary developments which they must undergo. That right of the institutions to undertake adaptations is all the more evident in this case since, as is clear from the first recital of Regulation No 3904/92, the completion of the internal market is a fundamental objective for the development of the Community.

68 As regards the principle of protection of legitimate expectations, the right to rely on this principle extends to any individual who is in a situation in which it is apparent that the Community administration has led him to entertain reasonable expectations (see, for example, *Exporteurs in Levende Varkens and Others* v *Commission*, cited above at paragraph 54, paragraph 148). On the other hand, a person may not plead a breach of this principle unless the administration has given him precise assurances (see, for example, *Lefebvre and Others* v *Commission*, cited above at paragraph 60, paragraph 72).

69 In the present case, the applicant has furnished no evidence to prove or even suggest that the Community institutions had led it to entertain reasonable expectations and that they would adopt appropriate compensatory and adaptive measures.

70 The applicant simply refers in its application to the 'legitimate expectations ... of the entire profession' or states in the reply that 'there was nothing to suggest that, when adopting the measures necessary to complete the internal market, the Community institutions would not take specific compensatory or support measures'. It is thus clearly unable to prove that the defendants caused it to entertain reasonable expectations, in the sense that they would not implement the measures necessary to complete the internal market or would adopt compensatory or support measures.

71 The argument alleging breach of the principle of protection of legitimate expectations is, therefore, unfounded.

72 The Court also finds that the applicant's argument based on the alleged violation of its fundamental right to pursue its professional activity, amounting to a breach of the principle of protection of legitimate expectations, is unfounded.

73 Fundamental rights form an integral part of the general principles of the law, the observance of which the Community judicature ensures. In safeguarding those rights, it must draw inspiration from constitutional traditions common to the Member States, so that measures which are incompatible with the fundamental rights recognised by the constitutions of those States are not allowed in the Community. International treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories can also supply guidelines which should be followed (Case 44/79 *Hauer* [1979] ECR 3727, paragraph 15; and Opinion 2/94 [1996] ECR I-1759, paragraph 33).

74 The freedom to pursue a trade or profession forms part of the general principles of Community law. However, that principle does not constitute an unfettered prerogative, but must be viewed in the light of its social function. Consequently, the freedom to pursue a trade or profession may be restricted, provided that those restrictions correspond to objectives of general interest pursued by the Community and that they do not constitute a disproportionate and intolerable interference which would affect the very substance of the right so guaranteed (Case 265/87 *Schräder* [1989] ECR 2237, paragraph 15; Case C-84/95 *Bosphorus* [1996] ECR I-3953, paragraph 21; and Case T-390/94 *Schröder and Others* v *Commission* [1997] ECR II-504, paragraph 125).

75 As far as the present case is concerned, the completion of the internal market does not affect the existence of the applicant's business or the substance of the freedom to choose a trade or occupation. It does not affect an associated right directly, but only indirectly, because the abolition of certain customs and tax formalities which it entails has a certain impact on how the applicant's business can be exploited and, for that reason alone, on the exercise of the profession. Furthermore, the completion of the internal market is an objective of evident general interest. In the light of the essential aim thus pursued, it does not entail any undue limitation on the exercise of the fundamental right in question.

76 It follows that none of the higher-ranking principles of law referred to by the applicant has been infringed.

77 Finally, it should be added that the alleged failure to take proper action in adopting compensatory and support measures, even if it did exist and even if it was improper, would nevertheless clearly not constitute a serious and flagrant breach

of the principles in question. First, in setting up the internal market and thus in taking account of the adverse effects it is likely to entail, the defendants have a broad discretion and, second, they have adopted a wide range of measures through Regulation No 3904/92. That Regulation makes clear, moreover, in its eighth recital, that these Community measures are merely complementary and are intended to make a useful contribution to the efforts made by the Member States. As is clear from the sixth recital of Regulation No 3632/85, certain Member States, including France, had specific rules regulating the profession of customs agent which Community law, in this case, Regulation No 3632/85, merely seeks not to undermine. It thus seems clear, without even raising the question of subsidiarity, that it was primarily incumbent on the Member States concerned, whose adoption of the Single Act produced the root of the alleged damage, to take any compensation or support measures needed. Having regard to the role assumed here by the Member States, the Community's action must be considered sufficient, if it was obliged to take any action at all.

78 It follows that the alternative claim alleging liability for fault is not founded. It follows from all the foregoing that the application must be rejected in its entirety.

Costs

79 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful and the Council and Commission have applied for costs, the applicant must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the costs.

García-Valdecasas Azizi Jaeger

Delivered in open court in Luxembourg on 29 January 1998.

H. Jung J. Azizi

Registrar President