JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
11 July 2002 *

In Case T-205/99,

Hyper Srl, established in Limena (Italy), represented by D. Ehle and D. Ehle, Rechtsanwälte, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by J.-C. Schieferer, acting as Agent, assisted by M. Nuñez-Müller, Rechtsanwalt, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of Commission Decision REM 14/98 of 5 February 1999 finding that the remission of import duties due from the applicant in respect of television sets imported from India is not justified,

* Language of the case: German.

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

composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 6 March 2002,

gives the following

Judgment

General background to the dispute

1. *Legal background*

Legislation concerning the remission of customs duties

1 The conditions governing the remission of customs duties applicable to the present case are laid down in 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). That article provides:

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

2 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 Regulation No 1430/79 (OJ 1986 L 352, p. 19) provides that the '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 a situation which is not in itself a special situation within the meaning of Article 13 of Regulation No 1430/79.

3 The procedural rules concerning the remission of customs duties which are of relevance to the present case are Articles 235 to 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and Articles 878 to 909 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).

4 It follows from those provisions that the administrative procedure for the remission of customs duties is a two-step process. First, the person liable must lodge his application for remission with 'the customs office of entry in the

accounts', which is the office where the import or export duties for which remission is sought were entered into the accounts. That office forwards the application to the 'decision-making customs authority' which is defined as the national customs authority competent to decide on the application (Article 879 of Regulation No 2454/93). If that authority considers that there are no grounds for granting the remission, it may, pursuant to the rules in force, adopt a decision to that effect without transmitting the application to the Commission. By contrast, where that authority is unable to make a decision on the basis of Article 899 et seq. of Regulation No 2454/93, which describe a number of situations in which remission may or may not be granted, and 'the application is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned', the Member State to which the authority belongs must transmit the case to the Commission (Article 905(1) of Regulation No 2454/93). The file sent to the Commission must include all the facts necessary for a full examination of the case as well as a signed statement from the person applying for remission certifying 'that he has read the case and stating either that he has nothing to add or listing all the additional information that he considers should be included' (Article 905(2) of that regulation). Subsequently, after consulting a group of experts composed of representatives of all the Member States, meeting within the framework of the Customs Code Committee to consider the case in question, the Commission 'shall decide whether or not the special situation which has been considered justifies... remission' (first paragraph of Article 907). That decision must be taken within six months of the date on which the file transmitted by the Member State is received by the Commission (second paragraph of Article 907 of Regulation No 2454/93) and the Member State concerned must be notified of that decision as soon as possible (Article 908(1)). On the basis of that Commission decision the decision-making customs authority must decide whether to grant or refuse the application for remission made to it (Article 908(2) of Regulation No 2454/93).

5 Following the entry into force, on 6 August 1998, of Commission Regulation (EC) No 1677/98 of 29 July 1998 amending Regulation No 2454/93 (OJ 1998 L 212, p. 18), Regulation No 2454/93 now includes an additional provision, Article 906a, which provides:

'Where, at any time in the procedure provided for in Articles 906 and 907, the Commission intends to take a decision unfavourable towards the applicant for...

remission, it shall communicate its objections to him/her in writing, together with all the documents on which it bases those objections. The applicant for... remission shall express his/her point of view in writing within a period of one month from the date on which the objections were sent. If he/she does not give his/her point of view within that period, he/she shall be deemed to have waived the right to express a position'.

System of generalised tariff preferences applicable to products originating in India

6 Council Regulation (EEC) No 3831/90 of 20 December 1990 applying generalised tariff preferences for 1991 in respect of certain industrial products originating in developing countries (OJ 1990 L 370, p. 1), which is applicable to the present case, grants generalised tariff preferences in respect of, *inter alia*, finished and semi-finished industrial products from developing countries.

7 Article 1(1) of Regulation No 3831/90 provides for the suspension from 1 January to 31 December 1991 of duties of the Common Customs Tariff in respect of those products covered by the regulation ('preferential treatment'). That suspension was extended to cover the period from 1 January to 31 December 1992 by Council Regulation (EEC) No 3587/91 of 3 December 1991 (OJ 1991 L 341, p. 1).

8 The beneficiaries of the system of tariff preferences established by Regulation No 3831/90 include, *inter alia*, the Republic of India (the second indent of Article 1(2) in conjunction with Annex III). The list of products covered by that system includes colour television sets which come under the tariff heading 8528 (Article 1(1) in conjunction with Annex I).

9 To determine the origin of goods and, hence, whether they are eligible for preferential treatment, Article 1(4) of Regulation No 3831/90 refers to the rules laid down in Commission Regulation (EEC) No 693/88 of 4 March 1988 on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the European Economic Community in respect of certain products from developing countries (OJ 1988 L 77, p. 1).

Rules on the determination of product origins

10 Article 1(1) of Regulation No 693/88 provides:

'... the following shall be considered as products originating in a country enjoying those preferences...:

(a) products wholly obtained in that country;

(b) products obtained in that country in the manufacture of which products other than those referred to in (a) are used, provided that the said products have undergone sufficient working or processing...'

11 As regards, more specifically, colour televisions classified under tariff heading 8528, a combined reading of Article 3(3) of Regulation No 693/88 and Annex III thereto makes it clear that where those products are manufactured using

materials which do not enjoy preferential treatment, they may be regarded as having been sufficiently worked or processed if the aggregate value of the non-originating materials does not exceed 40% of the ex-works price of the product.

12 On importation into the Community, originating products within the meaning of Regulation No 693/88 are, in principle, eligible to benefit from tariff preferences on production of a Form A certificate of origin. That certificate is issued either by the customs authorities or by other governmental authorities of the exporting country 'provided that the latter country... assists the Community by allowing the customs authorities of Member States to verify the authenticity of the document or the accuracy of the information regarding the true origin of the products in question' (Article 7(1) of Regulation No 693/88). The certificate must be presented to the customs authorities in the Member State of importation (Article 9 of that regulation).

13 Since the certificate of origin constitutes the documentary evidence for the application of the provisions concerning tariff preferences, it is the responsibility of the competent authorities of the exporting country to take any steps necessary to verify the origin of the products and to check the other statements on the certificate (Article 19 of Regulation No 693/88). For that purpose, those authorities have, in particular, the right to call for any documentary evidence and to carry out any checks which they consider appropriate (Article 20(5) of that regulation).

14 Whenever the competent customs authorities in the Community have reasonable doubt as to the authenticity of a certificate of origin or the accuracy of information concerning the true origin of the products in question, a subsequent verification of the certificate must be carried out (Article 13(1) of Regulation No 693/88). To that end, the customs authorities must return the certificate to the appropriate governmental authority in the exporting country giving, where appropriate, the reasons as to form or substance for an inquiry (Article 13(2) of that regulation).

15 When an application for subsequent verification has been made, the verification must be carried out and its results communicated to the customs authorities in the Community within a maximum of six months. Those results must be such as to establish whether the certificate of origin in question applies to the products actually exported and whether those products were in fact eligible to benefit from the provisions on tariff preferences (Article 27(1) of Regulation No 693/88).

2. *Facts and procedure*

The disputed imports

16 The applicant is a company incorporated under Italian law, established in Limena (Italy). It imported two consignments of 700 colour television sets, classified under tariff heading 8528, from India ('the disputed imports'). Those television sets had been manufactured, sold and exported by Weston Electroniks, a company established in New Delhi (India) ('the exporter').

17 The fact that the television sets originated in India was certified by two certificates of origin bearing the reference numbers 4371009 and 4649001, which had been issued by the Indian authorities at the request of the exporter in May and September 1992 respectively ('the disputed certificates').

18 In August and October 1992, the television sets were released for free circulation in Italy with the authorisation of the Padua customs office — the customs office of entry in the accounts — which, on the basis of the disputed certificates, granted the tariff preferences provided for in Regulation No 3831/90.

The withdrawal of the disputed certificates and the recovery order issued by the Italian customs authorities

19 By letter of 9 September 1994, the Indian Embassy in Brussels informed the defendant that a number of certificates of origin, including the disputed certificates, had been withdrawn by the Indian governmental authorities.

20 After being informed by the defendant of that withdrawal, the Italian customs authorities addressed a decision to the applicant, on 8 March 1995, ordering post-clearance recovery of customs duties totalling 33 101 795 Italian lire (ITL).

Administrative procedure before the Italian and Community authorities

21 By letter of 20 September 1996, the applicant submitted an application for remission to the Padua customs office in respect of the customs duties claimed by that office.

22 That application was forwarded to the Italian Ministry of Finance, as the decision-making customs authority. Taking the view that the conditions for remission were met in the case in question, the Ministry transmitted the case to the defendant by letter of 22 April 1998, in accordance with Article 905(1) of Regulation No 2454/93.

23 It should be noted that before the application for remission was transmitted to the defendant, the applicant had declared to the Italian authorities, by letter of 10 December 1997, that it had no observations to make regarding the proposed application for remission and that the file drawn up by the Italian authorities was complete.

24 After receiving the application for remission from the Italian Ministry of Finance, the defendant examined the case in the light of Article 13(1) of Regulation No 1430/79 and Article 905 et seq. of Regulation No 2454/93.

25 By letter of 29 July 1998, the defendant informed the applicant of its intention not to grant the application for remission since it had doubts as to whether there was a 'special situation' within the meaning of Article 13(1) of Regulation No 1430/79. Before taking a final decision, the defendant none the less requested the applicant to submit any observations it might have within one month.

26 In reply to that letter, the applicant wrote on 25 August 1998 expressing its views in respect of the information in the file which, according to the Commission, did not justify a remission of the customs duties.

27 The defendant noted those observations and, before taking a final decision, consulted the group of experts composed of representatives of all Member States, meeting within the framework of the Customs Committee, as provided for in Article 907(1) of Regulation No 2454/93. That committee considered the matter at its meeting on 16 October 1998.

28 Finally, in Decision REM 14/98 of 5 February 1999 ('the contested decision'), the defendant rejected the application for remission which had been transmitted to it by the Italian Ministry of Finance. The applicant was notified of that decision on 9 July 1999.

Proceedings before the Court

29 By application of 13 September 1999, received at the Registry of the Court of First Instance on 15 September 1999, the applicant brought the present action for annulment of the contested decision.

30 By order of the President of the Third Chamber of 13 September 2000, the proceedings were suspended pending delivery of the final judgment in Joined Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99 *Kaufring and Others* v *Commission* [2000] ECR II-1337; '*Turkish Televisions*'). That judgment, which annulled all the decisions contested in those joined cases, was delivered in open court on 10 May 2001.

31 By letter of 31 July 2001, the Court requested the Commission to decide on the procedural steps it intended to take in the present case in the light of the judgment in *Turkish Televisions*.

32 By letter of 13 September 2001, the Commission informed the Court that, in its view, the judgment in *Turkish Televisions* did not have any specific procedural implications for the present case inasmuch as the facts and the procedure underlying the cases at issue in that judgment were dissimilar to those in the present case.

33 Following the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure and to put a number of written questions to the parties. In addition, the Court, granting an application submitted by the applicant, requested the defendant to produce a number of documents, in particular, the reports of investigations which it had conducted in India, the written correspondence between it and the Indian authorities and the file transmitted by the Italian authorities on which it had based the contested decision. The parties replied to those questions and requests for the production of documents within the prescribed period.

34 The parties presented oral argument and replied to the questions put by the Court at the hearing on 6 March 2002.

Forms of order sought

35 The applicant claims that the Court should:

— annul the contested decision;

— order the defendant to pay the costs.

36 The defendant contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Substance

1. *Summary of the pleas in law*

37 In support of its action for annulment, the applicant alleges, first, failure to observe the principle of respect for the rights of the defence and, second, infringement of Article 13(1) of Regulation No 1430/79.

38 In its application, the applicant had also claimed that the contested decision infringed 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). However, in response to a question put by the Court, the applicant confirmed at the hearing that it had withdrawn that plea.

2. *The plea alleging failure to observe the principle of respect for the rights of the defence*

Arguments of the parties

39 The applicant claims that the principle of respect for the rights of the defence was not observed in the course of the administrative procedure. That plea is raised in two parts.

40 In the first part of that plea, the applicant submits that the defendant failed to observe the principle of respect for the rights of the defence in so far as it did not provide the applicant with all the documents on which the contested decision was based.

41 The applicant observes that, according to settled case-law, that principle 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 Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401, paragraph 78). The applicant also submits that that principle is reflected in Article 906a of Regulation No 2454/93 in so far as, under that provision, when the Commission intends to adopt a decision rejecting an application for remission it is required to communicate its objections to the party concerned in writing, together with all the documents on which it intends to base those objections. It must also allow the party concerned to express its views on those documents.

42 According to the applicant, that principle and Article 906a were not complied with in the present case in so far as, in the administrative procedure, the applicant

was not granted access to all the documents relied on by the defendant as the basis for the contested decision. The applicant observes that it did not have access to, *inter alia*, the communications from the Indian authorities concerning the withdrawal of the disputed certificates, which stated the reasons for the withdrawal and the exporter's views on the matter. Likewise, the applicant asserts that it did not have access to the reports drawn up by the Commission's services concerning the importation of colour television sets from India or to any joint findings by the defendant and the Indian authorities regarding the origin of those goods. The applicant also points out that none of those documents was sent to it as annexes to the defendant's letter of 29 July 1998, which contained only a brief summary of the case and some very general observations on the purported checks and findings made by the Indian authorities. The applicant also notes that the letter of 9 September 1994 from the Indian Embassy informing the defendant that the disputed certificates had been withdrawn was communicated to the applicant only in the form of an annex to the statement of defence.

43 In that regard, the applicant rejects the defendant's contention that the principle of respect for the rights of the defence was observed in the present case inasmuch as, on 10 December 1997, the applicant stated that it had read the file compiled by the Italian authorities and that it had nothing to add to it. The applicant submits that although that statement implies that the applicant had access to that file, the fact remains that it did not have access to the other documents held by those authorities, in particular, the written correspondence with the defendant and the letter from the Indian Government concerning the withdrawal of the disputed certificates. It also disputes the defendant's contention that the defendant did not add any documents to the file submitted by the Italian authorities.

44 In the second part of the first plea, the applicant claims that its rights of defence were not respected by the defendant in so far as the defendant did not grant it access to all its documents relating to imports of colour television sets from India. The applicant submits that although the defendant wrongfully failed to incorporate that procedural guarantee in Article 906a of Regulation No 2454/93, the right to access to the file is expressly recognised by the case-law.

45 In that regard, the applicant refers to paragraphs 78 to 80 of the judgment in *Eyckeler & Malt* v *Commission*, cited in paragraph 41 above, which make clear that the right to access to the file is one of the procedural guarantees intended to protect the right to be heard and must most particularly be respected in cases where the party concerned claims that the Commission has made serious errors. According to the applicant, it also follows from that judgment that, first, the Commission must provide access to all non-confidential official documents concerning the contested decision, if requested to do so, and, second, the Commission is not empowered to carry out a pre-selection of those documents, since documents which the Commission does not consider to be relevant may well be of interest to the person applying for the remission (*Eyckeler & Malt* v *Commission*, cited above, paragraph 81; see also, on competition matters, Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others* v *Commission* [2000] ECR II-491). The applicant also submits that, as is apparent from the interpretation of the right to access to the file given in the *Turkish Televisions* judgment, that right is not confined to access to non-confidential documents but also covers access to confidential documents.

46 The applicant submits that in the case at issue here it was not given any access to the defendant's file even though the applicant had claimed that serious errors had been made by the defendant. Furthermore, the applicant considers that the defendant ought, at its own initiative and without any express request from the applicant, to have informed the applicant of the possibility of such access in the course of the consultation procedure.

47 At the hearing the applicant further claimed that, in its view, the non-communication of mission reports drawn up by the defendant constituted an infringement of Article 8(3) of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ 1996 L 292, p. 2) and of Articles 12, 20 and 21 of Council Regulation (EC) No 515/97 of 13 March 1997

on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ 1997 L 82, p. 1) in so far as, pursuant to those provisions, such reports may be used as evidence in administrative and judicial proceedings.

48 The defendant denies that it failed to respect the applicant's rights of defence during the administrative procedure.

Findings of the Court

Introductory observations

49 It is now well-established case-law that, in view of the power of assessment enjoyed by the Commission when it adopts a decision pursuant to the general equitable provision set down in Article 13 of Regulation No 1430/79, observance of the right to be heard must be guaranteed in procedures for the remission or repayment of import duties (see, *inter alia*, paragraph 152 of *Turkish Televisions*, and the case-law referred to therein). That conclusion is particularly apt where, in exercising its exclusive authority under Article 905 of Regulation No 2454/93, the Commission proposes not to follow the opinion of the national authority as to whether the conditions laid down by Article 13 of Regulation No 1430/79 have been met (Case T-346/94 *France-aviation* v *Commission* [1995] ECR II-2841, paragraph 36).

50 The principle of respect for the rights of the defence requires that any person who may be adversely affected by a decision be placed in a position in which he may

effectively make his views known, at least as regards the evidence on which the Commission has based its decision (see, to that effect, Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885, paragraph 40, and Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, paragraph 21).

51 The two parts of the applicant's plea alleging failure to observe the principle of respect for the rights of the defence must be examined in the light of those principles.

First part of the plea: non-communication of the documents used by the defendant as the basis for the contested decision

52 It is clear that, by the defendant's letter of 29 July 1998, the applicant was placed in a position, before the contested decision was adopted, to take a stance and adequately make known its views on the evidence which, according to the defendant, justified the rejection of its application for remission.

53 The applicant does not dispute that fact. It submits, however, that the principle of respect for the rights of the defence was breached in so far as it was not granted access to all the documents on which the defendant based the contested decision.

54 In that regard it should be noted that, in its written pleadings and at the hearing, the defendant stated that it had based the contested decision solely on the file submitted to it by the Italian authorities in accordance with Article 905(1) of Regulation No 2454/93.

55 It is clear from the applicant's written statement of 10 December 1997 that it had had access to that file in the context of the administrative procedure before the Italian authorities. Moreover, in contrast to the cases at issue in *Turkish Televisions* (paragraphs 182 and 183), it is not apparent from the contested decision that the defendant based that decision on documents other than those in the file submitted by the national authorities. In particular, contrary to the applicant's assertion, there is no aspect of the contested decision which supports the conclusion that that decision was based on reports drawn up by the Commission's services concerning the importation of colour television sets from India or on joint findings of the defendant and the Indian authorities regarding the origin of those goods.

56 It must therefore be held that the applicant did indeed have access to all the documents on which the defendant based the contested decision.

57 That finding is not invalidated by the fact that, as submitted by the applicant, its written statement of 10 December 1997 related only to the application for remission which it had presented to the Italian authorities and which was then submitted by them to the defendant.

58 It should be noted that, in its reply, the applicant acknowledged that it had read the file held by the Italian authorities. In addition, the abovementioned statement was submitted pursuant to the first subparagraph of Article 905(2) of Regulation No 2454/93. That provision expressly provides that the case transmitted to the Commission by the national authorities must also include a statement from the party concerned certifying that he has read the case and stating either that he has nothing to add or listing all the additional information that he considers should be included. That procedural requirement was introduced in order to ensure, in accordance with the principles enunciated by the Court in paragraphs 30 to 36 of

France-aviation v *Commission*, cited above in paragraph 49, that the person liable can acquaint himself with the case compiled by the national authorities before it is transmitted to the Commission (see, to that effect, Case T-290/97 *Mehibas Dordtselaan* v *Commission* [2000] ECR II-15, paragraph 44).

59 Therefore, if the applicant chose not to avail itself of the opportunity, provided under that provision, to acquaint itself with the file that the Italian authorities were about to forward to the defendant, it cannot subsequently claim, in support of its plea that its rights of defence were not respected, that it did not have access to that file. While the principle of respect for the rights of the defence imposes a number of procedural obligations on the national and Community authorities, it also implies a certain amount of diligence on the part of the party concerned. Accordingly, if the party concerned considers that its rights of defence have not been respected, or have not been adequately respected, in the administrative procedure, it is for that party to take the measures necessary to ensure that they are respected or, at the very least, to inform the competent administrative authority of that situation in good time.

60 Finally, as regards the fact, acknowledged by the defendant at the hearing, that the letter of 9 September 1994 from the Indian Embassy was not included in the file held by the Italian authorities, the non-communication of that letter in the administrative procedure, while regrettable, does not constitute a breach of the principle of respect for the rights of the defence. As observed above, that principle implies only that the party concerned be able to take a position on the documents on which the Commission based the contested decision. In the present case, it is obvious from that decision that the Commission did not rely on the abovementioned letter in deciding whether the conditions for the remission of the duties had been met. Although the contested decision implicitly referred to that letter, by stating that the Indian authorities had withdrawn a number of certificates of origin, including the disputed certificates, that reference was intended only as an explanation for the Italian authorities' decision to undertake post-clearance recovery of the customs debt from which the applicant is seeking remission. By contrast, at no point in the contested decision did the Commission rely on that letter to justify its rejection of that application for remission.

61 In view of the foregoing, the first part of the present plea must be rejected.

Second part of the plea: failure to observe the right to access to the file

62 As regards the applicant's claim that the contested decision fails to observe the principle of respect for the rights of the defence in so far as the defendant did not grant it access to all the documents relating to the present case, it must be observed at the outset that the applicant never requested access to those documents during the administrative procedure.

63 Next, as observed in paragraph 50 of this judgment, the principle of respect for the rights of the defence implies only that the party concerned be placed in a position in which he may effectively make his views known as regards the evidence, including the documents, on which the Commission has based its decision. That principle therefore does not require the Commission, acting on its own initiative, to grant access to all the documents which may have some connection with the case at issue when an application for remission is referred to it. If the party concerned considers that such documents are relevant for establishing the existence of a special situation and/or the lack of deception or obvious negligence on its part, then it is for the party concerned itself to request access to those documents in accordance with the provisions adopted by the institutions under Article 255 EC.

64 Contrary to the applicant's assertions, it does not follow from the case-law that the principle of respect for the rights of the defence imposes a general obligation on the institutions to spontaneously grant access to all documents relating to the contextual background of the case at issue.

65 As regards the administrative procedure concerning remission of customs duties, the Court has clearly stated, in paragraph 81 of *Eyckeler & Malt* v *Commission*, cited above in paragraph 41, that it is at the request of the party concerned that the defendant is required to provide access to all non-confidential official documents concerning the contested decision (see also Case T-50/96 *Primex Produkte Import-Export and Others* v *Commission* [1998] ECR II-3773, paragraph 64). Therefore, if no such request is made, there is no automatic access to the documents held by the defendant.

66 Finally, the applicant's argument alleging infringement of Article 8(3) of Regulation No 2185/96 and of Articles 12, 20 and 21 of Regulation No 515/97 must be rejected.

67 Since that argument is neither an amplification of the plea under consideration nor a plea based on factual or legal evidence which has come to light in the course of the proceedings, it is to be considered as a new plea, which, in accordance with Article 48(2) of the Court's Rules of Procedure, must be rejected as inadmissible.

68 Furthermore, even if that line of argument ought to be taken into consideration, the provisions in question have no bearing whatsoever on the present case. Article 8(3) of Regulation No 2185/96 concerns only the drawing-up and probative value of reports compiled by the Commission services in the context of checks carried out in the Member States. Articles 12, 20 and 21 of Regulation No 515/97 provide, *inter alia*, that findings and information obtained in the course of checks carried out by the national and Community authorities may be relied on as evidence. Those provisions thus provide no support whatsoever for the applicant's assertion that the defendant ought to have granted it access to all the documents relating to the present case even in the absence of any such express request from the applicant.

69 The second part of the plea must therefore be rejected.

Conclusion

70 In the light of the foregoing, the plea alleging failure to observe the principle of respect for the rights of the defence is unfounded.

3. *The plea alleging infringement of Article 13(1) of Regulation No 1430/79*

Arguments of the parties

71 The applicant submits that, as is apparent from *Eyckeler & Malt* v *Commission*, cited above in paragraph 41 (paragraph 132), Article 13(1) of Regulation No 1430/79 constitutes a general equitable provision designed to cover situations other than those which arise most often in practice. That provision 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.

72 The applicant also submits that, according to the case-law, the Commission must take account not only of the Community interest in ensuring that the customs provisions are respected, but also of the interest of an importer acting in good faith not to suffer harm which goes beyond its normal commercial risk (*Eyckeler & Malt* v *Commission*, cited above in paragraph 41, at paragraph 133).

73 In the light of those principles, the applicant considers that the contested decision clearly infringes Article 13(1) of Regulation No 1430/79 in so far as, in the present case, there are various circumstances which constitute a special situation justifying remission of the customs duties.

74 First, the applicant claims that the administrative procedure leading to the withdrawal of the disputed certificates was marred by irregularities. According to the applicant, that fact constitutes a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

75 The applicant thus observes that the disputed certificates were withdrawn by the Indian authorities without the exporter being informed of that fact or given the opportunity to express its views on the matter. Moreover, as is apparent from the documents produced by the Commission at the Court's request, at no point during the administrative procedure did the Community and Indian authorities provide any evidence or valid grounds for the finding that the television sets at issue did not originate in India. In the applicant's view, that failure is all the more serious given that the exporter's statements and the findings of the Italian authorities show that the television sets met the conditions on origin laid down in Regulation No 693/88, and that the disputed certificates were therefore valid.

76 In that regard, the applicant rejects the defendant's argument that the validity of the disputed certificates and, hence, the creation of the customs debt cannot be contested in the present action. It submits that the defendant's argument is inconsistent in so far as, on the one hand, the defendant claims that it is for the Italian authorities and courts alone to ensure the judicial protection of persons liable for duties in matters concerning the invalidity of certificates of origin and, on the other hand, it considers that the national and Community customs authorities are not obliged to verify the legality of a withdrawal of certificates of origin by the authorities of non-member countries. The applicant submits that that argument amounts to a refusal to grant the importer any effective judicial protection in the Community and that it runs contrary to Community case-law inasmuch as it is well-established practice of the Community Courts, as is clear from, *inter alia*, Case C-61/98 *De Haan* [1999] ECR I-5003, paragraphs 52 and 53, to rule on cases concerning remission of duties even where the legality of recovery of those duties is in doubt.

77 Second, the applicant considers that in the present case its legitimate expectation that the disputed certificates were valid and its good faith were sufficient to constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

78 The applicant argues that its legitimate reliance on the validity of the disputed certificates was backed up by the certificates themselves, the declarations made by the exporter and the findings of the Italian customs authorities, since it appeared from those factors that the television sets met the conditions for granting preferential treatment and there was no evidence to suggest their inaccuracy. The applicant also observes that its reliance on the validity of the disputed certificates was all the more legitimate since it was not, and still is not, in possession of any evidence proving, first, the invalidity of those certificates and, second, the withdrawal of those certificates by the Indian authorities.

79 Moreover, the applicant considers that, contrary to the defendant's contentions, it is entitled to plead that the protection of its legitimate expectation that the

disputed certificates were valid and its good faith constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79. It considers that in the contested decision the defendant wrongly held, on the basis of the case-law (Joined Cases 98/83 and 230/83 *Van Gend & Loos* v *Commission* [1984] ECR 3763) and Article 904(c) of Regulation No 2454/93, that reliance on the validity of the certificates of origin is not normally protected. In particular, it points out that Article 904(c) of Regulation No 2454/93 does not apply to the present case because the disputed certificates were not forged and there is no evidence to suggest that they were falsified or not valid for obtaining preferential treatment. It also notes that, even if that provision were to apply to the present case, the protection of its legitimate expectations and its good faith was not the sole ground relied on by the applicant in support of its application for remission and that, consequently, the conditions laid down in Article 13(1) of Regulation No 1430/79 might none the less have been met. Finally, according to the applicant, Article 904(c) of Regulation No 2454/93 is unlawful because it disproportionately restricts the protection afforded to the legitimate expectations and good faith of importers.

80 In addition, the applicant considers that its view that protection of the legitimate expectation that a certificate of origin is valid and of the good faith of importers may, in certain circumstances, constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79 finds support in both the case-law (*Eyckeler & Malt* v *Commission*, cited above in paragraph 41, paragraph 157) and the Council Decision of 28 May 1996 on the post-clearance recovery of the customs debt (OJ 1996 C 170, p. 1).

81 Third, the applicant claims that, contrary to the defendant's finding in the contested decision, the financial damage which it suffered as a result of the post-clearance recovery of the customs duties constitutes a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

82 It submits that, first, it is for the defendant to guard against and mitigate the damage suffered by importers and, second, importers do not gain any benefit from the preferential treatment inasmuch as the reduction in the customs duties directly benefits consumers, whereas the financial burden of post-clearance recovery is borne exclusively by the importers, who have no possibility of passing that burden on to consumers.

83 The applicant further submits that it guarded itself against the risk of post-clearance recovery by ordering television sets complete with certificates of origin from its supplier. It also notes that in the present case it cannot bring an action for damages against the exporter because it is not in possession of any evidence that the conditions for preferential treatment were not met. It submits that the Indian authorities and the defendant neither produced any documents containing such evidence nor contacted the supplier. Moreover, according to the applicant, such an action would, in all probability, already be time-barred.

84 Fourth, the applicant claims that the Indian authorities and the defendant committed serious breaches of their obligations. In its view, those breaches constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

85 In that regard, it notes that the system of preferential treatment is based on agreements between the Community and those countries authorised to benefit from that system (including India). Under those agreements, the beneficiary countries and the defendant are required to ensure that the rules governing the system are observed, which implies, in particular, an obligation on the beneficiary countries to verify the accuracy of exporters' declarations as to the origin of products and an obligation on the defendant to exercise the greatest care when

carrying out checks, in order to protect importers from suffering unnecessary damage. According to the applicant, those obligations are particularly stringent since it is the beneficiary countries which profit from the preferential treatment and not the importers who, as is the case for the applicant, are obliged to participate in a system from which they accrue no benefit. The applicant notes that the importers' sole interest lies in equal treatment with their competitors and not in advantages from preferential tariffs.

86 According to the applicant, the Indian authorities acted in breach of their obligations by, first, withdrawing the disputed certificates without any objective reason and without giving the exporter the opportunity to express its views prior to the withdrawal, second, issuing the disputed certificates in full knowledge of all the facts necessary for applying the customs rules in question (Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465, paragraph 95) and, third, colluding with the exporters.

87 As to the defendant's failure to fulfil its obligations, the applicant submits, first, that the defendant did not adequately supervise the Indian authorities' application of the rules of origin in respect of goods intended for export to Europe and, second, that it did not adequately ascertain the facts when carrying out its investigation in India.

88 The applicant also takes the view that the defendant failed to fulfil its obligations toward the applicant by failing to warn it in good time of its doubts as to the validity of the certificates of origin issued by the Indian authorities for export of the colour television sets. The applicant submits that it is apparent from the defendant's records and the documents produced by it that at the end of 1990 the defendant was already harbouring doubts as to the validity of the certificates of origin issued in respect of the colour television sets. In particular, the applicant points out that it is clear from the communications of irregularities, of

25 October 1991 and 29 November 1991, that the defendant was clearly informed of the problems regarding colour television sets from India and was therefore in a position to inform importers of its doubts as to the validity of the certificates of origin issued by the Indian authorities. However, in the present case, the defendant did not do so and accordingly failed to fulfil its duty of diligence (*Turkish Televisions* judgment, paragraph 268).

89 The applicant also submits that in *De Haan*, cited above in paragraph 76, the Court of Justice held that the lack of a warning may constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79. The applicant points out, in particular, that in that judgment the Court of Justice considered that there is no general obligation on customs authorities to inform the person liable for customs duties of irregularities affecting the customs arrangements used by that person, but the fact that those authorities failed to warn that person may constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79. The fact that the authorities knowingly failed to inform the person liable for the duty of frauds in respect of those arrangements prevented that person from avoiding a customs debt being incurred.

90 The defendant denies having made a manifest error of assessment by finding in the contested decision that the conditions laid down in Article 13(1) of Regulation No 1430/79 were not met in the present case.

Findings of the Court

Introductory observations

91 It is common ground between the parties that, in the context of the facts underlying the present case, no deception or obvious negligence can be attributed

to the applicant. By contrast, they disagree as to whether the defendant made an error of assessment by finding, in the contested decision, that the circumstances of the case did not constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

92 In that regard, the case-law indicates that the existence of a special situation is established where it is clear from the circumstances of the case that the person liable is in an exceptional situation as compared with other operators engaged in the same business (see Case C-86/97 *Trans-Ex-Import* [1999] ECR I-1041, paragraphs 21 and 22, and *De Haan*, cited above in paragraph 76, paragraphs 52 and 53) and that, in the absence of such circumstances, that person would not have suffered the disadvantage caused by the *a posteriori* entry in the accounts of customs duties (Case 58/86 *Coopérative Agricole d'Approvisionnement des Avirons* [1987] ECR 1525, paragraph 22).

93 It is also clear from the case-law that, in order to determine whether the circumstances of the case constitute a special situation in which no deception or obvious negligence may be attributed to the person concerned within the meaning of Article 13(1) of Regulation No 1430/79, the Commission must assess all the relevant facts (see, to that effect, Case 160/84 *Oryzomyli Kavallas and Others* v *Commission* [1986] ECR 1633, paragraph 16, and *France-aviation*, cited above in paragraph 49, paragraph 34).

94 In paragraph 223 of the *Turkish Televisions* judgment, the Court also stated that in cases where the persons liable have relied, in support of their applications for remission, on the existence of serious errors on the part of the contracting parties in implementing an agreement binding the Community, that obligation implies that the Commission must base its decision as to whether those applications are justified on all the facts relating to the disputed imports of which it gained knowledge in the performance of its task of supervising and monitoring the

implementation of that agreement. Likewise, it follows from that judgment (paragraph 224) that the Commission cannot, in the light of the obligation described above in paragraph 93, and of the principle of equity which underlies Article 13(1) of Regulation No 1430/79, disregard relevant information of which it has gained knowledge in the performance of its tasks and which, although not forming part of the administrative file at the stage of the national procedure, might have served to justify remission for the parties concerned.

95 Moreover, as is clear from paragraph 133 of *Eyckeler & Malt*, cited above in paragraph 41, although the Commission enjoys a margin of discretion in applying Article 13 (*France-aviation*, cited above in paragraph 49, paragraph 34), it is required to exercise that power by genuinely balancing, on the one hand, the Community interest in ensuring that the customs provisions are respected and, on the other, the interest of the *bona fide* importer in not suffering harm which goes beyond normal commercial risk. Consequently, when considering whether an application for remission is justified, the Commission cannot take account simply of the conduct of importers. It must also assess the impact on the resulting situation of its own conduct, which may itself have been wrongful.

96 It is in the light of those principles that the Court must determine whether the Commission committed a manifest error of assessment by finding in the contested decision that the circumstances pleaded by the applicant did not constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

Irregularities in the withdrawal of the disputed certificates as a special situation

97 It should be noted that, as is apparent in particular from the sixth, seventh and eighth recitals in the preamble to the contested decision, the withdrawal of the

disputed certificates by the Indian authorities resulted in the suppression of the preferential tariffs from which the applicant benefited when the television sets were put into free circulation and, thus, formed the basis of the decision by the Italian customs authorities to carry out post-clearance recovery of the customs duties owed by the applicant in respect of those imports. Therefore, as the applicant itself concedes, the argument that the withdrawal of the disputed certificates led to a flawed administrative procedure raises the issue of the legality of the decision by the Italian authorities to carry out post-clearance recovery of the import duties.

98 As is clear from the case-law, the sole aim of Article 13(1) of Regulation No 1430/79 is to enable importers, when certain special conditions are satisfied and in the absence of deception or obvious negligence, to be exempted from payment of duties due from them and not to enable them to contest the actual principle of a customs debt being due (see Joined Cases 244/85 and 245/85 *Cerealmangimi and Italgrani* v *Commission* [1987] ECR 1303, paragraph 11, and Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam) and JCT Benelux* v *Commission* [1993] ECR I-3873, paragraph 43). The application of substantive Community customs law falls within the exclusive competence of the national customs authorities. Decisions adopted by those authorities, including decisions requiring post-clearance payment of customs duties not previously levied, may be challenged before the national courts under Article 243 of the Community Customs Code; those courts may make a reference to the Court of Justice pursuant to Article 234 EC (see, to that effect, Case T-195/97 *Kia Motors Nederland and Broekman Motorships* v *Commission* [1998] ECR II-2907, paragraph 36).

99 By contrast, the procedure before the Commission provided for in Articles 906 to 909 of Regulation No 2454/93 is, in accordance with Article 905 of that regulation, confined to an examination of whether the conditions for remission laid down in Article 13(1) of Regulation No 1430/79 have been met. Consequently, the only pleas or arguments which can be properly put forward by a person liable for customs duties who, like the applicant in the present case, requests annulment of the decision adopted at the end of that procedure are those which seek to show the existence of a special situation and/or the lack of deception or obvious negligence on its part. In no circumstances may an applicant

rely, in relation to the contested decision, on pleas or arguments seeking to show that the decisions of the competent national authorities subjecting it to payment of the duties at issue were unlawful (*CT Control (Rotterdam) and JCT Benelux* v *Commission*, cited above in paragraph 98, paragraph 44).

100 Contrary to the applicant's submission, that situation does not adversely affect the judicial protection afforded to Community importers. As is clear from the above description of the division of powers between the national and Community authorities, the fact that, in the context of the procedure provided for in Article 905 et seq. of Regulation No 2454/93, it is impossible for the applicant to rely on arguments contesting the propriety of the withdrawal of the disputed certificates derives from the fact that the Commission is not competent to decide on that matter. Moreover, where appropriate, there is nothing to prevent the applicant from raising such arguments in proceedings before the competent national court seeking review of the legality of the decision of the Italian customs authorities.

101 In the light of the foregoing observations, the applicant's arguments seeking to establish that the alleged impropriety of the withdrawal of the disputed certificates constitutes a special situation within the meaning of Article 13(1) of Regulation No 1430/79 cannot be accepted.

The legitimate expectations and good faith of the applicant as constituting a special situation

— Legitimate expectations

102 It is settled case-law that reliance on the validity of certificates of origin which prove to be forged, falsified or invalid does not, of itself, constitute a special

situation. Verifications carried out after importation would in large measure be deprived of their usefulness if the use of such certificates could, of itself, justify granting a remission (*Van Gend & Loos* v *Commission*, cited above in paragraph 79, paragraph 13). The converse result could discourage traders from adopting an inquiring attitude and make the public purse bear a risk which falls mainly on traders (Case C-446/93 *SEIM* [1996] ECR I-73, paragraph 45).

103 That principle is reflected in Article 4(2)(c) of Regulation No 3799/86, from which it follows that reimbursement or remission of import duties is not to be granted where the only ground relied on in support of the application for reimbursement or remission is the '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'.

104 Contrary to the assertions of the applicant, which has raised an objection of illegality in this regard, that provision does not restrict the scope of the principle of legitimate expectations and fairness which underlies Article 13(1) of Regulation No 1430/79 any more than is necessary. As the Court observed in the judgment in *SEIM*, cited above in paragraph 102 (paragraphs 46 and 47), 'where an application based on the trader's ignorance of the fact that documents submitted were forged, falsified or not valid is supported by evidence of a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to him, that application is to be submitted to the Commission, in accordance with Article 6 of Regulation No 3799/86, in order for it to take a decision. Accordingly, Article 4(2)(c) of Regulation No 3799/86 cannot be regarded as restricting the general principle of fairness laid down in Article 13(1) of Regulation No 1430/79 beyond what is necessary'.

105 It follows that the applicant's reliance on the validity of the disputed certificates does not, of itself, constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

106 Contrary to the applicant's assertion, that finding is not invalidated by the Council Decision of 28 May 1996, cited in paragraph 80 above.

107 It is clear from the express terms of that decision that it does not have any binding effect and is not intended to derogate from the existing rules on the remission and reimbursement of customs duties. In that decision, the Council merely requested the Commission to carry out a study with a view to finding an overall solution to the problems of post-clearance recovery of customs duties from Community importers where that recovery is the consequence of irregularities in the acts of the authorities in non-member countries. That decision does not therefore invalidate the principle that reliance on the validity of certificates of origin which prove to be forged, falsified or invalid does not, of itself, constitute a special situation.

108 Similarly, *Eyckeler & Malt* v *Commission*, cited above in paragraph 41, does not provide support for the applicant's submission regarding the protection of its reliance on the validity of the disputed certificates. In paragraph 162 of that judgment, the Court expressly referred to the case-law cited in paragraph 102 of the present judgment, while stating, in substance, in paragraph 163 that that case-law did not exclude the party concerned from putting forward other arguments in support of its application for remission.

109 Moreover, as regards the applicant's argument that its legitimate expectation that the disputed certificates were valid was based on the checks and declarations made by the Italian authorities, it must be observed that it follows from Regulation No 693/88 that the authorities in the State of exportation (in the present case, the Indian authorities) were the authorities competent to carry out, at the request of the customs authorities of the Member States, an *a posteriori* verification of the certificates of origin issued by them and, where necessary, to withdraw those certificates deemed to be invalid. Therefore, the decision to

withdraw the disputed certificates should have been challenged in proceedings against the competent authorities in the Republic of India in the context of the judicial procedures provided for the settlement of such disputes in that State.

110 Finally, the applicant may not found its legitimate expectations as to the validity of the disputed certificates on — erroneous — information provided by the exporter. If that were to be the case, it would be impossible to carry out post-clearance recovery of customs debts in cases of fraud by the exporter because, in carrying out the disputed imports, the importer necessarily relies on information provided by the exporter.

— Good faith

111 While it is true that the applicant's good faith has not been called into question by the defendant, that circumstance cannot, of itself, constitute a special situation. It is apparent from *Van Gend & Loos* v *Commission*, cited above in paragraph 79 (paragraph 11), first, that Article 13(1) of Regulation No 1430/79 requires mandatorily that both conditions set out in that provision be met and, second, that those two conditions are independent. Therefore, the existence of good faith, already taken into account in the condition relating to the absence of deception or obvious negligence, cannot additionally constitute a special situation within the meaning of that provision.

112 The applicant is therefore incorrect in its assertion that the defendant ought to have held that its good faith constituted a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

The pecuniary damage suffered by the applicant as constituting a special situation

113 Contrary to the applicant's submissions, the Commission did not make a manifest error of assessment by finding in the contested decision that the pecuniary damage suffered by the applicant as a result of the recovery of duties did not constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

114 The fact that the customs authorities of a Member State decide to make post-clearance recovery of customs duties following withdrawal, by the authorities of a non-member country, of certificates of origin which proved to be invalid after subsequent verifications by the authorities of that country, constitutes a normal commercial risk which must be taken into consideration by any trader who is aware of the rules. It is therefore the responsibility of traders to take steps to guard against such risks, in particular by making the necessary arrangements in their contractual relations with their suppliers and, where appropriate, by seeking compensation from the perpetrator of the fraud (see, to that effect, Case C-97/95 *Pascoal & Filhos* v *Fazenda Pública* [1997] ECR I-4209, paragraphs 59 and 60, and Joined Cases T-10/97 and T-11/97 *Unifrigo Gadus and CPL Imperial 2* v *Commission* [1998] ECR II-2231, paragraphs 62 and 63).

115 That conclusion is all the more compelling given that the converse interpretation, namely that the damage suffered as a result of post-clearance recovery is capable of constituting a special situation, would jeopardise the very possibility of post-clearance recovery of customs duties, since that type of recovery, by definition, takes place well after the initial importation and subsequent sale of the imported goods, and would therefore prevent all recovery of outstanding duties.

Failures by the Indian authorities and the defendant to fulfil obligations as constituting a special situation

Introductory observations

116 According to the case-law, breaches by non-member countries and/or the Commission of their obligations to monitor application of specific importation arrangements may constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79 (see, to that effect, *Eyckeler & Malt* v *Commission*, cited above in paragraph 41, paragraph 162 et seq.; *Primex Produkte Import-Export and Others* v *Commission*, cited above in paragraph 65, paragraph 140 et seq.; *Turkish Televisions* judgment, paragraph 237 et seq.). It should, however, be borne in mind that in those judgments the Court reached that conclusion solely on the basis of the seriousness of the breaches and their implications for the legality of transactions effected under those arrangements. Those breaches had the effect of placing the applicants in those cases in exceptional situations when compared with other traders carrying out the same activity.

117 Moreover, it is clear from those judgments that in order to ascertain whether failures by a non-member country and/or the Commission to fulfil obligations are liable to constitute special situations within the meaning of Article 13(1) of Regulation No 1430/79, the true nature of the obligations imposed on those authorities and the Commission by the applicable legislation must be examined for each case at issue.

— Failures by the Indian authorities to fulfil obligations

118 As is clear from the description of the legal background to the case (see, in particular, paragraphs 12 to 15 above), the Indian authorities had, as the authorities of the country benefiting from the preferential treatment, a particularly important role to play in applying and supervising that system of preferential treatment and, in particular, with regard to compliance with the rules on product origins. Accordingly, under Article 15 of Regulation No 693/88, it was, in general terms, the responsibility of the Indian authorities to comply, and to ensure compliance, with the rules concerning the preparation and issue of certificates of origin. To that end, those authorities had to assist the Community by allowing the customs authorities of Member States to verify the authenticity of the certificate of origin or the accuracy of the information regarding the true origin of the products in question (Article 7(1) of that regulation). They could also carry out subsequent verifications of the certificates of origin issued by them. Under Article 13 of that regulation, they were additionally obliged to carry out such verifications at the request of Community customs authorities whenever those authorities had 'reasonable doubt as to the authenticity to the document or as to the accuracy of the information regarding the true origin of the products in question' (see also, on the consequences of subsequent verifications, Article 27 of that regulation).

119 The applicant claims that the Indian authorities acted in breach of their obligations by, first, withdrawing the disputed certificates without any objective reason and without giving the exporter the opportunity to express its views prior to the withdrawal and, second, issuing the disputed certificates in full knowledge of all the facts necessary for applying the customs rules in question (*Faroe Seafood and Others*, cited in paragraph 86 of this judgment, paragraph 95) and, third, colluding with the exporters.

120 As to the applicant's first allegation, namely that the Indian authorities acted in breach of their obligation to inform and hear the exporter prior to withdrawing the disputed certificates, even assuming that such an obligation existed under

Indian law and that the applicant could prove that no hearing had taken place before the withdrawal, that circumstance is not such as to constitute a special situation with respect to the applicant. As observed in paragraph 99 of this judgment, that line of argument is of no relevance to the present case since it relates to the validity of the withdrawal of the disputed certificates and, hence, the legality of the decision by the Italian customs authorities to carry out post-clearance recovery of the import duties. Moreover, even assuming that the applicant's argument ought to be taken into consideration, it is rebutted by the minutes of the meeting of 27 November 1992 between the representatives of the Community inspection mission and the Indian authorities, from which it is clear that the Indian authorities had heard, or at least intended to hear, the exporters before withdrawing the disputed certificates.

121 As to the other failures referred to by the applicant, the documents produced by the defendant prove that, in addition to the fact that the Indian authorities actively cooperated with the Commission services and those of the Member States as regards verification of the legality of exports of colour television sets to the Community, those authorities were not aware of all the facts needed to apply the rules in question and did not act in collusion with the exporters. It is clear from the report of the inspection mission carried out in India from 12 to 27 November 1992 and from the written correspondence between the Commission and the Indian authorities that those authorities were misled by the Indian exporters as regards compliance with the conditions governing issue of the certificates of origin. The applicant has, moreover, not provided any evidence to show that that was not the case in this instance.

— Failures by the Commission to fulfil obligations

122 The failures alleged against the defendant are of two kinds: first, the defendant purportedly failed to fulfil its general obligation to supervise and monitor

application of the system of preferential treatment by the Indian authorities and, second, it purportedly failed to fulfil its obligation to warn the applicant of its doubts as to the validity of the certificates of origin issued by the Indian authorities for export of the colour television sets.

123 As to the alleged failure to fulfil the obligation to supervise and monitor application of that system, it must first be observed that, in contrast to the cases at issue in *Turkish Televisions*, in which the defendant carried out an essential function as regards supervision of the proper application of the EEC-Turkey Association Agreement (see, in particular, paragraphs 257 to 259 of the *Turkish Televisions* judgment), the defendant's powers with regard to the application of the system of preferential treatment with India were relatively limited. The obligation to ensure that the applicable rules were observed lay principally with the authorities of the Member States and the Indian authorities. Contrary to the applicant's assertion, neither Regulation No 3831/90 nor Regulation No 693/88 contain provisions which would have empowered, or indeed obliged, the defendant to supervise the issuing of certificates of origin by the Indian authorities or even to give instructions to those authorities. The defendant's role was confined to centralisation of the information received from the Member States and to coordination of their initiatives (in particular, inspections carried out in the beneficiary country) with the aim of ensuring compliance with the provisions on preferential treatment.

124 Moreover, although the applicant was provided with the inspection reports from the mission carried out in India in November 1992, the correspondence between the defendant and the Indian authorities, and the correspondence between the defendant and the national authorities throughout the procedure before the Court, it was not at any time able to provide conclusive evidence substantiating its allegations of failings on the part of the defendant. On the contrary, it is clear from those documents that the defendant acted promptly and diligently and complied with its duties in respect of provision of information and inspection of the irregularities which had marred a number of imports of colour television sets from India.

125Furthermore, the applicant's assertion that the defendant did not carry out adequate checks in respect of the origin of the television sets at issue must be rejected. As observed in paragraph 118 of this judgment, it was the responsibility of the Indian authorities, and not the Commission, to carry out subsequent verifications, possibly following a request to that effect from the authorities of the Member States, of the origin of goods exported under the system of preferential treatment.

126As regards the alleged breach of the obligation to warn the applicant of doubts as to the validity of the certificates of origin issued by the Indian authorities, there is no provision of Community law which expressly obliges the defendant to warn importers when it has doubts as to the validity of customs transactions effected by those importers under the system of preferential treatment (see, to that effect, in regard to the external transit regime, *De Haan*, cited above in paragraph 76, paragraph 36).

127 It is true that in paragraph 268 of the *Turkish Televisions* judgment, cited above in paragraph 30, the Court found that such an obligation on the Commission may in certain specific cases be inferred from its general duty of diligence toward traders. It must, however, be observed that the facts in the present case are not the same as those at issue in that judgment. In the cases giving rise to that judgment, the Commission was aware of the fact that, or seriously suspected that, the Turkish authorities had made serious errors in their application of the Association Agreement (in particular, by failing to transpose the legislation on the compensatory levy) and that those errors affected the validity of all exports of televisions sets to the Community. By contrast, in the present case, the Commission had never been informed of such errors on the part of the Indian authorities and, indeed, there is no evidence of such errors (see above, paragraphs 120 and 121).

128 Further, the Commission can be obliged, under its general duty of diligence, to issue a general warning to Community importers only when it has serious doubts as to the legality of a large number of exports effected under a system of preferential treatment.

129 It is evident that when the applicant carried out the disputed imports the defendant did not have any such doubts regarding imports of colour television sets from India. It is apparent from the correspondence between the Indian authorities and the defendant that, prior to October 1992, the defendant's doubts concerned only the validity of certain certificates of origin issued by the Indian authorities for television sets produced in India by a different supplier from that of the applicant. Consequently, it was only in October 1992 that the Community authorities extended their investigations to include other manufacturers of televisions sets, in particular the exporter, because they had doubts as to the validity of the certificates of origin issued for the export of colour television sets manufactured by those companies.

130 The Commission did not therefore fail in its obligations by not warning the applicant, prior to the disputed imports, of its doubts as to the validity of a number of certificates of origin issued by the Indian authorities.

131 The applicant claims, however, that, even assuming that the Commission was not obliged to warn it of its doubts as to the validity of the certificates of origin, the fact remains that, as is clear from *De Haan*, cited above in paragraph 76, the intentional failure to warn traders may constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79. The applicant observes that in paragraph 53 of that judgment, the Court of Justice held that 'the demands of an investigation conducted by the customs authorities or the police constitute, in the absence of any deception or negligence on the part of the person liable, and where that person has not been informed that the investigation is being carried

out, a special situation within the meaning of Article 13(1) of Regulation No 1430/79. Although it may be legitimate for the national authorities, in order better to dismantle a network, identify perpetrators of fraud and obtain or consolidate evidence, deliberately to allow offences or irregularities to be committed, to place on the person liable the burden of the customs debt arising from the choices made in connection with the prosecution of offences is inimical to the objective of fairness which underlies Article 905(1) of Regulation No 2454/93 in that it puts that person in an exceptional situation in comparison with other operators engaged in the same business'.

132 That argument cannot be accepted.

133 It suffices to observe that in the case at issue in *De Haan*, cited above in paragraph 76, the Netherlands authorities were already aware of, or at least had serious grounds for suspecting, the existence of a fraud even before the customs operations giving rise to the customs debt had been carried out. They were therefore in a position to warn the party concerned that a customs debt might be incurred, but deliberately chose not to do so in order better to dismantle the network, identify the perpetrators of the fraud and obtain or consolidate evidence.

134 That is clearly not the situation in the present case. It should be remembered that, as observed in paragraph 129 of this judgment, at the time when the applicant carried out the imports in question, the defendant did not have any doubts as to the validity of the certificates of origin issued to the exporter. Accordingly, the defendant and the national authorities were not acting deliberately in failing to inform the applicant and allowing a customs debt to be incurred.

Conclusion

135 In the light of the foregoing, the plea alleging infringement of Article 13(1) of Regulation No 1430/79 is without foundation.

General Conclusion

136 Since the two pleas raised by the applicant are unfounded, the present action must be dismissed.

Costs

137 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. As the applicant has been unsuccessful and the Commission has applied for costs, the applicant must be ordered to pay the costs incurred by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the applicant to pay the costs.**

Jaeger Lenaerts Azizi

Delivered in open court in Luxembourg on 11 July 2002.

H. Jung M. Jaeger

Registrar President