OPINION OF ADVOCATE GENERAL COSMAS

delivered on 14 November 1996 *

Table of Contents

I — Legal framework ..... I - 4212

A — Council Decision 86/283 ..... I - 4212

B — Other Community Legislation ..... I - 4217

II — Facts ..... I - 4221

III — The preliminary questions ..... I - 4223

IV — Replies to the preliminary questions ..... I - 4224

A — The first and second questions ..... I - 4224

B — The sixth question ..... I - 4226

C — The third question ..... I - 4231

D — The fourth and fifth questions ..... I - 4233

E — The seventh question ..... I - 4237

V — Conclusion ..... I - 4238

1. In the context of a legal dispute concerning the lawfulness of post-clearance recovery of import duties, the Tribunal Tributário de Segunda Instância (Tax Court of Second Instance), Lisbon, referred to the Court of Justice certain preliminary questions which it considers necessary in order to resolve the litigation pending before it.

I — Legal framework

A — *Council Decision 86/283*

2. By Decision 86/283/EEC [1] (hereinafter the 'Decision'), the Council laid down a

* Original language: Greek.

1 — Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community (OJ 1986 L 175, p. 1).

series of provisions concerning the association of overseas countries and territories (hereinafter 'OCT') with the European Economic Community.

3. Part Two of the Council Decision concerns the instruments of EEC-OCT cooperation. Article 70(1) provides that:

'Products originating in the countries and territories shall be imported into the Community free of customs duties and charges having equivalent effect.'

4. In accordance with Article 182 the Council Decision is to enter into force on 1 July 1986, whilst in accordance with Article 183 the decision was to apply until 28 February 1990. [2]

5. In accordance with Article 184(1), the countries and territories to which the Council Decision is to apply are listed in Annex I.

6. Annex I contains a 'list of the countries and territories referred to in Article 1' to which Council Decision 86/283 is to apply, including Greenland, as a country having special relations with the Kingdom of Denmark.

7. Annex II to the Decision contains a series of provisions concerning the definition of the concept of 'originating products' and methods of administrative cooperation.

8. Title I (Articles 1 to 5) gives the definition of the concept of originating products.

9. More specifically, Article 1 provides that:

'For the purpose of implementing the Decision and without prejudice to paragraphs 3 and 4, the following products shall be considered:

(...)

(b) products originating in the countries and territories:

1. products wholly obtained in one or more countries or territories;

(...)'

2 — With effect from 1 March 1990 Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1) began to apply. In accordance with Article 240(1) that decision is to apply for a period of 10 years.

10. Article 2 provides that:

'The following shall be considered wholly obtained in one or more countries and territories (...) within the meaning of Article 1 (1)(a) (1), (b)(1)(3) and (4):

(...)

(f) products of sea fishing and other products taken from the sea by their vessels;

(...).'

11. Title II of Annex II to the Council Decision lays down the methods of administrative cooperation between Member States and the OCT.

12. Article 6(1)(a) provides as follows:

'Evidence of products' originating status, within the meaning of this Annex, is given by a movement certificate EUR.1 (...),'.

13. Under Article 7:

'1. A movement certificate EUR.1 shall be issued by the customs authorities of the exporting Member State or country or territory when the goods to which it relates are exported. It shall be made available to the exporter as soon as actual export has been effected or ensured.

(...)

5. Application for movement certificates EUR.1 must be preserved for at least three years by the customs authorities of the exporting Member State, country or territory.'

14. Article 8 is as follows:

'1. The movement certificate EUR.1 shall be issued by the customs authorities of the exporting Member State, country or territory if the goods can be considered "originating products" within the meaning of this Annex.

2. For the purpose of verifying whether the conditions stated in paragraph 1 have been met, the customs authorities shall have the right to call for any documentary evidence or to carry out any check which they consider appropriate.

(...).'

15. Article 10 provides that:

'1. Under the responsibility of the exporter, he or his authorized representative shall request the issue of a movement certificate EUR.1.

2. The exporter or his representative shall submit with his request any appropriate supporting document proving that the goods to be exported are such as to qualify for the issue of a movement certificate EUR.1.'

16. In accordance with Article 12:

'Movement certificates EUR.1 shall be submitted to customs authorities in the importing Member State, country or territory, in accordance with the procedures laid down by that Member State, country or territory. The said authorities may (...) also require the import declaration to be accompanied by a statement from the importer to the effect that the goods meet the conditions required for the implementation of the Decision.'

17. Article 23 provides:

'In order to ensure the proper application of this title, the Member States and the relevant authorities of the countries and territories (...) shall assist each other, through their respective customs and administrations, in checking the authenticity of movement certificates EUR.1 and the accuracy of the information concerning the actual origin of the products concerned (...).'

18. Under Article 24:

'Penalties shall be imposed on any person who (...) draws up or causes to be drawn up (...) a document which contains incorrect

particulars for the purpose of obtaining a movement certificate EUR.1 (...).'

19. Finally, Article 25 provides as follows:

'1. Subsequent verification of movement certificates EUR.1 (...) shall be carried out at random or whenever the customs authorities of the importing Member State, country or territory have reasonable doubt as to the authenticity of the document or the accuracy of the information regarding the true origin of the goods in question.

2. For the purpose of implementing paragraph 1, the customs authorities of the importing Member State, country or territory shall return the movement certificate EUR.1 (...) or a photocopy thereof, to the customs authorities of the exporting Member State, country, or territory, giving, where appropriate, the reasons of form or substance for an inquiry. The invoice, if it has been submitted, or a copy thereof shall be attached to certificate EUR.1 (...) and the customs authorities shall forward any information that has been obtained suggesting that the particulars given on the said certificate (...) are inaccurate.

(...)

3. The customs authorities of the importing Member State, country or territory shall be informed of the results of the verification within three months. These results must be such as to make it possible to determine whether the disputed movement certificate EUR.1 (...) applies to the goods actually exported, and whether these goods can, in fact, qualify for the application of the preferential arrangements.

When such disputes cannot be settled between the customs authorities of the importing Member State, country or territory and those of the exporting Member State, country or territory, or when they raise a question as to the interpretation of this Annex, they shall be submitted to the Committee on Origin set up under Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods.

In all cases the settlement of disputes between the importer and the customs authorities of the importing Member State, country or territory shall be under the legislation of the said State, country or territory.'

B — *Other Community Legislation*

20. Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt [3] provided in Article 2(a) that a customs debt on importation is incurred on the placing of goods liable to import duties in free circulation in the customs territory of the Community.

21. Article 3(a) provided that the moment when a customs debt on imports is incurred is deemed to be, in the cases referred to in Article 2(1)(a), the moment when the competent authorities accept the entry of the goods for free circulation or the time of any other act which, in accordance with the provisions in force, has the same effect in law as such acceptance.

22. The first paragraph of Article 13 of Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt [4] repealed Directive 79/623/EEC with effect from 1 January 1989.

3 — OJ 1979 L 179, p. 31.
4 — OJ 1987 L 210, p. 15.

23. In Article 2(1)(a) of Title I concerning the incurrence of a customs debt, a, Section A (entitled 'Customs debt on importation') it is provided that:

'1. A customs debt on importation shall be incurred by:

(a) the placing of goods liable to import duties in free circulation or the placing of such goods under the temporary procedure with partial relief from import duties.

(...).'

24. In accordance with Article 3:

'The moment when a customs debt on importation is incurred shall be deemed to be:

(a) in the cases referred to in Article 2(1)(a), the moment when the competent authorities accept the entry of the goods for free circulation or temporary importa-

tion or the time of any other act which, in accordance with the provisions in force, has the same effect in law as such acceptance.

(...).'

25. The second paragraph of Article 14 provided that Regulation No 2144/87 was to apply with effect from 1 January 1989.

26. Council Regulation (EEC) No 1031/88 of 18 April 1988 concerns the determination of the persons liable for payment of a customs debt. [5]

27. In Title I concerning the persons liable for payment of a customs debt on importation, Article 2 provides in particular as follows:

'1. Where a customs debt has been incurred pursuant to Article 2(1)(a) or (f) of Regulation (EEC) No 2144/87, the person liable for payment of such debt shall be the person in whose name the declaration or any other act with the same legal effects was made.

(...).'

28. The second paragraph of Article 12 provided that Regulation No 1031/88 was to apply from 1 January 1989.

29. Article 251 of Council Regulation (EEC) No 2913/92 of 12 October 1992 on the Common Customs Code (CCC) [6] repealed, *inter alia,* both Regulations Nos 2144/87 and 1031/88.

30. Chapter I of Title I of the CCC determines, in accordance with its title, the scope of the CCC. Article 3(1) thereof expressly defined the customs territory of the Community, to which the CCC is to apply, so as to include the territory of the Kingdom of Denmark, except Greenland.

5 — OJ 1988 L 102, p. 5.

6 — OJ 1992 L 302, p. 1.

31. Articles 201 to 208 of the CCC determine the moment when a customs debt arises on importation and which products are subject thereto. Article 201 provides as follows:

'1. A customs debt on importation shall be incurred through:

(a) the release for free circulation of goods liable to import duties, or

(b) the placing of such goods under the temporary importation procedure with partial relief from import duties.

2. A customs debt shall be incurred at the time of acceptance of the customs declaration in question.

3. The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor.

Where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up on the basis of information which leads to all or part of the duties legally owed not being collected, the persons who provided the information required to draw up the declaration and who knew or ought reasonably to have known that such information was false, may also be considered debtors in accordance with the national provisions in force.'

32. Pursuant to the second paragraph of Article 253 the CCC applied as from 1 January 1994.

33. Council Regulation (EEC) No 1697/79 of 24 July 1979 governs the post-clearance recovery of import 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. [7]

34. Article 2 is as follows:

'1. Where the competent authorities find that all or part of the amount of import

7 — OJ 1979 L 197, p. 1. As from 1 January 1994 those matters are governed by the CCC, already cited above at footnote 6.

duties (...) legally due on goods entered for a customs procedure involving the obligation to pay such duties has not been required of the person liable for payment, they shall take action to recover the duties not collected.

(...)

2. Within the meaning of paragraph 1 action for recovery shall be taken by notifying the person concerned of the amount of import duties (...) for which he is liable.

(...).'

35. Council Regulation (EEC) No 1430/79 of 2 July 1979 [8] originally determined the conditions of repayment of duties unduly levied or of remission of import duties and export duties. Article 13 of the Regulation, as replaced by Council Regulation (EEC) No 3069/86 of 7 October 1986, [9] is as follows:

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

(...)'

36. Commission Regulation (EEC) No 3799/86 of 12 December 1986 [10] lays down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties. Title II, Section B, makes provision for the special situations to which Article 13 of Regulation No 1430/79, as amended, is to apply. More specifically, it defines at I. certain 'special situations which do, and those which do not, constitute grounds for the repayment or remission of import duties.'

37. Article 4 of Regulation No 3799/86 provided that:

'For the purposes of Article 13(1) (...) and without prejudice to other situations to be considered case by case (...):

1. (...)

8 — OJ 1979 L 175, p. 1. These matters are governed as from 1 January 1994 by the CCC, cited above at footnote 6.

9 — OJ 1986 L 286, p. 1.

10 — OJ 1986 L 352, p. 19.

2. The following situations shall not by themselves be special situations resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned:

(...)

(c) 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.'

II — Facts

38. In 1988 and 1989 the Portuguese undertaking, Pascoal & Filhos (Pascoal), imported four consignments of cod from Greenland. In respect of each of the consignments, corresponding EUR.1 movement certificates were issued, certifying that the goods in question originated in Greenland. [11]

11 — More accurately, the EUR.1 certificates in question are numbered and dated 76 092 of 6 September 1988, 76 106 of 19 September 1988, 77 525 and 77 526 of 14 September 1989, respectively.

39. The Portuguese authorities allowed all the consignments to be imported into the Community free of duty. The import declarations were made by Pascoal on 23 and 30 September 1988 and on 25 July 1989.

40. Subsequently, the Portuguese customs authorities requested the Greenland customs authorities to carry out a post-clearance check, in cooperation with representatives of the Commission, as to the accuracy of the EUR.1 certificates which had been issued for the abovementioned consignments.

41. On completion of that procedure the Greenland authorities and representatives of the Commission drew up a report (the 'basic report') which contained, *inter alia*, the following observations:

'Within the framework of a mission of administrative cooperation of the Commission of the European Communities, the administrative documentation (declarations of importation, exportation, transit and movement certificates EUR.1's from 1988 to present) which are recorded by this office in respect of its competence has been examined on 5 and 7 September 1990.'

As regards, more specifically, the certificates in question, it was stated as follows:

'Movement certificates EUR.1 Nos 76 106 of 19 September 1988 ... 76 092 of 6 September 1988, 77 525 of 14 July 1989 and 77 526 of 14 July 1989: it has been established on the basis of the relevant documentation provided by the abovementioned company that the quantities of Greenland fresh codfish delivered for further processing on board of the concerned factory ships are not sufficient, according to the communicated processing yield, in order to obtain the quantities of finished products which have been imported into the EEC with the said movement certificates (...).'

42. On the basis of that report, the Greenland authorities sent to the Portuguese customs authorities an official communication as follows:

'As the examinations — carried out in cooperation with EEC representatives — have shown that some EUR.1 goods certificates issued in Greenland are not in conformity with the regulations laid down in Annex 2 to the OLT Agreement regarding certification of State of origin, you are kindly asked to ensure that the following goods certificates are revoked and cancelled.

(...).' [12]

12 — The provisions of Annex II to Decision 86/283 are meant.

43. That communication was made to the Portuguese authorities, but the report drawn up by the Greenland authorities together with representatives of the Commission was not so communicated.

44. Taking the view that it was bound by the abovementioned communication and without proceeding to conduct further measures of inquiry as to the actual origin of the goods, the Conferência Final da Alfândega (Final Customs Assessment Office), Oporto, applied the procedure for post-clearance recovery against Pascoal in respect of the four consignments of cod. That procedure culminated in the adoption of assessments to duty amounting in total to ESC 61 709 940.

45. On learning of the communication to the Portuguese authorities of the results of the inquiries of the Greenland authorities, Pascoal examined the case-file of the authority competent for the imposition of post-clearance import duties, which did not, however, contain the basic report. According to the Court making the reference, Pascoal learnt of the basic report only at the appeal stage, on submission of the response to the appeal.

46. Pascoal took the view that the assessments imposing post-clearance import duties were unlawful on two grounds: (a) the competent authority infringed an essential procedural requirement since, by not communicating the basic report to the interested parties,

it did not provide an adequate legal statement of the reasons on which the assessment was based; (b) that authority infringed Community legislation because the preconditions for post-clearance recovery were not met and, moreover, there was an error of calculation. Thereupon Pascoal brought proceedings before the Tribunal Fiscal Aduaneiro (Customs Court), Oporto, to have the assessments set aside. That court deemed the communication by the Greenland authorities to constitute a sufficient statement of reasons and dismissed the action as unfounded.

47. Subsequently, Pascoal appealed against the dismissal of its action to the Tribunal Tributário de Segunda Instância (Tax Court of Second Instance), Lisbon.

III — The preliminary questions

48. The national court, continuing to have doubts as to the interpretation of certain Community provisions which govern, in its view, the resolution of the dispute, submitted the following questions to the Court for a preliminary ruling, by an order dated 29 November 1994:

'(a) Does the responsibility of the exporter, referred to in Article 10(1) of Annex II to Council Decision 86/283/EEC of 30 June 1986, extend to customs duties resulting from the cancellation of movement certificates EUR.1 issued on the basis of false information as to the origin of the goods?

(b) What is the meaning and scope of the modal adverb "also" used in the second subparagraph of Article 201(3) of the Community Customs Code, in particular where the national customs law provides that responsibility for payment of the duties due in respect of the goods involved in the infringement attaches exclusively to the person who committed the customs infringement?

(c) May the rule in the judgment of the Court of Justice of the European Communities of 7 December 1993 in Case C-12/92 *E. Huygen*, published at pages 5 and 6 of *Proceedings of the Court of Justice* No 35/93, although relating to the Free Trade Agreement between the EEC and Austria, apply to the circumstances of this case, which concerns the interpretation and application of Council Decision 86/283/EEC?

(d) What is the meaning, purport and scope of the *results of the verification* referred to by Article 25(3) of Annex II to Council Decision No 86/283/EEC?

(e) May a procedure for post-clearance recovery in the Member State of importation be commenced and completed

before the results of the verification are forwarded by the customs authorities in the exporting country to the customs authorities in the importing country and without the importer being aware of the results of the verification?

(f) Does the levying of an importer acting in good faith of the duties payable on goods in respect of which an exporter has committed a customs offence, in which the importer was in no way involved, infringe the principles of justice, prohibition of enrichment at the expense of others, proportionality, legal certainty and good faith?

(g) Since the customs authorities in the country of exportation neglected to carry out a prior inspection of the exporter's warehouses before issuing the movement certificates EUR.1, and since the Portuguese importer cannot remedy the situation arising from such negligence, does that situation not constitute a case of *force majeure* for the importer, precluding the procedure for post-clearance recovery commenced against it?'

IV — Replies to the preliminary questions

49. I consider it expedient to examine the questions submitted in five units, as follows: first, I will analyse the first and second, then the sixth, followed by the third, fourth and fifth and, finally, the seventh question.

A — *The first and second questions*

50. In the first and second questions the national court is asking the Court to define the scope of an exporter's responsibility under Article 10(1) of Annex II to the Decision, and Article 201(3) of the Community Customs Code and, specifically, whether the exporter is liable to pay the duties imposed after invalidation of the EUR.1 goods movement certificates which were issued on the basis of a false declaration as to the origin of the goods.

51. Even though it realizes that the CCC entered into force after the debt arose (end of section 3 of order for reference), the national court seeks an interpretation of Article 201 of the CCC, deeming it to reproduce the previous superseded legislation. It has in contemplation Articles 2 and 3 of Regulation No 1031/88 concerning the same question. [13]

13 — Cited above at footnote 5.

52. Those two questions evidently raise issues of admissibility.

53. The Portuguese Government and the Commission consider that the second question is inadmissible because the CCC began to apply as from 1 January 1994, whereas the material facts of the present case occurred in 1988 and 1989, that is to say under the regime prior to the CCC. They point out that, under the Court's settled case-law, [14] a reply to that question would not relate to the subject-matter of the main proceedings and, consequently, would not be relevant to the solution of the dispute.

54. The Commission maintains that the CCC applies only to the customs territory of the Community which, in accordance with Article 3 thereof, does not include Greenland. It also stresses that, under Article 2(2) of the CCC, certain of its provisions apply outside the Community customs territory in the framework either of special provisions or of international agreements. It further considered that there is in fact special provision for mutual cooperation between the OCT, which include Greenland, and the Community (Decision 86/283); it therefore maintains that that decision merely provides machinery for checking the origin of goods which give rise to entitlement to preferential treatment but does not deal with the question of determining the person responsible for import duties in the event of an irregularity in the declaration of origin of the goods. It therefore concludes that the provisions of the CCC may not be relied on in the present case.

55. Irrespective of the above, there is an even more important reason, in my view, for not answering those two questions. Considering that under Portuguese law it is the person committing the customs infringement who is liable to pay post-clearance duties, the national court asks whether an analogous principle may be inferred from the Community provisions to which the first and second preliminary questions refer, pursuant to which the exporter's liability precludes liability on the part of an importer acting in good faith. [15]

56. However, that construction is based on a misapprehension of the Community rules. Whether Article 2(1) of Regulation No 1031/88 or Article 201(3) of the CCC is deemed applicable to the main proceedings, I

14 — In fact they cite paragraph 17 et seq. of the judgment of 16 July 1992 in Case C-343/90 *Lourenço Dias* [1992] ECR I-4673.

15 — According to Pascoal and the national court, under Portuguese law, the exporter alone is liable to pay post-clearance import duties where his conduct is punishable, except where the importer is deemed also to be liable by dint of being a joint perpetrator. Conversely, the Portuguese Government considers that, under Portuguese law, the exporter is liable to pay post-clearance import duties only if the goods in question belong to the person committing the offence; in all other cases, that is to say where the goods belong to persons who have no responsibility for the customs infringement, those persons are liable only for the amount of duty. And it concludes that, under Portuguese law, the importer has a sole liability to pay the entirety of the duties.

consider that the declarant/importer is in any event responsible for the customs debt. Any liability on the part of a third party does not suffice to exempt him from his own liability.

57. Since the Community provisions bear that meaning, the Portuguese law on the responsibility of the exporter is without significance.

58. Under those circumstances and irrespective of whether the provision of the CCC is applicable to the main proceedings or not, and of whether that provision may be applied to an exporter established in Greenland, it is not appropriate to reply to the first and second questions because it is evident that, since they are based on a misconception of Community law that any liability on the part of the exporter is sufficient to exempt the importer from all liability, any reply given would not be useful to the national court in resolving the dispute pending before it.

B — *The sixth question*

59. In its sixth question the national court asks whether the imposition on an importer in good faith of the obligation to pay duties, where those duties were imposed after the setting aside of the EUR.1 movement certificates which had been issued on the basis of a false declaration by the exporter concerning the origin of the goods, would be contrary to the 'principle of justice', and to the principles of unjust enrichment at the expense of a third party, proportionality, legal certainty and good faith.

60. Citing in this connection a provision of the Portuguese Constitution requiring the public administration to act in compliance with the 'principle of justice', the national court considers that the customs authorities cannot subject citizens to 'unjust taxes' which it would be for others to pay. In such a situation, the national court considers that there would not only be an infringement of the 'principle of justice' but also unjust enrichment in favour of the person committing the customs offence.

61. Moreover, in the national court's view, to deem the importer in good faith to be responsible for the customs debt would be contrary to the principle of proportionality, since the imposition of customs duties on the importer in good faith who took no part in the customs offence affects him irreparably and thus goes beyond what is necessary in order to protect Community interests. Furthermore, the national court considers that that solution runs counter to the principle of legal certainty 'by overturning the contractual basis and substantially altering the factual circumstances underlying the parties' intention to enter into contractual relations.'

62. Finally, the national court alleges there to be a serious infringement of the principle of good faith because the obligation on the importer to pay customs duties is not one of the risks inherent in contracts such as that in the present case, which is an international contract for the sale of goods and not a speculative contract. It further takes the view that the case-law of the Court, as laid down in the *Acampora* case, [16] according to which the importer in good faith must appraise the risks inherent in the market which he is prospecting and accept them as part of the normal vagaries of commerce, does not do justice to the specific nature of international contracts for the sale of goods.

63. I stated above that Community legislation renders the declarant/importer responsible in all cases for post-clearance payment of customs duties. On the other hand, under the legislation in force, the good faith of the importer is not an event giving rise to extinction of the customs debt. [17]

64. I do not consider that, under the Court's case-law, the good faith of the importer may exempt the latter from his liability to pay post-clearance duties.

65. In *Acampora*, [18] the preliminary questions were raised on the refusal by an importer to pay the customs debt for which he was liable in respect of goods imported from outside the Community. That trader had enjoyed preferential customs treatment by declaring that the imported goods 'originated' in a country to which the Community had accorded tariff preferences. However, post-clearance checks by the customs authorities showed that those products did not satisfy the conditions for the application of that preferential scheme.

66. Whilst acknowledging the difficulties faced by the importer in good faith who is in the end required to pay post-clearance customs duties, the Court gave priority to the Community interest which requires those duties to be collected. Thus, on the one hand, it recognized that 'the possibility of checking after importation without the importer's having been previously warned may cause him difficulties when in good faith he has thought he was importing goods benefiting from tariff preferences in reliance on certificates which, unbeknown to him, were incorrect or falsified', but held that 'in the first place the Community does not have to bear the adverse consequences of the wrongful acts of the suppliers of its nationals, in the second place the importer can attempt to obtain compensation from the perpetrator of the fraud and in the third place, in calculating the benefits from trade in goods likely

16 — Case 827/79 *Amministrazione delle Finanze* v *Acampora* [1980] ECR 3731.

17 — See Article 9(1) and (2)(a) of Directive 79/623, cited above at footnote 3, Article 8(1) of Regulation No 2144/87, cited above at footnote 4, and Article 233 of the CCC, cited above at footnote 6.

18 — Cited above at footnote 16.

to enjoy tariff preferences, a prudent trader aware of the rules must be able to assess the risks inherent in the market which he is considering and accept them as normal trade risks'. [19]

67. I believe that the solution adopted by the Court in that case should guide the Court in the search for a solution in the present case. The national court takes a different view of the matter because it does not believe that such a solution may be applied to contracts of the type before the national court, which is an international contract for the sale of goods, and not a speculative transaction. However, nowhere does it say what are the particular features of such a contract and on what ground they preclude the application of the judgment in *Acampora* to the present case.

68. As regards infringement of the principle of proportionality as a result of post-clearance imposition on the importer in good faith of customs duties, I would stress that imposition of customs duties on the importer/declarant is evidently an appropriate means of enabling the Community to receive the customs duties owing to it. That measure is aimed at importers because they are persons known to the customs authorities by virtue of the fact that it is they who lodge the declarations for entry into free circulation of goods subject to customs duties. It is thus also necessary since exemption of the importer/declarant would result in the Community being liable for the injurious consequences of the unlawful conduct of suppliers of its nationals.

69. As the Commission rightly points out (paragraph 13 of its observations), the scheme for post-clearance recovery of customs duties established by the Community legislature reflects the striking of a fair balance between opposing interests: on the one hand, the public interest in the correct application of the provisions on collection of customs duties; on the other, the private interest of both traders in not being penalized for matters for which they are not personally responsible and that of other traders who, having previously taken all appropriate steps to reduce as far as possible the risk of objective liability to post-clearance imposition of duties, refrained from undertaking certain import operations because it considered them to be of doubtful profitability. [20]

70. Consequently, post-clearance imposition of customs duties on the importer in good faith is both necessary and appropriate in order to attain the legitimately pursued

19 — Paragraph 8 of the judgment.

20 — In his Opinion in Case C-12/92 *Huygen and Others* [1993] ECR I-6381 (paragraph 29 *in fine*) Advocate General Gulmann argued that 'the importer must of course be aware that he is taking a risk when he makes a contract with an exporter without making sure beforehand that the latter is in possession of the documents proving the origin of the goods. If the exporter (...) cannot submit the necessary documents, it is the importer who must take the consequences by paying the customs duty.' Judgment in that case was delivered on 7 December 1993.

objective, and its disadvantages do not outweigh its advantages. [21]

71. Relying on the case-law of the Court, [22] to the effect that the prohibition of unjust enrichment at the expense of a third party is a general principle of Community law, the national court takes the view that the imposition of customs duties on the importer in good faith would be contrary to that principle because it would entail unjust enrichment of the person committing the customs offence.

72. Irrespective of whether there is a general principle as indicated by the national court, I do not consider that there can be any question in the present case of unjust enrichment of the exporter entailing a loss for the importer in good faith since, as the Court also stressed in *Acampora*, [23] the importer retains a right of action against the exporter for recovery of sums paid.

73. As regards the 'principle of justice' relied on by the national court which, in its view, is binding on the administration and precludes the imposition of 'unjust taxes' on the importer in good faith where the customs offence was committed by the exporter, it must be observed that Community law contains no higher-ranking general principle [24] to this effect.

74. At all events I consider it expedient to recall that (1) in accordance with Article 4(2)(c) of Commission Regulation No 3799/86 on repayment or remission of import duties, [25] submission of documents even in good faith for the purposes of the grant of preferential tariff treatment in favour of goods declared for free circulation and subsequently found to be false, forged or not eligible for the grant of such treatment, does not in itself constitute a special situation arising from circumstances not involving deception or obvious negligence by the party concerned; (2) the Court has held that the abovementioned provision of Regulation No 3799/86 is valid [26] and that it does not

21 — On the principle of proportionality see in particular judgment in Case 265/87 *Schräder* [1989] ECR 2237, paragraph 21, and judgments in Case C-295/94 *Hüpeden* [1996] ECR I-3375, paragraph 14 and Case C-296/94 *Pietsch* [1996] ECR I-3409, paragraph 15.

22 — In Case 26/67 *Danvin* v *Commission* [1968] ECR 463 the Court held there is unjust enrichment where a person suffers loss whose corollary is the unjust enrichment of a third party.

23 — Judgment cited above at footnote 16 (paragraph 8).

24 — In its judgment in Joined Cases 17/61 and 20/61 *Klöckner* v *High Authority* [1962] ECR 325, the Court refers to the principle of justice in the sense of the principle of proportionality. Thus, as regards the powers of the High Authority of the ECSC in devising the financial mechanisms which it establishes in order to preserve market equilibrium, the Court held that the High Authority 'has a duty to take account of the economic circumstances in which those arrangements have to be applied, so that the aims pursued may be attained under the most favourable conditions and with the smallest possible sacrifices by the undertakings affected. This principle of justice however must always be harmonized with the principle of legal certainty.' The Court concluded that these two principles must be so reconciled as to entail the minimum of sacrifice by persons as a whole within the Community.

25 — Regulation cited above at footnote 10.

26 — See judgment in Case C-446/93 *SEIM* v *Subdirector-geral das Alfândangas* [1996] ECR I-73, paragraph 48.

restrict beyond what is necessary the general equitable provision contained in Article 13(1) of Regulation No 1430/79. It recalled in that connection its settled case-law [27] to the effect that 'verifications carried out after importation would be largely deprived of their usefulness if the use of false certificates could, of itself, justify granting a remission.' And it went on to state [28] that 'the opposite result could discourage traders from adopting an inquiring attitude and make the public purse bear a risk which falls mainly on traders.'

75. The national court also invokes the principle of legal certainty and takes the view that post-clearance imposition of customs duties on the importer in good faith would run counter to this principle.

76. The Court has consistently held [29] that the principle of legal certainty demands clarity and precision of the rules of law under which the institutions exercise their powers and individuals carry on their activities. I do not believe that this principle is infringed by the post-clearance imposition of customs duties on the importer in good faith. In fact, the scheme of post-clearance recovery of duties established by the Community legislature expressly allows for post-clearance checks and the likelihood of customs duties being imposed, where it is shown that certain goods have been illegally imported free of duty.

77. Finally, the national court refers to the contractual basis which it says precludes post-clearance imposition of customs duties on the importer in good faith on the ground that that would substantially alter the conditions under which the parties decided to enter into contractual relations.

78. It seems to me that this reference to the contractual basis and to contractual relations can only concern relations between importers and exporters. Consequently, it can in no way affect the importer's relationship with the customs authorities of the State of importation such as to have any effect on his obligation to discharge any post-clearance liability to customs duties on importation.

79. Thus, it must be concluded that the imposition of customs duties on the importer in good faith is not contrary to the

27 — *SEIM* (paragraph 44). See also judgment in Joined Cases 98/83 and 230/83 *Van Gend & Loos* v *Commission* [1984] ECR 3763, paragraph 13. Moreover, it is worth pointing out that, in that judgment (paragraph 20), but also in Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465 on post-clearance recovery of import duties for fishery products originating in the Faroe Isles, the Court held (paragraph 93) that the person liable to pay customs duties 'cannot entertain a legitimate expectation with regard to the validity of certificates by virtue of the fact that they were initially accepted by the customs officers of a Member State', since 'the role of those officers in regard to the initial acceptance of declarations in no way prevents the customs authorities from subsequently checking their veracity.'

28 — Paragraph 45 of *SEIM* judgment.

29 — See for example judgment in Case C-325/91 *France* v *Commission* [1993] ECR I-3283, paragraph 26. See also judgment of 9 February 1994 in Case C-119/92 *Commission* v *Italy* [1994] ECR I-393, paragraph 17.

principles of prohibition of unjust enrichment, proportionality, legal certainty and good faith.

C — *The third question*

80. The third question submitted turns on the judgment in *Huygen and Others.* [30] In that case, the authorities of the importing State were unable to determine the true origin of the goods. In accordance with paragraphs 1 and 2 of the operative part of that judgment, where the authorities of the exporting State reply to the authorities of the importing State, upon a request for post-clearance verification, that they have not succeeded in establishing the precise origin of the goods, the authorities of the importing State are not definitively bound in connection with a claim for payment of unpaid customs duties but may take into consideration other proofs of origin of the goods.

81. According to the Portuguese Government, the *Huygen* case may be distinguished in several respects from the present case. First, the Greenland authorities replied unreservedly that the EUR.1 certificates had to be cancelled. Secondly, where the outcome of checks is not clear as regards the validity of the certificates, the checks which may be carried out by the authorities of the importing country are not obligatory but merely an option open to those authorities. Thirdly, inasmuch as the Court gave judgment in light of certain factual circumstances, the solution adopted in its judgment cannot be extended automatically to other circumstances. The Portuguese Government thus concludes that, where the competent authorities of the exporting State certify to the competent authorities of the importing State that certain EUR.1 certificates were not issued in compliance with the rules laid down in Annex II to the Decision, the results of the verification are binding on the authorities of the importing State and leave them no margin of discretion, with the consequence that the cancellation of the certificates is justified.

82. I consider that the question raised by the national court essentially seeks to ascertain whether, regard being had to Decision 86/283, the customs authorities of the importing State were wrong to deem themselves to be definitively bound by the information supplied to them by the customs authorities of the exporting State in the context of the *ex post facto* verification of the EUR.1 certificates carried out by those authorities, when they could and should have taken all necessary steps to determine the exact origin of the goods.

30 — Judgment cited above at footnote 20. That case concerned a reference for a preliminary ruling addressed to the Court by the Belgian Court of Cassation for interpretation of the EEC-Austria Agreement, signed in Brussels on 22 July 1972 and concluded and approved on behalf of the Community by Council Regulation (EEC) No 2836/72 of 19 December 1972 (Journal Officiel 1972 L 300, p. 1), and in particular Protocol No 3 annexed thereto.

83. Article 25(3) of Annex II to the Decision provides that the results of verification of the EUR.1 certificates carried out at the request of the customs authorities of the importing Member State, country or territory are, within a period of no more than three months, to be brought to the notice of those authorities by the customs authorities of the exporting country. Under that provision, where the customs authorities of the importing Member State, country or territory and those of the exporting Member State, country or territory have been unable between them to settle disputes arising or if those disputes raise a question of interpretation of Annex II, the question is to be submitted, at the request of the authorities of the Member State or of the OCT, to the Committee on Origin established by Council Regulation (EEC) No 802/68. [31]

84. The provision made for importing Member States to challenge the results of verification and, in particular, the provision of Article 25(3) of Annex II to the Decision, which provides that any dispute is to be submitted to the Committee on Origin, demonstrates, in my view, that the reply/communication of the customs authorities of the State of exportation containing the results of the verification are not automatically binding on the customs authorities of the importing State in such a way as to require them without more ado to take a decision requiring post-clearance settlement of import duties in accordance with the results of the verification carried out. On the other hand, they would be so bound if they did not refer the matter to the Committee on Origin.

85. Accordingly, I consider that it would be contrary to the relevant Community provisions for the customs authorities of the State of importation to regard themselves as bound to take a decision in accordance with the findings on the validity of the EUR.1 certificates made by the customs authorities of the State of exportation, and to refuse to assess the results of verification in order to determine whether they should be contested before the Committee on Origin. [32]

86. That is what appears to have happened in the present case since, as stated in the order for reference, on receipt of the communication sent by the Greenland customs authorities, 'the Conferência Final da Alfândega, Oporto, *considering itself to be*

31 — Regulation of 27 June 1968 on the common definition of the concept of the origin of goods (OJ, English Special Edition 1968 (I)); that regulation was repealed by Regulation No 2913/92 establishing the Community Customs Code, cited above at footnote 6; however, on the date when the customs authorities of the State of exportation sent the results of the verification to the customs authorities of the Member State of importation, Article 25(3) of the Decision was in force providing for the possibility of submitting any dispute for appraisal by the Committee on Origin.

32 — Assessment by the customs authorities of the Member State of importation of the results of verification in order to determine whether the matter should be referred to the Committee on Origin is, in my view, perfectly in keeping with the Court's case-law to the effect that the duty to determine the origin of goods which may be eligible for preferential tariff treatment is in principle the task of the authorities of the State of exportation and not of the authorities of the State of importation, the latter being obliged to recognize the EUR.1 certificates issued by the customs authorities of the exporting State; see judgments in Case 218/83 *Les Rapides Savoyards* [1984] ECR 3105, paragraph 27 and in Case C-432/92 *Anastasiou and Others* [1994] ECR I-3087, in particular paragraphs 38 and 39, and in *Faroe Seafood and Others*, cited above at footnote 27 (paragraphs 18 to 22). The point of view which I am expressing here does not mean that the customs authorities of the State of importation may ignore the conclusions of the verification, but simply that they have the possibility of analysing them and, in the event of disagreement, of bringing the matter before the Committee on Origin.

bound thereby and without taking any measures regarding evidence of the true origins of the goods, initiated four procedures for post-clearance recovery against the appellant which culminated in the issue of the contested assessment notices' (emphasis added).

D — *The fourth and fifth questions*

87. In the fourth and fifth questions the national court requests the court to define the content of the term 'results of verification' appearing in Article 25(3) of Annex II to Council Decision 86/283/EEC and the consequences of the communication of those results by the customs authorities of the exporting State to the customs authorities of the importing State.

88. The Commission calls in question the admissibility of the fourth question. In its view the verification referred to in Article 25(3) of Annex II to the Decision did not take place in this case. No such verification, however, needed to be conducted since it is the Greenland authorities themselves which, following an on-the-spot verification, found the EUR.1 certificates issued to be invalid. It therefore considers that this fact casts doubt on the relevance of the question to the solution of the dispute.

89. It should be recalled that, according to the facts as found by the national court, the customs authorities of the importing State requested verification of four EUR.1 certificates issued in respect of the same number of consignments of cod which had already been imported into Portugal. The question whether the verification carried out was indeed that provided for in this Article, that is to say verification upon request by the customs authorities of the importing Member State, concerns appraisal of factual circumstances of the main proceedings, which is a matter exclusively for the national court. [33] Since the question submitted concerns an interpretation of Community law which is not in principle foreign to the subject-matter of the main proceedings, the Court is obliged in my view to reply to it. [34]

90. The national court takes the view that the reply whereby the custom authorities of the exporting State requested cancellation of the EUR.1 certificates does not constitute communication of the results of post-clearance verification carried out at the request of the customs authorities of the importing State, but merely information. And it raises the question (paragraph 4.3 of the order for reference) whether the results of verification must be accompanied by a detailed description of the steps taken on the exporter's premises and the legal and factual reasons which led to the conclusion that the EUR.1 certificates had not been issued lawfully.

33 — See for example judgment in Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763, paragraph 39.

34 — See judgment in Case C-67/91 *Asociación Española de Banca Privada and Others* [1992] ECR I-4785, paragraphs 25 and 26.

91. Pascoal maintains that the notices of assessment to import duties are invalid because they do not contain a statement of the reasons on which they are based. The notification, it says, did not contain a statement of facts on the basis of which the customs authorities of the exporting State reached the conclusion that the EUR.1 certificates were invalid. [35] Thus it was not in a position to defend itself against the decision of the customs authority of the importing Member State precisely because it did not know the reasons for the cancellation of the EUR.1 certificate.

92. The Commission considers the fifth question to be seeking to establish whether it is possible to bring an action for post-clearance recovery without there having been verification of the certificates as provided for in Article 25(3) of Annex II to the Decision, or pending the results of such verification. In other words, as far as the Commission is concerned, the question apparently seeks to ascertain whether a request for post-clearance verification and, more specifically, the receipt of the results of that verification constitute a condition *sine qua non* of an action for post-clearance recovery. In its view, nothing of the kind may be inferred either from the letter or the spirit of the applicable provisions. Consequently, it considers that an action for post-clearance recovery may be brought, even in the absence of such verification, where the customs authorities of the importing State have at their disposal all the evidence necessary in order to reject the provenance asserted and to set aside the certificate presented.

93. The reply suggested to the third preliminary question already contains *in nuce* the solution to those which I shall examine here. Allow me to recall that, under Article 25(3) of Annex II to the Decision, the authorities of the Member State, country or territory of importation may challenge the results of verification of the EUR.1 certificates carried out at their request by the customs authorities of the exporting State by submitting the matter to the Committee on Origin provided for by Regulation No 802/68 and that, when the competent authorities of the importing State do not avail themselves of this possibility, they are bound by the results of the verification carried out by the customs authorities of the exporting State.

94. In my opinion, for the importing State to be able to avail itself of the possibility of bringing the matter before the Committee on Origin under Article 25(3) of Annex II to the Decision, it is essential that the communication sent by the customs authorities of the exporting State puts it in a position to form a view on the question whether it regards those results as satisfactory or not and whether they are such as to carry conviction. However, for that to be possible the customs authorities of the exporting State must on no account rest content with a reply which is too brief.

35 — In this connection Pascoal invokes the principle of Portuguese law to the effect that a fiscal decision must be accompanied by a statement of reasons so that the addressee is in a position to understand the reasons leading to its adoption. Consequently, the results of the verification must exhibit the same characteristics as a fully reasoned decision and cannot be limited to a mere decision or conclusion.

95. In my view, the results of the verification must enable it to be determined whether the contested EUR.1 certificate remains applicable to the goods in fact exported and whether, consequently, those goods may be eligible for application of the preferential regime. It is true that Article 25(3) of Annex II imposes no limit on the scope of the information derived from the verification and the rationale of that provision is not verification of the validity and adequacy of the grounds of the administrative decision invalidating the EUR.1 certificates. However, as regards relations between customs authorities, the result of the verification must be clear and unequivocal and must give the customs authority of the importing State an accurate indication of whether the certificates subject to verification are valid or not. Given that, when the relevant results are communicated to them, the customs authorities of the importing State may, in the event of doubt, bring the matter before the Committee on Origin, the communication sent by the customs authorities of the exporting State must contain a minimum of explanations as to the reasons on which those conclusions are based, that is to say the reasons why the issue of EUR.1 movement certificates was in the end adjudged to be unlawful. In other words, the results of the verification must include a minimum of analysis, a succinct statement of reasons to inform the recipient so that he may usefully exercise the right afforded to him by the abovementioned provisions. That condition is not satisfied where the reply by the customs authority of the exporting country is excessively brief.

96. In the present case, the reply/communication sent by the customs authorities of the exporting State does not fulfil those requirements. Certainly, it was clear on whether the customs authorities regarded the certificates as valid, [36] but it provided no clarification as to the reasons which led it to that conclusion. The explanations were provided much later, when the basic report was sent.

97. In light of the foregoing considerations, and in particular of the analysis in regard to the third question, I do not consider that the mere communication made by the customs authorities of the exporting country could be deemed to be a communication of the results of verification within the meaning of Article 25(3) of Annex II to the Decision and that it was capable of being used by the competent customs authorities of the importing Member State to bring and, *a fortiori*, conduct to their conclusion proceedings for post-clearance recovery of import duties. [37]

36 — The communication states, first, that 'control examinations — carried out in collaboration with representatives from the EEC Commission — *have proved* that some goods certificates issued on EUR.1 in Greenland do not comply with the regulations laid down in OLT-Agreement's [decision 86/283] Annex II regarding attainment of status of origin', and secondly, that the customs authorities of the exporting State requested the customs authorities of the importing State 'to arrange that the following goods certificates are revoked and cancelled' (emphasis added).

37 — The French Government observed that, at point 14 'results of verification' of the model EUR.1 certificate, which forms Annex 5 to Annex II to the Decision, it suffices to tick the corresponding square to say whether the EUR.1 certificate 'satisfies the requisite conditions as to authenticity and regularity'. It considers that it is possible to reply in that way to the request for post-clearance verification made by the customs authorities of the exporting State by those of the importing State. That cannot, however, suffice on its own as an argument in support of the proposition that the legislature intended a brief indication/communication on the part of the competent authorities of the exporting State to be sufficient in order to produce legal effects, without requiring a succinct account of the reasons on which those conclusions are based so as to enable those concerned to prepare their defence.

98. The national court also points out (point 4.4 *in fine* of the order for reference) that even the basic report was insufficient because the customs authorities of the exporting country were unsuccessful in determining the exact origin of the cod, simply stating that it did not originate in Greenland. In light of the foregoing analysis, inasmuch as the results of the verification clearly show the reasons why the EUR.1 certificates were issued unlawfully, I am of the opinion that this failing on the part of the customs authorities of the exporting country is not of such importance as to invalidate the basic report which they sent to the customs authorities of the importing State. [38]

99. The question which then arises is whether and when the importer/declarant must receive notice of the results of the verification, when he was not aware of the circumstances in which the goods were exported, relied on the exporter for the regularity of the EUR.1 certificates and, following proceedings for post-clearance recovery of customs duties, may be required to pay the amount arrived at under this heading. Examination of this question would be otiose if the view were taken that bare notification does not constitute communication of the results of the verification. However, since this question is fundamental, being directly linked to observance of the rights of the defence, I consider that the Court must reply to it.

100. The Court has consistently held [39] that 'respect for the rights of the defence, in all proceedings which are initiated against a person and which are liable to culminate in a measure adversely affecting that person is a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the procedure in question.' As the Court stressed, that principle 'requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views' and guarantees 'every person the right to be heard before the adoption of a decision capable of adversely affecting him.'

101. The fundamental obligation to observe the rights of the defence, which is likewise incumbent on the national authorities in their relations with the persons concerned, [40] means in my view that, prior to conducting to a conclusion proceedings for post-clearance recovery of import duties, the

38 — Moreover, it would be illogical to require the customs authorities of the exporting country to determine not only whether the goods, in this case cod, were or were not of Greenland provenance but, moreover, its precise origin, it being the case that with current ultra-modern methods the fish might have been caught anywhere where cod with similar characteristics to Greenland cod is located.

39 — See judgment in Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, paragraphs 21 and 30. See also judgment in Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885, paragraph 39, and judgment in Joined Cases C-48/90 and C-66/90 *Netherlands* v *Commission* [1992] ECR I-565, paragraph 44.

40 — See judgment in Case C-60/92 *Otto* [1993] ECR I-5683, paragraph 14. The Court has acknowledged that the principle in question must be observed, that is to say that the rights of the defence of those concerned must be secured within the context of the establishment by national law of the appropriate procedure for the application of Articles 85 and 86 of the Treaty by the national authorities.

competent customs authority of the importing Member State must allow any debtor, for example the importer/declarant, the possibility to express his point of view by drawing his attention to the substantive grounds on which it considers that the EUR.1 certificates which he had submitted do not qualify for application of the preferential regime.

E — *The seventh question*

102. By its seventh question the national court seeks to determine the extent to which the importer may invoke *force majeure* in order to avoid post-clearance recovery of import duties where the customs authorities of the exporting country have omitted to carry out a prior check in the exporter's warehouses before issuing EUR.1 movement certificates, in a situation where the importing company is unable to guard against such negligence.

103. The Court has consistently held that 'in the absence of specific provisions, recognition of circumstances constituting *force majeure* presupposes that the external cause relied on by individuals has consequences which are inexorable and inevitable to the point of making it objectively impossible for the persons concerned to comply with their obligations.' [41] The concept of *force majeure* must be understood as meaning 'abnormal and unforeseeable circumstances beyond the control of the trader concerned, whose consequences could not have been avoided despite the exercise of all due care, so that conduct of the public authorities may, according to the circumstances, constitute a case of *force majeure*.' [42]

104. Under the terms of Article 8(2) of Annex II to the Decision, the authorities of the exporting State have the right 'to call for any documentary evidence or to carry out any check which they consider appropriate.' They are not obliged so to act but have the right to do so.

105. None the less, in light of the concept of *force majeure*, as described above, and of the provisions of Article 8(2), cited above, I am of the opinion that a prudent trader ought to know that the customs authorities of the exporting country merely have the right to carry out a check and that, consequently, he should not regard it as completely beyond the bounds of possibility that, owing to the lack of systematic controls, the EUR.1 certificate may contain an inaccuracy.

41 — See judgment in *Huygen*, cited above at footnote 20 (paragraph 31 of the judgment). See also judgment in Joined Cases 154/78, 205/78, 206/78, 226/78 to 228/78, 263/78 and 264/78, 39/79, 31/79, 83/79 and 85/79 *Valsabbia and Others* v *Commission* [1980] ECR 907, paragraph 140.

42 — See, *inter alia*, *Huygen*, cited above, paragraph 31, and judgments in Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125, paragraph 23; Case 266/84 *Denkavit France* [1986] ECR 149, paragraph 27; Case C-338/89 *Organisationen Danske Slagterier* [1991] ECR I-2315, paragraph 16; and Case C-50/92 *Molkerei-Zentrale Süd* [1993] ECR I-1035, paragraph 11.

V — Conclusion

106. On those grounds I therefore propose that the Court should reply as follows to the questions referred to it for a preliminary ruling by the Tribunal Tributário de Segunda Instância, Lisbon:

(1) The post-clearance imposition of liability to pay customs duties on an importer who acted in good faith concerning the validity of EUR.1 movement certificates, which were finally cancelled following post-clearance checks, is not contrary to the principles of good faith, the prohibition on unjust enrichment, proportionality or legal certainty.

(2) The results of a verification carried out pursuant to Article 25(3) of Annex II to Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community by the customs authorities of the exporting country are not automatically binding on the customs authorities of the importing Member State since the latter may challenge those results before the Committee on Origin established by Regulation (EEC) No 802/68 of the Council of 27 June 1968 on the common definition of the concept of origin of goods.

(3) (a) Article 25(3) of Annex II to Council Decision 86/283/EEC must be interpreted as meaning that the term 'the results of this verification shall be notified' refers to the conclusions which must be communicated, together with a succinct account of the grounds on which they are based, by the customs authorities of the exporting country to those of the importing State on the question whether the contested EUR.1 certificate is or is not

applicable to the goods actually exported and, consequently, whether the goods in question may in fact qualify for application of the preferential regime.

(b) Before proceedings for post-clearance recovery of import duties may be brought and concluded in the importing Member State, country or territory, the customs authorities of the exporting State must have communicated, within the three-month period provided, to the customs authorities of the importing State, the results of the verification carried out and the importer must have received notice thereof and been put in a position to submit his observations in due course.

(4) The fact that the customs authorities of the exporting country carried out no verification prior to issue of the EUR.1 certificate whose annulment entailed post-clearance payment of import duties does not constitute a case of *force majeure* capable of being relied on by an importer in order to exempt himself from his obligation to settle the amount due by way of import duties.