Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

16 April 2015 *

(Customs union — Post-clearance recovery of import duties — Imports of glyphosate originating in Taiwan — Application for the remission of import duties made by a customs agent — Article 239 of Regulation (EEC) No 2913/92 — Fairness clause — Existence of a special situation — Declarations of release for free circulation — Incorrect certificates of origin — Concept of obvious negligence — Commission decision finding that the remission of duties was not justified)

In Case T-576/11,

Schenker Customs Agency BV, established in Rotterdam (Netherlands), represented by J. Biermasz and A. Jansen, lawyers,

applicant,

v

European Commission, represented initially by L. Keppenne and F. Wilman, and subsequently by A. Caeiros and B.-R. Killmann, acting as Agents, and by Y. Van Gerven, lawyer,

defendant,

APPLICATION for annulment of Commission Decision C(2011) 5208 final of 27 July 2011 finding the remission of import duties not justified in a particular case (Case REM 01/2010),

THE GENERAL COURT (Sixth Chamber),

composed of S. Frimodt Nielsen, President, F. Dehousse and A.M. Collins (Rapporteur), Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 19 November 2014,

gives the following

* Language of the case: Dutch.

Judgment

Facts of the dispute

Anti-dumping rules applied to glyphosate imports

1 Glyphosate is a substance that forms the basis of a herbicide used in agricultural weeding and the maintenance of urban and industrial areas.

2 Commission Regulation (EC) No 1731/97 of 4 September 1997 imposed a provisional anti-dumping duty on imports of glyphosate originating in the People's Republic of China (OJ 1997 L 243, p. 7) into the European Union.

3 Council Regulation (EC) No 368/98 of 16 February 1998 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China and collecting definitively the provisional duty imposed (OJ 1998 L 47, p. 1) levied a definitive anti-dumping duty of 24% on those imports.

4 By letter of 14 December 1999, the Commission of the European Communities notified the Member States, within the framework of 'mutual assistance', of suspected possible irregularities involving imports of glyphosate in the European Union. The letter contained information sent by the Belgian customs authorities concerning glyphosate imports in 1998 and 1999 which were declared as coming from Taiwan but which in actual fact originated in China. It also contained information sent by the French customs authorities concerning glyphosate imports declared under incorrect tariff headings.

5 In that letter, the Commission also stated that, based on information on the worldwide glyphosate industry and the analysis of import flows for this product, it suspected that glyphosate produced in China had been transferred to third countries which, despite not being known as producers of glyphosate, were among the countries that exported glyphosate to the European Union at the same prices as glyphosate produced in China. This information underpinned the suspicions of the European Anti-Fraud Office (OLAF) of possible transshipments or insufficient transformations in Taiwan, Thailand, Singapore and Malaysia.

6 The letter contained a list of the companies involved in the irregularities reported by the Kingdom of Belgium and the French Republic, as well as a list of several companies established in the European Union under suspicion by the Commission in connection with imports of glyphosate in the European Union, including the importer of glyphosate at issue in the present case.

7 Lastly, in its letter the Commission asked the Member States to keep a watchful eye over imports of glyphosate and to carry out checks to locate possible forged certificates of origin. It also asked the Member States to send it copies of the commercial and transport documents as well as the certificates of origin relating to glyphosate imports declared as originating in Malaysia, Singapore, Thailand and Taiwan in respect of 1998 and 1999.

8 After receiving a request from the European Glyphosate Association on 26 March 2001, on 8 May 2001 the Commission adopted Regulation (EC) No 909/2001 initiating an investigation concerning the alleged circumvention of anti-dumping measures imposed by Regulation No 368/98 on imports of glyphosate originating in the People's Republic of China by imports of glyphosate consigned from Malaysia or Taiwan, and making such imports subject to registration (OJ 2001 L 127, p. 35).

9 Following the Commission's investigation, the Council of the European Union adopted Regulation (EC) No 163/2002 of 28 January 2002 extending the definitive anti-dumping duty imposed by Regulation No 368/98 on imports of glyphosate originating in the People's Republic of China to imports of glyphosate consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not, and terminating the investigation in respect of imports from one Malaysian and one Taiwanese exporting producer (OJ 2002 L 30, p. 1).

Declarations for the release of glyphosate for free circulation by Schenker Customs Agency

10 Between 19 February 1999 and 19 July 2001, the applicant, Schenker Customs Agency BV, filed with the Netherlands customs authorities, as a customs agent, 52 declarations for the release of imported glyphosate for free circulation in the European Union.

11 The applicant, by indirect representation, made these declarations in its own name in favour of the company Biermann-Schenker L[da], whose principal was the Portugal-based company that imported the glyphosate at issue ('the Importer').

12 All of those declarations stated that the glyphosate originated in Taiwan. They were made, in particular, on the basis of certificates of origin issued by Taiwanese chambers of commerce evidencing that the goods originated in Taiwan, certificates that were sent by the Importer to the applicant.

Checks by the customs authorities of Portugal

13 As a result of the Commission's letter of 14 December 1999 within the framework of mutual assistance, and after receiving information from the Netherlands customs authorities, the Portuguese customs authorities carried out inspections and requested information and documents from the Importer and Biermann-Schenker, who acted as the Importer's agent in Portugal.

14 Following those checks, the Portuguese customs authorities concluded that the Taiwanese certificates of origin supporting the declarations of release for free circulation submitted by the applicant were not credible and that there were documents showing that the Importer was aware of the Chinese origin of the imported glyphosate. These conclusions were referred to in a report drawn up by the Portuguese customs authorities dated 18 October 2002. This report was sent to OLAF, who forwarded it to the Netherlands customs authorities on 8 November 2002.

OLAF mission

15 A mission was arranged at the request of, inter alia, the Netherlands authorities. It was composed of representatives of OLAF and of some other Member States.

16 The OLAF mission visited Taiwan between 18 March and 1 April 2003 in order to investigate glyphosate exports to the European Union declared as originating in Taiwan but suspected as originating in China. The mission report, dated 2 June 2003, states that the glyphosate imported into the European Union by the Importer, which was stated to originate in Taiwan in the declarations of release for free circulation submitted by the applicant, in actual fact originated in China.

17 The report explains that the glyphosate was transported from China via Hong Kong to the Taiwanese port of Kaohsiung, from where the goods were redirected to the European Union with a new bill of lading and certificates of origin issued by the Taiwan Chamber of Commerce and the Chamber of Commerce in Taiwan — Taipei Chamber of Commerce based on false declarations as to the origin of the goods.

Proceedings conducted by the Netherlands customs authorities

18 The Netherlands customs authorities carried out checks on the applicant on 30 July, 3 August, 30 November and 14 December 2001. These checks revealed that for most of the imports of glyphosate examined, the goods had been loaded in China and shipped to Rotterdam (Netherlands) via Taiwan.

19 As a result of the checks, the Netherlands customs authorities concluded that the glyphosate at issue was actually of Chinese, not Taiwanese, origin and was therefore subject to the anti-dumping duties provided for in Regulation No 368/98. The report summarising these conclusions was issued by the Netherlands customs authorities on 21 February 2002. This report states, inter alia, that an interview bringing an end to the checks was held with representatives of the applicant on 11 February 2002 and that, when asked by the customs inspector for their comments on the outcome of the checks and the possible action to be taken as a result thereof, as well as on possible modifications they might suggest in that regard, they gave no reply, pointing out that they were waiting for the results of an internal inquiry.

20 On 13 February, 2 May and 2 July 2002, the Netherlands customs authorities issued seven recovery notices to the applicant totalling EUR 1 696 303.17 for anti-dumping duties relating to imports of glyphosate in respect of which the applicant had submitted declarations of release for free circulation between 19 February 1999 and 19 July 2001.

21 On 9 December 2002, the applicant filed an application with the Netherlands customs authorities, under Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, 'the Customs Code'), for remission of the anti-dumping duties in respect of which recovery was sought. The Netherlands customs authorities refused remission on 9 September 2004 and confirmed their refusal on 6 September 2005.

22 The applicant brought an action against these decisions before the Rechtbank te Haarlem (Haarlem District Court, Netherlands), which confirmed them by judgments of 4 December 2006.

23 The applicant lodged an appeal against the judgments of Haarlem District Court before the Gerechthof te Amsterdam (Amsterdam Court of Appeal, Netherlands). In its judgments of 18 December 2008, the Amsterdam Court of Appeal (Customs Chamber) held that, since the applicant's situation was comparable to the situation giving rise to the judgment of 25 July 2008 in *C.A.S.* v *Commission* (C-204/07 P, ECR, EU:C:2008:446) and, although the applicant had disregarded certain matters, it could not be accused of deception or obvious negligence, the application for remission had to be forwarded to the Commission, under Article 905 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of the Customs Code (OJ 1993 L 253, p. 1, 'the Implementing Regulation'). Consequently, the Amsterdam Court of Appeal declared that the appeal was well founded, set aside the judgments of the Haarlem District Court and the contested decisions of the customs authorities refusing remission of the customs duties, and asked those authorities to send the case file to the Commission.

24 By letter of 18 February 2010, the Netherlands customs authorities sent the case file to the Commission, under Article 905 of the Implementing Regulation, and asked it to rule on whether the remission of the import duties claimed from the applicant would be justified under Article 239 of the Customs Code.

25 Pursuant to Article 906a of the Implementing Regulation, the Commission notified the applicant of its intention to take an unfavourable decision on the latter's application for remission of the import duties and set out its objections. The applicant submitted its observations on those objections on 1 June 2011.

26 In its observations, the applicant essentially contends that the behaviour of the Netherlands and Taiwanese authorities and of the Commission itself placed it in a special situation in accordance with Article 239 of the Customs Code. It also disputes the Commission's findings relating to the existence of obvious negligence on account of, in particular, invoices mentioning additional transport costs and documents containing references to the loading of glyphosate in the People's Republic of China.

Contested decision

27 After several exchanges of correspondence and the provision of additional information by the applicant and the Netherlands customs authorities, and following the examination by the group of experts provided for in Article 907 of the Implementing Regulation, on 27 July 2011 the Commission adopted Decision C(2011) 5208 final finding that the remission of import duties was not justified in a particular case (Case REM 01/2010) ('the contested decision').

28 In the contested decision, the Commission examined the two conditions set out in Article 239 of the Customs Code, read in conjunction with Article 905 of the Implementing Regulation, in order for the remission of duties to be granted, namely, first, that the liable party must be in a special situation compared to other operators engaged in the same business and, second, no deception or obvious negligence may be attributed to the liable party.

29 As regards the first condition, in the first place, the Commission found that the applicant was not in a special situation because the Taiwanese authorities had issued incorrect certificates of origin, as the facts of the case fell within the scope of European Union anti-dumping duties, over which the authorities of third countries had no powers. In the second place, the Commission considered that its own behaviour had not placed the applicant in a special situation either, since it was not required to notify liable parties of situations such as those in the present case. Furthermore, the Commission stated that, in December 1999, it had informed the Member States of its suspicions as to the existence of fraud involving imports of glyphosate and that, in 2003, OLAF had conducted a mission in Taiwan. In the third place, the Commission considered that the behaviour of the Netherlands authorities, who were not actually aware of the irregularities relating to glyphosate imports before the imports and the declarations of release for free circulation at issue occurred, had not placed the applicant in a special situation.

30 As regards the second condition, the Commission noted that the law applicable to the present case was not particularly complex. In addition, it stated that the applicant was relatively experienced as a well-established customs agent and had previously filed other declarations for free circulation in respect of past glyphosate imports, including those originating in China. Moreover, it took the view that the applicant had not taken all measures necessary to ensure that the declarations it submitted were correct, as it had not expressed any doubts as to the true origin of the glyphosate, despite the existence of invoices stating that the goods had left from Shanghai (China) and inconsistencies casting doubt on the certificates of origin issued by the Taiwanese chambers of commerce. In the light of these considerations, the Commission found that the applicant had not acted with the diligence that is normally expected of a customs professional and, therefore, the second condition in order for the remission of duties to be granted was not satisfied in the present case.

31 Accordingly, the Commission decided that the remission of import duties requested was not justified.

Procedure and forms of order sought by the parties

32 By application lodged at the Registry of the General Court on 10 November 2011, the applicant brought the present action.

33 Following a change in the composition of the Chambers of the General Court, the Judge-Rapporteur was assigned to the Sixth Chamber, to which the present case was accordingly allocated.

34 Upon hearing the report of the Judge-Rapporteur, the General Court (Sixth Chamber) decided to open the oral procedure.

35 At the hearing on 19 November 2014, the parties presented oral arguments and answered the questions put to them by the Court.

36 The applicant contends that the Court should:

— annul the contested decision;

— rule that the remission of duties claimed is justified;

— order the Commission to pay the costs.

37 At the hearing, in answer to a question put by the Court, the applicant stated that it was withdrawing its second head of claim, formal note of which was taken in the minutes of the hearing.

38 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

39 In support of its action, the applicant relies on six pleas in law. The first five pleas in law are based on the Commission's alleged infringement of Article 239 of the Customs Code, in so far as the Commission — after wrongly considering that the applicant was not in a special situation and had been obviously negligent — erroneously decided that the remission requested by the applicant was not justified. The sixth plea in law alleges that the statement of reasons for the contested decision is defective, in so far as it does not take into account all of the facts and circumstances relied on by the applicant.

Preliminary remarks on the procedure for the remission of import duties

40 Attention must be drawn to the exceptional nature of the mechanism laid down in Article 239 of the Customs Code, as elaborated and expanded on by Article 905 of the Implementing Regulation.

41 Under Article 239 of the Customs Code, '[i]mport duties … may be repaid or remitted in situations … resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned'.

42 That provision is expanded on by Article 905 of the Implementing Regulation, which states that the Member State's authorities that receive an application for the remission of import duties must send the application to the Commission to be settled under the prescribed procedure where it 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'.

43 It has been held that the procedure for the remission or repayment of import duties pursues, inter alia, the aim of limiting the post-clearance payment of duties to cases where such payment is justified and is compatible with fundamental principles, such as the principle of the protection of legitimate expectations (see, to that effect, judgment of 11 November 1999 in *Söhl & Söhlke*, C-48/98, ECR, EU:C:1999:548, paragraph 54, and order of 1 October 2009 in *Agrar-Invest-Tatschl* v *Commission*, C-552/08 P, ECR, EU:C:2009:605, paragraph 52).

44 In addition, according to settled case-law, this mechanism for the repayment or remission of duties constitutes a general fairness clause intended, in particular, to cover exceptional situations (see judgment of 30 November 2006 in *Heuschen & Schrouff Oriëntal Foods* v *Commission*, T-382/04, EU:T:2006:369, paragraph 42 and the case-law cited). Accordingly, the repayment or remission of import duties, which may be made only under the conditions and in cases specifically provided for, constitutes an exception to the normal import and export procedure and, consequently, the provisions which provide for such repayment or remission are to be interpreted strictly (judgment of 17 February 2011 in *Berel and Others*, C-78/10, ECR, EU:C:2011:93, paragraph 46; see judgment in *Heuschen & Schrouff Oriëntal Foods* v *Commission*, EU:T:2006:369, paragraph 45 and the case-law cited).

45 As regards the condition relating to the existence of a special situation in accordance with Article 239 of the Customs Code, this condition is satisfied when it is apparent from the circumstances of the case that the liable party is in an exceptional situation compared to other operators engaged in the same business and that, in the absence of such circumstances, it would not have sustained the loss associated with the import duties being subsequently entered in the accounts (see, to that effect, judgments of 25 February 1999 in *Trans-Ex-Import*, C-86/97, ECR, EU:C:1999:95, paragraph 22, and 19 February 1998 *Eyckeler & Malt* v *Commission*, T-42/96, ECR, EU:T:1998:40, paragraph 132).

46 Furthermore, in order to determine whether the circumstances of the case constitute a special situation in which no obvious negligence or deception may be attributed to the person concerned, the Commission must assess all the relevant facts (as regards the interpretation of Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), see, by analogy, judgment of 11 July 2002 in *Hyper* v *Commission*, T-205/99, ECR, EU:T:2002:189, paragraph 93).

47 It is in the light of the foregoing considerations that the pleas in law and arguments of the parties in this case must be examined.

The first five pleas in law alleging infringement of Article 239 of the Customs Code

The existence of a special situation

48 By its first plea in law, the applicant essentially submits that the Commission erred in law by considering that it was not in a special situation in accordance with Article 239 of the Customs Code because, first, the Netherlands authorities had issued recovery notices without hearing the applicant beforehand and had belatedly carried out the recovery of import duties from the Importer and, second, at the relevant time the applicant's status as customs agent established in the Netherlands entailed the de facto obligation to act as indirect representative of the client in question.

49 It should be noted, in that regard, that the sole aim of the provisions of the fairness clause, as laid down in Article 239 of the Customs Code and Article 905 of the Implementing Regulation, is to enable economic agents, when certain special conditions are satisfied and in the absence of obvious negligence or deception, to be exempted from payment of duties due from them, and not to enable them to contest the actual principle of the customs debt being due or the associated procedure. The application of the substantive customs law of the European Union falls within the exclusive competence of national customs authorities (judgment of 6 July 1993 in *CT Control (Rotterdam) and*

JCT Benelux v *Commission*, C-121/91 and C-122/91, ECR, EU:C:1993:285, paragraph 45). The decisions taken by these authorities in accordance with that law may be challenged before the national courts under Article 243 of the Customs Code and those courts may make a request to the Court of Justice under Article 267 TFEU (judgments of 16 July 1998 in *Kia Motors and Broekman Motorships* v *Commission*, T-195/97, ECR, EU:T:1998:181, paragraph 36, and 13 September 2005 *Ricosmos* v *Commission*, T-53/02, ECR, EU:T:2005:311, paragraph 165).

50 Accordingly, a liable party who seeks the annulment of a decision adopted by the Commission at the end of the procedure laid down in Article 905 of the Implementing Regulation can only validly rely on pleas in law or arguments designed to demonstrate the existence of a special situation or the absence of obvious negligence or deception attributable to it. The liable party cannot challenge that decision with pleas in law or arguments designed to demonstrate that the decisions of the competent national authorities requiring it to pay the contested duties are unlawful (see, to that effect, order of 28 February 2012 in *Schneider España de Informática* v *Commission*, T-153/10, ECR, EU:T:2012:94, paragraph 30 and the case-law cited).

51 In the present case, the applicant's argument alleging that the Netherlands authorities sent it recovery notices without first giving it the opportunity to make known its views effectively essentially seeks to challenge the lawfulness of the procedure conducted by those authorities and, therefore, the resulting notices. The fact that the applicant used this argument before the Commission to demonstrate that it was in a special situation in accordance with Article 239 of the Customs Code is of no significance in that regard; in the procedure laid down in Article 905 of the Implementing Regulation, the Commission has no power to review the lawfulness of decisions taken by national customs authorities. Accordingly, this argument cannot be upheld against the contested decision in the context of the present action.

52 Furthermore, the recovery notices that the Netherlands customs authorities sent to the applicant simply constitute the notification to the applicant of the subsequent entry in the accounts by these authorities of an existing customs debt which, pursuant to Article 201(2) of the Customs Code, was incurred when the declarations submitted by the applicant were accepted. In addition, pursuant to Article 201(3) of the Customs Code, the applicant was debtor of the entire debt, including the import duties that had not been collected because it had declared that Taiwan was the country of origin of the imported glyphosate, when the country of origin was actually China and, therefore, the goods were subject to anti-dumping duties.

53 Accordingly, since the subsequent checks demonstrated that the anti-dumping duties had not been incorrectly applied, the national customs authorities had to, in principle, carry out post-clearance recovery of the duties which were not levied on importation (see, by analogy, judgment of 14 May 1996 in *Faroe Seafood and Others*, C-153/94 and C-204/94, ECR, EU:C:1996:198, paragraph 16).

54 In addition, it is apparent from the report of 21 February 2002, drawn up by the Netherlands customs authorities after the checks carried out on the applicant on 30 July, 3 August, 30 November and 14 December 2001, that an interview bringing an end to the investigation was held with representatives of the applicant on 11 February 2002. This report also shows that the inspector asked the representatives of the applicant for their comments and that the latter stated that they were carrying out an internal inquiry first. According to the documents in the case, no reply to the inspector's questions was ever sent to the Netherlands customs authorities.

55 As regards the applicant's arguments concerning the belated nature of the notices issued by the Netherlands customs authorities against the Importer, it must be stated that these arguments essentially seek to challenge the decisions taken by the Netherlands customs authorities, which fall within the scope of substantive customs law and not the procedure laid down in Article 905 of the Implementing Regulation, in respect of which the Commission has competence. Those arguments cannot, therefore, be used to challenge the contested decision in this action.

56 Furthermore, it should be recalled that, under Article 201(3) of the Customs Code, the debtor of import duties is the declarant and, in the event of representation, the person on whose behalf the customs declaration is made shall also be a debtor. In addition, under Article 213 of the Customs Code, where several persons are liable for payment of one customs debt, they shall be jointly and severally liable for such debt. Accordingly, the Netherlands customs authorities cannot be criticised for having issued recovery notices against the applicant in its capacity as customs agent and, therefore, debtor of the customs debt. The fact that the customs authorities subsequently issued notices against the Importer is irrelevant. As regards the fact that the Importer was declared insolvent without paying the recovery notices of the customs authorities and without the applicant being able to take action against it, this is one of the risks involved in the pursuit of the business of customs agent. It therefore follows that the issuance in 2003 of recovery notices against the Importer and the circumstances relied on by the applicant in that regard do not place it in a special situation in accordance with Article 239 of the Customs Code.

57 So far as concerns the applicant's argument that it was placed in a special situation on account of the fact that the rules applicable to customs agents in the Netherlands required it to act as indirect representative of the Importer, it must be noted that these rules fall within the scope of the procedural customs law of the Netherlands.

58 Under Article 5(2) of the Customs Code, the representation of a person in his dealings with the customs authorities for the performance of the acts and formalities laid down in the code may be either direct, where the representative acts in the name and on the behalf of that person, or indirect, where the representative acts in his own name but on behalf of the other person. According to that provision, the Member States may reserve the right to provide that customs declarations in their territory must be made by a customs agent carrying on his business there. Consequently, the rules applicable in the Netherlands providing for both direct and indirect representation are based on one of the possibilities available to Member States under the Customs Code. Since these rules, which lay down specific conditions when declarations are submitted by a customs agent established in that country, apply to all customs agents established in the Netherlands, the applicant cannot argue that they place it in a special situation in accordance with Article 239 of the Customs Code.

59 In the light of the foregoing, the applicant's first plea in law must be rejected as unfounded.

60 In its second plea in law, the applicant essentially argues that the behaviour of the Taiwanese chambers of commerce, which issued the incorrect certificates of origin, placed it in a special situation.

61 Under Article 62 of the Customs Code, the declarant is required to supply the documents and information necessary for the implementation, by the customs authorities, of the relevant customs procedure, including where there are anti-dumping duties to be applied based on the origin of the goods.

62 In that regard, reference must be made to the case-law according to which an expectation as to the validity of certificates of origin which prove to be false, forged or not valid does not constitute, in itself, a special situation justifying a remission of duties (order of 1 July 2010 in *DSV Road* v *Commission*, C-358/09 P, EU:C:2010:398, paragraph 81; see, by analogy, judgments of 13 November 1984 in *Van Gend & Loos and Expeditiebedrijf Bosman* v *Commission*, 98/83 and 230/83, ECR, EU:C:1984:342, paragraph 13, and 10 May 2001 *Kaufring and Others* v *Commission*, 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, ECR, EU:T:2001:133, paragraph 234). Post-clearance checks would be largely deprived of their usefulness if the use of such certificates could, of itself, justify granting a remission. The opposite result could discourage traders from adopting an inquiring attitude and make the public purse bear a risk which falls mainly on traders (see, to that effect, judgment of 18 January 1996 in *SEIM*, C-446/93, ECR, EU:C:1996:10, paragraph 45).

63 In addition, it has been held that the fact that the customs authorities of a Member State decide to make post-clearance recovery of customs duties when certificates of origin prove to be invalid after subsequent checks 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 (see, by analogy, judgment in *Hyper* v *Commission*, cited in paragraph 46 above, EU:T:2002:189, paragraph 114 and the case-law cited).

64 It should also be borne in mind that, as regards anti-dumping duties imposed by a Commission or Council regulation in respect of goods originating in a third country, the authorities of that third country are not involved in any way in the implementation of those regulations and are not endowed with any oversight or supervisory functions whatsoever, so that the liable party may consider those authorities to be 'competent' authorities in relation to matters falling within the scope of such European Union legislation.

65 In the present case, the declarations submitted by the applicant stated that Taiwan was the country of origin of the glyphosate to be imported. In support of those declarations as to the origin of the glyphosate, the applicant relied on certificates of origin issued by Taiwanese chambers of commerce which had been sent to it by the Importer. After post-clearance checks carried out by the Netherlands customs authorities, it became apparent that these certificates did not attest to the true origin of the imported glyphosate. The fact that these certificates proved to be invalid cannot be considered to place the applicant in a special situation. Reliance on such certificates as proof of the origin of the goods declared to the customs authorities is a choice made by the declarant in order to discharge his obligation to declare the origin of the imports to the customs authorities. That choice entails risks forming an integral part of the business of customs agent, risks that, therefore, must be borne by the customs agent and not by the public purse. If, as the applicant claims, these circumstances had to be regarded as placing the liable party in a special situation justifying the remission of anti-dumping duties, economic operators would have no interest in ensuring the accuracy of the declarations and documents submitted to the customs authorities.

66 The foregoing considerations cannot be called in question by the Commission decisions relied on by the applicant, in which the Commission found that, in the context of a preferential set of rules, remission was justified on account of the fact that the authorities of a third country, specifically authorised under that set of rules, had issued false certificates of origin over a period of several years without any post-clearance check having been carried out and without the importers, who had not acted fraudulently or negligently, being aware thereof.

67 As the Commission correctly pointed out in the contested decision, these decisions were taken within the framework of preferential tariff treatment rules and the considerations set out therein as regards the measures taken by third country authorities are not capable of being applied to the circumstances of the present case, which do not fall within the scope of such rules but within the scope of anti-dumping duties.

68 Furthermore, it must be stated that, in this case, the applicant has not established to what extent and on what basis the chambers of commerce that allegedly issued the certificates of origin at issue can be regarded as competent authorities in this respect.

69 In addition, reference should be made to the case-law according to which, in the context of a non-preferential set of rules, including when anti-dumping duties apply, no conclusion can be drawn from the issuance by the authorities of a third country of a certificate as to the non-preferential origin of the goods in question (see, to that effect, judgment of 16 December 2010 in *HIT Trading and Berkman Forwarding* v *Commission*, T-191/09, EU:T:2010:535, paragraph 43).

70 In the light of the foregoing considerations, the second plea in law relied on by the applicant must be rejected as unfounded.

71 By its third plea in law, the applicant essentially argues that the Commission was wrong to consider that its own behaviour, which amounts to a breach of its obligations of coordination and supervision in respect of the investigations conducted in the present case, did not place the applicant in a special situation in accordance with Article 239 of the Customs Code.

72 It should be observed that, when applying the anti-dumping duties imposed by Regulation No 368/98 — the circumvention of which is at the origin of the recovery notices issued by the Netherlands customs authorities — the powers of the Commission are narrower than those at issue in the case giving rise to the judgment in *C.A.S.* v *Commission*, cited in paragraph 23 above (EU:C:2008:446), relied on by the applicant. In that case, the Commission was subject to specific obligations imposed by an association agreement with a third country, which also conferred powers on it so that it could discharge those obligations. The obligation to apply anti-dumping duties to the imports concerned primarily falls on the customs authorities of the Member States. However, as guardian of the treaties and of European Union secondary legislation, in general, and in its key role as overseer of the application of European Union customs law, in particular, coordination and supervision obligations, notably in the context of investigations into potential infringements, fall on the Commission.

73 In the present case, first of all, on 14 December 1999, the Commission sent the Member States — within the framework of mutual assistance — information in its possession concerning the possible circumvention of anti-dumping duties on glyphosate imports originating in China.

74 Subsequently, as explained in paragraphs 13 to 15 above, the Commission — particularly through OLAF — assisted the Portuguese and Netherlands customs authorities with their investigations, coordinating their efforts, which included sending them relevant information resulting from the investigations. This coordination work led to OLAF's fact-finding mission in Taiwan.

75 Lastly, the Commission adopted Regulation No 909/2001, opening its own investigation into the circumvention of anti-dumping duties imposed on glyphosate originating in China. As a result of that investigation, the Council adopted Regulation No 163/2002, which extended the anti-dumping duties applicable to glyphosate originating in China to glyphosate imports from Taiwan and Malaysia.

76 Thus, contrary to the applicant's claims, it is apparent from the facts of the case that procedures were set in motion either by the Commission or with its support as and when information relating to the possible circumvention came to light at the end of the different stages of the investigations conducted by the national authorities and OLAF.

77 Furthermore, it should be noted that the obligations thus imposed on the Commission do not include the obligation to inform importers or customs agents of information in its possession or to warn them when it has doubts regarding the transactions they perform, as acknowledged by the case-law (see, to that effect, judgment in *Hyper* v *Commission*, cited in paragraph 46 above, EU:T:2002:189, paragraph 126). Consequently, the Commission discharged its obligations of supervision and coordination in the context of the implementation of the regulation imposing anti-dumping duties applicable in the present case.

78 It is also common ground that the Commission triggered the investigations conducted by the national authorities within the framework of mutual assistance when it forwarded, by means of its letter of 14 December 1999 addressed to the Member States, the information it had received concerning isolated irregularities reported by two Member States as well as the suspicions it had at that time, based on general information in its possession.

79 The fact that the applicant's 52 declarations were submitted before completion of the different national investigations and OLAF's investigation cannot be considered to vitiate the behaviour of the Commission in this case.

80 Consequently, the Commission was right to find, in the contested decision, that its behaviour had not placed the applicant in a special situation in accordance with Article 239 of the Customs Code.

81 The third plea in law relied on by the applicant must therefore be rejected as unfounded.

82 By its fourth plea in law, the applicant argues that the Commission was wrong to consider that it had not been placed in a special situation because the Netherlands customs authorities had reacted with undue delay and had not cooperated in the proper manner with the investigations into glyphosate imports.

83 It should be recalled that, according to the case-law, when customs authorities are not actually aware of irregularities concerning imports and they do not deliberately allow these irregularities to continue so as to tackle them better, the fact that they accept declarations relating to such imports cannot place the liable party in a special situation in accordance with Article 239 of the Customs Code (see, to that effect, judgment in *HIT Trading and Berkman Forwarding* v *Commission*, cited in paragraph 69 above, EU:T:2010:535, paragraphs 101 and 102).

84 In the present case, first, it is apparent from its letter of 14 December 1999 that the Commission was in possession of some general information and examples supplied by the Belgian and French customs authorities, which it forwarded to the Member States precisely to enable those authorities to conduct investigations and uncover possible circumvention operations.

85 Indeed, in its letter the Commission called on the national authorities to be vigilant and to gather additional information. However, even though the letter included a list of glyphosate importers, it did not contain sufficiently tangible evidence concerning named companies which would have given the national authorities grounds for taking specific and immediate action against them or against the operations conducted by them.

86 Second, this case does not involve preferential rules or operations within the framework of association agreements or treaties laying down special supervision arrangements to be applied by the competent authorities entrusted with such functions. It is true that, when imports to which anti-dumping duties apply are subject to a general set of rules, both the Commission and the national customs authorities are under an obligation of diligence and supervision to ensure that European Union law is applied. However, that obligation does not mean that, when information such as that contained in the letter of 14 December 1999 exists, customs authorities are required to carry out physical and automatic checks of all consignments of glyphosate arriving at EU customs so far as concerns the companies mentioned in that letter. Nor are customs authorities required to warn those companies, given the general nature of the information contained therein.

87 Contrary to what the applicant claims, with reference to the judgment of 7 September 1999 in *De Haan* (C-61/98, ECR, EU:C:1999:393), the facts of the present case do not support the conclusion that the Netherlands customs authorities, following the Commission's letter of 14 December 1999, had specific information concerning irregularities identified in the declarations submitted by the applicant and that, nevertheless, they deliberately allowed the applicant to continue to submit such declarations. Furthermore, it is apparent from that same case-law that customs authorities which have been informed of a possible fraud are not under any obligation to warn an operator that he could incur liability for customs duties as a result of the fraud, even where he has acted in good faith (see, to that effect, judgment in *De Haan*, EU:C:1999:393, paragraph 36).

88 Third, the documents before the Court show that the Netherlands customs authorities conducted the first inspection of the applicant on 30 July 2001, shortly after the submission, on 19 July, of the last of the disputed declarations. As appears from the report of the Netherlands customs authorities of 21 February 2002, it was only after carrying out checks on the applicant that they were able to identify the irregularities which gave rise to the recovery notices in question.

89 The documents before the Court also show that the information obtained by the Netherlands authorities during their investigations was forwarded to the Commission which, in turn, forwarded that information to the Portuguese customs authorities. Likewise, OLAF's investigation, including the mission to Taiwan, was initiated at the request of the Netherlands customs authorities. This evidence attests to the active role played by the Netherlands customs authorities through their investigations into the suspected circumvention operations and their coordination with other customs authorities and OLAF.

90 In the light of the above, it must be held that the Commission was right to consider that the behaviour of the Netherlands customs authorities had not placed the applicant in a special situation in accordance with Article 239 of the Customs Code.

91 Consequently, the fourth plea in law relied on by the applicant must be rejected as unfounded.

92 Having regard to the foregoing, it must be concluded that the Commission did not commit any error of law when it considered, in the contested decision, that none of the arguments put forward by the applicant was capable of placing it in a special situation and that, therefore, the first of the two cumulative conditions set out in Article 239 of the Customs Code was not satisfied in this case.

The existence of deception or obvious negligence

93 The fifth plea in law relied on by the applicant essentially disputes the Commission's assessment of the applicant's lack of diligence, on the basis of which the Commission found that the second condition set out in Article 239 of the Customs Code was not satisfied in this case.

94 It is apparent from Article 905(3) of the Implementing Regulation that, for the purpose of examining the conditions laid down in Article 239 of the Customs Code, the Commission must review all relevant information, including information on the behaviour of the operator concerned, in particular his professional experience, good faith and diligence.

95 The Court has consistently held that in order to assess whether there is obvious negligence within the meaning of Article 239 of the Customs Code, account must be taken in particular of the complexity of the provisions non-compliance with which resulted in the customs debt being incurred, as well as the professional experience of the economic operator and the degree of care which he exercised (see judgment of 27 September 2005 in *Common Market Fertilizers* v *Commission*, T-134/03 and T-135/03, ECR, EU:T:2005:339, paragraph 135 and the case-law cited).

96 In the light of these principles, it is necessary to examine the factors that the Commission took into account in its analysis of the second condition of Article 239 of the Customs Code.

97 Since there is no dispute as to the Commission's determination that the rules applicable in the present case are not complex, it is necessary to examine the other two criteria which it considered in the contested decision.

98 As regards the criterion relating to the economic operator's experience, it must be examined whether the operator concerned is one whose business activities consist mainly in import and export transactions and whether he has already gained some experience in the conduct of such transactions (judgment in *Common Market Fertilizers* v *Commission*, cited in paragraph 95 above, EU:T:2005:339, paragraph 140).

99 In the present case, it must be stated — as the Commission pointed out in paragraph 54 of the contested decision, without it being disputed by the applicant — that the applicant has been active in the customs agent business since 1971, making it an experienced economic operator in the area of

exports and imports in the European Union. It follows that the applicant cannot be unaware of the particularities of the rules on anti-dumping duties, all the more so because the specific rules applicable in the present case are not especially complex, as the Commission found in the contested decision.

100 In addition — as the Commission pointed out in paragraph 54 of the contested decision, without it being disputed by the applicant — when the applicant submitted the declarations of release for free circulation in question, it had already filed declarations relating to glyphosate imports, including glyphosate originating in China, for the same client as in the present case, namely the Importer. The Commission also notes in this paragraph that, in October and November 1997, shortly after the entry into force on 6 September 1997 of Regulation No 1731/97 imposing a provisional anti-dumping duty on imports of glyphosate originating in China, the applicant filed declarations for the Importer on three occasions concerning the importation of glyphosate originating in Singapore.

101 Therefore, the Commission was right to consider the applicant to be an experienced operator for the purpose of applying Article 239 of the Customs Code.

102 As regards the examination of the diligence with which the applicant acted, it should be observed first of all that it follows from Article 62 of the Customs Code that declarations submitted to the customs authorities must contain all the information and documents necessary for implementation of the provisions governing the customs procedure under which the goods are declared. Furthermore, pursuant to Article 199 of the Implementing Regulation and Annex 37 thereto, the lodging with a customs office of a declaration signed by the declarant is deemed to render him responsible for the accuracy of the information given in the declaration and the authenticity of the documents attached.

103 In addition, it follows from the rules on indirect representation, as set out in Article 5 of the Customs Code, that an indirect representative, in so far as he acts in his own name even if he does so on behalf of another person, is responsible for the declarations he submits to the customs authorities.

104 It has been held that a customs agent, by the very nature of his functions, renders himself liable for the payment of import duties and for the validity of the documents which he presents to the customs authorities (judgments in *CT Control (Rotterdam) and JCT Benelux* v *Commission*, cited in paragraph 49 above, EU:C:1993:285, paragraph 37, and of 18 January 2000 in *Mehibas Dordtselaan* v *Commission*, T-290/97, ECR, EU:T:2000:8, paragraph 83).

105 In the present case, it is apparent from the contested decision that the Commission took the following factors into account. In the first place, the Commission pointed out in paragraphs 56 and 57 of the contested decision that when the Netherlands customs authorities inspected the applicant's premises they found that invoices for transport costs showing the port of departure as Shanghai, in China had been attached to the declarations dated 8 May, 26 June and 24 August 2000. It is not disputed that these invoices relate to costs incurred during importation of the glyphosate forming the subject matter of the declarations at issue and that they contain references to the port of departure of Shanghai. In this respect, it makes no difference whether the costs involved are start-up costs or transport costs in the strict sense, since it can be clearly inferred that the glyphosate left from the port of Shanghai.

106 In the second place, the Commission pointed out in paragraph 58 of the contested decision that packing lists drawn up by companies established in China were attached to three declarations dated 22 August 2000. It is not disputed that these packing lists correspond to the same consignments of glyphosate as those forming the subject-matter of such declarations, consignments in respect of which bills of lading showing Kaohsiung (Taiwan) as the place of receipt and port of shipment and certificates of origin issued by Taiwan Chamber of Commerce were obtained. Furthermore, it must be stated that these three declarations show China as the country of departure of the goods, which the applicant does not dispute.

107 In the third place, the Commission noted in paragraph 61 of the contested decision that there were inconsistencies in the certificates of origin which were identified in the course of the national proceedings in the Netherlands. It is apparent from the case file prepared by the Netherlands customs authorities and from the copies of the disputed certificates of origin submitted by the applicant that these certificates contain inconsistencies, such as the absence of dates or registration numbers, identical registration numbers on certificates bearing different dates, registration numbers superimposed on the same certificate or the word 'original' stamped on only a few certificates.

108 Lastly, as the Commission pointed out in paragraph 54 of the contested decision, account must be taken of the fact that the applicant had submitted declarations on behalf of the Importer for the release of glyphosate from China for free circulation before the entry into force of Regulation No 1731/97 imposing a provisional anti-dumping duty on imports of glyphosate originating in that country and that, as a matter of fact, the Importer changed the country from which it imported glyphosate shortly thereafter.

109 Accordingly, the Commission cannot be criticised for having considered, in the light of the above factors, that a well-established customs agent such as the applicant should at least have had doubts as to the true origin of the imported glyphosate.

110 In addition, if the applicant, as it itself claims, did not even check or have access to the invoices and packing lists relating to the declarations at issue before submitting them to the customs authorities, when, under Article 199 of the Implementing Regulation, it is, as declarant, responsible for the accuracy of the information given in those declarations, its lack of diligence is all the more significant. As the Commission correctly maintains, the applicant's internal procedures for processing declarations and compiling the relevant documents as well as the particularities of the corporate structure of its group cannot constitute grounds allowing it to elude obligations that form an integral part of a customs agent's functions and pass on the consequences thereof to the budget of the European Union.

111 At the very least, if the applicant had received documentation relating to declarations that it had already submitted showing that the information declared was inaccurate, particularly as regards the origin of the imported goods, it could have corrected those declarations or taken steps to avoid repetition of the inaccuracies.

112 Likewise, the applicant cannot rely on the fact that it only submitted the declarations on the instructions of its client and on the basis of the documents supplied by the client, as the accuracy and truthfulness of the declarations is the applicant's sole responsibility as customs agent. Indeed, according to the case-law cited in paragraph 104 above, a customs agent cannot take refuge behind the actions of its client to justify the remission of import duties.

113 The applicant's arguments that the condition relating to the absence of obvious negligence or deception set out in Article 239 of the Customs Code is comparable to the concept of force majeure must be dismissed in the light of the provision made in Article 905 of the Implementing Regulation and the case-law cited in paragraph 95 above, which lay down the relevant criteria for the examination of this condition.

114 Moreover, the applicant cannot rely on the considerations that led the Amsterdam Court of Appeal to set aside the decisions of the Haarlem District Court. Those considerations conclude that it is for the Commission to define a position, under Article 905 of the Implementing Regulation, on the justification for the requested remission. Thus, the court of appeal held that the case file had to be forwarded to the Commission. However, the assessment of the lawfulness of the decision taken by the Commission is a matter for the Court.

115 It follows that the Commission — in the exercise of its discretion and having regard to all of the relevant aspects of the case, particularly as regards the non-complex nature of the rules at issue, the applicant's experience and the evidence suggesting that it did not act with diligence — did not commit an error of law when it considered that the second condition laid down in Article 239 of the Customs Code, relating to the absence of obvious negligence or deception, was not satisfied in this case.

116 Consequently, the fifth plea in law relied on by the applicant must be rejected as unfounded.

Sixth plea in law, alleging infringement of the obligation to state reasons

117 By its sixth plea in law, the applicant essentially argues that the contested decision does not contain an adequate statement of reasons in respect of a number of arguments it put forward, particularly regarding the behaviour of the Commission, the Netherlands authorities and the Taiwanese authorities.

118 It has been held that the statement of reasons required under Article 296 TFEU must be appropriate to the measure in question and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to carry out its review. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of the reasons for a measure meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 30 April 2009 in *Commission* v *Italy and Wam*, C-494/06 P, ECR, EU:C:2009:272, paragraph 48 and the case-law cited).

119 In the present case, it is apparent from the contested decision that the Commission examined the arguments that the applicant put forward in the observations the latter submitted to the former on 1 June 2011, summarised in paragraph 26 above.

120 In the contested decision, the Commission explained why it considered that its behaviour had not placed the applicant in a special situation. Thus, it referred to the fact that there is no obligation requiring it to supervise the issuance of certificates by chambers of commerce in Taiwan or to inform glyphosate importers of its suspicions. The Commission also gave an account of its interaction with national customs authorities in the context of the investigations conducted into glyphosate imports. In addition, it ruled on the observations of the Amsterdam Court of Appeal as regards the case-law of the Court.

121 The Commission also set out in the contested decision the reasons why it considered that neither the behaviour of the Taiwanese chambers of commerce nor that of the Netherlands authorities had placed the applicant in a special situation in accordance with Article 239 of the Customs Code.

122 Furthermore, in the contested decision the Commission examined the factors it considered to be relevant in order to find that the second condition laid down in Article 239 of the Customs Code was not satisfied; in particular, it relied on the fact that the applicant had not acted with the diligence expected of a well-established customs professional.

123 Therefore, the contested decision clearly contains the reasons that led the Commission to consider that the applicant was not in a special situation in accordance with Article 239 of the Customs Code and that the condition laid down in that article relating to the absence of obvious negligence or deception by the person concerned was not satisfied.

124 The sixth plea in law relied on by the applicant must therefore be rejected as unfounded.

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

Costs

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

On those grounds,

THE GENERAL COURT (Sixth Chamber),

hereby:

1. **Dismisses the action;**

2. **Orders Schenker Customs Agency BV to bear its own costs and pay those incurred by the European Commission.**

Frimodt Nielsen Dehousse Collins

Delivered in open court in Luxembourg on 16 April 2015.

[Signatures]