OPINION OF ADVOCATE GENERAL TRSTENJAK delivered on 13 March 2008 [1]

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I — Introduction

1. In this case, the Court of Justice of the European Communities has to rule on an appeal lodged by CAS SpA against the judgment of the Court of First Instance of 6 February 2007 in *CAS SpA* v *Commission*.[2] The appellant and applicant at first instance ('the appellant') seeks the setting aside of that judgment in which the Court of First Instance declared that the Commission's decision of 18 October 2002 (REC 10/01, 'the contested decision') not to approve the repayment of import duties amounting to EUR 1 702 340.25, applied for by the appellant in respect of 32 of a total of 48 import certificates presented, was lawful and consequently dismissed the appellant's action for annulment in part of that decision.

2 — Case T-23/03 [2007] ECR II-289, 'the contested judgment'.

II — Legal framework

Community legislation on the remission of customs duties

2. With regard to a possible remission of import duties, 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 CCC') provides as follows:

'Import duties or export duties may be repaid or remitted in situations … resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned. The situations in which this provision may be applied and the procedures to be followed to that end shall be defined in accordance with the Committee procedure …'

3. Article 905(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1, 'the CCC implementing regulation') provides:

'Where the decision-making customs authority to which an application for repayment or remission under Article 239 (2) of the [CCC] has been submitted cannot take a decision on the basis of Article 899, but the application is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, the Member State to which this authority belongs shall transmit the case to the Commission to be settled under the procedure laid down in Articles 906 to 909.

…'

4. Article 904(c) of the CCC implementing regulation reads:

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

…

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

5. Article 236 of the CCC provides:

‘1. Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

Import duties or export duties shall be remitted in so far as it is established that when they were entered in the accounts the amount of such duties was not legally owed or that the amount has been entered in the accounts contrary to Article 220(2).

No repayment or remission shall be granted when the facts which led to the payment or entry in the accounts of an amount which was not legally owed are the result of deliberate action by the person concerned.

…’

6. Under Article 220(2)(b) of the CCC, subsequent entry in the accounts of the duty resulting from a customs debt must not occur where the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

III — Facts and procedure

A — *Facts in the main proceedings*

7. The appellant is a company incorporated under Italian law and a 95.1% subsidiary of Steinhauser GmbH (‘Steinhauser’), established in Ravensburg (Germany). The appellant’s core business consists in processing imported fruit juice concentrates; it is also an importer of such products in Italy. It is essentially Steinhauser which maintains the business relationship with foreign suppliers.

8. According to the findings of fact made by the Court of First Instance, between 5 April 1995 and 20 November 1997 the appellant imported and put into free circulation in the Community apple and pear juice concentrates declared as being from and

originating in Turkey. That type of product was imported into the Community using A.TR.1 certificates with the effect that those products qualified for the exemption from customs duties provided for by the Association Agreement and the Additional Protocol.

9. In accordance with Article 29 of Decision No 1/95, the customs services in Ravenna (Italy) carried out a post-clearance documentary check on the authenticity of A.TR.1 certificate D 141591 submitted by the appellant in the course of one of the import operations for the period from 5 April 1995 to 20 November 1997. In accordance with the relevant provisions, the request for verification of the authenticity of that certificate was sent to the Turkish authorities.

10. By letter of 15 May 1998, the Turkish authorities notified the Ravenna customs services that the checks carried out showed that that certificate was not authentic since it had not been issued by the Turkish customs authorities. They stated, moreover, that further checks were to be carried out.

11. Consequently, the Italian authorities carried out post-clearance checks on 103 A.TR.1 certificates submitted by the appellant in the course of various import operations.

12. By letter of 10 July 1998, the Permanent Representation of the Republic of Turkey to the European Union ('the Turkish Permanent Representation') notified the Commission that A.TR.1 certificates submitted by the appellant, listed in an annex to that letter and concerning exports by the Turkish company Akman to Italy, were 'false'. The Commission forwarded that letter to the Italian customs authorities by letter of 20 July 1998.

13. Between 12 and 15 October 1998 and between 30 November and 2 December 1998, the European Commission's Unit for the Coordination of Fraud Prevention ((UCLAF), predecessor to OLAF) carried out checks in Turkey.

14. By letter of 8 March 1999, the Turkish Permanent Representation notified the customs services in Ravenna that 32 A.TR.1 certificates submitted by the appellant ('the certificates at issue'), including 18 of the certificates listed in the annex to the letter of 10 July 1998, had been neither issued nor validated by the Turkish authorities.

15. The Italian customs authorities took the view that it was clear from all the correspondence exchanged between themselves, the Commission, UCLAF and the Turkish authorities that the latter considered 48 A.TR.1 certificates, including the certificates at issue, relating to exports to Italy by the appellant through the Turkish company Akman, to be either forged or irregular. In the present case, the 32 certificates at issue (corresponding to customs duties totalling ITL 3 296 190 371 or EUR 1 702 340.25) were considered to be forged, given that they had been neither issued nor validated by Turkish customs offices. On the other hand, the 16 other certificates (corresponding to customs duties totalling ITL 1 904 763 758 or EUR 983 728.38) were classified as invalid, given that, whilst they had been issued by the Turkish customs authorities, the goods concerned did not originate in Turkey. Since all 48 certificates had been classified as either forged or invalid, the goods to which they related could not qualify for the preferential treatment accorded to imported Turkish agricultural products. Accordingly, the Italian customs administration demanded the sum of ITL 5 200 954 129 or EUR 2 686 068.63 from the appellant by way of unpaid customs duties.

16. By letter of 28 March 2000 to the Ravenna customs services, the appellant, relying on Article 220(2)(b) and Articles 236 and 239 of the CCC, claimed that import duties should not have been entered in the accounts post-clearance and that the import duties claimed should be repaid. In support of its claim, the appellant pleaded its good faith, errors on the part of the competent authorities that could not have been detected and deficiencies attributable to those authorities.

17. By letter of 30 November 2001, the Italian Republic asked the Commission to decide whether it was appropriate to waive subsequent entry in the accounts of the import duties claimed from the appellant pursuant to Article 220(2)(b) of the CCC, or to repay those duties under Article 239 of the CCC.

18. By letter of 3 June 2002, the Commission requested certain additional information from the Italian authorities. They replied by letter of 7 June 2002.

19. By letter of 25 July 2002, the Commission informed the appellant of its intention not to consent to its claim. Before taking a final decision, however, the Commission invited the appellant to advise it of any observations it may have and to have access to the file so that it may inspect the non-confidential documents. On 6 August 2002, the appellant's representatives consulted the administrative

file at the Commission's offices. They also signed a declaration confirming that they had had access to the documents listed in an annex to that declaration.

20. By letter of 15 August 2002, the appellant submitted its observations to the Commission. It maintained, in particular, its position that the competent customs authorities had committed factual errors that it could not have detected, errors which it also likened to failings capable of giving rise to a special situation within the meaning of Article 239 of the CCC.

21. On 18 October 2002, the Commission adopted the contested decision, which was notified to the appellant on 21 November 2002. Firstly, the Commission concluded that it was appropriate to enter in the accounts the import duties that were the subject-matter of the claim. Secondly, however, it concluded that it was appropriate to repay import duties in respect of the part of the claim relating to the 16 invalid certificates since, in that regard, the appellant was in a special situation within the meaning of Article 239 of the CCC. Thirdly, with regard to the 32 certificates at issue, it concluded, on the other hand, that the circumstances relied on by the appellant could not give rise to a special situation within the meaning of Article 239 of the CCC. Consequently, in Article 2 of the contested decision, the Commission decided that it was not appropriate to repay the import duties relating to those certificates, amounting to EUR 1 702 340.25.

B — *The proceedings before the Court of First Instance and the contested judgment*

22. By application lodged at the Registry of the Court of First Instance on 29 January 2003, the appellant brought an action against the Commission and claimed that the Court should annul Article 2 of the contested decision. It put forward three pleas in law in support of its action, alleging, firstly, infringement of the rights of the defence, secondly, infringement of Article 239 of the CCC and, thirdly, infringement of Article 220(2)(b) of the CCC.

23. The Commission contended that the Court should dismiss the action and order the appellant to pay the costs.

24. The Court dismissed the action in its entirety.

1. First plea in law

25. By the first plea in law, the appellant maintained that its rights of defence had been infringed during the administrative procedure in that, although it had had access to the file containing the documents on which the Commission based the contested decision, it had not had access to documents which had

a decisive influence on the Commission's overall assessment of the situation.

26. Rejecting that plea in law, the Court held, in paragraph 88 of the contested judgment, that, in that context, the principle of respect for the rights of the defence implies only that the party concerned be placed in a position in which it may effectively make its views known as regards the evidence — including the documents — used against it by the Commission as a basis for the decision, and that there is therefore no requirement for Commission, acting on its own initiative, to grant access to all the documents which may have some connection with the case at issue when an application for remission is referred to it.

27. The Court then held, in paragraph 92, that the fact that the documents to which the appellant had been unable to obtain access during the administrative procedure were not expressly mentioned in the contested decision did not preclude the fact that the contested decision may have been based on some of those documents. This could not apply to all of the voluminous correspondence to which the appellant referred, since at least some of those documents simply related to the background to the case at issue. With regard to those documents 'relating to the background', the Court of First Instance held that, where documents which have not been used as the basis of a contested decision are not communicated, any failure to communicate them is irrelevant, given that such documents cannot, in any case, have any bearing on the contested decision. Accordingly, it rejected the first plea in law as irrelevant, in so far as it concerned the failure to communicate such documents.

28. With regard to the documents used by the Commission as the basis for the contested decision, the Court found, in paragraphs 98 to 100 of the contested judgment, that the appellant had consulted the file relating to the contested decision at the Commission's offices and had signed a written declaration expressly confirming that access had been granted to all documents directly or indirectly connected with the matter at issue. Furthermore, a list was annexed to that declaration setting out all the documents to which the appellant's representative had had access. On the basis of that list, the Court concluded that the appellant had indeed consulted various documents which, according to its submissions, it had been unable to consult.

29. As to the correspondence exchanged by the Commission and UCLAF with the Turkish authorities and the national customs authorities of the Member States, the Court held that there was no evidence to suggest that the Commission based the contested decision on any documents other than those in the file to which the applicant had access at the consultation on 6 August 2002.

2. The second plea in law

30. The second plea in law, which alleged infringement of Article 239 of the CCC and was also rejected by the Court of First Instance, is composed of four parts. The first part concerns incorrect classification of A.TR.1 movement of goods certificate D 437214. The second and third parts relate,

respectively, to serious deficiencies attributable to the Turkish authorities and those attributable to the Commission. Lastly, the fourth part concerns lack of obvious negligence on the part of the appellant and the assessment of commercial risks.

31. With regard to the first part of the second plea in law, the Court first recalled that determination of the origin of goods is based on a division of powers between the authorities of the exporting country and those of the importing country, origin being established by the authorities of the exporting country, and then examined the correspondence between the Commission, the Italian authorities and the Turkish authorities. In that regard, the Court noted in paragraph 122 that the Commission based the part of its contested decision concerning the forged certificates essentially on the Turkish authorities' letter of 8 March 1999 to the Ravenna customs services. However, the Court noted that a comparison between the wording of that letter and the wording of subsequent communications from the Turkish authorities disclosed ambiguities as to the classification of certificate D 437214 and that the Commission was not in a position properly to conclude that certificate D 437214 had been forged prior to the adoption of the contested decision (paragraphs 124 and 128). However, that consideration did not suffice to annul the contested decision, in the light of the content of a letter of 22 August 2003, that is, dating from the time after the decision at issue, in which the Turkish authorities confirmed their conclusions contained in their letter of 8 March 1999 because the appellant could not be regarded as having any legitimate interest in the annulment of a decision on the ground of a procedural defect where the annulment of the decision could only lead to the adoption of another decision identical in substance to the annulled decision (paragraph 133).

32. The Court then examined the second part of the second plea in law, alleging various deficiencies attributable to the Turkish authorities, which were essentially based on the proposition that the Turkish authorities did in fact issue and endorse the certificates at issue.

33. In this connection, in paragraphs 150 to 152 of the contested judgment, the Court first pointed out that, on the one hand, it lay within the exclusive competence of the Turkish authorities to determine whether documents they had issued were original or forged, and that, on the other, those authorities had concluded that the certificates at issue were forged. It then rejected the appellant's argument that the stamps and signatures applied to the certificates at issue demonstrate that they were in all likelihood issued and authenticated by the Turkish authorities. Moreover, neither the Association Agreement nor the implementation provisions expressly provide that registers of the certificates issued by the Turkish authorities are to be kept (paragraph 161). The Court further observed that presentation of documents which prove to be forgeries does not of itself permit it to be concluded that there was some kind of collusion between the exporters and the customs authorities which issued them (paragraphs 167

and 168). Finally, the Court held that the Turkish authorities had not failed to fulfil their obligations to provide administrative assistance and that the appellant's argument was not substantiated by any evidence (paragraphs 216 to 218).

34. Next, the Court of First Instance examined the third part of the second plea in law, alleging a number of deficiencies attributable to the European Commission.

35. In this regard, the Court first recalled the investigations conducted by UCLAF in Turkey and held that it had not been established that the Commission had encountered difficulties concerning the administrative assistance agreed upon with the Republic of Turkey which would have justified a reference to the Association Council or the Customs Union Joint Committee (paragraphs 238 to 240). The Court then held that neither the Association Agreement, nor the decisions of the Association Council, nor the applicable Community legislation laid down any obligation for specimens of stamps and signatures to be sent from one Contracting Party to another (paragraphs 249 to 257), for importers to be warned of doubts as to the validity of customs transactions effected by those importers under the system of preferential treatment (paragraph 270) or for a specific method of investigation to be adopted by UCLAF (paragraph 284).

36. Having found that, in the part of the contested decision dealing with forged certificates, the Commission did not express its view on the issue of the applicant's due care or negligence, the Court rejected the fourth part of the second plea in law, alleging that there was no obvious negligence on the part of the appellant, as being of no consequence (paragraphs 295 and 296).

3. The third plea in law

37. The Court then rejected the third plea in law, alleging infringement of Article 220(2)(b) of the CCC, since the appellant had not been able to demonstrate that the acts of the competent authorities contributed to the issue or acceptance of the certificates at issue which proved to be forged (paragraphs 303 to 307).

4. Measures of organisation of procedure and measures of inquiry requested

38. Finally, the Court of First Instance rejected the evidence offered and the measures of inquiry requested by the appellant either as having no purpose or as being neither relevant nor necessary for the purpose of ruling in the case (paragraphs 314 to 333).

C — *Proceedings before the Court of Justice and forms of order sought by the parties*

39. By application of 13 April 2007 lodged at the Registry of the Court of Justice on 16 April 2007, the appellant brought the present appeal.

40. The appellant claims that the Court should

— set aside the judgment of the Court of First Instance of 7 February 2007 in Case T-23/03;

— grant the form of order sought at first instance; in the alternative, refer the case back to the Court of First Instance for a decision on the substance;

— allow the applications for measures of organisation of procedure made by the appellant by documents of 28 January 2003, 4 August 2003 and 11 August 2003;

— order the defendant to pay the costs of the proceedings at first instance.

41. By document of 22 June 2007 registered at the Registry of the Court of Justice on 25 June 2007, the Commission lodged a response, in which it claims that the Court should

— dismiss the appeal in its entirety;

— uphold in their entirety the forms of order which the Commission sought at first instance; and

— order the appellant to pay the costs of the proceedings, including the costs of the proceedings at first instance.

42. By order of 30 July 2007, the President of the Court of Justice found that the submission of a reply was not necessary.

43. After the written procedure, a hearing took place on 10 January 2008 at which the parties made their oral observations.

D — *Grounds of the appeal and arguments of the parties*

44. By way of an introductory observation, the Commission points out that the appeal stands or falls by the premise that the certificates at issue are not forged. The Court of First Instance found in the contested judgment that the 32 A.TR.1 certificates at issue were forged and were not issued by the Turkish customs authorities. The appeal effectively disputes that finding of fact by the Court of First Instance and is therefore inadmissible. In addition, the Commission raises various objections of inadmissibility against particular grounds of the appeal.

45. The appellant puts forward nine grounds of appeal.

46. By its first ground of appeal, the *appellant* submits that the Court of First Instance made an error of law when it considered the Turkish authorities to have exclusive competence to determine whether the A.TR.1 movement certificates were authentic or correct. In that regard, the appellant takes the view that where there are sufficient objective indications that the competent customs authorities of a third country were involved in the irregularities in question, or even where there is concrete suspicion of such conduct, the exclusive competence of those authorities ends.

47. The *Commission* contends that, in view of the fact that the Court of First Instance concluded that no involvement of the Turkish authorities in forging the certificates at issue has been established, there is no reason to doubt the division of responsibilities between the Turkish and the Community customs authorities.

48. By its second ground of appeal, the *appellant* submits that the Court of First Instance wrongly considered that the right of access to documents relates only to documents on which the Commission based the decision at issue. The right of access to documents should also apply to confidential documents. The Commission must at least identify confidential documents and attach a non-confidential summary.

49. The *Commission* replies that the appellant's argument has no basis in Community law.

50. By its third ground of appeal, the *appellant* complains that the Court of First Instance imposed on it the entire burden of proof for those factual circumstances which characterised a 'special situation' within the meaning of Article 239 of the CCC and Article 905 of the CCC implementing regulation, in so far as they constitute factual matters in third countries (in this case Turkey) or within the Commission's sphere of action and influence. Such a division of the burden of proof demands something impossible and unreasonable from

the applicant. The latter complied with its obligation to present evidence by pleading objective factors which justified serious doubts and established a degree of probability with regard to the irregularities in question.

51. In the view of the *Commission*, this is not a question of allocation of the burden of proof. On the contrary, the question of allocation of the burden of proof arises only when a factual claim at issue is supported by at least *prima facie* documentary evidence. However, to shift the burden of proof would be tantamount to placing the Commission and the customs authorities of the Member States and the third State *a priori*; under 'general suspicion' and imposing on them the — often impossible — burden of furnishing evidence in rebuttal. In addition, the Commission reaffirms its view that these are mere presumptions on the part of the appellant and not objective indicia.

52. By its fourth ground of appeal, the *appellant* submits that, in refusing to admit the evidence offered by it and to order the measures of inquiry requested by it, the Court infringed Article 68(1) of the Rules of Procedure of the Court of First Instance. That is *a fortiori* the case since the Court imposed very great demands on it in terms of the burden of proof. Moreover, in view of the fact that its request referred, on the one hand, to all the documents in the file and, on the other, only illustratively to specific documents such as, for example, the OLAF report of 9 December 1998, the Court wrongly assumed that its request for the production of documents from the administrative file had no purpose (paragraph 313).

53. The *Commission* argues that the Court of First Instance was right to reject the appellant's requests for measure of inquiry and offers of evidence as serving no purpose and irrelevant because the file already contained relevant and consistent evidence.

54. The fifth ground of appeal relates to errors which the Court of First Instance allegedly made in the classification in law of documents/facts in relation to the deficiencies attributable to the Turkish authorities and the Commission.

55. With regard to the alleged deficiencies attributable to the Turkish authorities, the *appellant* is firstly of the view that the Court interpreted and classified the certificates at issue wrongly in law. Secondly, it challenges the Court's interpretation of the forging of A.TR.1 certificate D 437214. Thirdly, a comparison of the stamps on the certificates acknowledged as irregular with those considered to be forged reveals no difference, which shows that the certificates at issue were wrongly classified as forged. Fourthly, the appellant submits that the Court made an error of law in not acknowledging that Turkey is legally obliged, under various provisions of Decisions No 1/95 and No 1/96, to register the certificates issued. Moreover, it challenges the Court's consideration that forgers would have every interest in using on forged certificates a registration number which corresponded with a lawful certificate. It bases that view on the premise that a double importation under the same registration number would be noticed immediately,

particularly since the port of entry was Ravenna and on no occasion has a duplicate registration number been found. Fifthly, the appellant alleges involvement of the Turkish authorities in issuing the certificates at issue, since those authorities could have prevented the use of forged certificates at the time of export clearance by checking the certificates presented and the goods. Sixthly, the appellant challenges the Court's legal assessment with regard to the alleged deficiency on the part of the Turkish authorities in providing administrative assistance and in particular the finding that those authorities did not contradict themselves. Finally, it submits that various other circumstances demonstrate the Turkish authorities' involvement in issuing the certificates at issue.

56. As a preliminary point, the *Commission* contends that the appellant misunderstands the nature of the Court's findings in relation to the fifth ground of appeal. That ground of appeal does not concern points of law, but contains assessments of fact which cannot be the subject-matter of proceedings on an appeal on a point of law. Moreover, in the fifth ground of appeal, the appellant has inadmissibly restated its submissions at first instance. It is unable to show in what respect the Court of First Instance made an error of law in this connection. Its allegations are unsubstantiated and without any probative value. The keeping of registers is not prescribed either in the Association Agreement or in any other provisions applicable here.

57. With regard to the alleged deficiencies attributable to the Commission, the *appellant* submits that there were sufficient objective indications of systematic and deliberate infringements by the competent Turkish authorities, which should have justified an intensified review of preferential treatment by the Commission. Taking as its basis Article 93 of the CCC implementing regulation and Article 4 of Decision No 1/96, the appellant expresses the opinion that the Republic of Turkey and the Commission were legally obliged during the period in question (1995 to 1997) to communicate or require specimens of the stamps of the competent customs officials used by the Turkish customs authorities. The Court of First Instance also made an error of law when it did not conclude that the Commission was obliged to warn importers of fruit juice concentrates by the end of 1994/beginning of 1995 at the latest of irregularities in Turkey in the issuing of A.TR.1 movement certificates. Moreover, UCLAF failed to comply with its obligations under Articles 1 and 3 of Regulation (EC) No 1073/1999 to carry out a proper investigation in Turkey, since it did not adopt certain methods of investigation.

58. In the *Commission's* view, the appellant is again merely contesting the findings and assessments of fact made by the Court of First Instance. Neither Turkey nor the Commission was obliged, under the provisions applicable here, to send specimens of stamps or signatures. With regard to the duty to warn importers, which the appellant considers it to have, the Commission points out that the

imports at issue here dated from the period between April 1995 and November 1997, whereas doubts regarding the authenticity and the accuracy as to content of Turkish A.TR.1 certificates arose only subsequently, namely as of 1998.

59. By its sixth ground of appeal, the *appellant* submits that the Court of First Instance should have classified the Commission's failure to call on the Customs Committee/Association Council as a fault. It refers in this respect to the judgment in '*Turkish televisions*'. [3]

60. The *Commission* contends that, in view of the Turkish authorities' consistent and impeccable willingness to cooperate, it had no reason to call on the Customs Committee or the Association Council.

61. By its seventh ground of appeal, the *appellant* submits that the Court of First Instance failed to take into account the appellant's legitimate interest in the annulment of the contested decision with respect to A.TR.1 certificate D437214 since, in view of the three-year period prescribed in Article 218(3) of the CCC and having regard to the Court's judgment regarding an alleged 'forging' of certificate D437214, it was no longer permissible to charge the duty, once it had been repaid/remitted, by issuing a new notice of assessment.

62. In the *Commission*'s view, the appellant's interpretation of Article 905 et seq. of the CCC implementing regulation and Article 218(3) of the CCC is incorrect, since the decision at issue here was adopted within the aforementioned periods and was not annulled by the Court of First Instance.

63. By its eighth ground of appeal, the *appellant* complains that the Court of First Instance failed to recognise that, even on the assumption that the certificates at issue were false, having regard to the gross misconduct of the Turkish authorities and the Commission it was unfair, in view of the relationship between economic operators and the administration, to leave the appellant to bear a loss stemming from the decision at issue.

64. The *Commission* states out that it did not express a view in the decision at issue on the question of the appellant's care or negligence, and that therefore the appellant's submissions concerning this question are of no consequence.

65. By its ninth ground of appeal, the *appellant* complains that the Court of First Instance found that there was no active involvement on the part of the Turkish customs authorities in the issuing and use of the 32 A.TR.1 certificates in question in this case for the purposes of Article 220(2)(b) of the CCC.

3 — Joined Cases T-186/97, T-187/97, T-190 to T-192/97, T-210/97, T-211/97, T-216 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99 *Kaufring and Others* [2001] ECR II-1337.

66. In that regard, the *Commission* submits that, in view of the fact that this case concerns forged certificates which were not issued by the Turkish authorities, it is precisely any 'active error' on the part of the Turkish authorities for the purposes of Article 220(2)(b) of the CCC that is lacking.

IV — Legal assessment

A — *Introductory observations*

1. Substantive considerations

67. Regulation (EEC) No 2913/92 establishing the Community Customs Code entered into force on 22 October 1992 and, pursuant to Article 253 thereof, was to apply from 1 January 1994. The customs provisions contained in a large number of Community regulations and directives were assembled, on the basis of the Customs Union, in a Customs Code containing the customs legislation including the implementing provisions to be adopted at Community and national level. Based on the concept of an internal market, the general rules and procedures of the Customs Code were to ensure the common implementation of all tariff and other measures, including agricultural and commercial policy measures, introduced at Community level in connection with trade in goods between the Community and third countries. The codification of Community customs legislation was not confined to the technical reproduction of existing customs legislation; amendments were also made, at the same time, with the aim of making the customs legislation more consistent, simplifying it and remedying existing omissions with a view to adopting complete Community legislation in this area. Accordingly, the Customs Code lays down new provisions for, inter alia, the post-clearance recovery, repayment and remission of import and export duties, which in part carried forward the earlier legislation and in part introduced amendments. [4]

68. The older Community provisions which were repealed in the course of introducing the Customs Code included, pursuant to Article 251 of the CCC, Regulation (EEC) No 1697/79, [5] Article 13 of which is regarded as the predecessor provision of the present-day Article 239 of the CCC [6] and has been interpreted on several occasions by the Court. Like that earlier provision, Article 239 of the CCC is also a general equitable provi-

4 — See Dollen, M., 'Nacherhebung, Erstattung und Erlass von Abgaben nach dem neuen Zollkodex', in *Europäische Zeitschrift für Wirtschaftsrecht*, No 24/1993, pp. 754, 755; Berr, C./Trémeau, H., *Le droit douanier*, 4th edition, Paris 1997, p. 219.

5 — Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties

6 — See Müller-Eiselt, P., 'Nacherhebung — Erlass — Erstattung — Gedanken zum Vertrauensschutz in die Zollerhebung', in *Vertrauensschutz in der Europäischen Union*, Cologne 1998, p. 106.

sion [7] under which, for the purpose of ensuring the protection of legitimate expectations in situations other than those arising most often in practice and for which express provision is made, import and export duties which are legally payable may be repaid or remitted, provided that no deception or obvious negligence is attributable to the person concerned. When deciding whether a special situation within the meaning of that provision exists, the Commission must, within the limits of the wide discretion which it has in that regard, assess all of the facts and circumstances and balance, on the one hand, the Community interest in ensuring that the customs provisions are respected and, on the other, the interest of the economic operator acting in good faith in not suffering harm which goes beyond normal commercial risks.

69. The general provision in Article 239 of the CCC applies, in particular, where, in view of the relationship between a trader and the administration, it would be inequitable to require the trader to bear a loss which he normally would not have incurred. [8] In principle, the Court's case-law requires the trader to be in an 'exceptional situation' as compared with other operators engaged in the same business. [9] Both the Court in its case-law and the Community legislature in the CCC implementing regulation have specified when such 'special situations' within the meaning of Article 239 of the CCC exist. [10]

70. In any event, pursuant to Article 904 of the CCC implementing regulation, Community law expressly does not recognise as

7 — Joined Cases 244/85 and 245/85 *Cerealmangimi and Italgrani* v *Commission* [1987] ECR 1303, paragraph 10, and Case C-446/93 *SEIM* [1996] ECR I-73, paragraph 41. Sack, J., *Zollrecht, Handbuch des EU-Wirtschaftsrechts*, vol. 1, C. II, paragraph 82, p. 27, mentions only Article 905 of the CCC implementing regulation as the general equitable provision of enormous importance for practical purposes, clearly because that provision contains the factual precondition for the 'special situation' itself. Other authors, such as Müller-Eiselt, P., cited above (footnote 6), p. 106, mention solely or mainly Article 239 of the CCC as the relevant provision. It would be more correct to use the second indent of Article 239(1) of the CCC in conjunction with Article 905 of the CCC implementing regulation as the basis for the remission or repayment of import duties on account of special circumstances.

8 — Case 58/86 *Coopérative agricole d'approvisionnement des Avirons* [1987] ECR 1525, paragraph 22.

9 — Case C-86/97 *Trans-Ex-Import* [1999] ECR I-1041, paragraph 21; Case C-61/98 *De Haan Beheer* [1999] ECR I-5003, paragraph 52; and *Kaufring and Others*, cited in footnote 3, paragraph 218.

10 — In the view of Huchatz, W., *Lehrbuch des Europäischen Zollrechts* (eds. Witte, P./Wolffgang, H.-M.), Hamm 2007, p. 414, the interpretation of this vague legal concept has been outlined by the Court and the Commission. Article 239 of the CCC pursues two different aims. First, it expands the groups of cases contained in Articles 236, 237 and 238 to include a catalogue of individual cases specified in the CCC implementing regulation (Article 900 of the CCC implementing regulation), in which repayment or remission is also possible. The fact that this catalogue is in the CCC implementing regulation enables the Commission, acting within the limits of its delegated legislative powers under the third indent of Article 202 EC and pursuant, for example, to proposals from the national customs administrations or to the Court's case-law, to include further individual cases in that group. Secondly, the national administration is enabled, over and above all the cases mentioned in Articles 236 to 238 and in Article 900 of the CCC implementing regulation, to grant a repayment or a remission in 'special' individual cases where there are circumstances which do not result from deception or obvious negligence on the part of the person concerned (Article 899(2) of the CCC implementing regulation). However, the cases of repayment listed in the CCC and the CCC implementing regulation are not exhaustive since, in addition, there are further situations in which repayment is merited. In that way, equitable considerations can play a part and fairness in individual cases can be achieved. Here too, the case-law of the Community courts plays a special role. Thus, Huchatz, W., in *Zollkodex* (ed. von Witte, P.), 4th edition, Munich 2006, Article 239, paragraph 30, points out that, in order to complete the concept of 'special situations' within the meaning of Article 239(1) of the CCC and Article 905 of the CCC implementing regulation, recourse may be had to the case-law, especially that of the Court of Justice (including with regard to the earlier legislation).

such a special situation the presentation in good faith of preference or other documents subsequently found to be forged or falsified. By incorporating that exclusion, the Community legislature incorporated the Court's previous case-law into the customs legislation of the Community. [11]

71. Given that, on the one hand, at first instance the appellant contested the Commission's decision by way of an action for annulment under Article 230 EC essentially on the ground that, in its case, there was a special situation within the meaning of the second indent of Article 239 of the CCC in conjunction with Article 905 of the CCC implementing regulation, and, on the other hand, Article 904 of the CCC implementing regulation appears, at least *prima facie*, to preclude its claim for remission of import duties, it must be assumed that those provisions constitute the substantive framework within which the Court of Justice will have to decide whether the present appeal is admissible and well founded.

11 — See the leading case, namely Joined Cases 98/83 and 230/83 *Van Gend und Loos* [1984] ECR 3763, paragraphs 15 to 17, in which the fact of having been furnished with invalid certificates of origin was not held to be a special circumstance, on the ground that such a circumstance may be regarded as one of the professional risks which a customs agent, by the very nature of his functions, runs. See also Case 827/79 *Acampora* [1980] ECR 3731, paragraph 8; Case C-348/89 *Mecanarte* [1991] ECR I-3277, paragraph 24; and Case C-97/95 *Pascoal & Filhos* [1997] ECR I-4209, paragraphs 57 to 60.

2. Procedural considerations

72. From a procedural point of view, in view of the appellant's extensive and detailed observations on the exact course of the events which gave rise to these proceedings, I feel compelled to point out that an appeal to the Court of Justice under the second paragraph of Article 225(1) EC is limited to points of law. Article 58 of the Statute of the Court of Justice states that the appeal may lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure or the infringement of Community law.

73. In assessing whether a plea may properly be put forward in the context of an appeal, it should therefore be noted that the purpose of the appeal procedure is to review the application of the law by the Court of First Instance and not to repeat the proceedings at first instance. The mere repetition of the pleas in law at first instance does not constitute an admissible plea on appeal. The appeal must, on the contrary, indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the arguments on which the claim that it should be set aside is based. [12]

12 — Rengeling, H.-W./Middeke, A./Gellermann, M., *Handbuch des Rechtsschutzes in der Europäischen Uni*on, Munich 2003, § 28, paragraphs 22 and 24, p. 500, 501. Case C-41/00 P *Interporc* v *Commission* [2003] ECR I-2125, paragraph 15, and Case C-496/99 P *Commission* v *CAS Succhi di Frutta* [2004] ECR I-3801, paragraph 48.

B — *Examination of the grounds of appeal*

1. First ground of appeal: breach of the principle of the division of responsibilities between the exporting and the importing country

(a) Division of responsibilities between the exporting and the importing country

74. With regard to the alleged breach of the principle of the division of responsibilities between the competent authorities of the exporting country and of the importing country in determining the authenticity or accuracy of movement certificates, it should be observed that the conclusions of the Court of First Instance in paragraphs 120, 121, 150, 323 and 324 of the contested judgment, to which the appellant refers in its appeal, were reached having regard to the provisions of the Association Agreement between the EEC and the Republic of Turkey and on the basis of the Court's settled case-law.

75. Article 15 of Decision No 1/96 provides that the checking of the authenticity and accuracy of the certificates is to be carried out within the framework of mutual assistance provided for in Article 29 and Annex 7 of Decision No 1/95. That assistance is to take place in accordance with Articles 3 and 4 of that annex in such a way that information regarding operations noted or planned, which are or could be in breach of customs legislation, is exchanged upon request or of their own motion between the authorities of the Parties. The effectiveness of that system of administrative cooperation necessarily presupposes a division of powers between the authorities concerned, which the Court expressly recognises.

76. According to settled case-law, the determination of the origin of goods is based on a division of powers between the authorities of the exporting country and those of the importing country; whilst the former determine origin, the proper working of the system is ensured jointly by the authorities concerned on both sides. That system is justified by the fact that the authorities of the exporting state are in the best position to verify directly the facts which determine origin. [13] It has the additional advantage

13 — Case 218/83 *Les Rapides Savoyards and Others* [1984] ECR 3105, paragraph 26, concerning the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972; Case C-12/92 *Huygen and Others* [1993] ECR I-6381, paragraphs 24 and 25, concerning the Agreement between the European Economic Community and the Republic of Austria of 22 July 1972; and Case C-432/92 *Anastasiou and Others* [1994] ECR I-3087, paragraph 38, concerning the Agreement of 19 December 1972 establishing an Association between the European Economic Community and the Republic of Cyprus. See also Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465, paragraph 19.

of producing certain and uniform results regarding the identification of the origin of goods and of thereby avoiding deflections of trade and distortions of competition in trade.

77. That mechanism can function only if the customs authorities of the importing country accept the determinations legally made by the authorities of the exporting country. [14] As the Court held in *Les Rapides Savoyards and Others*, [15] in the context of international free trade agreements entered into between the Community and a non-member State on the basis of reciprocal obligations, recognition by the customs authorities of the Member States of decisions legally made by the authorities of that non-member State is also necessary in order that the Community can, in turn, demand that the customs authorities of that State accept the decisions taken by the customs authorities of the Member States concerning the origin of products exported from the Community to the State in question.

78. It is true that the customs authorities of the importing country are not legally bound by the presentation of a preference certificate to grant the importer the preferential treatment applied for. However, provided that the preference certificate was properly issued in accordance with formal requirements, it is *prima facie* substantively accurate. The presentation of the preference certificate therefore produces at least a binding effect in point of fact, that is, as regards the findings of fact made by the customs authority in the exporting country. [16]

79. It follows that, under the Association Agreement, the customs authorities of the importing country cannot refuse preferential treatment to goods which are imported under cover of a certificate properly issued by the customs authorities of the exporting country.

80. Even if the customs authorities of the importing State have reasonable doubts as to the true origin of the goods in question, the only course open to them is to ask the customs authorities of the exporting State to carry out a subsequent verification of that origin. [17]

81. That system of cooperation and division of responsibilities between the customs administrations necessarily means that they are also bound by the results of that subsequent verification where the customs authorities of the exporting State have been able to determine the origin of the goods in question. According to the Court's own case-law, only in exceptional cases, where the customs authorities of the exporting State are not in a position duly to carry out the subsequent verification, may the customs authorities of

14 — *Faroe Seafood and Others*, cited in footnote 13, paragraph 20, and Joined Cases C-23/04 to C-25/04 *Sfakianakis* [2006] ECR I-1265, paragraph 23.

15 — Cited in footnote 13, paragraph 27.

16 — Prieß, H.-J., *Zollkodex*, cited above (footnote 10), Article 27, paragraph 41.

17 — See the Opinion of Advocate General Léger in Joined Cases C-23/04 to C-25/04 *Sfakianakis* [2006] ECR I-1265, point 33.

the importing State check the authenticity and the accuracy of the certificate at issue and take account of other evidence as to the origin of the goods. [18]

82. Contrary to the appellant's view, the case-law cannot in any event be interpreted as meaning that the importing State has a right of verification of such a kind as to enable it to review and call in question the lawfulness and then the determination made by the exporting State as a whole. Rather, in *Pascoal & Filhos*, [19] the Court held that where the competent authorities of the exporting State declare, following subsequent verification, that a certificate does not apply to the goods actually exported, that is sufficient to enable the authorities of the exporting State to hold that duties legally owed have not been required and consequently to institute proceedings to recover them. The Court further noted that nothing in the rules in question obliges the latter authorities to establish the accuracy of the results of the verification or the true origin of the goods.

83. It must therefore be concluded that, in accordance with the case-law of the Court of Justice and as correctly stated by the Court of First Instance in paragraphs 120 and 121 of the contested judgment, the Italian authorities and the Commission were in principle bound by the determination made by the Turkish authorities regarding the authenticity of the 32 certificates in question. There is no objective reason to alter the division of responsibilities between the Turkish and the Community customs authorities. Rather, I concur with the Commission's assessment that the Community customs authorities would themselves have been in no position to determine whether a third country's export certificates presented to them were authentic or forged. That finding may therefore be made solely by the technically competent customs authorities of the exporting State, which in this case are the Turkish customs authorities.

(b) Different assessment in the event of misconduct on the part of the authorities of the exporting State

84. In my view, there is no need to examine the question whether another assessment is appropriate in the event that irregularities have arisen which ultimately involved the customs authorities of the third State. After all, according to the findings of the Court of First Instance, no misconduct on the part of the Turkish authorities is provable in this case. In addition, these are facts whose appraisal falls in principle within the exclusive jurisdiction of the Court of First Instance [20] and which are reviewable by the Court of Justice only in so far as the substan-

18 — *Huygen and Others*, cited in footnote 13, paragraph 27.

19 — Cited in footnote 11, paragraph 37.

20 — Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* [2004] ECR I-123, paragraph 48, and Case C-194/99 P *Thyssen Stahl AG* v *Commission* [2003] ECR I-10821, paragraph 33. Lenaerts, K./Arts, D./Maselis, I., *Procedural Law of the European Union*, 2nd edition, London 2006, p. 453, paragraph 16-003, point out that the Court of Justice does not have jurisdiction with respect to findings of fact. The fact that an appeal is limited to points of law means that the Court of First Instance has exclusive jurisdiction in that regard. It follows that an appellant may neither call in question the findings of fact made by the Court of First Instance nor put forward facts which were not established at first instance by that Court.

tive inaccuracy of the findings is apparent from the documents submitted in the case. [21] Provided that evidence is properly taken and the general principles of law and the rules governing the burden of proof and the procedure for hearing evidence have been complied with, it is then exclusively for the Court of First Instance to assess the probative value of the evidence produced before it. [22]

85. As far as the classification of the 32 import certificates as forgeries is concerned, the Court of First Instance first mentions, in paragraph 122 of the contested judgment, the Turkish authorities' letter of 8 March 1999 to the Ravenna customs services with its list of the 32 certificates which the Turkish authorities considered to have been forged. The Court then draws attention, in paragraph 125, to the ambiguities which were apparent from a comparison between the conclusions in that letter and those in the letter of 22 April 1999 from the Permanent Representation to UCLAF. At that time, the difficulty for the parties lay in concluding beyond doubt from the Turkish authorities' written statements whether the certificates in question were forged or merely inaccurate. The Court of First Instance concludes that the expression, 'not correct … and not issued according to the rules' could also have been interpreted as meaning that the certificates in question had not been forged. As noted by the Court in paragraph 129 of the contested judgment, however, any doubt as regards the forgeries could be removed by reference to the Turkish authorities' letter of 22 August 2003. Accordingly, in the light of the facts put before it, the Court was entitled to conclude, without making any error of law, that the 32 import certificates at issue were forgeries.

86. With regard to the appellant's allegation regarding involvement of the Turkish authorities, the Court of First Instance observed in paragraph 167 that the presentation of documents which prove to be forgeries does not of itself permit it to be concluded that there was some kind of collusion between the exporters and the customs authorities which issued them. The Court thus drew attention, without thereby making an error of law, to the absence of evidence that the Turkish authorities participated in the forgeries.

87. Nor is it possible to accept the appellant's argument that the issuing of inaccurate certificates constitutes a significant irregularity justifying withdrawal of recognition of the determination made by the Turkish authorities. That argument is in fact tantamount to calling in question the division of responsibilities, recognised by the Court of Justice, as between the exporting country and the importing country in regard to checking the authenticity and accuracy of certificates. Moreover, there can be no question of equating the erroneous issuing of inaccurate certificates by the competent customs authorities with the forging of certificates, which has criminal implications.

88. The first ground of appeal should therefore be rejected.

21 — *Aalborg Portland and Others*, cited in footnote 20, paragraph 48.

22 — See the Opinion of Advocate General Ruiz-Jarabo Colomer in *Aalborg Portland and Others*, judgment cited in footnote 20, point 38. Joined Cases C-280/99 P to C-282/99 P *Moccia Irme and Others* v *Commission* [2001] ECR I-4717, paragraph 78, and Case C-185/95 P *Baustahlgewerbe* v *Commission* [1998] ECR I-8417, paragraph 24.

2. Second ground of appeal: breach of the right of access to documents or other rights of the defence

89. The appellant alleges breach of its right of access to documents. In so far as it is asking the Court to review the scope of its rights as the defendant in the administrative proceedings, that is a point of procedural law and thus an admissible ground of appeal.

90. It complains that it had access solely to those documents on which the Commission based the contested decision. On the other hand, it was granted no access to 'context documents' or confidential documents, which the Commission also takes to include the UCLAF and OLAF reports.

91. Citing its own case-law,[23] in paragraph 88 of the contested judgment the Court of First Instance first observed that the principle of respect for the rights of the defence in connection with the administrative procedure relating to the remission of customs duties implies only that the party concerned be placed in a position in which it may effectively make its views known as regards the evidence, including the documents — used against it by the Commission as a basis for the decision. That principle therefore did not require the Commission, acting on its own initiative, to grant access to all the documents which might have some connection with the case at issue when an application for remission is referred to it. If the party concerned considered that such documents were relevant for establishing the existence of a special situation and/or the lack of deception or obvious negligence on its part, then it was for the party concerned itself to request access to those documents in accordance with the provisions adopted by the institutions under Article 255 EC.

92. The Court further pointed out in paragraph 89 that it is at the request of the party concerned that the Commission is required to provide access to all non-confidential official documents concerning the contested decision. If no such request is made, it follows that there is no automatic access to the documents held by the Commission.[24]

93. Those statements of the Court of First Instance must be examined from the point of view of the different forms which the right of access to documents has now taken both in the laws of the Member States and in Community law. On the one hand, that right is inseparably linked with the procedural guarantees in the administrative procedure afforded to the addressee of an administrative decision pursuant to the principle of acting in accordance with the rule of law. On the other hand, that right can be understood as an expression of the public's right to information, which requires the activities of all organs and other institutions of the State

23 — Case T-205/99 *Hyper* v *Commission* [2002] ECR II-3141, paragraph 63, and Case T-329/00 *Bonn Fleisch Ex- und Import* v *Commission* [2003] ECR II-287, paragraph 46.

24 — Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401, paragraph 81; Case T-50/96 *Primex Produkte Import-Export and Others v Commission* [1998] ECR II-3773, paragraph 64; and *Bonn Fleisch Ex- und Import* v *Commission*, cited in footnote 23, paragraph 46.

to be transparent and subject to democratic control. [25]

94. Article 255 EC gives concrete expression to the principle of transparency laid down as a rule in the second paragraph of Article 1 EC and at the same time puts into effect the freedom of information for citizens of the Union guaranteed in Article 42 of the Charter of Fundamental Rights of the European Union. [26] In these proceedings, however, the question which arises is primarily that of safeguarding the individual's rights during an administrative procedure at the end of which the Commission was required to decide on the remission of import duties in accordance with Article 239 of CCC. Consequently, the appellant should be referred to the possibility of an application under Article 255 EC, by virtue of its specific function, only if there were no specific provisions available to it for its protection. However, the appellant did in any case have a right to be heard, recognised by the case-law of the Community judicature, [27] as well as the right of access to the file during the administrative procedure before the Commission.

95. As the Court of Justice has pointed out on several occasions, the rights of the defence form an integral part of the general principles of law, whose observance the Court ensures, [28] for which purpose the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on which the Member States have collaborated or to which they are signatories. [29]

25 — In his Opinion in Case C-58/94 *Netherlands* v *Council* [1996] ECR I-2169, points 13 to 15, Advocate General Tesauro also distinguishes between the function of access to public documents to safeguard the rights of the individual in the context of an administrative procedure and the general public interest in having access to information relating to the activities of the State.

26 — Broberg, M., Access to documents: a general principle of Community law?, *European Law Review* (2002), pp. 196, 197, points out that the first real step towards allowing the public a right of access to documents held by the Community institutions dates back to 7 February 1992 when the Member States signed the Final Act to the Maastricht Treaty. In Declaration No. 17 to that act, the Member States pointed to the close connection between, on the one hand, transparency of the decision-making process and, on the other, the democratic nature of the Community institutions. In response to Declaration No 17, the Council and the Commission jointly adopted a Code of conduct concerning public access to Council and Commission documents (OJ 1993 L 340, p. 41). Nevertheless, the notions of openness and access to documents were not introduced into Community law until the adoption of the Treaty of Amsterdam. Thus, the second paragraph of Article 1 EU now provides that decisions are to be taken 'as openly as possible'. A new Article 255 EC, inserted in the Treaty, guarantees the right of access for any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, to European Parliament, Council and Commission documents. That right is also enshrined in Article 42 of the Charter of Fundamental Rights of the European Union proclaimed on 7 December 2000 (2000/C 364/01). Finally, that right was formulated in more detail at the level of secondary Community legislation by the provisions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

27 — In Joined Cases C-121/91 and C-122/92 *CT Control* [1993] ECR I-3873, paragraph 48, the Court first observed that the procedure under Article 13 of Regulation No 1430/79, which precedes the adoption of decisions by the Commission on the repayment or remission of import duties, comprises several stages, some of which take place at national level (submission of the application by the undertaking concerned, preliminary examination of the application by the customs authorities) and some at Community level (submission of the application to the Commission, examination of it by the Committee on Duty-Free Arrangements, consultation of a group of experts, decision by the Commission, notification to the Member State concerned). The Court further observed that, if that procedure is conducted in accordance with Community law, it affords the persons concerned all the necessary legal safeguards, namely the safeguard of a fair hearing.

28 — Case C-7/98 *Krombach* [2000] ECR I-1935, paragraphs 25 and 26, and Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *PVC II* [2002] ECR I-8375, paragraph 316.

29 — See Case C-274/99 P *Connolly* v *Commission* [2001] ECR I-1611, paragraphs 37 and 38.

96. According to the Court's case-law, the right of access to the file, as a corollary of the principle of respect for the rights of the defence, means that the Commission must give the undertaking concerned the opportunity to examine all the documents in the investigation file which may be relevant for its defence. [30] Those documents include both incriminating evidence and exculpatory evidence, save where the business secrets of other undertakings, the internal documents of the Commission or other confidential information are involved. [31]

97. Since it does not restrict access to those documents on which the Commission based its decision at issue, but rather extends it to include all documents which may be relevant for the addressee's defence, the right of access to the file within the meaning of that case-law of the Court of Justice proves to be wider than the interpretation on which the Court of First Instance based its judgment. However, the treatment of documents classified as confidential, which as such must be exempted from access, is unexceptionable.

98. In my opinion, the Court of First Instance interpreted the right of access to the file in connection with the administrative procedure concerning remission of duties unduly strictly, which in principle should be regarded as an error of law.

99. However, I am of the opinion that a divergent view of the normative scope of that general legal principle is not, in itself, capable of justifying setting aside the contested judgment. On the contrary, the of procedural economy and the protective function of the procedural safeguards for the person concerned demand careful consideration of whether the Court of First Instance would have come to a different conclusion if it had taken account of the case-law of the Court of Justice when applying Community law.

100. As the Court of Justice held in *Hercules Chemicals* [32] in connection with the right of access to the file, there is no error of law where the Court of First Instance holds that the granting of access to all the other documents would not have led to annulment of the Commission decision at issue and consequently rejects the appellant's submissions concerning a breach of the rights of the defence.

101. That case-law takes up a fundamental principle of general administrative law and of

30 — To that effect, Case T-30/91 *Solvay* [1995] ECR II-1775, paragraph 81, and Case C-199/99 P *Corus UK* v *Commission* [2003] ECR I-11177, paragraphs 125 to 128.

31 — See Case 85/76 *Hoffmann-La Roche* v *Commission* [1979] ECR 461, paragraphs 9 and 11; Case C-51/92 P *Hercules Chemicals* v *Commission* [1999] ECR I 4235, paragraph 75; and Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraph 315).

32 — Cited in footnote 31, paragraphs 80 to 82.

Community administrative procedural law, [33] namely that a procedural irregularity justifies the judicial annulment of an administrative decision only when such annulment has a bearing on the content of the decision itself.

102. As Advocate General Mischo correctly stated in his Opinion in *PVC*, [34] access to the file is not an end in itself, but is designed to allow the person concerned effectively to exercise his rights of defence. It is therefore logical that, when an irregularity in access to the file has not had any effect on the exercise of those rights, it cannot lead to the annulment of the contested decision.

103. In his Opinion in *Aalborg Portland*, [35] Advocate General Ruiz-Jarabo Colomer stated, with regard to the aforementioned protective function of the right of access to the file, that procedural defects are irrelevant if, in spite of everything, the person concerned has enjoyed the appropriate rights of defence. The decision may be annulled only if it is found that, if the proper procedural routes had been scrupulously followed, the outcome could have been more advantageous for the person concerned or if, precisely because of the procedural defect, it is impossible to ascertain whether the decision would have been different.

104. In essence, the Court of First Instance used that line of argument in paragraph 94 of the contested judgment when it rejected the allegation of infringement of the right of access to the file on the ground that, where documents which have not been used as the basis of a contested decision are not communicated, any failure to communicate them is in any event irrelevant, given that such documents cannot, in any case, have any bearing on the contested decision. That conclusion forms part of the Court's findings of fact and is unexceptionable in law.

105. In regard to those documents on which the Commission based its decision, it should be pointed out that the Court of First Instance also noted that, at the consultation of the file relating to the Commission's decision, which was carried out at the Commission's offices on 6 August 2002, the appellant's representative signed a written declaration expressly confirming that access had been granted to all documents directly or indirectly connected with the matter at issue. A list was annexed to that declaration setting out all the documents to which that

33 — Thus, infringement of an 'essential' procedural requirement is necessary in order to justify an action for annulment, in which regard a distinction is not being made between 'essential' and 'non-essential' procedural requirements, but the decisive factor is the 'essential character' of the infringement. Whether an essential infringement of procedural requirements exists is assessed according to the situation in each individual case, since the infringement of one and the same rule may be more or less serious depending on the circumstances. In general, the essential character of a procedural requirement is affirmed where the procedural defect could have influenced the formulation of the content of the measure or where the procedural requirement was adopted specifically to protect the person concerned (Rengeling, H.-W./Middeke, A./Gellermann, M., cited above (footnote 12), § 7, paragraph 98, p. 139). In Case 30/78 *Distillers Company* v *Commission* [1980] ECR 2229, paragraph 26, and *Thyssen Stahl* v *Commission*, cited in footnote 20, paragraph 31, the Court held that the rights of the defence are infringed where it is possible that the outcome of the administrative procedure conducted by the Commission may have been different as a result of an error committed by it.

34 — Joined Cases C-244/99 P and C-251/99 P [2002] ECR I-8375, point 331.

35 — Cited in footnote 22, points 28 to 30.

representative had had access. As the Court expressly noted in paragraphs 99 and 100 of the contested judgment, that list included the UCLAF mission report of 9 December 1998 and the letter of the same date from the Commission/UCLAF to the Turkish Permanent Representation, which the appellant complains, again in the appeal, was not presented to it. Consequently, the Court was fully entitled to assume that the appellant, contrary to its assertions, was granted access to those documents.

106. With regard to that request for access to the file, made by the applicant after the contested decision had been adopted and the proceedings initiated, in paragraph 102 of the contested judgment the Court pointed out that that is clearly irrelevant for the purposes of determining whether the applicant's rights of defence may have been adversely affected during the administrative procedure and can have no bearing on the legality of that decision.

107. The Court's explanations show that it examined whether the documents in question would have been of any use at all to the appellant. It did not therefore confine its appraisal to whether the failure to disclose the disputed documents had had an impact on the content of the final decision.

108. In fact, its account has the effect, fundamentally, of showing that the documents concerned, far from providing the appellant with an argument, were either unlikely to be relied upon by the appellant, because of their nature or subject-matter, or, because of their content, liable to confirm the Commission's conclusions, or in any event not to contradict them in the slightest.

109. I therefore consider that the Court essentially complied, in its method of analysis, with the case-law of the Court of Justice and that its conclusions are correct.

110. Finally, the Court's observations regarding the appellant's partially inconsistent conduct in exercising its right of access to the file must be assessed. In fact, in paragraph 102 of the contested judgment, the Court rightly drew attention to the fact that the applicant did not make any further request for access to other evidence in the file during the administrative procedure and also did not act in response to the Commission's offer of access to the desired documents, made on 10 July 2003. Against that background, it appears contradictory for the appellant, despite being aware of those omissions in the exercise of its rights as the defendant at first instance, to complain that those rights were infringed and contest on appeal the unobjectionable grounds of the judgment given at first instance.

111. The second ground of appeal must therefore be rejected.

3. Third ground of appeal: allocation of the burden of pleading and proving the facts

112. A finding of the existence of 'circumstances' within the meaning of the second indent of Article 239(1) of the CCC or of a 'special situation' within the meaning of Article 905(1) of the CCC implementing regulation presupposes the pleading, proof and appraisal of certain facts and circumstances. However, the question of the specific allocation of the burden of pleading and proof is in dispute between the parties, since the appellant claims that the burden of proof should be reversed or mitigated in its favour. By ultimately alleging in its submissions that the Court of First Instance disregarded the procedural-law principles governing the burden of proof, the appellant relies on misapplication of Community law and thus on an admissible ground of appeal. [36]

113. Consideration of this ground of appeal first requires some fundamental explanations regarding the allocation of the burden of proof in the context of the procedure for repayment or remission of import duties.

114. It should first be noted that, under the generally accepted rules of procedural law, the party relying on the conditions laid down in a provision must as a general rule prove that they have been satisfied. [37] Logically, as a rule, it is for the importer to plead and prove the existence of a 'special situation' as referred to in Article 239 of the CCC, justifying a remission of import duties. [38] The same applies, for example, to the proof of origin of goods where the decision as to whether or not a repayment of import duties should be made depends on the clarification of that question. [39]

115. Conversely, it is for the Commission, in the context of its decision as to whether a 'special situation' exists, in which it has an

36 — According to Rengeling, H./Middeke, A./Gellermann, M., cited above (footnote 12), § 28, pp. 502 to 504, the procedural norms on whose infringement the appeal may be based also include, in addition to the procedural provisions of the Treaties, the Statutes and the Rules of Procedure of the Court of First Instance, the general principles of Community law which concern the proceedings. Thus, the appeal may allege infringement of the parties' right to a fair hearing as well breaches of the principles governing the burden of proof or the taking of evidence. With regard to the amenability to review of the correct application of the rules relating to the burden of proof by the Court of First Instance, see Case C-49/92 P *Anic* [1999] ECR I-4125, paragraph 96; Joined Cases C-2/01 P and C-3/01 P *BAI and Commission* v *Bayer* [2004] ECR I-23, paragraphs 47, 61 and 117; Case C-551/03 P *General Motors* v *Commission* [2006] ECR I-3173, paragraphs 51 and 52; and Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries Ltd and Nippon Steel Corp* v *Commission* [2007] ECR I-729, paragraph 39.

37 — Also according to Advocate General Kokott in her Opinion in Case C-293/04 *Beemsterboer Coldstore Services* [2006] ECR I-2263, point 47.

38 — Also according to Alexander, S., *Zollkodex,* cited above (footnote 10), Vor Art. 220, paragraph 4, according to which the burden of pleading and proving the facts justifying an application for repayment rests upon the customs debtor.

39 — See *CT Control*, cited in footnote 27, paragraph 39, according to which it is for the importer seeking to obtain repayment of import duties and not the Commission to establish that imported goods originate in an ACP State for which the Community provides for preferential arrangements.

appropriate margin of discretion, [40] to plead and prove that the certificates presented by the importer are forged or falsified. On the other hand, it is not required to prove that there is no special situation where the requirements of Article 904(c) of the CCC implementing regulation are satisfied, since that provision already contains an assessment by the Community legislature, which is binding on the Commission, to the effect that any good faith on the part of the importer during the procedure under Article 239 of the CCC cannot be regarded as meriting protection.

116. As I have already explained in my introductory observations on this case, [41] the Community legislature, by the formulation of that exclusion, adopted the Court's previous settled case-law according to which the fact that documents presented in good faith in order to obtain preferential tariff treatment for goods declared for free circulation are subsequently found to be falsified does not constitute a special circumstance justifying a remission of import duties. That case-law has, since the judgment in the leading case, *Van Gend und Loos*, [42] been founded on the consideration, inter alia, that the Community cannot be made to bear the adverse consequences of infringements. The Court has held that the receipt of invalid certificates of origin can, in principle, be considered to be one of the professional risks which a trader, by the very nature of his activity, runs and he is at liberty to seek compensation from the perpetrator of the fraud.

117. The Court of First Instance has recognised exceptions to that rule only in those cases of forgery which go beyond the normal commercial risk borne by the trader concerned, such as breaches by the Commission of its duty of supervision [43] or in the case of participation by customs employees in infringements. [44] That case-law of the Court of First Instance is fully correct, since it takes account of the fact that, as a rule, the trader concerned, apart from those procedures which require his participation, has little opportunity to influence the course of the customs procedure and he must therefore rely on the due performance of their tasks by the competent authorities under a system of

40 — Thus, according to the case-law, in order to determine whether the circumstances of the case constitute a special situation in which no deception or obvious negligence may be attributed to the person concerned within the meaning of Article 239(1) of the CCC, the Commission must assess all the relevant facts (to that effect, Case 160/84 *Oryzomyli Kavallas and Others* v *Commission* [1986] ECR 1633, paragraph 16, and Case T-346/94 *France-aviation* v *Commission* [1995] ECR II-284, paragraphs 34 and 36.

41 — See above, point 70.

42 — Cited in footnote 11, paragraphs 15 to 17.

43 — *Eyckeler & Malt* v *Commission*, cited in footnote 24, paragraphs 189 to 191, and *Kaufring and Others*, cited in footnote 9, paragraph 218.

44 — In *Kaufring and Others*, cited in footnote 9, paragraph 231, the Court of First Instance held that only errors attributable to acts of the competent authorities which could not reasonably have been detected by the person liable to pay create entitlement to the waiver of post-clearance recovery of customs duties. The central aspects of that case were a number of irregularities on the part of the Turkish authorities in the implementation of the Association Agreement and association law derived from it and the serious deficiencies in the Commission's monitoring of the implementation of those provisions. In Case T-330/99 *Rotermund* [2001] ECR II-1619, paragraph 58, the 'special situation' as referred to in Article 239 of the CCC arose from the existence of fraudulent practices which could only reasonably be explained by the active complicity of an employee of the customs office at the destination, since the Court concluded in that regard that the Commission was not entitled to confine itself to requiring that the applicant adduce formal and definitive proof of such complicity. That case-law was also mentioned in Case T-332/02 *Nordspedizionieri* [2004] ECR II-4405, paragraph 58.

administrative cooperation. To that extent, it would be unfair to require him to bear a loss which was actually attributable to contraventions committed by the administrative authorities.

118. However, it must be borne in mind that those exceptions developed by way of judge-made law can only constitute ad hoc adaptations of settled case-law so as to ensure that substantive justice is done in individual cases. As exceptions, they may be applied only restrictively. [45] That accords, moreover, with the existing case-law of the Community judicature, according to which the remission of import duties may be made only under certain conditions and in cases specifically provided for, so that, as exceptions to the normal rules for imports, the relevant provisions are to be interpreted strictly. [46] Their application must therefore be preceded by a rigorous examination of the facts and circumstances, assessing the evidence offered. In accordance with the generally accepted rules of procedural law and in the light of the Court's clear case-law since *Van Gend & Loos*, I consider it logical to make the appellant bear the burden of pleading and proof, including in relation to the occurrence of those irregularities which may be capable of constituting a 'special situation' as referred to in Article 239 of the CCC.

119. The arguments put forward by the appellant in favour of a reversal of the burden of proof are unconvincing.

120. As the Commission correctly states, contrary to the appellant's submissions, the present case does not primarily concern a question of allocation of the burden of proof. The question of allocation of the burden of proof arises only when a factual claim at issue is at least *prima facie* provable. However, the appellant's arguments lack any foundation, since the Court of First Instance found no basis for its submission that the Turkish authorities were guilty of deficiencies in the implementation of the Association Agreement and of infringing the rules on administrative assistance. On the contrary, it is apparent from paragraph 194 of the contested judgment that the UCLAF missions in Turkey were undertaken within a reasonable period following the discovery of the initial forgery. Moreover, the Court refers in paragraph 195 to the fact that the examinations carried out by the Turkish authorities concerned a very large number of certificates, but that the list of certificates considered by those authorities to be forged was nevertheless sent to the Ravenna customs services relatively quickly. Finally, in paragraph 196, the Court drew attention to the voluminous correspondence between the Community authorities and the Turkish authorities concerning the certificates at

45 — Pursuant to the principle '*exceptio est strictissimae interpretationis*'. For the narrow interpretation of derogating provisions by the Court of Justice, see, for example, Case C-307/05 *Del Cerro Alonso* v *Osakidetza* [2007] ECR I-7109, paragraph 39; Joined Cases C-346/03 and C-529/03 *Atzeni & Lilliu* [2006] ECR I-1875, paragraph 79; and Case C-286/02 *Bellio Fratelli* [2004] ECR I-3465, paragraph 46.

46 — Case C-48/98 *Söhl & Söhlke* [1999] ECR I-7877, paragraph 52, and *Bonn Fleisch Ex- und Import* v *Commission*, cited in footnote 23, paragraph 63.

issue. Against that background, the Court's conclusion that there was no substantiation for the appellant's assertion that the Turkish authorities, and in particular the Turkish Permanent Representation, refused to cooperate with the Commission as of 2000 is unexceptionable.

121. There were still less, according to the Court's findings of fact, any indications of supposed involvement of the Turkish authorities in forging the import certificates in question, so that the appellant's attempt to draw a parallel between the facts in the main proceedings and those in *Kaufring and Others* does not succeed. Contrary to the appellant's submissions, presentation of documents found to be forged does not of itself permit it to be concluded that there was some kind of collusion between the exporters and the customs authorities which issued them, since otherwise the rule contained in Article 904(c) of the CCC implementing regulation would be superfluous.

122. Apart from the lack of cogency of its argument, I am of the opinion that a reversal of the burden of proof would hardly be beneficial to the appellant's cause, since the Commission and UCLAF/OLAF, on their own initiative, obviously did everything necessary, including undertaking on-the-spot investigative missions, in order to clarify the facts in the main proceedings in agreement with the Turkish authorities. In the absence of any indications to the contrary, it must therefore be assumed that the Commission and the Turkish authorities exhausted the legal opportunities for administrative assistance which the Association Agreement afforded them. It must be expressly reiterated in this connection that the Commission has no autonomous powers of investigation in third countries such as Turkey, but that it is reliant on their cooperation and where cooperation is refused it can at best draw appropriate inferences.[47] In so far as its efforts yielded neither indications of the authorship of the forgeries nor any suspicious circumstances pointing to conduct in breach of duty on the part of the competent authorities, it is not clear what benefit a reversal of the burden of proof would have for the parties. The same applies to the reduced obligation to present evidence claimed by the appellant, since the Commission is after all obliged to make the results of its investigations available to the Court of First Instance. The information thereby obtained is therefore also of benefit to the appellant. Challenging the division of the burden of pleading and proof specified by the Court of First Instance can therefore be aimed only at calling into question retrospectively and for no good reason the Court's findings of fact which it made without erring in law. In the light of the fact that not only

47 — Alexander, S., *Zollkodex,* cited above (footnote 10), Art. 220, paragraph 72, notes that the scope of the investigations to be undertaken by a Community mission depends only on the matter to be investigated and on the toleration of the investigations by the third country in question. The fact that the toleration of Community missions may possibly be called for in the context of administrative assistance under the second indent of Article 81(1) of the CCC implementing regulation or that the Community may participate in investigations carried out by the authorities of third States does not in any way alter the fact that Community missions are not to be regarded as part of a system of administrative cooperation. See, by way of comparison, the powers of OLAF within the European Union, Weitendorf, S., 'Die interne Betrugsbekämpfung in den Europäischen Gemeinschaften durch das Europäische Amt für Betrugsbekämpfung (OLAF)', *Europäisches und internationales Integrationsrecht*, volume 15, Hamburg 2006, p. 243 and Kuhl, L., 'Les pouvoirs d´enquête de l'OLAF', *La protection des intérêts financiers de l'Union et le rôle de l'OLAF vis-à-vis de la responsabilité pénale des personnes morales et des chefs d'entreprises et admissibilité mutuelle des preuves*, Brussels 2005, p. 90, in which the authors point out that, even in the context of checks in the Member States, the Office is reliant on the full cooperation of the authorities in those States. Accordingly, the carrying out of on-the-spot investigations requires the prior consent and the supervision of the national authorities

the finding but also the assessment of the facts by the Court of First Instance is in principle outside the scope of the review carried out by the Court of Justice, this ground of appeal must be rejected.

4. Fourth ground of appeal: decision not to order measures of organisation of procedure for taking of evidence

123. By its fourth ground of appeal, the appellant challenges the rejection of the measures of organisation of procedure requested under Articles 64(4) and 65 of the Rules of Procedure of the Court of First Instance and thus alleges a misapplication of procedural law, which in principle is amenable to review by the Court of Justice. However, the decision regarding the usefulness of measures of organisation of procedure for the purpose of resolving the dispute remains a matter for the Court of First Instance. [48]

124. Against that background, the appellant's complaints of procedural irregularities are unfounded.

125. So far as the alleged failure to present the UCLAF mission reports of 9 and 23 December 1998 is concerned, the Court of First Instance rightly assumed, in paragraph 99 of the contested judgment, that the appellant had access to those documents. [49] In answer to the further complaint concerning the incompleteness of the reports presented, it must be stated that the appellant itself admits, in point 88 of its appeal, that it received the missing parts of those reports on 12 December 2005, so that, at the time of the hearing on 15 November 2005, the appellant was aware of the full contents of those documents. Consequently, its request for presentation of documents contained in the file was rightly to be rejected as devoid of purpose.

126. In addition, in paragraph 324 of the contested judgment, the Court referred to the fact that the Turkish authorities had clearly identified the certificates at issue as forgeries. The Court concluded that, in the light of the case-file and in view of the appellant's claims, measures intended to demonstrate that the documents were authentic were neither relevant nor necessary for the purpose of resolving the present dispute. The

48 — Under Article 49 of its Rules of Procedure, at any stage of the proceedings the Court of First Instance may, after hearing the Advocate General, prescribe any measure of organisation of procedure or any measure of inquiry. The purpose of measures of organisation of procedure is to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions. According to settled case-law, it is for the Court of First Instance to appraise the usefulness of measures of inquiry for the purpose of resolving the dispute. See Case T-138/98 *ACAV and Others* [2000] ECR II-341, paragraph 72, and Case T-68/99 *Toditec* [2001] ECR II-1443, paragraph 40. In that respect, the Court of First Instance has discretion within the limits imposed on it by the Rules of Procedure.

49 — See above, point 105.

Court therefore, in exercise of its discretion, decided not to order those measures. That decision is unexceptionable in law.

127. Consequently, this ground of appeal also must be rejected.

5. Fifth ground of appeal: legal classification of documents/facts in relation to alleged deficiencies attributable to the Turkish authorities and the Commission

128. By way of introduction, it should be pointed out that, by its fifth ground of appeal, the appellant chiefly challenges findings of fact and assessments of fact which, in principle, cannot be the subject-matter of the present proceedings. Their examination is permissible only in so far as it constitutes a review of their legal classification and of the legal inferences which the Court drew from them in order to find that there is no 'special situation' as referred to in Article 239 of the CCC. [50]

50 — Where the Court of First Instance has found or appraised the facts, the Court of Justice has jurisdiction, pursuant to Article 225 EC, to carry out a review of the legal classification of those facts and the legal inferences drawn from them by the Court of First Instance (to that effect, Lenaerts, K./Arts, D./Maselis, I., cited above (footnote 20), p. 457, paragraph 16-007). As the Court of Justice has held on several occasions, such a classification is a question of law which, as such, may be subject to review by the Court of Justice in an appeal (see Case C-499/03 P *Biegi Nahrungsmittel and Commonfood* v *Commission* [2005] ECR I-1751, paragraph 41; Case C-19/93 P *Rendo and Others* v *Commission* [1995] ECR I-3319, paragraph 26; and Case C-470/00 P *Parliament* v *Ripa di Meana and Others* [2004] ECR I-4167, paragraph 41).

129. It should further be observed that, in so far as the appellant takes as the starting point for its arguments a different allocation of the burden of pleading and proof from that which the Court of First Instance took as a basis, [51] its view must, in view of my conclusions on the third ground of appeal, be rejected.

130. I shall examine below the alleged deficiencies attributable to the Turkish authorities and the Commission, on which the appellant bases its arguments concerning the existence of a 'special situation'. In order, as far as possible, to avoid repetition, I shall concentrate my observations on those aspects which appear particularly relevant to me, and refer only briefly to any which have already been dealt with in my legal assessment.

(a) The alleged deficiencies attributable to the Turkish authorities

(i) Classification of the 32 A.TR.1 certificates in question as forgeries

131. With regard to the classification of the 32 A.TR.1 certificates as forgeries, it is sufficient to note that the Court of First Instance

51 — Point 108 of the appeal.

found, without erring in law, that, pursuant to the division of powers prescribed under Community law, the authenticity of Turkish certificates was to be determined only by the competent Turkish authorities. [52] The latter had, as correctly recognised by the Court, confirmed the authenticity of those certificates. [53]

(ii) A.TR.1 movement certificate D437214

132. As correctly found by the Court of First Instance in paragraph 129 et seq., by their letter of 22 August 2003, the Turkish authorities had also removed any doubt that certificate D437214 was a forgery.

133. Nevertheless, the nature of the certificates in question as forgeries is not, in itself, sufficient to justify the allegation of a deficiency, let alone that of an involvement, on the part of the Turkish authorities. Accordingly, the appellant's submissions regarding a deficiency in the classification of the A.TR.1 certificates in question as forgeries must be rejected.

52 — See above, point 83.
53 — See above, point 85.

(iii) Deficiency attributable to the Turkish authorities as regards the stamps

134. The appellant's submissions concerning a deficiency attributable to the Turkish authorities in relation to the stamps must also be rejected, since it has not shown with the necessary clarity how the Court of First Instance made an error of law which is amenable to review. That factor is sufficient in itself to justify a rejection of this submission.

135. Purely as a precaution, it should be pointed out that, in so far as the appellant seeks to infer from the supposed similarity between the stamps on the certificates in question and those on the certificates classified as correct that the certificates in question were not forged, but only incorrect, that argument must be answered by stating that, from a legal point of view, such a finding cannot replace the Turkish authorities' clear classification, for the reasons already set out.

(iv) Deficiency attributable to the Turkish authorities with regard to the registration of official documents

136. The Court of First Instance is correct when it observes that no obligation for the Turkish authorities to keep appropriate registers can be inferred from either the Association Agreement or the provisions for its

implementation. Nevertheless, the appellant is also correct in its view in point 136 of its appeal that the registration of official documents is a common practice for an organised authority and thus, in actual fact, a matter of course. At the same time, registration is, as the appellant notes, the basis for the proper provision of administrative assistance.

137. Nevertheless, that finding is incapable on its own of supporting the appellant's argument that the certificates in question are authentic certificates. That submission is rebutted by the clear findings of the Turkish authorities. Instead, the reasoning of the Court of First Instance is to be preferred, namely that forgers would have every interest in using on forged certificates a registration number which corresponded with a lawful certificate. No error of law is apparent in that.

(v) Deficiency attributable to the Turkish authorities on account of involvement in the issuing of incorrect certificates

138. As already observed, the Court of First Instance rightly concluded that the mere circumstance that the certificates at issue here were forged did not permit any inference as to the Turkish authorities' involvement in those forgeries.

(vi) Deficiency attributable to the Turkish authorities in the provision of administrative assistance

139. In paragraphs 194 to 206 of the contested judgment, the Court of First Instance found that the cooperation given by the Turkish authorities was totally correct. In that regard, it pointed out, in particular, that the checking of the certificates in question was instigated by the Turkish authorities themselves and that those authorities checked several hundred certificates within a reasonable period, communicated the results of their investigations to the Community authorities and also facilitated several on-the-spot missions of the Commission in Turkey. Those findings are unexceptionable in law.

140. Nor do the attempts at concealment or obstruction in the course of the investigations, which are imputed by the appellant to the Turkish authorities, permit the inference that the Court of First Instance assessed the facts put before it in a legally erroneous manner, particularly since those submissions are neither adequately pleaded nor supported by any evidence.

141. In so far as the appellant refers to the proceedings before the Customs Police Service in Cologne or the Finanzgericht Hamburg (Finance Court, Hamburg) cited by it, it should be noted that those are proceedings which obviously have nothing to do with the repayment procedure at issue here and were not notified to the Commission for the

record by the appellant during the repayment procedure either. In that respect, this submission should be rejected as irrelevant

142. The appellant's submissions regarding certificates D 141591 and D 412662 are equally irrelevant, since neither of them is the subject of the contested Commission decision. In paragraph 199 of the contested judgment, the Court points out that D 141591 is not one of the certificates at issue in the present case, because the appellant neither appealed against the duties that were levied following the finding of forgery nor applied for repayment of the duties paid, thus implicitly acknowledging that the certificate in question was not authentic.

(vii) Deficiency attributable to the Turkish authorities by reason of other factors and the obstruction of investigations in Mersin

143. The appellant's other submissions concerning a supposed deficiency attributable to the Turkish authorities should be rejected. Those submissions effectively call in question the Court's findings of fact but without clearly showing in what respect an error of law is apparent.

144. The Court of First Instance correctly declared the appellant's reference to its discussions with the Turkish Prime Minister's Office of Economic Affairs and to the termination of the investigation proceedings against its exporter, Mr Akman, to be just as irrelevant as its unsubstantiated allegations that the Turkish authorities had, despite several on-the-spot UCLAF missions, obstructed the Commission's investigations in Turkey. Contrary to the appellant's view, they do not affect the assessment of the facts. In any event, they do not allow the conclusion either that the certificates were merely incorrect or that there was a deficiency attributable to the Turkish authorities.

(b) The alleged deficiencies attributable to the Commission

145. The appellant has alleged a total of four deficiencies against the Commission, which in its view should constitute 'special situations' as referred to in Article 239 of the CCC. However, in the contested judgment, the Court of First Instance concluded that the Commission did not fail to discharge any duties. As will be demonstrated below, that view must be concurred with absolutely.

(i) Deficiency in monitoring the system of preferential treatment applicable to Turkey

146. First, it correctly noted that the alleged failures relating to the supervision and

monitoring of the implementation of the Association Agreement were to be examined in the light of the Commission's duty pursuant to Article 211 EC and the principle of good administration to ensure the proper application of the Association Agreement. [54] The Court referred to the fact that that duty also resulted from the Association Agreement and the various decisions adopted by the Association Council. [55]

147. After assessing all the facts and circumstances of the case, it concluded that the Commission did what was necessary to ensure the proper implementation of the Association Agreement. It rightly drew attention, in paragraph 238 of the contested judgment, to the fact that the Commission conducted investigations in Turkey as soon as there were initial indications that movement certificates had been forged.

148. In accordance with the generally accepted rules of procedural law, the Court imposed on the appellant the burden of explanation and proof in respect of any deficiency attributable to the Commission. In that connection, it rejected the appellant's general allegations and suspicions as well as its attempt to draw an analogy with the facts in *Kaufring and Others*. The Court was of the opinion that those facts were not comparable with those being examined in the present case, since in *Kaufring and Others* the Court had held that the Turkish authorities were responsible for serious deficiencies, and in particular had failed to implement provisions of the Association Agreement which applied to all exports of television sets from Turkey. Those failings had contributed to the occurrence of irregularities in exports and had created for the exporters a special situation as referred to in Article 239 of the CCC. However, in the Court's opinion, no such deficiencies had been established in relation to the certificates at issue in the present case.

149. In actual fact, at the time of the events which gave rise to this dispute, there were no indications of systematic breaches of the provisions of the Association Agreement which could have given the Commission grounds for increased vigilance in monitoring the system of preferential treatment applicable to Turkey. It could not, therefore, be accused of any deficiency. Consequently, the Court did not make any errors of law in the legal assessment of the facts.

(ii) Deficiency in failing to send impressions of stamps

150. The Court of First Instance rightly concluded in the contested judgment that neither Turkey nor the Commission was required under the provisions applicable here to send specimens of stamps or

54 — *Kaufring and Others*, cited in footnote 9, paragraph 257; *Eyckeler & Malt* v *Commission*, cited in footnote 24, paragraph 165; and Case 175/84 *Krohn* v *Commission* [1987] ECR 97, paragraph 17.

55 — *Kaufring and Others*, cited in footnote 9, paragraph 258.

signatures. The Commission's failure to send impressions of stamps to the Italian customs authorities was therefore not capable of constituting a deficiency.

151. Nor, contrary to the appellant's view, did any obligation to send impressions of stamps result, in particular, from Article 93 of the CCC implementing regulation. According to its clear wording, that provision relates, not to the A.TR.1 certificates at issue here, but only to the 'GSP' forms and certificates of origin 'Form A', which in turn relate only to imports of products originating in developing countries. [56]

152. Moreover, contrary to the appellant's view, Article 93 of the CCC implementing regulation was not declared applicable *mutatis mutandis* by decisions adopted pursuant to the Association Agreement between the Community and Turkey. That is also true with regard to Article 4 of Decision No 1/96. Contrary to the appellant's submissions, that provision does not in any way declare Article 93 of the CCC implementing regulation applicable in the present case. The appellant fails to appreciate that the provisions of Community customs legislation are applicable within the scope of the Association Agreement with Turkey only when and only in so far as that is expressly provided for in the Association Agreement or the decisions adopted pursuant to it. However, Article 93 of the CCC implementing regulation has at no time been brought within the scope of the Association Agreement. Consequently, the appellant also is unable to cite a single provision pursuant to which Article 93 of the CCC implementing regulation has been declared applicable *mutatis mutandis* in the present case.

153. It is therefore clear that in this case Article 93 of the CCC implementing regulation was neither applicable according to its wording nor even only declared applicable under the Association Agreement with Turkey.

(iii) Breach of a duty to warn importers in good time

154. The breach of a duty to warn importers in good time presupposes a corresponding duty of the Commission under Community law. Nevertheless, in paragraph 270 of the contested judgment, the Court of First Instance, invoking the case-law of the Community judicature, [57] correctly stated that there is no provision in Community law which expressly obliges the Commission to warn importers of doubts as to the validity

56 — This follows from Article 67(1) in conjunction with Article 80(a) of the CCC implementing regulation, which relate to the preferential tariff arrangements for developing countries. See also the survey of preferential origin and free circulation certificates in Lux, M., *Das Zollrecht der EG*, Cologne 2003, p. 136. Preference certificates for goods from Turkey display the abbreviation 'A.TR', whereas 'Form A' is used for goods from developing countries, which benefit from the Generalised System of Preferences (GPS) as an independent trading instrument of the Community in its trade with third States.

57 — Case C-61/98 *De Haan Beheer* [1999] ECR I-5003, paragraph 36, and *Hyper* v *Commission*, cited in footnote 23, paragraph 126.

of customs transactions effected by those importers under a system of preferential treatment.

155. Nevertheless, the possibility remains that the Commission may be obliged, under its general duty of diligence, to issue a general warning to Community importers. However, such a duty to warn can arise only when the Commission has serious doubts as to the legality of a large number of exports effected under a system of preferential treatment. [58]

156. As the Court noted in paragraph 273, the appellant failed to demonstrate conclusively that the Turkish authorities made serious errors which affected all exports of fruit juice concentrates and contributed to the circulation of forged certificates. No analogy could therefore be drawn with the facts which gave rise to the judgment in *Kaufring and Others*.

157. The appellant's submissions in these appeal proceedings allow no differing appraisal, since its allegation in points 225 and 226 of the appeal expressly relates to the issuing of 'incorrect', but not 'forged', movement certificates, so that it has still failed to produce evidence of the Turkish authorities' involvement in the forgeries. Moreover, the appellant bases its claim on inadmissible arguments, since its submissions expressly seek a new finding of facts and not exclusively a legal review of the grounds of the Court's judgment, which does not fall within the jurisdiction of the Court of Justice as the appellate court.

158. It must nevertheless be pointed out that, in paragraph 274 of the contested judgment, the Court of First Instance took into account the fact that the appellant's imports at issue here date from the period from April 1995 to November 1997, whereas doubts as to the authenticity and/or correctness of content of Turkish A.TR.1 certificates arose only subsequently, namely as of 1998. Consequently, the Commission was aware of the existence of the forged certificates only after the Italian authorities had discovered the first forged certificate and an investigation procedure had been initiated. It must be concluded from this that, even if the Commission had been obliged as of 1998 to warn the Community importers, that would have had no effect on the imports from 1995 to 1997 at issue here.

159. Accordingly, the Court of First Instance rightly found that there was no duty of the Commission to warn importers in good time.

58 — See *Hyper* v *Commission*, cited in footnote 23, paragraph 128.

(iv) Deficiency in clarifying and assessing the facts during the investigations in Turkey

160. As regards the allegation of deficiency in clarifying and assessing the facts during the investigations in Turkey, the Court held in paragraph 284 of the contested judgment, without erring in law, that the appellant was not able to substantiate its argument. The Court had rightly concluded, in the course of assessing the facts, that the Commission had properly examined and then assessed all the relevant facts by means of missions.

161. In so far as, by this ground of appeal, the appellant again complains of a legally incorrect allocation of the burden of proof, this submission must, in the light of my observations on the third ground of appeal, be rejected.

162. Moreover, the appellant also bases its ground of appeal on inadmissible submissions, since its arguments expressly seek a renewed assessment of the facts and not exclusively a legal review of the grounds of the Court's judgment. In particular, it is unable to explain clearly how the Court made an error of law. Since this submission does not satisfy the procedural requirements applicable to the grounds of an appeal, this argument must also be rejected.

(c) Interim conclusion

163. In conclusion, it must be held that in this case neither the Turkish authorities nor the Commission failed in their duties and, therefore, in that respect, there is no 'special situation' within the meaning of Article 239 of the CCC and Article 905 of the CCC implementing regulation.

6. Sixth ground of appeal: the Commission's failure to call on the Customs Committee/ Association Council

164. By its sixth ground of appeal, the appellant criticises the fact that the Commission did not turn to the Customs Committee or the Association Council in order to stop the irregularities which were occurring in trade between the Community and Turkey. In its view, the error of law in the contested judgment lies in the fact that the Court confined itself to describing the duties of the Association Council and the Joint Customs Committee stipulated in the relevant provisions, but without undertaking any legal qualification of those provisions in relation to the specific case. Moreover, the Court did not draw the necessary legal inferences as regards the course of action required of

the Commission on the basis of the facts adduced. [59]

165. That argument cannot be accepted, since in paragraph 239 of the contested judgment the Court certainly examined the facts of the main proceedings as to whether the conditions for calling in the Joint Customs Committee in this specific case were fulfilled.

166. The legal basis for that body to act on the initiative of the Commission would have to be Article 52(2) of Decision No 1/95, under which the Parties are to consult within the Committee on any point relating to the implementation of the Decision which gives rise to a difficulty for either of them. If such difficulties had arisen, that committee would have been competent to formulate appropriate recommendations to the Association Council with a view to ensuring the proper functioning of the Customs Union. However, there were obviously no indications of any great difficulties. On the contrary, it must be assumed that, in view of the willingness of the Turkish authorities to cooperate, recourse to those bodies was neither necessary nor justified.

167. Accordingly, in paragraph 239 of the contested judgment, the Court found, without erring in law, that the applicant had not been able to establish that the Commission encountered difficulties concerning the administrative assistance agreed upon with the Republic of Turkey which would have justified discussion within those bodies of the adoption of specific measures to combat such difficulties.

168. The Court was therefore entitled to take the view that no analogy could be drawn with the facts in *Kaufring and Others*, particularly as similar failings on the part of the Turkish authorities, which would have created a special situation, had not been established in relation to the movement certificates at issue. [60]

169. The Commission was therefore not obliged to refer to the Customs Committee or the Association Council. Consequently, this ground of appeal should be rejected as unfounded.

7. Seventh ground of appeal: failure to take into account a legitimate interest of the appellant in relation to A.TR.1 movement certificate D 437214

170. In so far as the appellant obviously relies, in connection with its seventh ground

59 — Point 240 of the appeal.

60 — See above, point 148.

of appeal, on the three-year period under Article 221(3) of the CCC [61] in order to avoid its obligation to pay import duties, that argument must be answered by pointing out that it is founded on an incorrect interpretation of Community law.

171. On the one hand, it fails to take into account the fact that this case concerns the remission or repayment of duties pursuant to Article 239 of the CCC and not, as probably assumed by the appellant, the waiver of subsequent entry in the accounts under Article 220(2)(b) of the CCC, to which Article 221(3) of the CCC is applicable. [62]

This case concerns two different types of procedure with differing formal and substantive requirements which must be examined independently of each other. [63]

172. On the other, these considerations are based on the legally incorrect view that the Court of First Instance should have annulled the contested decision on procedural grounds. However, as the Court correctly explained in paragraph 133 of the contested judgment, even partial annulment could only have led to the adoption of another decision identical in substance. It is admittedly true that, as held by the Court in paragraph 128 of the contested judgment, the Commission was not in a position properly to conclude, at the time of the adoption of the contested decision, that is, on 18 December 2002, in view of the unclear statements of the Turkish authorities, that certificate D 437214 had been forged. Nevertheless, that conclusion ultimately proved to be objectively correct, as the Turkish authorities' letter of 22 August

61 — In point 254 of its appeal, the appellant refers to the 'three-year period under Article 218(3) of the CCC', which, however, contrary to what the appellant suggests, is not a limitation period. On the contrary, that provision lays down a specific period within which the amount resulting from the customs debt must be entered in the accounts. It applies to cases other than the normal case of incurrence of the customs debt and thus applies also to the post-clearance recovery of duties under Article 220 of the CCC, to which the appellant refers (see Alexander, S., *Zollkodex*, cited above, footnote 10, Article 218, paragraph 6).

62 — See, for example, Galera Rodrigo, S., *Derecho aduanero español y comunitario*, Madrid 1995, p. 312; Bleihauer, H.-J., *Lehrbuch des Europäischen Zollrechts,* cited above (footnote 10), p. 416. The latter assumes that subsequent entry in the accounts pursuant to Article 220 of the CCC, following a decision (favourable to the person liable) on the remission or repayment of import duties pursuant to Article 239 of the CCC, is possible only where the customs duty again becomes payable pursuant to Article 242 of the CCC because, for example, the remission or repayment was made in error. However, such a set of circumstances clearly does not exist in this case, since the Commission's decision was not preceded by a favourable decision on remission or repayment pursuant to Article 239 of the CCC in respect of the movement certificates at issue. Nor do the circumstances exist in which, in the view of Huchatz, W., *Lehrbuch des Europäischen Zollrechts*, cited above (footnote 10), pp. 379, 380, subsequent entry in the accounts pursuant to Article 220 of the CCC is, in general, considered a possibility. That is the case, first, where the amount of duty was not entered in the accounts by the administration within the time limits for entry in the accounts laid down in Articles 218 and 219 of the CCC; second, where the amount of duty was entered in the accounts at a level lower that the amount legally owed.

63 — See Alexander, S. *Zollkodex*, cited above (footnote 10), Before Article 220, paragraph 8, who draws attention to the differing requirements of remission or repayment under the second indent of Article 239(1) of the CCC and waiver of post-clearance recovery under Article 220(2)(b) of the CCC. This circumstance requires parallel procedures to be carried out.

2003 eventually confirmed. [64] According to the case-law of the Community judicature, however, there is no legitimate interest in securing the annulment of a decision for a procedural defect where the annulment of the decision could only give rise to another decision identical in substance to the decision annulled. The Court's decision is therefore unexceptionable in law.

173. Consequently, this ground of appeal also should be rejected.

8. Eighth ground of appeal: balancing of fairness and risk

174. As the Court noted in paragraph 295 of the contested judgment, the Commission had not, in the contested decision, expressed its view on the issue of the appellant's due care or negligence. On that basis, the Court concluded that the appellant's plea that there was no obvious negligence on its part was of no consequence and should therefore be rejected.

175. In so far as the appellant submits that the Court erroneously omitted, in that respect, to carry out a balancing of fairness and risk, its argument cannot be accepted, since the Court was not in any way legally obliged to do so.

176. As the appellant itself acknowledges in points 257 and 258 of the grounds of its appeal, traders' confidence in the validity of import licences which subsequently prove to be forged is not, as a rule, protected by Community law, but is a general commercial risk. [65] In Article 904(c) of the CCC implementing regulation, the Community legislature has already made a clear assessment of risks, by which the Community judicature is bound when interpreting Community law.

177. In so far as the appellant infers from the case-law that the Commission should have carried out a balancing of fairness and risk, it specifically cannot base its claim on the case-law which it cites for that purpose. In the *Bonn Fleisch* case [66] cited by it, there was misconduct both on the part of the Member State's customs authorities and on the part of the Commission in discharging their duties of care, any indication of which is absent in this case. [67] The same applies to the judgment in *Eyckeler & Malt* which it cites. [68]

178. Consequently, this ground of appeal also should be rejected as manifestly unfounded.

64 — Case 117/81 *Geist* v *Commission* [1983] ECR 2191, paragraph 7; Case T-43/90 *Díaz García* v *Parliament* [1992] ECR II-2619, paragraph 54; Case T-261/97 *Orthmann* v *Commission* [2000] ECR-SC I-A-181 and II-829, paragraphs 33 and 35, and Case T-16/02 *Audi* v *OHIM* [*TDI*] [2003] ECR II-5167, paragraphs 97 and 98.

65 — See above, points 70 and 112 to 115.

66 — Cited in footnote 23, paragraphs 115 to 117.

67 — See above, points 163 and 169.

68 — Cited in footnote 24.

9. Ninth ground of appeal: infringement of Article 220(2)(b) of the CCC

179. By its ninth ground of appeal, the appellant alleges an infringement of Article 220(2)(b) of the CCC, which, for reasons connected with the protection of legitimate expectations and legal certainty, limits subsequent entry in the accounts (post-clearance recovery). [69] That provision is intended to protect the legitimate expectation of the person liable that all the information and criteria on which the decision to recover or not to recover duties is based are correct. [70]

180. Under that provision, waiver of post-clearance recovery by the national authorities is subject to three cumulative conditions. Provided that those three conditions are fulfilled, the person liable is entitled to waiver of post-clearance recovery. [71] First, non-collection of the duties must have been as the result of an error made by the competent authorities. Second, the nature of their error must be such that it could not reasonably be detected by the person liable acting in good faith, despite his professional experience and the diligence shown by him. Third, the person liable must have complied with all the provisions laid down by the rules in force as far as his customs declaration is concerned. [72]

181. What is at issue between the parties to these proceedings is essentially the concept of 'error', in relation to which the appellant assumes the existence of such an error in this case. It complains that the Court failed to take into account the active involvement of the Turkish authorities in the issuing and use of the 32 A.TR.1 certificates in question here.

182. For both legal and factual reasons, that argument cannot be accepted.

183. First, it should be noted that the presentation in good faith of forgeries of official documents, which is possible, in particular, in the case of preference certificates, cannot, in law, result in an 'error' within the meaning of Article 220(2)(b) of the CCC. [73] The Court's case-law requires, in order for such an 'error' to be assumed, an act attributable to the

69 — Case C-187/91 *Belovo* [1992] ECR I-4937, paragraph 14, and Case 210/87 *Padovani* [1988] ECR 6177, paragraph 6.

70 — *Mecanarte*, cited in footnote 11, paragraph 19, and Case C-251/00 *Ilumitrónica* [2002] ECR I-10433, paragraph 39.

71 — Case C-250/91 *Hewlett Packard France* [1993] ECR I-1819, paragraph 12; *Faroe Seafood and Others*, cited in footnote 13, paragraph 84; and Case C-15/99 *Sommer* [2000] ECR I-8989, paragraph 35.

72 — *Hewlett Packard France*, cited in footnote 71, paragraph 13; *Faroe Seafood and Others*, cited in footnote 13, paragraph 83; Case C-370/96 *Covita* [1998] ECR I-7711, paragraphs 25 to 28; and Case C-30/00 *William Hinton & Sons* [2001] ECR I-7511, paragraphs 68, 69, 71 and 72.

73 — To that effect also Alexander, S., *Zollkodex*, cited above (footnote 10), Article 220, paragraphs 18 and 65.

customs authorities and the causal connection between that act and their error. [74]

184. Taking that case-law as a starting point, it is, in my view, reasonable to delimit the legal notion of 'error' in relation to that of 'forgery' in such a way that the former necessarily presupposes an act (even though an objectively incorrect one) on the part of the customs authorities within their sphere of competence, [75] whereas a forgery in principle implies a deliberate act on the part of unauthorised third parties. [76] It is clear from this that both concepts are associated with fundamentally different situations.

185. Consequently, persons liable for customs duty who, in good faith, rely on forged preference certificates which were not issued by the competent authorities of a third State do not enjoy any protection of legitimate expectations under that provision. [77] That view is consistent with the case-law of the Court of Justice regarding the scope of that provision. In accordance with the Court's case-law on the remission or repayment of import duties under Article 239 of the CCC, it is also acknowledged in the context of subsequent entry in the accounts that falsified preference certificates are part of the commercial risk and the importer himself must make the necessary arrangements in order to guard against that risk. [78] The fact that the importer acts in good faith does not release him from his responsibility in relation to the settlement of the customs debt, since he is the person declaring the imported goods. The importer himself must answer for payment of the duties and the regularity of the documents presented to the customs authorities, even if he is no longer able to pass on his loss. [79] The importer alone must therefore, in principle, be responsible for any insolvency resulting from the non-remission of duties. Nor, in itself, is the extent of the debt whose remission is sought a factor capable of influencing the assess-

74 — See *Mecanarte*, cited in footnote 11, paragraph 23, and *Ilumitrónica*, cited in footnote 70, paragraph 42; Order of the Court in Case C-299/98 P *CPL Imperial 2 and Unifrigo* v *Commission* [1999] ECR I-8683, paragraph 32.

75 — The Court of Justice takes the view that the notion of error is not limited to mere calculation or copying errors on the part of the competent authorities, but includes any kind of error which vitiates the decision in question, such as, in particular, the misinterpretation or misapplication of the applicable rules of law (*Mecanarte*, cited in footnote 11, paragraph 20.

76 — In which case the deliberate unauthorised act of the third parties consists in making a false or altering an existing authentic document for the purpose of deception in legal relations.

77 — *Pascoal & Filhos*, cited in footnote 11, paragraph 59 et seq.. Sack, J., cited above (footnote 7), volume 1, C. II, paragraph 79, p. 26, points out that, in the context of post-clearance recovery, no legitimate expectations are protected in respect of forged or falsified documents because otherwise post-clearance recovery could practically never take place in those cases and the incentive to use such documents would be considerably increased. He further refers to the rule in Article 904(c) of the CCC implementing regulation.

78 — Order in *CPL Imperial 2 and Unifrigo* v *Commission*, cited in footnote 74, paragraph 37 et seq., and judgment in Joined Cases T-10/97 und T-11/97 *CPL Imperial 2 and Unifrigo* v *Commission* [1998] ECR II-2231, paragraph 62 et seq.

79 — *Van Gend and Loos*, cited in footnote 11, paragraphs 16 and 17. According to Dolfen, M., 'Nacherhebung, Erstattung und Erlass von Abgaben nach dem neuen Zollkodex', in *Europäische Zeitschrift für Wirtschaftsrecht*, No 24/1993, p. 759, the person liable alone bears the risk that a commercial document relating, for example, to the origin of the goods may, on subsequent inspection, prove to be false.

ment of the conditions for such remission.[80] On the other hand, the Community cannot be expected to bear the detrimental consequences of third parties' illegal conduct.

186. That case-law must be applied to the present case. Reference should be made in this connection to the findings of fact made without any error of law by the Court of First Instance, according to which the 32 A.TR.1 certificates in question are forgeries which were made without the involvement of the Turkish authorities. In view of the inadequate evidence produced by the appellant, the Court of First Instance had no grounds for assuming that the competent authorities were actively involved in the issue of the forgeries. In that respect, the Court was fully entitled to reject the third ground of appeal as unfounded.

187. Since Article 220(2)(b) of the CCC was not infringed by the contested judgment, the ninth ground of appeal also should be rejected as manifestly unfounded.

V — Result of my analysis

188. In the light of the above, the appeal is unfounded. It should therefore be dismissed in its entirety.

VI — Costs

189. Under Article 69(2) of the Rules of Procedure, which apply to appeals pursuant to Article 118 thereof, 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 appellant has been unsuccessful in its submissions, it should be ordered to pay the costs in accordance with the form of order sought by the Commission.

80 — The amount of the customs debt imposed on the applicant reflects the financial significance of the goods, in particular the amount of duties and taxes imposed on those goods. The fact that the amount claimed by way of import duties is considerable comes within the category of business risks to which the economic operator is exposed (see, to that effect, *Faroe Seafood and Others*, cited in footnote 13, paragraph 115). Accordingly the extent of the debt whose remission is sought is not in itself a factor capable of influencing the assessment of the conditions for such remission (Case T-53/02 *Ricosmos* v *Commission* [2002] ECR II-3173, paragraph 161.

VII — Conclusion

190. In view of the foregoing considerations, I propose that the Court should

— dismiss the appeal in its entirety and

— order the appellant to pay the costs of the proceedings, including the costs of the proceedings at first instance.