Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

15 December 2016 *

(Customs union — Importation of tuna products from El Salvador — Post-clearance recovery of import duties — Application for non-recovery of import duties — Article 220(2)(b) and Article 236 of Regulation (EEC) No 2913/92 — Right to sound administration under Article 872a of Regulation (EEC) No 2454/93 — Error of the competent authorities not reasonably capable of being detected)

In Case T-466/14,

Kingdom of Spain, represented initially by A. Rubio González, and subsequently by V. Ester Casas, abogado del Estado,

applicant,

v

European Commission, represented by P. Arenas, A. Caeiros and B.-R. Killmann, acting as Agents,

defendant,

ACTION based on Article 263 TFEU and seeking annulment of Commission Decision C(2014) 2363 final of 14 April 2014 which found, in a particular case, that the remission of import duties is justified for a certain amount, but not for another amount (REM 02/2013), inasmuch as it concludes that the remission of the import duties of EUR 14 417 193.41 is not justified,

THE GENERAL COURT (Fifth Chamber),

composed, at the time of deliberation, of A. Dittrich, President, J. Schwarcz (Rapporteur) and V. Tomljenović, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written part of the procedure and further to the hearing on 6 April 2016,

gives the following

* Language of the case: Spanish.

Judgment

Background to the dispute

1 Between 2007 and 2009, two companies of the Calvo group established in Spain, Calvo Conservas, SL and Calvo Distribución Alimentaria, SL (together, 'the person liable'), imported into Spain processed tuna products, namely canned tuna and frozen tuna loins, declared to originate in El Salvador ('the disputed imports').

2 The person liable asked the Spanish authorities to apply the scheme of generalised tariff preferences ('GSP') to the disputed imports, entailing suspension of the Common Customs Tariff of 24%, by presenting certificates of origin Form A issued by the customs authorities of El Salvador following a request by the exporter, another Calvo group company, Calvo Conservas El Salvador, SA de CV, which had provided the customs authorities of El Salvador with documents evidencing the origin of the products for GSP purposes.

3 Based on the certificates of origin submitted by the person liable, the Spanish customs authorities accepted the Salvadorean origin of the products and granted its application for preferential tariff treatment for the disputed imports.

4 Between 8 and 20 November 2009, representatives of the European Anti-Fraud Office (OLAF) and of several Member States of the European Union conducted a mission in El Salvador due to suspicions of fraud concerning the importation of processed tuna products.

5 OLAF's mission reports of 2 June and 7 December 2009, as well as the final report of 16 September 2010, show that the GSP rules were not observed. A number of irregularities relating to the origin of the disputed imports were identified. Those irregularities concerned the use of non-compliant certificates of origin for GSP purposes; failure to comply with the condition that nationals of the beneficiary country or of the Member States must account for at least 75% of the vessels' crew in order for the vessel to be regarded as having the nationality of the beneficiary country; and the use of two flags — of El Salvador and the Seychelles — by the tuna vessels Montelape and Montealegre, owned by the Calvo group, with the result that these two vessels had to be regarded as having no nationality and the tuna caught by them could not be considered to originate in El Salvador.

6 The irregularity relating to the dual flagging of the tuna vessels Montelape and Montealegre was the subject of a mission conducted by OLAF to investigate the use of structural funds for fisheries received by a Calvo group company, Calvopesca, SA. OLAF's final report found that there were serious irregularities in relation to those vessels, which had been registered in the Seychelles in order to receive structural funds for fisheries and had switched to a Salvadorean flag after two years of operations so that their catches could be declared as originating in El Salvador in order for them to receive preferential tariff treatment under the GSP.

7 In 2010, in response to OLAF's reports, the Spanish authorities initiated a procedure for the post-clearance recovery of import duties and applied the ordinary duty rate of 24% to the disputed imports. The total customs duties claimed amounted to EUR 15 292 471.19.

8 On 1 July 2011, the person liable submitted an application for remission of the import duties under Article 236 in conjunction with Article 220(2)(b) and under Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the CCC').

9 After being informed by the Commission that it intended to take an unfavourable decision, the person liable withdrew its application for remission of duties by letter of 5 September 2012.

10 Accordingly, on 10 September 2012, the Commission notified the person liable that it regarded the duty remission file as not open.

11 On 16 January 2013, the Spanish authorities — acting on their own initiative — applied to the Commission for the remission of duties under Article 236 in conjunction with Article 220(2)(b) of the CCC.

12 The person liable argued that the conditions laid down in Article 236 in conjunction with Article 220(2)(b) of the CCC were satisfied and agreed with the reasoning of the Spanish authorities. However, it objected to the file being sent to the Commission in the light of the judgment of 21 May 2012 of the Audiencia Nacional (National High Court, Spain), which had found that preferential tariff treatment under the GSP could be granted in the present case. The person liable therefore submitted that the file should be sent back to the national authorities and that, where appropriate, a question could be referred to the Court for a preliminary ruling.

13 Nonetheless, the Commission contended that the decision of the Spanish court did not prevent it from taking a decision on a matter falling within its remit.

14 On 13 February, 16 July and 8 October 2013, the Commission requested additional information which the Spanish authorities provided. The person liable examined those requests for information and was able to make comments on the replies that the Spanish authorities proposed to submit.

15 By letter of 10 December 2013, in accordance with Article 872a of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of the CCC (OJ 1993 L 253, p. 1), the Commission invited the person liable to comment on any points of fact or law which might lead to its application being refused ('the letter of objections').

16 By letter of 9 January 2014, the person liable claimed that the Salvadorean authorities had committed an error. It insisted that it had acted in good faith and in compliance with the provisions relating to the customs declaration. It also criticised the Commission's interpretation of the provisions concerning flagging and drew attention to the difficulties faced in order to comply with the crew composition requirement set out in Article 68(2) of Regulation No 2454/93. Lastly, the person liable stated that the Commission had not sent the correct stamps to the Salvadorean authorities and had not observed the rights of the defence in so far as it had not disclosed all the documents on which it based its decision to the person liable.

17 On 17 February 2014, in accordance with Article 873 of Regulation No 2454/93, a group of experts composed of representatives of the Member States met to consider the file.

18 By Decision C(2014) 2363 final of 14 April 2014, the Commission found that, in a particular case, the remission of import duties was justified for a certain amount, but not for another amount (REM 02/2013) ('the contested decision').

19 In recital 27 of the contested decision, the Commission recalls that, under Article 220(2)(b) of the CCC, the issue of incorrect certificates by the customs authorities of a non-member country constitutes an error which could not reasonably have been detected by the operator, the latter for its part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

20 With respect to the condition relating to the detectable nature of the error, the Commission finds, in recital 28 of the contested decision, that the Salvadorean authorities erred in issuing certificates of origin Form A in breach of Regulation No 2454/93. In recitals 30 to 32 of the contested decision, the Commission states that it committed no error as regards both the provision of stamps to the Salvadorean authorities and the disclosure of documents on which it intended to base its decision.

With respect to the first situation, the Commission submits that, even if such an error had been established, it would have been relevant only if the certificates of origin had been forged. However, that was not the case. With respect to the second situation, the Commission maintains that it sent the person liable all the requested documents and gave it the opportunity to comment on them.

21 The Commission recalls that, when assessing that first condition, it is required to take into account all the circumstances of the case, the nature of the error as well as the experience of and care exercised by the person liable. It also states that, in accordance with the Court's case-law, the nature of the error must be assessed in the light of the complexity of the applicable legislation. In recital 35 of the contested decision, the Commission finds that the person liable infringed the rules of origin by failing to ensure compliance with the requirement that at least 75% of the crew of tuna-catching vessels must be nationals of EU Member States or of the beneficiary country. Furthermore, in recitals 36 and 37 of the contested decision, it claims that preferential tariff treatment was granted on the basis of inappropriate certificates, namely certificates of origin EUR.1 issued by the authorities of the Seychelles or Ivory Coast and non-preferential certificates of origin issued by the Chambers of Commerce of Spain and France. In those circumstances, the origin of the tuna could not be traced. Since the exporter is a subsidiary of the Calvo group, to which the person liable also belongs, the person liable should have detected the error. By contrast, in recital 38 of the contested decision, the Commission asserts that, in the case of the certificates of origin issued by Panama, a country belonging to regional group II with El Salvador, the person liable could not have known whether they had been correctly issued by the Salvadorean authorities.

22 As regards the second condition relating to the good faith of the person liable, the Commission submits, in recitals 40 and 41 of the contested decision, that, in the light of the nature of that person's activity and the fact that it belongs to a group operating in various continents and is therefore subject to different rules, it did not take due care to ensure that the crew composition requirement was met.

23 In recital 42 of the contested decision, the Commission goes on to state that, in some cases, the exporter had submitted either non-preferential certificates of origin issued by the Chambers of Commerce of Spain and France at the same time as certificates of origin EUR.1 not issued by the customs authorities of the European Union relating to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ 2000 L 317, p. 3), and approved on behalf of the Community by Council Decision 2003/159/EC of 19 December 2002 (OJ 2003 L 65, p. 27, 'the ACP Agreement'), or certificates of origin EUR.1 issued by the authorities of the Seychelles at the same time as certificates of origin Form A issued by the authorities of Panama. By submitting certificates of origin from which the origin of the tuna could not be ascertained, the person liable infringed the provisions relating to the customs declaration and the applicable rules of origin.

24 Lastly, the Commission maintains, in recitals 43 to 45 of the contested decision, that two tuna vessels belonging to the Calvo group sailed under two flags or were registered in two States even though EU legislation clearly required vessels to be registered in only one country and to sail under the flag of that country in order to qualify for preferential tariff treatment. By failing to comply with Article 68(2) of Regulation No 2454/93, the person liable did not exercise due care.

25 Consequently, the Commission found that the remission of import duties in the amount of EUR 230 879.88 was justified for imports in respect of which proof of origin of the tuna processed in El Salvador was based on certificates of origin Form A issued by the Panamanian authorities, but not for import duties in the amount of EUR 14 417 193.41 in respect of the other situations.

Procedure and forms of order sought

26 The Kingdom of Spain brought this action by application lodged at the Registry of the General Court on 24 June 2014. The Commission lodged its defence on 18 September 2014. On 17 November 2014, the Kingdom of Spain submitted its reply and, on 22 January 2015, the Commission submitted its rejoinder.

27 On a proposal from the Judge-Rapporteur, the General Court (Fifth Chamber) decided to open the oral part of the procedure.

28 The parties presented oral argument and gave their replies to the questions asked by the Court at the hearing on 6 April 2016.

29 The Kingdom of Spain claims that the Court should:

— annul the contested decision in so far as it finds that the remission of import duties in the amount of EUR 14 417 193.41 is not justified;

— order the Commission to pay the costs.

30 The Commission contends that the Court should:

— dismiss the action in its entirety;

— order the Kingdom of Spain to pay the costs.

Arguments of the parties

31 In support of its action, the Kingdom of Spain relies on two pleas in law. The first plea alleges infringement of the right to good administration in relation to Article 872a of Regulation No 2454/93, while the second alleges infringement of Article 220(2)(b) of the CCC.

First plea in law, alleging infringement of the right to sound administration, within the context of Article 872a of Regulation No 2454/93

32 The Kingdom of Spain argues that a decision based on previously undisclosed reasons infringes the right to good administration, in relation to Article 872a of Regulation No 2454/93, and Article 41 of the Charter of Fundamental Rights of the European Union.

33 It observes that, in the context of the procedure for the remission of import duties, Article 872a of Regulation No 2454/93 provides that, where the Commission intends to take an unfavourable decision, it is under an obligation to communicate its objections in writing as well as the documents on which it relies, so that the party concerned can express its views. In the light of the three requests for additional information sent by the Commission to the person liable, the Kingdom of Spain contends that a full analysis was conducted of the three conditions set out in Article 220(2)(b) of the CCC for the remission of import duties and that the conditions not mentioned in the letter of objections should be regarded as being satisfied.

34 The Kingdom of Spain also claims that, in the letter of objections, the Commission's comments only covered the condition relating to the possibility for the person liable to detect the error and did not address the conditions relating to good faith and compliance with the legislation on the customs declaration. Nevertheless, the Commission examined those latter conditions in recitals 40 to 42 of the contested decision, thereby infringing Article 41 of the Charter of Fundamental Rights.

35 In the reply, the Kingdom of Spain argues that the reference in the letter of objections to non-compliance with the rules of origin is not sufficient, since at issue is the condition determining whether a procedure for the remission of import duties should be initiated. It submits that the fact that the Commission attached documents concerning compliance with the conditions relating to good faith and the legislation on the customs declaration to the letter of objections is incapable of remedying the shortcomings in the statement of reasons for the contested decision. Furthermore, the fact that the reply sent by the person liable to the letter of objections contains comments relating to good faith and to the customs declaration does not mean that the letter contained an adequate statement of reasons. Lastly, the procedure should have had a different outcome, since the error was not detectable because the exporter had not given an incorrect account of the facts.

36 The Commission contends that it complied with the obligation laid down in Article 872a of Regulation No 2454/93 by means of the letter of objections and all the documents on which it based its objections, which were forwarded to the person liable who, by letter of 9 January 2014, submitted observations on, inter alia, good faith. It maintains that the letter of objections addressed the conditions relating to good faith and the customs declaration. The Commission states that the letter of objections includes an entire paragraph on the good faith of the person liable and claims that that condition is inseparable from the condition relating to the detectability of the error. If the person liable was aware of the error and had applied for preferential tariff treatment, it cannot be regarded as acting in good faith, since good faith can be pleaded only if the person liable has complied with all provisions of the legislation. The Commission therefore concludes that the obligation to state reasons was fulfilled by the examination of the care exercised by the person liable and the detectable nature of the error.

37 The Commission submits that both the contested decision and the letter of objections refer to the condition relating to compliance with the legislation on the customs declaration, since the person liable made observations on that point in its letter of 9 January 2014. Accordingly, there was no infringement of its right to be heard. The Commission asserts that the scope of the obligation to state reasons must be assessed, in particular, in the light of its context and, therefore, the documents attached to the letter of objections relating to, among other things, compliance with the conditions on good faith and the customs declaration, having regard to the rules of origin.

38 In addition, the Commission stresses that the infringement of the right to be heard entails the annulment of the contested decision only if, had it not been for such an irregularity, the outcome of the procedure might have been different. Since the conditions of Article 220(2)(b) of the CCC are cumulative, it contends that the elaboration in the contested decision of the fact that the error relied on in the instant case could have been detected by the person liable is sufficient to justify the refusal to remit the import duties. Moreover, there is nothing to suggest that the person liable had any other observations to make which could have resulted in the adoption of a different decision.

39 Observance of the rights of the defence is a fundamental principle of EU law, of which the right to be heard in all proceedings forms an integral part (judgments of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraphs 33 and 36, and of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 28).

40 The right to be heard in all proceedings is now affirmed not only in Articles 47 and 48 of the Charter of Fundamental Rights, which ensure respect for both the rights of the defence and the right to fair legal process in all judicial proceedings, but also in Article 41 of the Charter, which guarantees the right to good administration. Article 41(2) of the Charter provides that the right to good

administration includes, inter alia, the right of every person to be heard before any individual measure which would affect him adversely is taken (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 29).

41 In accordance with that principle, which applies where the authorities are minded to adopt a measure which will adversely affect an individual (judgments of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraph 36, and of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 30), the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision (judgment of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraph 37).

42 It should also be recalled that, in customs matters, observance of the rights of the defence is ensured by the provisions of Article 872a of Regulation No 2454/93 which provide that, where, at any time in the procedure provided for in Articles 872 and 873 of that regulation, the Commission intends to take a decision unfavourable towards the person concerned by the case presented, it is to communicate its objections to him in writing, together with all the documents on which it bases those objections; that the person concerned by the case submitted to the Commission is to express his point of view in writing within a period of one month from the date on which the objections were sent; and that if he does not give a point of view within that period, he will be deemed to have waived the right to express a position.

43 The plea in law must be examined in the light of those considerations.

44 In the case in point, the Commission sent the person liable a letter of objections, to which the latter replied (see paragraphs 15 and 16 above).

45 However, the Kingdom of Spain argues, in essence, that since the letter of objections did not address the conditions relating to the good faith of the person liable and compliance with the legislation on the customs declaration, it must be concluded that the Commission did not have any objections as regards those two conditions for the application of Article 220(2)(b) of the CCC, which should be considered to be met by the person liable. In examining those points in recitals 40 to 42 of the contested decision, the Commission infringed Article 41 of the Charter of Fundamental Rights by failing to have regard to the right to be heard of the person liable.

46 Without it being necessary to adjudicate on the admissibility of the plea alleging infringement of the right to be heard, in the light of the possibility for the Kingdom of Spain to invoke such an infringement affecting the person liable, in so far as it constitutes an irregularity which by its nature is subjective (see, by analogy, judgment of 1 July 2010, *Nuova Terni Industrie Chimiche* v *Commission*, T-64/08, not published, EU:T:2010:270, paragraph 186), the first plea must, in any event, be dismissed as unfounded.

47 As a preliminary point, it should be noted that, under Article 220(2)(b) of the CCC, the competent authorities are not to make post-clearance entry in the accounts of import duties unless three cumulative conditions are fulfilled. First, it is necessary that the duties were not levied as a result of an error on the part of the competent authorities themselves, secondly, that the error made by them was such that it could not reasonably have been detected by a person liable acting in good faith and, finally, that that person complied with all the provisions laid down by the legislation in force as regards the customs declaration. If those conditions are fulfilled, the person liable is entitled to the waiver of post-clearance recovery of the duty (see judgments of 18 October 2007, *Agrover*, C-173/06, EU:C:2007:612, paragraph 30 and the case-law cited, and of 15 December 2011, *Afasia Knits Deutschland*, C-409/10, EU:C:2011:843, paragraph 47 and the case-law cited).

48 In respect of the first of those conditions, it should be noted that Article 220(2)(b) of the CCC is intended to protect the legitimate expectations of the person liable that all the information and criteria on which the decision to recover or not to recover customs duties is based are correct. The legitimate expectations of the person liable attract the protection provided for in that article only if it was the competent authorities 'themselves' which created the basis for those expectations. Thus, only errors attributable to acts of the competent authorities create entitlement to the waiver of post-clearance recovery of customs duties (see judgment of 18 October 2007, *Agrover*, C-173/06, EU:C:2007:612, paragraph 31 and the case-law cited).

49 As regards the second of the conditions referred to above, the question whether or not an error of the competent customs authorities was detectable must be assessed having regard to the nature of the error, the professional experience of the operators concerned and the care which they exercised. The nature of the error must be assessed in relation to the complexity or sufficient simplicity of the rules concerned and the period of time during which the authorities persisted in their error (see judgment of 18 October 2007, *Agrover*, C-173/06, EU:C:2007:612, paragraph 32 and the case-law cited).

50 As to the third condition, the person making the declaration must supply the competent customs authorities with all the necessary information as required by the EU rules, and by any national rules supplementing or transposing them, in relation to the customs treatment requested for the goods in question (see judgment of 18 October 2007, *Agrover*, C-173/06, EU:C:2007:612, paragraph 33 and the case-law cited).

51 It should be noted that, in contrast to the claims made by the Kingdom of Spain, it is apparent from the letter of objections — particularly part B thereof, the heading of which refers, first, to the condition relating to the detectability of the error, secondly, to the good faith of the person liable and, thirdly, to compliance by the person liable with all the provisions laid down in the legislation in force concerning the customs declaration — that the Commission had, in particular, taken the view that in order to examine whether the person liable acted in good faith, it was necessary to consider whether that person could have detected the error on the part of the Salvadorean authorities.

52 In that context, the Commission asked itself whether it would have been possible, from a straightforward analysis of the facts, to discern the error committed by those authorities. It clearly drew a link between the contention of the person liable, relating to its good faith, and the question of the extent to which that person was or could have been aware of the error. It should also be noted that, as is apparent from its reply dated 9 January 2014, the person liable interpreted those assertions in that way and supplied specific information concerning, inter alia, its good faith as well as the fact that it satisfied the requirements of the relevant legislation.

53 In particular, as regards the composition of the vessels' crew, the Commission took account of the activity of the person liable and the fact that it operated in different oceans and seas, subject to different rules, in order to conclude that it could have correctly applied the legislation on the preferential tariff treatment of the rules of origin and should have checked that the conditions for such preferential treatment were met, by securing access to such information. The Commission found that the legislation at issue could not be regarded as complex. In its view, the exporter could have, in this instance, detected the error committed by the Salvadorean authorities.

54 As regards the evidence of the origin of the catches, the Commission stated that the person liable ought to have known that the certificates submitted were not compliant documents for the purposes of regional cumulation and that the products for which the Salvadorean authorities had issued certificates of origin Form A did not satisfy the conditions for the award of preferential origin, concluding that the exporter should have detected the error committed by those authorities.

55 In respect of the dual flagging of the two vessels, mentioned in paragraph 6 above, the Commission found that, since the person liable formed part of the same group as the company that owned those vessels, it knew or ought to have known that they were also registered in the Seychelles and should have been acquainted with the applicable rules in that regard, which could not be classified as complex.

56 As for the professional experience of the person liable, the Commission noted that that person formed part of a group holding a position of leadership in fishing activities and in the preparation, manufacture, packaging and marketing of fish-based products.

57 Concerning the care exercised by the person liable, the Commission reproduced the different findings and conclusions set out in paragraphs 53 to 56 above to conclude that that person had not shown the degree of care which could be expected from a professional operator and had not provided the customs authorities with all the necessary information required under the EU rules relating to the customs treatment requested for the goods in question.

58 In those circumstances, the letter of objections contains a sufficiently clear and complete statement of the reasons which led the Commission to maintain that the error on the part of the Salvadorean customs authorities was easily detectable by an operator acting in good faith, in accordance with the case-law cited in paragraph 47 above. The Kingdom of Spain cannot therefore claim that the right to be heard of the person liable was infringed because no objections were made as to its good faith.

59 Next, it should be noted that, as regards the condition relating to compliance with the legislation on the customs declaration, the Commission gave a clear and detailed account in the letter of objections of the reasons why it considered that condition not to be met. As the Commission points out, the letter of objections contains an indication that, in its view, the person liable did not comply with the provisions on the rules of origin set out in Chapter 2 of Title IV of Regulation No 2454/93 on the rules of origin under the GSP of the European Union. In the letter of objections, that conclusion followed the finding that the exporter, which is part of the same group of companies as the person liable, could have known that the certificates used were not appropriate in order to qualify for regional cumulation, that the products covered by the certificates of origin Form A issued by the Salvadorean authorities did not satisfy the conditions for the conferment of preferential origin on El Salvador and that the products were not eligible for the preferential tariff treatment provided for under EU legislation.

60 By means of those findings, the Commission expressed its doubts as to whether the person liable had complied with the legislation on the customs declaration. The misapplication of the rules relating to the origin of products imported into the European Union in order for them to receive preferential tariff treatment has an impact on the customs declaration for those products, since they are wrongly subject to a scheme to which they are not entitled.

61 Thus, Article 84 of Regulation No 2454/93 provides that proof of origin is to be submitted to the customs authorities of the Member State of importation in accordance with the procedures laid down in Article 62 of the CCC. Article 62 concerns customs declarations made in writing. It provides that the customs declaration must be made on an official form prescribed for that purpose; must be signed; must contain all the particulars necessary for implementation of the provisions governing the customs procedure for which the goods are declared; and must be accompanied by all the documents required for implementation of the provisions governing that customs procedure. In order to qualify for preferential tariff treatment based on the origin of the imported products, the importer is required, under Article 62 of the CCC in conjunction with Article 84 of Regulation No 2454/93, to attach a correct certificate of origin Form A to the customs declaration.

62 Accordingly, a breach of the rules relating to the origin of the imported products entails an infringement of the legislation relating to the customs declaration.

63 Consequently, the Kingdom of Spain's argument that the reference in the letter of objections to the failure to comply with the rules of origin is not sufficient, since at issue is the condition determining whether a procedure for the remission of import duties should be initiated, must be rejected because, although the fact that certificates of origin had not been correctly issued by the Salvadorean authorities is actually the reason why the Spanish customs authorities initiated the post-clearance recovery procedure, following OLAF's reports, that fact also shows that the person liable did not comply with the legislation relating to the origin of the products and that relating to the customs declaration.

64 Furthermore, although the Commission mentioned the question of the documents which could be attached to the letter of objections and on which it based its objections, the Kingdom of Spain does not complain that the Commission failed to disclose to it documents which would have been necessary in order to protect the rights of the defence of the person liable. Moreover, in the reply, the Kingdom of Spain simply states that the Commission is entitled to support its objections by reference to documents annexed to the letter of objections, but cannot substantiate those objections by means of those documents alone.

65 It follows from all of the foregoing that the first plea of the action must, on any view, be dismissed as unfounded.

Second plea in law, alleging infringement of Article 220(2)(b) of the CCC

66 Principally, the Kingdom of Spain submits that the error was not reasonably capable of being detected by the person liable and, as a subsidiary argument, claims that the person liable exercised due care and complied with the provisions relating to the customs value. Although the Kingdom of Spain divides its arguments in support of the second plea into three parts corresponding to the conditions set out in Article 220(2)(b) of the CCC for the waiver of post-clearance recovery, it also questions the cumulative nature of those three conditions.

67 As a preliminary point, it is appropriate to rule on the admissibility of a complaint contained in the reply.

Admissibility of the complaint concerning an earlier application for the remission of import duties submitted by the person liable

68 In the reply, the Kingdom of Spain contends that, in so far as the Commission appears to raise questions relating to the REM 01/11 file, the remission forming the subject matter of that file should be considered to be granted since the conditions for return laid down in the first or fifth indent of Article 871(6) of Regulation No 2454/93 were not fulfilled. The remission was obtained before the contested decision due to the expiry of the legal deadlines and none of the documents relating to that file reveal any change in the facts or the legal assessment of the issue, or the existence of a disagreement as regards the account of the facts.

69 In its rejoinder, the Commission claims that the argument concerning another file on the remission of duties should be declared inadmissible because it was raised out of time.

70 At the hearing, the Kingdom of Spain — in answer to a question put by the Court — stated that the claims made in the reply concerning the REM 01/11 file did not constitute a new plea in law and simply responded to the claims made by the Commission.

71 In any event, it is apparent from the provisions of Article 76(d) in conjunction with Article 84(1) of the Rules of Procedure of the General Court that the application initiating proceedings must state the subject matter of the proceedings and contain a summary of the pleas in law relied on, and that no

new plea in law or argument may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure (see, to that effect, judgment of 15 July 2015, *Dennekamp* v *Parliament*, T-115/13, EU:T:2015:497, paragraph 80).

72 Even if it were to be considered that it was in reaction to certain claims made by the Commission that the Kingdom of Spain submitted in the reply that the contested import duties should be remitted in this case, due to the expiry of the legal deadlines by which the Commission is required to adopt a decision following the application for the remission of import duties submitted by the person liable on 1 July 2011, the fact remains that the submission in question is a complaint that was not raised in the application initiating proceedings even though it is based on matters of law or of fact which were already known to the Kingdom of Spain when that application was lodged, since it is not disputed that it was the Spanish authorities who forwarded the application for remission to the Commission, as well as the withdrawal of that application by the person liable, or that those authorities were aware of the fact that the Commission considered the file to be not open.

73 Accordingly, that complaint — raised for the first time in the reply and, therefore, submitted out of time — must be found to be inadmissible.

Cumulative nature of the conditions laid down in Article 220(2)(b) of the CCC

74 In the complaint concerning the non-detectability of the error, the Kingdom of Spain maintains that, under Article 220(2)(b) of the CCC, the authorities of the exporting country were liable for errors committed in the issue of certificates of origin and were responsible for supervising the conditions for the application of preferential arrangements, where the error followed a correct account of the facts by the exporter or an incorrect account, provided that, in such a case, those authorities knew or ought to have known that the certificate was incorrect. It argues, in the light of the finding in the contested decision that there was an error on the part of the Salvadorean authorities and the requests for additional information sent to the Spanish authorities, that the exporter neither presented the facts incorrectly nor misled those authorities, since it supplied all the information available to it, particularly evidence of the origin of the raw materials and the vessels' crew lists. Therefore, the error should have been characterised as an error not reasonably capable of detection.

75 In essence, the Kingdom of Spain maintains that, where the error committed by the customs authorities of the exporting country is not the result of an incorrect account of the facts by the exporter or, even if it is the result of such an incorrect account, where the authorities knew or ought to have known that the certificates submitted were incorrect, the error is deemed to be not detectable, since the conditions relating to the error are met. It also relies on the provisions concerning goods with preferential status, set out in Article 220(2)(b) of the CCC, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17), which it describes as specific rules applying within the framework of preferential arrangements, under which the finding of the existence of an error, committed on the basis of correct information provided by the exporter, results in that error being not reasonably capable of detection.

76 The Kingdom of Spain concludes from that line of argument that, since the Commission had not found, in the contested decision, that the error was due to an incorrect account of the facts by the exporter or that the Salvadorean authorities knew or ought to have known that the certificates submitted were incorrect, the references to the conditions relating to good faith and the legislation on the customs declaration were improper.

77 The Commission maintains that the Kingdom of Spain's complaint is ineffective, since the fact that one of the three conditions for the remission of duties is fulfilled does not mean that the other two are also met. Furthermore, the Commission gave a detailed reply before the Court to the question whether the error on the part of the Salvadorean authorities was reasonably detectable, in the light of the type of error involved.

78 In order to deal with the complaint raised by the Kingdom of Spain, it is necessary to determine, first, whether the non-detectability of the error on the part of the authorities of the exporting country concerning the certificates of origin automatically follows, pursuant to the second subparagraph of Article 220(2)(b) of the CCC, from the circumstances in which that error was committed and, secondly, whether, where that error ought to be regarded as being not capable of detection by the person liable, the other conditions for the application of that article should, therefore, be considered to be met.

Non-detectability of the error

79 The Court has held that the aim of post-clearance verification is to check whether the statement of origin in a certificate of origin Form A or EUR.1 which has been issued is correct (see, to that effect, as regards certificates of origin EUR.1, judgments of 9 March 2006, *Beemsterboer Coldstore Services*, C-293/04, EU:C:2006:162, paragraph 32, and of 15 December 2011, *Afasia Knits Deutschland*, C-409/10, EU:C:2011:843, paragraph 43; and, as regards certificates of origin Form A, judgment of 8 November 2012, *Lagura Vermögensverwaltung*, C-438/11, EU:C:2012:703, paragraph 17).

80 Where post-clearance verification does not confirm the origin of the goods as stated in the certificate of origin Form A or EUR.1, it must be concluded that the goods are of unknown origin and that the certificate of origin and the preferential tariff were thus wrongly granted (see, to that effect, judgments of 9 March 2006, *Beemsterboer Coldstore Services*, C-293/04, EU:C:2006:162, paragraph 34; of 15 December 2011, *Afasia Knits Deutschland*, C-409/10, EU:C:2011:843, paragraph 44; and of 8 November 2012, *Lagura Vermögensverwaltung*, C-438/11, EU:C:2012:703, paragraph 18).

81 Accordingly, if the authorities of the exporting State have issued incorrect certificates of origin Form A or EUR.1, the issue of those certificates must, under the second and third subparagraphs of Article 220(2)(b) of the CCC, be regarded as an error on the part of those authorities, unless it transpires that the certificates were based on an incorrect account of the facts provided by the exporter. If those certificates were issued on the basis of false statements by the exporter, post-clearance recovery of the import duties must be carried out as a consequence, unless, inter alia, it is clear that the authorities which issued those certificates knew or ought to have known that the goods did not meet the conditions necessary in order for them to receive preferential treatment (see, to that effect, judgments of 15 December 2011, *Afasia Knits Deutschland*, C-409/10, EU:C:2011:843, paragraph 48, and of 8 November 2012, *Lagura Vermögensverwaltung*, C-438/11, EU:C:2012:703, paragraph 19).

82 It is in the light of those considerations that the Court must determine whether the errors committed by the Salvadorean authorities were capable of being detected by the person liable.

83 Relying on the second subparagraph of Article 220(2)(b) of the CCC, as amended by Regulation No 2700/2000, the Kingdom of Spain claims that, since the Commission acknowledges the existence of an error on the part of the competent authorities, the non-detectability of that error flows directly from that provision.

84 In the rejoinder, the Commission confined itself to submitting, in detailed terms, that the conditions laid down in the first subparagraph of Article 220(2)(b) of the CCC must be satisfied cumulatively in order for a decision to be taken to waive the post-clearance recovery of import duties, taking account of the principle of legitimate expectations and the principle that exceptions to the normal arrangements for the payment of a customs debt must be interpreted strictly.

85 As a result of the Kingdom of Spain's line of argument, the Court is required to identify the provisions of Article 220(2)(b) of the CCC which apply in this case and the conditions laid down in those provisions for the acceptance of an application for non-recovery.

86 The second subparagraph of Article 220(2)(b) of the CCC provides that the error is not reasonably capable of detection for the purposes of the first subparagraph where the issue of an incorrect certificate by the authorities of a non-member country takes place in the context of an arrangement whereby the preferential status of goods is established on the basis of a system of administrative cooperation involving those authorities. Nevertheless, the third subparagraph of Article 220(2)(b) of the CCC states that the issue of an incorrect certificate is not to constitute an error where the certificate is based on an incorrect account of the facts provided by the exporter, except where, in particular, it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down in order to receive preferential treatment.

87 Therefore, first of all, before establishing the consequences of such an error for the application of the second and third subparagraphs of Article 220(2)(b) of the CCC, it is necessary to determine, in the light of the contested decision, the circumstances in which the error was committed by the Salvadorean authorities.

88 In the first place, it should be recalled that the Commission found that, in order to qualify for the GSP, significant quantities of tuna had been imported from El Salvador under improperly issued certificates of origin Form A and that all of the irregularities affecting those certificates constituted infringements of the rules of origin, particularly due to the incorrect use of certificates of origin EUR.1 (recitals 6 to 9 of the contested decision). Based on that finding, the Commission concluded that the tuna imports at issue should not have been subject to the preferential rate of customs duty provided for under the GSP (recital 10 of the contested decision).

89 In recital 28 of the contested decision, the Commission considered, in the light of the circumstances of the case, that the Salvadorean authorities had committed an error in incorrectly issuing certificates of origin Form A without complying with the relevant articles of Regulation No 2454/93.

90 After finding that it had not committed any error itself in the supply of specimen stamps to the Salvadorean authorities (recitals 30 to 32 of the contested decision), the Commission examined whether the error committed by those authorities could reasonably have been detected by the person liable (recitals 29 and 33 to 39 of the contested decision) and whether that person had acted in good faith (recitals 40 to 47 of the contested decision).

91 It must be observed that, in the contested decision, the Commission made no finding whatsoever that the incorrect certificates had been issued on the basis of an incorrect account of the facts by the exporter, or, a fortiori, that the Salvadorean authorities knew or ought to have known that the goods did not satisfy the conditions laid down in order to receive preferential tariff treatment, in contrast to what was provided for in the third subparagraph of Article 220(2)(b) of the CCC.

92 In the second place, it is therefore necessary to determine whether the person liable qualifies under the rule set out in the second subparagraph of Article 220(2)(b) of the CCC, according to which the error is presumed to be not reasonably capable of detection for the purposes of the first subparagraph where the issue of an incorrect certificate by the authorities of a non-member country takes place in the context of an arrangement whereby the preferential status of goods is established on the basis of a

system of administrative cooperation involving those authorities. This rule is thus linked to the first subparagraph of Article 220(2)(b) of the CCC, by providing that, in the specific case where an incorrect certificate of origin is issued, there is a legal presumption that the error is not detectable.

93 First of all, it is apparent from recitals 7 to 9 and 35 to 38 of the contested decision that the irregularities identified by the Commission in the issue of certificates of origin Form A concern the rules of origin of goods imported into the EU.

94 Next, the issue of incorrect certificates of origin Form A took place under the GSP provided for at the material time by Council Regulation (EC) No 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences (OJ 2005 L 169, p. 1) and Council Regulation (EC) No 732/2008 of 22 June 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007 (OJ 2008 L 211, p. 1).

95 It is apparent from Article 5(2) of Regulation No 980/2005 and Article 5(2) of Regulation No 732/2008 that, for the purposes of the arrangements referred to in Article 1(2) of each of those regulations, namely the arrangements under which tariff preferences apply, the rules concerning the methods of administrative cooperation are those laid down in Regulation No 2454/93.

96 In the version resulting from Commission Regulation (EC) No 883/2005 of 10 June 2005 amending Regulation No 2454/93 (OJ 2005 L 148, p. 1), applicable to the present case, Article 81 of Regulation No 2454/93 provides that, as a general rule, originating products are eligible on importation into the EU to benefit from the tariff preferences referred to in that regulation, provided that they have been transported direct, on production of a certificate of origin Form A issued either by the customs authorities or by other competent governmental authorities of the country benefiting from the preferential treatment. Article 83 of that regulation provides that since the certificate of origin Form A constitutes the documentary evidence for the application of provisions concerning the tariff preferences referred to in that regulation, it is the responsibility of the governmental authorities of the exporting country to take any steps necessary to verify the origin of the products and to check the other statements on the certificate.

97 Articles 93 to 95 of Regulation No 2454/93 refer to methods of administrative cooperation between GSP beneficiary countries and the Commission, which include the post-clearance verification of certificates of origin Form A whenever the customs authorities of the European Union have reasonable doubts as to their authenticity, the originating status of the products concerned or the fulfilment of the other requirements laid down in the section of the regulation relating to the GSP, whereby the authorities of the exporting country are required to carry out such verification and notify the outcome to the customs authorities of the European Union within a maximum of six months (Article 94(1) and (3) of Regulation No 2454/93). Furthermore, Article 94(6) of Regulation No 2454/93 provides that, where the verification procedure or any other available information appears to indicate that the provisions of the section concerning the GSP are being contravened, the exporting beneficiary country must, on its own initiative or at the request of the European Union, carry out appropriate inquiries or arrange for such inquiries to be carried out with due urgency to identify and prevent such contraventions, inquiries in which the European Union may participate. Lastly, Article 94(7) of Regulation No 2454/93 provides that copies of the certificates of origin Form A must be kept for at least three years by the governmental authorities of the exporting country.

98 Thus, it is apparent from Regulations No 980/2005 and No 732/2008 in conjunction with Regulation No 2454/93, as amended by Regulation No 883/2005, that the preferential status of the products concerned was established on the basis of a system of administrative cooperation involving the authorities of a non-member country, namely those of El Salvador.

99 Therefore, under the second subparagraph of Article 220(2)(b) of the CCC, the error committed by the Salvadorean authorities in the issue of the certificates of origin Form A was an error presumed to be not reasonably capable of detection for the purposes of the first subparagraph of that provision.

100 Accordingly, it is necessary to pursue this line of reasoning in order to determine whether the other conditions for the application of Article 220(2)(b) of the CCC have to be satisfied in this case or whether, as the Kingdom of Spain maintains, that is not necessary because the Commission did not find, in the contested decision, that the error was due to an incorrect account of the facts by the exporter or that the Salvadorean authorities knew or ought to have known that the certificates submitted were incorrect.

Obligation to satisfy the other conditions for the application of Article 220(2)(b) of the CCC

101 According to the Kingdom of Spain, the references made by the Commission to the conditions relating to good faith and the legislation on the customs declaration are improper because, in the contested decision, the Commission did not find that the error on the part of the Salvadorean authorities was the result of an incorrect account of the facts by the exporter.

102 In essence, the Commission contends that the three conditions for the application of the first subparagraph of Article 220(2)(b) of the CCC must be satisfied in order for the post-clearance recovery of the customs debt to be waived and submits that it was right to examine whether the person liable had acted in good faith and complied with the legislation relating to the customs declaration. Furthermore, as regards the good faith condition, the Commission asserts that the fourth subparagraph of Article 220(2)(b) of the CCC, inserted by Regulation No 2700/2000, applies to the situation of the person liable and precludes such a person who has not exercised due care from pleading good faith.

103 In order to address the Kingdom of Spain's arguments, it is necessary to ascertain as a matter of fact whether Regulation No 2700/2000 established a specific scheme for applications for the waiver of post-clearance recovery where the imported goods have preferential status.

104 It follows from paragraphs 92 to 99 above that, under the second subparagraph of Article 220(2)(b) of the CCC, where the preferential status of goods is established on the basis of a system of administrative cooperation involving the authorities of a non-member country, the issue of an incorrect certificate by those authorities constitutes an error that is presumed to be not reasonably capable of detection for the purposes of the first subparagraph, such rule thus constituting an exception since it provides as the starting base for assessment a legal presumption which must be taken into account in the evaluation of the cumulative conditions in question (see paragraph 47 above).

105 Furthermore, it must be noted that Regulation No 2700/2000, on which the Kingdom of Spain places particular reliance in its assertion that that regulation established a specific scheme for the post-clearance entry in the accounts of import duties in the context of preferential arrangements, supplemented Article 220(2)(b) of the CCC by adding to its first subparagraph four further subparagraphs all of which concern preferential arrangements (see, to that effect, judgment of 9 March 2006, *Beemsterboer Coldstore Services*, C-293/04, EU:C:2006:162, paragraphs 3 and 4). In addition, the new text strengthens the protection of the legitimate expectations of the traders concerned in the event of errors on the part of the customs authorities relating to preferential arrangements for goods from non-member countries (judgment of 9 March 2006, *Beemsterboer Coldstore Services*, C-293/04, EU:C:2006:162, paragraph 25), by clarifying the specific situation where goods from non-member countries benefit from preferential treatment (see, to that effect, Opinion of Advocate General Kokott in *Beemsterboer Coldstore Services*, C-293/04, EU:C:2005:527, point 29).

106 It thus follows from these preliminary considerations that the second to fifth subparagraphs of Article 220(2)(b) of the CCC lay down specific rules under which there is no post-clearance entry in the accounts of import duties owed where the preferential status of goods is established on the basis of a system of administrative cooperation involving the authorities of a non-member country. Contrary to the Commission's assertions, the examination of an application for waiver of post-clearance recovery of import duties must be conducted in the light of the second subparagraph of Article 220(2)(b) of the CCC.

107 However, such an examination must also be conducted taking account of the provisions of the first subparagraph of Article 220(2)(b) of the CCC and, therefore, of the cumulative conditions it contains and which must be satisfied, in addition to the condition requiring the error committed by the competent authorities to be reasonably detectable (see paragraphs 92 to 99 above), namely, that the person liable must have acted in good faith and complied with all the provisions laid down by the legislation in force (see, to that effect, order of 1 October 2009, *Agrar-Invest-Tatschl* v *Commission*, C-552/08 P, EU:C:2009:605, paragraphs 52, 55 and 56, and judgment of 15 December 2011, *Afasia Knits Deutschland*, C-409/10, EU:C:2011:843, paragraph 47).

108 In the first place, as regards the condition relating to the good faith of the person liable, it is apparent from the fourth subparagraph of Article 220(2)(b) of the CCC that the person liable may plead good faith when he can demonstrate that, during the period of the trading operations concerned, he has taken due care to ensure that all the conditions for preferential treatment have been fulfilled (judgment of 16 December 2010, *HIT Trading and Berkman Forwarding* v *Commission*, T-191/09, not published, EU:T:2010:535, paragraph 53).

109 Therefore, the Kingdom of Spain is wrong to argue that the Commission improperly referred to the condition relating to good faith before deciding whether there should be post-clearance recovery of the import duties owed pursuant to Article 220(2)(b) of the CCC, as amended by Regulation No 2700/2000.

110 Nonetheless, it should be recalled that the condition concerning the good faith of the operator is to some extent related to the condition concerning the lack of knowledge of the error committed by the customs authorities. The question whether the operator acted in good faith involves, in particular, determining whether he might not reasonably have been able to detect the error made by the competent authorities (see, by analogy, judgments of 14 May 1996, *Faroe Seafood and Others*, C-153/94 and C-204/94, EU:C:1996:198, paragraphs 83 and 98 to 102; of 18 October 2007, *Agrover*, C-173/06, EU:C:2007:612, paragraph 30; and of 15 December 2011, *Afasia Knits Deutschland*, C-409/10, EU:C:2011:843, paragraph 47).

111 It is necessary at this juncture to assess how the condition relating to the good faith of the operator must be interpreted in order to apply the first to fourth subparagraphs of Article 220(2)(b) of the CCC in the legal context arising from the adoption of Regulation No 2700/2000, that is to say in the area of preferential arrangements. Account must be taken of the clarification which may be provided by the grounds for that regulation, the procedure leading to its adoption and the case-law.

112 In the first place, as regards the grounds for Regulation No 2700/2000, recital 11 thereof states that it is necessary, for preferential arrangements, to define the concepts of error by the customs authorities and of the good faith of the person liable. After addressing the question of error on the part of the authorities of a non-member country, the recital goes on, in general terms, to state that the person liable may plead good faith where he can demonstrate that he has taken due care, except when a notice stating that there are grounds for doubt has been published in the *Official Journal of the European Union*. This recital must be interpreted as evidence that the good faith of the person liable is to be examined where the error committed by the authorities of a non-member country has resulted in the issue of an incorrect certificate, regardless of the origin of that error, whether it lay with the authorities in question or was prompted by an incorrect account of the facts by the exporter.

113 In the second place, as regards the actual procedure for the adoption of Regulation No 2700/2000, first, it should be pointed out that the amendment of Article 220(2)(b) of the CCC was not envisaged in the proposal for a European Parliament and Council Regulation (EC) amending Regulation (EEC) No 2913/92 (OJ 1998 C 228, p. 8).

114 Following the opinion at first reading of the European Parliament, which proposed inserting the second and third subparagraphs into Article 220(2)(b) of the CCC, the Commission presented an amended proposal for a European Parliament and Council Regulation (EC) amending Regulation (EEC) No 2913/92 (OJ 2000 C 248, p. 1).

115 Furthermore, it is apparent from the minutes of the 2248th meeting of the Internal Market Council of the European Union, held in Brussels (Belgium) on 16 March 2000, during which political agreement was reached on the proposal to amend the CCC, that that proposal envisaged laying down precise definitions of 'administrative errors' and 'good faith of the importer' as regards operations involving goods subject to preferential treatment pursuant to incorrect certificates issued by the authorities of a non-member country.

116 Common Position (EC) No 31/2000 of 25 May 2000, adopted by the Council, acting in accordance with the procedure referred to in Article 251 EC, with a view to adopting a Council Regulation (EC) amending the CCC (OJ 2000 C 208, p. 1) contains the recitals and provisions which would be definitively adopted in the form of Regulation No 2700/2000.

117 Secondly, in press release IP/2000/1123, issued on 5 October 2000, the member of the Commission with responsibility for the internal market stated that the amendment in question introduced a new concept of the protection of the good faith of operators who import goods under preferential arrangements where the certificates of origin prove to be incorrect, so that importers would know that they would not be automatically excused if exporters in a non-member country were to provide false certificates of origin, for example.

118 It is therefore clearly apparent from the procedure for the adoption of Regulation No 2700/2000 that the fourth subparagraph of Article 220(2)(b) of the CCC relating to the good faith of the person liable applies where incorrect certificates granting entitlement to a preferential arrangement have been issued by the authorities of a non-member country, which confirms the finding set out at the end of paragraph 112 above.

119 Thirdly, the Court has held that recital 11 of Regulation No 2700/2000 shows that the purpose of the amendment of Article 220(2)(b) of the CCC was to define, for the particular case of preferential arrangements, the concepts of 'error by the customs authorities' and 'good faith of the person liable …' and thus, without having recourse to an amendment of the substance, the aim of that article was to explain the above concepts, which were already contained in the initial version of Article 220 and defined by the case-law (see judgment of 9 March 2006, *Beemsterboer Coldstore Services*, C-293/04, EU:C:2006:162, paragraph 22 and the case-law cited). Consequently, the EU Courts found that Article 220(2)(b) of the CCC was essentially an interpretative provision (judgment of 9 March 2006, *Beemsterboer Coldstore Services*, C-293/04, EU:C:2006:162, paragraph 23).

120 The Court accordingly reproduced the reasoning set out in the Opinion of Advocate General Kokott in *Beemsterboer Coldstore Services*, (C-293/04, EU:C:2005:527, points 29 and 32), according to which, first, the new version of Article 220(2)(b) of the CCC was not intended to change, but merely to clarify, the specific situation where goods from non-member countries benefit from preferential treatment, since the EU legislature saw the need in this context to provide a more accurate definition of the terms 'error by the customs authorities' and 'good faith of the person liable …', and, secondly, the amendment of the provision served merely to codify and define more precisely the pre-existing legal situation for the specific case of errors on the part of the customs authorities relating to the preferential status of goods from non-member countries.

121 In those circumstances, the earlier case-law concerning post-clearance recovery of import duties continues to apply. As indicated in paragraph 110 above, that case-law shows that the condition concerning the good faith of the operator is to some extent related to the condition concerning the lack of knowledge of the error committed by the customs authorities, and that the question whether the operator acted in good faith involves, in particular, determining whether he might not reasonably have been able to detect the error made by the competent customs authorities.

122 Accordingly, despite the fact that it is apparent from the second subparagraph of Article 220(2)(b) of the CCC that the error committed by the authorities of a non-member country in issuing an incorrect certificate is an error presumed to be not reasonably capable of detection for the purposes of the first subparagraph (see paragraph 99 above), it is also necessary to take into consideration the fact that the condition concerning the good faith of the operator and that concerning the lack of knowledge of the error on the part of the customs authorities are, to some extent, linked (see paragraph 121 above), with the result that it is necessary, in any event, to examine them in the light of the specific circumstances of the case, having regard to the legal presumption provided for in the second subparagraph of the provision at issue.

123 Such an interpretation also maintains the practical effect of the fourth subparagraph of Article 220(2)(b) of the CCC, since the good faith of the person liable may be pleaded in the conditions referred to in that provision and examined by the Commission on a case-by-case basis and taking account of all the factual circumstances of the case, even where the error is presumed to be not reasonably capable of detection by the person liable.

124 Next, as regards the condition relating to compliance with the legislation in force on the customs declaration, the new provisions inserted into Article 220(2)(b) of the CCC by Regulation No 2700/2000 make no reference whatsoever to that condition. However, it should be recalled that the examination of an application for waiver of post-clearance recovery of import duties must also be conducted taking account of the provisions laid down in the first subparagraph of Article 220(2)(b) of the CCC and, therefore, of the cumulative conditions it contains and which must be satisfied (see paragraphs 92 to 99 above), namely, in particular, the condition that the person liable acted in good faith and complied with all the provisions of the legislation in force (see, to that effect, order of 1 October 2009, *Agrar-Invest-Tatschl* v *Commission*, C-552/08 P, EU:C:2009:605, paragraphs 52, 55 and 56, and judgment of 15 December 2011, *Afasia Knits Deutschland*, C-409/10, EU:C:2011:843, paragraph 47).

125 Therefore, the condition relating to compliance with the legislation in force on the customs declaration applies where the post-clearance recovery procedure concerns the preferential status of goods and the authorities of a non-member country have issued an incorrect certificate in that regard.

Implementation of the other conditions for the application of Article 220(2)(b) of the CCC

126 As is apparent from paragraph 123 above, the fact that the error on the part of the competent authorities constitutes an error presumed to be not reasonably capable of detection in no way precludes the Commission from examining whether the person liable acted in good faith, in accordance with the case-law cited in paragraph 121 above, taking account of all the specific circumstances of the case.

127 Furthermore, the condition relating to compliance with the legislation on the customs declaration must also be examined by the Commission and it is therefore appropriate to determine whether, in the light of the Kingdom of Spain's arguments, the contested decision is vitiated by errors in that regard.

– *Criteria relating to the good faith of the person liable*

128 As a preliminary point, special attention must be paid to two factors flagged up by the Commission in the contested decision in the assessment of the question whether, in the case in point, the person liable acted in good faith.

129 First, the person liable forms part of a group operating across the world in the area of fisheries and in the preparation, manufacture, packaging and marketing of fish-based products, whether fresh, chilled or canned (recital 39 of the contested decision).

130 Secondly, the exporter of the products in question, who provided information on the basis of which certificates of origin Form A were issued, is a company belonging to the same group as the person liable (recitals 37 and 46 of the contested decision) and the two vessels that sailed under two flags also belong to that group (recital 43 of the contested decision). In those circumstances, in the Commission's view, it cannot be accepted that the presumption that the error was not reasonably capable of detection pursuant to the second subparagraph of Article 220(2)(b) of the CCC should result in the recognition that the person liable acted in good faith.

131 Specifically, it is apparent from the case-law that the error on the part of the competent authorities must be such that the person liable, acting in good faith, could not reasonably have been able to detect it in spite of the professional experience and exercise of due care required of him (see, to that effect, judgment of 14 November 2002, *Ilumitrónica*, C-251/00, EU:C:2002:655, paragraph 38).

132 In the first place, it should be noted that the information put forward by the Commission in the contested decision concerning the professional experience of the person liable (see paragraph 129 above) was not disputed by the Kingdom of Spain which, on the contrary, admits that the Commission was right to state, in recital 39 of the contested decision, that the person liable was a very experienced operator, but which also contends that the professional experience of the person liable does not prejudge the failure to satisfy the conditions laid down in Article 220(2)(b) of the CCC.

133 It is true that professional experience does not, in itself, preclude the good faith of the operator or the non-detectability of the error, as the Kingdom of Spain points out. However, it can be expected that an experienced professional would pay greater attention to administrative and factual details the appraisal of which is an ordinary part of his activities, particularly so that he can identify more easily any departure from correct standard practice.

134 In the second place, as regards due care, the onus is on the trader, where he has doubts, to make inquiries and seek all possible clarification to ensure that he does not infringe the relevant provisions (see, by analogy, judgments of 11 November 1999, *Söhl & Söhlke*, C-48/98, EU:C:1999:548, paragraph 58, and of 13 September 2007, *Common Market Fertilizers* v *Commission*, C-443/05 P, EU:C:2007:511, paragraph 191).

135 It is apparent from the contested decision that the Commission examined the condition relating to the due care of the operator in the light of the different items of evidence which had been identified as constituting a failure to comply with the rules of origin.

136 First, as regards the condition relating to the composition of the crew of the fishing vessels, the Commission considered that, having regard to the nature of its business and the fact that it belongs to a group operating in different oceans and is therefore subject to different rules, the person liable had not exercised due care in failing to satisfy the conditions for the receipt of preferential tariff treatment laid down by the provisions of Regulations No 980/2005 and No 732/2008.

137 Secondly, the Commission found that, in some cases, the exporter had submitted, at the same time, either non-preferential certificates of origin issued by the Chambers of Commerce of Spain and France and certificates of origin EUR.1 not issued by the customs authorities of the European Union and relating to the ACP Agreement, or certificates of origin EUR.1 issued by the authorities of the Seychelles and certificates of origin Form A issued by the authorities of Panama. It took the view that, in the absence of the necessary traceability, such acts made it impossible to ascertain the origin of the tuna and concluded that the person liable had infringed the provisions relating to the customs declaration and the applicable rules of origin.

138 Thirdly, the Commission stated that the concepts of 'dual registration', 'registration number' and 'dual nationality' of vessels were not ambiguous and were clearly defined under the law of the United Nations (UN). It added that EU law clearly required fishing vessels to be registered in only one State and to sail under the flag of only one State in order to qualify for the GSP. The Commission claimed that the two vessels in question had been registered in the Seychelles and had sailed under the flag of that country for five years, all the while registered in and sailing under the flag of El Salvador, and that the person liable had nevertheless declared that the conditions laid down in Article 68(2) of Regulation No 2454/93 to qualify for the GSP were met.

139 Fourthly, the Commission pointed out that the information on the basis of which the Salvadorean authorities had issued the certificates of origin Form A had been supplied by a subsidiary of the group of the person liable.

140 The Commission concluded that the person liable had not demonstrated the degree of care expected from a professional operator in relation to the customs treatment requested for the products in question in the situations identified by it.

141 In the third place, it is necessary to reply to the different arguments put forward by the Kingdom of Spain to contest the lack of due care by the person liable.

142 First, and as a preliminary point, the Kingdom of Spain submits that it is contradictory to assert, in the contested decision, that the Salvadorean authorities committed an error without the exporter having provided an incorrect account of the facts and that the person liable failed to exercise due care in respect of those facts.

143 In that regard, it is indeed undeniable that the condition concerning the non-detectability of the error committed by the competent authorities is to some extent related to the question of the good faith of the person liable, as borne out by the case-law. However, it cannot be accepted that the automatic and necessary consequence of the presumption that the error was not reasonably capable of detection, which results from the application of the second subparagraph of Article 220(2)(b) of the CCC, inserted by Regulation No 2700/2000, is a finding that the person liable acted in good faith, all the more so in this case, in the light of the circumstances identified in paragraphs 128 to 130 above. As regards the contradiction referred to by the Kingdom of Spain between the finding that an error was committed and the absence of an incorrect account of the facts by the exporter, no argument is put forward in support of that claim and its logic is not apparent from the case-law either. The same holds for the possible contradiction between the absence of an incorrect account of the facts by the exporter and the lack of due care on the part of the person liable in respect of those facts. Specifically, it cannot be presumed that the good faith of the person liable flows directly from the exporter's conduct, since the person liable may not, in particular, profit from the latter's actions where the factual information supplied by the exporter cannot lead to the issue of certificates of origin Form A by the competent authorities of the non-member country in question. Accordingly, the abovementioned claims of the Kingdom of Spain must be assessed in the light of the fact that some of the errors committed by the Salvadorean customs authorities flowed from the taking into account of

initial certificates which clearly could not be considered to create an entitlement to preferential treatment, while others were the result of significant breaches of obligations relating to the crew and flagging of the vessels at issue.

144 The Kingdom of Spain's argument must therefore be rejected.

145 Secondly, the Kingdom of Spain submits that it would be disproportionate to require the person liable to be aware of the composition of the crew on each vessel at the time of the different catches; those catches were made by vessels not belonging to the Calvo group with the result that it was not possible for the latter to require information on the composition of the crew. The Kingdom of Spain asserts that the person liable took additional precautions by requiring its suppliers to provide a declaration of ownership attesting to compliance with the crew composition rule. It also maintains that the complexity of the legislation concerning the origin of fishery products is one of the relevant factors in the assessment of the conditions of Article 220(2)(b) of the CCC and is beyond doubt in this case.

146 As regards the first argument concerning the disproportionate nature of the requirement concerning the awareness of the person liable of the composition of the crew on the vessels which fished the products in question, it should be noted that although the Commission imposes such a requirement on the liable person in the contested decision, it also extends that requirement to the exporter in its pleadings before the Court. In any event, in the light of the fact that the liable person and the exporter belong to the same group, the exporter's lack of care as regards supervision of the condition relating to the composition of the crew on the vessels is also attributable to the person liable, particularly on account of the possibilities for making inquiries which exist between undertakings of the same group. Furthermore, by producing declarations of ownership of the vessels, which indicate the composition of the crew and which the Calvo group customarily require shipowners to complete, the Kingdom of Spain actually provides clear evidence that the requirement for the exporter or person liable to be aware of the composition of the crew is not manifestly disproportionate and could, on the contrary, reflect a relatively standard practice in the fisheries sector, particularly where the catches made by those vessels are intended to be imported into the European Union under the GSP. In those circumstances, it is not inconceivable that the exporter or liable person, wishing to benefit from the GSP, might ask suppliers, even from outside the Calvo group, for data on crew composition in the course of their contractual relations, notwithstanding the Kingdom of Spain's claims that such information was difficult to obtain on account of, in particular, the possibility of there being changes to the crew at the time of each catch or the presence on board of some individuals on a non-permanent basis. Moreover, contrary to the assertions of the Kingdom of Spain, compliance with the legislation on the protection of personal data does not preclude such an approach, since in practice there are various ways of requesting and protecting such data without infringing the abovementioned legislation, by seeking the necessary permissions, for that purpose, from the persons concerned, especially for vessels outside the group of the exporter or person liable. In addition, acceptance of the Kingdom of Spain's contention in that regard would render inoperative the requirement to establish the composition of the crew at the time of the catch, even though it is not disputed that such an obligation applied in the instant case, in accordance with the rules in force on the relevant date.

147 As regards the seven certificates which the Kingdom of Spain produced before the Court, the Commission states that they do not show that the condition relating to the composition of the crew on a vessel, under which nationals of the Member States or of the beneficiary country of the preferential tariff treatment must account for 75% of the crew members, was met. As the Commission rightly points out, these certificates only indicate the percentage of the crew members who are nationals of EU Member States or of a beneficiary country of GSP group II for cumulation purposes ('percentage of nationals of an EU Member State or of GSP group II countries') and one of them refers to the percentage of crew members who are nationals of States which are parties to the ACP

Agreement. In those circumstances, it must be considered that, in the light of their vagueness, the certificates in question are not capable of demonstrating that the crew composition condition was met.

148 Lastly, as regards the complexity of the legislation concerning the origin of fishery products, it cannot be found that such complexity exists as regards the legal point in dispute in this case. Article 68(1)(f) and (g) and the fifth indent of Article 68(2) of Regulation No 2454/93, in the version in force at the material time, state that products of sea fishing and other products taken from the sea outside its territorial waters by its vessels, as well as products made on board its factory ships, are to be considered as wholly obtained in a beneficiary country or in the European Union, and that the terms 'its vessels' and 'its factory ships' apply only to vessels and factory ships of which, in particular, at least 75% of the crew are nationals of the beneficiary country or of the Member States.

149 That rule cannot be regarded as being of such complexity that it would be excessively difficult for a very experienced operator, like the person liable or the exporter, to ensure that it was observed. The Kingdom of Spain's argument relating to the number of decisions by which the Commission has rejected the post-clearance entry in the accounts of import duties in the tuna sector, in respect of which it is not argued that the legislative difficulty related specifically to the question of crew composition, must therefore be dismissed, as must the argument relating to the amendments made by the institutions of the European Union to the legislative framework of the GSP. Those circumstances do not support the conclusion that the condition relating to the composition of the crew was of a complex nature. Furthermore, the fact that the Commission participated in an initiative to simplify the rules of origin in preferential arrangements leading to the removal of the crew composition condition constitutes at the very most a mere indication that the institution intended to improve legislative practice following the analysis of the effects of the rules at issue, without it being possible to infer that those rules were difficult to understand for experienced professionals in the area in question. Indeed, as the Commission correctly points out, it has not been proven that the findings of the Kingdom of Spain relating to the complexity of the legislation specifically concerned the crew composition requirement. Likewise, the fact that there was a consultation in that connection between OLAF and the Commission Legal Service is not decisive proof of the complex nature of the legal point before the Court. Moreover, as regards the interpretation of the concept of crew by the Court in its judgment of 14 May 1996 in *Faroe Seafood and Others* (C-153/94 and C-204/94, EU:C:1996:198, paragraph 47), the restriction of that concept to the permanent staff of a vessel cannot be viewed as an additional source of difficulty in order to ensure compliance with the rule laid down in Article 68(1) and the fifth indent of Article 68(2) of Regulation No 2454/93, since the result, on the contrary, is that inquiries only have to be made in respect of crew members with a stable link to the vessels making catches subject to the GSP.

150 The Kingdom of Spain's line of argument on that point must therefore be rejected.

151 Thirdly, the Kingdom of Spain contends that the contested decision is contradictory, since it is stated in that decision that, on account of its activity, the person liable ought to have known that the crew composition condition was not satisfied, but that, as regards catches the origin of which was established by certificates of origin Form A issued by Panama, the person liable could not have detected the error. In addition, the Commission departed from its previous practice in taking decisions, whereby it has always granted the remission of customs duties to experienced operators carrying on the same activity as the person liable, which is a relevant matter to be taken into account in this case, even though those decisions were adopted in order to apply Article 239 of the CCC or the ACP rules.

152 As regards the contradictory nature of the contested decision, it should be pointed out that the reasons why the Commission considered that the situation of the raw materials from Panama should be treated differently from other situations are clearly apparent from recital 38 of that decision. The origin of the raw materials in question was evidenced by certificates of origin Form A issued by the Panamanian

authorities, which is part of regional group II, and not by certificates of a different nature issued by the authorities of a country not forming part of that regional group, as was the case with the disputed imports. In those circumstances, the Commission conceded that the person liable could not have known whether or not the certificates of origin Form A issued by the Salvadorean authorities for the disputed imports had been correctly issued in the light of similar certificates issued by the Panamanian authorities. There are therefore no contradictions in the contested decision.

153 As regards the previous practice followed in taking decisions, the Commission rightly states that Decisions REM 07/02 and REM 08/02 relate to situations where there was no question of the exporter having submitted inappropriate initial certificates of origin for GSP purposes, in circumstances where, as in the present case, customs debtors had specific professional experience and the debtor and exporter formed part of the same group. Indeed, these decisions relate to problems linked to the composition of the crew and, in the second case, also relate to problems connected with the ownership of the vessels in question. In respect of the other decisions produced by the Kingdom of Spain, none of them refer to a situation where the person liable and the exporter form part of the same group. Accordingly, these are decisions involving factual situations which differ from the factual situation at issue in the case in point. They cannot therefore be used as a basis for a decision-making practice that is relevant to the resolution of this case. Furthermore, none of those decisions contains a finding that the legislation at issue was complex and that the remission of import duties was warranted for that reason.

154 The Kingdom of Spain's line of argument on that point must therefore be rejected.

155 Fourthly, the Kingdom of Spain recalls that, according to the case-law, a degree of importance is attached to the period during which the customs authorities exhibit the same conduct in order to assess the care exercised by operators. For years, the Salvadorean authorities — duly aware of the certificates available — did not raise any objections to the issue of certificates of origin Form A on account of, in particular, the Commission's failure to send stamps, thereby encouraging the issue of incorrect certificates.

156 The Court finds, as the Commission did, that the argument relating to the maintenance of the competent authorities' position over time is not in itself decisive for assessing whether the person liable exercised due care, although it is useful in order to ascertain the existence of an error on the part of those authorities (see, to that effect, judgment of 5 June 2013, *Recombined Dairy System* v *Commission*, T-65/11, EU:T:2013:295, paragraphs 25 and 29). In the light of all the relevant information in this case, specifically the experience of the person liable, the fact that it belongs to the same group as the exporter and the nature of the error committed, the maintenance of the Salvadorean authorities' position over time does not exonerate the person liable from its failure to exercise due care. Furthermore, the question of the stamps which the Commission should have sent to those authorities has no bearing on the nature of the error committed and, therefore, on the due care which the person liable should have exercised. Indeed, the Kingdom of Spain states, after noting that the failure to send the stamps was directly attributable to the Commission which, in its view, clearly contributed to the issue of the incorrect certificates and to the persistence of the error over time, 'that [said failure] cannot be regarded as the main cause of the issue of the incorrect certificates'. Similarly, it should also be pointed out that, in this case, the question of the possible forgery of the certificates of origin EUR.1 used as the basis for the issue of the certificates of origin Form A did not arise, so that the Commission's failure to forward the relevant stamps could not have had any practical consequences.

157 The Kingdom of Spain's line of argument on that point must therefore be rejected.

158 In the fifth place, the Kingdom of Spain asserts that the rule of origin provides only that vessels must be registered or recorded in the beneficiary country or in a Member State and that the exclusion of preferential arrangements in cases of dual registration is the result of an interpretation by the

Commission which was not known when the applications for certificates were made, which indicated that the flag of the Seychelles was used. Therefore, the consequences of dual registration derive from a complex set of rules, evidenced by the fact that the Salvadorean authorities' interpretation of the flag condition was different from that of the Commission.

159 As the Commission rightly points out, the Kingdom of Spain concedes that both the person liable and the exporter knew that the vessels in question were registered in two countries. Instead, the latter argues that the exporter acted in good faith in notifying the Salvadorean authorities of the fact that two flags were flown. Moreover, it is not disputed that the vessels in question belonged to another company of the group to which the person liable and the exporter belong.

160 In contrast to the Kingdom of Spain's arguments, it cannot be accepted that the rule of origin, laid down in Article 68(2) of Regulation No 2454/93, is particularly complex. That provision states that vessels which make catches subject to the GSP must be registered or recorded in the beneficiary country or in a Member State and must sail under the flag of a beneficiary country or of a Member State. Thus, it must be considered that the only question that remains relevant concerns the consequences of the fact that the two vessels in question were registered in both El Salvador and the Seychelles.

161 As the Commission pointed out on several occasions, UN law establishes the consequences for a vessel of sailing under various flags.

162 Thus, Article 92(2) of the United Nations Convention on the Law of the Sea, signed in Montego Bay on 10 December 1982 and which entered into force on 16 November 1994, provides that a ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality. It follows from that rule that a ship sailing under two flags is in an irregular situation under international law.

163 As regards the applicability of that rule in this case, it should be noted that the United Nations Convention on the Law of the Sea was approved on behalf of the European Union by Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ 1998 L 179, p. 1). This has the result of binding the European Union, since the provisions of that convention form an integral part of the EU legal order (judgments of 30 May 2006, *Commission* v *Ireland*, C-459/03, EU:C:2006:345, paragraph 82, and of 3 June 2008, *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraph 53).

164 Therefore, the Commission was right to apply the rule of origin laid down in Article 68(2) of Regulation No 2454/93, taking account of the rule contained in Article 92(2) of the United Nations Convention on the Law of the Sea. In view of this relatively simple process for interpreting a provision of that regulation in the light of the convention, which, moreover, at the material time, was by no means recent, the legislation in question cannot be considered to be complex. Furthermore, having regard to the experience of the exporter and the liable person as well as the fact that they belong to an international fisheries group, the Kingdom of Spain cannot reasonably claim that they were unaware of the rule on dual flagging and its severe consequences.

165 In those circumstances, all of the Kingdom of Spain's arguments objecting to the finding on dual flagging in the contested decision must be rejected, including its contention that the exporter did not conceal the fact that the vessels in question sailed under two flags. That the authorities were aware of the situation has no bearing on the relevance of the fact that this was an action contrary to the abovementioned rules (see paragraphs 162 and 163 above).

166 In respect of, lastly, the argument relating to the professional experience of the person liable, a finding which, according to the Kingdom of Spain, does not prevent the Commission from remitting the import duties, in line with its previous practice, it should be noted that this argument has already been addressed by the Court, particularly in paragraphs 128 to 133, 146 and 149 above, in so far as it appears that, in the light of the circumstances of the case and especially its professional experience, the person liable ought to have exercised a level of care which it has not demonstrated in relation to the errors committed by the Salvadorean authorities.

167 Regarding the fact that such experience was not a bar to waiver of the recovery of import duties for imports from Panama, it is sufficiently apparent from paragraph 152 above that the person liable was not able to ascertain from the evidence of origin provided by means of the certificates of origin Form A issued by the authorities of Panama, a country forming part of regional group II, whether or not the certificates of origin Form A issued by the Salvadorean authorities for the disputed imports had been correctly issued in the light of those issued by the Panamanian authorities. Therefore, the Kingdom of Spain cannot infer from that finding any contradiction in the Commission's reasoning, based on the perception of two different factual situations concerning imports made by the person liable.

168 Accordingly, it must be held that the Commission was right to find that the person liable had not exercised due care and that he could not, therefore, be considered to have acted in good faith for the purpose of applying Article 220(2)(b) of the CCC.

– *Criteria relating to compliance with the legislation on the customs declaration*

169 The Kingdom of Spain's main argument is that the Commission did not identify the provisions concerning the customs value which had not been complied with and simply found that the rules of origin had been infringed. Such a finding does not establish an infringement of the legislation on the customs declaration. The liable person submitted correct customs declarations containing applications for preferential tariff treatment based on the certificates necessary for that purpose. It cannot therefore be accused of having failed to provide information it could not reasonably have known about or obtained.

170 In support of its arguments, the Kingdom of Spain refers to the report by OLAF which acknowledges that it is possible to identify, based on a catch, the finished products obtained and the consignments sent to the European Union containing those products, without there being anything to suggest that it is not possible to identify the origin of the catches. Furthermore, the consignments sent to the European Union included products deriving from raw materials caught not only by the vessels in question, but also by other vessels. Consequently, if all the consignments had contained products deriving from the processing of raw materials caught by several vessels, the Commission's assertion that some consignments, sent under the same certificate of origin Form A, did not comply with the provisions relating to the customs value would be arbitrary, since that circumstance arises in all cases.

171 Lastly, the Kingdom of Spain submits that the traceability system in force enables the origin of catches to be determined, since OLAF expressly refers to the traceability reports supplied by the person liable, which demonstrates that there is an appropriate traceability system in place and that it is possible to distinguish, in respect of each consignment, between originating products and non-originating products. In addition, it states that in a letter of 14 March 2014, bearing the reference Ares(2014) 732193, the Commission acknowledged the existence of traceability in this case and claims that that letter is related to the contested decision since it contains assessments concerning a decision of the Tribunal de Cuentas (Court of Auditors, Spain) on the 2009 debt determinations in respect of the disputed imports.

172 In the reply, the Kingdom of Spain contends that the interpretation according to which the dual registration of a vessel precludes the application of preferential arrangements was furnished after the Spanish authorities had completed most of the post-clearance debt determinations, which did not distinguish between originating products and non-originating products covered by the same certificate.

173 Furthermore, the Kingdom of Spain recalls that non-compliance with the rule of origin enables the customs debt to be established, which is necessary in order to initiate a procedure for the remission of duties but is not a prerequisite for such remission.

174 As a preliminary point, it should be observed that, as is apparent from recital 42 of the contested decision, by submitting certificates of origin from which the origin of the tuna could not be ascertained, the person liable infringed the provisions relating to the customs declaration and the applicable rules of origin.

175 This is the only consideration justifying the finding of non-compliance with the provisions relating to the customs declaration. Before the Court, the Commission did not properly address the Kingdom of Spain's argument that it is not possible for such non-compliance to be based on an infringement of the rules of origin, which, in its view, is the starting point for the post-clearance recovery procedure and not a factor in assessing whether or not the condition relating to the customs declaration is satisfied.

176 It should be recalled that, according to settled case-law, the person making the declaration must supply the competent customs authorities with all the necessary information as required by the EU rules, and by any national rules supplementing or transposing them, in relation to the customs treatment requested for the goods in question (judgments of 23 May 1989, *Top Hit Holzvertrieb* v *Commission*, 378/87, EU:C:1989:209, paragraph 26, and of 14 May 1996, *Faroe Seafood and Others*, C-153/94 and C-204/94, EU:C:1996:198, paragraph 108).

177 The Court has held, however, that this obligation may not go beyond production of the information that the person making the declaration may reasonably be expected to possess and obtain, with the result that it is sufficient for such information, even if incorrect, to have been provided in good faith (judgments of 1 April 1993, *Hewlett Packard France*, C-250/91, EU:C:1993:134, paragraph 29, and of 14 May 1996, *Faroe Seafood and Others*, C-153/94 and C-204/94, EU:C:1996:198, paragraph 109).

178 It follows from paragraphs 61 and 62 above that the established breach of the rules relating to the origin of the imported products entails, in this case, an infringement of the legislation relating to the customs declaration. Article 84 of Regulation No 2454/93 provides that proof of origin is to be submitted to the customs authorities of the Member State of importation in accordance with the procedures laid down in Article 62 of the CCC. Article 62 concerns customs declarations made in writing. It provides that the customs declaration must be made on an official form prescribed for that purpose; must be signed; must contain all the particulars necessary for implementation of the provisions governing the customs procedure for which the goods are declared; and must be accompanied by all the documents required for implementation of the provisions governing that customs procedure. In order to qualify for preferential tariff treatment based on the origin of the imported products, the importer is required, under Article 62 of the CCC in conjunction with Article 84 of Regulation No 2454/93, to attach a correct certificate of origin Form A to the customs declaration.

179 Furthermore, as the Commission rightly points out, the traceability system used by the person liable does not enable the origin of the relevant catches to be determined in this case. Since the post-clearance entries in the accounts made by the Spanish authorities related only to non-originating goods and goods which could not be separated from non-originating goods, those same authorities thereby acknowledged that there was insufficient traceability. Similarly, as the Commission points out,

it is apparent from the letter of 14 March 2014 referred to in paragraph 171 above that that letter concerned only goods which could have been excluded from post-clearance recovery as originating goods capable of being separated from non-originating goods. In general, the question of the traceability of the products thus relates, as the Commission rightly submits, to a stage prior to these proceedings, namely that of the establishment of the customs debt, which is a matter for the national authorities, and not that of the remission of duties. Moreover, as regards OLAF's mission reports, these also describe serious inadequacies in the traceability system, contrary to the Kingdom of Spain's claims.

180 Lastly, it cannot be usefully argued that the Commission conducted an arbitrary assessment of the different situations covered by the certificates submitted since, as examined in paragraph 152 above, there were several objectively separate and non-comparable situations.

181 Therefore, without it being necessary to examine the other arguments put forward by the Kingdom of Spain in that regard, referred to in paragraphs 170 to 173 above, which do not invalidate either the finding that the possible traceability of products did not concern the products in question or the conclusion that the Commission did not conduct an arbitrary assessment of the facts, this complaint of the second plea in law as well as the second plea as a whole must be rejected, as must the present action.

Costs

182 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

183 Since the Kingdom of Spain has been unsuccessful, it must bear its own costs as well as those of the Commission, in accordance with the forms of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the Kingdom of Spain to bear its own costs and to pay those incurred by the European Commission.**

Dittrich Schwarcz Tomljenović

Delivered in open court in Luxembourg on 15 December 2016.

[Signatures]

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