Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

25 July 2018 * [i]

(Appeal — Customs union — Regulation (EEC) No 2913/92 — Article 239 — Remission of import duties — Import of linen fabrics from Latvia between 1999 and 2002 — Special situation — Supervision and monitoring obligations — Corruption alleged of the customs authorities — Inauthentic movement certificate — Mutual trust)

In Case C-574/17 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 28 September 2017,

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

applicant,

the other party to the proceedings being:

Combaro SA, established in Lausanne (Switzerland), represented by D. Ehle, Rechtsanwalt,

applicant at first instance,

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, J. Malenovský, M. Safjan, D. Šváby and M. Vilaras, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 By its appeal, the European Commission asks the Court to set aside the judgment of the General Court of the European Union of 19 July 2017, *Combaro* v *Commission* (T-752/14, EU:T:2017:529) ('the judgment under appeal') by which that court annulled Commission Decision C(2014) 4908 final of 16 July 2014 finding that the remission of import duties is not justified in a particular case (REM 05/2013) ('the contested decision').

Legal context

The Association Agreement

2 Article 34 of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Latvia, of the other part (OJ 1998 L 26, p. 3) ('the Association Agreement') was worded as follows:

'Protocol 3 [concerning the definition of originating products and methods of administrative cooperation] lays down rules of origin for the application of the tariff preferences provided for in this Agreement as well as the methods of administrative cooperation therewith.'

3 Articles 16 and 17 of Protocol No 3 concerning the definition of 'originating products' and methods of administrative cooperation, as amended by Decision No 4/98 of the Association Council between the European Communities and their Member States, of the one part, and the Republic of Latvia, of the other part, of 2 December 1998 adopting the modifications to Protocol 3 to the Europe Agreement included in Decision No 1/97 of the Joint Committee under the Agreement on free trade and trade-related matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, of the one part, and the Republic of Latvia, of the other part (OJ 1999 L 6, p. 10), provided that products originating in Latvia benefited from the provisions of the Association Agreement on presentation of an EUR.1 movement certificate issued by the customs authorities of the country of export.

4 Article 31(2) of that protocol provided:

'In order to ensure the proper application of this Protocol, the Community and Latvia shall assist each other, through the competent customs administrations, in checking the authenticity of the movement certificates EUR.1 …'

5 Article 32 of that protocol, entitled 'Verification of proofs of origin', stated, in paragraphs (1), (3) and (5):

'1. Subsequent verifications of proofs of origin shall be carried out at random or whenever the customs authorities of the importing country have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Protocol.

…

3. The verification shall be carried out by the customs authorities of the exporting country. For that purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.

…

5. The customs authorities requesting the verification shall be informed of the results thereof as soon as possible. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in … Latvia … and fulfil the other requirements of this Protocol.'

The Customs Code

6 Article 239(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Customs Code') provides:

'Import duties … may be repaid or remitted in situations …:

…

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

The implementing regulation

7 Article 899(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 1335/2003 of 25 July 2003 (OJ 2003 L 187, p. 16), ('the implementing regulation') states:

'In other cases, except those in which the dossier must be submitted to the Commission pursuant to Article 905, the decision-making customs authority shall itself decide to grant repayment or remission of the import … duties where there is a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

…'

8 Article 905(1) of the implementing regulation provides:

'Where the application for repayment or remission submitted under Article 239(2) of the [Customs Code] is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, the Member State to which the decision-making customs authority belongs shall transmit the case to the Commission to be settled under the procedure laid down in Articles 906 to 909 where:

– the authority considers that a special situation is the result of the Commission failing in its obligations …'

Background to the dispute

9 The background to the dispute is set out in paragraphs 1 to 28 of the judgment under appeal.

10 The contested decision concerns import duties on linen fabrics which were imported into the European Union via Germany, between 10 December 1999 and 10 June 2002, by Combaro SA, and whose Latvian preferential origin was not proved.

11 Textiles of Latvian preferential origin were, during that period, exempt from the import restrictions under the Association Agreement. Those textiles benefited from that exemption only if the importer proved their origin by means of a movement certificate EUR.1 issued by the Latvian authorities at the time of export.

12 In the present case, Combaro benefited from an exemption from import duties based on the Association Agreement, granted by the German customs authorities on presentation of 51 movement certificates ('the certificates at issue').

13 Following a report carried out by the Danish customs authorities, the European Anti-Fraud Office (OLAF) conducted a fact-finding mission in Latvia. In the light of the OLAF report, the European Commission sent the Member States, on 11 September 2002, a mutual assistance communication requesting an inspection of all imports of linen fabrics from Latvia.

14 The German customs authorities requested the Latvian customs authorities to carry out a post-clearance check of the certificates at issue. The Latvian customs authorities responded to the requests of the German customs authorities by letters of 7 April, 2 May and 7 May 2003 (together 'the letters of 2003') in the following terms:

'[The] certificates [at issue] were not entered in the customs records. They were not issued by the Latvian customs authorities and must therefore be regarded as invalid.'

15 By decision of 3 July 2003, the German customs authorities decided to initiate proceedings for the post-clearance recovery of the import duties corresponding to those certificates.

16 In the meantime, expert reports were conducted, at OLAF's request, concerning the movement certificates submitted in respect of the imports into Denmark. It followed from those reports, first, that the stamp imprints on those certificates were probably authentic and, secondly, that the signature on those certificates was, slightly more likely than not, that of a Latvian customs agent.

17 Following the decision of the Finanzgericht München (Finance Court, Munich, Germany), the Bundesministerium der Finanzen (Federal Ministry of Finance, Germany) requested Combaro to provide its opinion and on 3 September 2013 requested the Commission to remit the import duties, in application of Article 239 of the Customs Code. The Commission then initiated the REM 05/2013 procedure.

18 On 16 July 2014, the Commission adopted the contested decision.

19 In recital 32 of that decision, the Commission considered that there was no special situation, for the purposes of Article 239 of the Customs Code, which is attributable to failure on the part of the Latvian customs authorities, since it was unable to conclude that those authorities had been involved in issuing the contested certificates.

20 The Commission also examined whether it had itself failed in monitoring the correct implementation of the Association Agreement. In recitals 36 to 41 of the contested decision, it concluded that its conduct did not give rise to a special situation.

21 Since the Commission concluded, in recital 45 of that decision, that remission of the import duties was not justified in the absence of a special situation, for the purposes of Article 239 of the Customs Code, it added, in recitals 48 to 52 of that decision, that Combaro had not shown the necessary diligence.

The procedure before the General Court and the judgment under appeal

22 By application lodged at the Registry of the General Court on 12 November 2014, Combaro brought an action for annulment of the contested decision. In support of that action, Combaro raised a single plea, alleging infringement of Article 239 of the Customs Code.

23 By the judgment under appeal, the General Court annulled the contested decision and ordered the Commission to pay its own costs as well as those incurred by Combaro.

Forms of order sought by the parties

24 By its appeal, the Commission claims that the Court should:

– set aside the judgment under appeal;

– dismiss the application made at first instance by Combaro, and

– order Combaro to pay the costs relating to the appeal and to the proceedings at first instance.

25 Combaro requests the Court to dismiss the appeal and to order the Commission to pay the costs.

The appeal

26 In support of its appeal, the Commission invokes four grounds.

27 In the present case, it is necessary to examine together the first and second grounds of appeal, alleging respectively an error of legal characterisation of the facts and a distortion of the evidence concerning a special situation.

Arguments of the parties

28 By its first ground of appeal, the Commission claims that the General Court erred in its legal characterisation of the facts concerning the existence of a special situation for the purposes of Article 239 of the Customs Code, by considering that the Commission did not have sufficient information and that it had not complied with its monitoring obligations in the context of the Association Agreement.

29 In the first place, the General Court took no account of measures already taken by the Commission to obtain information relating to trade in linen fabrics between the European Union and Latvia, which also cover the situation of Combaro.

30 In the second place, the General Court made incorrect assessments relating to the measures which the Commission should have taken.

31 In that regard, the Commission claims, in particular, that the General Court wrongly blamed the Commission for the destruction of the stamp imprints by the Latvian authorities, although it itself held that there was no obligation to conserve the stamps used.

32 Moreover, it claims that, in light of the repeated confirmation by those authorities in relation to the inauthenticity of the certificates at issue, the General Court's assertion that the Commission should have required those authorities to genuinely re-examine those certificates is vitiated by several errors.

33 Between 2003 and 2007, those authorities examined the certificates at issue and twice made the same declarations. The General Court could not therefore legitimately rely on the fact that the person who signed the letters of 2003 was criminally convicted, since the reply contained in the letter of 26 June 2007 ('the reply of 2007') was, in any event, signed by another agent and is, therefore, entirely lawful.

34 In that context, the General Court ignored the fact that the Commission is bound, in accordance with the Court's case-law, by the post-clearance check carried out by the Latvian customs authorities. On the contrary, it even complained that the Commission failed to comply with that obligation and thus wrongly concluded that it should have sought further information.

35 By its second ground of appeal, the Commission claims, first of all, that the General Court distorted the evidence by affirming that the Deputy Director of the Latvian customs authorities, who signed the certificates at issue and the correspondence in the context of the post-clearance check, was convicted of unlawful conduct in the course of his duties. It is thus apparent from a simple comparison between the various documents in the file that the certificates at issue were not signed by that person.

36 Next, the judgment under appeal is vitiated by another distortion of the evidence, in so far as it declares that the Latvian customs authorities were unable to provide the original stamp imprints of the customs offices at issue.

37 Finally, those two distortions are decisive, since, without them, the General Court should have concluded that it was not necessary for the Commission to take additional measures.

38 Combaro contends that the first and second grounds of appeal should be rejected.

39 It contends, in that regard, that the measures taken by the Commission are general measures which were insufficient in the present case.

40 As regards the additional measures required from the Commission, they should effectively have been taken. In particular, effective verification of the certificates at issue was necessary, in so far as, on account of the factors established by the General Court, there was no basis of mutual trust. The authorities of a country with respect to which there exists a suspicion of corruption cannot claim such trust. In that context, the Commission overestimates the importance given by the General Court to the identity of the person who signed the letters of 2003. Those letters constitute only one indicator amongst others.

41 The reply of 2007 also does not have the value given to it by the Commission, since it cannot serve as trustworthy confirmation of the letters of 2003 and it is not based on an actual examination of the facts of the case.

42 Moreover, although Combaro acknowledges that the Deputy Director of the Latvian customs authorities did not sign the certificates at issue, but only the letters of 2003, it claims that the person who signed those certificates is unknown and that he worked under the authority of the deputy director. Moreover, copies of the certificates at issue were attached to the letters of 2003, which implies that those certificates and those letters should be regarded as forming a whole.

43 The second distortion noted by the Commission could also not be admitted.

Findings of the Court

44 As a preliminary matter, it should be noted that Article 239 of the Customs Code constitutes, in conjunction with Article 905 of the implementing regulation, a general fairness clause intended to cover the exceptional situation in which a declarant might find himself in comparison with other

operators engaged in the same business (see, to that effect, judgments of 17 February 2011, *Bolton Alimentari*, C-494/09, EU:C:2011:87, paragraph 54, and of 22 March 2012, *Portugal* v *Transnáutica*, C-506/09 P, EU:C:2012:156, paragraph 65).

45 That general fairness clause entails the remission of import duties where two conditions are met, namely the existence of a special situation and the absence of obvious negligence or deception on the part of the liable person (see, to that effect, judgment of 25 July 2008, *C.A.S.* v *Commission*, C-204/07 P, EU:C:2008:446, paragraph 86).

46 In the judgment under appeal, the General Court concluded, following the examination of the first part of the single plea in law raised by Combaro, that the Commission had wrongly considered, in the contested decision, that that company was not in a special situation, for the purposes of Article 239 of the Customs Code.

47 It is apparent from paragraphs 90 and 91 of that judgment that that conclusion is based on the finding that, first, the Commission erroneously considered that it had sufficient information allowing it to assess the situation and, secondly, that institution had failed to take concrete measures required of it in accordance with its mission of supervision and control of the correct application of the Association Agreement.

48 The General Court thus considered, in particular in paragraphs 77 and 85 of that judgment, that the Commission should have further explained the facts of the case and that, if that institution had made full use of its rights and powers, the authenticity or inauthenticity of the certificates at issue could have been established with more certainty.

49 In that regard, the General Court held, in paragraphs 87 and 88 of that judgment, that the Commission could not legitimately be satisfied with the replies given by the Latvian customs authorities in the context of the post-clearance check so as to decide on the situation of Combaro and that it should have made use of its rights and powers, in spite of those replies.

50 It should be noted that, as the Commission points out, it is apparent from the Court's settled case-law, referred to in paragraph 86 of the judgment under appeal, that the system of administrative cooperation established by a protocol stating, in an annex to an agreement between the European Union and a non-member State, the rules concerning the origin of goods is based on mutual trust between the authorities of the importing Member States and those of the exporting State (see, to that effect, judgments of 15 December 2011, *Afasia Knits Deutschland*, C-409/10, EU:C:2011:843, paragraph 28, and of 24 October 2013, *Sandler*, C-175/12, EU:C:2013:681, paragraph 49).

51 The Court deduced from the above, with regard more particularly to the post-clearance check of the EUR.1 certificates issued by the exporting country, that the findings and determinations legally made by the authorities of that latter country apply, in principle, to the authorities of the Member State of import (see, to that effect, judgments of 25 February 2010, *Brita*, C-386/08, EU:C:2010:91, paragraphs 62 and 63, and of 15 December 2011, C-409/10, EU:C:2011:843, paragraph 29).

52 Those principles are entirely relevant as regards the application of the Association Agreement, since it follows from Articles 17 and 32 of Protocol No 3 that it is for the authorities of the country of export to issue the EUR.1 certificates, to check, for that purpose, the origin of the goods concerned and to take a position, where appropriate, on the authenticity of such certificates.

53 Those principles must, moreover, be transposed, *mutatis mutandis*, to the relations between the Commission and the customs authorities of the country of export where that institution decides on the authenticity of movement certificates, in order to assess the existence of a special situation for the purposes of Article 239 of the Customs Code.

54 In this specific case, the Commission is required, for the purposes of taking a decision on the repayment or remission of import duties, to examine, in lieu of the customs authorities of the Member State of import, the import conditions of certain goods and the application of the relevant customs rules, in particular those relating to the authenticity of movement certificates (see, to that effect, judgment of 25 July 2008, *C.A.S.* v *Commission*, C-204/07 P, EU:C:2008:446, paragraph 90).

55 In that context, the main grounds put forward, in the Court's case-law, to justify the administrative cooperation mechanism based on trust in the results of the post-clearance check carried out by the authorities of the country of export, namely the fact that the latter are the best placed to carry out that check, the fact that such a system has the advantage of producing certain and uniform results and the need to ensure mutual recognition of the decisions taken by the EU authorities (see, to that effect, judgments of 12 July 1984, *Les Rapides Savoyards and Others*, 218/83, EU:C:1984:275, paragraphs 26 and 27, and of 17 July 1997, *Pascoal & Filhos*, C-97/95, EU:C:1997:370, paragraph 28), mean that the conclusions reached by the authorities of the country of export apply, in principle, to the Commission where that institution assesses the existence of a special situation, for the purposes of Article 239 of the Customs Code.

56 In the light of the above, the Commission is justified in claiming that it was, in principle, required to rely on the findings and on the determinations legally made by the Latvian customs authorities, in the context of the post-clearance check provided for by the Association Agreement, in order to decide on the authenticity of the certificates at issue.

57 Admittedly, the trust thus bestowed on those authorities does not mean that the Commission cannot, in any case, be called upon to conduct investigations into the authenticity of such certificates.

58 Therefore, in the judgment of 25 July 2008, *C.A.S.* v *Commission* (C-204/07 P, EU:C:2008:446), to which the General Court referred in particular in paragraphs 70 to 74 of the judgment under appeal, the Court held that the Commission should have taken concrete measures to verify the authenticity of the movement certificates and that a failure in that regard could constitute a special situation.

59 However, in the case which gave rise to that judgment, the obligation to thereby conduct detailed investigations of such certificates, in the context of the Commission's general task of supervision and monitoring of the application of an Association Agreement, was justified by very specific circumstances, relating to the fact that the customs authorities of the country of export had formulated assessments concerning those certificates which were ambiguous and inconsistent (see, to that effect, judgment of 25 July 2008, *C.A.S.* v *Commission*, C-204/07 P, EU:C:2008:446, paragraph 111).

60 In those circumstances, despite the trust owed in principle to those authorities, the Commission was not, in that case, capable of deciding on the application submitted to it on the sole basis of the replies provided by those authorities.

61 Conversely, in the present case, there is nothing in the judgment under appeal to indicate that the General Court concluded that the replies supplied by the Latvian customs authorities were ambiguous or inconsistent. It is apparent, by contrast, from paragraph 87 of the judgment under appeal that the General Court considered that the Commission was obliged to depart from the conclusions reached by those authorities.

62 In order to justify that conclusion, the General Court relied on the brevity of those authorities' findings and on the fact that the confirmation of the findings, over the course of 2007, was not the result of a genuine re-examination of the file, and also on a series of facts presented as indications that those authorities were involved in issuing the certificates at issue.

63 More specifically, the General Court reached the following conclusions in paragraph 75 of the judgment under appeal:

– the post-clearance check of the certificates at issue was initiated as a result of the OLAF investigation concerning imports of linen fabrics into Denmark;

– the OLAF report mentions that while in transit the linen fabrics passed briefly through a Latvian bonded warehouse in order to conceal the origin of the goods in question;

– the expert comparisons of the stamp imprints and signatures on the certificates used for imports into Denmark following the OLAF report show that the stamp imprints and signatures were probably authentic;

– the stamp imprints on the certificates at issue are very similar to the authentic stamp imprints of the Latvian customs authorities;

– the Deputy Director of the Latvian customs authorities, Mr R., who signed the certificates at issue and the correspondence in the context of the post-clearance check, was convicted of unlawful conduct in the course of his duties;

– the Latvian customs authorities were unable to supply the original stamp imprints used by the customs offices concerned, namely the Jelgava [(Latvia)] and Bauska [(Latvia)] customs offices;

– Commission reports mention a climate of corruption, in particular, within the Latvian customs authorities;

– imports of linen fabrics from Latvia increased and exceeded the production capacities of that country.

64 Without it being necessary to determine whether certain circumstances could justify the Commission departing from the unequivocal assessments made by the customs authorities of the country of export, it must be noted that the findings put forward by the General Court cannot, in any event, justify the conclusion reached by that court and, therefore, justify the rejection of the Commission's argument that it had necessarily to adhere to the results of the post-clearance check of the certificates at issue carried out by the Latvian customs authorities.

65 Therefore, it should be noted, in the first place, that the General Court's finding that the Latvian customs authorities were unable to supply the original stamp imprints used by the customs offices of Jelgava and Bauska, cannot call into question the trust which should be bestowed on those authorities.

66 As the Commission claims in its appeal, although the Republic of Latvia sent in good time specimen stamp imprints used in its customs offices, no provisions of the Association Agreement oblige the Latvian customs authorities to subsequently keep the authentic stamp imprints, which the General Court besides pointed out in paragraph 80 of the judgment under appeal, or to keep the stamps allowing imprints to be made once those stamps were no longer used.

67 In the second place, the fact that a deputy director of the Latvian customs authorities was convicted for unlawful conduct in the context of his duties and that Commission reports refer to a climate of corruption amongst those authorities is not, in the present case, decisive.

68 First, as Combaro moreover acknowledges, the Commission correctly points out that it is clearly apparent from a simple comparison of the letters of 2003 and the certificates at issue, which are included in Annex B-4 to the defence submitted by the Commission at first instance, that the signatures on those various documents differ considerably.

69 The General Court therefore distorted the evidence presented before it by holding that Mr R. could be regarded as the person who signed both those letters and those certificates.

70 Secondly, assuming that the conviction of the person who signed those letters and the general climate of corruption referred to in Commission reports during the period when the imports at issue took place, namely between 1999 and 2002, may be relevant in order to assess the value to be given to the position adopted during 2003 by the Latvian customs authorities, it must be noted that those elements cannot be decisive in the present case.

71 It is apparent in particular from paragraphs 16 and 88 of the judgment under appeal that those authorities confirmed that the certificates at issue had to be considered to be invalid, in the reply of 2007, which was not signed by Mr R. and was sent on a date on which it is neither alleged, nor a fortiori established, that those authorities were confronted with a sensitive problem of corruption and on which, moreover, the Republic of Latvia was already a member of the European Union.

72 The fact that the letters of 2003 are limited to brief assertions and that it is not established that the confirmation made in 2007 was the result of new investigations cannot render the positions adopted by those authorities devoid of value, since the Association Agreement does not provide for any particular formalities in that regard and it is apparent from the Court's case-law that the customs authorities of the Union are bound by the results of a post-clearance check, even where those results are sent without any reasoning or in the form of a signature on a record drawn up by OLAF following an investigation (see, to that effect, judgments of 17 July 1997, *Pascoal & Filhos*, C-97/95, EU:C:1997:370, paragraphs 30 to 33, and of 15 December 2011, *Afasia Knits Deutschland*, C-409/10, EU:C:2011:843, paragraph 40).

73 In that context, the Commission is justified in claiming that the other indicia listed in paragraph 75 of the judgment under appeal are not sufficient to warrant the conclusion reached by the General Court in paragraph 87 of that judgment, namely that it was for the Commission to make use of its rights and powers, in spite of the replies provided by the Latvian customs authorities.

74 Therefore, the fact that the post-clearance check of the certificates at issue was initiated following an investigation of OLAF, conducted with respect to other movement certificates presented in relation to imports into another Member State, which had given rise to the suspicion that certain agents of the Latvian customs authorities were involved in fraudulent operations, both as a result of the detailed rules governing those operations and the characteristics of those certificates, cannot, in general, render the investigations carried out by those authorities with regard to such certificates devoid of any value, by excluding entirely the administrative cooperation mechanism provided for in protocol No 3.

75 Likewise, although the increase in imports of linen fabrics from Latvia beyond the capacity of that country's production was likely to establish the existence of certain fraudulent operations, it did not allow the direct and general involvement of the Latvian customs authorities in those operations to be demonstrated, or, a fortiori, it to be demonstrated that those authorities were involved in issuing of the certificates at issue.

76 Moreover, trust in the customs authorities of the country of export cannot be called into question on the basis of an assessment of one element of the certificates at issue, such as the stamp imprints on them, without obliging the Commission to systematically substitute its control for that of those authorities in relation to the authenticity of movement certificates and to thereby infringe the principles referred to in paragraphs 50 to 56 of the present judgment.

77 It follows from all the foregoing considerations that the General Court erred in its legal characterisation of the facts concerning the existence of a special situation for the purposes of Article 239 of the Customs Code, by concluding that, for the reasons mentioned in paragraph 62 of

the present judgment, the Commission could not rely on the clear replies provided by the Latvian customs authorities so as to assess the authenticity of the certificates at issue and that that institution should, on the contrary, have used its rights and powers for that purpose, in spite of those replies.

78 Therefore, the General Court could not validly conclude, in paragraphs 90 and 91 of the judgment under appeal, that the Commission had wrongly considered that it had sufficient information to allow it to assess the situation and that that institution had failed to take the concrete measures required of it in accordance with its obligation to supervise and monitor the correct application of the Association Agreement. It follows that the conclusions made by the General Court with regard to the well-founded character of the first part of the single plea submitted at first instance by Combaro, which constitute the necessary basis for the operative part of the judgment under appeal, must be rejected.

79 Consequently, since the first and second grounds of appeal must be upheld, it is necessary to annul the judgment under appeal, without it being necessary to examine the other grounds invoked by the Commission in support of its appeal.

The dispute at first instance

80 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the Court quashes the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits.

81 That is the situation in the present case. It is therefore necessary to examine the action for annulment of the contested decision brought by Combaro.

82 The first part of the single plea of that action, alleging infringement of the condition concerning the existence of a special situation for the purposes of Article 239 of the Customs Code, is divided into several arguments, relating to various infringements alleged, ascribed respectively to the Latvian customs authorities, the Commission and the German customs authorities.

83 First of all, it must be noted that, although Combaro relies, in order to establish those various infringements, on findings made, according to it, by a national court, it follows from the Court's case-law that, where the Commission takes a decision on a particular case under Article 239 of the Customs Code, it cannot be bound by a decision given previously by such a court (see, to that effect, judgment of 20 November 2008, *Heuschen & Schrouff Oriëntal Foods Trading*, C-375/07, EU:C:2008:645, paragraph 69), a fortiori where that decision seeks solely to determine whether the customs authorities of the Member State of import must refer a case to the Commission for it to decide on a possible application of that provision.

84 It follows from the wording of the letters of 7 April and 7 May 2003, sent by the Latvian customs authorities in the context of the post-clearance check of the certificates at issue, as well as from the wording of the reply of 2007 confirming the results of that check, that those authorities consistently and unambiguously claimed that they did not issue those certificates, which implies that those certificates were not considered to be authentic by those authorities.

85 Combaro's argument that the results of that post-clearance check of the certificates at issue must be rejected, in so far as they included ambiguities and inconsistencies similar to those found in the judgment of 25 July 2008, *C.A.S.* v *Commission* (C-204/07 P, EU:C:2008:446), cannot be accepted.

86 Moreover, it is apparent from paragraphs 50 to 77 of the present judgment that, in those circumstances, the arguments presented by Combaro in order to establish that it was for the Commission to conduct investigations relating to the authenticity of those certificates, in spite of the

findings established by the Latvian customs authorities, and that, by failing to do so, the Commission infringed its obligations, must necessarily be rejected. It follows that Combaro has not established that the Commission could not validly conclude, in the contested decision, that those certificates were not authentic.

87 Consequently, Combaro's argument relating to the alleged failings of the Latvian customs authorities must also be rejected, since it is based on the premiss that, as a result of the corruption of their agents and organisational weaknesses, those authorities indeed wrongly issued the certificates at issue and, subsequently, hindered the determination of the authenticity of those certificates.

88 Likewise, Combaro's argument relating to the alleged deficiencies of the German customs authorities cannot be accepted, in so far as those deficiencies relate to the fact that those authorities concluded, wrongly and without sufficient care, that those certificates were not authentic.

89 Finally, the arguments seeking to establish that the Commission failed to comply with its obligations by not sufficiently combating the corruption of the Latvian customs authorities and for not publishing an opinion intended to warn importers about the situation in Latvia at that time must, in any event, be rejected as ineffective, in so far as they bear no relation to the conditions in which Combaro carried out the imports at issue in the contested decision. Those arguments could be relevant in that regard only if it had to be concluded that the certificates at issue were indeed issued by those authorities, which has precisely not been established.

90 It follows from the foregoing that Combaro has not established that the Commission was wrong to conclude in the contested decision that the existence of a special situation, for the purposes of Article 239 of the Customs Code, had not been demonstrated and, therefore, that the first part of the single plea submitted by Combaro at first instance must be rejected.

91 Since the existence of a special situation is an essential condition of being able to claim repayment or remission of import duties, the second part of Combaro's single plea, alleging the absence of manifest negligence on its part, must be rejected as ineffective (see, to that effect, order of 10 June 2010, *Thomson Sales Europe* v *Commission*, C-498/09 P, not published, EU:C:2010:338, paragraph 97).

92 Consequently, the action for annulment of the contested decision brought by Combaro must be dismissed.

Costs

93 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

94 Under Article 138(1) of those rules of procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

95 Since Combaro has been unsuccessful and the Commission has applied for costs, Combaro must be ordered to pay the costs.

On those grounds, the Court (Third Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union of 19 July 2017, *Combaro* v *Commission* (T-752/14, EU:T:2017:529);**

2. **Dismisses the action brought by Combaro SA;**

3. **Orders Combaro SA to bear its own costs as well as those incurred by the European Commission.**

[Signatures]

i — The wording of paragraph 76 of this document has been modified after it was first put online.