JUDGMENT OF THE COURT (FIRST CHAMBER)
13 NOVEMBER 1984 [1]

Van Gend & Loos NV and Expeditiebedrijf Wim Bosman BV v Commission of the European Communities

(Remission of import duties)

Joined Cases 98 and 230/83

1. *Community law — Principles — Force majeure — Concept*

2. *European Communities' own resources — Remission of import duties — Article 13 of Regulation No 1430/79 — Special circumstances — Concept*
(Council Regulation No 1430/79, Art. 13)

1. Recognition of a case of *force majeure* presupposes that the external cause relied upon has irresistible and inevitable consequences to the point of making it objectively impossible for the persons concerned to fulfil their obligations.

2. A customs agent, by the very nature of his functions, renders himself liable both for the payment of import duty and for the validity of the documents which he presents to the customs authorities. Being furnished with certificates of origin which are invalid, even though issued by the customs authorities of the countries named in them, is one of the professional risks which he runs and cannot constitute a special circumstance within the meaning of Article 13 of Council Regulation No 1430/79 on the repayment or remission of import or export duties.

In Joined Cases 98 and 230/83

VAN GEND & LOOS NV, a company incorporated under Netherlands law, whose registered office is at Utrecht, represented by S. L. Buruma and L. J. Hopmans, Advocaten at the Hoge Raad [Supreme Court] of the

1 — Language of the Case: Dutch.

Netherlands, with an address for service in Luxembourg at the Chambers of J. Loesch, 2 Rue Goethe (Case 98/83),

and

EXPEDITIEBEDRIJF WIM BOSMAN BV, a private company incorporated under Netherlands law, whose registered office is at 'S-Heerenberg, represented by L. J. Hopmans, Advocaat at the Hoge Raad of the Netherlands, with an address for service in Luxembourg at the Chambers of J. Loesch, 2 Rue Goethe (Case 230/83),

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Auke Haagsma, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Commission's Legal Department, Jean Monnet Building,

defendant,

APPLICATIONS to have declared void two decisions adopted by the Commission on 10 January 1983 concerning requests made by the applicants to their national authorities for remission of import duties on the basis of, in particular, Article 13 of Council Regulation No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (Official Journal L 175, p. 1) and Commission Regulation No 1575/80 of 2 June 1980 laying down provisions for the implementation of Article 13 of Regulation No 1430/79 (Official Journal L 161, p. 13),

THE COURT (First Chamber)

composed of: Lord Mackenzie Stuart, President, G. Bosco (President of Chamber) and T. Koopmans, Judge,

Advocate General: G. F. Mancini
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

I — Summary of facts and written procedure

Van Gend & Loos NV, the applicant in Case 98/83, and Expeditiebedrijf Wim Bosman BV, the applicant in Case 230/83, are both customs and forwarding agents.

It appears that when several consignments of textile products were being imported, both applicants produced certificates of origin showing that the goods came from Egypt, Morocco or Turkey. Pursuant to the agreements in force between the Community and those countries, the consignments in question either benefited from a preferential rate of duty or, in certain cases, were admitted duty free.

However, it appeared as the result of an inquiry that the certificates of origin at issue were incorrect and a higher customs duty should have been paid. Consequently, the applicants were ordered to pay additional duty. They were not able to recover that sum from their client, however, which had gone into liquidation in the meantime. Furthermore, they contend that it has never been established that the countries of origin mentioned in the certificates were in fact incorrect.

Each applicant applied to the Ministry of Finance of the Kingdom of the Netherlands for a remission of import duty on the basis of, in particular, Article 13 of Council Regulation No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (Official Journal L 175, p. 1) and of Commission Regulation No 1575/80 of 20 June 1980 laying down provisions for the implementation of Article 13 of Regulation No 1430/79 (Official Journal L 161, p. 13).

Those two applications were submitted to the Commission in accordance with the procedure laid down in Regulation No 1575/80, and as a result the Commission decided, in Article 1 of each of the two decisions at issue of 10 January 1983, that remission of import duties was not justified. The remission of duty applied for was HFL 556 454.30 in the case of Van Gend & Loos and HFL 82 356.60 in the case of Bosman.

The aforementioned Regulation No 1430/79 refers to a number of situations in which, under certain conditions, repayment or remission of import duties may occur. The regulation also provides for a "residual category": according to Article 13, import duties may be repaid or remitted in situations "resulting from special circumstances in which no negligence or deception may be attributed to the person concerned".

In their application to the Netherlands Ministry of Finance for a remission, the applicants set out the special circumstances in which they found themselves and in which, they maintained, no negligence or deception might be attributed to them.

The applicants initiated proceedings on 30 May 1983 in Case 98/83 and on 10 October 1983 in Case 230/83.

Upon hearing the report of the Judge Rapporteur and the views of the Advocate General the Court decided, by order of 18 January 1984 as regards Case 98/83 and by order of 29 February 1984 as regards Case 230/83, to assign both cases to the First Chamber pursuant

to Article 95 of the Rules of Procedure, and to open the oral procedure without any preparatory inquiry.

By order of 29 February 1984 the Court (First Chamber), having noted that Cases 98/83 and 230/83 dealt with related subjects, joined the two cases for the purposes of the oral procedure and the judgment.

II — Conclusions of the parties

Van Gend & Loos claims that the Court should declare the contested decision void and make an appropriate order as to costs.

Bosman claims that the Court should declare the contested decision void, or at least declare it to be of no effect, and make an appropriate order as to costs.

The Commission contends that the Court should declare the applications inadmissible, or at least declare them to be without foundation, and order the applicants to pay the costs.

III — Submissions and arguments of the parties

A — Admissibility

The Commission considers that there is some doubt as to whether or not Bosman was in fact informed of the Commission's decision for the first time on 9 August 1983. Since the Commission cannot prove that Bosman was informed of the decision earlier, however, it does not contend that that application should be declared inadmissible.

The Commission also expressed doubts as to the admissibility of the application brought by Van Gend & Loos but was unable to substantiate them.

B — Substance

Summary of the applicants' observations

The *applicants* submit, first, that the Commission was in breach of its obligation to give the reasons for its decision, and secondly that the remission was wrongly refused.

(a) They maintain that in order to meet the conditions laid down in Article 13 of Regulation No 1430/79 it is necessary both to have acted in good faith and to be able to prove the existence of special circumstances. However, they contend that in the statement of reasons for its decisions the defendant merely sets out the circumstances, the existence of which the applicants had proved, which showed that they had acted in *good faith,* and omitted to mention the *special circumstances* which they had relied on. These special circumstances were the following:

deceit or fraud on the part of their clients;

the issue of certificates of origin by the customs authorities in Egypt, Morocco, Turkey and Italy;

the fact that they were unaware that the certificates were not valid;

the fact that the applicants acted in their own name.

(b) According to the applicants, the defendant justified its decision by means of the following argument: if the declaration of the goods for free circulation is made by a customs agent in his own name, a remission under Article 13 of Regulation No 1430/79 would nullify the effect of *subsequent checks* by the customs authorities which showed that the movement certificate or T 2 L document on the basis of which a preferential rate of duty had been levied was not valid. However, remission of import duties generally takes place as a consequence of facts which only come to

light during a subsequent investigation. The examples now being quoted by the Commission (see below) support that argument because it is only after the event that it can be seen that too much customs duty has been paid. A handful of examples does not suffice to show that in practice subsequent checks are rarely, or never, carried out. Moreover, a subsequent investigation carried out in order to determine whether the criteria laid down in Article 13 of Regulation No 1430/79 had been satisfied would be irrelevant.

(c) Van Gend & Loos states, moreover, that the defendant contends, in support of its decision in relation to that applicant, that no *negligence* whatsoever can be attributed to the Netherlands *customs authorities* in regard to the way in which they carried out the investigation to determine whether there had been an offence. However, any negligence on the part of the Netherlands customs authorities which occurred during the investigation of a possible offence is irrelevant in this case. What Van Gend & Loos criticized was in fact the authorities' negligence at the time that the goods were declared for the purpose of putting them into free circulation. Van Gend & Loos emphasizes that according to information recently received from the Netherlands customs authorities, there was at the time that the goods in question were declared a presumption that the certificates produced did not state the correct origin of the goods. Had Van Gend & Loos been informed of that presumption at the time of its declaration, it could have taken steps to protect its interests. It cannot agree with the defendant's statement that it is not generally appropriate during an investigation to communicate information about it to interested parties. It is clear that such parties might suffer considerable damage owing to the absence of information.

The arguments concerning the passive role of the customs and the fact that it was impossible to keep all officials informed of developments in the case is not relevant since a single telephone call would habe been sufficient to allow the applicants to take steps to protect their interests. The defendant's arguments to the contrary do not justifiy the refusal of a remission because the two criteria laid down in Article 13 have nothing to do with the question of negligence on the part of the customs authorities.

(d) According to the applicants, it is difficult to ascertain what were the *criteria* used by the defendant when applying Article 13 of Regulation No 1430/79, when in fact the preamble to the regulation requires that the procedure set out in that article be followed in order to define the situations which justify repayment or remission of import duties.

The defendant is now attempting to put forward additional reasons for its decision in the observations it has presented to the Court by claiming that Article 13 can only be applied if the goods are destroyed, delivered free of charge to certain charities or re-exported. Those additional reasons cannot be used to justify a decision which itself contains an insufficient statement of the reasons on which it was based. Moreover, compliance with such conditions was required neither during the procedure which led up to the adoption of the decision, nor in the decision itself.

Similarly, when the defendant claims that it pointed out in its decision that "the customs agent, by making the declaration in its own name and on its own account, is itself liable for the importation, which implies that it is liable even if the certificates presented on that occasion are found to be invalid", it is seeking to justify its decision after the event, since no such ground appeared in the decision itself.

Even though the present level of knowledge and experience is not such as to permit the defendant to define the situations referred to in Article 13, it

must determine in each individual case the grounds on which remission is not justified in a manner which is clear and comprehensible both for the applicants and for the Court.

(e) Even though they refer to an examination by the *Committee on Duty-Free Arrangements,* the decisions at issue make no reference either to a proposal or to an opinion of that Committee, nor do they indicate either the contents of any proposal or opinion of the Committee on Duty-Free Arrangements which might exist or the result of any vote in the Committee, and it is thus impossible to verify that the defendant complied with the procedure laid down in Article 25 of Regulation No 1430/79 in adopting its decision. In any event, the defendant has infringed Article 5 of Regulation No 1575/80 and Article 190 of the Treaty.

In exactly the same way as the *procedural rules* for determining which cases are covered by Article 13, the *cases themselves* are to be determined in accordance with the opinion of a group of experts. Unlike the text of the draft regulation (Official Journal C 54, 6. 3. 1976, p. 85) — on which the Commission is now basing its argument — the regulation in force provides that the procedure to be followed is that laid down in Article 25. However, Article 25 refers to the procedure laid down in Article 9 in Regulation No 1798/75 requiring the Commission to obtain the opinion of a group of experts. Moreover, it is clear from in the preambles to Regulation No 1430/79 and Regulation No 1575/80 that the Commission is obliged to obtain that opinion.

(f) Finally, the applicants claim that the decisions at issue are void because they had no opportunity to be *heard,* even though the decisions had major financial consequences for them. The applicants were not in the same position as the representatives of the Netherlands who took part in the meetings of the Committee on Duty-Free Arrangements and who, moreover, were under no obligation to support an application put forward by the applicants. At national level, the procedure was limited to presentation of an application by the applicants and verification by the national authorities of the existence of sufficient ground for that application. The applicants submit to the Court a letter from the Netherlands Ministry of Finance indicating the conditions which the applications were required to meet. Case 294/81, *Control Data Belgium NV,* in which the Court, in a judgment of 17 March 1983, rejected the same argument in similar proceedings, can be distinguished from the present case inasmuch as the applicant in that case was relying solely on an infringement of essential procedural requirements. In this case, neither the group of experts nor, *a fortiori,* the applicants were consulted. Moreover, the applicants have relied upon an infringement of the general principles of law, which is more than just an infringement of procedural requirements (judgment of 13. 7. 1966, Joined Cases 56 and 58/64 *Consten and Grundig* v *Commission* [1966] ECR 299).

(g) The applicants invite the Commission to produce written *evidence* that the time-limits laid down in Articles 5 and 6 of Regulation No 1575/80 have been observed. Even though the defendant's letters were dated 11 January 1983, that does not mean that they were sent on the same date.

(h) The applicants emphasize that Article 10 of Regulation No 1430/79 cites seven sets of circumstances which give rise to a special situation. In *Article 11,* remission on the grounds of those

circumstances is conditional upon the goods having been destroyed, delivered free of charge to charities or re-exported. Although the opening words of Article 11 (1) show that that article merely lays down detailed rules for the cases referred to in Article 10, the defendant apparently now wishes to apply the conditions laid down in Article 11 to remissions granted on the basis of Article 13. If the Community legislature had wished to make the conditions laid down in Article 11 applicable to the situations provided for in Article 13, it would have clearly indicated its intention to do so. The re-export in question in the examples now given by the defendant is not a special circumstance but merely a condition of remission within the meaning of Article 10.

It should be noted that Article 13 (3), as adopted in Council Regulation No 1672/82 (Official Journal L 186, 30. 6. 1982, p. 1), provides that remission may be made subject to special conditions. However, the import duties at issue here were entered in the accounts before 1 July 1982 so that Article 13, as amended, does not apply to the present application. It is only under Article 13 (3), as amended, that re-export can in fact be imposed as a special condition, not under Article 13 in the form in which it was applicable in this case.

(i) The applicants submit that the wording of Article 13 of Regulation No 1430/79 reflects the approach adopted by the Court in relation to the expression *force majeure*, as used in various regulations. According to that approach, it is necessary to bear in mind the legal context in which that concept must produce its effects, the special nature of the public law relationship existing between undertakings and the national administration, and the aims of the regulation in question. It appears from the Court's judgments that "the concept of *force majeure* is not limited to absolute impossibility but must be understood in the sense of unusual circumstances, outside the control of the importer or exporter, the consequences of which, in spite of the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice" (judgment of 17. 12. 1970 Case 11/70, *Internationale Handelsgesellschaft* [1970] ECR 1125).

The applicants are surprised to note that the defendant considers that they did not take sufficient care, something which contradicts many other statements referring to "the absence of negligence or deception" on the part of the applicants. The defendant can therefore no longer contend that the applicants acted without sufficient care and can only claim that there are no special circumstances.

The applicants also emphasize that the general interest requires that trade between Member States not be hindered by overly restrictive obligations. No doubt experienced customs agents such as the applicants can detect forgeries, but improper issue of certificates as a result of the unlawful act of the customs authorities of the country, from which the goods come or in which they originated is a circumstance entirely beyond their control. Moreover, the fact that the certificates were invalid did not emerge until after a particularly long investigation carried out by the Netherlands authorities.

A customs agent has neither the means nor the powers to carry out such an investigation.

A customs agent cannot act as agent for its clients since Article 55 of the General Law on customs and excise requires that customs agents act in their own name. The Netherlands customs authorities take no account of the concept of agency and import duties payable are deducted from the applicants' current account.

In order to protect their interests, the applicants would have to require each of their clients to lodge a guarantee equal to the normal rate of duty and to maintain that guarantee for the period of several years during which additional duty could be demanded. That would be unacceptable to the applicants' clients.

The fact that the importation is carried out by a customs agent has advantages not only for the clients but also for the authorities who have the benefit of the agent's experience and of the fact that it has a current account.

In the context of the plea of *force majeure,* it is important to note that, in a case such as the present one, the Netherlands authorities granted a remission of duty both on grounds of equity and in the light of the special circumstances of the case in respect of import duties to which Regulation No 1430/79 was not applicable on account ot the date on which it came into force. It was not a case of applying legislation of a Member State which was subsequently replaced by Community rules, but rather of granting a remission on equitable grounds. The Court of Justice has not only based its own decisions on the practice of the national authorities but has also recognized the principle of equity.

The applicants point out that the certificates of origin furnished were actually issued by the competent authorities of the exporting State declared on those certificates, so that the applicants had no reason to doubt the validity of the certificates. The requirement that the consequences of an exceptional event must also be umforeseeable if the concept of *force majeure* is to be relied upon is to be found neither in the law of the Member States nor in the case-law of the Court of Justice.

It is significant that the Netherlands administration informed the applicants that proceedings for the recovery of the sums due would not be pursued "in the light of the special circumstances" and "on equitable grounds", as regards the import duties to which Regulation No 1430/79 did not apply by virtue of the date on which it came into force.

Finally, the applicants rely on the expectations raised by the customs authorities as regards the validity of the certificates furnished and contend that those expectations should be met when applying Regulation No 1430/79. The customs authorities are not required to carry out a thorough and systematic investigation, but when the national authorities carry out an investigation in a particular case because they suspect that clients of the customs agents have committed offences, they should act so as to limit as far as possible the damage suffered by third party undertakings.

Summary of the defendant's observations

The *defendant* emphasizes that what gives rise to the obligation to pay import duties is the act of bringing certain goods into the Community's customs territory. However, it may subsequently be discovered that the imported goods have left the customs territory or have been destroyed. In such cases, a customs debt is no longer justified. The Council adopted Regulation No 1430/79 so as to be able to cancel the customs debt in such cases.

That regulation mentions four different situations and a residual category. It has proved impossible until now to define in general terms the cases which fall into the residual category since the knowledge and experience necessary to do so are still lacking. Thus, cases falling into the residual category must be defined by what is called the committee procedure.

In the relatively numerous cases which have been referred to the defendant under Article 13 of the Council regulation, the defendant has always followed the spirit of the Council regulation, and consequently it has only granted remissions or repayments when, by reason of special circumstance, the goods in question were no longer within the customs territory, or had been placed under another customs procedure, placed in free circulation, destroyed, and so on.

In two cases, for example, duty was reimbursed which had been paid at the time of importation of vehicles bought in the United States but which did not comply with the legislation in force in the United Kingdom and which, for that reason, had to be re-exported.

In this case, there is no question of the goods having been re-exported or destroyed, nor of the application of a higher tariff than that provided for under the Common Customs Tariff; the goods were placed in free circulation in the usual way and have remained in the Community's customs territory. Moreover, the import duty levied by way of the demand for additional duty is at the rate applicable to the goods, having regard to their nature and their origin.

(a) With regard to the argument that the Commission's decision infringes the obligation *to state the reasons* on which it was based, the defendant points out that it is sufficient if the decision sets out in a concise but clear and relevant manner the principal issues of law and of fact upon which it is based and which are necessary in order that the reasoning which led the Commission to adopt that decision may be understood. In this case, the preambles to the decisions refer in each case first of all to the applications presented by the Netherlands authorities and also contain a detailed statement of the circumstances on the basis of which a remission of import duties is being sought. Two of the arguments on the basis of which the applicants are seeking the remission are mentioned, namely that "the customs agent acted in good faith" and that "the customs authorities could have informed them earlier of their suspicions".

The defendant does not dispute the first argument. On the other hand, it emphasizes in the third recital in the preamble that good faith alone is not sufficient if special circumstances have not been shown to exist.

In that connection, the defendant states firstly that a customs agent, since he makes the declaration in his own name and on his own account, is himself responsible for the importation, which implies that he is also liable for any defect in the certificates furnished on that occasion. The question of good faith is independent both of the proof of special circumstances (because the latter is a distinct condition) and of proof of liability.

Secondly, the defendant points out that if the arguments put forward by the applicants are sufficient to obtain a remission, investigations carried out by the Member States after importation would no longer have any purpose since the demand for additional duty to which such investigations could, in an appropriate case, give rise and which is the very purpose of such investigations could no longer be made.

Finally, with regard to the argument advanced by Van Gend & Loos to the effect that the Netherlands customs authorities ought to have informed that applicant of the results of the investigation that it was carrying out while it was in progress, the decision states that the Netherlands administration could not be accused of any negligence on that point. It cannot therefore constitute a special circumstance.

The applicants complain that the defendant has advanced reasons for its decision before the Court that it did not state in the decisions themselves. However, the arguments put forward by the defendant before the Court which describe in detail the practice which has

been followed until now are solely intended to provide information which might be useful in considering the application, and not to advance further grounds for the decisions. Not only was there no need to supply that information as grounds for the individual decision at issue, but the quantity of information involved is such as to make it impossible to have included it in the preambles to the decisions.

The applicants also complained that the defendant did not take account of the special circumstances relied upon by them (misrepresentation and fraud on the part of the their clients, issue of certificates by the public authorities . . .). However, the defendant has explained why the situation was not attributable to special circumstances and why therefore it was no longer obliged to consider the reasons put forward by the applicants. Their situation was, in fact, assessed in the light of the criteria laid down in Article 13 of Regulation No 1430/79.

When the defendant states that the applicants' good faith is not disputed, that does not mean that its existence is recognized but merely that that second condition does not need to be considered since the first has not been met.

(b) In their second argument the applicants dispute the defendant's contention that the grant of a remission would nullify the effect of *checks regularly carried out after importation,* on the ground that repayment or remission of import duties generally takes place precisely in connection with facts which only emerge during subsequent checks. The defendant states that it is not clear from either the preamble to Regulation No 1430/79 or the terms of the regulation itself that that regulation was intended to cover circumstances which only emerged during subsequent investigations. The examples cited by the defendant show that in practice the situations which arise rarely, if ever, relate to investigations made after importation, but are often concerned with facts which only emerge after the goods have been put in free circulation rather than facts which already exist at the time the goods are so placed. The defendant points out, however, that it never claimed that "remission of duty must be excluded if an investigation is carried out after importation".

(c) Van Gend & Loos puts forward a third argument in which it claims that it did not, as the decision addressed to it states, complain of the lack of *care on the part of the Netherlands authorities* in their investigations, but the lack of care of the Netherlands customs authorities when they accepted the declaration of the goods made by the applicant for the purpose of putting the goods into free circulation. However, the recital in the preamble to the decision dealing with that point does not contain any such allegation. It should be emphasized, moreover, that it is not appropriate in an investigation which, like the one in this case, was unusually long and complicated to communicate information to persons directly or indirectly concerned. Finally, the role of the customs authorities when they accept declarations is the relatively passive one of establishing whether or not the declaration is complete. In many cases, internal instructions do not permit customs officers to release information which may be in their possession concerning pending investigations.

(d) The applicants point out next that the *criteria* used by the defendant in applying Article 13 are not clear even though recourse must be had to the procedure laid down in that article to define the situations to which it refers. However, the defendant maintains that if it was in a position to identify criteria which could be used generally, it would certainly incorporate them in a regulation; that is not yet possible. Because of the lack of a precise definition of the concept of "special circumstances", the defendant has a certain discretion in defining the cases to which it applies. The decision which it takes in a particular case cannot be regarded as

unlawful unless it could not reasonably arrive at a conclusion as to whether or not special circumstances existed, something which has not been proved in this case.

(e) As regards the applicant's argument that the Commission's decisions contain no information allowing them to verify that the defendant adopted its decision in accordance with the procedure laid down in Article 25 of Regulation No 1430/79, the defendant points out that the legal basis for the decision, and hence the procedure to be followed, is to be found in Article 5 of Commission Regulation No 1575/80 and not in Article 25 of Regulation No 1430/79. However, Regulation No 1575/80 does not provide for an opinion to be expressed by the *Committee on Duty-Free Arrangements* or for a vote within that committee, but only for a decision of the Commission to be taken after "consulting a group of experts composed of representatives of all Member States meeting within the framework of the Committee on Duty-Free Arrangements to examine the case in question". In that connection, the second recital in the preamble to the decision states that, in accordance with that article, "a group of experts composed of representatives of all the Member States met on 26 November 1982 and on 8 December 1982 within the framework of the Committee on Duty-Free Arrangements to examine the case".

The applicants are confusing that procedure with the one used to identify the cases to which may be applied the first paragraph of Article 13 of Regulation No 1430/79 and the procedural steps which must be taken to that end. According to the second paragraph of Article 13 of Regulation No 1430/79, recourse is to be had in such cases to the procedure laid down in Article 25, which in its turn refers to Article 9 (2) and (3) of Regulation No 1798/75, and it is this regulation which requires the opinion of the Committee on Duty-Free Arrangements.

(f) With regard to the argument that the applicants ought to have been given an opportunity to be *heard*, it should be emphasized that the applications in the procedures which led to the adoption of the decisions were made by the Netherlands. The representatives of the Netherlands had ample opportunity, during the two meetings of the Committee on Duty-Free Arrangements, to put forward any information or arguments that they considered significant. During the procedure at national level, Van Gend & Loos and Bosman had an opportunity to put forward all their arguments. Moreover, the complete file on the matter was submitted to the Committee. In its judgment of 17 March 1983 (Case 294/81 *Control Data Belgium* v *Commission* [1983] ECR 911, paras. 16 and 17), the Court rejected the same argument in similar proceedings concerning exemption from customs duties for scientific apparatus on the ground that the procedure laid down in the relevant Community legislation had been followed and that the applicant had been able to state its arguments in full through the national authorities. It should be noted that not only do the decisions in the present case and those in *Control Data Belgium* contain a recital in the preamble concerning consultation with a group of experts but that those recitals are drafted in almost identical terms. The applicants do not accept the parallel drawn with the *Control Date Belgium* case because, unlike the latter undertaking, they are relying not solely on infringement of essential procedural requirements but also on infringement of the general principles of law. The defendant points out that the applicants surely did not wish to state that the requirements which the statement of reasons for a decision must satisfy depend on the type of action which could subsequently be brought against that decision.

(g) As regards the invitation to the Commission to the Commission to

produce written *evidence* that the time-limits have been complied with, the defendant points out that the applications at issue were received on 11 October 1982 and the decisions were adopted on 10 January 1983, so that the time-limit of three months from the date on which the applications were received has been complied with. Those dates are in fact mentioned in the decisions. Notice of the decisions was given to the Netherlands on 11 January 1983 and was thus well within the 30 day period required by the rules governing notice. The Permanent Representation of the Netherlands to the Communities acknowledged receipt of the decisions on the same day. The defendant has submitted documents to the Court in support of its statements.

(h) As regards the argument based on the judgments of the Court in relation to the concept of *force majeure*, the defendant considers that the situations provided for in Article 13 may, in certain cases, constitute examples of *force majeure*. It points out, however, that the Court has held that "the concept of *force majeure* is not identical in the different branches of law and the various fields of application" (judgment of 11 July 1968, Case 4/68 *Schwarzwaldmilch* v *Einfuhr- und Vorratsstelle* [1968] ECR 377). Moreover, Article 13 certainly does not deal exclusively with cases of *force majeure*. In the present applciations, there is no question of *force majeure* because that would require not only an unusual event but also that the consequences of that event could not have been foreseen and that the person concerned had shown all due diligence (judgment of 11 July 1968, cited above). It cannot be claimed, however, that the discovery that the certificates of origin were invalid was wholly unforeseeable for a person exercising the profession of customs agent, who knows that acceptance of a declaration by the customs does not constitute a guarantee against possible further demands for duty. He also knows that the risk is greater in regard to certain types of goods or certain transactions. Moreover, a customs agent must show all due diligence when he concludes a contract involving his making a declaration in his own name but on behalf of another person. There are other ways of making such declarations, such as an agency agreement under which the principal remains liable for payment of whatever import duty is due. The customs agent can also require that security be put up, or he can take out insurance. His fees should also take account of the risk of loss which he runs. The fact that Netherlands legislation makes the applicants themselves liable is not sufficient in itself to warrant recognition of the existence of special circumstances.

Article 55 of the General Law on customs and excise applies only when the applicants act as customs agents. However, if one of the applicants considered that the risk was too great to be undertaken in its capacity as customs agent, it could, under Article 46 of the aforementioned law, undertake it as a direct agent (in which case the principal himself would be liable).

Finally, the argument regarding the expectation raised by the Netherlands authorities concerning the validity of the certificates disregards both the relevant Community provisions and the nature of the customs authorities' duties when they accept declarations. Article 7 of Council Directive 79/695 of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation (Official Journal L 205, p. 19) provides that declarations are to be "accepted by the customs authority immediately" if they comply with certain purely formal conditions. Article 10 (2) of that directive provides that that is to be "without prejudice to either any subsequent verification ... or the possible consequences of applying the provisions

in force, particularly as regards any change in the amount of import duty charged on these goods". Having regard to the very large number of declarations made each day, the relatively few staff and the need to complete customs formalities rapidly, particularly at frontiers, it is practically impossible to check the validity of declarations immediately.

(i) The applicants appear to think that the only reason why the defendant considers that there are no special circumstances in this case is that the imported goods were neither destroyed, nor delivered free of charge to a charity nor re-exported.

However, the defendant did not rely upon any such negative criterion. Rather, it considered whether the arugments put forward in the Netherlands application in support of the contention that special circumstances existed were adequate.

It is not possible to draw from the examples cited by the defendant a general rule to the effect that special circumstances only exist in cases of that kind. It is not correct, therefore, to maintain that henceforth the Commission intends to extend the conditions laid down in *Article 11* of Regulation No 1430/79 to applications under Article 13.

IV — Oral procedure

At the sitting on 5 April 1984 oral argument was presented on behalf of the applicant by L J. Hopmans and on behalf of the Commission of the European Communities by A. Haagsma, acting as Agent.

The Advocate General delivered his opinion at the sitting on 17 May 1984.

Decision

1 By applications lodged at the Court Registry on 30 May and 10 October 1983 respectively Van Gend & Loos NV, whose registered office is at Utrecht, and Expeditiebedrijf Wim Bosman BV, whose registered office is at 's-Heerenberg, requested the Court pursuant to the second paragraph of Article 173 of the EEC Treaty to declare void two decisions adopted by the Commission on 10 January 1983 concerning applications made by the undertakings to their national authorities for remission of import duties previously collected by the Netherlands authorities.

2 The applicants, both customs agents, imported into the Netherlands textile products said to have originated in Egypt, Morocco and Turkey at the preferential rate of duty applicable for those countries. On investigation, the Netherlands customs authorities found that the goods had not originated in

the above-mentioned countries, and that consequently a higher rate of duty should have been paid. They therefore issued a demand for additional duty to the applicants.

3 The applicants denied that additional duty was payable and applied to the Ministry of Finance of the Kingdom of the Netherlands for a remission of import duties on the basis of, in particular, Article 13 of Council Regulation No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (Official Journal L 175, p. 1) and Commission Regulation No 1575/80 of 20 June 1980 laying down provisions for the implementation of Article 13 of Regulation No 1430/79 (Official Journal L 161, p. 13). Both applications were submitted to the Commission in accordance with the procedure laid down in Regulation No 1575/80.

4 Article 13 of Regulation No 1430/79 provides that import duties may be repaid or remitted "in situations resulting from special circumstances in which no negligence or deception may be attributed to the person concerned". In support of their request for remission, the applicants relied in particular on the fact that the certificates of origin were issued by the customs authorities of the countries indicated upon them and that the applicants believed, in good faith, that those certificates were valid.

5 In the two decisions of 10 January 1983 which are being challenged in this case, the Commission held, for reasons stated in identical terms, that "the customs agent, by declaring the goods with a view to putting them into free circulation in his own name but on behalf of another, assumed an obligation to pay any import duty which might be payable in respect of the goods. The fact that the customs agent, in good faith, presented movement certificates and T 2 L documents which were subsequently found to be invalid does not constitute special circumstances within the meaning of the first paragraph of Article 13 of Regulation No 1430/79, such as to justify remission of import duty legally due. The concept of special circumstances is independent of the concept of good faith referred to in the first paragraph of Article 13 of the said regulation. Both conditions must be met before the remission applied for may be granted. Furthermore, remission in those circumstances would nullify the effect, when the declaration with a view to putting the goods into free circulation is made by the customs agent in his own name, of subsequent checks carried out by the customs authorities of the Member States which show that a movement certificate or a T 2 L document on the basis of which a preferential rate of duty has been levied is not valid". As regards Van Gend & Loos, the Commission stated further that "no fault whatsoever can be found with the way in which the Netherlands customs authorities carried

out the investigation which led to the discovery of the offence which had been committed". Consequently, the Commission refused both applications.

6 The applicants challenge both decisions on two grounds, namely breach of the Commission's obligation to state reasons for its decisions and wrongful refusal to grant a remission of duty.

The statement of reasons for the Commission's decisions

7 The applicants' first submission in this regard is that there was a breach of the procedural requirements. They contend that since the contested decisions referred neither to the existence nor to the contents of a proposal or an opinion of the Committee on Duty-Free Arrangements, they are unable to ascertain whether the decisions were adopted in accordance with the procedure laid down in Regulation No 1430/79. Moreover, the procedure followed by the Commission gave the applicants no opportunity of being heard even though the decisions at issue had significant financial consequences for them.

8 In that connection, it should be pointed out firstly that the decisions at issue were adopted pursuant to Article13 (1) of Regulation No 1430/79. The procedure for adopting such decisions is governed by Regulation No 1575/80. It comprises several stages, some of which take place at national level (submission of the application by the undertaking concerned, preliminary examination of the application by the customs authorities), and some at Community level (submission of the application to the Commission, examination of it by the Committee on Duty-Free Arrangements, consultation of a group of experts, decision by the Commission, notification to the Member States concerned).

9 It may be seen from the preambles to the decisions at issue, which are not contested on this point, that the required procedure was followed in this case. That procedure allowed the applicants to put all their arguments to the Netherlands authorities. All the documents on the file were available both to the Committee on Duty-Free Arrangements and to the Commission. In those circumstances, the complaint based on a breach of the procedural requirements must be dismissed.

10 Next, the applicants contend that the contested decisions did not dispute the existence of the special circumstances relied on by the applicants to justify

the remission of customs duty. In particular, the statement of reasons for the decisions makes no reference to the fraud committed by the applicant's clients, nor does it refer to the fact that the false certificates were issued by the customs authorities of the countries of origin and that the applicants thus had no reason to suspect that those certificates were invalid.

11 Those arguments are, however, irrelevant. The decisions at issue are based on the ground that there were no "special circumstances" in this case within the meaning of Article 13 of Regulation No 1430/79. The preambles to the decisions state that the concept of special circumstances is independent of the concept of good faith referred to in the same provision and that both conditions must be met in order to quality for a remission of duty. In the light of that argument, therefore, it was not necessary to dispute the existence of circumstances likely to prove the good faith of the applicants, since that good faith was not at issue. Moreover, even if the arguments put forward by the applicants proved not only their good faith but also the existence of special circumstances within the meaning of the aforementioned Article 13, the Commission has indicated in a way which is sufficient for the purposes of Community law why those circumstances do not justify a remission.

12 The applicants also contest the statement in the preambles to the two decisions to the effect that granting a remission on the basis of the good faith of the undertakings concerned would nullify the effect of subsequent investigations carried out by the customs authorities for the purpose of checking the validity of the documents on the basis of which a preferential rate of duty had been levied. They emphasize that remission of import duty generally takes place on the basis of facts which only emerge during a subsequent investigation.

13 The Court shares the Commission's opinion on that point. It cannot be denied that verifications carried out after importation would be largely deprived of their usefulness if the use of false certificates could, of itself, justify granting a remission.

14 The submission based on breach of the Commission's obligation to give reasons for its decisions must therefore be rejected.

The substance of the case

15 The applicants' principal argument contests the interpretation put forward by the Commission of the "special circumstances" referred to in Article 13 of Regulation No 1430/79. According to the applicants, the meaning of that term is the same as that given by the Court to the term *force majeure* in Community law. The applicants submit that the Court has held that that term is not limited to absolute impossibility but must be understood in the sense of unusual circumstances, outside the control of the importer or exporter, the consequences of which, in spite of the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice. In this case, they contend, the fact that the certificates issued were invalid was due to an unlawful act on the part of the customs authorities of the country of consignment and only became apparent after a particularly long investigation carried out by the Netherlands authorities and which a customs agent would have had no means of carrying out.

16 With regard to that argument, it is sufficient to note that even if Article 13 of Regulation No 1430/79 can be interpreted as being identical in meaning to the concept of *force majeure*, recognition of a case of *force majeure* none the less presupposes that the external cause relied upon has irresistible and inevitable consequences to the point of making it objectively impossible for the persons concerned to fulfil their obligations. In this case, since the applicants are competent professionals, the fact of having been furnished with invalid certificates of origin cannot be regarded as an unforeseeable and inevitable circumstance which occurred in spite of the exercise of all due care. A customs agent, by the very nature of his functions, renders himself liable both for the payment of import duty and for the validity of the documents which he presents to the customs authorities. As regards the argument that the applicants were not able to recover their loss from their clients because the latter had gone into liquidation, it should be observed that Article 13 of Regulation No 1430/79 is manifestly not intended to protect customs agents against the consequences of their clients going into liquidation.

17 The applicants' argument that the fact that the certificates of origin were issued by the customs authorities of the countries named in them constitutes a "special circumstance" within the meaning of the aforementioned Article 13 must also be rejected. The Commission did not exceed the discretion granted to it by Article 13 of Regulation No 1430/79 in deciding that that fact was one of the professional risks which a customs agent, by the very nature of his functions, runs.

18 With regard to the applicants' complaint that the Commission was obliged by the second paragraph of Article 13 to indicate at the outset in its decision the criteria which it intended to use in applying the aforementioned article, it must be observed that it is clear from the first paragraph of the above-mentioned Article 13 that until such time as a list of the special circumstances within the meaning of that provision can be drawn up, it is for the Commission to indicate in each case whether or not such circumstances exist and to give reasons for its decision on that point. The defendant has in fact done so. The defendant was therefore not obliged, in that situation, to draw up a list of criteria pursuant to the second paragraph of that provision.

19 Finally, Van Gend & Loos complains that the national authorities showed a lack of due diligence in not verifying the certificates at issue when the declaration was made at the time of importation. Because they did not do so, the authorities allowed the applicant to entertain a legitimate expectation that the documents furnished were authentic. The Commission should have taken account of that fact.

20 That complaint must also be rejected. A customs agent cannot entertain a legitimate expectation with regard to the validity of certificates by virtue of the fact that they were initially accepted by the customs officers of a Member State. The role of those officers in regard to the initial acceptance of declarations in no way prevents the customs authorities of the Member States from subsequently checking their veracity, nor does it prevent effect being given to the consequences of those checks, as is clear in particular from Article 10 (2) of Council Directive 79/695 of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation (Official Journal L 205, p. 19).

21 Consequently, the submission that the remissions were wrongfully refused cannot be accepted. The applications must therefore be dismissed in their entirety.

Costs

22 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submissions, they must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the applications;**

2. **Orders the applicants to pay the costs.**

Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 13 November 1984.

For the Registrar

H. A. Rühl

Principal Administrator

G. Bosco

President of the First Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 17 MAY 1984 [1]

Mr President,
Members of the Court,

1. The Court is called upon to rule on two parallel actions brought by Netherlands undertakings seeking to have the decisions by which the Commission found that remission of customs duties was not justified declared void. The central issue of both disputes is the interpretation of Article 13 of Council Regulation No 1430/79 of 2 July 1979 (Official Journal L 175, p. 1) which has already been considered by

1 — Translated from the Italian.