JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
27 February 2003 *

In Case T-329/00,

Bonn Fleisch Ex- und Import GmbH, established in Troisdorf (Germany), represented by D. Ehle, lawyer, with an address for service in Luxembourg

applicant,

v

Commission of the European Communities, represented by X. Lewis, acting as Agent, and M. Núñez-Müller, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of the Commission's decision of 25 July 2000 finding that the remission of import duties is not justified in a particular case (REM 49/99),

* Language of the case: German.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges,

Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 10 September 2002,

gives the following

Judgment

Legal and factual background

Legislation concerning the Community tariff quota for frozen beef and import licences

1 In accordance with Article 1(3) of Regulation (EEC) No 3392/92 of 23 November 1992 opening and providing for the administration of a Community tariff quota for meat of bovine animals, frozen, falling within CN code 0202 and products falling within CN code 0206 29 91 (1993) (OJ 1992 L 346, p. 3), the Council

opened, for 1993, a Community tariff quota for frozen beef (also known as 'the GATT quota') and set an import duty applicable to that quota of 20%.

2 On 22 December 1992, the Commission adopted Regulation (EEC) No 3771/92 laying down detailed rules for the application of the import arrangements provided for in Regulation No 3392/92 (OJ 1992 L 383, p. 36). In order to qualify for the quota, operators had to submit applications to participate to the competent Member State authorities (Article 3). After those applications had been forwarded to the Commission, it had to decide as soon as possible to what extent applications might be accepted (Article 5(1)). Imports of quantities by operators who had thus obtained rights to import were to be subject to presentation of import licences (Article 6(1)). Those licences were to be issued on application and in the names of the operators who had obtained rights to import (Article 6(2)). Licence applications could be lodged solely in the Member State where the application to participate had been submitted (Article 6(3)).

3 Article 8(1) of Regulation No 3771/92 refers to Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ 1988 L 331, p. 1). According to the version of that regulation applicable at the time of the facts of the present case, all licences were to be drawn up in at least two copies, the first of which was to be issued to the applicant and the second to be retained by the issuing agency (Article 19(1)). On application by the titular holder of the licence and on submission of copy No 1 of the document, one or more extracts from those documents could be issued by the competent agencies of the Member States, the extracts in question also being drawn up in two copies, one for the applicant and the other for the issuing agency (Article 20(1)). Licence extracts were to have the same legal effects as the licences from which they were extracted, within the limits of the quantity in respect of which such extracts were issued (Article 10).

4 Contrary to the previous legal position, Regulation No 3719/88 allowed import licences to be divided and the rights conferred by them were transferable. The transfer could be made during the period of validity of the licence in question and was effected by entering the name and address of the transferee on the licence or, where appropriate, on the extract therefrom. It was certified by the stamp of the issuing agency and took effect from the date of the entry; the transferee could neither further transfer his rights nor transfer them back to the titular holder (Article 9).

5 Since those licences and licence extracts and the guaranteed rights to import had become marketable between economic operators, a market developed in that area. Certain provisions of Regulation No 3719/88 were designed to forestall the risk of circumvention of the import system for agricultural products.

6 Article 28 states, in particular:

'1. Where necessary for the proper application of this Regulation, the competent authorities of the Member States shall exchange information on licences and certificates and extracts therefrom and on irregularities and infringements concerning them.

2. Member States shall inform the Commission as soon as they have knowledge of irregularities and infringements in regard to this Regulation.

3. Member States shall communicate to the Commission the names and addresses of the agencies which issue licences or certificates and extracts therefrom...

4. Member States shall also forward to the Commission impressions of the official stamps and, where appropriate, of the embossing presses of authorities empowered to act. The Commission shall immediately inform the other Member States thereof.'

7 In order to ensure compliance with the body of customs and agriculture legislation more generally, the Council adopted, on 19 May 1981, Regulation (EEC) No 1468/81 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters (OJ 1981 L 144, p. 1), as amended by Council Regulation (EEC) No 945/87 of 30 March 1987 (OJ 1987 L 90, p. 3).

8 According to Article 14a(1) of Regulation No 1468/81:

'Where the competent authorities of a Member State become aware of operations which are, or appear to be, contrary to the law on customs or agricultural matters and which are of particular interest at Community level, and in particular:

— where they have, or might have, ramifications in other Member States, or

— where it appears to the said authorities likely that similar operations have been also carried out in other Member States,

they shall pass on to the Commission as quickly as possible, either on their own initiative or at the reasoned request of the Commission, all relevant information, where appropriate in the form of documents or copies or extracts from documents, necessary to determine the facts so as to enable the Commission to coordinate the action undertaken by the Member States. The Commission shall pass this information on to the competent authorities of the other Member States.'

Purchase of the extracts in question by the applicant

9 The applicant is a beef importing company which, in October 1993, purchased from the Spanish company GESPA SL three import licence extracts dated 18 and 19 October 1993, purportedly issued by the relevant Spanish authorities (hereinafter 'the extracts in question'). Those extracts were numbered 36 20511395, 36 20511526 and 36 20511571. Balestrero Srl, an Italian company established in Genoa, acted as intermediary for the purchase. The Spanish companies Carnicas Sierra Ascoy SA, Jaime Salva Xumetra and Productos Valent SA were named as the titular holders of the import licences in question.

10 The extracts in question concerned the import of beef under the 1993 GATT quota opened by Regulation No 3392/92.

11 In December 1993, the applicant requested the release for free circulation of four lots of South American beef and presented, for that purpose, the extracts in

question. On presentation of those extracts, the customs office of Siegburg (Germany) authorised release for free circulation and imposed the reduced duty of 20%, in accordance with Article 1(3) of Regulation No 3392/92.

Alleged irregular nature of the extracts in question

12 Following a request by a Netherlands company for verification of the authenticity of licences for the import of beef within the framework of the GATT quota, the competent Spanish authorities stated that they had not issued the licences in question and that consequently those licences were forgeries. By fax of 20 August 1993, the relevant Spanish authorities alerted the Commission.

13 By a circular letter of 28 September 1993, the Commission informed the competent authorities in all Member States of the situation, asking them to be particularly vigilant regarding imports of beef and to alert the Commission of any irregularities discovered or suspected.

14 The Spanish authorities once again notified the Commission, by letter of 22 April 1994, of the forgery of numerous GATT quota import licences, enclosing the embossing stamps and comparisons of the authentic and forged signatures.

15 On 2 May 1994, the Commission sent examples of forged licences, impressions of stamps and forged and authentic signatures to the authorities of the Member States (Notice AM 40/94).

16 On 13 May 1994, the Spanish authorities sent to the Commission a list of valid licences and extracts issued in 1993 for the import of frozen beef. On 14 June 1994, the Commission forwarded that list to the competent departments of the Member States. In that same notice of 14 June 1994, the Commission asked the competent authorities of the Member States to check the validity of GATT quota licences and licence extracts submitted to customs offices in 1993 when beef was imported.

17 The Zollkriminalamt Köln (the Customs Investigation Office, Cologne, hereinafter 'the ZKA Köln') informed the Commission, by letter of 22 August 1994, that it had discovered three 1993 licences not included in the list of valid licences. Photocopies of the documents in question were sent by the Commission to the Spanish authorities and, on 24 October 1994, the Spanish authorities stated that they were forgeries.

18 By letters of 21 December 1995 and 8 August 1996, the ZKA Köln requested the Commission, with regard to the extracts in question, to ask the relevant Spanish authorities for confirmation of the provisional results of the investigation conducted, namely the fact that those authorities had not issued licence extracts numbered 36 20511395, 36 20511526 and 36 20511571.

19 The competent Spanish authorities replied, by letter of 11 February 1997, that they had not issued the extracts in question and that they were therefore forgeries. They confirmed that position in their reply of 7 July 1997 to a question from the Hauptzollamt Köln-Deutz and also in their reply of 1 August 1997 to a question from the Commission, adding furthermore that there were no licences corresponding to those extracts.

20 On 11 September 1997, the Genoa Public Prosecutor's Office commenced proceedings against the owners of Balestrero and an Argentinian intermediary

named Colle Garcia. The applicant, as civil claimant, was able to present its observations in those proceedings. By judgment of 4 May 1998, the accused parties, the owners of Balestrero and Colle Garcia, were sentenced to terms of imprisonment for, *inter alia*, forging the extracts in question which had been sold to the applicant.

The application for the remission of duties and Community legislation applicable

21 In so far as the products imported into Germany by the applicant on the basis of the extracts in question no longer qualified for preferential tariff treatment, the German customs authorities, on 29 March 1996, demanded that the applicant pay the import duties due, namely DEM 363 248.34.

22 On 10 July 1996, the applicant submitted to the Hauptzollamt Köln-Deutz an application for remission of import duties under Article 13(1) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1). Even though, since 1 January 1994, that regulation had no longer been in force, the substantive rules of the regulation remained applicable to situations that had occurred before it expired (see, to that effect, Case C-61/98 *De Haan* [1999] ECR I-5003, paragraph 13).

23 Article 13(1) of Regulation No 1430/79 provided:

'Import duties may be... remitted in situations resulting from special circumstances in which no negligence or deception may be attributed to the person concerned.'

24 However, Article 4(2)(c) of Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Regulation No 1430/79 (OJ 1986 L 352, p. 19) stated that 'production, even in good faith, for the purpose of securing preferential tariff treatment of goods entered for free circulation, of documents subsequently found to be forged, falsified or not valid for the purpose of securing such preferential tariff treatment' was not by itself a special situation within the meaning of Article 13 of Regulation No 1430/79.

25 The procedure for the remission of import duties was governed, in the present case, by the provisions of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 2, hereinafter 'the CCC'), and the implementing provisions thereof, laid down in Commission Regulation (EEC) No 2454/93 of 2 July 1993 (OJ 1993 L 253, p. 1, hereinafter 'the IP-CCC').

26 The IP-CCC provide that, where the relevant customs authority cannot take a decision on the basis of Article 899 et seq. of the IP-CCC, which set out a number of situations in which remission may or may not be granted, but 'the application is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned', the Member State to which that authority belongs is to transmit the case to the Commission (Article 905(1) of the IP-CCC). The file sent to the Commission is to include all the facts necessary for a full examination of the case presented as well as a 'statement, signed by the applicant for repayment or remission, certifying that he has read the case and stating either that he has nothing to add or listing all the additional information that he considers should be included' (Article 905(2) of the IP-CCC).

27 Article 906a of the IP-CCC states:

'Where... the Commission intends to take a decision unfavourable towards the applicant for... remission, it shall communicate its objections to him/her in writing, together with all the documents on which it bases those objections. The applicant for... remission shall express his/her point of view in writing within a period of one month from the date on which the objections were sent. If he/she does not give his/her point of view within that period, he/she shall be deemed to have waived the right to express a position.'

28 After consulting a group of experts composed of representatives of all Member States, meeting within the framework of the Customs Committee to consider the case in question, the Commission 'shall decide whether or not the special situation which has been considered justifies repayment or remission' (first paragraph of Article 907 of the IP-CCC).

29 In the present case, the Hauptzollamt Köln-Deutz informed the applicant, by letter of 15 June 1999, of the German Ministry of Finance's intention to bring the matter before the Commission, in accordance with Article 905(1) of the IP-CCC. The applicant was invited to submit its observations, which it did in a statement dated 30 June 1999.

30 By letter of 18 October 1999, the German authorities duly submitted the applicant's application for the remission of import duties to the Commission.

31 By letter of 7 December 1999, the applicant requested access to the Commission's file.

32 By letter of 12 May 2000, the Commission informed the applicant of its provisional analysis, according to which the conditions for allowing remission of import duties were not fulfilled. It invited the applicant to consult the file at the Commission's premises and to submit its observations within a time-limit of one month, in accordance with Article 906a of the IP-CCC.

33 On 26 May 2000, the applicant's agent was allowed to consult the file at the Commission's premises. The list of the documents in the file to which the applicant was given access is attached to a statement by the applicant's counsel of 26 May 2000.

34 By statement of 8 June 2000, the applicant submitted its observations on the Commission's letter of 12 May 2000.

35 In accordance with the first paragraph of Article 907 of the IP-CCC, the group of experts composed of representatives of all Member States met on 3 July 2000 within the framework of the Customs Committee to consider the applicant's application for remission of import duties.

36 On 25 July 2000, the Commission informed the German authorities of its decision finding that remission of import duties was not justified in a particular case (REM 49/99) and refusing the remission of import duties on beef from South America (hereinafter 'the contested decision'). According to the Commission, 'the circumstances of this case, whether taken in isolation or as a whole, do not constitute a special situation within the meaning of Article 13 of Regulation No 1430/79' (the contested decision, paragraph 36).

Procedure and forms of order sought

37 It was against that background that the applicant brought the present action on 25 October 2000.

38 The applicant claims that the Court of First Instance should:

— annul the contested decision;

— order the Commission to pay the costs.

39 The Commission claims that the Court of First Instance should:

— dismiss the action as unfounded;

— order the applicant to pay the costs.

40 The Commission failed to submit its rejoinder within the prescribed time-limit.

41 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure. As a measure of organisation of procedure, it put written questions to the parties and requested them to forward certain documents to it.

42 The parties presented oral argument and replied to the Court's oral questions at the hearing on 10 September 2002, in the course of which the Court of First Instance requested the Commission to lodge various documents by 7 October 2002. Following the lodging of the requested documents, the President of the Third Chamber closed the oral procedure on 25 October 2002.

Substance

43 The applicant puts forward two pleas in law in support of its application. The first alleges infringement of the rights of the defence and the second breach of Article 13(1) of Regulation No 1430/79.

The first plea in law, alleging infringement of the rights of the defence

44 The applicant submits that its rights of defence were infringed during the course of the administrative procedure. It considers, first, that the file to which it had access on 26 May 2000 at the Commission's premises was incomplete. It cites various relevant documents which were not included in the file that it consulted. It notes that, in its letter of 7 December 1999, it had requested 'access to all relevant documents from all the Commission's services'.

45 The Court of First Instance notes that, according to settled case-law, observance of the right to be heard must be guaranteed in procedures for the remission of import duties, in particular in view of the power of assessment enjoyed by the Commission when it adopts a decision pursuant to the general equitable provision contained in Article 13 of Regulation No 1430/79 (see, in particular, Joined Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99 *Kaufring and Others* v *Commission* [2001] ECR II-1337, paragraph 152, hereinafter 'the *Turkish Televisions* judgment').

46 However, in the context of an administrative procedure for the remission of import duties, the principle of respect for the rights of the defence implies only that the party concerned be placed in a position in which it may effectively make its views known as regards the evidence, including the documents, on which the Commission has based its decision. That principle therefore does not require the Commission, acting on its own initiative, to grant access to all the documents which may have some connection with the case at issue when an application for remission is referred to it. If the party concerned considers that such documents are relevant for establishing the existence of a special situation and/or the lack of deception or obvious negligence on its part, then it is for the party concerned itself to request access to those documents in accordance with the provisions adopted by the institutions under Article 255 EC (Case T-205/99 *Hyper* v *Commission* [2002] ECR II-3141, paragraph 63).

47 While the principle of respect for the rights of the defence imposes on the Commission a number of procedural obligations, it also implies a certain amount of diligence on the part of the party concerned. Accordingly, if the party concerned considers that its rights of defence have not been respected, or have not been adequately respected, in the administrative procedure, it is for that party to take the measures necessary to ensure that they are respected or, at the very least, to inform the competent administrative authority of that situation in good time (*Hyper* v *Commission*, cited above, paragraph 59).

48 It must be noted that, in the present case, the Commission informed the applicant, by letter of 12 May 2000, of its provisional analysis according to which the conditions for the remission of import duties were not fulfilled. In response to the applicant's request of 7 December 1999, the Commission invited the applicant to consult the file at the Commission's premises and to submit its observations within a time-limit of one month. Thus, on 26 May 2000, the applicant's agent consulted the file at the Commission's premises. The list of the documents in the file to which the applicant had access is attached to a statement by the applicant's counsel of 26 May 2000.

49 It must be pointed out that the applicant does not allege that it did not have access, in the course of the administrative procedure, to certain documents which formed the basis of the Commission's contested decision.

50 Furthermore, it should be noted that the applicant, in its observations of 8 June 2000 in reply to the Commission's provisional assessment of the application for remission of 12 May 2000, did not submit that any documents had been withheld when it was granted access to the file. Nor did the applicant, after having consulted the file at the Commission's premises on 26 May 2000, request the Commission to forward to it any other documents.

51 In the light of the content of paragraphs 45 to 47 above, the argument alleging that the file was incomplete must be rejected.

52 Secondly, the applicant disputes the confidentiality of certain documents. It submits that the Commission does not clearly indicate what criteria distinguish confidential documents from non-confidential documents. It cites, in that respect, a number of documents the confidential nature of which seems, to the applicant,

to be unjustified. It states that only documents the knowledge or copying of which could jeopardise Community interests can be considered confidential.

53 The applicant then notes that although the truly confidential documents should not be disclosed as they are, they should, however, at least have been summarised in a non-confidential document in order to allow the applicant's agent to examine their essential content.

54 The applicant further states, in its reply, that the right of access to the file implies a right to make photocopies of documents consulted. It bases this right both on practical considerations linked to the need to examine properly the documents in question, namely the need for a translation, consultation of experts, etc., and on German procedural rules (procedure before the financial courts) and Community procedural rules (Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (OJ 1994 L 46, p. 58) regulating, *inter alia*, copying charges).

55 The Commission observes that the applicant's arguments questioning the confidentiality of certain documents have been put forward only to found the allegation that there was an infringement of a right to make photocopies. It confirms that the applicant did not have the right to photocopy certain documents in the file, even though it could have copied out the content of those documents by hand. However, according to the Commission, the right of access to a file does not include a right to photocopy documents from the file.

56 The Court of First Instance finds that it is apparent, first, from the list of documents to which the applicant had access during the administrative procedure and, secondly, from the Commission's observations in its defence and the

applicant's observations in its reply, that, on 26 May 2000, the applicant had access to documents described as confidential by the Commission, but was merely prevented from making photocopies of them.

57 The documents in question, which were sent to the Court in pursuance of a measure of organisation of procedure, are all, with the exception of one document, communications between the administrative authorities of the Member States and the Commission, on the basis of Regulation No 1468/81 (see paragraph 8 above). Such communications are, in accordance with Article 19 of Regulation No 1468/81, of 'a confidential nature' and 'covered by the obligation of professional secrecy'. The other document is a letter of 10 May 1994 addressed to the Commission from The Hague Public Prosecutor's Office (arrondissementsparket) concerning a criminal inquiry in progress. Its content is also confidential (see Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)).

58 It follows that the documents that the applicant was prevented from photocopying during the administrative procedure were correctly described as confidential by the Commission.

59 Contrary to the applicant's claims, the right to access to the file in the context of a procedure for the remission of import duties does not imply, for the undertaking concerned, the right to make photocopies of confidential documents. It must be emphasised in that regard that an interested party does not, in principle, even have the right to consult the full text of confidential documents. Generally, as regards confidential documents, a party's right of access to the file is limited to access to a non-confidential version or summary of the documents in question (see, to that effect, Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others* v *Commission* [2000] ECR II-491, paragraphs 142 to 144 and 147).

60 In those circumstances, the first plea in law must be rejected in its entirety.

The second plea in law, based on a breach of Article 13(1) of Regulation No 1430/79

Preliminary observations

61 It must be noted that, according to settled case-law, Article 13(1) of Regulation No 1430/79 (see above, paragraph 23) constitutes a general equitable provision (see, in particular, Case 283/82 *Schoeller & Söhne* v *Commission* [1983] ECR 4219, paragraph 7, and the *Turkish Televisions* judgment, cited in paragraph 45 above, paragraph 216).

62 According to that provision, a person liable to pay customs duties who demonstrates both the existence of a special situation and the absence of obvious negligence and deception on his part is entitled to the remission of those duties (Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401, paragraph 134, and the *Turkish Televisions* judgment, cited in paragraph 45 above, paragraph 217).

63 It must however be noted that the remission of import duties, which can only be granted under certain conditions and in cases specifically provided for, constitutes an exception to the normal import procedure and, consequently, the provisions providing for such remission must be interpreted strictly (Case C-48/98 *Söhl & Söhlke* [1999] ECR I-7877, paragraph 52).

64 In that context, the Community judicature has held that the existence of a special situation is established where it is clear from the circumstances of the case that the person liable is in an exceptional situation as compared with other operators engaged in the same business (see Case C-86/97 *Trans-Ex-Import* [1999] ECR I-1041, paragraphs 21 and 22, and *De Haan*, cited in paragraph 22 above, paragraphs 52 and 53) and that, in the absence of such circumstances, he would not have suffered the disadvantage caused by the entry in the accounts *a posteriori* of customs duties (Case 58/86 *Coopérative agricole d'approvisionnement des Avirons* [1987] ECR 1525, paragraph 22, and the *Turkish Televisions* judgment, cited in paragraph 45 above, paragraph 218). Article 13(1) of Regulation No 1430/79 is thus intended to apply where the circumstances characterising the relationship between a trader and the administration are such that it would be inequitable to require the trader to bear a loss which it would not normally have incurred (*Eyckeler & Malt* v *Commission*, cited in paragraph 62 above, paragraph 132).

65 The second plea in law consists of two parts, which relate in particular to the two conditions to which the application of Article 13(1) of Regulation No 1430/79 is subject. In the first part, the applicant observes that it acted in good faith and that it cannot be criticised for any manifest negligence. The second part is based on the existence of a special situation within the meaning of Article 13(1) of Regulation No 1430/79.

First part: good faith and the lack of manifest negligence on the part of the applicant

66 The applicant submits a body of evidence demonstrating its good faith and thereby precluding any manifest negligence on its part. It points out, however, that the contested decision contains no allegation of obvious negligence.

67 The Commission submits that the applicant should have noticed the irregular nature of the extracts in question. The applicant was manifestly negligent, which precludes the application of Article 13(1) of Regulation No 1430/79.

68 The Court of First Instance notes that, in the contested decision, the Commission rejected the application for remission of import duties since 'the circumstances of this case, whether taken in isolation or as a whole, do not constitute a special situation within the meaning of Article 13 of Regulation... No 1430/79' (paragraph 36 of the contested decision). However, as the Commission acknowledged at the hearing, it made no mention, in the contested decision, of the other condition to which remission of duties is subject, namely the lack of deception and manifest negligence on the part of the party concerned.

69 It follows that the first part of the present plea in law is irrelevant and must therefore be rejected.

Second part: existence of a special situation within the meaning of Article 13(1) of Regulation No 1430/79

— Preliminary observations

70 In the second part, the applicant submits that by considering, in the contested decision, that the circumstances of the present case did not constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79, the Commission made an error of assessment.

71 In that regard, the Court of First Instance would point out that, in order to determine whether the circumstances of the case in question constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79, the Commission must assess all the relevant facts (*Eyckeler & Malt* v *Commission*, cited in paragraph 62 above, paragraph 133; the *Turkish Televisions* judgment, cited in paragraph 45 above, paragraph 222, and *Hyper* v *Commission*, cited in paragraph 46 above, paragraph 93). Although in that regard it enjoys a discretionary power, it is required to exercise that power by genuinely balancing, on the one hand, the Community interest in ensuring that the customs provisions are respected and, on the other, the interest of the importer acting in good faith in not suffering harm which goes beyond normal commercial risk. Consequently, when considering whether an application for remission is justified, the Commission cannot take account only of the conduct of importers. It must also assess the impact on the resulting situation of its own conduct (*Eyckeler & Malt* v *Commission*, cited in paragraph 62 above, paragraph 133; the *Turkish Televisions* judgment, cited in paragraph 45 above, paragraph 225; and *Hyper* v *Commission*, cited in paragraph 46 above, paragraph 95) and the conduct of the national customs authorities (Case T-330/99 *Spedition Wilhelm Rotermund* v *Commission* [2001] ECR II-1619, paragraph 57).

72 The applicant's argument that the circumstances of the present case constituted a special situation within the meaning of Article 13(1) of Regulation No 1430/79 must be examined in the light of those principles. To that effect, the applicant submits first that it has not been established that the extracts in question were forgeries. Furthermore, the applicant refers to the impact of the conduct of the Spanish authorities and the Commission on the resulting situation.

— The extracts in question are not forgeries

73 The applicant first submits that the Commission adduced no proof in paragraphs 16 to 20 of the contested decision that the extracts in question were forgeries. In support of the claim that the contested licences are forgeries, the Commission relies only on statements from the relevant Spanish authorities and on the

judgment of the Tribunale de Genova (Regional Administrative Court, Genoa) of 4 May 1998. The Commission conducted no further inquiry.

74 According to the applicant, the extracts in question are not forgeries. They bear the authorised signature and are marked with the stamp valid at that time. They may be false but they were issued by Spanish civil servants. The applicant also points out that all the correspondence between the Commission and the Spanish authorities was conducted exclusively by Ms M for the Spanish authorities. Ms M, whose signature appears on the extracts in question, cannot be considered a source of objective information.

75 At the hearing, the applicant again relied on the transcript of the examination of Ms M, which took place on 24 October 2001 at the request of the Oberlandesgericht Köln (Higher Regional Court, Cologne). During that examination, Ms M declared that the signature on the letter from the Spanish authorities to the Commission of 22 April 1994 (see paragraph 14 above) was hers, although she had previously maintained that it was a forged signature.

76 The Court of First Instance notes that in accordance with Article 905(2) of the IP-CCC, '[t]he case sent to the Commission [by the customs authority dealing with the application for remission] shall include all the facts necessary for a full examination of the case presented'. It follows that it is in principle the responsibility of the national customs authority concerned to ensure that the file is complete in order to allow the Commission to take a decision. However, under Article 905(2) of the IP-CCC '[s]hould it be found that the information supplied by the Member State is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts, the Commission may ask for additional information to be supplied'.

77 In the present case, the Commission was fully entitled to state in the contested decision on the basis of documents sent to it, in particular declarations of the relevant Spanish authorities and the judgment of the Tribunale di Genova of 4 May 1998, that the extracts in question were forgeries ('Fälschungen'). No further inquiry on the Commission's part was necessary in that regard.

78 The Spanish authorities stated not only that the extracts in question were false (falsos), but they also explicitly described them as forgeries (falsificaciones) in their letter of 11 February 1997 addressed to Mr J. Poncet of the Unit on Coordination of Fraud Prevention. They confirmed in their reply of 7 July 1997 to a question from the Hauptzollamt Köln-Deutz and in their reply of 1 August 1997 to a question from the Commission that the extracts were false and had not been issued by the relevant Spanish authorities.

79 Furthermore, the judgment of the Tribunale di Genova of 4 May 1998 refers to the fact that the extracts numbered 36 20511395, 36 20511526 and 36 20511571 are essentially forgeries.

80 Finally, the German authorities themselves stated in their letter of 15 June 1999 (see paragraph 29 above) that the extracts in question were forgeries.

81 With regard to the argument that the extracts in question were issued with the collaboration of one or more Spanish officials, it must be noted that the Court of First Instance, in its judgment in *Spedition Wilhelm Rotermund* v *Commission* (cited in paragraph 71 above, paragraphs 57 and 58), recognised that the active complicity of an official of the customs authorities in question in a customs fraud

may constitute a special situation, within the meaning of Article 13(1) of Regulation No 1430/79, which would give rise to the remission of duties. However, in contrast to the case that gave rise to the cited judgment, no such complicity has been established in the present case. It must be pointed out that all the applicant's arguments concerning the involvement of Ms M or other Spanish officials in the issue of the extracts in question are based on pure supposition and not on any objective evidence. In any case, the transcript of the examination of Ms M, upon which the applicant placed great weight at the hearing, contains nothing to indicate such complicity on the part of Spanish officials in the issue of the extracts in question. Moreover, after being questioned on the issue at the hearing, the applicant withdrew its argument regarding the signature appearing on the letter of 22 April 1994. By that letter, the Spanish authorities informed the Commission of 'the forged signature [of Ms M] on the false licences'. The signature appearing on the letter is, however, Ms M's authentic signature.

82 Finally, the fact that the forged extracts contain a forgery of Ms M's signature is no reason to consider that that Spanish official is not a source of objective information.

83 The first circumstance put forward by the applicant has no factual basis and therefore does not constitute, in the present case, a special situation within the meaning of Article 13(1) of Regulation No 1430/79 giving entitlement to remission of duties.

— Impact of the conduct of the Commission and the national authorities on the resulting situation

84 The applicant observes that the national authorities are required to forward to the Commission impressions of the official stamps of the agencies which issue

import licences and specimen signatures of the people entitled to issue such licences. The Commission is required to inform the other Member States thereof.

85 However, on the one hand, the relevant Spanish authorities did not send the stamps and signatures used on import licences in 1993 to the Commission and to other national authorities in due time. On the other hand, the Commission did not seek to enforce that obligation.

86 The applicant also observes that, if the Commission, having been informed by the Spanish authorities of a number of irregularities on 20 August 1993, had immediately initiated an inquiry and fully informed the authorities of other Member States, it could have prevented the extracts in question coming onto the market. In those circumstances, it would be inequitable to require the applicant to bear a loss which it would normally not have incurred if the competent Spanish authorities and the Commission had not failed to fulfil their obligations (see *Eyckeler & Malt* v *Commission*, cited in paragraph 62 above, paragraph 132).

87 The Commission contends that it administered the tariff quota with all due diligence. Following the initial information provided by the Spanish authorities by fax of 20 August 1993, it informed the Member States by letter of 28 September 1993 of the appearance of forged licences, expressly urging them to be extra vigilant.

88 Furthermore, according to the Commission there was no incorrect conduct on the part of the Spanish authorities due to a purported failure to provide information. The Spanish authorities immediately informed the Commission on 20 August 1993, after it became aware of the first forgeries. When the imports took place in

December 1993, the Spanish authorities had no information concerning the forgery of the three extracts in question and the offences committed at the expense of the applicant. They have given unfailing assistance in clarifying the facts and sent the necessary information to the Commission and to the Italian and German authorities.

89 The Court of First Instance would point out, first of all, that, pursuant to Article 211 EC and the principle of good administration, the Commission was obliged to ensure the proper application of the GATT quota (see, to that effect, *Eyckeler & Malt* v *Commission*, cited in paragraph 62 above, paragraph 165).

90 It must then be noted that Regulations No 1468/81 and No 3719/88 impose mutual obligations on Member States and on the Commission to provide each other with information so as to facilitate the 'prevention and detection of infringements' of customs rules (see the second recital in the preamble to Regulation No 1468/81), and in particular of the rules concerning the GATT quota.

91 Thus, in accordance with Article 28(4) of Regulation No 3719/88 'Member States shall... forward to the Commission impressions of the official stamps and, where appropriate, of the embossing presses of authorities empowered to act [in the issue of import licences and extracts of such licences]'. Under the same provision, '[t]he Commission shall immediately inform the other Member States thereof'.

92 Next, Article 14a of Regulation No 1468/81 states that '[w]here the competent authorities of a Member State become aware of operations which are, or appear to be, contrary to the law on customs or agricultural matters... they shall pass on

to the Commission as quickly as possible, either on their own initiative or at the reasoned request of the Commission, all relevant information'. Under that same provision, the Commission is obliged to 'pass this information on to the competent authorities of the other Member States'.

93 It is essential that the Member States and the Commission comply with those obligations in order to ensure the effectiveness of the provisions cited above, which are designed to forestall and detect infringements of customs regulations. First, the detection by the customs authorities of the Member States of any forgeries would be hindered if those authorities did not have impressions of the official stamps used by the authorities of the other Member States for the purpose of issuing import licences and licence extracts. Secondly, where the authorities of a Member State find infringements, it is essential that they notify the Commission without delay; it will immediately inform the other Member States of any information likely to aid the detection of other irregular licences or extracts.

94 Generally, the provisions cited above allow the Commission to obtain from the authorities of the Member States the information required for the exercise of its monitoring duty with regard to the GATT quota.

95 First, in order to check whether the requirements of Article 28(4) of Regulation No 3719/88 were complied with in the present case, the Court of First Instance, by letter of 28 June 2002, requested the Commission to forward to the Court impressions of the official stamps that were in use when the applicant acquired the extracts in question; these had been sent by the Spanish authorities to the Commission on the basis of the provision cited above. The Commission was also requested to produce documentary evidence to show that it had informed the other Member States of those stamps in accordance with the requirement in Article 28(4) of Regulation No 3719/88.

96 By letter of 22 July 2002, the Commission forwarded to the Court of First Instance a letter from the Spanish authorities dated 18 March 1986 (note 28/86) by which those authorities forwarded to the Commission the embossing stamp ('selloen seco') of the Directorate-General for External Trade that was used on import licences for agricultural products at the time in question. However, neither the embossing stamp in question nor an impression of the official stamp was forwarded with the letter sent to the Court of First Instance.

97 It is clear, however, from the Commission's summary of the 125th joint meeting of the management committee on 'trade mechanisms' of 15 and 16 April 1986 that during that meeting 'examples of stamps issued by the relevant Spanish authorities... [were] distributed to the Member States'.

98 Since it did not receive 'the impressions of the official stamps', the Court of First Instance again requested the Commission, at the hearing, to submit the stamps used at the material time by the Spanish authorities for the purposes of issuing GATT quota import licences. It also requested the Commission to send to the Court copies of valid Spanish import licences issued in 1993 for the import of beef under the GATT quota.

99 Following that request, the Commission, by letter of 7 October 2002, sent the Court of First Instance a copy of the embossing stamp which was forwarded with the letter from the Spanish authorities dated 18 March 1986 (see paragraph 96 above) and had been passed on to the Member States during the meeting of 15 and 16 April 1986 (see paragraph 97 above).

100 It must, however, be noted that the impression of the embossing stamp does not correspond to the stamp that appears on the copies of the valid licences that were produced to the Court of First Instance. The Commission observes in its letter of

7 October 2002 that it questioned the Spanish authorities on that matter and that they 'confirmed that the stamp which was transmitted in 1986 was no longer in use in 1993'; they explained that the 1986 stamp referred to the 'Ministerio de Economia y Hacienda' whereas the 1993 stamp refers to the 'Ministerio de Industria, Comercio y Turismo'.

101 The same letter of 7 October 2002 also explains that 'a copy of the valid stamp in use in Spain in 1993 was sent [by the Spanish authorities] to the Commission on 22 April 1994'.

102 It must be pointed out that, by letter of 22 April 1994, the Spanish authorities did send the stamp that was in use in 1993 to the Commission. However, the purpose of that letter was to inform the Commission that the 1993 stamp had been withdrawn. The letter includes an impression of the new stamp for 1994 and of the former stamp and explains that '[t]he current stamp of the issuing body carries the lettering Ministerio de Comercio y Turismo, and not Ministerio de Industria, Comercio et Turismo (former stamp in use in 1993)'.

103 It is clear from the above that the Spanish authorities did not comply with the obligations arising from Article 28(4) of Regulation No 3719/88. They forwarded to the Commission the stamp used in 1993 for the issue of GATT quota import licences, at a time when that stamp was no longer valid.

104 Secondly, with regard to the mutual obligations arising from Article 14a of Regulation No 1468/81, it must be remembered that, by fax of 20 August 1993, the Spanish authorities notified the Commission of the existence of false Spanish licences and licence extracts for the import of beef under the 1993 GATT quota.

105 It is clear, however, that by failing to warn the national authorities of the other Member States as soon as possible of the problem of forged Spanish licences and extracts, the Commission failed to fulfil its duty of diligence. It must be noted that the Commission waited until 28 September 1993 before informing the competent authorities of all the Member States of the content of the fax of 20 August 1993.

106 In the present case, it was all the more essential that the Commission immediately inform the authorities of the other Member States because the Commission itself considered that the forgery of licences and extracts referred to in the fax of 20 August 1993 was not an isolated case. In its notice of 28 September 1993, the Commission referred to 'the increasing numbers of irregularities in connection with the import of beef into the Community'.

107 It must also be ascertained whether, in the present case, the Commission complied with its duty of sound administration with regard to the GATT quota by obtaining from the Spanish authorities and passing on to the authorities of other Member States 'all relevant information' within the meaning of Article 14a of Regulation No 1468/81.

108 In that regard, it must first be noted that the fax of 20 August 1993, by which the Spanish authorities informed the Commission of the irregularities discovered and sent it a copy of the forged documents, did not contain 'all relevant information' within the meaning of Article 14a of Regulation No 1468/81. Under that provision, the Spanish authorities were required to pass on to the Commission any information they possessed which could help to track down any other Spanish licence or extract forgeries. In the present case, that obligation required the Spanish authorities to forward not only the official stamp used for the issue of

import licences and extracts thereof — which was already required under Article 28(4) of Regulation No 3719/88 — but also the specimen signature of the person or persons authorised to issue such licences or extracts and the numbers of the licences and extracts already issued under the GATT quota for 1993.

109 In order to comply with its obligation to ensure the correct application of the GATT quota, the Commission is required not only to pass on the information received under Article 14a of Regulation No 1468/81 to the authorities of the other Member States as soon as possible, but also to ensure that the Member States comply with the obligations arising from that provision. The Commission's role in terms of its duty to ensure the correct application of the GATT quota does not merely involve the passive transmission of information that the relevant authorities of a Member State decide to pass on to it. Consequently, when Member State authorities have informed the Commission of the discovery of forged import licences and/or import licence extracts, the Commission must obtain, as soon as possible, from the authorities of the Member State from which the forged licences and extracts appear to have come, all information which might aid the discovery of other forged documents. The Commission is required to inform the competent authorities of the other Member States without delay of the information thus obtained.

110 It must, however, be noted that, in its letter of 28 September 1993, the Commission confined itself to passing on the information contained in the fax of 20 August 1993 to the authorities of the other Member States. Even though, in that same letter, it asked the authorities of the Member States to 'pay particular attention to imports of [beef]' and stressed that they should verify, in particular, 'the correctness of the documents involved', the Commission did not, at that time, send the information necessary for such verification to the Member States.

111 It was only by a note of 2 May 1994 that the Commission passed on to the authorities of the Member States an impression of the authentic stamp used, in

1993, by the Spanish authorities to issue GATT quota import licences and extracts of those licences and forwarded the specimen signature of the Spanish civil servant authorised, in 1993, to sign licences and extracts. Furthermore, the list of import licences and extracts of those licences issued by the Spanish authorities in 1993 for the import of beef under the GATT quota was not sent to the authorities of other Member States until 14 June 1994.

112 It is true that the Spanish authorities themselves were slow to pass on to the Commission 'all relevant information' within the meaning of Article 14a of Regulation No 1468/81. It was not until 22 April 1994 that the Spanish authorities sent to the Commission the impression of the authentic stamp used in 1993 for the issue of valid import licences and licence extracts. Under cover of the same letter, the Spanish authorities forwarded the specimen signature of the person authorised, in 1993, to sign the licences and extracts concerned, whose signature was copied on the extracts in question. Furthermore, it was not until 13 May 1994 that the Spanish authorities sent the complete list of GATT quota licences and licence extracts issued by them in 1993 to the Commission.

113 Even though the Spanish authorities were slow in sending 'all relevant information' to the Commission, the Commission was in breach of its duty of supervision within the framework of the GATT quota by not actively seeking, from the time that it received the fax of 20 August 1993, to obtain such information so as to enable other forged licences and extracts to be detected.

114 Finally, it must be noted that the information that was passed on by the Spanish authorities in April and May 1994 and forwarded by the Commission to the Member States by notices of 2 May and 14 June 1994 did in fact enable the national authorities to detect further forgeries of licences and extracts for the import of frozen beef. Thus, in a Commission notice of 10 November 1994

entitled 'Results of the ad-hoc meeting held on 27.10.94 in Brussels', which refers among others to the notices of 2 May and 14 June 1994, it is stated first that 'Member States received [in previous notices] copies of the false licences together with copies of the true signatures and stamps used by the Spanish issuing authority as well as the list of all valid licences issued in 1993 and 1994'. Secondly, it states that '[a]s a result of this information additional suspect licences have recently been discovered in both Italy and Germany'. The information passed on also enabled the perpetrators of the fraud to be identified within a short period. It is apparent, in fact, from that notice of 10 November 1994 that the Commission had already, on 2 June 1994, requested the Italian authorities to carry out an investigation into the Balestrero company.

115 It follows from the above that, in the present case, the conduct of the Spanish authorities and of the Commission rendered Article 28(4) of Regulation No 3719/88 and Article 14a of Regulation No 1468/81 ineffective. The competent authorities of other Member States thus did not receive the information necessary to detect the false Spanish licences and extracts, including the extracts in question, relating to the import of beef under the 1993 GATT quota, and to identify the perpetrators of the fraud, until May or June 1994. If, in this case, first of all, the Commission, once it had been informed of the first forgeries in August 1993, had requested the Spanish authorities to forward to it an impression of the authentic stamp, the specimen signature of the official authorised to sign the licences and extracts issued under the 1993 GATT quota and a list of all valid licences and extracts issued under that quota, and, second, the Commission had forwarded that information, without delay, to the competent authorities of the other Member States, it is likely that the perpetrators of the fraud would have already been identified by the time the applicant acquired the extracts in question, in October 1993. In any event, the fact that the licences in question were false could have been discovered before the applicant's customs debt arose in December 1993.

116 In those circumstances, the facts of the present case must be regarded as a special situation within the meaning of Article 13(1) of Regulation No 1430/79. It is true that Community law does not normally protect the expectations of a person liable for payment as to the validity of an import certificate that is found to have

been forged when subsequently checked, since such a situation forms part of commercial risk (*Eyckeler & Malt* v *Commission*, cited in paragraph 62 above, paragraph 188, and the case-law cited in the present judgment). However, in the present case, it would be inequitable to require the applicant to bear the burden of the customs debt, provided it is shown that the other condition for the application of Article 13(1) of Regulation No 1430/79, namely lack of deception or manifest negligence on the part of the party concerned, is also satisfied.

117 It follows that the Commission committed a manifest error of assessment in considering in the contested decision that 'the circumstances of this case, whether taken in isolation or as a whole, do not constitute a special situation within the meaning of Article 13 of Regulation No 1430/79' (paragraph 36).

118 The present plea in law is therefore well founded. Consequently, the contested decision must be annulled.

Costs

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

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber),

hereby:

1. **Annuls the Commission's decision of 25 July 2000 finding that the remission of import duties is not justified in a particular case (REM 49/99);**

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

Jaeger Lenaerts Azizi

Delivered in open court in Luxembourg on 27 February 2003.

H. Jung

Registrar

K. Lenaerts

President