JUDGMENT OF THE COURT (Fifth Chamber)

7 September 1999 *

In Case C-61/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tariefcommissie, Netherlands, for a preliminary ruling in the proceedings pending before that court between

De Haan Beheer BV

and

Inspecteur der Invoerrechten en Accijnzen te Rotterdam,

on the interpretation of Community law relating to the incurrence and recovery of a customs debt,

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, J.C. Moitinho de Almeida, C. Gulmann, D.A.O. Edward and M. Wathelet (Rapporteur), Judges,

* Language of the case: Dutch.

Advocate General: F.G. Jacobs,

Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— De Haan Beheer BV, by K.H. Meenhorst and A.P. Eeltink, tax advisers,

— the Netherlands Government, by M. Fierstra, Head of the European Law Department in the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by H. van Lier and R. Tricot, of its Legal Service, acting as Agents, assisted by J. Stuyck, of the Brussels Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of De Haan Beheer BV, represented by K.H. Meenhorst, A.P. Eeltink and A.L.C. Simons, tax adviser; the Netherlands Government, represented by M. Fierstra; the United Kingdom Government, represented by M. Ewing, of the Treasury Solicitor's Department, acting as Agent, assisted by M. Hoskins, barrister; and the Commission, represented by H. van Lier, assisted by J. Stuyck, at the hearing on 14 January 1999,

after hearing the Opinion of the Advocate General at the sitting on 11 March 1999,

gives the following

Judgment

1 By order of 24 February 1998, received at the Court on 2 March 1998, the Tariefcommissie (Administrative Court for Customs and Excise) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Community law relating to the incurrence and recovery of a customs debt.

2 That question was raised in proceedings between the company De Haan Beheer BV (hereinafter 'De Haan'), a customs agent, and the Inspecteur der Invoerrechten en Accijnzen te Rotterdam (the Inspector of Customs and Excise, Rotterdam, hereinafter 'the Inspector') concerning the recovery of a customs debt in the sum of NLG 1 575 030.60.

3 Between 29 July and 8 September 1993 De Haan, acting as principal, drew up seven T1 declarations assigning several consignments of cigarettes to be dealt with under the external Community transit procedure. Those non-Community goods were to be dispatched from customs warehouses in the Netherlands to Antwerp for export to a number of non-member countries.

4 The goods never reached the customs office of destination in Antwerp, but instead were made available for consumption in the Netherlands without the relevant customs duties having been paid.

5 That fraud was the subject of an investigation conducted by the Nederlandse Fiscale Inlichtingen- en Opsporingsdienst (the Netherlands Tax Inquiry and

Investigation Department, hereinafter 'the FIOD') in collaboration with the competent Belgian authorities. It is clear from the order for reference that, by the end of July 1993, the customs authorities were already aware, or at least had serious grounds for suspecting, that a Community transit of cigarettes, involving irregularities such as to give rise to a customs debt, was being organised. The investigation revealed that the stamp of the Antwerp customs office had been fraudulently affixed to the T1 documents by a Belgian customs official.

6 It is also clear from the documents before the Court that De Haan was not in any way implicated in the fraud and honestly believed that the transit operation had been carried out normally, despite the fact that one of the suspects was a member of its staff.

7 On 13 July 1994 the customs authorities gave De Haan notice to pay customs duty of NGL 2 463 318 on the consignments of cigarettes thus fraudulently placed on the Netherlands market. On 5 September 1995 the Inspector reduced that sum by NGL 888 287.40 on the ground that the retail value of the cigarettes had been overestimated.

8 De Haan brought an action before the Tariefcommissie challenging that decision. It claimed that, because it had acted in good faith and because the investigators had, since the end of July 1993 at the latest, known about the preparations for the fraud, the customs authorities should have informed it of the situation, at the very least after the first consignment had been misappropriated, so that it could have taken steps to avoid incurring a customs debt in respect of the next six consignments. All it would have had to do was refrain from making the six declarations for those consignments.

9 It was in those circumstances that the Tariefcommissie, taking the view that an interpretation of Community law was necessary for the disposal of the action, stayed proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Is it to be assumed from rules of written or unwritten Community customs law that, in their relations with those liable to pay customs duty, customs authorities are under an obligation such as that described in paragraph 6.2 above [that of warning a declarant in the position of the applicant, whose declarations are established as having been made in good faith, against possible fraud] and, if so, what are the legal consequences, as regards assessment, entry in the accounts and collection of the customs debt, if the authorities fail to comply with that obligation?'

The Community legislation

10 It is appropriate to specify at the outset which provisions of Community law applied at the material time in the case in the main proceedings.

11 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1, hereinafter 'the Customs Code'), which consolidated the provisions of customs law previously scattered across a multitude of Community regulations and directives, was the subject of implementing provisions contained in Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1). Both regulations became applicable on 1 January 1994.

12 In the present case, whilst the notice to pay was issued in July 1994, the facts in the main proceedings to which the customs debt relates occurred before the Customs Code became applicable.

13 It should be noted in this connection that, according to settled case-law, procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, whereas substantive rules are usually interpreted as not applying to situations existing before their entry into force (see, in particular, Joined Cases 212/80 to 217/80 *Salumi and Others* [1981] ECR 2735, paragraph 9, and Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam) and JCT Benelux* v *Commission* [1993] ECR I-3873, paragraph 22).

14 It is therefore appropriate to refer, on the one hand, to the substantive rules contained in the legislation in force prior to implementation of the Customs Code and, on the other hand, to the procedural rules contained in the Customs Code.

15 Title V of Council Regulation (EEC) No 2726/90 of 17 September 1990 on Community transit (OJ 1990 L 262, p. 1) governs the external Community transit procedure. In particular, Article 10 provides that all goods which are to be carried under that procedure must be the subject of a T1 declaration signed by the principal.

16 Under Article 11(1) of that regulation

'The principal shall be responsible for:

(a) production of the goods intact and the T1 document at the office of destination by the prescribed time-limit and with due observance of the measures adopted by the competent authorities to ensure identification;

(b) observance of the provisions relating to the Community transit procedure;

(c) payment of duties and any other charges due as a result of an offence or irregularity committed in the course of or in connection with a Community transit operation.'

17 In addition, Article 3(3) of Council Regulation (EEC) No 1854/89 of 14 June 1989 on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt (OJ 1989 L 186, p. 1) provides:

'In the case of a customs debt... entry in the accounts of the corresponding amount of duty must occur within two days of the date on which the customs authority is in a position to:

(a) calculate the amount of duty in question, and

(b) determine the person liable for payment of that amount.'

18 Under Article 6(1) of the same regulation

'As soon as it has been entered in the accounts, the amount of duty shall be communicated to the person liable for its payment, in accordance with the appropriate procedures.'

19 As regards the recovery of import duties, Article 2(1) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1) provides:

'Where the competent authorities find that all or part of the amount of import duties... legally due... has not been required of the person liable for payment, they shall take action to recover the duties not collected.

However, such action may not be taken after the expiry of a period of three years from the date of entry in the accounts... or, where there is no entry in the accounts, from the date on which the customs debt relating to the said goods was incurred.'

20 However, two provisions allow for situations in which import duties need not be levied. First, Article 5(2) of Regulation No 1697/79 provides:

'The competent authorities may refrain from taking action for the post-clearance recovery of import duties or export duties which were not collected as a result of an error made by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having for his part acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration is concerned.

The cases in which the first subparagraph can be applied shall be determined in accordance with... implementing provisions...'

21 Article 2 of Commission Regulation (EEC) No 2164/91 of 23 July 1991 laying down provisions for the implementation of Article 5(2) of Regulation No 1697/79 (OJ 1991 L 201, p. 16) specifies three situations where the competent authority of the Member State in which the error which resulted in insufficient duty being collected was either made or discovered must itself decide not to take action for post-clearance recovery:

— where a tariff quota or a tariff ceiling was reached at the time of acceptance of the customs declaration without that fact having been published in the *Official Journal of the European Communities*;

— where the authority considers that the conditions laid down in Article 5(2) are fulfilled and the amount not collected is less than ECU 2 000;

— where the Member State has been authorised not to recover the duty.

22 Furthermore, where no error can be attributed to the competent authorities themselves, 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), as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986 (OJ 1986 L 286, p. 1) (hereinafter 'Regulation No 1430/79'), provides:

'Import duties may be repaid or remitted in special situations other than those referred to in Sections A to D [which are irrelevant to the disposal of the case in the main proceedings], which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

The situations in which the first subparagraph may be applied, and the detailed procedural arrangements to be followed for this purpose, shall be determined in accordance with the procedure laid down [for the adoption of implementing provisions]. Repayment or remission may be made subject to special conditions.'

23 Article 4 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) lists a number of 'special situations' within the meaning of Article 13(1) of Regulation No 1430/79 which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned. In addition, there are other situations which must be assessed on a case by case basis, but that assessment must be carried out in accordance with a procedure which requires the intervention of the Commission.

24 As regards more particularly the procedure to be followed in cases where Article 13(1) of Regulation No 1430/79 applies, reference must be made to Articles 905 to 909 of Regulation No 2454/93 which became applicable on 1 January 1994. Article 905(1) states:

'Where the decision-making customs authority to which an application for repayment or remission under Article 239(2) of the Code [which is substantially the same as Article 13(1) of Regulation No 1430/79] has been submitted cannot take a decision on the basis of Article 899 [which corresponds to Article 4 of Regulation No 3799/86], but the application is supported by evidence which might constitute a special situation resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, the Member State to which this authority belongs shall transmit the case to the Commission to be settled under the procedure laid down in Articles 906 to 909.'

25 Article 908(2) states that the customs authority is to decide whether to grant or refuse the application made to it on the basis of the Commission's decision. If the Commission fails to take a decision within six months of receipt of the file

forwarded by the Member State concerned pursuant to Article 905, or fails to notify a decision to the Member State within 30 days of the expiry of the said period of six months, the customs authority must, under Article 909, grant the application for reimbursement or remission.

26 In the present case, it should be noted that the Kingdom of the Netherlands made such an application to the Commission, which rejected it by Decision C(98) 372 final of 18 February 1998.

The question referred for a preliminary ruling

27 By its question, the national court is essentially asking whether, in the context of an external transit procedure, customs authorities are under an obligation to inform a principal of the likelihood of fraud, not involving the principal himself but liable, if carried out, to cause him to incur a customs debt and, if there is such an obligation, what consequences flow from a failure to comply with it.

28 In order to give the national court an answer that will be of assistance in deciding the case in the main proceedings, it is appropriate to expand the second part of the question and ask whether, in the event that the customs authorities fail to inform a principal of the likelihood of fraud, Community law and, in particular, Article 5(2) of Regulation No 1697/79 or Article 13(1) of Regulation No 1430/79, make it possible to exonerate the principal from payment of the customs debt arising from the fraud.

The obligation upon customs authorities to inform a principal of the likelihood of fraud

29 It should be borne in mind at the outset that, under Article 177 of the Treaty, the Court has no power to apply rules of Community law to a particular case but may only provide a national court with information on the interpretation of Community law which may be useful to it in assessing the effects of a provision of national law (see, in particular, Case 100/63 *Kalsbeek* v *Sociale Verzekeringsbank* [1964] ECR 565, at 572, and Case 137/84 *Ministère Public* v *Mutsch* [1985] ECR 2681, paragraph 6).

30 Next, it should be observed that Article 11(1)(c) of Regulation No 2726/90 provides that a principal is, as a rule, responsible for payment of duties due 'as a result of an offence or irregularity committed in the course of or in connection with a Community transit operation', and does not require, in order for the customs debt to arise, that the principal be shown to be at fault or that the customs authorities be obliged in any way to inform the principal that an investigation has been carried out and has led to the discovery of an offence or irregularity.

31 Admittedly, in circumstances such as those in point in the main proceedings, had the customs authorities informed the person liable for payment of the possibility that a fraud was being perpetrated by his clients, that person would have been able to take the necessary steps, if not to avoid incurring the customs debt, at the very least to prevent or limit its increase.

32 However, quite apart from the question whether circumstances of that kind are such as to justify abstention from post-clearance recovery, or the reimbursement or remission of import duties (a question that will be dealt with in paragraphs 37 to 55 of this judgment), the fact remains that the demands of an investigation aimed at identifying and apprehending the persons who have carried out or are planning a fraud, or the accomplices of those persons, may justify a deliberate omission to inform the principal about the investigation fully or at all, even where the principal is in no way implicated in the perpetration of the fraud.

33 De Haan nevertheless maintains that, in accordance with the combined provisions of Article 3(3) and Article 6(1) of Regulation No 1854/89, the duty should have been entered in the accounts within two days of the date on which the customs authority was in a position to calculate its amount and determine the person liable for its payment, and that the amount of duty should have been communicated to it as soon as it was entered in the accounts.

34 That reasoning cannot be accepted. As the Court has already held, in Case C-370/96 *Covita* [1998] ECR I-7711, at paragraphs 36 and 37, failure on the part of the customs authorities to observe the time-limits laid down in Articles 3 and 5 of Regulation No 1854/89 when taking action for the post-clearance recovery of customs duty does not nullify the right of those authorities to proceed with such post-clearance recovery, provided that it is carried out within the three-year period prescribed for the purpose in Article 2(1) of Regulation No 1697/79. The sole purpose of those time-limits is to ensure rapid and uniform application by the competent administrative authorities of the technical procedures for the entry in the accounts of the amounts payable by way of import and export duties. Whilst failure by the customs authorities to observe the time-limits may result in the Member State concerned paying interest in respect of delay to the Communities, in the context of making available own resources, such failure does not affect the fact that the customs debt is payable or the authorities' right to proceed with post-clearance recovery.

35 The same applies to the time-limit laid down in Article 6(1) of Regulation No 1854/89. Even supposing the customs authorities failed in this case to inform the principal of the amount of duty as soon as it was effectively entered in the accounts, a point which is not clear from the file, that failure to comply with Article 6(1) cannot, by itself, prevent the recovery of the duty payable so long as recovery is effected within the period of three years laid down in Article 2(1) of Regulation No 1697/79.

36 In light of the foregoing, the answer to the first part of the question must be that Community law does not impose on customs authorities which have been informed of a possible fraud in connection with external transit arrangements any

obligation to warn a principal that he could incur liability for customs duty as a result of the fraud, even where he has acted in good faith.

Circumstances which may justify abstention from post-clearance recovery, or the reimbursement or remission of duties

37 It should be borne in mind that, under Community law, two categories of specific exceptions to the payment of customs debts are recognised.

38 The first is set out in Article 5(2) of Regulation No 1697/79.

39 That provision makes any waiver of post-clearance recoveries by the customs authorities subject to three conditions (see, in particular, Case C-250/91 *Hewlett Packard France* v *Directeur Général des Douanes* [1993] ECR I-1819, paragraphs 12 and 13, and *Covita*, cited above, at paragraphs 24 to 28).

40 First, the failure to collect duties must be the result of an error made by the competent authorities themselves. Next, the error made by the competent authorities must be such that it could not reasonably be detected by the person liable acting in good faith, notwithstanding his professional experience and the care expected of him. Lastly, the person liable must have complied with all the provisions laid down by the legislation in force as far as his customs declaration is concerned.

41 In this connection, whilst it is for the national court to ascertain whether, having regard to the circumstances of the case, the three conditions set out in Article 5(2) of Regulation No 1697/79 have been met (see Joined Cases C-47/95 to C-50/95,

C-60/95, C-81/95, C-92/95 and C-148/95 *Olasagasti and Others* v *Amministrazione delle Finanze dello Stato* [1996] ECR I-6579, paragraphs 33 to 35), it already follows from paragraph 32 of the present judgment that a deliberate omission on the part of the customs authorities to inform a principal of a possible fraud in which the principal is not implicated cannot, in any event, be classified as an error on the authorities' part.

42 The second category of exceptions to the payment of import or export duties is set out in Article 13(1) of Regulation No 1430/79. That provision, which does not require an error to have been made by the competent authorities themselves, makes the repayment or remission of import duties subject to two cumulative conditions, namely the existence of a special situation and the absence of deception or obvious negligence on the part of the economic operator.

43 In this connection, it should be borne in mind that the list of special situations within the meaning of Article 13(1) of Regulation No 1430/79 which Article 4 of Regulation No 3799/86 provides is, as the first subparagraph thereof expressly states, not exhaustive (see, to that effect, *Covita*, cited above, paragraph 31).

44 It is therefore for the customs authorities to determine on a case by case basis whether a situation such as that in point in the main proceedings, which is not mentioned in the said list, none the less constitutes a situation which is special within the meaning of the applicable Community legislation and thus requires the Member State to which the authority belongs to forward the case to the Commission to be settled under the procedure laid down in Articles 906 to 909 of Regulation No 2454/93.

45 One of the points to be considered, which was highlighted by the referring court and which characterises the situation at issue in the main action, is the fact that, had the customs authorities informed the person liable of their suspicion of fraud, that person would have taken the necessary measures, after the misappropriation

of the first consignment of cigarettes, to avoid incurring a customs debt in relation to the next six consignments.

46 Since an application for remission of duties, supported by evidence which might constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79, had been made to the customs authorities and those authorities were not in a position to take a decision on the basis of Article 4 of Regulation No 3799/86, the Kingdom of the Netherlands requested the Commission to rule on the question whether there was a 'special situation' within the meaning of that provision. By decision of 18 February 1998, the Commission expressed the view that there was no such special situation in this case.

47 In view of this, although the national court makes no reference to that decision, the existence and, even more so, the content of which were, because of the date on which it was adopted, probably unknown to it at the time when it made its order for reference, it is appropriate, in order to give that court an answer that will be helpful in resolving the dispute before it, to determine whether that decision was a valid one by examining the question whether the conditions for applying Article 13(1) of Regulation No 1430/79 are in fact satisfied in a case such as that pending before it.

48 In this connection it should be pointed out that, in accordance with Article 908 of Regulation No 2454/93, the customs authority has to give its decision on the basis of the Commission's decision. However, if the Court declares that decision invalid, the Commission will be obliged to take the steps called for by such a declaration and re-examine, in the light of the Court's judgment, the question whether Article 13(1) of Regulation No 1430/79 applies to the circumstances in point in the main proceedings, the periods referred to in Articles 907 and 909 of Regulation No 2454/93 beginning to run from the date of delivery of the judgment. This also means that the national court, which may not substitute its own determination for that of the Commission, can stay proceedings pending the Commission's decision or the expiry of the abovementioned periods.

49 In this instance, review of the Commission's decision, which has in fact been produced to the Court and has been the subject of both written and oral submissions, conforms, moreover, to the principle of procedural economy, in that the question whether the decision was lawful has also been raised directly before the Court in Case C-157/98 *Netherlands* v *Commission*, the proceedings in which have been stayed pending the delivery of this judgment.

50 In reaching its conclusion that the declarant's situation could not be regarded as a special situation within the meaning of Article 13(1) of Regulation No 1430/79, the Commission observed that De Haan was responsible for the proper conduct of the customs procedure and that exposure to possible fraudulent acts is a normal risk for economic operators. It also took into account, first, the twofold circumstance that, even though De Haan was not itself implicated in the fraud, one of its staff, for whom it was responsible, was implicated, and that the involvement of a Belgian customs official was not established, and, secondly, the fact that the FIOD's abstention, in the interests of completing its investigation, from disclosing its information to De Haan could not constitute a special situation justifying remission of import duties under Article 13(1) of Regulation No 1430/79.

51 In this connection, it should first be observed that, according to the national court, which has not been contradicted by the Commission on the point, no negligence or deception can be attributed to De Haan.

52 Secondly, it should be noted that, as the Court held in Case C-86/97 *Woltmann* [1999] ECR I-1041, at paragraphs 18 to 21, Article 905 of Regulation No 2454/93, pursuant to which the Member State to which the authority belongs may apply to the Commission to determine, on the basis of the information placed before it, whether a special situation exists such as to justify the remission of duties, includes a general fairness clause intended to cover the exceptional situation in which a declarant might find himself in comparison with other operators engaged in the same business, where the customs authority has not itself been able, on the basis of the grounds adduced, to take a decision regarding the remission of duties under either Article 4 of Regulation

No 3799/86 or Article 899 of Regulation No 2454/93, depending on which of those two provisions applies, by reason of its temporal scope, to the situation of the person liable.

53 In that regard, the demands of an investigation conducted by the customs authorities or the police constitute, in the absence of any deception or negligence on the part of the person liable, and where that person has not been informed that the investigation is being carried out, a special situation within the meaning of Article 13(1) of Regulation No 1430/79. Although it may be legitimate for the national authorities, in order better to dismantle a network, identify perpetrators of fraud and obtain or consolidate evidence, deliberately to allow offences or irregularities to be committed, to place on the person liable the burden of the customs debt arising from the choices made in connection with the prosecution of offences is inimical to the objective of fairness which underlies Article 905(1) of Regulation No 2454/93 in that it puts that person in an exceptional situation in comparison with other operators engaged in the same business.

54 It is clear from the wording of the decision of 18 February 1998 that the Commission's assessment, in the light of the abovementioned objective of fairness and the circumstances in which the fraud took place, of the question whether De Haan was in an exceptional situation in comparison with other operators engaged in the same business, was incorrect.

55 The Commission's decision must, therefore, be held to be invalid.

56 In light of the foregoing, the second part of the question must be answered as follows:

— the demands of an investigation conducted by the national authorities may, in the absence of any deception or negligence on the part of the person liable,

and where that person has not been informed that the investigation is being carried out, constitute a special situation within the meaning of Article 13(1) of Regulation No 1430/79 where the fact that the national authorities have, in the interests of the investigation, deliberately allowed offences or irregularities to be committed, thus causing the principal to incur a customs debt, places the principal in an exceptional situation in comparison with other operators engaged in the same business;

— Commission Decision C(98) 372 final of 18 February 1998 is invalid.

Costs

57 The costs incurred by the Netherlands and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Tariefcommissie by order of 24 February 1998, hereby rules:

1. Community law does not impose on customs authorities which have been informed of a possible fraud in connection with external transit arrangements any obligation to warn a principal that he could incur liability for customs duty as a result of the fraud, even where he has acted in good faith.

2. The demands of an investigation conducted by the national authorities may, in the absence of any deception or negligence on the part of the person liable, and where that person has not been informed that the investigation is being carried out, constitute a special situation within the meaning of Article 13(1) of Council Regulation (EEC) 1430/79 of 3 July 1979 on the repayment or remission of import or export duties, as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986, where the fact that the national authorities have, in the interests of the investigation, deliberately allowed offences or irregularities to be committed, thus causing the principal to incur a customs debt, places the principal in an exceptional situation in comparison with other operators engaged in the same business.

3. Commission Decision C(98) 372 of 18 February 1998 is invalid.

Puissochet Moitinho de Almeida Gulmann

Edward Wathelet

Delivered in open court in Luxembourg on 7 September 1999.

R. Grass

Registrar

J.-P. Puissochet

President of the Fifth Chamber