OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 9 FEBRUARY 1984 [1]

Mr President,
Members of the Court,

1. In this reference for a preliminary ruling the Court is called upon to interpret Regulation No 827 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (Official Journal, English Special Edition 1968 (I), p. 209). The Court will in particular have to determine whether a certain product, wool, falls within its scope.

The limited liability company, CILFIT, whose registered office is in Trieste, and 54 other undertakings, likewise established in Italy, brought an action in 1974 against the Minister for Health before the Tribunale di Roma [District Court, Rome] for the recovery of sums which they had paid between 1968 and 1970 in respect of health-inspection levies on the importation of wool. The Tribunale dismissed the application. The plaintiff undertakings thereupon appealed against that judgment to the Corte d'Appello [Court of Appeal], Rome and when the Corte d'Appello rejected their case (12 December 1978) they appealed by way of cassation (4 October 1979). By order of 27 May 1981 the Corte di Cassazione stayed the proceedings and formulated an initial question for a preliminary ruling on the interpretation of Article 177 of the EEC Treaty. In its judgment thereon on 6 October 1982 ([1982] ECR 3415) this Court ruled: "The third paragraph of Article 177 of the EEC Treaty must be interpreted as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court of Justice or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt."

The Corte di Cassazione reconsidered the case in the light of those principles and considered it had to stay the proceedings once again in order to submit to this Court a second question on the Community rules to be applied in the case. By order of 22 February 1983 it asked the following question:

"Is wool included, under the heading 'animal products not elsewhere specified or included', for which the Common Customs Tariff heading is 05.15, among the products covered by the common organization of the markets provided for by Regulation (EEC) No 827/68 of the Council of 28 June 1968 and listed in the annex thereto?"

2. A few words on the subject of the main proceedings. As I have said, they were brought by certain undertakings to recover from the Italian administration the health-inspection levies paid on the importation of wool. In their view Law No 30 of 30 January 1968 on the basis

1 — Translated from the Italian.

of which the authorities had claimed payment of those levies ought not to have been applied because it was incompatible with Regulation No 827/68. On that basis the plaintiffs assert their right to recover all sums wrongly paid to the State between 1968 and 1970. Naturally the administration takes the opposite view. It maintains that the regulation does not concern wool and consequently does not prevent the application of the domestic rules concerned with health checks on the importation of that product.

The objective of the case pending before the Corte di Cassazione is therefore to establish whether or not wool comes within the scope of Regulation No 827/68. That is precisely the problem which the national court, having recourse to the procedure under Article 177, asks this Court to resolve.

3. Let us consider in the first place the relevant Community provisions in the matter. The first to be considered is Article 38 of the Treaty. Article 38 (1) provides that "the Common Market shall extend to agriculture and trade in agricultural products" and then immediately adds: " 'agricultural products' means the products of the soil, of stock farming and of fisheries and products of firststage processing directly related to these products." Article 38 (3) specifies the products "subject to the provision of Articles 39 to 46" (that is those subject to the Common Agricultural Policy which is governed by Title II) by referring to the list contained in Annex II to the Treaty. Finally, and this is the provision of more immediate concern to us, heading 05.15 of that list refers to "animal products not elsewhere specified or included".

The second authority to which the national court directly refers is Regulation No 827/68. It concerns "the common organization of the market in certain products listed in the annex". In its turn, by referring to the headings of the Common Customs Tariff, that annex refers to certain products contained in Annex II to the Treaty including "animal products not elsewhere specified or included". It is worth noting that that wording is precisely the same as that of Annex II which I have just cited.

The question therefore is whether wool is included in the aforementioned heading. The plaintiffs in the main action claim that it is. Let me say straight away that I do not share that opinion.

4. It seems to me necessary to state a premise: the interpretation of the residual heading "Animal products not elsewhere specified or included" in the annex to Regulation No 827/68 must necessarily agree with that of the identical heading in Annex II to the Treaty. That is so both because the two headings are identical and because of the hierarchic relationship between them. In other words: since the regulation is a secondary authority which is based on Title II of the Treaty, its scope cannot exceed that of that title and consequently also that of the provision (like Annex II) to which it refers in order to identify the products subject to it. An interpretation of the heading under the regulation

which would bring wool within that heading would therefore be unacceptable if it were necessary to take the view that the corresponding heading of Annex II did not include it.

That being so it is necessary to recognize the decisive importance which the case-law of the Court and in particular the judgment of 25 March 1981 in Case 61/80 *Coöperatieve Stremsel- en Kleurselfabriek* v *Commission* [1981] ECR 851 has for the interpretation of Annex II. Let me quote the most important passage for our purposes: "Since there are no Community provisions explaining the concepts contained in Annex II to the EEC Treaty and that annex adopts word for word certain headings of the Customs Cooperation Council Nomenclature, it is appropriate to refer to the said Explanatory Notes in order to interpret that annex."

Do those notes provide useful guidance for the purpose of establishing whether wool must be included in heading 05.15 of Annex II to the Treaty? In my opinion they do. Rule 3 (a) states that "the heading which provides the most specific description must take priority over headings providing a more general description" and, in so doing, implies that if a particular product is referred to in a specific heading of the Brussels Nomenclature it is not possible to regard it as also included in a residual heading. The wording "not elsewhere specified or included" in heading 05.15 must therefore be understood (precisely because of the nomenclature's importance as recognized by the Court for a correct interpretation of Annex II), as meaning that a product can come within this general heading only if it is not included in one of the various specific headings of the same nomenclature. In short the adverb "elsewhere" must refer to the latter and not to the provisions of the Treaty.

To answer the question from the Italian court it is therefore sufficient to ascertain whether wool is provided for in a specific heading of the nomenclature. An inquiry shows that it is: Chapter 53 refers precisely to wool. It follows that it falls neither within Annex II to the Treaty nor, by reason of the hierarchic relationship which I mentioned above, within the scope of Regulation No 827/68.

5. In conclusion I propose that the Court should answer as follows the question put to it by the Corte Suprema di Cassazione of the Italian Republic by order of 22 February 1983 in the case pending between the limited liability company CILFIT and 54 other undertakings on the one hand and the Ministero della Sanità on the other:

"Regulation No 827 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty must be interpreted as meaning that it does not include wool among the products to which it applies and which are specifically listed in the annex thereto. In particular wool is not covered by the wording 'animal products not elsewhere specified or included' appearing in the said annex to the regulation under heading 05.15."