land, or are re-consigned from Switzerland, where appropriate after storage in a customs warehouse.

Therefore, where goods are sent from Belgium to a specified consignee in a Swiss free port and are re-consigned by that person through the customs office of that free port to another person in Italy, the operation must be regarded as constituting Community transit.

2. Where goods coming from a Member State are accompanied by a consignment note on which the symbol T2 has been entered by the office of departure in that Member State or on which the symbol T1 is not entered in space No 25, the Swiss office of departure is authorized, in the case of re-consignment to a destination in a Member State, to issue a new consignment note bearing the symbol T2 in space 25. If Copy No 3 of the consignment note is missing or if it bears the symbol T1, the Swiss office of departure is not empowered to issue a consignment note bearing the symbol T2.

3. Where, by reason of an offence or irregularity committed in connection with a Community transit operation, the duties and other charges payable are not collected, recovery of those duties and charges is to be effected by the Member State in which the offence or irregularity was committed, in accordance with the laws, regulations and administrative provisions of that State.

In Case 99/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Corte d'Appello [Court of Appeal], Brescia, for a preliminary ruling in the proceedings pending before that court between

CLAUDIO FIORAVANTI

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO [State Finance Administration]

on the interpretation of Regulation No 542/69 of the Council of 18 March 1969 on Community transit (Official Journal, English Special Edition 1969 (I), p. 125) and Regulation No 2812/72 of the Council of 21 November 1972 on the conclusion of an Agreement between the European Economic Community and the Swiss Confederation on the application of the rules on Community transit (Official Journal 1973, L 365, p. 225),

THE COURT (Fourth Chamber)

composed of: G. Bosco, President of Chamber, P. Pescatore, A. O'Keeffe, T. Koopmans and K. Bahlmann, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice may be summarized as follows:

I — Facts and written procedure

According to the order requesting a preliminary ruling, Mr Fioravanti was instructed, in his capacity as customs agent, by Gormec Srl [hereinafter referred to as "Gormec"], whose registered office is in Milan, to clear through customs three consignments of butter which had originated in the Community and had been imported from Belgium. After receiving the documentation and establishing that it was correct and in order, Mr Fioravanti submitted the relevant definitive import declarations. The goods were then cleared through customs on the basis of three customs entry documents issued by the customs authorities at Cremona after the goods had been stored at the premises of Magazzini Generali Cariplo in Cremona. Each entry document was used to clear through customs 50 000 kg of butter which, when inspected by the customs authorities on importation, was accepted as being of Belgian origin and as having been consigned from Belgium on the basis of all the documentation received by Mr Fioravanti and submitted to the customs authorities in Cremona. Subsequently the Brescia area customs authorities proceeded to review the particulars recorded in the three customs entry documents and as a result of inquiries made of the Belgian and Swiss customs authorities they established that the goods had been imported into Belgium from Australia and had been consigned by Sofial, a company in Brussels, passing initially through the customs office at Montzen, to Roba SA of Basel at the free port of La Praille, Geneva, and were then re-consigned from that free port to Magazzini Generali Cariplo in Cremona. They also ascertained that the Swiss customs authorities had marked the CIM [International Convention concerning the carriage of goods by rail — Bern 1961] international consignment notes issued for the onward dispatch with the symbol T2, indicating internal Community transit, because of an alleged error which, it is assumed, derived from the

fact that Copy No 3 of the CIM consignment notes issued in Belgium had been lost. That copy should have been marked with the symbol indicating the Community or extra-Community origin of the goods being transported. In the absence of the symbol T1, which indicates extra-Community origin, it is presumed that the goods are the subject of an internal Community transit operation.

The Italian authorities therefore made an assessment in respect of the three customs documents and required the payment of uncollected duties both from Gormec and from Mr Fioravanti, who was liable on a subsidiary basis pursuant to the second paragraph of Article 41 of Italian Customs Law No 43 of January 1973. Since Gormec was insolvent, the Italian authorities served Mr Fioravanti with an order to pay LIT 243 400 755.

Mr Fioravanti challenged that order by proceedings before the Tribunale di Brescia [District Court, Brescia] claiming that the Italian Finance Administration had no power to require payment of the duties since, under Article 36 of Regulation No 542/69, the recovery thereof ought to be effected by the Belgian authorities, being the authorities in the Member State in which the offence was committed. That view, which was disputed by the Italian Finance Administration and rejected by the court of first instance, was again put forward in the proceedings before the Corte di Appello which, by order of 20 April 1983, decided pursuant to Article 177 of the EEC Treaty to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

"1. With particular reference to Articles 1 and 5 of the Agreement between the EEC and the Swiss Confederation on the application of the rules on Community transit contained in Regulation (EEC) No 2812/72 of the Council and to other specific provisions of those rules, must a transit operation involving goods which, after being dispatched from Belgium (customs office at Montzen) to a specific consignee at the free port of Geneva (La Praille), Switzerland, are re-consigned by that person, through the customs office of that free port, to another consignee in the city of Cremona (Italy) and definitively imported there, be regarded as Community transit?

2. In the circumstances under consideration, was it lawful for the Swiss customs authorities to issue CIM international consignment notes containing references to the consignment notes relating to the previous phase of the carriage and to mark them with the symbol T2 indicating internal Community transit, on the basis of the assertion (for which there is no proof inasmuch as Copy N 3 of those documents is presumed lost) that the earlier consignment notes were not marked with any symbol and therefore did not bear the symbol T1, in the absence of which the Community transit operation had to be treated as internal and not external, that is to say relating to goods which did not come from countries outside the Community?

3. In the case of goods which in fact came from outside the Community (in this case from Australia) and were imported into Belgium temporarily and therefore without the payment of any customs duty in Belgium, the Member State of the Community in which the transit in

question began, does that transit operation, which was carried out on the basis of documents permitting internal Community transit, give rise to liability on the part of the country (and of the traders) from which the goods were consigned (Belgium) or on the part of the country from which they were subsequently re-consigned (Switzerland) and not on the part of the country (Italy) where the goods were definitively imported on the basis of documents which were formally valid?

4. Since Article 36 (1) of Regulation (EEC) No 542/69 provides that 'When it is found that, in the course of a Community transit operation, an offence or irregularity has been committed in a particular Member State, the recovery of duties or other charges which may be chargeable shall be effected by that Member State . . .', must the recovery of the agricultural levy be effected by the State in which the transit described as being an internal Community transit operation commenced or by the State from which the goods were re-consigned, by means of proceedings against the traders concerned, even though in this case the offence was discovered in Italy?"

The request for a preliminary ruling was received at the Court Registry on 30 May 1983.

Pursuant to Article 20 of the Protocol on the Statute of the Court, written observations were submitted by C. Fioravanti, the plaintiff in the main proceedings, represented by Gregorio Leone of the Milan Bar, by the Italian Government, represented by the Avvocato dello Stato, O. Fiumara, and by the Commission of the European Communities, represented by Alberto Prozzillo, a member of its Legal Department.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

By order of 29 February 1984 the Court, pursuant to Article 95 (1) and (2) of its Rules of Procedure, assigned the case to the Fourth Chamber.

II — Written observations submitted to the Court

The plaintiff in the main proceedings, Mr Fioravanti, claims that contrary to the view expressed by the Corte d'Appello, Brescia, the No 3 copies of the CIM consignment notes issued in Belgium were not lost. For the first two consignments, those copies reached Switzerland in the normal way. Only the No 1 copy for the last consignment appears to have been lost in Switzerland, so that the customs authority validated Copy No 2 as Copy No 3. It should however be noted that that copy of the consignment note had not been marked with the symbol T1 by the Belgian customs authorities at Montzen either.

Consequently, this case is the result of an unlawful act committed in Belgium when the Community transit customs documentation which should accompany a consignment of butter bound for Italy was drawn up. The goods were sent by rail from Montzen (Belgium) and the six consignments notes relating thereto were not marked with the symbol T1 to indicate the non-Community origin of

the goods. Article 11 of Regulation No 385/73 provides that: "The international consignment note ... drawn up in respect of goods accepted for transport by the railway authorities of an original Member State shall have equivalent effect to a document T2 provided it does not bear the indication T1".

The answer to the first question is, according to the plaintiff, to be found in Article 1 (1) of Regulation No 2812/72, which provides as follows:

"The rules on Community transit ... shall apply ... to the movement of goods between two points situated in the Community via the Territory of the Swiss Confederation, whether the goods are consigned direct, with or without transhipment in Switzerland, or re-consigned from Switzerland, where appropriate after storage in a customs warehouse."

Consequently, an operation involving the transport, as in this case, of butter consigned from Belgium to the free port in Geneva and then re-consigned to Italy must be regarded as Community transit.

The rules on Community transit relate solely to the movement of goods between two points within the Community, and it is immaterial if the goods are kept for a time on Swiss territory or if, during the operation, ownership of the goods changes as a result of their being sold whilst in transit.

The reply to the question can therefore only be affirmative.

As regards the second question, the plaintiff in the main proceedings claims that, contrary to the view expressed by the Corte di Appello, Brescia, not all the No 3 copies of the consignment note were lost in Switzerland. But it is incontestable that none of the consignment notes drawn up in Belgium bore the indication T1, from which the extra-Community nature of the goods and therefore non-payment of the customs duties could be inferred.

Article 7 (2) of Regulation No 304/71 of the Commission of 11 February 1971 (Official Journal, English Special Edition 1971 (I), p. 63) provides as follows:

"With respect to goods referred to in Article 1 (2) of Regulation (EEC) No 542/69, the office of departure shall indicate, on Copy No 3 of the consignment note, that the goods to which that document refers are carried under the external Community transit procedure.

To this end, it shall clearly mark the symbol T1 in the space 'description of goods'."

In relation thereto, Article 11 of Regulation No 385/73 of the Commission of 19 January 1973 (Official Journal 1973, L 42, p. 1) on the methods of administrative cooperation to safeguard the free movement of goods in Community trade provides as follows:

"For the purpose of implementing the provisions of Commission Regulation (EEC) No 304/71 of 11 February 1971 concerning the simplification of Community transit procedures for goods transported by rail:

the international consignment note ... drawn up in respect of goods accepted for transport by the railway authorities of an original Member State shall have equivalent effect to document T2 provided that it does not bear the indication T1 in accordance with the provisions of Article 7 (2) of the aforesaid regulation ..."

Finally, Regulation No 2812/72 on the conclusion of an Agreement between the Community and the Swiss Confederation on the application of the rules on Community transit provides as follows:

Article 6

"1. The competent Swiss customs offices are empowered to assume the functions of offices of departure, offices of transit, offices of destination and offices of guarantee.

...

2. The competent customs offices of the Member States are empowered to issue documents T1 or T2 valid for a Swiss office of destination."

Article 8

"2. For goods referred to in Article 1 (3) of the Regulation on Community transit ... the Swiss office of departure shall indicate on the Copy No 3 of the international consignment note that the goods to which it relates are being forwarded under the procedure for internal Community transit. To this end, it shall enter in the 'Description of goods' space the symbol T2 and its stamp."

On the basis of those provisions, the plaintiff in the main proceeding concludes that since neither the symbol T1 nor the symbol T2 was entered on the CIM consignment notes by the Belgian customs authorities in Montzen, the Geneva customs authorities were obliged to take the view that the goods in question were Community goods of the kind referred to in Article 11 of Regulation No 385/73. When preparing the new consignment notes for the dispatch of the goods from Geneva to Cremona, the Swiss customs authorities quite properly entered the symbol T2 on the new CIM consignment notes considering that, on the basis of the documentation forwarded by the Montzen customs authorities, the goods in question were Community goods.

As regards the third question, the plaintiff in the main proceedings is of the opinion that the answer is clear if it is borne in mind that the unlawful preparation of a document which falsely declares as of Community origin goods which in fact originated in a non-member country gives rise to liability attaching exclusively to the person who drew up the document which was irregular and not to a person who used it in good faith.

Consequently, the only reply to the question must be that the drawing up of the documents and the carriage of goods originating outside the Community, on the basis of documents valid for internal Community transit, give rise to liability attaching only to traders in the country from which the goods were consigned (Belgium) or to traders in the country from which the goods were re-consigned (Switzerland) but not to traders in the country in which definitive importation took place.

With regard to the fourth question, the plaintiff in the main proceedings claims that the Community legislature decided to follow the general principle of *locus commissi delicti*. Accordingly, it may be stated on the basis of Article 36 of Regulation No 542/69, in response to the question submitted, that even though the offence was discovered only in Italy following the re-examination of the particulars recorded in the import docu-

ments, it is established in this case that the offence was committed in Belgium following the fraudulent or erroneous drawing up of the consignment notes, when the goods were re-consigned.

Thus, recovery of the agricultural levy must be pursued in the State (Belgium) in which the carriage described (in the absence of the indication T1) as internal Community transit originated or, in the alternative, in the State (Switzerland) from which the goods were re-consigned and where the indication T2 was — in the event erroneously — entered on the CIM consignment notes. Any other conclusion would be contrary to Article 36 of Regulation No 542/69 on Community transit.

The *Italian Government* points out with regard to the facts of the case that an additional inspection, carried out in Belgium under Article 18 (2) of Council Regulation No 2891/77 by the Commission in May and June 1978, established that three consignments, each of 100 000 kg of butteroil of non-Community origin, were sent from Belgium to Switzerland; the first two consignments were accompanied by documents on which the symbol T1 had not been entered, whilst in the case of the third consignment it had been impossible to determine whether that symbol had been entered on the documents. Some of the goods, namely 100 000 kg from the first two consignments and 50 000 kg from the third consignment, were re-consigned to Italy with Swiss consignment notes marked with the symbol T2.

As regards the non-Community goods taken into Italy, no charges should have been levied since the import took place under the internal Community procedure.

The Italian Government considers that the first question submitted for a preliminary ruling should be answered in the affirmative.

In the terms of Regulation No 542/69 and the agreement between the European Economic Community and the Swiss Confederation referred to in Regulation No 2812/72, the rules on Community transit apply to the movement of goods between two points situated in the Community, via Swiss territory, whether the goods are consigned direct, with or without transhipment in Switzerland, or re-consigned from Switzerland, where appropriate after storage in a customs warehouse. The consignment of goods from Belgium to Italy therefore falls within the Community transit procedure where the goods cross Swiss territory, whether the goods are sent direct or are placed in a customs warehouse in Switzerland for re-consignment to Italy.

The fact that re-consignment from Switzerland is the responsibility of the addressee of the consignment from Belgium is necessarily immaterial and is not such as to break the continuity of Community transit, in so far as that continuity is ensured by storage in the free port, except in the cases referred to in Article 5 of the said agreement.

In fact, in this case the goods consigned from Belgium and re-consigned from

Switzerland to a final destination in Italy remained at all times under the Community transit procedure, whether or not the accompanying documents were issued in good and due form.

With regard to the second question, the Italian Government points out that in its report the Commission observed that the additional inspection disclosed that at the time of the exportation to Switzerland of a consignment of at least 200 tonnes of non-Community butteroil, the customs office of departure (Lamorteau Station) did not enter the symbol T1 on Copy No 3 — which served as a Community transit document — of the international consignment notes accompanying the goods. Following that administrative error, the Swiss customs authorities were entitled automatically to treat the goods as having been brought in under the internal Community transit procedure and, as regard the quantities re-consigned to Italy, it was entitled, under the agreement of 23 November 1972, to enter the symbol T2 (indicating the Community nature of the goods in question) on the Swiss consignment notes.

Article 7 (2) of Regulation No 304/71 provides that with respect to goods referred to in Article 1 (2) of Regulation No 542/69, the office of departure is to indicate, on Copy No 3 of the consignment note, that the goods to which that document refers are carried under the external Community transit procedure. To that end, it is clearly to mark the symbol T1 in the space "description of goods". An international consignment note not bearing any symbol is to be regarded as a T2 document.

In the operations with which this case is concerned, it is established that when the first two consignments of 100 000 kg were consigned from Belgium to Switzerland, Copy No 3 of the consignment note was not marked with the symbol T1. As regards the third consignment, it gives rise to certain doubts since the Swiss authorities were unable to locate the No 3 copies: but everything points to the conclusion that those copies were not marked with the symbol T1 either. In view of the absence of the symbol T1 on the documentation presented to the Swiss customs authorities, they were fully justified in considering that the goods had arrived under the internal Community transit procedure and therefore in re-consigning them with T2 documtation.

As regards the third and fourth questions, the Italian Government considers that Article 36 of Regulation No 542/69 entrusts the aciton for recovery of the duties payable to the Member State in which an offence or irregularity has been committed in connection with a Community transit operation.

In general, the question of determining the *locus commissi delicti* has given rise to differing views — some consider that the offence is committed where the unlawful act is committed whereas others consider that the offence is committed where the event occurs, if that event is necessary to complete the offence (place of completion). In fact, it seems that the solution depends essentially on the wording of the positive rule governing the specific case in question.

As regards Article 36 of the regulation in question, it seems that the provision is intended to refer to the place where the irregularity was committed.

The Commission maintains that the infringement in question in this case consists in the introduction into Italy of goods from a non-member country without collection of the applicable levies. But that conclusion is unacceptable. Before the goods were taken into Italy, the Belgian authorities issued international consignment notes for the entry into a Swiss free port, under the Community transit procedure, of non-Community goods which had been classified as Community goods. Therefore, it was because of the attitude of the Belgian authorities that goods of non-Community origin were entered for free circulation and consigned as such to Switzerland, whence it was possible subsequently for them lawfully to be taken into a Member State without any duty being paid. Consequently, the customs debt arose in Belgium when the goods were declared for free circulation. In order to be lawfully covered by that procedure, the goods should have been subject to levies in Belgium, whereas they were lawfully taken into Italy without the payment of any levy since they were in free circulation in the Community.

It is therefore appropriate to conclude that the offence was committed in Belgium where, when dispatched, the goods were declared for free circulation, and not in Italy where the goods arrived ultimately; consequently, recovery of the levies (from Belgian traders) should have been undertaken by Belgium, which, being the Member State in which the offence was committed, is liable to pay to the Commission the amounts due in respect of the duties payable.

The *Commission* submits that the first question seems to derive from confusion between "Community transit" and "internal Community transit": Regulation No 542/69 refers to all transit operations, that is to say the movement of goods between two places within the Community. If the goods in question are Community goods, it is a case of "internal Community transit"; if they were not Community goods, it is a case of "external Community transit". The fact that the goods passed through Switzerland does not change matters, since the transit operations in this case were carried out in accordance with the formalities laid down in the agreement concluded between the EEC and the Swiss Confederation regarding Community transit. And under Article 1 (1) of that agreement, the rules on Community transit apply to the movement of goods between two points in the Community, via Swiss territory, whether the goods were consigned direct, with or without transhipment in Switzerland, or were re-consigned from Switzerland, where appropriate after storage in a customs warehouse.

As regards the second question, it is apparent from the context of Article 7 of Regulation No 304/71 that an international consignment note issued in a Member State is equivalent to an internal Community transit document, unless the customs office of departure enters the symbol T1. Moreover, the above-mentioned agreement empowers the Swiss authorities to issue internal Community transit documents upon presentation of an internal Community transit document issued in a Member

State of the Community. Consequently, on the basis of an international consignment note issued in a Member State, not bearing the symbol T1 and therefore being equivalent to an internal Community transit document, the Swiss authorities would, in the case of reconsignment within the framework of the simplified procedure laid down for goods carried by rail, issue a new international consignment note ranking as an internal Community transit document. For that purpose they should enter in space 25 of such a consignment note the symbol T2.

If the international consignment note issued in Belgium did not bear the symbol T1, the conduct of the Swiss authorities was therefore lawful. If, on the other hand, that symbol had been entered on the consignment note, their conduct would have been unlawful.

The third question, according to the Commission, concerns the liability attaching to countries and traders as a result of the transport operation. It is important to remember:

(a) That responsibility for payment of a customs debt arises not from the carriage of goods, even if such carriage was covered by an irregular document, but from other causes specified in the directive dealing with customs debt;

(b) That liability under administrative or criminal law may attach to a trader if he knowingly uses a false document;

(c) That if the Belgian customs office of departure had not entered the symbol T1 on the international consignment note, liability on the part of Belgium would be conceivable and in fact, in a Community transit operation, the customs office of departure has the task, *inter alia* of verifying the customs status of the goods, and if, in consequence, they were to be carried under the simplified procedure for goods carried by rail, the customs office of departure should enter the symbol T1 on the international consignment note; that aspect may however not be pertinent to the decision to be given.

The answer to the last question submitted presents no difficulty since the offence or irregularity in question is clearly defined: it consists in declaring non-Community goods for home use without payment of the duties objectively payable having been made. It is clear that such an offence or irregularity was committed in Italy and that recovery of the unpaid duties should be effected by that country.

III — Oral procedure

At the sitting on 29 May 1984 oral argument was presented for the plaintiff in the main proceedings, C. Fioravanti, represented by G. Leone, of the Milan Bar, for the Italian Government, represented by A. Squillante, acting as Agent, assisted by O. Fiumara, Avvocato dello Stato, and by the Commission of the European Communities, represented by its Agent, A. Prozzillo.

The Advocate General delivered his opinion at the sitting on 3 July 1984.

Decision

1 By an order dated 20 April 1983, which was received at the Court on 30 May 1983, the Corte d'Appello [Court of Appeal], Brescia, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of the Agreement between the European Economic Community and the Swiss Confederation on the application of the rules on Community transit (Official Journal 1973, L 365, p. 226) (hereinafter referred to as the "Agreement") and of Regulation No 542/69 of the Council of 18 March 1969 on Community transit (Official Journal, English Special Edition 1969 (I), p. 125).

2 Those questions were raised in proceedings between Claudio Fioravanti, a customs agent, (the plaintiff in the main proceedings), and the Italian State Finance Administration (the defendant in the main proceedings).

3 In the order requesting a preliminary ruling the Corte d'Appello states that the plaintiff in the main proceedings, in his capacity as a customs agent, was instructed to clear through customs three consignments of butter which had originated in the Community and had been imported from Belgium. On the basis of the documentation received, which was genuine and formally in order, he submitted the definitive import declarations in respect of the goods. The goods were then cleared through customs on the basis of three customs entry documents issued by the Cremona customs authorities, at the premises of Magazzini Generali Cariplo, where they had been stored.

4 Subsequently, the Italian customs authorities established that the goods had come from Australia and had been imported into Belgium temporarily in order to be processed, were then sent from Belgium to a Swiss undertaking in the free port of La Praille, Geneva, and from there were re-consigned to Gormec Srl, in Cremona, where they were cleared through customs by the plaintiff in the main proceedings.

5 According to the Corte d'Appello, the Swiss customs authorities had marked the CIM international consignment notes issued for the onward dispatch with the symbol T2, indicating internal Community transit, because of an alleged error which, it is assumed, resulted from the loss of Copy No 3 of the consignment notes issued in Belgium, which should have been marked with the symbol indicating the Community or non-Community origin of the

goods. Under the regulations in force, an operation is deemed to constitute internal Community transit in the absence of the symbol T1 indicating the non-Community origin of the goods.

6 The Italien customs authorities thereupon calculated that the agricultural levies payable at the dates of the various import documents on the consignments in question as goods originating in a non-member country amounted to LIT 243 400 755. It required Gormec Srl and, in the alternative, Mr Fioravanti, who was liable on a subsidiary basis under Article 41 of the Italian Customs Law, to pay the sum in question. Gormec Srl did not pay and attempts to levy execution against that company proved fruitless. Consequently, on 17 May 1977 the State Finance Administration served an order on Mr Fioravanti requiring him to pay the above-mentioned sum of LIT 243 400 755.

7 Mr Fioravanti challenged that order before the Tribunale di Brescia [District Court, Brescia]. He put forward several arguments in defence of his position, contending in particular that the authority which issued the order lacked jurisdiction. He observed, in that regard, that the infringements or irregularities concerning the Community transit in question had been committed in another Member State (Belgium) or in a State associated with the EEC for the purposes in question by virtue of an international agreement (Switzerland) and that, by virtue of Article 36 of Regulation No 542/69, "the recovery of duties or other charges which may be chargeable shall be effected by that Member State".

8 The State Finance Administration contended that the circumstances provided for by the article referred to had not arisen in this case. It maintained that the operation in question did not constitute Community transit, that is to say transit between Member States via Switzerland, but transit from a non-member country, namely Switzerland, since the operation whereby the butter was transported from Geneva to Cremona on the instructions of a person who was not the sender of the original consignment from Montzen in Belgium but was in fact the person who received that consignment was completely independent of the latter operation and therefore the essential precondition for its classification as a Community transit operation, namely that the goods should come from a Member State of the Community, was not fulfilled.

9 The Tribunale di Brescia dismissed Mr Fioravanti's objection and he therefore appealed to the Corte d'Appello, Brescia, which submitted the following questions to the Court of Justice for a preliminary ruling:

"1. With particular reference to Articles 1 and 5 of the Agreement between the EEC and the Swiss Confederation on the application of the rules on Community transit contained in Regulation (EEC) No 2812/72 of the Council and to other specific provisions of those rules, must a transit operation involving goods which, after being dispatched from Belgium (customs office at Montzen) to a specific consignee at the free port of Geneva (La Praille), Switzerland, are re-consigned by that person, through the customs office of that free port, to another consignee in the city of Cremona (Italy) and definitively imported there, be regarded as Community transit?

2. In the circumstances under consideration, was it lawful for the Swiss customs authorities to issue CIM international consignment notes containing references to the consignment notes relating to the previous phase of the carriage and to mark them with the symbol T2 indicating internal Community transit, on the basis of the assertion (for which there is no proof inasmuch as Copy No 3 of those documents is presumed lost) that the earlier consignment notes were not marked with any symbol and therefore did not bear the symbol T1, in the absence of which the Community transit operation had to be treated as internal and not external, that is to say relating to goods which did not come from countries outside the Community?

3. In the case of goods which in fact came from outside the Community (in this case from Australia) and were imported into Belgium temporarily and therefore without the payment of any customs duty in Belgium, the Member State of the Community in which the transit in question began, does that transit operation, which was carried out on the basis of documents permitting internal Community transit, give rise to liability on the part of the country (and of the traders) from which the goods were consigned (Belgium) or on the part of the country from which they were subsequently re-consigned (Switzerland) and not on the part of the country (Italy) where the goods were definitively imported on the basis of documents which were formally valid?

4. Since Article 36 (1) of Regulation (EEC) No 542/69 provides that 'When it is found that, in the course of a Community transit operation, an offence or irregularity has been committed in a particular Member State, the recovery of duties or other charges which may be chargeable shall be effected by that Member State . . .', must the recovery of the agricultural levy be effected by the State in which the transit described as

being an internal Community transit operation commenced or by the State from which the goods were re-consigned, by means of proceedings against the traders concerned, even though in this case the offence was discovered in Italy?"

10 The national court assumes that the No 3 copies of the consignment notes were lost. However, in the course of the proceedings before the Court of Justice, Mr Fioravanti produced photographic copies of certain documents which he stated to be the No 3 copies of the consignment notes in question. They bore the symbol T2. If it were established that those documents were the consignment notes issued in Belgium, it could be concluded that they did not bear the symbol T1, with the result that the goods were subject to the internal Community transit procedure. It is for the national court to determine whether that was the position in the case of the goods in question or a part of them.

11 According to the provisions of Regulation No 542/69, movements of goods which do not satisfy the conditions laid down in Articles 9 and 10 of the EEC Treaty are subject to the external Community transit procedure. Movements of goods which satisfy those conditions are subject to the internal Community transit procedure. Those provisions have been amended by subsequent regulations, in particular, with regard to the carriage of goods by rail, by Regulation No 304/71 of the Commission of 11 February 1971 (Official Journal, English Special Edition 1971 (I), p. 63).

12 Goods that are to be carried under the procedure for external Community transit must be covered by a T1 declaration. Goods that are to be carried under the procedure for internal Community transit must be covered by a T2 declaration. The forms for the declarations are made up in sets comprising at least the following copies:

(a) the copy for the office of departure, bearing the number 1;

(b) the copy for the office of destination, bearing the number 2;

(c) the copy for return, bearing the number 3;

(d) the statistical copy, bearing the number 4.

Each copy must bear the symbol T1 in the case of external Community transit or the symbol T2 in the case of internal Community transit. For goods carried by rail the accompanying documents are called "International Consignment Notes (CIN)".

The first question, concerning the Agreement and the concept of Community transit

13 Mr Fioravanti, the Government of the Italian Republic and the Commission, which have submitted observations to the Court, agree that the first question should be answered in the affirmative.

14 It is true that by virtue of Article 7 (1) of Regulation No 542/69, the Community transit procedure is not to apply to the carriage of goods by rail under the procedure laid down in the TIF Convention, provided that the operation begins or is to end outside the Community. As regards the application of the Agreement, the term "Community" in that article refers exclusively to the European Economic Community (Article 2 (2) of the Agreement). However, by virtue of Article 1 of the Agreement, the rules on Community transit are to apply to the movement of goods between two points situated in the Community via the territory of the Swiss Confederation, whether the goods are consigned direct, with or without transhipment in Switzerland, or are re-consigned from Switzerland, where appropriate after storage in a customs warehouse. Article 5 of the Agreement lays down the conditions for the issue of T2 or T2L documents for goods which are re-consigned from Switzerland after storage in a customs warehouse.

15 It must therefore be stated in reply to the first question that where goods are sent from Belgium to a specified consignee in the free port of La Praille, Geneva (Switzerland), and are re-consigned by that person through the customs office of that free port to another person in Italy, the operation must be regarded as constituting Community transit.

The second question, concerning the issue of T2 consignment notes

16 The second question is intended to determine whether, and if so in what circumstances, the Swiss customs authorities may issue CIM International Consignment Notes bearing the symbol T2 to indicate internal Community transit. In that connection, it must be remembered that, by virtue of Article 6 of the Agreement, the competent Swiss customs offices are empowered to assume *inter alia* the functions of offices of departure, offices of transit, offices of destination and offices of guarantee. Subject to certain provisions specified in the Agreement, the issue of T2 documents by a Swiss office of departure is subject to the presentation of T2 documents drawn up in a Member State. The competent offices of departure in the Member States are empowered to issue T1 or T2 documents which are valid for a Swiss office of destination.

17 It follows that where goods accompanied by T2 documents drawn up in a Member State are re-consigned in the circumstances referred to in Article 5 of the Agreement the Swiss office of departure is empowered to issue T2 documents for a destination in a Member State. As the Commission points out in its written observations, it is apparent from the context of Article 7 of Regulation No 304/71 that an international consignment note issued in a Member State has the force of an internal Community transit document, unless the office of departure marks space No 25 with the symbol T1. Consequently, on the basis of an international consignment note issued in a Member State and not bearing the symbol T1, which is therefore valid as an internal Community transit document, the Swiss authorities issue, in the case of re-consignment under the simplified procedure for goods carried by rail, a new international consignment note having the force of an internal Community transit document. They must for that purpose enter the symbol T2 in space No 25 in such a consignment note. On the other hand, if Copy No 3 of the consignment note is missing or if it bears the symbol T1, the Swiss authorities are not empowered to issue a consignment note bearing the symbol T2.

18 It must therefore be stated in reply to the second question that, where goods coming from a Member State are accompanied by a consignment note on which the symbol T2 has been entered by the office of departure in that

Member State or on which the symbol T1 is not entered in space No 25, the Swiss office of departure is authorized, in the case of re-consignment to a destination in a Member State, to issue a new consignment note bearing the symbol T2 in space 25. If Copy No 3 of the consignment note is missing or if it bears the symbol T1, the Swiss office of departure is not empowered to issue a consignment note bearing the symbol T2.

The third and fourth questions, concerning the recovery of duties

19 Article 36 (1) of Regulation No 542/69, which was in force at the material time, provided:

> "1. When it is found that, in the course of a Community transit operation, an offence or irregularity has been committed in a particular Member State, the recovery of duties or other charges which may be chargeable shall be effected by that Member State in accordance with its provisions laid down by law, regulation or administrative action, without prejudice to the institution of criminal proceedings."

That provision was also applicable to the Swiss Confederation by virtue of the Agreement.

20 Mr Fioravanti maintains that when the goods arrived in Italy they were accompanied by consignment notes bearing the symbol T2. The Italian customs authorities therefore properly admitted the goods without charging customs duties and agricultural levies, since no offence or irregularity within the meaning of the regulation had been committed in Italy.

21 The Commission considers that Article 36 of Regulation No 542/69 is not applicable to this case. It maintains that the release into circulation in a Member State of non-Community goods which were not previously in free circulation in the Community causes customs duties and other charges payable in respect of their release into circulation to become due. That event occurred in Italy and the duties and charges must be recovered there. The simple fact of entering the symbol T2 on the consignment notes accompanying non-Community goods does not give rise to the collection of any duty or charge. For that reason Article 36 of the regulation is not applicable, in the Commission's view.

22 That argument cannot be accepted. The internal Community transit system requires a provision governing the case where, as a result of an irregularity in the application of the system, the duties and other charges payable are not collected. The Commission has been unable to indicate to the Court the nature of the duties and charges referred to by the provision in question which would be payable in the event of an offence or irregularity other than the duties and charges payable upon release into free circulation or upon exportation. It must therefore be concluded that Article 36 of the regulation applies to an offence or irregularity committed in connection with a Community transit operation and resulting in the non-collection of the duties or other charges which should have been collected.

23 It must therefore be stated in reply to the third and fourth questions that, where, by reason of an offence or irregularity committed in connection with a Community transit operation, the duties and other charges payable are not collected, recovery of those duties and charges is to be effected by the Member State in which the offence or irregularity was committed, in accordance with the laws, regulations and administrative provisions of that State.

Costs

24 The costs incurred by the Government of the Italian Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in reply to the questions submitted to it by the Corte d'Appello, Brescia, by order of 20 April 1983, hereby rules:

1. **Where goods are sent from Belgium to a specified consignee in the free port of La Praille, Geneva (Switzerland), and are re-consigned by that person through the customs office of that free port to another**

person in Italy, the operation must be regarded as constituting Community transit.

2. Where goods coming from a Member State are accompanied by a consignment note on which the symbol T2 has been entered by the office of departure in that Member State or on which the symbol T1 is not entered in space No 25, the Swiss office of departure is authorized, in the case of re-consignment to a destination in a Member State, to issue a new consignment note bearing the symbol T2 in space 25. If Copy No 3 of the consignment note is missing or if it bears the symbol T1, the Swiss office of departure is not empowered to issue a consignment note bearing the symbol T2.

3. Where, by reason of an offence or irregularity committed in connection with a Community transit operation, the duties and other charges payable are not collected, recovery of those duties and charges is to be effected by the Member State in which the offence or irregularity was committed, in accordance with the laws, regulations and administrative provisions of that State.

Bosco Pescatore

O'Keeffe Koopmans Bahlmann

Delivered in open court in Luxembourg on 27 November 1984.

For the Registrar

D. Louterman

Administrator

G. Bosco

President of the Fourth Chamber