# OPINION OF ADVOCATE GENERAL STIX HACKL

delivered on 14 January 2003 [1]

## I — Introduction

1. The referring court asks in its questions essentially what rights are conferred under Community law upon an undertaking which, having applied for payment of Community export refunds in respect of an export transaction, finds itself for reasons beyond its control unable to submit the necessary documents relating to the completion of this export transaction to the competent authorities within the time prescribed.

## II — Legal background

2. Commission Regulation (EEC) No 3665/87 [2] entered into force on 1 January 1988 and was amended several times before being repealed and superseded by Commission Regulation (EC) No 800/1999. [3] Regulation No 800/1999 entered into force on 24 April 1999 and has been applicable since 1 July 1999. Under Article 54(1), first indent, of that regulation, Regulation No 3665/87 continued to apply to exports where the export declarations were accepted before the date of applicability of Regulation No 800/1999. The exports giving rise to the main proceedings in the present case were effected in 1995, so under this rule on the conflict of timing of provisions relating to the granting of any export refunds, they are subject to Regulation No 3665/87.

3. Article 1 of Regulation No 3665/87 provided that that regulation was inter alia applicable to exports of rice.

4. Article 47 of the version of Regulation No 3665/87 as amended at the time of the facts in the main proceedings provided as follows:

'1. The refund shall be paid only on written application by the exporter and shall be paid only by the Member State in whose territory the export declaration was accepted.

...

1 — Original language: German.

2 — Regulation of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1).

3 — Regulation of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11).

2. Except in cases of *force majeure*, the documents relating to payment of the refund or release of the security must be submitted within 12 months following the date on which the... export declaration was accepted.

3. ...

4. Where the documents required under Article 18 cannot be submitted within the period referred to in paragraph 2, although the exporter has acted with all due diligence to obtain them and communicate them within such period, he may be granted further time for the production of these documents.

5. Requests for the treatment of other documents as equivalent, as referred to in paragraph 3, whether or not supporting documents are attached, and requests for extension of time referred to paragraph 4 must be submitted within the period referred to in paragraph 2.

6. ...

7. ...'

5. Article 48(2)(a) of Regulation No 3665/87 provided:

'Where proof that all the requirements laid down by Community rules have been complied with is produced within six months of expiry of the periods set in Article 47(2), (4) and (5), the refund paid shall be 85% of the sum which would have been paid if all the requirements had been complied with.'

6. Article 18 of Regulation No 3665/87, referred to in Article 47(4) of that regulation, specified which documents could serve as proof of clearance of release for consumption. This provision was amended several times in order to facilitate production of the corresponding proof by Community exporters.

7. Reference is made to Article 22(1) of Regulation No 3665/87 for a better understanding of the main proceedings.

'On application by the exporter, Member States shall advance all or part of the amount of the refund as soon as the export declaration has been accepted on condition that a security is lodged of which the amount is equal to the amount advanced plus 15%.

Member States may lay down the conditions under which it shall be possible to apply for an advance of part of the refund.'

8. Article 23(1) of Regulation No 3665/87 provided:

'Where the amount advanced is greater than the amount actually due in respect of the relevant export operation or an equivalent export operation, the exporter shall repay the difference between the two amounts plus 15% of such difference.

Where, however, by reason of *force majeure*,

— the proof to be furnished under this Regulation in order to qualify for the refund cannot be produced, or

— the product arrives at a destination other than that for which the advance was calculated,

the additional 15% shall not be charged.'

9. The background to Articles 47 and 48 of Regulation No 3665/87 under discussion here is explained in the penultimate recital of that regulation:

'Whereas in the interest of sound administrative practice, applications for payment of the refund, accompanied by all relevant documents, should be required to be made within a reasonable period, save in cases of *force majeure* and in particular when it has not been possible to comply with the time-limit because of administrative delays beyond the control of the exporter.'

10. It should be added that the successor provisions in Articles 49 and 50 of Regulation No 800/1999 largely echo the abovementioned Articles 47 and 48 of Regulation No 3665/87. Article 49(5) of Regulation No 800/1999, the successor provision to Article 47(5) of Regulation No 3665/87, provides:

'However, if those applications are submitted within six months following this time-limit, the provisions of the first subparagraph of Article 50(2) shall apply.'[4]

4 — This footnote refers to a corrigendum for the German text, which does not concern the English version.

The first subparagraph of Article 50(2) of Regulation No 800/1999 corresponds to Article 48(2)(a) of Regulation No 3665/87.

## III — Facts, procedure and questions referred

11. In 1995 Eurico Italia SpA (hereinafter: Eurico) exported three consignments of rice to Israel, in respect of which it applied to the Ministero delle Finanze (hereinafter: the Ministero) for payment of Community export refunds.

12. In July 1995 the competent authorities made an advance payment to Eurico of some ITL 33 million.

13. Subsequently, Eurico was unable, despite repeated requests, to obtain the necessary documents from the Israeli buyer proving arrival of the goods at the destination. Finding itself unable to observe the 12-month period prescribed in Article 47(2) of Regulation No 3665/87 for presenting the necessary documents, on 6 March 1996, clearly within the period set by Article 47(5) of Regulation No 3665/87, Eurico submitted two applications to the Ministero for an extension of time.

14. By letter of 19 October 1996 the Ministero refused the applications. The grounds given were that at the time of the application Eurico still had a further six months available to submit the missing documents. The Ministero also found that despite the fact that the maximum periods laid down by Article 47(2) and Article 48(2) of Regulation No 3665/87 had expired, the documents were still missing. The Ministero concluded from this that the application for the granting of export refunds should be refused.

15. On 18 December 1996 the Ministero demanded repayment from Eurico of the advance payment already made. The actions brought by Eurico in response were unsuccessful, as a consequence of which it had to pay the sum demanded, plus 15%.

16. Only after submitting requests through official Italian channels and instructing lawyers did Eurico succeed in November 1997 in obtaining the necessary documents from Israel. These were then sent to the Ministero on 3 December 1997.

17. On 4 December 1997 Eurico brought an action before the Tribunale di Genova (Regional Court, Genoa) against the Ministero for payment of some ITL 103 million

in export refunds. By judgment of 3 February 2000 the Tribunale di Genova, rejecting objections of lack of jurisdiction, allowed the claim by Eurico on the basis of Article 47(4) of Regulation No 3665/87. As grounds, it stated that 'the claimant is asserting its entitlement to be granted further time for submission of the documents evidencing release for consumption which it could not submit within the 12 months following the date of acceptance of the export declaration even though the exporters had been diligent in seeking to obtain them (a situation which has in fact been proved in these proceedings), since Eurico arranged for diplomatic intervention and action by the FTI, applying for the issue of replacement documents by the Israeli customs authorities)'.

18. The Ministero appealed against that decision to the referring court. According to the order for reference, the Ministero objects in particular to the interpretation of Article 47(4) of Regulation No 3665/87, applied by the Tribunale di Genova. In its submission the period may never exceed a maximum of 18 months, irrespective of any extension. In the present case, however, the complete documents were only submitted some 32 months after acceptance of the export declarations. This follows from Article 48(2) of Regulation No 3665/87, which provides that where proof of compliance with all the conditions laid down by Community rules is produced within six months of expiry of the periods set in Article 47(2), (4) and (5), the refund payable is to be 85% of the refund that would have been paid had all the conditions been met.

19. In the main proceedings Eurico submitted that Article 48 of Regulation No 3665/87 suggests neither that the granting of further time is subject to a maximum limit, nor that the total period for submission of the necessary documents may not exceed 18 months.

20. Since the referring court holds an interpretation of Community law to be necessary, it has stayed proceedings and submitted the following questions to the Court:

'(A) On the basis of Article 47(4) and Article 48 of Regulation (EEC) No 3665/87, must it be concluded

(a) that the further time which may be granted to an exporter may not in any circumstances exceed a maximum duration of 18 months, or

(b) that, conversely, the 15% reduction applies only where the ordinary time-limit and any extension

thereof granted to the exporter have been exceeded by more than six months?

(B) If the interpretation given in the above paragraph under (b) is correct, are there, on the basis of the two abovementioned articles, maximum time-limits, — having regard to various aspects, including those indicated in the grounds of this order, which may be relevant from the Community-law point of view — within which the extensions of time may be granted?

(C) If the interpretation given in question A(b) is correct, what are those maximum time-limits and how long are the additional periods under the two abovementioned articles?

(D) If the interpretation given in question A(b) is correct, may a private individual, on the basis of the two abovementioned articles, claim a legally protected right to the setting of a particular duration (regarded as commensurate with the difficulties of obtaining the prescribed documentation) for the extension of time?

(E) If the interpretation given in question A(b) is correct, may the national court, on the basis of the two abovementioned articles — if the administrative authority failed to grant special periods — grant further time to an exporter (if he has acted diligently to obtain the documents and forward then within the period of 12 months pursuant to Article 47(2) of the said regulation) and may it set the length of those periods on the basis of the time actually taken to obtain and forward the prescribed documentation?'

## IV — The questions referred

21. The first three questions referred concern, essentially, the point whether and to what extent Article 48(2) of Regulation No 3665/87 lays down criteria regarding the further time provided for in Article 47(4) of that regulation. The last three questions, on the other hand, relate to legal protection against a refusal by national authorities to grant further time under Article 47(4) of Regulation No 3665/87.

A — *Extension of time to allow submission of the necessary proof (questions A to C).*

1. Submissions of the parties

22. *Eurico*, the *Commission* and the *French Government* have all submitted, essentially, in their written observations that Article 47(4) of Regulation No 3665/87 does not provide a maximum duration for any extension of time. Consequently, it is a matter for the national authorities to set the duration of the extended period in individual cases. They contend that, when so doing, the authorities must take account of the diligence exercised by the applicant exporter, the grounds for his application, and the period of time predictably necessary to overcome the difficulties cited.

23. *Eurico* challenges the view of the Italian administration that any extension beyond six months is in any event precluded, and that even if such extensions were to be granted, the amounts refunded would have to be reduced by 15%. The reference in Article 48(2)(a) to the period laid down in Article 47(4) applies to the situation where the extension of time has been exceeded, and not the original 12-month period laid down in Article 47(2) (hereinafter: the basic period). It follows from this that even where further time has been granted, the exporter may submit the necessary documents within six months of expiry of that further time, although then liable to the 15% reduction in the amount payable.

24. Eurico regards the position of the Italian Government as also untenable against the background of the judgment of 21 January 1999 in *Germany* v *Commission*.[5] It points out in this connection that, according to that judgment, the purpose of the possibility of an extension of time provided by Article 47(4) of Regulation No 3665/87 is that exporters who, despite having made every effort required of them, have been prevented by circumstances beyond their control from producing the requisite documents within the 12-month period, are not automatically deprived of the refunds provided for under Community law. The imposition of a 15% reduction in the amount refunded to a diligent exporter who could justify the delay by circumstances beyond his control would be incompatible with this purpose. The view of the Italian Government is also incompatible with the principles of proportionality and of the protection of legitimate expectations.

5 — Case C-54/95 [1999] ECR I-35, at paragraph 146 et seq.

25. The *French Government* is broadly of the same view as Eurico, rejecting the interpretation that an exporter has a maximum of 18 months from the date of acceptance of the export declaration to submit the necessary documents. The use of the conjunction 'and' in Article 48(2) of Regulation No 3665/87 indicates that the periods laid down by Article 47 must have expired in order for the six-month period provided in Article 48(2) to start running at all.

26. In the view of the French Government, the interpretation under discussion would lead to a situation in which national authorities would ultimately lose their discretion over the duration of the further time to be granted. It also refers to the purpose of the further time according to the judgment in *Germany* v *Commission*, cited above.

27. The *Commission* also shares the same view as Eurico to a large extent. It emphasises that export refunds are payable in full if the exporter submits the necessary documents within the 12-month period under Article 47(2) of Regulation No 3665/87 or, as the case may be, within the consecutive additional period under Article 47(4). The 15% reduction provided under Article 48(2) only applies if the exporter submits the documents between that expiry of the set periods and the end of the sixth month following the expiry. If the exporter submits the documents at a date later than this, he no longer has any claim to payment of the refunds.

## 2. Legal assessment

28. According to the wording of Regulation No 3665/87, an exporter who has lodged an application for payment of export refunds is in principle required under Article 47(2) to submit the documents for payment of the refund, or for release of the security provided in accordance with Article 22, within 12 months following the date of acceptance of the export declaration. The purpose of this period is to accommodate the administration's interest in limiting the duration of the procedure. [6]

29. As the present case perfectly illustrates, circumstances may, however, exist in which the exporter, despite not being at fault in any way, is unable to submit in good time the documents proving release of the goods for consumption in a non-

6 — See judgment in Case C-155/89 *Philipp Brothers* [1990] ECR I-3265, at paragraph 39, on the predecessor provision to Article 31(1) of Regulation No 2730/79: 'The fixing of the length of that period... is not unreasonable, bearing in mind... that the intervention agencies cannot keep open indefinitely files relating to operations in respect of which a Member State has paid refunds in advance...'.

member country due solely to the customs authorities in that country not acceding to his requests. [7] Against that background, it is understandable that Article 47(4) should envisage the possibility of an extension of time, provided that 'the exporter has acted with all due diligence to obtain and communicate them [the requisite documents] within such period'.

30. In that connection, reference should be made to the decision in *Germany* v *Commission* [8] properly cited by the parties, where it was held that the purpose of the possibility of an extension of time under Article 47(4) of Regulation No 3665/87 was 'to ensure that exporters who, despite having made every effort required of them, have been prevented, as a result of circumstances beyond their control, from producing the requisite documents within the 12-month period, are not automatically deprived of the refunds provided for under the Community rules'.

31. The question here is whether the extension of time granted under Article 47(4) is subject to any special criteria. The Italian Government clearly bases its interpretation of Article 47(4), namely that it precludes any further time beyond six months, that the total period for submitting the necessary documents may never exceed 18 months, and that the 15% reduction in any refunds paid always operates if the documents are submitted after expiry of the 12-month basic period, on Article 48(2)(a) of Regulation No 3665/87, and in particular on the reference there to a period of six months after expiry of the periods provided for in Articles 47(2), 47(4) and 47(5).

32. Such an interpretation is not convincing, since it inconsistent with both the wording and the meaning and purpose of the provisions concerned.

33. As regards the wording of Article 48(2)(a) of Regulation No 3665/87, it should be noted, echoing the French Government, that the reference to the periods laid down in Article 47 utilises the conjunction 'and', so that the reduction in the refunds provided for by this provision is linked to the condition that the documents have been submitted within six months from the expiry of the relevant period. The relevant period is the 12-month period laid down in Article 47(2), or, in the case of

7 — See *Philipp Brothers* (cited in footnote 6) at paragraph 27 on the predecessor provision to Article 31(2) of Regulation No 2730/79: '... exporters may encounter difficulties in obtaining the customs documents from the authorities of the non-member country of importation, upon whom they have no means of exerting pressure'.

8 — Cited in footnote 5 (at paragraph 148).

further time, the extension of time granted under Article 47(4). The conjunction 'and' clearly indicates that the legal consequence under Article 48(2)(a) operates after expiry of both the basic period laid down under Article 47(2), and the extension of time provided for in Article 47(4).

34. Although Article 48(2)(a) is concerned inter alia with the expiry of the extended period under Article 47(4), it is not linked to this provision in any regulatory sense, since it governs another, conceptually clearly separate, question. Article 47(4) deals with the question of the period within which an exporter must prove that the conditions for any claim for payment have been met; Article 48(2), however, is concerned with the question of the legal consequence of a relatively minor failure to comply with a time-limit. The lack of a regulatory link between the two provisions becomes clear if one considers that Article 47(4) deals with the conduct of the exporter and makes the granting of further time dependent on his diligence, while Article 48(2)(a) makes no mention of the reasons for failing to comply with the time-limit.

35. It should be noted, with regard to the meaning and purpose of Article 47(4) of Regulation No 3665/87, that construing this provision to the effect that the assessment of the further time for which it provides is not subject to any criteria derived from Article 48(2)(a), is compatible with its meaning and purpose.

36. Thus, the Court held in its judgment in *Germany* v *Commission* [9] that Article 47(4) of Regulation No 3665/87 conferred a margin of discretion on national authorities. This margin of discretion extends both to the assessment of the conduct of the exporter, in other words to the question whether he has exhibited diligence in seeking to obtain the documents, and to the other circumstances of an individual case justifying a certain extension of time. If Article 48(2)(a) were to lay down any criteria, the margin of discretion of national authorities would largely disappear.

37. This appears all the less acceptable in that Article 47(4) is intended to ensure that an exporter does not lose his claim for reasons outside his control. [10] However, if the duration of the extension of time were outside the discretion of the competent national authorities, taking all the circumstances of individual cases into account, exporters would run the risk of losing their claim owing to a rigid rule regarding

9 — Cited in footnote 5 (at paragraph 146 et seq.).
10 — See point 32 above.

time-limits, despite the provision of proof being impossible for reasons outside their control.

38. In my view, taking the predecessor [11] and successor [12] regulations on this matter into account permits of no other result.

39. As regards Regulation No 2730/79, the Court examined the appropriateness of a six-month period for submitting the necessary proof in *Philipp Brothers*. [13] The period in that case was a basic period which corresponded to that in the later Regulation No 3665/87 discussed here, and which was only increased to 12 months in Commission Regulation (EEC) No 1663/81. [14] The Court referred in this connection to the necessity of limiting the duration of the procedure. However, nothing in its observations to my mind suggests an implicit and rigid limitation of the extension periods to be granted under Article 47(2) of Regulation No 3665/87, since in that case — unlike the present case — the main point at issue was whether an application for an extension period could be made with some prospect of success after expiry of the basic period in instances where doubts had been cast on its validity. [15]

40. As regards Regulation No 800/1999, it should be noted that it makes express provision in Article 49(5) inter alia for late applications for further time — and makes it clear in this connection that delay will incur the legal consequence of a reduction in the amount of the refund. Irrespective of this, it provides in Article 50(2) for reductions in the amounts refunded where proof of compliance with requirements for payment of export refunds is provided late — up to six months after expiry of the basic period or the extension period. The conclusion, *a contrario*, to be drawn from this is that this six-months' period of grace in the event of late proof of compliance with the requirements for the claim for payment should be separated from the extension period in instances where difficulties are expected in providing proof, since each of the two failures to comply with the time-limit incurs different legal consequences.

41. For these reasons it is proposed that the Court answer the first three questions to

11 — Commission Regulation (EEC) No 2730/79 of 29 November 1979 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1979 L 317 p. 1).

12 — Regulation No 800/1999 (cited in footnote 3).

13 — Cited in footnote 6 (at paragraph 36 et seq.).

14 — Regulation of 23 June 1981 amending for the fifth time Regulation (EEC) No 2730/79, amending for the second time Regulation (EEC) No 798/80 and amending Regulation (EEC) No 52/81 as regards in particular the period for submission of the documents necessary for certain payments to be made (OJ 1981 L 166, p. 9).

15 — Although Advocate General Mischo argued in his Opinion delivered on 3 May 1990 in *Philipp Brothers* (cited in footnote 6) in favour of a strict solution to the effect that the period in question represented a preclusive time-limit, the Court held that an application for an extension of time under Article 31(2) of Regulation No 2730/79 could still be made after expiry of the period for submission of the customs documents.

the effect that the duration of the further time provided for under Article 47(4) of Regulation No 3665/87 is not limited by Article 48 of Regulation No 3665/87. Setting the duration of the further time lies within the discretion of the competent national authority, which must take into account all the relevant factors in the individual cases, in particular the expected duration of the measures initiated by the exporter to overcome the difficulties outside his control in procuring the documents.

B — *Legal protection under Regulation No 3665/87 (questions D and E)*

1. Submissions of the parties

42. *Eurico* seeks to infer from case-law [16] that where an administrative authority has wrongly refused an exporter's claim for further time, a national court may allow such a claim and itself determine the duration of that extension of time.

43. The *French Government*, as regards the granting of an extension of time, advocates reducing the discretion on the part of the national administrative authority to zero provided that all the factors in an individual case support the granting of such an extension. Accordingly, the exporter in such a case could then rely on Article 47(4) of Regulation No 3665/87 in order to obtain the annulment of the administrative act in question.

44. On the other hand, the French Government sees nothing in Regulation No 3665/87 or in Community law to support the idea that a national court can determine the duration of the extension of time itself. It refers in this connection to the procedural autonomy of Member States and concludes that the fact that a national court might not have the power under national law to set the period instead of the administrative authority would not make it unduly difficult for a diligent exporter to exercise the rights conferred upon him under Article 47(4) of Regulation No 3665/87.

45. The *Commission* first stresses that the wording of Article 47(4) of Regulation No 3665/87 suggests that the exporter cannot derive a right from it to obtain an

16 — It relies on the judgments in Cases 222/86 *Heylens and Others* [1987] ECR 4097, C-213/89 *Factortame and Others* [1990] ECR I-2433, and C-97/91 *Oleificio Borelli* v *Commission* [1992] ECR I-6313.

extension of time. A considerable degree of discretion is allowed to national authorities when examining such an application. In particular, they should examine whether the difficulties asserted actually exist, and whether the exporter has shown the necessary diligence. They should also set the necessary additional periods of time for procuring the requisite documents.

46. The Commission also refers to the procedural autonomy of Member States and comes to the conclusion that national courts responsible for ruling on a refusal by the national administrative authority to grant an extension of time must be endowed with the same powers of review as in procedures for deciding national disputes of the same type.

2. Legal assessment

47. In the light of the clear wording of Article 47(4) of Regulation No 3665/87, under which further time *may* be granted to the exporter in the instances stated, it follows from the outset that an exporter cannot claim a right under Article 47(4) to have further time granted.

48. The decision of a national authority on an application for further time to submit the requisite documents constitutes a discretionary decision, in the context of which the national authority assesses both the credibility of the difficulties adduced by the exporter and the diligence exercised by him in overcoming these difficulties. The national authority also has to estimate the time necessary to eliminate the difficulties, in order to be able to set the duration of any extension of time.

49. There is no doubt that the affected exporter has a right to effective legal protection by a national court against this discretionary decision by the competent national authority.[17] Whether this legal protection takes the form of an independent right to bring an action, or whether the discretionary decision is only examined in conjunction with the examination of the decision not to grant export refunds or to demand the repayment of relevant advances, can, owing to the close chronological proximity of the decision on further time and the decision on granting export refunds or repayment of any

17 — See Case 222/84 *Johnston* [1986] ECR 1651, at paragraphs 17 to 19. See also the statement of principle by Advocate General Alber in the pending Case C-63/01 *Evans* [2003] ECR I-14447, at paragraph 76 et seq.

advances paid, be regarded as irrelevant as regards the provision of such legal protection.

50. Should the national court seised of the application arrive at the view that the contested national decision of refusal is an abuse of discretion, for example, because of a manifest error of assessment, the question as to the legal consequence of this finding is then clearly governed by national law. Community law thus has nothing to say about whether the competence of the national court should be limited when examining a contested decision, let alone whether it should encompass the power to vary an incorrect decision. The Commission and the French Government are correct in this respect in referring to the principle of procedural autonomy of Member States.

51. Accordingly, the fundamental authority of national law to determine the powers of review of the national court is subject to two conditions. Firstly, the detailed rules for the application of national law must not have the effect of rendering implementation of Community law impossible in practice, or excessively difficult (effectiveness), and secondly, national law must be applied without discrimination as compared to proceedings for deciding national disputes of the same type (equivalence). [18]

18 — See only judgment in Case C-298/96 *Oelmühle and Schmidt Söhne* [1998] ECR I-4767, at paragraph 24 with further references.

52. As regards the first condition of effectiveness, it should be noted that the absence of any possibility of examining the contested discretionary decision by the competent national authority would be tantamount to a denial of legal protection, which as such would infringe Community law.

53. The second condition, that of equivalence, presupposes, for its part, that the scope of a court's powers of review in the case of facts with a Community-law aspect is no different from that in cases of like facts of a national nature without a Community-law aspect.

54. The answer to the fourth and fifth questions referred must therefore be that the decision of the competent national authority under Article 47(4) of Regulation No 3665/87 constitutes a discretionary decision against which effective legal protection must exist, free of discrimination as compared to purely national disputes of the same type without a Community-law aspect. It is for national law to lay down the detailed arrangements for granting legal protection whilst preserving the principles of effectiveness and equivalence.

## V — Conclusion

55. In the light of all this, it is proposed that the Court give the following answers to the Corte d'Appello di Genova:

— The duration of the extension of time provided for under Article 47(4) of Regulation No 3665/87 is not limited by Article 48 of Regulation No 3665/87. Setting the duration of the extension of time lies within the discretion of the competent national authority, which must take into account all the relevant factors in the individual case, in particular the foreseeable duration of the measures initiated by the exporter to overcome the difficulties outside his control in procuring the requisite documents.

— The decision of the competent national authority under Article 47(4) of Regulation No 3665/87 constitutes a discretionary decision against which effective legal protection must exist, free of discrimination as compared to purely national disputes of the same type without a Community-law aspect. It is a matter of national law to lay down the detailed arrangements for granting legal protection whilst preserving the principles of effectiveness and equivalence.