OPINION OF ADVOCATE GENERAL TRSTENJAK
delivered on 7 June 2007 [1]

I — Introduction

1. The Commissione tributaria regionale di Genova (Genoa Regional Tax Court) (Italy) is asking the Court whether Articles 216 and 220 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2] are applicable in the case where Community goods have been previously exported under the inward processing procedure to a non-member country with which an agreement containing a no-drawback clause is in force.

2. The dispute on which this case is based relates to the demand by the Genoa Customs Office for customs duties allegedly owed by Agrover Srl ('Agrover') in the context of the inward processing procedure in relation to the prior exportation to Hungary, which at the time was linked to the European Communities and their Member States by an agreement containing a no-drawback clause, of wholly-milled rice of Community origin, and the subsequent import from Thailand, on a duty-free basis, of an equivalent quantity of husked rice.

II — Legal background

A — *The CCC* [3]

3. Article 114 provides as follows:

'1. Without prejudice to Article 115, the inward processing procedure shall allow the following goods to be used in the customs

1 — Original language: French.

2 — OJ 1992 L 302, p. 1, 'the CCC'.

3 — Subsequent amendments to the CCC do not affect the passages cited herein.

territory of the Community in one or more processing operations:

(a) non-Community goods intended for re-export from the customs territory of the Community in the form of compensating products, without such goods being subject to import duties or commercial policy measures;

(b) goods released for free circulation with repayment or remission of the import duties chargeable on such goods if they are exported from the customs territory of the Community in the form of compensating products.

2. The following expressions shall have the following meanings:

(a) suspension system: the inward processing relief arrangements as provided for in paragraph 1(a);

(b) drawback system: the inward processing relief arrangements as provided for in paragraph 1(b);

(c) processing operations:

— the working of goods, including erecting or assembling them or fitting them to other goods;

— the processing of goods;

— the repair of goods, including restoring them and putting them in order;

and

— the use of certain goods defined in accordance with the committee procedure which are not to be found in the compensating products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the process.

(d) compensating products: all products resulting from processing operations;

(e) equivalent goods: Community goods which are used instead of the import goods for the manufacture of compensating products;

(f) rate of yield: the quantity or percentage of compensating products obtained from the processing of a given quantity of import goods.'

4. Article 115 provides as follows:

'1. Where the conditions laid down in paragraph 2 are fulfilled, and subject to paragraph 4, the customs authorities shall allow:

(a) compensating products to be obtained from equivalent goods;

(b) compensating products obtained from equivalent goods to be exported from the Community before importation of the import goods.

2. Equivalent goods must be of the same quality and have the same characteristics as the import goods. However, in specific cases determined in accordance with the committee procedure, equivalent goods may be allowed to be at a more advanced stage of manufacture than the import goods.

3. Where paragraph 1 applies, the import goods shall be regarded for customs purposes as equivalent goods and the latter as import goods ...'

5. Article 216 provides as follows:

'1. In so far as agreements concluded between the Community and certain third countries provide for the granting on importation into those countries of preferential tariff treatment for goods originating in the

Community within the meaning of such agreements, on condition that, where they have been obtained under the inward processing procedure, non-Community goods incorporated in the said originating goods are subject to payment of the import duties payable thereon, the validation of the documents necessary to enable such preferential tariff treatment to be obtained in third countries shall cause a customs debt on importation to be incurred.

2. The moment when such customs debt is incurred shall be deemed to be the moment when the customs authorities accept the export declaration relating to the goods in question.

3. The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the declaration is made shall also be a debtor.

4. The amount of the import duties corresponding to this customs debt shall be determined under the same conditions as in the case of a customs debt resulting from the acceptance, on the same date, of the declaration for release for free circulation of the goods concerned for the purpose of terminating the inward processing procedure.'

6. Article 220 provides as follows:

'...

2. Except in the cases referred to in the second and third subparagraphs of Article 217(1), subsequent entry in the accounts shall not occur where:

...

(b) the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration;

...'

B — *Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part* [4]

7. Article 1 states that '[a]n association is hereby established between the Community and its Member States on the one part and Hungary on the other part'.

C — *Decision No 3/96 of the Association Council, Association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part* [5]

8. Article 15, entitled 'Prohibition of drawback of, or exemption from, customs duties', provides as follows:

'1. (a) Non-originating materials used in the manufacture of products originating in the Community, in Hungary or in one of the other countries referred to in Article 4 for which a proof of origin is issued or made out in accordance with the provisions of Title V shall not be subject in the Community or Hungary to drawback of, or exemption from, customs duties of whatever kind ...'.

III — The main proceedings and the reference for a preliminary ruling

9. In 2001, following an inward processing authorisation granted by the Novare Customs Office, Agrover, whose principal office is established in Vercelli (Italy), first exported to Hungary, which at the time was connected with the European Communities and their Member States by an agreement containing a no-drawback clause, in three consignments, wholly-milled rice of Community origin and then imported from Thailand, on a duty-free basis, an equivalent quantity of husked rice.

10. On 26 January 2004, the Genoa customs office, where the three compensating importations were made, issued three correction notices for a total amount of EUR 73 767.88. The Genoa customs office took the view that those imports ought to be subject to the payment of duties on the ground that they

4 — OJ 1993 L 347, p. 2.

5 — Decision of 28 December 1996 (OJ 1997 L 92, p. 1).

did not count as coming under the inward processing procedure within the meaning of Articles 114 and 115 of the CCC since the compensating imports were not from a country with which an agreement with the Community was in force.

11. Agrover brought an action against those decisions. The Commissione tributaria provinciale di Genova dismissed that action on 2 July 2004. Agrover brought an appeal against that decision before the Commissione tributaria regionale di Genova, which took the view that it was necessary to refer the following two questions to the Court for a preliminary ruling:

'(1) Can Article 216 of the [CCC] apply where a Community product (rice) previously exported under the inward processing procedure with an EUR.1 certificate to a non-member country (with which an agreement on preferential tariff treatment is in force) gives rise to the application of customs duties at the time of the subsequent compensating reimportation of the same (or equivalent) goods from a so-called "non-agreement" non-member country?

(2) If duties under Article 216 of the [CCC] are not levied at the time of the compensating importation, may the customs authorities seek to recover them *a posteriori*, or does the exemption referred to in Article 220 of the [CCC] apply?'

IV — Observations submitted to the Court

A — *First question*

12. Agrover proposes that the Court reply that Article 216 of the CCC does not apply to the inward processing procedures it carried out because Article 216 relates only to non-Community products 'incorporated' in the Community products to be exported, whereas in the case of the rice it previously exported there was no incorporation. That interpretation, it claims, is supported by Article 15 of Decision No 3/96, which provides for a prohibition on the drawback of customs duties between the European Communities and their Member States, on the one hand, and Hungary, on the other, only for non-originating materials used in the manufacture of products originating in the Community. Furthermore, in this case the application of Article 216 of the CCC

would result in a loss of approximately EUR 210 per tonne of rice for the exporter.

13. The Italian Government proposes that the Court reply that the 'inward processing' procedure referred to in Articles 114, 115 and 216 of the CCC relates to any customs operation which meets the statutory requirements, and the trader cannot claim that its benefits extend to the subsequent compensatory re-importation of the same goods from a non-member country which has not entered into an agreement with the Community. The Italian Government points out that the doubts that arise in construing the imprecise wording of Article 216 of the CCC when applied to a case such as this one were removed by Commission document TAXUD/724/2003 of 20 March 2003, which, while acknowledging the ambiguity of the provision, established that in all cases where an inward processing procedure of rice with prior exportation is carried out with the issue of a EUR.1 certificate, customs duties are payable upon re-importation of the non-Community goods. That is true because, according to that document, 'despite its context, [Article 216 of the CCC is] neither a rule on origin nor a rule on inward processing but a rule relating to the customs obligation. In other words the legal basis for possible recovery of the customs duties is Article 216 of the CCC as such and not the "no-drawback rule" laid down in the origin protocol' [unofficial translation]. The grant of an exemption from customs duties on the compensating importation as well would have the effect of generating too many advantages in respect of a single operation. The trader must choose to benefit either from the exemption at the time of export pursuant to the issue of an EUR.1 certificate or from the exemption from duties at the time of the compensatory import.

14. The Commission for its part proposes that the Court reply that Article 216 of the CCC can only apply to 'classic' inward processing where import precedes export. Article 216 of the CCC relates to goods originating in the Community obtained under the inward processing procedure. However the consequence of Article 115(3) of the CCC is that the transaction in this case cannot be regarded as equivalent to an export of goods to a non-member country with which a preferential tariff agreement is in force. Article 216(2) of the CCC, which states that the moment when the customs debt is incurred is deemed to be the moment when the customs authorities accept the export declaration relating to the goods previously treated under the 'classic' inward processing procedure, is irreconcilable with the EX/IM inward processing procedure (known as the 'prior exportation' system), and with the legal fiction covered by Article 115(3) of the CCC. In the light of that legal fiction, the Italian authorities should not have stamped the EUR.1 certificate for the rice of Community origin that was to be exported to Hungary. On the contrary, they should have regarded the rice as coming from Thailand and for export to Hungary under the EX/IM inward processing system.

B — *Second question*

15. Agrover submits that if the Court were to find that Article 216 of the CCC applies in this case, the Court ought to reply that Agrover is not bound to pay the customs duties, since Article 220(2)(b) of the CCC is also applicable. First of all, Agrover's good faith cannot be questioned since the customs authorities did not express any reservation with regard to analogous transactions for a number of years. That inaction justifies the application of Article 220(2)(b) of the CCC. [6] The Commission's TAXUD/724/2003 document also emphasises the unsuitability of Article 216 of the CCC for inward processing transactions such as that in this case. Finally, the inward processing authorisation did not refer to Article 216 of the CCC. Agrover thus considers that the customs authorities cannot now, without infringing the principle of the protection of legitimate expectations, [7] claim that the issue of the EUR.1 certificates when the wholly-milled rice was exported to Hungary can result in the imposition of very high duties on the compensatory imports of Thai rice since that would cause irreparable damage to the applicant, given that Agrover is no longer able to transfer the border duty to the purchaser of the re-imported rice.

16. The Italian Government proposes that the Court reply that Article 220(2)(b) of the CCC is inapplicable in this case since the customs authorities did not make any error, either at the time of the export or at the time of the compensatory import. There was no error when the EUR.1 certificate was issued since the exported rice was indeed of Italian origin. And there was none on import, since the acceptance of the customs declaration has no legal relevance as regards approval or endorsement of the particular operational methods used, nor does it imply prior review of the lawfulness of the transaction, as such review is generally carried out *a posteriori* so as to speed up customs operations. Even if there had been an error, Agrover could reasonably have been expected to detect it given its professional experience in the area of customs clearance and international trade. Further, Agrover ought to assume the economic risks associated with its activities and cannot hide behind the notion of good

6 — Agrover refers to Case C-250/91 *Hewlett-Packard France* [1993] ECR I-1819.

7 — Agrover refers in particular to Case C-251/00 *Ilumitrónica* [2002] ECR I-10433.

faith, which has always been interpreted strictly by the Community case-law. [8]

17. The Commission proposes that the Court does not reply to the second question given that in the case on which the reference for a preliminary ruling is based no customs duty was payable for the purposes of Article 216 of the CCC. It none the less adds that the Court has recognised the right of taxable persons not to be subject to *a posteriori* recovery by the authorities of duty payable if all the following three conditions are met. First, non-collection of the duties must have been due to an error made by the competent authorities themselves. Second, the error they made must be such that the person liable, acting in good faith, could not reasonably have been able to detect it in spite of the professional experience and exercise of due care required of him. Finally, he must have complied with all the provisions laid down by the legislation in force so far as his customs declaration is concerned. [9] In the event of a dispute in relation to the recovery of the duty not paid on the export of rice to Hungary, it is for the national court to make a legal appraisal of the facts in the light of the interpretation of Article 220(2)(b) of the CCC which relates specifically to cases where there has been an error when issuing the certificates necessary to obtain a preferential tariff.

V — Assessment

A — *The first question*

18. It must first of all be pointed out that the current CCC is due to be completely and thoroughly overhauled in the near future. [10] In general the proposed modernised code is intended to bring about '[t]he modernising of the Customs Code, streamlining of customs procedures and processes and the adaptation of the rules to common standards for IT systems'. In addition it will in particular

8 — Particularly, according to the Italian Government, to limit the payment *a posteriori* of import or export duties in the event that payment is justified and consistent with the principle of the protection of legitimate expectations (see *Hewlett Packard France* cited above) and does not expose the trader to damage going beyond the ordinary commercial risk (Joined Cases T-186/97, T-187/97, T-190/97, T-192/97, T-210/97, T-211/97, T-216/97, T 218/97, T-279/97, T-280/97, T-293/97 and T-147/99 *Kaufring and Others* v *Commission* [2001] ECR II-1337); also to protect the interests of the Community in recovering its own resources, stating that 'The fact that an importer has been acting in good faith does not release him from his liability to pay the customs debt where it is he who has declared the imported goods' (Case C-97/75 *Pascoal & Filhos* [1997] ECR I-4209, paragraph 57; see similarly Case 827/79 *Ciro Acampora* [1980] ECR 3731, and Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465.

9 — The Commission refers in particular to Case C-15/99 *Sommer* [2000] ECR I-8989, paragraphs 35 to 39.

10 — No date has been given. The current code remains in force until 2008 at least (M. Lux and P.-J. Larrieu, La réforme du Code des douanes communautaire, tentative réussie de concilier progrès technique et simplification du droit?, *Revue des affaires européennes*, 2005, p. 554).

significantly affect the concept of inward processing as it exists today. [11]

19. For the time being, under Article 114 of the CCC, the inward processing procedure [12] enables a person to benefit from a suspension of import duties in respect of goods from non-member countries on condition that they are processed and re-exported out of the Community. Under this system, the same product is imported, processed and re-exported. The CCC also provides for what is known as the 'equivalent compensation' system: the goods may be of Community origin on condition that they are equivalent to goods held by the same undertaking (Article 115(3) of the CCC). It is, finally, possible under the CCC to export goods before even importing the non-member country goods under what is known as the 'prior exportation' or 'EX/IM' system (Article 115(1)(b) of the CCC). [13] In this case the Italian undertaking Agrover wanted to make use of both possibilities, since it exported Italian rice to Hungary, then imported rice from Thailand.

20. In addition, at the time of these operations there was a preferential agreement between the Republic of Hungary and the Community containing a 'no-drawback' clause. This clause is intended to prohibit the suspension of import duties on goods from non-member countries exported to a country that is a signatory to a preferential agreement. This rule is therefore intended to reinforce bilateral economic integration since, by restricting the use of goods from non-member countries that are not signatories, it encourages the incorporation of goods from partner countries. In order to facilitate the substantiation of the origin of goods exported in this kind of exchange, specific documents were created, circulation

11 — In future there will be no need for intention to re-export. Consequently the draft regulation states that 'the inward processing suspension procedure should be merged with processing under customs control and the inward processing drawback procedure abandoned. This one inward processing procedure should also cover destruction, except where destruction is carried out by, or under the supervision of, customs' (Proposal for a Regulation of the European Parliament and of the Council laying down the Community Customs Code COM(2005) 608 final, hereinafter 'proposed modernised code').

12 — The goods placed under the inward processing procedure may be used in two ways: under the 'suspension' system (use in Community customs territory of non-Community goods intended to be re-exported outside the Community as compensating products without such goods being subject to import duties), and under the 'drawback' system (use in Community customs territory of goods released for free circulation, with repayment or remission of import duties if the goods are re-exported outside the territory as compensating products). See C.J. Berr and H. Trémeau, *Le droit douanier*, Economica, 7th edition, Paris, 2006, p. 327. See also in particular, T. Lyons, *EC Customs Law*, Oxford University Press, p. 345 et seq., Oxford, 2001; T. Palacchino, Perfezionamento attivo, in *Il diritto tributario comunitario*, Il Sole 24 ORE, Milan, 2004, p. 321-341; M. Lux, *Guide to Community Customs Legislation*, Bruylant, Bruxelles, 2002, p. 365 et seq. and by the same author *Das Zollrecht der EG, ein Lehr- und Übungsbuch sowie Nachschlagewerk für Praktiker*, Cologne, 1st edition, 2003, p. 287 et seq.

13 — M. Reymão ('Aperfeiçoamento activo', in *Direito aduaneiro das Comunidades Europeias na perspectiva da União Europa*, Braga, 1992, p. 164) thus states that the EX/IM prior exportation rules enable compensating products obtained from equivalent goods to be exported before the importation of non-Community goods. Plainly that benefit will only be granted to goods subject to the inward processing procedure with equivalent compensation — there can therefore be no prior exportation without equivalent compensation. See also J. García Gallego, 'El régimen de perfeccionamiento activo como medida de fomento a la exportación', in *Cuadernos Europeos de Deusto*, Bilbao, 1991, p. 103; M. Foraster Serra, 'Regulacion legal del trafico de perfeccionamieto activo', in *Revista juridica espagñola La Ley, Distribuciones de la Ley*, Madrid, 1988, p. 929 and M. Lux, *Das Zollrecht der EG, ein Lehr- und Übungsbuch sowie Nachschlagewerk für Praktiker*, cited above, p. 288.

certificates, also known as 'EUR.1' certificates. [14] The various parties seem to attach great importance to the fact that the Italian customs office issued this certificate to Agrover for the rice it exported to Hungary. But this factor is hardly important; it simply shows that, because Agrover wanted to export its rice to Hungary under the preferential regime, it requested such a document from the Italian customs authorities, which issued the document to it.

21. The purpose of the inward processing procedure is different from that of the no-drawback rule in that, by exempting from customs duties imports into the Community from non-member countries, it is intended to place at a competitive advantage goods from non-member countries which are processed in the Community and re-exported, [15] or in the words of the Court, 'not to put at a disadvantage internationally Community undertakings which use goods from non-member countries in order to obtain products for export by giving them the possibility of acquiring such goods under the same conditions as undertakings from non-member countries'. [16]

22. Article 216 of the CCC addresses those two objectives by providing that goods imported under the inward processing procedure must be subject to the payment of import duties where they are exported subject to preferential tariff treatment. Article 216 of the CCC therefore does not specifically envisage, as Agrover and the Commission maintain, only the classic situation where import precedes export (the 'EX/IM' system).

23. For all that, owing to the legal fiction of the equivalent compensation system in Article 115(3), under which the compensating products are treated as non-member country goods and import goods as Community goods, Article 216 of the CCC must, to my mind, also apply in a situation where

14 — Agreement on the European Economic Area — Protocol 4 on rules of origin (OJ 1994 L 1, p. 54). 'A movement certificate EUR.1 shall be issued by the customs authorities of the exporting country on application having been made in writing by the exporter or, under the exporter's responsibility, by his authorised representative' (Article 17(1)). 'The issuing customs authorities shall take any steps necessary to verify the originating status of the products ...' (Article 17(5)).

15 — 'The customs mechanisms for the inward processing procedure were conceived as valves for the protection of foreign goods intended for re-export following industrial processing in the Member States. Placing those goods under the procedure, authorising them to be imported free of the customs duty to which they would normally be subject if they were placed on the internal market, can only serve to encourage Community exports by enabling them to face global markets under more favourable competitive conditions' (C.J. Berr and H. Trémeau, p. 327). See also M. Reymão (p. 155), who points out that the inward processing procedure is today not only a suspensory customs procedure but rather a system intended to have economic consequences. In fact, its essential purpose is to encourage certain economic activities by promoting exports by Community undertakings. See also T. Palacchino, p. 322, and García Gallego, p. 91.

16 — Case C-437/93 *Temic Telefunken microelectronic* [1995] ECR I-1687, paragraph 18, in the context of proceedings relating to the system of processing under customs control to precious metals contained in defective integrated circuits, as a result of an inward processing procedure.

export precedes import (the 'EX/IM' system). [17]

24. This reading of Article 216 of the CCC appears to be consistent with the economic objective of the customs regime. Reference to the economic objective is justified firstly by the complexity and less than explicit drafting of the article, as noted by all parties to the proceedings. Secondly, a legal analysis of matters in the field of customs necessitates giving consideration to the economic implications of those matters. [18]

25. However, if Article 216 of the CCC were not applied to cases where export precedes import and the goods are exported to a country with which there is a preferential agreement with a no-drawback clause, the holder of the inward processing authorisation would not pay duty either on import, this being the very objective of the system, or on prior export, under the no-drawback clause.

26. Like the very small number of authors to have looked into this state of affairs, [19] the Customs Code Committee in the TAXUD document referred to by the Italian Government points out that the situation is illogical: 'Article 216 of the Code was a self-standing provision introduced in order to deal with the consequences, from the point of view of customs debt, of the no-drawback rule in certain preferential agreements. It was mainly intended to ensure, by defining the specific situation that gives rise to the customs debt, that the Community's international obligations are observed by depriving the exporter/holder of the inward

17 — Indeed in future the existence of a customs debt to be discharged in such a situation ought no longer to be in doubt. Article 216 of the CCC is to be replaced by an Article 50. Article 50(1)(b) of the proposed modernised Code expressly addresses the situation where export precedes import:
'Article 50:
Special provisions relating to non-originating goods
1. Where a prohibition of drawback of, or exemption from, import duties applies to non-originating goods used in the manufacture of products, for which a proof of origin is issued or made out in the framework of a preferential arrangement between the Community and certain countries or territories outside the customs territory of the Community or groups of such countries or territories, a customs debt on importation shall be incurred in respect of these products, through either of the following:
(a) the acceptance of the re-export notification relating to the products in question, obtained under inward processing;
(b) the acceptance of the declaration relating to the goods placed under the inward processing procedure in the case of prior exportation of the processed products in question.'

18 — 'When one attempts an analysis of an economic customs regime and strives to discern its basic principles one is naturally led to weigh the economic purpose of the regime in question against the legal mechanisms which define its conditions of use. This process is more particularly necessary [in the case of the inward processing procedure] owing to the influence, more than is the case for other procedures, of economic factors on the direction to be given to the implementing mechanisms' (C.J. Berr and H. Trémeau, 2006, p. 325).

19 — See H.-J. Priess and R. Pethke, 'The Pan-european Rules of Origin: the Beginning of a New Era in European Free Trade', *Common Market Law Review*, 34, 1997, p. 804: 'Anti-duty drawback or exemption clauses constitute standard rules of free trade agreements. Their aim is to prevent a double advantage by using specific customs procedures, such as inward processing traffic to enter the preferential zone under exclusion or reduction of import duties, as well as preferential treatment after substantial transformation. Such duty drawback or exemption programmes would distort trade flows by attracting imports of third countries materials to the country applying such programmes'. See also P. Witte, *Zollkodex Kommentar*, Beck, Munich, 2006, p. 389: 'Otherwise it would be possible to procure a double customs advantage: first on import into the country of manufacture and secondly on import into the country of the party enjoying preferential treatment. This becomes clear in the context of an inward processing procedure, where goods are imported free of duties and, after processing and acquisition of origin, re-exported and could be imported into a third country at the preferential tariff (drawback)'.

processing authorisation of the benefit of the procedure (exemption from the duties applicable to imported goods) whenever the relevant agreement contains a no-drawback rule and it applies to the exported goods. Unfortunately the wording used in Article 216 of the Code does not exactly reflect the scope and content of the no-drawback rule ...' [20] [unofficial translation].

27. In this case the Commission considers that it is not bound by that document. Whilst it is true that it does not have any binding force, [21] it is none the less instructive to consider it, [22] especially given that the committee is composed of eminent specialists in the field. [23]

28. Accordingly Agrover's argument that application of Article 216 of the CCC would result in it sustaining a loss of approximately EUR 210 per tonne of rice cannot be upheld. The non-application of Article 216 of the CCC would in this case result in a gain of EUR 80 per tonne of rice (since Agrover pays EUR 210 per tonne for paddy rice imported from Thailand and is itself paid EUR 290 when it exports wholly-milled rice to Hungary [24]), whereas if Article 216 were to apply, Agrover would have to pay import duties of EUR 210 per tonne of paddy rice, that is, a loss of EUR 166 per tonne of rice. Whilst that consequence is admittedly regrettable for the economic operator, it is none the less consistent with the objective of favouring Community goods over imports from non-member countries. Therefore, in a similar situation, the economic operator would have every interest, as the Customs Code committee invites it to do in its information document of 20 March 2003, in 'preferably choosing not to make use of the exemption granted under the inward processing procedure and rather exporting the originating rice under the preferential agreement' [unofficial translation]. In any event, Agrover must pay duties for which, owing to the time it took the Italian authorities to comprehend the situation, it ultimately benefited from exceptionally long payment periods.

29. Finally, the statement in the first question referred that there is no preferential agreement with the country from which the imported goods come is, it must be pointed

20 — The document thus concludes that 'the current wording of Article 216 is therefore not entirely suited to the international context in which it and the subsequent amendments to the rules on preferential origin were adopted. It is therefore necessary to revise it and the Commission has begun to draw up proposals to that end' [unofficial translation].

21 — The Commission thus rightly refers to the judgment in Case C-11/05 *Friesland Coberco Dairy Foods* [2006] ECR I-4285, which, following the Opinion of Advocate General Poiares Maduro (points 22 to 35), states at paragraph 33 that 'the Committee's conclusion is not binding on national customs authorities when they are determining an application for authorisation for processing under customs control'.

22 — Case C-495/03 *Intermodal Transports* [2005] ECR I-8151, paragraph 48, thus observes that the explanatory notes 'are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force'. In the proposed modernised code, the explanatory notes and guidelines, while they do not have legally binding force, are intended gradually to replace the internal administrative instructions of the Member States (see M. Lux and P.-J. Larrieu, p. 569).

23 — The customs code committee is referred to in the seventh recital in the preamble to the CCC which states that 'a Customs Code Committee should be set up in order to ensure close and effective cooperation between the Member States and the Commission' and established by Article 247 et seq. of the CCC.

24 — Agrover says that the price per tonne of wholly-milled rice ought in fact to be EUR 500 per tonne. Agrover explained that the purpose of this large reduction was to facilitate purchase by countries with a relatively weak economic capacity.

out, irrelevant since, if the goods could be imported free of tax under a preferential agreement, the problem of the inward processing mechanism, which is intended precisely to suspend import duties, would simply not arise.

30. The reply to the first question must therefore be that Article 216 of the CCC applies where Community goods have previously been exported under the inward processing procedure to a non-member country with which an agreement providing for preferential tariff treatment is in force.

B — *The second question*

31. By its second question the national court is asking whether Agrover can, in the event that the reply to the first question is in the affirmative, benefit from a remission of duties under Article 220(2)(b) of the CCC on the basis of a possible error on the part of the customs authorities.

32. It must be recalled that the repayment or remission of import as well as export duties can be granted only under certain conditions and in situations specifically provided for. The provisions allowing such repayment or remission are therefore to be interpreted strictly. [25]

33. Article 220(2)(b) of the CCC expressly addresses the situation where 'the amount of duty legally owed failed to be entered in the accounts as a result of an error on the part of the customs authorities', that is to say, the authorities reach an initial decision on the amount of the customs duties, then change their mind and decide that the amount of duties has been wrongly assessed. However, in the present case, the customs authorities did not change their mind; they never told Agrover that there would be no duty to pay. The demand for payment of 26 January 2004 is the first time the customs authorities stated a view. Article 220(2)(b) of the CCC is therefore in any event inapplicable. [26]

25 — See paragraph 52 of the judgment in Case C-48/98 *Söhl & Söhlke* [1999] ECR I-7877 concerning proceedings between a textile undertaking and the Hauptzollamt Bremen concerning various tax notices relating to imports under the outward processing procedure and re-exports of non-Community goods brought into Community customs territory.

26 — The Court stated, in the context of Regulation (EEC) No 1697/79 of the Council 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), that 'only errors attributable to acts of the competent authorities which could not reasonably have been detected by the person liable create entitlement to the waiver of post-clearance recovery of customs duties' (Case C-348/89 *Mecanarte* [1991] ECR I-3277, paragraph 23). In the present case there was no conduct on the part of the customs authorities at the time of the imports, but simply a failure to react.

VI — Conclusion

34. In the light of the foregoing considerations I propose that the Court reply to the questions referred by the Commissione tributaria regionale di Genova as follows:

(1) Article 216 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ('the CCC') applies where Community goods have previously been exported under the inward processing procedure to a non-member country with which an agreement providing for preferential tariff treatment is in force.

(2) Article 220(2)(b) of the CCC does not apply to situations where customs duties are not entered in the accounts *a posteriori.*