OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 17 September 1997 *

1. By decision of 10 July 1996 the Pleno da Secçao de Contencioso Tributário del Supremo Tribunal Administrativo (Portuguese Supreme Administrative Court, Fiscal Division, sitting in plenary session) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the possibility of extending the time-limit allowed by the customs authorities for completion of the inward processing of imported goods prior to their being exported after incorporation in the compensating goods.

2. Those questions were raised in proceedings between the Portuguese customs authorities and the undertaking Fábrica de Queijo Eru Portuguesa Ld.ª (hereinafter 'Eru Portuguesa') concerning the partial export of a quantity of butter imported from New Zealand under the inward processing relief arrangements.

3. In March 1988, pursuant to authorization No 128/88 of the Lisbon Customs Office, Eru Portuguesa imported 108 tonnes of butter from New Zealand under the inward processing relief arrangements, in respect of which Single Document No 5801 of 18 March 1988 and Single Document No 6236 of 23 March 1988 were issued by the Jardim do Tabaco Customs Post.

According to the customs authorization, the New Zealand butter was to be used, with other raw materials, in the manufacture of processed cheese, the compensating product to be exported by Eru Portuguesa.

4. The time-limit for export prescribed in the abovementioned inward processing authorization was six months. That time-limit was twice extended by the Portuguese customs authorities, however, at the request of Eru Portuguesa, on the grounds of *force majeure*. It was first extended by six months, until March 1989, and then by a further two months, until 23 May 1989.

5. By letter of 21 June 1989 Eru Portuguesa requested the Director General of Customs to grant a further extension of the time-limit, pursuant to Article 27 of Regulation (EEC) No 3677/86, [1] so that the remainder of the New Zealand butter, estimated at some 30 tonnes, could be 'incorporated in the final product for export' or, at least, to authorize the goods in question to be exported 'in the

* Original language: Spanish.

1 — Council Regulation (EEC) No 3677/86 of 24 November 1986 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements (OJ 1986 L 351, p. 1).

unaltered state' pursuant to Article 18(4) of Regulation (EEC) No 1999/85. [2]

6. That request was refused by the Deputy Director General of Customs, by a decision of 12 July 1989 based on the negative opinion of the International Customs Cooperation Services Directorate of the Customs Directorate General.

7. Eru Portuguesa brought proceedings before the Tribunal Tributário de 2ª Instância (Fiscal Court of Second Instance) for the annulment of that decision, on the grounds that it did not contain an adequate statement of reasons and that it infringed the applicable Community rules. The Tribunal Tributário de 2ª Instância dismissed the action in a judgment of 5 February 1991. Eru Portuguesa appealed to the Supremo Tribunal Administrativo (Supreme Administrative Court), which by judgment of 1 July 1992 dismissed the appeal and upheld the judgment at first instance in its entirety. Eru Portuguesa appealed against this judgment to the Pleno da Secçao de Contencioso Tributário del Supremo Tribunal Administrativo, which found it necessary in order to resolve the dispute to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Should Article 28 of Council Regulation (EEC) No 3677/86 of 24 November 1986 be interpreted as meaning that the six-month time-limit prescribed therein cannot be extended?

2. Or should that provision instead be interpreted as meaning that the general rule for granting extensions provided for in Article 27 of that regulation and in the second subparagraph of Article 14(2) of Council Regulation (EEC) No 1999/85 of 16 July 1985 is to be applied to the said time-limit?'

8. Before answering those questions I shall set out the most relevant provisions of the Community rules applicable to inward processing arrangements at the material time.

The Community rules governing inward processing arrangements

9. At the material time inward processing arrangements were governed by Regulation No 1999/85, the basic regulation, which

2 — Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements (OJ 1985 L 188, p. 1).

was implemented by Regulation No 3677/86. Both regulations entered into force on 1 January 1987.

10. For the purposes of those provisions, inward processing takes the form of an economic customs arrangement intended to facilitate the use by Community undertakings of goods from non-member countries for the manufacture and processing of goods for export. The inward processing relief arrangements allow 'goods imported from non-member countries to escape customs duties if they undergo certain working or processing operations in the Community and are then re-exported as compensating products outside the Community'. [3] Article 1(2) of Regulation No 1999/85 provides for two types of inward processing, the suspension system and the drawback system.

Inward processing arrangements, under the suspension system, allow non-Community goods to be brought into the customs territory of the Community without the need to complete the clearance formalities for release into free circulation and without payment of import duties, so that the goods can undergo processing and be exported outside the Community after being incorporated in a compensating product deriving from the processing operations. [4] Since the foreign goods will not be absorbed into the Community economy, it is logical that they should be exempt from import duties, so as to encourage processing of them by a Community undertaking under the best competitive conditions, with a view to their later export to non-member countries. [5]

11. Inward processing constitutes an exception to the general rule that goods from non-member countries brought into the Community customs territory must be cleared for free circulation and have import duties levied on them. As a result, use of this customs procedure, designed to enhance the export capacity of Community undertakings, is subject to the grant of authorization by the customs authorities of the Member State where the processing operations take place. Such authorization will be granted, pursuant to Articles 5 and 6 of Regulation No 1999/85, if the necessary economic conditions are met, that is to say if the inward processing helps to create favourable conditions for the export of compensating products without prejudice to the essential interests of Community producers.

3 — Case C-437/93 *Hauptzollamt Heilbronn* v *Temic Telefunken Microelectronic* [1995] ECR I-1687, paragraph 19.

4 — See my Opinion in Case C-103/96 *Directeur Général des Douanes de Droits Indirects* v *Eridania Beghin-Say* [1997] ECR I-1453, paragraphs 8 to 11.

5 — For a detailed analysis of the inward processing relief arrangements, see, *inter alia*, U. Baumann, 'Le régime douanier du perfectionnement actif', *Revue du Marché Commun*, 1984, No 280, p. 406; C.-J. Berr and H. Tremeau, *Le droit douanier*, Economica, Paris, 1992; J.-F. Durand, 'Régimes douaniers économiques. Régimes de transformation à l'importation', *Juris-Classeur Europe*, volume 542, 1995.

12. In addition to granting authorization, the customs authority of the Member State determines the time-limit within which the compensating products are to be dealt with in one of the ways provided for in Article 18 (the normal procedure is for the compensating products to be exported outside the customs territory of the Community under customs control) and the inward processing is thus completed. To that end, Article 14 of Regulation No 1999/85 provides as follows:

'1. The customs authority shall fix the time-limit within which the compensating products must be dealt with in one of the ways referred to in Article 18. This time-limit shall be fixed having regard to the period necessary for completion of the processing operations and for disposal of the compensating products.

2. The time-limits shall run from the date on which the non-Community products are placed under inward processing relief arrangements. The customs authority may extend them on submission of a duly substantiated request by the holder of the authorization.

...

4. Specific time-limits may be established, in accordance with the procedure laid down in Article 31(2) and (3), for certain processing operations or for certain import goods.'

13. That provision of the basic regulation was implemented by Articles 27 and 28 of Regulation No 3677/86. Article 27 provides as follows: 'Where the circumstances so warrant, the time-limit set for placement under one of the procedures referred to in Article 18 or 27 of the basic regulation may be extended, even when the limit originally set has expired.'

Article 28 is worded as follows: 'In the case of agricultural products of the kind referred to in Article 1 of Regulation (EEC) No 565/80 ... which are to be exported in the form of processed products or goods within the meaning of Article 2(b) or (c) of that regulation, the period within which the import goods must be dealt with in one of the ways specified in Article 18 of the basic regulation may not exceed six months.'

14. Regulation (EEC) No 2281/88, [6] which entered into force on 26 July 1988, added the following subparagraph to Article 28 of Regulation No 3677/86: 'However, in [the] case of the products specified in Article 1 of Regulation (EEC) No 804/68 ... intended for

6 — Commission Regulation (EEC) No 2281/88 of 25 July 1988 amending Council Regulation (EEC) No 3677/86 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements (OJ 1988 L 200, p. 20).

the manufacture of products referred to in that article or of goods listed in the Annex to that regulation, the time-limit for re-export may not exceed four months.'

The preliminary questions

15. By the two questions which it has referred to the Court of Justice, the national court seeks to ascertain, esentially, whether the six-month time-limit laid down in Article 28 of Regulation No 3677/86 is non-extendable or whether, on the other hand, it can be extended pursuant to the general provision on the extension of such time-limits in Article 27 of that regulation.

16. Eru Portuguesa maintains in its observations that Article 14(1) of Regulation No 1999/85 allows, as a general rule, the national customs authorities to determine the time-limit for export of the compensating products. However, Article 28 of Regulation No 3677/86, in application of Article 14(4) of the basic regulation, lays down a maximum time-limit for export of six months in the case of agricultural products for which inward processing authorization has been granted. Regulation No 2281/88 reduces this exceptional time-limit to four months in the case of milk products.

Eru Portuguesa maintains that both the general time-limits and the special time-limits for export of agricultural products and milk products may be extended on submission of a duly substantiated request, as provided for in Article 14(2) of the basic regulation and Article 27 of Regulation No 3677/86. It further considers that even if the special time-limits for export of agricultural products and milk products cannot be extended pursuant to Article 27 of Regulation No 3677/86 they should be extended in cases of *force majeure* or unfavourable circumstances, as in the present case. *Force majeure* or unfavourable circumstances are circumstances which justify exporting the products in the same state as when they were imported, without being required to undergo the inward processing operations which allow them to be incorporated in compensating products.

Eru Portuguesa also points out that the Portuguese customs authorities, after twice granting an extension of the time-limit for export, infringed the principle of the protection of legitimate expectations and the principle of legal certainty when, for no good reason, it rejected the third request for an extension. In Eru Portuguesa's opinion this refusal by the Portuguese authorities constitutes a misuse of powers.

17. The French Government, the Portuguese Government and the Commission, on the other hand, consider that the maximum time-limit for export of six months prescribed in Regulation No 3677/86 in the case of agricultural products cannot be extended,

since that provision lays down a special rule derogating from the general provision which allows the customs authorities to determine the time-limit for export and to extend it in duly substantiated circumstances.

18. In my opinion the Community legislature clearly took account of the special characteristics of the marketing of agricultural products when it established the legal arrangements for inward processing and in particular the time-limits for completion of those arrangements.

19. The general rule, which applies to all goods with the exception of agricultural products, is found in Article 14(1) of the basic regulation, which makes the customs authorities responsible for determining the time-limit for completion of the inward processing arrangements. Furthermore, Article 14(2) of the basic regulation and Article 27 of Regulation No 3677/86 allow the customs authorities to extend the original time-limit for completion of the inward processing operations, upon submission of a duly substantiated request by the holder of the authorization and provided that the circumstances so warrant. In principle, an extension of the time-limit will be granted where the appropriate economic conditions continue to apply, that is to say, where the export of the compensating products is encouraged and the interests of Community producers are not prejudiced.

20. In the present case the product subject to inward processing is New Zealand butter intended to be incorporated in processed cheese, the compensating product which was to be exported. The product is therefore one of the agricultural products to which the abovementioned general rule does not apply: it is covered by the special rule on export time-limits laid down in Article 28 of Regulation No 3677/86 under the power provided for in Article 14(4) of the basic regulation. This special rule applies to the agricultural products referred to in Article 1 of Regulation (EEC) No 565/80, [7] which include milk and milk products which are intended to be exported as goods or processed products and for which an export refund is applicable.

21. Article 28 of Regulation No 3677/86 lays down a maximum time-limit of six months for completion of the inward processing arrangements and, accordingly, for the export of the compensating product, which represents the customary way of completing the said arrangements. Owing to the surplus milk production in the Community, Regulation No 2281/88 restricts the time-limit for completion to four months in the case of products covered by the common organization of the market in milk and milk products, which include butter and cheese. [8]

As the French Government and the Commission point out in their observations, the establishment by law of strict time-limits for completion of the inward processing arrangements in the case of agricultural products meets the need to strike a balance

7 — Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products (OJ 1980 L 62, p. 5).

8 — Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (OJ, English Special Edition 1968(I), p. 176).

between those arrangements and the system of export refunds, both of which are mechanisms designed to encourage Community exports. The time-limits for completion of inward processing are reduced because there is no other way of preserving the essential interests of Community producers, since the economic conditions which at a given time made it advisable to authorize the inward processing of agricultural products from non-member countries may rapidly cease to exist where Community production increases.

22. In accordance with the aim pursued by the Community legislature when it adopted those special provisions on time-limits for completion of the inward processing arrangements in the case of agricultural products, I consider that Article 27 of Regulation No 3677/86 is not applicable to the circumstances in question. In my opinion the maximum time-limits of six months and four months applicable to agricultural products and milk products respectively cannot be extended and the general provision on the extension of time-limits in Article 27, which refers solely to time-limits for completion of the inward processing which have been fixed by the national customs authorities, does not apply. The aim pursued by the Community legislature in prescribing maximum time-limits for completion of the inward processing operations could not be achieved if the customs authorities were able to extend them upon submission of a substantiated request by the holder of the authorization.

23. The literal meaning of Article 28 of Regulation No 3677/86 also argues in favour of the time-limits of six months and four months being regarded as non-extendable. Article 28 provides that the period within which the imported goods are to be dealt with in one of the prescribed ways of discharging the inward processing relief arrangements '... may not exceed six months'. Very similar language is also used in Article 28(2), applicable to milk and milk products, which was inserted by Regulation No 2281/88, which provides that the time-limit for re-export '... may not exceed four months'. The categoric language of those provisions is incompatible with the possibility that those special time-limits for completion of inward processing might be extended pursuant to Article 27 of Regulation No 3677/86. The Community legislature would have needed to make express reference to the possibility of extending those special time-limits, but it would have been somewhat illogical to fix a shorter maximum period and to give the national customs authorities the possibility of extending the period on submission of a substantiated request by the holder of the authorization.

24. It also follows from a systematic interpretation of Article 28 of Regulation No 3677/86 that the maximum periods laid down therein are non-extendable. That rule is a special provision which takes priority over the general rule in Article 27, which allows the periods for completion of the inward processing arrangements to be extended. Furthermore, the third recital of the preamble to Regulation No 2281/88, which inserts a second paragraph into Article 28 of Regulation No 3677/86 restricting the period for re-exportation of milk and milk products to four months, states that '... a non-renewable time-limit should also be set

for dealing with the compensating products in one of the approved ways ...'. Regardless of whether the amendment inserted in Regulation No 2281/88 is applicable to the facts of the present case, a question which must be resolved by the national court and which does not affect the ruling requested from the Court of Justice, that reference to the non-renewable nature of the maximum time-limit for re-exportation is a valid factor for consideration when interpreting Article 28 of Regulation No 3677/86 as a whole. The Community rules which have subsequently regulated the inward processing arrangements have maintained the same distinction between a general period for completion of the inward processing arrangements fixed by the customs authority and capable of being extended, which applies to goods in general covered by the inward processing arrangements, and special non-renewable periods for completion of such arrangements which apply to agricultural products in respect of which export refunds are payable. [9]

25. Finally, the fact that the customs authorities of a Member State have incorrectly applied Article 28 of Regulation No 3677/86 and, as in the present case, have granted extensions of the time-limit originally set for completion of the inward processing arrangements in the case of an agricultural product, does not entitle the holder of the authorization to seek a further extension of the time-limit and, where his request is refused, to rely on the infringement of the principle of the protection of legitimate expectations and the principle of legal certainty, misuse of powers or *force majeure*.

26. The principle of legal certainty is a fundamental principle of Community law which requires in particular that rules imposing charges on a taxpayer be clear and precise so that he may be able to ascertain unequivocally what his rights and obligations are and take steps accordingly. [10] In my opinion, Article 28 of Regulation No 3677/86 fully meets the requirements of the principle of legal certainty, since it regulates with sufficient clarity the time-limit for completion of the inward processing arrangements applicable to agricultural products in respect of which export refunds are payable.

27. As regards the principle of the protection of legitimate expectations, which is also one of the fundamental principles of Community law, [11] it is clear to my mind that it cannot be relied on in circumstances in which administrative decisions have been based on an incorrect application of a Community rule. The possibility of relying on misuse of powers must be rejected just as firmly because the customs authorities' refusal to grant a further extension of the

9 — See Articles 26 and 28 of Commission Regulation (EEC) No 2228/91 of 26 June 1991 laying down provisions for the implementation of Council Regulation (EEC) No 1999/85 on inward processing relief arrangements (OJ 1991 L 210, p. 1), applicable from 1 October 1994.
Until 1 January 1994 the applicable rules were laid down in Article 118 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and Articles 559 and 560 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

10 — See, *inter alia*, Case C-143/93 *Gebroeders van Es Douane Agenten* v *Inspecteur der Invoerrechten en Accijnzen* [1996] ECR I-431, paragraph 27, and Case C-354/95 *The Queen* v *Minister for Agriculture, Fisheries and Food, ex parte: National Farmers' Union and Others* [1997] ECR I-4559, paragraph 57.

11 — See, *inter alia*, Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraphs 33 and 34, and Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* v *Fattoria Autonoma Tabacchi and Others* [1994] ECR I-4863, paragraphs 57 to 59.

time-limit for completion of the inward processing arrangements in the present case was entirely consistent with the aim pursued by Article 28 of Regulation No 3677/86 and, accordingly, those authorities did not use their powers with the purpose of achieving an end other than that for which they were conferred on them. [12]

28. In the context of the present case, the principle of *force majeure* [13] cannot be relied on to seek an extension of the time-limit for completion of the inward processing arrangements or for export of the butter in the same state as that in which it was imported, since there is no reference to any abnormal and unforeseeable circumstances outside the control of the economic operator which make it impossible to incorporate the imported goods in the compensating product by means of the relevant processing operations.

Furthermore, inward processing is an economic customs arrangement which brings advantages for the beneficiaries, and failure to fulfil the obligations associated with it requires that the goods from the non-member country be released for free circulation and import duties paid, which are the operations to which imported goods are normally subject.

Conclusion

29. In the light of the foregoing considerations, I propose that the Court of Justice answer the questions referred to it as follows:

Article 28 of Council Regulation (EEC) No 3677/86 of 24 November 1986 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements is be interpreted as meaning that in the case of agricultural products covered by the arrangements for export refunds the six-month time-limit for completing the inward processing arrangements is non-renewable and cannot be extended pursuant to the general rule on extending such time-limits in Article 27 of that regulation.

12 — See, *inter alia*, Case C-156/93 *Parliament* v *Commission* [1995] ECR I-2019, paragraphs 31 to 33.

13 — See, *inter alia*, Case 149/78 *Rumi* v *Commission* [1979] ECR 2523, Case 284/82 *Busseni* v *Commission* [1984] ECR 557 and Case C-334/87 *Greece* v *Commission* [1990] ECR I-2849 (summary publication).