JUDGMENT OF THE COURT (SECOND CHAMBER)
16 DECEMBER 1982 [1]

Bundesanstalt für landwirtschaftliche Marktordnung v Firma H. und J. Brüggen (reference for a preliminary ruling from the Bundesverwaltungsgericht)

Case 71/82

Agriculture — Common organization of the markets — Cereals — Import or export licences — Extension of the period of validity on the ground of force majeure *— Retroactive extension — Permissibility — Conditions — Effects*
(Regulation No 473/67/EEC of the Commission, Art. 9 (1))

In so far as the narrowly-defined exceptions, which are restricted to cases of *force majeure*, do not in principle affect the reliability of the licensing system, the effects of a decision to extend the period of validity of an export licence taken because of the existance of a case of *force majeure* must come into play regardless of whether such extension occurs before or after the expiry of the period of validity of the licence.

Article 9 (1) of Regulation No 473/67 must therefore be interpreted as meaning that the period of validity of an export licence for which the refund has been fixed in advance may be extended for a period of time which has expired — that is to say, retroactively — where the competent authority has wrongly refused to grant in due time an extension justified by a case of *force majeure* and where as a result it has been necessary for the export to be effected on the basis of a fresh licence relating to the same transaction; in such a case, the fresh licence has no legal effect and must be formally cancelled.

In Case 71/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesverwaltungsgericht [Federal Administrative Court], for a preliminary ruling in the proceedings pending before that court between

BUNDESANSTALT FÜR LANDWIRTSCHAFTLICHE MARKTORDNUNG [Federal Office for the Organization of Agricultural Markets], Frankfurt am Main,

1 — Language of the Case: German.

and

FIRMA H. UND J. BRÜGGEN, Lübeck,

on the interpretation of Article 9 (1) of Regulation No 473/67/EEC of the Commission of 21 August 1967 (Amtsblatt L 204, 24. 8. 1967, p. 16) on import and export licences for cereals,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: G. Reischl
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

The undertaking H. and J. Brüggen had requested and on 27 November 1969 obtained from the appellant, in accordance with Regulation No 473/67/EEC, a licence for the export to Peru of 595 920 kg of groats, valid until 31 May 1970. The groats were to be produced from oats imported from the German Democratic Republic. The refund had been fixed in advance in accordance with Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (Official Journal, English Special Edition 1967, p. 33).

However, a suspension of shipping in the German Democratic Republic because

ice had caused exceptional congestion in the shipment of cereals, prevented Brüggen from taking delivery of the entire quantity of oats from the German Democratic Republic, to be used for the production of the groats to be exported. Up to 31 May 1970, when the export licence expired, it was therefore able to export only 298 039 kg of the product in question.

Its request dated 13 May 1970 for an extension of the validity of the licence was refused by the appellant on the ground that there was no case of *force majeure* to justify such extension.

Brüggen was therefore compelled in June 1970 to apply for a new licence, which was issued to it, for the export of the remaining quantity. However, the rate of refund applicable in June 1970, DM 288.96 per tonne, was lower than the rate fixed in advance, DM 307.05 per tonne, paid on the basis of the original licence; Brüggen thus suffered a loss of DM 5 388.67.

Nevertheless, Brüggen pursued its request for an extension of the first licence before the German administrative court, which found in its favour at first instance. Brüggen also succeeded before the Verwaltungsgerichtshof [Higher Administrative Court] after it had amended its claim and applied not for the extension of the validity of the export licence but only for a decision placing it in the same position, so far as the deposit and the export licence were concerned, as it would have been in if the amount of groats exported after 31 May 1970 had been exported on the basis of the first licence. However, before the Bundesverwaltungsgericht it repeated in the alternative the claim made at first instance.

The Bundesverwaltungsgericht accepts that Brüggen is entitled to an extension on the ground of *force majeure* but doubts whether it is possible after the expiry of an export licence to require the competent authority retroactively to extend the validity of the licence. Indeed it believes that such a decision would be likely to jeopardize the proper working of the system and fears that the reliability of the number of licences issued as an indicator of market trends would in that case be reduced.

However, in view of Brüggen's interest in obtaining recognition of its right to make the export at the rate of refund fixed by the first licence and the fact that it is impossible to institute proceedings for damages against the national administration in the absence of manifest error on its part, the Bundesverwaltungsgericht decided by order of 17 December 1981 to refer the following question to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

"Does Article 9 (1) of Regulation No 473/67/EEC of the Commission of 21 August 1967 (Amtsblatt L 204, 24. 8. 1967, p. 16) permit the validity of an export licence in which the amount of the refund is fixed in advance to be extended for a period already past, thus giving it retroactive effect, in order to enable an exporter the validity of whose licence was not extended in due time and who therefore effected the export on the basis of a fresh licence to benefit in respect of that export from the rate of refund which had been fixed in advance?"

The order for reference was lodged at the Court Registry on 18 February 1982.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community, written observations were lodged by the Commission of the European Communities, represented for that purpose by J. Sack, acting as Agent, and by H. und J. Brüggen, represented by Mrs Festge.

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

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice

First the *Commission* observes that it would have been appropriate if the Bundesverwaltungsgericht had also put to the Court a question on the possible existence in this case of a case of *force majeure* within the meaning of Regulation No 473/67, since, if that question were settled, the question for a preliminary ruling would not be so pressing, and the dispute could easily be settled in the framework of German law.

In relation to the retroactive extension of an export licence in cases of *force majeure*, the Commission contends that it is possible under Article 9 of Regulation No 473/67 when the application for such extension has wrongly been refused and the goods have for that reason been exported on the basis of another export licence.

In support of that view, it puts forward the following arguments:

It is almost inconceivable that in an action on the existence of a case of *force majeure*, it could be definitively decided in the short time available whether or not there is a right to the extension of the period of validity of the export licence.

The Commission further argues that if the extension of a licence after the expiry of its period of validity were to be refused even though the respondent was entitled to an extension under Community legislation, it would be virtually, and in certain cases wholly, impossible to enable him to exercise his rights in any other way. The Commission states that national law will generally make it possible to bring claims for damages against national authorities only in cases where the defective decision may be attributed to the national authority. That will not often be possible in cases of *force majeure* which are difficult to assess under Community law. Moreover the Commission considers that it is in any event an inadequate remedy to invite the respondent to have recourse to those possibilities of claims for damages available under national law.

According to the Commission if the Court were to deny the possibility of retroactively extending the period of validity of the export licence and confine itself to deciding in its judgment that the competent authority was bound to extend the licence on the day when the application was made to it, that solution could at the very most satisfy the undertaking in relation to the deposit, which would then have to be refunded to it. On the other hand, it would be impossible also to grant to it the refund fixed in advance, because there would clearly be no legal basis for so doing, since the goods were not exported on the basis of the licence in question. However, in this regard it is also important that the respondent should be able to enforce his right, which is possible only by means of the retroactive extension of the licence.

Consequently, the Commission considers that only very serious grounds affecting the public interest can justify preventing the respondent from effectively exercising the rights which are conferred upon him by a legal provision. However, in the Commission's opinion it is not possible to detect such serious grounds in this case.

In that regard, the Commission contends, attention should first be drawn

to an obvious difference between this case and Case 85/78, to which the Bundesverwaltungsgericht chiefly refers. It stresses that in that case the Court had to arrive at a decision on the question how far certain declarations of intent made in accordance with Community law (application for an import licence) might be revoked in application of rules of national law. This case does not relate to the application of rules of national law intended to supplement those of Community law, but the complete implementation of rights conferred by Community law itself. In this case it should therefore be considered that restrictions other than those expressly provided for by Community law may be applied only in wholly exceptional cases.

The Commission adds that the retroactive extension of an export licence is inevitably coupled with the annulment of a second licence and that it cannot be denied that the amendments to be made to the two licences adversely affect the reliability of the system of import and export licences which applies to agricultural products in the framework of the common organization of the market. That is all the more so in the Commission's view when the amendments are made — as in this case — more than 12 years after the transactions in question have been carried out.

However, the Commission considers that the application in this case of Article 9 of Regulation No 473/67 does not involve a danger of that kind, since cases of *force majeure* are relatively rare and are based on objective factual circumstances, the existence of which may be clearly established and over which the persons concerned have no influence. In cases of *force majeure* which may be objectively proved, the danger is therefore considerably less.

Indeed, the Commission observes that if it is to be accepted that genuine cases of *force majeure* are to remain the exception and if their effect on the proper functioning of the system of import and export licences is therefore to remain minimal, even in cases of retroactive amendment of some licences, it is necessary for the national authorities and courts to apply a relatively strict criterion when they examine whether they are in fact faced with a case of *force majeure* within the meaning of the applicable provisions of Community law.

According to the Commission from the premise that legitimate applications for annulment or extensions of the period of validity of licences are not very frequent and therefore the adverse effects on the functioning of the licensing system are felt only within narrow limits, the conclusion is reached that it does not appear justifiable in this context to restrict the full exercise by the person concerned of the rights which are conferred upon him by Community legislation.

The Commission states that on the other hand another problem arises in this connection which is much more difficult to solve, in relation to the legal basis for the annulment of the second licence, by virtue of which the goods were exported. Regulation No 473/67 does not provide for annulment in such a case. Article 9, in particular, cannot apply, since the second licence does not remain unused on the ground of *force majeure*. According to the Commission, there a lacuna in Community law on this point.

On the other hand, the Commission considers that if the case were to be decided on the basis of German administrative law alone, there would be no such lacuna. In that case the authority would be required to annul the second licence as a result of the right to the elimination of the consequences arising out of an illegal act (Folgenbeseitigungsanspruch) developed by German case-law. However, in this case a question arises which can be settled only on the basis of Community law alone.

In the absence of express rules of Community law on this point and having regard to the fact that a solution of the problem is necessary in order to ensure the effective protection of those concerned, the Commission considers that there is nothing to prevent the Court of Justice from introducing, in order to complete Community law by way of judicial pronouncement, an obligation on the part of the authority to annul an export licence which has had to be applied for and granted only because the national authority had wrongly refused to extend the period of validity of an earlier licence in spite of the existence of a case of *force majeure*. Although it sets out from the principle that the provisions on *force majeure* are not capable of being applied by analogy, the Commission considers, having regard to the circumstances of this case, that is it nevertheless possible here to establish an obligation on the part of the national authority to annul the second licence by the application by analogy of the provisions of Article 9 (1) (a) and (3) of Regulation No 473/67.

In conclusion, the Commission proposes that the Court should reply to the question put to it by the Bundesverwaltungsgericht as follows:

"The period of validity of an export licence issued in accordance with Article 12 of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals, for which the refund was fixed in advance in accordance with Article 16 (4) of that regulation, may, in application of Article 9 of Regulation No 473/67/EEC of the Commission, be extended even after it has expired where the competent authority has wrongly refused to grant an extension in due time, thus forcing the trader to effect the export on the basis of a fresh licence. The licence subsequently issued must in that case be annulled."

Brüggen also considers first that the retroactive extension of the validity of a licence for a period already past is possible by virtue of existing legislation. In support of that argument it cites Article 36 (2) of Commission Regulation No 3183/80 which provides that the request to extend the period validity of a licence may be made up to 30 days after the expiry of such period of validity, that is to say that the administrative decision sought is made even later. According to Brüggen, even before the entry into force of that provision, the general principle of law, confirmed by the Court in its judgment of 30 January 1974 whereby, in the absence of any express provision of law, a request for an extension may be submitted even after the expiry of the period of validity of the licence, applied (Case 158/73 *E. Kampffmeyer* v *Einfuhr- und Vorratsstelle für Getreide*, [1974] ECR 101).

It also asserts that the higher rate of refund fixed in advance must also be granted when the export is effected after the expiry of the licence the extension of which was unlawfully refused and therefore of necessity on the basis of a fresh licence.

In that regard it refers to the judgment of the Court of 20 February 1975 in Case 64/74, *Reich* v *Hauptzollamt Landau*, [1975] ECR 261, in which the Court stated that the rate of levy fixed in advance continues to apply in the case of delayed importation provided that the delay is due to a case of *force majeure*. It contends that what is valid for a levy fixed in advance must also apply to a refund fixed in advance.

Brüggen observes that this case differs from Case 64/74 in so far as there the imports were effected under the same licence, but after the expiry of the period for which the levy in question was fixed

in advance, whereas in this case a new licence had to be requested. According to Brüggen, because of that special feature, the Bundesverwaltungsgericht was reluctant to permit retroactive extension, because such a procedure might, in the court's opinion, have an appreciable effect on the reliability of the licensing system.

Brüggen challenges that objection and claims that the purpose of the licensing system is to provide the competent authorities for the organization of markets with a comprehensive view of the market and that at least that comprehensive view of the market is not affected by the fact that the exporter, which has lodged an application for the extension of the export licence, applies for a fresh licence because, on the one hand, the authorities do not take a decision quickly enough (or such decision is wrong in law) on its application and, on the other, the duty to make delivery is pressing. It observes that the fresh licence must indeed be substituted for the original one, thus enabling the competent authority to take notice and realize that the quantity is exported only once. It stresses that in addition the original licence had already expired before a decision had been taken on the application for an extension and before an application for a fresh licence had been made and that at that time the authorities were therefore already aware of the fact that the licence had not been used in respect of a certain quantity. The comprehensive view of the market could therefore be corrected.

Furthermore, Brüggen maintains that the application for the grant of a higher rate of refund fixed in advance for the goods exported here by virtue of a new licence is based on the principle of proportionality, inasmuch as Community law must not impose any charge which is not necessary to achieve the objectives of the Treaty. It stresses that, in particular, according to the Opinion of Mr Advocate General Warner in Case 64/74, *Reich*, [1975] ECR at p. 274, the principle of proportionality implies "that ... traders should be relieved of the consequences of events amounting to *force majeure*." But, according to Brüggen, that means in this case also that, where an exporter has been unable because of *force majeure* to use in due time a licence with a refund fixed in advance and the intervention body has unlawfully failed in due time to extend the licence, it must nevertheless be placed in the position in which it would have been if the export licence had been extended in due time.

Finally, Brüggen observes that the refusal to grant a higher rate of refund fixed in advance is also a breach of the principle of equality of treatment, inasmuch as identical cases are treated in a different manner according to the diligence displayed by the authorities of the individual Member States in their work; which is incompatible with the principles of equality and equity (judgment of 12 November 1981 in Joined Cases 212 to 217/80, *Amministrazione delle Finanze dello Stato* v *Salumi* [1981] ECR 2735.

On those grounds, Brüggen suggests that the question put to the Court by the Bundesverwaltungsgericht should be answered in the manner proposed by the Commission.

III — Oral procedure

At the sitting on 7 October 1982, oral argument was presented by the following: Barbara Festge, Rechtsanwältin, Hamburg, for H. und J. Brüggen; Albrecht Stockburger, Rechtsanwalt, Hamburg, for the Bundesanstalt für landwirtschaftliche Marktordnung; and Jörn Sack, acting as Agent, for the Commission of the European Communities.

The Advocate General delivered his Opinion at the sitting on 11 November 1982.

At the sitting on 7 October 1982, the Court (Second Chamber) was composed of A. Chloros, President, and O. Due and K. Bahlmann, Judges.

According to Article 27 (2) of the Rules of Procedure only those Judges who were present at the oral proceedings may take part in the deliberations. The Second Chamber, by order of 17 November 1982, decided, owing to the death of Judge Chloros, its President, to re-open the oral procedure before the newly-composed Chamber.

The parties to the action informed the Second Chamber that they would not participate in the sitting on 2 December 1982 and referred to the submissions and arguments set out in their oral arguments at the sitting on 7 October 1982.

At the same sitting the Advocate General confirmed the Opinion delivered at the sitting on 11 November 1982.

Decision

1 By an order of 17 December 1981, which was received at the Court on 18 February 1982, the Bundesverwaltungsgericht [Federal Administrative Court] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 9 (1) of Regulation No 473/67/EEC of the Commission of 21 August 1967 on import and export licences for cereals (Amtsblatt L 204, 24. 8. 1967, p. 16).

2 That question was raised in the course of a dispute between Firma H. und J. Brüggen, Lübeck, [hereinafter referred to as "Brüggen"], the plaintiff in the main action, and the Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets], Frankfurt am Main, over the question whether the period of validity of an export licence in which the amount of the refund is fixed in advance may be extended retroactively.

3 It appears from the order making the reference that Brüggen had on 27 November 1969 obtained a licence for the export to Peru of 595 920 kg of groats, valid until 31 May 1970. On 13 May 1970 the undertaking requested an extension of the period of validity of the licence, stating that it had been unable to take delivery from the German Democratic Republic of the entire quantity of oats to be used for the production of the groats to be exported, because the waterways between Frankfurt an der Oder and Lübeck had remained ice-bound for longer than usual, from December 1969 to April

1970. In fact, by 31 May 1970 Brüggen had exported only 298 039 kg of groats under the licence which had been issued to it.

4 That request for an extension was refused by the predecessor of the Bundesanstalt für landwirtschaftliche Marktordnung on the ground that, although Article 9 (2) of Regulation No 473/67/EEC does in fact include among cases of *force majeure* the suspension of inland shipping owing to the formation of ice, the undertaking concerned could not rely upon that provision, because the situation constituting a case of *force majeure* had prevented only the import of the raw material to be used for the manufacture of the goods not the export of the goods actually covered by the licence.

5 The plaintiff was therefore compelled to apply for a new licence, after the grant of which it was able to export the remaining quantity of 297 881 kg of groats after 31 May 1970. However, the rate of refund paid on the basis of the new licence was DM 288.96 per tonne as against the rate of refund paid on the basis of the first licence, DM 307.05 per tonne, which resulted in a loss to Brüggen of DM 5 388.67.

6 At first instance and on appeal, the national courts recognized in substance that the plaintiff ought to have obtained the extension of the period of validity of the first export licence and that it should therefore be placed in the situation in which it would have been if its original application had been granted.

7 The Bundesverwaltungsgericht, before which the matter was brought, agrees with the lower courts that the defendant ought to have granted to Brüggen the extension of the period of validity of the licence. On the other hand, it expresses reservations as to the possibility of a retroactive extension of the validity of the expired licence, which would be the only means of placing the undertaking concerned in the position in which it would have been if the export had been effected under the first licence but would be incompatible with national law, which does not permit the plaintiff to bring a Folgenbeseitigungsanspruch [an application to remedy the consequences of administrative action] on the basis of a wrong decision by the administration.

8 Moreover, the Bundesverwaltungsgericht considers that such a retroactive extension would be likely to jeopardize the proper functioning of the system of export licences because the second licence would serve only as a

temporary substitute, so that, on the one hand, the reliability of the system as an indicator of market trends would be impaired, and, on the other hand, the holder of a licence could thus himself in a manner of speaking extend the period of validity of his licence.

9 On the other hand, it would scarcely be satisfactory from the point of view of the legal protection of traders within the Community if, in the event of a case of *force majeure*, it were impossible to obtain a retroactive extension of the period of validity of an export licence.

10 Under those circumstances, the Bundesverwaltungsgericht referred to the Court of Justice the following question:

"Does Article 9 (1) of Regulation No 473/67/EEC of the Commission of 21 August 1967 (Amtsblatt L 204, 24. 8. 1967, p. 16) permit the validity of an export licence in which the amount of the refund is fixed in advance to be extended for a period already past, thus giving it retroactive effect, in order to enable an exporter the validity of whose licence was not extended in due time and who therefore effected the export on the basis of a fresh licence to benefit in respect of that export from the rate of refund which had been fixed in advance?"

11 By that question, the national court in substance is asking whether Article 9 (1) of Regulation No 473/67/EEC permits the retroactive extension of the period of validity of an export licence, where the competent authority has wrongly refused to grant in due time an extension justified by a case of *force majeure* and the export has therefore had to be effected on the basis of a fresh export licence relating to the same transaction. The question also raises the problem of the validity of the second licence.

12 It must first be stated that it is clear from the provisions and general scheme of Article 9 (1) and (2) of Regulation No 473/67/EEC that the existence of a case of *force majeure* is a condition which is both necessary and sufficient for the extension of the period of validity of a licence for the import or export of cereals.

13 Consequently, if in the view of the national authorities, which in such a matter are subject to the jurisdiction of the competent courts, the existence of a case of *force majeure* cannot or can no longer be disputed, the importers and exporters concerned are entitled on demand to an extension of the period of validity of the licences.

14 In relation to the question of the retroactive extension of the period of validity of the export licence, it must be stated that the plaintiff's right to such an extension is intended to enable it to effect the export transaction at the rate of refund fixed in advance in that licence in spite of the obstacles arising out of the events which have constituted *force majeure;* its right must therefore be such as to produce all the effects necessary for that purpose.

15 In so far as the narrowly-defined exceptions, which are restricted to cases of *force majeure,* do not in principle affect the reliability of the licensing system, the effects of a decision to extend the period of validity of an export licence taken because of the existence of a case of *force majeure* must come into play regardless of whether such extension occurs before or after the expiry of the period of validity of the licence.

16 That solution is also desirable on grounds connected with the legal protection of the licence holder, since if there is no possibility of retroactive extension he cannot enjoy the rights conferred upon him by Article 9 of Regulation No 473/67/EEC.

17 It must also be borne in mind that the Court has accepted that it is permissible, in the event of the loss of a licence which constitutes a case of *force majeure* for a request to be made pursuant to Article 18 (1) of Regulation No 1373/70/EEC of the Commission (Official Journal, English Special Edition 1970 (II), p. 439) after the period of validity of the licence has expired (judgment of 30 January 1974 in Case 158/73, *Kampffmeyer* v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1974] ECR 101). In addition, the validity of such retroactive extension may be inferred from a provision which was laid down after the material events in this case, namely Article 36 (2) of Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products (Official Journal 1980, L 338, p. 1), which provides that, in a case of *force majeure,* a request to extend the period of validity of a licence or certificate may be received not more than 30 days after the expiry of such period of validity. In those conditions, it is clear that the decision which follows that request may also be made retroactively, with the result that the extension applies retroactively to the period between the expiry of the period of validity of the licence or certificate and the decision on the request for an extension.

8 It therefore follows that, on grounds relating to the legal protection of the licence holder, a retroactive extension which does not have an appreciable effect on the reliability of the licensing system must be considered valid under Article 9 (1) of Regulation No 473/67.

9 It should also be stated that the recognition of the validity of such retroactive extension raises the question of the validity of the second licence which was issued to the plaintiff in the main action in this case.

10 It follows from the considerations set out above that in so far as the first licence, the period of validity of which has been extended, takes full effect, the second, which relates to the same export transaction, automatically ceases to have effect and must be formally cancelled.

21 The answer to the question submitted to the Court must therefore be that Article 9 (1) of Regulation No 473/67 must be interpreted as meaning that the period of validity of an export licence for which the refund has been fixed in advance may be extended for a period of time which has expired — that is to say, retroactively — where the competent authority has wrongly refused to grant in due time an extension justified by a case of *force majeure* and where as a result it has been necessary for the export to be effected on the basis of a fresh licence relating to the same transaction; in such a case, the fresh licence has no legal effect and must be formally cancelled.

Costs

22 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

23 As there proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings before the Bundesverwaltungsgericht, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Bundesverwaltungsgericht by order of 17 December 1981, hereby rules:

Article 9 (1) of Regulation No 473/67 of the Commission must be interpreted as meaning that the period of validity of an export licence for which the refund has been fixed in advance may be extended for a period of time which has expired — that is to say, retroactively — where the competent authority has wrongly refused to grant in due time an extension justified by a case of *force majeure* and where as a result it has been necessary for the export to be effected on the basis of a fresh licence relating to the same transaction; in such a case, the fresh licence has no legal effect and must be formally cancelled.

Pescatore Due Bahlmann

Delivered in open court in Luxembourg on 16 December 1982.

The Registrar
by order

H. A. Rühl

Principal Administrator

P. Pescatore

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 2 DECEMBER 1982 [1]

Mr President,
Members of the Court,

The facts of the reference for a preliminary ruling on which I give my opinion today may be summarized as follows:

Firma H. und J. Brüggen, the plaintiff and respondent in the appeal on a point of law in the main action, carries on a cereal processing business in Lübeck. On payment of a desposit it was issued by what was then the Einfuhr- und Vorratsstelle für Getreide and Futtermittel [Import and Storage Agency for Cereals and Feeding-stuffs] with a licence for the export to Peru of 595 920 kg of groats in which the refund was fixed in advance and which was valid until 31 May 1970. The groats were to be manufactured from oats which should have been delivered to Lübeck by inland waterways from the German Democratic Republic in two consignments, one in the first and the other in the second half of April 1970. However, owing to the exceptionally severe winter which resulted in the lengthy blockage by ice of the inland shipping routes in the German Democratic Republic, delivery of the

1 — Translated from the German.