and whose consistency, after the addition of water and refrigeration, is such that it does not break up too rapidly at ambient temperatures and which retains its freshness for a sufficiently long period.

In Case 64/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Fourth Chamber of the Finanzgericht [Finance Court] Münster for a preliminary ruling in the action pending before that Court between

NICOLAUS CORMAN & FILS SA, having its registered office at Goé-Dolhain, Belgium,

and

HAUPTZOLLAMT [Principal Customs Office] GRONAU (Federal Republic of Germany),

on the interpretation of the concept of "edible ices ... suitable for consumption" appearing in the third indent of Article 6 (1) (c) of Regulation (EEC) No 1259/72 of the Commission of 16 June 1972 on the disposal of butter at a reduced price to certain Community processing undertakings (Official Journal, English Special Edition 1972 (II), p. 559), as amended by Regulation (EEC) No 2815/72 of the Commission of 22 December 1972 (Official Journal, English Special Edition 1972 (30-31 December), p. 5) and as last amended by Regulation (EEC) No 2819/74 of the Commission of 8 November 1974 (Official Journal L 301, p. 21),

THE COURT (Third Chamber)

composed of: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: G. Reischl
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

I — Facts and procedure

On 27 January and 4, 11 and 14 February 1975 the plaintiff in the main action, a Belgian company, applied to the Zollamt [Customs Office] Aachen-Autobahn-Süd for customs clearance for 80 007.5 kilograms of re-solidified butter which it had bought under the procedure laid down by Regulation No 1259/72 and exported from Belgium into the Federal Republic of Germany. The German purchaser, Otto Suwelack Nachfolger KG, wished to use that butter to make edible ices and placed it under customs control. On the basis of that declared intended use the Zollamt levied the German rate of monetary compensation, reduced by 50 %, making DM 37 927.09 in total in accordance with Article 20 (a) of Regulation No 1259/72 as amended by Regulation No 1570/74 of the Commission of 21 June 1974 (Official Journal L 167, p. 29) amending Regulation (EEC) No 1259/72 and No 218/74 as regards the monetary compensatory amounts applicable to butter sold at a reduced price to certain Community processing undertakings.

The final product manufactured by that German company, a powder for the preparation of edible ices, was analysed by the Zolltechnische Prüfungs- und Lehranstalt München [Customs Laboratory and Training College, Munich] and the Institut für Chemie der Bundesanstalt für Milchforschung Kiel [Chemistry Institute of the Federal Milk Research Establishment, Kiel] in order to check whether it conformed with the third indent of Article 6 (1) (c) of Regulation No 1259/72 as amended by Regulation No 2815/72.

Under that provision the butter may be processed only into

"powder for the preparation of edible ices falling within subheadings Nos ex 18.06 D or ex 21.07 F of the Common Customs Tariff, of a milkfat content of less than 32 % and suitable for consumption without any treatment other than the addition of water and refrigeration".

On the strength of those two institutions' reports the Zollamt Coesfeld, which, according to the Finanzgericht, was responsible for customs control, came to the view that the re-solidified butter had not been used for the declared purpose because edible ices suitable for consumption could not be made from the powder under the required conditions and therefore by a corrective notice dated 18 March 1976 it demanded an additional payment of monetary compensation amounting to DM 37 918.80.

The Finanzgericht states that the experts' reports found that the powder when made up did not constitute an edible ice which came up to consumer expectations. According to the Chemistry Institute, Kiel, "if their intended use had not been declared the powders would

hardly have been considered to be preparations for the manufacture of edible ices". The ice produced from the powder generally lacked taste and did not have a good consistency owing to the formation of ice crystals; moreover its sugar content was lower than normal and so was its content of flavourings such as vanillin and its content of emulsifying and stabilizing agents. As for emulsifier the preparation contained only 1 % sodium caseinate which had a destabilizing effect on the edible ice. That agent is unusual in edible ices and moreover is not marketable in the Federal Republic of Germany. Finally, it was impossible to beat up the ice satisfactorily which quickly collapsed once taken from the freezer and there was an immediate, clear separation of the frozen and liquid parts of the ice. As a result the ice did not have the normal creamy consistency or palatability which is of such prime importance in view of the fact that ice is a sweet.

The plaintiff in the main action lodged an objection against the corrective notice on the ground that the German authorities were subjecting the powder to excessive requirements. The expression "suitable for consumption" or "verbrauchsfähig" in German means "consumable" or "not unsuitable for consumption" and is not a synonym for "pleasing to the taste" ["zum Genuß geeignet"]. That view is borne out by practical considerations as the expression should be interpreted uniformly throughout the Community which means that a product should be considered to be suitable for consumption as soon as it may be marketed in a Member State. As it happens, the powder is suitable for consumption in Belgium as may be seen from a certificate dated 19 February 1979 issued by the Institut National Belge pour le Lait et les Produits Laitiers [Belgian National Institute for Milk and Milk Products]. That certificate also shows that the use of sodium caseinate is authorized in the manufacture of edible ice in the United Kingdom, Italy and the Benelux countries; what is more, according to the Finanzgericht, Regulation No 1259/72 does not prohibit that additive. Nor does that regulation lay down requirements as to the minimum content of vanillin and sugar, or as to its degree of aeration.

That objection was rejected and the plaintiff in the main action brought the matter before the Finanzgericht Münster, which considered that it did not have sufficient information to define the concept of "edible ices ... suitable for consumption" in Community law and by an order dated 16 January 1981 put three questions to the Court which read as follows:

"1. What properties must be possessed by 'edible ices ... suitable for consumption' within the meaning of the third indent of Article 6 (1) (c) of Regulation (EEC) No 1259/72 of the Commission of 16 June 1972 on the disposal of butter at a reduced price to certain Community processing undertakings (Official Journal, English Special Edition 1972 (II), p. 559) as amended by Regulation (EEC) No 2815/72 of the Commission of 22 December 1972 (Official Journal, English Special Edition 1972 (30-31 December), p. 5) and as last amended by Regulation (EEC) No 2819/74 of the Commission of 8 November 1974 (Official Journal L 301, p. 21)? Is it sufficient for the frozen product to be 'consumable', 'not inedible', or 'not unsuitable for human consumption' or 'not harmful to health'? Or must it in addition meet consumer expectations or trade

conceptions, in other words, must it be accepted by the consumer as ordinary edible ice which is customarily bought and sold?

2. If consumer expectations or trade conceptions are the test is it sufficient for the product to meet consumer expectations or trade conceptions in the State where it is processed, in any EEC Member State, or even in a non-member country; or must it meet consumer expectations or trade conceptions prevailing in all Member States?

3. Does the answer depend on whether the product is marketable in one of those States or in all EEC Member States under the respective food regulations applying there?"

The order making the reference was registered at the Court Registry on 23 March 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Corman, the plaintiff in the main action, represented by Ehle, Feldmann and Partners, Rechtsanwälte at the Oberlandesgericht Köln [Higher Regional Court, Cologne] and by the Commission of the European Communities, represented by J. Sack, a member of its Legal Department, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, by an order dated 15 July 1981 the Court decided to assign the case to the Third Chamber pursuant to Article 95 of the Rules of Procedure and 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 of the EEC

A — Observations of the plaintiff in the main action

The *plaintiff in the main action* expands on the same arguments which it put before the Finanzgericht.

After first analysing the Community regulations it arrives at the conclusion that there is no provision giving a closer definition of or explaining the concept "suitable for consumption".

It then goes on to argue that the product in question is both lawful and marketable under Belgian, Italian, Netherlands, United Kingdom and Luxembourg regulations; however it does not meet the requirements of the German Regulation of 15 July 1933 on edible ices as amended by the Regulation of 1 July 1970 (Bürgerliches Gesetzbuch I 1970 I p. 1061).

As far as the interpretation of the concept "suitable for consumption" is concerned, the plaintiff in the main action takes the view that it should be interpreted independently in Community law and without regard to similar or identical national provisions.

According to the wording of Article 6 of Regulation No 1259/72, as amended by Regulation No 2819/74, the end product should have properties making it "simply 'consumable', in the neutral sense of the term", which rules out the defendant's interpretation that the product should be "pleasing to the taste of the German consumer" ["zum deutschen Verbrauchergenuß geeignet"].

It also emerges from the context to which Article 6 belongs that the essential point about the expression "suitable for consumption without any treatment other than the addition of water and refrigeration" is that processing may consist in the addition of flavouring, stabilizers and other substances which are definitively listed "provided that the product continues to fall within the tariff heading for which it is intended". As the product is an "intermediate product which is intended for processing" the Community legislature cannot have intended to take account of consumer views when using the expression "suitable for consumption".

It follows from the aims of those regulations, as they appear in the recitals in the preamble to Regulation No 1259/72 and No 232/75, that the monitoring of the use to which butter sold at a reduced price is put is to continue until the product has reached the final state envisaged by the regulations; that does not mean its consumption, but simply the last state in which the commodity is to be found after it has undergone the various stages of treatment and processing prescribed by the regulations. So once the product has reached that "final state" the last person acquiring the product may process it again in order to produce an edible ice meeting consumer requirements as to pleasant taste.

It follows from all those factors regarding the interpretation of the provision "suitable for consumption" that the object of the regulation (supervision) is fulfilled if through the use or processing of the powder for the purpose of manufacturing edible ices a product of specific composition appears which is suitable for consumption after the addition of water and refrigeration. Consequently no additional requirement that account should be taken at that stage of any consumer expectations may be imposed pursuant to the regulation at issue.

The balancing of interests and considerations of practicability, which qualify the interpretation, also support the argument that "suitable for consumption" should be construed to mean "consumable" in a neutral sense. It cannot be the task of Community authorities to check in each Member State in which that product is offered for consumption whether the product, which may be an intermediate product, has been readily accepted there by consumers as consumable and comes up to their expectations as to palatable edible ice.

The plaintiff adds, finally, that the practicable course in each Member State is to take the lowest common denominator in the Community. That course is taken in its own country, Belgium, and since the product complies with the requirements of its own national legislation the plaintiff should be entitled to presume that the German authorities will not impose more stringent requirements when interpreting the expression in question.

Consequently it proposes that the questions put by the Finanzgericht should be answered as follows:

"The first question:

The property of being 'suitable for consumption' which must be possessed by intermediate products obtained from butter stocked and sold at reduced prices in accordance with Regulation (EEC) No 1259/72 of the Commission of 16 June 1972 (Official Journal, English Special Edition 1972 (II), p. 559), as amended by Regulation (EEC) No 2815/72 of the Commission of 22 December 1972 (Official Journal, English Special Edition 1972 (30-31 December), p. 5) and as last amended at the time in question by Regulation (EEC) No 2819/74 of 8 November 1974

(Official Journal L 301, p. 21), and which has been processed in accordance with the conditions laid down by Article 6 (1) (a), contains the products referred to in Article 6 (1) (b), and has been turned into powder preparations falling within tariff subheading ex 18.06 D or ex 21.07 F of the Common Customs Tariff for the manufacture of edible ices, in accordance with the conditions contained in the third indent of Article 6 (1) (c) means that those intermediate products are consumable or not unsuitable for human consumption without any treatment other than the addition of water and refrigeration notwithstanding any further processing or treatment which is subsequently carried out for the purpose of producing edible ices adapted to the market such as for example the alteration of the taste, consistency or other characteristics of the ices to suit the taste of the consumer.

The second question

There is no need to answer this question because consumer expectations and trade conceptio: . are not relevant.

The third question

Whether the intermediate product covered by the regulation is marketable under the food regulations of a particular Member State is immaterial, too."

B — Observations of the Commission

The *Commission* takes the view first of all that this case should be considered in the light of the judgments given by the Court on 28 June 1979 in Cases 216 & 217/78 *Beljatzky* and *Corman* [1979] ECR 2273 et seq. according to which the monetary compensatory amounts may be re-assessed if the butter has not been put to the use intended.

It goes on to examine the provisions of the relevant regulations and arrives at the conclusion that the powder so made should not only meet all the conditions for classification in one of the tariff subheadings indicated, either 18.06 D or 21.07 F of the Common Customs Tariff in force at that time, but should also be capable of being classified as edible ice (in subheading 18.06 D or 21.07 C) after the mere addition of water and refrigeration. It doubts whether the national court has fully grasped those two conditions required of powder preparations because the order making the reference reiterates an argument of the plaintiff which is "wrong or at any rate simplistic" in the sense that it overlooks the most important point which is that the processing of the product into edible ice falling within the tariff subheadings referred to above should be "solely by the addition of water and refrigeration".

The Commission rules out subheading 18.06 D which it claims concerns only products which are cocoa-based. It considers that it would have been desirable for the national court to require evidence at the outset that the powder in question was indeed a product falling within tariff subheadings ex 18.06 D or ex 21.07 F which by the mere addition of water and refrigeration is transformed into an edible ice falling within tariff subheading ex 18.06 B or ex 21.07 C.

If that were indeed the case it would be necessary to consider whether that product is consumable, that is to say whether it may be supplied direct to the ultimate consumer as an edible ice without having undergone any processing or refinement. Therefore it is

not sufficient for the product to be simply "consumable", or even "not unsuitable for consumption". Rather it should be consumable as an ice ready for consumption [Speiseeis]. The consumer must therefore be able to recognize and accept it as such.

It is readily apparent from the provisions of Regulation No 1259/72 that the product must unmistakably appear as an *edible ice consumable by the ultimate consumer.* That view is further confirmed by both the meaning and scope of Regulation No 1259/72 since its object implies that the end product should be capable of being consumed as an edible ice because if it were sufficient for the product to be simply "consumable" the aim of the provision contained in Article 6 of Regulation No 1259/72, that is to say the prevention of the use of butter sold at a reduced price for purposes other than the making of edible ice, would not be attained.

Nevertheless the definition of concept of "edible ices ... suitable for consumption" should not be subjected to excessive requirements; it is for free competition to determine whether a commodity is to be successful on the market. The definition of the concept should therefore "rest on the minimum conditions which a product must fulfil for it to continue to be classified as an edible ice".

It should not rest on the regulations laid down in a national legal system or even on those which on a comparative view appear to be the least stringent. National regulations are significant here in two ways: first, if a product cannot be marketed as an edible ice in any Member State, it is certainly not "suitable for consumption"; secondly, by the same token, if the same product can be marketed in a Member State as an edible ice, that may be taken as an indication that it is probably a product which is suitable for consumption. So national regulations may at most serve as indicators and the concept of "suitable for consumption" should therefore be defined according to the minimum requirements of the Community consumer as contained moreover in Regulation No 232/75.

Since edible ice is a sweet, its sugary or flavoured taste is very important, as well as its consistency. An edible ice should not therefore melt rapidly and separate into its liquid and solid components. On the other hand the Commission considers that other characteristics, such as the feel of the product on the tongue, the normal vanillin content or the degree of aeration and the rate at which it melts, are not so crucial.

The Commission believes that those criteria should be sufficient to enable the national court to arrive at a decision and that there is therefore no need to consider other characteristics which might be required of an edible ice for it to be suitable for consumption since it is the task of national courts to decide in each individual case "whether in applying the criteria set out above a product should be considered as an edible ice".

Consequently the Commission proposes that the questions put by the national court should be answered as follows:

"1. Powders falling within subheading ex 18.06 B or ex 21.07 F (old version) of the Common Customs Tariff intended for the preparation of edible ices within the meaning of Regulation (EEC) No 1259/72 of the Commission comprise only

products which, after the mere addition of water and refrigeration, may be considered as edible ices falling within subheadings ex 18.06 B or ex 21.07 C of the Common Customs Tariff and which as such are suitable for consumption.

2. The suitability of the product for consumption is determined by the minimum requirements which a Community consumer sets for an edible ice. A significant guide in this regard is the marketability of a product as an edible ice under the national legal system of a Member State. On the other hand a product is not suitable for consumption if it is not marketable under that name in another Member State.

3. A product which has no distinct sugary or flavoured taste, or which on melting separates into two parts, one liquid, one solid, does not meet the minimum conditions for an edible ice suitable for consumption within the meaning of Regulation No 1259/72."

III — Oral procedure

At the sitting on 15 October 1981 oral argument was presented by the following: Ulrich C. Feldmann, Rechtsanwalt, Cologne, for Nicolaus Corman & Fils, the plaintiff in the main action, and Jörn Sack, acting as Agent, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 19 November 1981.

Decision

By an order of 16 January 1981, which was received at the Court on 23 March 1981 the Finanzgericht [Finance Court] Münster referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions concerning in particular the interpretation of the words "edible ices ... suitable for consumption" within the meaning of the third indent of Article 6 (1) (c) of Regulation No 1259/72 of the Commission of 16 June 1972 (Official Journal, English Special Edition 1972 (II), p. 559) on the disposal of butter at a reduced price to certain Community processing undertakings, as amended by Regulation No 2815/72 of the Commission of 22 December 1972 (Official Journal, English Special Edition [1972] (30-31 December, p. 5) and as last amended by Regulation No 2819/74 of the Commission of 8 November 1974 (Official Journal L 301, p. 21) (hereinafter referred to as "Regulation No 1259/72 as amended").

2 Those questions were submitted in the course of proceedings between a Belgian undertaking, which exported re-solidified butter for use by a German undertaking for the manufacture of a powder for the preparation of edible ices by the addition of water and refrigeration, and the Hauptzollamt (Principal Customs Office) Gronau (Federal Republic of Germany), which charged monetary compensatory amounts not at the reduced rate of 50% fixed by Article 20 of Regulation No 1259/72 as amended but at the full rate on the ground that the re-solidified butter in question had not been processed in accordance with its declared destination into a powder capable of being made into edible ices suitable for consumption and accordingly could not be classified in subheadings Nos ex 18.06 D or ex 21.07 F of the Common Customs Tariff.

3 In fact, according to the Hauptzollamt, the analysis of the powder carried out at the request of the customs authorities by specialized establishments indicated that the powder was not suitable for consumption without any treatment other than the addition of water and refrigeration. That analysis showed that, on the basis of the flavouring and sweetening, the content in binding and emulsifying agents and the degree of stability of the final product obtained, it could not be considered as an edible ice suitable for consumption. Having regard to the outcome of these analyses the national court put three questions to the Court of Justice which were worded as follows:

"1. What properties must be possessed by 'edible ices ... suitable for consumption' within the meaning of the third indent of Article 6 (1) (c) of Regulation (EEC) No 1259/72 of the Commission of 16 June 1972 on the disposal of butter at a reduced price to certain Community processing undertakings (Official Journal, English Special Edition 1972 (II), p. 559) as amended by Regulation (EEC) No 2815/72 of the Commission of 22 December 1972 (Official Journal, English Special Edition 1972 (30-31 December), p. 5) and as last amended by Regulation (EEC) No 2819/74 of the Commission of 8 November 1974 (Official Journal L 301, p. 21)? It is sufficient for the frozen product to be 'consumable', 'not inedible', or 'not unsuitable for human consumption' or 'not harmful to health'? Or must it in addition meet consumer expectations or trade conceptions, in other words, must it be accepted by the consumer as ordinary edible ice which is customarily bought and sold?

2. If consumer expectations or trade conceptions are the test is it sufficient for the product to meet consumer expectations or trade conceptions in the State where it is processed, in any EEC Member State, or even in a

non-member country; or must it meet consumer expectations or trade conceptions prevailing in all Member States?

3. Does the answer depend on whether the product is marketable in one of those States or in all EEC Member States under the respective food regulations applying there?"

4 The three questions put are intended in essence to establish the meaning for Community purposes of the words "suitable for consumption" appearing in the third indent of Article 6 (1) (c) of Regulation No 1259/72 as amended which provides that butter sold in accordance with that regulation and in accordance with its objectives may only be processed into:

"powder for the preparation of edible ices falling within subheadings Nos ex 18.06 D or ex 21.07 F of the Common Customs Tariff, of a milkfat content of less than 32% and suitable for consumption without any treatment other than the addition of water and refrigeration."

5 That provision implies that the powder produced from butter must meet all the conditions authorizing classification of the product in one of the two stated subheadings of the Common Customs Tariff, that is to say, that the powder must be capable of being processed solely by the addition of water and refrigeration into a final product which constitutes an edible ice suitable for consumption.

6 If regard is had first of all for the Explanatory Notes to the Common Customs Tariff the words "suitable for consumption" imply that only the limited requirements as to the quality of an edible ice within the meaning of the said tariff subheadings may be prescribed. In fact classification in tariff headings 18.06 "Chocolate and other food preparations containing cocoa" and 21.07 " Food preparations not elsewhere specified or included" shows that the final product in question must be consumable, which means that it must not be unsuitable for human consumption or harmful to health.

7 In the second place, within the framework of Regulation No 1259/72 it is stated that the product obtained simply by the addition of water to the

powder made from re-solidified butter which is then frozen constitutes "edible ices . . . suitable for consumption" without any treatment other than that described. The foregoing means that it must be possible to consume the product as an edible ice, that is to say that it must have a perceptible taste of sugar or flavouring and have a composition whose consistency and freshness is sufficiently lasting. For these purposes a product which is tasteless or loses its consistency too rapidly by melting or whose components break up almost immediately on melting does not constitute an edible ice suitable for human consumption within the meaning of Regulation No 1259/72 as amended. This was furthermore confirmed by the subsequent Regulation No 232/75 of the Commission of 30 January 1975 on the sale of butter at reduced prices for use in the manufacture of pastry products and ice cream (Official Journal L 24, p. 45) which requires that such ice cream must contain one or more flavourings and emulsifying or stabilizing agents.

8 These minimum requirements are based on the provisions of the Common Customs Tariff read in conjunction with Regulation No 1259/72, that is to say, on provisions of Community law which do not refer to legal systems of the Member States in determining their meaning and scope; the Community legal order does not in fact aim in principle to define its concepts on the basis of one or more national legal systems without express provision to that effect. In this case all national variations from such Community requirements as to quality tend to distort the uniform effect of Regulation No 1259/72 as amended and to use it for purposes other than that for which it was intended, which is the disposal of butter stocks by sale at a reduced price to certain processing undertakings by permitting a reduction in the monetary compensatory amounts pertaining to the marketing of products whose destination is not necessarily that for which a favourable rate is provided by that regulation.

9 The reply to the Finanzgericht Münster should accordingly be that powder falling within subheadings Nos ex 18.06 D or ex 21.07 F of the Common Customs Tariff and intended for the preparation of edible ices within the meaning of the third indent of Article 6 (1) (c) of Regulation No 1259/72 as amended by Regulation No 2815/72 of the Commission and as last amended by Regulation No 2819/74 of the Commission of 8 November 1974 must contain only products which can be processed into edible ices suitable for consumption without any treatment other than the addition of water and

refrigeration. Suitability for consumption as an edible ice within the meaning of the said regulation requires for the purposes of Community law treatment of the basic product such that its sole possible application is the production of edible ices, that is to say, of a product which is perceptibly sugared or flavoured and whose consistency, after the addition of water and refrigeration, is such that it does not break up too rapidly at ambient temperatures and which retains its freshness for a sufficiently long period.

Costs

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

On those grounds,

THE COURT (Third Chamber)

in answer to the questions referred to it by the Finanzgericht Münster by order of 16 January 1981, hereby rules:

Powder falling within subheadings Nos ex 18.06 D or ex 21.07 F of the Common Customs Tariff and intended for the preparation of edible ices within the meaning of the third indent of Article 6 (1) (c) of Regulation No 1259/72 as amended by Regulation No 2815/72 of the Commission and as last amended by Regulation No 2819/74 of the Commission of 8 November 1974 must contain only products which can be processed into edible ices suitable for consumption without any treatment other than the addition of water and refrigeration. Suitability for consumption as an edible ice within the meaning of the said regulation requires for the purposes of Community law treatment of the basic product such that its sole possible application is the production of edible ices, that is to say, of a product which is perceptibly sugared or flavoured and whose

consistency, after the addition of water and refrigeration, is such that it does not break up too rapidly at ambient temperatures and which retains its freshness for a sufficiently long period.

Touffait Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 14 January 1982.

For the Registrar

H. A. Rühl

Principal Administrator

A. Touffait

President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 19 NOVEMBER 1981 [1]

Mr President,
Members of the Court,

The reference for a preliminary ruling on which I am giving my opinion today arises from the following facts:

The plaintiff in the main action, a Belgian undertaking, in January and February 1975 applied to the Zollamt [Customs Office] Aachen—Autobahn Süd for customs clearance into free circulation of a number of consignments of re-solidified butter amounting in all to some 80 tonnes which it had bought in accordance with the procedure laid down in Regulation (EEC) No 1259/72 of the Commission of 16 June 1972 on the disposal of butter at a reduced price to certain Community processing undertakings (Official Journal, English Special Edition 1972 (II), p. 559) and had imported from Belgium into the Federal Republic of Germany. At the same time the purchaser of the goods, the German undertaking, Dr Otto Suwelack Nachfolger KG, applied for the goods to be placed under customs control since it intended to use the re-solidified butter for the manufacture of edible ices in accordance with the provisions of the said regulation. In accordance with these applications the customs office charged, on the basis of that destination in accordance with Article 20 of Regulation No 1259/72, as amended by Regulation (EEC) No 1570/74 (Official Journal L 167 of 22 June 1974, p. 29) monetary compensatory amounts at the reduced rate of 50 %, amounting in all to DM 37 927.09.

1 — Translated from the German