2. An agricultural product imported by sea into Italy and accordingly subjected to the reduced rate of the levy in accordance with Article 23 (1) of Regulation No 120/67 is in free circulation within the Community for the purposes of Article 1 (3) of Regulation (EEC) No 542/69 of the Council on Community transit.

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 15 May 1985

My Lords,

Council Regulation No 120/67 on the common organization of the market in cereals (OJ 1967, p. 2269) recites that 'Italy should be authorized for some years to take measures to reduce the impact of the new system on the level of prices for feed grain in that Member State in order to facilitate the adjustment of the Italian market to that new system'. Article 23 (1) of the regulation, as amended by Council Regulation No 1601/68 (OJ 1968, L 253 p. 2), reads as follows:

'When barley, oats, maize, grain sorghum and millet are imported by sea into the Italian Republic and until the end of the 1971/72 marketing year, that Member State may reduce the levy by 7.5 units of account per metric tonne on condition that an equal subsidy is granted for deliveries of the same cereals by sea from Member States, unless this subsidy has, at the request of the sender of the cereals, been paid to him by the exporting Member State which shall forthwith inform the Italian Republic. The latter shall always keep all Member States regularly informed of the amount of the subsidy in force.'

The Italian Government chose to apply the scheme envisaged by that paragraph and in 1967 a decree law was adopted to that effect.

The plaintiffs in the main case are the heirs of Otello Mantovani. On 10 July 1972 the *Panagos D. Pateras* docked in La Spezia with a consignment of maize from Baton Rouge in Louisiana. The Mantovani company requested the customs authorities there to clear the consignment through customs on board ship, the consignee being a trader in Rotterdam, the Netherlands, and the authorities acceded to that request. It seems to be common ground that this resulted in the delivery by the Italian customs authorities of a document showing that the goods were in free circulation within the meaning of Articles 9 and 10 of the Treaty. The exact nature of the document delivered is somewhat unclear. In its reference for a preliminary ruling the Court of Cassation has stated that it was a T2L form (see Commission Regulation No 2313/69 (OJ 1969, L 295, p. 8)). On the other hand, the

parties to the main action have stated before this Court that it was a T2 document as provided for by Council Regulation No 542/69 on Community transit (OJ 1969, L 77 p. 1). In any event, it does not seem to me that the answers to be given to the questions posed by the Court of Cassation depend on this matter.

The cargo was never unloaded in Italy at all. The ship proceeded to Rotterdam where the maize was unloaded. At the hearing before this Court, counsel for Padovani denied that there was any intention to clear the goods through customs in Italy solely to take advantage of the reduced levies imposed on imports into that country. He claimed that it was intended to unload the cargo in Italy, but that this became impossible at the last moment and that it was for this reason that the ship then set off for Rotterdam.

When the consignment was cleared through customs, the Mantovani company did not pay the levy either in full or in part but lodged bonds by way of security for the amount in question. It was not until 13 July 1977 that the La Spezia customs office informed it that the full rate of levy would have to be paid.

The Mantovani company thereupon commenced proceedings against the customs administration before the District Court in La Spezia which held in its favour that it was entitled to pay the levy after the reduction rather than in full. On appeal, the Court of Appeal at Genoa considered *inter alia* that the registration on board ship was a merely notional importation procedure and held that the company must pay the levies in full. The matter then came before the Court of Cassation which referred two questions under Article 177.

In the first question the Court is asked to rule as to the interpretation of Article 23 (1) 'since it is necessary to ascertain whether the reduction of the levy by 7.5 units of account under that provision of Community law in the case of cereals imported from non-member countries into Italy by sea also applies where the products themselves undergo registration on board ship in an Italian port but are forwarded on the same vessel without being unloaded to another port in another EEC Member State'.

The object of the question is thus whether such products can be said to have been 'imported by sea into the Italian Republic' within the meaning of Article 23 (1).

All those who have lodged observations claim that the reason for the reduction of the levy on goods being imported into Italy by sea was the higher port charges in that country in view of conditions obtaining in the ports there. The preamble to Council Regulation No 1157/77 (OJ 1977, L 136, p. 12), one of the many regulations which prolonged the scheme, states this expressly. However, the parties draw different conclusions from this.

The Commission and Italy both take the view that in this context goods cannot be regarded as having been 'imported' until they have been unloaded.

The Commission points out that the term 'importation' has different meanings in different contexts of Community law.

According to the Commission, in some cases 'importation' means putting into free circulation within the meaning of Articles 9 and 10 of the Treaty. On the other hand, when used in Article 23 (1) this term involves putting the goods into free circulation and unloading them. In support of this view it points to the fact that, where cereals were 'delivered' by sea from other Member States, an equivalent subsidy was to be granted by virtue of the closing words of the first sentence of that paragraph. A consignment cannot be said to have been 'delivered' unless it has been unloaded. Since the object of the subsidy was to ensure that Community cereals were not put at a disadvantage as compared with those coming directly from third countries, the Commission claims that the term 'imported' must be given the same meaning.

The Italian Government maintains that the ultimate objective of counteracting higher port costs in Italy by means of the reduction in the levy was to ensure that the cereals would not be more expensive in Italy than in other Member States. To grant the reduction with respect to consignments which were not even unloaded in Italy would clearly not further this objective.

I accept these arguments. It is no answer to say, as the plaintiffs in the main case have done, that even by bringing the ship into port without unloading the cargo the Mantovani company suffered the financial consequences, notably in demurrage, of conditions in Italian ports. It is obvious that in such circumstances the effects of these conditions were not felt to the same extent as if the goods had been unloaded. As the Italian Government has pointed out, the object of reducing the levy was not in any event to enable ships to dock in Italy and have their cargoes cleared through customs there without unloading them.

I am not convinced by the second argument put forward by the plaintiffs, which is based on an alleged distinction between paragraphs 1 and 2 of Article 23. Article 23 (2) provides as follows:

'Furthermore, when barley, oats, maize, grain sorghum and millet are imported into the Italian Republic, that Member State may reduce the levy ... on condition that an equal subsidy is granted for deliveries of the same cereals from Member States.'

The plaintiffs maintain that only paragraph 2 conferred a benefit on Italy, whereas paragraph 1 was merely a technical measure designed to cancel out the higher costs caused by the procedures in the Italian ports. They deduce from this that goods could be 'imported' into Italy from third countries under paragraph 1 without being unloaded there. That deduction seems to me to be a *non sequitur.*

Finally, the plaintiffs claim that, had the Italian authorities wished to refuse the benefit of the reduction of the levy, they could quite simply not have cleared the cargo through customs until it had been unloaded. That argument as to what could have been done to avoid speculative transactions if the regulation had a different meaning from that which I think it clearly has, does not persuade me that a different meaning should be given to it.

The second question posed by the Court of Cassation asks whether, by virtue of Article 1 (3)(a) of Regulation No 542/69, 'the internal Community transit procedure provided for and governed by the above-mentioned regulation is applicable to agri-

cultural products imported by sea from non-member countries, cleared through customs on board ship under Italian national law and shipped, without being unloaded in Italy, to another port in another Member State of the Community, where the Community rules provide for a reduction of the levy in respect of agricultural products imported by sea into the Italian Republic'.

The provision referred to stipulates that the procedure for internal Community transit shall apply to goods which satisfy the conditions laid down by Articles 9 and 10 of the Treaty. The second question must therefore be taken to ask whether goods can be in free circulation within the meaning of those articles of the Treaty where Community legislation provides for a reduced agricultural import levy.

To my mind there is no doubt that such goods can be in free circulation. Article 10 (1) of the Treaty provides that 'products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges of equivalent effect which are payable have been levied in that Member State ...'. This means that only those customs duties and charges which are due must have been paid. If it were otherwise, goods entering the Community free of, or subject to reduced, customs duties or levies would never be in free circulation. That would be a manifestly absurd result.

It may be that the real point of the second question is to establish whether the goods could have been put into free circulation within the meaning of Articles 9 and 10 of the Treaty and yet not have been 'imported' within the meaning of Article 23 (1) of Regulation No 120/67. That is in my view possible since the two concepts are not identical and in any event, as the Commission has pointed out, the term 'imported' has different meanings in different contexts of Community law.

In the light of these considerations I take the view that the questions posed by the Court of Cassation should be answered as follows:

'(1) To be 'imported by sea' into Italy from a third country within the meaning of Article 23 (1) of Council Regulation No 120/67, goods must have been both cleared through customs and unloaded in that Member State.

(2) Goods may be in free circulation under Articles 9 and 10 of the Treaty where they have been subject to a reduced levy in accordance with Article 23 (1) of Council Regulation No 120/67.'

The costs of the parties to the main action fall to be decided by the national court. The Commission should bear its own costs.