JUDGMENT OF THE COURT (Fourth Chamber)
16 December 1997 *

In Case C-325/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Supremo Tribunal Administrativo for a preliminary ruling in the proceedings pending before that court between

Fábrica de Queijo Eru Portuguesa Ld.ª

and

Subdirector-Geral das Alfândegas,

joined as a party: **Ministério Público**

on the interpretation of Article 14(2) of Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements (OJ 1985 L 188, p. 1) and Articles 27 and 28 of Council Regulation (EEC) No 3677/86 of 24 November 1986 laying down provisions for the implementation of Regulation No 1999/85 (OJ 1986 L 351, p. 1), as amended by Commission Regulation (EEC) No 2281/88 of 25 July 1988 (OJ 1988 L 200, p. 20),

* Language of the case: Portuguese.

THE COURT (Fourth Chamber),

composed of: H. Ragnemalm (Rapporteur), President of the Chamber, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Fábrica de Queijo Eru Portuguesa Ld.ª, by Álvaro Caneira, of the Lisbon Bar,

— the Portuguese Government, by Luís Fernandes, Director of the Legal Service of the European Communities Directorate-General in the Ministry of Foreign Affairs, and Luís Augusto Máximo dos Santos, Assistant in the Lisbon Law Faculty, acting as Agents,

— the French Government, by Catherine de Salins, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Frédéric Pascal, Central Administrative Attaché in the same Directorate, acting as Agents,

— the Commission of the European Communities, by Francisco de Sousa Fialho, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Portuguese Government and the Commission at the hearing on 17 July 1997,

after hearing the Opinion of the Advocate General at the sitting on 17 September 1997,

gives the following

Judgment

1 By order of 10 July 1996, received at the Court Registry on 4 October 1996, the Supremo Tribunal Administrativo (Portuguese Supreme Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Article 14(2) of Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements (OJ 1985 L 188, p. 1, the 'basic regulation') and Articles 27 and 28 of Council Regulation (EEC) No 3677/86 of 24 November 1986 laying down provisions for the implementation of Regulation No 1999/85 (OJ 1986 L 351, p. 1), as amended by Commission Regulation (EEC) No 2281/88 of 25 July 1988 (OJ 1988 L 200, p. 20).

2 The questions were raised in proceedings between Fábrica de Queijo Eru Portuguesa Ld.ª ('Eru Portuguesa') and Alfândega de Lisboa ('the Customs Authority') relating to an application for an extension of the time-limit for re-exporting goods which had been placed under inward processing relief arrangements.

3 It is clear from the first three recitals in the preamble to the basic regulation that such arrangements are aimed at promoting exports from Community undertakings, under the international division of labour, by enabling them to import goods from non-member countries without paying import duties where they are to be exported from the Community after processing, but without adversely affecting the essential interests of Community producers.

4 Article 14 of the basic regulation provides:

'1. The customs authority shall fix the time-limit within which the compensating products must be dealt with in one of the [w]ays 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 goods 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.

...

3. ...

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.'

5 Article 27 of Regulation No 3677/86 provides:

'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.'

6 Article 28 of Regulation No 3677/86 provides:

'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.'

7 The third recital in the preamble to Regulation No 2281/88 expressly states that 'in view of the market situation for the milk products concerned the period of validity of the inward processing authorization should be limited; ... a non-renewable time-limit should also be set for dealing with the compensating products in one of the approved ways'.

8 In those circumstances, Regulation No 2281/88 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 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.'

9 According to Article 1 of 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), that regulation applies to products covered by 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).

Among those products, Article 1(c) and (d) of Regulation No 806/68 refer to 'butter' and 'cheese and curd'.

10 It appears from the order for reference that during March 1988 Eru Portuguesa imported from New Zealand 108 tonnes of butter under the inward processing relief arrangements on the basis of an authorization of 11 March 1988 issued by the Customs Authority. Under the terms of that authorization, the compensating product to be exported was processed cheese, in the manufacture of which the imported butter was to be used as the principal raw material.

11 The time-limit for re-export, set by the authorization at six months, was twice extended by the Customs Authority at the request of Eru Portuguesa on the ground of *force majeure*; it was first extended until March 1989 and subsequently to 23 May 1989.

12 On 21 June 1989 Eru Portuguesa applied to the Director General of Customs for a further extension of the time-limit, pursuant to Article 27 of Regulation No 3677/86, in order for the remainder of the goods, which it specified as amounting to some 30 tonnes, to be incorporated in the final product for export, or at least for the company to be authorized under Article 18(4) of the basic regulation to re-export those goods 'in the unaltered state'.

13 The Deputy Director General of Customs rejected that application by decision of 12 July 1989 on the ground, in particular, that Article 28 of Regulation No 3677/86, as amended by Regulation No 2281/88, provides, in respect of the products specified in Article 1 of Regulation No 804/68, that the time-limit for re-export may not exceed four months. Noting that the provision was applicable from 26 July 1988, the Deputy Director General of Customs concluded that the two extensions of the time-limit previously allowed to Eru Portuguesa had in fact been granted in breach of Article 28 of Regulation No 3677/86.

14 By judgment of 5 February 1991, the Tribunal Tributário de Segunda Instancia (Fiscal Court of Second Instance) dismissed the action brought by Eru Portuguesa for the annulment of that decision. That judgment was upheld by a judgment of 1 July 1992 of a Division of the Supremo Tribunal Administrativo. Eru Portuguesa then lodged an appeal against that judgment with the Division for Fiscal Matters of the Supremo Tribunal Administrativo, sitting in plenary session, which decided to stay proceedings and seek a preliminary ruling from the Court of Justice on the following questions:

'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?'

15 By its questions, which it is appropriate to examine together, the national court asks essentially whether Article 28 of Regulation No 3677/86 must be interpreted as meaning that the time-limits prescribed therein may not be extended or that they may be extended pursuant to Article 27 of that regulation and Article 14(2) of the basic regulation.

16 Eru Portuguesa submits, first, that those time-limits, whether general or specific, may be extended if such a course is justified in the particular circumstances of each case. Secondly, it submits that by virtue of the principles of the protection of legitimate expectations and legal certainty the Customs Authority was not, on any interpretation, entitled to reject its application for an extension. Thirdly, it maintains that the Customs Authority misused its powers. Lastly, it considers that an extension of the time-limit should have been granted to it on the grounds of *force majeure*, since it was impossible to re-export the compensating products or the goods 'in the unaltered state'.

17 The Portuguese and French Governments and the Commission contend that Article 28 of Regulation No 3677/86, in the version of that article resulting from Regulation No 2281/88, lays down specific time-limits for the re-export of certain goods, pursuant to Article 14(4) of the basic regulation, which national customs authorities may not extend.

18 The terms employed in Article 28 of Regulation No 3677/86, as amended by Regulation No 2281/88, — 'the period ... may not exceed six months' and 'the time-limit for re-export may not exceed four months' — clearly show that, for agricultural products, the time-limits are specific and may not be extended. Such time-limits were established in accordance with Article 14(4) of the basic regulation and are applicable by way of derogation from Article 27 of Regulation No 3677/86.

19 Such an interpretation of Article 28 of Regulation No 3677/86 is, moreover, consistent with the objective pursued by that regulation and the basic regulation, which is to make application of the inward processing relief arrangements to agricultural products more difficult because of the particular problems raised by the functioning of the common market in those products. It was for that reason that it was decided to set strict bounds at Community level to the time-limits within which the inward processing relief arrangements for import goods are to be cleared.

20 It follows that that objective would be undermined if the specific time-limits referred to in Article 28 of Regulation No 3677/86 could be extended by the national customs authorities.

21 As regards the principles of the protection of legitimate expectations and legal certainty, it should be stated that as from 1 January 1987, the date on which the basic regulation took effect and Regulation No 3677/86 entered into force, the time-limit of six months generally applicable to agricultural products could not be extended and as from 26 July 1988, the date on which Regulation No 2281/88

entered into force, nor could the time-limit of four months applicable to milk products. Consequently, the two extensions of the time-limit for re-export allowed to Eru Portuguesa in 1988 and 1989 were wrongly granted.

22 That being so, it need merely be held that a trader is not entitled to expect that, when he has benefited from decisions of a national authority that do not comply with a clear and unequivocal rule of Community law, the same authority will adopt a further decision in breach of Community law.

23 The argument based on misuse of powers is also irrelevant, inasmuch as, by refusing to grant a further extension to the time-limit for re-export, the Customs Authority did no more than apply Article 28 of Regulation No 3677/86 correctly and did not use its powers for the exclusive, or at least predominant, purpose of achieving ends other than those provided for by the applicable Community rules.

24 Lastly, with regard to the principle of *force majeure* relied upon by Eru Portuguesa to justify its claim that it was impossible to re-export the compensating products or the goods 'in the unaltered state', it should be noted that no mention was made of the existence of abnormal and unforeseeable circumstances extraneous to the trader concerned, the consequences of which could only have been avoided at the cost of excessive sacrifice, despite all the efforts deployed.

25 The answer to the questions referred to the Court is therefore that Article 28 of Regulation No 3677/86, as amended by Regulation No 2281/88, must be interpreted as meaning that the time-limits for re-export laid down therein may not be extended.

Costs

26 The costs incurred by the Portuguese and French Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions referred to it by the Supremo Tribunal Administrativo by order of 10 July 1996, hereby rules:

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, as amended by Commission Regulation (EEC) No 2281/88 of 25 July 1988, must be interpreted as meaning that the time-limits for re-export laid down therein may not be extended.

Ragnemalm Kapteyn Murray

Delivered in open court in Luxembourg on 16 December 1997.

R. Grass H. Ragnemalm

Registrar President of the Fourth Chamber