Council Regulation No 1697/79 of 24 November 1979 does not apply to payments of import or export duties made before 1 July 1980.

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 9 December 1982.

P. Heim
Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 11 NOVEMBER 1982 [1]

Mr President,
Members of the Court,

1. The questions which were referred to the Court on 5 March 1982 by the Tribunale Civile e Penale, Florence, pursuant to an order issued on 25 November 1981, again raise the issue of the post-clearance recovery of import duties which were not charged on goods entered for a customs procedure involving the obligation to pay them.

2. The circumstances giving rise to the dispute between the company known as Italgrani and the Italian customs authorities are as follows:

In November 1972 the company made a declaration to the customs authorities at Leghorn (Livorno) that it intended to import a consignment of wheat from a non-member country. The declaration was accepted by the authorities on 8 November 1972, but the goods were not removed from the customs until after that date, in batches spread over a period of time.

Initially, the customs authorities applied the agricultural levy at the rate ruling on the dates when the goods were removed. However, on 11 July 1977 they demanded payment from the importing company of the sum of LIT 5 901 035, plus interest, representing the difference between the rate ruling on the day when the import declaration was accepted and the rate ruling when the goods were removed.

In so doing, the customs authorities were merely abiding by the Court's judgment of 15 June 1976 in *Frecassetti* [2], in which

1 — Translated from the French.

2 — Case 113/75 *Frecassetti*, [1976] ECR 983.

it was held that levies must be calculated on the basis of the rate applicable on the day when the import declaration for the goods is accepted.

Nevertheless, Italgrani objected to the post-clearance recovery, claiming that the case-law of the Court could not apply to situations which had already been settled.

The Tribunale in Florence wishes to know whether the adoption of Council Regulation (EEC) No 1697/79 of 24 July 1979, which deals with the question of post-clearance recovery, has the effect of rendering unlawful the action for recovery taken by the Italian authorities, regard being had to the fact that that action was commenced prior to 1 July 1980, on which date the Council regulation came into force, but more than three years after the adoption of the administrative measure whereby the levy applicable was originally determined.

3. The plaintiff in the main proceedings has not submitted any written or oral observations and this opinion will be brief in view of the judgment which the Court delivered on 12 November 1981, in very similar circumstances.[1] Furthermore, it is reasonable to suppose that if the Tribunale in Florence had known about that judgment, it would not have considered it necessary to seek the Court's ruling.

Indeed, it is apparent from that decision that the only "post-clearance recoveries" which fall within the scope of Regulation No 1697/79 are those which are effected following action commenced *after 1 July 1980.*

The fact that the amount originally stated to be payable may have been calculated either on the basis of information given by the competent authorities themselves or on the basis of provisions of a general nature subsequently invalidated by a court decision[2] has no effect upon that finding.

Similarly, the provision whereby no interest on overdue payments is to be charged on sums recovered after clearance when the shortfall in the amount collected is attributable to an error made by the competent authorities[3] is operative only if the duties payable are not determined until after 1 July 1980.

I am of the opinion that the Court should rule that a determination of import duties established prior to 1 July 1980 does not constitute a "post-clearance recovery" within the meaning of Regulation No 1697/79.

1 — Joined Cases 212 to 217/80 *Salumi and Others* [1981] ECR 2735.

2 — See Article 5 (1) of the regulation.

3 — See Article 7 of the regulation.