OPINION OF ADVOCATE GENERAL SAGGIO

delivered on 27 January 1999 *

1. In the present case, the Finanzgericht (Finance Court), Bremen (Germany) asks the Court to give a ruling on the interpretation of Commission Regulation (EEC) No 2551/93 of 10 August 1993, [1] amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and the Common Customs Tariff. [2]

The national court also asks the Court to give a ruling on the validity of Article 522(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, [3] and on the retrospective effect of the revisions of Articles 522 and 526(4) of Commission Regulation (EC) No 3254/94 of 19 December 1994 amending Regulation (EEC) No 2454/93, [4] concerning customs declarations made before its entry into force.

* Original language: Italian.

1 — OJ 1993 L 241, p. 1.

2 — OJ 1987 L 256, p. 1.

3 — OJ 1993 L 253, p. 1.

4 — OJ 1994 L 346, p. 1.

The relevant provisions

2. The combined nomenclature of the Common Customs Tariff ('the CCT') is contained in Annex I to the abovementioned Council Regulation No 2658/87. Article 12 thereof confers on the Commission the task of adopting 'each year by means of a regulation a complete version of the combined nomenclature together with the corresponding autonomous and conventional rates of duty of the Common Customs Tariff, as it results from measures adopted by the Commission or Council'.

3. At the time at which the imports in question were made, the applicable version of the tariff nomenclature was that contained in Council Regulation No 2658/87 and in Annex I to Commission Regulation No 2551/93.

In the circumstances of the case the following headings of the combined nomenclature ('CN') are of particular relevance:

'(a) 0802 Other nuts, fresh or dried, whether or not shelled or peeled:

— walnuts:

0802 32 00 — — shelled

(b) 0811 Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter:

0811 90 99 — — other'.

Point No 2 of the introductory notes to Chapter 8 ('Edible fruit and nuts; peel of citrus fruits or melons') of Annex I to Commission Regulation No 2551/93 states that chilled fruit and nuts are to be classified in the same headings as the corresponding fresh fruit and nuts. The following point states that dried fruit or nuts may be partly rehydrated or treated in order to improve their preservation or stabilisation or to preserve their appearance, provided that it preserves the characteristics of dried fruit or nuts. Neither of those points of the introductory notes, however, provides any definition of what is to be meant by fresh fruit and dried fruit. [5]

4. Next we come to Article 109 of Council Regulation (EEC) No 2913/92 establishing the Community customs code ('the code'). [6] It provides that imported goods placed under the customs warehousing procedure may, subject to authorisation by the customs authorities, undergo 'the usual forms of handling', whether manual or not, intended to preserve them, improve their appearance or marketable quality or prepare them for distribution or resale. [7]

Article 112(2) provides that, where the goods have undergone the usual forms of handling within the meaning of Article 109, 'the nature

5 — A definition of the term 'fresh fruit', although concerning a different fruit (berries), is found in the judgment in Case 120/75 *Riemer* [1976] ECR 1003. In paragraph 3 the Court states that the term 'fresh' must be interpreted 'to mean those berries which are in the natural state in which they have been harvested and which have not undergone any of the methods of preservation or treatment mentioned.' The Court then held that 'berries which are subjected to the freezing process undergo certain irreversible changes as a result of this very process, in particular to the structure of the flesh, with the result that they are no longer in the natural state., even after they have started to thaw or have thawed out'.

6 — OJ 1992 L 302, p. 1.

7 — The same definition is used in Annex 69 to Commission Regulation No 2454/93. Subsequent Regulation No 3254/94, also mentioned above, further specified what is meant by 'usual forms of handling' within the meaning of Articles 522 and 518. Since 'Unless otherwise specified, none of the following handlings may give rise to a different eight-digit CN code,' the list in Annex 3 includes among the operations to ensure the preservation of the import goods in good condition during storage 'Any treatment by lowering the temperature, even if this results in a different eight-digit CN code.'

of the goods, the customs value and the quantity to be taken into account in determining the amount of import duties shall, at the request of the declarant, be those which would be taken into account for the goods, at the time referred to in Article 214 [8] if they have not undergone such handling. However, derogations from this provision may be adopted under the committee procedure'. [9]

5. Article 522(3) of Commission Regulation No 2454/93 provides however that, where handling would result in higher import duties than those applying to the goods before handling, the person concerned must renounce the request referred to in Article 112(2) of the Code. In that case, 'the warehouse keeper of a type D warehouse shall waive any advantage he might gain from the application of the items of charge recognised or accepted for the handled goods when they were entered for the procedure'.

6. Article 522 of Regulation No 2454/93 was subsequently amended by Article 1(16) of Commission Regulation No 3254/94 which entered into force on 7 January 1995. In the new version, the article no longer contains the restriction previously provided in subparagraph 3.

The facts and the question referred

7. The company Mövenpick Deutschland GmbH imported from China a batch of fresh walnuts. During transport, the goods were refrigerated at a temperature between 0 and 5°C. On their arrival in Germany, the goods were placed in a type D customs warehouse where they underwent freezing to a temperature of –24°C, for better preservation during the warehousing period. Before they were admitted to free circulation, the walnuts were removed from the warehouse and placed in a different environment with a temperature higher than 0°C.

8. On 22 December 1994 the plaintiff in the main proceedings declared the batch of those goods at the Zollamt Neustädter Hafen (the customs office) for admission to free circulation. According to the information supplied,

8 — According to that provision, '1. Save as otherwise expressly provided by this Code and without prejudice to paragraph 2, the amount of the import duty or export duty applicable to goods shall be determined on the basis of the rules of assessment appropriate to those goods at the time when the customs debt in respect of them is incurred.
2. Where it is not possible to determine precisely when the customs debt is incurred, the time to be taken into account in determining the rules of assessment appropriate to the goods concerned shall be the time when the customs authorities conclude that the goods are in a situation in which a customs debt is incurred.
However, where the information available to the customs authorities enables them to establish that the customs debt was incurred prior to the time when they reached that conclusion, the amount of the import duty or export duty payable on the goods in question shall be determined on the basis of the rules of assessment appropriate to the goods at the earliest time when existence of the customs debt arising from the situation may be established from the information available.
3. Compensatory interest shall be applied, in the circumstances and under the conditions to be defined in the provisions adopted under the committee procedure, in order to prevent the wrongful acquisition of a financial advantage through deferment of the date on which the customs debt was incurred or entered in the accounts.'

9 — See note 18 below.

the batch was made up of 1 533 12.5 kg boxes of fresh walnut pieces, shelled and unsweetened. For the purposes of customs handling, the applicant used code CN 0802 32 00 0000 of the combined nomenclature, which refers to 'walnuts, shelled, fresh or dried', declaring that the goods were thawed, and had undergone the usual handling for the purposes of ensuring their preservation, distribution and resale.

The customs office however classified the goods as 'frozen walnuts' under heading CN 0811 9099. The customs duty was therefore fixed at 18%, whereas the classification used by the plaintiff would have attracted duty at the rate of 8%.

9. On 16 January 1995 the plaintiff lodged a complaint before the Hauptzollamt Bremen-Freihafen (the principal customs office), seeking annulment of the classification made by the customs office and, accordingly, application of the more favourable provision contained in Article 112(2) of the customs code. The plaintiff stated that, at the time of the customs declaration, the dried walnut pieces had been thawed; they had been deep frozen on arrival in Hamburg solely for the purposes of better preservation during the warehousing period. They were therefore to be considered as 'fresh or dried' goods, subject to the usual forms of handling, and thus to the application of duty at 8% provided for by the corresponding heading of the CCT. The plaintiff maintained, moreover, that in the circumstances reference could not be made to the judgment in Case 120/75 *Riemer* v *Hauptzollamt Lubeck West* in which the Court of Justice had held that the term 'fresh berries' did not include berries which had been frozen and then thawed, particularly as in the circumstances the dried nuts had never undergone irreversible changes as a result of those processes such as to alter the structure of the flesh or to cause them to lose their natural properties.

The plaintiff further maintained that Article 522(3) of Regulation No 2454/93 was invalid for infringement of the provisions of superior law referred to in Article 112 of the code, in that the first, although adopted in implementation of the provisions of the code, does not make it possible to rely on the principle of the neutrality of 'the usual forms of handling' for the purposes of application of the rate of customs duties.

10. The Hauptzollamt rejected the complaint as unfounded. With regard to the first question, it held that a food which had previously been frozen could not be treated the same as an identical fresh product even if it were presented for customs clearance as unfrozen. With regard to application of the principle of the 'neutrality' of the usual forms of handling, the Hauptzollamt decided that the provision most favourable to the importing company, contained in Article 112(2) of the code, could not be applied in the circumstances of the case because Article 522(3) of Commission Regulation No 2551/93 had been

properly adopted in accordance with the derogation provided for by the last sentence of Article 112(2) of the code.

11. On 3 April 1996 the applicant brought an action challenging that decision before the Finanzgericht Bremen, where it in essence repeated the submissions made before the customs office. By order of 19 August 1996 the Finanzgericht called for a technical expert's report in order to establish whether walnut pieces, imported by sea and refrigerated at a temperature between 0 and 5°C, had undergone alterations in flesh structure, taste and external appearance at the time at which they were placed on the market, after being stored in a refrigerated environment at a temperature of -24°C for a period of between one and 12 months. The expert concluded that the treatment described could not technically be regarded as a 'freezing procedure', since walnuts contain no freezable water. It was, in the expert's opinion, simply a chilling procedure. Nevertheless, the Hauptzollamt adhered to its classification, arguing that the process to which the walnuts were subjected, even if it was not equivalent to freezing in the technical sense, was not without effects, since it prevented the ripening process and thereby prevented the oil from becoming rancid. The process could not therefore be ignored at the time of tariff classification. For its part, the applicant claimed to find confirmation of its line of reasoning in the technical expert's opinion: as explained by the report, the walnuts had never undergone 'freezing' in the strict sense, and therefore could not, *ex hypothesi*, be classified under the CCT heading concerning frozen products.

12. By order of 7 October 1997 the Finanzgericht referred the following questions to the Court of Justice for a preliminary ruling:

'1. Is the Common Customs Tariff in the version contained in Annex I to Commission Regulation (EEC) No 2551/93 of 10 August 1993 (OJ 1993 L 241, p. 1) amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (Combined Nomenclature 1994) to be interpreted so that dried walnut pieces imported from a non-member country, which were stored deep frozen in a customs warehouse in the Community and subsequently presented for admission to free circulation in a thawed condition, are to be classified under heading No 0802?

2. If not:

Was Article 522(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 (OJ 1993 L 253, p. 1), which has since been replaced by the new version of Article 522 introduced by Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ 1994 L 346, p. 1), inoperative?

3. If so:

Should Article 522 in conjunction with Article 526(4) of the Provisions implementing the Community's customs code, in versions enacted by Article 1, points 16 and 18 of Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ 1994 L 346, p. 1), also be applied to customs declarations before 7 January 1995?'

The first question

13. By its first question, the Finanzgericht Bremen is asking the Court whether, on a proper interpretation of the wording of the CCT contained in Annex I to Commission Regulation No 2551/93, heading 0802 includes the goods in question, notwithstanding the processes which they have undergone after their arrival within the territory of the Community.

14. In the observations presented by the Commission and by the applicant — which agree that the goods should be classified under heading 0802 — it is pointed out that in the light of the case-law of the Court the decisive criterion for the customs classification of goods must be sought in their objective characteristics and properties, as apparent to the customs authorities of the Member States at the time of clearance, and in accordance with the wording of the headings and subheadings of the combined nomenclature and the notes to the sections or chapters. [10] For the purposes of uniform interpretation of the CCT the Court also attributes importance to the explanatory notes of the Customs Cooperation Council with regard to the harmonised system. [11]

15. The solution to the problem of classifying the goods in question within the combined nomenclature is therefore to be sought within that system. According to the explanatory note, a 'frozen' product means a product which has been cooled to below its freezing point (frozen throughout), whereas a 'chilled' product is a product kept at a low temperature but above freezing point. [12] As has been pointed out above, for the purposes of Tariff classification only the objective characteristics

10 — See for example Joined Cases C-59/94 and C-64/94 *Ministre des Finances* v *Pardo & Fils and Camicas* [1995] ECR I-3159; Case C-177/91 *Bioforce* [1993] ECR I-45; Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945 and Case 200/84 *Daiber* [1985] ECR 3363.

11 — See for example Case C-393/93 *Stanner* v *Hauptzollamt Bochum* [1994] ECR I-4011, paragraph 15 of which states that according to 'the Court's case-law [...] both the explanatory notes to the nomenclature of the Customs Cooperation Council and the classification slips issued by the Committee on Common Customs Tariff Nomenclature are important means for ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation ... In order to interpret the above Tariff headings, therefore, it is necessary to take account not only of the wording and scheme of the Common Customs Tariff but also of the content of those explanatory notes'. See also Case C-395/93 *Neckermann Versand* v *Hauptzollamt Frankfurt am Main-Ost* [1994] ECR I-4027, paragraph 5, and Case 200/84 *Daiber* [1985] ECR 3363, paragraph 14.

12 — I would point out that the report drawn up by the technical expert appointed by the Finanzgericht Bremen states that dried walnuts cannot 'be frozen' because of their low water content, and also that the 'non-technical' freezing to which they were subjected in this case does not give rise to any changes to the structure of their flesh, but rather makes it possible to preserve the oil in them unspoilt stabilising the flavour and thus improving conservation.

of the product at the time it is released from customs control ought to have been taken into account. At that time, the goods were 'thawed' in the technical sense, in reality, as pointed out by the technical expert before the national court, the goods had not been subjected to a freezing process *stricto sensu*, given the low water content of dried walnuts, but rather to a process of rapid chilling, that is to say at a lower temperature (-24 °C) compared with that of refrigeration 0-5 °C). Therefore, those 'irreversible changes, in particular to the structure of the flesh' which the Court had mentioned in *Riemer* [13] as a decisive factor in assessing whether the fruit in question had been 'frozen' have not been established.

16. The objective characteristics of the product therefore warrant its classification under Tariff heading 0802, as pieces of 'other nuts, fresh or dried, whether or not shelled or peeled', and more specifically its classification under Tariff subheading 0802 3200 'shelled walnuts', whether they should be, after 3200 for which the fixed rate of duty payable is 8%.

17. I therefore propose that the Court should answer the first question as follows: on a proper construction of the Common Customs Tariff in the version contained in Annex I to Commission Regulation (EEC) No 2551/93 of 10 August 1993, walnut pieces imported from a non-member country, which have been subjected to refrigeration in a customs warehouse within the territory of the Community and subsequently released into free circulation at a temperature above freezing point, must be classified under Tariff heading 0802.

13 — Judgment cited above, paragraph 4.

The second question

18. The conclusion reached above with respect to the first question referred, by virtue of which the goods in question ought to be classified under heading 0802 of the Common Customs Tariff, renders devoid of purpose the two following questions, which the national court has in fact made conditional upon a negative response to the first question. However, if the Court should intend to reach a different solution, classifying the goods in question as 'frozen' within the meaning of heading 0811 of the Customs Tariff, I would lay the following observations before the Court.

19. By its second question the national court is asking the Court of Justice to rule on the validity of Article 522(3) of Commission Regulation No 2454/93, repealed by Commission Regulation No 3254/94, but in force at the material time. More specifically, the German court wishes to know whether that provision, adopted by the Commission by way of delegation made by the Council, is compatible with the higher-ranking legislation contained in the Code.

20. I would recall that the provision the validity of which is in question concerns the customs treatment of goods undergoing the 'usual forms of handling' mentioned in Article 109 of the Code. It provides that where handling would result in higher import duties than those applying to the goods before handling, the person concerned is not to present the request referred to in Article 112(2) of the Code. [14] In other words, as a result of Article 522(3) of the Commission regulation, the person concerned may not profit from the principle of 'neutrality' of handling and, thereby, obtain the same treatment that he would have received if, at the time in which the customs obligation arose, the goods have not undergone such handling. By contrast, the Code provides that the goods must receive the customs treatment corresponding to the state in which they were at the time when they were introduced into the territory of the Community, any subsequent handling being irrelevant for those purposes. [15] In the case before the Court, the treatment undergone by the products, if it is understood technically as 'freezing', is undoubtedly to be understood to be a 'usual form of handling' within the meaning of Article 109 of the Code. That treatment would therefore entail the application of duty at 18%, greater than the duty (8%) to which the goods would have been subject if they had not undergone the handling referred to. On that interpretation of the relevant legislation, Article 112 of the Code would make it possible to apply the duty corresponding to the characteristics of the goods before treatment, thus more favourable than the duty under heading 0802, while Article 552 of the Commission regulation would require the application of the rate higher than that under heading 0811.

21. In this connection, it should first of all be observed that, as also pointed out by the national court, the rules laid down by the Commission regulation would appear to run counter to those laid down by Article 112 of the Code. Indeed, ... the latter allows for a certain favourable treatment where the imported goods are subject to 'usual forms of handling', the former excludes it. Nevertheless, the last sentence of Article 112(2) of the Code permits the adoption of 'derogations' from those rules, in accordance with the 'Committee procedure' referred to in Article 249 of the Code. Therefore, since the Commission regulation, which contains Article 522 the validity of which is in issue, was certainly adopted pursuant to Article 249 of the Code, [16] the question is definitely to assess whether that provision, as submitted by the Commission, contains 'derogation' from the principle of neutrality, or whether it should rather be considered, as submitted by the applicant, to be new legislation of general application, incompatible with the system established by the Code. It is clear that only in the first hypothesis can the prescription in question be considered to be valid inasmuch as it is compatible with the higher-ranking rules.

14 — For ease of reading I now recall the text of that provision: where the imported goods 'have undergone the usual forms of handling within the meaning of Article 109, the nature of the goods, the customs value and the quantity to be taken into account in determining the amount of import duties shall, at the request of the declarant, be those which would be taken into account for the goods, at the time referred to in Article 214 if they had not undergone such handling. However, derogations from this provision may be adopted under the Committee procedure.'

15 — It should be borne in mind that the reasoning followed in the provision is based on the assumption that the goods in question are to be classified as 'frozen walnut' for the purposes of heading 0811 of the Common Customs Tariff.

16 — See the preamble to Commission Regulation No 2454/93.

22. In support of its own position, the Commission refers to the ratio of the favourable treatment which importers enjoy under Article 112 of the Code and consequently the power of derogation conferred on the Commission. The Commission observes that goods imported from non-member countries appear on the markets of those countries with characteristics which do not necessarily correspond to the characteristics of markets in the Member States. Goods must therefore be adapted to Community market conditions, by means of treatment (forms of handling) so as to ensure their preservation, improve their appearance or commercial quality or prepare for their distribution or resale; those treatments may be carried out without the person concerned having to waive the benefits of the customs warehousing arrangements. None the less, the Commission adds, in order to prevent economic conditions and in particular competitive relationships with respect to equivalent products of Community origin, from being distorted to the detriment of Community products, the 'usual forms of handling' permitted must be minor, and not therefore such as to cause any in-depth change in the characteristics or use of the goods.

In the Commission's opinion, the derogation in Article 522(3) is therefore explained since, in all the cases in which the 'usual forms of handling' result in alteration of the goods such as to entail the application of a higher tariff (as in the case of freezing), the more favourable treatment ought not to be granted; a different solution would result in affording those goods more favourable treatment than the corresponding Community products.

23. I consider the solution put forward by the applicant to be correct. We cannot reasonably speak of 'derogations' from the rules laid down by Article 112 of the Code when there is a provision which actually substantially reduces its legislative content, denying the advantages provided for where the 'usual forms of handling' have been used. This is in fact a 'derogation' from a higher-ranking provision only if the latter remains in force as a general provision from which the former makes 'derogations' restricting its scope by way of exception. In the case before the Court, however, the provision in the Commission regulation has the effect of abolishing the advantage provided by the rules of the Code, by making it impossible for the persons subject to customs requirements to profit from the advantages offered them by Article 112 of the Code.

24. If that is so, it should be added that the rules under Article 522 of the Commission regulation cannot *a fortiori* be justified by the general authorisation provided by Article 249 of the Code in order to adopt 'the provisions required for implementation of this Code'. [17] It is sufficient to recall in this connection the general principle by which the Commission,

17 — That article also sets out the procedure to be followed (committee procedure) to implement the customs code. The Commission representative is to submit to the Committee composed of representatives of the Member States, which he presides over, a draft of the measures to be taken, so that the Committee may formulate its own opinion by the majority laid down in Article 148(2) of the Treaty within a time-limit which the Chairman may lay down according to the urgency of the matter. The Commission is to adopt the measures envisaged if they are in accordance with the opinion of the committee; if not, the Commission shall, without delay, submit to the Council a proposal relating to the provisions to be adopted by a qualified majority. If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

in adopting measures to implement fundamental rules drawn up by the Council, may not derogate from the principles laid down therein. [18] In the area with which we are now concerned, the Court has stated that, while it is true that the Council has conferred on the Commission, which acts in concert with the customs experts of the Member States, a broad discretion as to the precise content of the customs headings for the purposes of classifying any given goods, that does not however permit the Commission to alter the wording of the Tariff. [19] Similarly, the implementing regulation may not derogate from the provisions favourable to persons subject to the customs obligation contained in the Code.

25. For all the reasons set out above, I propose that the Court should apply as follows to the second question referred by the Finanzgericht Bremen: Article 522(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 is invalid in so far as it provides that where a 'usual form of handling' would result in higher import duties than those applying to the goods before handling, the person concerned is not to present the request referred to in Article 112(3) of the Customs Code.

The third question

26. By its third question the national court is asking the Court of Justice whether, in the event of an affirmative reply to the second question — thus, once Article 522(3) of Regulation No 2454/93 has been held to be invalid — it is possible to apply the rules contained in Commission Regulation No 3254/94 of 19 December 1994 to the customs declarations under consideration.

27. Article 1(16) of that regulation, which came into force on 7 January 1995, replaces the wording of Article 522 of Regulation No 2454/93. In its new version, the provision no longer includes the restrictions included in the previous version on access to the advantages of the handling arrangements.

28. The national court is therefore asking the Court of Justice whether the new version of Article 522 may have retrospective effect, and whether it may thus govern the customs treatment of goods admitted to the 'usual forms of handling' arrangements even when the customs declarations were made before the date on which the new regulation entered into force.

29. Since, in the absence of clear indications to that effect appearing in the wording, a regulation cannot be interpreted as having retrospective effect, I consider that in the circumstances it is sufficient to observe, like the Commission, that once Article 522(3) of the original regulation has been declared to be

18 — See to that effect Case 23/75 *Rey Soda* [1975] ECR 1279, and Case C-303/90 *France* v *Commission* [1991] ECR I-5315.

19 — See Case C-265/89 *Vismans* [1990] ECR I-3411, paragraph 13, and Case C-401/93 *Goldstar Europe* [1994] ECR I-5587, paragraph 19.

invalid, the general rule laid down in Article 122(2) of the Code must be applied. This rule is formulated in such a way that it can be directly relied upon before national authorities. Accordingly, the principle of the neutrality of the usual forms of handling, codified in this last regulation, finds application for the customs declarations in question.

30. I therefore propose that the Court should reply as follows to the third question: customs declarations made before the entry into force of Commission Regulation EC No 3254/94 are governed by Article 112(2) of Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code.

Opinion

31. In the light of the preceding observations, I propose that the Court should reply as follows to the questions referred by the Finanzgericht Bremen:

(1) On a proper construction of the combined nomenclature in the version contained in Annex I to Commission Regulation (EEC) No 2551/93 of 10 August 1993, walnut pieces imported from a non-member country, which have been subjected to refrigeration in a customs warehouse within the territory of the Community and subsequently released into free circulation at a temperature above freezing point must be classified under Tariff heading 0802.

(2) For all the reasons set out above, I propose that the Court should apply as follows to the second question referred by the Finanzgericht Bremen: Article 522(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2193/92 is invalid in so far as it provides that where a 'usual form of handling' would result in higher import duties than those applying to the goods before handling, the person concerned is not to present the request referred to in Article 112(3) of the Customs Code.

(3) Customs declarations made before the entry into force of Commission Regulation EC No 3254/94 are governed by Article 112(2) of Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code.