OPINION OF ADVOCATE GENERAL ELMER

delivered on 12 June 1997 *

1. In the present case, the Corte d'Appello di Venezia (Italy) has requested the Court to give a preliminary ruling on the interpretation of Article 2 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties [1] ('the Regulation').

The relevant provisions of Community law

2. The Regulation contains in particular the following provisions:

'*Article 2*

1. Where the competent authorities find that all or part of the amount of import duties or export duties legally due on goods entered for a customs procedure involving the obligation to pay such duties has not been required of the person liable for payment, they shall take action to recover the duties not collected.

However, such action may not be taken after the expiry of a period of three years from the date of entry in the accounts of the amount originally required of the person liable for payment or, where there is no entry in the accounts, from the date on which the customs debt relating to the said goods was incurred.

...

Article 11

This regulation shall enter into force on 1 July 1980.'

* Original language: Danish.

1 — OJ 1979 L 197, p. 1.

The dispute before the national court and the question referred for a preliminary ruling

3. Between May 1978 and October 1980 Conserchimica Srl acquired from Italian importers petroleum products which had been imported under a favourable tariff arrangement. Conserchimica resold those products to a third party.

4. On 28 April 1986, after serving several notices of assessment between February 1981 and May 1984, the Amministrazione delle Finanze dello Stato sent a tax demand to Conserchimica whereby it ordered it to pay the VAT and customs duties, pointing out to that end that Conserchimica was not in possession of the authorization necessary for the purchase of goods imported under a favourable tariff arrangement.

5. Conserchimica contested that demand before the Tribunale (District Court), Venice, which, after referring questions to the Court of Justice for a preliminary ruling, [2] upheld the claim of the Amministrazione delle Finanze dello Stato.

2 — Joined Cases 248/88, 254/88 to 258/88, 309/88 and 316/88 *Chimica del Friuli and Others* v *Amministrazione delle Finanze dello Stato* [1989] ECR 2837.

6. Conserchimica appealed against the decision of the Tribunale di Venezia to the Corte d'Appello, Venice, claiming in particular that the demand had not been sent within the period of three years prescribed by Article 2 of the Regulation on the post-clearance recovery of import duties or export duties.

7. By order of 9 May 1996 the Corte d'Appello di Venezia decided that the case-file was to be forwarded, pursuant to the first paragraph of Article 177(b) of the Treaty, to the Court of Justice of the European Communities, and requested it to give a preliminary ruling on the following question:

'Does Article 2 of Council Regulation (EEC) No 1697/79 of 24 July 1979, which prescribes a three-year period for the recovery of duties not collected, also apply to situations where the conditions were satisfied before 1 July 1980, the date on which that regulation entered into force pursuant to Article 11 thereof?'

Analysis

8. Conserchimica submits that the period of three years prescribed in Article 2 of the Regulation replaced the period of five years prescribed by the earlier national legislation

also so far as concerns situations prevailing when the Regulation entered into force.

9. The Italian Government submits that the Court has already answered the question by its judgments in *Salumi and Others* [3] and *Ditta Italgrani*, [4] in which it held that the Regulation does not apply to payments of import or export duties made before the date of its entry into force, that is 1 July 1980.

10. The Commission states that *Salumi and Others* concerned the payment of duties made before the date of the entry into force of the Regulation, while the present case concerns customs debts which were not paid by the time the Regulation entered into force, but which had already been incurred at that moment. The reasoning followed by the Court in the *Salumi* case must none the less be applied also to the present case.

11. It must be observed, as the Commission has pointed out, that the present case, unlike *Salumi* and *Italgrani*, concerns duties which were paid after the entry into force of the Regulation. However, the duties relate to situations which arose prior to the entry into force of the Regulation.

12. In the *Salumi* case, the Court held that:

'Although procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, this is not the case with substantive rules. On the contrary, the latter are usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them [paragraph 9].

This interpretation ensures respect for the principles of legal certainty and the protection of legitimate expectation, by virtue of which the effect of Community legislation must be clear and predictable for those who are subject to it. The Court has repeatedly emphasized the importance of those principles, in particular in the judgments of 25 January 1979 in Case 98/78 *Racke* v *Hauptzollamt Mainz* ([1979] ECR 69) and Case 99/78 *Decker* v *Hauptzollamt Landau* ([1979] ECR 101), in which it stated that in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication and that it may be otherwise only exceptionally, where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected [paragraph 10].

In this regard, it should be stated first that the regulation in question is intended to provide a body of rules covering the post-clearance recovery of import and export duties, resulting from the application of the common agricultural policy or from the

3 — Joined Cases 212/80 to 217/80 *Amministrazione delle Finanze dello Stato* v *Salumi and Others* [1981] ECR 2735.

4 — Case 82/82 *Ditta Italgrani* [1982] ECR 4323.

provisions of the Treaty on the customs union. Replacing the relevant national provisions with Community provisions, that regulation contains both procedural and substantive rules which form an indivisible whole and the individual provisions of which may not be considered in isolation, with regard to the time at which they take effect [paragraph 11].

Therefore the provisions of the regulation may not be accorded retroactive effect unless sufficiently clear indications lead to such a conclusion. It is apparent that, far from indicating any retroactive effect, both the wording and the general scheme of the regulation lead to the conclusion that the regulation provides only for the future [paragraph 12].

This results, first, from the very wording of the provisions of the regulation, which impose either an obligation or a prohibition in relation to bringing proceedings for the recovery of duty and which are therefore not designed to cover actions already commenced at the date of the entry into force of the regulation. Secondly, it also follows from the period of time which elapsed between the adoption of the regulation, on 24 July 1979, and its entry into force, on 1 July 1980, a time-lapse which demonstrates that the Council did not consider the implementation of the Community rules to be urgent [paragraph 13].

Furthermore, if the scope of the regulation were extended so as to include all actions pending before the national courts at the date of its entry into force, the application of national law or of the Community rules would depend on the conduct of the national authorities and more especially on the speed with which they brought and concluded legal proceedings. That could result in an unjustified difference in treatment with regard to transactions effected in similar circumstances and would be incompatible with the principles of equality and justice. Therefore, in determining the temporal scope of the regulation, the date of the original payment of the duties should be taken into account [paragraph 14].

It appears from all these considerations that the regulation covers only import or export transactions for which the payment of duties was made on or after 1 July 1980 [paragraph 15].'

13. I am of the view that that reasoning applies also to the present case, which does in fact concern the recovery of duties which should have been paid at the time, prior to the entry into force of the Regulation, when Conserchimica purchased the products in question. I would refer in that respect to what the Court held in its judgment of 1 April 1993 in the *Lageder* cases: [5]

'However, that regulation was not in force at the material time and is therefore not applicable (see judgment in Joined Cases 212/80 to 217/80 *Amministrazione delle Finanze dello Stato* v *Salumi and Others* [1981] ECR 2735, paragraph 15)' (paragraph 26).

5 — Joined Cases C-31/91 to C-44/91 *Lageder and Others* [1993] ECR I-1761, paragraph 26.

Conclusion

14. I accordingly propose that the Court give the following answer to the question referred by the Corte d'Appello di Venezia:

Article 2 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties must be interpreted as meaning that that provision does not apply to the post-clearance recovery of duties which should have been paid in respect of operations which were carried out before 1 July 1980.