OPINION OF ADVOCATE GENERAL VAN GERVEN
delivered on 29 October 1992 *

Mr President,
Members of the Court,

1. These proceedings stem from a request made by the Finanzgericht München [Finance Court, Munich] concerning the inward processing arrangements introduced by Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing arrangements [1] and by 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. [2] The question referred for a preliminary ruling was raised in proceedings between Textilveredlungsunion GmbH&Co. KG (the plaintiff in the main proceedings, hereinafter referred to as 'TVU') and Hauptzollamt [principal customs office] Nürnberg-Fürth (the defendant in the main proceedings).

Facts

2. On 21 January 1980, TVU received authorization for inward processing 'on its own behalf' ('own processing'). [3] In its application for authorization, TVU declared that no processing operation would be carried out on behalf of a principal established in the Community. Under Regulation No 1999/85, which entered into force on 1 January 1987, a new version of the authorization was issued by decision of 17 December 1987. The new version provided that the processing was to be carried out as 'own processing'. [4]

On 23 July 1989, TVU placed in its bonded warehouse yarn purchased in South Korea by Schäfer, another German company. In October 1989, it made a declaration to the customs authorities that it had released 14 016 kg of that yarn for free circulation. It paid the corresponding customs duties, but on 15 December 1989 applied for the repayment of part of those customs duties, explaining that it had dyed, and therefore processed, some of the 14 016 kg of yarn at Schäfers request under a job contract between TVU and Schäfer.

3. By decision of 22 March 1990, the Hauptzollamt refused the request for the repayment of customs duty. It maintained *inter alia* that TVU did not have adequate authorization to carry out the processing in question, since the processing had not been effected on its own behalf. In common with

* Original language: Dutch.

1 — OJ 1985 L 188, p. 1.

2 — OJ 1986 L 351, p. 1. This regulation has been replaced with effect from 1 October 1991 by Council Regulation (EEC) No 2228/91 of 26 June 1991 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements (OJ 1991 L 210, p. 1).

3 — In German: 'für eigene Rechnung (Eigenveredelung)'.

4 — In German: 'in Eigenveredelung'.

the Commission in its written observations submitted to the Court, the Hauptzollamt maintained that authorization to carry out the processing should have been applied for, not by TVU, but by its principal, Schäfer. Indeed, Article 3(7) of Regulation No 3677/86 provides that 'Where processing is carried out under a job processing contract between two persons established in the Community the application for authorization shall be lodged by or on behalf of the principal'.

4. TVU has made neither written nor oral observations to the Court. However, it is to be inferred from the national courts order that TVU argues that the authorization to carry out own processing granted to it in 1987 also covered the processing of goods on behalf of a principal established in the Community. Article 3(7) of Regulation No 3677/86 — from which it appears on the contrary that only an authorization issued to Schäfer (or to its representative) can cover the operation in question — could not be applied in this case for two reasons. First, that article cannot detract from Article 3(2) of the basic regulation, Regulation No 1995/85, which provides that 'the authorization [to carry out inward processing] shall be issued at the request of the person who carries out processing operations or arranges for them to be carried out'. [5] In addition, job processing within the meaning of Article 3(7) of Regulation No 3677/86 was not involved. Article 5(1)(c) of Regulation No 3677/86 provides that 'job processing' means any processing of import goods ... which is carried out according to the specifications and on behalf of a principal established outside the customs territory of the Community. However, in this case the principal was established in the Community.

5. Following the rejection of its complaint, TVU brought an action in the Finanzgericht München, which referred the following question to the Court for a preliminary ruling:

'Is Article 3(2) of Regulation (EEC) No 1999/85, in conjunction with Article 3(7) and Article 5(1)(c) of Regulation (EEC) No 3677/86, to be interpreted as meaning that an inward processing authorization issued for "own processing" to a person who processes or transforms non-Community goods for his own account also covers the processing or transformation of non-Community goods carried out by that person under a job contract for a principal established within the Community?'

6. Before suggesting a reply, I would point out that the question put to the Court concerns only one aspect of the main proceedings. TVU asked the Finanzgericht to order the import duties to be repaid under Articles 3 and 4 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties. [6] One of the conditions for obtaining such repayment is that 'when the goods were entered for free circulation they were intended to be

5 — According to Article 3(1) of that regulation, authorization is to be issued by the customs authority of the Member State in which the processing operations are carried out.

6 — OJ 1979 L 175, p. 1.

placed under another customs regime [in this case, the inward processing regime], *all the requirements of which they fulfilled*' (my emphasis). [7] The due issue of authorization is one of the conditions for carrying out inward processing. [8] The question referred by the Finanzgericht is concerned with that condition only; more specifically it is concerned with whether authorization could *überhaupt* [in any event] be issued to the operator, TVU, in respect of the processing operations carried out on behalf of Schäfer. Apart from this question of Community law, it must be asked specifically whether the authorization for 'own processing' issued to TVU in 1987 could also cover the processing operations at issue in this case or, in other words, whether TVU remained within the limits of the authorization which was issued to it. That question is not for the Court of Justice to assess, but for the national court.

Compatibility of Article 3(7) of Regulation No 3677/86 with Article 3(2) of Regulation No 1995/85

7. The relationship between Regulations Nos 1999/85 and 3677/86 is that which exists between a basic text and an implementing text. This is clear in itself from the title of Regulation No 3677/86, according to which that regulation lays down 'provisions for the implementation of Regulation (EEC) No 1999/85'. Moreover, Regulation No 1999/85 is expressly described as the 'basic regulation' [9] and is the legal basis of Regulation No 3677/86. [10]

8. According to the Hauptzollamt and the Commission, Article 3(2) of Regulation No 1999/85 and Article 3(7) of Regulation No 3677/86 fit perfectly into the basic regulation/implementing regulation relationship. According to them, the last-mentioned article applies Article 3(2) of the basic regulation, which is expressed in general terms, to the specific situation of a job processing contract between two persons established in the Community. I am not persuaded by this.

9. Article 31 of the basic regulation introduces a procedure whereby the 'provisions *required* [my emphasis] for the implementation of [Regulation No 1999/85]' are to be adopted. I consider, however, that Article 3(7) of Regulation No 3677/86 does not constitute a provision required for the implementation of Article 3(2) of Regulation No 1999/85. The latter article is absolutely clear and has no need of further implementation. Article 3(7) of Regulation No 3677/86 does not implement Article 3(2) of Regulation No 1999/85, but limits its scope and lays down a rule which is not consistent with the wording of that article. The Finanzgericht also rightly observes that the basic regulation indicates precisely the provisions for which it is necessary to adopt implementing

7 — Article 4(a) of Regulation No 1430/79.

8 — See Article 3(1) of Regulation No 1999/85.

9 — Article 1(1) of Regulation No 3677/86.

10 — See the preamble to Regulation No 3677/86: 'Having regard to Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements, and in particular Article 31 thereof'. The preamble also refers generally to the EEC Treaty, but such a reference is too vague for it to be considered the legal basis (see the judgment in Case 45/86 *Commission* v *Council* [1987] ECR 1493, paragraphs 8 and 9).

provisions by means of the procedure laid down in Article 31, [11] and that Article 3(2) contains no such indication.

10. The Commission puts forward yet another argument to show that Article 3(7) of Regulation No 3677/86 does in fact fall within the framework of Regulation No 1999/85. It considers that the economic conditions on which Articles 5 and 6 of Regulation No 1999/85 makes issue of inward processing authorization subject can be verified only on the principals premises *in the case of a job processing contract*. Moreover, it considers that the principal is best placed to offer 'every guarantee which the customs authority considers necessary' [12] and to ensure that 'all compensating products are to be exported'. [13] It is argued that it is therefore more than logical that the authorization in question must be applied for, not by the operator, but by his principal.

This article, too, does not seem convincing to me. Verification of compliance with the — economic and other — conditions may be carried out irrespective of the person who provides the information. Where the processing operation is carried out on behalf of a third party, the information may come — depending on its nature — as much from the principal as from the operator. This does not prevent its being notified to the customs authorities by only one person in this case too. The operator seems to me to be the best qualified in this regard: as the national court observes, it is the customs authority of the Member State in which the processing operations are carried out which issues the authorization [14] and it is there that compliance with the authorization issued can best be checked.

The Commission also claims that an alternative version of Article 3(2) of Regulation No 1999/85 circulated during the preparatory work according to which inward processing authorization was to be issued 'in particular cases' at the principal's request. It maintains that that version was not embodied in the final text because it was considered unnecessary. In my view, the Commission has not put forward sufficient data to support this argument. In addition, it has not been shown that a job processing contract between two persons established in the Community should be regarded as being a 'particular case' within the meaning of the aforementioned alternative version.

11. I therefore conclude that Article 3(7) of Regulation No 3677/86 is not simply a provision implementing Article 3(2) of the basic regulation, Regulation No 1999/85, but, on the contrary, provides for a derogation from Article 3(2) which finds no support in the basic regulation. Accordingly, I consider that Article 3(7) of Regulation No 3677/86 cannot be used as a guide for the interpretation of Article 3(2) of Regulation No 1999/85.

11 — As is clear from the text of Regulation No 1999/85, these are Article 1(3)(h); Article 2(2) and (4); Article 6(4); Articles 7, 8, 9, 12 and 13; Article 14(4); Article 15(2); Article 18(5); Article 19(2); Article 21(1)(a); Article 27(2); and Article 29(2) of Regulation No 1999/85.

12 — See Article 4(b) of Regulation No 1999/85.

13 — See Article 8(1) of Regulation No 3677/86.

14 — See note 5 above.

12. For completeness' sake I would add the following. Even if it were considered that, under Article 3(7) of Regulation No 3677/86, an inward processing authorization can been be applied for only by the principal, and not the operator, it has not been established that a contract of the kind at issue in this case, which was concluded between persons established in the Community, is a job processing contract within the meaning of that article. The expression 'job processing' is defined only in Article 5(1)(c) of Regulation No 3677/86, which provides that '"job processing" means any processing of import goods directly or indirectly placed at the disposal of the holder of the authorization which is carried out according to the specifications and on behalf of *a principal established outside the customs territory of the Community*, generally against payment of processing costs alone' (my emphasis). That definition does not square with the situation referred to in Article 3(7) of that regulation, since that article is concerned with 'processing carried out under a job processing contract between two persons *established in the Community*' (my emphasis).

Apart from the aforementioned contradiction between Article 3(2) of Regulation No 1999/85 and Article 3(7) of Regulation No 3677/86, that contradiction also reveals the presence of a lack of clarity of the relevant provisions of Regulation No 3677/86. It cannot have been intended to make individuals the victims of this. Therefore, it has not been shown in this case that TVU carried out job processing within the meaning of Article 3(7) of Regulation No 3677/86 (in the event that that article is nevertheless determinative — *quod non*: see paragraph 11 above).

Conclusion

13. In conclusion, I propose that the Court should reply as follows to the question referred by the Finanzgericht München:

Article 3(2) of Regulation (EEC) No 1999/85, in conjunction with Article 3(7) and Article 5(1)(c) of Regulation (EEC) No 3677/86, must be interpreted as meaning that an authorization for inward processing which takes place pursuant to a processing contract between two persons established in the Community may be applied for by the person who carries out processing operations or by the person who arranges for them to be carried out.