In Joined Cases 212 to 217/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Corte Suprema di Cassazione [Supreme Court of Cassation], Rome, for a preliminary ruling in the actions pending before that court between

AMMINISTRAZIONE DELLE FINANZE DELLO STATO [Italian State Finance Administration]

and

SRL MERIDIONALE INDUSTRIA SALUMI,

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

and

SALUMIFICIO DI VERONA VASSANELLI,

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

and

FRATELLI ULTROCCHI,

DITTA ITALO ORLANDI E FIGLIO

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO,

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

and

SAS MOLINO FIGLI DI GINO BORGIOLI,

DITTA VINCENZO DIVELLA

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

on the interpretation of Council Regulation 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 (Official Journal 1979, L 197, p. 1),

THE COURT (Third Chamber)

composed of: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: S. Rozès
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. Article 1 (1) of Council Regulation 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, determines "the conditions under which the competent authorities shall undertake post-clearance recovery of import duties or export duties on goods entered for a customs procedure involving the obligation to pay such duties for which, for whatever reason, payment has not been required of the person liable for payment". "Import duties" for the purposes of the regulation means, *inter alia*, agricultural levies.

Article 2 (1) of the regulation provides:

"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."

Articles 5 and 7 of the regulation are worded as follows:

"Article 5

1. No action may be taken by the competent authorities for recovery where the amount of the import duties or export duties subsequently found to be lower than the amounts legally due was calculated:

   — either on the basis of information given by the competent authorities themselves which is binding on them,

   — or on the basis of provisions of a general nature subsequently invalidated by a court decision.

2. The competent authorities may refrain from taking action for the post-clearance recovery of import duties or export duties which were not collected as a result of an error made by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having for his part acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration is concerned.

   The cases in which the first sub-paragraph can be applied shall be determined in accordance with the implementing provisions laid down in accordance with the procedure provided for in Article 10."

"Article 7

Where the non-collection of import duties or export duties legally due is attributable to an error made by the competent authorities, no interest on overdue payments shall be charged on sums recovered post-clearance."

Article 10, to which Article 5 (2) refers, states *inter alia* that the provisions necessary for the implementation of Article 5 shall be adopted following the procedure laid down in Regulation No 1798/75 of the Council of 10 July 1975 on the importation free of Common Customs Tariff duties of educational, scientific and cultural materials (Official Journal 1975, L 184, p. 1).

Regulation No 1697/79 entered into force on 1 July 1980 pursuant to Article 11 thereof.

2. The main actions are between traders and the Italian Amministrazione delle Finanze dello Stato [hereinafter referred to as "the Amministrazione"]. Traders challenged amended notices issued prior to 1 July 1980 by the Amministrazione requiring them to pay additional sums as levies on imports of agricultural products.

It appears from the file that until 11 September 1976 the customs authorities had always calculated the levies on the basis of a method recommended by the Commission for use in customs matters. According to that method, in the event

of a reduction in customs duties after the import declaration but before the goods were released for home use, the more favourable rate could be applied at the request of the importer.

However, in its judgment of 15 June 1976 (Case 113/75 *Frecassetti* [1976] ECR 983) the Court of Justice held that that method could not be applied to agricultural levies on imports from non-Member States which had to be uniformly calculated according to the rate of levy on the day of acceptance by the customs authorities of the import declaration.

In order to comply with that judgment the Italian legislation on the subject, namely the preliminary provisions of the customs tariff, was amended by Decree No 695 of the President of the Republic of 22 September 1978 (Gazzetta Ufficiale 1978, No 319, p. 8235). Article 1 (3) of that Decree provided that the option of applying the more favourable rate should not extend to agricultural levies or to the other charges laid down within the context or the common agricultural policy. Article 3 stated that the aforementioned provision was to take effect from 11 September 1976, the date on which the judgment in the *Frecassetti* case was published in the Official Journal of the European Communities.

However, before the date of the *Frecassetti* judgment, the Amministrazione had already required undertakings to pay additional levies relating to imports of agricultural products on the ground that the "more favourable rate" rule had been applied by mistake. That is the context in which the Court came to deliver its judgment of 27 March 1980 in Joined Cases 66, 127 and 128/79 *Salumi and Others* [1980] ECR 1237. That judgment was basically concerned with the question whether it was possible to recover such sums under Community law. In answer to that question the Court held that in the absence of Community rules on the subject:

"it is for the national legal system of each Member State to lay down the detailed rules and conditions for the collection of Community revenues in general and agricultural levies in particular and to determine the authorities responsible for collection and the courts having jurisdiction to decide disputes to which that collection may give rise but such procedures and conditions may not make the system for collecting Community charges and dues less effective than that for collecting national charges and dues of the same kind" (Paragraph 18).

The Court nevertheless pointed out at paragraph 16 of the same judgment that the Council had already adopted specific provisions, including Regulation No 1697/79, but that they had not yet entered into force.

In the meantime Regulation No 1697/79 entered into force and the court making the reference, the Italian Corte Suprema di Cassazione, referred questions on the interpretation of that regulation to the Court of Justice pursuant to Article 177 of the EEC Treaty. The questions, which are identical in the six cases, are worded as follows:

"(a) Does Council Regulation (EEC) No 1697/79 of 24 July 1979, in particular Article 5 thereof, apply in respect of payments of agricultural levies made prior to 1 July 1980 at a rate lower than the amount

legally due, in relation to which even before that date steps had been taken for recovery, the lawfulness of which is being challenged, in other respects, before a national court?

(b) If the reply to Question (a) is in the affirmative, do the provisions of Article 5 extend to the payment of agricultural levies at a rate lower than the amount legally due, where such payment was made, on the one hand, in substantial compliance with the Community rules according to the guidance for interpreting the same which could at that time be inferred from the official acts of organs of the Community and which was acknowledged as correct by the national court, but was later disregarded by the Court of Justice and, on the other hand, in formal compliance with national rules subsequently held not to apply on the subject but at the time applied consistently by the competent national administrative authority in conformity with the circulars and instructions issued by its ruling body? If Article 5 does extend to such payments, which of its two paragraphs is applicable?

(c) If the answer to Question (b) is in the affirmative, and Article 5 (2) applies, do the rules laid down therein (where already brought into effect by the issuing of the implementing provisions referred to in the second subparagraph thereof) have the effect of legitimizing, under the Community legal order, national rules already adopted fixing the amount of the levies to be collected at a rate lower and therefore different from that laid down at the time by Community rules?

(d) If the reply is in the negative, does the provision contained in Article 7 of the above-mentioned regulation extend to payments required subsequent to its entry into force, in connection with recoveries in respect of payments made at a rate lower than the amount legally due, in the circumstances described at (b) above, prior to 1 July 1980?"

3. The orders making the references were lodged at the Court Registry on 27 October 1980.

By order dated 17 December 1980 the Court ordered that these cases be joined for the purposes of the procedure and judgment.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the companies Meridionale Industria Salumi, Italo Orlandi e Figlio and Molino Figli di Gino Borgioli, the civil parties in Cases 212/80, 215/80 and 216/80, represented by Nicola Catalano of the Rome Bar, by the companies Salumificio di Verona Vassanelli, Fratelli Ultrocchi and Vincenzo Divella, the civil parties in Cases 213/80, 214/80 and 217/80, represented by Giovanni Maria Ubertazzi and Fausto Capelli of the Milan Bar, by the Italian Government, represented by Ivo M. Braguglia, Avvocato dello Stato, and by the Commission of the European Communities, represented by Alberto Prozillo, a member of the Legal Department acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided by order of 8 April 1981 to refer these joined cases to the Third Chamber pursuant to Article 95 of the Rules of Procedure and to open the oral procedure without any preparatory inquiry.

II — Written observations

1. The observations of the *companies Meridionale Industria Salumi, Italo Orlandi e Figlio and Molino Figli di Gino Borgioli* are as follows:

(a) With regard to the first question, they put forward arguments both for and against the applicability of Regulation No 1697/79 to actions for recovery which were initiated prior to the entry into force of the regulation.

The arguments which suggest that the regulation does not apply are as follows:

— The period of about one year which elapsed between the adoption of the regulation and its entry into force suggests that the provisions of the regulation do not apply to actions which had already been commenced.

— Article 2 stipulates a limitation period of three years in respect of actions for recovery.

— The prohibition in Article 5 (1) on action by the competent authorities to recover in certain circumstances can refer only to action which would have been taken after the entry into force of the regulation.

On the other hand the following arguments favour the applicability of the regulation:

— Article 5 (1) may be interpreted as meaning that it prohibits only the initiation of actions for recovery and not the pursuance of actions which had already been initiated before the entry into force of the regulation and which must necessarily be concluded one way or another, albeit in accordance with the new rules. The decisive factor is therefore not the procedure but the substance of the rules, namely the prohibition on recovery in specific circumstances. That interpretation seems to be confirmed by the relationship between Article 5 (1) and Article 5 (2) since Article 5 (2) gives an option to refrain from recovery, that is to say not to pursue action already initiated. Moreover, it accords with judicial decisions in certain Member States, in particular Italy, and inasmuch as those decisions reflect a general principle of law it applies also in Community law; the principle is that in revenue matters, unless the contrary is expressly provided, legislation affects legal relations arising prior to its entry into force where the effects of the relations have not yet been exhausted. That is the case if proceedings are still pending in relation to actions for recovery initiated prior to the entry into force of the legislation.

— The fact that the limitation period of three years laid down in Article 2 can be invoked only after the entry into force of the regulation is not sufficient in itself to prevent proceedings still pending from being decided on the basis of the new rules.

— The period between the adoption of the regulation and its entry into force may be regarded as intended to allow Member States time to make administrative arrangements to comply with the new rules.

In view of the aforementioned arguments both for and against the applicability of

the regulation the companies Meridionale Industria Salumi, Italo Orlandi e Figlio and Molino Figli di Gino Borgioli leave it to the Court to decide the answer to the first question.

They add, for whatever purpose it may serve, that Regulation No 1697/79 cannot in any event affect questions already fully settled or matters which are *res judicata.* In addition, the regulation cannot affect the application of national provisions, compatible with Community law, in relation to actions for recovery already initiated, such as rules on the limitation of actions or inadmissibility.

(b) If the first question is answered in the affirmative, that is to say if the Court considers Regulation No 1697/79 to be applicable to actions for recovery initiated prior to the entry into force of the regulation, the answer to the second question must be as follows: the present case comes within the scope of Article 5 (1) of the regulation, with the result that the Italian revenue authorities cannot claim the balance of the levy charged on the importation of agricultural products.

Both the situations described in Article 5 (1) apply in the present case. The first (calculation of the amount of duty on the basis of information given by the competent authorities themselves which is binding on them) applies inasmuch as the central administration, by numerous circulars, laid down the practice which the customs administration followed. Those circulars, of which traders are aware, contain directives on the interpretation and application of the rules in question and are therefore binding on the decentralized branches to which they are addressed. Whilst not binding on third parties, they allow them to require the administration to comply therewith by reason of the principle of legitimate expectation. The second situation (calculation of the amount of duty on the basis of provisions of a general nature subsequently invalidated by a court decision) also applies inasmuch as the method of calculation adopted until 1976 was based on general provisions of national law which were invalidated by the judgment of the Court of Justice of 15 June 1976 (Case 113/75 *Frecassetti* [1976] ECR 983).

(c) The third question loses its point since in any event Article 5 (2) does not apply in the present case.

(d) The fourth question was put to avoid subsequent reference should the Court consider Regulation No 1697/79, and in particular Article 5 thereof, inapplicable. In that event it would be necessary to consider whether and to what extent Article 7 could in any event apply if the action for recovery had to succeed, for example, because of the absence of a written request from the trader. The answer is left fo the discretion of the Court.

2. The *companies Salumificio di Verona Vassanelli, Fratelli Ultrocchi and Vincenzo Divella* refer first of all to the history of the present case and cite previous cases, in particular the judgments of the Court of 15 June 1976 in Case 113/75 *Frecassetti* [1976] ECR 983, 5 March

1980 in Case 265/78 *Ferwerda* [1980] ECR 617 and 27 March 1980 in Case 61/79 *Denkavit* [1980] ECR 1205 and Joined Cases 66, 127 and 128/79 *Salumi* [1980] ECR 1237.

(a) Regarding the retroactive application of Regulation No 1697/79, they argue that in the absence of express provisions on pending matters it is necessary to have recourse to what is implied and to considerations of a general nature. The main issue is whether the national rules can apply to pending matters even after the entry into force of the regulation or whether the regulation affects matters which arose before its entry into force.

Whether repealed provisions can apply to pending matters depends *inter alia* on the subject-matter. Thus the rules applicable to the case must be those of the law applicable when the case is tried, no matter when the issues arose. However, Regulation No 1697/79 is not concerned solely with procedural rules in relation to the circumstances in which the competent authorities may take action for post-clearance recovery. It is based on general considerations of equity which, according to the second recital in the preamble, assume that "the post-clearance recovery of import duties or export duties involves some degree of prejudice to the certainty which persons liable for payment have the right to expect from official acts having financial consequences". The same view was expressed in the opinion of the Economic and Social Committee (Official Journal 1978, C 59, p. 45), which advised the Council to re-draft certain provisions of the regulation in order to give better protection to business interests.

The temporal effect of Regulation No 1697/79 also depends on the factual background against which those rules must be viewed. The regulation is connected with the introduction of the system of the Community's own resources. In adopting it the Community institutions intended to take the initiative in harmonizing the rules on the basis of which it is possible to recover duties which were legally due but were not levied, in whole or in part, at the time of the customs declaration. Those considerations lead to the conclusion that the new rules do not allow the continued application of national rules to the contrary even if limited to matters still pending.

The companies Vassanelli, Ultrocchi and Divella then discuss the indications which may be inferred from Regulation No 1697/79 to suggest that it has retroactive effect. They maintain that when retroactivity is not prohibited, as in criminal law, the problem of matters pending when the former rules cease to apply and the subsequent rules enter into force depends on the intention of the legislature as apparent, if only implicitly, from the subsequent rules. That is clear, *inter alia,* from Article 191 of the Treaty which provides principally that regulations shall enter into force on the date specified therein and only alternatively, that is to say when the regulation is silent in this regard, on the 20th day following their publication.

There is nothing in the regulation to show that its application is confined to matters arising after its entry into force. On the contrary many of the provisions contained therein, as for example Article 1, refer to matters giving rise to levies in

the past. They also refer to matters prior to the publication and entry into force of the regulation. Thus the Community legislature intended to provide for future and for pre-existing situations if that should prove necessary.

More specifically Article 5 (1) refers to the amount which "was calculated" being less than the amount due. It follows that if the competent authorities become aware that they have wrongly calculated the levies applicable to an importation made the previous year and that the error is due to the reasons given in Article 5 (1), they cannot take any action to recover the balance even if the error of calculation was made before the entry into force of the regulation. On the other hand, if the drafters of the regulation had intended to exclude errors of calculation committed before its entry into force they ought to have used the wording "is calculated after 1 July 1980" thus clearly showing that the provision was to apply only as regards future transactions.

That conclusion is also confirmed by the fact that Article 5 (1) is not only of a procedural nature in that the competent authorities cannot take formal steps for recovery but also relates to substance in that the competent authorities cannot recover because such recovery would be contrary to the principle of legitimate expectation contained in the regulation. That is apparent *inter alia* from the second recital, according to which "the taking of action for post-clearance recovery is under no circumstances justified" in certain conditions. The words "taking of action for post-clearance recovery" are of a general nature and cover the commencement, continuance and conclusion of the action.

On the other hand, if it were otherwise an unacceptable result would be reached because it would be seriously discriminatory if only traders against whom the competent authorities had commenced an action for recovery before 1 July 1980 were forced to make a further payment in respect of customs duties. That would mean for example that simple forgetfulness on the part of the competent authorities may involve discriminatory application of the same provision as against persons in identical positions.

Against that interpretation of Article 5 (1) of the regulation it is not possible to object that the entry into force of the regulation was postponed for about a year in relation to the date of publication in the Official Journal or that Article 2 lays down a limitation period of three years.

The postponement of the regulation's entry into force was imposed on the Community institutions by Member States in order to avoid being called upon to credit traders with sums which were no longer recoverable under the regulation.

On the other hand, the limitation period laid down by Article 2 obviously applies only in cases where recovery would otherwise be allowed on the basis of the regulation. Thus a claim cannot be time-barred if there is no right to recover.

The companies Vassanelli, Ultrocchi and Divella therefore propose that the Court should answer the first two questions by ruling that Regulation No 1697/79 has

retroactive effect and that Article 5 (1) applies in the circumstances described in the order making the reference.

(b) The third question therefore loses its purpose. The answer to the fourth question may be left to the Court's discretion.

3. The observations of the *Italian Government* are as follows:

(a) The answer to the first question is in the negative in so far as the regulation does not apply to debts which arose before its entry into force. That conclusion is confirmed by three considerations:

— The first argument arises from all the provisions of the regulation and in particular Article 5 thereof, which concerns only actions not yet commenced by the competent authorities at the entry into force of the regulation. If Article 5 had intended also to cover actions for recovery already commenced it ought to have stated that no action for recovery may be commenced or *continued* by the competent authorities.

In the same way the second subparagraph of Article 2 (1) of the regulation relating to the period of three years after which action to recover can no longer be taken applies only to the future. That period cannot also apply to actions already commenced. No provisions have been made for the transition from the pre-existing national rules to the new Community rules.

— The second argument in support of the position adopted by the Italian Government is based on the relationship between Articles 5 and 9 of the regulation in question.

The last part of Article 9 provides that "Member States are not obliged ... to establish the corresponding own resources within the meaning of Regulation (EEC, Euratom, ECSC) No 2891/77". For the purposes of that regulation an entitlement is deemed to be established as soon as the corresponding claim has been duly determined by the appropriate department or agency of the Member State. Entitlements so established are to be entered in the accounts. That means, in the first place, that as regards customs debts arising before the entry into force of Regulation No 1697/79, the establishment and entry into the accounts within the meaning of Regulation No 2891/77 have already taken place and, secondly, that Article 9 of Regulation No 1697/79 does not authorize Member States to annul what has already been established and entered into the accounts.

Article 9 of Regulation No 1697/79 therefore also provides only for the future in that it authorizes Member States not to establish duties constituting own resources if recovery of those duties is prohibited pursuant to Article 5 (1) or if the Member States have the option not to recover those duties pursuant to Article 5 (2). However, it is not possible to accept that Member States must or may suspend recovery of duties accrued, established and entered in the accounts before the entry into force of Regulation No 1697/79 without allowing those same Member States the option of annulling the measures establishing those debts and entering them in the accounts. To take a different view would mean requiring Member States not to recover specific duties and at the same time requiring them to make available to the Commission pursuant to Regulation

No 2891/77 amounts corresponding to the duties not recovered.

— The third argument in support of the position adopted by the Italian Government arises from the logical interpretation of the provisions in question. If Article 5 of the regulation were to refer also to actions for recovery already commenced that would have the result that exemption of debtors in the same situations might depend on the relative energy of the competent authorities in recovering debts or on the relative length of legal proceedings, with the result that debts of the same kind and arising during the same period would be treated differently. That would be contrary to the principle of equality which according to the case-law of the Court should be at the basis of the general system of the financial provisions of the Treaty including financial charges.

(b) In view of the negative answer to be given to the first question the second and third questions lose their purpose.

Nevertheless, the Italian Government observes in the alternative that the facts of the present case may perhaps fall within the scope of the second indent of Article 5 (1) of Regulation No 1697/79. The words "on the basis of provisions of a general nature subsequently invalidated by a Court decision" may in view of their purpose be extended to cases in which the provisions of a general nature are subsquently found to be incompatible with Community rules as interpreted by the Court of Justice.

However, the facts of the case may also fall within the scope of Article 5 (2) of the regulation since they involve an error by the competent authorities in the interpretation of the provisions concerning the applicable rate of levy. Moreover, respect for the principle of legitimate expectation, on which Article 5 (2) of the regulation is founded, is also at the basis of Article 3 of Decree No 695 of the President of the Republic of 22 September 1978, according to which the national rules previously considered applicable continued to apply until 10 September 1976.

As to the third question, the Italian Government proposes, also in the alternative, that it should be answered in the affirmative provided that all the provisions of the national rules in force at the time for obtaining the more favourable rate of levy were respected.

(c) In the view of the Italian Government the fourth question assumes that Article 5 of Regulation No 1697/79 does not apply to actions for recovery already pending. In that case it would be consistent with Community law for actions pending to continue even after the entry into force of the regulation. The answer to the fourth question should therefore be in the negative in that there is no impediment on levying interest on arrears.

In fact, if Regulation No 1697/76 applies only to customs debts arising after its entry into force, previous debts in respect of which actions for recovery are still in progress continue to be governed by the national rules previously applicable and to give rise to interest on arrears even after 1 July 1980 provided that such is the result under the national rules previously applicable.

4. The *Commission of the European Communities* considers that Regulation No 1697/79 applies only to customs operations entered in the accounts as from 1 July 1980, the date on which the regulation came into force or, if not

entered in the accounts, to debts arising thereafter. That conclusion follows from consideration of the object of Regulation No 1697/79, which is the complete harmonization of both the substantive and procedural provisions on post-clearance recovery of customs duties, charges having equivalent effect and agricultural levies on imports and exports.

More particularly, the Commission relies on three considerations, namely the general principles applicable when one law is replaced by another, the systematic interpretation of the regulation and the principles of the Community legal system.

(a) As regards the first point (principles applicable when one law is replaced by another), in the absence of a specific provision only procedural and not substantive provisions can apply to matters still pending. That is apparent from previous decisions of the Court on the temporal validity of Community measures. According to those decisions, measures of a legislative nature apply only to matters arising after their entry into force. In this connection, the Commission cites the judgments of 24 November 1971 in Case 30/71 *Siemers* [1971] ECR 919 and 15 December 1971 in Case 77/71 *Gervais-Danone* [1971] ECR 1127 on regulations concerning tariff classification and the judgment of 5 May 1977 in Case 104/76 *Jansen* [1977] ECR 829 on social security rules.

(b) In the second place, Regulation No 1697/79 must be considered in the context of the whole body of legislation applicable to customs matters in the Community, which is made up of directly applicable Community provisions, subordinate national provisions and independent national provisions in sectors not governed by provisions of Community law.

From that point of view it is to be observed that the period of three years provided for by the regulation for commencing proceedings for recovery constitutes a compromise between the various periods, extending from one to six years, provided for by the national laws. Therefore the application of the period of three years to matters still pending would result in extending the national periods in certain Member States and shortening them in others, which would seriously affect legal certainty and the rights of persons subject to the law.

(c) Finally, both the fact that Regulation No 1697/79 is a single and indivisible whole and the necessity of ensuring equal treatment for all traders regarding the collection of charges for the benefit of the Community budget preclude the possibility that part of the regulation, namely that relating to the limitation period for commencing proceedings for recovery, might enter into force at a different date from the rest of the regulation concerning the conditions of form and substance for bringing such proceedings. It would be inconceivable to substitute a Community period for the national periods whilst leaving the national laws to govern the substantive conditions.

In support of its position the Commission adds that the Committee on Duty-Free Arrangements expressed a similar view to that of the Commission when it discussed the question of the temporal validity of Regulation No 1697/79.

(d) In conclusion the Commission proposes that the Court should answer the first question put by the national court as follows, the other questions losing their purpose:

"Regulation (EEC) No 1697/79 applies solely to operations entered in the accounts after 1 July 1980 or, if not entered in the accounts, to customs debts arising thereafter".

III — Oral procedure

At the sitting on 2 July 1981 oral argument was presented by the following: Nicola Catalano of the Rome Bar, for the companies Meridionale Industria Salumi, Italo Orlandi e Figlio and Molino Figli di Ginò Borgioli; Giovanni Maria Ubertazzi and Fausto Capelli of the Milan Bar, for the companies Salumificio di Verona Vassanelli, Fratelli Ultrocchi and Vincenzo Divella; Ivo M. Braguglia, Avvocato dello Stato, for the Italian Government; and Alberto Prozillo, a member of the Commission's Legal Department, for the Commission of the European Communities.

The Advocate General presented her conclusions at the sitting on 8 October 1981.

Decision

1 By orders dated 2 July 1980, which were received at the Court on 27 October 1980, the Corte Suprema di Cassazione [Supreme Court of Cassation], Rome, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions, which are identical in the six joined cases, on the interpretation 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 (Official Journal 1979, L 197, p. 1).

2 The questions were raised in the context of disputes between traders and the Amministrazione delle Finanze dello Stato [Italian State Finance Administration, hereinafter referred to as "the Amministrazione"]. The traders had challenged amended notices, issued by the Amministrazione prior to the entry into force of the aforementioned regulation on 1 July 1980, requiring them to pay a sum equal to the difference between the agricultural levy calculated at the rate applicable on the day of acceptance of the import

declaration and the levy calculated at the more favourable rate introduced between the import declaration and the release of the goods for home use. The Amministrazione claimed that the more favourable rate had been applied in error.

3 It is clear from the documents before the Court that until 1976 the Italian authorities had always calculated the levies by applying the more favourable rate at the request of the importer. However, in its judgment of 15 June 1976 (Case 113/75 *Frecassetti* v *Amministrazione delle Finanze dello Stato* [1976] ECR 983) the Court held that that method could not be applied to agricultural levies on imports from non-Member States, which had to be calculated at the rate applicable on the day when the import declaration was accepted by the customs authorities.

4 The Court also held in its judgment of 27 March 1980 (Joined Cases 66, 127 and 128/79 *Amministrazione delle Finanze* v *Salumi* [1980] ECR 1237) that, in so far as no provisions of Community law are relevant, it is for the internal legal system of each Member State to lay down the detailed rules and conditions for the collection of Community revenues, but such rules and conditions may not make the system for collecting Community charges and dues less effective than that for collecting national charges and dues of the same kind.

5 Since the latter judgment was delivered before Regulation No 1697/79 entered into force, the purpose of these cases is to discover whether national law or the Community regulation which has meanwhile entered into force should apply in these cases. The Corte Suprema di Cassazione therefore referred to the Court the following questions:

"(a) Does Council Regulation (EEC) No 1697/79 of 24 July 1979, in particular Article 5 thereof, apply in respect of payments of agricultural levies made prior to 1 July 1980 at a rate lower than the amount legally due, in relation to which even before that date steps had been taken for recovery, the lawfulness of which is being challenged, in other respects, before a national court?

(b) If the reply to Question (a) is in the affirmative, do the provisions of Article 5 extend to the payment of agricultural levies at a rate lower than the amount legally due, where such payment was made, on the one hand, in substantial compliance with the Community rules according to the guidance for interpreting the same which could at that time be inferred from the official acts of organs of the Community and which was acknowledged as correct by the national court, but was later disregarded by the Court of Justice and, on the other hand, in formal compliance with national rules subsequently held not to apply on the subject but at the time applied consistently by the competent national administrative authority in conformity with the circulars and instructions issued by its ruling body? If Article 5 does extend to such payments, which of its two paragraphs is applicable?

(c) If the answer to Question (b) is in the affirmative, and Article 5 (2) applies, do the rules laid down therein (where already brought into effect by the issuing of the implementing provisions referred to in the second subparagraph thereof) have the effect of legitimizing, under the Community legal order, national rules already adopted fixing the amount of the levies to be collected at a rate lower and therefore different from that laid down at the time by Community rules?

(d) If the reply is in the negative, does the provision contained in Article 7 of the above-mentioned regulation extend to payments required subsequent to its entry into force, in connection with recoveries in respect of payments made at a rate lower than the amount legally due, in the circumstances described at (b) above, prior to 1 July 1980?"

6 By the first question the national court is, in substance, asking whether Regulation No 1697/79 applies to payments of import or export duties made before the date on which the regulation entered into force.

7 The object of Regulation No 1697/79, as stated in Article 1 thereof, is to determine the conditions under which the post-clearance recovery is undertaken of import or export duties on goods entered for a customs procedure involving the obligation to pay such duties for which payment has not been required of the person liable for payment. Where the competent authorities find that such duties have not been charged, they are obliged to take action to recover them, provided, however, that 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 or, where there is no entry in the accounts, from the date on which the customs debt was incurred

(Article 2 (1)). In certain cases the regulation prohibits action for recovery (Article 5 (1)) or permits the authorities to refrain from taking action (Article 5 (2)). It also provides that in certain cases no interest on overdue payments is to be charged on sums recovered (Article 7).

8 However, as the regulation does not contain any transitional provisions, it is advisable to have recourse to generally recognized principles of interpretation in order to determine its effect *ratione temporis,* having regard both to wording of the regulation and to its objectives and general scheme.

9 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.

10 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.

11 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 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.

12 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.

13 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.

14 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.

15 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.

16 The reply to the first question put by the Corte Suprema di Cassazione should therefore be that Council Regulation No 1697/79 of 24 Juliy 1979 does not apply to payments of import or export duties made before 1 July 1980.

17 Therefore the second and third questions, which were put only in the event of the reply to the first question being in the affirmative, do not require to be answered. The reply to the fourth question is included in that given to the first.

Costs

18 The costs incurred by the Italian Government and the Commission which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the actions pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Corte Suprema di Cassazione, Rome, by orders dated 2 July 1980, hereby rules:

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

Touffait Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 12 November 1981.

J. A. Pompe
Deputy Registrar

A. Touffait
President of the Third Chamber