OPINION OF MR ADVOCATE GENERAL JACOBS
delivered on 26 September 1989 *

My Lords,

1. Bessin et Salson SA ('the Company') is a French clothing company which from 1973 onwards sent material from France to be made up into garments in Tangiers, Morocco, and sent back to France under the outward processing arrangements between the Community and Morocco. (The provisions laying down those arrangements are set out in the Report for the Hearing.) In order to enjoy customs exemption under those arrangements, the goods must be accompanied by a movement certificate (now known as a EUR 1 certificate) issued by the Moroccan authorities. An inspection of the Company's papers carried out by the French customs authorities in 1976 revealed the absence of such certificates. In 1977 the French customs authorities required payment of customs duty on the goods which had already been reimported from Morocco and on all reimportation transactions in progress. The Company asked the Moroccan authorities for movement certificates in respect of both current transactions and past ones, but — for reasons which remain unclear — it was unable to obtain the certificates for several years. Eventually, certificates were granted in respect of current reimportation transactions from July 1980 onwards, whilst certificates for the transactions between 1973 and that date were supplied *a posteriori* by the Moroccan authorities only in 1984.

2. Meanwhile, on 29 April 1981, the Company claimed repayment from the French customs authorities of the customs duty paid between 1973 and July 1980, amounting to FF 2 949 614.77. In 1984, after the relevant certificates had been supplied to them, the French customs authorities met the claim in part. Applying the three-year prescription period laid down in the French Customs Code (the relevant provisions of which are set out in the Report for the Hearing), they refunded the customs duties for the three years up to the date of the claim (i. e. 29 April 1978 to 29 April 1981, an amount of FF 2 044 099.48) but refused to reimburse the customs duties pertaining to the period before 29 April 1978 (an amount of FF 1 125 545.99).

3. The Company brought proceedings against the French customs authorities before the tribunal d'instance, Paris (first arrondissement), on 30 December 1985, claiming reimbursement of customs duties paid for the period between 25 February 1974 and 28 April 1978. The Company argued that it was unfair to make it bear the customs duties when the lack of the necessary certificates was due solely to the failure of the Moroccan authorities. The French customs authorities relied on the

* Original language: English.

three-year limitation period laid down in the French Customs Code. To displace the application of those national rules, the Company sought to rely on Community law, in particular Article 19 of Council Regulation No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (Official Journal 1979, L 175, p. 1), which provides:

'Subject to the second subparagraph of Article 3(2), the second subparagraph of Article 5(2) and the second subparagraph of Article 10(2), the periods within which this regulation provides that an application for repayment or remission of import or export duties shall be submitted may not be extended unless the person concerned can prove that he was prevented by unforeseen circumstances or *force majeure* from submitting his application within the prescribed periods.'

That provision allows derogation in particular from the period of three years laid down in Article 2(2) of the regulation for claiming the repayment of import duties paid but not lawfully due. The regulation entered into force on 1 July 1980 (Article 27). Article 19 was subsequently deleted and a rule of similar substance was included in Article 2 by Regulation No 3069/86 (Official Journal 1986, L 286, p. 1).

4. In order to resolve the issue before it, the tribunal d'instance by a judgment of 14 October 1986, lodged at the Court Registry on 28 December 1987, referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Do the provisions of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties apply in a case where an application for reimbursement of customs duties was submitted to the competent authorities of a Member State by an importer after that regulation had entered into force in respect of duties paid prior to its entry into force?

(2) If the answer to Question 1 is in the affirmative, may that importer rely on the provisions of Article 19 of the regulation, under which the period laid down in Article 2(2) thereof for submission of an application for the repayment or remission of import duties may be extended if the person concerned can prove that he was prevented by unforeseen circumstances or *force majeure* from submitting his application within that period, in so far as in this case it was absolutely impossible for the importer to obtain EUR 1 forms from the competent authorities of a non-member country?

(3) If the answer to Question 1, and consequently also to Question 2, is in the negative, is it contrary to the general principles of Community law for the national legislation of a Member State to provide for a mandatory time-limit of three years for the submission of all applications for reimbursement of customs duties wrongfully charged when the importer was actually prevented from submitting such an application within the period laid down by that national legislation not by virtue of his own act but as a

result of the complete failure of the competent authorities of a non-member country to provide the EUR 1 forms which are necessary for such an application and when the importer has repeatedly explained to the competent authorities of the Member State that it was absolutely impossible for him to submit the said forms which the competent authorities of the non-member country had to send to him but which he received, countersigned retroactively, only 10 years after the imports in question had commenced?

(4) In so far as the answer to Questions 1 and 2 or to Question 3 is in the affirmative, may the importer claim interest on the amount of the customs duties which he is seeking to have repaid and, if so, from what date?'

5. As to the first question, the Company's claim for reimbursement was made on 29 April 1981 which was after the entry into force of Regulation No 1430/79 (i.e. 1 July 1980), but the duties in question were paid for the period 1974 to 1978 which was before the regulation entered into force. The Company submits that the regulation applies where the national customs authorities take a decision on the reimbursement of customs duties after the date of its entry into force. That would mean that the regulation applied in this case, as the decision refusing reimbursement was contained in a letter dated 2 July 1984, well after the date of the entry into force of the regulation. The French Government and the Commission, on the other hand, consider that such an interpretation would lead to retroactive application of the regulation, contrary to Community law. They both consider that the first question should be answered in the negative, i. e. to the effect that the regulation does not apply to the circumstances stated. Relying in particular on Joined Cases 212 to 217/80 *Amministrazione delle Finanze dello Stato* v *Salumi* [1981] ECR 2735 and Case 113/81 *Reichelt* v *Hauptzollamt Berlin-Süd* [1982] ECR 1957, they argue that the regulation applies only to future transactions and that the relevant transactions are either the entry in the accounts (a phrase defined at Article 1(2)(e) of the regulation) or the payment of the amount in question: the lodging of a claim for reimbursement or the national customs authorities' decision on such a claim are not relevant transactions for this purpose, nor is it relevant whether a dispute is still in progress over an amount which has been paid or entered in the accounts.

6. The Court held in *Reichelt* (paragraphs 14 and 15) that Regulation No 1430/79 applied for the future only. The question in this case is to determine the relevant event for that purpose. The terms of the regulation in my view give sufficient guidance to resolve the question. The first subparagraph of Article 2(2) provides: 'Import duties shall be repaid or remitted for one of the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within a period of three years from the date on which those duties were entered in the accounts by the authority responsible for their collection'. It appears from this passage that the relevant event is the date on which the duties in question 'were entered in the accounts'.

7. That the terms of Article 19 are to be read subject to Article 2(2) in this respect is confirmed by the amendment effected by Regulation No 3069/86. The fifth recital of the latter regulation states:

'Whereas this time-limit [namely in Article 13] and those laid down in the second subparagraph of Article 3(2), the second subparagraph of Article 5(2), the second subparagraph of Article 10(2) and the second subparagraph of Article 13(2) may be exceeded only in duly justified exceptional cases; whereas Article 19 therefore applies only to the time-limit referred to in Article 2; whereas the text should consequently be simplified by amending Article 2 and deleting Article 19.'

Accordingly Article 1 of Regulation No 3069/86 deleted Article 19 from Regulation No 1430/79 and inserted the following subparagraph after the first subparagraph of Article 2(2) thereof:

'This period may not be extended unless the person concerned can prove that he was prevented by unforeseeable circumstances or *force majeure* from submitting his application within the prescribed period'.

The placing of that subparagraph and the express reference to 'this period' indicate without any doubt that the relevant period is three years starting from the date when the duties were entered in the accounts.

8. 'Entry in the accounts' is defined in Article 1(2)(e) of Regulation No 1430/79 as 'the official act by which the amount of the import duties or export duties to be collected by the competent authorities is duly determined'. In my view it is reasonable that that should be the relevant event for the present purpose because it is the first time that the importer or exporter can know the amount demanded of him and can form a view as to whether he should claim its repayment or remission. The date of payment of the sums in question might be envisaged as an alternative, but I would reject it for two reasons. First, it would conflict with the wording of the regulation. Secondly, it would be less satisfactory as a choice of starting point because the importer or exporter could extend the period unilaterally by delaying payment, which could engender inequalities between one case and another and would provide less legal certainty than the criterion of 'entry in the accounts'. The same reasons exclude *a fortiori* the possibility of using as the relevant event the date of the claim for reimbursement and still more the date of the decision on such a claim; indeed the latter of those two possibilities has already been expressly excluded by the Court in *Reichelt* (see point 2 of the ruling).

9. Accordingly, I consider that Regulation No 1430/79 applies to claims for repayment or remission only of such duties as were entered in the accounts after the entry into force of that regulation. Therefore the first question referred by the tribunal d'instance should be answered in the negative, i.e. to the effect that the regulation does not apply to an application for

the reimbursement of duties paid prior to its entry into force.

10. Even if the regulation did apply, the Company would face two further difficulties: First, Article 19 grants only a power and not an obligation to derogate from the three-year period laid down in Article 2. Secondly, the case might be regarded as falling under Article 10(1)(e) of the regulation as a 'special situation' rather than under Articles 2 and 19, from which it would follow under Article 10(2) that the basic period for applying for reimbursement would be three months, not three years as under Article 2. However, those difficulties do not arise if, as I propose, the first question is answered in the negative. Nor, on that view, does the second question fall to be considered.

11. As regards the third question, the Company submits in effect that, if the regulation is not applicable, the general principles of law, recognized in Community law (in particular fairness, good faith, proportionality and equality), preclude the application of provisions of national law which impose a mandatory limitation period of three years on all claims for reimbursement of customs duty unduly paid, even where an importer has been prevented from submitting such a claim within the time specified not through his own fault but through the failure of the competent authority to supply the EUR 1 certificates necessary for the claim and where the importer has throughout informed the national authorities that he was unable to supply those certificates which the authorities of the non-member country should have given him and which were only supplied *a posteriori* 10 years after the imports in question began. The French Government and the Commission, on the other hand, contend that in the absence of Community rules on the reimbursement of customs duties unduly paid (and in their view it follows from their proposed answer to the first question that no such Community rules were in force at the relevant time in the present case) the matter is governed by national law both as to substance and as to procedure, provided that the national rules do not result in claims under Community law being dealt with less favourably than claims under national law or make claims under Community law impossible. The Commission and the French Government take the view that there are no aspects of the present case to bring it within the proviso. Therefore at the relevant time, Community law did not prohibit the national law of a Member State from imposing a three-year prescription period on claims for the reimbursement of customs duties paid but allegedly not due.

12. In my opinion it is clear from the Court's case-law that, in the absence of Community rules on the repayment or remission of customs duties, the matter is governed by the national law of the Member State concerned: see in particular paragraph 7 of *Reichelt* and see Case 33/76 *Rewe* v *Landwirtschaftskammer Saarland* [1976] ECR 1989, Case 45/76 *Comet* v *Produktschap voor Siergewassen* [1976] ECR 2043, and Joined Cases 119 and 126/79 *Lippische Hauptgenossenschaft* v *BALM* [1980] ECR 1863. On the view which I have taken on the first question, no Community

legislation was applicable to the matter at the relevant time. Therefore national law governed the question of the limitation period at that time. The Court's case-law imposes two conditions on the applicability of national law in such circumstances: it should not discriminate between claims under Community law and similar claims under national law, and it should not make the exercise of rights conferred by Community law impossible in practice: see for example Case 130/79 *Express Dairy Foods* v *Intervention Board for Agricultural Produce* [1980] ECR 1887. It is not suggested in this case that application of the three-year limitation period prescribed by French law infringes either of those conditions, and indeed it is difficult to see how it could. On the other hand, the application of that limitation period in my view proceeds from a concern to ensure legal certainty which is common to the legal order of the Community and to the laws of the Member States. Moreover, the period of three years prescribed by French law in this case appears reasonable and adequate to ensure the legal protection of the Community citizen, particularly when it is borne in mind that the limitation period approved by the Court in *Comet* was 30 days and in *Rewe* was one month or, in certain circumstances, one year. In my view, therefore, the general principles of law recognized in Community law do not prohibit the application of a limitation period under national law such as that in the present case.

13. If Questions 1 and 3 are answered in the negative, as I propose, Question 4, regarding interest, does not fall to be considered.

14. If it did fall to be considered, the Commission submits that national law not Community law governs the award of interest (as it governs other aspects of the procedure) on claims for the reimbursement of customs duties such as the present one. The Company, for its part, argues that, since the reimbursement of the customs duties in question is dictated by a general principle of Community law (the principle of fairness), Community law also requires the importer to be adequately compensated for being kept out of his money for the duration of the dispute, and hence requires interest to be awarded on customs duties unduly paid, such interest to run from the date of payment of the duties by the importer.

15. It is clear from the Court's case-law that, in the absence of any applicable Community law, the question of interest, like that of limitation periods, is governed by national law: see in particular Case 26/74 *Roquette* v *Commission* [1976] ECR 677, at p. 686, paragraphs 12 and 13 and Case 130/79 *Express Dairy Foods* [1980] ECR 1901, paragraph 17. However, in my opinion, no such reference to national law falls to be made in the present case, because Community law does not require the reimbursement of the customs duties claimed outside the limitation period imposed by national law.

16. Accordingly, I would answer the questions referred by the tribunal d'instance, Paris (first arrondissement), to the following effect:

(1) The provisions of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties do not apply in a case where an application for reimbursement of customs duties was submitted to the competent authorities of a Member State by an importer after that regulation had entered into force in respect of duties paid prior to its entry into force.

(2) It is not contrary to the general principles of law recognized in Community law for the national legislation of a Member State to provide for a mandatory time-limit of three years for the submission of all applications for reimbursement of customs duties when the importer was prevented from submitting such an application within that period by circumstances beyond his control.