1. For the purposes of determining the date on which the obligation to import pursuant to the licence is deemed to have been fulfilled, within the meaning of Article 15 (1) (a) of Regulation No 1373/70, acceptance by the customs authorities, within the meaning of Article 15 (5) (a), of the document by which the declarant states his intention to put the goods into free circulation does not require that the customs procedure should be finally concluded in favour of the declarant.

2. Before Article 15 (1) can apply, it is essential that the goods which, pursuant to the provisions of the second subparagraph of Article 8 (2), have been attributed on the licence, shall have, in fact, been put into free circulation.

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Given in open court at Luxembourg on 15 May 1974.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 30 APRIL 1974 [1]

Mr President,
Members of the Court,

Introduction

Importation into the Community of agricultural products covered by common organizations of the markets is, as you know, subject under the basic regulations to issue of import licences granted for a fixed period of time and constituting both obligation and authority to import a given quantity of the product concerned.

The obligation to import the goods during the period of validity of the licence is underwritten by the lodging of security.

1 — Translated from the French.

Moreover, the same principles apply to exports as well as to the advance fixing of levies and refunds.

By Regulation No 1373/70 of 10 July 1970, the Commission laid down detailed rules for applying the licence system.

Amongst other things, the Regulation defined what was to be understood by the expression 'import customs formalities' (Article 8 (2) (a)), provided that the obligation to import shall be *considered to have been fulfilled on the day when these customs formalities are completed* (Article 15 (1) (a)), and specified that '"the *day* on which the customs formalities are completed" means the day on which... the declarant [i.e. the importer] states his intention to put the products in question in free circulation' (Article 15 (5) (a)).

Finally, under the terms of Article 15 (2), release of the security in the case of imports is subjects to production of proof of completion of the customs formalities referred to in Article 8 (2) (a).

You are asked to interpret Article 15 (5) by the Verwaltungsgericht of Frankfurt-on-Main, before which an action has been brought against the Einfuhr- und Vorratsstelle für Schlachtvieh, Fleisch und Fleischerzeugnisse (Cattle and meat import and warehousing authority) by the Firm of Norddeutsches Vieh- und Fleischkontor of Hamburg.

Facts

On 21 April 1971, the plaintiff in the main action obtained from the authority an import licence for 400 metric tons of frozen beef and veal from South America. The firm provided bank security in the sum of 146 400 DM. The validity of the licence expired on 21 July 1971.

On 14 July, after earlier imports amounting to 360 metric tons which were attributed on the licence, the company applied to the competent customs office for clearance of 53 051 kg of frozen forequarter of beef on the bone imported from Uruguay and intended for processing.

The application, which was formally accepted by the customs, was eventually refused not for reasons connected with the Community rules governing import licences but on grounds arising from the German law on meat health control.

The first paragraph of Article 12 (a) of that law in fact allows meat to be imported only in carcase, even though the carcases can be cut up into halves or quarters. Exceptions may, however, be made by the Federal Minister of Public Health provided that the animals were slaughtered in approved slaughter-houses in the country of origin and under the supervision of a qualified veterinary officer of German nationality.

Proof that there was such supervision must be provided by lead seals on the quarters of meat and by production of a certificate of inspection. The costs, clearly substantial, of this supervision are charged to the importer.

In the case before the German court, the customs authority, acting as the veterinary body responsible for admissions, found that the forequarters of beef and veal, constituting the consignment submitted for inspection, had not been provided with the requisite lead seals.

From this the authorities concluded that the inspection had not been carried out before departure and, taking the view that, as the consignment did not consist of whole carcases, inspection was legally impossible on arrival in Germany, refused to authorize its being put into free circulation.

As the importer was unable, before the validity of the import licence expired, to obtain an alternative supply of meat, the import authority ruled that the obligation to import had been only partly fulfilled by the quantities previously attributed on the licence and accordingly declared the security forfeit to the extent of 6 309 DM representing the quantity which had not been imported.

After an unsuccessful protest against this decision, the importer brought an action before the administrative court of Frankfurt, which has referred to you for a preliminary ruling on the following question:

Does the *receipt* of the declarant's customs application by the customs authorities amount to 'acceptance', within the meaning of Article 15 (5) (a) of Regulation No 1373/70 of the Commission of the European Communities of 10 July 1970, by the customs authorities of the document by which the declarant states his intention to put the goods in free circulation, or is 'acceptance', within the meaning of this provision, to be interpreted to mean that the customs procedure underlying that acceptance has been finally concluded in favour of the declarant?

Issues

In the form in which it has been put, the question expresses the following dilemma:

— *either* it is necesssary — and enough — for the customs office to have *received* the application for clearance of the products covered by the import licence while the licence is still valid before the obligation to import can be considered as having been fulfilled and, in consequence, the security can be released;

— *or* it is necessary that the national customs procedure shall have been brought to a conclusion and that the customs authorities shall have authorized removal of the goods for consumption before importation can be considered to have actually taken place, in which case the security may be released only if authorization was granted before the validity of the licence expired.

The second of these alternatives is, in my view, untenable.

On this point, both the arguments relied on by the plaintiff in the main action and the considerations set out by the Frankfurt administrative court seem to me to be conclusive. In Regulation No 1373/70, the Commission introduced a coherent system for uniform application to importers in every Member State. The obligation to import, which is considered as having been fulfilled on the day when the customs formalities referred to under Article 8 (2) (a) are completed, is a Community concept whose meaning and scope are independent of the national customs procedures which are still in force.

In its place it is not possible to rely solely on the authority for removal or release, in other words, the act by which a customs authority allows the importer to dispose of goods which have been cleared.

Of course, the fact that various national legislations are applicable to imports, especially in the field of hygiene control, may mean that, as regards its clearance through customs, a product may be treated differently in one State compared with another.

But these national legislations cannot validly be set against the Community concept of an obligation to import associated with issue of an import licence within the meaning of Regulation No 1373/70.

It is, accordingly, in my view inconceivable that release of the security, which is designed to ensure that this obligation is fulfilled, should, *before the validity of the licence expires*, be subject to performance of a positive act on the part of the customs authorizing release of the goods.

Such an interpretation would defeat the purpose of the provisions of the Commission's Regulation.

Should one therefore adopt the first alternative and decide that mere physical receipt by the customs authorities of the document by which the importer states his intention to put the goods in free circulation is all that is required for the security ot be released forthwith, since

the obligation to import is considered as having been fulfilled?

I do not think that this line of reasoning fits in any better with the wording of the provisions of the Regulation with which we are concerned or with the objects of the system of import licences.

Article 15 does not attempt any definition of what is to be understood by 'importation actually effected'. Its sole purpose is to introduce two legal presumptions:

— the first, in paragraph 1, specifies the day on which the obligation to import is *considered to have been fulfilled;* this is the day on which the customs formalities referred to in Article 8 (2) (a) were completed;

— the second, in paragraph 5, lays down that the day on which the import customs formalities are completed within the meaning of the Regulation means the day on which the customs authorities 'accept the document by which the declarant states his intention to put the products in question in free circulation'.

The justification for these provisions lies in the fact that the validity of the import licences is of limited duration and that the obligation to import must be fulfilled before this validity expires.

The purpose of the legal presumptions is, therefore, to determine the date on which this obligation must be *deemed* to have been fulfilled.

The same date is operative for the purposes of release of the security because, under Article 15 (2), release is subject to proof that the customs formalities referred to in Article 8 (2) (a) were in fact completed while the licence remained valid.

In other words, the security may be released only if a *condition precedent* is satisfied and that is that, before the validity of the licence expires, the customs authorities have received the document by which the declarant states his intention to put the products in question in free circulation.

In this way, the Commission has deliberately adopted a mechanical Community formula, easy to apply, and which enables all importers to be treated alike.

But, is this condition precedent, based on the necessarily limited validity of the licences, sufficient?

I agree with the Commission that it is not. It is also necessary that importation should have been effected, that the goods should actually have been put into free circulation on the territory of the Member State where the customs procedure is carried out.

This requirement will quite clearly be met only to the extent that the customs authorities authorize the collection or release of the goods submitted to them after confirmation that they accord not only with the descriptions supplied by the declarant and the entry on the import licence but also with the national legislative provisions in force, among them those dealing with meat health inspection.

As these checks require some time to complete, the products may be released only after the validity of the import licence has expired. But this matters little so long as the customs authorities have received the importer's declaration within the prescribed time-limit. The legal fiction introduced by Article 15 of Regulation No 1373/70 enables the import obligation to be deemed to have been fulfilled on the day the declaration was received.

On the other hand, if there is a legal objection to the release of the goods and, in consequence, the importation cannot actually be effected, it follows that the importer cannot, in principle, obtain release of the security.

There is support for this construction in Articles 15 (2) and 15 (3) of the Regulation.

Under the first of these provisions, release of the security is subject to proof

that the customs formalities referred to in Article 8 (2) (a) have been completed.

Under the second, this proof is furnished by production of Copy No 1 of the import licence (or of extracts therefrom) endorsed in accordance with the requirements of Article 8.

The wording of the Article makes it clear that the competent customs office to which the document must be submitted has not only to endorse it but to *attribute* under this head the *quantities of goods imported.*

How can the customs authorities make this attribution if clearance of the products has been refused?

The concomitant system laid down for exports by Regulation No 1373/70 tends to confirm this interpretation: though the day on which the customs formalities are completed plays a part in establishing whether exportation has been effected during the certificate's validity, release of the security is expressly subject to proof that the product in question has actually left the geographical territory of the Community.

It must also be borne in mind that the Commission's Regulation must be interpreted in the light of the instruments setting up the common organizations of markets and, more particularly in our case, of Regulation No 805/68 of the Council on the market in beef and veal.

The ninth recital of the Preamble to that Regulation declares: 'Whereas, in order to control the volume of imports of beef and veal, in particular frozen beef and veal, a system of import licences should be introduced including the lodging of a deposit *guaranteeing that importation is effected*'.

Article 15 of this basic Regulation is explicit on this point. In the third subparagraph of paragraph 1 of that Article, it is provided that issue of the import licence shall be conditional on the lodging of a deposit 'guaranteeing that importation is effected during the period of validity of the licence; the deposit shall be forfeited in whole or in part *if importation is not effected, or is only partially effected, within that period.*'

As, on the basis of Article 12 of Regulation No 120/67 of the Council, the wording of which was similar to that of Article 15 of Regulation No 805/68, you recalled in your Judgment of 30 January last (Case 158/73, *Kampffmeyer)* in connexion with cereal imports, 'the system of lodging deposits is intended to ensure *completion of the imports* and exports for which licences or certificates are requested, so that both the Community and the Member States may be *certain of knowing exactly what transactions are intended.*'

The system of giving certificates and security accordingly provides a check on the development of trade between the Community and third countries and information on the volume of both imports and exports.

The goods involved in the present case are covered by heading 02.01 A II a-2-bb of the common tariff (meat and edible offals of domestic bovine animals, frozen: fore-quarters); they were intended for processing and, because of this, entitled to benefit from the special import terms under which 90 % of the levy is suspended.

But this favourable arrangement had its counterpart: the issue of import licences giving entitlement to the special import terms could be limited or suspended (Article 3 (2) of Regulation No 888/68 of the Council).

For this purpose it was necessary to draw up *each year* an *estimate* of supplies and requierements of meat intended for the processing industry. In addition, the last subparagraph of Article 14 (2) of Council Regulation No 805/68 provided that an estimate valid for the following three months should be established each quarter, taking the market situation into account.

It is in the light of this quarterly estimate that any decision is taken on total or partial suspension of the levy and on

limitation or discontinuance of the issue of import licences giving entitlement to the special terms.

As this involves a close watch on imports of beef and veal, *'especially frozen beef and veal'*, one appreciates the need to introduce a system of import licences which involves the lodging of security *guaranteeing that importation is effected during the period of validity of the licence.*

As the Commission suggests, to register the movements of goods 'stuck' at the customs barriers would defeat the object of the provisions and deprive the check maintained on developments in the meat market of any value.

Clearly, though Regulation No 1373/70 has, for the purpose of establishing the date on which the obligation to import is deemed to have been fulfilled, opted for the day of receipt of the document by which the importer states his intention to put the goods in question in free circulation, this is no more than a legal fiction designed to avoid importers in the various Member States having to suffer from the consequences of the different time it takes from state to state to carry out customs examinations. This does not alter the fact that the actual putting of the goods into free circulation, evidenced by endorsement of import licences and entry thereon of the quantities imported, continues to be the implied but essential condition for release of the security.

This approach makes it possible to reconcile the objectives of economic forecast which the Community's system of licences, backed by the lodging of security, exists to serve, with the legitimate interests of importers, who are deemed to have fulfilled their undertaking to import on the day they complete customs formalities. It seems to me also to be consonant with the provisions of Article 18 of Regulation No 1373/70.

As you know, this instrument provides as follows: 'Where, as a result of *force majeure,* import or export cannot be effected during the period of validity of the licence or certificate, the Member State issuing the licence or certificate shall decide, at the request of the titular holder, either that the obligation to import or export is cancelled, the security being released, or that the period of validity of the licence or certificate is extended for such period as may be considered to be necessary in view of the circumstances invoked.'

Refusing to regard *force majeure* as synonymous with absolute impossibility, this Court has placed a wide and liberal interpretation on *force majeure* so as to avoid penalizing diligent importers with loss of their security.

In the first place, in your Judgment, already cited, of 30 January 1974, you have emphasized that 'the public interest, which requires as accurate forecast as possible of import trends in each Member State and justifies the deposit of security against the grant of authorization to import, must be reconciled to the necessity of not hampering trade between States by too rigid obligations, a necessity which also derives from the public interest'.

Secondly, you have declared that 'the threat of forfeiture of security is intended to encourage the fulfilment of the obligation to import by importers enjoying the authorization and thus to ensure the accurate forcasting of import trends.'

But from this you drew the conclusion that the importer who has, as far as he is concerned, taken all the precautions which could reasonably be expected of a prudent and diligent trader, must be released from the obligation to import when circumstances outside his control make it impossible for him to effect the importation during the period of validity of his licence. The consequence of which is that his security must be returned to him.

In order to resolve the issue in the main action it is clearly relevant to remind the German court of these precedents.

It is true that, in the present case, the Court has not asked you whether the fact that, when the consignment reached Germany, the lead seals, which are used as evidence that veterinary inspection has taken place on departure, were missing could be accepted as a case of *force majeure*. Had it done so, however, your answer would certainly have been that such a question amounts, in the case before us, to finding out whether the importer acted as a reasonably diligent trader, on the assumption that he was in a position to demonstrate that he had done all that was necessary to ensure that the requisite examination was carried out. As Community law is silent on this point, it would be for the national court to decide whether, in the light of the circumstances of this case, the importer has or has not exercised the requisite degree of care.

I am therefore of the opinion that the Court should rule as follows:

1. In the case of frozen meat and veal, the day on which, within the meaning of Article 15 (5) (a) of Regulation No 1373/70 of the Commission, the obligation to import must be considered as having been fulfilled is the day of *receipt* by the customs authorities of the document by which the declarant states his intention to put in free circulation the goods referred to in the import licence;

2. For the purposes of release of security, however, this legal presumption is valid only to the extent that, after being attributed on the licence in accordance with the provisions of Article 8 (2) (a) of the Regulation, the goods have been put into free circulation beyond possibility of recall.