OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 8 OCTOBER 1981 [1]

Mr President,
Members of the Court,

I — In its judgments of 15 June 1976 in Case 113/75, *Frecassetti* v *Amministrazione delle Finanze dello Stato* [1976] ECR 983), and of 27 March 1980 in Joined Cases 66, 127 and 128/79, *Amministrazione delle Finanze dello Stato* v *Salumi, Vassanelli and Ultrocchi* [1980] ECR 1237), the Court held that levies on the importation of agricultural products must be calculated at the rate in force on the day on which the import declaration for the goods is accepted by the customs authorities.

In the present cases the Corte Suprema di Cassazione has requested a preliminary ruling on the question whether the post-clearance recovery required in principle by those judgments must take into account the entry into force of Council Regulation No 1697/79 on 1 July 1980.

The facts are as follows:

On 11 September 1976, the operative part of the Court's jugdment in *Frecassetti* was published in the Official Journal of the European Communities. On 22 September 1978 a decree was issued in Italy providing for the application of the rate of levy in force on the day on which the import declaration was accepted. The Amministrazione delle Finanze dello Stato [Italian State Finance Administration, hereinafter referred to as "the Amministrazione"], which had collected levies on the basis of a different rate, more favourable to the importer, had already issued amended notices requiring payment of additional sums as levies on imports of agricultural products (cereals and meat) from non-Member States, in some cases dating back to 1966. Those notices were addressed to the three defendants in the main proceedings in Joined Cases 66, 127 and 128/79, *Amministrazione delle Finanze dello Stato* v *Salumi, Vassanelli and Ultrocchi,* and also to two other firms, Orlandi and Divella, plaintiffs in the main proceedings in two of the cases now before the Court (Cases 215 and 217/80).

In the context pf the disputes between Orlandi and Divella and the Amministrazione (which had been successful in the appeal courts) and in the disputes which continued after the Court's judgment of 27 March 1980 between the Amministrazione and Salumi, Vassanelli and Ultrocchi (likewise successful in the appeal courts), the Corte Suprema di Cassazione asked the Court in five orders, all dated 2 July 1980, whether the post-clearance recovery required in principle as a result of its judgments in *Frecassetti* and *Salumi* must take into account the entry into force of Council Regulation No 1697/79 on 1 July 1980, that is to say, after the Court's judgment and the day before the Italian court decided to submit a fresh request for a preliminary ruling.

Thus the basic issue in these cases concerns the effects *ratione temporis* of a preliminary ruling of the Court in conjunction with a Council regulation with regard to the situation underlying that which gave rise to the Court's judgment of 27 March 1980.

1 — Translated from the French.

In its judgment of 27 March 1980 [1980] ECR 1237 at p. 1263, paragraph 18), the Court stated that, in the absence of specific Community rules, the collection and post-clearance recovery of agricultural levies must be governed by the detailed rules and conditions applicable in the internal legal system of each Member State to national charges of the same kind, in such a way as to ensure that the former are collected as effectively as the latter.

However, the Council did not wait until the delivery of that judgment before following the course set out in paragraph 15 thereof. On 2 July 1979 it had adopted Regulation No 1430/79 on the repayment or remission of import or export duties and, on 24 July 1979, Regulation No 1697/79 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.

It seems undeniable that Regulation No 1697/79 lays down the detailed rules and conditions for the collection of agricultural levies in particular, within the meaning of paragraph 18 of the Court's judgment. According to paragraph 16, that regulation provides "only a partial solution to the problems concerning the equality of persons in this sphere and the necessarily technical and detailed nature of such provisions means that a judicial interpretation can provide *only a partial* remedy".

Although it is "relatively detailed", Article 5 (2) of the regulation leaves to implementing provisions the task of determining the cases in which the customs authorities are authorized to refrain from taking action for post-clearance recovery of duties. Such implementing provisions were adopted by Commission Regulation No 1573/80 of 20 June 1980, which did not enter into force until 1 July 1980.

Therefore it is not entirely accurate to state, as the Commission has done, that this is a "regulation for the *total* harmonization of *the whole* of the matter", with the exception of acts which could give rise to criminal court proceedings (Article 3).

II — Although the Council has not submitted observations in the course of these proceedings, I share the Commission's view that that regulation could not apply to actions for recovery which had been initiated but not decided before its entry into force.

In its judgment of 27 March 1980 the Court took care to point out that that regulation had not yet entered into force at the date of its ruling, and that, although it partially settled the problems concerning the equality of persons in a certain sphere, it nevertheless left scope for judicial interpretation.

According to a principle generally accepted in the law of the Member States, procedural laws apply immediately to all actions pending at the time of their entry into force, although they are not retroactive.

But Regulation No 1697/79 created a new body of rules; it neither amended nor clarified any earlier provisions; on the contrary, it was intended to fill a gap by adopting uniform conditions at Community level relating to the limitation period (Article 2 (1)), procedure (Article 2 (2) and Article 4)

and questions of substance (Article 5), governing the taking of action for the recovery of unpaid duty. Thus these are not purely procedural provisions.

Moreover, it would not be permissible to state that the sole purpose of the regulation is to provide *additional* safeguards for persons owing duty. Indeed, it is impossible to overlook the fact that the following expressions are intended rather as guidance: "no action *may* be taken ... for recovery" (Article 5 (1)); "the competent authorities *may refrain* from taking action for the post-clearance recovery" (first subparagraph of Article 5 (2)); "the cases in which the first subparagraph *can* be applied" (second subparagraph of Article 5 (2)). On the other hand, however, Article 2 (1) lays down the principle that recovery is mandatory in so far as the debt is not time-barred.

In spite of its equivocal nature, however, the authors of the regulation could have stated expressly that on its entry into force it was to apply to actions for recovery brought on the basis of national law and still pending.

But there is no indication in its provisions, preparatory documents, or its general scheme, that its authors intended to give it such scope, albeit by implication.

That clearly follows, first, from the very wording of the provisions of the regulation: "the competent authorities ... shall take action" (Article 2 (1)); "no action for recovery may be taken ..." (Article 5 (1)).

Further evidence of the fact that the regulation does not have "immediate effect" is provided by the considerable period of time which elapsed before its entry into force: it was adopted on 24 July 1979 and published on 3 August 1979, but did not enter into force until 1 July 1980 (at the same time as Regulation No 1430/79) and its full and total application may yet be affected by the Committee on Duty-Free Arrangements (Article 10). Moreover, that time-lag made it possible to dispense with transitional provisions.

Finally, if it were held to be applicable to particular situations with which the Corte Suprema di Cassazione still has to deal, the fact that Regulation No 1697/79 may have a tempering effect on "legal relationships which arose and were established before the preliminary ruling was given" but were "not yet defined according to national law" could not influence the way in which the first question submitted to the Court should be answered. If the qualifications which Article 5 places on the principle that action must be taken for recovery (first subparagraph of Article 2 (1)) were applicable to proceedings still pending on 1 July 1980, the remission of debts of persons in the same circumstances might depend on the degree of enthusiasm with which the competent authorities had taken action for recovery or on the varying duration of court proceedings, which would lead to debts of the same kind, having arisen at the same time, being treated differently within a single Member State.

The recourse to national law, which results from the interpretation which I am proposing to the Court, runs the risk of leading to a difference in the treatment of customs debtors, according to the greater or lesser severity of the

national laws or regulations relating to the recovery of unpaid duty. But that disparity was expressly accepted by the Community legislature, which authorizes the Member States not to establish the own resources corresponding to import duties or export duties in relation to which no action for post-clearance recovery has been taken in application of the provisions of Regulation No 1697/79 (Article 9).

The Court itself held in its judgment of 10 July 1980 in Case 811/79 *Amministrazione delle Finanze dello Stato* v *Ariete* ([1980] ECR 2245 at p. 2555, paragraph 16) that "such differences, especially in rules relating to challenging national levies, cannot be regarded as discriminatory or, a fortiori, as likely to distort competition . . .".

Furthermore, it is irrelevant that the taxpayers were not or are no longer in a position to pass on the additional charge resulting from a possible post-clearance recovery.

III — Under those circumstances, it is my opinion that the other questions put by the national court do not need to be answered.

However, even in disputes concerning the financial charges which the authorities in Member States are obliged to collect on behalf of the Communities, there is nothing to prevent the national courts from following the principles on which Regulation No 1697/79 (particularly Article 5) is based, in so far as their application to the proceedings before them does not render the post-clearance recovery of Community levies impossible in practice or less effective than the collection of national taxes and charges of the same kind.

Furthermore, it goes without saying (Question (d)) that the amounts recovered post-clearance may not be exempt from interest if the charging of interest is provided for by the national laws or regulations which apply in relation to the collection of national taxes and charges.

In its written observations, the Commission proposed that the answer to the question should be not merely that Regulation No 1697/79 applies only to actions for recovery brought after 1 July 1980 but also that it applies only to import or export transactions for which the administrative measure fixing the amount of duty payable was adopted after 1 July 1980 or for which the trader's obligation to pay the amount of duty applicable arose after that date.

In the context of these cases, it is not in my view necessary to go as far as that. However, I am content to rely on the wisdom of the Court on that matter and I conclude that the Court should rule that "post-clearance recovery" for the purposes of Regulation No 1697/79 means only actions for recovery initiated after 1 July 1980.