

and consequently becomes payable, before the day of completion of the customs formalities. Accordingly, the calculation and actual collection of the levy, that is to say payment thereof, may be made at a later stage.

Bosco

O'Keefe

Koopmans

Delivered in open court in Luxembourg on 27 May 1982.

For the Registrar

H. A. Rühl

Principal Administrator

G. Bosco

President of the First Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL  
DELIVERED ON 1 APRIL 1982<sup>1</sup>

*Mr President,  
Members of the Court,*

Article 16 of Regulation No 1009/67/EEC on the common organization of the market in sugar (Official Journal, English Special Edition 1967, p. 304), as amended by Regulation (EEC) No 607/72 (Official Journal, English Special Edition 1972 (I), p. 236), provides that if the cif. price for white sugar or raw sugar, which is determined by the Commission pursuant to Regulation (EEC) No 784/68 (Official Journal, English Special Edition 1968 (I), p. 161),

is higher than the threshold price, that is to say the price determined under Article 12 of Regulation No 1009/67, a levy equal to the difference between those prices is to be charged on exports of the product in question. Article 16 also provides that where the Community or any region thereof can no longer be supplied with sugar at prices within the limit of the threshold price, provision may be made for charging a *special* levy on exports of the product in question, in which case the first-mentioned levy is inapplicable. Furthermore, the article provides that: "Save as otherwise provided by the Council ... the levy or

<sup>1</sup> — Translated from the German

the special levy to be charged, as appropriate, shall be that applicable on the day of exportation”.

Under Article 1 of Regulation (EEC) No 608/72 (Official Journal, English Special Edition 1972 (I), p. 238) laying down detailed rules to be applied in cases of considerable price rises on the world sugar market, the special levy is to be determined in accordance with the procedure laid down by Article 40 of Regulation No 1009/67, that is to say in accordance with the so-called management committee procedure. Article 1 also provides that the special levy may be determined by means of an invitation to tender and, in an extreme emergency, by the Commission.

The special export levy was determined by Regulation (EEC) No 3150/73 of the Commission (Official Journal 1973, L 321, p. 16). Regulation (EEC) No 1076/72 of the Commission (Official Journal, English Special Edition 1972 (II), p. 470) contains implementing provisions for that purpose. In Article 3, which according to Article 1 also applies to special export levies, that regulation provides that:

“Save in cases where the special export levy is determined by invitation to tender, the levies referred to in Article 1 shall be those applicable on the day on which the customs formalities referred to in the second subparagraph of Article 8 (2) (b) of Regulation (EEC) No 1373/70 are completed.

The levies shall be collected by the Member State on whose territory the formalities referred to in paragraph (1) are completed. They shall be payable at the latest at the time of completion of those formalities”.

According to Article 15 (5) (b) of Regulation (EEC) No 1373/70, referred to in that provision (Official Journal, English

Special Edition 1970 (II), p. 439), for the purposes of that regulation the day when the customs formalities referred to in Article 8 (2) (b) are completed means the day on which the customs authorities accept the document by which the declarant states his intention to export the products in question.

In the second half of 1974 the plaintiff in the main proceedings, a ships' chandler in Genoa, exported several consignments of sugar to Switzerland. The goods in question, which differed in origin, were originally intended for use as ships' stores and were placed in a private bonded warehouse in Genoa belonging to the plaintiff. The latter claims that when, like the carrier involved in the exportation of the goods, it inquired of the customs authorities whether Community duties were payable in the event of the delivery of supplies to a purchaser in a non-member country, it was informed that none were due. Moreover, at the time of completion of the customs formalities it was officially confirmed that the goods were free of duty. In any event, no export levies were collected at that time. At the beginning of 1975, however, the plaintiff was informed by the customs authorities that it was as a result of an error that no levies had been collected and that it was required either to bring the sugar back into the Community or pay the levies. The plaintiff refused to comply and accordingly demands for payment were served on it and enforcement measures taken against it.

The plaintiff's response was to bring an action before the Tribunale di Genova [District Court, Genoa]. In support of its argument that the notices of assessment to duty were unlawful, it referred to the second sentence of Article 3 (2) of Regulation No 1076/72, which states that the levies are payable at the latest at the time of completion of the customs formalities. Further, it relied upon Article 15 (5) (b) of Regulation No 1373/70, which

provides that the day on which the customs formalities are completed means the day on which the customs authorities accept the document by which the declarant states his intention to export the products in question or to place them under customs control. It follows from those provisions, in the plaintiff's opinion, that the levies should have been collected when it submitted its request for authorization to export the sugar. The consequence of the customs authorities' failure to exercise that right was, according to the aforementioned provisions of Community law, the forfeiture of their right to claim the duties.

Against that view, the defendant argues that the only inference to be drawn from the aforesaid provisions is that the conditions governing liability to duty are fulfilled on the day on which the customs authorities accept the export declaration. The right to claim the duties arises at that stage whilst payment and receipt of the money may, as is usually the case, follow later. It is, the defendant maintains, quite inconceivable — since such a rule would be foreign to the legal systems of all the Member States — that a failure to exercise the right to claim the duties as soon as the amount of the claim can be determined (for the purpose of which the relevant date is likewise, according to Article 3 of Regulation No 1076/72, the day of completion of the customs formalities) might entail forfeiture of that right. It is in fact necessary to proceed on the basis that in the case of levies the right is not lost, since in any event the Italian law on customs duties provides only for the *time-barring* of claims.

The national court stayed the proceedings by order of 25 May 1981 in order to seek a ruling on how the expression "at the latest" in the sentence "they shall be payable at the latest at the time of completion of [the customs] formalities" in Article 3 (2) of Regu-

lation No 1076/72 was to be interpreted and in particular whether it referred to the time of determination of the amount of the levy or to the first or last moment when actual payment (collection) may be required.

My opinion on the matter is as follows:

1. The Italian Government and the Commission take the view that the sentence of Article 3 of Regulation No 1076/72 referred to in the order making the reference does not mean that if at the time of completion of the customs formalities the levies are not collected the right to do so is forfeited, so as to preclude their subsequent collection. I am inclined to agree with that interpretation on the basis of the following considerations:

(a) The term "payable" contained in the sentence to be interpreted is significant. Its general meaning is that since at the material time an obligation crystallizes and becomes enforceable, payment may be demanded from that moment. It would be quite exceptional, however, on the basis of that term to make the supposition that, unless the right to claim the levy is exercised when payment falls due, the right is forfeited. Such a possibility might be envisaged only if a rule embodying the aforesaid concept also contained unequivocal provisions to that effect or if it were clear from the meaning and purpose of the rule that that was the only consequence — the forfeiture of the right — which could be intended. In the present case, however, there can be no question of that, as we shall shortly see in detail.

(b) Article 3 (1) of Regulation No 1076/72 clearly states that as a rule, that is to say when the levy is not determined by way of an invitation to tender, the

amount of the levy is determined by reference to the day on which the customs formalities are completed, in other words the day which is also the latest time at which it is payable.

That undoubtedly militates against the view that the term "payable" is to be interpreted as involving forfeiture of rights and against the supposition that the time at which the customs debt crystallizes coincides with the time when it ceases to exist in the event of a failure to collect it. It is possible to state that not only is there no such rule in the legal system of any Member State but also that there can be no question of its being, as the plaintiff contends, in the interests of trade, which is swiftly transacted and for which simplicity and clarity are essential conditions. That is because, as far as the price is concerned, which is affected by the levy, normal trading arrangements are certainly not made at the time of completion of the customs formalities but considerably earlier.

(c) In so far as the plaintiff for the purpose of its argument lays particular emphasis on the expression "*at the latest*", it must concede that the sentence in question refers not to the *collection* of the levies but only to the time at which they are *payable*.

The Court has also heard that the use of the expression "*at the latest*" in relation to the usual case, in which payment falls due on the day by reference to which the amount of the levy is calculated, seems difficult to understand, yet can be explained and makes sense if it is viewed against the background of the practice in certain Member States according to which the levy becomes payable in a sense even earlier. That appears to be the case, as the Commission has shown in

detail, in Belgium and in the Netherlands where for the purpose of the provision of security a standard assessment is raised in respect of the liability to duty when the export licence is granted. In order to take that into account, it was laid down that the levy was to be payable *at the latest* at the time of completion of the customs formalities and therefore not *only* at that time. Viewed in those terms, the meaning of the rule is clear. It is not concerned with the extinguishment of the customs debt but rather with the fact that the Member States should not be allowed to postpone the levying of duty beyond the period prescribed on the ground that completion of the customs formalities does not necessarily entail actual exportation of the goods, as is the case for example when they are placed under customs control.

(d) Moreover, in that connection, it has quite rightly been pointed out that Community law does not regulate all the details involved in the levying of duty and that, in the absence of a comprehensive set of Community rules, it is supplemented by national law, in particular as far as the determination of the competent authorities and the detailed rules for collection are concerned. That was decided in Joined Cases 66, 127 and 128/79<sup>1</sup> with reference to the Council Decision of 21 April 1970, which was also concerned with agricultural levies.

In those circumstances and in view of the finding that the relevant national customs legislation does not provide for forfeiture but only for time-barring of rights, it can scarcely be assumed that the purpose of Regulation No 1276/72 was to provide for the forfeiture of the right in question and to ensure that as a

<sup>1</sup> — Judgment of 27 March 1980 in Joined Cases 66, 127 and 128/79 *Amministrazione delle Finanze v. Ministero Industria, Commercio Estero, Agricoltura e Pesca, Litorececi* (1980 ECR 1237 and 1265).

rule such forfeiture should occur on the day on which the levy becomes payable.

Moreover, that is borne out by the fact that such a rule is not even provided for by Council Regulation (EEC) No 1697/79 (Official Journal 1979, L 197, p. 1), which entered into force on 1 July 1980, applies also to levies (Article 1) and regulates the post-clearance recovery of import or export duties. Article 2 of that regulation provides that duties legally due but payment of which has not been demanded are to be recovered subsequently and that this may be done within a period of three years from the date of entry in the accounts of the amount in question or, where there is no entry in the accounts, from the date on which the custom debt was incurred. Furthermore, Article 7 provides merely that, in cases where duties have not been collected as a result of an *error* by the competent authorities, no interest on overdue payments is to be charged on sums recovered post-clearance. Accordingly, it does not prevent duties from being collected subsequently.

(e) Finally, two further arguments were put forward by the Commission which are significant and lend weight to the view which I have expressed.

- (i) The Commission points out that the regulation to be interpreted is a *Commission* regulation which merely lays down detailed rules for the collection of levies introduced in accordance with the requirements established by the *Council*. If that is borne in mind, it can scarcely be assumed that the Commission would have intended in adopting its implementing rules to provide for the *extinguishment* of a customs debt, the creation of which was regarded as necessary by the Council as a result of serious economic and political considerations. Moreover, the

Commission would have lacked the requisite powers.

- (ii) Secondly, the Commission rightly points out that in principle a customs debt can come into being only on the basis of *objective* factors and not on the basis of the knowledge possessed by the person liable to duty. The supposition that the failure to levy the duties as a result of an error on completion of customs formalities entails the *extinguishment* of the debt is clearly inconsistent with that principle. It would make the operation and implementation of a system of duties, and therefore the achievement of a specific objective of the Council's economic policy, conditional on the awareness, zeal and ability of national officials responsible for enforcement. There is no evidence to suggest that such a state of affairs was intended and that consequently the risk of *discrimination* and lack of uniformity in the application of the legislation on levies had been accepted.

(f) Accordingly, it is clear how the question submitted by the national court should be answered. However, it is equally clear that the answer does not prejudice the question of what consequences may arise from the express assurance which the plaintiff claims to have received from the customs authorities that its exports would be free from duty, as a result of placing reliance upon which it now finds itself in difficulty. That problem cannot be resolved in proceedings for a preliminary ruling but only under national law.

2. There remain to be considered a number of other questions raised by the plaintiff, which are not concerned with the export procedure as such but with the classification of the exported goods.

The plaintiff has emphasized that the exported sugar came from its own bonded warehouse. It was also maintained that the sugar was intended for use as ships' stores and that part of it originated in the Val d'Aosta, which is governed by special arrangements. Evidently, the plaintiff seeks to challenge the view that the sugar which it exported is to be regarded as Community sugar and to show that since in its case no obligation to pay the levy has arisen, the question of interpretation submitted serves no purpose.

The representative of the Italian Government argued against that view at the hearing. He explained in detail that the sugar exported by the plaintiff was in any event to be regarded as Community sugar and that accordingly it had in principle been correct to apply to it the system of export levies. There was evidence that the sugar originated partly in France and partly in Denmark. Moreover, its designation as Community sugar was not lost as a result of the fact that it was originally intended for use as ships' stores and was placed in a private

customs warehouse; this merely exempted it from Italian value added tax and Italian manufacturing tax. Similarly, the fact that part of the exported sugar passed in transit through the Val d'Aosta, a region governed by a special system of taxation, is not material since this did not alter the origin of the sugar for the purposes of Community law.

We should not concern ourselves with those problems any further at this stage. It is not possible to ascertain whether they have already been discussed in the course of the national proceedings and have been dismissed by the national court as immaterial. In any event, they call for an examination of the purely factual questions of origin and storage, which clearly cannot be considered in proceedings for a preliminary ruling. Accordingly, the plaintiff may, if it is convinced of their relevance, raise those matters in the national proceedings and the Italian court hearing the case may then, if it considers that there are compelling reasons for doing so, refer any questions of interpretation relating thereto to the Court of Justice.

3. Therefore I propose that the question submitted by the Tribunale di Genova for a preliminary ruling should be answered as follows:

"The sentence 'they shall be payable at the latest at the time of completion of those formalities' contained in Article 3 of Regulation No 1076/72 is not to be interpreted as meaning that failure to collect the levies at the stated time entails a forfeiture of the right to do so, so as to preclude their subsequent collection".