OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 26 September 2000 [1]

I. Introduction

1. By the question which it referred to the Court of Justice for a preliminary ruling under Article 234 EC, the Tribunale di Genova (District Court, Genoa), Italy, seeks interpretation of Article 244 of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. [2]

II. Facts of the main proceedings

2. The question submitted for a preliminary ruling has arisen in proceedings brought by Siples Srl in liquidation (hereinafter 'Siples') against the Ministero delle Finanze (Ministry of Finance) and the Servizio Riscossione Tributi, Concessione Provincia di Genova (agent of the Tax Collection Service in the Province of Genoa).

3. The Genoa Customs Authority served an order on Siples for payment of the sum of ITL 2 300 million in respect of customs duties and VAT levied on importation concerning imports of mushrooms from Korea in 1993. Siples challenged that order before the Tribunale di Genova.

4. The agent of the Tax Collection Service in the Province of Genoa issued a notice seeking recovery from Siples of the abovementioned amount. Siples challenged that notice and sought suspension of implementation pending a determination by the courts in regard to the customs debt.

5. In connection with this second case, and more specifically with the application for suspension of implementation, the Tribunale di Genova, considering that, under the application national legislation and case-law on the matter, it did not have jurisdiction, ruled that under Article 244 of the abovementioned Code customs authorities may, in certain circumstances, suspend implementation of a decision challenged before them.

6. The national court found that the conditions required under Article 244 afore-

1 — Original language: Spanish.

2 — Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

said for the suspension of enforcement of the claim for recovery appeared to be met, but expressed doubts as to whether the provision was applicable, owing to the fact that it confers power to suspend implementation of the contested decision only on the customs authority and not on the courts.

7. It therefore decided to stay the proceedings and refer a question to the Court of Justice for a preliminary ruling in order to resolve the doubts concerning the interpretation of Article 244 of the Code.

III. The question referred for a preliminary ruling

8. The Tribunale di Genova has forwarded the case-file to the Court of Justice so that it may give a preliminary ruling on the following question of interpretation:

'Is the power to suspend the contested decision provided for in Article 244 of Regulation (EEC) No 2913/92 conferred exclusively on the customs authority or also on the judicial authority before which an appeal has been brought?'

IV. The Community provisions

9. Article 243 of the Community Customs Code is as follows:

'1. Any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.

Any person who has applied to the customs authorities for a decision relating to the application of customs legislation and has not obtained a ruling on that request within the period referred to in Article 6(2) shall also be entitled to exercise the right of appeal.

The appeal must be lodged in the Member State where the decision has been taken or applied for.

2. The right of appeal may be exercised:

(a) initially, before the customs authorities designated for that purpose by the Member States;

(b) subsequently, before an independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States.'

10. For its part Article 244 provides that:

'The lodging of an appeal shall not cause implementation of the disputed decision to be suspended.

The customs authorities shall, however, suspend implementation of such decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

Where the disputed decision has the effect of causing import duties or export duties to be charged, suspension of implementation of that decision shall be subject to the existence or lodging of a security. However, such security need not be required where such a requirement would be likely, owing to the debtor's circumstances, to cause serious economic or social difficulties.'

11. Finally, Article 245 provides that:

'The provisions for the implementation of the appeals procedure shall be determined by the Member States.'

V. The proceedings before the Court of Justice

12. The applicant in the main proceedings, the Governments of Italy and Sweden, and the Commission, submitted written observations within the period prescribed for that purpose by Article 20 of the EC Statute of the Court of Justice. At the hearing on 22 June 2000, the representatives of the Italian Republic and the Commission submitted oral argument.

13. Siples maintains that Italian law confers on the courts power to order suspension of implementation. [3] In its view, the existence of that power is acknowledged in Article 244 of the Code. It states, in that regard, that the reference in that provision to the customs authorities should not be understood to mean that they alone may suspend implementation, but that under it

3 — In that regard, it cites Articles 24 and 113 of the Italian Constitution, and Article 29 of Legislative Decree No 46 of 26 February 1999 (*Gazzetta Ufficiale* of 5 March 1999, suppl. ord. no 53).

the same power as that enjoyed by the courts is extended to them.

14. The Italian Government, taking the view that the dispute relates only to VAT on imports, refers to its observations in Case C-1/99 (*Kofisa*). In those observations, it maintained that there was no provision in the Italian legal system under which the Community Customs Code, in particular Articles 243 and 244 thereof, was rendered applicable to VAT on imports and that, therefore, the Court of Justice has no jurisdiction to give a ruling in this case.

In the alternative, the Italian Government proposes that the Court of Justice should reply to the question referred to it for a preliminary ruling by holding that the right of appeal provided for in Article 243 of the Code should be brought, initially, before the customs authority designated for that purpose by the Member States. Subsequently, a negative decision by the customs authority may be the subject of an appeal before an independent authority, which may also suspend implementation of the contested decision.

15. For its part, the Swedish Government maintains that the rules relating to the administration of justice by the national courts are a matter for the Member States. Consequently, Article 244 of the Code does not regulate the power of the national courts to order suspension of implementation. On the other hand, it may be inferred from the second paragraph of Article 244 that this rule refers only to the power of the *customs authorities* to suspend implementation of a decision concerning customs matters.

The Swedish Government concludes that Article 244 of the Code does not preclude the national legal systems from granting the courts with jurisdiction to determine disputes concerning customs matters the power to order total or partial suspension of implementation of the contested decision.

16. Finally, the Commission observes that the question referred for a preliminary ruling is identical to the second question referred in Case C-1/99 (*Kofisa*). The Commission defends the relevance of the question referred for a preliminary ruling in this case since it considers that, in spite of the fact that a part of the dispute is fiscal in nature, Article 244 of the Code is applicable in so far as the customs duties are concerned.

As far as the substance of the question is concerned, the Commission considers that Article 244 of the Community Customs Code confers the power to suspend implementation, in the circumstances stipulated in the provision, only on the customs authorities. However, that does not preclude the courts from ordering suspension under the rules of procedure currently in force under the national legislation. Finally, the Commission points out that, in accordance with the case-law of the Court of Justice, Community law affords individuals

complete and effective judicial protection, which means, in particular, that interim relief may be granted to ensure the full effectiveness of the definitive judgment.

VI. The question referred for a preliminary ruling

17. By the question referred for a preliminary ruling the Tribunale di Genova seeks to ascertain whether Article 244 of the Code confers the power to order provisional suspension of implementation of the contested decision solely on the customs authority or also on the court before which the appeal has been brought.

18. At the outset the Italian Government's claim that the Court of Justice has no jurisdiction to give a ruling on this matter must be rejected. Unlike the circumstances in Case C-1/99 (*Kofisa*), [4] it is evident from the information provided by the national court that the present case refers not only to VAT on imports but also to customs duties. Therefore, although the dispute is in part of a fiscal nature, Article 244 must be deemed to be applicable in the main proceedings.

19. As regards the substance of the question, Article 244 merely establishes, so far as this case is concerned, that the customs authorities are to order total or partial suspension of implementation of the contested decision where they have legitimate reasons for believing that the decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

20. The wording itself of the article supports the interpretation that the power to order suspension of implementation is conferred only on the customs authorities. Whereas Article 243 expressly lays down the procedure for bringing appeals before both the customs authorities and before an independent authority (a judicial authority or equivalent specialised body), Article 244 provides only for suspension of implementation of the contested decision to be ordered by the customs authorities.

21. On the other hand, it should be noted, as the Commission points out in its observations, that the provision in question constitutes an exception to the general rule (Article 7 of the Code) which establishes that, other than in the circumstances specified in the second paragraph of Article 244, the decisions taken by the customs authorities have immediate effect.

In light of the fact that derogations from Community law are to be interpreted restrictively, the power to suspend implementation of decisions laid down in Article 244 should be afforded only to the authorities expressly mentioned in the provision which, therefore, cannot be interpreted extensively so as to confer the aforementioned power, by analogy, on the courts.

4 — See my Opinion in that case also delivered on 26 September 2000, ECR I-207, I-210.

22. The preconditions laid down by Article 244 of the Code for suspension by the customs authority confirm this interpretation. The rule allows suspension of implementation only in cases in which the customs authorities have good reason to believe that the contested decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned. As the Court of Justice pointed out in *Giloy*, [5] the customs authorities are to suspend implementation of a contested customs decision where only one of the two conditions mentioned is fulfilled. Therefore, the administrative authority may order suspension merely where there is a risk of irreparable damage for the person concerned.

On the other hand, under the Court's case-law concerning the suspension by judicial bodies of a national administrative act adopted pursuant to a rule of Community law [6] the judicial authorities may order suspension only if, amongst other conditions, they entertain serious doubts as to the validity of the Community act and, at the same time, there is urgency, owing to the risk to the applicant of serious and irreparable damage.

23. However, this interpretation of Article 244 does not preclude the judicial authorities seised of the case, pursuant to Article 243 of the Code, from ordering suspension of implementation of the contested decision in accordance with the rules of procedure applicable under national law.

24. At the same time, the Court has held [7] that Community law grants individuals full and effective legal protection, which means, in particular, that their right to interim relief is recognised in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under Community law.

25. In sum, Article 244 of the Code does not preclude the judicial authorities determining a case on appeal under Article 243 from ordering the suspension of implementation of the contested decision, either pursuant to rules of procedure in force under national law or in order to comply with the obligation to secure the full and effective legal protection afforded to individuals under Community law.

5 — Judgment of 17 July 1997 in Case C-130/95 *Giloy* [1997] ECR I-4291.

6 — See the Court's judgments of 21 February 1991 in Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415; of 9 November 1995 in Case C-465/93 *Atlanta and Others (1)* [1995] ECR I-3761 and of 17 July 1997 in Case C-334/95 *Krüger* [1997] ECR I-4517.

7 — See, in particular, the judgments of 19 June 1990 in Case C-213/89 *Factortame* [1990] ECR I-2433, paragraph 21, and of 21 February 1991 in *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* (cited in footnote 6 above), paragraphs 16 to 18, and the orders of 3 May 1996 in Case C-399/95 R *Germany* v *Commission* [1996] ECR I-2441, paragraph 46, and 29 January 1997 in Case C-393/96 P(R) *Antonissen* v *Council and Commission* [1997] ECR I-441, paragraph 36.

VIII. Conclusion

26. In light of the foregoing considerations, I propose that the Court of Justice reply as follows to the question submitted by the Tribunale di Genova:

Article 244 of the Code must be interpreted as meaning that the power to order suspension of implementation of the contested decision is conferred only on the customs authorities. However, that provision does not prevent the judicial authorities determining a case on appeal under Article 243 of the Code from ordering suspension, either pursuant to rules of procedure in force under national law or in order to comply with the obligation to secure the full and effective legal protection afforded to individuals under Community law.