JUDGMENT OF THE COURT (Fifth Chamber)
12 December 1996 *

In Joined Cases C-47/95, C-48/95, C-49/95, C-50/95, C-60/95, C-81/95, C-92/95 and C-148/95,

EIGHT REFERENCES to the Court under Article 177 of the EC Treaty by the Tribunale di Genova for a preliminary ruling in the proceedings pending before that court between

Olasagasti & C. Srl (C-47/95),

Comarcon SNC (C-48/95),

Ghezzi Alimentari Srl (C-49/95),

Fredo Srl (C-50/95),

Cateringros Srl (C-60/95),

Intercod Srl (C-81/95),

Nuova Castelli SpA (C-92/95),

Igino Mazzola SpA (C-148/95)

* Language of the case: Italian.

and

Amministrazione delle Finanze dello Stato,

on the interpretation of Article 1(1) of Commission Regulation (EEC) No 3416/91 of 25 November 1991 on certain residual duties applicable in 1991 in the framework of the successive reduction in accordance with the Act of Accession of Spain and Portugal (OJ 1991 L 324, p. 11), and of Article 5 of Council Regulation (EEC) No 1679/79 of 24 July 1979 on the post-clearance recovery of import 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 (OJ 1979 L 197, p. 1),

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, L. Sevón, D. A. O. Edward (Rapporteur), P. Jann and M. Wathelet, Judges,

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Olasagasti & C. Srl, by Alessandro Ghibellini, of the Genoa Bar,

— Igino Mazzola SpA, by Gianfranco Barabino, of the Genoa Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Service of the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo M. Braguglia, Avvocato dello Stato,

— the Commission of the European Communities, by Antonio Aresu, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Italian Government and the Commission at the hearing on 11 July 1996,

after hearing the Opinion of the Advocate General at the sitting on 26 September 1996,

gives the following

Judgment

1 By orders of 26 January, 16, 17 and 23 February, 9 and 30 March 1995, received at the Court Registry between 23 February and 12 May 1995, the Tribunale di Genova (District Court, Genoa) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Article 1(1) of Commission Regulation (EEC) No 3416/91 of 25 November 1991 on certain residual duties applicable in 1991 in the framework of the successive reduction in accordance with the Act of Accession of Spain and Portugal (OJ 1991 L 324, p. 11) and of Article 5 of Council Regulation (EEC) No 1679/79 of 24 July 1979 on the post-clearance recovery of import 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 (OJ 1979 L 197, p. 1).

2 Those questions were raised in proceedings brought by Olasagasti & C. Srl (C-47/95), Comarcon SNC (C-48/95), Ghezzi Alimentari Srl (C-49/95), Fredo Srl (C-50/95), Cateringros Srl (C-60/95), Intercod Srl (C-81/95), Nuova Castelli SpA (C-92/95) and Igino Mazzola SpA (C-148/95) against the Italian authorities concerning the post-clearance recovery of customs duties on imports of preserved tuna in olive oil from Spain between 30 November 1991 and 31 December 1992.

3 Article 75(1) of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23, hereinafter 'the Act of Accession') provides for the progressive abolition of customs import duties between the Community of Ten and Spain. That abolition is to proceed in eight stages for products in general and in different numbers of stages for particular products specified in subparagraphs (a), (b), (c) and (d) of that provision.

4 Article 75(4) provides that, for products subject to the common organization of markets, it may be decided, in accordance with the prescribed procedure, that the Kingdom of Spain or the Community of Ten is to abolish or suspend customs duties in whole or in part, according to the circumstances, on the products mentioned in that provision.

5 Article 75 forms part of Chapter 3, entitled 'Agriculture'. Article 67(1), which also appears in that Chapter, provides:

'This Chapter concerns agricultural products with the exception of products falling within Regulation (EEC) No 3796/81 on the common organization of the market in fishery products'.

6 In implementation of Article 75(4) of the Act of Accession, Article 1 of Regulation No 3416/91 provides:

'1. The residual duties applicable to imports of the agricultural products listed in the Annex to Regulation (EEC) No 3835/90 into the Community of Ten in accordance with Articles 75(1) and 243(1) of the Act of Accession are hereby totally suspended until 31 December 1991.

The suspension provided for in the first subparagraph shall not apply to the products in Chapter 15 of the Combined Nomenclature referred to in Article 94(1) of the Act of Accession.

2. Should the Common Customs Tariff duties on products originating in Bolivia, Colombia, Ecuador and Peru and listed in the Annex to Regulation (EEC) No 3835/90 be suspended again, the provisions of paragraph 1 shall apply *mutatis mutandis* during the duration of the suspension.'

7 According to the third recital in its preamble, Regulation No 3416/91 was intended to ensure that agricultural products imported from Spain and Portugal were not treated less favourably than the same products covered by Council Regulation (EEC) No 3835/90 of 20 December 1990 amending Regulations (EEC) No 3831/90, (EEC) No 3832/90 and (EEC) No 3833/90 in respect of the system of generalized tariff preferences applied to certain products originating in Bolivia, Colombia, Ecuador and Peru (OJ 1990 L 370, p. 126). Under Article 3 of that regulation, Common Customs Tariff duties are to be totally suspended for products listed in the Annex to it, originating in the four countries in question. Those products include prepared and preserved fish (heading 16.04 of the Combined Nomenclature).

8 Council Regulation (EEC) No 3587/91 of 3 December 1991 (OJ 1991 L 341, p. 1) extended until 31 December 1992 the preferential regime introduced by Regulation No 3835/90.

9 Between 30 November 1991 and 31 December 1992, the plaintiffs in the main proceedings imported into Italy preserved tuna in olive oil from Spain. Initially, customs duties were not charged on those imports since the Italian authorities considered that the goods in question were eligible for the suspension under Regulation No 3416/91. The fact that the suspension was fully operational had been confirmed by Circulars No 6507/UCTD of 29 November 1991 and No 1914/UCTD of 22 February 1992. However, following a notice issued by the Commission of the European Communities (note of 14 October 1992 to all Taric correspondents in the Member States), the Italian authorities issued Circular No 1632/III of 27 October 1992 indicating that the suspension was applicable only to agricultural products other than fish.

10 In that notice the Commission stated that certain Member States entertained doubts as to the duties applicable to fishery products and went on to confirm that the suspension of customs duties provided for by Article 1 of Regulation No 3416/91 was available only for agricultural products consigned from Portugal and Spain to the Community covered by Article 243(1) of the Act of Accession in the case of Portugal and Article 75(1) thereof in the case of Spain.

11 In 1993 the customs authorities in Ventimiglia and Genoa then took the view that the exemption under Regulation No 3416/91 did not apply to fishery products falling within heading 16.04 of the Combined Nomenclature, since Article 1 of that regulation referred expressly to Article 75 of the Act of Accession and not to Article 173, which covers the products in question. Consequently, by separate orders, they required the plaintiffs in the main proceedings to pay the outstanding duties, together with default interest.

12 The plaintiffs then brought separate actions before the Tribunale di Genova against those orders, claiming that under the Community legislation agricultural products included fishery products and related products of first-stage processing, such as the 'prepared and preserved fish' mentioned in the Annex to Regulation No 3835/90. They also claimed that the conditions laid down in Article 5(2) of Regulation No 1679/79 were fulfilled.

13 Regulation No 1679/79, which applied until 31 December 1993, on which date it was superseded by the Community Customs Code laid down by Council Regulation (EEC) No 2913/92 of 12 October 1992 (OJ 1992 L 302, p. 1), provided that, where the customs authorities found that duties legally due had not been required of the person liable for payment, they were to take action to recover them within three years.

14 However, Article 5 of Regulation No 1679/79 provided:

'1. No action may be taken by the competent authorities for recovery where the amount of the import duties or export duties subsequently found to be lower than the amount legally due was calculated:

— either on the basis of information given by the competent authorities themselves which is binding on them,

— or on the basis of provisions of a general nature subsequently invalidated by a court decision.

2. The competent authorities may refrain from taking action for the post-clearance recovery of import duties or export duties which were not collected as a result of an error made by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having for his part acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration is concerned.

The cases in which the first subparagraph can be applied shall be determined in accordance with the implementing provisions laid down in accordance with the procedure provided for in Article 10.'

15 In those circumstances, the national court stayed proceedings and, in the various actions pending before it, referred the following questions to the Court for a preliminary ruling:

(1) Does the suspension of customs duties as provided for in Article 1(1) of Regulation (EEC) No 3416/91 of 25 November 1991, in respect of imports from Spain, for the benefit of the agricultural products listed in the Annex to Regulation (EEC) No 3835/90, also apply to imports from that country of tuna in olive oil?

(2) May the competent customs authorities, pursuant to Article 5(1) and (2) of Regulation (EEC) No 1697/79 of 24 July 1979, as supplemented by Regulation (EEC) No 1715/90 of 20 June 1990, and Article 2 of implementing Regulation (EEC) No 2164/91 of 23 July 1991, initiate action for the recovery of customs duties which were not collected at the time of importation because they were regarded as having been totally suspended as a result of an erroneous interpretation of the Community legislation in force, but which subsequently proved to be due on the basis of a different interpretation of the same Community legislation provided by the Commission after consulting its Legal Service, where the person liable observed all the provisions laid down by the rules in

force as far as his customs declaration was concerned and it does not appear that that person was aware that the interpretation initially given to the Community legislation by the Italian authorities was erroneous?

16 By order of the President of the Court of Justice of 16 June 1995, Cases C-47/95, C-48/95, C-49/95, C-50/95, C-60/95, C-81/95, C-92/95 and C-148/95 were joined for the purposes of the written procedure, the oral procedure and judgment.

The first question

17 Article 38 of the EC Treaty includes fishery products in the category of agricultural products.

18 Although using the term 'agricultural products' in the same sense as does the Treaty, Chapter 3 of Part Four of the Act of Accession lays down a first regime for agricultural products other than fishery products and Chapter 4 lays down a second regime for agricultural products of fisheries.

19 It must be pointed out that the residual duties suspended by Article 1(1) of Regulation No 3416/91 are those referred to in Article 75(1) of the Act of Accession, which, being included in Chapter 3 of Part Four thereof, relates only, by virtue of Article 67(1), to agricultural products other than fishery products covered by the common organization of the market introduced by Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products (OJ 1981 L 379, p. 1).

20 Provisions granting suspension of customs duties are to be interpreted strictly according to their terms and may not therefore be applied, contrary to their wording, to products which they do not mention (see, to that effect, Case 58/85 *Ethicon* v *Hauptzollamt Itzenhoe* [1986] ECR 1131, paragraph 13).

21 Whilst it is true, first, that according to the third recital in its preamble, Regulation No 3416/91 sought to ensure that agricultural products imported from Spain and Portugal were treated no less favourably than the same products imported from the four non-member countries mentioned in Regulation No 3835/90 and granted preferential treatment, and, second, that preserved tuna in olive oil ranks among the agricultural products listed in the Annex to the latter regulation, the fact nevertheless remains that the wording of Article 1(1) of Regulation No 3416/91 makes no reference to Article 173 of the Act of Accession, which provides for the progressive abolition of customs duties on fishery products.

22 In that regard, it should be noted that the same regime was laid down for Portugal. Article 1(1) of Regulation No 3416/91 refers to Article 243(1) of the Act of Accession and that provision, which is identical to Article 75(1), covers agricultural products other than fishery products but does not mention Article 360, which relates to fishery products.

23 Furthermore, the suspension of customs duties by Article 1(1) of Regulation No 3416/91 was a matter decided by the Commission on the basis of Article 75(4) of the Act of Accession, which, like Article 243(4) concerning Portugal, empowers it to suspend customs duties on the products mentioned in that article. However, no provision of the Act of Accession empowers the Commission to suspend duties on fishery products.

24 As the Advocate General observes in point 18 of his Opinion, the suspension of customs duties on fishery products requires an act of the Council. The Commission therefore has no competence to suspend such duties in relation to fishery products.

25 It follows that the suspension of residual customs duties applicable to imports from Spain into the Community of Ten under Article 75(1) of the Act of Accession, provided for in Article 1(1) of Regulation No 3416/91 for the agricultural products listed in the Annex to Regulation No 3835/90, does not apply to imports of preserved tuna in olive oil from Spain.

The second question

26 The national court's second question is whether Article 5 of Regulation No 1679/79 must be interpreted as meaning that the competent customs authorities may not initiate action for the recovery of customs duties not collected at the time of importation as a result of an erroneous interpretation by those authorities of the applicable Community provisions, where the person liable fulfilled all his Community obligations in making his customs declaration and does not appear to have been aware that the interpretation adopted was incorrect.

27 Article 5 of Regulation No 1679/79 provides for two distinct regimes.

28 The first regime, provided for in Article 5(1), covers situations in which the amount of duty found subsequently to be lower than the amount legally due was calculated on the basis of provisions of a general nature subsequently invalidated by a court decision (second indent) or on the basis of information given by the customs authorities themselves which is binding on them (first indent).

29 According to settled case-law, such information can only be measures relating to the tariff classification of goods addressed by the competent authorities directly to a particular trader in a specific case (see, to that effect, Case C-80/89 *Behn Verpackungsbedarf* [1990] ECR I-2659, paragraph 22).

30 Moreover, as the Court indicated in Case C-371/90 *Beirafrio* v *Alfândega do Porto* [1992] ECR I-2715, paragraph 15, the category of acts of customs authorities covered by that provision was exhaustively defined by Council Regulation (EEC) No 1715/90 of 20 June 1990 on the information provided by the customs authorities of the Member States concerning the classification of goods in the customs nomenclature (OJ 1990 L 160, p. 1).

31 Since the classification of the goods at issue in the main proceedings was not mentioned in Circulars Nos 6507/UCTD and 1914/UCTD and the latter do not constitute measures concerning the tariff classification of goods addressed directly by the competent authorities to a particular trader in a specific case, Article 5(1) of Regulation No 1679/79 is not applicable to circumstances such as those in issue in this case.

32 The second regime, provided for by Article 5(2) of the same regulation, makes the right of the person liable to pay customs duties not to have post-clearance recovery effected by the competent authorities subject to three conditions. That provision is the subject of settled case-law (see, most recently, Joined Cases C-153/94 and C-204/94 *Faroe Seafood and Others* [1996] ECR I-2465).

33 First, the competent authorities themselves must have made an error. In the main proceedings the national court may, irrespective of the question whether or not Circulars Nos 6507/UCTD and 1914/UCTD were binding, take account of the fact that, initially, the competent authorities in Italy confirmed that while the regulation was in force they would not seek to recover duty on imports of goods such as preserved tuna in olive oil from Spain.

34 Second, the error committed by the competent authorities must be such that it could not reasonably have been detected by the person liable, notwithstanding his professional experience and the care expected of him. In that respect, the national court may first take account of the complexity of the provisions applicable in this case and in particular the fact that the expression 'agricultural products' used in Article 38 of the Treaty includes fishery products. It may then take into consideration the objective of Regulation No 3416/91, namely suspension of duties on products from Spain on the same terms as those applied under another regulation to certain products — including preserved fish — originating in Bolivia, Colombia, Ecuador and Peru. Finally, it may take account of the fact that Regulation No 3416/91 expressly mentioned the regulation suspending duties on products originating in the four South American countries mentioned above.

35 Third, under Article 5 of Regulation No 1697/79 the person liable must have acted in good faith and complied with all the provisions laid down by the legislation in force so far as his customs declaration is concerned. That too is a matter for the national court.

36 Having regard to the foregoing considerations, the answer to the second question must be that it is for the national court to establish whether the conditions laid down in Article 5(2) of Regulation No 1679/79 are fulfilled. In determining whether or not the error committed by the authorities could reasonably have been detected by the person liable account should be taken, in particular, of the nature of the error, the professional experience of the trader concerned and the degree of

care exercised by him. The relevant factors to be taken into account include the complexity of the legislation, the terms in which the objective of the provisions at issue is expressed, recurrence of the error in question in other measures of the Member State concerned and any divergence of views between the Member States as to the proper interpretation of the relevant provisions.

Costs

37 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action/proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Tribunale di Genova, by orders of 26 January, 16, 17 and 23 February, 9 and 30 March 1995, hereby rules:

1. **The suspension of the residual customs duties applicable to imports from Spain into the Community of Ten in accordance with Article 75(1) of the Act of Accession, provided for in Article 1(1) of Commission Regulation (EEC) No 3416/91 on certain residual duties applicable in 1991 in the framework of the successive reduction in accordance with the Act of Accession of Spain and Portugal for the agricultural products listed in the Annex to**

Council Regulation (EEC) No 3835/90 of 20 December 1990 amending Regulations (EEC) No 3831/90, (EEC) No 3832/90 and (EEC) No 3833/90 in respect of the system of generalized tariff preferences applied to certain products originating in Bolivia, Colombia, Ecuador and Peru, does not apply to imports of preserved tuna in olive oil from Spain.

2. **It is for the national court to establish whether the conditions laid down in Article 5(2) of Council Regulation No 1679/79 on the post-clearance recovery of import 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 are fulfilled. In determining whether or not the error committed by the authorities could reasonably have been detected by the person liable account should be taken, in particular, of the nature of the error, the professional experience of the trader concerned and the degree of care exercised by him. The relevant factors to be taken into account include the complexity of the legislation, the terms in which the objective of the provisions at issue is expressed, recurrence of the error in question in other measures of the Member State concerned and any divergence of views between the Member States as to the proper interpretation of the relevant provisions.**

Moitinho de Almeida Sevón Edward

Jann Wathelet

Delivered in open court in Luxembourg on 12 December 1996.

R. Grass J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber