

In Case 77/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the First Civil Division of the Corte Suprema di Cassazione [Supreme Court of Cassation] for a preliminary ruling in the proceedings pending before that court between

SRL CILFIT in liquidation, and 54 Others, Rome,

and

MINISTERO DELLA SANITÀ [Ministry of Health], Rome,

and

LANIFICIO DI GAVARDO SPA, Milan,

and

MINISTERO DELLA SANITÀ, Rome,

on the interpretation of Regulation No 827/68 (EEC) of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (Official Journal, English Special Edition 1968 (I), p. 209),

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, Lord Mackenzie Stuart and G. Bosco, Judges,

Advocate General: G. F. Mancini  
Registrar: P. Heim

gives the following

## JUDGMENT

## Facts and Issues

The order making the reference, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

Regulation No 827/68 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (Official Journal, English Special Edition 1968 (I), p. 209).

## I — Facts and written procedure

By summons served on the Italian Minister for Health on 18 September 1974, the plaintiffs in the main proceedings brought an action for the recovery of sums which they had paid in respect of health-inspection levies on the importation of certain quantities of wool. The charge, which had been 30 lire per quintal of imported wool since 1947, was increased to 700 lire by Law No 30 of 30 January 1968. According to the plaintiffs, the increase from 30 lire to 700 lire was due to a material transcription error which occurred during the legislative process. That error was corrected by Law No 1239 of 30 December 1970, which reduced the amount in question. However, since the 1970 law did not take effect retroactively, the plaintiffs applied for repayment of the difference between the two amounts for the period between 1968 and 1970.

After the Tribunale di Roma [District Court, Rome] had dismissed their application, the plaintiffs in the main proceedings lodged an appeal, maintaining *inter alia* that the 1968 law was inapplicable following the adoption of

That regulation, Article 2 of which provides that in trade with non-member countries the levying of any charge having effect equivalent to a customs duty is prohibited, applies by virtue of Article 1 thereof to the products listed in the Annex to the regulation. Those products include:

“ex 05.15 B Animal products not elsewhere specified or included; dead animals of Chapter I, unfit for human consumption”.

Exactly like Annex II to the Treaty, the Annex to Regulation No 827/68 specifies the products concerned by reference to the Common Customs Tariff description. Chapter 5 of the tariff forms part of Section I — live animals; animal products — which includes *inter alia* Live animals (01), meat, (02), fish, crustaceans and molluscs (03), milk and dairy products (4) and products of animal origin not elsewhere specified or included (05), such as unworked hair (05.01), fish waste (05.05); ivory (05.09), natural sponges (05.13) and the residual category under heading 05.15 mentioned above. Note 1 to Chapter 5 states expressly that that chapter does not include “animal textile materials, other than horsehair and horsehair waste (Section XI)”.

Section XI of the Common Customs Tariff includes textiles and textile articles. That section includes *inter alia* silk (50), man-made fibres (51) and wool (53).

The plaintiffs in the main proceedings claimed before the Corte d'Appello [Court of Appeal], Rome, that wool is included among the animal products for which Regulation No 827/68 prohibits the levying of charges having equivalent effect to a customs duty. By judgment of 12 December 1978 the Corte d'Appello rejected that argument, upholding the view put forward by the Ministry of Health to the effect that wool falls within Chapter 53 of the Common Customs Tariff and not within heading 05.15 B of the Annex to Regulation No 827/68.

On 4 October 1979 the plaintiffs in the main proceedings appealed against that judgment to the Corte di Cassazione. In its submissions, seeking dismissal of the appeal, the Ministry of Health invited the Corte di Cassazione itself to determine the question thus raised, maintaining that the circumstances of fact were so obvious as to exclude any possibility of interpretative doubt and therefore to render unnecessary any request for a preliminary ruling from the Court of Justice. The plaintiffs on the other hand maintained that since a question as to the interpretation of a regulation had been raised before a court against whose decisions there was no judicial remedy under national law, the court could not, by virtue of the third paragraph of Article 177 of the Treaty, escape the obligation to bring the matter before the Court of Justice.

In view of those conflicting arguments, by order of 27 March 1981 the Italian

Corte di Cassazione stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

“Does the third paragraph of Article 177 of the EEC Treaty, which provides that where any question of the same kind as those listed in the first paragraph of that article is raised in a case pending before a national court or tribunal against whose decisions there is no judicial remedy under national law that court or tribunal must bring the matter before the Court of Justice, lay down an obligation so to submit the case which precludes the national court from determining whether the question raised is justified or does it, and if so within what limits, make that obligation conditional on the prior finding of a reasonable interpretative doubt?”

In its judgment of 6 October 1982 in Case 283/81 *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health* [1982] ECR 3415, the Court gave the following ruling on that question:

“The third paragraph of Article 177 of the EEC Treaty must be interpreted as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court of Justice or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Com-

munity law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community.”

On the basis of that judgment, the Corte di Cassazione considered that the arguments regarding the problem of interpretation of Regulation No 827/68 raised by the parties were of such a nature that it was not possible for a national court of last instance to apply Community law without submitting a request to the Court of Justice for a preliminary ruling.

By order of 22 February 1983, the Corte di Cassazione stayed the proceedings and asked the Court of Justice to give a preliminary ruling under the first paragraph of Article 177 of the Treaty on the following question:

“Is wool included, under the heading ‘Animal products not elsewhere specified or included’ for which the Common Customs Tariff heading is 05.15, among the products covered by the common organization of the markets provided for by Regulation (EEC) No 827/68 of the Council of 28 June 1968 and listed in the Annex thereto?”

In the statement of grounds of the order making the reference, the Italian Corte di Cassazione states that the correct application of Community law to the question raised in the main proceedings is not so obvious as to leave no scope for any reasonable doubt. It states that the effect of the view put forward by the Ministry of Health, whereby for the purposes of the correct identification of “animal products not elsewhere specified or included” reference should be made to the detailed description in the Common Customs Tariff nomenclature,

is to give the expression in question a limited scope, by confining it to products of animal origin not specified or included in other headings of the Customs Tariff. The court making the reference wonders whether such an interpretation of the above-mentioned expression in fact corresponds to the scope of Article 38 (1) of the Treaty which defines “agricultural products” as “products of the soil, of stock farming and of fisheries and products of first-stage processing directly related to these products”. Thus, the interpretation put forward by the wool companies to the effect that the expression “not elsewhere ... specified” means: not specified elsewhere in the Annex, may be justified.

The order making the reference was received at the Court Registry on 9 May 1983.

Pursuant to Article 20 of the Protocol on the Statute of the Court, written observations were submitted by the plaintiffs in the main proceedings, represented by Guido Scarpa of the Milan Bar and Giorgio Stella Richter of the Rome Bar, by the Government of the Italian Republic, represented by the *Avvocato dello Stato*, Sergio Laporta, and by the Commission of the European Communities, represented by its Legal Adviser, Gianluigi Campogrande, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By order of 9 November 1983 the Court decided pursuant to Article 95 (1) of the Rules of Procedure to assign the case to the First Chamber.

II — Summary of the written observations submitted to the Court

A — *Observations of the plaintiffs in the main proceedings*

According to the wool undertakings, *the plaintiffs in the main proceedings*, there is no doubt that the wool in question in the main proceedings is included among the products listed in the Annex to Regulation No 827/68, namely under the heading "Animal products not elsewhere specified or included". In support of that view, they emphasize in the first place that wool should be treated as an agricultural product within the meaning of Article 38 of the Treaty since by its very nature it is a product of first-stage processing of animal origin. The plaintiffs add that certain provisions of Italian law likewise treat wool as a product of animal origin.

The plaintiffs in the main proceedings go on to point out that, in pursuance of Article 38 (3) of the Treaty, the Council adopted in 1962 and thereafter certain regulations setting up a common organization of the agricultural markets in specific products. According to the plaintiffs, Regulation No 827/68 falls within that category by bringing within the common organization of the markets products of animal origin not specified or included elsewhere. In fact, the regulation in question as it were completes the phase of specific regulations (product by product) by extending the Community régime to all products of animal origin not specified or included elsewhere, that is to say not specified or included in the specific regulations. It was necessary in respect of those residual agricultural products to abolish charges having an equivalent effect on imports

coming from non-member countries in the same way as the specific regulations had done for the other agricultural products.

Accordingly, the only question is whether or not wool is to be regarded as an agricultural product within the meaning of Article 38 of the Treaty and as an "animal product" within the meaning of the Annex to Regulation No 827/68. An affirmative answer to that question is called for.

B — *Observations of the Italian Government*

According to the *Government of the Italian Republic* Regulation No 827/68 was only able to set up a common organization of the market for categories of products regarded as agricultural products by virtue of Article 38 (3) of the Treaty and included as such in the list in Annex II thereto. The Italian Government observes that in Annex II to the Treaty the descriptions of products of animal origin are based exactly on the Customs Cooperation Council nomenclature and correspond to those subsequently adopted in the Common Customs Tariff. Identical descriptions appear in the Annex to Regulation No 827/68. In this case, both in Annex II of the Treaty and in the Annex to the above-mentioned regulation, the category "Animal products not elsewhere specified or included" is identified by reference to tariff heading 05.15. If that category is the same as that specifically covered by heading 05.15 and if, in turn, the context thereof corresponds to that of the Common Customs Tariff, any assessment as to whether or not a particular product of animal origin is included under heading 05.15 must necessarily take account of the expla-

natory notes to Chapter 5 of the Common Customs Tariff. The Italian Government observes that it is apparent, without any possibility of error, from Note No 1 to that chapter that no animal textile materials other than horsehair and horsehair waste can be regarded as falling within any of the 15 tariff headings which that chapter comprises. Moreover, specific provision is made for wool in Chapter 53 of the Common Customs Tariff.

Consequently, the Italian Government considers that wool is not covered by the description "Animal products not elsewhere specified or included" given in the Annex to Regulation No 827/68.

### *C — Observations of the Commission*

The Commission of the European Communities takes the same position as that adopted by the Italian Government. It also emphasizes that Regulation No 827/68 cannot apply, by virtue of Article 38 (3) of the Treaty, to products other than those listed in Annex II to the Treaty. It states that the description in question, as it appears in the Annex to Regulation No 827/68, repeats to the letter the description given in Annex II. Therefore, the Commission considers that the problem raised by the national court is that of determining whether wool falls within heading "05.15 Animal products not elsewhere specified or included" in Annex II to the Treaty.

As regards the interpretation of Annex II to the Treaty, the Commission goes on to observe that in its judgment of 25 March 1981 in Case 61/80 *Coöperatieve Stremsel* [1981] ECR 851 the Court stated that "Since there are no Community provisions explaining the concepts contained in Annex II to the EEC Treaty and that annex adopts word for word certain headings of the

Customs Cooperation Council nomenclature, it is appropriate to refer to the said Explanatory Notes in order to interpret that annex".

The Commission adds that, according to Rule 3 (a) of the Explanatory Notes to the above-mentioned nomenclature, the heading which provides the most specific description must take priority over headings providing a more general description, and that it was in application of that principle that the Court took the view in the above-mentioned judgment that the inclusion of a given product of animal origin under a specific heading of the Customs Cooperation Council nomenclature meant that that product did not fall within general heading 05.15. Applying that interpretative criterion, the Commission points out that wool is the subject of a specific chapter in the nomenclature, Chapter 53.

In consequence, the Commission proposes that the question submitted by the Italian Corte di Cassazione be answered as follows:

"Wool is not included in the products covered by the common organization of the markets established by Regulation (EEC) No 827/68 of the Council of 28 June 1968."

### III — Oral procedure

The plaintiff companies in the main action, represented by Guido Scarpa, of the Milan Bar, and the Commission of the European Communities, represented by its Legal Adviser, Gianluigi Campogrande, acting as Agent, presented oral argument at the sitting on 8 December 1983.

The Advocate General delivered his opinion at the sitting on 9 February 1984.

## Decision

- 1 By order of 22 February 1983, received at the Court on 3 May 1983, the Corte Suprema di Cassazione referred a question for a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of Regulation No 827/68 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty.
  
- 2 That question was raised in an action brought by the company CILFIT and 54 other companies, importers of wool, established in Italy, for the recovery of sums which they had paid in respect of health-inspection levies. The plaintiffs in the main action maintain that the Italian legislation on health-inspection levies could not apply to imports of wool from non-member countries since such goods were made subject to a common organization of the market by Regulation No 827/68, Article 2 of which provides that in trade with non-member countries the levying of any charge having effect equivalent to a customs duty is prohibited.
  
- 3 Regulation No 827/68 applies, according to Article 1 thereof, to the products listed in the annex thereto. They include "ex 05.15 B animal products not elsewhere specified or included". The national court wishes to know whether wool comes under that category of product.
  
- 4 The recitals in the preamble to Regulation No 827/68 state that a common organization of the market, involving a special system of rules, has been established for many of the products listed in Annex II to the Treaty and that appropriate provisions must also be adopted, within the framework of the common organization of the markets, so as to permit the establishment of a single market for all the other products listed in that annex.

- 5 It follows that the object of the regulation is to establish a common organization of the markets for products in Annex II to the Treaty not yet governed by other common organizations. Annex II contains, according to Article 38 (3) of the Treaty, the list of products subject to the provisions of Articles 39 and 46 of the Treaty relating to the Common Agricultural Policy.
  
- 6 Although therefore Article 1 of the regulation provides that the common organization established by the regulation is to cover the products listed in the annex thereto and although that annex contains, *inter alia*, the following description: “ex 05.15 B animal products not elsewhere specified or included; dead animals of Chapter I, unfit for human consumption”, those words cannot have a meaning different from that which they have in Annex II to the Treaty which also contains them.
  
- 7 Since there are no Community provisions explaining the concepts contained in Annex II to the Treaty and that annex adopts word for word certain headings of the Common Customs Tariff, it is appropriate to refer to the established interpretations and methods of interpretation relating to the Common Customs Tariff in order to interpret the annex. Annex II itself refers moreover to the headings and subheadings of the tariff to identify the products listed.
  
- 8 Chapter V of the Common Customs Tariff, which includes the subheading, 05.15 B, at issue in this case, forms part of Section I of the tariff, live animals, animal products, which covers *inter alia* live animals, meat, fish, crustaceans and molluscs, milk and dairy products and “products of animal origin, not elsewhere specified or included”; the latter fall under Chapter 5 which includes *inter alia* human hair, fish waste, ivory and natural sponges. Wool is the subject of Chapter 53, “wool and other animal hair”, which comes under Section XI “textiles and textile articles”.

- 9 To exclude all risk of misunderstanding about the tariff classification of wool Note 1 to Chapter 5 provides that the chapter does not cover “animal textile materials, other than horsehair and horsehair waste (Section XI)”.
- 10 Accordingly subheading 05.15 B of the Common Customs Tariff does not include wool which therefore cannot be referred to by the expression “ex 05.15 B animal products not elsewhere specified or included” in Annex II to the Treaty and the annex to Regulation No 827/68.
- 11 The plaintiffs in the main action pointed out that an interpretation which would result in excluding wool from the scope of Annex II and thus from Articles 39 to 46 of the Treaty entails the risk of disregarding the scope of Article 38 (1) of the Treaty according to which the Common Market extends to agricultural products, that is products of the soil, of stock farming and of fisheries and products of first-stage processing directly related to these products. Wool undoubtedly comes under the latter category, which means that the agricultural regulations must be interpreted in such a manner as to include wool in the common organizations of the markets.
- 12 The Italian Government and the Commission have nevertheless rightly contended that although Article 38 (1) gives a general definition of the term “agricultural products” Article 38 (3) expressly provides that the provisions of the Treaty relating to the Common Agricultural Policy apply to the products listed in Annex II to the Treaty. Within two years of the entry into force of the Treaty, however, the Council could decide what products were to be added to that list; in doing so the Council had to keep within the scope of the general definition of agricultural products contained in Article 38 (1).
- 13 The question asked must therefore be answered to the effect that the phrase “ex 05.15 B animal products not elsewhere specified or included” contained in the Annex to Regulation No 872/68 does not cover wool.

Costs

- 14 The costs incurred by the Government of the Italian Republic and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Corte Suprema di Cassazione by order of 22 February 1983, hereby rules:

The phrase "ex 05.15 B, animal products not elsewhere specified or included" contained in the Annex to Regulation No 827/68 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty does not cover wool.

Koopmans

Mackenzie Stuart

Bosco

Delivered in open Court in Luxembourg on 29 February 1984.

J. A. Pompe  
Deputy Registrar

T. Koopmans  
President of the First Chamber