Information on the Court of Justice of the European Communities

1979 – III

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

III

1979

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(as from 1 April 1979)

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J U D G M E N T S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

Judgment of 5 April 1979

Case 11/78

Italian Republic v Commission of the European Communities

(Opinion delivered by Mr Advocate General Mayras on 1 February 1979)

1. Agriculture - Processed products - Monetary compensatory amounts - Application - Condition - Incidence of compensatory amounts applicable to basic products on price of processed products
(Regulation No. 974/71 of the Council, Art. 2(2))

2. Agriculture - Monetary compensatory amounts - Groups of products - Application - Commission - Discretion

1. In order to justify the application of compensatory amounts to processed products, it is sufficient for the compensatory amounts applicable to the basic products to have a considerable incidence on the price of the processed products.

2. The Commission is not bound to fix compensatory amounts for all the products in a group, but may assess the need to apply compensatory amounts either by products or by groups of products.

NOTE

The Italian Republic lodged an application for the annulment of Commission Regulation No. 2657/77 on the application of monetary compensatory amounts to certain products not covered by Annex II to the Treaty and of Regulation No. 800/77 amending, as regards products which are subject to monetary compensatory amounts, Regulation (EEC) No. 572/76 fixing monetary compensatory amounts, and to the extent to which, through Regulation No. 2657/77, it provides for the subsequent application, after 31 December 1977, of the monetary compensatory amounts to certain products falling under specified tariff subheadings.

The products referred to in Regulation No. 800/77 are: sugar confectionery, not containing cocoa, chewing-gum, white chocolate, ice-cream, whether or not containing cocoa, biscuits etc.

According to Regulation No. 800/77 the fact that the basic agricultural products from which those products are obtained were subject to monetary compensatory amounts of a high level means that "the difference in prices of the basic products has become so marked as to have a considerable effect on the conditions of competition of the processed products, having regard to the characteristics of the market in certain sensitive products".

Article 2 of that regulation provided that in respect of the said processed products "monetary compensatory amounts shall not apply beyond 31 December 1977".

The Italian Government notified the Commission by a letter of 24 October 1977 that it objected to the continued application of Regulation No. 800/77. Nevertheless, it was decided by Regulation No. 2657/77 of 30 November 1977 that the regulation would remain in force for an indefinite period.

The Italian Government claims that the Commission did not appraise the risk of disturbances in the trade in agricultural products but appraised instead the risk of distortion of competition in respect of the products in question. Furthermore, the statement of reasons on which Regulation No. 800/77 is based is defective in that it fails to take account of the risk of disturbances in the trade in agricultural products.

Examination of the regulations applied shows that the statement of reasons on which the regulation in question is based indicates clearly that the application of such compensatory amounts to the basic products may have a considerable effect on the prices of the processed products and accordingly that complaints must be dismissed as unfounded.

The Italian Government also contests Regulation No. 800/77. In the part concerning the products in question the regulation breaches the principle of proportionality since the application of monetary compensation is neither necessary nor proportionate to the objective of resolving the difficulties encountered by the Irish processing industries in the limited sector of trade with the United Kingdom.

The Court stated that the Commission was not obliged to fix compensatory amounts for all the products in a group but merely to appraise the need for their application, either to individual products or to groups of products.

The Court dismissed the application and ordered the Italian Republic to pay the defendant's costs.

A number of references for preliminary rulings were made concerning the validity of Commission Regulation (EEC) No. 800/77. They were made in:

Cases 151/77, 95/78 and 157/78.

Judgment of 5 April 1979

Case 151/77

Peiser v Hauptzollamt Hamburg-Ericus

(Opinion delivered by Mr Advocate General Mayras on 1 February 1979)

1. Agriculture - Processed products not coming under Annex II to the EEC Treaty - Monetary compensatory amounts - Application - When permissible - Specific arrangement under Article 235 of the EEC Treaty
(Regulation No. 974/71 of the Council, Art. 1(2))

2. Agriculture - Processed products - Monetary compensatory amounts - Application - Condition - Incidence of compensatory amounts applicable to basic products on price of processed products
(Regulation No. 974/71 of the Council, Art. 2(2))

3. Agriculture - Monetary compensatory amounts - Groups of products - Application - Commission - Discretion

1. Monetary compensatory amounts may validly be fixed for products derived from the processing of agricultural products and not coming under Annex II to the EEC Treaty if they are the subject of a specific arrangement under Article 235 of the EEC Treaty.

2. In order to justify the application of compensatory amounts to processed products, it is sufficient for the compensatory amounts applicable to the basic products to have a considerable incidence on the price of the processed products.

3. The Commission is not bound to fix compensatory amounts for all the products in a group, but may assess the need to apply compensatory amounts either by products or by groups of products.

NOTE See Case 11/78 (p.5)

Judgment of 5 April 1979

Case 95/78

SpA Dulciora v Amministrazione delle Finanze dello Stato

(Opinion delivered by Mr Advocate General Mayras on 1 February 1979)

1. Agriculture - Processed products - Monetary compensatory amounts - Application - Condition - Incidence of compensatory amounts applicable to basic products on price of processed products (Regulation No. 974/71 of the Council, Art. 2 (2))

2. Agriculture - Monetary compensatory amounts - Groups of products - Application - Commission - Discretion

1. In order to justify the application of compensatory amounts to processed products, it is sufficient for the compensatory amounts applicable to the basic products to have a considerable incidence on the price of the processed products.

2. The Commission is not bound to fix compensatory amounts for all the products in a group, but may assess the need to apply compensatory amounts either by products or by groups of products.

3. According to the provisions of Article 26 of Regulation No. 2727/75, it is only if the Commission adopts measures which are not in accordance with the opinion of the Management Committee that those measures must be communicated to the Council. In these circumstances the absence of an opinion by the Committee in no way affects the validity of the measures adopted by the Commission.

NOTE See Case 11/78 (p.5)

Judgment of 5 April 1979

Case 157/78

Trawigo GmbH & Co. KG v Hauptzollamt Aachen-Nord

(Opinion delivered by Mr Advocate General Mayras on 1 February 1979)

1. Agriculture - Processed products not coming under Annex II to the EEC Treaty - Monetary compensatory amounts - Application - When permissible - Specific arrangement under Article 235 of the EEC Treaty
(Regulation No. 974/71 of the Council, Art. 1(2))

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A number of references for preliminary rulings were made concerning the validity of Commission Regulation (EEC) No. 800/77. They were made in:

Case 151/77 Firma Peiser v Hauptzollamt Hamburg-Ericus

Case 95/78 - Dulciora S.p.A. v Amministrazione delle Finanze dello Stato

Case 157/78 - Trawigo v Hauptzollamt Aachen-Nord.

The Ccurt ruled in all these cases that consideration of the questions raised had disclosed no factor of such a kind as to affect the validity of Regulation No. 800/77.

Judgment of 5 April 1979

Case 148/78

Public Prosecutor v Tullio Ratti

(Opinion delivered by Mr Advocate General Reischl on 20 February 1979)

1. Acts of the institutions - Directives - Direct effect - Expiration of the period for implementation - Necessary condition

   (EEC Treaty, Art. 189, third para.)

2. Harmonization of laws - Classification, packaging and labelling of solvents - Obligations of the Member States - Scope

   (Council Directive No. 73/173, Arts. 3 and 8)

3. Harmonization of laws - Classification, packaging and labelling of solvents - Obligations of the Member States - Scope

   (Council Directive No. 73/173)

4. Harmonization of laws - Measures for the protection of the health of persons and animals - Community control procedures - Unilateral derogations under Article 36 - Inadmissibility

   (EEC Treaty, Arts. 36 and 100)

5. Harmonization of laws - Classification, packaging and labelling of solvents - National provisions more restrictive than Community standards - Admissibility - Conditions - Adoption procedure in accordance with Community provisions

   (Council Directive No. 73/173, Art. 9)

6. Acts of the institutions - Directives - Implementation before the expiration of the period specified - Ineffectiveness with regard to other Member States

   (EEC Treaty, Art. 189, third para.)

7. Acts of the institutions - Directives - Direct effect - Expiration of the period for implementation - Necessary condition - Consequence - Possibility for an individual to plead the principle of "legitimate expectation"

   (EEC Treaty, Art. 189, third para.)

8. Acts of the institutions - Directives - Direct effect - Expiration of the period for implementation - Necessary condition

   (EEC Treaty, Art. 189, third para.; Council Directive No. 77/728, Art. 9)

1. It would be incompatible with the binding effect which Article 189 ascribes to directives to exclude on principle the possibility of the obligations imposed by them being relied on by persons concerned. Particularly in cases in which the Community authorities have, by means of directive, placed Member States under a duty to adopt a

certain course of action. the effectiveness of such an act would be weakened if persons were prevented from relying on it in legal proceedings and national courts prevented from taking it into consideration as an element of Community law. Consequently a Member State which has not adopted the implementing measures required by the directive in the prescribed periods may not rely, as against individuals, on its own failure to perform the obligations which the directive entails. It follows that a national court requested by a person who has complied with the provisions of a directive not to apply a national provision incompatible with the directive not incorporated into the internal legal order of a defaulting Member State, must uphold that request if the obligation in question is unconditional and sufficiently precise. Subject to these reservations a Member State may not apply its internal law - even if it is provided with penal sanctions - which has not yet been adapted in compliance with the directive, to such a person after the expiration of the period fixed for its implementation.

On the other hand, so long as the period prescribed for the Member States to incorporate the provisions of a directive into their internal legal orders has not yet expired, the directive cannot have direct effect; such effect only arises at the end of the period prescribed and in the event of default by the Member State concerned.

2. The combined effect of Articles 3 to 8 of Directive No. 73/173 is that only solvents which "comply with the provisions of this directive and the annex thereto" may be placed on the market and that Member States are not entitled to maintain, parallel with the rules laid down by the said directive for imports, different rules for the domestic market. Thus it is a consequence of the system introduced by Directive No. 73/173 that a Member State may not introduce into its national legislation conditions which are more restrictive than those laid down in the directive in question, or

which are even more detailed or in any event different, as regards the classification, packaging and labelling of solvents and that this prohibition on the imposition of restrictions not provided for applies both to the direct marketing of the products on the home market and to imported products.

3. Directive No. 73/173 must be interpreted as meaning that it is not permissible for national provisions to prescribe that containers shall bear a statement of the presence of ingredients of the products in question in terms going beyond those laid down by the said directive.

4. When, pursuant to Article 100 of the Treaty, Community directives provide for the harmonization of measures necessary to ensure the protection of the health of persons and animals and establish Community procedures to supervise compliance therewith, recourse to Article 36 ceases to be justified and the appropriate controls must henceforth be carried out and the protective measures taken in accordance with the scheme laid down by the harmonizing directive.

5. National provisions going beyond those laid down in Directive No. 73/173 are compatible with Community law only if they have been adopted in accordance with the procedure and formalities prescribed in Article 9 of the said directive.

6. If one Member State has incorporated the provisions of a directive into its internal legal order before the end of the period prescribed therein, that fact cannot produce any effect with regard to other Member States.

7. Since a directive by its nature imposes obligations only on Member States, it is not possible for an individual to plead the principle of "legitimate expectation" before the expiry of the period prescribed for its implementation.

8. Directive No. 77/728 of the Council of the European Communities of 7 November 1977, in particular Article 9 thereof, cannot bring about with respect to any individual who has complied with the provisions of the said directive before the expiration of the adaptation period prescribed for the Member State any effect capable of being taken into consideration by national courts.

NOTE

The undertaking represented by Mr Ratti decided to package its solvents and to affix to the containers labels in accordance with Council Directive No. 73/173/EEC of 4 June 1973. It also decided that Council Directive No. 77/728/EEC of 7 November 1977 should apply to its varnishes.

Those two directives have not yet been adopted into the Italian legal system. In fact Law No. 245 of 5 March 1963 on both solvents and varnishes remains in force at the present time in Italy. Law No. 245 is both more stringent (in that it requires the quantity of benzene, toluene and xylene in the solvent or varnish to be stated) and in certain respects more flexible (it does not require that all the components considered as toxic should be indicated) than the two above-mentioned directives.

Proceedings were instituted by the Public Prosecutor against Mr Ratti for failure to observe Law No. 245. In these proceedings the Pretura di Milano submitted to the Court of Justice a series of preliminary questions on the interpretation of the two Council directives.

The Court, in its reply to the questions submitted, ruled as follows:

1. Where, after the expiry of the period prescribed for the implementation of a directive, a Member State has not yet modified its domestic legislation so as to comply with the said directive, the said State may not apply its domestic legislation - even if it carries penalties under the criminal law - to a person who has complied with the provisions of the said directive.

2. It is clear from the structure of Directive No. 73/173 that a Member State cannot introduce into its national legislation conditions which are more restrictive or more detailed than those prescribed by the directive in question, or which in any case differ therefrom, as regards the classification, packaging or labelling of solvents and that such prohibition on the imposition of restrictions which have not been prescribed applies both to the distribution of products directly on to the national market and to the importation of such products.

3. Directive No. 73/173 must be interpreted as meaning that it does not permit national provisions to require an indication on containers of the presence of components of the products in question in terms going beyond those prescribed by the said directive.

4. National provisions going beyond those prescribed by Directive No. 73/173 are compatible with Community law only if they are enacted in accordance with the procedures and forms prescribed in Article 9 of the said directive.

5. Council Directive No. 77/728/EEC of 7 November 1977, and in particular Article 9 thereof, cannot give rise, with regard to individuals who have complied with the provisions of the said directive before the expiry of the period for adjustment laid down for the Member State in question, to any effect which may be taken into consideration by national courts.

Judgment of 5 April 1979

Case 176/78

Max Schaap v Bestuur van de Bedrijfsvereniging

voor Bank- en Verzekeringswezen Groothandel en Vrije Beroepen

(Opinion delivered by Mr Advocate General Warner on 14 March 1979)

Social security for migrant workers - Benefits - Overlapping - Benefits corresponding to periods of voluntary or optional insurance - Article 46 (2) of Regulation (EEC) No. 574/72 of the Council and Article 46 (3) of Regulation (EEC) No. 1408/71 of the Council - Scope (Regulation (EEC) No. 1408/71 of the Council, Art. 46 (3) and Regulation (EEC) No. 574/72 of the Council, Art. 46 (2))

Where there can be no question of periods coinciding because one body of legislation in question is of type A, Regulation No. 574/72 allows the worker the benefits corresponding to any period of voluntary or optional insurance.

Therefore although Article 46 (2) of Regulation No. 574/72 appears under the heading "Calculation of benefits in the event of overlapping of periods", it must be applied to all cases coming under Article 46 (3) of Regulation No. 1408/71 - even if there can be no question of periods coinciding because one body of legislation in question is of type A - so that, for the purpose of the application of that paragraph, the competent institution cannot take account of benefits corresponding to periods completed under voluntary or optional insurance.

NOTE

The Centrale Raad van Beroep (court of last instance in social security matters) referred to the Court of Justice two preliminary questions on the interpretation of Article 46 of Regulation No. 1408/71 on social security for migrant workers and on Article 46 of Regulation No. 574/72 of the Council fixing the procedure for implementing Regulation (EEC) No. 1408/71.

Those questions were submitted in the course of an action concerning the calculation by the competent Netherlands institution of the invalidity pension of the plaintiff in the main action, a Netherlands national who had worked in Germany from 1929 to 1933 and subsequently in the Netherlands.

The person concerned availed himself of the right under German legislation concerning victims of National Socialist persecution voluntarily to buy in rights with regard to insurance for pension

purposes for the period from 1934 to 1945 in order to claim a larger German pension. Having regard to the German pension, the Netherlands institution reduced, inter alia, under Article 46 (3) of Regulation No. 1408/71, the amount of the benefit payable to the person concerned under Netherlands legislation on insurance for pension purposes.

The person concerned contested that decision on the basis that regard had wrongly been had to his entire German pension whilst the major part of it was payable on the basis of voluntary insurance. He further argued on the basis of the Petroni judgment (Case 24/75 [1975] ECR 1149) that the provisions of Article 1408/71 ruled out a reduction under the national legislation of a Member State of a benefit acquired under national legislation alone without reference to Community provisions.

In the course of the main action (cf. Case 98/77 Schaap [1978] ECR 707) the Court had already given the following reply: "So long as a worker is receiving a pension by virtue of national legislation alone, the provisions of Regulation No. 1408/71 do not prevent the national legislation, including the national rules against the overlapping of benefits, from being applied to him in its entirety, provided that if the application of such national legislation proves less favourable than the application of the rules laid down by Article 46 of Regulation No. 1408/71 the provisions of that article must be applied".

The Centrale Raad van Beroep further referred to the Court the following questions which form the subject-matter of the present case.

"1. Is the heading of Article 46 of Regulation No. 574/72 an integral part of that article in the sense that the content of the article is also determined by that heading?

2. Having regard to Article 46 (2) (d) of Regulation No. 1408/71 are the second subparagraph of paragraph (1) and paragraph (2) of Article 46 of Regulation No. 574/72 read together

the whole article relates only to benefits calculated in accordance with Article 46 (2) (a) and (b) of Regulation No. 1408/71 in cases where aggregation of periods has occurred and in connexion with which periods of voluntary or optional continued insurance were not taken into account, or do those provisions, or does one of them, also apply to cases in which the benefits were not calculated in accordance with Article 46 (2) (a) and (b) of Regulation No. 1408/71 and there has been no question of leaving out of account periods of voluntary or optional continued insurance in calculating the benefits?"

The Court considered the provisions in question and subsequently ruled that whilst Article 46 (2) of Regulation No. 574/72 is headed "Calculation of benefits in the event of overlapping insurance periods", it must be applied to all matters falling under Article 46 (3) of Regulation No. 1408/71 so that for the purposes of the application of that paragraph the competent institution cannot take into account benefits corresponding to completed periods of voluntary or optional insurance.

Judgment of 5 April 1979

Joined Cases 220 and 221/78

SpA A.L.A. & A.L.F.E.R. v Commission of the European Communities

(Opinion delivered by Mr Advocate General Capotorti on 14 March 1979)

1. Proceedings - Time-limits - Expiration - Result - Barring
(Statute of the Court of Justice of the ECSC, Art. 39)

2. Procedure - Application - Conditions - Disregard - Putting in order - Limits
(Rules of Procedure, Art. 38(7))

1. It follows from the last paragraph of Article 39 of the Statute of the Court of Justice of the ECSC that, apart from the existence of unforeseeable circumstances or of force majeure, disregard of the time-limits for bringing proceedings results in the right of action's being barred.

2. There is no possibility of putting an application in order as provided for in Article 38 (7) of the Rules of Procedure where the application is already out of time.

NOTE On 30 May 1978, the Commission imposed penalties on the applicants for disregard of certain general decisions relating to mandatory minimum prices for concrete reinforcement bars. Notice of those individual decisions was given to the applicants on 5 June 1978. By registered letters received at the Court on 20 July 1978 the applicants lodged an application for the annulment of the decisions.

Since comparison of the date of notification of the penalties with that of the receipt of the applications at the Court Registry showed that they were lodged after the expiry of the time-limit of one month within which proceedings must be brought (Article 39 of the Statute of the Court of Justice of the ECSC) as extended by the time granted on account of distance, in this case 10 days (Article 1 Annex II to the said regulation), the Court, for the reasons stated in the summary, dismissed the applications as inadmissible.

Judgment of 2 May 1979

First Chamber

Case 137/78

Henningsen Food Inc. and Others v Produktschap Pluimvee en Eieren

(Opinion delivered by Mr Advocate General Warner on 22 March 1979)

1. Common Customs Tariff - Tariff headings - Eggs, not in shell, and egg yolks suitable for human consumption as in subheading 04.05 B I - Concept

2. Common Customs Tariff - Tariff headings - Food preparations under subheading 21.07 G I (a) 1 - Specific case

1. It is clear from the wording of subheading 04.05 B I of the Common Customs Tariff and from the Explanatory Notes to the tariff that the products to which the subheading refers are essentially birds' eggs, not in shell, and egg yolks, without further processing, to which any chemical components are added in small quantities only, in order to preserve them.

2. A product composed of 52% whole hen-egg powder, 25% soya meal, 22% glucose syrup and 1% salt and lecithin does not come under heading 04.05 B I of the Common Customs Tariff but constitutes a "food preparation" coming under subheading 21.07 G I (a) 1 of the tariff.

NOTE

The College van Beroep voor het Bedrijfsleven (administrative court of last instance in matters of trade and industry), in the course of proceedings concerning the application of a provision of Regulation No. 974/71 of the Council, submitted to the Court of Justice questions on the interpretation of certain provisions of the Common Customs Tariff and of the detailed rules for the application of monetary compensatory amounts.

According to that provision of the regulation, where a product exported from a Member State has been imported into a Member State which is bound to grant a compensatory amount on importation the exporting Member State may, with the agreement of the importing Member States, pay the compensatory amount which that importing State was required to grant.

Under that provision the appellants in the main action (Henningsen Food Inc.) claimed from the competent Netherlands agency payment of monetary compensatory amounts payable by the United Kingdom in respect of the importation of goods classified under tariff subheading 04.05 B I of the Common Customs Tariff.

The Netherlands authorities accepted that tariff classification (eggs, not in shell; egg yolks; suitable for human consumption) whilst the British authorities considered that those products come under tariff subheading 21.07 G I (a) (1) (Food preparations not elsewhere specified or included: containing no starch or less than 5% by weight of starch) to which, unlike the former heading, monetary compensatory amounts do not apply.

This case led the Court of Justice to establish the classification of the product in question, Hentex, the composition of which is as follows: 52% whole hen-egg powder, 25% soya meal, 22% glucose syrup and 1% salt and lecithin.

The Court replied to the question submitted to it by the Netherlands court with the ruling that a product containing 52% whole hen-egg powder, 25% soya meal, 22% glucose syrup, and 1% salt and lecithin does not come under heading 04.05 B I of the Common Customs Tariff but constitutes a "food preparation" coming under subheading 21.07 G I (a) (1) of the tariff.

Judgment of 16 May 1979

Case 2/78

Commission of the European Communities v Kingdom of Belgium

(Opinion delivered by Mr Advocate General Reischl on 20 March 1979)

1. Quantitative restrictions - Measures having equivalent effect - Designations of origin - National measures of guarantee - Conditions for acceptability - Proportionality - Examination of certificates of origin

(EEC Treaty, Arts. 30 and 36)

2. Quantitative restrictions - Measures having equivalent effect - Designations of origin - National measures of guarantee - Conditions for acceptability - Proportionality - Limits

(EEC Treaty, Art. 30)

3. Quantitative restrictions - Measures having equivalent effect - Designations of origin - National measures of guarantee - Duties of Member State concerned

(EEC Treaty, Arts. 30 and 36)

1. In the absence of a Community system guaranteeing for consumers the authenticity of designations of origin, Article 30 et seq. of the Treaty do not prevent a Member State from taking measures to prevent unfair practices in that connexion subject, however, to the condition that those measures should in particular not be unreasonable, that is to say, disproportionate in relation to that objective.

To check the authenticity of a product bearing a designation of origin by the expedient of examining certificates of origin issued in the producer Member State is not unreasonable.

2. The sole fact that a Member State applies, for checking the authenticity of products bearing a designation of origin, a system involving the importer of those products in more difficulties than would result from another possible system cannot in itself constitute a failure by that State to fulfil its obligations under Article 30 of the Treaty.

3. A Member State which applies a system for checking the authenticity of products bearing a designation of origin has a duty to ensure, seeking if necessary in this respect the assistance of the Commission, that traders wishing to import into that State such products bearing a designation of origin duly adopted by that State and in free circulation in a regular manner in a Member State other than that of origin, are able to effect such imports and are not placed at a disadvantage as compared with direct importers, save in so far as appears reasonable and strictly necessary to ensure the authenticity of those products.

NOTE The Commission brought an action for the purpose of establishing that, by making the importation of potable spirits bearing an appellation of origin and lawfully in free circulation in Member States other than the country of origin subject to more onerous conditions, as regards proof of entitlement to that appellation, than those laid down for the same products imported directly from the country of origin, the Kingdom of Belgium had failed to fulfil its obligations under Article 30 of the Treaty. It is clear from the Belgian ministerial regulation that the conditions which it lays down are fulfilled when spirits bearing an appellation of origin are imported directly from the country of origin in containers intended for sale to consumers, fitted with a special closing device and bearing on this device, as well as on the label, certain details relating to the name and registered trade-mark of the manufacturer and the words "bottled in the country of origin". These provisions form part of a series of provisions adopted by Belgium for the purpose of protecting the authenticity of appellations of origin.

The appellation of origin "Scotch Whisky" is included amongst those adopted by the Belgian Government, and the difficulties, as regards obtaining the requisite official document, encountered by certain Belgian importers of that product from a Member State other than the country of origin gave rise to various complaints to the Commission. It emerges from the thorough analysis of the Belgian legislation undertaken by the Court of Justice that several measures were taken by the Belgian Government to render the initial measures less inflexible.

A previous case before the Court of Justice, Procureur du Roi v Dassonville, may be recalled. The main object of that case was to ascertain whether a national regulation prohibiting the importation of goods bearing an appellation of origin, when those goods were not accompanied by an official document issued by the exporting State certifying their entitlement to that appellation, constituted a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty.

In its judgment of 11 July 1974 in that case the Court ruled that "the requirement by a Member State of a certificate of authenticity which is less easily obtainable by importers of an authentic product which has been put into free circulation in a regular manner in another Member State than by importers of the same product coming directly from the country of origin constitutes a measure having an effect equivalent to a quantitative restriction as prohibited by the Treaty".

In the grounds of the Dassonville judgment the Court added that, if a Member State takes measures to prevent unfair practices as regards the authenticity of the appellation of origin of a product, those measures must be reasonable.

The essential question to be decided in the present case is whether the measures taken by the Kingdom of Belgium for the purposes of ensuring the authenticity of spirits bearing an appellation of origin imported into Belgium are unreasonable in that they are disproportionate in relation to that objective.

The Court points out that it cannot be said that the control of the authenticity of a product bearing an appellation of origin by the expedient of an examination of certificates of origin issued in the Member State where production takes place constitutes an unreasonable measure in relation to the aims of ensuring the authenticity of the product.

The Commission has not refuted in a satisfactory way the argument supported by the Belgian Government to the effect that these liberalizing measures had contributed to an appreciable improvement in the situation of businesses wishing to import spirits bearing a protected appellation of origin into Belgium from another Member State in which they are in free circulation in relation to the situation of direct importers; instead it merely stated that, in spite of the said measures, the system of control applied by the Belgian Government still involved the importer of those products into Belgium in more difficulties than would ensue from the system of capping and labelling which it advocates.

However, this fact relied upon by the Commission cannot of itself constitute a failure to fulfil the obligations incumbent upon the Kingdom of Belgium under Article 30 of the Treaty.

The Court:

1. Declares that the action is dismissed;

2. Orders the Commission to pay the costs, except those arising from the interventions;

3. Orders the Commission and the interveners to bear their own costs arising from the interventions.

Judgment of 10 May 1979

Case 12/78

Italian Republic v Commission of the European Communities

(Opinion delivered by Mr Advocate General Warner on 31 January 1979)

Agriculture - Processed products - Monetary compensatory amounts - Application - Condition - Incidence of compensatory amounts applicable to basic products on price of processed product - Commission - Determination - Criteria

(Regulation No. 974/71 of the Council, Art. 2 (2))

It follows from Article 2 (2) of Regulation No. 974/71 that in order to justify the application of compensatory amounts to processed products, it is sufficient for the compensatory amounts applicable to the basic product to have a considerable incidence on the price of the processed products. In order to determine whether such is the case the Commission must take account of the incidence of the compensatory amounts applicable to the basic product in trade in the processed product in the whole of the Community.

NOTE

The Italian Republic has lodged an application for the annulment of several Commission regulations introducing monetary compensatory amounts in the field of cereals.

The dispute relates to the application of the system of monetary compensatory amounts to durum wheat and to certain of its derived products which are the subject-matter of specific rules under Article 235 of the EEC Treaty.

The Commission considered that the absence of monetary compensatory amounts caused difficulties during the summer of 1977 as regards both durum wheat and the products derived therefrom, that deflections of trade in the case of durum wheat and distortions of competition in the case of some of the derived products had been noted and that this state of affairs had furthermore been worsened by the sharp drop in supplies of home-grown durum wheat and the increased need for imports from non-member countries.

Consequently, the Commission introduced, by Regulation No. 2604/77, monetary compensatory amounts on certain products (durum wheat - cereal groats and cereal meal of durum wheat, macaroni, spaghetti and similar products, etc.). Shortly afterwards, the Commission adopted two other regulations, one abolishing the application of the compensatory amounts "to operations carried out under cover of a certificate fixing the export refund or the import levy in advance in respect of which the application was lodged prior to 26 November 1977", the other deciding that the compensatory amounts fixed for the products falling within subheadings 10.01 B (durum wheat) were to be granted on certain exports and imports only under specified conditions.

The Italian Government has requested the annulment of the three regulations in question but considered that it had only to put forward reasons against Regulation No. 2604/77, as the two other regulations depend on the former regulation.

The first argument put forward is based on manifest error in the appraisal of the conditions and distortion of the facts by the Commission.

The Italian Government claims that there were never any disturbances in trade as regards durum wheat and meal, the market in which is on a regional and not a Community scale; the southern regions of the Community produce and process durum wheat and the northern regions obtain supplies not from the south of the Community but from third countries; the two markets are completely autonomous and are not capable of affecting one another.

The Commission was able to show that there were large imports of durum wheat from third countries to the United Kingdom where, because of the weakness of the currency, the levies expressed in units of account were much lower than in countries in which the currency had been revalued and that considerable quantities had been re-exported to Belgium, the Netherlands and the Federal Republic of Germany with the result that importers in those countries were able because of those deflections of trade to make substantial profits. Therefore the argument put forward cannot be accepted.

The second and third arguments put forward are the infringement of Article 1 (3) of Regulation No. 974/71 of the Council and misuse of powers. These arguments concern the application of the compensatory amounts to macaroni, spaghetti and similar products.

The Italian Government puts forward a series of arguments, inter alia that macaroni, spaghetti and similar products are processed products and constitute typical industrial products in which the cereal constituent is not of overwhelming importance, that pasta products are the subject-matter of specific rules under Article 235 of the Treaty and that the fact that the regulation was based on conditions which should not have been taken into account makes the regulation illegal in its entirety ... etc.

The Commission claims that the distortions of competition which affected the market in pasta products in the Community were caused:

by the considerable depreciation in the lira which made it impossible for producers of pasta products in the other Member States to support competition from Italian producers;

by the low level of the price of durum wheat in Italy, which is close to the intervention price.

According to the Community rules it is sufficient for the purposes of justifying the application of the compensatory amounts to processed products for the compensatory amounts appplicable to the basic product to have an important effect on the price of the processed products.

It is an established fact that there was at that time a disturbance of the market as regards durum wheat and the product of first-stage processing, in other words durum wheat meal. The arguments of the Italian Government when they emphasize the existence of a more favourable structure of production costs in Italy do not however call in question that evaluation made by the Commission which concerns the Community as a whole. It is therefore impossible to complain that the Commission exceeded the limits of its discretion in the matter or that it used its power for purposes extraneous to Regulation No. 974/71. The Court rules that the application is dismissed and that the Italian Republic must pay the costs of the proceedings.

Judgment of 16 May 1979

Case 84/78

Angelo Tomadini v Amministrazione delle Finanze dello Stato

(Opinion delivered by Mr Advocate General Warner on 31 January 1979)

1. Agriculture - Common organization of markets - Variation of rules - Principle of protection of legitimate expectation - Application - Conditions and limits

2. Agriculture - Monetary compensatory amounts - Introduction in respect of durum wheat and products derived therefrom - Commission Regulation No. 2604/77 - Validity

3. Agriculture - Monetary compensatory amounts - Introduction in respect of durum wheat and products derived therefrom - Application to transactions in course of execution (Commission Regulation No. 2604/77, as amended by Regulation No. 2792/77)

1. In the context of economic rules such as those governing the common organization of agricultural markets, if in order to deal with individual situations the Community institutions have laid down specific rules enabling traders in return for entering into certain obligations with the public authorities - as regards transactions definitively undertaken - to protect themselves from the effects of the necessarily frequent variations in the detailed rules for the application of the common organization, the principle of respect for legitimate expectation prohibits those institutions from amending those rules without laying down transitional measures unless the adoption of such measures is contrary to an overriding public interest.

On the other hand, the field of application of this principle cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules in the absence of obligations entered into with the public authorities.

This is particularly true in a field such as the common organization of the markets, the purpose of which necessarily involves constant adjustment to the variations of the economic situation in the various agricultural sectors.

2. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Commission Regulation No. 2604/77 introducing monetary compensatory amounts in respect of durum wheat and products derived therefrom.

3. Apart from the exception provided for by Regulation No. 2792/77, the monetary compensatory amounts laid down by Regulation No. 2604/77 are applicable to the exportation of pasta from Italy to the other Member States and to non-member countries as from 2 January 1978 in pursuance of contracts concluded prior to 25 November 1977.

NOTE

Case 84/78 - Angelo Tomadini v Amministrazione delle Finanze dello Stato (Italy) - 16 May 1979 - Monetary compensatory amounts

The Pretura of Trento submitted several preliminary questions to the Court of Justice concerning the validity of Commission Regulation No. 2604/77 introducing monetary compensatory amounts for durum wheat and derived products.

The plaintiff in the main action asked the Pretura of Trento to declare illegal the charging by the Amministrazione delle Finanze, the defendant in the main action, of compensatory amounts totalling 724 000 lire on the export of 8 500 Kg. of egg pasta by Tomadini from Italy to the Federal Republic of Germany in January 1978.

The dispute concerns the application of the system of monetary compensatory amounts to durum wheat and to certain derived products thereof, which are subject to specific rules made under Article 235 of the Treaty.

The first two questions submitted by the national court raise legal problems that are identical to those examined in the course of the proceedings for annulment brought by the Italian Government against the Commission (Case 12/78), see weekly bulletin No. 13/78.

By judgment of 10 May 1979 that application for annulment was dismissed. Hence the questions submitted by the Pretura may be answered by means of a reference to the judgment in Case 12/78 and by ruling that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulation No. 2604/77.

A third question asks whether, should the Court declare it valid, the regulation in question may be considered to be applicable to exportations of pasta products from Italy to the other Member States and third countries after 2 January 1978, pursuant to contracts drawn up prior to 25 November 1977, the date of the adoption of Regulation No. 2604/77, during a period in which it was not possible to forsee the introduction of any compensatory amount in the sector in question.

In order to dispose of their production more easily in the other Member States, Italian exporters, it is said, had made long-term contracts at a time when they could not reasonably have foreseen the introduction of monetary compensatory amounts on pasta products.

The Italian producers argue that the adoption of Regulation No. 2604/77, without provision being made for transitional arrangements for intra-Community trade, violates the principle of the protection of legitimate expectations.

The Court noted that, in order to uphold the principle of the protection of legitimate expectations, the Commission had provided that, at the request of the persons concerned, the newly introduced monetary compensatory amounts would not be applied to transactions covered by an advance fixing certificate in respect of an export refund or import levy for which application had been made before 26 November 1978, the date on which Regulation No. 2604/77 came into force.

Moreover, by publishing the regulation in dispute, which was to become applicable only from 2 January 1978, on 26 November 1977 the Commission had mitigated the effects of the new rules on transactions in the course of execution, in so far as that was compatible with the attainment of the objectives of the reintroduction of monetary compensatory amounts.

Consequently, the Court ruled that, apart from the exception provided for in Regulation No. 2792/77, the monetary compensatory amounts introduced by Regulation No. 2604/77 are applicable to exports of pasta products from Italy to the other Member States and to third countries pursuant to contracts drawn up prior to 25 November 1977.

Judgment of 16 May 1979

Case 236/78

Fonds National de Retraite des Ouvriers Mineurs v Giovanni Mura

(Opinion delivered by Mr Advocate General Warner on 4 April 1979)

Social security for migrant workers - Benefits - Overlapping - Right acquired by virtue of national legislation alone - Provisions for reduction or suspension - Applicability - Community rules more favourable - Preference (Regulation No. 1408/71 of the Council, Art. 46)

Where the provisions of Article 46 of Regulation No. 1408/71 are more favourable to the worker than the provisions of national legislation alone, by virtue of which the worker receives a pension, the provisions of that article must be applied in their entirety.

NOTE

The Cour de Travail (Labour Court), Mons, Belgium, submitted to the Court of Justice a question on the interpretation of Article 46 of Regulation No. 1408/71 within the context of a dispute concerning the calculation by the competent Belgian institution of the invalidity pension of an Italian national who worked in France as a miner from 1958 to 1973, when he became an invalid.

In Belgium Mr Mura met the condition imposed by the national legislation, namely proof of a minimum of ten years' employment in mining undertakings. However, in order to become entitled to benefit in France he had to rely on the provisions of Article 45 of Regulation No. 1408/71 and for the calculation of benefit in France the periods of employment actually completed in both Member States were added together and the French benefit paid pro rata.

Applying the national rules against overlapping of benefits and Article 46 of Regulation No. 1408/71, the competent Belgian institution (the FNROM) deducted from the invalidity pension an amount equal to the French pro rata payments and claimed back from Mr Mura the excess that he had received.

The Cour de Travail, Mons, sharing the doubts expressed by the FNROM on the interpretation of Article 46 of Regulation No. 1408/71, referred the case to the Court of Justice, submitting the following question: "Does the second subparagraph of Article 46 (1) preclude the application of Article 46 (2) (c)? This question is of particular relevance in that the Court of Justice, in its judgment of 14 March 1978 in Case 98/77 Schaap refers in the operative part, and not in the grounds therefor, to the whole of Article 46".

The Court answered this question by ruling that, where the provisions of Article 46 of Regulation No. 1408/71 are more favourable to workers than the provisions of the national legislation under which the worker receives a pension when taken alone, the provisions of that article must be applied in full.

Judgment of 29 May 1979

Case 165/78

IMCO-Michaelis GmbH & Co. v Oberfinanzdirektion Berlin

(Opinion delivered by Mr Advocate General Capotorti on 22 March 1979)

1. Common Customs Tariff - Tariff headings - Parts and fittings of fountain pens and stylograph pens and pencils within the meaning of subheading 98.03 C II - Concept

2. Common Customs Tariff - Tariff headings - Interpretation - General Rule 2(a) - Scope

3. Common Customs Tariff - Tariff headings - Interpretation - General Rule 2(a) - Parts and fittings of an article - Concept

1. It is clear from the general plan of heading 98.03 of the Common Customs Tariff and from the very concept of "parts and fittings" that that tariff category implies the existence, even if possibly only in the future, of a complete article of which such pieces are fittings or parts. It follows that the constituent parts, disassembled or not yet assembled, of a complete article, cannot be classified as "parts and fittings", within the meaning of subheading 98.03 C II, in respect of the complete article of which they form the totality of the components.

2. General Rule 2(a) for the Interpretation of the Nomenclature of the Common Customs Tariff covers articles not yet assembled as well as articles which have been disassembled. To the extent to which the parts not yet assembled allow of the assembly of a complete article they are covered by the provisions governing that article even though the Common Customs Tariff contains a specific heading for parts and fittings.

3. General Rule 2(a) for the Interpretation of the Nomenclature of the Common Customs Tariff must be interpreted as meaning that when unassembled parts of an article are presented for customs clearance only any surplus parts not allowing of the assembly of a complete article are to be regarded as "parts and fittings" of the said article within the meaning of the Common Customs Tariff.

NOTE

The Bundesfinanzhof referred to the Court of Justice certain questions concerning the application of the general rules for the interpretation of the nomenclature of the Common Customs Tariff to the classification of unassembled parts of ball-point pens. The parts (caps, barrels and magazines) had to be imported by the plaintiff in the main action from the United States and assembled in the Federal Republic of Germany. The caps and barrels contained all the parts of the mechanism and were delivered in pairs, whilst the magazines were delivered in boxes of 600 units and intended to be made up with the caps and barrels with which they were imported to form ball-point pens and in part for the plaintiff's stock of refill magazines.

The defendant in the main action in its classification opinion found that the caps, barrels and the corresponding number of magazines came under subheading 98.03 A of the Common Customs Tariff (fountain pens and stylograph pens and pencils (including ball-point, felt tipped and fibre tipped pens and pencils)) as unassembled ball-point pens whilst the surplus magazines came under subheading 98.03 C II (parts and fittings ... Other) as parts for ball-point pens.

In seeking classification of the caps, barrels and corresponding magazines under subheading 98.03 C II, which is more favourable, the plaintiff relied on general rule 2 (a) for the interpretation of the nomenclature of the Common Customs Tariff which provides:

> "Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as imported, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), imported unassembled or disassembled".

The plaintiff claimed that since the articles in question were assembled in the form of ball-point pens only after their importation into the Federal Republic of Germany they could not constitute "disassembled" ("zerlegt") articles within the meaning of general rule 2 (a).

The Court ruled that general rule 2 (a) for the interpretation of the nomenclature of the Common Customs Tariff covers articles not yet assembled as well as articles which have been disassembled and to the extent to which the parts not yet assembled allow of the assembly of a complete article they are covered by the provisions governing that article even though the Common Customs Tariff contains a specific heading for parts and fittings.

When unassembled parts of an article are presented for customs clearance only any surplus parts not allowing of the assembly of a complete article are to be regarded as "parts and fittings" of the said article within the meaning of the Common Customs Tariff.

Judgment of 29 May 1979

Joined Cases 173 and 174/78

Villano and Others v Nordwestliche Eisen-und Stahl- Berufsgenossenschaft

(Opinion delivered by Mr Advocate General Capotorti on 3 May 1979)

Social security for migrant workers - Accidents at work and occupational diseases - Assessment of degree of incapacity - Taking into consideration of accidents or diseases occurring subsequently under the legislation of another Member State - Requirement - None

(Regulation No. 3 of the Council, Art. 30 (1); Regulation No. 1408/71 of the Council, Art. 61 (5))

Article 30 (1) of Regulation No. 3 and Article 61 (5) of Regulation No. 1408/71 merely require the competent institution of a Member State to take into consideration accidents or diseases which have occurred previously under the legislation of another Member State, as if they had occurred under the legislation of the first Member State but do not require it to take into consideration also accidents or diseases which have occurred subsequently under the legislation of another Member State.

NOTE

The Bundessozialgericht /Federal Social Court/ submitted the following preliminary question to the Court of Justice:

"Does the defendant German social insurance institution according to Article 30 (1) of Regulation No. 3 of the Council of the European Economic Community concerning social security for migrant workers and according to Article 61 (5) of Regulation (EEC) No. 1408/71 of the Council of the European Communities on the application of social security schemes to employed persons and their families moving within the Community have to take into consideration an accident at work sustained by the plaintiff which occurred subsequently in Italy as if it had occurred under German legislation, if the granting of a pension to the plaintiff arising out of a previous accident at work which occurred under German legislation depends upon the percentage of the reduction of earning capacity caused by both accidents at work amounting at least to the figure 20 (first sentence to Article 581 (3) of the Reichsversicherungs-ordnung /national social insurance regulation/) ?"

The main actions are between social security funds on the one hand and two Italian workers, the appellants in those actions on the other, who both suffered an accident at work which occurred in the Federal Republic of Germany and then, on suffering a second accident at work, this time in Italy, requested the insurance institutions, the respondents in the main action, to take the latter accidents into consideration in determining whether the conditions prescribed by German legislation for the grant of an invalidity pension had been fulfilled.

The appellants rely by analogy on certain provisions of Regulation No. 3 and Regulation No. 1408/71 which require the competent institution to take into consideration accidents or diseases which have occurred previously under the legislation of another Member State (not such accidents or diseases which have occurred subsequently).

Those provisions are intended to ensure that a worker who is a victim of one or more accidents or diseases in another Member State receives treatment equivalent to that granted to a worker in the same situation who has not left the Member State in question.

The Court replied to the question by ruling that Article 30 (1) of Regulation No. 3 and Article 61 (5) of Regulation No. 1408/71 do not require the competent institution of a Member State to take into account accidents or illnesses arising at a later date under the legislation of another Member State as if they had arisen under the legislation of the first-mentioned Member State.

Judgment of 31 May 1979

Case 22/78

Hugin Kassaregister AB & Hugin Cash Registers Ltd. v Commission of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 2 May 1979)

1. Competition - Dominant position - Market in question - Market for spare parts - Definition
(EEC Treaty, Art. 86)

2. Competition - Dominant position - Concept
(EEC Treaty, Art. 86)

3. Competition - Agreements and dominant position - Effects on trade between Member States - Condition for the application of Community rules
(EEC Treaty, Arts. 85 and 86)

4. Competition - Dominant position - Abuse - Effects on trade between Member States - Condition - Actual or potential existence of normal pattern of trade between the Member States
(EEC Treaty, Art. 86)

1. To determine whether an undertaking occupies a dominant position it is necessary first to determine the relevant market. As regards the supply of spare parts it is necessary to ascertain, to that end, whether such supply constitutes a specific market or whether it forms part of a wider market. To answer that question it is necessary to determine the category of clients who require such parts.

2. The manufacturer of a product occupies a dominant position when it is in a position which enables it to determine its conduct without taking account of competing sources of supply.

3. The interpretation and application of the condition relating to effects on trade between Member States contained in Articles 85 and 86 of the Treaty must be based on the purpose of that condition which is to define, in the context of the law governing competition, the boundary between the areas respectively covered by Community law and the law of the Member States. Thus Community law covers any agreement or any practice which is capable of constituting a threat to freedom of trade between Member States in a manner which might harm the attainment of the objectives of a single market between the Member States, in particular by partitioning the national markets or by affecting the structure of competition within the common market. On the other hand conduct the effects of which are confined to the territory of a single Member State is governed by the national legal order.

4. If the restrictive sales policy of a producer prevents a potential client, established in the same Member State, from satisfying its spare parts requirements through normal commercial channels, that is to say on the national market, and it is thus induced to attempt to obtain the product in question in the other Member States, those attempts cannot be regarded as an indication of the existence, whether actual or potential, of a normal pattern of trade between the Member States in the product. In those circumstances the producer's conduct is not capable of affecting trade between Member States within the meaning of Article 86 of the Treaty.

NOTE

The Swedish undertaking, Hugin, and its British subsidiary submitted an application for the annulment of Commission Decision No. 78/68/EEC of 8 December 1977 relating to a proceeding under Article 86 of the EEC Treaty. In the alternative the applicant requested the annulment or reduction of the fine.

The decision found that Hugin had infringed the first paragraph of Article 86 of the Treaty by refusing to supply spare parts for Hugin cash registers to Lipton's Cash Registers and Business Equipment Limited, whose registered office is in London, and by prohibiting its subsidiaries and distributors within the Common Market from selling such spare parts outside its distribution network. In the reasons for its decision the Commission stated that Hugin held a dominant position within the meaning of Article 86 of the Treaty which it had abused in such a way that it was capable of affecting trade between Member States.

Hugin's position on the market

The decision points out that although Hugin has only a relatively small share of the market in cash registers, which is extremely competitive, it enjoys a monopoly of spare parts for the machines it makes itself and it holds a dominant position in respect of the maintenance and repair of Hugin cash registers.

The principal argument submitted by Hugin is that maintenance services and the supply of spare parts by no means constitute a distinct market and instead form an essential feature of competition on the market in cash registers in general. As evidence of this Hugin points out that its services operate at a loss. In settling the case it is necessary first of all to determine the relevant market and to take account of the fact that Hugin's conduct which is at issue consists in a refusal to supply spare parts to all independent undertakings outside its own distribution network.

Examination of the market in cash registers and spare parts shows that, for the purposes of the application of Article 86 to the circumstances of the present case, the market in Hugin spare parts requested by the independent undertakings is in fact to be considered the relevant market. It must then be considered whether Hugin enjoys a dominant position on that market. In this respect Hugin concedes that it holds a monopoly in new spare parts. On the market in its own spare parts Hugin is in a position to act without regard for the sources of supply of competitors.

There are accordingly no grounds for querying the conclusion that on this market Hugin enjoys a dominant position within the meaning of Article 86.

Hugin's behaviour on the market

The Commission considers that Hugin has abused its dominant position by its refusal to supply spare parts to Liptons and, in general, to any marketing undertaking.

Hugin replies that it wishes to retain for itself maintenance and repair services not as a profit-making operation in itself but for the purpose of upholding the reputation of the reliability of its cash registers in the fact of competition from other makes, which, it maintains, is supported by the fact that it runs those services at a loss.

It must therefore be considered whether the condition laid down by Article 86 of the Treaty for the application of Community law to the behaviour in question has been fulfilled. Accordingly it must be ascertained whether any abuse by Hugin of its dominant position may affect trade between Member States.

It is clear from consideration of the commercial operations of Liptons and of the trade in spare parts in general that trade between Member States is not affected by the obstacles which Hugin's conduct places in the way of the operations of independent undertakings which specialize in the provision of maintenance services.

The value of the spare parts is in itself relatively insignificant and Hugin's behaviour cannot be considered as having the effect of diverting the movement of goods from its normal channels, taking account of the economic and technical factors peculiar to the sector in question.

It must thus be concluded that Hugin's conduct is not capable of affecting trade between Member States.

The Court has accordingly

(1) Annulled the Commission Decision of 8 December 1977 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.132 - Hugin/Liptons).

(2) Ordered the Commission to pay the costs.

Judgment of 31 May 1979

Case 132/78

Denkavit Loire S.à r.l. v French State (Customs Authorities)

(Opinion delivered by Mr Advocate General Warner on 29 March 1979)

1. Customs duties - Charges having an equivalent effect - Concept (EEC Treaty, Arts. 9, 12, 13 and 16)

2. Tax provisions - Internal taxation - Concept - Equal tax treatment for national and imported products - Criteria (EEC Treaty, Art. 95)

3. Customs duties - Charges having an equivalent effect - Charge on imported meat (EEC Treaty, Arts. 9, 12 and 13)

1. Any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier and which is not a customs duty in the strict sense, constitutes a charge having an equivalent effect within the meaning of Articles 9, 12, 13 and 16 of the Treaty. Such a charge however escapes that classification if it constitutes the consideration for a benefit provided in fact for the importer or exporter representing an amount proportionate to the said benefit. It also escapes that classification if it relates to a general system of internal dues supplied systematically and in accordance with the same criteria to domestic products and imported and exported products alike, in which case it does not come within the scope of Articles 9, 12, 13 and 16 but within that of Article 95 of the Treaty.

2. In order to relate to a general system of internal dues and thus not come within the application of the provisions prohibiting charges having an effect equivalent to customs duties, the charge to which an imported product is subject must impose the same duty on national products and identical imported products at the same marketing stage and the chargeable event giving rise to the duty must also be identical in the case of both products.

It is therefore not sufficient that the objective of the charge imposed on imported products is to compensate for a charge imposed on similar domestic products - or which has been imposed on those products or a product from which they are derived - at a production or marketing stage prior to that at which the imported products are taxed.

3. A charge which is imposed on meat, whether or not prepared, when it is imported, and in particular on consignments of lard, even though no charge is imposed on similar domestic products, or a charge is imposed on them according to different criteria, in particular by reason of a different chargeable event giving rise to the duty, constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the Treaty.

NOTE

The main action is between the French customs authorities and a French manufacturer of animal feeding-stuffs who had imported a consignment of lard from the Federal Republic of Germany. The questions submitted are intended to clarify the point whether the provisions of Community law (Articles 9, 12, 13 and 95 of the EEC Treaty and of Regulation No. 2759/75 of the Council on the common organization of the market in pigmeat) prevent the levying on occasion of the importation of the said consignment of a charge introduced by the French Law of 24 June 1977 "introducing a charge for protection of public health and for the organization of the markets in meat and abolishing the public health charge and the charge for inspections and stamp duty".

The Court ruled that "a charge which is imposed on meat, whether or not prepared, when it is imported, and in particular on consignments of lard, even though no charge is imposed on similar domestic products, or a charge is imposed on them according to different criteria, in particular by reason of a different chargeable event giving rise to the duty, constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the EEC Treaty".

Judgment of 31 May 1979

Case 182/78

Bestuur Algemeen Ziekenfonds Drenthe-Platteland v G. Pierik

(Opinion delivered by Mr Advocate General Mayras on 3 May 1979)

1. Social security for migrant workers - Community rules - Worker - Concept

   (Regulation No. 1408/71 of the Council, Art. 1 (a))

2. Social security for migrant workers - Sickness insurance - Benefits provided in another Member State - Recipients - Pensioners

   (Regulation No. 1408/71 of the Council, Art. 22 (1) (c))

3. Social security for migrant workers - Sickness insurance - Benefits in kind provided in another Member State - Pensioners - Authorization of competent institution - Provisions applicable

   (Regulation No. 1408/71 of the Council, Art. 22 (1) (c) and (2))

4. Social security for migrant workers - Sickness insurance - Benefits in kind provided in another Member State - Authorization of competent institution - Conditions for grant

   (Regulation No. 1408/71 of the Council, Art. 22 (1) (c) and (2)

5. Social security for migrant workers - Sickness insurance - Benefits in kind provided in another Member State - Concept

   (Regulation No. 1408/71 of the Council, Art. 22 (1) (c))

1. The definition of the concept of "worker" in Article 1 (a) of Regulation No. 1408/71 of Regulation No. 1408/71 of the Council for the purposes of the application of the regulation has a general scope, and in the light of that consideration covers any person who has the capacity of a person insured under the social security legislation of one or more Member States, whether or not he pursues a professional or trade activity. It follows that, even if they do not pursue a professional or trade activity, pensioners entitled to draw pensions under the legislation of one or more Member States come within the provisions of the regulation concerning "workers" by virtue of their insurance under a social security scheme, unless they are subject to special provisions laid down regarding them.

2. By the reference to a "worker" Article 22 (1) (c) of Regulation No. 1408/71 does not purport to restrict its scope to active workers as opposed to inactive workers, the same reference being contained in Articles 25 and 26 in the same chapter, which respectively concern "unemployed persons" and "pension claimants".

3. In the case of a pensioner who is entitled to benefits in kind under the legislation of a Member State and who does not pursue a professional or trade activity, the right to be authorized by the competent institution to go to another Member State to receive there the treatment appropriate to his condition is governed by the provisions of Article 22 (1) (c) and (2) of Regulation No. 1408/71.

4. When the competent institution acknowledges that the treatment appropriate to the condition of a worker constitutes a necessary and effective treatment of the sickness or disease from which he suffers the conditions for the application of the second subparagraph of Article 22 (2) of Regulation No. 1408/71 are fulfilled and the competent institution may not in that case refuse the authorization referred to by that provision and required under Article 22 (1) (c).

5. The expression "benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence" in Article 22 (1) (c) (i) of Regulation No. 1408/71 refers to any benefit which the institution of the Member State to which the person concerned goes after obtaining the authorization referred to in Article 22 (1) (c) has the power to grant, even if it is not required to provide them under legislation which it administers.

NOTE The Centrale Raad van Beroep [court of last instance in social security matters], the Netherlands, referred to the Court of Justice a preliminary question on the interpretation of provisions of Regulation No. 1408/71 of the Council concerning the right of "pensioners" to receive treatment appropriate to their state of health in the territory of a Member State other than the one in which they reside.

Preliminary questions concerning this case have previously been referred to the Court of Justice which replied to them in its judgment of 16 March 1978 (Case 117/77 [1978] ECR 829; Proceedings of the Court of Justice No. 8/78).

The Centrale Raad van Beroep nevertheless considered that in order to settle the case before it it was necessary to obtain replies to further questions.

In the first question the national court asks whether the provisions of Article 22 of Regulation No. 1408/71 which governs the rights of workers to benefits in kind also extends to pensioners "who are not, or are no longer, at work and who request from the competent institution authority to go to a Member State other than the State of their residence in order to receive there treatment appropriate to their state of health.

The Court replied by ruling that

The right of a pensioner entitled to benefits in kind under the legislation of a Member State who does not work to be authorized by the competent institution to go into another Member State to receive the medical care appropriate to his state of health is governed by the provisions of Article 22 (1) (c) and (2) of Regulation No. 1408/71.

With regard to the second question, the Court laid down in its judgment of 16 March 1978 that "the duty laid down in the second subparagraph of Article 22 (2) to grant the authorization required under Article 22 (1) (c) covers both cases where the treatment provided in another Member State is more effective than that which the person concerned can receive in the Member State where he resides and those where the treatment in question cannot be provided on the territory of the latter State".

The Court ruled in the present case that where the institution recognizes that the medical attention constitutes necessary and effective treatment of the illness or disease from which the person concerned suffers, the conditions for the application of the second subparagraph of Article 22 (2) of Regulation No. 1408/71 are fulfilled and the competent institution cannot refuse in that case the authorization referred to in that provision and required under Article 22 (1) (c).

With regard to the third question, which concerns the reimbursement of costs, the Court ruled that the words "benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence" in Article 22 (1) (c) (i) relate to all benefits which the institution of the Member State where the person concerned goes, after obtaining the authorization referred to in Article 22 (1) (c), is able to provide even if the institution is not obliged to provide them pursuant to the legislation administered by that institution.

Judgment of 31 May 1979

Case 183/78

Firma Galster v Hauptzollamt Hamburg-Jonas

(Opinion delivered by Mr Advocate General Mayras on 5 April 1979)

1. Common Customs Tariff - Tariff headings - Products "slightly dried or slightly smoked" within the meaning of subheadings 02.06 B I (b) 3 (aa) and 02.06 B I (b) 5 (aa) - Concept

2. Common Customs Tariff - Tariff headings - Frozen meat within the meaning of heading 02.01 - Concept

1. Having regard to the Explanatory Notes and Additional Notes to the Common Customs Tariff it is clear that the basis of the decisive criterion for tariff classification of "slightly dried" or "slightly smoked" products within the meaning of subheadings 02.06 B. I (b) 3 (aa) and 02.06 B I (b) 5 (aa) of that tariff is not the water/protein ratio in the meat considered in isolation, but is primarily the capacity of such slight drying or slight smoking to ensure the actual preservation of the meat.

2. The expression "frozen" in heading 02.01 of the Common Customs Tariff covers not only meat which has been frozen when fresh but also meat which has first been slightly dried and subsequently frozen, in so far as its actual and lasting preservation depends essentially upon such freezing.

NOTE

The Bundesfinanzhof /Federal Finance Court/ referred to the Court of Justice two preliminary questions on the interpretation of certain provisions of the Common Customs Tariff with regard to the tariff classification of pigmeat which has been frozen when fresh.

The main action concerns the classification of meat which has been "slightly dried" and subsequently "frozen" for export.

The Court ruled that the expression "frozen" in heading 02.01 of the Common Customs Tariff covers not only meat which has been frozen when fresh but also meat which has first been slightly dried and then frozen in so far as its actual and lasting preservation depends essentially upon such freezing.

Judgment of 31 May 1979

Case 207/78

Ministère Public v Gilbert Even and Office National des Pensions pour Travailleurs Salariés (O.N.P.T.S.)

(Opinion delivered by Mr Advocate General Mayras on 29 March 1979)

1. Social security for migrant workers - Community rules - Benefits which come within and benefits which are excluded from the substantive field of application thereof - Distinguishing criteria
(Regulation (EEC) No. 1408/71 of the Council, Art. 4 (1) and (4))

2. Social security for migrant workers - Community rules - Benefits which are excluded from the substantive field of application thereof - Benefits for victims of war or its consequences
(Regulation (EEC) No. 1408/71 of the Council, Art. 4 (4))

3. Free movement of persons - Workers - Equal treatment - Social and tax advantages - Concept
(Regulation (EEC) No. 1612/68 of the Council, Art. 7 (2))

4. Free movement of persons - Workers - Equal treatment - Social advantages - Benefit based on a scheme of national recognition - Exclusion
(Regulation (EEC) No. 1612/68 of the Council, Art. 7 (2))

1. The fact that a provision providing for benefits for victims of war or its consequences comes within national social security legislation is not by itself determining for the purpose of concluding that the benefit laid down in that provision is in the nature of a social security benefit within the meaning of Regulation No. 1408/71, since the distinction between benefits which are excluded from the field of application of that regulation and benefits which come within it rests entirely on the factors relating to each benefit, in particular its purposes and the conditions for its grant.

2. Article 4 (4) of Regulation No. 1408/71 must be interpreted as also excluding from the field of application of that regulation special national schemes (such as that referred to in Article 1 (4) of the Belgian Royal Decree of 27 June 1969), the essential objective of which is to offer to workers who fought in the allied forces between 1940 and 1945 and who suffer incapacity for work attributable to an act of war a testimony of national recognition for the hardships suffered during that period and to grant them, by increasing the rate of the early retirement pension, a benefit by reason of the services thus rendered to their country.

3. It follows from all the provisions of Regulation (EEC) No. 1612/68 of the Council and from the objective pursued that the social and tax advantages which this regulation extends to workers who are nationals of other Member States are all those which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Community.

4. A benefit based on a cheme of national recognition, (such as the benefit granted by the Belgian Royal Decree of 27 June 1969), cannot be considered as an advantage granted to a national worker by reason primarily of his status of worker or resident on the national territory and for that reason does not fulfil the essential characteristics of the "social advantages" referred to in Article 7 (2) of Regulation (EEC) No. 1612/68.

It does not therefore come within the substantive field of application of that regulation and is not therefore, as regards the conditions for the grant of that benefit, subject to the provisions of the latter.

NOTE The Cour du Travail, Liège, submitted to the Court several questions for a preliminary ruling on the interpretation of the provisions of Articles 3 and 4 of Regulation (EEC) No. 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community. These questions have been raised within the context of a dispute between the Office National des Pensions pour Travailleurs Salariés, Brussels, and a French national who had been in receipt of an early retirement pension paid by the said Office National since reaching 60 years of age.

Pursuant to the Belgian legislation the retirement pension, paid at the normal rate at 65 years of age, may start to run at the choice and upon the request of the person concerned during the period of five years preceding the normal pension age but in that case it is reduced by 5% per year of early payment. However, the above-mentioned reduction does not apply to Belgian nationals who served in the allied forces between 10 May 1940 and 8 May 1945 and are in receipt of a war service invalidity pension granted by an allied nation for incapacity for work attributable to an act of war.

In the present case Mr Even, who was in receipt under the French legislation of a permanent war service 10% invalidity pension as a result of a war wound sustained on 13 May 1940, claimed the benefit granted by that provision of an early retirement pension without reduction, relying upon the principle of equality of treatment between national workers and workers of another Member State enshrined in the Community rules.

The national court doubted whether a benefit such as that referred to by the Belgian rules can be regarded as a social security benefit within the meaning of Article 4 (1) (c) of Regulation No. 1408/71 and come within the scope of that regulation.

The Court held that the observations of the Commission were correct in that although a benefit such as that in this case does not constitute a social security benefit within the meaning of Regulation No. 1408/71, it may nevertheless be regarded as a social advantage within the meaning of Regulation No. 1612/68 on freedom of movement for workers within the Community and thus come within the scope of the latter regulation.

In answer to the question put to it the Court ruled that Article 4 (4) of Regulation No. 1408/71 must be interpreted as referring also to special schemes such as that referred to in Article 1 (4) of the Belgian Royal Decree of 27 June 1969 laying down the conditions under which a scheme of national recognition entitles an employed person to an early retirement pension without reduction.

Judgment of 12 June 1979

N.V. Nederlandse Spoorwegen v Staatssecretaris van Financiën

(Opinion delivered by Mr Advocate General Reischl on 8 May 1979)

1. Tax provisions - Harmonization of legislation - Turnover tax - Common system of value added tax - Services subject thereto - Services ancillary to the transport of goods - Collection of the price of the goods carried - Specific treatment - Not permissible (Second Council Directive No. 67/288, Annex B, item 5)

2. Tax provisions - Harmonization of legislation - Turnover tax - Common system of value added tax - Services subject thereto - Exemption by Member States - Conditions - Mandatory taxation of services ancillary to transport of goods (Second Council Directive No. 67/228, Art. 6 (2), Annexes A, item 10, and B, item 5)

1. If a carrier has undertaken, in addition to the transport of the goods, to collect the price of the goods before delivering them to the consignee (cash-on-delivery system) the collection of that price is a service ancillary to the transport within the meaning of Annex B, item 5, to the Second Council Directive No. 67/228 on the harmonization of legislation of Member States concerning turnover taxes. It follows that for the purposes of the application of value added tax Member States are not empowered to treat an ancillary service such as the collection of the cash-on-delivery price separately from the service of the transport of goods.

2. The provision "Regarding Article 6 (2)" in Annex A, item 10, to Directive No. 67/228 must be interpreted restrictively in order to safeguard the coherence of the new system and the neutrality in competition which it seeks to establish. It follows that a Member State cannot insert into its legislation a measure exempting a service listed in Annex B save in an exceptional case which justifies an adverse effect upon neutrality in competition. It must be concluded that the collection of the price of goods transported, a service ancillary to the transport of goods, cannot be exempted from turnover tax since it is included in the aforementioned Annex B, item 5, which contains the list of services compulsorily taxable under Article 6 of the directive. The national court must take account of the combined provisions of Article 6 (2) and of Annex B, item 5.

NOTE

The main action is between the Staatssecretaris van Fananciën and a carrier who provides a cash-on-delivery service, payment consisting of the transport charge together with a fee, the so-called "cash-on-delivery commission", which is increased by the turnover tax, which it deducts in its tax declarations. The Staatssecretaris van Financiën considers that that commission, as the the "collection of money payable", must be "exempt from taxation" under Netherlands law.

In the light of these proceedings, the national court referred to the Court of Justice the following first question:

> "If a carrier has undertaken, in addition to the transport of the goods, to collect the price of the goods before delivering them to the consignee (cash-on-delivery system) is the collection of that price a service ancillary to the transport within the meaning of item 5 of Annex B to the Second Directive of the Council of the European Communities of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes ?"

It follows from the analysis made by the Court that since the performance of those two services (transport and cash-on-delivery service) is inseparable it is necessary, so as to achieve the objective of neutrality of competition sought by the directives on value added tax, for the collection of the price of the goods transported to be considered as a service ancillary to the transport of goods and thus be subject to value added tax in all Member States in order to achieve equality of treatment between the various means of transport and to ensure that this service is taxed under the same conditions in all the Member States.

The Court therefore replied to this first question by ruling that where a carrier has undertaken, in addition to the transport of the goods, to collect the price of the goods before delivering them to the consignee (cash-on-delivery system) the collection of the price of the goods transported is a service ancillary to the transport within the meaning of item 5 of Annex B to the Second Directive of the Council of the European Communities of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes.

The national court referred to the Court a second question worded as follows:

> "If so, are the Member States free, in the application of the turnover tax, to treat an ancillary service such as the aforesaid collection of the cash-on-delivery price separately in such a way that the services of transport and storage of goods referred to in item 5 of Annex B are not exempted from turnover tax but the ancillary service of collection of money is so exempted ?"

The Court held that, for the purposes of the application of value added tax, Member States are not free to treat an ancillary service such as the collection of the cash-on-delivery price and the service of transport of goods separately.

Judgment of 12 June 1979

Joined Cases 181 and 229/78

Ketelhandel van Paassen B.V. v Staatssecretaris van Financiën

Minister van Financiën v Denkavit Dienstbetoon B.V.

(Opinion delivered by Mr Advocate General Reischl on 8 May 1979)

1. Tax provisions - Harmonization of legislation - Turnover tax - Common system of value added tax - Special national systems - Conditions for adoption - Mandatory consultation with Commission - Arrangements therefor
(Council Directive No. 67/228, Art. 16)

2. Tax provisions - Harmonization of legislation - Turnover tax - Common system of value added tax - Persons subject thereto - National system under which undertaking is a single entity for tax purposes - Conditions for adoption
(Council Directive No. 67/228, Annex A, Point 2)

1. Article 16 of the Second Council Directive (No. 67/228/EEC) on the harmonization of legislation of Member States concerning turnover taxes does not lay down any particular procedure from the point of view of the form of the reference to the Commission, but it does require that such reference should be made "in good time", that is to say that the Commission should be given a reasonable period of time to examine the documents sent to it, that it should know the purpose for which the Member State has sent them to it and that they should contain complete information enabling the Commission - in accordance with Article 101 of the Treaty - to find that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the Common Market and that the resultant distortion needs to be eliminated.

2. A Member State has adopted a system such as that referred to in the fourth paragraph of Point 2 "Regarding Article 4" of Annex A to Directive No. 67/228/EEC if it has laid down in its legislation that turnover tax shall be levied inter alia on the supply of goods and services by undertakings, after entering into the consultations to which reference is made in Article 16 of the directive, even though it has not defined the concept of an undertaking otherwise than as "any person who independently carries on business".

NOTE

The proceedings in the main actions are between companies and the Netherlands Minister of Finance who issued a corrected assessment for turnover tax in respect of each of the companies in question, maintaining that neither was an "undertaking" because although they are independent from a legal point of view they were both linked with third companies by financial, economic and organizational relationships, that they therefore formed with those companies a "single entity for tax purposes", that they could not therefore introduce value added tax in their internal transactions with those third companies and that the companies had wrongly recovered input tax.

The first set of questions concerns whether a Member State, by adopting a system such as that referred to in Annex A 2. Regarding Article 4, of the Second Directive of the Council No. 67/228/EEC (application of the common system of value added tax), could define the concept of undertaking merely as "any person who independently carries on business", while from the preparatory stages of the Law prior to its coming into force it is clear that that concept can also cover other concepts. The other point is whether the Netherlands entered into the consultations to which reference is made in Annex A 2. Regarding Article 4,of the Second Directive.

Article 4 of that directive provides that a "taxable person" means any person who independently and habitually engages in transactions pertaining to the activities of producers, traders or persons providing services, whether or not for gain.

The national court recognizes that the system known as that of the "single entity of undertakings for tax purposes" traditionally formed part of the domestic legal order of the Netherlands before the introduction of the system of value added tax.

It is necessary to know whether the measures adopted by the Netherlands Government to introduce the provisions of the directives on value added tax into its domestic legal order were notified to the Commission as required by Article 16 of the Second Directive.

The Court examined the procedure implemented by the Government of the Netherlands and reached the conclusion that that government fulfilled its duties under the directive for the purpose of maintaining in its legislation the system of the single entity of undertakings for tax purposes.

The Court, in reply to the questions submitted to it by the Hoge Raad, ruled as follows:

"A Member State has adopted a system such as that referred to in Annex A 2. Regarding Article 4, of the Second Directive, if it has, after entering into the consultations provided for in Article 16 of the directive, laid down by law that turnover tax shall be levied inter alia in relation to the provision of goods and services by undertakings even though it has defined the concept of undertaking merely as 'any person who independently carries on business'. "

Judgment of 19 June 1979

Case 180/78

Mrs Brouwer-Kaune v Bestuur Bedrijfsvereniging Kledingbedrijf

(Opinion delivered by Mr Advocate General Capotorti on 16 May 1979)

Social security for migrant workers - Invalidity insurance - Benefits - Overlapping - Application by analogy with provisions relative to old-age and death benefits - Scope of analogy
(Regulation No. 1408/71 of the Council, Art. 40 (1))

Article 40 (1) of Regulation No. 1408/71 of the Council must be interpreted as meaning that it also relates to the award of invalidity benefits in a Member State in which the right to such benefits has been acquired by a worker on the basis of legislation of the type referred to in Article 37 (1) in a case where the person concerned, before the acquisition of such right, had already become entitled, by virtue of the legislation of another Member State not being of that type, to an old-age benefit resulting from the conversion of an earlier invalidity benefit.

NOTE

The plaintiff in the main action worked in Germany between 1928 and 1950, then removed to the Netherlands, where she worked as an employed person from 1951 to 1972. From 1 August 1970 she received an occupational invalidity pension in Germany, which was converted into an early old-age pension with effect from 1 August 1973.

In the Netherlands she was granted benefit for incapacity for work from 2 October 1973, that is to say at a date subsequent to the conversion of the German invalidity pension into an old-age pension.

Because of the chronological order in which those benefits were granted, the Centrale Raad van Beroep /Court of last instance in social security matters/considered that Article 43 of Regulation No. 1408/71 relating to the conversion of invalidity benefits into old-age benefits was not applicable, at least not directly in the case in question. In fact that article provides for the case where invalidity benefits are acquired in two Member States before the conversion into old-age pension and paragraph (2) provides that, even after such a conversion in one of the Member States, the institution responsible for providing invalidity benefits in the other Member State shall continue to pay the recipient the invalidity benefits to which he is entitled under the legislation which it applies. Since that provision was not applicable to the case in question, the Netherlands authorities had to ascertain whether the national legislative provisions which, in the event of overlapping between an invalidity benefit due under Netherlands law and a foreign old-age benefit, provide that the national benefit shall be reduced by the total amount of the foreign benefit, are in conformity with the other provisions of Community law in issue, in particular Article 40 of the regulation. Article 40 provides for the case of a worker who has been subject to the laws of two or more Member States, of which at least one, like the German law in this case, makes the amount of the invalidity benefits dependent on the duration of the periods of insurance.

The Court relied upon the legal principles which it has laid down in decided cases involving a worker who has been subject to the legislation of two or more Member States in the field of old-age insurance, which principles have been extended to cases of invalidity insurance and have constantly been favourable to the worker (judgment of 14 March 1978, Case 98/77 - Schaap and judgment of 21 October 1975, Case 24/75 - Petroni). The problem in this case was to know whether a different solution must be adopted only for the case where conversion of the invalidity benefit in one Member State takes place before the invalidity benefit becomes payable in another Member State.

The absence of any express provision relating to the last-mentioned hypothesis must be regarded as a lacuna. The protection of the rights which the person concerned enjoys by virtue of national legislation alone, without having recourse to the rules for aggregation or apportionment, and the need to respect any benefits resulting from those rules, prevail in the same way in all cases.

The Court replied by ruling that Article 40 (1) of Regulation No. 1408/71 of the Council must be interpreted as providing for the payment of invalidity benefits in a Member State in which a worker has been acknowledged to be entitled to those benefits under legislation of the type specified in Article 37 (1) also in the case where, before the commencement of that entitlement, the person concerned has already become entitled, under the legislation of another Member State, not being of that type, to an old-age benefit resulting from the conversion of a previous invalidity benefit.

Judgment of 21 June 1979

Case 240/78

Atalanta Amsterdam B.V. v Produktschap voor Vee en Vlees

(Opinion delivered by Mr Advocate General Reischl on 30 May 1979)

1. Agriculture - Common organization of the market - Pigmeat - Member States - Implementation of Community regulations - Designation of competent institutions - Apportionment of powers amongst a number of institutions - Permissibility - Conditions

   (Regulations Nos. 2759/75 and 2763/75 of the Council; Commission Regulation No. 1889/76)

2. Agriculture - Common organization of the market - Pigmeat - Private storage aids - Acquisition of the right to aid - Belated transmission of documents - Unimportance of such documents

   (Commission Regulation No. 1889/76, Arts. 3 (2) (a) and 6 (2))

3. Agriculture - Common organization of the market - Pigmeat - Private storage aids - System of deposits - Conditions concerning legality - Proportionality - Forfeiture of the deposit according to the degree of failure to implement the contract

   (Regulation No. 2763/75 of the Council, Art. 4 (2) (b); Council Regulation No. 1889/76, Art. 5 (2))

1. It is for each Member State to determine the institutions which are empowered within its domestic legal system to adopt measures in implementation of Regulations No. 2759/75 of the Council on the common organization of the market in pigmeat, No. 2763/75 of the Council laying down general rules for granting private storage aid for pigmeat and No. 1889/76 of the Commission laying down detailed rules for granting private storage aid for pigmeat. The Member States may apportion amongst several national institutions the task of adopting the various necessary implementing measures. In this latter case it is however incumbent on the said national institutions to ensure by appropriate means that the measures which they adopt are co-ordinated in such a way that they do not jeopardize the proper functioning of the organization of the market.

2. The belated transmission to the competent intervention agency of the documents relating to the various storage operations does not prevent the acquisition of the right to aid within the meaning of Article 6 (2) of Regulation No. 1889/76 provided that the obligations set out in Article 3 (2) of the said regulation have been fulfilled in their entirety.

3. The absolute nature of Article 5 (2) of Regulation No. 1889/76 is contrary to the principle of proportionality in that it does not permit the penalty for which it provides to be made commensurate with the degree of failure to implement the contractual obligations or with the seriousness of the breach of those obligations.

Accordingly, notwithstanding the provisions of that article, Article 4 (2) (b) of Regulation No. 2763/75 of the Council remains applicable in the sense that the competent authority may declare the deposit forfeit in whole or in part according to the gravity of the breach of the contractual obligations.

NOTE

The College van Beroep voor het Bedrijfsleven /administrative court of last instance in matters of trade and industry/ submitted several questions on the interpretation and validity of various provisions of Regulations Nos. 2759/75 and 2763/75 of the Council on the common organization of the market in pigmeat and laying down general rules for granting private storage aid for pigmeat.

Those questions were raised in the context of a dispute between the intervention agencies responsible for granting storage aid in the Netherlands, the defendant in the main action, and the Atalanta undertaking, the plaintiff in the main action, which had entered into several contracts for the storage of pigmeat with the intervention agencies responsible in the Netherlands for making contracts relating to storage and for ruling on the fate of the security lodged by the storer, referred to as the VIB.

The plaintiff in the main action had failed, with regard to certain storage operations, to send to the VIB, within the period laid down, the documentary proof of those operations; the VIB decided that the securities which had been lodged would be forfeited. For the same reason the intervention agency refused to grant the storage aid claimed by Atalanta, which brought an action in the national court, which in turn referred the case to the Court of Justice.

The first question raised was designed to ascertain whether it is the national intervention agencies or the Member States who are empowered to decide on the application of the rules laid down by the regulations in issue.

The Court replied by ruling that the power to decide on the applicatic of the rules laid down by the provisions of Regulations Nos. 2759/75, 2763/75 and 1889/76 belongs to the institutions appointed for that purpose by each Member State.

The Court was further asked about the influence on the application of the Council regulations concerned of a delay in sending documents.

The Court replied by ruling that a delay in sending the documentary proof of the storage operations to the competent intervention authority does not impede the acquisition of entitlement to the aid within the meaning of Article 6 (2) of Regulation No. 1889/76, since the obligations specified in Article 3 (2) (a) of the said regulation were wholly performed

The last questions dealt with the scope and validity of Article 5 (2) of Commission Regulation No. 1889/76, particularly with regard to the provisions of Article 4 of Regulation No. 2763/75 of the Council.

The Court replied to those questions by ruling that irrespective of the stipulations contained in Article 5 (2) of Commission Regulation No. 1889/76, Article 4 (2) (b) of Regulation No. 2763/75 of the Council remains applicable, with the effect that the competent authority may declare the security forfeit, totally or partially, according to the gravity of the breach of contract.

Judgment of 26 June 1979

Pigs and Bacon Commission v MacCarren & Co. Ltd.

(Opinion delivered by Mr Advocate General Warner on 15 May 1979)

1. Agriculture - Common organization of the market - Pigmeat - Provisions of the Treaty on aids granted by States - Applicability - Conditions
   (EEC Treaty, Arts. 92 to 94; Regulation No. 2759/75 of the Council, Art. 21)

2. Agriculture - Common organization of the market - Member States - Undermining Community rules - Prohibition
   (EEC Treaty, Art. 40)

3. Agriculture - Common organization of the market - Pigmeat - Principles - Freedom of intra- Community trade - Member States - Unilateral intervention - Prohibition
   (Regulation No. 2759/75 of the Council)

4. Agriculture - Common organization of the market - Pigmeat - Member States - Conferment of special advantages on national producers - Export subsidy - Prohibition
   (Regulation No. 2759/75 of the Council, Art. 15 (2))

5. Agriculture - Common organization of the market - Pigmeat - Principles - Open market - Exhaustive rules
   (Regulation No. 2759/75 of the Council)

6. Agriculture - Common organization of the market - Pigmeat - National marketing scheme - Prohibition - Criteria
   (Regulation No. 2759/75 of the Council)

7. Community law - Principles - Direct effect - National levy incompatible with Community law - Impossibility of recovering

8. Agriculture - Common organization of the market - Precedence over general rules of Treaty - System of State monopolies of a commercial character - Inapplicability
   (EEC Treaty, Arts. 37 and 38 (2))

9. Community law - Principles - Direct effect - National levy incompatible with Community law - Right to reimbursement - Arrangements for securing - Discretion of national court

1. It follows from Article 21 of Regulation No. 2759/75 of the Council on the common organization of the market in pigmeat that although Articles 92 to 94 of the EEC Treaty on aids are fully applicable to the pigmeat sector, their application nevertheless remains subordinate to the provisions governing the common organization of the market

established by the regulation. Recourse by a Member State to the provisions of Articles 92 to 94 cannot receive priority over the provisions of the regulation on the organization of that sector of the market.

2. Once the Community has, pursuant to Article 40 of the EEC Treaty, legislated for the establishment of the common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it.

3. The marketing system established by Regulation No. 2759/75 in the context of the system for the free movement of goods guaranteed by the provisions of the Treaty is intended to ensure freedom of trade within the Community by the abolition both of barriers to trade and of all distortions in intra-Community trade and hence precludes any intervention by Member States in the market otherwise than as expressly laid down by the regulation itself.

4. Article 15 (2) of Regulation No. 2759/75 prevents Member States from conferring a special advantage on their producers by granting them an export bonus in addition to any refund which may be received in pursuance of the regulation at the risk of thus distorting conditions of competition between Community producers on external markets.

5. The common organization of the market in pigmeat, like the other common organizations, is based on the concept of an open market to which every producer has free access and the functioning of which is regulated solely by the instruments provided for by that organization.

6. Regulation No. 2759/75, having regard to the provisions of the Treaty relating to the free movement of goods, must be interpreted as meaning that a national system is incompatible with the common

organization of the market in pigmeat where the object of that system is to permit a central marketing agency vested by law with power to charge a levy on the whole of the production of a commodity coming under the common organization of the market,

(a) to effect, from the proceeds of the receipts from the levy, the payment of bonuses for certain products intended to be marketed in the Common Market or exported to non-member countries;

(b) to inflict a financial disadvantage on any producer, who is compelled to pay the production levy, by reason of the fact that he effects his sales directly without availing himself of the intermediary or of the services of the central marketing agency.

7. The levy demanded within the framework of a national marketing system is not due from producers to the extent to which it is employed for purposes incompatible with the requirements of the Treaty on the free movement of goods and with the common organization of the market.

8. It follows from Article 38 (2) of the Treaty which gives priority to the rules for the organization of the agricultural markets as against the rules laid down for the establishment of the Common Market as a whole, of which Article 37 is one, that the provisions relating to a common organization of the market cannot be thwarted by describing as a "State monopoly" an agency vested with certain statutory powers in the agricultural sphere.

9. In principle any trader who is required, by the legislation of a Member State, to pay a levy has the right to claim the reimbursement of that part of the levy which is devoted to purposes incompatible with Community law. It is for the national court to assess, according to its national law, in each individual case, whether and to what extent the levy paid may be recovered and if so whether there may be set off against such a debt the sums paid to the trader by way of a bonus which is also incompatible with Community law.

NOTE

The Pigs and Bacon Commission (hereinafter referred to as "the PBC"), the plaintiff in the main action, is an Irish public body set up in 1939 which carries out certain duties in the field of regulating the market in pigmeat and, more particularly, of bacon marketing.

The PBC is composed of representatives of the government and of the trades interested, and is endowed by law with extensive powers for controlling, as a central marketing agency, the whole of the sector in question. In order to finance its activities the PBC had the statutory right to charge a levy on pig carcasses intended for the manufacture of bacon. This levy was used on the one hand for financing the PBC's general activities intended to improve the production and marketing of bacon and, on the other hand, for the payment of a bonus - granted in fact in the form of a refund of a part of the levy charged - for the export, principally to the United Kingdom, of high quality bacon. At the time of Ireland's accession to the Community the compatibility of this system with Community law was considered by the Irish authorities. It was understood on that occasion that the PBC would thenceforth relinquish its statutory powers and would carry out its duties in future only on a voluntary basis, which was accepted by all the representatives of the traders concerned. However, there was one exception to this voluntary basis: the PBC still has the statutory right to charge the levy intended to finance its various activities and it also continues to pay a bonus for the export of high quality bacon, it being understood that the bonus is payable only to those of the producers who effect their exports through the intermediary of the PBC.

The defendant in the main action, McCarren and Company Limited, is a producer and exporter of bacon. In the beginning that company took part in the arrangement made between the Irish authorities and the producers, and during that period of affiliation to the PBC it paid the contribution on the carcasses intended for the production of bacon and exported its product through the intermediary of the PBC and drew the bonus.

At a later stage McCarren felt that it could with greater advantage export its production directly, and withdrew from the scheme as from 30 April 1975. From that date it has refused to pay the levy to the PBC and has been deprived of the export bonus.

The action brought before the High Court, Dublin, concerns the claim by the PBC for the levy to which it considers itself entitled by law.

McCarren for its part has made a counter-claim for reimbursement of the levy paid by it subsequent to 1 February 1973, the date of the application in Ireland of the common organization in the market in pigmeat and until it severed its links with the PBC.

McCarren claimed before the national court that the activities of the PBC as regards the charging of the levy on pig carcasses and the application of the proceeds to the payment of a bonus reserved exclusively to producers exporting their bacon through the intermediary of the PBC were incompatible with the EEC Treaty and the common organization of the market in pigmeat.

The dispute led the High Court, Dublin, to refer to the Court of Justice a number of preliminary questions on the interpretation of Articles 92 and 93 of the Treaty (aids granted by States), Article 16 (abolition of customs duties on exports and charges having equivalent effect), Article 34 (prohibition of quantitative restrictions on exports and measures having equivalent effect), Article 37 of the Treaty and Article 44 of the Act of Accession (national monopolies of a commercial character), Article 40 of the Treaty and Regulation No. 2759/75 (common organization of the market in pigmeat) and Articles 85 and 86 of the Treaty (competition).

In view of all the rules of Community law invoked by the national court, the Court of Justice referred to its judgment of 29 November 1978 in Case 83/78 (Pigs Marketing Board (Northern Ireland) v Redmond /1978/ ECR 2347) in which it held that once the Community has, pursuant to Article 40 of the Treaty, legislated for the establishment of the common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it. The marketing system established by Regulation No. 2759/75 is intended to ensure freedom of trade within the Community by the abolition both of barriers to trade and of all distortions in intra-Community trade and hence precludes any intervention by Member States in the market otherwise than as expressly laid down by the regulation itself. According to the idea on which the regulation dealing with the common organization of the market in pigmeat is based, the products referred to therein are required to move freely within the Community, and no financial machinery is allowed to create advantages for the marketing of any national product as against that of another Member State.

The same consideration applies to exports to non-member countries. Moreover the system practised by the PBC is incompatible with Regulation No. 2759/75 by reason of the difference in treatment for which it provides between producers according to whether or not they make use of the intermediary of the PBC to effect the sale of their products in other Member States or to export them to non-member countries.

Traders who choose to market their products directly are thus penalized.

The Court answered by ruling that:

1. Having regard to the provisions of the Treaty relating to the free movement of goods, Regulation No. 2759/75 must be interpreted as meaning that a national system is incompatible with the common organization of the market in pigmeat where the object of that system is to permit a central marketing agency vested by law with the power to charge a levy on the whole of the production of a commodity coming under the common organization of the market, such as pig carcasses intended for the production of bacon,

   (a) to effect, from the proceeds of the receipts from the levy, the payment of bonuses for certain products intended to be marketed in the Common Market or exported to non-member countries;

   (b) to inflict a financial disadvantage on any producer, who is compelled to pay the production levy, by reason of the fact that he effects his sales directly without availing himself of the intermediary or of the services of the central marketing agency.

2. The levy demanded within the framework of a marketing system having the above-mentioned characteristics is not due from producers to the extent to which it is devoted to purposes incompatible with the requirements of the Treaty on the free movement of goods and with the common organization of the market.

A further question arose as a result of the counter-claim by McCarren and Company for reimbursement of the levy paid by it between 1973 and 1975 if the levy was not lawfully payable by reason of the operation of Community law.

The Court ruled that:

3. It is for the national court to determine, on the one hand, whether and to what extent the levy charged on a product coming under the common organization of the market and devoted to purposes incompatible with that organization must be reimbursed and, on the other hand, whether and to what extent there may be set off against that right to reimbursement the amount of the bonuses paid to the trader concerned.

Judgment of 27 June 1979

Case 161/78

Advokatrådet as representative of P. Conradsen A.S. v Ministry of Inland Revenue

(Opinion delivered by Mr Advocate General G. Reischl on 29 May 1979)

1. Tax provisions - Harmonization of laws - Indirect taxes on the raising of capital - Capital duty on contributions to capital companies - Basis of assessment - Actual value of the assets at the time of contribution - Liabilities and expenses deductible - Concept - Exclusion of potential liabilities

(Council Directive No. 69/335, Art. 5 (1) (a))

2. Tax provisions - Harmonization of laws - Indirect taxes on the raising of capital - Capital duty on contributions to capital companies - Basis of assessment - Actual value of the assets at the time of contribution - Entering of "Provisions for taxation" under liabilities in the balance sheet - No effect

(Council Directives No. 69/335, Art. 5 (1) (a) and No. 78/660, Art. 9, Liabilities B.2)

3. Tax provisions - Harmonization of laws - Indirect taxes on the raising of capital - Capital duty on contributions to capital companies - Basis of assessment - Actual value of the assets at the time of contribution - Liabilities and expenses deductible - Concept - Potential tax liability on an untaxed reserve - Exclusion

(Council Directive No. 69/335, Art. 5 (1) (a))

1. It is evident from Article 5 (1) (a) of Council Directive No. 69/335 concerning indirect taxes on the raising of capital, in the light of its objectives, that the capital duty is to be charged on the "actual value" of the assets at the time at which they were contributed and not on their book value, and that the "liabilities and expenses" which are deductible under this provision from the actual value of the contributions can only be those the existence and amount whereof are certain.

The need to base the taxation of capital which has been raised on criteria which are objective and uniform within the Community in fact precludes the book value of the assets contributed and also of potential tax liabilities chargeable on the profits of the company from being taken into consideration. Such liabilities, for the very good reason that they are unascertained, make it impossible to determine the actual value of assets contributed at the time at which they were contributed and thus to calculate one of the main constituent elements for the levying of the duty, namely the basic taxable amount.

2. The principle laid down in Article 5 (1) (a) of Directive No. 69/335 that the charging of capital duty on the actual value of the assets at the time at which they were contributed and not on the basis of their book value cannot be affected by the fact that Article 9, Liabilities B.2 of Council Directive No. 78/660 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies provides for "Provisions for taxation" to be entered under liabilities as "Provisions for liabilities and charges". That directive pursues an objective which differs considerably from that of Directive No. 69/335: it does not aim at harmonizing taxation of the raising of capital, but, as provided for in Article 54 (3)(g) of the Treaty, is among the measures which, in the context of the right of establishment aim at "co-ordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 with a view to making such safeguards equivalent throughout the Community".

In these circumstances, although entering "Provisions for taxation" under liabilities fulfils the requirements for the presentation by companies of their balance sheet, in accord with the interests of the members and of third parties, it does not imply that such an entry may affect the value of capital which has been raised and is liable to the capital duty introduced by Directive No. 69/335.

Although Article 20 (1) of Directive No. 78/660 does not rule out the possibility that provisions for liabilities and charges are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise, paragraph (3) of the very same article states that the said provisions "may not be used to adjust the values of assets", and thus makes it clear that entering these provisions in the accounts relates to the requirements for the presentation of the balance sheets of certain types of companies but cannot in fact alter the basis for the assessment of a tax such as capital duty which in substance is based on the actual value of the assets.

3. The provisions of Article 5 (1) (a) of Directive No. 69/335 must be interpreted to mean that those provisions prevent a Member State, in assessing the liability to capital duty on the raising of the capital of a newly-formed limited company, whose share capital is created by contributions from an existing undertaking belonging to one of the founders, from granting a deduction for the potential tax liability on an untaxed reserve created when the aforesaid founder contributed to the new company the said undertaking's goods in stock and goods on order under binding contracts at a value written down for tax purposes less than their actual value.

Likewise, in the circumstances related above, Article 5 (1) (a) of Directive No. 69/335 precludes a deduction's being allowed for the amount of any potential tax which the newly-formed company would have to pay if, during the year in which it was formed, it realized a profit from the reserve resulting from the writing-down of the contributions for tax purposes and thereby obtained a corresponding amount of actual income liable to tax as such.

NOTE

Under Danish company law, the share capital of a new company may be provided through a contribution of assets other than in cash, such as goods in stock or goods purchased under binding contracts but not yet delivered. The law does not prohibit the writing-down of the non-cash assets contributed, which does not involve any risk for the company's creditors, but as regards taxation the founders of the company are assessable on the income which they may derive from the contributions calculated according to their actual value.

Denmark's accession to the Community had the effect of making applicable in Denmark Council Directive No. 69/335/EEC of 17 July 1969 providing for the abolition of stamp duty on dealings in securities as well as of all indirect taxes other than capital duty on the raising of capital. The directive provided for the harmonization in all the Member States of the factors which contribute to the calculation and charging of that duty.

P. Conradsen A.S. was formed on 1 January 1974. It received a contribution of goods in stock and binding contracts. In its notification of the raising of capital, the company calculated the amount on which duty was to be charged at Dkr 1 000 000, leaving out of account the written-down value of goods in stock and goods purchased under binding contracts (Dkr 1 927 740).

The Advokatråd [Bar Council], acting as representative of the company concerned, lodged an objection with the Ministry of Inland Revenue, arguing primarily that the value of the goods in stock and of the contracts contributed should be made to coincide with that appearing in the balance sheet and, in the alternative, that the amount on which duty was to be charged should in any case be reduced by the amount of the tax chargeable on the written-down value of the goods in stock and the goods on order under binding contracts.

The tax authorities rejected this argument, taking the view that any taxation of amounts pertaining to the writing-down is a step in the general taxation of income subsequent to the company's formation and that, moreover, the taking into account of those written-down values will not necessarily produce an equivalent amount of taxable income in the company's hands since such an eventuality depends on completely uncertain circumstances. Any charge to tax which may result from such writing-down does not constitute a "liability" within the meaning of Article 5 (1) (a) of Directive No. 69/335 and cannot be deducted from the amount on which capital duty is to be charged.

In order to elucidate this problem, the Østre Landsret [Eastern Division of the High Court] decided to refer the following questions to the Court of Justice:

1. Must the provisions of Article 5 (1) (a) of the Council Directive of 17 July 1969 concerning indirect taxes on the raising of capital (69/335/EEC) be interpreted to mean that those provisions prevent a Member State, in assessing the liability to duty on the raising of the capital of a newly-formed limited company A, whose share capital was created by contributions from an existing undertaking belonging to a person B, from refusing a deduction for any tax on an untaxed reserve which is regarded as an asset in the assessment of duty and which was created when B contributed to A the undertaking's goods in stock and goods on order at a value written down for tax purposes less than the actual value of the relevant goods in stock and goods on order?

2. Must the provisions of Article 5 (1) (a) of the Council Directive of 17 July 1969 concerning indirect taxes on the raising of capital (69/335/EEC) be interpreted to mean that, in the circumstances related in connexion with Question 1, these provisions preclude a deduction's being allowed for the amount of tax payable by A if A took the untaxed reserves as income in the year when the company was formed and thereby obtained a corresponding amount of income which is in fact liable to tax?

The Court answered by ruling that the provisions of Article 5 (1) (a) of Council Directive No. 69/335 of 17 July 1969 concerning indirect taxes on the raising of capital must be interpreted to mean that those provisions prevent a Member State, in assessing the liability to capital duty on the raising of the capital of a newly-formed limited company, whose share capital is created by contributions from an existing undertaking belonging to one of the founders, from granting a deduction for any tax on an untaxed reserve created when the aforesaid founder contributed to the new company the said undertaking's goods in stock and goods on order under binding contracts at a value written down for tax purposes less than their actual value.

Likewise, in the circumstances related above, Article 5 (1) (a) of Directive No. 69/335 precludes a deduction's being allowed for the amount of any tax payable by the newly-formed company if it took the reserve resulting from the writing-down of the contributions for tax purposes as income in the year when the company was formed and thereby obtained a corresponding amount of actual income liable to tax as such.

Judgment of 28 June 1979

Case 160/78

Interkontinentale Fleischhandelsgesellschaft v Hauptzollamt München-West

(Opinion delivered by Mr Advocate General F. Capotorti on 7 June 1979)

Common Customs Tariff - Tariff headings - Meat within the meaning of subheadings 16.02 B III (a) 1, 2 and 3 - Concept

It follows from the definitions contained in heading 1602 of the Common Customs Tariff, in the version brought into force by Regulation No. 3000/75 of the Council - in particular in subheadings 16.02 B I (a) and (b), 16.02 B III (a) and 16.02 B III (b) 1 - that whenever the authors of the Common Customs Tariff intended to refer to meat of a particular kind they did so expressly.

Consequently the argument that the term "of any kind" used in tariff subheadings 16.02 B III (a) 1, 2 and 3 relates only to offal so that the percentage of meat to be taken into account for classification under the said subheading is solely that of meat of "domestic swine" cannot be upheld.

The term "meat" in subheadings 16.02 B III (a) 1, 2 and 3 of the Common Customs Tariff in the version brought into force by Regulation No. 3000/75 relates therefore to meat of all kinds, including in particular beef and veal.

NOTE

The Finanzgericht München referred a question to the Court of Justice on the interpretation of heading 16.02 of the Common Customs Tariff in the version in force in 1976. The question was raised in the context of an action pending before the Hauptzollamt München-West and an undertaking which in May 1976 imported from Romania a quantity of minced meat, 10% of which was pigmeat and 90% of which was beef or veal.

The product was classified by the Hauptzollamt under tariff subheading 16.02 B III (a) 1 ("Other prepared or preserved meat or meat offal: ... (a) containing meat or offals of domestic swine and containing by weight: 1. 80% or more of meat or offal, of any kind, including fats of any kind or origin"). The importer challenged that classification on the grounds that the term "meat" contained in the definition of subheading 16.02 B III (a) referred solely to pigmeat and that consequently mixtures containing less than 40% by weight of pigmeat - which is the case as regards the mixtures imported in this instance - should be classified under subheading 16.02 B III (a) 3 ("less than 40% of meat or offal, of any kind, including fats of any kind or origin").

The Court ruled that the term "meat" in subheadings 16.02 B III (a) 1, 2 and 3 of the Common Customs Tariff in force in 1976 relates to meat of all kinds, including in particular beef and veal.

Judgment of 28 June 1979

Case 216/78

Nicolai Beljatzky v Hauptzollamt Aachen-Süd

(Opinion delivered by Mr Advocate General Warner on 3 May 1979)

Agriculture - Monetary compensatory amounts - Basis of calculation - Value of the products concerned - Butter from storage - Sale at reduced price to processing undertakings - Reduction of monetary compensatory amounts - Conditions - Reduction in value of goods owing to their compulsory destination - Re-assessment of compensatory amounts - Legal bases

(Regulation No. 974/71 of the Council, Art. 2; Regulation No. 1259/72, Art. 6 (1) (c) and (2) and Art. 20)

The definitive application of the reduced monetary compensatory amounts provided for by Article 20 of Regulation No. 1259/72 of the Commission on the disposal of butter at a reduced price to certain Community processing undertakings pre-supposes that the goods in question, having regard in particular to the use to which they are to be put, have the reduced value attributed to them by virtue of that regulation. In so far as the importer has not furnished the proof, within the period prescribed in Article 6 (1) (c) and (2) of that regulation, that the goods have been put to the use to which the reduction of the compensatory amounts is subject, the goods cannot be regarded as having the conventional value referred to above. In such a case the legal basis for the re-assessment of the compensatory amounts is to be found in the general rules governing the system of monetary compensatory amounts, as established by Regulation No. 974/71 of the Council.

NOTE

The Finanzgericht Düsseldorf submitted to the Court of Justice two questions on the interpretation of a Commission regulation on the disposal of butter at reduced prices to certain Community processing undertakings.

These questions were raised in the course of an action between the customs authorities of the Federal Republic of Germany and an importer of butter from Belgium concerning the application to that butter of the system of reduced monetary compensatory amounts provided for by Article 20 of the regulation in question.

The German customs authorities first charged on the importations of that product, which was produced from butter from storage and intended for the manufacture of fine baker's wares in accordance with the provisions of the regulation in question, the reduced monetary compensatory amounts

and subsequently, by a notice of corrective assessment, charged in respect of the importations a sum equal to the difference between those reduced amounts and the amounts normally applicable outside the system established by the regulation in question. The German authorities claim that, since the butter in question had not been put by the final user to the use prescribed in the regulation, it could not qualify for the reduced compensatory amounts thereby fixed and that it became liable to the monetary compensatory amounts prescribed for butter freely marketable without restrictions as to its use. The importer objected that there was no legal basis for such corrective assessment since Community law, in particular the aforementioned regulation, did not contain any independent provisions authorizing the subsequent recovery of the difference between the normal rate and the reduced rate of the compensatory amounts initially applied to the product where it is diverted from its destination laid down by law.

The Finanzgericht therefore asked:

"1. Is Article 20 of Regulation (EEC) No. 1259/72 ... to be interpreted as meaning that the definitive preferential levy treatment (reduction of the compensatory amounts) is subject only to the condition that the product be marketed in accordance with Articles 1 to 19 of the regulation or is there the further condition that the product be used in the manner prescribed by the regulation?

2. In the latter case:

Is Article 20 itself an independent provision allowing for the levy of a supplementary charge?"

The Court ruled that the definitive application of the reduced monetary compensatory amounts provided for by Article 20 of Regulation No. 1259/72 of the Commission of 16 June 1972 presupposes that the goods in question, having regard in particular to the use to which they are to be put, have the reduced value attributed to them by virtue of Regulation No. 1259/72. In so far as the importer has not furnished the proof, within the period prescribed in Article 6 (1) (c) and (2), that the goods have been put to the use to which the reduction of the compensatory amounts is subject, the legal basis for the subsequent reassessment of such amounts is to be found in the general rules governing the system of monetary compensatory amounts, as established by Regulation No. 974/71 of the Council of 12 May 1971.

Judgment of 28 June 1979

Case 217/78

Nicolas Corman & Fils S.A. v Hauptzollamt Aachen-Süd
(Opinion delivered by Mr Advocate General Warner on 28 June 1979)

Agriculture - Monetary compensatory amounts - Basis of calculation - Value of the products concerned - Butter from storage - Sale at reduced price to processing undertakings - Reduction of monetary compensatory amounts - Conditions - Reduction in value of goods owing to their compulsory destination - Re-assessment of compensatory amounts - Legal basis
(Regulation No. 974/71 of the Council, Art. 2; Regulations Nos. 1259/72 and 232/75, Arts. 6 and 20)

The definitive application of the reduced monetary compensatory amounts provided for by Article 20 of Regulation No. 1259/72 of the Commission on the disposal of butter at a reduced price to certain Community processing undertakings and by Article 20 of Regulation No. 232/75 of the Commission on the sale of butter at reduced prices for use in the manufacture of pastry products and ice-cream pre-supposes that the goods in question, having regard in particular to the use to which they are to be put, have the reduced value attributed to them by virtue of those regulations. In so far as the importer has not furnished the proof, within the period prescribed in Article 6 of the said regulations, that the goods have been put to the use to which the reduction of the compensatory amounts is subject, the goods cannot be regarded as having the conventional value referred to above. In such a case the legal basis for the re-assessment of the compensatory amounts is to be found in the general rules governing the system of monetary compensatory amounts, as established by Regulation No. 974/71 of the Council.

NOTE

In this reference for a preliminary ruling the Finanzgericht Düsseldorf referred to the Court of Justice the same questions as in the previous case, Case 216/78, save that the reductions in monetary compensatory amounts depended not only on Article 20 of Regulation No. 1259/77 but also on Article 20 of Regulation No. 232/75 of the Commission of 30 January 1975.

Since the latter regulation is solely concerned, in the interest of clarity and efficient administration, to consolidate the provisions concerning butter for use in the manufacture of pastry products and ice-cream, the Court gave the same answer as in the aforementioned Case 216/78.

Judgment of 28 June 1979

Joined Cases 233 to 235/78

Benedikt Lentes and Others v Federal Republic of Germany

(Opinion delivered by Mr Advocate General Capotorti on 31 May 1979)

1. Agriculture - Common organization of the market - Wine - Private storage aid for table wine - Conditions for the grant thereof - Minimum quantity required - Storage in a single place of storage - No

(Regulation (EEC) No. 816/70 of the Council; Commission Regulation (EEC) No. 2015/76, Art. 5)

2. Agriculture - Common organization of the market - Wine - Member States - Implementation of the Community regulations - Private storage aid for table wine - Control procedure - Discretion - Determination of the maximum dispersion of the places of storage - Criteria

(Commission Regulation (EEC) No. 2015/76, Art. 7)

3. Agriculture - Common organization of the market - Wine - Member States - Implementation of the Community regulations - Private storage aid for table wine - Control procedure - Discretion - Determination of the maximum dispersion of the places of storage - Criteria

(Commission Regulation (EEC) No. 2015/76, Art. 4 (2) (c) and Art. 14)

1. It follows both from the recitals of the preamble to Regulation No. 816/70 of the Council laying down additional provisions for the common organization of the market in wine and Commission Regulation No. 2015/76 on storage contracts for table wine, grape must and concentrated grape must and from the wording of Article 5 of the latter regulation that the objective of private storage aid for table wine is to have an effect on market prices by means of a reduction in supply and that storage contracts must therefore relate to significant quantities, in other words quantities sufficient to have an effect on market prices; for this reason the contracts must relate to a minimum quantity of 100 hectolitres. The attainment of that objective is not however linked to the storage in a single place of the quantities temporarily removed from the market. On the contrary, the duty to store the wine in a single storage place might form an obstacle to the attainment of the above-mentioned objective, in particular where the wines are those of various producers who have formed a group.

2. The intervention agencies are not obliged to conclude storage contracts no matter how dispersed the places in which the wines are stored. By giving the Member States the task of

and responsibility for adopting "all measures to ensure that the necessary checks are made", Article 7 of Regulation No. 2015/76 grants those Member States a margin of discretion in determining, having regard to the specific conditions of the wine-growing zones in question, to what extent a multiplication of the places of storage would be likely to jeopardize the effectiveness of the check or to increase its costs out of proportion to the objective sought and thus justify a refusal to conclude a storage contract.

3. The expression "place of storage" used in Article 4 (2) (c) and Article 14 of Regulation No. 2015/76 cannot be interpreted as obliging the national intervention agencies to refuse to conclude a storage contract with a producer or groups of producers of table wine on the sole ground that the quantity forming the subject-matter of the contract sought is not stored in a single place, that is to say on one and the same plot of land. However it is for the competent national authorities to determine, having regard to the specific conditions in the wine-growing zones in question, to what extent a multiplication of the places of storage, which is likely to jeopardize the effectiveness of the check on storage operations or to make them obnormally expensive, allows the conclusions of storage contracts to be refused.

NOTE

The Verwaltungsgericht /Administrative Court/ Frankfurt am Main asked three identical preliminary questions concerning the interpretation of Commission Regulation No. 2015/76 on storage contracts for table wine, grape must and concentrated grape must.

The Court ruled that the expression "place of storage" used in Article 4 (2) (c) and Article 14 (a) of Commission Regulation No. 2015/76 of 13 August 1976 (Official Journal 1976 No. L 221, p. 20) cannot be interpreted as obliging the national intervention agencies to refuse to conclude a storage contract - for a minimum quantity, moreover, of 100 hectolitres - with a producer or groups of producers of table wine for the mere reason that the quantity forming the subject-matter of the contract sought is not stored in a single place, that is to say in one and the same lot. However, it is for the competent national authorities to determine, having regard to the particular conditions in the wine-growing areas concerned, to what extent a multiplicity of places of storage, such as to compromise the effectiveness of the control of storage operations or to make them abnormally expensive, allows the conclusion of storage contracts to be refused.

Judgment of 3 July 1979

Joined Cases 185 to 204/78

Officier van Justitie v van Dam en Zonen and Others

(Opinion delivered by Mr Advocate General Reischl on 6 June 1979)

1. Fishing - Conservation of the resources of the sea - Powers of the EEC - Not exercised - Interim powers of the Member States (Act of Accession, Art. 102)

2. Community law - Principles - Equality of treatment - Discrimination on grounds of nationality - Concept - National measures applicable to all who are subject to the jurisdiction of a Member State - Exclusion (EEC Treaty, Art. 7)

1. The transitional period referred to in Article 102 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties expired on 31 December 1978. Since the Council had not implemented prior to that date the protective measures envisaged by that provision, Member States had, during the year 1978, the right and the duty to adopt, within their respective spheres of jurisdiction, any measures compatible with Community law to protect the biological resources of the sea and, in particular, to fix fishing quotas for the undertakings and fishermen subject to their control.

2. The application by a Member State of rules which, whilst compatible with Community law, are more strict than those applied in the same sphere by other Member States is not contrary to the principle of non-discrimination enshrined in Article 7 of the Treaty, so long as such rules are applied equally to all who are subject to the jurisdiction of that Member State. Thus national rules fixing fishing quotas are not to be considered as discriminatory if they are applied uniformly to all the fishermen under the jurisdiction of the Member State concerned.

NOTE

The Economische Politierechter /Magistrate in Economic Affairs/ of the Arrondissementsrechtbank /District Court/, Rotterdam, referred to the Court questions on the interpretation of Article 5 of the EEC Treaty and Article 102 of the Act of Accession for the purpose of determining the compatibility with Community law of the regulations made by the Government of the Netherlands limiting catches of sole and plaice in the North Sea.

Prosecutions were instituted against 20 fishing undertakings for infringing the Netherlands regulations fixing quotas for catches of sole and plaice in the North Sea for the year 1978. Before the national court the accused relied on the defence that, as the transitional period provided for by Article 102 of the Act of Accession had expired on 1 January 1978, the adoption of measures for the protection of the biological resources of the sea came within the jurisdiction of the Community. As a result the Netherlands was no longer competent to enact the regulations under which the prosecutions were brought.

The defendants further submitted that, even supposing the Netherlands provisions had been lawfully enacted, they would still be incompatible with Community law as constituting a discrimination against Netherlands fishermen in view of the fact that the other Member States would be applying less severe provisions in the same maritime zone.

This case led the national court to refer to the Court of Justice three preliminary questions. The first question concerned the interpretation of Article 102 of the Act of Accession and more particularly the determination of the date on which the transitional period expired.

Article 102 provides that "From the sixth year after accession at the latest, the Council, acting on a proposal from the Commission, shall determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea". This text raises a problem because it refers to a period and not to a precise date. The expression "sixth year after accession" can be understood as referring to the beginning or to the end of that year, that is to say 1 January or 31 December 1978. However, by reading the particular provision of Article 102 together with the general terms of Article 9 of the Act of Accession, it can be deduced that the period stated in Article 102 can have practical significance only if it refers to the end of the sixth year, otherwise the particular provision would be pointless since it would lay down the same period as that prescribed by the general provision.

The Court held that the period prescribed by Article 102 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties expired on 31 December 1978.

It follows from that that the incidents out of which the prosecutions arose took place at a time when the transitional period stated in Article 102 had not yet expired.

The second question asked whether the measures taken by the Netherlands with regard to fishing are based on Community provisions or on obligations imposed on the Member States by the Community through the Treaty as referred to in Article 5 of the Treaty, or on powers conferred on the Member States by the Community.

The Court had already stated in its judgment of 16 February 1978 (Case 61/77 Commission v Ireland [1978] ECR 417) which law was applicable in that field and what was the division of jurisdiction between the Community and the Member States.

The Court replied to the second question by ruling that measures such as those contained in the Beschikking Voorlopige Regeling Vangstbeperking Tong en Schol 1978 [Decree provisionally laying down restrictions on catches of sole and plaice] and in the Beschikking Voorlopige Regeling Contingentering Tong en Schol Noordzee 1978 [Decree provisionally laying down quotas for North Sea sole and plaice], both of 29 December 1977, came, at the time in question, within the jurisdiction of the Member States.

A third question asked whether the contents of the aforesaid provisions of the Netherlands were compatible with Community law.

It emerged from the file in the case and from the arguments adduced by the persons being prosecuted that the Netherlands measures were being criticized on the ground that they were discriminatory as regards Netherlands fishermen since other Member States were applying less severe measures in that field. It must be pointed out that the protective measures co-ordinated within the framework of the Community, in consultation with the Commission, are based on a division of responsibilities between the Member States, in that, at present, each State controls the catches unloaded at its own ports, according to the provisions of its own national legislation on fishing quotas. The Court ruled that national provisions such as the Netherlands regulations on fishing quotas of 29 December 1977 could not be considered discriminatory when they applied uniformly to all fishermen subject to the jurisdiction of the Member State in question.

Judgment of 4 July 1979

Case 7/79

Gallet v French Minister of Agriculture

(Opinion delivered by Mr Advocate General Reischl on 26 June 1979)

Agriculture - Common organization of the market - Wine - Community methods of analysis - National measure of control - Presumption in law of over-alcoholization - Acceptability - Conditions (Commission Regulations Nos. 1539/71 and 2984/78)

In the absence of Community provisions in the matter, a Member State may apply as a national measure of control, for the purpose of checking whether the issue of a certificate of consent in respect of wines bearing a registered designation of origin is justified, a presumption in law of over-alcoholization which is based on the proportion of alcohol to dry matter determined by the 100° method, provided that that presumption is capable of being rebutted.

NOTE

Mr Gallet, a wine-producer in Gironde, brought an action before the French Conseil d'Etat seeking annulment of the order of the Minister for Agriculture in 1974 relating to the analytical and organoleptic tests for wines bearing a registered designation of origin and in particular of Article 3 thereof inasmuch as it lays down as a minimum requirement that the analytical test shall relate to certain factors amongst which is to be found the dry extract measured by densimetry and at 100%.

In support of his claim Mr Gallet submits that the latter provision infringes a provision of Regulation No. 1539/71 of the Commission determining Community methods for the analysis of wines inasmuch as the regulation provides that "the total dry extract shall be measured by a densimeter and calculated indirectly from the specific gravity of the residue without alcohol".

The French Conseil d'Etat took the view that the resolution of the dispute before it depended on whether the Community provisions were to be understood as authorizing the measurement of the dry extract "by densimetry and at 100%".

In reply the Court ruled that, as Community law stands at present, a Member State may, as a national measure of control for the purpose of checking whether the issue of a certificate of consent in respect of wine bearing a registered designation of origin is justified, use a legal presumption of over-alcoholization which is based on the proportion of alcohol to dry extract determined by the 100% method, provided that the presumption is capable of being rebutted.

Judgment of 11 July 1979

Case 268/78

Jean-Louis Pennartz v Caisse Primaire d'Assurance Maladie des Alpes-Maritimes

(Opinion delivered by Mr Advocate General Warner on 21 June 1979)

Social security for migrant workers - Sickness insurance - Accidents at work and occupational diseases - Cash benefits - Calculation - Average wage - Determination
(Regulation No. 3 of the Council, Arts. 18 (1) and 13 (2))

Article 18 (1) of Regulation No. 3 of the Council cannot be interpreted as merely determining the legislation applicable for fixing the reference period for the average wage without affecting in any way the determination of the remuneration to be taken into consideration in calculating the pension. It is clear from both the wording and the objectives of that provision that it is intended to establish, where, under the legislation of one Member State, the basic wage employed in calculating cash benefits is the average wage over a given period, the remuneration of which the competent institution must take account in order to determine that wage. It provides for that purpose that the remuneration to be taken into consideration is the wage "obtained" during the periods of work completed under the legislation of such State.

If, having regard to the provisions of Articles 12 to 15 of the regulation, the legislation applicable is that of the Member State on whose territory the worker was employed at the time when the accident occurred, the wage "obtained" within the meaning of Article 18 (1) constitutes only the wages paid in the reference period, established in accordance with that legislation, on the territory of that State.

Consequently, in pursuance of Articles 18 (1) and 30 (2) of the regulation, where, under the legislation of one of the Member States, the basic wage to be reckoned for the calculation of cash benefits due to a person who has sustained an accident at work and who has worked successively in one or more Member States is the average wage for a given period, such average wage is to be determined solely by reference to the wages paid in the State in which the person concerned was working at the time of the accident, in accordance with the rules and the method of calculation prevailing in that State.

NOTE

Mr Pennartz, a worker of French nationality, resident in France, suffered an accident at work in 1969. The Caisse Primaire d'Assurance-Maladie des Alpes-Maritimes /Central Sickness Insurance Fund for the Alpes-Maritimes/ calculated the amount of the invalidity benefit in respect of that accident on the basis of an average wage actually received by the person concerned in the last employment occupied at the time of the accident. In doing so the Caisse was following the provisions of the relevant French law.

The person concerned challenged that method of calculation contending that the wage on which the calculation of the benefit is based ought to be determined by reference, not only to the wage received in his last employment before the accident, but also to the higher wage which he had actually earned previously in Belgium.

This led the French Cour de Cassation to refer the following question to the Court of Justice:

> "Pursuant to the Community provisions then applicable, must the basic wage to be used in calculating the benefits payable to a person who has suffered an accident at work and who has worked successively in more than one Member State during the reference period fixed in accordance with the legislation of the State where the accident occurred be reckoned on the basis of all remuneration received during that period in any of those States or solely on the basis of the remuneration received in the State in which the claimant was working at the time of the accident, in accordance with the provisions and the method of calculation in force in that State?"

The question concerns the interpretation of the provisions of Regulation No. 3 of the Council, which was in force at the time when the disputed benefit was paid, on accidents at work.

The Court ruled that in pursuance of Articles 18 (1) and 30 (2) of Regulation No. 3 of the Council, where, under the legislation of one of the Member States, the basic wage to be reckoned for the calculation of cash benefits due to a person who has sustained an accident at work and who has worked successively in one or more Member States is the average wage for a given period, such average wage is to be determined solely by reference to the wages paid in the State in which the person concerned was working at the time of the accident, in accordance with the rules and the method of calculation prevailing in that State.

Judgment of 12 July 1979

Joined Cases 32, 36 to 82/78

BMW Belgium N.V. and Others v Commission of the European Communities

(Opinion delivered by Mr Advocate General Warner on 12 June 1979)

1. Competition - Administrative procedure - Initiation at the request of a natural or legal person not having a legitimate interest - Absence of effect on the legality of the decision adopted - Right of the Commission to open the procedure upon its own initiative
   (EEC Treaty, Arts. 85 and 86: Regulation No. 17 of the Council, Art. 3(1) and (2) (b))

2. Competition - Agreements - Dealership agreements - Prohibition on re-export imposed on the dealers - Infringement of Community rules - Committed intentionally
   (EEC Treaty, Art. 85 (1); Regulation No. 17 of the Council, Art. 15 (2))

3. Competition - Fines - Fixing - Powers of the Commission - Change in previous practice - Infringement of the principle of non-discrimination - None
   (Regulation No. 17 of the Council, Art. 15 (2))

1. A decision taken by the Commission under Article 3 (1) of Regulation No. 17 of the Council is not without a valid legal basis by reason of the fact that the procedure leading to that decision was initiated following complaints by persons not having a "legitimate intent", within the meaning of paragraph (2) (b) of the said article, in requesting the Commission to find an infringement of the provisions of Article 85 or Article 86 of the Treaty. It follows from paragraph (1) above-mentioned that the Commission is entitled to open such a procedure upon its own initiative.

2. When the importer of a given product invites dealers established in the same Member State to subscribe to an agreement whereby they undertake not to re-export the said product and that agreement is in fact concluded, the infringement of Article 85 (1) of the Treaty which follows therefrom has been committed by the said importer intentionally within the meaning of Article 15 (2) of Regulation No. 17 and it matters little whether or not the importer was aware that at the same time Article 85 (1) of the Treaty was being infringed.

3. The fact that, in similar previous cases of prohibited agreements between the person granting the dealership and the dealers, the Commission did not consider that there was reason to impose fines on the dealers as well cannot deprive it of the power to come to a different decision in a fresh case where the conditions for the exercise of the power to impose a fine set out in Article 15 (2) of Regulation No. 17 are satisfied. Such difference of treatment does not constitute an infringement of the principle of non-discrimination.

NOTE

Actions were brought against a decision of the Commission of 23 December 1977 by BMW Belgium and 47 BMW dealers in Belgium.

In Article 1 of that decision the Commission states that the applicants have infringed Article 85 (1) of the EEC Treaty by agreeing on the basis of two circulars dated 29 September 1975 to a general export prohibition and maintaining it from 29 September 1975 to 20 February 1976. In Article 2 of that decision fines were imposed in respect of the infringement found in Article 1 amounting to 150 000 units of account (Bfrs 7 500 000) in the case of BMW Belgium and 2 000, 1 500 and 1 000 units of account (that is Bfrs 100 000, 75 000 and 50 000) in the case of the dealers. BMW Belgium, which is the wholly-owned subsidiary of BMW Munich, notified the Commission of its standard form distribution agreement entered into with its appointed dealers and applied for exemption under Article 85 (3) of the EEC Treaty.

One of the essential features of the system of selective distribution authorized by the Commission is the fact that if approved dealers undertake not to resell to unauthorized dealers they remain free to resell not only within their own area but also anywhere else within the common market to other appointed dealers, final consumers or their representatives.

In 1975 the prices of new BMW cars were considerably lower in Belgium than those prevailing in other Member States, which led to an increase in re-exportations of BMW vehicles from Belgium to other Member States, in particular to the Federal Republic of Germany and the Netherlands. Certain exports were to unauthorized dealers.

This situation resulted in correspondence between BMW Munich and BMW Belgium and prompted BMW Belgium to send two circulars dated 29 September 1975. The first circular was sent by the BMW undertaking itself, reminding dealers of the prohibition on sales to unauthorized dealers and suggesting that no BMW dealer in Belgium should export vehicles or sell them to undertakings exporting vehicles.

The second circular was sent by eight members of the Belgian BMW Dealers' Advisory Committee and contained the advice "No more sales outside Belgium".

The reaction of BMW Munich was to point out the details of the system of distribution authorized by the Commission, and BMW Belgium, after a delay of four months in complying with the instructions of the parent undertaking, addressed a circular dated 20 February 1976 to its dealers. On 3 November 1976 the Commission decided to initiate the proceeding against BMW Belgium and the Belgian BMW dealers which resulted in the adoption of the contested decision.

According to that decision the circulars of 29 September 1975 clearly establish that BMW Belgium and the members of the Dealers' Advisory Committee intended to stop all exports from Belgium of new BMW vehicles. There was accordingly a general prohibition on exports which was maintained for four months, constituting an infringement of Article 85 (1) of the Treaty committed "intentionally" by BMW Belgium and by the Dealers' Advisory Committee and "negligently" by the BMW dealers. The decision states that the applicants, by agreeing to such a prohibition, were participating in an agreement which might affect trade between Member States and which was intended appreciably to restrict or distort competition within the common market.

The finding of an infringement of Article 85 (1) of the EEC Treaty

The applicants dispute the lawfulness of the contested decision on the basis that the disputed circulars were solely intended to remind Belgian BMW dealers of the prohibition on resales to unauthorized dealers. The wording of the circulars expresses clearly and unequivocally the intention of preventing and causing the prevention of all exports from Belgium regardless of the status of the purchaser, whether appointed dealer, unauthorized dealer, final consumer or agent of the latter. The argument that, since BMW Belgium is a wholly-owned subsidiary of BMW Munich, it cannot have a purpose other than that established by the parent undertaking, cannot be considered relevant. In fact the connexion of economic dependence between a subsidiary undertaking and a parent undertaking does not preclude either that the behaviour of such undertakings may differ or indeed that they may have distinct interests.

It must be held that the circulars of 29 September 1975 constitute proof of an intention to stop all exports of new BMW vehicles from Belgium. BMW Belgium and the members of the Advisory Committee intentionally addressed the circulars to the Belgian dealers, thereby inviting the latter to sign an agreement to the effect that they would refrain from re-exporting the products in question.

The infringement constituted by the measures adopted by BMW Belgium and the members of the Advisory Committee was thus intentional.

It is thus clear that the applications are not well-founded in so far as they are directed against Article 1 of the contested decision.

The fines

The contested decision makes it clear that the Commission, in imposing the fines, considered, on the one hand, that BMW Belgium and the members of the Belgian Dealers' Advisory Committee had knowingly infringed the provisions of Article 85 (1) and, on the other, that the Belgian dealers had displayed negligence.

BMW maintains that the infringement was not "intentional", that the fine is excessive having regard to the fact that the period in question extends to a mere four months; the BMW dealers claim that it was never their intention to support a general prohibition on exports and that their economic dependence on BMW Belgium was such as to invalidate their agreement to the said circulars.

Since the dealers have infringed Article 85 (1) the Commission has specific power to impose fines, from which it follows that the applications are not well-founded in so far as they are directed against Article 2 of the contested decision.

The Court has ruled: (1) The applications are dismissed as unfounded; (2) The applicants are liable for the costs. Each party shall bear a portion of the Commission's costs corresponding to the percentage of the fine imposed upon it in relation to the total of the fines.

Judgment of 12 July 1979

Case 149/78

Metallurgica Luciano Rumi SpA v Commission of the European Communities

(Opinion delivered by Mr Advocate General Capotorti on 21 June 1979)

1. ECSC - Prices - Price lists - Obligation to publish - Objective - Scope
(ECSC Treaty, Art. 60 (2) (a))

2. ECSC - Prices - Price lists - Amendments - Obligation to communicate - Scope
(ECSC Treaty, Art. 60 (2) (a))

3. Community law - Principles - Force majeure - Concept - Definition - Rules

4. ECSC - Prices - List prices - Alignment - Permissible - Conditions
(ECSC Treaty, Art. 60 (2) (b))

5. ECSC - Prices - Infringement of the relevant provisions of the Treaty - Fines - Fixing - Rules
(ECSC Treaty, Art. 64)

1. The purpose of publication of price lists and conditions of sale, for which provision is made in Article 60 (2) (a) of the ECSC Treaty, is as far as possible to prevent prohibited practices, to enable purchasers to learn exactly what prices will be charged and be able themselves to check whether any discrimination has taken place and to enable undertakings to have an accurate knowledge of the prices of their competitors so as to enable them to align their prices. That principle of compulsory publication is of a general nature and in no way depends upon the short-term economic situation.

2. It is clear from Article 60 (2) (a) of the ECSC Treaty that undertakings are obliged to notify the Commission of any amendment to their price lists, subject to circumstances of force majeure.

3. The concept of force majeure must be defined in each case in terms of the legal framework within which its application is invoked.

4. It is clear from Article 60 (2) (b) of the ECSC Treaty that alignment constitutes an exception to the principle concerning list prices and that the offer made to the customer must be aligned on a price list based on another point which secures the buyer more advantageous terms. Alignment is accordingly prohibited between undertakings quoting on the basis of the same basing points. That prohibition, which has regard for the general system of the Treaty, is intended to ensure compliance with the obligation to make public price lists and conditions of sale and to maintain the transparency of the market.

5. In fixing a fine pursuant to Article 64 of the ECSC Treaty the Commission and the Court must take account of the seriousness of the infringement.

To that end, in the case of an infringement of the obligation to publish price lists, account must be taken, where appropriate, of the fact that in times of disturbance, entailing rapid changes in prices, the publication of price lists cannot so effectively ensure the transparency of the market as in a period of relative stability, so that the damage caused by the infringement appears less serious than if it had taken place in less unsettled times.

NOTE

Metallurgica Luciano Rumi S.p.A. brought an action based on Article 36 of the ECSC Treaty for the annulment or in the alternative the amendment of the individual decision of the Commission ordering it to pay a fine of 65 135 units of account for "having breached Article 60 of the Treaty and its implementing decisions". That decision was based upon the fact, which was not in issue, that the applicant had sold between 15 April 1977 and 5 May 1977 large quantities of concrete reinforcement bars in France at fixed prices not in accordance with the prices in its price-list published on 6 February 1976 which was still in force throughout the period when the sales took place.

The applicant relied on several submissions. The main one was that it was not in breach of its obligation, pursuant to Article 60 (2) (a) of the ECSC Treaty, to make public its price-lists and conditions of sale because, having regard to the situation on the market in concrete reinforcement bars, it was entitled to exemption on the grounds of force majeure. At the time of the sales in question the crisis in the sector and competition made it impossible to maintain prices for more than two or three successive days so that it was unable to bring its price-list up to date.

The Court regarded the fact that other undertakings had, at more or less regular intervals, published their price-lists without difficulty as evidence that a diligent and prudent undertaking could comply without undue sacrifice with the obligation concerning publication and therefore did not find that there was force majeure.

The applicant further submitted that according to Article 60 (2) (b), although any increase is formally prohibited, reductions are permitted provided that they do not exceed "the extent enabling the quotation to be aligned on the price-list, based on another point which secures the buyer the most advantageous delivered terms". The applicant claimed to be able to establish that the prices in question were aligned on the prices charged by other producers in the Community (Feralpi and IRO) in comparable transactions.

The Court found that the applicant, whose basing point was Montello, could not align itself on the undertakings Feralpi and IRO, whose basing points were Lonato and Odolo respectively and were thus situated in the same zone and did not entail any advantage as to delivery terms for the French customer to whom their reinforcement bars were sold and it therefore rejected this submission (cf. paragraph 4 of the summary).

The applicant claimed alternatively that the fine should be reduced to a nominal sum since the infringement was mild in character and purely formal.

The Court, while holding that the infringements of which the applicant was guilty were not purely formal but affected the transparency of the market established under the general system of the ECSC Treaty and that this prevented the fine from being reduced to a nominal amount, nevertheless had regard to the serious disturbances on the market in reinforcement bars at the time of the infringements, which affected in particular undertakings such as the applicant whose activity consisted almost exclusively in the production of such bars, and it therefore reduced the fine from 15 to 10% of the amount whereby the list prices exceeded the prices charged, that is 43 423 units of account.

Judgment of 12 July 1979

Case 153/78

Commission of the European Communities v Federal Republic of Germany

(Opinion delivered by Mr Advocate General Warner on 20 June 1979)

1. Free movement of goods - Derogations - Article 36 - Objective - Restrictions authorized - Conditions for permissibility
(EEC Treaty, Art. 36)

2. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Prohibition - Derogations - Directive on health problems in intra-Community trade in fresh meat - No effect
(EEC Treaty, Articles 30 and 36)

3. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Conditions relating to imports of meat products - Prohibited - Derogations - Protection of human health - Not applicable
(EEC Treaty, Articles 30 and 36)

1. The purpose of Article 36 of the Treaty is not to reserve certain matters to the exclusive jurisdiction of the Member States; it merely allows national legislation to derogate from the principle of the free movement of goods to the extent to which this is and remains justified in order to achieve the objectives set out in the article. Since the restrictive measures authorized by Article 36 derogate from the fundamental principle of the free movement of goods, they are in accordance with the Treaty only in so far as they are "justified", that is to say, necessary in order, in this case, to ensure the protection of human health and life.

2. Article 6 of Council Directive No. 64/433 on health problems affecting intra-Community trade in fresh meat, according to which the provisions of the directive do not affect Member States' national provisions concerning certain types of fresh meat, could not have the purpose or effect of modifying the scope of the obligations imposed on Member States by Articles 30 and 36 of the Treaty.

3. A national legal provision prohibiting the import from other Member States of meat products manufactured from meat not coming

from the country of manufacture of the finished product cannot be justified by the possibility that meat products have been manufactured from the meat of animals which have been slaughtered in third countries.

A provision of that nature is not necessary either to diminish the risk of unwholesomeness of imported meat products coming from an establishment situated in another Member State, or to ensure effective health controls with regard to such products at the time of importation. Thus it constitutes both an obstacle to the free movement of meat products which is superfluous and in any event disproportionate to its objective, and discrimination against meat-processing establishments which import their raw material from another Member State in comparison with their competitors who obtain supplies of fresh meat from slaughterhouses in their own country.

NOTE

The Commission of the European Communities brought an action before the Court for a declaration that "by prohibiting the import from other Member States of meat products manufactured from meat not coming from the country of manufacture of the final product, the Federal Republic of Germany has failed to comply with its obligations under Articles 30 and 36 of the EEC Treaty".

The German law on the inspection of meat imposes, amongst other conditions, a requirement that the product was manufactured in an establishment approved by the Federal Minister concerned and situated, moreover, in the country in which the animals supplying the meat required for the manufacture of that product were slaughtered.

The German Government contended that, although the national provision at issue constituted a measure equivalent in effect to a quantitative restriction, it was justified under Article 36 of the Treaty on grounds of the protection of health of humans. But the Commission submitted that Article 36 could not be relied on in this case because there was no danger to human health and, even if such a danger did exist, the measure at issue was not likely to remove it.

The defendant pleaded that the measure at issue was intended to prevent the risk that meat products manufactured in another Member State might in fact be produced from the meat of animals slaughtered outside the Community, whereas the Commission recognized that the Member States remained free to take protective measures with regard to meat products manufactured from the meat of animals slaughtered in non-member countries.

The Court found that that possibility cannot be eliminated but it is not such as to justify the restriction at issue. The risk must be eliminated by proving that the slaughter of the animal and the preparation of its meat both took place within the territory of the Community. On the other hand it is of no importance whether the slaughter and preparation took place in one and the same Member State or the first operation took place in one Member State and the second in another Member State. The German Government also submitted that crossing a frontier entailed an increase in the risk of contamination of fresh meat. The Court rejected that argument, the more so as the directive of 26 June 1964 on health problems affecting intra-Community trade in fresh meat lays down particularly stringent requirements regarding packing and transport.

(1) Declared that, by prohibiting the import from other Member States of meat products manufactured in one of those States from the meat of animals slaughtered in a different Member State, the Federal Republic of Germany had failed to fulfil its obligations under Article 30 and 36 of the EEC Treaty;

(2) Ordered the defendant to pay the costs.

Judgment of 12 July 1979

Case 166/78

Government of the Italian Republic v Council of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 13 June 1979)

1. Application for annulment - Member States - Right of action - Position taken up by the applicant Member State at the time when the contested act was adopted - No effect
(EEC Treaty, Art. 173, first paragraph)

2. Acts of the institutions - Regulations - Obligation to state reasons - Limits
(EEC Treaty, Art. 190)

3. Council - Discretion - Assessment of a complex economic situation - Findings of a general nature as to the basic facts - Lawfulness

4. Agriculture - Common organization of the markets - Cereals - Premium payable to producers of potato starch - Compliance with the objectives of the Common Agricultural Policy
(EEC Treaty, Art.39; Council Regulations Nos. 1125/78 and 1127/78)

5. Agriculture - Common organization of the markets - Discrimination between producers or consumers in the Community - Concept - Granting of a production premium to only one branch of industry - Exclusion - Conditions
(EEC Treaty, Art. 40 (3), second subparagraph)

1. The first paragraph of Article 173 of the Treaty confers on every Member State the right to challenge, by an application for annulment, the legality of every Council regulation, without the exercise of this right being conditional upon the positions taken up by the representatives of the Member States of which the Council is composed when the regulation in question was adopted.

2. As far as concerns general acts, especially regulations, the requirements of Article 190 of the Treaty are satisfied if the statement of reasons given explains in essence the measures taken by the institutions. A specific statement of reasons in support of all the details which might be contained in such a measure cannot be required, provided such details fall within the general scheme of the measures as a whole.

3. When certain constituent elements of a complex situation are difficult to apprehend with any accuracy the discretion which

the Council has when it assesses that complex economic situation is not only excercisable in relation to the nature and scope of the provisions which are to be adopted but also, to a certain extent, to the findings as to the basic facts, especially in this sense that the Council is free to base its assessment, if necessary, on findings of a general nature.

4. The purpose of the premium payable to producers of potato starch, provided for in Council Regulation No. 1125/78 amending Regulation No. 2727/75 on the common organization of the market in cereals and in Council Regulation No. 1127/78 amending Regulation No. 2742/75 on production refunds in the cereals and rice sectors is to maintain the profitability of the potato starch industry and thus indirectly to ensure an outlet for an agricultural product, the importance of which for the agricultural economy in certain regions of the Community is evident. There is therefore no doubt whatever that these regulations are within the ambit of the objectives of the Common Agricultural Policy as such objectives are defined in Article 39 of the Treaty.

5. The granting of a production premium to one branch of industry to the exclusion of a competing branch does not amount to discrimination within the meaning of the second subparagraph of Article 40 (3) of the Treaty if the premium has been introduced for the purpose of obviating the special difficulties found to exist in the sector in question following the trend, unfavourable to that sector, of economic factors, such as the value of the by-products of both of the principal products.

NOTE

The Government of the Italian Republic brought an action against the Council of the European Communities on 31 July 1978 seeking annulment of the provisions relating to a premium payable to manufacturers of potato starch contained in Council Regulation No. 1125/78.

That regulation recalled the constraints imposed on the potato starch industry which might lead to a disturbance of the balance between the different starch industries. Pursuant to the said Regulation No. 1125/78, Regulation No. 1127/78 provided that Member States should grant a premium of 10.00 units of account per tonne of potato starch payable to the starch manufacturer.

The provisions at issue belong to the system of Community rules relating to amyloid products, the particular aim of which is to enable products made from raw materials of agricultural origin to withstand competition from synthetic products. That objective is pursued in particular by granting production refunds. The origin of the dispute is the introduction, by the impugned regulations, of a production premium for potato starch only, while at the same time retaining the scheme for comparable refunds in favour of both products.

The Italian Government based its action on a group of complaints, the first of which concerned the insufficiency of the reasons stated. Article 90 of the Treaty requires that the statement of reasons explain in essence the measures taken by the institutions but not a specific statement of reasons in support of all the details which might be contained in such a measure. Regulation No. 1127/78 states that the payment of a premium to producers of potato starch was imposed in order to maintain the balanced relationship between the prices of potato starch and maize starch, taking into account the increasing advantage enjoyed by the maize starch industry, particularly because of the by-products obtained from such manufacture. Thus the statement of reasons is sufficient.

The Italian Government also complained that the Council had committed a manifest error in its appraisal of certain economic factors by which it was guided when introducing the premium in question. The Court did not uphold that complaint.

The Italian Government also complained that the regulation at issue did not pursue the objectives of Article 39 of the Treaty in the correct manner and involved discrimination contrary to Article 40 of the Treaty.

The Court found that the granting of the premium to potato starch only was not discriminatory in nature. Since none of the Italian Government's grounds of complaint was upheld the Court dismissed the application and ordered the applicant to pay the costs.

Judgment of 12 July 1979

Case 223/78

Criminal proceedings against Adriano Grosoli

(Opinion delivered by Mr Advocate General Capotorti on 27 June 1979)

1. Agriculture - Common organization of the market - Price formation - National measures - Incompatibility with Community rules - Criteria - Assessment - Jurisdiction of national court

2. Agriculture - Common oragnization of the market - Beef and veal - Transfer to an intervention agency of frozen beef and veal - Sale price to consumer - Unilateral fixing by Member State concerned - Permissibility - Conditions
(Council Regulation No. 2453/76)

3. Agriculture - Common organization of the market - Beef and veal - Sale price to consumer - Unilateral fixing by a Member State - Permissibility - Conditions

1. In sectors covered by a common organization of the market, and a fortiori when this organization is based on a common price system, Member States can no longer take action, through national provisions adopted unilaterally, affecting the machinery of price formation as established under the common organization. However, the provisions of a Community agricultural regulation which comprise a price system applicable at the production and wholesale stages leave Member States free - without prejudice to other provisions of the Treaty - to take the appropriate measures relating to price formation at the retail and consumption stages, on condition that they do not jeopardize the aims or functioning of the common organization of the market in question.

In every case it is for the national court to decide whether the maximum prices which it is called upon to consider produce such effects as to make them incompatible with the Community provisions in the matter. In this respect it is necessary to take account of the specific nature of the organization of the market in question.

2. Council Regulation No. 2453/76 on the transfer to the Italian intervention agency of frozen beef and veal held by the intervention agencies in other Member States, in conjunction with the regulations implementing it, must be interpreted as meaning that the Italian Government is authorized to fix by national measures retail prices for such meat on condition that the retailers' margin of profit is not so small as to hinder the marketing of the products in question.

3. Outside the scope of Regulation No. 2453/76 the unilateral fixing by a Member State of maximum prices for frozen beef and veal at the retail stage is incompatible with the common organization of the market in beef and veal only to the extent to which it endangers the objectives or the operation of that organization.

NOTE

The Pretura, Padua, requested the Court of Justice to "give a ruling as to the compatibility with the Community rules of a binding system of prices laid down by the authorities and limited to the retail sector alone, taking into account the fact that in such a case the question of the constitutionality of the legislative measures on prices adopted by the Italian State is said to be justified in relation to Article 3 of the Constitution of the Italian Republic".

The question concerns an Italian Decreto del Capo dello Stato /Decree of the Head of State/, on maximum retail prices for frozen beef and veal, and the Community rules on the common organization of the market in beef and veal.

The Court recalled its settled case-law (Galli, Tasca, Dechman) whereby it had established that, in all the sectors covered by a common organization of the market, and a fortiori when that organization is based on a common system of prices, the Member States may no longer take action through national measures, adopted unilaterally, affecting the machinery of price formation as established under the common organization.

However, the Member States remain free to take the appropriate measures relating to price formation at the retail and consumption stages on condition that they do not jeopardize the aims or functioning of the common organization of the market in question. In every case it is for the national court to decide whether the maximum prices which it is called upon to consider produce such effects as to make them incompatible with the Community provision in that sector.

The Court ruled that:

1. Council Regulation No. 2453/76 of 5 October 1976 on the transfer to the Italian intervention agency of frozen beef and veal held by the intervention agencies in other Member States, in conjunction with the regulations implementing it, must be interpreted as meaning that the Italian Government is authorized to fix by national measures retail prices for such meat on condition that the retailers' margin of profit is not so small as to hinder the marketing of the products in question;

2. Outside the scope of that regulation the unilateral fixing by a Member State of maximum prices for frozen beef and veal at the retail stage is incompatible with the common organization of the market in beef and veal only to the extent to which it endangers the objectives or the operation of that organization.

Judgment of 12 July 1979

Case 237/78

Caisse Régionale d'Assurance Maladie de Lille v Diamente Palermo (née Toia)

(Opinion delivered by Mr Advocate General Warner on 3 July 1979)

1. Social security for migrant workers - Community rules - Matters covered - Declarations of Member States - Effects
(Regulation No. 1408/71 of the Council, Arts. 5 and 96)

2. Social security for migrant workers - Equality of treatment - Disguised discrimination - Prohibition
(Regulation No. 1408/71 of the Council, Art. 3 (1))

3. Social security for migrant workers - Community rules - Matters covered - Schemes pursuing objectives of demographic policy - Exclusion - No distinction

4. Social security for migrant workers - Community rules - Matters covered - Non-contributory old-age benefit - Equality of treatment - Scope
(Regulation No. 1408/71 of the Council, Arts. 2 (1), 3 (1) and 4 (1) (c) and (2))

1. The fact that a Member State has mentioned a given allowance in its declaration notified and published in accordance with the provisions of Articles 5 and 96 of Regulation No. 1408/71 of the Council must be accepted as proof that the benefits relating to that allowance are social security benefits within the meaning of the regulation.

2. The rule on equality of treatment, laid down by Article 3 (1) of Regulation No. 1408/71 prohibits not only patent discrimination, based on the nationality of the beneficiaries of social security schemes, but also all disguised forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result. Such may be the case with a provision which makes the grant of an allowance to women with children dependent on the nationality of the children of the mother in question.

3. Regulation No. 1408/71 does not make any distinction between the social security schemes to which it applies according to whether those schemes do or do not pursue objectives of demographic policy.

4. Articles 2 (1), 3 (1) and 4 (1) (c) and (2) of Regulation No. 1408/71 must be interpreted as meaning that the grant of a non-contributory old-age benefit to women with children may not be made dependent either on the nationality of the person concerned or on that of her children, provided that the nationality in question is that of one of the Member States.

NOTE

The Caisse Régionale d'Assurance Maladie de Lille refused to grant the mother of a family, an Italian national residing in France, the allowance for mothers of a family ("allocation aux mères de famille") provided for by Article L 640 of the French Social Security Code.

That article provides that the allowance in question shall be made available to women of French nationality, who have attained 65 years of age, are without means of support, are spouses of employed persons and who have brought up not less than five dependent children for a preiod of not less than nine years prior to their sixteenth birthday. It is a further requirement of French law that such children must be of French nationality at the date when the right is acquired.

In the present case the allowance for mothers of a family was refused on the ground that five of the seven children of the mother in question were not of French nationality but had had Italian nationality from the time of their birth.

In the course of the action the Caisse Régionale declared that it withdrew the objection that the mother was not herself of French nationality.

In those circumstances the Cour d'Appel requested an interpretation of certain provisions of Regulation No. 1408/71 with regard to the grant of an old-age benefit, which, since it is non-contributory in nature, is in principle reserved to French nationals. It should be observed that the requirements of equality of treatment prohibit not only manifest discrimination on the basis of the nationality of persons covered by social security schemes but, further, all forms of latent discrimination which, through the application of differing criteria, produce the same result.

A condition concerning the nationality of children, such as that prescribed by the relevant French legislation, is in fact capable of producing the result that a mother of a family who is a foreign national is able to qualify for the allowance only in exceptional circumstances.

Such a mother is in particular worse off in comparison with mothers of a family who are nationals of the State of residence when the nationality of the children depends in principle on the nationality of their parents according to the law of the country of origin and of the country of residence, as is the case with Italian law and French law in this sphere. Accordingly, the requirement concerning the nationality of the children must be regarded as an indirect discrimination unless it is justified by objective distinctions.

The Court of Justice settled the question referred to it by the Cour d'Appel, Douai, by ruling that Articles 2 (1), 3 (1) and (3) and 4 (1) (c) and (2) of Regulation (EEC) No. 1408/71 must be interpreted to mean that the grant of an old-age benefit of a non-contributory nature to mothers of a family cannot be rendered conditional either upon the nationality of the recipient mother or upon that of her children, provided that such persons are nationals of one of the Member States.

Judgment of 12 July 1979

Case 244/78

Union Laitière Normande, Union des Coopératives Agricoles v French Dairy Farmers Ltd.

(Opinion delivered by Mr Advocate General H. Mayras on 14 June 1979)

1. References for a preliminary ruling - Jurisdiction of the Court - Definition of the legal context of the questions
(EEC Treaty, Art. 177)

2. Acts of the institutions - Directives - Implementation by Member States - Time-limit - Not expired - National rules to the contrary - Admissibility - Applicability of the British Weights and Measures Act 1963 to pre-packaged milk from another Member State
(Council Directive No. 75/106, Art. 7 (2))

1. Whilst Article 177 of the Treaty does not permit the Court to evaluate the grounds for making the reference, the need to afford a helpful interpretation of Community law makes it essential to define the legal context in which the interpretation requested should be placed.

2. Since the date for the implementation of the provisions of Council Directive No. 75/106 on the approximation of the laws of the Member States relating to the making-up by volume of certain pre-packaged liquids was, by Article 7 (2) thereof, deferred in the case of the United Kingdom until 31 December 1979 at the latest, the maintenance in force by that Member State of the provisions of the Weights and Measures Act 1963 could not be prohibited by the rules of Community law until that period had expired and could therefore be applied until 31 December 1979 to the marketing in the United Kingdom of pre-packaged milk from another Member State, made up in containers of a capacity of one litre.

NOTE

The Tribunal de Commerce, Paris , submitted to the Court of Justice a series of preliminary questions on the interpretation of certain provisions of Regulation (EEC) No. 566/76 of the Council as regards the fat content of whole milk and on the interpretation of Articles 30 and 36 of the EEC Treaty.

The main action is between an association of agricultural cooperatives governed by French law and its English subsidiary concerning the implementation on 30 September 1978 of a contract for the supply of standardized whole milk produced in France and exported to the United Kingdom.

The milk in question had a fat content of 3.78%, was subjected to ultra-high temperature treatment (U.H.T.) and was packed in one-litre cartons.

Since the importing undertaking had not obtained from the British authorities the marketing licence required by British legislation for the marketing in England of all milk, whether imported or not, bearing the special U.H.T. marking, it decided to withdraw from the contract. The Union Laitière Normande thereupon instituted proceedings against its English subsidiary before the Tribunal de Commerce, Paris, for failure to implement the contract for the said supplies.

It is clear from the series of questions submitted to the Court of Justice that the French court considers it necessary, in order to decide the consequences of failure to implement the contract in dispute, to establish whether the English legislation preventing the marketing of the product in question within the United Kingdom was in accordance with Community law at the time of the importation.

It is clear from the file that the British legislation of 1963 on weights and measures provides that for the marketing of all "pre-packed" milk, whether imported or not, the product must be marketed in containers measuring one-third of a pint, one-half of a pint or multiples of a half-pint.

The milk was imported into the United Kingdom in one-litre packages and was thus from the outset contrary to the provisions of the British legislation on weights and measures.

That is why the national court submitted the following question to the Court of Justice: "Is the application of British weights and measures legislation to milk produced and packaged in another Member State compatible with the terms of Article 3 (6) of Regulation No. 1411/71 (as enacted by Article 2 of Council Regulation No. 566/76), which stipulates the requirements of public health as the only reservation in relation to intra-Community trade?"

The Council, in order to promote the approximation of the laws of the Member States relating to weights and measures, adopted Directive No. 75/106/EEC of 19 December 1974 "on the approximation of the laws of the Member States relating to the making-up by volume of certain prepackaged liquids".

The objective of that Council directive is to approximate the conditions of presentation for sale of liquids in prepackages on the grounds that such conditions differ in the various Member States and the trade in such prepackages is thereby hindered.

Article 7 (2) of the directive states that "... Belgium, Ireland, the Netherlands and the United KIngdom may defer implementation of this directive and the annexes thereto until 31 December 1979 at the latest".

It is thus clear from an express provision of the directive that the United Kingdom is authorized until 31 December 1979 to maintain in force the provisions of its national legislation establishing the capacity of packages of products which may be distributed, from which it follows that milk may be marketed in the United Kingdom only if the product is packed in containers of one-third of a pint, one-half of a pint, or in multiples of a half-pint.

The parties concur in the fact that importation of the products prepackaged in containers of one litre was effected in 1978.

The Court ruled that, since the time-limit for putting into force the provisions of Directive No. 75/106/EEC of the Council of 19 December 1974 "on the approximation of the laws of the Member States relating to the making-up by volume of certain prepackaged liquids", pursuant to Article 7 (2) thereof, had been extended until 31 December 1979 at the latest in the case of the United Kingdom, the retention by the latter of the provisions of the British Weights and Measures Act of 1973 was not, when the importations in dispute were effected, prohibited by the provisions of Community law and accordingly were at that date applicable to the marketing in the United Kingdom of milk from another Member State prepackaged in containers having a capacity of one litre.

Judgment of 12 July 1979

Case 260/78

Maggi GmbH v Hauptzollamt Münster

(Opinion delivered by Mr Advocate General Reischl on 21 June 1979)

Agriculture - Monetary compensatory amounts - Application by the Member States - Exemption under arrangements concerning inward processing traffic - Not permissible

(Regulation No. 1380/75 of the Commission)

The provisions of Regulation No. 1380/75 of the Commission laying down detailed rules for the application of monetary compensatory amounts must be interpreted as meaning that a Member State may not apply its national rules in the matter of inward processing traffic so as to exempt from monetary compensation, in intra-Community trade, goods imported from another Member State in which they are in free circulation.

NOTE

The Finanzgericht Münster referred a number of questions to the Court of Justice for a preliminary ruling as to whether it is compatible with Community law for a Member State on the basis of the national law concerning inward processing arrangements (that is processing without payment of customs duties) to exempt from payment of monetary compensatory amounts goods which had been in free circulation in another Member State.

Those questions were submitted in the course of an action between the German customs authorities and a German undertaking concerning the refusal by the former to apply inward processing arrangements to certain quantities of sugar imported from France for use in the manufacture of soups intended for export to France and Belgium.

The application of inward processing arrangements had been requested in order to obtain exemption for the imported sugar from monetary compensatory amounts on importation in view of the fact that the finished product did not benefit from the grant of monetary compensation on exportation.

The Court ruled that the provisions of Regulation No. 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts must be interpreted as meaning that a Member State may not apply its national rules in the matter of inward processing traffic so as to exempt from monetary compensation, in intra-Community trade, goods imported from another Member State in which they are in free circulation.

Judgment of 12 July 1979

Case 266/78

Bruno Brunori v Landesversicherungsanstalt Rheinprovinz

(Opinion delivered by Mr Advocate General G. Reischl on 4 July 1979)

Social security for migrant workers - Old-age and death insurance - Affiliation - Conditions - Application of national legislation (Regulation No. 1408/71 of the Council, Art. 45)

The sole objective of Regulation No. 1408/71 of the Council is to co-ordinate the national legal systems of social security, each of which determines the conditions for affiliation to the various social security schemes, including the conditions under which compulsory affiliation ceases. That regulation therefore, and in particular Article 45 thereof, cannot be interpreted as laying down the conditions under which compulsory insurance arises or ceases, since the answer to that question is exclusively a matter for the appropriate national laws.

Consequently Article 45 is not applicable so as to determine the existence or non-existence of an obligation to effect insurance laid down by national legislation.

NOTE

The Landessozialgericht Rheinland-Pfalz referred to the Court of Justice two questions on the interpretation of Regulation No. 1408/71 of the Council on the application of social security schemes to employed workers in relation to the application of the German law on pension insurance for craftsmen.

The plaintiff in the main action is an Italian national who, after living for a period in Italy where he paid contributions to the Italian old-age insurance scheme for 47 months, worked as a wage-earner in the Federal Republic of Germany, where he paid compulsory contributions to the German old-age insurance scheme for 185 months. On 19 September 1975 he became an independent craftsman and was thus subject to the law relating to pension insurance for craftsmen, which provides for a legal obligation to belong to the pension insurance scheme for employed workers where the insured person has paid contributions for less than 216 months. The plaintiff was again engaged as a wage-earner from 1 September 1976.

Relying on Article 45 of the said regulation, the person concerned believes that by reason of his period of contributions in Italy he totalled more than 216 months of contributions at the time when he became subject to the legislation on pension insurance for craftsmen, so that he was freed of the legal obligation to effect insurance during the period when he was an independent craftsman. The defendant in the main action took the view that the provisions of that regulation relating to the aggregation of insurance periods were not applicable to the plaintiff's situation. In the view of that institution aggregation is available only for the purpose of the acquisition, retention or recovery of entitlement to benefits.

The Court replied to the questions referred to it by the Landessozialgericht for a decision in this dispute by ruling that Article 45 (1) of Regulation No.1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community is not applicable so as to determine the existence or non-existence of an obligation to effect insurance laid down by national legislation.

Judgment of 12 July 1979

Case 9/79

Marianna Wörsdorfer (née Koschniske) v Raad van Arbeid

(Opinion delivered by Mr Advocate General Mayras on 28 June 1979)

1. Community law - Methods of interpretation - Texts in several languages - Uniform interpretation - Different language versions to be taken into account

2. Social security for migrant workers - Family benefits - Pensioners - Rules against overlapping - Spouse of pensioner in receipt of family allowances in another Member State - Spouse - Concept (Regulation No. 574/72 of the Council, Art. 10 (1) as amended by Regulation No. 873/73)

1. The need for a uniform interpretation of Community regulations makes it impossible in case of doubt for the wording of a provision to be considered in isolation but requires on the contrary that it should be interpreted and applied in the light of the versions existing in the other official languages.

2. The expression "diens echtgenote" [whose wife] in Article 10 (1) (b) of Regulation No. 574/72 includes a married man who is engaged in a professional or trade activity in a Member State and whose wife is entitled under the provisions of Article 77 (2) (a) of Regulation No. 1408/71 to family allowances under the legislation of another Member State.

NOTE

A German national, receiving invalidity benefit in the Netherlands, and entitled as such to Netherlands family allowances in accordance with Article 77 of Regulation No. 1408/71, brought an action appealing against the decision of the competent Netherlands institution to suspend payment of those allowances on the ground that her husband was pursuing a professional or trade activity in Germany and receiving there allowances for dependent children.

The provision invoked provides that a person receiving a family allowance linked to an invalidity benefit shall lose that allowance if his "spouse", that is to say his wife ("diens echtgenote") in the Dutch version of Article 10 of Regulation No. 574/72, pursues a professional or trade activity within the territory of a Member State in which entitlement to family allowances is not subject to conditions of insurance or employment. As the plaintiff's husband was drawing family allowances in Germany, the application of Article 10 caused problems owing to the use of the word "echtgenote" (wife) in the Dutch version. A comparison with the other versions of the provision in question reveals that they all use a term which includes both male and female workers.

In answer to the question referred to it by the Raad van Beroep /Social Security Court/, Zwolle, the Court ruled that the expression "diens echtgenote" /whose wife/, occurring in Article 10 (1) (b) of Regulation No. 574/72 applies equally to a married man pursuing a professional or trade activity in one Member State, whose wife is entitled, pursuant to Article 77 (2) (a) of Regulation No. 1408/71, to family allowances in accordance with the legislation of another Member State.

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