

COURT OF JUSTICE

Reference for a preliminary ruling by the Tariefcommissie, Amsterdam, by judgment of that court of 5 February 1982 in the case of Gebrs. Vismans B.V. v. Inspecteur der Invoerrechten en Accijnzen, Rotterdam

(Case 47/82)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tariefcommissie [Administrative Court of last instance in revenue matters] of 5 February 1982, which was received at the Court Registry on 8 February 1982, for a preliminary ruling in the case of Gebrs. Vismans B.V., Rotterdam v. Inspecteur der Invoerrechten en Accijnzen [Inspector of Customs and Excise], Rotterdam on the following question:

Are the words 'Beans of the genus "Phaseolus mungo". . . Free', used under subheading 07.05 B I in Annex A to Council Regulation (EEC) No 2792/79 of 10 December 1979 (Official Journal No L 328, 1979, p. 83), meant to exempt from import duties:

- (i) beans of the type known as 'green gram';
- (ii) beans of the type known as 'black gram'; or
- (iii) both types of beans?

Action brought on 11 February 1982 by the Government of the Italian Republic against the Commission of the European Communities

(Case 61/82)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 11 February 1982 by the Government of the Italian Republic in the person of its Agent, represented by the Avvocatura Generale dello Stato [State Advocate General's Office], with an address for service in Luxembourg at the Italian Embassy.

The applicant claims that the Court should declare void the Decision of the Commission of the European Communities of 16 November 1981 in so far as it excludes from the charges made to the European Agricultural Guidance and Guarantee Fund, Guarantee Section, the sums of Lit 2 264 702 642, Lit 721 953 004, Lit 1 143 616 575 and Lit 10 852 510 (in all, Lit 4 141 124 731) on the grounds stated, and order the defendant to pay the costs.

Principal submissions and arguments relied upon:

The Italian Government claims that the Decision of the Commission is unlawful in so far as it does not charge to the European Agricultural Guidance and Guarantee Fund the following expenditure:

1. Lit 2 264 702 642 concerning entries relating to the sale of intervention cereals, on the ground of the infringement of Articles 1, 3 and 5 of Council Regulation (EEC) No 729/70 ⁽¹⁾, of Commission Regulation (EEC) No 1723/72 ⁽²⁾ and of Articles 2 and 3 of Commission Regulation (EEC) No 376/70 ⁽³⁾; *ultra vires* acts; failure to provide an adequate statement of reasons: the Commission has failed to establish that the prices fixed for the products sold by the Italian intervention agency did not correspond to the market prices and cannot claim to apply the monthly average of prices prevailing in certain centres of Central and Northern Italy;
2. Lit 721 953 004 concerning margins of 2 % for losses for skimmed-milk powder, on the ground of infringement of Articles 1, 3 and 5 of Regulation (EEC) No 729/70 and of Article 8 of Regulation (EEC) No 1723/72 and also of Article 2 of Council Regulation (EEC) No 986/68 ⁽⁴⁾, as amended by Council Regulation (EEC) No 1038/72 ⁽⁵⁾, and Articles 1 and 8 of Commission Regulation (EEC) No 990/72 ⁽⁶⁾; *ultra vires* acts; failure to provide an adequate statement of reasons: although the Commission maintains that aid must be granted only for milk 'used in the manufacture of compound feedingstuffs' and not for 'processed' milk Article 1 of Regulation (EEC) No 990/72 refers to 'milk ... used in the manufacture of ... feedingstuffs ...' which can only mean 'milk used in the process of producing the abovementioned freedingstuffs', that is, also including such wastage in processing as may be considered normal in the production cycle.
3. Lit 1 143 616 575 concerning aids for the private storage of cheese, on the ground of infringement of Articles 1, 3 and 5 of Regulation (EEC) No 729/70 and of Article 8 of Regulation (EEC) No 1723/72, of Article 8 of Council Regulation (EEC) No 804/68 ⁽⁷⁾, Article 10 of Council Regulation (EEC) No 971/68 ⁽⁸⁾ and Articles 16 and 17 of Commission Regulation (EEC) No 1107/68 ⁽⁹⁾ and breach of the principles of law concerning the interpretation of contracts; *ultra vires* acts; failure to provide an adequate statement of reasons: although Regulations (EEC) No 971/68 and (EEC) No 1107/68 concerning cheese render the grant of aid conditional upon the conclusion of a contract they do not lay down any requirement as to the form of the contracts itself. In this case it was in fact concluded since the intention of the party concerned, expressed in the application, is in accordance with that of the AIMA [State Agency for Intervention on the Agricultural Market] expressed in a letter of acceptance and rendered enforceable by the positive outcome of the inspection

⁽¹⁾ Official Journal, English Special Edition 1970 (I), p. 218.

⁽²⁾ Official Journal, English Special Edition, Second Series, III, p. 109.

⁽³⁾ Official Journal, English Special Edition 1970 (I), p. 126.

⁽⁴⁾ Official Journal, English Special Edition 1968 (I), p. 260.

⁽⁵⁾ Official Journal, English Special Edition 1972 (II), p. 456.

⁽⁶⁾ Official Journal, English Special Edition 1972 (II), p. 428.

⁽⁷⁾ Official Journal, English Special Edition 1968 (I), p. 169.

⁽⁸⁾ Official Journal, English Special Edition 1968 (I), p. 251.

⁽⁹⁾ Official Journal, English Special Edition 1968 (II), p. 382.

carried out by the inspectorate which is set out in the appropriate report. The subsequent disciplinary measure is properly superfluous for Community purposes but the AIMA considered it necessary to adopt it for purely accounting reasons.

4. Lit 10 852 510 concerning aids for the storage of wine on the ground of infringement of Articles 1, 3 and 5 of Regulation (EEC) No 729/70 and of Article 8 of Regulation (EEC) No 1723/72, Articles 5 and 6 of Council Regulation (EEC) No 816/70 ⁽¹⁾, as amended by Council Regulation (EEC) No 2504/71 ⁽²⁾, Article 8 of Commission Regulation (EEC) No 1437/70 ⁽³⁾, as well as breach of the principles of law concerning the interpretation of contracts; *ultra vires* acts; failure to provide an adequate statement of reasons: the Italian Government requests the Court to reconsider the problems dealt with in its judgment in Case 1251/79 ⁽⁴⁾ and to come to different conclusions. In fact in that judgment the Court held that the Community aid had not been granted by the AIMA in accordance with the Community provisions inasmuch as the contracts had not been concluded before 15 February, and stated that by 'conclusion' must be understood the drawing up of the written contract after verification of all the relevant information by the intervention agency. It must in fact be admitted that the contract may be concluded independently of such verification (cf. in particular Article 7 (2) of Regulation (EEC) No 1437/70), at the time at which the *consensus* is reached, subject to cancellation if the outcome of the verification is negative. In any case the attainment of the objective pursued by the Community provision, that is to remove excess production from the market in the critical period, must permit the costs, which have been excluded on a mere formality, to be charged to the European Agricultural Guidance and Guarantee Fund.

⁽¹⁾ Official Journal, English Special Edition 1970 (I), p. 234.

⁽²⁾ Official Journal, English Special Edition 1971 (III), p. 962.

⁽³⁾ Official Journal, English Special Edition 1970 (II), p. 469.

⁽⁴⁾ [1981] ECR 205.

Action brought on 11 February 1982 by the Government of the Italian Republic against the Commission of the European Communities

(Case 62/82)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 11 February 1982 by the Government of the Italian Republic in the person of its Agent, represented by the *Avvocatura Generale dello Stato* [State Advocate General's Office], with an address for service in Luxembourg at the Italian Embassy.

The applicant claims that the Court should declare void the Decision of the Commission of the European Communities of 16 November 1981 in so far as it excludes from the charges made to the European Agricultural Guidance and Guarantee Fund, Guarantee Section, the sums of Lit 880 058 997, Lit 3 727 568 990, Lit 78 596 145, Lit 3 610 555 765 and Lit 98 951 625 (in all, Lit 8 395 731 522) on the grounds stated, and order the defendant to pay the costs.