JUDGMENT OF THE COURT
24 February 1988 *

In Case 264/86

French Republic, represented by Gilbert Guillaume, Director of Legal Affairs at the Ministry of External Relations, acting as Agent, and Philippe Pouzoulet, acting as Deputy Agent, with an address for service in Luxembourg at the French Embassy, 9 boulevard Prince Henri,

applicant,

supported by

Kingdom of Spain, represented by Francisco Javier Conde de Saro, Director-General for the Coordination of Legal and Institutional Relations with the Communities, acting as Agent, assisted by Rafael García-Valdecasas Fernández and Ramiro Sánchez de Lerín García-Ovies, members of the State Legal Service for the Court of Justice of the European Communities, with an address for service in Luxembourg at the Spanish Embassy, 4-6 boulevard Emanuel Servais,

intervener,

v

Commission of the European Communities, represented by its Legal Adviser, Denise Sorasio, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Regulations (EEC) Nos 2469/86 and 2470/86 of 31 July 1986 concerning the granting of compensation to producers of tuna supplied to the canning industry (Official Journal 1986, L 211, pp. 19 and 22) are void,

* Language of the Case: French.

THE COURT

composed of: Lord Mackenzie Stuart, President, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, Y. Galmot, C. Kakouris and T. F. O'Higgins, Judges,

Advocate General: C. O. Lenz
Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 2 December 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 January 1988,

gives the following

Judgment

1 By an application lodged at the Court Registry on 21 October 1986 the French Republic brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that Commission Regulation No 2469/86 of 31 July 1986 laying down detailed rules for the granting of compensation to producers of tuna for the canning industry (Official Journal 1986, L 211, p. 19) and Commission Regulation No 2470/86 of 31 July 1986 determining the maximum amount of the compensation for tuna supplied to the canning industry for the period from 1 January to 31 March 1986 (Official Journal 1986, L 211, p. 22) are void.

2 During the hearing the applicant stated that, as regards Regulation No 2469/86, its application sought merely to establish that Article 2 (3) of the regulation is void. The arguments submitted in order to show that the regulation is void, which were supported by the intervener, the Kingdom of Spain, relate solely to that provision.

3 The dispute concerns the compensation which may be 'granted if necessary to Community producers of tuna' in respect of certain types of tuna intended for the canning industry under Article 17 of Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products (Official Journal 1981, L 379, p. 1, hereinafter referred to as 'the basic regulation').

4 The recitals in the preamble to the basic regulation state that a fall in import prices for tuna for the canning industry in respect of which Article 20 of the regulation totally suspends Common Customs Tariff duties might threaten the income level of Community producers and that, consequently, provision should be made for compensation to be granted to such producers 'when necessary'. The recitals go on to state that, since Community production of tuna is inadequate, conditions of supply comparable to those ruling in exporting non-member countries should be maintained for food-processing industries and that any disadvantages which thereby arise for Community tuna producers 'could be offset' by payment of the compensation envisaged for this purpose.

5 Article 17 (5) of the basic regulation provides that it is for the Council to adopt 'general rules' for granting the compensation in question. Article 17 (6) provides that 'detailed rules for the application' of that provision are to be adopted by the Commission in accordance with the management committee procedure.

6 The general rules in question were enacted in Council Regulation (EEC) No 1196/76 of 17 May 1976 laying down general rules for the granting of compensation to producers of tunny for the canning industry (Official Journal 1976, L 133, p. 1). That regulation is based on a previous basic regulation, namely Regulation No 100/76, Article 17 of which has the same scope as Article 17 of the present basic regulation. Article 7 of Regulation No 1196/76 provides that the Commission is to adopt, in accordance with the management committee procedure, 'detailed rules for the application' of the regulation and the maximum amount of the compensation. Those detailed rules were laid down in Commission Regulation No 2469/86 whilst Regulation No 2470/86 fixes the maximum amount of compensation for the first quarter of 1986 on the basis of those provisions.

7 The French and Spanish Governments complain that by Article 2 (3) of Regulation No 2469/86 the Commission fixed an upper limit for the amount of compensation at a level not provided for by Council Regulation No 1196/76 and that the Commission calculated the maximum amount of compensation in Regulation No 2470/86 on the basis of that upper limit.

8 Reference is made to the Report for the Hearing for a fuller account of the relevant Community regulations and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 The French Government makes two submissions in support of its application. First it argues that the two regulations do not contain a sufficient statement of the reasons on which they are based and that, in particular, the recitals in the preamble thereto do not indicate the reasons which led the Commission to lay down an upper limit for the compensation. Secondly it argues that the Commission was not empowered to lay down an upper limit for the compensation because the rules adopted by the Council leave no scope for the fixing of such an upper limit. The latter submission should be examined first.

10 The following are the relevant provisions of Council Regulation No 1196/76. Article 3 provides that compensation is to be granted if, at the same time, the quarterly average Community market price and the entry price of the product in question are less than 90% of the Community producer price which is a price fixed by the Council pursuant to the basic regulation. Article 4 provides that compensation is to be granted only if an examination reveals that the situation recorded on the Community market is the consequence of the level of prices on the world market for tuna and that a fall in the price on the Community market has not been caused by an abnormal increase in the quantities produced. Finally, Article 5 provides that the compensation is not to exceed the difference between the Community producer price and the price actually obtained by the Community producer but that it may not be greater than the difference between the Community producer price and the quarterly average Community market price.

11 Article 2 (3) of Commission Regulation No 2469/86 provides that the maximum amount of the compensation is to be at the level which is necessary to ensure that

the fall in prices on the Community market does not threaten the income which tuna producers derive from selling the quantities produced, be it on the Community market or on that of non-member countries. It is clear from a 'technical memorandum' which the Commission made available to the management committee and which was placed before the Court that the effect of the provision for an upper limit is to enable the Commission, in determining the maximum amount of compensation on the basis of the Council regulation, to apply a 'counteractive measure' in order to ensure that the amount of compensation does not exceed the actual reduction in the total income of Community producers. That counteractive measure is calculated on the basis of a comparison between, on the one hand, the average price together with the quantities sold on the Community market and on that of non-member countries during the quarter in question and, on the other, the weighted average for the corresponding quarter of the preceding three years.

12 The French and Spanish Governments take the view that the Council regulation imposes very precise limits with regard to the calculation of the maximum amount of compensation and does not allow for the introduction of any significant new limit within the framework of the detailed rules for the application of that regulation laid down by the Commission. In addition, the upper limit set by the Commission is calculated by reference to movements in producers' income whilst taking account of the quantities produced whereas that factor has already been taken into account in Article 4 of the Council regulation.

13 The Commission considers that the distinction between 'general rules' to be laid down by the Council and 'detailed rules for their application' to be laid down by the Commission cannot be drawn without taking account of the relevant legislative context. In this case Article 2 (3) of Regulation No 2469/86 is in conformity with the purpose of the compensation as defined in the recitals in the preamble to the basic regulation and is not inconsistent with the provisions of Council Regulation No 1196/76.

14 It must be stated first that the provisions of Council Regulations Nos 3796/81 and 1196/76 which empower the Commission to lay down detailed rules for the application of the system of aid in question in accordance with the management procedure refer to examples of such detailed rules and those examples do not include the laying down of rules setting an upper limit to the compensation. Thus, Article 17 (6) of the basic regulation refers, in particular, to the fixing of the conversion factors applicable to the various species, sizes and modes of presentation of tuna, and to the list of representative markets and ports by reference to

which average monthly prices are to be determined. Article 7 of Council Regulation No 1196/76 refers by way of example to adjustments to the weighted average of mean monthly prices.

15 In those circumstances the issue between the parties may be reduced to the question whether the fact that the Council has included in the 'general rules' relating to the granting of compensation precise limits with regard to the calculation of the maximum amount of compensation prevents the fixing of a supplementary upper limit within the framework of the 'detailed rules' laid down by the Commission where that upper limit is set by reference to the level of tuna producers' income.

16 In that respect it is necessary to examine both the purpose of the compensation and the provisions governing the circumstances in which it may be granted.

17 As regards the purpose of the compensation, it must be noted that the compensation was provided for with a view to offsetting the financial detriment which might result from a fall in income owing to the opening of the Community market in frozen tuna for the canning industry originating in non-member countries. The Commission is therefore quite right to maintain that the competent institutions are under an obligation to take account in calculating the maximum amount of the compensation of the danger which imports into the Community represent for the level of producers' income.

18 However, that conclusion does not necessarily mean that it is permissible for the Commission to establish, within the framework of the detailed rules for applying the general rules, an upper limit based on the level of producers' income calculated on the basis of the quantities produced and their average price. In fact, the submission of the French and Spanish Governments is precisely that account has already been taken in Regulation No 1196/76, and in particular in Article 4 thereof, of any possible factor based on income levels, so that the introduction of other limitations based on such factors is precluded.

19 In that regard the Commission contends that Article 4 relates only to a special situation, namely where a fall in the price on the Community market is caused by an 'abnormal increase' in the quantities produced in the Community; where that is the case no compensation may be granted. Article 4 leaves open the possibility for the Commission to vary the maximum amount of the compensation by taking into account any increase in Community production which, whilst not being abnormal, may nevertheless make up for the loss of income due to a fall in prices.

20 The Commission's argument must be rejected. Although the recitals in the preamble to the Council regulation state that provision is made for the granting of compensation because a fall in import prices might threaten the income level of Community producers, it is to price levels that the regulation refers in connection with the assessment of that threat. Only in the case of an abnormal increase in the quantities produced in the Community do changes in production levels rather than changes in price levels come into play and they do so in order to rule out the possibility of granting compensation.

21 It must be concluded that Regulation No 1196/76 is to be regarded as exhaustive so far as concerns the taking into account of changes in the quantities produced and in income levels and that, consequently, the Commission is not empowered to lay down, in the context of the laying down of detailed rules for the application of the system for granting compensation, rules setting an upper limit based on the same criteria.

22 It follows from the foregoing that the submission relating to the Commission's lack of competence must be accepted and that, without there being any need to consider the other submission, Article 2 (3) of Commission Regulation No 2469/86 must be declared void.

23 Consequently, the whole of Commission Regulation No 2470/86 which relates to the calculation of the maximum amount of compensation as determined by the application of that provision must be declared void.

Costs

24 According to Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Neither the French Government nor the Spanish Government has claimed that the Commission should be ordered to pay the costs. It follows that, although the Commission has failed in its submissions, each party must be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

(1) Declares void Article 2 (3) of Commission Regulation No 2469/86 of 31 July 1986 laying down detailed rules for the granting of compensation to producers of tuna for the canning industry;

(2) Declares void Commission Regulation No 2470/86 of 31 July 1986 determining the maximum amount of the compensation for tuna supplied to the canning industry for the period from 1 January to 31 March 1986;

(3) Orders the parties to bear their own costs.

Mackenzie Stuart Due Moitinho de Almeida Rodríguez Iglesias

Koopmans Everling Galmot Kakouris O'Higgins

Delivered in open court in Luxembourg on 24 February 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President