No 1530/78 is part of the system of supervision and proof necessary to ensure the smooth operation of the aid scheme, the Commission, by adopting that provision, did not exceed the powers conferred on it by Regulation No 516/77.

REPORT FOR THE HEARING
delivered in Case 121/87 *

I — The relevant legal provisions, the facts of the case and the question referred to the Court

1. Article 3a (1) of Council Regulation (EEC) No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables (Official Journal 1977, L 73, p. 1), as amended by Council Regulation (EEC) No 1152/78 of 30 May 1978 (Official Journal 1978, L 144, p. 1), introduced a system of production aid for the products listed in Annex 1a to the regulation, such as peaches in syrup and tomato concentrates, derived from fruit and vegetables grown in the Community.

2. That system of aid is based, according to Article 3a (2) and (3) of Regulation No 516/77, on a system of contracts which are concluded for a minimum period to be determined and which are binding on producers of the fresh products and on processing undertakings. For deliveries made under such contracts, a minimum price within the Community is fixed which the processors must pay to the producers.

3. Article 3b (1) of the regulation sets out the reason for the system of aid: the amount of the aid is fixed so as to make up the difference between the prices of Community products and those of products from non-member countries.

4. Article 3b (4) of the regulation provides as follows:

'Production aid shall be granted to processors who have concluded contracts in accordance with Article 3a'.

5. Article 3b (5) of the regulation lays down three conditions for the grant of aid. It provides as follows:

'The aid shall be paid, on application, to the interested parties as soon as the body designated by the Member State in which the processing is carried out [has] established that:

(i) the processor has paid the producer a price not less than the minimum price;

* Language of the Case: German.

(ii) the products under contract have been processed;

(iii) the products after processing comply with the quality standards in force'.

6. Article 3c of the regulation provides that detailed rules for the application of Articles 3a and 3b are to be adopted in accordance with the procedure laid down in Article 20, that is to say by the Commission in accordance with the management committee procedure.

7. On the basis of that enabling provision, the Commission adopted Regulation No 1530/78, Article 4 (2) of which provides as follows:

'...

The processing undertakings concerned shall keep stock accounts showing:

(a) for each of the periods referred to in Article 1 (2):

(i) the consignments of raw materials bought and entering the undertaking each day, the consignments covered by processing contracts or endorsements and the numbers of any receipts which may be drawn up in respect of these consignments being shown separately;

(ii) the weight of each consignment entering the undertaking and, in the case of consignments covered by the said contracts, the name and address of the other contracting party;

(b) the quantities of finished products obtained each day by processing the raw materials, the quantities obtained from the raw materials delivered under the processing contracts being shown separately.

...'.

8. By Council Regulation (EEC) No 1639/79 of 24 July 1979 amending Regulation No 516/77 (Official Journal 1979, L 192, p. 3) the system of aid in question was extended, with effect from the beginning of the 1980/81 marketing year, to cherries preserved in syrup falling with subheading 20.06 B of the Common Customs Tariff.

9. By application of 8 August 1980, Bayernwald Früchteverwertung GmbH, the plaintiff in the main proceedings, sought the grant of production aid for the 1980/81 marketing year on the basis of the aforementioned rules for the processing of 55 tonnes of sweet cherries into conserves in 1980. The sweet cherries in question were delivered under six contracts.

10. The Bundesamt für Ernährung und Forstwirtschaft (Federal Office for Food and Forestry), which is the body designated by the Federal Republic of Germany for the purposes of the implementation of the sytem of aid in question, refused, by decision of 28 April 1982, to grant the aid sought on the grounds that an audit of the undertaking had revealed inconsistencies between delivery notes, invoices and calculations and that the stock accounts had not been kept in a proper manner. In particular, the daily

entries required pursuant to Regulation No 1530/78 were missing and the supporting documents or the calculations which were submitted in their place could not be broken down on a day-by-day basis.

11. Following that decision, the plaintiff in the main proceedings brought an action before the Verwaltungsgericht Frankfurt am Main.

12. By order of 19 March 1987 the Verwaltungsgericht stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Is Article 4 (2) of Commission Regulation (EEC) No 1530/78 of 30 June 1978 (Official Journal 1978, L 179, p. 21) a rule imposing an additional condition for the grant of production aid which the Commission of the European Community was empowered to enact without exceeding its legislative powers, or is the abovementioned provision merely a rule prescribing that only the stock accounts are admissible in evidence?'

13. The Verwaltungsgericht makes the following points with regard to the question it has referred to the Court:

The first question which arises is whether the obligation to keep stock accounts, imposed on the undertakings by the provision in question, constitutes a supplementary condition for entitlement to the grant of aid in addition to the three conditions laid down in Article 3b (5) of Regulation No 516/77.

If so, the question arises whether the Commission has exceeded its powers since, under the aforementioned provision, it is empowered to adopt only the detailed rules for the application of Articles 3a and 3b of Regulation No 516/77, cited above.

If not, the question arises as to the consequences and penalties attached to failure to keep stock accounts; the Commission regulation contains no express provision on those matters; is the keeping of stock accounts therefore to be regarded as the sole form of evidence or as one form of evidence which may be supplemented by other evidence?

14. The order for reference was received at the Court Registry on 7 April 1987.

II — Written procedure

1. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 10 July 1987 by Bayernwald Früchteverwertung GmbH, the plaintiff in the main proceedings, represented by V. Schiller, Rechtsanwalt, Cologne, on 10 July 1987 by the Commission of the European Communities, represented by its Legal Adviser, Dierk Booss, and on 13 July 1987 by the Bundesamt für Ernährung und Forstwirtschaft, in the name of the Federal Republic of Germany, the defendant in the main proceedings, represented by Mr Apelt, acting as Agent.

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

Written observations submitted to the Court

3. The defendant in the main proceedings maintains that the keeping of proper stock accounts constitutes a condition upon which entitlement to the grant of the aid in question is dependent and that the Commission was empowered to impose that condition.

4. In its view Article 3c of Regulation No 516/77 empowers the Commission to adopt detailed rules for the application of Articles 3a and 3b and to fix the amount of the aid and the minimum price to be paid to producers, in accordance with the procedure laid down in Article 20.

5. On the basis of the power thereby conferred on it, the Commission adopted Regulation No 1530/78, Article 4 of which defines the checks provided for in Article 3b of Regulation No 516/77 and the minimum scope of those checks. That constitutes the necessary basis for the checks to be carried out by the competent national authorities.

6. The fact that Article 4 (2) merely lays down the minimum requirements which the stock accounts must satisfy shows that the keeping of such accounts must be regarded as a condition for the entitlement to the grant of aid.

7. The point of departure for the legislature is therefore clearly that the minimum information to be shown in the stock accounts is indispensable for the purpose of checking that the conditions for granting aid are satisfied. That is confirmed by the fourth recital in the preamble to Regulation No 1530/78 which states that 'these stock accounts must contain certain minimum information necessary for verifying . . .'. Consequently, in order to comply with the minimum requirements the stock accounts must be kept properly.

8. In the opinion of the defendant in the main proceedings, the power conferred on the Commission does not relate solely to the adoption of rules relating to purely secondary matters. On the contrary, provisions relating to the actual entitlement to the grant of aid, which are necessary in order to ensure uniform application in all the Member States, also fall within the detailed rules of application for the purposes of Article 3c of Regulation No 1530/78.

9. The three fundamental conditions for the grant of the aid in question, laid down in Article 3b of Regulation No 516/77, are not to be regarded as final. In the context of the powers conferred upon it, the Commission is empowered to lay down other conditions governing actual entitlement to the aid.

10. That is borne out, for example, by the fact that Article 5 of Regulation No 1530/78, by which the Commission laid down a time-limit of 90 days for the lodging of an application for aid, falls within the powers conferred by Article 3c, as the Hessisches Verwaltungsgericht (Administrative Court, Hessen) stated in its judgment of 18 August 1986 (Reference No: 8 UE 2042/84).

11. In the event that the aforementioned submission is not accepted, the defendant in the main proceedings contends, in the alternative, that the keeping of proper stock accounts constitutes the sole form of evidence for the grant of the aid in question. It constitutes a reliable basis and a uniform framework for the checks to be carried out by the national authorities and the sole means of avoiding distortion of competition.

12. That exclusive form of evidence cannot be replaced by other forms of evidence. However, the use of other evidence, for example business documents, should not be excluded in so far as they enable the accuracy of the stock accounts to be substantiated. Such subsidiary evidence cannot, however, replace or complement missing, incomplete or contradictory stock accounts.

13. The plaintiff in the main proceedings considers that the argument put forward by the defendant in the main proceedings that the keeping of stock accounts is an imperative condition for the grant of aid, so that it is irrelevant whether the undertaking concerned has actually processed the amounts in question and whether it is in a position to prove it by other additional means, is unfounded.

14. In its view the provision at issue, Article 4 (2) of Regulation No 1530/78, does not lay down any additional condition in respect of entitlement to the grant of the aid in question because such conditions are set out exhaustively in Article 3b (5) of the basic regulation, Regulation No 516/77, but is merely a procedural rule, non-observance of which does not automatically lead to the loss of the right to receive production aid.

15. That conclusion follows clearly, in the first place, from the wording of the provision in question which nowhere states that only those persons who keep stock accounts are to benefit from production aid. The only conclusion which it is posssible to draw from the wording of that provision is that the purpose of keeping stock accounts is to assist the task of the national authorities charged with carrying out checks.

16. The plaintiff in the main proceedings contends that that conclusion is confirmed by the meaning and purpose of the provision at issue; that provision must be interpreted in the light of the other two paragraphs of Article 4 of Regulation No 1530/78 which deal with the checks to be carried out by the authorities of the Member States and in the light of the fourth recital in the preamble to the regulation which states that 'in order to ensure the correct application of the system of aid, provision should be made for the agency designated . . . to . . . verify the stock accounts . . . [which] must contain certain minimum information necessary for verifying the processing of the products . . . '.

17. For the keeping of stock accounts to have constituted a condition for the entitlement to the grant of aid, an express provision to that effect would have been necessary. Moreover, the loss of the aid in the event of failure to comply with the obligation to keep stock accounts is a penalty which should also have been laid down in express terms.

18. The plaintiff in the main proceedings adds that the provision at issue forms part of a Commission regulation laying down detailed rules for the application of the system of aid, the material conditions for the grant of which had been laid down exhaustively by the Council. The enabling regulation contains no power for the Commission to impose additional conditions.

19. According to the hierarchy of the acts of the Community institutions established by the EEC Treaty, where the Commission exercises the powers conferred upon it under the fourth subparagraph of Article 155 of the EEC Treaty for the implementation of the rules laid down by the Council, it may not complete, restrict, amend or extend those rules (see the Court's judgments of 11 November 1975 in Case 37/75 *Bagusat KG* v *Hauptzollamt Berlin-Packhof* [1975] ECR 1339, and of 28 March 1979 in Case 158/78 *Biegi* v *Hauptzollamt Bochum* [1979] ECR 1103). Consequently, the provision at issue would be devoid of effect if it laid down an additional condition for the grant of aid.

20. The plaintiff in the main proceedings contends in the alternative that, even if it is accepted that the keeping of stock accounts constitutes a condition for the entitlement to the grant of aid, such a condition does not mean that the stock accounts must be kept properly. The provision at issue does not contain any detailed provisions on that matter and where a provision of Community law is unclear or imprecise it must be interpreted in a manner which is the least restrictive for the trader concerned, according to the Court's judgment of 12 November 1969 in Case 29/69 (*Stauder* v *Ulm* [1969] ECR 419).

21. According to the plaintiff in the main proceedings, the question then arises whether the keeping of stock accounts must be regarded as the sole form of evidence. It maintains that the reply to that question must be in the negative.

22. Neither Commission Regulation No 1530/78 nor the basic regulation, Council Regulation No 516/77, expressly provides that evidence that the conditions for the grant of the aid in question have been satisfied may be provided only by means of the stock accounts. On the contrary, Commission Regulation No 1530/78 provides solely that the stock accounts must contain, in particular, certain minimum information. Consequently, the Commission has made it clear that other forms of evidence are admissible.

23. That conclusion is confirmed by the fact that even if the stock accounts are kept in a proper manner, there may still be doubts regarding the accuracy of the data contained therein. In such a case it must be possible for the person concerned to establish the accuracy of that data using all the forms of evidence permitted by the legal system of the Member State concerned. If he cannot do so, it would be absolutely impossible for the person concerned to establish the veracity of his stock accounts in the event that they are challenged by the national authorities.

24. The plaintiff in the main proceedings therefore proposes that the reply to the question put should be that the keeping of stock accounts in accordance with Article 4 (2) of Commission Regulation No 1530/78 does not constitute a condition for

the entitlement to the grant of aid. That requirement is intended to facilitate the checks to be carried out by the authorities and evidence that the products for which production aid is sought have been processed may be furnished by any means of evidence recognized under the legal system of the Member State concerned.

25. The Commission contends as regards the first part of the national court's question, namely whether the provision at issue constitutes a condition for the entitlement to the grant of aid, that Articles 3a, 3b and 3c, which were inserted into Regulation No 516/77, constitute a complete system for regulating market support and form a coherent whole. The system is essentially based on support for production prices by the payment by processors of a minimum price to producers.

26. The homogeneity of that system is also expressed in Article 3b (5) of Regulation No 516/77 which lays down in a clear manner three conditions for the grant of the aid in question, as the Court accepted in its judgment of 27 March 1984 in Case 169/82 (*Commission* v *Italian Republic* [1984] ECR 1603).

27. Commission Regulation No 1530/78 cannot therefore impose other conditions for the entitlement to the grant of the aid in question; its sole purpose is to lay down provisions for the application of the system and for verification thereof.

28. That is confirmed by the fourth recital in the preamble to that regulation. The words 'to ensure the correct application of the system of aid' mean that the legislature took the view that a system of aid is set out in its definitive form in the Council regulation and that the sole purpose of the Commission regulation is to lay down rules for its application. That view is borne out by the introductory sentence of Article 4 of Regulation No 1530/78 which refers to the checks provided for in Article 3b (5) of Regulation No 516/77 and which is intended to ensure that the necessary material conditions have been satisfied.

29. In that connection, the keeping of proper stock accounts represents an essential and necessary condition for the entitlement to the grant of aid, but that condition relates solely to the means of evidence. Consequently, the Commission did not exceed the bounds of the powers conferred upon it by Article 3c of Regulation No 516/77.

30. The Court has held that, in the exercise of the powers conferred upon it by Article 155 of the EEC Treaty for the implementation of the rules laid down by the Council, the Commission may adopt all the measures which are necessary or appropriate for the implementation of the basic regulation, provided that they are not contrary to the basic regulation or to the implementing legislation adopted by the Council (judgment of 15 May 1984 in Case 121/83 *Zuckerfabrik Franken GmbH* v *Hauptzollamt Würzburg* [1984] ECR 2039).

31. In addition, the Court has accepted that implementing rules adopted by the Commission may be drafted in such a way as to leave the national authorities no possibility of substituting other methods of proof for the formalities relating to proof or verification laid down in the Commission's regulation. In that respect the Commission

refers to the Court's judgments of 7 February 1979 in Case 18/76 (*Germany* v *Commission* [1979] ECR 343) and of 14 January 1981 in Case 819/79 (*Germany* v *Commission* [1981] ECR 21).

32. The Commission therefore proposes that the reply to be given by the Court to the question put by the Verwaltungsgericht Frankfurt am Main should be that Article 4 (2) of Commission Regulation No 1530/78 constitutes 'a necessary condition for the grant of production aid in accordance with Article 3b of Regulation No 516/77, as amended by Regulation No 1152/78, which the Commission was able to impose without exceeding the bounds of its legislative competence'.

C. N. Kakouris
Judge-Rapporteur