JUDGMENT OF THE COURT
OF 13 JUNE 1978 [1]

British Beef Company Limited v Intervention Board for Agricultural Produce (preliminary ruling requested by the High Court of Justice, Queen's Bench Division, Commercial Court)

"Monetary compensatory amounts"

Case 146/77

1. *Agriculture — Monetary compensatory amounts — Right to grant or duty of payment thereof — Creation — Rules applicable*

2. *Agriculture — Monetary compensatory amounts — Maintenance for a week — Legitimate expectation — Absence thereof*
(Commission Regulation No 2405/76)

1. The actual right to receive a monetary compensatory amount and the charge resulting from the levying of such an amount are only created by the performance of the import or export transaction as the case may be and only from the moment when that transaction takes place. It follows that in the absence of an express provision to the contrary the amounts to be paid or levied are those fixed by the rules in force at the moment of the import or export whatever may be the date on which the contract relating to the transaction in question was concluded.

2. Having regard to the recitals to and the provisions of Regulation No 2405/76 and to the special circumstances existing at the time of its adoption it could not arouse in the minds of persons concerned a legitimate expectation, which the Commission was required to protect, of its maintenance for the whole of the week in question.

In Case 146/77

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice, Queen's Bench Division, Commercial Court, for a preliminary ruling in the action pending before that Court between

1 — Language of the Case: English

BRITISH BEEF COMPANY LIMITED

and

INTERVENTION BOARD FOR AGRICULTURAL PRODUCE

on the interpretation and validity of Commission Regulation (EEC) No 2424/76 of 5 October 1976 altering the monetary compensatory amounts (Official Journal L 275, p. 1),

THE COURT,

composed of: H. Kutscher, President, M. Sørensen and G. Bosco (Presidents of Chambers), A. M. Donner, J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. From the middle of September 1976 onwards the British pound lost value as against the "snake" currencies. Consequently the Commission was obliged to increase the monetary compensatory amounts (hereinafter referred to as "MCAs") to be granted on imports into and charged on exports from the United Kingdom — already at a high level. Because the Commission found this situation unsatisfactory it proposed to the Council the adoption of a regulation for a devaluation of the representative rate for the pound sterling (document COM(76)531 final of 4 October 1976). This regulation was intended to enter into force on 11 October 1976. While waiting for the Council to decide on its proposal the Commission adopted Regulation (EEC) No 2405/76 of 1 October 1976 altering the monetary compensatory amounts (Official Journal L 271, p. 1) which

entered into force on Monday, 4 October 1976, maintaining unchanged from the previous week the level of the MCAs for the pound sterling and the Irish pound.

The fourth recital to this regulation indicated that:

... "in view of the developments in the exchange rates of the pound, and pending an urgent decision on the matter by the Council, it is appropriate to maintain, as a precautionary measure, the monetary amounts fixed with effect from 27 September 1976 for the two currencies in question."

The Council did not adopt the Commission's above-mentioned proposal. The Commission, therefore, adopted Regulation (EEC) No 2424/76 of 5 October 1976 altering the monetary compensatory amounts (Official Journal L 275, p. 1), increasing the MCAs in the United Kingdom so as to adjust them to the recent devaluations of the pound sterling. This regulation entered into force on Wednesday, 6 October 1976, but was applicable on request from Monday, 4 October 1976.

2. British Beef Company Ltd (hereinafter referred to as "British Beef"), the plaintiff in the main action, carries on the export of beef from the United Kingdom to other Member States.

The Intervention Board for Agricultural Produce, the defendant in the main action, is the agency in the United Kingdom responsible for the carrying out of operations and arrangements of the common agricultural policy of the community.

3. As the level of MCAs which it had to pay on its exports had been increased by Regulation No 2424/76 British Beef brought an action against the intervention Board before the High Court of Justice, Queen's Bench Division, Commercial Court. It claims that on its true construction the said regulation does not apply to exports made by it in execution of contracts entered into force before the promulgation of the regulation. Alternatively it submits that the regulation is invalid in so far as it purports to apply to the aforesaid exports and that the Intervention Board is not entitled to implement the same in respect of the said exports.

4. Before deciding further, the High Court of Justice by order of 15 November 1977 stayed the proceedings and requested the Court of Justice, pursuant to Article 177 of the EEC Treaty, to give a preliminary ruling on the following questions:

"(1) Whether upon the true interpretation of Commission Regulation (EEC) No 2424/76 of 5 October 1976 that regulation does not apply to exports effected in execution of contracts concluded prior to the date on which it was promulgated;

(2) Whether on the above-mentioned grounds or on any of them the aforesaid regulation is invalid in so far as it purports to apply to such exports."

5. The order of the High Court of Justice was received at the Court Registry on 2 December 1977.

In accordance with Article 20 of the Statute of the Court of Justice of the EEC written observations were submitted by the parties to the main action and the Commission of the European Communities.

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

II — Written observations submitted to the Court

A — Written observations submitted by British Beef Company Ltd, the plaintiff in the main action

British Beef explains that the standard procedure in the trade in question is that, for shipments of meat to be made at the end of each week, traders start making contracts from the middle of the previous week. According to British Beef it is essential for all traders in that market to be able to rely upon short-term forecasts concerning levels of MCAs when entering into contracts, since the prices are based upon the rates of MCAs prevailing at the date of export.

The plaintiff further explains that the Meat and Livestock Commission (hereinafter referred to as "MLC"), so delegated by the Intervention Board, provides a telex service forecasting the level of the MCAs. According to British Beef the MLC forecast notified on the Wednesday before the trading week in question has always proved to be accurate except in the case giving rise to the present dispute.

British Beef further submits that because Regulation No 2405/76 made no changes in the MCAs for the United Kingdom, British traders traded for the week beginning 4 October 1976 on the basis that the MCAs were "frozen". That expectation was confirmed by an MLC telex of 29 September 1976. A further telex dated Tuesday 5 October 1976 stated that "it is understood that there is to be no devaluation of UK green pound ... 'Freezing' of MCAs will not apply after this week." Nevertheless the Commission on the very same day adopted Regulation No 2424/76.

According to British Beef the Commission acts unlawfully if, in the absence of an overriding matter of public interest, it abolishes or alters with immediate effect and without warning the application of compensatory amounts in a specific sector without adopting transitional measures (see the judgment of the Court of 14 May 1975 in *CNTA* v *Commission* (Case 74/74 [1975] ECR 533).

Initially British Beef makes three comments on the above rule: first, that there was in the present case no overriding matter of public interest; secondly, that while the formulation in the *CNTA* case was expressed in the context of the abolition of MCAs, the rule applies equally to their alteration; thirdly, that the Court has, in its judgments of 15 December 1977 and 8 June 1977 in *Dietz* v *Commission* (Case 126/76 [1977] ECR 2431) and in *Merkur* v *Commission* (Case 97/76 [1977] ECR 1063), treated as the decisive factor the question whether the MCAs constitute a burden or a benefit. Consequently according to British Beef in the present case the rule applies to exports on which MCAs were levied and not granted.

British Beef alleges that the above rule is based on the principle of the need to protect legitimate expectation. To support this argument the company cites, *inter alia*, the judgments of the Court of 10 December 1975 in *Union Nationale des Coopératives Agricoles de Céréales* v *Commission and Council* (Joined Cases 95 to 98/74, 15 and 100/75 [1975] ECR 1615), in particular paragraphs 30, 35 to 37, 44 to 46 and 52 to 55 and that of 7 July 1976 in *IRCA* v *Amministrazione delle Finanze dello Stato* (Case 7/76 [1976] ECR 1213) as well as the above-mentioned *Merkur* and *Dietz* cases (97/76 and 126/76 respectively). The claims which failed in those cases did so, in British Beef's submission, because it was held that the claimants could have foreseen the effects of the legislation.

British Beef further alleges that it follows from the above-mentioned

judgments that the essential question in the present case is whether the change in MCAs effected by Regulation No 2424/76 was unforeseeable. According to British Beef the argument that the preamble to Regulation No 2405/76 gave a warning that a change in the MCAs was imminent has no foundation as far as that company is concerned. This is the case because the regulation was enacted only on Friday 1 October and because, although British Beef was notified by telex of the operative part of the regulation, the preamble would only have been available, at the earliest, when the regulation was published in the Official Journal on Monday 4 October, when the contracts concerned had already been concluded.

British Beef further submits that the preamble cannot be so construed as to give any warning of a change in MCAs. On the contrary, since the preamble expressly affirms that it is appropriate to maintain the MCAs at their existing levels, the natural inference is that they would not be altered in the immediate future. Nor does the sense affected by the use of the words "pending an urgent decision of the Council" give a warning of change in MCAs. The only decision of the Council to be expected in that context was a decision to devalue the "green" pound sterling. Moreover even if the preamble had not come too late, and even if it had contained some reference to a future change in MCAs, it would still have been inadequate because traders have to be able to deal in precise figures, not in vague possibilities. Consequently a reference to a possible future change, of an unspecified amount and to take effect at an unspecified date, could not be regarded as making that change foreseeable in respect of the contracts relevant here.

Accordingly for the reasons set out above British Beef submits that the questions referred to the Court should be answered as follows:

"(1) Commission Regulation (EEC) No 2424/76 of 5 October 1976 is to be interpreted as not applying to exports effected in execution of contracts concluded prior to the date on which it was promulgated; further or in the alternative;

(2) The aforesaid regulation is invalid in so far as it purports to apply to such exports."

B — Written observations submitted by the Intervention Board for Agricultural Produce, the defendant in the main action

The Intervention Board submits concerning the first preliminary question that upon a correct interpretation of Regulation No 2424/76 . the new rates concerning beef prescribed in the annex to that regulation apply to all exports effected as from 6 October 1976 irrespective of the dates of the contracts in execution of which the exports were made.

As to the second question, the Intervention Board states that faced with a regulation duly published, valid on the face of it, and directly applicable in the United Kingdom, it was bound to enforce it. It was under no duty to inquire into any of the matters alleged by the plaintiff to render the regulation invalid, all of which concern only the Commission. In the circumstances the Intervention Board has, at this stage, no submission to make to the Court on the subject of the question.

C — Written observations submitted by the Commission of the European Communities

The Commission submits that on a literal interpretation Regulation No 2424/76 is applicable to exports of agricultural products from the United Kingdom effected on or after 6 October 1976.

As to the principle of the need to protect legitimate expectation the Commission refers to the definition given by the Advocate General in his opinion delivered on 12 November 1975 in the *Coopératives Agricoles de Céréales* cases (Joined Cases 95 to 98/74, 19 and 100/75 [1975] ECR at page 1643 in particular).

The application of this definition to the plaintiff's situation demonstrates, according to the Commission, that the company could have had no reasonable belief or expectation which has in fact been disappointed by the application to the exports in question of Regulation No 2424/76.

In the first place the level of MCAs fixed by Regulation No 2424/76 was completely in accord with the system applied by the Commission under rules laid down by the Council. The Commission is obliged to alter the rate accordingly when there is a change of more than one point in the percentage difference between the representative rate of a currency and its real value on the exchange markets over a given period. Only in exceptional circumstances following the management committee procedure does the Commission feel required to depart from this rule — for example where, as in the case of Regulation No 2405/76, it anticipates an event during the course of the week which would require the re-establishment of the previous amounts.

It is true that in practice the Commission fixes amounts which are valid for a whole week. In the Commission's view Regulation No 2424/76 is to be regarded as having been adopted in accordance with this pratice. Once the anticipated change in the representative rate of the pound sterling did not materialize, the Commission was obliged to fix amounts for the whole week 4 to 10 October for those importers who would have an interest in the application of such rules. However, for exporters the Commission, through a desire to avoid a formal back-dating of the regulation, abstained from fixing the amounts from the beginning of the week.

The amounts fixed by Regulation No 2424/76 were — in the Commission's submission — entirely predictable to an informed trader at the time. He would have been aware of the British Government's reluctance at that time to agree to a devaluation of its "green" currency. Moreover he was warned by contemporary press comments and by the wording of the fourth recital to Regulation No 2405/76 of the transitory nature of the "freezing" of the amounts. He could therefore have anticipated their "unfreezing", even with a retroactive effect to the beginning of the week, in the event of the Commission's expectations regarding a devaluation of the "green" pound not being realized.

In the Commission's opinion there are no grounds advanced by British Beef which should lead the Court "exceptionally" to recognize their claim for "exemption" of exports made under certain contracts from the normal application of Regulation No 2424/76. The Court is extremely prudent about recognizing such an "exemption" (see judgment in Case 126/76, *Dietz* v *Commission).* Moreover the system of MCAs is designed to allow the Common Market to function properly in time of monetary instability, rather than to protect the individual interests of traders.

An analysis of the particular situation of the plaintiff leads the Commission to suppose that the Company entered into its contractual commitments not on the basis of the regulations as published but of information received from the Intervention Board. It therefore seems to the Commission that British Beef should have based its action in the national court.

In conclusion the Commission proposes to the Court the following answers to the questions submitted by the High Court of Justice:

"(1) Regulation (EEC) No 2424/76 applies to exports effected during the period 6 to 10 October 1976 in execution of contracts concluded prior to the date on which it was promulgated.

(2) Examination of the questions raised has not revealed any factor capable of affecting the validity of the aforesaid regulation."

III — Oral procedure

At the hearing on 20 April 1978 the plaintiff in the main action, represented by F. Jacobs, the defendant in the main action, represented by P. G. Langdon-Davies, and the Commission, represented by its Legal Adviser, R. Wainwright, acting as Agent, submitted oral argument.

The defendant in the main action stated in reply to a question from the Advocate General that the Meat and Livestock Commission had not been authorized by the Intervention Board to acquaint traders with information received from the Commission.

The Advocate General delivered his opinion at the hearing on 23 May 1978.

Decision

1 By order of 15 November 1977 which reached the Court on 2 December 1977 the High Court of Justice, Queen's Bench Division, Commercial Court, referred to the Court of Justice in pursuance of Article 177 of the EEC Treaty two questions relating to the interpretation and validity of Commission Regulation (EEC) No 2424/76 of 5 October 1976 altering the monetary compensatory amounts (Official Journal L 275, p. 1).

2 These questions were raised in the course of an action between a United Kingdom trader carrying out the export of beef to other Member States, the plaintiff in the main action, and the British Intervention Board for Agricultural Produce, the defendant in the main action, regarding the levying of monetary compensatory amounts fixed by Regulation No 2424/76 on the occasion of the execution of export contracts concluded before the entry into force of the regulation.

3 In spite of the trend noted in the exchange rate of the pound sterling the Commission, by Regulation (EEC) No 2405/76 of 1 October 1976 altering the monetary compensatory amounts (Official Journal L 271, p. 1), which entered into force on Monday 4 October 1976, maintained unchanged for the United Kingdom the amounts fixed for the previous week.

4 In the words of the fourth recital in the preamble to the regulation that measure was adopted "as a precautionary measure" and "pending an urgent decision on the matter by the Council".

5 As the proposal made by the Commission relating to a depreciation of the representative rate of the pound sterling was not adopted by the Council, the Commission adopted Regulation (EEC) No 2424/76 which entered into force on Wednesday 6 October, under which the monetary compensatory amounts applicable for the United Kingdom were increased so as to adjust them to the decline in value of the pound.

The first question

6 The first question inquires whether Regulation No 2424/76 must be interpreted as meaning that it did not apply to exports effected in execution of contracts concluded prior to the date on which it was promulgated.

7 It should be noted on this subject that the actual right to receive a monetary compensatory amount and the charge resulting from the levying of such an amount are only created by the performance of the import or export transaction as the case may be and only from the moment when that transaction takes places.

8 It follows that in the absence of an express provision to the contrary the amounts to be paid or levied are those fixed by the rules in force at the moment of the import or export whatever may be the date on which the contract relating to the transaction in question was concluded.

9 Although Article 2 of Regulation No 2424/76 fixed the date of entry into force of the regulation as 6 October 1976 and provided that it might be applied, at the request of any party concerned, with effect from 4 October 1976, there was no provision making it possible to exempt contracts in progress from the charges resulting from the regulation.

10 The answer to be given to the first question should therefore be that Regulation No 2424/76 was applicable to exports effected in execution of contracts concluded prior to the date of its promulgation.

Second question

11 In the second question the Court is asked whether Regulation No 2424/76 is valid in so far as it purports to apply to exports effected in execution of contracts in progress.

12 The plaintiff in the main action has pointed out in this respect that the regulation frustrated its legitimate expectation of the maintenance unchanged for the whole of the week in question of the monetary compensatory amounts fixed for the previous week and renewed by Regulation No 2405/76.

13 However, having regard to the recitals to and the provisions of the regulation and to the special circumstances existing at the time of its adoption it could not arouse in the minds of persons concerned a legitimate expectation, which the Commission was required to protect, of its maintenance for the whole of the week in question.

14 Indeed it may be seen from the statement of the grounds on which the regulation was based that it had been adopted as a precautionary measure and pending an urgent decision on the matter by the Council.

15 The persons concerned could not be unaware of the uncertainties which were typical of the situation and in particular of the possibility that the proposal of the Commission for an alteration of the representative rate of the pound sterling might not be adopted by the Council; nor could they fail to recognize that as soon as the proposal was shown to be impracticable the Commission had no further ground for not fixing new monetary compensatory amounts on the basis of the rates of exchange recorded, in accordance with the provisions of the basic regulation applicable in the matter.

16 Even certain communications sent out by a private organization on which the applicant in the main action based its claims reflected the uncertainty which was typical of the situation.

17 The reply should therefore be that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Regulation No 2424/77.

Costs

18 The costs incurred by the Commission of the European Communities which has submitted its observations to the Court are not reimbursable.

19 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the High Court of Justice by order of 15 November 1977, hereby rules:

1. **Commission Regulation (EEC) No 2424/76 of 5 October 1976 was applicable to exports effected in execution of contracts concluded prior to the date of its promulgation.**

2. **Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of that regulation.**

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 13 June 1978.

A. Van Houtte
Registrar

H. Kutscher
President