OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 6 July 1988

My Lords,

Council Regulation (EEC) No 516/77 of 14 March 1977 (Official Journal 1977, L 73, p. 1) on the common organization of the market in products produced from fruit and vegetables, as amended by Council Regulation (EEC) No 1152/78 of 30 May 1978 (Official Journal 1978, L 144, p. 1) set up a system of production aids to enable specified processed products to be manufactured at a price lower than that which would result from the payment of a remunerative price to producers for the fresh products in order to enable them to compete with processed products emanating from third countries.

By Council Regulation (EEC) No 1639/79 of 24 July 1979 (Official Journal 1979, L 192, p. 3) cherries preserved in syrup falling under CCT subheading ex 20.06 B were added to the list of products subject to the system of production aids.

The system of aids set up by Article 3a to 3c of Regulation No 516/77 (as amended) was to be based on contracts binding between producers and processors, which contracts, concluded for a minimum period to be specified, were required to specify the quantities of raw materials to which they related, a schedule for deliveries to producers and the price to be paid to producers. A minimum price was to be fixed to be paid to producers and the amount of aid being such as to make up the difference between the prices of Community products and those of products from third countries. In each Member State the aid was to be paid as soon as the designated body had established, first, that the processor had paid the producer a price not less than the minimum price; second, that the products under contract had been processed and third, that such products after processing complied with the quality standards in force (Article 3b (5)). Those three requirements are clearly conditions of entitlement to aid.

By Article 3c it was provided that detailed rules for the applications of Article 3a and 3b should be adopted in accordance with Article 20 — namely by the Commission after consulting the management committee.

Commission Regulation (EEC) No 1530/78 of 30 June 1978 (Official Journal 1978, L 179, p. 21), as subsequently amended by Regulation (EEC) No 1348/80 of 30 May 1980 (Official Journal 1980, L 135, p. 66), laid down rules for the application of the system of aids. That regulation recited that in order to ensure the correct application of the system the agency designated by the Member State should both make random checks of the weight and quality of the products delivered to the processing undertaking and verify the stock accounts of the

undertaking which 'must contain minimum information necessary for verifying the processing of the products covered by the contracts'.

In addition to requiring that the contract should be in writing and that quantities and qualities should be verified, the Commission regulation, in Article 4, provided that:

'2. The processing undertaking 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, 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;,

. . . .

The agency designated in each Member State was required to make random checks and to verify the 'stock records' which (since the French and German versions use the same word in Article 4 (2) and Article 4 (3)) I take to be the same thing as 'stock accounts', of each processing undertaking (Article 4 (3)).

Bayernwald Früchteverwertung GmbH claimed production aid in respect of 55 tonnes of sweet cherries processed in 1980 under six contracts. The appropriate authority refused the payment on the basis that there were discrepancies between delivery notes, invoices and calculations and that there were not regular stock accounts complying with Article 4 (2) of the Commission regulation. On an application to the Verwaltungsgericht, the validity and scope of that article were put in issue and the court has referred the following question:

'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?'

The first point taken is that by Article 4 (2) the Commission is purporting to add another condition to those laid down by the Council in Article 3b (5) of Regulation 516/77 and that it has no power to do so.

It is clear that the Commission cannot add to or alter the substantive conditions prescribed by the Council as determining the right to aids. On the other hand, the

Commission is specifically empowered by the Council to adopt detailed rules for the application of Article 3a and 3b, the Council's regulation not containing any such rules. It seems to me that, as was said of different but comparable legislation in Case 121/83 (*Zuckerfabrik Franken* [1984] ECR 2039), 'that provision must be understood as meaning that the Commission is authorized to adopt all the measures which are necessary or appropriate for the implementation of the basic legislation, provided that they are not contrary to such legislation or to the implementing legislation adopted by the Council' (paragraph 13).

Rules as to the content of an application form and as to the keeping of the necessary documentation, in order to make it possible to ensure that the system of aid is properly applied and is not abused, seem to me clearly to fall prima facie within that delegated authority. Such rules do not go to the substantive entitlement to the aid but to the method of establishing the right to aid.

The question remains as to what is the scope of the provision and whether it is disproportionate in its requirements.

There are obviously cases where, in order to ensure that the objectives of legislation are attained and fraud avoided, the Commission is entitled to lay down precise procedures which must be strictly adhered to (e. g. Case 18/76 *Germany* v *Commission* [1979] ECR 343 and Case 819/79 *Germany* v *Commission* [1981] ECR 21). It may thus require physical checks or the production of original documents, conditions which have to be complied with.

In the present case it seems to me that in order to enable Member States to make the necessary checks, and to be satisfied that aid is due, and in order so far as possible to have the same categories of information available in each Member State, it was reasonable and within its competence for the Commission to require that the 'stock accounts' should be kept, it being understood that they need only contain the minimum information necessary for verifying the processing of the products covered by the contracts in question. The details required to be given in the stock accounts do not seem to me to go beyond what was legitimately required.

Although the precise form of the stock accounts is not laid down, so that there is room for some flexibility, a Member State may refuse aid if these accounts containing the specified items of information are not kept at all or if they are so incomplete or inaccurate that they cannot fairly be described as stock accounts containing the prescribed information. In this sense the keeping of stock accounts is a condition of the granting of aid, even though, as counsel for Bayernwald contends, the requirement is not expressed to be 'a condition'. They must be kept and be available for inspection.

On the other hand, since the object of the exercise is to make it possible to check the precise quantities in respect of which aid is due, it does not follow that no other

documents can be looked at in order to decide whether aid is due. Thus, if doubts are raised as to the accuracy of the figures in the stock accounts, the appropriate authority can require other documents to be produced to verify whether the stock accounts are accurate. So also, it seems to me, can the producer provide other documents to answer such doubts, to correct discrepancies which may have crept in, or to complete items inadvertently omitted. Although such errors may cast doubts as to the entitlement to aid, and may mean that the burden of proof is not discharged by the producer, it would in my view be going too far to deny aid *in toto* because of some minor error or omission which could readily be corrected by the primary documents. What is essential is that stock accounts which are substantially accurate in respect of the information specified in Article 4 (2) should be kept.

This approach, I recognize, leaves a grey area between the case where no stock accounts are kept (and where there is no entitlement to aid) and the case where minor, easily correctable errors can be remedied (and where aid is granted). In such cases the burden on the undertaking which has not kept accurate accounts may be particularly heavy and is only to be discharged by the production of primary documents such as invoices or delivery notes where these exist. It is a matter for the national court or authority in each case to decide whether the accounts which are kept can be remedied with sufficient clarity and certainty in order to establish that aid is due in respect of specific transactions.

I would accordingly answer the question referred on the lines that:

'Article 4 (2) of Commission Regulation (EEC) No 1530/78 which requires that stock accounts shall be kept showing the matters specified has not been shown to be invalid as being outside the legislative powers of the Commission conferred by Article 3c of Council Regulation (EEC) No 516/77, as amended by Council Regulation (EEC) No 1152/78: the keeping of such accounts in a substantially accurate form is a precondition to establishing entitlement to aid, albeit errors may be corrected or omissions rectified by reference to other documents.'

The costs of the parties to the main dispute fall to be dealt with by the national court, the costs of the Commission are not recoverable.