JUDGMENT OF THE COURT
1 OCTOBER 1974 [1]

Norddeutsches Vieh- und Fleischkontor GmbH v Hauptzollamt-Ausfuhrerstattung Hamburg-Jonas (preliminary ruling requested by the Finanzgericht Hamburg)

'Swine bellies'

Case 14/74

Summary

1. *EEC Treaty — Products originating in the German Democratic Republic — Free circulation in the Federal Republic of Germany — Not Community products (EEC Treaty, Protocol on German Internal Trade)*

2. *Agriculture — Common organization of the markets — Agricultural producers — Guarantee of income — Price mechanism — Limitation to Community products (EEC Treaty, Article 40)*

1. The dispensation granted by the Protocol on German Internal Trade annexed to the Treaty does not have the result of making the German Democratic Republic part of the Community, but only that a special system applies to it as a territory which is not part of the Community. The importation of goods into the Federal Republic of Germany under the Protocol cannot therefore be regarded as importation from a third country, since it is German internal trade. Although such goods are entitled to circulate freely in the Federal Republic of Germany without customs clearance, they are not regarded by reason of this as having an origin in the Federal Republic of Germany.

2. The organization of the agricultural markets has established price mechanisms intended to give agricultural producers certain guarantees of income. The benefit of these measures is limited, in general, to products of the Community, that is to say of those countries which contribute to the financing of the common agricultural policy.

In Case 14/74

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht Hamburg for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

FIRMA NORDDEUTSCHES VIEH- UND FLEISCHKONTOR, GmbH, Hamburg,

and

HAUPTZOLLAMT-AUSFUHRERSTATTUNG (head customs office, export refunds) Hamburg-Jonas,

on the interpretation of Articles 6 (1) and 7 of Regulation (EEC) No 177/67 of the Council of 27 June 1967, laying down general rules for granting export refunds on pigmeat and criteria for fixing the amount of such refunds (OJ L 130 of 28 June 1967, p. 2614), and of Article 4 (1) and (2) (d) of Regulation (EEC) No 802/68 of the Council of 27 June 1968, on the common definition of the concept of the origin of goods (OJ L 148 of 28 June 1968, p. 1) in conjunction with the 'Protocol on German Internal Trade and connected problems',

THE COURT

composed of R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher, C. Ó Dálaigh (Rapporteur), and Lord Mackenzie Stuart, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order for reference and the written observations submitted pursuant to 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

The common organization of the market in pigmeat was created by Regulation (EEC) No 121/67 of the Council of 13

June 1967 (OJ L 117 of 19 June 1967, p. 2283) which implements a system for trade with third countries according to which, on the one hand, 'a levy ... shall be charged on imports into the Community of the products (subject to the common organization of the market)' (Article 8) and, on the other hand, 'to the extent necessary to enable the (said) products to be exported on the basis of quotations or prices for those products on the world market, the difference between those quotations or prices and prices within the Community may be covered by an export refund' (Article 15 (1)).

The general rules for the grant of these refunds and the criteria for the fixing of their amount are laid down in Regulation (EEC) No 177/67 of the Council of 27 June 1967, Article 6 (1) of which provides that 'the refund shall be paid upon proof:

— that the products have been exported from the Community, and

— that the products are of Community origin, except where Article 7 applies'.

In the words of the said Article 7 'no export refund shall be granted on products (subject to the common organization of the market) ... imported from third countries and re-exported to third countries, unless the exporter proves:

— that the product to be exported and the product previously imported are one and the same, and

— that the levy was collected on importation'.

According to Article 4 (1) of Regulation (EEC) No 802/68 of the Council of 27 June 1968, 'goods wholly obtained or produced in one country shall be considered as originating in that country'.

Paragraph (2) (d) of the same Article states that 'the expression goods wholly obtained or produced in one country means ... products derived from live animals raised therein'.

Moreover, Article 6 (1) of Regulation (EEC) No 1041/67 of the Commission of 21 December 1967, on detailed rules for the application of export refunds on products subject to a single price system (OJ L 314 of 23 December 1967, p. 9) provides that 'a refund shall be granted only in respect of products in free circulation within the Community'.

Finally, the German Government adopted, on 24 January 1968, a regulation concerning EEC export refunds (Bundesanzeiger No 18 of 26 January 1968).

Within the context of these provisions, the plaintiff in the main action (hereinafter referred to as the plaintiff) exported to Yugoslavia, on 27 June 1969, a consignment of 14 252 kg and on 4 July 1969 two consignments of 14 784 kg and 14 155 kg of pigmeat covered by tariff heading 02.01-A-III-a-5 described as 'swine bellies and cuts of bellies'.

The defendant in the main action (hereinafter referred to as the defendant) maintains that the goods originated within the German Democratic Republic, had been temporarily stored within the Federal Republic of Germany, and then exported in the state in which they were imported. The defendant refunded a total of DM 16 784·62, corresponding to the consignments exported on 4 July 1969, but did not reply to the claim, made subsequently, for a refund for the consignment exported on 27 June 1969. After an investigation, by Decision of 27 May 1971, it in fact claimed repayment of the DM 16 784·62 and, by another Decision of the same day, rejected the claim pending, on the grounds of Article 7 (1) of Regulation (EEC) No 1041/67 and Article 7 (2) (3) of the German regulation concerning EEC export refunds, according to which an export refund shall be granted only if the claimant has proved that the goods originated within a Member State of the Community, which requirement has not been fulfilled in this case.

By Decision of 20 January 1972 the

defendant rejected as unfounded the complaint made to it by the plaintiff.

The latter brought an action against this Decision, on 23 February 1972, before the Finanzgericht Hamburg, which decided to suspend the proceedings and to refer to the Court of Justice the following preliminary question:

'Are Article 6 (1) or Article 7 of Regulation (EEC) No 177/67 and Article 4 (1) and (2) (d) of Regulation (EEC) No 802/68 in conjunction with the "Protocol on German Internal Trade and connected problems" to be interpreted as meaning that products within the meaning of Article 1 (1) of Regulation (EEC) No 121/67, which have been brought from the German Democratic Republic into the Federal Republic of Germany under the terms of the agreement on inter-zonal trade, are eligible for export refunds on export from the Federal Republic to a third country?'

It appears from the order for reference that the Finanzgericht is questioning the application of the abovementioned provisions to products from the German Democratic Republic. It recalls that in the Protocol of 25 March 1957 on German Internal Trade and connected problems (Bundesgesetzblatt 1957, II, p. 984), annexed to the EEC Treaty, the Member States agreed that 'since trade between the German territories subject to the Basic Law for the Federal Republic of Germany and the German territories in which the Basic Law does not apply is a part of German internal trade, the application of this Treaty in Germany requires no change in the treatment currently accorded this trade'. Since the application of the EEC Treaty can therefore have no effect on German internal trade, the concepts 'community origin' and 'country' should be interpreted to mean that the German Democratic Republic is included within the Community. If not, it should be made known whether the goods in question fall within the field of application of Article 7 of Regulation (EEC) No 177/67.

The order for reference was registered at the Court on 1 March 1974. The Commission of the European Communities, represented by its Legal Adviser P. Kalbe, the Government of the Federal Republic of Germany represented by M. Seidel and the plaintiff, represented by Advocates Wendt, Wiech and Heyn, of the Hamburg Bar, submitted written observations.

Having heard the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the procedure without any preparatory inquiry.

II — Observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

(a) Observations submitted by the plaintiff

The *plaintiff* notes, firstly, that there can be no question in the present case of applying Article 7 of Regulation No 177/67, since the Protocol on German Internal Trade, which is an integral part of the EEC Treaty and therefore takes precedence over Community Regulations, expressly provides that the application of the said Treaty does not require the Federal Republic of Germany to adapt its system of trade with the German Democratic Republic to that of its trade with third countries. It therefore transpires that German internal trade forms part of the internal trade of the Federal Republic of Germany, that the German Democratic Republic is not a third country within the meaning of the above-mentioned Article 7 and that the bringing of goods into the Federal Republic of Germany from the German Democratic Republic does not constitute

importation into the Federal Republic of Germany. It is for this reason that neither the Common Customs Tariff nor the levies are applied.

According to the plaintiff, Article 6 (1) of Regulation No 177/67 is directly applicable and accordingly the goods in question must be considered to have originated within the Federal Republic of Germany. There can be no question of ascertaining whether, on the basis of the sphere of application of the EEC Treaty as defined by Article 227, goods produced within the German Democratic Republic are of Community origin, but solely of determining whether goods brought into the Federal Republic of Germany from the German Democratic Republic within the context of inter-zonal trade must be treated as goods of Community origin. Article 4 of Regulation No 802/68 must moreover be interpreted in the light of paragraph (1) of the Protocol and, since this is a matter of internal trade, goods which are marketed in this context cannot have originated in a country other than that in which they are put upon the market.

The relevance of this view is supported by the fact that the German Democratic Republic does not form part of the Community customs territory. Goods brought into the Federal Republic of Germany from the German Democratic Republic under the terms of the inter-zonal trade agreement must be held to have belonged originally to the customs territory of the Community; were this not so it would be impossible to ascribe any meaning to Article 3 of Regulation No 1496/68, defining the customs territory. In fact the organization of the Community as a customs union means that, with regard to the free circulation of goods within the Community, a distinction is made only between goods which originate within the Member States and those which originate within third countries (Article 9 (2) in conjunction with Article 10 (1) of the EEC Treaty).

The above considerations are moreover confirmed in practice. The bringing of a product into the Federal Republic of Germany from the German Democratic Republic does not give rise to the imposition of any levy, is not subject to any import duty and is effected on the basis of Community prices.

Accordingly, if in all respects such a product must be considered to be a product indigenous to the Federal Republic of Germany, this solution must also be valid as a necessary consequence as to its origin. The defendant has objected before the Finanzgericht that the German Democratic Republic is neither a Member State of the EEC nor a third country. The question which arises therefore is whether the applicability of Article 6 (1) of Regulation No 177/67 to the goods in question is in conformity with the objectives of the system for refunds on exports to third countries, and for what reason this provision takes Community origin to be a decisive factor. In fact Article 6 (1) is not concerned to regulate the market in a particular way, independently of Article 7; its sole object is to guarantee the application of the principle that no refund shall be granted for products imported from third countries. Moreover the provisions of secondary EEC legislation must be interpreted in the light of paragraph (1) of the Protocol which takes precedence over them.

Against this point the defendant adduced the argument that pigmeat imported from the German Democratic Republic cannot, in principle, benefit from refunds, because the price system established by Regulation No 121/67 for pigmeat is based upon the price of feed grain within the Community and because, if the pigs have not been raised within the Community, the feed grain necessary for raising them has not been bought at Community prices. In effect the danger of speculative transactions is avoided in inter-zonal trading relations with goods subject to a common organization of the market, since the West German buyer can buy in the

German Democratic Republic only at Community prices.

Accordingly, the plaintiff is of the opinion that the products in question should, at the time of exportation from the Federal Republic of Germany to a third country, have been treated as analogous to products, included amongst those mentioned in Article 1 (1) of Regulation No 121/67, which have been wholly obtained or produced within the Federal Republic of Germany, and that, subject to the fulfilment of certain conditions upon the grant of an export refund, they can attract refunds pursuant to Article 6 (1) of Regulation No 177/67.

(b) Observations submitted by the German Government

The *German Government* emphasizes, firstly, that the Protocol on German Internal Trade does not extend the sovereignty of the EEC to the German Democratic Republic, but grants that country special arrangements as a territory not belonging to the Community, such that the Federal Republic of Germany is not obliged to impose customs duties and levies nor to grant export refunds.

There is therefore no question of admitting, by a legal fiction, that goods imported from the German Democratic Republic into the Federal Republic of Germany originated within the latter country, which would result in the agricultural production of the German Democratic Republic benefitting from the marketing guarantee of the common agricultural policy when it has made no contribution towards the financing of that policy.

If goods exported from the German Democratic Republic into the Federal Republic of Germany are in fact put into free circulation within the Community, that is because the Federal Republic of Germany does not have to comply with the formalities regarding importation and the levying of customs duties and charges having equivalent effect laid down for products coming from third countries. The Council did not however intend to adopt rules by way of derogation, and the concept of 'Community origin' mentioned in Article 6 (1) of Regulation No 177/67 and that of 'country' mentioned in Article 4 (1) of Regulation No 802/68 must not be interpreted as meaning that the German Democratic Republic is included within the Community. Accordingly, it is clear that no refund is granted on exports of products imported into the Federal Republic of Germany in the context of German internal trade, since no levy is charged on import and since goods imported from the German Democratic Republic are not legally analogous to products the importation of which has occasioned the charging of a levy.

(c) Observations submitted by the Commission

The *Commission* notes, firstly, that in order for goods to qualify for an export refund it is not sufficient that they should be in free circulation within the Community pursuant to Article 6 (1) of Regulation No 1041/67. It must further be established that the decisive material criteria laid down in Articles 6 and 7 of Regulation No 177/67 should be respected. These criteria are explained by the concern to guarantee that Community products should find an outlet into the world market, which would not normally be open to them. Since the imported pigmeat makes no contribution to an increase in the income of Community producers, it is not subject to a price guarantee and is not supported by means of export refunds. At the very most, the levies charged on importation might be reimbursed.

The plaintiff cannot show proof, as required in Article 6, 'that the products are of Community origin', since Article 4 of Regulation No 802/68 lays down that only 'goods wholly obtained or produced in one country shall be considered as originating in that country', from which it may be deduced that only goods obtained or produced in

one of the Member States are of Community origin; the German Democratic Republic cannot be said to be one of those States.

Knowledge of the origin of the goods, whether 'third country' or territory situated outside the Community and enjoying special status, is of no importance in relation to the question whether or not a levy has been charged.

In view of the stipulations of the Protocol on German Internal Trade, which allows trade to be conducted within the context of an internal German market, the German Democratic Republic cannot be said to be a 'third country'. However, an exportation from the Federal Republic of Germany into Yugoslavia is not governed by those rules, even if the goods had previously been transferred into the Community in the context of internal German trade.

The Commission accordingly submits that the question referred should be answered in the negative.

The plaintiff in the main action, the German Government and the Commission of the European Communities submitted oral observations at the hearing on 2 July 1974.

The Advocate-General delivered his opinion at the hearing on 11 July 1974.

Law

1 By order dated 30 January 1974, received at the Court Registry on 1 March 1974, the Finanzgericht Hamburg, in pursuance of Article 177 of the EEC Treaty, raised the question of the interpretation of Articles 6 (1) and 7 of Regulation (EEC) No 177/67 of the Council of 27 June 1967 and of Article 4 (1) and (2) (d) of Regulation (EEC) No 802/68 of the Council of 27 June 1968 in conjunction with the 'Protocol on German Internal Trade and connected problems' annexed to the EEC Treaty.

The Court is asked whether the aforementioned provisions are 'to be interpreted as meaning that products within the meaning of Articles 1 (1) of Regulation No 121/67/EEC, which have been brought from the German Democratic Republic into the Federal Republic of Germany under the terms of the agreement on inter-zonal trade, are eligible for export refunds on export from the Federal Republic to a third country'.

It appears from the order of reference that this question has arisen in proceedings relating to the export by the plaintiff in the main action to Jugoslavia on 27 June and 4 July 1969 of consignments of pigmeat under heading 02.01.A-III-a-5 described as 'swine bellies and cuts of bellies', the defendant in the main action maintaining that the goods originated in the German Democratic Republic, were brought temporarily to the Federal Republic of Germany and then re-exported in the same condition.

2 Under Article 6 (1) of Regulation No 177/67 the refund payable on pigmeat exported from the Community is subject to proof that it is 'of Community origin'.

Article 6 makes one exception where Article 7 applies.

This exception relates only to products imported from third countries and re-exported to third countries.

No refund is however granted under Article 7 'unless the exporter proves: . . . that the levy was collected on importation'.

It is estblished that imports from the German Democratic Republic into the Federal Republic of Germany are not liable to levies.

The products in question therefore, in any event, cannot come under the provisions of Article 7.

3 The plaintiff in the main action relies on Article 6 of Regulation No 177/67 to maintain that pigmeat which has been brought into the Federal Republic of Germany from the German Democratic Republic under the terms of the so-called 'inter-zonal' trade should be regarded as a product of Community origin.

4 Regulation No 802/68 gives a Community definition to the concept of the origin of goods 'for purposes of . . . the uniform application of all measures adopted, in relation to the exportation of goods, by the Community or by Member States'.

Under Article 4 of the said Regulation " 'goods wholly obtained or produced in one country" means . . . products derived from live animals raised therein'.

Article 6 therefore does not authorize the grant of a refund for products derived from animals raised outside the Community.

5 The plaintiff in the main action maintains nevertheless that, in the light of the provisions of Article 1 of the Protocol on German Internal Trade, Article 4 of Regulation No 802/68 must be interpreted as meaning that goods imported into the Federal Republic of Germany from the German Democratic Republic must be treated as products originating in the Federal Republic of Germany.

6 Article 1 of the Protocol states 'Since trade between the German territories subject to the Basic Law for the Federal Republic of Germany and the German territories in which the Basic Law does not apply is a part of German internal trade, the application of this Treaty in Germany requires no change in the treatment currently accorded this trade'.

These rules aim only at exonerating the Federal Republic of Germany from applying the rules of Community law to German internal trade.

The dispensation thus granted does not have the result of making the German Democratic Republic part of the Community, but only that a special system applies to it as a territory which is not part of the Community.

The importation of goods into the Federal Republic of Germany under the Protocol cannot therefore be regarded as importation from a third country since it is German internal trade.

Although under Article 1 of the Protocol products originating in the German Democratic Republic are entitled to circulate freely in the Federal Republic of Germany without customs clearance, they are not regarded by reason of this as having an origin in the Federal Republic of Germany.

The argument of the plaintiff in the main action therefore finds no support in the Protocol.

7 The plaintiff then states that since under the Protocol the products cannot be regarded as originating in a third country, they must necessarily be regarded as having the characteristics set out in Article 9 (2) of the Treaty and must be regarded as originating in a Member State.

Under Article 6 of Regulation No 1041/67 of the Commission (OJ L 314 of 23 December 1967, p. 9) on detailed rules for the application of export refunds on products subject to a single price system, a refund is granted only in respect of products in free circulation within the Community.

As regards the free circulation of goods, Article 10 of the Treaty makes the distinction only between products originating in a Member State and those coming from a third country.

8 This argument, based only on the general scheme established by Articles 9 and 10 of the Treaty, loses sight of the fact that the Protocol on German Internal Trade is an integral part of the Treaty, and under this Protocol, the German Democratic Republic is neither a Member State of the EEC nor, as regards German internal trade, a third country, but a special system is applied to it.

This argument must accordingly be rejected.

9 The plaintiff in the main action claims further that it may be deduced from the fact that a special reason has been given in the Regulation only for Article 7 that therefore Article 6 serves no object of market regulation independent of Article 7 and its sole objective is to make clear that there should be no refund in respect of goods which have been imported from third countries.

Proof that the reason for exclusion specified in Article 7 does not apply can be given by showing Community origin, and if goods do not come under Article 7 of Regulation No 177/67, then by converse reasoning it follows that they had their origin in the Community.

10 This argument disregards the system established in Articles 6 and 7 of Regulation No 177/67.

These provisions, far from constituting only rules as to the formal burden of proof, lay down the basic conditions for the grant of refunds.

The main principle here is that only products originating in the Community are entitled to a refund, and what is granted to products imported from third countries and re-exported to third countries is only a 'repayment' of a levy already exacted.

This argument must therefore be rejected.

11 Further, the organization of the agricultural markets has established price mechanisms intended to give agricultural producers certain guarantees of income providing, in the case of export to third countries, refunds granted from Community resources.

The benefit of these measures is limited, in general, to products of the Community, that is to say of those countries which contribute to the financing of the common agricultural policy.

Although to a certain extent Article 7 of Regulation No 177/67 enables a refund to be granted for imported goods, this is limited to a 'repayment' of levies already exacted.

The scope of the Protocol is therefore misconceived if it is sought to infer from it that the Community must extend the guarantees of prices under the common agricultural policy to products originating in the German Democratic Republic.

12 The question raised must therefore be answered in the negative.

Costs

13 The costs incurred by the Government of the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, cannot be reimbursed.

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

On those grounds,

THE COURT

in answer to the question referred to it by the Finanzgericht Hamburg by order of 30 January 1974, hereby rules:

Articles 6 (1) and 7 of Regulation No 177/67/EEC of the Council of 27 June 1967 and Article 4 (1) and (2) (d) of Regulation (EEC) No 802/68 of the Council of 27 June 1968, in conjunction with the 'Protocol on German Internal Trade and connected problems' annexed to the EEC Treaty, cannot be interpreted as enabling products within the meaning of Article 1 (1) of Regulation No 121/67/EEC, imported into the Federal

Republic of Germany from the German Democratic Republic under the terms of the agreement on inter-zonal trade, to be granted a refund when they are re-exported from the Federal Republic of Germany to a third country.

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 1 October 1974.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 11 JULY 1974 [1]

Mr President,
Members of the Court,

Under Article 15 (1) of Regulation No 121/67 of the Council on the common organization of the market in pigmeat (OJ L 117 of 19. 6. 1967, p. 2283), because market prices in the Community are as a rule above the level of the world market due to the price of fodder, and to the extent necessary to enable the products listed in Article 1 of Regulation No 121/67 to be exported 'on the basis of quotations or prices for those products on the world market, the difference between those quotations or prices and prices within the Community may be covered by an export refund'.

The general rules for granting export refunds on pigmeat are laid down in Regulation No 177/67 of the Council (OJ 130 of 28. 6. 1967, p. 2614). Under Article 6 (1) thereof the refund shall be paid 'upon proof:

— that the products have been exported from the Community, and
— that the products are of Community origin, except where Article 7 applies.'

Article 7 provides:

'No export refund shall be granted on products listed in Article 1 (1) of Regulation No 121/67/EEC which are imported from third countries and re-exported to third countries, unless the exporter proves:

— that the product to be exported and the product previously imported are one and the same, and

1 — Translated from the German.