JUDGMENT OF THE COURT (Second Chamber)

28 September 2006 *

In Joined Cases C-129/05 and C-130/05,

REFERENCES for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 17 March 2005, received at the Court on 21 March 2005, in the proceedings

NV Raverco (C-129/05),

Coxon & Chatterton Ltd (C-130/05)

v

Minister van Landbouw, Natuur en Voedselkwaliteit,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen, P. Kūris, J. Klučka (Rapporteur) and L. Bay Larsen, Judges,

* Language of the case: Dutch.

Advocate General: M. Poiares Maduro,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 9 March 2006,

after considering the observations submitted on behalf of:

— Coxon & Chatterton Ltd, by A. Braakman, advocaat,

— the Netherlands Government, by H.G. Sevenster and M. de Grave, acting as Agents,

— the Greek Government, by S. Charitaki and E. Svolopoulou, acting as Agents,

— the Commission of the European Communities, by A. Bordes and M. van Heezik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 May 2006,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the

organisation of veterinary checks on products entering the Community from third countries (OJ 1998 L 24, p. 9) ('the Directive'), read in conjunction with Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin (OJ 1990 L 224, p. 1) ('the Regulation').

2 The references arose in proceedings between, firstly, NV Raverco ('Raverco') and, secondly, Coxon & Chatterton Ltd ('Coxon') and the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality) concerning the latter's decisions rejecting as unfounded Raverco's and Coxon's complaints against decisions of 1 and 22 March 2002 ordering the destruction of rejected import consignments of meat from China.

Legal context

The Directive

3 Articles 1, 2, 17 and 22 of the Directive provide:

'*Article 1*

Veterinary checks on products from third countries introduced into one of the territories listed in Annex I shall be carried out by the Member States in accordance with this Directive.

Article 2

...

2. In addition:

...

(j) "import conditions" means veterinary requirements for products to be imported, as laid down in Community legislation;

...

Article 17

...

2. Where the checks referred to in this Directive show the competent authority that the product does not satisfy the import conditions, or where such checks reveal an irregularity, the competent authority, in consultation with the person responsible for the load or his representative, shall decide:

(a) either to redispatch the product outside the territories listed in Annex I from the same border inspection post to a destination agreed with the person

responsible for the load, using the same means of transport, within a maximum time limit of 60 days, where this is not precluded by the results of the veterinary inspection and health requirements.

...

(b) or, if redispatch is impossible or the 60-day time limit referred to in (a) has elapsed or the person responsible for the load gives his immediate agreement, destroy the products in the facilities provided for that purpose nearest to the border inspection post in accordance with Council Directive 90/667/EEC of 27 November 1990 laying down the veterinary rules for the disposal and processing of animal waste, for its placing on the market and for the prevention of pathogens in feedstuffs of animal or fish origin ...

Pending redispatch of the products referred to in this point or confirmation of the reasons for rejection, the competent authorities shall store the products in question under the supervision of the competent authority at the expense of the person responsible for the load.

...

Article 22

...

2. If any one of the checks provided for in this Directive indicates that a consignment of products is likely to constitute a danger to animal or human health, the competent veterinary authority shall immediately take the following measures:

— it shall seize and destroy the consignment in question,

— it shall immediately inform the other border inspection posts and the Commission of the findings and of the origin of the products, in accordance with Decision 92/438/EEC.

...'

The Regulation

4 Article 5 of the Regulation provides:

'Where it appears that a maximum residue limit cannot be established in respect of a pharmacologically active substance used in veterinary medicinal products because residues of the substances concerned, at whatever limit, in foodstuffs of animal origin constitute a hazard to the health of the consumer, that substance shall be included in a list in Annex IV, which shall be adopted in accordance with the procedure laid down in Article 8. Except as provided for in Article 9, any amendments to Annex IV shall be adopted in accordance with the same procedure.

The administration of the substances listed in Annex IV to food-producing animals shall be prohibited throughout the Community.'

5 Annex IV to the Regulation refers, inter alia, to furazolidone and chloramphenicol as pharmacologically active substances.

The disputes in the main proceedings and the questions referred for a preliminary ruling

6 In February and March 2002, Raverco and Coxon declared the importation into the European Union of consignments of frozen duck breasts and rabbit meat from China. Those consignments were accompanied by health and export certificates issued by the Chinese authorities for dispatch purposes.

7 In accordance with the checks prescribed by the Directive, sample extracts were taken from those consignments and analysed. Residues of chloramphenicol (1.4 ppb) and furazolidone (49 ppb) were detected in the duck breast consignments and residues of furazolidone (2.7 ppb) in the rabbit meat consignments.

8 By decisions of 1 and 22 March 2002, on the basis of the results of those analyses, the official veterinary inspector of the Rijksdienst voor de keuring van Vee en Vlees (National Inspection of Livestock and Meat Service) refused the import of those consignments and ordered their destruction.

9 On 18 March and 26 April 2002, Raverco and Coxon lodged objections against those decisions with the respondent in the main proceedings alleging that those consignments should have been redispatched to China and not destroyed, on the grounds that:

— no risk would be posed to human or animal health in the Netherlands were the products redispatched to China;

— the Directive is not intended to protect consumers outside the Union;

— there is room for doubt as to whether Article 5 of the Regulation applies and a zero-limit does not apply to furazolidone or chloramphenicol;

— up to 30 March 2002, a number of decisions were taken to redispatch consignments of meat containing a certain quantity of those substances.

10 By decisions of 16 and 22 May 2003, the respondent in the main proceedings dismissed as unfounded Raverco's and Coxon's complaints on the grounds, inter alia, that:

— Article 22(2) of the Directive requires the immediate seizure and destruction of products likely to constitute a danger to animal or human health and redispatch was therefore not possible:

— under Article 5 of the Regulation and its Annex IV, a zero-limit applies to furazolidone and chloramphenicol.

11 The appellants in the main proceedings lodged appeals against those decisions before the referring court. Considering that the outcome of both disputes depends on the interpretation of provisions of Community law, the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) decided to stay the proceedings and, in both cases, to refer the same four questions to the Court for a preliminary ruling in the following terms:

'(1) Must Article 17(2)(a) of [the] Directive ... be interpreted as meaning that objection to the redispatch of a consignment that does not satisfy the import conditions must be based on the failure to meet Community requirements for importation or may it be founded on the requirements that apply at the destination outside the territories listed in Annex I to [the] Directive ... agreed with the person responsible for the load?

(2) Must Article 17(2)(a) of [the] Directive ..., read in conjunction with Article 22(2) of that directive and Article 5 of [the] Regulation ..., be interpreted as meaning that, in all cases in which any one of the checks provided for in [the] Directive ... indicates that a consignment of animal products is likely to constitute a danger to animal or human health, that provision imperatively requires the destruction of such products?

(3) Must Article 22 of [the] Directive, ... read in conjunction with Article 5 of [the] Regulation ..., be interpreted as meaning that the mere fact that residues of a substance listed in Annex [IV] to [the] Regulation ... are found in a consignment means that the consignment in question is likely to constitute such a danger to animal or human health as to preclude its redispatch?

(4) If the second question is answered in the negative, must Article 17(2) of [the] Directive ... be interpreted as meaning that it also serves to protect the interests of the third country into which, after redispatch, the consignment is to be imported, even if those interests do not also involve the protection of an interest that can be located in the Member States of the ... Union?'

12 By order of the President of the Court of 25 April 2005, Cases C-129/05 and C-130/05 were joined for the purposes of the written and oral procedure and the judgment.

The questions referred for a preliminary ruling

Question 1

13 By its first question, the national court asks, in essence, whether, pursuant to Article 17(2)(a) of the Directive, objection to the redispatch of a consignment that does not satisfy the import conditions is founded on the failure to meet Community requirements or on the requirements that apply in the third country to which the consignment is likely to be redispatched.

14 It is clear from both the wording and the purpose of Article 17(2) of the Directive that the obstacles to the redispatch of products lie in the failure to meet Community requirements.

15 Under provision, where the checks referred to in the Directive show the competent authority that the product does not satisfy the import conditions, redispatch may be precluded under certain conditions, Article 2(2) of the Directive defining 'import conditions' as veterinary requirements for products to be imported, as laid down in Community legislation.

16 As the Advocate General observed at point 22 of his Opinion, the Directive provides for a system of veterinary inspections to establish if products fulfil the Community import conditions. Moreover, it is abundantly clear from the wording Article 8(2) and (4), Article 10(2)(a) and (f) and Article 12(2) to (6) of the Directive, in particular, that such inspections are based exclusively on Community legislation.

17 In the light of these considerations, the answer to the first question must be that Article 17(2)(a) of the Directive is to be interpreted as meaning that objection to the redispatch of a consignment that does not satisfy the import conditions must be based on the failure to meet Community requirements.

Questions 2 and 3

18 By its second and third questions, which it is appropriate to consider together, the national court asks, in essence, whether the fact that a substance prohibited under Article 5 of the Regulation is found in a consignment in the course of a veterinary inspection carried out under the Directive constitutes, by definition, a danger to animal or human health, with the effect that that consignment must necessarily be destroyed under Articles 17(2) and 22(2) of the Directive.

19 It is apparent from the very wording of Article 5 of the Regulation that, firstly, the presence of residues of a substance listed in Annex IV to the regulation in foodstuffs of animal origin, at whatever limit, constitutes a hazard to the health of the consumer and, secondly, that the administration of those substances to food-producing animals is prohibited throughout the Community on account of the danger such substances represent, the Member States having no discretion in the matter.

20 Chloramphenicol and furazolidone, which were detected in the meat consignments at issue in the main proceedings in the course of veterinary inspections, are listed in Annex IV to the Regulation as pharmacologically active substances for which no limits can be established. It is therefore accepted that a consignment of meat containing chloramphenicol and furazolidone must be regarded as constituting a hazard to the health of the consumer and as being prohibited under Article 5 of the Regulation.

21 With regard to the question of whether consignments of meat containing such substances must be destroyed in the light of Articles 17(2) and 22(2) of the Directive, it is to be noted that the first of those provisions no longer applies once it has been established that a consignment of products is likely to constitute a danger to animal or human health within the meaning of Article 22(2) of the Directive.

22 Indeed, as the Advocate General observed at points 29 and 30 of his Opinion, Article 17(2) of the Directive is of general applicability in that it is directed at all situations where the checks required at the border inspection posts reveal either that the product does not satisfy the import conditions or that there is an irregularity, albeit merely an administrative one. By contrast, Article 22(2) of the Directive has a much narrower scope in that it applies specifically where the checks reveal that a consignment of products is likely to constitute a danger to animal or human health.

23 Moreover, whereas Article 17(2) of the Directive provides for a general assessment to determine whether there are obstacles to the redispatch of a consignment that does not comply with Community legislation, the wording of Article 22(2) of that directive leaves no margin of discretion as to whether redispatch is possible once

such a consignment has been found likely to constitute a danger to animal or human health. In such a case, the latter provision imperatively requires the seizure and destruction of the consignment in question.

24 Given that consignments of meat such as those at issue in the main proceedings constitute a hazard to human health on account of the presence of substances prohibited under Article 5 of the Regulation, Article 22(2) of the Directive alone is applicable.

25 Accordingly, the competent authorities are obliged under that provision to seize and destroy such consignments.

26 That interpretation cannot be affected by Coxon's argument that Article 22(2) of the Directive no longer applies, on the basis that, following redispatch, products that fail to satisfy Community import conditions cease to pose a risk to animal or human health within the Community.

27 Such an argument would be contrary to the wording of Article 22(2) of the Directive and to its purpose, as evidenced, inter alia, by recitals 9, 10, 13 and 14 in the preamble to the Directive, which is to lay down strict rules to safeguard public and animal health and to prevent fraudulent operations and irregularities.

28 There is no doubt that an interpretation of Article 22(2) of the Directive that permitted products containing substances prohibited under Article 5 of the regulation to be redispatched could increase the risk of fraudulent re-import of such products into the Community since the importer would be virtually assured that his products would not be destroyed and he would be liable only for any redispatch charges.

29 In the light of the above, the answer to the second and third questions must be that Article 22(2) of the Directive, read in conjunction with Article 5 of the Regulation, is to be interpreted as meaning that it imperatively requires the competent veterinary authorities to seize and destroy products which, following veterinary inspections carried out pursuant to that directive, are revealed to contain a substance listed in Annex IV to that Regulation.

Question 4

30 In view of the answer to the second and third question, there is no need to answer the fourth question.

Costs

31 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 17(2)(a) of Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries is to be interpreted as meaning that objection to the redispatch of a consignment that does not satisfy the import conditions must be based on the failure to meet Community requirements.**

2. **Article 22(2) of Directive 97/78, read in conjunction with Article 5 of Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin, is to be interpreted as meaning that it imperatively requires the competent veterinary authorities to seize and destroy products which, following veterinary inspections carried out pursuant to that directive, are revealed to contain a substance listed in Annex IV to that regulation.**

[Signatures]