JUDGMENT OF THE COURT (First Chamber)
6 June 1990 *

In Case C-174/88

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

The Queen

and

Dairy Produce Quota Tribunal for England and Wales, ex parte: Hall & Sons (Dairy Farmers) Ltd,

for a preliminary ruling on the interpretation of the provisions of Council Regulation (EEC) No 856/84 of 31 March 1984 (Official Journal 1984, L 90, p. 10) amending Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176) and Council Regulation (EEC) No 857/84 of 31 March 1984 (Official Journal 1984, L 90, p. 13) adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68,

THE COURT (First Chamber)

composed of: Sir Gordon Slynn, President of Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: W. Van Gerven
Registrar: H. A. Rühl, Principal Administrator

after considering the written observations submitted on behalf of

* Language of the case: English.

Hall & Sons (Dairy Farmers) Ltd, by Stuart Isaacs and Neil Calver, barristers, and D. Jackson, solicitor,

the United Kingdom, by George Pulman, barrister, and S. Hay, Treasury Solicitor, acting as Agent,

the Commission of the European Communities, by D. Grant Lawrence, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing,

after hearing oral argument by Hall & Sons (Dairy Farmers) Ltd, the United Kingdom and the Commission, represented by Peter Oliver, a member of its Legal Department, at the hearing on 21 November 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 13 December 1989,

gives the following

Judgment

1 By order of 4 October 1987, which was received at the Court on 28 June 1988, the High Court, London, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the provisions of Council Regulation (EEC) No 856/84 of 31 March 1984 (Official Journal 1984, L 90, p. 10) amending Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176) and Council Regulation (EEC) No 857/84 of 31 March 1984 (Official Journal 1984, L 90, p. 13) adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68.

2 That question was raised in connection with an application for judicial review in which Hall & Sons (Dairy Farmers) Ltd (hereinafter referred to as 'Hall'), which

sells its own milk and milk bought in from other suppliers, is challenging a decision whereby the Dairy Produce Quota Tribunal for England and Wales (hereinafter referred to as 'the Quota Tribunal') stated that it was unable to vary the amount of a reference quantity allocated to Hall by the Minister for Agriculture, Fisheries and Food (hereinafter referred to as 'the Minister').

3 It is apparent from the documents before the Court that on 22 August 1984 Hall applied to the Minister in order to obtain a 'primary direct sales quota', being the reference quantity for those sales provided for by the relevant Community legislation. By letter of 21 January 1985 the Minister informed Hall that he intended to assign it a primary quota of 1 323 193 litres based on an estimate of the milk produced by its own dairy herd.

4 Taking the view that the quota assigned was incorrect, Hall appealed by way of objection to the Quota Tribunal on the ground that the Minister should have fixed the amount of the quota on the basis of Hall's total sales in the relevant period, regardless of whether the milk thus sold had been produced in Hall's own holdings or bought in from another supplier, namely the Milk Marketing Board. Hall therefore claimed a primary quota of 9 735 363 litres.

5 By decision of 29 August 1985 the Quota Tribunal directed that it was unable to vary the primary quota assigned to Hall. It is apparent from the documents before the Court that the Quota Tribunal based that decision on the fact that the milk in question had already given rise to the grant of a quota to the suppliers of the Milk Marketing Board and that the same milk could not be taken into account for two separate quotas without undermining the scheme established by the relevant provisions of national law, namely the Dairy Produce Quota Regulations 1984 (hereinafter referred to as 'the Quota Regulations'), which were enacted in order to implement at national level the Community system of milk levies.

6 Hall then made an application for judicial review to the Queen's Bench Division of the High Court, in which it argued that, by taking as a basis solely the milk produced by Hall's dairy herd and excluding the milk from the Milk Marketing Board, the Quota Tribunal had misinterpreted both the Quota Regulations and the relevant Community legislation. The High Court, London, therefore referred the following question to the Court of Justice for a preliminary ruling:

'Whether the reference quantity to be assigned to a producer of milk and milk products in accordance with the provisions of Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products and Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector is to be calculated by reference to all the direct sales made by the producer in the relevant calendar year or else by reference only to the direct sales made by him during that period out of milk produced by himself'.

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant provisions of Community law and national law, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 Article 5c(1) of Regulation No 804/68 (inserted by Regulation No 856/84) imposed an additional levy payable by producers or purchasers of cows' milk on the quantities of milk and/or milk equivalent which, for the 12 months concerned, exceed a reference quantity to be determined. According to Article 5c(2), the levy is also payable by every milk producer on the quantities of milk and/or milk equivalent which he has sold for direct consumption and which exceed the reference quantity assigned to him. According to Article 5c(3), the sum of those quantities must not, in principle, exceed the guaranteed total quantity assigned to the Member State concerned.

9 Article 6(1) of Regulation No 857/84 provides that each producer referred to in Article 5c(2) of Regulation No 804/68 is to be assigned a reference quantity corresponding to the direct sales made by him. However, the total of the reference quantities so assigned may not exceed the limit fixed for each Member State in the annex to that regulation.

10 The phrase 'milk or milk equivalent sold directly to consumption' is defined in Article 12(h) of Regulation No 857/84 as 'milk or milk products processed into milk equivalent, sold without going through an undertaking treating or processing milk'. However, that definition does not expressly specify the origin of the milk sold in that way.

11 Hall maintains, therefore, that the reference quantity assigned to it pursuant to Article 6 of Regulation No 857/84 must necessarily correspond to its total direct sales. It relies on the following arguments: no provision in Article 6 requires that a producer's reference quantity be limited to its own production. An interpretation of the provisions in question which includes all direct sales cannot be invalidated by the fact that it would lead to the assignment of more than one reference quantity in respect of the same quantity of milk since each reference quantity is assigned on a different basis. Nor would that interpretation give rise to discrimination between producers since Hall, like other direct suppliers, is in a special position which is neither comparable nor identical to that of other producers who sell their milk solely to the Milk Marketing Board.

12 The Commission and the United Kingdom maintain, however, that Article 6 must be interpreted as being limited to sales of milk produced by the producer himself, that is to say by his own dairy herd. All the milk purchased by Hall from the Milk Marketing Board has already been the subject of a quota for the original producer and it would be quite contrary to the purpose of the dairy produce quota scheme for more than one quota to be assigned in respect of the same quantity of milk. Furthermore, such an interpretation would lead to substantial discrimination in favour of producers engaging in direct sales as against producers who sell to the Milk Marketing Board. Hall is therefore entitled only to a reference quantity for the proportion of its sales corresponding to the milk obtained from its own herd.

13 It should be noted that Article 6(1) of Regulation No 857/84 does not expressly state whether the direct sales referred to by that provision are limited to milk coming solely from the producer's own herd or whether such sales can also include direct sales of milk bought in by someone who, at the same time, also produces milk on his own account.

14 However, it is plain from Article 6 that the reference quantity must be assigned to a 'producer'. According to Article 12(c) and (d) of Regulation No 857/84, a 'producer' is a person who farms a holding, which is defined as 'all the production units operated by the producer and located within the geographical territory of the Community'. Those provisions indicate that the reference quantities must be limited to direct sales of milk produced by the producer himself, that is to say from his own production units. The phrase 'selling milk . . . directly to the consumer' refers to the milk produced on the holding farmed by the producer. It is that milk which serves as a basis for the reference quantity within the meaning of Article 6 of Regulation No 857/84.

15 That this interpretation based on the actual wording of Article 6(1) is well founded is borne out by the objective of the Community provisions at issue. As the Commission and the United Kingdom have correctly pointed out, it follows from the wording of the first subparagraph of Article 5c(1) of Regulation No 804/68 that the objective of the additional levy introduced by that article 'is to curb the increase in milk production'. As the Court stated in its judgment of 17 May 1988 in Case 84/87 *Erpelding* v *Secrétaire d'État à l'agriculture et à la viticulture* [1988] ECR 2647, the purpose of that system is to re-establish, by limiting milk production, the balance between supply and demand in the milk market, which is characterized by structural surpluses.

16 An interpretation of the concept of reference quantity assigned for direct sales, according to which that quantity would take account not only of production from the producer's own dairy herd but also of the milk bought by him from the Milk Marketing Board even though a reference quantity in respect of that milk has already been assigned to another producer, would open the way for producers to create additional reference quantities through sales and purchases. Such an interpretation would be incompatible with the objective and scheme of the Community rules, which are designed to restrict milk production, and it cannot therefore be adopted.

17 It should be pointed out, moreover, that the effect of the interpretation advocated by Hall would be that producers who sell only their own dairy produce would

have to be assigned lower individual reference quantities, so that the national reference quantity was not exceeded. That would lead to discrimination in favour of direct sellers to the detriment of other producers, contrary to the recognized basic Community principle of non-discrimination.

18 It follows that Article 6(1) of Regulation No 857/84 must be understood as excluding direct sales where the producer acts not as a producer but solely as an intermediary.

19 The answer to the question submitted for a preliminary ruling by the High Court, London, must therefore be that Article 6(1) of Council Regulation No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68 in the milk and milk products sector must be interpreted as meaning that the reference quantity assigned to each producer of milk and milk products referred to in Article 5c(2) of Regulation (EEC) No 804/68 is to be calculated on the basis of the quantity of milk or milk products which he sold directly to consumption during the relevant reference year and was produced by his own herd.

Costs

20 The costs incurred by the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings 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 (First Chamber),

in answer to the question referred to it by the High Court, London, by order of 4 October 1987 hereby rules:

Article 6(1) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector must be interpreted as meaning that the reference quantity assigned to each producer of milk and milk products referred to in Article 5c(2) of Regulation (EEC) No 804/68 is to be calculated on the basis of the quantity of milk or milk products which he sold directly to consumption during the relevant reference year and was produced by his own herd.

Slynn Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 6 June 1990.

J.-G. Giraud
Registrar

Gordon Slynn
President of the First Chamber