JUDGMENT OF THE COURT (FIRST CHAMBER) OF 9 MARCH 1978 [1]

Kühlhaus Zentrum AG v Hauptzollamt Hamburg-Harburg (preliminary ruling requested by the Finanzgericht Hamburg)

Case 79/77

Agriculture — Monetary compensatory amounts — Imports from third countries — Exemption from levy — Reduction of monetary compensation by multiplication by a coefficient — Inadmissibility

(Regulation No 1380/75 of the Commission, Art. 4 (3))

Regulation No 1380/75 is not to be interpreted in the sense that where, on the import into Member States of goods from third countries, the levy has been fixed but its imposition has been suspended and where monetary compensation is charged for such goods the monetary compensation should be reduced by multiplication by a monetary coefficient.

In Case 79/77

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

KÜHLHAUS ZENTRUM AG, Hamburg

and

HAUPTZOLLAMT HAMBURG-HARBURG on the interpretation of Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (Official Journal L 139 of 30 May 1975, p. 37),

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. M. Donner and A. O'Keeffe, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

1 — Language of the Case: German.

JUDGMENT

Facts and Issues

The facts, the procedure 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 plaintiff in the main action, the German undertaking Kühlhaus Zentrum AG, which owns a private customs warehouse, put a consignment of frozen beef from Argentina into free circulation on 12 November 1975. It had been imported as part of a tariff quota opened to third countries by the Community under agreements entered into within the framework of the General Agreement on Tariffs and Trade (GATT). That quota allowed a certain quantity of meat to be imported free from import levy, subject to payment of customs duty of 20%.

A monetary compensatory amount of DM 1 866.80 was then charged on the goods, and the plaintiff in the main action lodged an objection against the payment notice in respect thereof; it argued that the coefficient referred to in Article 4 (3) of Regulation No 1380/75 should have been applied to the monetary compensatory amount, which would have had the effect of reducing it by DM 1 483.20, that is, by the amount by which the levy is reduced when the levy fixed is multiplied by the coefficient referred to in the said Article 4 (3).

The defendant in the main action, Hauptzollamt (Principal Customs Office) Hamburg-Harburg, dismissed that objection, and the matter was brought before the Finanzgericht (Finance Court) Hamburg.

Considering that a question concerning the interpretation and possibly the validity of Community provisions arose, that court decided, by an order of 1 June 1977, to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

1. Is Regulation (EEC) No 1380/75 to be interpreted in the sense that where, on the import into Member States of goods from third countries, the levy has been fixed but its imposition has been suspended and where monetary compensation is charged for such goods the monetary compensation should be reduced by multiplication by a monetary coefficient?
2. If Question 1 is answered in the affirmative:

   Is the monetary compensation to be reduced by the amount by which, if a levy had been imposed, it would have been reduced by application of the coefficient set out in Regulation (EEC) No 2147/75?
3. If Question 1 is answered in the negative:

   Is Regulation (EEC) No 1380/75 void in so far as, where a levy is fixed in units of account but its imposition is suspended, the monetary compensation on imports into the Federal Republic of Germany from third countries is not reduced by application of a monetary coefficient?

The order making the reference was entered at the Court Registry on 4 July 1977.

Having heard the report of the Judge Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry, and to assign the case to the First Chamber.

II — Summary of the written observations submitted to the Court pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The *plaintiff in the main action* argues that it emerges from the seventh recital in the preamble to Regulation No 1380/75 that, although for the purposes of correct calculation it is necessary to fix the monetary compensatory amounts at different rates according as trade with other Member States or with third countries is concerned, for the sake of simplification the same rate should be fixed in both cases, as in Regulation No 1463/73. In that way, the adjustment which would ordinarily be required in the monetary compensatory amounts has been transferred and applied to import charges, refunds and all other amounts charged or granted in trade with third countries.

Consequently, the monetary compensatory amounts in respect of imports from third countries into the Federal Republic of Germany are fixed, or at all events imposed, at an excessively high rate when the imposition of the levies is suspended. For, in such a case, the correction of the monetary compensatory amounts which has been transferred to the levies cannot take place. Therefore the adjustment should be carried out in the monetary compensatory amounts themselves; they should be reduced by an amount resulting from the multiplication of the levy by the monetary coefficient.

It is argued that Regulation No 1380/75 provides that the coefficient should be applied not to the import charges imposed but to those which are "fixed in units of account". That should also be the case when import charges so fixed are not in fact imposed owing to their suspension.

Any different interpretation of Regulation No 1380/75 would be contrary to the prohibition on discrimination and to the principle of equal treatment and in particular to Article 40 (3) of the EEC Treaty. The first result of such an interpretation would be wrongfully to treat dissimilar situations in the same way. For the same monetary compensatory amounts would then be imposed, without any correction of the other import charges, on imports both from Member States and from third countries, although in that connexion the charges on imports from third countries into the Federal Republic of Germany should necessarily be lower. Secondly, similar situations would be treated in a different way without any valid reason. On the one hand imports from third countries would bear heavier charges than imports from Member States. On the other hand, imports from third countries into the Federal Republic of Germany would bear heavier charges than imports from third countries into other Member States. In such cases, the other Member States would enjoy the advantage of having the "correct" monetary compensatory amount at the same time as the suspension of levies. German importers would have to pay an unadjusted, and hence excessively high, monetary compensatory amount.

The *Commission* points out first of all that the questions raised are not confined to the meat sector, but in a very general way call in question "goods" and "imports from third countries". However, the Commission's observations are confined to the particular facts of the importation at issue in the main action.

The Commission then states the way in which it has interpreted the decisive regulation in this area, Regulation No 974/71, Article 2 of which provides only that the rates used (which are established in the light of changes in the monetary situation) are applied "to the prices", taking into account the purpose of the system which is to compensate for divergences in the level of prices caused by changes in the monetary situation. In intra-Community trade, the Commission has taken guaranteed prices (in particular intervention prices) as its reference price. On the other hand, in trade with third countries levies and refunds in themselves entail partial monetary compensation (expressed in units of account and converted into the national currencies of the respective Member States by applying the parity — or subsequently the so-called "green conversion rates" — those amounts completely offset the difference between the world prices which have been used as a basis and the level of prices in the Member State concerned). Consequently, the monetary compensatory amounts applicable in regard to third countries have been so calculated as to refer only to that part of the prices not yet offset by the levies or refunds, that is to say the world prices which form the basis of the levies and refunds.

Out of concern for administrative simplification, the Commission decided in a second stage of the system to fix uniform basic monetary compensatory amounts calculated by reference to the Community guarantee prices both for intra-Community trade and for trade with third countries. However, those amounts require to be corrected since the necessary compensation has already been ensured by the levy or the refund. Therefore in the regulations adopted by the Commission since 1 March 1973 (Regulations Nos 648/73, of 1 March 1973, and 1463/73, of 30 May 1973) a coefficient, called a monetary coefficient, was fixed to convert the effect of revaluation in the case of Member States with revalued currencies, and of devaluation in the case of Member States with devalued currencies. For the Federal Republic of Germany, for example, the effect of the revaluation of the Deutschmark in relation to the "green rate" is currently 7.5% and the monetary coefficient is consequently 0.925%, being (100 - 7.5) ÷100. For France, the effect of the devaluation of the French Franc is currently 14.5% and the monetary coefficient is consequently 1.145%, being (100 + 14.5) ÷100. Thus in the system of calculation currently applied, the basic monetary compensatory amount and the monetary coefficient together form a single unit which is the true monetary compensatory amount.

Thus at first sight one is tempted to conclude that the monetary compensatory amount applied in the case at issue in the main action is excessive because the correction ordinarily carried out by means of the monetary coefficient could not take place owing to the exemption from the levy. However, the difference between the monetary compensatory amount actually applied and the monetary compensatory amount calculated in the theoretically correct way is so slight that in the end it could be ignored. The calculation by the plaintiff in the main action, who estimates the excess of the monetary compensatory amount over the actual figure at DM 1483.20, is based on incorrect data. The plaintiff wishes the monetary compensatory amount to be reduced by the amount by which the levy (had one been imposed) would have been reduced by multiplication by the monetary coefficient in force at the material time (0.9%), that is to say it wishes the levy to be reduced by 10%.

That method of calculation is without any legal basis, because where no levy is actually applicable there is no point of reference for the application of the

monetary coefficient, and is contrary to Article 4 (3) of Regulation No 1380/75. At most, the calculation of the monetary compensatory amount could be corrected by returning to the original method of calculation, on the basis of the world price of the imported goods. The use of that method would enable the plaintiff in the main action to gain approximately 7 pfennigs per kilogramme, a total of DM 193.46 (that is to say approximately 1% of the value of the goods). The explanation of the difference between the two results is that in the case of the product at issue, the calculation of the monetary compensatory amount is influenced at the outset by two specific factors: first, the basic monetary compensatory amount applied to beef and veal is established not on the basis of the intervention price but on the basis of a price reduced by 10% in order to take more account of the real level of the market price in that sector; secondly, the calculation (conversion) coefficients used for the purpose of calculating the monetary compensatory amount applied to the beef and veal product at issue are different from those used for the calculation of the levy. Therefore the basic monetary compensatory amount applied to the product at issue is lower than an amount calculated according to the same principles as the levy. The effect of applying the monetary coefficient to the levy is to reduce the total monetary compensatory amount more than if it had been calculated from the outset on the basis of the world price. The consequence of this, briefly stated, is to give imports into countries with revalued currencies a relative advantage and to put imports into countries with devalued currencies at a relative disadvantage. However, there is no justification for continuing to make the advantage inherent in the system operate by applying the coefficient when the levy has been abolished.

All things considered, owing to the peculiarities inherent in the calculation of the monetary compensatory amount for beef and veal it is not possible to avoid certain divergences from a theoretically ideal solution whichever of the two methods of calculation is used, but those divergences remain within tolerable limits and at all events do not give rise to differences so great as to be capable of disturbing trade. That is the reason why the Commission has not so far considered it necessary to give up the method of calculation currently used. Owing to the constant variations in prices on the world market, the reintroduction of the old system for beef and veal would require permanent updating (for all the Member States) of the monetary compensatory amounts applied to imports from third countries; furthermore, establishing the prices on the world market would in itself be a further element of uncertainty.

The Commission proposes that the questions raised by the Finanzgericht Hamburg should be answered as follows:

1. The regulations in force and in particular Regulation No 1380/75 do not provide any legal basis for "multiplication by a monetary coefficient" — or, more exactly, for a reduction of the monetary compensatory amount by application of the monetary coefficient to the notional levy. Therefore the national authorities do not have the power to carry out such an adjustment to the monetary compensatory amount (which, moreover, would take the form of an increase in certain other cases). Neither would such a reduction of the monetary compensatory amount be justified in economic terms, because it would be excessively favourable to imports (into countries with revalued currency).

2. If, contrary to the Commission's point of view, the first question is answered in the affirmative, the answer to the second question should also be in the affirmative.
3. The monetary compensatory amount charged where the product in question is exempted from import levy is only slightly higher than the amount which would be charged if a theoretically ideal method of calculation were applied. Such negligible differences can be tolerated in view of the lack of precision inevitably associated with the flat-rate nature of the system and having regard to the administrative complications that would be caused by a change in the method of calculation.

The plaintiff in the main action, represented by K. Landry, Advocate of the Hamburg Bar, and the Commission of the European Communities, represented by its Legal Adviser, P. Gilsdorf, acting as Agent, submitted oral observations at the hearing on 24 November 1977.

The composition of the Chamber having been altered, it was decided, after hearing the views of the parties to the main action, to re-open the oral procedure at the hearing on 25 January 1978.

The parties to the main action having stated that they adhered to their earlier submissions, the Advocate General delivered his opinion at that hearing.

Decision

1 By an order of 1 June 1977, received at the Court on 4 July 1977, the Finanzgericht Hamburg referred to the Court, pursuant to Article 177 of the EEC Treaty, several questions on the interpretation and the validity of Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (Official Journal L 139, p. 37).

Those questions were raised in the course of a dispute concerning the charging of monetary compensatory amounts on a consignment of frozen beef imported from Argentina by the German undertaking Kühlhaus Zentrum, the plaintiff in the main action.

It had been imported as part of a tariff quota opened to third countries by the Community under agreements entered into within the framework of the General Agreement on Tariffs and Trade (GATT), giving exemption from import levy.

A monetary compensatory amount of DM 1 866.80 was charged on the goods, and the plaintiff in the main action lodged an objection against the payment notice in respect thereof.

That objection was based on Article 4 (3) of Regulation No 1380/75, application of which, in the plaintiff's submission, has the effect of reducing the monetary compensation by the amount by which the levy is reduced when it is multiplied by the coefficient referred to in the said Article 4 (3).

2 It is asked whether Regulation No 1380/75 is to be interpreted in the sense that where, on the import into Member States of goods from third countries, the levy has been fixed but its imposition has been suspended and where monetary compensation is charged for such goods the monetary compensation should be reduced by multiplication by a monetary coefficient.

If the foregoing question is answered in the affirmative, it is asked whether the monetary compensation is to be reduced by the amount by which, if a levy had been imposed, it would have been reduced by application of the coefficient set out in Regulation No 2147/75.

If the first question is answered in the negative, it is asked whether Regulation No 1380/75 is void in so far as, where a levy is fixed in units of account but its imposition is suspended, the monetary compensation on imports into the Federal Republic of Germany from third countries is not reduced by application of a monetary coefficient.

3 The provisions of Article 4 (3) and (4) of Regulation No 1380/75 read as follows:

"3. However,

(a) ...

(b) in trade with third countries the import charges and the export refunds and levies, fixed in units of account ... shall be multiplied by a coefficient. This coefficient shall be derived from the percentage used to calculate the monetary compensatory amount and shall be fixed by the Commission at the same time as that amount.

...

4. Where the levy or refund is to be increased or reduced, as the case may be, by accession and monetary compensatory amounts and muliplied by a coefficient, the calculation shall be made as follows:

(a) the levy or refund shall be reduced or increased, as the case may be, by the accession compensatory amount;

(b) the resulting amount shall be multiplied by the coefficient; and

(c) the amount obtained after multiplication shall, after conversion into national currency, be reduced or increased, as the case may be, by the monetary compensatory amount."

4 In the seventh recital in the preamble to the same regulation, the Commission gives the following explanation of the need to apply the coefficient:

"Whereas accession compensatory amounts, fixed components as referred to in Article 61 of the Act of Accession (Official Journal (English Special Edition) of 27 March 1972, p. 14), import charges, export refunds and all other amounts charged or granted in units of account in respect of trade with third countries are, like the prices in the Member States concerned, converted into the currencies of those Member States by applying the exchange rates provided for under the common agricultural policy; whereas, therefore, in calculating the monetary compensatory amount only the difference between the price level and the amount in question expressed in units of account need be taken into consideration; whereas, in order to simplify the system so that the same compensatory amount may be applied in respect of the trade of a given Member State with every other Member State and with third countries, accession compensatory amounts, fixed components, import charges, export refunds and all other amounts charged or granted in respect of trade with third countries should be corrected by a coefficient expressing the position of the currency of the Member State which is to apply the monetary compensatory amount."

5 Relying on the terms of that recital and in particular on the sentence "whereas, therefore, in calculating the monetary compensatory amount only the difference between the price level and the amount in question expressed in units of account need be taken into consideration", the plaintiff in the main action claims that the provisions of the said Article 4 are to be interpreted in the sense that it is sufficient for a levy to be fixed in units of account, even if the levy is not imposed, and that in such a case the monetary compensatory amount must be reduced by the amount by which the levy which has not been imposed would have been reduced by application of the coefficient.

6 Out of concern for administrative simplification, the Commission decided on 1 March 1973 to fix uniform basic monetary compensatory amounts calculated by reference to the Community guarantee prices both for intra-Community trade and for trade with third countries.

However, in principle the monetary compensatory amounts require to be corrected in respect of imports from third countries (or exports to such countries), since the compensation necessary has already been ensured by the levy or refund.

That correction is effected by the application of the coefficient referred to in Article 4 of Regulation No 1380/75.

Although at first sight the monetary compensatory amount applied to the importation carried out by the plaintiff in the main action may seem excessive because the correction ordinarily carried out by means of the monetary coefficient could not take place owing to the exemption from the levy, the express terms of the regulation lead to that result.

Since the terms of the regulation are clear, the interpretation of Article 4 of the regulation which is put forward by the plaintiff in the main action cannot be upheld.

Consequently, the first question must be answered in the negative.

7 The plaintiff in the main action further submits that, if its interpretation of the regulation at issue is not upheld, the regulation itself is "void" for infringement of the principle of the prohibition on discrimination and of the principle of equal treatment, and in particular of the principle stated in Article 40 (3) of the Treaty.

The plaintiff considers that the charging of the monetary compensatory amount at the full rate on imports carried out free from imposition of the levy has the effect of giving an advantage to imports into Member countries with depreciated currencies, in which the monetary compensatory amount is granted without deduction, and of putting at a disadvantage imports into Member countries with appreciated currrencies, in which the monetary compensatory amount is charged without adjustment.

8 Although it may be doubted whether it is appropriate to apply the system of monetary compensatory amounts in the case of a quota from a third country admitted into the Community free from imposition of the levy, the Community rules provide for that system to be applied to such imports unless the Commission grants a special derogation.

The plaintiff in the main action has not called in question the application of the system of monetary compensatory amounts to the imports in question, but only the failure to reduce the amount by application of the monetary coefficient.

It is inherent in the system of monetary compensatory amounts that they are fixed at a flat rate and in a general way for products or groups of products.

The exemption of the quota in question from the levy was an exceptional derogation from the Community system of determination of prices for beef and veal, so that importers who were able to benefit from that exemption were in a situation not comparable to that of other importers.

Therefore, since discrimination consists above all in treating comparable situations differently, the facts do not support the complaint of discrimination as regards the application of Regulation No 1380/75 to the goods imported as part of the quota exempted from levy.

9 It follows from what has been said that consideration of the third question raised has disclosed no factor of such a kind as to effect the validity of the regulation at issue.

Costs

10 The costs incurred by the Commission of the European Communities which submitted observations to the Court are not recoverable.

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 submitted to it by the Finanzgericht Hamburg, by an order of 1 June 1977, hereby rules:

(1) Regulation No 1380/75 is not to be interpreted in the sense that where, on the import into Member States of goods from third countries, the levy has been fixed but its imposition has been suspended and where monetary compensation is charged for such goods the monetary compensation should be reduced by multiplication by a monetary coefficient.

(2) Consideration of the third question raised has disclosed no factor of such a kind as to affect the validity of the regulation at issue.

Bosco Donner O'Keeffe

Delivered in open court in Luxembourg on 9 March 1978.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 25 JANUARY 1978

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Finanzgericht of Hamburg. The Plaintiff in the proceedings before that Court is the Firma Kühlhaus Zentrum AG. The Defendant is the Hauptzollamt Hamburg-Harburg.

The Plaintiff is the owner of a customs warehouse at Hamburg and, as such, became accountable on behalf of a customer for the charges leviable on the removal from that warehouse on 12 November 1975 of a consignment of 2 760 kg of frozen beef imported from the Argentine. That consignment was entered as part of a tariff quota conceded by the EEC under the GATT. The effect of this was that the meat in question was exempt from import levy though it remained liable to the customs duty of 20% chargeable under the Common Customs Tariff and also to the payment of an m.c.a. The question at issue between the parties is as to the proper amount of that m.c.a. It was assessed by the Defendant, in accordance with Commission Regulation (EEC) No 2195/75 of 22 August 1975 "on the monetary compensatory amounts applicable in the beef and veal sector" at DM 67.64 per 100 kg, i.e. in all DM 1 866.80.

Your Lordships will have it in mind that import levies are, broadly speaking, designed to cover the difference between world market prices and Community prices — see in the case of beef and veal Articles 10 and 13 of Council Regulation (EEC) No 805/68 of 27 June 1968 "on the common organization of the market in beef and veal". Such levies are fixed in units of account. For application in any particular case they need to be converted into the national currency of the Member State concerned. Since the entry into force of Council Regulation (EEC) No 475/75 of 27 February 1975 "on the exchange rates to be applied in agriculture" that conversion has in every case been effected at the "repres-