JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 12 JULY 1979 [1]

Maggi GmbH
v Hauptzollamt Münster
(preliminary ruling requested by the Finanzgericht Münster)

"Inward processing — monetary compensatory amounts"

Case 260/78

Agriculture — Monetary compensatory amounts — Application by the Member States — Exemption under arrangements concerning inward processing traffic — Not permissible (Regulation No 1380/75 of the Commission)

The provisions of Regulation No 1380/75 of the Commission laying down detailed rules for the application of monetary compensatory amounts must be interpreted as meaning that a Member State may not apply its national rules in the matter of inward processing traffic so as to exempt from monetary compensation, in intra-Community trade, goods imported from another Member State in which they are in free circulation.

In Case 260/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Münster for a preliminary ruling in the action pending before that court between

MAGGI GMBH

and

HAUPTZOLLAMT MÜNSTER

1 — Language of the Case: German.

with

OBERFINANZDIREKTION [Regional Finance Board] MÜNSTER, intervening,

on the question whether an exemption from monetary compensatory amounts granted by a Member State within the context of inward processing arrangements on goods in free circulation in another Member State is compatible with Community law,

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, M. Sørensen and A. Touffait, Judges,

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

gives the following

JUGDMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

1. The plaintiff in the main action regularly imported sugar from France into Germany, processed it into soup preparations on commission for a French customer and exported the products thus manufactured to France and Belgium.

By a decision of 9 January 1974 the defendant in the main action, on the application of the plaintiff for exemption from the sugar tax ("Zuckersteuer") and from monetary compensatory amounts, granted it permanent inward processing arrangements (processing of goods under customs control) for the mixing and packaging of white sugar intended for the manufacture of soup preparations. By a decision of 20 January 1975 the defendant in the main action withdrew the authorization which it had granted on the grounds that the inward processing arrangements were no longer necessary: the German regulation on exemption from the sugar tax (Zuckersteuerbefreiungsordnung) makes provision for exemption from that tax in respect of sugar imported for the manufacture of goods intended for export; the purpose of inward processing traffic is not exemption from monetary compensatory amounts.

The plaintiff in the main action lodged an objection against that decision. The objection was dismissed as unfounded by the intervener in the main action. Consequently the plaintiff in the main action instituted proceedings before the Finanzgericht Münster.

2. By an order of 6 October 1978 the Finanzgericht Münster stayed proceedings in the case and referred the following questions to the Court of Justice for a preliminary ruling pursuant to Article 177 of the EEC Treaty:

"1. On 8 September 1975 was it in principle compatible with Community law, and in particular with the provisions of Regulation (EEC) No 974/71 of the Council of 12 May 1971 (Official Journal, English Special Edition 1971 (I), p. 257) and Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 (Official Journal L 139, p. 37), that a Member State of the Community as originally constituted, in intra-Community trade and on the basis of its national law concerning inward processing arrangements (in the present case, Article 47 *et seq.* of the Zollgesetz (Customs Law) of the Federal Republic of Germany of 1961 in conjunction with Article 2 (1) of the Abschöpfungserhebungsgesetz (Law relating to the imposition of levies) of 1962), should exempt from payment of the monetary compensatory amount goods which had been in free circulation in another Member State and on which monetary compensatory amounts are to be levied on import under Community law, subject to the condition that the goods were not to be put into free circulation in the importing State but were to be processed under the surveillance of the customs and re-exported as constituent parts of other goods to the country of origin or to another Member State?

2. In the event of Question 1 being answered in the affirmative: Was the exemption from the levying of the monetary compensatory amount also compatible with Community law where national law (in this case, Article 47 (2) of the German Customs Law) made it dependent upon a prior assessment by the customs authority of reliability of the processor?

3. In the event of Questions 1 and 2 being answered in the affirmative: Was the exemption from the levying of the monetary compensatory amount also compatible with Community law where national law (in the present case, Article 48 (2) of the German Customs Law) made it dependent upon a prior balancing by the customs authorities of the interests of the processor against the interests of the domestic manufacturer in the country of importation?"

3. The order of the Finanzgericht shows that the plaintiff in the main action argued before it that it is impossible to infer from Regulation (EEC) No 1463/73 of the Commission of 30 May 1973 laying down detailed rules for the application of monetary compensatory amounts (Official Journal 1973, L 146, p. 1) or from Regulation (EEC) No 1380/75 which replaced that regulation, both of which were cited in the decision adopted with regard to the objection lodged by the plaintiff in the main action, that in intra-Community trade inward processing traffic cannot result in exemption from monetary compensatory amounts. That inward processing arrangements within the

original Member States of the Community are lawful in principle may already be inferred from Regulation (EEC) No 1515/74 of the Commission of 18 June 1974 on the application of inward processing arrangements in trade between the Member States of the Community as originally constituted and the new Member States, and between the new Member States themselves, for such time as customs duties are levied in such trade (Official Journal 1974, L 163, p. 17). The plaintiff in the main action recalled before the Finanzgericht the wording of the 13th recital in the preamble to Regulation No 1380/75:

"Whereas the system provided for by this regulation can cover only products in free circulation within the Community; whereas, moreover, products benefiting from a compensatory amount should be of a quality such that they can be marketed under normal conditions."

It considers that that recital shows clearly that the application of the regulation is restricted to products in free circulation within the Community as opposed to goods to which inward processing arrangements apply. Furthermore, Article 11 of the said regulation draws a distinction between goods which it is intended shall be put into free circulation and other goods.

4. The order of the Finanzgericht also indicated that the defendant and the intervener in the main action claimed that Regulation No 1515/74 does not apply to the case in question since it constitutes an exceptional system for the transitional period in trade with the new Member States. Likewise, the 13th recital in the preamble to Regulation No 1380/75 does not provide grounds for concluding that inward processing traffic is lawful. In fact products which were not in free circulation within the Community could only be those which did not comply with the conditions laid down in Article 9 (2) of the Treaty. On the other hand, goods coming from a Member State fall within one of the situations referred to in Article 9 (2) of the Treaty.

5. The Finanzgericht emphasizes in the order making the reference that the Community provisions applicable to this case do not expressly settle the question whether it is lawful to authorize inward processing arrangements in intra-Community trade for the purposes of granting exemption from monetary compensation.

It recalls furthermore that Articles 7 to 15 of Regulation No 1380/75 governing intra-Community trade do not, unlike Article 6, which refers to trade with third countries, contain any reference of a general nature to the provisions governing the levying of customs duties of which the national provisions on inward processing arrangements might form part. Article 8 (5) together with paragraph (1) refers to the customs provisions only for the purpose of determining the rate of monetary compensation. According to the Finanzgericht the question thus arises as to whether it may be concluded *a contrario* that the national provisions concerning customs are not generally applicable in intra-Community trade.

The Finanzgericht continues:

"In addition, it appears doubtful whether the sanctioning of inward processing arrangements in intra-Community trade by a Member State and accordingly the exemption from the levying of monetary compensatory amounts is compatible with the spirit and objective of the said EEC regulations. The objective of monetary compensation is essentially to

compensate for the effect on the prices of particular goods of the divergence of the actual exchange rates of the Member States from the official parity and to stabilize prices in trade in a particular country's currency (cf. the recitals to Regulation (EEC) No 974/71). This objective applies not only to trade in goods which go into free circulation in the importing State, but also to trade in goods which are processed in the importing State under customs control and are re-exported as components of other goods to the country of origin or to another Member State . . ."

"Objections to the exemption from the levying of monetary compensatory amounts by a Member State on the basis of its national provisions on inward processing arrangements also arise from the fact that thereby the uniform application of Community law could be jeopardized . . ., merely because the national provisions of the Member States of the European Communities differ *inter se* (in some cases considerably) as regards inward processing arrangements (cf. the recitals of the preamble to the directive of the Council of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing, Official Journal, English Special Edition 1969 (I), p. 75) . . ."

6. The order making the reference was received at the Court Registry on 13 December 1978.

The Commission of the European Communities, represented by its Legal Adviser, P. Kalbe, acting as Agent, assisted by A. Stockburger, of the Frankfurt Bar, lodged written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities. The Commission informed the Court of Justice by letter of 14 June 1979 that it had appointed Peter Gilsdorf, one of its Legal Advisers, and Mr. Stockburger as Agents.

The Court, having heard the report of the Judge-Rapporteur and the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry.

By an order of 28 March 1979 the Court decided, pursuant to Article 95 (1) of the Rules of Procedure to assign the case to the Second Chamber.

II — Written observations submitted to the Court by the Commission

The Commission claims that it is quite clear from the wording of the relevant provisions of Community law that inward processing traffic having as its purpose exemption from monetary compensatory amounts was not authorized in trade between Member States of the Community as originally constituted: basic Regulation No 974/71 of the Council, in conjunction with Regulation (EEC) No 2746/72 of the Council of 19 December 1972 (Official Journal, Special Edition 1972 (28 and 30 December), p. 64) amending that regulation, provides that compensatory amounts are applicable to all commercial transactions whether they concern Member States or third countries (Article 1 (1)). No provision was made for any exception.

The Commission continues that Regulation No 1380/75, which was in force during the period in question and which contains the provisions for the implementation of Regulation No 974/71, likewise provides for no exceptions to the mandatory application of monetary compensatory amounts to

all trade in goods. Article 6 makes express reference, with regard to trade with third countries, to the provisions concerning the charging of customs duties and import levies which are also stated to apply to monetary compensatory amounts. There is no such reference to customs provisions in Title III concerning the application of monetary compensatory amounts in intra-Community trade. It is merely provided that certain provisions of customs legislation may apply by analogy.

The Commission considers that its point of view is substantiated by considerations of policy in legal matters. It states first of all that, after the achievement of the European customs union it was necessary to ensure, in introducing the system of compensatory amounts, that the obstacles to the free movement of goods on the territory of the Community as originally constituted inevitably entailed by the implementation of that system were minimized. The re-introduction of inward processing arrangements within the framework of the monetary compensatory amounts obliged the Community legislature to furnish the system of compensatory amounts with additional customs arrangements governing trade between the original Member States. That decision was incompatible with the provisions of Article 9 (1) of the Treaty.

The Commission states, secondly, that the rules which governed inward processing traffic could not apply to monetary compensation; it was necessary to establish new rules for monetary compensation. It emphasizes that the basic directive of the Council of 4 March 1969 (Official Journal, English Special Edition 1969 (I), p. 75) is restricted to goods which are not in free circulation within the Community. The Commission adds that, if the Community legislature had intended to make the provisions of the directive applicable to monetary compensation between the original Member States, it would have been necessary to lay down a new definition of the concept of free circulation between Member States; such a definition does not exist.

The Commission observes, thirdly, that if inward processing arrangements had been re-introduced in the context of trade between the original Member States, it would have been necessary to apply them to all products. An economic necessity could at the most be said to exist where a compensatory amount is applied to the basic product, but not to a product re-exported after processing. However, according to the Commission an authorization for inward processing traffic, the effect of which is to exempt the trader from monetary compensation, brings with it in such a case distortions of competition and geographical disadvantages which could not in any event be tolerated by the Community: in all cases where monetary compensation is applied to basic products coming from the original Member States but not to compensating products manufactured from them, raw materials from Member States with weak currencies enjoy price advantages in relation to products coming from Member States with hard currencies which sometimes cannot be made good if, by virtue of inward processing arrangements, it is possible for them to avoid payment of monetary compensatory amounts.

The Commission further states that the system of monetary compensation provides for the possibility of inward processing traffic in trade with third countries, as is indicated indirectly by Article 1 of Regulation (EEC) No 1947/78 of the Commission of 11 August 1978 amending Regulation No 1380/75 (Official Journal 1978, L 221, p. 14), which added to Article 6 of Regulation No 1380/75 an Article 6a providing for the application of monetary compensatory amounts to

inward processing traffic. The Commission adds that this problem has not arisen with regard to intra-Community trade for the simple reason that inward processing traffic does not exist as a factor in monetary compensation.

Finally, the Commission maintains that since the second and third questions were submitted only to cover the eventuality of an affirmative answer being given to the first question is it unnecessary to reply to them.

III — Oral procedure

The Commission, represented by its Legal Adviser, Peter Gilsdorf, acting as Agent, presented oral argument at the hearing on 21 June 1979.

The Advocate General delivered his opinion in the course of the same hearing.

Decision

By an order of 6 October 1978, which was received at the Court of Justice on 13 December 1978, the Finanzgericht Münster submitted, under Article 177 of the EEC Treaty, the following questions for a preliminary ruling:

"1. On 8 September 1975 was it in principle compatible with Community law, and in particular with the provisions of Regulation (EEC) No 974/71 of the Council of 12 May 1971 (Official Journal, English Special Edition 1971 (I), p. 257) and Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 (Official Journal, L 139, p. 37) that a Member State of the Community as originally constituted, in intra-Community trade and on the basis of its national law concerning inward processing arrangements (in the present case, Article 47 *et seq.* of the Zollgesetz (Customs Law) of the Federal Republic of Germany of 1961 in conjunction with Article 2 (1) of the Abschöpfungserhebungsgesetz (Law relating to the imposition of levies) of 1962), should exempt from payment of the monetary compensatory amount goods which had been in free circulation in another Member State and on which monetary compensatory amounts are to be levied on import under Community law, subject to the condition that the goods were not to be put into free circulation in the importing State but were to be processed under the surveillance of the customs and re-exported as constituent parts of other goods to the country of origin or to another Member State?

2. In the event of Question 1 being answered in the affirmative: Was the exemption from the levying of the monetary compensatory amount also compatible with Community law where national law (in this case, Article 47 (2) of the German Customs Law) made it dependent upon a prior assessment by the customs authority of the reliability of the processor?

3. In the event of Questions 1 and 2 being answered in the affirmative: Was the exemption from the levying of the monetary compensatory amount also compatible with Community law where national law (in the present case, Article 48 (2) of the German Customs Law) made it dependent upon a prior balancing by the customs authorities of the interests of the processor against the interests of the domestic manufacturer in the country of importation?"

2 Those questions were submitted in the course of an action between the German customs authorities and a German undertaking concerning the refusal by the former to apply inward processing arrangements to certain quantities of sugar imported from France for use in the manufacture of soups intended for export to France and Belgium. The application of inward processing arrangements had been requested in order to obtain exemption for the imported sugar from monetary compensatory amounts on importation in view of the fact that the finished product did not benefit from the grant of monetary compensation on exportation.

3 In order to reply to the question submitted it is necessary first of all to consider the provisions 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 1975, L 139, p. 37) which, pursuant to Article 21 thereof, entered into force on 1 June 1975.

4 Title II (Article 6) of that regulation lays down detailed rules for the application of monetary compensatory amounts in trade with third countries and Title III (Articles 7 to 15) lays down detailed rules for their application in intra-Community trade. Whilst Article 6 provides that the provisions concerning the charging of customs duties shall apply to monetary compensatory amounts, there is no provision of that nature in Title III. Only certain specific customs provisions are applicable to intra-Community trade and the rules relating to inward processing arrangements are not amongst them.

5 This interpretation of the wording of the provisions is in accordance with the intention underlying them. The representative of the Commission explained in the course of the procedure before the Court that, after the achievement of the customs union had removed the justification for inward processing arrangements in intra-Community trade, the Commission wished to ensure that the arrangements were not re-established when the system of monetary compensatory amounts was introduced. Furthermore, it is clear from Article 2 of Council Directive No 69/73 of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing (Official Journal, English Special Edition 1969 (I), p. 75 that those arrangements do not apply to goods which are in free circulation within the Member States. It would thus have been necessary to enact specific provisions if it had been intended to re-introduce the arrangements in the context of the system of monetary compensation.

6 The Commission also pointed out that there is no real economic necessity to exempt the importer from monetary compensatory amounts in circumstances such as those in the present case since the Commission, as a matter of policy, also applies the monetary compensation arrangements to derived products where the proportion of raw materials covered by that system exceeds a reasonable level.

7 In those circumstances the reply to the first question referred to the Court should be that the provisions of Regulation No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts must be interpreted as meaning that a Member State may not apply its national rules in the matter of inward processing traffic so as to exempt from monetary compensation, in intra-Community trade, goods imported from another Member State in which they are in free circulation.

8 In view of that answer to the first question it is unnecessary to reply to the second and third questions.

Costs

9 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable; since 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 as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions submitted to it by the Finanzgericht Münster by an order of 6 October 1978, hereby rules:

The provisions of Regulation No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts must be interpreted as meaning that a Member State may not apply its national rules in the matter of inward processing traffic so as to exempt from monetary compensation, in intra-Community trade, goods imported from another Member State in which they are in free circulation.

Mackenzie Stuart Sørensen Touffait

Delivered in open court in Luxembourg on 12 July 1979.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 21 JUNE 1979 [1]

In connexion with the reference for a preliminary ruling by the Finanzgericht Münster on which only the Commission of the European Communities has put forward written and oral observations, it is sufficient, I feel, to state that I find the

1 — Translated from the German.