JUDGMENT OF THE COURT (Fifth Chamber)

25 February 2010 *

In Case C-25/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Fővárosi Bíróság (Hungary), made by decision of 25 September 2008, received at the Court on 19 January 2009, in the proceedings

Sió-Eckes kft

v

Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve,

THE COURT (Fifth Chamber),

composed of E. Levits, President of the Chamber, A. Borg Barthet (Rapporteur) and M. Berger, Judges,

* Language of the case: Hungarian.

Advocate General: P. Cruz Villalón,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 17 December 2009,

after considering the observations submitted on behalf of:

— Sió-Eckes kft, by A. Törő, ügyvéd,

— the Hungarian Government, by J. Fazekas, R. Somssich and K. Szíjjártó, acting as Agents,

— the Commission of the European Communities, by M. Vollkommer and A. Sipos, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products (OJ 1996 L 297, p. 29) and Commission Regulation (EC) No 1535/2003 of 29 August 2003 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables (OJ 2003 L 218, p. 14), as amended by Commission Regulation (EC) No 386/2004 of 1 March 2004 (OJ 2004 L 64, p. 25) ('Regulation No 2201/96' and 'Regulation No 1535/2003', respectively), and Commission Regulation (EEC) No 2320/89 of 28 July 1989 laying down minimum quality requirements for peaches in syrup and/or in natural fruit juice under the production aid scheme (OJ 1989 L 220, p. 54), as amended by Commission Regulation (EC) No 996/2001 of 22 May 2001 (OJ 2001 L 139, p. 9) ('Regulation No 2320/89').

2 The reference was made in the course of proceedings between Sió-Eckes kft ('Sió-Eckes') and Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve (Office for Agriculture and Regional Development) ('the Hivatal') concerning aid received by Sió-Eckes for the marketing year 2004/05 for the production of peach pulp.

Legal background

Regulation No 2201/96

3 Article 2(1) of Regulation No 2201/96 provides:

'A Community aid scheme is hereby introduced to assist producer organisations supplying tomatoes, peaches and pears harvested in the Community for the production of the processed products listed in Annex I.'

4 Under Article 3(1) of that regulation:

'The scheme referred to in Article 2 shall be based on contracts between, on the one hand, producer organisations recognised or provisionally authorised under Regulation (EC) No 2200/96 and, on the other, processors approved by the competent authorities in the Member States.

…'

5 Article 6(1) of Regulation No 2201/96 states:

'Detailed rules for the application of Articles 2 to 5, and in particular rules governing approval of processors, conclusion of processing contracts, payment of aid, control measures and sanctions, marketing years, minimum characteristics of the raw material supplied for processing, minimum quality requirements for finished products and the financial consequences of overrunning thresholds, shall be adopted in accordance with the procedure laid down in Article 29.'

6 According to Article 6c(4) of that regulation:

'Production aid shall be granted to processors only for processed products which:

(a) have been produced from raw materials harvested in the Community, for which the applicant has paid at least the minimum price referred to in Article 6a(2);

(b) meet minimum quality requirements.'

7 Annex I to Regulation No 2201/96 lists, under the heading 'Processed products referred to in Article 2', CN codes ex 2008 70 61, ex 2008 70 69, ex 2008 70 71, ex 2008 70 79, ex 2008 70 92 and ex 2008 70 98, corresponding to the designation 'Peaches in syrup and/or in natural fruit juice'.

Regulation No 1535/2003

8 The third recital in the preamble to Regulation No 1535/2003 states:

'To ensure that the scheme is applied uniformly, the products listed in Article 6a(1) of Regulation (EC) No 2201/96 and in Annex I thereto, the marketing years applicable to those products and the delivery periods for the raw materials should be defined.'

9 According to Article 2 of Regulation No 1535/2003, under the heading 'Finished products':

'"Products listed in Article 6a(1) of and Annex I to Regulation (EC) No 2201/96" means the following products:

(1) peaches in syrup and/or in natural fruit juice: whole peaches or pieces of peaches, without peel, having undergone a heat treatment, packed in hermetically sealed containers with a covering liquid of sugar syrup or natural fruit juice and falling within CN codes ex 2008 70 61, ex 2008 70 69, ex 2008 70 71, ex 2008 70 79, ex 2008 70 92, and ex 2008 70 98;

…'

10 Article 35(1) of Regulation No 1535/2003 provides inter alia:

'Except in cases of force majeure, where it is found that the full quantity of tomatoes, peaches or pears accepted for processing under contract has not been processed into one of the products listed in Article 6a(1) of and Annex I to Regulation (EC) No 2201/96, the processor shall pay the competent authorities an amount equal to twice the unit amount of the aid multiplied by the quantity of the raw material concerned which has not been processed, plus interest calculated in accordance with Article 33(1).'

11 Article 41 of Regulation No 1535/2003 provides that 'Regulation (EC) No 449/2001 is hereby repealed. … References to the repealed Regulation shall be construed as references to this Regulation …'.

Regulation No 2320/89

12 According to Article 1 of Regulation No 2320/89:

'This Regulation lays down the minimum quality requirements that preserved peaches in syrup and/or in natural fruit juice, as defined in Article 1(2) of Regulation (EC) No 449/2001, must meet.'

13 Article 2 of Regulation No 2320/89 provides inter alia:

‘For the manufacture of peaches in syrup and/or peaches in natural fruit juice, only peaches of the species *Prunus persica L.* shall be used, excluding nectarines. …’

14 Under Article 3(1), (2) and (6) of that regulation:

‘1. Peaches in syrup and/or in natural fruit juice must be manufactured in one of the styles defined in paragraph 2.

2. For the purpose of this Regulation the styles are defined as follows:

(a) “whole fruit” means the whole fruit, unpitted;

(b) “halves” means the pitted fruit cut vertically into two approximately equal parts;

(c) “quarters” means the pitted fruit cut into four approximately equal parts;

(d) “slices” means the pitted fruit cut into more than four wedge-shaped parts;

(e) “dice” means the pitted fruit cut into cube-like parts.

…

6. Peaches in syrup shall be practically free from:

(a) foreign materials of vegetable origin;

(b) peel;

(c) blemished units.

Whole fruits, halves and quarters shall also be practically free from mechanically damaged units.’

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

15 Since the marketing year 2004/05 Sió-Eckes has been an approved processer for the purposes of Regulation No 2201/96.

16 In the course of an on-the-spot check conducted on 5 October 2005, the Hivatal found that Sió-Eckes had manufactured peach pulp falling within CN code 2008 70 92 from the entire quantity of peaches purchased on the basis of a processing contract which is the subject of aid in the marketing year 2004/05. By request of 30 March 2006, the Hivatal asked Sió-Eckes to provide information and a declaration relating to the goods thereby obtained.

17 The declaration by Sió-Eckes, the manufacturing formula it submitted and other documents submitted confirmed the on-the-spot finding that the goods concerned were peach pulp covered by CN code 2008 70 92.

18 On the basis of that information, the Hivatal found, by decision of 18 May 2006, that during the marketing year concerned, Sió-Eckes had manufactured, from the peaches purchased on the basis of a processing contract, finished products which did not fulfil the conditions laid down by European Union law for receipt of the aid. In accordance with Article 35 of Regulation No 1535/2003 it therefore ordered Sió-Eckes to pay the sum of HUF 45 484 064 with interest on the ground of the irregularity found.

19 Sió-Eckes brought an administrative appeal against that decision, which was confirmed by decision of 20 June 2006 by the President of the Hivatal.

20 On 3 August 2006, Sió-Eckes brought an appeal against that decision before the Fővárosi Bíróság (Budapest Metropolitan Court). It maintains that the finished products that it manufactures are in fact covered by CN Code 2008 70 92 referred to in Article 2(1) of Regulation No 1535/2003 but that the products which are listed in that provision may be raw materials (semi-finished products) for other products or end products for final consumers.

21 Before the referring court, the Hivatal submits that, in addition to the fact that the CN Code 2008 70 92 does not specifically refer to peach pulp, the product manufactured by the applicant in the main proceedings does not fulfil the requirements laid down in Article 3(1), (2) and (6) of Regulation No 2320/89. It adds that, in order to receive the production aid for processing peaches, the 'peaches in syrup and/or in natural fruit juice' must be manufactured in one of the styles defined in Article 3(2). The Hivatal also maintains that the arguments relied on by the applicant in the main proceedings in support of the definition of 'semi-finished products' are unfounded since, first, when the applicant joined the aid scheme, it had applied for and obtained approval for the production of finished products designated as 'peaches in syrup and/or in natural fruit juice' covered by CN Code ex 2008 70 92, so that it was not authorised under the aid scheme to manufacture other products and, second, it is clear that, in this case, the product in question was a packaged finished product provided with a lid and not an intermediate product undergoing an industrial process.

22 Taking the view that the resolution of the dispute before it depended on the interpretation of the applicable European Union law, the Fővárosi Bíróság decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. May Article 2(1) of … Regulation … No 2201/96 be interpreted as meaning that, in accordance with Annex I, the production aid scheme applies, not only to peaches in syrup and/or in natural fruit juice included in CN code ex 2008 70 61, but also to the products with other CN codes listed in that annex (ex 2008 70 69, etc.)?

2. Does a processor who manufactures products under CN code ex 2008 70 92 comply with the provisions of Regulation No 2201/96?

3. May Article 2(1) of … Regulation … No 1535/2003 be interpreted as meaning that the products designated by CN codes ex 2008 70 61, ex 2008 70 69, ex 2008 70 71, ex 2008 70 79, ex 2008 70 92, ex 2008 70 94 and ex 2008 70 99 are also finished products within the meaning of the regulation?

4. In so far as, in accordance with the answers to the previous questions, the definition of finished products is applicable only to the peaches described in Article 3 of … Regulation … No 2320/89, why are the CN codes of other products included in the regulations previously cited?

5. In accordance with the regulations cited above, may the products resulting from the separate phases of peach processing be regarded as finished products, regardless of whether they may be marketed (for example, the pulp)?'

The questions referred for a preliminary ruling

The first four questions

23 By its first four questions, which it is appropriate to examine together, the referring court asks essentially whether a product covered by CN code 2008 70 92 qualifies for the aid scheme referred to in Article 2(1) of Regulation No 2201/96.

24 It must be recalled that, in accordance with Article 2(1) of Regulation No 2201/96, the aid scheme established by that regulation is applicable to the production of processed products in Annex I thereto, which lists, under the heading 'Processed products referred to in Article 2', CN codes ex 2008 70 61, ex 2008 70 69, ex 2008 70 71, ex 2008 70 79, ex 2008 70 92 and ex 2008 70 98, corresponding to the designation 'Peaches in syrup and/or in natural fruit juice'.

25 In that connection, it should be noted that CN code 2008 70 covers not only peaches, but also nectarines. Article 2 of Regulation No 2320/89 laying down minimum quality requirements for peaches in syrup and/or in natural fruit juice under the production aid scheme expressly states that, for the manufacture of peaches in syrup and/or peaches in natural fruit juice,'only peaches of the species *Prunus persica L.* shall be used, excluding nectarines'.

26 Thus, since products other than those designated in Annex I to Regulation No 2201/96 may be covered by the CN codes mentioned, the prefix 'ex' which precedes the latter is intended to specify which products among them are concerned by the production aid scheme.

27 That is also clear from a number of regulations. Thus, Commission Regulation (EC) No 899/2007 of 27 July 2007 amending Regulation (EC) No 2037/2000 of the European Parliament and of the Council as regards the adjustment of CN codes for certain ozone depleting substances and mixtures containing ozone depleting substances to take account of amendments to the Combined Nomenclature laid down in Council Regulation (EEC) No 2658/87 (OJ 2007 L 196, p. 24), states that '[a]n "ex" before a code implies that also other substances than those referred to in the column "Description" may fall under that subheading'. It is also clear from Council Regulation (EC) No 1329/2003 of 21 July 2003 amending Regulation (EC) No 992/95 as regards tariff quotas for certain agricultural and fishery products originating in Norway (OJ 2003

L 187, p. 1) that '[w]here ex-CN codes are indicated, the preferential scheme is to be determined by application to the CN code and corresponding description taken together'.

28 It follows that a product which is covered by a CN code set out in Annex I to that regulation and which corresponds to the designation of the goods indicated with respect to that code may qualify for the aid scheme established by Article 2(1) of Regulation No 2201/96.

29 That interpretation is supported by Article 2(1) of Regulation No 1535/2003 which states that, within the meaning of Regulation No 2201/96 'peaches in syrup and/or in natural fruit juice' means the following products: whole peaches or pieces of peaches, without peel, having undergone a heat treatment, packed in hermetically sealed containers with a covering liquid of sugar syrup or natural fruit juice and falling within CN codes ex 2008 70 61, ex 2008 70 69, ex 2008 70 71, ex 2008 70 79, ex 2008 70 92 and ex 2008 70 98.

30 It should be added that Article 6c(4)(b) of Regulation No 2201/96 provides that production aid is paid only to processors for processed products which 'meet minimum quality requirements'. Regulation No 2320/89, which lays down the minimum quality requirements for preserved peaches in syrup and/or in natural fruit juice, as defined in Regulation No 1535/2003, specifies, in Article 3 thereof, the style in which they must be manufactured, that is as whole peaches, halves, quarters, slices or dice.

31 It follows from the foregoing considerations that 'peaches in syrup and/or in natural fruit juice' may be regarded as a processed product for the purposes of Article 2(1) of

Regulation No 2201/96 if they satisfy both the definition in Article 2(1) of Regulation No 1535/2003 and also meet the minimum quality requirements laid down by Regulation No 2320/89.

32 Accordingly, the answer to the first four questions is that Article 2(1) of Regulation No 2201/96 must be interpreted as meaning that a product which is covered by one of the CN codes listed in Annex I to that regulation, including CN code 2008 70 92, and which corresponds to the definition 'peaches in syrup and/or in natural fruit juice', within the meaning of that regulation, read in conjunction with Regulations Nos 1535/2003 and 2320/89, qualifies for the aid scheme referred to in that provision.

The fifth question

33 By its fifth question, the referring court asks essentially whether the product obtained after each of the stages of the processing of peaches and which may be sold separately must be regarded as being a finished product for the purposes of Regulations Nos 2201/96 and 1535/2003.

34 As a preliminary point, it must be recalled that, under Article 2(1) of Regulation No 2201/96, processed products in Annex I to that regulation, including, among others, 'peaches in syrup and/or in natural fruit juice', qualify for the aid scheme referred to in that provision.

35 Regulation No 1535/2003 laying down detailed rules for applying Regulation No 2201/96, contains Article 2, entitled 'Finished products', according to which the

products referred to in Annex I to that regulation must have certain characteristics. Thus,'peaches in syrup and/or in natural fruit juice' must be whole peaches or pieces of peaches, without peel, having undergone a heat treatment, packed in hermetically sealed containers with a covering liquid of sugar syrup or natural fruit juice and falling within one of the CN codes mentioned in Article 2(1).

36 It follows that products with the characteristics mentioned in Article 2(1) of Regulation No 1535/2003 must be regarded as processed products for the purposes of Regulation No 2201/96.

37 However, it does not appear either from the wording of Regulations Nos 2201/96 and 1535/2003 or from their general scheme that only the products obtained during the final stage of the manufacturing process and intended for final consumers may qualify for the aid scheme established by Regulation No 2201/96.

38 On the contrary, it is clear from the scheme of Article 2 of Regulation No 1535/2003 and, in particular, points 9 and 11 to 15, concerning tomato-based products that the product obtained at the end of each different stage of processing may, under certain conditions, be regarded as a finished product for the purposes of that regulation.

39 Therefore, the answer to the fifth question is that the product obtained at the end of the various stages of processing of peaches may be regarded as being a finished product for the purposes of Regulations Nos 2201/96 and 1535/2003, provided that it has the characteristics set out in Article 2(1) of Regulation No 1535/2003.

Costs

40 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 (Fifth Chamber) hereby rules:

1. **Article 2(1) of Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products, as amended by Commission Regulation (EC) No 386/2004 of 1 March 2004, must be interpreted as meaning that a product which is covered by one of the CN codes listed in Annex I to that regulation, as amended, including CN code 2008 70 92, and which corresponds to the definition 'peaches in syrup and/or in natural fruit juice', within the meaning of that regulation, read in conjunction with Commission Regulation (EC) No 1535/2003 of 29 August 2003 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables, as amended by Regulation No 386/2004, and with Commission Regulation (EEC) No 2320/89 of 28 July 1989 laying down minimum quality requirements for peaches in syrup and/or in natural fruit juice under the production aid scheme, as amended by Commission Regulation (EC) No 996/2001 of 22 May 2001, qualifies for the aid scheme referred to in that provision.**

2. **The product obtained at the end of each different stage of processing of peaches may be regarded as being a finished product for the purposes of**

Regulations Nos 2201/96 and 1535/2003, as amended, provided that it has the characteristics set out in Article 2(1) of Regulation No 1535/2003, as amended.

[Signatures]