JUDGMENT OF THE COURT (First Chamber)
17 October 2000 *

In Case C-114/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Cour Administrative d'Appel de Nancy (France) for a preliminary ruling in the proceedings pending before that court between

Roquette Frères SA

and

Office national interprofessionnel des céréales (ONIC),

on the interpretation of Article 5(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1),

* Language of the case: French.

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, P. Jann and L. Sevón (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Roquette Frères SA, by N. Coutrelis, of the Paris Bar,

— the Office national interprofessionnel des céréales (ONIC), by J.-P. Cordelier, of the Paris Bar,

— the Commission of the European Communities, by G. Berscheid and K.-D. Borchardt, of its Legal Service, acting as agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Roquette Frères SA, represented by N. Coutrelis, of the French Government, represented by C. Vasak, Deputy

Secretary for Foreign Affairs in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent, and the Commission, represented by G. Berscheid, at the hearing on 9 December 1999,

after hearing the Opinion of the Advocate General at the sitting on 3 February 2000,

gives the following

Judgment

1 By judgment of 25 March 1999, received at the Court on 6 April 1999, the Cour Administrative d'Appel de Nancy (Administrative Court of Appeal, Nancy), referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Article 5(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1).

2 That question was raised in proceedings between Roquette Frères SA ('Roquette Frères') and the Office national interprofessionnel des céréales (National Cereals Joint Trades Office) ('ONIC') concerning export refunds in respect of glucose syrup which Roquette Frères had exported to Austria.

Applicable legislation

3 Article 4(1) of Regulation No 3665/87 provides:

'Without prejudice to the provisions of Articles 5 and 16, the refund shall be paid only upon proof being furnished that the products for which the export declaration was accepted have, within 60 days from the date of such acceptance of the export declaration, left the customs territory of the Community in the unaltered state.'

4 Article 5(1) of that regulation provides:

'Payment of the differentiated or non-differentiated refund shall be conditional not only on the product having left the customs territory of the Community but also — save where it has perished in transit as a result of *force majeure* — on its having been imported into a non-member country and, where appropriate, into a specific non-member country within 12 months following the date of acceptance of the export declaration:

(a) where there is serious doubt as to the true destination of the product, or

(b) where, by reason of the difference between the amount of the refund on the exported product and the amount of the import duties applicable to an identical product on the date of acceptance of the export declaration, it is possible that the product may be re-introduced into the Community.

...

In the cases referred to in the first subparagraph, the provisions of Articles 17(3) and 18 shall apply.

In addition, the competent authorities of the Member States may require that additional evidence be provided such as to satisfy them that the product has actually been placed on the market in the non-member country of import in the unaltered state.'

5 Article 17(3) of Regulation No 3665/87 provides:

'A product shall be considered to have been imported when it has been cleared through customs for release for consumption in the non-member country concerned.'

6 Article 18 of that regulation describes the procedures for showing that the customs formalities have been completed.

Main proceedings and questions referred to the Court

7 Following an application for refunds in respect of glucose syrup which it had exported to Austria between 1 and 7 March 1990, Roquette Frères received from ONIC the sum of FRF 254 179.82 by way of advance.

8 Since Roquette Frères was unable to provide the additional evidence which ONIC had requested in order to establish that the glucose had been consumed in the unaltered state on the Austrian market, ONIC queried whether it was entitled to the refund. It therefore refused to release the amount of the guarantee, equal to 115% of the amount of the advance, that is to say, a sum of FRF 292 306.79, and imposed a penalty on Roquette Frères because it was unable to provide the supporting documents.

9 Roquette Frères brought an action before the Tribunal Administratif (Administrative Court), Lille (France), for repayment of a sum equivalent to the guarantee, on the ground that the glucose syrup, exported within the framework of an inward processing traffic arrangement, had been used by its Austrian customer to

manufacture penicillin, some of which had subsequently been re-imported into the Community.

10 By judgment of 7 August 1995 the Tribunal Administratif ordered ONIC to pay Roquette Frères compensation amounting to FRF 146 153.59 exclusive of interest and dismissed the remainder of the claim.

11 Before the Cour Administrative d'Appel, Roquette Frères sought to have that judgment varied and requested, *inter alia*, that ONIC be ordered to pay it a sum corresponding to the total amount of the guarantee, together with interest at the statutory rate from 16 November 1993.

12 Taking the view that the outcome of the dispute before it depended on the interpretation of the provisions of the Community legislation on export refunds in force on 1 March 1990, the Cour Administrative d'Appel decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Did the provisions in force on 1 March 1990 and, in particular, Article 5(1) of Commission Regulation No 3665/87 of 27 November 1987, in so far as it provides that the export refund is to be paid only if "... the product has been actually placed on the market in the non-member country of import in the unaltered state ...", permit the body responsible for supervision (in this instance, ONIC) to challenge the supplier's entitlement to refunds on the sole ground that the goods delivered had been used by its foreign customer in the preparation of another product, which was itself liable to be re-exported to other Member States of the European Economic Community?'

The question referred the Court

13 By its question, the national court is essentially asking whether Article 5(1) of Regulation No 3665/87 is to be interpreted as meaning that payment of an export refund can be made conditional on production of additional evidence of such a kind as to show that a product which in the non-member country of import has undergone processing regarded as substantial in that it has been used in an irreversible manner in the manufacture of another product, which is itself likely to be re-exported into the Community, has actually been placed on the market in that country in the unaltered state.

14 In that regard, Roquette Frères, the French Government and the Commission maintain that in the case of non-differentiated refunds, such evidence can be required only where there are grounds for suspecting abuse involving the re-introduction into the Community of a product which has attracted a refund. That is not the case, in particular, where the exported product has undergone substantial and irreversible processing of such a kind that it is no longer possible for the original product to be re-imported.

15 They claim, moreover, that that interpretation is supported by Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11), which clarified the rule applicable in such cases. It follows from Article 20 of that regulation that entitlement to the refund is not affected where a product is re-imported into the Community after undergoing substantial processing in the non-member country to which it was exported.

16 ONIC contends, on the other hand, that when a product, albeit processed, is re-introduced into the territory of the Community, it no longer satisfies the

condition that it must have left the Community customs territory and have been released for consumption in the non-member country of destination in the unaltered state. In order to be placed on the market in the unaltered state, the product must be exploited in the non-member country of import. That is not the case, however, where the product is simply altered and re-imported into the internal market of the Community.

17 In that regard, the Court points out that it is necessary to bear in mind the purpose of Article 5(1) of Regulation No 3665/87, which, according to the fourth recital in the preamble thereto, is to prevent abuses which, in the case referred to in Article 5(1)(b) of that regulation, consists, *inter alia*, in the risk that the exported product may be re-introduced into the Community (see, in that regard, Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraphs 45 and 46).

18 In order to combat those abuses, the competent authorities of the Member States are entitled, under the fourth subparagraph of Article 5(1) of Regulation No 3665/87, to require additional evidence such as to satisfy them that the product has actually been placed on the market in the non-member country of import in the unaltered state. Such evidence may be required where there is suspicion or proof that abuses have been committed (see Case C-347/93 *Boterlux* [1994] ECR I-3933, paragraphs 25 and 27).

19 Abuse in the sense of the re-introduction into the Community of the product previously exported cannot exist where the product has undergone substantial and irreversible processing, as a result of which it has ceased to exist as such and a new product, coming under a different tariff heading, has been created.

20 The interpretation resulting from paragraphs 17 to 19 of this judgment, namely that there is no abuse for the purposes of Article 5(1)(b) of Regulation

No 3665/87 where the product concerned has undergone substantial processing, is also supported by Article 20(1) of Regulation No 800/1999, which replaced it. That provision makes it possible to refute the suspicion that the product in question has been re-imported by showing that the product in respect of which a non-differentiated refund was paid has, after leaving the Community customs territory, undergone working or substantial processing within the meaning of Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), namely 'economically justified processing ... in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture'.

21 In the light of the foregoing, the answer to the question referred to the Court must be that Article 5(1) of Regulation No 3665/87 is to be interpreted as meaning that payment of an export refund cannot be made conditional on production of additional evidence of such a kind as to show that a product which, in the non-member country of import, has undergone processing regarded as substantial in that it has been used in an irreversible manner in the manufacture of another product, which is itself likely to be re-exported into the Community, has actually been placed on the market in that country in the unaltered state.

Costs

22 The costs incurred by the French Government and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Cour Administrative d'Appel, Nancy, by judgment of 25 March 1999, hereby rules:

Article 5(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products is to be interpreted as meaning that payment of an export refund cannot be made conditional on production of additional evidence of such a kind as to show that a product which, in the non-member country of import, has undergone processing regarded as substantial in that it has been used in an irreversible manner in the manufacture of another product, which is itself likely to be re-exported into the Community, has actually been placed on the market in that country in the unaltered state.

Wathelet Jann Sevón

Delivered in open court in Luxembourg on 17 October 2000.

R. Grass

Registrar

M. Wathelet

President of the First Chamber