JUDGMENT OF THE COURT (Third Chamber)
18 February 1993 *

In Case C-285/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court) Hamburg (Federal Republic of Germany) for a preliminary ruling in the proceedings pending before that court between

Firma E. Merck

and

Hauptzollamt Hamburg-Jonas,

on the interpretation of Council Regulation (EEC) No 3035/80 of 11 November 1980 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds (OJ 1980 L 323, p. 27), as amended by Council Regulation (EEC) No 2223/86 of 14 July 1986 (OJ 1986 L 194, p. 1),

THE COURT (Third Chamber),

composed of: M. Zuleeg, President of the Chamber, J. C. Moitinho de Almeida and F. Grévisse, Judges,

Advocate General: C. O. Lenz,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

the applicant in the main proceedings, by Rolf Streckmann, Tax Adviser, Hamburg, and

* Language of the case: German.

the Commission of the European Communities, by Ulrich Wölker, of its Legal Service, acting as Agent.

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 9 July 1992,

gives the following

Judgment

1 By order of 14 August 1991, which was received at the Court on 7 November 1991, the Finanzgericht Hamburg (Germany) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the fourth paragraph of Article 2, Article 3(1), (2) and (3) and footnote 7 to Annex C of Council Regulation (EEC) No 3035/80 of 11 November 1980 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds (OJ 1980 L 323, p. 27, hereinafter 'the regulation'), as amended by Council Regulation (EEC) No 2223/86 of 14 July 1986 (OJ 1986 L 194, p. 1).

2 The question arose in proceedings between Firma E. Merck (hereinafter 'Merck') and the Hauptzollamt (Principal Customs Office) Hamburg-Jonas (hereinafter 'the Hauptzollamt').

3 It appears from the case-file that, since 1984, Merck has been exporting to non-member countries vitamin C manufactured using glucose obtained from sucrose (white sugar) from sugar beet, after inversion. In the subsequent stages of the production process, the glucose is converted into sorbitol, which is used in order to obtain the goods exported.

4 The Hauptzollamt rejected 106 applications for refunds in respect of exports of vitamin C made by Merck between 12 August 1987 and 24 January 1989. According to the Hauptzollamt, it follows from footnote 7 to Annex C to the regulation that no export refund is to be granted where, as in this case, sorbitol is not obtained directly from sucrose, but from glucose, which is an amylaceous product coming under the common organization of the market in cereals and is not eligible for any refund. Export refunds for glucose were provided for only subsequently by Commission Regulation (EEC) No 166/89 of 24 January 1989 amending Regulation (EEC) No 2727/75 on the common organization of the market in cereals (OJ 1989 L 20, p. 16).

5 The case was brought before the Finanzgericht Hamburg, which stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Must the fourth paragraph of Article 2 and Article 3(1), (2) and (3) in conjunction with footnote 7 to Annex C to Regulation (EEC) No 3035/80 be interpreted as meaning that export refunds can also be granted for vitamin C produced from sorbitol at the rates of refund laid down in respect of sugar if the sorbitol has been obtained from glucose produced from white sugar?'

6 The national court asks which provisions apply to the calculation of the refund. It considers that, in so far as the goods exported, namely vitamin C, fall within Annex B to the regulation, the calculation should be carried out in accordance with the detailed rules laid down in Article 3(1) and (2) of the regulation. However, since sorbitol — which is used in the manufacture of vitamin C — also constitutes goods within the meaning of the regulation, but falls within Annex C thereto, the national court does not rule out the possibility that the rule laid down in the fourth paragraph of Article 2 of the regulation may mean that the refund must be calculated in accordance with the detailed rules laid down in Article 3(3) of the regulation.

7 The national court observes that, in the latter event, it would be necessary to interpret footnote 7 to Annex C to the regulation. It asks whether the sucrose is 'used' to produce the sorbitol, within the meaning of that footnote, where the sorbitol is obtained from sugar glucose which itself is obtained from the processing of the sucrose. While admitting that an affirmative answer to that question might be consistent with the intention of the Community legislature, the national court observes that it might be argued against that interpretation that Article 3(2) of the regulation does not relate the concept of 'use' to the original product, but to the more elaborate product manufactured in a subsequent production stage, which would in this case be glucose.

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant legislation, 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.

9 As Article 1(1) indicates, the regulation lays down general rules for the fixing and granting of refunds applicable to exports of the 'basic products' listed in Annex A thereto (which include white sugar), of products derived from the processing thereof, or of products assimilated to either of those two categories in accordance with Article 1(2), when those various products are exported in the form of 'goods' not covered by Annex II to the Treaty but listed in certain regulations and in Annexes B and C to the regulation.

10 Article 3 of the regulation lays down, for those goods, the quantities of basic products to be taken in calculating the amount of the refund. As regards the goods listed in Annex B, the amount of the refund must in principle be determined, according to the provisions of Article 3(1) of the regulation, on the basis of the quantities of the basic products actually used. In the case of products listed in Annex C to the regulation, Article 3(3) thereof provides that the quantities of the basic products used are to be fixed on a flat-rate basis. Vitamin C is mentioned in Annex B to the regulation. As for sorbitol, it is among the goods listed in Annex C to the regulation. It is the subject of the aforementioned footnote 7, which

specifies the terms on which the refund is to be determined in relation to the quantities used of sorbitol obtained from amylaceous products and from sucrose, which are to be calculated on the basis of specific quantities of maize and white sugar.

11 Article 2 of the regulation relates to the rate of the refund which is to be applied to the quantities of the basic products determined in accordance with the detailed rules laid down by Article 3 which were used to manufacture the exported goods. The fourth paragraph of Article 2 provides that when goods are used in the manufacture of the goods exported, the rate of refund to be taken is 'the rate applicable when the former goods are exported unaltered'.

12 The quantity of basic products to be taken in calculating the refund for exports of vitamin C has to be determined in accordance with Article 3(1)(c) of the regulation, which provides as follows:

'in the case of use:

— either of a product not covered by Annex II to the Treaty derived from the processing of a product referred to in (a) or (b),

— or of a product derived from the mixture and/or the processing of several products referred to in (a) and/or (b), and/or products referred to in the preceding indent,

the quantity, to be determined on the basis of the quantity of the product actually used in the manufacture of the goods exported, shall be equal, for each of the basic products in question and subject to the provisions of paragraph 3, to the quantity established by the competent authorities in accordance with Article 8(1). ...'

13 According to Article 3(3),

'In respect of the goods listed in Annex C, the quantity of basic products to be taken in calculating the amount of the refund shall be that shown in that Annex against each of those goods.'

14 Those provisions must be interpreted as meaning that, when goods listed in Annex C to the regulation, such as sorbitol, are used in the manufacture of exported goods coming under Annex B to the regulation — in the dispute in the main proceedings, vitamin C — the quantity of basic products to be taken is that fixed in Annex C for the first-mentioned goods.

15 Indeed, the only explanation for the reference made by Article 3(1) of the regulation to Article 3(3) is that application must be made, for the purpose of determining the quantity of basic products to be taken, of the rule set out in the fourth paragraph of Article 2 of the regulation concerning the determination of the applicable rate of refund, according to which, when goods are used in the manufacture of the goods exported, account should be taken of the first-mentioned goods.

16 Footnote 7 to Annex C to the regulation reads as follows:

'The refund shall be determined in relation to the quantities used of D-glucitol (sorbitol) obtained from any amylaceous products and of D-glucitol (sorbitol) obtained from sucrose, and shall be calculated on the basis of the following quantities of maize and white sugar:

— 1, 52 kg of maize for 1 kg of D-glucitol (sorbitol) in aqueous solution, obtained from amylaceous products,

— 0, 74 kg of white sugar for 1 kg of D-glucitol (sorbitol) in aqueous solution, obtained from sucrose,

— 2, 45 kg of maize for 1 kg of D-glucitol (sorbitol), other than in aqueous solution, obtained from amylaceous products,

— 1, 06 kg of white sugar for 1 kg of D-glucitol (sorbitol) other than in aqueous solution, obtained from sucrose.'

17 It should be observed that that footnote draws no distinction according to whether the sorbitol is obtained directly or indirectly from sucrose.

18 That interpretation is consistent with the objective of the regulation, which aims to facilitate the exportation of certain basic products whose price is higher in the Community than on the world market. In that connection, it is immaterial whether the exported goods were obtained directly from such basic products or whether their manufacture required an intermediate process.

19 Article 3(2) of the regulation cannot call that interpretation in question.

20 That provision reads as follows:

'For the purposes of paragraph 1, the products used unprocessed in the manufacture of exported goods shall be considered as actually used. Where, during one of the stages of manufacture of such goods, a basic product is itself processed into another more elaborate basic product used at a later stage, only the latter basic product shall be considered as actually used.'

21 As the Commission correctly observes, the term 'used' in footnote 7, cited above, relates to the sorbitol and not to the basic product, namely sucrose, and it appears in any event from the wording of Article 3(2) of the regulation that that provision is concerned with the case, not referred to by the national court, where a basic product is processed into another basic product, and forms part of a method for calculating the basic products actually used which is not applicable to sorbitol, for which the regulation lays down a flat-rate method.

22 In view of the foregoing, the answer to the national court's question must be that the combined provisions of the fourth paragraph of Article 2, Article 3(1)(c) and (3), and footnote 7 to Annex C of Regulation No 3035/80, as amended by Regulation No 2223/86, are to be interpreted as meaning that export refunds are to be granted for vitamin C obtained from sorbitol at the rates laid down in respect of sugar even if the sorbitol is obtained from glucose produced from white sugar.

Costs

23 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Finanzgericht Hamburg, by order of 14 August 1991, hereby rules:

The combined provisions of the fourth paragraph of Article 2, Article 3(1)(c) and (3), and footnote 7 to Annex C of Council Regulation (EEC) No

3035/80 of 11 November 1980 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds, as amended by Council Regulation (EEC) No 2223/86 of 14 July 1986, must be interpreted as meaning that export refunds are to be granted for vitamin C obtained from sorbitol at the rates laid down in respect of sugar even if the sorbitol is obtained from glucose produced from white sugar.

Zuleeg Moitinho de Almeida Grévisse

Delivered in open court in Luxembourg on 18 February 1993.

J.-G. Giraud
Registrar

M. Zuleeg
President of the Third Chamber