OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 13 June 1989 *

Mr President,
Members of the Court,

A — The facts

1. The cases in which I am delivering my Opinion today concern the question whether the various rules governing premiums provided for under the common organization of the market in sheepmeat and goatmeat [1] for various regions of the Community are compatible with the principles of non-discrimination, equal treatment and the free movement of goods laid down in the EEC Treaty.

2. The plaintiffs in the main proceedings contest the decisions of the Office national interprofessionnel des viandes, de l'élevage et de l'aviculture (Ofival) fixing the amounts of the premiums intended to compensate them for their loss of income in sheepmeat production in accordance with Article 5 of Regulation (EEC) No 1837/80. They consider that the sum of the premiums and their income does not allow them to obtain an income corresponding to the seasonally adjusted basic price, thereby placing them at a disadvantage compared to producers in region 5 (Great Britain) who, by virtue of the payment of the variable slaughter premium, are certain of obtaining the seasonally adjusted basic price.

3. On those grounds, they applied to the defendant in the main proceedings for a variable slaughter premium or, alternatively, a premium calculated on the basis of the difference between the officially determined market price at the time they sold their animals and the basic price prevailing at the same period.

4. Following the rejection of their applications by the defendant in the main proceedings, the tribunal administratif de Dijon and the tribunal administratif d'Amiens, to which they appealed, referred questions to the Court of Justice concerning the compatibility of Articles 5 and 9 of Council Regulation No 1837/80 with the abovementioned principles of the EEC Treaty.

5. The details of the order for reference, the arguments of the parties and the common organization of the market in sheepmeat and goatmeat at issue in this case I will consider, as far as is necessary, during the course of my Opinion. For the rest, I would refer to the Report for the Hearing.

B — Opinion

6. Having regard to the very broad terms in which the references are drafted and the broad scope of the parties' arguments, I

* Original language: German.

1 — Council Regulation (EEC) No 1837/80 of 27 June 1980 on the common organization of the market in sheepmeat and goatmeat (OJ 1980, L 183, p. 1).

consider it necessary first of all to define the subject-matter of these proceedings. The issue in the main proceedings is essentially whether the plaintiffs may claim a premium which is greater than that paid to them to compensate them for their loss of income. Consequently, the compatibility of the common organization of the market in sheepmeat and goatmeat with the principles laid down in the EEC Treaty needs to be considered only in so far as that organization prevents a higher premium from being paid. In so far as the validity of Regulation No 1837/80 has given rise to other objections, not connected with the claims of the plaintiffs in the main proceedings, consideration need not be given to them because it is not for the Court, in the context of a reference for a preliminary ruling, to give consultative opinions on points of law not connected with the main proceedings.

7. At the outset of the examination upon which I am now going to enter I should point out that in several judgments of the full Court different premium schemes established in the context of the common organization of the market in sheepmeat and goatmeat have been found to be lawful. I refer in particular to the judgment of 15 September 1982 in Case 106/81 [2] and to the two judgments of 2 February 1988, delivered in Case 61/86 and in Joined Cases 305/85 and 142/86. [3]

8. In the judgment in Case 61/86, the Court held, in particular, that the common organization of the market in sheepmeat and goatmeat established by Regulation No 1837/80 had still not brought about the complete integration of the different regional markets and was still in the process of gradual development into a single market. Although Regulation (EEC) No 871/84 [4] abolished reference prices for the six regions set up for the purposes of that common market organization, there were still differences between those regions, the most important being that one of the market support mechanisms, namely the variable slaughter premium, was permitted in only one region, namely region 5 (Great Britain).

9. Admittedly, the principle question in Case 61/86 was not whether it was lawful to provide, within the context of a common market organization, for different market support mechanisms, of which one was applicable in only one region of the Community, but rather what conclusions were to be drawn from the existence of differing rules. None the less, the Court accepted that a common market organization may, at least for a certain transitional period, have different market support mechanisms for different regions if that seems appropriate in the light of the circumstances. In that regard, the Court could base itself on the judgment, also cited above, of 13 September 1982 in Case 106/81, in which with reference to Article 39(2) of the EEC Treaty it held that, far from excluding the introduction by degrees of a common

2 — Judgment of 15 September 1982 in Case 106/81 *Julius Kind KG* v *EEC* [1982] ECR 2885.

3 — Judgments of 2 February 1988 in Case 61/86 *United Kingdom* v *Commission* [1988] ECR 431 and in Joined Cases 305/85 and 142/86 *United Kingdom* v *Commission* [1988] ECR 467.

4 — Council Regulation (EEC) No 871/84 of 31 March 1984 amending for the fourth time Regulation (EEC) No 1837/80 on the common organization of the market in sheepmeat and goatmeat and amending Regulation (EEC) No 950/68 on the Common Customs Tariff (OJ 1984, L 90, p. 35).

agricultural market organization, the EEC Treaty provides that in working out the common agricultural policy and the special methods for its application, account is to be taken of the structural and natural disparities [5] between the various agricultural regions and the need to effect the appropriate adjustments by degrees.

10. Before considering the question whether certain arguments put forward in this case would lead to the conclusion that, notwithstanding the cases cited above, Articles 5 and 9 of Regulation No 1837/80 are invalid, the various price support mechanisms should be briefly described.

11. At present the common organization of the market in sheepmeat provides for the following stabilizing measures:

(i) a system of premiums intended to compensate sheep farmers for loss of revenue (Article 5);

(ii) intervention measures in the form of private storage aid or purchases by the intervention agencies in respect of fresh sheepmeat (Article 6);

(iii) *in addition, for Great Britain*, payment of a variable slaughter premium for sheep (Article 9).

5 — Those disparities are set out in Section I A of the judgment setting out the facts and issues in Case 106/81.

12. The variable slaughter premium may be paid in Great Britain only if no intervention measures in the form of purchases by the intervention agencies in respect of fresh sheepmeat have been adopted and if the prices recorded on the representative markets in that region are below a 'guide level' corresponding to 85% of the basic price referred to in Article 3(1). The amount of the premium is equal to the difference between the seasonally adjusted guide level and the market price recorded in that region. In addition, account is taken of the fact that the variable slaughter premium has been paid when the premium to be paid by way of compensation for loss of income is calculated because that premium is reduced by the weighted average of the variable premiums actually paid (Article 5(6)).

13. The loss of revenue represents any difference there may be between the basic price and the arithmetical mean of the market prices recorded in each region. The premium to offset loss of revenue is fixed at the end of each marketing year, whereas the variable slaughter premium is paid during the marketing year.

14. On the other hand, according to Article 5(4) of Regulation No 1837/80, if, for one or more regions a foreseeable loss in revenue is estimated during the marketing year, bearing in mind the foreseeable development in the market prices, the Member States may make, in the region or regions in question, a payment on account in favour of producers of sheepmeat situated in the less-favoured farming areas. In accordance with Article 4 of Commission Regulation (EEC) No 3007/84 of 26 October 1984, [6] the

6 — Commission Regulation (EEC) No 3007/84 of 26 October 1984 laying down detailed rules for the application of the premium for producers of sheepmeat (OJ 1984, L 283, p. 28).

payment on account is 30% of the amount of the foreseeable premium.

15. However, in derogation from that provision, Commission Regulation (EEC) No 3728/86 of 15 December 1986[7] fixed the advance for the 1986 marketing year at 75% of the estimated premium. Furthermore, by decision of 16 December 1986, the Council authorized the French Republic to grant aid in the same amount to sheep farmers whose holdings were situated in areas which are not less-favoured areas.[8]

16. It is clear from the market support system described above that the defendant in the main proceedings rejected the plaintiffs' applications on the basis of Articles 5 and 9 of Regulation No 1837/80: under Article 9, the variable slaughter premium may be paid only in region 5 (Great Britain); the amount of the compensation for loss of income is calculated in accordance with Article 5(2) on the basis of any difference there may be between the basic price and the arithmetical mean of the market prices recorded, without, however, analysing the market price prevailing at the time when the animals were sold.

17. The plaintiffs in the main proceedings and the French Republic see in the differences in the premium rules an infringement of the principle of equal treatment which has placed the plaintiffs in particular at a disadvantage. Since the variable slaughter premium is calculated weekly and paid very rapidly, it enables 'out-of-season' producers (such as the plaintiffs) to be compensated for the difference between the guaranteed price and the market price at the time they sell their animals. However, since the premium for loss of income paid in region 2 (France) is calculated on the basis of the annual arithmetical mean of the prices recorded weekly at national level, the final income of an out-of-season French producer who sold his products in a week in which the price recorded was very much below the basic price would be below the amount of the seasonally adjusted basic price as fixed by the Community authorities.

18. Furthermore, British producers are at an advantage because the slaughter premium is paid to them relatively quickly whereas producers such as the plaintiffs in the main proceedings receive the premium only after the end of the marketing year.

19. On the other hand, the Council, the Commission and the United Kingdom consider that the difference between the applicable rules is justified.

20. The characteristics of the British market are different from those of the markets in the other regions. Because of imports from non-member countries corresponding to traditional patterns of trade, which found their way into the Community under arrangements concluded in the context of the GATT, prices on that market are in fact lower than on other markets.

7 — Commission Regulation No 3728/86 of 5 December 1986 determining for the Member States the estimated loss of income and the estimated level of premium payable per ewe and per female goat for the 1986 marketing year (OJ 1986, L 344, p. 17).

8 — Council Decision of 16 December 1986 on the grant of a national aid in the form of a payment on account of the premium for ewes in the sheepmeat sector in France (OJ 1986, L 382, p. 3).

21. The payment of the variable slaughter premium during the marketing year is, in a way, an advance payment of the premium for loss of revenue. However, producers in less-favoured areas may also receive an advance payment in the form of a payment on account of 75% of their loss of income. Moreover, in the 1985/86 marketing year, France was authorized to make the same payment on account, by way of State aid, until the end of that marketing year to producers in areas not regarded as less favoured.

22. In the result, it must be concluded that Community sheepmeat producers receive the same income support and that therefore the principle of equal treatment has not been infringed.

23. Furthermore, the Council submitted a calculation to the Court which shows that the total income of the plaintiffs in the main proceedings differs only negligibly from that of a comparable sheepmeat producer in region 5 (Great Britain).

24. The plaintiffs in the main proceedings did not contest the calculation submitted to the Court, but they drew different conclusions from it. They also observed at the hearing that their concern was not that all Community producers should enjoy the same revenue but that they should have free access to support payments on the same terms.

25. Even though in this case the comparison between the premium for loss of income and the variable slaughter premium has been at the centre of the debate, it should none the less be pointed out that those two market support mechanisms are not alternatives in the sense that one is applicable in region 5 (Great Britain) and the other in the other regions of the Community. The alternatives are rather, on the one hand, the variable slaughter premium paid in region 5 under Article 9(1) of Regulation No 1837/80 and intervention in the form of purchases of fresh sheepmeat under Article 6(1)(b), on the other. The premium for loss of income may, however, be paid in all regions of the Community; having regard to the compensation mechanism laid down in Article 5(6) of Regulation No 1837/80, the payment of the variable slaughter premium in region 5 is merely a sort of advance payment of the premium for loss of income, which will be paid in full at the end of the marketing year.

26. Despite the abolition of different reference prices for each region, the common organization of the market in sheepmeat and goatmeat is still much more an umbrella covering different market organizations. According to the Commission's representative, the variable slaughter premium is intended to ensure low prices to the consumer, whereas the system of intervention is intended to support the prices paid to producers. Although, as the representative of the French Government pointed out, there has been a certain convergence of market prices, there has not yet been any real unification of the market organizations. The Commission hopes to achieve that unification *inter alia* by the progressive phasing out of the variable

slaughter premium between now and the end of 1992.[9]

27. The special provisions for region 5 (Great Britain) appear still to be justified in the light of the abovementioned case-law of the Court; they are based on objective criteria, namely the significantly lower market prices in that region caused by considerable imports of sheepmeat from non-member countries. Those traditional imports are protected by commitments entered into in the context of the GATT and by voluntary restraint agreements with, *inter alia*, New Zealand.[10] Furthermore, care was taken to ensure that only a very small part of the meat imported from New Zealand was marketed in France. Of the maximum quantity of 245 500 tonnes carcass weight fixed in 1980, only 3 500 tonnes could, since 1984, be imported into France, that quantity increasing by 10% per year afterwards.[11]

28. It is certainly true that a part of the premium for loss of income is already paid to producers in region 5 (Great Britain) during the marketing year in the form of the variable slaughter premium, whereas producers in other Community regions receive the payment only after the end of the marketing year. However, the fact remains that because of the higher market price which they obtain, producers in other regions of the Community likewise obtain, even during the marketing year, a higher income from sales on the market. That significantly reduces the advantage enjoyed by producers in region 5 (Great Britain). Moreover, the variable slaughter premium does not guarantee producers in region 5 (Great Britain) an income equal to the seasonally adjusted basic price, as the plaintiffs in the main proceedings initially claimed, but merely an income equal to the guide price, which is equal to 85% of the basic price. It should also be noted that, at least in the areas of the Community regarded as less favoured, payments on account equal, in 1986, to 75% of the foreseeable amount of the premium may be made before the end of the marketing year.

29. Finally, because under Article 5 of Regulation No 1837/80 Community sheepmeat producers' total income resulting from average market sales proceeds and the respective premiums is in the end identical per unit of weight, regional differences in the market support mechanisms in a common market organization which has not yet been completely unified cannot be regarded as a significant difference in the treatment accorded to the various producers. When differences do arise, however, they are caused by the fact that, under Article 5(2) of Regulation No 1837/80, the loss of income is calculated on the basis of the arithmetical mean of the

9 — See the Proposal for a Council Regulation on the common organization of the market in sheepmeat and goatmeat, submitted on 21 October 1988 (OJ 1988, C 319, p. 36).

10 — See the Council Decision of 14 October 1980 on the conclusion of voluntary restraint agreements with Argentina, Australia, New Zealand and Uruguay in the sheepmeat and goatmeat sector (OJ 1980, L 275, p. 13).

11 — Council Decision of 12 July 1984 on the conclusion of the exchange of letters complementing the Agreement between the European Economic Community and New Zealand on trade in mutton, lamb and goatmeat and comprising an understanding relevant to the first indent of clause 2 of that Agreement (OJ 1984, L 187, p. 75).

market prices recorded for each region. If as a result out-of-season producers suffer a loss of income for which they receive no compensation, producers in all Community regions may be affected and not just those in France.

30. However, the plaintiffs in the main proceedings cannot derive from the EEC Treaty any entitlement to higher market prices and equal market support premiums, as they claimed at the hearing.

31. Since there is nothing in the main proceedings to indicate that the plaintiffs in this case engaged in intra-Community trade in sheepmeat or in trade with non-member countries, or that they had any intention of so doing, I do not think it necessary to consider the questions of the free movement of sheepmeat or the rules governing external trade. A reply to those questions is not necessary in order to resolve the legal issues in the main proceedings.

32. To sum up, my conclusion is that these proceedings have not disclosed any factor which, in contrast to the previous cases decided by the Court, could now affect the validity of Council Regulation No 1837/80 of 27 June 1980. However, if the Chamber is inclined to draw different conclusions, I recommend that the issue be referred to the full Court.

C — Conclusion

33. Consequently, I propose that the Court should rule as follows:

'Consideration of the question has disclosed no factor of such a kind as to affect the validity of Council Regulation No 1837/80, as amended by Council Regulation No 871/74.'