OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 29 June 1988 *

Mr President,
Members of the Court,

1. The tribunal de grande instance (Regional Court), Agen (France), has asked the Court for a preliminary ruling on the compatibility with Community law of intertrade agreements in agriculture whose application has been extended by the public authorities to all the national producers operating in a sector of the market.

The problem has already come before the Court, in Case 218/85 *Cerafel* v *Le Campion* (judgment of 25 November 1986, [1986] ECR 3513) in which I acted as Advocate General. I therefore propose merely to repeat that, pursuant to Article 2 of Law No 75-600 of 10 July 1975, on intertrade agricultural organizations (*Journal officiel de la République française* (JORF), 11.7.1975, p. 7124), as last amended by Law No 80-502 of 4 July 1980 (JORF, 5.7.1980, p. 1670), the competent minister may, under specified conditions and by means of decree, extend agreements concluded by the legally recognized organizations to producers who are not members thereof. Such organizations may, in addition, be authorized to levy on these producers the contributions necessary to put the agreements into effect.

It is precisely the contributions for the 1982/83 and 1983/84 marketing years for celery and scorzonera which are at issue in the main proceedings. The Union nationale interprofessionnelle des légumes de conserve (National Intertrade Association for Preserved Vegetables, hereinafter referred to as 'Unilec') instituted proceedings for the payment of those contributions before the tribunal de grande instance, Agen, against Larroche Frères, a small canning undertaking operating in the South of France which was not a member of the association. In the course of the proceedings, the plaintiff added to the original claim the contributions payable for the 1985/86 marketing year, including those relating to the production of French beans.

Before the national court, Larroche contended that the extension *erga omnes* of the intertrade agreements for the producers and processors of the vegetables in question (Ministerial Decrees of 10 December 1981, 30 September 1983, 13 November 1984 and 18 December 1986, published respectively in JORF, 9.1.1982, p. 306, 15.10.1983, p. 9359, 12.4.1984, p. 11032, and 13.1.1987, p. 460), were contrary to the Community rules on agriculture and competition. By imposing on all the processors and canners a minimum purchase price for the French raw material, this measure in fact prevented independent traders from effectively competing on the relevant markets. In addition, under Article 3 (2) of the aforementioned law, the contributions intended to finance the activities of the association are also levied on vegetables imported from other Member States; they therefore constitute a disguised import duty.

* Translated from the Italian.

In view of the importance of the problems thus raised, the national court stayed proceedings and, by decision of 8 July 1987, asked the Court for a preliminary ruling on the following questions:

(a) In the light of Articles 39, 42 and 85 (1) of the EEC Treaty and Regulation No 26/62 of the Council of the European Communities of 4 April 1962, can the fixing by an intertrade agreement extended to all the producers concerned of a minimum purchase price be regarded as a concerted practice which may affect trade between Member States and have as its object or effect the prevention, restriction or distortion of competition within the common market?

(b) Is the possibility made available by a national law of providing, by the conclusion of an intertrade agreement which may be extended *erga omnes*, for the imposition of fees on products originating in other Member States to be regarded as incompatible with Article 95 of the EEC Treaty?

The parties to the main proceedings, the French Government and the Commission of the European Communities submitted written observations and presented oral argument at the hearing.

2. I should like at the outset to make various general comments. Since 1983 the Community legislation makes provision for a common system for the extension of agreements not unlike the French system (Regulations Nos 3284/83 and 3285/83 of 14 November 1983, Official Journal 1983, L 325, pp. 1 and 8). As regards the abovementioned vegetables, that system entered into force on 1 January 1986 (Regulation No 1977/85 of 16 July 1985, Official Journal 1985, L 186, p. 2). For the purposes of this case therefore it can only be taken into account in so far as it is applicable to the claim concerning the contributions payable for the 1985/86 marketing year.

I would note in addition that, by virtue of the reference in Article 1 of Regulation No 1035/72 of 18 May 1972 (Official Journal, English Special Edition 1972 (II), p. 437) to the relevant headings of the Common Customs Tariff, celery, scorzonera and French beans come within the common organization of the market in fruit and vegetables set up by that regulation. It follows that the national court's questions make it necessary to determine in the first place whether the extension *erga omnes* of the intertrade agreements is not already in itself incompatible with the Community rules regarding that organization of the market.

Furthermore, since the measures in question concern solely vegetables which are still in the fresh state, Unilec's argument that the dispute should be determined in the light of the Community rules relating to processed products must be rejected. Nor can it be claimed that in the present case the exceptions laid down in Regulation No 1035/72 for products intended for industrial processing are relevant since those exceptions actually relate not to producers' organizations, but to quality standards.

3. That having been said, I may now turn to the first question, whereby the national

court is essentially seeking to establish whether the imposition of a minimum purchase price on independent processors of certain vegetables is compatible with various provisions of primary and secondary Community law.

In this respect, it should be stated at the outset that the Court has consistently held that the setting-up of a common organization of the market places the Member States under a duty to 'refrain from taking any measure' which might undermine or create exceptions to it (judgments of 18 May 1977 in Case 111/76 *Van den Hazel* [1977] ECR 901, paragraph 13 of the decision; of 29 November 1978 in Case 83/78 *Pigs Marketing Board* [1978] ECR 2347, paragraph 56 of the decision; and of 7 February 1984 in Case 237/82 *Jongeneel Kaas* [1984] ECR 483, paragraph 12 of the decision).

At paragraph 18 of the decision in the more recent judgment, *Le Campion*, — to which I have already referred — the Court stated in particular: 'The common organization of the market in [the fruit and vegetables] sector is characterized by two levels of intervention. First of all, under Article 15 of Regulation No 1035/72, producers' groups may fix for certain products a withdrawal price below which they will not offer for sale products supplied by their members. By withdrawing products, producers' organizations are able to stabilize prices; in certain circumstances, financial compensation may be granted to cover the cost of withdrawal. Secondly, Article 19 ... establishes ... measures for certain products, ... applicable to all producers. Intervention under that article may, however, take place only where the Commission has found that the market in question is in a state of serious crisis; once such a finding has been made, the Member States must, through the intervention agencies, buy in products which satisfy Community quality standards and have not yet been withdrawn ... by producers' groups ... at prices determined under Community rules.'

Further at paragraph 19 of the decision the Court held: 'It may be concluded from that summary that Regulation No 1035/72 establishes an *exhaustive* body of rules governing the matter, and makes a very clear distinction between the intervention mechanisms which may be initiated by producers' groups and those which are applicable to all producers. Consequently, a Member State has no power to extend ... the intervention rules laid down by [those] producers' organizations' (my emphasis).

This analysis applies perfectly to the case now before the Court. The extension in question in fact introduces with regard to the national market a uniform system of guaranteed prices for all the producers which, effectively, replaces the system of withdrawal prices which organizations may impose only on their members and therefore negates the machinery of withdrawal from the market in the conditions laid down by the Community legislature. Accordingly it is incompatible with the rules of the common organization.

On the other hand, the entry into force of Regulation No 3284/83 on 1 January 1986 has not substantially altered this situation. Clearly, the new Article 15 b of Regulation No 1035/72 empowers the Member States to extend the binding effect of various rules laid down by producers' organizations to

producers who do not belong to such organizations. However, this power is subject to clear limits *ratione materiae et territorii* and to a long list of clearly defined conditions, including a request by the organization, the absence of interference with intra-Community trade, notification to the Commission, the latter's approval. Secondly, the rules which may be extended must concern only the production, marketing and advertising of the goods (Article 15 b (1) (a), (b) and (c)). Finally the rules concerning withdrawal from the market may be extended only with regard to the products listed in Annex II to Regulation No 1035/72, which, it will be noted, include the vegetables in question in this case.

In sum, the legislation in question is too thorough and detailed for it to be possible for the Member States to retain the wide margin of manoeuvre claimed by the French Government and Unilec. If this is the case, examination of the compatibility of the contested measures with Article 85 of the Treaty becomes superfluous. It follows from the aforesaid considerations that Regulation No 1035/72 deprives Member States of any power to make binding on all the producers and processors of the vegetables not listed in Annex II a system of minimum purchase prices introduced by national agreements.

4. Let us now consider the obligation to pay the contributions. I note in the first place that such charges are also levied where the French processors import their supplies of raw material from other Member States. The proceeds of these contributions which are collected by Unilec are then used by the latter, in accordance with the terms of the agreements, to subsidize initiatives to improve productivity and to promote commercially the trade in preserved vegetables.

Having said this, I shall not go into Unilec's lengthy examination of every aspect of this system. In order to reply to the national court it is sufficient to cite paragraph 22 of the decision in the *Le Campion* case where the Court held that the obligation in question should be regarded as 'unlawful in so far as it serves to finance activities which are themselves held to be contrary to Community law. It is for the national court, therefore, to determine what part of the contribution required from non-members serves to finance such activities'.

There is, it seems to me, nothing more to be added with regard to this case. It may, nevertheless, be helpful to the national court to know that 'if the revenue from such a charge [a national charge levied on domestic and imported products according to identical criteria] is intended to finance activities for the special advantage of the taxed domestic products, it may follow that the charge . . . constitutes discriminatory taxation in so far as the fiscal burden on domestic products is neutralized by the advantage which the charge is used to finance, whilst the charge on the imported products constitutes a net burden' (judgment of 21 May 1980 in Case 73/79 *Commission* v *Italy* [1980] ECR 1533, paragraph 15 of the decision). Once again, these words are entirely appropriate to the case in issue.

5. On the basis of the foregoing considerations I propose that the Court should reply to the questions submitted by the tribunal de grande instance, Agen, by decision of 8 July 1987, in the proceedings between Unilec and Larroche Frères in the following terms:

'Regulation No 1035/72 on the common organization of the market in fruit and vegetables should be interpreted as not leaving the Member States any power to extend to national producers and processors who are not members of an intertrade organization in the sector the rules laid down by such an organization by means of agreements which fix minimum purchase prices for certain vegetables.

It is for the national court to determine whether in the light of the extent to which the organization's activities are incompatible with Community law, this fact renders unlawful the contributions imposed on producers who are not members and entails for these non-members total or partial exemption therefrom.'