REPORT FOR THE HEARING
20 MAY 1977 [1]

I — Summary of the facts

1. By a letter of 19 January 1977, which reached the Commission on the following day, the Office of the United Kingdom Permanent Representative to the European Communities informed the Commission, having regard to Article 93 (3) of the Treaty of Rome, of its intention to introduce, as from 31 January 1977, a temporary subsidy for pig producers amounting to 5·5 pence per kilogramme deadweight.

2. By a letter of 25 January 1977 the Commission informed the British authorities that it considered that the measure notified to it threatened to distort competition and to affect trade between Member States within the meaning of Article 92 (1) of the Treaty and that the Commission was therefore initiating, in respect of the measure, the procedure provided for in Article 93 (2). On 4 February 1977 the United Kingdom, under the third subparagraph of Article 93 (2), applied to the Council for a decision that the aid be considered compatible with the Common Market within the meaning of that provision.

3. As the Council did not accede to the United Kingdom's application the suspension of the procedure initiated by the Commission ceased to have effect in accordance with the provisions of the last sentence of the third subparagraph of Article 93 (2). As the aid in question had in the meantime been put into force the Commission addressed to the United Kingdom of Great Britain and Northern Ireland its decision of 17 February 1977 (77/172/EEC), published in OJ L 54, p. 39, requiring that that Member State 'shall forthwith terminate the provision of the aid in the form of a subsidy to pig producers the plan for which was notified to the Commission by letter dated 19 January 1977'.

4. As, notwithstanding that decision, the United Kingdom continued to grant the aid in question, the Commission, by application dated 8 March 1977 (31/77), received at the Court Registry on 11 March, referred to the Court under the second subparagraph of Article 93 (2) the failure of the Member State in question to comply with the decision which had been adopted.

5. In its defence, lodged on 25 April 1977, the United Kingdom explains that the aid in dispute is intended to mitigate the effects of the machinery of compensatory amounts. As far as the market in question is concerned the compensatory amounts paid to importers of pigmeat in the United Kingdom are too high because they are calculated on artificial bases so that they have in fact become subsidies to importers. Hence the aid in dispute cannot be considered as distorting or threatening to distort competition and the prohibition contained in Article 92 (1) therefore does not apply to it. By an application of the same date the United Kingdom itself initiated an action under Article 173 (53/77) requesting that the decision of 17 February be quashed either for want of jurisdiction or for infringement of the Treaty or for misuse of powers.

6. By a document ('Application') of 11 May 1977, received at the Court Registry on the following day, the Commission, pursuant to Article 186 of the Treaty and Article 83 of the Rules of Procedure, sought the adoption of interim measures requiring the United Kingdom to cease infringing the decision of 17 February

1 — Language of the Case: English.

1977 pending the decisions of the Court which would, in both cases, determine the questions of law at issue between the Commission and the United Kingdom in this matter ('to prescribe, as a necessary interim measure, that the United Kingdom cease infringing the said decision of the Commission pending a final determination in both the said cases of the legal issues outstanding between the Commission and the United Kingdom in this matter').

7. On 18 May 1977 the United Kingdom lodged its written observations. It requests that the Court:

'(a) may dismiss the application for interim measures;

(b) may give such directions as to the Court shall seem proper for the expeditious disposal of these proceedings.'

8. By order of 12 May 1977 the President of the Court by virtue of Article 85 of the Rules of Procedure decided to refer the application to the Court.

9. The parties were summoned to submit their oral observations at the hearing on 20 May 1977.

II — Summary of the submissions and arguments of the parties

1. (a) The *applicant* takes the view that there are urgency, necessity and the danger of serious and irreparable damage and that its application is not manifestly without foundation but exudes an air of *fumus boni juris*. Moreover the defendant has not sought the suspension of the decision in dispute and *prima facie* its application for annulment is not sustainable in law.

(b) It is common ground that the measure adopted by the United Kingdom is an aid. Experience has moreover proved that *prima facie* the measure does in fact distort competition and affect trade between Member States.

(c) The situation is urgent. In view of the fact that the aid in dispute has been granted as from 31 January 1977, the decision of 17 February did not provide for any delay in compliance. As the expectation that the defendant would comply proved to be ill founded the Commission referred the matter to the Court under Article 93 (2). As that reference did not result in the defendant's complying but, on the contrary, the defendant initiated its application for annulment in Case 53/77 it must be presumed that the United Kingdom intends to continue paying the aid in dispute until the Court has pronounced in the two cases.

(d) The failure to observe the decision of 17 February is increasingly harming a variety of Community interests.

First, aids granted by States are, under the Treaty, subject to prior control by the Commission and can only be put into force if the Commission agrees so that a contravention of the system set up by Articles 92, 93 and 94 of the Treaty would have immediate repercussions on the authority of the Community. To prevent this type of situation the Commission must be able to seek and obtain where necessary an interim order from the Court. In the second place the aid measure is having immediate and irreparable effects on the export possibilities of the other Member States and is continuing to confer unlawful and irreversible advantages on British producers. On the other hand the interim measures will not prejudice the substance of the situation as the aid could still be accorded retroactively if the decision of 17 February were for any reason to be annulled.

2. The *defendant* puts forward the following points:

(a) There are two cases before the Court — Case 31/77 in which the Commission

seeks a declaration that by not complying with the decision of 17 February the United Kingdom has failed to fulfil an obligation imposed on it by the Treaty, and Case 53/77 in which that very decision is assailed by the United Kingdom. In this situation the Commission is not entitled to request interim measures.

(b) There is no need for the adoption of interim measures. When the United Kingdom stated its intention to end the aid as soon as possible it did so in the expectation of a rapid reduction in the monetary compensatory amounts on pigmeat.

(c) Nor is there any urgency. The fact that the United Kingdom has not complied with the decision of 17 February may, under Article 93 (2) of the Treaty, supply grounds for a reference to the Court but cannot by itself justify the adoption of interim measures.

(d) The Commission has not substantiated its allegation that the aid measure in question is causing irreparable damage to the production of exporting Member States.

(e) Accordingly the questions at issue between the Commission and the United Kingdom cannot be resolved by interim measures but rather by an acceleration of the procedure in the two main actions.

A. M. Donner

Judge-Rapporteur

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 20 MAY 1977 [1]

Mr President,
Members of the Court,

On 20 January 1977 the Commission received a notification of a decision taken on the previous day by the Government of the United Kingdom to grant, as from 31 January, temporary aid to United Kingdom pig producers in the form of a subsidy of 5 1/2 pence per kilogramme dead weight.

On 25 January the Commission, considering that this aid was not compatible with the essential requirements of the Common Market within the meaning of Article 92 of the Treaty, initiated the procedure laid down by the first subparagraph of Article 93 (2). It immediately notified the Government of the United Kingdom, giving it notice to submit its comments within one week.

As the Commission pointed out in that communication, the provisions of Article 93 (3) had the effect of prohibiting the United Kingdom from putting the aid into effect until the procedure which had been initiated had resulted in a final decision.

However, the Government of the United Kingdom ignored this notice and did in fact bring the disputed aid measure into force on the date originally provided, namely 31 January.

At the same time the government, availing itself of the procedure offered by

1 – Translated from the French.