JUDGMENT OF THE COURT (Fifth Chamber)
7 May 1997 *

In Case C-223/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Finanzgericht Hamburg, Germany, for a preliminary ruling in the proceedings pending before that court between

A. Moksel AG

and

Hauptzollamt Hamburg-Jonas

on the interpretation of Article 8(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) in conjunction with Article 9(2) of the EC Treaty,

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, L. Sevón (Rapporteur), C. Gulmann, J.-P. Puissochet and M. Wathelet, Judges,

* Language of the case: German.

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— A. Moksel AG, by Dietrich Ehle, Rechtsanwalt, Cologne,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry for the Economy, acting as Agent,

— the Commission of the European Communities, by Klaus-Dieter Borchardt, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of A. Moksel AG, the German Government and the Commission at the hearing on 9 January 1997,

after hearing the Opinion of the Advocate General at the sitting on 20 February 1997,

gives the following

Judgment

1 By order of 7 June 1995, received at the Court on 27 June 1995, the Finanzgericht (Finance Court) Hamburg referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 8(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) in conjunction with Article 9(2) of the EC Treaty.

2 That question was raised in proceedings between A. Moksel AG (hereinafter 'Moksel') and the Hauptzollamt (Principal Customs Office) Hamburg-Jonas concerning the grant of export refunds in respect of products obtained from the slaughter of cattle.

3 Article 18(1) of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187) provides that, to the extent necessary to enable the products listed in the regulation to be exported on the basis of quotations or prices for those products on the world market, the difference between those quotations or prices and prices within the Community may be covered by an export refund.

4 In accordance with Article 18 of Regulation No 805/68, the Council, on 28 June 1968, adopted Regulation (EEC) No 885/68 laying down general rules for granting export refunds on beef and veal and criteria for fixing the amount of such refunds (OJ, English Special Edition 1968 (I), p. 237). Article 6(1) of that regulation provides as follows:

'The refund shall be paid upon proof:

— that the products have been exported from the Community, and

— that the products are of Community origin, unless an exception is made pursuant to Article 7.'

5 Article 7 of Regulation No 885/68 provides:

'Unless an exception is made in accordance with [the] procedure laid down in Article 27 of Regulation (EEC) No 805/68, no export refund shall be granted on products listed in Article 1 of that regulation which are imported from third countries and re-exported to third countries.'

6 The procedure referred to in that provision is that involving the Management Committee for Beef and Veal.

7 According to Article 8(1) of Regulation No 3665/87 — a regulation which, according to the final recital in the preamble thereto, was adopted in accordance with the opinion of all the relevant management committees — 'a refund shall be granted only in respect of products which come within the terms of Article 9(2) of the Treaty ...'.

8 Article 9(2) of the EC Treaty provides that the elimination of customs duties and quantitative restrictions between the Member States is to apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

9 Article 10(1) of the EC Treaty provides: 'Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.'

10 According to the order for reference, Moksel imported, in 1990, a quantity of beef cattle from the former German Democratic Republic ('GDR') for slaughter during transit in the Federal Republic of Germany and subsequent re-export to the former USSR. Furthermore, according to the observations submitted to the Court, export refunds were granted in accordance with the legislation in force at the time in the former GDR.

11 In the Federal Republic of Germany those cattle were covered by transit licences issued on 23 April and 15 May 1990. Reference was made in various pre-printed statements on the licence forms to the terms of transit and, in particular, to the fact that the animals were to be subject to the customs warehousing procedure in that Member State until the meat and offals were exported.

12 As the order for reference makes clear, the cattle to be dispatched were the subject of a customs declaration to the customs authorities of the former GDR, made upon submission, in particular, of an export order, a waybill relating to consignments bound for the Federal Republic of Germany and an international consignment note. The competent customs office in the former GDR completed the necessary formalities for the export of the animals on an annex to the export order. When the animals were brought into the Federal Republic of Germany between 24 May and 22 June 1990, they were presented to the competent customs authorities of that Member State. Those authorities drew up a transfer warrant which was confirmed by the principal customs office responsible and duly stamped. That document accompanied the cattle from the frontier customs office to the slaughterhouse and was then surrendered to the relevant inland customs office when the slaughter products were placed in store. After slaughter, a customs warehouse warrant was issued for the goods.

13 On 10 January 1991 Moksel completed the formalities for the export of the slaughter products to the former USSR and on 15 January 1991 submitted an application for export refunds to the Hauptzollamt Hamburg-Jonas. According to Moksel, the establishment of the 'de facto agricultural union' on 1 August 1990 or, at any rate, the reunification of the former GDR and the Federal Republic of Germany on

3 October 1990, had the effect of changing the legal status of the goods, which were thus to be treated as being of Community origin.

14 Following an unsuccessful complaint, Moksel brought an action before the national court, which stayed proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Is Article 8(1) of Regulation (EEC) No 3665/87 in the version of 27 November 1987, as amended on 8 December 1988, in conjunction with Article 9(2) of the EC Treaty to be interpreted as meaning that those provisions also cover products which were imported into the Federal Republic of Germany from the former German Democratic Republic in the period from 24 May to 22 June 1990 pursuant to an exceptional authorization for the processing of transit-trade goods and exported to a third country on 10 January 1991?'

15 By that question, the national court seeks in substance to ascertain whether export refunds are to be granted by reason of the export to a third country of products obtained from the slaughter of cattle imported into the Federal Republic of Germany from the former GDR under the transit procedure shortly before the reunification of Germany. The problem underlying that question concerns the effect of German reunification on the legal status of those goods under Community law and the designation 'goods originating in a Member State' or 'goods in free circulation' for the purposes of Article 8(1) of Regulation No 3665/87 in conjunction with Article 9(2) of the Treaty.

16 The regulation applicable at the material time for the purpose of determining the origin of goods was Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods (OJ, English Special Edition 1968 (I), p. 165). Article 4(1) of that regulation provides: 'Goods wholly

obtained or produced in one country shall be considered as originating in that country'. According to Article 4(2)(c), goods wholly obtained or produced in one country means 'live animals born and raised therein'.

17 At the time of their importation under the transit procedure, therefore, the cattle originated in the former GDR, that is to say a third country in relation to the Community.

18 Since the cattle were imported under the transit procedure, they were not released for free circulation in the Community, with the result that they could not in any way have acquired a Community origin during their stay in the territory of the Federal Republic of Germany.

19 Moksel denies however that the imported goods were covered by transit licences, claiming instead that they were imported in the context of internal trade within Germany and that no customs formality was completed.

20 However, it is settled case-law that, under Article 177 of the Treaty, which is based on a clear separation of functions between the national courts and the Court of Justice, the latter is empowered only to give rulings on the interpretation or the validity of a Community provision on the basis of the facts which the national court places before it (see, in particular, Case 104/77 *Oehlschläger* [1978] ECR 791, paragraph 4). In this case, as stated in paragraph 12 of this judgment, the national court has pointed out in the order for reference that the formalities for the export of the goods from the former GDR were completed, as were the formalities upon importation into the Federal Republic of Germany, under the transit procedure with the goods being placed under customs supervision (customs warehousing procedure).

21 Moksel also claims that the cattle imported from the former GDR in May and June 1990 acquired a Community origin as a result of the reunification of Germany, or, at the latest, upon implementation on 3 October 1990 of the Treaty of 31 August 1990 on the establishment of German unity (BGBl. 1990 II, p. 889).

22 As the Advocate General has pointed out in point 40 of his Opinion, Article 10 of the Treaty of reunification had the effect of extending the application of Community law to the territory of the former GDR as from that country's accession to the Federal Republic of Germany, that is to say on 3 October 1990. Therefore it is only as from that date and for the future that goods in free circulation in the territory of the former GDR acquired a Community origin, since goods which left that territory before that date could not acquire such origin retroactively.

23 That is clear, moreover, from section 3 of the Commission's communication of 24 October 1990 to the delegations of the Management Committee on Trade Mechanisms, according to which goods from the former GDR which on 2 October 1990 were no longer in free circulation in that country, in particular because the customs formalities for the grant of export refunds by the former GDR had been completed, are not in free circulation in the Community.

24 Accordingly, the cattle in point in the main proceedings were no longer in free circulation in the former GDR at the date of reunification since they had been exported from that country before that date, following completion of customs export formalities in the former GDR and payment of export refunds by that country. The origin of the cattle could therefore not have changed as a result of reunification. Furthermore, they were imported into the Federal Republic of Germany under the transit procedure and, consequently, could not have acquired a Community origin on 3 October 1990 as a result of their stay in the territory of that Member State.

25 The answer to the question must therefore be that Article 8(1) of Regulation No 3665/87 in conjunction with Article 9(2) of the Treaty are to be interpreted as meaning that products obtained from the slaughter of cattle are neither of Community origin nor in free circulation within the territory of the Community and do not therefore qualify for export refunds if, before 3 October 1990, the date of German reunification, they were exported from the former GDR, following completion of customs export formalities in that country and the grant of export refunds, and imported into the Federal Republic of Germany under the transit and warehousing procedure with a view to being re-exported to a third country.

Costs

26 The costs incurred by the German Government and the Commission of the European Communities, 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 (Fifth Chamber),

in answer to the question referred to it by the Finanzgericht Hamburg by order of 7 June 1995, hereby rules:

Article 8(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, in conjunction with Article 9(2) of the EC Treaty, are to be interpreted as meaning that products obtained from the slaughter of cattle are neither of Community origin nor in free circulation within the territory of the Community and do not therefore qualify for export refunds if, before 3 October 1990, the date of German reunification, they were exported from the former GDR, following completion of customs export formalities in that country and the grant of export refunds, and imported into the Federal Republic of Germany under the transit and warehousing procedure with a view to being re-exported to a third country.

Moitinho de Almeida Sevón Gulmann

Puissochet Wathelet

Delivered in open court in Luxembourg on 7 May 1997.

R. Grass J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber