OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 16 February 1989 *

Mr President,
Members of the Court,

1. The plaintiff in the main proceedings, Coöperatieve Melkverwerkingsvereniging DOC wa (hereinafter referred to as 'the Cooperative'), applied to the competent Netherlands authorities for the grant of aid pursuant to Regulation (EEC) No 986/68 of the Council of 15 July 1968 laying down general rules for granting aid for skimmed milk and skimmed-milk powder for use as animal feed (Official Journal, English Special Edition 1968 (I), p. 260) and Regulation (EEC) No 1105/68 of the Commission of 27 July 1968 on detailed rules for granting aid for skimmed milk for use as animal feed (Official Journal, English Special Edition 1968 (II), p. 379).

2. That aid was ultimately refused on the grounds that 'a condensed milk product' had allegedly been added to the buttermilk. The Cooperative thereupon appealed to the College van Beroep voor het Bedrijfsleven, The Hague, which considered that the case turned on the interpretation of the Community rules, since the applicable Netherlands provisions were identical to the Community provisions.

3. The College van Beroep therefore referred the following question to the Court of Justice:

'Must Regulation (EEC) No 986/68 of the Council, in particular the words "to which nothing has been added" in Article 1(a), read in conjunction with the provisions of Regulation (EEC) No 1105/68 of the Commission, be interpreted as meaning that the application of a process which, in order to attain the required dry-matter content, involves removing, after the buttermaking, the water that was used in its preparation and that remained behind in the buttermilk from the sweet buttermilk residue separated for the purpose, and subsequently remixing the sweet buttermilk, thus condensed, with the sour buttermilk residue resulting from the buttermaking, constitutes the addition of a product precluding the grant of aid pursuant to Article 1 of Regulation (EEC) No 986/68?'

4. Under Article 10(1) of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176), as amended by Regulation (EEC) No 465/75 of the Council of 27 February 1975 (Official Journal 1975, L 52, p. 8), aid is to be granted *inter alia* to skimmed milk and buttermilk produced in the Community and used for feed if those products meet certain conditions. Those conditions are laid down in particular in Article 1 of Regulation No 986/68, as amended, which is worded as follows: [1]

'For the purposes of this Regulation:

(a) "milk"

means the milk-yield of one or more cows, *to which nothing has been added*

* Original language: French.

1 — Emphasis added.

and which, at the most, has been only partially skimmed;

(b) "buttermilk"

means the by-product of the manufacture of butter from milk or cream, even though naturally or artificially soured;

(c) "skimmed milk"

means milk or buttermilk with a maximum fat content of 1%;

. . .'.

5. Rules for the implementation of that Regulation were laid down by the Commission in Regulation No 1105/68, as amended by Regulation (EEC) No 2114/75 of 11 August 1975 (Official Journal 1975, L 215, p. 12) and Regulation No 1645/78 of 13 July 1978 (Official Journal 1978, L 191, p. 23); Article 1(2) of Regulation No 1105/68 provides that: 'Aid shall be granted only for *quantities of skimmed milk* mixed with feed milk'. Article 1(4), (5) and (6) of Regulation No 1105/68, as amended, add the following further conditions:

'(4) Where skimmed milk and buttermilk resulting from the processing of milk into cream or butter are intended for incorporation in milk for animals and to qualify for aid, they may not be diluted in any way which is not normally part of the production methods used, in particular with water and/or whey.

(5) The granting of aid shall be subject to the following conditions being met:

(a) . . .

(b) in the case of buttermilk the defatted dry matter content must be at least 8.00%.

(6) However, these minimum values shall not apply in the following cases:

(a) when the average of the minimum values for the product in a Member State or in a region of a Member State exceeds the limit fixed in the preceding paragraph, this limit shall be replaced by the average value for the Member State or region concerned; this replacement may be limited to the portion of the year during which the minimum value is used;

(b) . . .

(c) when in the case of buttermilk the dry matter content is for justified technological reasons not less than 4% but less than the minimum specified defatted dry matter content. In such cases the aid which may be granted shall be reduced proportionately to the reduction in the dry matter content.'

6. It follows from those provisions that aid is granted only for buttermilk within the

meaning of Article 1(1) of Regulation No 986/68 and the question here is what is the scope of the conditions laid down by the Community rules.

7. It is plain, first of all, that the buttermilk must result from the processing of milk to which nothing has been added (Article 1(1)(b) of Regulation No 986/68). However, buttermilk would not result from processing of milk if it was also partly the result of the addition of substances not in the milk, such as the rinsing water. The prohibition of any additions to milk would lose its purpose if substances could be added at the following stage when buttermilk was made.

8. The wording of Article 1(4) of Commission Regulation No 1105/68 bears out this view.

9. There can also be no doubts in this respect in the light of the case-law of the Court. It held in a case which also concerned a product obtained from milk within the meaning of Article 1 of Regulation No 986/68 [2] that:

'A product for the manufacture of which substances other than the milk-yield of one or more cows have been used cannot attract aids under the intervention machinery referred to above, regardless of the chemical composition of the final product obtained in that way'.

2 — Judgment of 11 September 1983 in Joined Cases 205 to 215/82 *Deutsche Milchkontor* v *Germany* [1983] ECR 2633.

10. It is therefore quite clear that any addition, whether to the buttermilk or to the milk, precludes the product from qualifying for the aid in question.

11. The Cooperative further maintains that in any event there was no such addition in this instance but rather a partial separation followed by a remixing.

12. However, the Commission argues in this respect that the Community rules exclude not only any addition to the milk or buttermilk but also any further processing of the buttermilk intended to increase its defatted dry-matter content.

13. That view is borne out by the wording of Article 1 under which the buttermilk must result from the processing of the milk. If a further processing stage were permitted, the buttermilk finally obtained and for which aid is sought would actually also result from further processing of the buttermilk, and not only from processing of the milk. The extraction, by means of evaporation or other methods, of the water contained in the sweet buttermilk and the addition of the condensed buttermilk thus obtained to the sour buttermilk would constitute such further processing. The same would apply if the rinsing water were evaporated off in order to recover the buttermilk contained therein in a diluted state.

14. Article 1(5) and (6) of the Commission's implementing regulation, No 1105/68, as amended, also confirm that interpretation.

15. It is quite plain that by referring to the average of the minimum values for defatted dry-matter content in a Member State or in a region of a Member State, that the Regulation intended to refer to the values arising in the course of buttermaking and in the absence of any other operation, namely the values resulting naturally from the processing of the milk, since such a reference would be meaningless if each producer could obtain such values as he wished by carrying out the necessary operations.

16. The same reasoning applies *a fortiori* to Article 1(6)(c). Why should a lower amount of aid for buttermilk having a lower dry-matter content be provided for, if a producer could in any event carry out the necessary processing to alter that content more or less at will?

17. It is, finally, essential to note that the exclusion of any processing other than that of the milk into butter is indispensable for the practical application of the rules in question, in view of their aim which is to ensure that the best possible return is made from dairy production by means of optimizing the use of by-products from buttermaking. It is therefore absolutely essential that the by-product in question, namely buttermilk, stems exclusively from buttermaking rather than from the addition of products having a similar chemical composition (whey, condensed milk) which the rules in question do not seek to support. It follows that those rules would not achieve their purpose if there were no control on the origin of buttermilk qualifying for aid. The Commission has convincingly demonstrated that it would be extremely difficult to carry out such controls if certain processing was allowed because the final product would not reveal what processes had been carried out and the buttermilk could therefore have been subject to processing which in fact merely served to conceal processes contrary to the purposes of the aid, such as the addition of products or its dilution. It is therefore clear that the purpose of the aid scheme can only be achieved if there is no doubt that the buttermilk results only from the making of butter from milk which, in the absence of adequate means of control, means that *any* processing is excluded. The facts of this case show the extent of the difficulties since the national authorities were unable to determine themselves how the buttermilk had been processed or what had been added to it.

18. In view of the foregoing the use of the rinsing water and the increase of the buttermilk's defatted dry-matter content by means of any process whatsoever cannot be justified by the wish to avoid payment of a tax on waste water, which was one question raised before the College van Beroep.

19. For all the abovementioned reasons I propose that the following answer be given to the question asked by the College van Beroep voor het Bedrijfsleven.

20. The provisions of Regulation No 986/68 of the Council in conjunction with those of Regulation No 1105/68 of the Commission should be interpreted as precluding any addition to the buttermilk of substances not contained in the milk and also any further processing intended to raise the defatted dry-matter content of the buttermilk for which aid is sought by the extraction of the water contained in the sweet buttermilk and the mixing of the sweet buttermilk thus concentrated with the sour buttermilk.