JUDGMENT OF THE COURT (Fifth Chamber)

13 June 1996 *

In Case C-205/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Finanzgericht Baden-Württemberg (Germany) for a preliminary ruling in the proceedings pending before that court between

Binder GmbH & Co. International

and

Hauptzollamt Stuttgart-West,

on the validity of Commission Regulation (EEC) No 2198/90 of 27 July 1990 on protective measures applicable to imports of frozen strawberries, frozen raspberries, provisionally preserved strawberries and provisionally preserved raspberries originating in Poland (OJ 1990 L 198, p. 53) and Commission Regulation (EEC) No 3797/90 of 21 December 1990 on protective measures applicable to imports of certain semi-processed red fruits originating in Poland and Yugoslavia (OJ 1990 L 365, p. 22),

* Language of the case: German.

THE COURT (Fifth Chamber),

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

Advocate General: F. G. Jacobs,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— the Spanish Government, by Alberto José Navarro González, Director General for Community Legal and Institutional Coordination, and Gloria Calvo Díaz, Abogado del Estado, of the Legal Department for Matters before the Court of Justice, acting as Agents,

— the Commission of the European Communities, by Claudia Schmidt, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Binder GmbH & Co. International, represented by Felix Kübler, Rechtsanwalt in Stuttgart, the Spanish Government, represented by Gloria Calvo Díaz, and the Commission, represented by Claudia Schmidt, at the hearing on 14 March 1996,

after hearing the Opinion of the Advocate General at the sitting on 30 April 1996,

gives the following

Judgment

1 By order of 6 July 1994, received at the Court on 14 July 1994, the Finanzgericht (Finance Court) Baden-Württemberg referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions concerning, respectively, the validity of Commission Regulation (EEC) No 2198/90 of 27 July 1990 on protective measures applicable to imports of frozen strawberries, frozen raspberries, provisionally preserved strawberries and provisionally preserved raspberries originating in Poland (OJ 1990 L 198, p. 53), and the validity of Commission Regulation (EEC) No 3797/90 of 21 December 1990 on protective measures applicable to imports of certain semi-processed red fruits originating in Poland and Yugoslavia (OJ 1990 L 365, p. 22).

2 Those questions arose in proceedings between Binder GmbH & Co. International ('Binder') and the Hauptzollamt (Principal Customs Office) Stuttgart-West concerning countervailing charges levied on Binder for the import into Germany of frozen strawberries coming from Poland.

3 Council Regulation (EEC) No 426/86 of 24 February 1986 on the common organization of the market in products processed from fruit and vegetables (OJ 1986 L 49, p. 1) established a system of production aid and rules governing trade with non-member countries, in order to improve the competitivity of Community products processed from fruit and vegetables. Pursuant to Article 1 thereof, that Regulation applies *inter alia* to fruit preserved by freezing, without added sugar.

4 The first subparagraph of Article 18(1) of Regulation No 426/86 provides that:

'If, by reason of imports or exports, the Community market in one or more of the products specified in Article 1 is exposed or is likely to be exposed to serious

disturbances which might endanger the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with non-member countries until such disturbances or the threat thereof has ceased.'

5 Article 1 of Council Regulation (EEC) No 521/77 of 14 March 1977 laying down detailed rules for applying protective measures in the market in products processed from fruit and vegetables (OJ 1977 L 73, p. 28), which was maintained in force for the application of Regulation No 426/86, provides that, in order to assess whether the Community market is experiencing or threatened with such disturbances, particular account is to be taken of:

'(a) the volume of imports or exports effected or foreseen;

(b) the quantities of products available on the Community market;

(c) the prices for Community products on the Community market or the foreseeable trend of these prices and in particular any excessive upward or downward trend thereof in relation to prices in the years immediately preceding;

(d) where the abovementioned situation arises as a result of imports, the prices obtaining on the Community market, at a comparable stage, for products from third countries, and in particular any excessive downward trend in these prices'.

6 One of the protective measures which may be taken is the establishment of a system of minimum import prices with countervailing charges (the first indent of Article 2(1)(c) of Regulation No 521/77). Such measures 'may be taken only to such extent and for such length of time as is strictly necessary. [...] They may be

restricted to products imported from or originating in particular countries, to exports to particular countries or to particular qualities or types of presentation' (Article 2(2) of Regulation No 521/77).

7 The Commission adopted the contested regulations on the basis of those provisions.

8 Regulation No 2198/90 fixed a minimum import price for, *inter alia*, frozen strawberries without added sugar, originating in Poland, and provided for a countervailing charge to be levied where the import price for such products fell below that minimum. That Regulation was applicable until 31 December 1990.

9 Regulation No 3797/90 maintained in force the system of minimum prices with countervailing charges until 31 March 1991. However, it varied the minimum price applicable, depending on whether or not the fruit was whole.

10 The application of Regulation No 3797/90 was extended until 31 July 1991 and further extended until 25 September 1991 by, respectively, Commission Regulation (EEC) No 810/91 of 27 March 1991 (OJ 1991 L 82, p. 49) and Commission Regulation (EEC) No 2152/91 of 22 July 1991 (OJ 1991 L 200, p. 16).

11 Between November 1990 and September 1991 Binder imported frozen strawberries without added sugar from Poland. After carrying out a check, the Hauptzollamt Stuttgart-West concluded that Binder was not observing the minimum prices laid down by the Community regulations. It therefore ordered Binder to pay countervailing charges.

12 Binder applied to the Finanzgericht Baden-Württemberg to have the decision to recover those charges suspended or, if possible, set aside. It argued that Regulations No 2198/90 and No 3797/90 are invalid for the following reasons: first, the market was not exposed and was not likely to be exposed to disturbances, as evidenced by the documents which Binder placed before the court; secondly, the contested regulations failed to state sufficiently the reasons on which they are based; thirdly, the protective measures adopted were not consistent with the principle of proportionality. In support of the last point, Binder's arguments were that Regulation No 2198/90 made no distinction between the various quality classes of strawberries; that, by linking prices to the 'green' ecu, it contained a disguised increase in the minimum import price; and that the duration of the protective measures was excessive.

13 In order to respond to those arguments, the Finanzgericht Baden-Württemberg referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Commission Regulation (EEC) No 2198/90 of 27 July 1990 on protective measures applicable to imports of frozen strawberries, frozen raspberries, provisionally preserved strawberries and provisionally preserved raspberries originating in Poland (OJ 1990 L 198, p. 53) invalid for the entire period of its application until 31 December 1990?

(2) Is Commission Regulation (EEC) No 3797/90 of 21 December 1990 on protective measures applicable to imports of certain semi-processed red fruits originating in Poland and Yugoslavia (OJ 1990 L 365, p. 22) invalid for the initial period of its application until 31 March 1991, for the extended period of its application until 31 July 1991 (Commission Regulation (EEC) No 810/91 of 27 March 1991 amending Regulation No 3797/90, OJ 1991 L 82, p. 49), and thereafter for the further extended period of its application until 25 September 1991 (Commission Regulation (EEC) No 2152/91 of 22 July 1991 amending Regulation No 3797/90, OJ 1991 L 200, p. 16)?'

14 By those two questions, which may be considered together, the national court asks whether Regulations No 2198/90 and No 3797/90 are valid, in the light of the various arguments put to it by Binder. It is appropriate, therefore, to address each of those arguments in turn.

The existence of serious disturbances on the market

15 Binder maintains that, having regard to the criteria laid down by Article 1 of Regulation No 521/77, the Community market in frozen strawberries was not exposed and was not likely to be exposed to serious disturbances during the period at issue. Relying on a report by the Zentrale Markt- und Preisberichtstelle für Erzeugnisse der Land-, Forst- und Ernährungswirtschaft GmbH (Central bureau for reporting on markets and prices relating to agricultural, forestry and food products), Binder argues that the 1990 rise in imports of frozen strawberries was attributable to the fact that Community production did not satisfy the Community processing industry's demand for strawberries of the *Senga Sengana* variety, which was scarcely grown at all in the Community. Furthermore, at that time strawberries for processing were grown only in small quantities in the Community since, unlike the preceding three years, there had been no surplus on the fresh fruit market. Binder also argues that the price of those products remained broadly stable between 1989 and 1993 and that the mean price of frozen strawberries imported from Poland was higher in 1990 and 1991 than in 1989.

16 The Commission and the Spanish Government contend that, on the contrary, there was a serious likelihood of disturbances on the market when the contested regulations were adopted. They maintain that the Polish authorities have been unable since 1989 to monitor exports of frozen strawberries and, as a result, have been unable to ensure compliance with the voluntary-restraint agreements reached between Poland and the Community in that connection. This led to a significant increase in imports of frozen strawberries from Poland during the first six months

of 1990, which caused prices on the Community market to fall sharply. According to the Commission, the documents produced by Binder, which relate to only one variety of strawberries, do not contradict that finding, which concerns the frozen strawberry market as a whole and not any single variety, selected at random.

17 According to established case-law (see Case 345/82 *Wünsche* v *Germany* [1984] ECR 1995, paragraph 21, and Joined Cases C-296/93 and C-307/93 *France and Ireland* v *Commission* [1996] ECR I-795, paragraph 32), it must be verified whether the Commission committed a manifest error of assessment in its evaluation of the market in question.

18 It should be noted, first of all, that Binder does not deny that the voluntary-restraint agreement concerning exports of frozen strawberries, which was concluded between Poland and the Community for the 1989/90 marketing year, was not observed and that no agreement of the same type was reached for the 1990/91 marketing year.

19 Secondly, the official statistics provided by the Commission reveal that, as early as mid-1990, the volume of frozen strawberry imports entering the Community had reached a level comparable to the annual level reached in each of the two previous years. That rise in imports, which was almost entirely attributable to imports from Poland, was accompanied by a substantial reduction — approximately 30% — in the price of imports during the same period.

20 The documents produced by Binder do not prove that the increase in imports from Poland was attributable primarily, if not exclusively, to the fact that Community production could not satisfy the demands of the Community processing industry. First, there is no indication that the strawberries grown in the Community and those imported from Poland were not interchangeable from the point of view of processors. Secondly, as the Advocate General points out in point 36 of his Opinion, although insufficient Community production may explain the rise in the

volume of imports, it cannot explain the fall in the price of imports which was recorded during the first six months of 1990. On the contrary, a more likely explanation is that low import prices encourage processors to turn to imported products.

21 Furthermore, Binder cannot usefully rely on price movements recorded after the protection measures entered into force in order to maintain that the conditions for the adoption of such prices were not satisfied. Also, as the Advocate General observes in point 40 of his Opinion, the mean price of frozen strawberries imported from Poland was lower in 1990 and 1991 than in 1989, contrary to Binder's assertions.

22 In those circumstances, the Commission did not commit a manifest error of assessment by finding that there was a likelihood of serious disturbances on the Community market, which might endanger the objectives set out in Article 39 of the EC Treaty.

The reasons stated for the contested regulations

23 Binder argues that the grounds given for the regulations neither disclose the reasons for establishing minimum prices nor make it possible to verify whether the Commission took account of the criteria listed in Article 1 of Regulation No 521/77.

24 The Commission and the Spanish Government contend that the recitals to the contested regulations indicate why the contested measures were introduced and subsequently maintained.

25 The Court has consistently held (see, in particular, *France and Ireland* v *Commission*, cited above, paragraph 72), that the statement of reasons required by Article 190 of the EEC Treaty must be appropriate to the nature of the measure in dispute. It must disclose in a clear and unequivocal fashion the reasoning followed by the Community institution which adopted the measure in question in such a way as to make the persons concerned aware of the justification for the measure and enable the Court to exercise its power of review.

26 The recitals to the contested regulations make it clear that the Commission adopted and maintained in force the minimum price system because of the likelihood of disturbances to the market resulting from the failure to comply with the prices agreed with supplier countries, the substantial increase in the quantities imported and the substantially lower prices of imported produce by comparison with Community produce.

27 The contested regulations are not vitiated therefore by an inadequate statement of reasons.

The proportionality of the measures adopted

28 Binder argues, first, that the Commission acted contrary to the principle of proportionality in adopting Regulation No 2198/90 because it failed to vary the minimum import prices according to the different quality classes of frozen strawberries, as it had in Regulation No 3797/90.

29 The Commission and the Spanish Government contend that the Community authorities had to take measures to protect the market as a whole and not for the benefit of any single strawberry variety, selected at random. The Commission adds that, since the Polish authorities were not in a position at that time to issue export certificates enabling the quality of imported frozen strawberries to be checked, it

was impossible to make that differentiation in practice. Moreover, this would have been done as soon as the Polish authorities had set up a checking system, making such differentiation possible.

30 It is clear from the documents before the Court that, before the entry into force of the protective measures at issue, the Polish authorities had undertaken to ensure that their exporters would comply with a mean export price, agreed for each marketing year, and determined for frozen strawberries as a whole, without distinction as to quality. It also appears that, until 1 January 1991, the Polish authorities were not in a position to ensure — by issuing export certificates, for example — that the quality of exported strawberries was checked, with the result that customs authorities in the Community were unable, until that date, to make sure that minimum prices linked to the quality of imported strawberries were monitored in an effective and uniform manner. In those circumstances, it was no breach of the principle of proportionality for the Commission to decide to set a minimum import price which did not take account of the quality of the strawberries imported but only of the method by which they had been processed.

31 Secondly, Binder points out that the minimum prices were quoted in ecus and converted into the national currency on the basis of the agricultural conversion rates set out in Article 2 of Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy (OJ 1985 L 164, p. 1). Binder maintains that the effect of applying those conversion rates was to increase, arbitrarily, the amount expressed in national currency of the minimum import prices, as compared with the amount if the conversion had been based on the central rate fixed for that national currency *vis-à-vis* the ecu.

32 The Commission contends, first of all, that application of the agricultural conversion rates is required by virtue of the combined effect of Articles 1 and 2 of Regulation No 1676/85. Secondly, according to the Commission, that method of

calculation, which effectively caused import prices to rise by about 13% or 14%, was justified by the need to readjust those prices, which had not been altered for two years under the voluntary-restraint agreements concluded between the Commission and Poland.

33 On that point, it should be noted that, under Article 2(1)(b) of Regulation No 1676/85, for the conversion into the currency of a Member State of amounts expressed in ecus, the agricultural conversion rates are to be applied in the case of legal instruments relating to the common agricultural policy, including those based directly or indirectly on Article 43 of the EEC Treaty (see Article 1(2)(a) of Regulation No 1676/85). Consequently, the minimum import prices fixed by the regulations at issue had to be expressed in the currency of the importing Member State on the basis of the agricultural conversion rates.

34 Furthermore, having regard to the mean prices set by the voluntary-restraint agreements for previous years (ECU 845 per tonne for 1986/87, ECU 860 per tonne for 1987/88 and ECU 880 per tonne for 1988/89 and 1989/90) and the protective nature of the measures at issue, it has not been established — as required by the case-law of the Court of Justice — that the amount of ECU 88 per 100 kg, fixed for frozen strawberries without added sugar by Regulation No 2198/90, or that of ECU 92 per 100 kg, fixed by Regulation No 3797/90, exceed the level required to make the protective measures effective (see Case 77/86 *The Queen* v *Customs and Excise*, ex parte *National Dried Fruit Trade Association* [1988] ECR 757, paragraph 22).

35 Thirdly, Binder argues that the protective measures were maintained for too long. Since import prices had risen above prices on the Community market as early as the end of 1990, the protective measures should have have been abolished with effect from 1 January 1991.

36 The Commission and the Spanish Government contend that, although import prices did indeed rise above prices on the Community market, the likelihood of disturbances on the market persisted until the end of 1991, since production and exportation conditions in non-member countries had not changed. The Commission points out, in particular, that no agreement had been reached during that period with the authorities in exporting countries.

37 Binder's plea that the measures challenged were maintained for too long concerns only the post-1990 period. Consequently, the plea does not concern Regulation No 2198/90, which was no longer applicable thereafter. However, throughout the period of application of Regulation No 3797/90, which was twice extended, the conditions of the Community market and, specifically, the conditions for importing frozen strawberries from non-member countries, were not materially altered. In particular, the Community authorities did not always succeed in concluding agreements with non-member countries on the conditions for importing those products into the Community. The documents before the Court disclose, moreover, that the rise in imports from Poland continued throughout the period at issue and that the price of those products remained appreciably lower than that of Community products. In those circumstances, the duration of the protective measures cannot be regarded as excessive.

38 It must be concluded, therefore, that consideration of the questions referred for a preliminary ruling has disclosed no factor affecting the validity of Regulation No 2198/90 or Regulation No 3797/90.

Costs

39 The costs incurred by the Spanish 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 proceedings 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 questions referred to it by the Finanzgericht Baden-Württemberg by order of 6 July 1994, hereby rules:

Consideration of the questions referred for a preliminary ruling has disclosed no factor affecting the validity of Commission Regulation (EEC) No 2198/90 of 27 July 1990 on protective measures applicable to imports of frozen strawberries, frozen raspberries, provisionally preserved strawberries and provisionally preserved raspberries originating in Poland or of Commission Regulation (EEC) No 3797/90 of 21 December 1990 on protective measures applicable to imports of certain semi-processed red fruits originating in Poland and Yugoslavia.

Edward Puissochet Moitinho de Almeida

Sevón Wathelet

Delivered in open court in Luxembourg on 13 June 1996.

R. Grass D. A. O. Edward

Registrar President of the Fifth Chamber