JUDGMENT OF THE COURT (SECOND CHAMBER)
22 SEPTEMBER 1983 [1]

SA Roquette Frères
v Office national interprofessionnel des céréales (ONIC)
(reference for a preliminary ruling from the Conseil d'État of the French Republic)

(Production refunds on maize starch)

Case 311/82

Agriculture — Common organization of the markets — Cereals — Production refunds on maize processed into starch — Method of calculation — Reference to the threshold price and the supply price — Applicable rates — Rates in force on the date on which the maize was processed

(Regulation No 1132/74 of the Council; Regulation No 2012/74 of the Commission, Art. 2 (3))

Article 2 (3) of Regulation No 2012/74 laying down detailed rules for the application of Regulation No 1132/74 as regards production refunds on starches must be interpreted to mean that the production refund for maize processed into starch must be equal to the difference between the threshold price and the supply price applicable on the date on which the maize is processed.

In Case 311/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Conseil d'État [State Council] of the French Republic for a preliminary ruling in the proceedings pending before that court between

SA ROQUETTE FRÈRES, a French limited liability company with its registered office in Lestrem (Pas-de Calais),

and

OFFICE NATIONAL INTERPROFESSIONNEL DES CÉRÉALES (ONIC) [National Cereals Trades Board],

1 — Language of the Case: French.

on the interpretation and validity of Article 2 (3) of Regulation (EEC) No 2012/74 of the Commission of 30 July 1974 laying down detailed rules for the application of Regulation (EEC) No 1132/74 as regards production refunds on starches,

THE COURT (Second Chamber)

composed of P. Pescatore, President of Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: S. Rozès
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

Regulation No 120/67 of the Council of 13 June 1967 on the common organization of the market in cereals (Official Journal, English Special Edition 1967, p. 33) established a price system for various cereals, including maize, which involved in particular the fixing of:

(i) annual target prices published before the winter sowing in order to allow farmers to make their plans for cultivation;

(ii) an intervention price, on the basis of the target price, at which the competent national agencies are required to buy cereals offered to them; and

(iii) a threshold price to which the price of imported products must be increased by means of a variable levy.

The special position of the starch industry, and in particular its need to

maintain competitive prices in relation to substitute products, revealed the necessity to ensure that the basic products used by that industry, including maize, should be made available, by means of a production refund, at a price less than that resulting from the application of the system of levies and common prices.

As a result, Article 11 (1) of Regulation No 120/67 provided for a production refund for *inter alia* maize used by the starch industry for the manufacture of starch.

The detailed rules governing the production refund, the conditions for payment and the amount thereof were laid down by Regulation No 371/67 of the Council of 25 July 1967 fixing production refunds on starches and quellmehl (Official Journal, English Special Edition 1967, p. 219).

In that regulation the Council stated that a precise assessment of the situation resulting from the level of common prices and from the competition between, on the one hand, maize starch, rice starch and potato starch and, on the other hand, the substitute chemical products indicated that the refund should be fixed at such an amount that the price of maize used in starch manufacture would be brought down to 6.80 units of account per 100 kg, thus ensuring moreover a proper balance between the use of common wheat and maize. As a result Article 1 (1) of Regulation No 371/67 provided that from 1 July 1967 the Member States should grant a production refund for, *inter alia*, maize for the manufacture of starch equal to the difference, per 100 kg, between the threshold price of maize and 6.80 units of account.

In Regulation No 1060/68 of the Commission of 24 July 1968 adopting certain detailed rules for the application of Regulations Nos 367/67/EEC and 371/67/EEC regarding production refunds on maize processed into groats and meal and on maize and common wheat processed into starch and quellmehl (Official Journal, English Special Edition 1968 (II), p. 352), the Commission drew attention to the fact that the Council, in Regulation No 371/67, had stated that, on account of the connection between the production prices of the raw materials used in the manufacture of cereal and potato starches and of the interchangeability of those two products, a balanced relationship should be maintained between the prices thereof; a system of advance payment of the production refund had been provided for in respect of potato starch and the Commission took the view that in order not to favour one industry more than another such a system should be made general and should include *inter alia* maize, a raw material for starch.

Article 1 of Regulation No 1060/68 provides that where a manufacturer of starch who is holding maize for the manufacture of starch so requests, and where he furnishes proof that the maize is on his premises or under official supervision, the Member State responsible for granting the production refund must advance it to him in an amount not exceeding the difference, per 100 kg of maize, between the threshold

price for maize at the start of the marketing year and 6.80 units of account.

Article 2 of that regulation provides that the granting of the advance shall be subject to the lodging of a deposit by the starch manufacturer guaranteeing the processing of the maize into starch and that the Member State shall pay the advance to the starch manufacturer not later than 30 days from the day on which he furnishes proof that the maize is on his premises or under official supervision.

Article 3 of Regulation No 1060/68 provides that the production refund shall be paid to the manufacturer, account being taken of the threshold price for maize valid for the month of its processing, within 30 days from the date on which he furnishes proof that the maize has been processed.

Regulation No 371/67 was repealed by Regulation No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors (Official Journal 1974, L 128, p. 24), which entered into force on 1 August 1984.

As regards production refunds for starches, Article 1 of that regulation provided that the Member States should grant a production refund on maize for the manufacture of starch equal to the difference, per 100 kg, between the threshold price for maize and 8.20 units of account (instead of 6.80 units of account).

Article 2 (1) of Regulation (EEC) No 2012/74 of the Commission of 30 July 1974 laying down detailed rules for the application of Regulation No 1132/74 as regards production refunds on starches (Official Journal 1974, L 209, p. 44) stipulates that the refunds are to be paid to the producer of starch from maize when he furnishes proof that the maize has been placed under supervision by the competent agencies of the Member States and states that he is prepared to supply on request all information necessary for such supervision.

Article 2 (3) provides that the production refund is to be calculated by reference to the threshold price applicable on the day on which the application for the maize to be placed under official supervision was accepted and is to be paid within 30 days following acceptance of such application. Where necessary, the refund is adjusted subsequently by reference to the threshold price valid for the month during which processing takes place.

Before 1 August 1974 Roquette Frères SA, whose registered office is at Lestrem (Pas-de-Calais), placed under official supervision maize which was not processed until August and September of the same year. Pursuant to Regulation No 1060/68, it received before 1 August 1974 advance payment of the refunds calculated on the basis of the difference between the threshold price of 160.65 units of account per tonne and the supply price of 68 units of account per tonne.

From 1 August 1974 the threshold price fell to 106.60 units of account per tonne, whereas the supply price rose, pursuant to Article 1 of Regulation No 1132/74, from 68 to 82 units of account per tonne.

As regards the maize placed under supervision before 1 August 1974 and subsequently processed, Roquette considered that the production refunds should correspond to the difference between the new threshold price of 106.60 units of account and the former supply price of 68 units of account, whereas the competent national agency, the Office national interprofessionnel des

céréales [hereinafter referred to as "the Office National"], decided to have regard only to the new supply price of 82 units of account.

By judgment dated 22 April 1980 the Tribunal Administratif [Administrative Court], Lille, dismissed Roquette's claim against the Office National for payment of FF 3 615 399.50 by way of production refunds for the processing of maize into starch in August and September 1974. The Tribunal Administratif considered that "since the act giving entitlement to the refund was the production of starch the amount of the said refund must be calculated on the basis of the threshold price and supply price applying at the date of processing, even if advances allowed to the producer were calculated on the basis of previous prices".

On 22 July 1980 Roquette appealed against the judgment of the Tribunal Administratif to the Contentious Matters Division of the Conseil d'État of the French Republic.

The second and sixth subsections of the Contentious Matters Division considered that the outcome of the case depended on the answer to the question whether Article 2 (3) of Regulation No 2012/74 provides for account to be taken of variations in the threshold price and in the supply price or only of variations in the threshold price and, if the latter is the case, whether Article 2 (3) is in conformity with the provisions of Regulation No 1132/74.

It therefore decided on 15 October 1982, pursuant to Article 177 of the EEC Treaty, to stay the proceedings until the Court had given a ruling on the interpretation and validity of Article 2 (3) of Regulation No 2012/74.

The decision of the Contentious Matters Division of the Conseil d'État was registered at the Court on 9 December 1982.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were lodged on 23 February 1983 by the Commission of the European Communities, represented by its Legal Adviser, Jean-Claude Séché, and on 3 March 1983 by Roquette Frères, represented by Paul-François Ryziger, of the Paris Bar.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By order dated 20 April 1983 the Court, in application of Article 95 (1) and (2) of the Rules of Procedure, decided to refer the case to the Second Chamber.

II — Written observations submitted to the Court

Roquette Frères, the plaintiff in the main proceedings, states that it is aware that the judgment given on 15 December 1982 by the First Chamber of the Court (Case 5/82, *Hauptzollamt Krefeld* v *Maizena*) is largely unfavourable to it, but nevertheless insists that the problem should be considered afresh.

On the one hand, paragraph 16 of the judgment of the Court of 12 July 1977 in Case 2/77 (*Hoffmann's Stärkefabriken* v *Hauptzollamt Bielefeld* [1977] ECR 1375) constitutes authority for a decision in favour of the plaintiff in the main proceedings; further, it is hard to understand why it was necessary to amend Regulation No 2012/74 by Regu-

lation No 10/75 of the Commission of 31 December 1974 (Official Journal 1975, L 1, p. 24) if Regulation No 2012/74 always had the meaning attributed to it by the Commission now.

The problem is in fact a question of the method of interpretation: it is quite possible that the Commission committed an error in the drafting of Regulation No 2012/74, but the actual wording must prevail. It is not possible for traders to indulge in suppositions regarding the latent intentions of the Commission.

Regulation No 2012/74 must be interpreted as meaning that the supply price to be taken into account for the purposes of the refund, which is equal to the difference between the threshold price and the supply price, is that which is in force on the day the goods are placed under supervision. The Commission was able to adopt the regulation in question under the powers conferred on it by Article 5 of Regulation No 371/67 and Article 26 of Regulation No 120/67.

The *Commission* observes that the facts of the present case are entirely comparable with those of Case 5/82 (the *Maizena* case), in which the Commission gave judgment on 15 December 1982. The problem put to the Court in the two cases appears basically identical apart from three differences in the way the questions have been put; the Court's answer to the questions put in Case 5/82 is wider than the question of interpretation put by the Conseil d'État, but it obviously answers it completely.

It is patent from the judgment in Case 5/82 that the validity of Regulation No 2012/74, as interpreted by the Court, cannot be challenged. At paragraph 23 the Court stated that "consideration of the question raised has disclosed no factor of such a kind as to indicate that calculation of the refund by reference to the prices in force at the time at which the maize is processed is contrary to any rule of Community law".

The questions put by the Conseil d'État should be answered as follows:

1. Both under the Community rules in force until 31 July 1974 and under those in force after that date, the production refund for maize processed into starch must be equal to the difference between the threshold and supply prices applicable at the date at which the maize is processed.

2. Consideration of the question raised by the Conseil d'État has disclosed no factor of such a kind as to affect the validity of Regulation No 2012/74 of the Commission of 30 July 1974 laying down detailed rules for the application of Regulation No 1132/74 as regards production refunds on starches.

III — Oral procedure

The parties to the main proceedings and the Commission abstained from submitting oral observations at the sitting fixed for 30 June 1983.

The Advocate General delivered her opinion at the sitting on 7 July 1983.

Decision

1 By a decision of 15 October 1982 lodged at the Court on 9 December of that year, the Conseil d'État [State Council] of the French Republic referred to the Court under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation and, in the alternative, the validity of Article 2 (3) of Regulation (EEC) No 2012/74 of the Commission of 30 July 1974 laying down detailed rules for the application of Regulation (EEC) No 1132/74 as regards production refunds on starches (Official Journal 1974, L 209, p. 44).

2 The question arose in connection with litigation pending before that court between the company Roquette Frères and the Office national interprofessionnel des céréales [National Cereals Trades Board, hereinafter referred to as "the Office National"] concerning a claim for payment of FF 3 615 399.50 by way of production refunds on maize starch in respect of maize processed into starch in August and September 1974.

3 It appears from the file that prior to 1 August 1974 Roquette placed quantities of maize under official supervision which were processed in August and September of the same year. The litigation arises from the fact that the same period saw the simultaneous amendment of the price levels determining the amount of the refund (that is, the threshold price and the so-called "supply price") fixed by Article 1 of Regulation No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors (Official Journal 1974, L 128, p. 24) the difference between which dictates the amount of the refund. Whereas, at the material time, the threshold price had fallen, the supply price had been increased by the last-mentioned regulation from 6.80 to 8.20 units of account per 100 kg as from 1 August 1974.

4 The Office National had regard to the change in both prices when determining the amount of the refund. Roquette does not contest the adjustment made by reference to the threshold price, but points out that Regulation No 2012/74 of the Commission — Article 2 (3) of which provides for adjustment of the refund in accordance with any fluctuations "in the threshold price" occurring between the time when the maize is placed under supervision and the time of processing — made no comparable provision for any fluctuation in the supply price. Consequently it takes the view that the refund should be calculated by reference, on the one hand, to

the threshold price prevailing at the time of processing and, on the other hand, to the supply price in force at the time when the maize is placed under official supervision.

5 In order to resolve the dispute, the Conseil d'Etat asked the Court, first, to give its interpretation of Article 2 (3) of Regulation No 2012/74, and in the alternative, to rule on the compatibility of that provision with Regulation No 1132/74 of the Council, should it be found that only the change in the threshold price was to be taken into account in determining the amount of the refund.

6 As the Court stated in its judgment of 15 December 1982 concerning a substantially identical case (*Hauptzollamt Krefeld* v *Maizena*, Case 5/82 [1982] ECR 4601), the Community rules relating to production refunds for starch made from maize are based on Regulation No 120/67 of the Council of 13 June 1967 on the common organization of the market in cereals (Official Journal, English Special Edition 1967, p. 33), which established the principle of refunds.

7 That principle was put into effect for the first time by Regulation No 371/67 of the Council of 25 July 1967 fixing production refunds on starches and quellmehl (Official Journal, English Special Edition 1967, p. 219) and by Regulation No 1060/68 of the Commission of 24 July 1968 adopting certain detailed rules for the application of Regulations Nos 367/67 and 371/67 regarding production refunds on maize processed into groats and meal and on maize and common wheat processed into starch and quellmehl (Official Journal, English Special Edition 1968 (II), p. 352). Article 1 (1) of Regulation No 371/67 provided that the refund to be paid in respect of maize was to be equal to the difference per 100 kg of maize between the threshold price and a guaranteed supply price of 6.80 units of account. According to Regulation No 1060/68 (Articles 1 and 2 (4)) a refund advance calculated by reference to the threshold price in force at the start of the marketing year was to be paid not later than 30 days from the date on which the starch manufacturer requested it and furnished proof that the maize intended for the manufacturer of starch had been placed under customs supervision,

whereas the refund (Article 3) was to be calculated by reference to the threshold price in force when the maize was processed into starch and was to be paid within 30 days from the date on which the manufacturer furnished proof that the cereal had been processed. The system provided for in the regulations cited above applied until 31 July 1974 and was replaced with effect from 1 August 1974 by the system provided for in Regulations Nos 1132/74 and 2012/74.

8 Regulation No 1132/74 of the Council departed from Regulation No 371/67 inasmuch as it provided that henceforth the refund was to be equal to the difference per 100 kg of maize between the threshold price and a guaranteed supply price fixed at 8.20 units of account. Regulation No 2012/74 of the Commission modified the rules for operating the refunds by abolishing the system of advance payments and provided, in Article 2, that the refund was to be calculated by reference to the threshold price in force at the time when the product was placed under customs supervision, subject to an adjustment where there was a change in that price before the maize was processed into starch.

9 Both Article 3 of Regulation No 1060/68 and Article 2 of Regulation No 2012/74 do in fact refer to the same date for the determination of the threshold price which must be taken into account when calculating the refund. Since Article 2 (3) of Regulation No 2012/74 provides that the refund "shall, where necessary, be adjusted *a posteriori* by reference to the threshold price valid for one month during which processing takes place", that article too attaches paramount importance to the threshold price in force at the date of processing.

10 As regards the supply price, whilst before the entry into force of Regulation No 10/75 of the Commission of 31 December 1974, amending Regulation No 2012/74 laying down detailed rules as regards production refunds in the cereals and rice sectors (Official Journal 1975, L 1, p. 24), Community law did not expressly deal with the problem of the practical effects of changes in the price occurring between the time when the maize was placed under supervision and the time when it was processed, it nevertheless follows from the corpus of provisions on the production refund for starch in force since 1967 that the refund was to be calculated on the basis of the rates valid on the day of processing. Unlike the threshold price, which changes monthly

and in respect of which it was therefore necessary to make provision for adjustment, in Regulation No 2012/74 the supply price is fixed by the Council for an indefinite period and remains unchanged until the Council decides to alter it. In the absence of any express provision concerning the supply price to be used when calculating the refund, that price must obviously be determined by reference to the same date as that taken into account in determining the threshold price.

11 Before this Court Roquette contended that the inference to be drawn from the Court's judgment of 12 July 1977 (Case 2/77 *Hoffmann's Stärkefabriken AG* v *Hauptzollamt Bielefeld* [1977] ECR 1375) was that the date which had to be taken into account in calculating the refund was necessarily the date at which the product was placed under customs supervision.

12 However, in the passage of the judgment to which Roquette refers, the Court merely states that according to Article 2 (1) and (3) of Regulation No 2012/74 the production refund is to be paid and calculated at the moment when the person entitled thereto furnishes proof that the basic product has been placed under official supervison. Having regard to the reservation contained in the same article permitting adjustment of the refund, it is not possible to find in that passage any support for the view that the date of processing is not to be the date which determines the amount of the refund.

13 Roquette argues further that the Commission subsequently amended the wording of Article 2 (3) of Regulation No 2012/74 in Regulation No 10/75, making it refer thereafter to all the amounts envisaged by Regulation No 1132/74 of the Council so as to embrace changes in the threshold price and the supply price. It is difficult to see why that provision should have been necessary in order to amend the previous regulation if the latter had, from the outset, borne the meaning ascribed to it by the Office National and the Commission.

14 The general scheme of the regulations at issue and their economic purpose indicate that since the aim is to enable producers to sell maize starch on the

market at a competitive price, the adjustment must reflect the prices prevailing at the time of processing, not at the time when the maize is placed under supervision. It must therefore be held that the approach adopted in Regulation No 10/75 was already implied in the provisions of Regulation No 2012/74.

15 Thus the reply to be given to the first question raised by the Conseil d'État is that Article 2 (3) of Regulation No 2012/74 must be interpreted to mean that the production refund for maize processed into starch must be equal to the difference between the threshold price and the supply price applicable on the date on which the maize is processed.

16 In the light of that reply the subsidiary question as to the compatibility of the aforesaid provision with Regulation No 1132/74 is devoid of purpose.

Costs

17 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, a step in the proceedings before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Conseil d'État of the French Republic by a decision of 15 October 1982, hereby rules as follows:

Article 2 (3) of Regulation No 2012/74 of the Commission of 30 July 1974 laying down detailed rules for the application of Regulation (EEC) No 1132/74 as regards production refunds on starches must be

interpreted to mean that the production refund for maize processed into starch must be equal to the difference between the threshold price and the supply price applicable on the date on which the maize is processed.

Pescatore Due Bahlmann

Delivered in open court in Luxembourg on 22 September 1983.

For the Registrar

H. A. Rühl

Principal Administrator

P. Pescatore

President of the Second Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 7 JULY 1983 [1]

Mr President,
Members of the Court,

The Court has before it a request for a preliminary ruling from the Conseil d'État of the French Republic which, by a decision of 15 October 1982 lodged at the Registry on 9 December 1982, asks this Court to rule on the interpretation and validity of Article 2 (3) of Regulation No 2012/74 of the Commission of 30 July 1974. [2]

I — The circumstances which gave rise to the litigation before the Conseil d'État are as follows:

The company Roquette placed some maize under official supervision prior to 31 July 1974, on which date the marketing year for that cereal came to an end. Roquette processed the maize into starch after that date, namely in August and September 1974.

Regulation No 1125/74 of the Council of 29 April 1974 [3] had set 1 October as the commencement of the marketing year for maize, and 30 September of the following year as its closure. None the less in respect of the then current year Article 2 thereof had retained 1 August 1974 as the commencement of the marketing year.

1 — Translated from the French.

2 — Official Journal 1974, L 209, p. 44; the regulation lays down detailed rules as regards production refunds on starches for the application of Regulation (EEC) No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors (Official Journal L 128, 10. 5. 1974, p. 24).

3 — Official Journal L 128, 10. 5. 1974, p. 12; the regulation entered into force on 1 August 1974.