JUDGMENT OF THE COURT (Fifth Chamber)
1 April 1993 *

In Joined Cases C-260/91 and C-261/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by Tribunal Económico Administrativo Central, Madrid, for a preliminary ruling in the proceedings pending before that court between

Diversinte SA,

Iberlacta SA

and

Administración Principal de Aduanas de la Junquera,

on the validity of the retroactive effect of the second paragraph of Article 3 of Commission Regulation (EEC) No 744/87 of 16 March 1987 amending Regulation (EEC) No 805/86 introducing a charge on denatured skimmed-milk powder coming from Spain and derogating from Regulation (EEC) No 1378/86 as regards the accession compensatory amounts in trade with Spain (OJ 1987 L 75, p. 14),

THE COURT (Fifth Chamber),

composed of: G. C. Rodríguez Iglesias, President of the Chamber, R. Joliet, J. C. Moitinho de Almeida, F. Grévisse and D. A. O. Edward, Judges,

Advocate General: C. Gulmann,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

* Language of the case: Spanish.

— Diversinte SA and Iberlacta SA, by Erik H. Pijnacker Hordijk of the Amsterdam Bar and H. J. Bronkhorst, Advocaat with right of audience before the Hoge Raad der Nederlanden;

— the Greek Government, by Vassileios Kontolaimos, Assistant Legal Adviser, of the State Legal Service, and Ioannis Chalkias, representative of the said service, acting as Agents;

— the Commission of the European Communities by José Luis Iglesias Buhigues, Legal Adviser, acting as Agent;

having regard to the Report for the Hearing,

after hearing the oral observations of Diversinte SA and Iberlacta SA, the Greek Government and the Commission at the hearing on 11 November 1992,

after hearing the Opinion of the Advocate General at the sitting on 3 December 1992,

gives the following

Judgment

1 By orders of 2 October 1991, received at the Court on 14 October 1991, the Tribunal Económico Administrativo Central (Central Economic Administrative Court), Madrid, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the validity of the retroactive effect of the second paragraph of Article 3 of Commission Regulation (EEC) No 744/87 of 16 March 1987 amending Regulation (EEC) No 805/86 introducing a charge on denatured skimmed-milk powder coming from Spain and derogating from Regulation (EEC) No 1378/86 as regards the accession compensatory amounts in trade with Spain (OJ 1987 L 75, p. 14) (hereinafter 'the regulation in dispute').

2 The questions were raised in disputes between two companies governed by Spanish law, Diversinte and Iberlacta on the one hand, and the Administración Principal de Aduanas de la Junquera (hereinafter the 'Customs Office') on the other.

3 Between 28 February and 2 March 1987 Iberlacta exported to the Federal Republic of Germany 207 tonnes of milk powder containing 12% fat and denatured for use in animal feed. Between 3 and 5 March 1987, Diversinte exported to the same destination 120 tonnes of a similar product containing 18% fat.

4 On 17 March 1987 the regulation in dispute appeared in the *Official Journal of the European Communities*. Under that regulation, a charge which, pursuant to Commission Regulation (EEC) No 805/86 of 19 March 1986 introducing a charge on denatured skimmed-milk powder coming from Spain (OJ 1986 L 75, p. 14), as amended by Commission Regulation (EEC) No 3956/86 of 23 December 1986 (OJ 1986 L 365, p. 57), had until then been imposed on the export from Spain of skimmed milk imported into that Member State and denatured in accordance with the requirements applying before 1 March 1986 in that country, was extended to all milk powder, regardless of its fat content, denatured according to those requirements and exported from Spain after being imported there. The second paragraph of Article 3 of that regulation made it applicable from 12 February 1987.

5 In accordance with that regulation, the Customs Office requested Diversinte and Iberlacta to pay that charge, which they did albeit disputing the principle. According to those companies, the regulation in dispute was void since it was retroactive, but did not meet the requirements under which the Court permits retroactivity.

6 The two companies therefore brought the matter before the Tribunal Económico Provincial de Gerona (Economic Administrative Court for the Province of Gerona) (Spain), at first instance, and before the Tribunal Económico Administrativo Central (Central Economic Administrative Court), Madrid, on appeal.

7 That latter court decided to stay the proceedings and sought a 'ruling by the Court of Justice of the European Communities on the validity of the retroactive effects of the second paragraph of Article 3 of Commission Regulation (EEC) No 744/87 of 16 March 1987'.

8 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The validity of the retroactive effect of the regulation in dispute

9 As the court of reference correctly points out, the Court has consistently held that although in general the principle of legal certainty precludes a Community measure from taking effect before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectation of those concerned is duly protected (see, most recently, Case C-368/89 *Crispoltoni* [1991] ECR I-3695, paragraph 17).

10 It should, however, be pointed out that although according to the case-law of the Court, it is not impossible for Community decisions to have retroactive effect, decisions having such effect must include in the statement of the reasons on which they are based particulars which justify the desired retroactive effect (see the order in Case 1/84 R *Ilford* v *Commission* [1984] ECR 423, paragraph 19).

11 As the Court has already stated in Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, at paragraph 15, the statement of grounds required by Article 190 of the EEC Treaty must disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in question in such a way as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights and the Court to exercise its supervisory jurisdiction.

12 However, it should be noted that the regulation in dispute, dated 16 March 1987, does not explain anywhere why it has a retroactive effect as from 12 February 1987. The third recital in the preamble merely states that 'in order to prevent speculation in the product covered by this regulation the latter's provisions should be introduced as a matter of urgency'. At best, that recital enables it to be understood why the regulation is immediately applicable. It does not state why the charge must affect traders who exported non-skimmed milk in the month prior to the adoption of the regulation.

13 That lack of information makes it impossible for the Court to review the extent to which the retroactive effect was justified by the objective of the regulation or whether the legitimate expectation of the traders in question was protected.

14 In those circumstances it must be declared that the regulation in dispute does not meet the requirement of stating reasons laid down by Article 190 of the EEC Treaty.

15 Therefore, the answer to be given to the national court should be that the second paragraph of Article 3 of Commission Regulation (EEC) No 744/87 of 16 March 1987 amending Regulation (EEC) No 805/86 introducing a charge on denatured skimmed-milk powder coming from Spain and derogating from Regulation (EEC) No 1378/86 as regards the accession compensatory amounts in trade with Spain is invalid in so far as it declares that the regulation is applicable with effect from 12 February 1987.

Costs

16 The costs incurred by the Greek 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 Tribunal Económico Administrative Central, Madrid, by orders of 2 October 1991, hereby rules:

The last paragraph of Article 3 of Commission Regulation (EEC) No 744/87 of 16 March 1987 amending Regulation (EEC) No 805/86 introducing a charge on denatured skimmed-milk powder coming from Spain and derogating from Regulation (EEC) No 1378/86 as regards the accession compensatory amounts in trade with Spain is invalid in so far as it declares that the regulation is applicable with effect from 12 February 1987.

Rodríguez Iglesias Joliet

Moitinho de Almeida Grévisse Edward

Delivered in open court in Luxembourg on 1 April 1993.

J.-G. Giraud G. C. Rodríguez Iglesias

Registrar President of the Fifth Chamber