OPINION OF MR ADVOCATE GENERAL JACOBS
delivered on 29 November 1991 *

My Lords,

1. Article 5c of Council Regulation No 804/68, which was inserted by Council Regulation No 856/84 of 31 March 1984 (Official Journal 1984 L 90, p. 10), instituted an additional levy on milk production, payable on quantities of milk exceeding a certain reference quantity ('quota'). Article 1 of Council Regulation No 857/84 of 31 March 1984 (Official Journal 1984 L 90, p. 13) fixed the amount of the levy, and Article 2 determined the size of the quotas to be allocated to each producer with reference to the quantity of milk produced in a specified year. Following the Court's judgments in Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321 and Case 170/86 *Von Deetzen* v *Hauptzollamt Hamburg-Jonas* [1988] ECR 2355, however, a new Article 3a was inserted in Regulation No 857/84 by Council Regulation No 764/89 of 20 March 1989 (Official Journal 1989 L 84, p. 2). The purpose of the new article was to enable a quota to be allocated to milk producers who had entered into a non-marketing or conversion undertaking under Council Regulation No 1078/77 of 17 May 1977 (Official Journal 1977 L 131, p. 1), and who, because they had not engaged in milk production during the relevant year, were not eligible for a quota on a normal basis.

2. Mr and Mrs Dent, who are the applicants in the main proceedings (hereafter 'the applicants'), are dairy farmers who farm a holding in Cumbria, England. On 31 January 1980, the Dents, who were then trading together in a partnership, applied for entry into the conversion scheme established by Regulation No 1078/77. Their application was accepted, and they accordingly undertook to cease milk production for a period of four years ending on 30 April 1984, in exchange for a premium. On 6 April 1980 their son Michael joined the partnership.

3. As a result of their participation in the conversion scheme, the applicants did not produce milk in a relevant year for the allocation of a quota under Article 2 of Regulation No 857/84. However the Dents were successful in their application for a quota on grounds of 'exceptional hardship', under paragraph 17 of Schedule 2 to the Dairy Produce Quotas Regulations 1984 (S. I. 1984 No 1047), a provision of national law which was intended to implement Article 4(1)(c) of Regulation 857/84. According to

* Original language: English.

Article 4(1)(c), Member States may, in connection with the application of Article 2:

'grant producers undertaking farming as their main occupation an additional reference quantity . . . '.

The applicants were accordingly allocated a reference quantity of 873 600 litres, which I shall call the 'hardship quota'; the quota was presumably awarded after the expiry of the conversion undertaking given by Mr and Mrs Dent. It is common ground that the hardship quota was awarded to the partnership of three persons consisting of Mr and Mrs Dent and their son.

4. As I have already mentioned, the new Article 3a of Regulation No 857/84 inserted by Regulation No 764/89 of 20 March 1989, which entered into force on 29 March 1989, made it possible for producers who had entered into a non-marketing or conversion undertaking to receive a special quota. On 27 June 1989, Mr Dent applied for such a quota to the Ministry of Agriculture, Fisheries and Food ('the Ministry'); his application was made on behalf of the family partnership, which, it will be recalled, now consisted of Mr and Mrs Dent together with their son. Pursuant to that application, on 25 August 1989 the Ministry awarded a quota of 965 693 litres to Mr Dent personally, under the first subparagraph of Article 3a(2) ('the special quota'). The total amount of the hardship quota was however deducted from that new award leaving a total additional amount of only 92 093 litres. That deduction was made pursuant to the second subparagraph of Article 3a(2), which provides that:

'Where the producer has obtained a reference quantity pursuant to Article 3, points 1 and 2, and/or Article 4(1)(b) and (c), the special reference quantity . . . shall be reduced by such quantity.'

I shall refer to that provision as the 'anti-cumulation rule'. In the course of the main proceedings the Ministry accepted that the special quota should have been awarded to Mr and Mrs Dent jointly, rather than to Mr Dent individually. The Ministry continued however to maintain that it was entitled to deduct the full amount of the hardship quota, pursuant to the anti-cumulation rule.

5. In the main proceedings, the applicants maintained that no such reduction should be made, on the ground that the hardship quota was obtained pursuant to the national regulations rather than 'pursuant to . . . Article 4(1)(b) and (c)'. The applicants submitted, furthermore, that the hardship quota was in any case obtained pursuant to Article 4(1)(c) alone, rather than pursuant to Article 4(1)(b) *and* (c), so that again the anti-cumulation rule did not apply. Finally, they argued that no reduction fell to be made because the hardship quota and the special quota were awarded to two different groups of persons, namely the partnership of three in the case

of the former, Mr and Mrs Dent alone in the case of the latter; or alternatively that only two-thirds of the hardship quota should be deducted, on the ground that that proportion only of the hardship quota was attributable to Mr and Mrs Dent, the recipients of the special quota.

6. The Queen's Bench Division of the High Court has accordingly referred two questions to the Court for a preliminary ruling:

(1) On the proper interpretation of the second subparagraph of Article 3a(2) of Council Regulation (EEC) No 857/84 of 31 March 1984 (as inserted by Council Regulation (EEC) No 764/89 of 20 March 1989), does the special reference quantity referred to in the first subparagraph of that paragraph fall to be reduced by the amount of a reference quantity obtained by the producer pursuant to provisions of national regulations (*in casu*, paragraph 17 of Schedule 2 to the Dairy Produce Quotas Regulations 1984) which implemented only Article 4(1)(c), and not Article 4(1)(b), of Regulation 857/84?

(2) On the proper interpretation of the said second subparagraph of Article 3a(2) of Regulation 857/84 (as inserted by Regulation 764/89), and having regard to the definition of 'producer' in Article 12(c) of Regulation 857/84, where a special reference quantity is awarded to two persons (*in casu*, a husband and wife) who farm their holding in partnership with a third person (*in casu*, their son), does that special reference quantity fall to be reduced by the amount of a reference quantity (or a proportion thereof) where that reference quantity was awarded in respect of the same holding and otherwise falls within the said subparagraph but was obtained by the three persons as a partnership?

The first question

7. From the applicants' written observations submitted to the Court, it appears that they have abandoned the argument that the hardship quota was awarded pursuant to paragraph 17 of Schedule 2 to the Dairy Produce Quotas Regulations 1984 rather than pursuant to Article 4(1)(c) of Council Regulation No 857/84. It is clear in fact from the wording of paragraph 17 that the latter provision is intended to implement Article 4(1)(c) of Regulation No 857/84; thus, if the quota was awarded pursuant to paragraph 17, it is plain that it was awarded pursuant, equally, to Article 4(1)(c).

8. The applicants still maintain however that the hardship quota was awarded pursuant to Article 4(1)(c) rather than 'pursuant to . . . Article 4(1)(b) and (c)', and hence that the anti-cumulation rule is not applicable. The applicants contend therefore that the 'and' in the expression 'Article 4(1)(b) and (c)' is to be read conjunctively rather than disjunctively. It does not seem to me however that that is a possible reading of the legislation. It is to be noted that the quotas awarded pursuant to points (b) and (c) of Article 4(1) are distinct quotas, awarded in distinct sets of circumstances.

Strictly speaking, therefore, it is not possible for a single quota to be obtained pursuant to both provisions, even if a single producer could obtain quotas pursuant to both. Furthermore, as the United Kingdom Government points out in its written observations submitted to the Court, implementation of points (b) and (c) of Article 4(1) is in each case optional for the Member States. It is however clear that the anti-cumulation rule is still intended to apply, even where a Member State has chosen to implement only one of those options (and similarly for the options in points 1 and 2 of Article 3). In my view, therefore, the reference, in the anti-cumulation rule, to producers who have obtained a quota pursuant to 'Article 4(1)(b) and (c)' is merely an elliptical way of referring both to producers who have obtained a quota pursuant to Article 4(1)(b) and to those who have obtained a quota pursuant to Article 4(1)(c). Moreover, as the United Kingdom Government points out in its written observations, the term 'and' is similarly used elsewhere in Council Regulation No 847/84 in order to link two paragraphs or subparagraphs within the same article, whereas 'and/or' is used when linking two or more articles.

9. It follows, therefore, that the first question referred by the High Court is to be answered in the affirmative. I would add that that conclusion is plainly in accordance with the purposes of the legislation. There could be no justification, in my view, for allowing a producer in circumstances such as those of the present case to benefit both from a hardship quota and from a special quota.

The second question

10. As we have seen, the anti-cumulation rule can apply, even where the hardship quota was awarded pursuant to national legislation implementing Article 4(1)(c) only of Regulation No 857/84. The next question which must be considered is whether the rule still applies where the authorities responsible for awarding the special quota purported to make the award to a group of two persons, rather than to the group of three persons who received the previous quota. It will be recalled that in the present case, the hardship quota was awarded to the partnership of three (the applicants together with their son), whereas the Ministry purported to award the special quota to Mr and Mrs Dent only.

11. The applicants submit that, since the special quota was awarded to the partnership of two, whereas the hardship quota was awarded to the partnership of three, the two amounts of quota were awarded to different 'producers' within the meaning of Article 12(c) of Regulation No 857/84. It follows, in their submission, that no amount of the hardship quota falls to be deducted from the special quota. Alternatively, they argue that only two-thirds of the hardship quota falls to be deducted, on the ground that only that portion is attributable to the recipients of the special quota.

12. In its written observations, the United Kingdom Government suggests that, although the special quota was awarded in name to Mr and Mrs Dent only, it was in

substance awarded to the group of persons farming the holding at the time of the award, and must hence be regarded as belonging to the partnership of three. Even if the two quotas are regarded as having been awarded to different groups, the United Kingdom submits that, since the same group of persons were farming the holding on each occasion, the full amount of the hardship quota falls to be deducted from the special quota. In response to a written question put by the Court, however, the United Kingdom confirmed that, in its view, the true position was that both quotas should be regarded as belonging in law to the group consisting of Mr and Mrs Dent and their son.

13. A quota cannot in my view be treated as awarded to one group of persons for the purposes of applying the anti-cumulation rule, but for other purposes as belonging to a different group of persons. If Michael Dent were indeed treated under national law as having no proprietary interest in the special quota, it is difficult to see why his interest in the hardship quota should be taken into account in applying the rule. However, it seems to me that in the present case both the hardship quota and the special quota must be regarded as having been awarded to the three persons farming the holding at the time each quota was awarded.

14. Article 12(c) of Regulation No 857/84 defines a producer as 'a natural or legal person or group of natural or legal persons farming a holding located within the geographical territory of the Community . . .'. It is natural therefore to suppose that a quota must be awarded to the group of persons currently farming the holding. The question must however be considered whether that supposition remains valid in the case of the award of a special quota pursuant to Article 3a(1) of the regulation. Article 3a(1) provides that producers:

> '— whose period of non-marketing or conversion, pursuant to the undertaking given under Regulation (EEC) No 1078/77, expires after 31 December 1983 . . .
>
> shall receive provisionally, if they so request . . . , a special reference quantity . . . '.

The wording of that provision might appear to suggest that a special quota can only be awarded to those producers who have in fact given an undertaking under Regulation No 1078/77. Thus, in the present case, it was Mr and Mrs Dent who gave the relevant undertaking, since their son joined the partnership only after the undertaking had been given. It might therefore be supposed that the special quota should be awarded to them, as opposed to the partnership of three which was farming the holding at the time of the award, and it appears that the respondent Ministry took such a view in the course of the main proceedings.

15. It should however be noted that, after Michael Dent joined the partnership, it would still have been a breach of the undertaking given by Mr and Mrs Dent if the partnership had begun to produce milk before the end of the conversion period. Thus, Article 3(2) of Regulation No 1078/77 provides as follows:

'The grant of the conversion premium shall be conditional upon an undertaking by the producer that:

(a) during the conversion period, neither milk nor milk products from his holding will be disposed of, whether for a consideration or free of charge;

(b) from the date on which his application is lodged until the end of the conversion period, he will comply with the conditions laid down in the first subparagraph of Article 2(2)(b);

...'.

The conditions laid down in the first subparagraph of Article 2(2)(b) include:

'— he will not allow his holding or any part thereof to be used by others for dairy farming'.

The purpose of the award of a special quota under Article 3a(1) of Regulation No 857/84 is to enable a quota to be allocated to producers who were ineligible for a quota pursuant to Article 2 of the regulation because they were bound by a non-marketing or conversion undertaking. In my view, therefore, the benefit of Article 3a(1) must be taken to extend to producers who were similarly constrained, as a result of such undertakings, whether or not they were parties to the undertakings at the time the undertakings were given, and whether or not they would be personally liable under national law for any breach of such an undertaking. It is clear that the effect of a conversion undertaking given by the members of a partnership is not affected by, for instance, a change in the composition of the partnership in the course of the conversion period. It seems to me therefore that, in such a case, the 'producer' who is entitled to the benefit of Article 3a(1) is the group of persons farming the holding at the time the special quota is awarded, and who as a result of the undertaking have been deprived of the opportunity of receiving a quota under Article 2.

16. It seems to me, moreover, that the position would be the same, even in the case of a partner who joined the partnership after the end of the conversion period. For in that case, equally, the new partner is affected by the conversion undertaking, by virtue of having joined a partnership which has been deprived of quota as a result of the giving of the undertaking.

17. I conclude, therefore, that even in the case of a special quota, there is no reason for departing from the rule that the quota is awarded to the person or group of persons farming the holding at the time of the award. It follows that, when a special quota was allocated in response to Mr Dent's application, the quota should have been awarded to the partnership of three, and not merely to the two persons who were originally parties to the conversion undertaking.

18. Both the hardship quota and the special quota must accordingly be treated as belonging in law to the same group of persons, namely the partnership of three consisting of Mr and Mrs Dent and their son, and hence to the same 'producer' within the meaning of Article 12(c) of Regulation No 857/84. It follows therefore that the special quota awarded to the partnership of three falls to be reduced, pursuant to the anti-cumulation rule, by the amount of the quota previously awarded to the same producer. Again, that result is in my view fully consistent with the purposes of the legislation, and any contrary view would result in a wholly artificial benefit to the producers.

Conclusion

19. I am accordingly of the opinion that the Court should answer the questions referred by the High Court as follows:

1. The second subparagraph of Article 3a(2) of Council Regulation No 857/84 of 31 March 1984 must be interpreted as meaning that where a producer has obtained a reference quantity pursuant to national legislation implementing Article 4(1)(c) of that regulation, that reference quantity is to be deducted from a special reference quantity obtained pursuant to Article 3a(1).

2. Where a holding is farmed by a partnership, a special reference quantity allocated under Article 3a(1) of Regulation No 857/84 must be granted to the partnership as it is composed at the date when the quantity is allocated. Where the competent authorities have purported to allocate the quantity to certain individual partners rather than to the partnership as a whole, that fact cannot be relied upon to avoid deduction, pursuant to the second subparagraph of Article 3a(2), of the full amount of the reference quantity previously allocated to the partnership under Article 4(1)(c) of that regulation.