JUDGMENT OF THE COURT
2 February 1988 *

In Case 61/86

United Kingdom of Great Britain and Northern Ireland, represented by B. E. McHenry, of the Treasury Solicitor's Department, acting as Agent, assisted by Gerald Barling, Barrister, with an address for service in Luxembourg at the British Embassy,

applicant,

v

Commission of the European Communities, represented by D. Grant Lawrence, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

supported by

French Republic, represented by Gilbert Guillaume, Director of Legal Affairs at the Ministry of Foreign Affairs, acting as Agent, assisted by Ronny Abraham, Deputy Director of the Legal Affairs Directorate at the Ministry of Foreign Affairs, with an address for service in Luxembourg at the French Embassy,

intervener,

APPLICATION for a declaration that Commission Regulation No 3451/85 of 6 December 1985 (Official Journal 1985, L 328, p. 23) and Commission Regulation No 9/86 of 3 January 1986 (Official Journal 1986, L 2, p. 14), amending Commission Regulation No 1633/84 laying down rules for applying the variable slaughter premium for sheep, are void in part,

* Language of the Case: English.

THE COURT

composed of: G. Bosco, President of Chamber, acting as President, O. Due and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, K. Bahlmann, R. Joliet and F. Schockweiler, Judges,

Advocate General: C. O. Lenz
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 3 June 1987 at which the French Republic was represented by Bernard Botte, attaché d'administration centrale at the Ministry of Foreign Affairs, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 21 October 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 4 March 1986 the United Kingdom of Great Britain and Northern Ireland brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that Commission Regulations Nos 3451/85 of 6 December 1985 (Official Journal 1985, L 328, p. 23) and 9/86 of 3 January 1986 (Official Journal 1986, L 2, p. 14), each amending Commission Regulation No 1633/84 laying down rules for applying the variable slaughter premium for sheep, are void in so far as they require clawback to be charged on departure from region 5 in respect of animals and products for which a variable slaughter premium has not been and cannot be granted.

2 By an order of 18 June 1986 the Court allowed the intervention of the French Republic in support of the Commission's conclusions.

3 In support of its application the United Kingdom relies on the following submissions:

(i) Lack of competence on the part of the Commission, inasmuch as Article 9 (3) of Council Regulation No 1837/80 of 27 June 1980 on the common organization of the market in sheepmeat and goatmeat (Official Journal 1980, L 183, p. 1), as amended by Council Regulation No 871/84 of 31 March 1984 (Official Journal 1984, L 90, p. 35), empowers the Commission solely to prescribe the levying of a charge, upon exportation, of an amount corresponding exactly to that of the variable premium actually granted in respect of the animal exported;

(ii) Misuse of powers, inasmuch as the Commission, under the pretext of offsetting the effects of the variable slaughter premium for lambs, intended to restrict the level of exports of sheepmeat from the United Kingdom to France to a particular level;

(iii) Breach of the fundamental principles relating to the free movement of goods, inasmuch as the imposition of a charge upon exportation, in so far as it exceeds the mere recovery of a premium previously paid, constitutes a charge having an effect equivalent to a customs duty and consequently has the effect in fact of a quantitative restriction on exports;

(iv) Inadequacy of the statement of reasons, inasmuch as the Commission failed to explain the reasons justifying from an economic point of view the adoption of the measures in question.

4 In its first submission, the United Kingdom states that Article 9 (4) of Regulation No 1837/80, as amended by Regulation No 871/84, permits the Commission to adopt only the measures provided for in Article 9 (3) which requires the Commission to take the necessary measures for charging on departure from region 5 'an amount equivalent to the premium actually granted'. According to its wording, this provision empowers the Commission only to require the levying of a charge, upon exportation, in respect of animals for which variable slaughter premium has been paid, in an amount corresponding exactly to that of the premium actually paid in respect of the animals. By requiring, in the case of the

export of animals in respect of which the variable premium has not been paid, that an amount determined on the basis of that premium be charged, the Commission exceeded its powers.

5 The Commission, on the other hand, considers that the provision enables it to impose the charge on all animals of the ovine species in order to offset adequately all the effects of the premium which also affect the price of animals which have not benefited from it directly. In that respect it relies on that part of Article 9 (3) which provides for the charge to be levied 'on all products as referred to in Article 1 (a) and (c)'.

6 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the submissions and arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 As regards the wording of Article 9 (3), it must be stated that the words used are not completely clear as regards the scope of the power conferred on the Commission. It is, moreover, accepted by the Commission that the phrase on which it relies in support of its contention must not be taken literally since it does not in any way claim to charge 'clawback' on all the products as referred to in Article 1 (a) and (c). As the wording of the provision does not therefore clearly disclose an intention to confer on the Commission a wide discretion to determine the animals on which clawback is to be charged, it is necessary, in order to determine its meaning and scope, to refer to the fundamental objectives pursued by any common organization of the market, taking into account the specific requirements and limitations of the particular organization in question.

8 In that connection it should be noted in the first place that according to Article 43 (3) (b) of the EEC Treaty any common organization of the market 'ensures conditions for trade within the Community similar to those existing in a national market'.

9 In order to attain that objective any common organization of the market must essentially ensure the free movement of products and this necessarily involves the abolition of all obstacles which might impede such movement. As the Court has held, in particular in its judgment of 20 April 1978 in Joined Cases 80 and 81/77 *Les Commissionnaires Réunis* and *Les fils de Henri Ramel* v *Receveur des douanes* [1978] ECR 927, paragraph 24 of the decision), the abolition between Member States of customs duties and charges having equivalent effect constitutes a fundamental principle of the common market applicable to all products and goods with the result that any possible exception, which in any event must be strictly construed, must be clearly laid down and the extensive powers which may be conferred on the Commission in the conduct of the common agricultural policy must be exercised from the perspective of the unity of the market to the exclusion of any measure compromising the abolition between Member States of customs duties and quantitative restrictions or charges or measures having equivalent effect (paragraph 35 of the decision).

10 It must be stated that any charging of a sum of money, on exportation to another Member State, constitutes in principle, no matter how that charge is described, an obstacle to the free movement of products within the common market.

11 Nevertheless, the charging of such a sum may be justified in an organization of the market which has not yet been completely unified where it is intended to offset inequalities arising from the fact that the common organization of the market has not been fully achieved, in order to enable products covered by the organization to circulate on equal terms without thereby artificially distorting competition between producers in different regions. That was accepted by the Court in its judgment of 15 September 1982 in Case 106/81 *Kind* v *EEC* [1982] ECR 2885, when it held that the charge on exports provided for by Article 9 (3) of Regulation No 1837/80 was not to be regarded as a charge having an effect equivalent to a customs duty in so far as it was inseparable from the intervention system which was constituted by payment of the variable slaughter premium and which was intended to offset exactly the effects of the slaughter premium and thereby to enable products from the Member States or regions in which the premium was paid to be exported to other Member States without disturbing their markets.

12 The common organization of the market in sheepmeat and goatmeat established by Regulation No 1837/80 has still not brought about the complete integration of the different regional markets and is still in the process of gradual development

into a single market. Although Regulation No 871/84 abolished the separate reference price for each of the six regions recognized by this common organization of the market, none the less differences between the various regions still remain at the present time, the most important of which is the fact that one of the market support measures, namely the variable slaughter premium, is restricted to a single region, that is to say region 5 (Great Britain). In that region the premium exists side by side with the annual premium provided for in all the regions in order to compensate producers of sheepmeat for loss of income during a marketing year. It must nevertheless be noted that the variable premium is not added to the annual premium paid at the end of the year but is deducted from it in accordance with certain detailed arrangements so that it may be regarded as a kind of advance payment received, when the animal is slaughtered, on account of the general premium paid after the end of the year.

13 Although at first it was for the United Kingdom to determine the animals which could benefit from the variable premium and although under that system it was granted in respect of the majority of animals of the ovine species, the Commission, by Regulations Nos 3451/85 and 9/86, limited the possibility of granting the premium in fact exclusively to lambs satisfying certain conditions.

14 The incomplete state of such a common organization of the market, which is due in particular to the fact that a particular support measure is reserved for producers of a specific region and is liable to improve their competitive position, may call for corrective measures to restore equality between producers in all regions so far as their competitive position is concerned. Such measures, in so far as they constitute obstacles to the free movement of goods to which any common organization of the market must aspire, are necessarily of an exceptional nature and therefore their scope must be strictly limited to their specific objective in the context of bringing about market conditions which come closest to those of an internal market.

15 Consequently, a provision which prescribes in such circumstances the levying of a charge upon exportation must be interpreted narrowly. As no intention to the contrary clearly emerges from the wording of or the grounds underlying Article 9 (3), that provision cannot be given the wide interpretation proposed by the Commission and must be understood as prescribing solely the recovery of the amount of premium actually paid in respect of an animal when it leaves the region in which the premium was granted.

16 It follows that, by providing in Regulations Nos 3451/85 and 9/86 that an amount corresponding to a fraction of the variable slaughter premium paid in respect of lambs eligible for such premium is to be charged on carcasses of sheep, when they leave region 5, if they are the carcasses of animals other than those which may qualify for the premium, the Commission exceeded the powers conferred on it by Article 9 (3).

17 Consequently, without there being any need to consider the other submissions contained in the application, the United Kingdom's application must be granted and the provisions of the two contested regulations providing for a charge to be levied on exports to another Member State of animals of the ovine species and products thereof for which a variable slaughter premium has not been and cannot be paid must be declared void.

Costs

18 According to Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has failed in its submissions, it must be ordered to pay the costs save those of the French Republic, as intervener, which must be borne by the latter.

On those grounds,

THE COURT

hereby:

(1) Declares that Commission Regulation No 3451/85 of 6 December 1985 and Commission Regulation No 9/86 of 3 January 1986, each amending Commission Regulation No 1633/84 laying down rules for applying the variable slaughter premium for sheep, are void in so far as they require clawback to be charged, on departure from region 5, on animals of the ovine

species and products thereof for which variable slaughter premium has not been and cannot be paid;

(2) Orders the Commission to pay the costs save those of the French Republic, which shall be borne by the latter.

Bosco Due Rodríguez Iglesias

Koopmans Bahlmann Joliet Schockweiler

Delivered in open court in Luxembourg on 2 February 1988.

P. Heim
Registrar

A. J. Mackenzie Stuart
President