JUDGMENT OF THE COURT (Third Chamber)
14 November 1985 *

In Case 275/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry] for a preliminary ruling in the proceedings pending before that court between

Coöperatieve Melkproducentenbedrijven 'Noord-Nederland' BA (Frico),

plaintiff,

v

Produktschap voor Zuivel [Dairy Board],

defendant,

on the interpretation of the provisions of Community law governing the grant of monetary compensatory amounts for butter supplied for sale during 'butter-buying cruises',

THE COURT (Third Chamber)

composed of: U. Everling, President of the Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of:

the cooperative known as 'Frico', by C. P. van Eeghen and C. R. E. M. van Sasse van Ysselt, of the Brussels Bar,

the Government of the Netherlands, by I. Verkade, acting as Agent,

the Commission of the European Communities, by R. C. Fischer, its Legal Adviser, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 10 October 1985,

gives the following

* Language of the Case: Dutch.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By a judgment of 26 October 1984, which was received at the Court on 20 November 1984, the College van Beroep voor het Bedrijfsleven referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the provisions of Community law governing the grant of monetary compensatory amounts for butter supplied for sale during 'butter-buying cruises'.

2 The question was raised in the context of litigation between Coöperatieve Melkproducentenbedrijven 'Noord-Nederland' BA (Frico), which is one of the regular suppliers of butter for sale during the 'butter-buying cruises' which leave from ports in the Netherlands, and the Produktschap voor Zuivel (a body constituted under Netherlands public law to organize the national market in milk products, hereinafter referred to as 'the Produktschap').

3 'Butter-buying cruises' are defined by the national court seeking the preliminary ruling as: 'Short excursions by ship lasting only a few hours which start from and return to harbours of Member States of the European Community, in this case the Netherlands. During the trips the vessels sail for a short time outside territorial waters. Their principal attraction is that passengers can purchase a number of goods free of customs and excise duties and other charges.'

4 Frico, on being invited early in 1983 to tender for the supply of butter to an undertaking organizing such cruises, asked the Produktschap whether butter supplied to vessels used for 'butter-buying cruises' qualified for monetary compensatory amounts (MCAs).

5 The Produktschap replied in the affirmative, and accordingly paid Frico MCAs during the first four months of 1983. However, early in May 1983, the Netherlands Ministry of Agriculture and Fisheries informed the Produktschap that the question whether MCAs could be granted for supplies intended for sale on

board vessels used in 'butter-buying cruises' was the subject of consultation between the Ministry of Finance and the Commission. The Produktschap was asked not to pay any further MCAs in respect of such supplies.

6 The Commission gave an unfavourable opinion on the matter, and the Netherlands Government then asked the Produktschap on 20 June 1983 to reject any applications, both pending and new, for the grant of MCAs. Consequently, at the end of June 1983 the Produktschap, the defendant in the main proceedings, notified Frico that MCAs would no longer be granted in respect of butter supplied to ships making 'butter-buying cruises'.

7 By letter of 14 July 1983 the plaintiff demanded payment of MCAs for goods already supplied to 'butter ships', in respect of which the MCAs had already been deducted from the price of the butter supplied. The request was rejected by the Produktschap.

8 The plaintiff in the main proceedings challenged that decision before the College van Beroep, arguing that the decision was incompatible both with the Community provisions in force and with a number of general legal principles such as the principles of sound administration, legal certainty and legitimate expectation.

9 The first of those arguments led the national court to consider the interpretation of the relevant Community law and to refer to the Court of Justice the following preliminary question:

'Must Commission Regulation No 2730/79, and in particular Article 17 thereof, and Commission Regulation No 1371/81, read together with each other and with any other Community provisions, be interpreted as meaning that no monetary compensatory amounts may be granted in respect of the export of butter that is sold to passengers during "butter-buying cruises" as defined more precisely in the present judgment?'

10 Frico maintains that the relevant Community legislation does not preclude payment of MCAs for the export of butter sold to passengers during 'butter-buying cruises'. Article 17 of Commission Regulation No 2730/79 of 29 November 1979 laying down common detailed rules for the application of the system of export refunds on agricultural products (Official Journal L 317, p. 1) provides as follows: 'No refund shall be granted on products sold or distributed on

board ship which are liable to be reintroduced into the Community free of duties under Regulation (EEC) No 1818/75.' However, Commission Regulation No 1371/81 of 19 May 1981 laying down detailed rules for the administrative application of monetary compensatory amounts (Official Journal L 138, p. 1) does not contain any analogous provision. Frico therefore claims that the principle that legislation shall not have retroactive effect and the principles of legal certainty, equal treatment and legitimate expectation demand that products sold on board ship, including vessels which make 'butter-buying cruises', shall be held to qualify for the grant of MCAs.

11 The Netherlands Government takes the view that even if it may appear contrary to the purpose of the MCA scheme to grant compensatory payments for exports of products which are positively known to be destined for re-importation a few hours later into the same Member State under the duty-free scheme for travellers, there is nonetheless an entitlement to receive MCAs in respect of agricultural products sold on board ship, including vessels which make 'butter-buying cruises'. That entitlement is due to the fact that Regulation No 1371/81, mentioned above, does not lay down any condition as to the destination of the agricultural products and does not contain any express derogation regarding products supplied to vessels making 'butter-buying cruises'.

12 The Commission contends that the question referred by the national court should be answered in the affirmative. In the first place, supplying butter for 'butter-buying cruises' does not amount to 'export' either within the meaning of Article 1 of Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition 1971 (I), p. 257), or within the meaning of Article 1 (2) (c) of Regulation No 1371/81, mentioned above. Nor is it possible, according to the Commission, for such supplies of butter to be assimilated to exports from the Community under Article 5 of Regulation No 2730/79, which refers exclusively to the supply of products intended for consumption on board during the voyage. In the second place, it is wholly incompatible with the aims of the MCA scheme to grant MCAs when butter is supplied in those circumstances, because the supplies are delivered wholly within the market of the Member State in question and have no effect on trade within the Community or with non-member countries. Lastly, the Commission contends that the reference to Article 17 of Regulation No 2730/79 (mentioned above) is in any event irrelevant as far as supplies for 'butter-buying cruises' are concerned, since they cannot be imported duty-free.

13 It should be noted, in the first instance, that Regulation No 1371/81 provides in Article 2 that 'monetary compensatory amounts shall be applied to products being imported or exported' and in Article 1 (2) (c) defines 'export' as meaning 'the dispatch, whether definitive or temporary, of products ...

— from one Member State to another; and

— from a Member State to places outside the territory of the Community.'

14 However, the very definition of 'butter-buying cruises' given by the national court indicates that butter sold during such trips is not dispatched either to another Member State or to a non-member country. On the contrary, it is intended for immediate reintroduction into the territory of the Member State from which it was dispatched. It follows that the butter is not 'exported' within the meaning of the abovementioned provisions, which thus preclude payment of MCAs in those circumstances.

15 In the second instance, it is important to point out that although Article 1 (2) (c) of Regulation No 1371/81 adds that 'The supplies referred to in Article 5 of Regulation (EEC) No 2730/79 shall also be treated as exports', Article 5 itself provides as follows:

'(1) For the purposes of this regulation the following shall be treated as exports from the Community:

(a) supplies for victualling within the Community:

— seagoing vessels ...'

The term 'victualling' is quite unambiguous and, as the seventh recital in the preamble to Regulation No 2730/79 indicates, refers only to products taken on board ship as supplies for consumption on board — not, as in the case of 'butter-buying cruises', the supply of products intended to be sold to passengers and brought back on shore by them. It follows that Article 5 of Regulation No 2730/79 likewise cannot afford a basis for granting MCAs for butter supplied for sale during 'butter-buying cruises'.

16 That conclusion is confirmed by the very purpose of the MCA scheme, as expounded on several occasions by the Court in its judgments, in particular the judgment of 12 April 1984 (Case 281/82 *Unifrex* v *Commission* [1984] ECR 1969); there, the Court held that 'the establishment of compensatory amounts was intended to maintain the single-price system, the basis of the present organization of the markets, thus avoiding a disorganization of the system of intervention prices and maintaining normal patterns of trade in agricultural products both between the Member States and with non-member countries. The compensatory amounts can be applied therefore only in so far as the monetary measures referred to involve disturbances in trade in agricultural products.' However, it is clear that in the context of 'butter-buying cruises' the grant of MCAs would not have the effect of avoiding disturbances in trade in agricultural products due to monetary phenomena, because the products in question do not come into circulation either in intra-Community trade or in trade with non-member countries.

17 It should be noted lastly that the fact that Article 17 of Regulation No 2730/79 expressly precluded payment of export refunds in respect of agricultural products sold or distributed on board ship which were liable to be reintroduced thereafter into the Community duty-free under Regulation No 1818/75 does not invalidate the reasoning set out above. In the first place, that provision deals only with the export refund scheme for agricultural products, and is not relevant to the question raised by the national court, which is concerned exclusively with the grant of MCAs. Secondly, it should be observed that, contrary to Frico's assertions, the very wording of Article 17 indicates that the Community legislature intended to withhold export refunds from operations involving products which were not genuinely exported. The same considerations point to the same conclusion as far as the grant of MCAs is concerned.

18 It follows from the foregoing that the answer to be given to the question raised by the national court is that Articles 1 and 2 of Commission Regulation No 1371/81 of 19 May 1981 laying down detailed rules for the administrative application of monetary compensatory amounts and Article 5 of Commission Regulation No 2730/79 of 29 November 1979 laying down common detailed rules for the application of the system of export refunds on agricultural products must be

interpreted to mean that no monetary compensatory amount may be granted in respect of butter supplied for sale to passengers during short cruises at sea which start from, and return to, one and the same Member State.

Costs

19 The costs incurred by the Government of the Netherlands and the Commission of the European Communities, which have 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 (Third Chamber),

in answer to the question referred to it by the College van Beroep voor het Bedrijfsleven by judgment of 26 October 1984, hereby rules as follows:

Articles 1 and 2 of Commission Regulation No 1371/81 of 19 May 1981 laying down detailed rules for the administrative application of monetary compensatory amounts and Article 5 of Commission Regulation No 2730/79 of 29 November 1979 laying down common detailed rules for the application of the system of export refunds on agricultural products must be interpreted to mean that no monetary compensatory amount may be granted in respect of butter supplied for sale to passengers during short cruises at sea which start from, and return to, one and the same Member State.

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 14 November 1985.

P. Heim
Registrar

U. Everling
President of the Third Chamber