JUDGMENT OF THE COURT (First Chamber)
29 September 1998 *

In Case C-263/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice, Queen's Bench Division (England and Wales), for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Intervention Board for Agricultural Produce,

ex parte **First City Trading Ltd and Others,**

on the interpretation of Articles 23 and 33 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1) and on the validity of Commission Decision 96/239/EC of 27 March 1996 on emergency measures to protect against bovine spongiform encephalopathy (OJ 1996 L 78, p. 47) and of Commission Regulation (EC) No 773/96 of 26 April 1996 laying down special measures derogating from Regulations (EEC) No 3665/87, (EEC) No 3719/88 and (EEC) No 1964/82 in the beef and veal sector (OJ 1996 L 104, p. 19),

* Language of the case: English.

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, P. Jann and L. Sevón (Rapporteur), Judges,

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— the United Kingdom Government, by Lindsey Nicoll, of the Treasury Solicitor's Department, assisted by David Anderson, Barrister,

— the Commission of the European Communities, by James Macdonald Flett, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of First City Trading Ltd and Others, represented by Nicholas Green, Barrister, of the United Kingdom Government, represented by David Anderson, and of the Commission, represented by James Macdonald Flett, at the hearing on 26 March 1998,

after hearing the Opinion of the Advocate General at the sitting on 14 May 1998,

gives the following

Judgment

1 By order of 26 March 1997, received at the Court on 21 July 1997, the High Court of Justice, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty four questions on the interpretation of Articles 23 and 33 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1) and on the validity of Commission Decision 96/239/EC of 27 March 1996 on emergency measures to protect against bovine spongiform encephalopathy (OJ 1996 L 78, p. 47) and of Commission Regulation (EC) No 773/96 of 26 April 1996 laying down special measures derogating from Regulations (EEC) No 3665/87, (EEC) No 3719/88 and (EEC) No 1964/82 in the beef and veal sector (OJ 1996 L 104, p. 19).

2 Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), in the version thereof resulting from Council Regulation (EC) No 3290/94 of 22 December 1994 on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations (OJ 1994 L 349, p. 105, at p. 146), provides in Article 13(1) that, to the extent necessary to enable beef and veal products to be exported, the difference between world market prices and prices in the Community may be covered by export refunds. According to Article 13(3), such refunds may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.

3 Article 13(9) of Regulation No 805/68, as amended by Regulation No 3290/94, provides as follows:

'The refund shall be paid upon proof that:

...

— the products have been exported from the Community, and

— in the case of a differentiated refund the products have reached the destination indicated on the licence or another destination for which the refund was fixed ...'

4 Article 5 of Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products (OJ 1980 L 62, p. 5) provides: 'An amount equal to the export refund shall, at the request of the party concerned, be paid as soon as the products or goods have been brought under the customs warehousing or free zone procedure with a view to their being exported within a set time limit.' Under Article 6 of that regulation, security is to be lodged in a sum equal to the amount paid, plus an additional amount. Without prejudice to cases of *force majeure*, that security is to be wholly or partially forfeited in cases where reimbursement has not been made when export has not taken place within the period prescribed or if there proves to be no right to the export refund or if there was a right to a smaller refund.

5 Regulation No 3665/87 lays down detailed rules concerning payment of export refunds on agricultural products.

6 Article 5(1) of that regulation provides that, in the specific circumstances therein set out, payment of the differentiated or non-differentiated refund is to be conditional not only on the product having left the customs territory of the Community but also — save where it has perished in transit as a result of *force majeure* — on its having been imported into a third country and, where appropriate, into a specific third country within 12 months following the date of acceptance of the export declaration.

7 Articles 16 to 18 of Regulation No 3665/87, in the version thereof resulting from Commission Regulation (EEC) No 354/90 of 9 February 1990 (OJ 1990 L 38, p. 34), lay down additional conditions for products giving rise to differentiated refunds, particularly as regards proof of completion of the formalities for release for consumption in the third country concerned.

8 Article 23(1) of Regulation No 3665/87, which applies to advances on refunds for direct exports, provides as follows:

'Where the amount advanced is greater than the amount actually due in respect of the relevant export operation or an equivalent export operation, the exporter shall repay the difference between the two amounts plus 15% of such difference.

Where, however, by reason of *force majeure*:

— the proof to be furnished under this Regulation in order to qualify for the refund cannot be produced, or

— the product reaches a destination other than that for which the advance was calculated,

the additional 15% shall not be charged.'

9 Article 33 of Regulation No 3665/87, as amended by Commission Regulation (EEC) No 1615/90 of 15 June 1990 (OJ 1990 L 152, p. 33), which applies to advances on refunds where goods are processed or stored prior to export, is in terms analogous to those of Article 23. It provides, in the second subparagraph of paragraph (1), that where the amount due for the quantity exported is less than that paid in advance, the operator is to pay the difference between those two amounts, plus 20%. However, in cases of *force majeure*, the 20% increase is not applicable.

10 By Decision 96/239, the Commission prohibited, *inter alia*, exports of meat of bovine animals from the United Kingdom to the other Member States or third countries.

11 The Commission adopted measures relating to uncompleted export operations by Regulation No 773/96, as last amended by Regulation (EC) No 1349/96 of 11 July 1996 (OJ 1996 L 174, p. 13).

12 The sixth and seventh recitals in the preamble to Regulation No 773/96 are in the following terms:

'Whereas Commission Decision 96/239/EC of 27 March 1996 on emergency measures to protect against bovine spongiform encephalopathy, *inter alia*, prohibits exports of meat of bovine animals to third countries from the United Kingdom; whereas, furthermore, the health measures adopted by the authorities of certain third countries against Community exports of meat of bovine animals are having serious economic effects on Community exporters; whereas the resulting situation has seriously affected the possibilities of exporting under the conditions laid down by Regulations (EEC) No 565/80, (EEC) No 3665/87, (EEC) No 3719/88 and (EEC) No 1964/82;

Whereas, therefore, these negative consequences should be limited by adopting special measures and extending certain of the deadlines laid down by the rules on refunds in order to permit the regularisation of export operations which have not been completed because of the circumstances described'.

13 Article 3 of Regulation No 773/96, as amended by Regulation No 1349/96, provides *inter alia* that the increases of 15% and 20% referred to in Article 23(1) and the second subparagraph of Article 33(1) respectively of Regulation No 3665/87 are not applicable to exports carried out under licences issued by 31 March 1996, provided that the customs formalities for release for consumption in the third country concerned were carried out after 20 March 1996.

14 Article 4(1) and (2) of Regulation No 773/96, in the version thereof resulting from Regulation No 1349/96, provides:

'1. At the request of the exporter, for products for which by 31 March 1996:

— customs export formalities were completed but which were released back into free circulation in the United Kingdom because of health measures adopted by a third country, the exporter shall repay any refund paid in advance and the securities relating to the operations shall be released,

— customs export formalities were completed in the United Kingdom but which have not yet left the customs territory of the Community, the export declaration and the export licence shall be cancelled, the exporter shall repay any refund paid in advance and the securities relating to the operations shall be released,

— customs export formalities were completed but which have been destroyed by a third country as a result of measures adopted by it in relation to BSE, the exporter shall repay any refund paid in advance and, subject to the presentation of evidence of destruction, the securities relating to the operations shall be released,

— customs export formalities were completed but which have been returned to the customs territory of the Community and destroyed by the receiving Member State as a result of measures adopted by it in relation to BSE, the exporter shall repay any refund paid in advance and, subject to the presentation of evidence of destruction, the securities relating to the operations shall be released.

2. At the request of the exporter, for products placed under one of the arrangements referred to in Articles 4 and 5 of Regulation (EEC) No 565/80 in the United Kingdom by 31 March 1996 but which are not covered by an export declaration, the export licence shall be cancelled, the exporter shall repay the refund paid in advance and the securities lodged shall be released.'

15 According to the order for reference, First City Trading Ltd ('FCTL') and Meatal Supplies Ltd ('Meatal'), two of the applicants in the main proceedings, are engaged in the export of beef from the United Kingdom. On 27 March 1996, when the ban imposed by the Commission came into effect, FCTL and Meatal were in the process of exporting 648 200 kg of beef, of which 615 200 kg was in the name of FCTL and 33 000 kg was in the name of Meatal. Approximately 70% of the FCTL beef (432 921 kg) and all of the Meatal beef left the territory of the United Kingdom shortly before 27 March 1996 and was in transit on that date. That beef was subsequently repatriated to the United Kingdom. The remaining 30% of the FCTL beef (182 279 kg) never left the territory of the United Kingdom and was not permitted to do so after 27 March 1996. The applicants in the main proceedings returned the majority of the beef in question and were repaid by their suppliers or received credit notes for it, following payment of aid to those suppliers under the Beef Stocks Transfer Scheme, a United Kingdom scheme designed to mitigate some of the effects which the ban had on slaughterers and cutters.

16 On or about the date on which Decision 96/239 was adopted, a number of third countries, including all the intended destinations of the FCTL beef and the Meatal beef, imposed bans on the importation of British beef. The Republic of South Africa, the principal intended destination for the beef in question, provisionally banned the importation of British beef on 23 March 1996. Mauritius, the intended destination for the next largest proportion of the beef, imposed a ban on 22 March 1996.

17 FCTL and Meatal applied for and were granted advance payments of export refunds pursuant to Article 5 of Regulation No 565/80 and Chapters 2 and 3 of Title 2 of Regulation No 3665/87. As required by Article 6 of Regulation No 565/80, securities were lodged. In accordance with Articles 22(1) and 31(1) of Regulation No 3665/87, the amount of the guarantees provided exceeded by 15% or 20%

(depending upon the type of export envisaged) the amount of the export refunds advanced to FCTL and Meatal.

18 In the event, none of the FCTL beef or the Meatal beef entered the territory of any importing country. Since that normal precondition for payment of a differentiated export refund had not been satisfied, the Intervention Board for Agricultural Produce ('the Intervention Board') called upon the applicants in the main proceedings to repay the refund paid in advance and, upon their refusal to do so, informed the applicants of its intention to forfeit the securities.

19 It is common ground that the Intervention Board is not seeking payment of the penalties provided for in Articles 23 and 33 of Regulation No 3665/87.

20 On an application made on 27 August 1996, the High Court of Justice granted the applicants leave to apply for judicial review of the Intervention Board's decision to approach the guarantors with a view to obtaining payment of the securities in the amount of the refunds paid in advance. At the same time, the High Court granted an interlocutory injunction restraining the Intervention Board from enforcing or seeking to enforce the guarantees. By notice of motion dated 22 October 1996 the Intervention Board applied to have the leave to move for judicial review set aside and to have the injunction discharged. In the context of those proceedings, the High Court decided to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do Articles 23 and 33 of Commission Regulation No 3665/87/EEC as amended apply to the case where by reason of *force majeure* goods in transit in the course of export to third countries are repatriated to the Member State of export, or are they limited to those cases where the goods were imported into a different third country from that which was originally declared by the exporter to the competent authority?

(2) In circumstances where:

(a) by Commission Decision 96/239/EC of 27 March 1996 exports of beef from the United Kingdom to third countries were prohibited;

(b) bans on the importation of beef from the United Kingdom were also imposed by a number of third countries;

(c) exporters of beef were at the time of the said Decision in the process of carrying goods to third countries;

(d) the said exporters were forced to repatriate the beef to the United Kingdom;

(e) the exporters received advance-paid export refunds in accordance with [Council] Regulation No 565/80/EEC and Commission Regulation No 3665/87/EEC as amended in respect of the export transactions in issue; and

(f) the exporters suffered losses as a result of not being able to sell the beef on the export markets in question;

are the exporters entitled to retain all or part of the export refund by reason of the general principles of Community law and in particular *force majeure*, legitimate expectations, proportionality or equity?

(3) If [the] answer to Question 2 is that the exporter is entitled to retain in principle some or all of the export refund in question, are the exporters bound to give credit for any revenues derived from the disposal of the beef in the United

Kingdom (for example where the original vendor of the beef to the exporter was bound to repossess the beef under a retention of title clause in the original contract of sale and where the vendor repaid all or a portion of the original purchase price)?

(4) Are either or both of Commission Decision 96/239/EC or [Commission Regulation] No 773/96/EC unlawful to the extent that they do not provide for exporters in the circumstances referred to in Question 2 above being entitled to retain export refunds applicable to the exports in question or any portion thereof?'

Question 1

21 By its first question, the national court is essentially asking whether Articles 23 and 33 of Regulation No 3665/87, in the version thereof resulting from Regulation No 1615/90, must be interpreted as meaning that where, as a result, in particular, of *force majeure*, goods do not reach their country of destination but are repatriated to the Member State of export, the exporter is obliged to repay the export refunds paid in advance.

22 It is common ground that the applicants in the main proceedings are not being required to pay any penalty under Articles 23 or 33 of Regulation No 3665/87. The question referred must therefore be understood as relating solely to the applicants' obligation to repay the export refunds paid in advance.

23 The applicants in the main proceedings claimed at the hearing that they should be authorised to retain the export refunds by way of compensation for the loss suffered by them following repatriation of the beef to the United Kingdom.

24 The United Kingdom Government considers that, where beef is repatriated to the Member State of export, the situation is comparable to a change of destination, in the course of transit, to a country attracting no export refund. Consequently, Articles 23 and 33 of Regulation No 3665/87 are applicable, as are the principles established by the Court in Case C-299/94 *Anglo Irish Beef Processors International* v *MAFF* [1996] ECR I-1925, so that the difference between the amount of the refund paid in advance and that of the refund actually due must be repaid.

25 In the Commission's view, Regulation No 3665/87 clearly requires the export refunds to be repaid.

26 It should be noted in that regard that, according to Regulation No 805/68, the grant of refunds on beef and veal exports, equal to the difference between world market prices and prices within the Community, serves to safeguard Community participation in international trade in beef and veal.

27 According to the provisions of Regulation No 3665/87, payment of refunds is conditional, on the one hand, on the production of proof that the product has left the customs territory of the Community and, in the case of differentiated refunds, on its having been imported into a third country and, on the other hand, on completion of the formalities for its release for consumption.

28 Where the rate of refund varies according to the country of destination, the fact that, for reasons of *force majeure* in particular, the product does not reach its intended country of destination but is imported into another third country attracting a lower rate of refund, means that the exporter is obliged to repay the difference between the refund in respect of the country to which the product was to have been exported and that relating to the country to which it was in fact exported.

29 Since actual access to the market of destination is in principle conditional on completion of the formalities for release for consumption in the country of destination, the fact that the product did not reach that destination and, owing to *force majeure*, had to be exported to other countries rules out the possibility of its being regarded, for the purposes of payment of the differentiated refund, as having been imported within the meaning of Article 5(1) of Regulation No 3665/87 (see paragraph 23 of the judgment in *Anglo Irish Beef Processors International*, cited above).

30 The position is the same where the product is repatriated to the Member State of export. In such a situation, the formalities for release of the product for consumption in the country of destination have not been completed, so that it cannot be regarded, for the purposes of payment of the differentiated refund, as having been imported within the meaning of Article 5(1) of Regulation No 3665/87.

31 The answer to the first question must therefore be that Articles 23 and 33 of Regulation No 3665/87, in the version thereof resulting from Regulation No 1615/90, must be interpreted as meaning that where, as a result of, in particular, *force majeure*, goods do not reach their country of destination but are repatriated to the Member State of export, the exporter is obliged to repay any export refunds paid in advance.

Question 2

32 By its second question, the national court asks whether the general principles of Community law, and, in particular, those relating to *force majeure*, the protection of legitimate expectations, proportionality or equity, entitle exporters of beef from the United Kingdom to retain all or part of any export refunds paid in advance in circumstances where

(a) exports of beef from the United Kingdom to third countries have been prohibited by Decision 96/239,

(b) bans on the importation of beef from the United Kingdom have also been imposed by a number of third countries,

(c) exporters of beef were in the process of carrying goods to third countries at the time when Decision 96/239 was adopted,

(d) those exporters were forced to repatriate the beef to the United Kingdom,

(e) the exporters had received, in accordance with Regulations Nos 565/80 and 3665/87, advance payments of export refunds in respect of the export transactions in issue, and

(f) the exporters suffered loss as a result of their inability to sell their beef on the export markets in question.

33 Since the consequences of *force majeure* are clearly and exhaustively provided for by Regulation No 3665/87, that question must be construed as seeking to ascertain whether, if the circumstances described by the national court constitute *force majeure*, Regulation No 3665/87 is invalid under the general principles of Community law inasmuch as it does not permit exporters to retain all or part of any export refunds paid in advance.

34 FCTL and Meatal submitted before the national court and at the hearing before this Court that their situation was analogous to that referred to in Article 5(1) of Regulation No 3665/87, which provides that the refund is payable where the goods have

perished in transit as a result of *force majeure*. They sought to distinguish the present case from *Anglo Irish Beef Processors International*, in which the Court held that an exporter is not entitled to receive the refund at the rate applying to the country of destination where, as a result of *force majeure*, the goods do not reach that country but are exported to a different third country. They claimed that the circumstances of the present case were different, in that no other market existed for British beef and the *force majeure* arose as a result of a Community act, and submitted that the decision of the Court in *Anglo Irish Beef Processors International* did not cover such a situation.

35 The United Kingdom Government submits that none of the principles referred to by the national court justifies the retention by the exporters of all or part of the export refunds. It contends that the effects of *force majeure* are provided for by Regulation No 3665/87 and are limited to exemption from the obligation to pay the penalties. The principle of the protection of legitimate expectations is not applicable either, since there was no basis for any expectation that the position would be any different from that which was specified in the legislation and confirmed by the case-law of the Court. Moreover, having regard to the proper function of the export refund system, the obligation to repay such refunds, even in the event of *force majeure*, is not contrary to the principle of proportionality. Lastly, the obligation to repay refunds paid in advance is not contrary to the principle of equity. On the contrary, if the applicants were allowed to retain the refunds, they would enjoy an unfair advantage by comparison with traders who chose to sell their beef on the United Kingdom market or who wished to export their beef but did not apply for advance payment of refunds.

36 The Commission submits that Regulation No 3665/87 is clear and that neither *force majeure* nor equity is capable of altering in any way the obligation to repay export refunds. As to the principles of the protection of legitimate expectations and of proportionality, it points out that the Court has already expressed its view in that regard in its judgment in *Anglo Irish Beef Processors International.*

37 It must be observed as a preliminary point that, contrary to the submissions of FCTL and Meatal, there are no grounds for distinguishing the present case from the situation on which the Court gave its ruling in *Anglo Irish Beef Processors International*, either on the basis that the *force majeure* resulted from a Community act or on the ground that no other market existed for beef originating in the United Kingdom.

38 It is settled case-law that the concept of *force majeure* must be understood as referring to unusual and unforeseeable circumstances which were beyond the control of the party by whom it is pleaded and the consequences of which could not have been avoided even if all due care had been exercised (see, in particular, paragraph 11 of the judgment in Case 145/85 *Denkavit* v *Belgium* [1987] ECR 565).

39 It is therefore immaterial whether the *fait du prince* (act of a public authority) which may constitute such *force majeure* is a ban on imports of beef from the United Kingdom imposed by the country of destination or an export ban introduced by the Community, since both situations involve circumstances beyond the exporter's control.

40 By the same token, the actual concept of *force majeure* must not be confused with its possible consequences. The fact that, by contrast with the situation in *Anglo Irish Beef Processors International*, where the exporter was able to export the goods to another third country, no other market existed in the present case for the beef refused by the country of destination is therefore irrelevant.

41 As to the provisions of Regulation No 3665/87 concerning *force majeure*, it is settled case-law that, since the concept of *force majeure* does not have the same scope in various spheres of application of Community law, its meaning must be determined by reference to the legal context in which it is to operate (see, in particular, Case C-12/92 *Huygen and Others* [1993] ECR I-6381, paragraph 30). Therefore, Regulation No 3665/87 is not contrary to the general principles of Com-

munity law inasmuch as it specifies and limits the effects of *force majeure* in the field of export refunds.

42 As regards breach of the principle of proportionality, the Court held in paragraph 29 of its judgment in *Anglo Irish Beef Processors International* that where, as a result of *force majeure*, goods fail to reach their country of destination but are exported to other third countries attracting a lower rate of refund or no refund at all, forfeiture of a part of the security equal to the difference between the amount of the refund paid in advance and the amount of the refund actually due, without any penalty being imposed, is commensurate with the objective pursued by the legislature.

43 There is no essential difference between a case in which goods are exported to other third countries attracting no export refund and a case in which the goods are repatriated to the Member State of export. In both cases, the subsidised goods fail to reach their intended market and cannot be sold there.

44 Consequently, the rule requiring export refunds paid in advance to be repaid where the goods are repatriated to the Member State of export is proportional to the objective pursued.

45 As to breach of the principle of the protection of legitimate expectations, the Court has also held that the provisions of Regulations Nos 565/80 and 3665/87 cannot give rise to any legitimate expectation other than entitlement to a refund subject to the conditions laid down (see paragraphs 30 to 33 of the judgment in *Anglo Irish Beef Processors International*).

46 It should also be noted that the provisions of those regulations concerning *force majeure* were adopted precisely in order to protect traders against the prejudicial consequences which they may suffer as a result of unusual circumstances which they could not have foreseen. According to those provisions, exporters are exempted from having to pay penalties but not from having to repay refunds paid in advance.

47 It follows that, in the case in the main proceedings, FCTL and Meatal could not have had any legitimate expectation that they would be entitled to retain the export refunds paid in advance, even if *force majeure* were established.

48 As to the argument that it would be inequitable to require exporters to repay export refunds paid in advance, the principle of equity cannot be regarded as allowing any derogation from the application of provisions of Community law, save as provided for by the legislation or where the legislation is itself declared invalid.

49 It must be added that it is precisely if exporters were authorised to retain refunds paid in advance that they would have an unfair advantage over exporters who had not applied for an advance payment and who therefore received no export refund.

50 The answer to the second question must therefore be that Regulation No 3665/87 does not contravene the general principles of Community law, in particular the principles of *force majeure*, the protection of legitimate expectations, proportionality or equity, by prohibiting exporters of beef from the United Kingdom from retaining all or part of any export refunds paid in advance in circumstances where

(a) exports of beef from the United Kingdom to third countries have been prohibited by Decision 96/239,

(b) bans on the importation of beef from the United Kingdom have also been imposed by a number of third countries,

(c) exporters of beef were in the process of carrying goods to third countries on the date on which Decision 96/239 was adopted,

(d) those exporters were forced to repatriate the beef to the United Kingdom,

(e) the exporters had received, in accordance with Regulations Nos 565/80 and 3665/87, advance payments of export refunds in respect of the export transactions in issue, and

(f) the exporters suffered loss as a result of their inability to sell their beef on the export markets in question.

Question 3

51 By its third question, which would arise if the exporters were held to be entitled to retain all or part of the refund, the national court asks whether they would be bound to give credit for any revenues derived from disposal of the beef in the United Kingdom.

52 In view of the answers given to the first two questions, there is no need to answer the third question.

Question 4

53 By its fourth question, the national court enquires as to the validity of Decision 96/239 and Regulation No 773/96, inasmuch as they do not allow exporters, in the circumstances described in the second question, to retain all or part of the export refund.

Decision 96/239

54 The legality of Decision 96/239 was examined in the Court's judgments of 5 May 1998 in Case C-157/96 *National Farmers' Union and Others* [1998] ECR I-2211 and Case C-180/96 *United Kingdom* v *Commission* [1998] ECR I-2265.

55 It should be noted that the applicants in the main proceedings in this case, who were interveners in the main proceedings in *National Farmers' Union and Others*, also participated, in that capacity, in the proceedings before the Court.

56 However, they have not in the present case put forward any submission which differs from those previously considered in *National Farmers' Union and Others* and which is such as to call in question the legality of Decision 96/239.

57 In so far as this question is concerned, reference should therefore be made to the abovementioned judgments in *National Farmers' Union and Others* and *United Kingdom* v *Commission*.

58 The answer to this part of the question must therefore be that consideration of Decision 96/239 has not disclosed any factor of such a kind as to affect its validity.

Regulation No 773/96

59 In the United Kingdom's view, there are no grounds for suggesting that Regulation No 773/96 is unlawful. To permit exporters to retain refunds would be contrary to the objective of the refund scheme. It considers, moreover, that it was open to the Commission, in the exercise of its discretion, to omit such a measure when adopting the regulation in question.

60 The Commission is unable to see any basis on which Regulation No 773/96 could be regarded as inconsistent with the principles of the protection of legitimate expectations or of proportionality. It further submits that to provide for compensation in relation to beef which never reached its destination would be inconsistent with the export refund scheme, the objectives of Regulation No 3665/87, the case-law of the Court and the general principle of non-discrimination.

61 It should be noted in that regard that, although Regulation No 773/96 lays down special measures derogating from Regulation No 3665/87, it does not exempt exporters from the obligation to repay export refunds paid in advance where the goods have not been imported into, and marketed in, the third country of destination.

62 As is evident from the Court's examination of the second question, none of the general principles of Community law, and in particular the principles of *force majeure*, the protection of legitimate expectations, proportionality and equity, required exporters, in the circumstances described by the national court, to be authorised to retain all or part of any export refunds paid in advance.

63 Consequently, the fact that Regulation No 773/96 does not provide for the possible retention by exporters, in the circumstances described in the answer to the second question, of all or part of any export refunds paid in advance does not render it invalid.

Costs

64 The costs incurred by the United Kingdom Government and by the Commission, 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the High Court of Justice, Queen's Bench Division, by order of 26 March 1997, hereby rules:

1. Articles 23 and 33 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system

of export refunds on agricultural products, in the version thereof resulting from Commission Regulation (EEC) No 1615/90 of 15 June 1990, must be interpreted as meaning that where, as a result of, in particular, *force majeure*, goods do not reach their country of destination but are repatriated to the Member State of export, the exporter is obliged to repay any export refunds paid in advance.

2. Regulation No 3665/87 does not contravene the general principles of Community law, in particular the principles of *force majeure*, the protection of legitimate expectations, proportionality or equity, by prohibiting exporters of beef from the United Kingdom from retaining all or part of any export refunds paid in advance in circumstances where

(a) exports of beef from the United Kingdom to third countries have been prohibited by Commission Decision 96/239/EC of 27 March 1996 on emergency measures to protect against bovine spongiform encephalopathy,

(b) bans on the importation of beef from the United Kingdom have also been imposed by a number of third countries,

(c) exporters of beef were in the process of carrying goods to third countries on the date on which Decision 96/239 was adopted,

(d) those exporters were forced to repatriate the beef to the United Kingdom,

(e) the exporters had received, in accordance with Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in

respect of agricultural products and Commission Regulation (EEC) No 3665/87, advance payments of export refunds in respect of the export transactions at issue, and

(f) the exporters suffered loss as a result of their inability to sell their beef on the export markets in question.

3. Consideration of question 4 has not disclosed any factor of such a kind as to affect the validity of Decision 96/239.

Commission Regulation (EC) No 773/96 of 26 April 1996 laying down special measures derogating from Regulations (EEC) No 3665/87, (EEC) No 3719/88 and (EEC) No 1964/82 in the beef and veal sector is not rendered invalid by the fact that it prohibits exporters, in the circumstances described in the answer to the second question, from retaining all or part of any export refunds paid in advance.

Wathelet Jann Sevón

Delivered in open court in Luxembourg on 29 September 1998.

R. Grass

Registrar

M. Wathelet

President of the First Chamber