JUDGMENT OF THE COURT (Sixth Chamber)
5 July 1988 *

In Case 291/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court) Düsseldorf for a preliminary ruling in the proceedings pending before that court between

Central-Import Münster GmbH & Co. KG, Münster,

and

Hauptzollamt (Principal Customs Office) **Münster**,

on the validity of Article 2 of Commission Regulation (EEC) No 2742/82 of 13 October 1982 on protective measures applicable to imports of dried grapes (Official Journal 1982, L 290, p. 28) and the interpretation of certain provisions of Council Regulation (EEC) No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables (Official Journal 1977, L 73, p. 1) and Council Regulation (EEC) No 521/77 of 14 March 1977 (Official Journal 1977, L 73, p. 28) laying down detailed rules for applying protective measures in that market,

THE COURT (Sixth Chamber)

composed of: O. Due, President of the Chamber, T. Koopmans, K. Bahlmann, C. Kakouris and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of:

Central-Import Münster GmbH & Co. KG, the plaintiff in the main proceedings, by D. Ehle, Rechtsanwalt,

* Language of the Case: German.

the Government of the Hellenic Republic, by K. Stavropoulos, F. Spathopoulos and M. Tsotsanis, Legal Advisers at the Ministry of Foreign Affairs, the Ministry of Economic Affairs and the Ministry of Agriculture respectively, acting as Agents,

the Council of the European Communities, by A. Brautigam, Principal Administrator in the Council's Legal Department, acting as Agent, in the written procedure,

the Commission of the European Communities, by its Legal Adviser, D. Booss, acting as Agent, assisted in the oral procedure by D. Barry, an expert,

having regard to the Report for the Hearing and further to the hearing on 18 November 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 8 March 1988,

gives the following

Judgment

1 By an order of 13 October 1986, which was received at the Court on 24 November 1986, the Finanzgericht Düsseldorf referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty five questions concerning the validity of Article 2 of Commission Regulation No 2742/82 of 13 October 1982 on protective measures applicable to imports of dried grapes (Official Journal 1982, L 290, p. 28) and the interpretation of certain provisions of Council Regulation No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables (Official Journal 1977, L 73, p. 1) and Council Regulation No 521/77 of 14 March 1977 laying down detailed rules for applying protective measures in the market in products processed from fruit and vegetables (Official Journal 1977, L 73, p. 28).

2 Those questions arose in proceedings between Central-Import Münster GmbH & Co. KG, Münster, which imports dried grapes from non-member countries, and the Hauptzollamt Münster for the reimbursement of countervailing charges on imports of dried grapes which that company was required to pay under the Community legislation.

3 Article 14 of Council Regulation No 516/77 provides for the possibility of applying appropriate measures in trade with non-member countries if, by reason of imports or exports, the market in one or more of the products subject to the regulation is likely to be exposed to serious disturbances which might endanger the objectives set out in Article 39 of the Treaty.

4 Pursuant to that provision, Article 2 (1) (b) and (c) of Council Regulation No 521/77 provides that, should such a situation arise, the measures which may be taken are the introduction of arrangements under which, if the price for an imported product falls below a certain minimum, a condition may be imposed whereby that product may be imported only at a price which is at least equal to such minimum, and the total or partial suspension of imports or exports.

5 Commission Regulation No 2742/82, which was adopted on the basis of Article 14 (2) of Council Regulation No 516/77, laid down in Article 2 a minimum price for the product concerned in this case and a countervailing charge to be applied 'if the minimum price is not respected'.

6 It is clear from the documents before the Court that on 20 February and 9 April 1984 the plaintiff in the main proceedings imported from Turkey three consignments of sultanas, declaring for each consignment a purchase price higher than the minimum import price fixed under the Community rules. The customs authorities subsequently discovered that the actual purchase price for the imports in question was lower than the minimum import price; in accordance with Article 2 of Regulation No 2742/82, they therefore levied countervailing charges amounting to DM 20 164.70. Taking the view that the imposition of those charges was unlawful, the plaintiff brought an action before the Finanzgericht Düsseldorf for the recovery of the amount in question.

7 In the proceedings before that court, the plaintiff maintained that the provisions on the basis of which the countervailing charges were levied were not sufficiently specific or were *ultra vires* the enabling provision, that no sufficient reasons were stated for the method of calculating the minimum import price and that Article 2 of Regulation No 2742/82 was therefore invalid.

8 In those circumstances the Finanzgericht Düsseldorf stayed the proceedings, requested the Court to give a ruling on the validity of the aforesaid regulation and raised certain aspects of that problem in the following questions:

'1. Does Article 14 of Regulation (EEC) No 516/77, in conjunction with Articles 1 and 2 of Regulation (EEC) No 521/77, contain a sufficiently specific enabling provision establishing the essential criteria for protective measures such as those adopted by the Commission in Regulation No 2742/82?

2. Alternatively: is the term "by reason of imports" in Article 14 of Regulation No 516/77 and Article 1 of Regulation No 521/77 to be interpreted as meaning that imports from non-member countries must have been the essential cause of the disturbances at the date on which Regulation No 2186/83 was adopted and at the date on which the plaintiff carried out the imports in question?

3. Alternatively: must Article 2 (2) of Regulation No 521/77, in conjunction with Articles 13 and 14 of Regulation No 516/77 and Article 155 of the EEC Treaty, be interpreted as meaning that the Commission was not entitled to impose a countervailing charge in the event of import prices falling below the minimum import prices laid down?

4. Alternatively: must Article 2 (2) of Regulation No 521/77, in conjunction with Articles 13 and 14 of Regulation No 516/77, be interpreted as meaning that the Commission is not entitled to establish a flat rate for countervailing charges so that they exceed the difference between the minimum price laid down and the import price?

5. Alternatively: is the minimum price laid down in Article 2 (2) of Regulation No 2742/82 unlawful since it was not calculated according to objective criteria and no reasons were given for it?'

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

10 The fifth question, which calls in question the validity of the method of fixing the minimum price, will be considered before the third question, concerning the subsequent problem of the countervailing charge.

First question

11 In its first question the national court raises the issue of the validity of Regulation No 2742/82, in the first place by asking whether Article 14 of Regulation No 516/77 in conjunction with Articles 1 and 2 of Regulation No 521/77 contains a sufficiently specific enabling provision allowing the Commission to take protective measures concerning imports of dried grapes.

12 The plaintiff in the main proceedings points out that Article 14 (1) of Regulation No 516/77 authorizes the Council in very general terms to take protective measures. In its view, the Council should therefore adopt those measures itself; in any case, in the event of the delegation of that power to the Commission the Council is required to lay down beforehand in specific terms the conditions for its exercise by the Commission. In fact, however, in Regulation No 521/77 the Council laid down the detailed rules for applying protective measures in a manner scarcely less general than Article 14 (1). The plaintiff therefore concludes that

none of the provisions referred to in the first question contains a valid enabling provision allowing the Commission to take protective measures concerning imports of dried grapes.

13 It must first be borne in mind that the provisions implementing the basic regulations may be adopted either by the Council itself or by the Commission by virtue of an enabling provision complying with Article 155 (see the judgment of 17 December 1970 in Case 25/70 *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* v *Köster* [1970] ECR 1161). For such an enabling provision to be valid, it must be sufficiently specific — that is to say, the Council must clearly specify the bounds of the power conferred on the Commission. It is therefore necessary to consider in this case whether Articles 1 and 2 of Regulation No 521/77, read in conjunction with Article 14 of Regulation No 516/77, have defined the power conferred on the Commission to a sufficient extent.

14 Article 14 (1) of Regulation No 516/77 states that (a) protective measures may be taken where the market is or is likely to be exposed to serious disturbances as a result of imports or exports and (b) those measures must cease when the situation which gave rise to their application comes to an end. Article 1 of Regulation No 521/77 lays down the criteria for assessing whether the Community market is experiencing or threatened with serious disturbances, whilst Article 2 (1) of that Regulation lists a series of protective measures which may be taken in order to deal with a situation of that kind. Article 2 (2) provides that protective measures 'may be taken only to such extent and for such length of time as is stricly necessary'.

15 Those provisions thus determine the situations in which protective measures may be taken, the criteria for assessing whether such a situation exists, the kind of measures to be adopted and the period of their validity. The power conferred on the Commission is delimited by those factors in a sufficiently specific manner.

16 It follows that the validity of Regulation No 2742/82 is not affected by defects in its legal basis, since Article 14 of Regulation No 516/77 in conjunction with Articles 1 and 2 of Regulation No 521/77 contains a sufficiently specific enabling provision allowing the Commission to take protective measures concerning imports of dried grapes.

Second question

17 In its second question, the national court seeks to ascertain whether the phrase 'by reason of imports' in Article 14 (1) of Regulation No 516/77 and in Article 1 of Regulation No 521/77 is to be interpreted as meaning that imports from non-member countries must be the essential cause of the disturbances on the Community market before protective measures may be taken. That question must be construed as calling in question the validity of Regulation No 2742/82, which introduced protective measures, in the version which was in force at the time of the contested imports, that is to say as amended by Commission Regulation (EEC) No 2186/83 of 29 July 1983 (Official Journal 1983, L 210, p. 11), inasmuch as the imports from non-member countries were not the essential cause of the disturbances on the Community market. The validity of Regulation No 2742/82 was extended by Regulation No 2186/83 with a number of secondary amendments which are not relevant in this case.

18 The plaintiff in the main proceedings considers that imports must be the essential cause of a disturbance on the Community market, to the exclusion of other causes. The aim of protective measures, the legal relationship with other rules of that kind and the Commission's practice militate in favour of that interpretation.

19 The Commission, on the other hand, maintains that it is rare for a lasting disturbance of the market to have a single cause. It is therefore sufficient that imports should have been one cause, amongst others, of the disturbance for protective measures to be taken.

20 In that regard, it must be stated that Article 14 of Regulation No 516/77 and Article 1 of Regulation No 521/77 do not preclude the possibility that serious disturbances or the threat thereof may arise from a wide variety of causes, both internal and external to the common market. Those provisions merely lay down the rule that in so far as the disturbance of the market is attributable to imports protective measures must be taken, and there is no need to consider whether or not the imports constitute the essential cause of the disturbance.

21 It follows that imports must constitute one of the factors giving rise to the disturbance, but not necessarily its essential cause.

22 The question therefore arises whether in this case the imports were in fact one of the factors which gave rise to the disturbance of the Community market in dried grapes which led to the adoption of Regulation No 2742/82.

23 The plaintiff in the main proceedings considers that the disturbance of the Community market in dried grapes was not attributable to imports. It notes first of all that the statement in the first and third recitals of the preamble to Regulation No 2742/82, according to which the prices of imported dried grapes were lower than intra-Community prices, is incorrect. Furthermore, protective measures were taken in respect of all dried grapes other than 'currants', that is to say dried grapes with seeds, dark sultanas, non-sulphited light sultanas and sulphited light sultanas, although it is only the latter that are produced in the Community. Since imported sultanas are also light but are not sulphited and are not interchangeable with sulphited light sultanas, there cannot be a serious disturbance of the Community market in sulphited light sultanas.

24 The Commission, on the other hand, maintains that it was compelled to take protective measures because the increase in the volume of imports from non-member countries at prices below intra-Community prices created a serious disturbance on the Community market. That disturbance was eliminated by the measures adopted under Regulation No 2742/82, as is evidenced by the elimination of surplus stocks in the Community.

25 The Commission's argument must be accepted. It has been demonstrated in the proceedings before the Court, by means of figures produced by the Commission, that objective factors such as the increase in the volume of imports at prices below intra-Community prices made it possible to establish the existence or threat of a serious disturbance of the Community market in dried grapes.

26 It is not necessary for these purposes to consider whether dried grapes other than currants may, in view of some of their characteristics, be classified in a number of categories, as advocated by the plaintiff. It is apparent from the documents before the Court that the measures complained of were taken on the basis of the consideration that the different varieties of dried grapes other than currants are in general interchangeable as regards the use to which they are put.

27 That consideration has not been shown to be incorrect. Neither the regulations on the common organization of the markets in this sector nor the Common Customs Tariff make any distinction other than that between currants and other dried grapes. In particular, they make no distinction, amongst the latter, between sulphited and non-sulphited light sultanas.

28 The plaintiff in the main proceedings also observes that if there was a disturbance of the Community market in dried grapes, it was attributable to causes internal to the Community, in particular to the accumulation of Community aid and unauthorized national aid, which led to an increase in production and an artificial increase in prices, whilst at the same time storage aid hindered the marketing of that production.

29 Even assuming the plaintiff's argument to be well founded, it is not of such a kind, in view of the aforementioned considerations concerning the disturbance created by imports, as to call in question the application of protective measures.

30 It follows from the foregoing that the phrase 'by reason of imports' in Article 14 of Regulation No 516/77 and in Article 1 of Regulation No 521/77 must be interpreted as meaning that it is sufficient for imports to constitute one of the factors giving rise to the disturbance, though not necessarily its essential cause. In this case, the adoption of Commission Regulation No 2742/82 was based on the finding that imports were in fact one of the factors which gave rise to a serious disturbance on the Community market in dried grapes. Since that finding has not been shown to be incorrect, the validity of the regulation in question cannot be affected.

Fifth question

31 In its fifth question the national court seeks to ascertain whether or not the minimum price laid down in Article 2 (1) of Regulation No 2742/82 is valid, in the light of the reasons given for it and the criteria adopted for its calculation.

32 The plaintiff in the main proceedings considers that, contrary to Article 190 of the Treaty, no sufficient reasons were given for the level of the minimum price fixed in the aforesaid provision of Regulation No 2742/82. Furthermore, that level was not fixed in accordance with objective criteria, which constitutes a misuse of power. Article 2 (1) of Regulation No 2742/82 is therefore invalid for breach of the obligation to state reasons and for misuse of power.

33 The Commission states that the minimum price level laid down by Regulation No 2742/82, as amended by Article 1 of Commission Regulation (EEC) No 3099/83 of 3 November 1983 (Official Journal 1983, L 302, p. 19), is equal to the difference between the minimum price fixed for Community production of dried grapes, plus processing costs, and the production aid. In its view, that method of fixing the minimum price falls within the scope of the Commission's discretion.

34 Those observations must be compared with the third and fourth recitals in the preamble to Regulation No 2742/82, according to which 'the aim of the protective measures should be to exclude that imported dried grapes are marketed at abnormal low prices', which 'can be achieved by introducing a minimum price to be respected on import into the Community'. Having regard to those points, the reasons given for the minimum price fixed in the Regulation are sufficient. The fact that the Regulation does not list the quantitative factors on the basis of which the minimum price level was calculated cannot render those reasons insufficient. Moreover, the statement of reasons relates to objective factors, and the contrary assertion of the plaintiff, on the basis of which it alleges a misuse of power, is therefore unfounded.

35 It follows that the minimum price fixed in Article 2 (1) of Regulation No 2742/82, as amended by Article 1 of Regulation No 3099/83, is not invalid.

Third question

36 In its third question the national court seeks to ascertain whether the regulation in question is invalid for want of an enabling provision and, more specifically, whether the Commission was entitled by virtue of Articles 13 and 14 of Regulation No 516/77 in conjunction with Article 2 (2) of Regulation No 521/77 and Article 155 of the EEC Treaty to impose a countervailing charge in the event of import prices falling below the minimum import prices.

37 The plaintiff maintains that the imposition of a countervailing charge is unlawful because the combined provisions of Article 2 (1) of Regulation No 521/77 and Articles 13 and 14 of Regulation No 516/77 do not authorize the Commission, either directly or indirectly, to introduce a charge of that kind.

38 It must be pointed out that Article 14 (1) of Regulation No 516/77, which provides that appropriate measures may be applied in trade with non-member countries if the Community market is or is likely to be exposed to serious disturbances, does not preclude the introduction of a countervailing charge as a protective measure in order to deal with a situation of that kind.

39 With regard to Article 2 (1) of Regulation No 521/77, it must be observed that, as the Court held in its judgment of 11 February 1988 in Case 77/86 (*R.* v *H. M. Commissioners of Customs and Excise, ex parte The National Dried Fruit Trade Association* [1988] ECR 757), although the imposition of a countervailing charge was not expressly provided for in that Regulation, that does not necessarily imply that such a measure was precluded. On the contrary, it may be concluded from the fact that the Regulation authorized the total or partial suspension of imports that the Commission was empowered to introduce a less rigid scheme, namely a minimum price with a countervailing charge. In its judgment of 12 April 1984 in Case 345/82 (*Wünsche* v *Germany* [1984] ECR 1995), the Court held that where the Commission is entitled to take protective measures leading to a complete suspension of imports from third countries, it is *a fortiori* entitled to adopt less restrictive measures.

40 It follows from the foregoing that Article 14 of Regulation No 516/77 in conjunction with Article 2 (1) of Regulation No 521/77 must be interpreted as meaning that the Commission was entitled to impose a countervailing charge in the event of import prices falling below the minimum import prices.

Fourth question

41 In its fourth question, the national court, in the light of Article 2 (2) of Regulation No 521/77 in conjunction with Articles 13 and 14 of Regulation No 516/77, raises the question of the validity of Regulation No 2742/82 inasmuch as it lays down a fixed rate for the countervailing charge which exceeds the difference between the minimum price and the import price.

42 The plaintiff in the main proceedings submits that the imposition of a fixed-rate countervailing charge is contrary to the principle of proportionality and is therefore invalid inasmuch as it takes no account of the actual difference between the minimum price and the import price.

43 The Commission, on the other hand, argues that in order for the charge to have a dissuasive and a countervailing effect it was necessary not to vary it according to the import price but to set the amount of the charge at a fixed rate calculated so as to cover the difference between the lowest world-market price and the minimum price.

44 It must be pointed out that, as the Court held in its judgment of 11 February 1988 in Case 77/86, a countervailing charge is not in principle invalid merely because it is set at a fixed rate; its validity depends on a whole range of factors, such as the prices charged for imports or the requirements of effectively achieving the desired aim.

45 The Court also held in that judgment that the aim of the countervailing charge is to enforce the minimum price so as to ensure Community preference in the market for dried grapes other than currants; the aim is not to inflict an economic penalty on the trader who has imported them below the minimum price. However, the

introduction of a single, fixed-rate countervailing charge, imposed even where the difference between the import price and the minimum price is very small, amounts to an economic penalty and the Commission has not established that such a system was necessary for attaining the aim of Regulation No 521/77.

46 The answer to the fourth question must therefore be that Commission Regulation No 2742/82 of 13 October 1982 on protective measures applicable to imports of dried grapes, as subsequently amended, is invalid in so far as it introduced a countervailing charge at a fixed rate equal to the difference between the minimum price and the lowest world-market price.

Costs

47 The costs incurred by the Government of the Hellenic Republic and by the Council 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 proceedings are concerned, in the nature of 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 (Sixth Chamber),

in answer to the questions referred to it by the Finanzgericht Düsseldorf, by order of 13 October 1986, hereby rules:

(1) Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Commission Regulation (EEC) No 2742/82 of 13 October 1982 on protective measures applicable to imports of dried grapes, as subsequently amended, in so far as it introduced a minimum price and a countervailing charge to be imposed in the event of the import price of dried grapes from non-member countries falling below the minimum import price laid down.

(2) Commission Regulation (EEC) No 2742/82 of 13 October 1982, as subsequently amended, is invalid in so far as it introduced a countervailing charge at a fixed rate equal to the difference between the minimum price and the lowest world-market price.

Due Koopmans

Bahlmann Kakouris O'Higgins

Delivered in open court in Luxembourg on 5 July 1988.

J.-G. Giraud
Registrar

O. Due
President of the Sixth Chamber