JUDGMENT OF THE COURT (Second Chamber)
21 January 1987 *

In Case 86/85

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

Alexander Moksel Import-Export GmbH & Co. Handels-KG,

and

Hauptzollamt Hamburg-Jonas

on the interpretation of Article 2 of Regulation (EEC) No 32/82 of 7 January 1982 laying down the conditions for granting special export refunds for beef and veal (Official Journal 1982, L 4, p. 11), as amended (in the German version) by Regulation No 752/82 of 31 March 1982 (Official Journal 1982, L 86, p. 50),

THE COURT (Second Chamber)

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

Advocate General: M. Darmon
Registrar: P. Heim

after considering the observations submitted on behalf of

Alexander Moksel Import-Export GmbH & Co. Handels-KG, by Messrs Herrmann, Wiesner, Decker, Schaefer and Hermann, Rechtsanwälte, Augsburg, and by Dr Peter Wendt, Rechtsanwalt, Hamburg,

* Language of the Case: German.

the Commission of the European Communities, by Dirk Booss, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 23 April 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 10 June 1986,

gives the following

Judgment

1 By order of 8 February 1985, which was received at the Court on 4 April 1985, the Finanzgericht [Finance Court] Hamburg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Commission Regulation No 32/82 of 7 January 1982 laying down the conditions for granting special export refunds for beef and veal (Official Journal 1982, L 4, p. 11) with a view to determining whether the grant of special refunds was conditional upon the animals having been slaughtered in the Member State in which the customs export formalities were completed.

2 The question was raised in a dispute between Alexander Moksel Import-Export GmbH and Co. Handels-KG, the plaintiff in the main proceedings (hereinafter referred to as 'the plaintiff'), and Hauptzollamt [Principal Customs Office] Hamburg-Jonas, the defendant in the main proceedings (hereinafter referred to as 'the defendant').

3 In 1982 the plaintiff exported to the Soviet Union several consignments of meat from full-grown male cattle slaughtered in the United Kingdom. With a view to obtaining a special export refund under Regulation No 32/82, the origin of the consignments was attested by means of documents issued by the United Kingdom intervention agency, conforming to the specimen certificate annexed to that regulation and confirming in particular that the meat in question was from male animals. The meat was stamped with indelible ink.

4 After paying the special refund in respect of the consignments in question in an amount totalling DM 31 867.10, the defendant, by decision of 30 December 1982, demanded repayment of that sum on the ground that the certificate issued by the United Kingdom intervention agency did not furnish the proof of slaughter required by Article 2 (2) of Regulation No 32/82. In the defendant's view, the stipulation that 'such proof shall be provided by means of a certificate, a specimen of which is given in the Annex, issued on application by the party concerned by the intervention agency or any other authority designated for the purpose by the Member State in which the animals were slaughtered and in which the customs export formalities are completed . . . ', requires that, in order to ensure effective supervision, the animals should be slaughtered and the customs export formalities should be completed in the same Member State.

5 The plaintiff brought an action against that decision before the Finanzgericht Hamburg, maintaining that the defendant's reasoning disregarded the purpose of special refunds, namely to increase exports to non-member countries, and that it would lead to partitioning of the export markets of the Member States.

6 Considering that the dispute raised a question of interpretation of Community law the Finanzgericht stayed the proceedings and submitted the following question to the Court:

'Should Commission Regulation (EEC) No 32/82 laying down the conditions for granting special export refunds for beef and veal, as amended by Commission Regulation (EEC) No 752/82 of 31 March 1982 — and in particular Article 2 thereof — be interpreted as meaning that the grant of special refunds is conditional on the animals having been slaughtered in the Member State in which the customs export formalities are completed; further, does the slaughter of the animals in another Member State preclude the grant of special refunds even when the slaughter is certified by the competent intervention agency of that other Member State on the form provided for that purpose?'

7 Reference is made to the Report for the Hearing for the provisions of Community law and the arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 It must be stated in the first place that the Commission's view that under Article 2 (2) of Regulation No 32/82 (hereinafter referred to as 'the regulation') the Member State must be the same, and that that requirement constitutes one of the 'specific conditions' mentioned in Article 1 (1) for the grant of special refunds, cannot be upheld. Article 2 (1) of the regulation determines the purpose of the proof to be provided, which is to certify that the products come 'from full-grown male cattle'. Article 2 (2) determines *inter alia* the form of the proof, namely the certificate of which a specimen is given in the annex, and indicates which authorities are competent to issue it. Neither paragraph (1) nor paragraph (2) of Article 2 expressly requires the slaughter of the cattle and the completion of the customs formalities to take place in the same Member State as a precondition for the grant of the refunds.

9 It is apparent from the wording of Article 2 (2) of the regulation that the certificate may be issued either by the competent national intervention agency within the framework of the common organization of the market in beef and veal, or by 'any other authority designated for the purpose'. Thus, it follows from that provision that intervention agencies are competent in all cases. The restriction implicit in the phrase 'by the Member State in which the animals were slaughtered and in which the customs export formalities are completed' relates therefore only to the second of the two alternatives, namely the 'other authority'.

10 The requirement that only one Member State should be involved in the case of an 'other authority' is attributable to the need to guarantee the probative force of the certificate. The customs offices in the other Member States cannot determine whether the 'other authority' has in fact been 'designated' by the Member State in question for the purpose of issuing the certificate. For that reason, the competence of the 'other authority' must be limited to cases where the Member State of slaughter is the same as that of exportation. The need for such a condition does not arise where certificates are issued by intervention agencies, since their authority, which is expressly provided for in Article 2 (2) of the regulation, cannot be doubted by any customs office in the Community.

11 The Commission has also contended that it is necessary to concentrate all the operations in a single Member State in order to ensure effective supervision and that the risk of fraud by substitution of other products is thus reduced. In that connection, it must be stated that the risk of fraud resulting from a lack of coordi-

nation is reduced by Article 3 which provides that the national control measures 'include identification of each product by means of an indelible mark on each quarter or by individual seal on each quarter'. Moreover, the identification numbers of the pieces of animal carcasses must be entered on the certificate to be produced to the customs authorities, so that the latter are able to check that the products exported are the same as what was slaughtered. It must be emphasized that in this case the products concerned were marked indelibly and were accompanied by certificates issued by the United Kingdom intervention agency. Consequently, the German customs office in this case was perfectly able, on the basis of the certificate and the indelible marking carried out in the United Kingdom, to check and definitively establish the identity of the products.

12 The plaintiff also correctly pointed out at the hearing that even if the operations are concentrated in a single Member State the products may still pass through the hands of several intermediaries between slaughter and exportation. Moreover, it does not necessarily follow that the danger of fraudulent practices is higher where two Member States are involved rather than only one.

13 The Commission has maintained, finally, that intra-Community trade in goods is not affected in this case, since the exports at issue are intended for non-member countries. That view likewise cannot be upheld. It is sufficient to cite the example of a trader who might offer to an exporter in the same Member State consignments of beef from other Member States for exportation to non-member countries. If the exporter were unable to accept such an offer for the simple reason that the certificates accompanying such consignments of meat were unacceptable, intra-Community trade in goods would indeed be affected.

14 It is therefore appropriate to state in reply to the questions submitted by the national court that completion of the slaughter operations and of the customs export formalities in one and the same Member State of the Community does not constitute a precondition for the grant of the special export refunds provided for by Commission Regulation No 32/82 of 7 January 1982, provided that the document certifying that the products come from full-grown male cattle has been issued by the intervention agency of a Member State.

Costs

15 The costs incurred by the Commission of the European Communities, which has 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 (Second Chamber),

in answer to the questions referred to it by the Finanzgericht Hamburg by order of 8 February 1985, hereby rules:

Completion of the slaughter operations and of the customs export formalities in one and the same Member State of the Community does not constitute a precondition for the grant of the special export refunds provided for by Commission Regulation No 32/82 of 7 January 1982, provided that the document certifying that the products come from full-grown male cattle has been issued by the intervention agency of a Member State.

O'Higgins Due Bahlmann

Delivered in open court in Luxembourg on 21 January 1987.

P. Heim
Registrar

T. F. O'Higgins
President of the Second Chamber