REPORT FOR THE HEARING
delivered in Case 86/85 *

I — Legal background

By virtue of Article 1 (1) of the regulation at issue, Commission 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 (EEC) No 752/82 of 31 March 1982 (Official Journal 1982, L 86, p. 50), 'products complying with the specific conditions laid down in this regulation shall be eligible for special export refunds'. The basic conditions required to secure a special refund are laid down in Article 1 (2) and Article 2 (1) of the regulation. According to those provisions, the operation must relate to:

(i) the exportation of fresh or chilled meat, put up in the form of carcasses, half-carcasses, compensated quarters, fore-quarters and hindquarters; and

(ii) it must be proved that the products come from full-grown male cattle.

Article 2 (2) of the regulation contains procedural provisions concerning the form of the proof and identifying the competent authorities. It provides that:

'2. 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. This certificate must be produced to the customs authorities at the time of completion of the customs export formalities.'

According to Article 3 (2): 'The Member States shall take the necessary measures to ensure that no substitution of products takes place between the time they are checked and the time they leave the Community's geographical territory or are delivered to the destinations referred to in Article 5 of Regulation (EEC) No 2730/79. These measures shall include identification of each product by means of an indelible mark on each quarter or by individual seal on each quarter. The slaughter and identification shall take place in the abattoir indicated by the party concerned in the application referred to in Article 2 (2).'

According to the second recital in the preamble thereto, the purpose of Regulation No 32/82 is that of 'reducing intervention purchases' of beef and veal.

Regulation No 32/82 is based on Regulation (EEC) No 805/68 of 27 June 1968 (Official Journal, English Special Edition 1968 (I), p. 187) on the common organization of the market in beef and veal, in particular Article 18 thereof. The latter provision authorizes the grant of export refunds. Article 18 (2) provides that 'the refunds shall be the same for the whole Community'.

Regulation No 32/82 was also based on Regulation (EEC) No 885/68 of the Council of 28 June 1968 (Official Journal, English Special Edition 1968 (I), p. 237)

* Language of the Case: German.

laying down general rules for granting export refunds on beef and veal and criteria for fixing the amount of such refunds. Pursuant to Article 6 (1) of that regulation, payment of the refund is conditional upon the products being of Community origin. Moreover, the last recital in the preamble to that regulation states that 'to avoid distortions of competition between Community traders, the administrative conditions under which they operate must be identical throughout the Community'.

II — Facts and procedure

The dispute between the parties in the main proceedings relates to the grant of special refunds for beef from animals slaughtered in the United Kingdom and exported from the Federal Republic of Germany. In July 1982, the plaintiff in the main proceedings (hereinafter referred to as 'the plaintiff') placed several consignments of beef (hindquarters and forequarters) in the warehouse indicated to it for that purpose by the Hauptzollamt [Principal Customs Office] Oldenburg for the purpose of the grant of refunds. The meat came from full-grown male cattle, some of which had been slaughtered in the United Kingdom. The meat was intended to be exported to the Soviet Union. With a view to obtaining the special export refund under Regulation No 32/82, the plaintiff enclosed with the meat from animals slaughtered in the Federal Republic of Germany the customs declarations and certificates from the Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets], Frankfurt. As regards the meat from animals slaughtered in the United Kingdom, the plaintiff enclosed the documents issued by the United Kingdom intervention agency, based on the form annexed to Regulation No 32/82. They confirmed that the meat described in the forms came from male animals. The meat which came from animals slaughtered in the United Kingdom was stamped with indelible ink.

The defendant in the main proceedings (hereinafter referred to as 'the defendant'), which had initially prepaid the special refund for the whole consignment at the request of the plaintiff in the main proceedings, called upon the latter, by a notice dated 13 December 1982, to repay to it the sum of DM 31 867.10 in respect of the meat from animals slaughtered in the United Kingdom, on the following ground: the proof of slaughter provided for in Article 2 of Regulation No 32/82 had not been produced — the certificate issued by the United Kingdom intervention agency was not sufficient since slaughter and completion of the customs export formalities should take place in the same Member State. The plaintiff complained but its complaint was dismissed as unfounded by a decision of the defendant dated 25 November 1983.

That decision is contested in the main proceedings, on the ground that the right to special refunds is not conditional upon any obligation to slaughter the animals in the Member State in which the customs export formalities are completed.

The national court asks whether the words 'Member State in which the animals were slaughtered and in which the customs export formalities are completed' are intended to lay down, for the grant of the refund, a condition supplementing that laid down in Article 2 (1) of Regulation No 32/82. Such a result may be contrary to the purpose of intervention, since it is not in harmony with the objective described in the preamble to the regulation, namely reduction of intervention purchases, and, in addition, it impedes intra-Community trade. Furthermore, the national court states that such an interpretation does not seem absolutely necessary for control purposes. In that connection, it considers that the second paragraph of Article 3 of the regulation adequately indicates the importance of

watertight and effective supervision from the time of slaughter of the animals until exportation of the products, in order to avoid fraud, and states that, in compliance with the requirements of that provision, the products concerned in this case were marked indelibly and accompanied by certificates issued by the United Kingdom intervention agency.

The national court draws support for its doubts as to the interpretation of the applicable Community law from the fact that — by contrast with Regulation No 32/82 — Regulation (EEC) No 1687/76 of 30 June 1976 laying down common detailed rules for verifying the use and/or destination of products from intervention (Official Journal 1976, L 190, p. 1) applies special rules where several Member States are involved in an export operation — whether at the administrative control or processing stage (see Article 2 (3) and Articles 4 and 7). It states that since the problems were, in principle, well known, it cannot automatically be assumed that rules covering cases where products are forwarded from the Member State in which the animals are slaughtered to another Member State in which the customs export formalities are to be completed were omitted through an oversight.

It was for that reason that, by order of 8 February 1985, the Finanzgericht [Finance court] Hamburg referred to the Court of Justice of the European Communities for a preliminary ruling pursuant to Article 177 of the EEC Treaty the following question:

'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?'

The order from the Finanzgericht Hamburg was received at the Court Registry on 4 April 1985.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the plaintiff in the main proceedings, represented by Messrs Herrmann, Wiesner, Decker, Schaefer and Hermann, Rechtsanwälte, Augsburg, and also by Mr Wendt, Rechtsanwalt, Hamburg, and by the Commission of the European Communities, represented by Mr Boos, a member of its Legal Department, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. By decision of 29 January 1986, adopted pursuant to Article 95 (1) and (2) of the Rules of Procedure, the Court assigned the case to the Second Chamber.

III — Written observations submitted to the Court

A — *Observations submitted by Alexander Moksel GmbH & Co., Handels-KG*

1. *The literal interpretation of the contested provisions*

According to the *plaintiff*, the right to the refund is not subject to the requirement that the animals should have been slaughtered in the same Member State as that in which the customs formalities are completed. Article 2 (2) of Regulation No 32/82 merely grants

powers regarding designation of the authority responsible for issuing the slaughter certificate. It maintains that the phrase at issue, namely 'designated for the purpose by the Member State in which the animals were slaughtered and in which the customs export formalities are completed' relates only to the term 'any other authority'. The intervention agencies have already been 'designated' and are therefore competent in all cases where the Member State of slaughter and the Member State of exportation are not the same, but a Member State can declare 'another authority' to be competent. As regards the powers conferred, the 'other authorities' are competent only where the Member State of slaughter and the Member State of exportation were the same. It claims that it is necessary, in order to ensure rapid customs clearance, to limit the powers of the 'other authority' in this way. The customs offices in the various Member States are familiar with the intervention agencies of the other Member States, but they cannot be sure whether 'another authority' has in fact been 'designated' by the Member State in question for the purpose of issuing the certificate.

2. *Substantive law*

According to the plaintiff, the scheme and purpose of Regulation No 32/82 and also Article 1 (2) and Article 2 (1) of that regulation militate in favour of the interpretation that the Member State of slaughter and the Member State of exportation may be different. In its opinion, Article 2 (2) of the regulation contains procedural provisions governing the form of the proof to be produced and provisions concerning competent authorities. It considers that procedural rules should in all cases facilitate, and not frustrate, fulfilment of the aims of substantive law. The plaintiff maintains that it would be conducive to the attainment of the aim mentioned in the second recital in the preamble to the regulation, namely reduction of intervention purchases of beef, if there were no need for the Member State of slaughter and the Member State of exportation to be the same. Moreover, it infers from Article 6 (e) of Regulation (EEC) No 2226/78 (Official Journal 1978, L 261, p. 5), that intervention agencies must purchase beef and veal regardless of the Member State from which it comes. In support of that view, it also refers to Article 18 (2) of Regulation (EEC) No 805/68 and to Article 6 (1) of Regulation (EEC) No 885/68 and the last recital in the preamble thereto.

Furthermore, it is of the opinion that the substantive provisions concerned, in conjunction with Article 22 (1) of Regulation (EEC) No 805/68, uphold the principle of freedom of movement within the Community and consequently allow an undertaking which slaughters animals in one Member State to conclude a transaction with an exporter in another Member State of the Community.

3. *The need for rational application of the regulation*

The plaintiff claims that neither the problem of ensuring effective and comprehensive supervision from the time of slaughter of the animals until exportation nor the need to exclude any possibility of substitution of products between the time of the inspection and the exportation thereof provided for in the second paragraph of Article 3 of the regulation justifies a restrictive condition requiring the country of slaughter and the country of exportation to be the same.

It is of the opinion that Article 4 of Regulation (EEC) No 1687/76, to which the Finanzgericht referred at the end of its order for reference, is certainly not intended solely to ensure that there is no substitution of products — its purpose is above all to ensure that the products are actually exported. It maintains, however, that, by

virtue of the regulation at issue, an obligation to export arises only from the completion of the customs export formalities, with the result that before that stage there is not such a great need for safeguards as there is in the case of intervention products released from an intervention agency exclusively for the purpose of exportation.

Moreover, it claims that if the grant of refunds is conditional upon slaughter taking place in the Member State of exportation, there is a difference of treatment between exporters who fulfil that condition and exporters who purchase goods coming from other Member States for subsequent export to non-member countries. In its view, it is clear that a trader who purchases goods from other Member States is at a disadvantage; he receives no special refund in respect of the goods purchased. It considers that that difference of treatment is not objectively justified and moreover leads to a partitioning of the export markets, constituting an obstacle to attainment of the objective for which the refund was introduced, namely to promote exports to non-member countries.

Finally, the plaintiff maintains, in the alternative, that if, despite its arguments, Article 2 (2) of Regulation No 32/82 is to be interpreted as meaning that the grant of the special refund is also conditional upon the Member State of slaughter and the Member State of exportation being the same, that provision is void in so far as it is in breach of Community law of a higher rank and in breach of the principle of proportionality.

B — *Observations of the Commission*

1. *Semantic interpretation of the provision at issue*

For its part, the *Commission* contends that it is permissible to conclude from a semantic interpretation of the provision at issue that the requirement that the animals should be slaughtered and the customs export formalities completed in the same country not only defines areas of responsibility but also constitutes a precondition for the grant of the special refund. In its view, that interpretation is in harmony with the need to apply the regulation in the appropriate manner and in particular satisfies the need to prevent abuse. It does not see how such an interpretation impedes intra-Community trade.

2. *Guarantee of effective supervision*

The specific purpose of supervision enabling a product to be identified from the time of slaughter to the time of exportation is to ensure that the meat intended to be exported under the special refund system does not 'disappear' and is not replaced by other meat before being exported, and therefore cannot be offered to the intervention authorities. It contends that watertight and effective supervision of that kind cannot, however, be ensured unless the customs export formalities are completed in the Member State where the animals are slaughtered.

3. *The analogous regulations*

The Commission maintains that its interpretation of the provision in question is corroborated by the provisions of the following Community regulations, which have a similar purpose: Article 2 (1) and Article 5 of Commission Regulations (EEC) No 1964/82 of 20 July 1982 (Official Journal 1982, L 212, p. 48) and No 74/84 of 12 January 1984 (Official Journal 1984, L 10, p. 32) laying down the conditions for granting special export refunds on certains of cuts of boned and unboned meat; Article

2 (1) (a) of Commission Regulation (EEC) No 1136/79 of 8 June 1979 (Official Journal 1979, L 141, p. 10) laying down detailed rules for the application of special import arrangements for certain types of frozen beef intended for processing and repealing Regulation (EEC) No 572/78; and Article 4 (1) and (2) of Regulation (EEC) No 1687/76 of 30 June 1976 (Official Journal 1976, L 190, p. 1) laying down common detailed rules for verifying the use and/or destination of products from intervention.

It claims that the last-mentioned regulation is also based on the idea that in order to ensure that the proper use of the products can be verified, the customs export formalities must be completed in the Member State in which the last operation capable of giving rise to an incentive measure was carried out (slaughter operations under Regulation No 32/82 and boning and cutting under Regulations Nos 1964/82 and 74/84). It maintains that the rules laid down in Regulation No 1687/76 concerning the checks to be carried out between the time when the goods leave the intervention agency warehouse and the time of exportation are accounted for by the fact that that regulation relates to the use of stocks held by the intervention agencies which were already at the Community's disposal and in respect of which Community supervisory procedures could therefore be introduced, in particular by use of the control copy referred to in Article 2 (3) of Regulation No 1687/76. Under Regulation No 32/82, which relates to the exportation of meat from cattle slaughtered and exported without Community intervention, it considers that it was appropriate to provide for supervision only by means of a procedure introduced by each Member State. In those circumstances, the Commission considers that in order to ensure such supervision the export customs formalities may not be completed in a Member State other than that in which the animals were slaughtered.

T. F. O'Higgins
Judge-Rapporteur