JUDGMENT OF THE COURT (FIRST CHAMBER)
9 DECEMBER 1982 [1]

H. P. Klughardt oHG v Hauptzollamt Hamburg-St. Annen (reference for a preliminary ruling from the Bundesfinanzhof)

(Common organization of the market in beef and veal)

Case 309/81

1. *Agriculture — Common organization of the market — Beef and veal — Scope — Buffalo meat of non-domestic species — Inclusion*
   (Council Regulation No 425/77, art. 1)

2. *Measures adopted by the institutions — Regulations — Duty to provide a statement of the reasons on which they are based — Scope*
   (EEC Treaty, Art. 190)

1. Regulation (EEC) No 425/77 must be interpreted as meaning that buffalo meat of non-domestic species is covered by the common organization of the market in beef and veal.

2. In relation to the statement of reasons upon which regulations are based, Article 190 of the Treaty requires that the recitals in the preamble should explain in essence the measures taken, without its being necessary to provide a specific statement of reasons in support of all the details which might be contained in such measures.

In Case 309/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof [Federal Finance Court] for a preliminary ruling in the proceedings pending before that court between

H. P. KLUGHARDT oHG, Hamburg,

and

1 — Language of the Case: German.

HAUPTZOLLAMT [Principal Customs Office] HAMBURG-ST. ANNEN,

Intervener: FEDERAL MINISTER OF FINANCE,

on the interpretation and validity of Council Regulation (EEC) No 425/77 of 14 February 1977 amending Regulation (EEC) No 805/68 on the common organization of the market in beef and veal and adapting Regulation (EEC) No 827/68 and Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journal 1977, L 61, p. 1),

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: G. Reischl
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The order making the reference, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

(a) Facts

On 20 December 1977, H. P. Klughardt oHG [trading partnership] (hereinafter referred to as "Klughardt"), the plaintiff in the main action, applied to the German customs authorities for customs clearance in respect of 4 867.41 kg of wild buffalo meat from Australia falling under tariff subheading 02.01 A II (b) 4 (bb) 33 of the Common Customs Tariff. The customs authorities charged in respect of the goods a levy of DM 30 187.19 and monetary compensatory amounts in the sum of DM 2 620.13.

Klughardt objected to that assessment on the ground that a levy and monetary

compensatory amounts could be charged only on meat of domestic bovine animals. The Hauptzollamt [Principal Customs Office] rejected the objection as unfounded. An action which Klughardt then brought before the Finanzgericht [Finance Court] Hamburg was unsuccessful.

Klughardt then appealed against that decision on a point of law to the Bundesfinanzhof, which stayed the proceedings and referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty the two following questions:

"1. Was it the intention that wild buffalo meat should be included in the organization of the market in beef and veal as a result of Council Regulation (EEC) No 425/77?

2. If the answer to Question 1 is in the affirmative: Is Council Regulation (EEC) No 425/77 invalid in so far as it infringes Article 190 of the Treaty establishing the European Economic Community?"

(b) Rules applicable

It is not disputed that the goods in question must be classified under subheading 02.01 A II (b) 4 (bb) 33 of the Common Customs Tariff: "Meat and edible offals of the animals falling within heading No 01.01, 01.02, 01.03 or 01.04, fresh, chilled or frozen: Meat: ... Of bovine animals: ... Frozen: ... Other: ... Boned or boneless ... Other". Heading 01.02, to which that definition refers, reads as follows: "Live animals of the bovine species"; [1] it includes two subheadings: "A. Domestic species" and "B. Other".

At an earlier stage, Regulation No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187) covered only meat " of domestic bovine animals". The field of application of the agricultural rules on beef and veal was amended by Article 1 of Council Regulation No 425/77 of 14 February 1977 (Official Journal 1977, L 61, p. 1). In relation to live animals, that provision refers only to animals of the domestic bovine species (01.02 A II). In relation to meat, however, it refers to all meat of bovine animals, fresh, chilled or frozen (02.01 A II).

(c) Procedure

The order for reference made on 27 October 1981 was lodged at the Court Registry on 3 December 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Klughardt, the plaintiff in the main action, represented by Klaus Landry, Rechtsanwalt of Hamburg, by the Council of the European Communities, represented by its Legal Adviser, Bernhard Schloh, acting as Agent, assisted by Arthur Brautigam, a member of its Legal Department, and by the Commission of the European Communities, represented by Jörn Sack, 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 by order of 5 May 1982 to assign the case to the First Chamber, pursuant to Article 95 of the Rules of Procedure, and to open the oral procedure without any preparatory inquiry. However, the Court requested the plaintiff in the main action to supply information on the origin of the buffalo meat in question.

1 — Translator's note: The German version of this tariff heading reads "Rinder (einschließlich Büffel), lebend" and the French version reads "Animaux vivants de l'espece bovine, y compris les animaux du genre buffle" but the reference to buffalo does not appear in the English version.

II — Summary of the written observations submitted to the Court

In relation to the first question, *Klughardt* points out that until it was amended on the entry into force of Regulation No 425/77, Regulation No 805/68 did not include wild buffalo or their meat in the common organization of the market in beef and veal. A change in that situation as a result of Regulation No 425/77 ought to have appeared clearly in that regulation. It did not in fact do so.

According to Klughardt, the recitals in the preamble to Regulation No 425/77 do not mention buffalo or their meat or the fact that they are included in the field of application of the common organization of the market and the system of levies. It is clear from Article 1 of Regulation No 425/77 that only live animals of the domestic bovine species (tariff subheading 01.02 A) and not live animals of the wild buffalo species (tariff subheading 01.02 B) are covered by the common organization of the market. It is then inconsistent to interpret that regulation as excluding from the field of application of the organization of the market live animals of the wild buffalo species but including their meat. No such distinction between wild buffalo and their meat may be inferred from the provisions of the regulation in question (Article 1 (2) (a), in conjunction with Article 9 (2) of Regulation No 805/68, as amended by Article 3 of Regulation No 425/77).

In relation to the second question, Klughardt stresses that the recitals in the preamble to Regulation No 425/77 do not contain any reasons explaining why wild buffalo meat might be covered by the common organization of the market in beef and veal. If the first question is answered in the affirmative, the regulation should, in the absence of any statement of reasons, be considered to be illegal in this regard.

In conclusion, Klughardt considers that the questions submitted by the Bundesfinanzhof should be answered as follows:

"1. Wild buffalo meat was not included in the common organization of the market in beef and veal by Regulation No 425/77;

2. If it was, however, so included, Regulation No 425/77 is invalid in so far as it infringes Article 190 of the EEC Treaty."

The *Commission* observes first that it is clear from the Common Customs Tariff and from the organization of the market that the words "bovine animals" include buffalo, since the description of the products in tariff heading 01.02 reads "Rinder (einschließlich Büffel), lebend" [1] [Live animals of the domestic bovine species (including buffalo)]. It follows from that that subheading 02.01 A. II, covering the meat of bovine animals, in view of the wide definition of the words "bovine animals" provided in tariff heading 01.02, also includes buffalo meat. The Explanatory Notes to the Customs Tariff of the European Communities on tariff heading 01.02 also show that both the words "bovine animals" and the word "buffalo" cover domestic and wild species.

In order to determine whether an individual case concerns domestic or wild animals, it is necessary to consider whether the *species* to which the animal belongs is a domestic species (cf judgment of 12 December 1973 in Case 149/73 *Otto Witt KG* v *Hauptzollamt Hamburg-Ericus* [1973] ECR 1587). Transposing that principle to this case, the Commission is in no doubt that the imported Australian buffalo meat is meat of "live animals of the domestic bovine species" within the meaning of the

1 — Please refer to previous footnotes.

Common Customs Tariff and the organization of the market. In view of the Explanatory Notes to the Customs Tariff of the European Communities, such buffalo should in any event be classified, so far as their zoological genus is concerned, among domestic or water buffalo *(Bubalus bubalus* or *Bubalus arni).*

In relation to the first question, the Commission considers that Regulation No 425/77 also covers the meat of bovine animals which are not "live animals of the domestic bovine species" and includes that product in the common organization of the market in beef and veal. That is clear in particular from the precise wording of Regulation No 805/68 and Regulation No 425/77 amending the latter.

With regard to the second question, the Commission contends that an elaborate statement of reasons was not indispensable. At the time when Regulation No 425/77 was adopted, only one trader was affected by the new system, and that was purely because the customs authorities of one Member State were unsure of the classification of the product in question. From an economic point of view the amendment in question was therefore of only marginal importance. Regulation No 425/77 contains a series of amendments of the common organization of the market in beef and veal for which it was most important that a statement of reasons should be provided. That applied particularly to the inclusion in the common organization of "pure-bred breeding" animals.

The Commission also suggests that the Court, if it does not consider itself bound by the exact wording of the questions submitted for a preliminary ruling, should for the purposes of the solution of the main action define the expression animal "of the domestic bovine species" used in Regulation No 805/68 and in the Common Customs Tariff as referring to bovine animals which by their genus are domestic animals. On the other hand, it is of little significance whether the animals in question live individually in the domestic or wild state. If the Court were to follow that course, it would not be necessary to examine further the two questions referred to the Court.

However, should the Court consider itself to be bound by the wording of the questions submitted for a preliminary ruling, the Commission suggests that the following answer should be given:

"1. Council Regulation No 425/77 of 14 February 1977 amended Article 1 of the regulation on the common organization of the market in beef and veal with the result that the common organization of the market also covers the meat of bovine animals other than domestic animals.

2. An examination of the questions submitted has revealed no factors capable of affecting the validity of Regulation No 425/77."

The *Council* agrees with the observations submitted by the Commission in relation to the delimitation of the class of "animals of the domestic bovine species" in relation to that of animals of the non-domestic species.

It points out that Regulation No 425/77 abolished the distinction which had previously existed between the tariff headings, "Domestic bovine species" and "Other", in relation to meat (02.01).

The Council's position on the first question is therefore as follows:

Regulation (EEC) No 425/77 was intended also to include in the organization of the market in beef and veal the meat of animals of the bovine species, including buffalo, *other* than domestic species, that is to say, tariff subheading 01.02 B. Since the Australian buffalo meat fell within subheading 02.01 A II (a) of the classification in force from 1968 until 31 March 1977, that product was subject to that organization of the market from 1968. Regulation No 425/77, which entered into force on 1 April 1977, in no way changed that situation.

In relation to the second question, the Council points out that it follows from the case-law of the Court on the duty to give a statement of reasons that it is necessary to consider the rules in their entirety as well as the general context and objectives of the rules.

Regulation No 425/77 does not contain any specific statement of reasons relating to the inclusion in the organization of the market in beef and veal of the meat of animals of the bovine species "other" than domestic. The Council considers that such a statement of reasons is not necessary in this case. One of the grounds on which the Council adopts that position is that this was a minor part of the regulation. Indeed, the chief objective of Regulation No 425/77 was to alter the rules on trade with non-member countries. It clearly follows from the ninth recital in the preamble to Regulation No 425/77 that its objective is to avoid products which may be substituted for beef and veal being imported into the Community free of levies.

In conclusion, the Council considers that there was no infringement of Article 190 of the Treaty.

Replying to a question put by the Court, *Klughardt* explains that the Bundesfinanzhof submitted a question on the import of wild buffalo meat and that it clearly understood that to mean meat of buffalo of a non-domestic species. Moreover, there is no dispute in that regard between the parties to the main action.

In the alternative, it notes that the case relates to Australian wild buffalo which for 200 years have been living in the wild. They should therefore be considered to be game, in accordance with the Opinion of Mr Advocate General Trabucchi in Case 149/73 *Witt*, cited above.

III — Oral procedure

At the sitting on 8 July 1982 oral argument was presented by the following: Klaus Landry, Rechtsanwalt, Hamburg, for the plaintiff in the main action; Bernhard Schloh, acting as Agent, for the Council of the European Communities; and Jörn Sack, acting as Agent, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 14 October 1982.

Decision

1 By order of 27 October 1981 which was received at the Court on 3 December 1981, the Bundesfinanzhof [Federal Finance Court] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation and validity of Council Regulation (EEC) No 425/77 of 14 February 1977 amending Regulation (EEC) No 805/68 on the common organization of the market in beef and veal and adapting Regulation (EEC) No 827/68 and Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journal 1977, L 61, p. 1).

2 The questions were raised in the course of an appeal brought by a German undertaking against the application of levies and monetary compensatory amounts by the customs authorities on the importation of a quantity of frozen boneless buffalo meat.

3 The importer claimed before the national court that the application of levies and monetary compensatory amounts was justified only if the buffalo meat was re-covered by the common organization of the market in beef and veal and that that was not the case since it was meat of Australian buffalo, which was wild buffalo. Regulation No 425/77 did not include wild buffalo meat in the common organization of the market in beef and veal and if it should be interpreted otherwise, that regulation would be invalid on the ground that it did not state the reasons on which it was based.

4 In order to enable it to determine those two questions, the Bundesfinanzhof referred to the Court for a preliminary ruling the following questions:

"1. Was it the intention that wild buffalo meat should be included in the organization of the market in beef and veal as a result of Council Regulation (EEC) No 425/77?

2. If the answer to Question 1 is in the affirmative: Is Council Regulation (EEC) No 425/77 invalid in so far as it infringes Article 190 of the Treaty establishing the European Economic Community?"

5 During the procedure before the Court, the Council and the Commission contended that those questions were based on an erroneous premise, since the Australian buffalo was descended from the Asiatic buffalo and the latter should be regarded in accordance with the Explanatory Notes to the Customs Tariff of the European Communities as an animal of the domestic species. There is no doubt that the buffalo is an animal of the bovine species and that meat of animals of the domestic bovine species was already covered by the common organization of the market in beef and veal before the entry into force of Regulation No 425/77, by virtue of Article 1 of Council Regulation No 805/68 of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187).

6 However, it must be noted that the questions submitted to the Court of Justice by the national court concern the meat of wild buffalo and that it is for that court to determine whether the main action in fact concerns such a product.

7 Since the expression "wild buffalo" does not appear in the Common Customs Tariff or in the regulations on agricultural matters, it must be assumed that the national court refers in its questions to meat of buffalo of non-domestic species.

8 Article 1 of Regulation No 425/77 defines the scope of the common organization of the market in beef and veal so as to cover "Live animals of the domestic bovine species, other than pure-bred breeding animals" (subheading 01.02 A II of the Common Customs Tariff) and also "Meat of bovine animals, fresh, chilled or frozen" (subheading 02.01 A II of the Common Customs Tariff).

9 Article 5 of the same regulation amends the provisions of the Common Customs Tariff on live animals of the bovine species, [1] (heading 01.02) and on meat and edible offals of the bovine animals falling within heading 01.02, fresh, chilled or frozen (subheadings 02.01 A II, B II and C I). The amended version of tariff heading 01.02 distinguishes between animals of "Domestic species" and "Other", whereas there is no such distinction in tariff heading 02.01 in relation to meat and offals.

10 It therefore follows from the provisions of Regulation No 425/77 that there is no distinction in either the Common Customs Tariff or the rules on the common organization of the market between meat of buffalo of domestic species and that of buffalo of non-domestic species.

11 The plaintiff in the main action claims that a system whereby the live buffalo of non-domestic species was not covered by the common organization of the market whereas its meat was so included would be inconsistent. However, that argument concerns the question whether the distinctions made between bovine animals in Regulation No 425/77 are well founded, not the interpretation of that regulation.

12 The answer to the first question should therefore be that Regulation No 425/77 must be interpreted as meaning that meat of buffalo of non-domestic species is covered by the common organization of the market in beef and veal.

1 — Please refer to previous footnotes.

13 The second question asks whether such an interpretation results in the invalidity of Regulation No 425/77, since the recitals in the preamble to the regulation do not refer to the extension of the scope of the common organization of the market to cover meat of bovine animals of non-domestic species.

14 It should be recalled that the Court considered in its judgment of 12 July 1979 in Case 166/78 *Italian Republic* v *Council* [1979] ECR 2575, that, in relation to the statement of the reasons upon which regulations are based, Article 190 of the Treaty requires that the recitals in the preamble should explain in essence the measures taken, without its being necessary to provide a specific statement of reasons in support of all the details which might be contained in such a measure.

15 Regulation No 425/77 in essence provides for a revision of the rules governing trade with non-member countries, described in detail in the recitals in the preamble. The Council made use of that opportunity in order to settle other problems in relation to beef and veal by amending, for example, the rules applicable to pure-bred breeding animals. In addition, the 11th recital in the preamble to the regulation refers to the fact that the effect of the amendments to the regulations on beef and veal is to amend the descriptions of certain goods.

16 In those circumstances, the absence of a specific statement of the reasons for the inclusion of meat of bovine animals of non-domestic species in the common organization of the market does not make the regulation invalid for infringement of Article 190 of the Treaty.

17 The answer to the second question should therefore be that consideration of the question has disclosed no factor of such a kind as to affect the validity of Regulation No 425/77.

Costs

18 The costs incurred by the Council of the European Communities and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions submitted to it by the Bundesfinanzhof by order of 27 October 1981, hereby rules:

1. **Council Regulation (EEC) No 425/77 of 14 February 1977 must be interpreted as meaning that buffalo meat of non-domestic species is covered by the common organization of the market in beef and veal.**

2. **Consideration of the second question has disclosed no factor of such a kind as to affect the validity of Council Regulation (EEC) No 425/77 of 14 February 1977.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 9 December 1982.

P. Heim
Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 14 OCTOBER 1982 [1]

Mr President,
Members of the Court,

The action pending before the Bundesfinanzhof [Federal Finance Court] out of which the reference to be considered today arose concerns the question whether levies and monetary compensatory amounts may be charged on meat of what was described as wild buffalo, imported from Australia.

The following details in relation to the case must first be mentioned:

1 — Translated from the German.