JUDGMENT OF THE COURT
3 October 1985 *

In Case 46/84

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

Nordgetreide GmbH & Co. KG

and

Hauptzollamt [Principal Customs Office] **Hamburg-Jonas,**

on the validity of Commission Regulation No 746/79 of 11 April 1979 amending certain monetary compensatory amounts in the cereals sector (Official Journal L 95, p. 3) and of Commission Regulation No 3013/80 of 21 November 1980 amending Regulation (EEC) No 2140/79 as regards certain monetary compensatory amounts and Regulation (EEC) No 2803/80 as regards certain export refunds in the cereals sector (Official Journal L 312, p. 12),

THE COURT

composed of: G. Bosco, President of Chamber, acting as President, O. Due and C. Kakouris (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: C. O. Lenz
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of:

Nordgetreide GmbH & Co. KG, the plaintiff in the main proceedings, by Mr Festge, Rechtsanwalt, and

* Language of the Case: German.

the Commission of the European Communities, by B. Jansen and C. Berardis-Kayser, acting as Agents,

after hearing the Opinion of the Advocate General delivered at the sitting on 28 February 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 6 January 1984, which was received at the Court on 21 February 1984, the Finanzgericht Hamburg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the validity of Commission Regulation No 746/79 of 11 April 1979 amending certain monetary compensatory amounts in the cereals sector and of Commission Regulation No 3013/80 of 21 November 1980 amending Regulation (EEC) No 2140/79 as regards certain monetary compensatory amounts and Regulation (EEC) No 2803/80 as regards certain export refunds in the cereals sector, and on the consequences if they are found to be invalid.

2 The questions were raised in an action brought by Nordgetreide GmbH & Co. KG, the plaintiff in the main proceedings, against the Hauptzollamt Hamburg-Jonas (hereinafter referred to as 'the customs office'), the defendant in the main proceedings.

3 Between 29 May and 21 June 1979 and between 25 November 1980 and 15 March 1981 Nordgetreide exported to Denmark, Sweden and the United Kingdom maize groats and brewery meal falling under subheadings 11.02 A V (a) 1 and 2 of the Common Customs Tariff (Maize groats and maize meal (1) for the brewing industry and (2) other).

4 The customs office calculated the monetary compensatory amounts to be paid to Nordgetreide by applying Commission Regulation No 746/79 to the exports

carried out up to June 1979 and Regulation No 3013/80, which had subsequently entered into force, to those carried out after that date. Under Regulation No 746/79, the monetary compensatory amounts to be paid were DM 67.01 per tonne; under Regulation No 3013/80 they were DM 50.36 and DM 56.62 per tonne.

5 Considering that it was entitled to higher monetary compensatory amounts, Nordgetreide lodged an objection to each of the decisions of the customs office. The objections were dismissed and Nordgetreide appealed to the Finanzgericht Hamburg, contesting the way in which the customs office had calculated the monetary compensatory amounts and challenging the validity of Regulations Nos 746/79 and 3013/80.

6 Since it considered that the resolution of the dispute brought before it depended on the validity of the provisions of the Commission regulations challenged by the plaintiff, the Finanzgericht Hamburg submitted the following two questions to the Court of Justice for a preliminary ruling:

'(1) Are Commission Regulations (EEC) No 746/79 of 11 April 1979 and No 3013/80 of 21 November 1980 invalid in so far as, in respect of products under subheading 11.02 A V (a) 1 and 2 of the Common Customs Tariff (Maize groats and maize meal (1) for the brewing industry (2) other), they fix monetary compensatory amounts at only DM 67.01, DM 56.62 or DM 50.36 per tonne?

(2) Should Question 1 be answered in the affirmative, what are the consequences of such invalidity?'

The first question

The observations submitted to the Court

7 The plaintiff in the main proceedings states that the solution adopted by the Court in its judgments of 15 October 1980 (Case 4/79 *Providence Agricole de la Champagne* v *Office national interprofessionnel des céréales* [1980] ECR 2823, and Case 109/79 *Maïseries de Beauce* v *Office national interprofessionnel des céréales* [1980] ECR 2883), according to which the amount of the monetary compensatory amounts applicable to products obtained by processing a given quantity of maize in a specific manufacturing process the price of which depends on that of maize may not be clearly in excess of that of the monetary compensatory amounts fixed for that quantity of maize, also implies, conversely, that that sum must also not be clearly inferior to the same monetary compensatory amount. It claims that in

breach of that ruling the Community regulations at issue reduced the coefficient for the conversion of maize into meal from 1:1.8 (that is to say, 1.8 tonnes of maize for the production of one tonne of meal) which was initially applied, to 1:1.5, which entailed a reduction of nearly 20% in the monetary compensatory amounts paid for that derived product.

8 The regulations at issue are thus incompatible with the monetary compensatory amount scheme, which is based on the principle of neutrality, inasmuch as in breach of Article 40 (3) of the EEC Treaty they distort competition and place at a disadvantage processing undertakings established in countries with a strong currency *vis-à-vis* their competitors established in countries with a weak currency. When they export processed products, the former receive monetary compensatory amounts generally lower than those which they had to pay when they imported the basic product. On the other hand, the latter, when they export processed products, pay monetary compensatory amounts lower than those they received when they imported the basic product.

9 The plaintiff in the main proceedings maintains that in order to avoid such discrimination the Commission must apply a uniform system functioning independently of the various production sequences, either by abolishing monetary compensatory amounts for other products derived from maize while maintaining them for the principal derived product (maize meal falling under tariff subheadings 11.02 A V (a) 1 or 2) and applying the initial processing coefficient of 1:1.8, or by abandoning the processing sequence unilaterally described by the French mills (the applicants in Cases 4 and 109/79) and using as a basis the processing sequence which is most frequently used by the maize milling industry in the Community.

10 It states that in the process considered by the Court in the abovementioned judgments of 15 October 1980, which was the one used by the French maize mills, one tonne of maize groats and meal, 0.27 tonnes of flour, 0.27 tonnes of fodder flour, 0.242 tonnes of germ and 0.018 tonnes of waste is obtained from 1.8 tonnes of maize. On the other hand, in the process used by the applicant and by most of the mills established in the Federal Republic of Germany and in the Benelux countries, and which is economically the most modern, 1.8 tonnes of maize yields one tonne of groats and meal, 0.27 tonnes of flour and 0.09 tonnes of bran or fodder flour. The 0.4 tonnes remaining are composed of germ and chaff which contain unmarketable oils and fats and are processed to give kibbled maize-germ extract and maize-germ oil, in respect of which no monetary compensatory amount is paid. They are sold at a low price and are exposed to competition from

substitute products imported from non-member countries free of levies or compensatory taxes or both.

11 It claims that the maize germ which appears in the process used by the French mills must not be taken into consideration because it is merely the result of the fact that the technical inadequacy of the processing plant makes it impossible to process the germ into maize oil and kibbled maize-germ extract, which would be economically more rational.

12 It submits tables covering May and June 1979 which show that under Regulation No 746/79 the monetary compensatory amounts for products derived from maize by the process used in the French mills was DM 8.44 greater than the compensatory amounts for maize itself, whereas the compensatory amounts for derived products yielded by the German process is DM 1.17 lower. Similarly, for the period from November 1980 to March 1981, under Regulation No 3013/80, the total of the compensatory amounts for derived products yielded by the French process was DM 7.40 lower in the case of maize meal for the brewing industry and DM 1.14 lower for other maize meal falling under subheading 11.02 A V (a) 2, whereas for the German process that difference was DM 12.05 and DM 5.79 respectively. According to Nordgetreide, that difference is considerable if account is taken of the fact that the disadvantage resulting from it for undertakings based in a country with a strong currency is compounded by the advantage from which undertakings based in countries with a depreciated currency already benefit, as has been explained above.

13 The plaintiff in the main proceedings adds that the Community rules fixing the monetary compensatory amounts do not take account of the cost of processing the raw materials into derived products, which are heavier for German undertakings because they are incurred in the strong national currency.

14 The Commission contends, first, that factors such as the cost of processing and marketing derived products should not be taken into account because they are not part of the monetary compensatory amount scheme, the purpose of which is merely to preserve free movement of agricultural products in so far as the common prices are calculated on the basis of a currency conversion rate (the green rate) which does not correspond to the actual exchange rate. Moreover, the

Commission observes that even if it could obtain precise information concerning the disadvantages actually borne by undertakings in countries with a strong currency with regard to processing, such information would refer merely to individual cases which could not be regarded generally as decisive when considering the validity of the regulations at issue.

15 The Commission then points out that it amended the contested monetary compensatory amounts in Regulation No 3013/80 in order to comply with the judgments of the Court of 15 October 1980 in Cases 4/79 and 109/79 and the judgment of the same day in Case 145/79 (*Roquette Frères* v *French Customs Administration* [1980] ECR 2917), and that amendment could only consist of a reduction of the compensatory amounts for processed products obtained by the same process so that the sum of those amounts would not significantly and systematically exceed the compensatory amounts for the basic product.

16 It states that Regulation No 746/79 amended the method of calculation previously applied by reducing from 1:1.60 to 1:1.50 the maize processing coefficient for the main product obtained in the maize gritz production process, namely groats and meal falling under subheading 11.02 A V (a) 1 of the Common Customs Tariff, in order to take due account of the other processed products obtained during the manufacture of gritz.

17 The Commission emphasizes that Regulation No 746/79 could be regarded as invalid in so far as the method of calculation which it adopted did not take account of the fact that the sum of the monetary compensatory amounts for the processed products was clearly and systematically in excess of the compensatory amounts for maize, according to the rule laid down in the judgment of the Court in Case 145/79. The fact that the method of calculation adopted in Regulation No 746/79 was based on the intervention price for the basic product and took no account of the production refund applicable for gritz intended for the brewing industry was also contrary to that judgment. The Commission observes, however, that a declaration that Regulation No 746/79 is invalid on those grounds would be the opposite of what the plaintiff in the main proceedings wishes to obtain in so far as it would lead to a reduction in the compensatory amount for gritz used in the brewing industry within the Community.

18 On the other hand, the Commission considers that Regulation No 3013/80 complies with the Court's ruling to the effect that the compensatory amounts for derived products must not be 'clearly in excess' of those applicable for the quantity

of maize from which they are obtained. It emphasizes that the method of calculation introduced by that regulation is based on the need to take account, in exercising its discretion, of several complex factors and to make use of average values rather than the situation of each individual manufacturer both when calculating the processing coefficient and when deciding on the production process to be taken into account. It emphasizes that it is not possible to equate precisely the compensatory amounts applicable to processed products with those applicable to the equivalent quantity of the basic product, nor is that required either by Regulation No 974/71 of the Council or by the judgments of the Court of 15 October 1980.

19 The Commission submits tables showing that the monetary compensatory amounts for the basic product in question are only slightly higher than the compensatory amounts for the products into which it can be processed: for the 1.883 tonnes of maize necessary to obtain one tonne of gritz, the monetary compensatory amount in November 1980 was DM 71.08, whereas for the processed products obtained by the process in question in this case, it was DM 67.97, which represents a difference of only DM 3.11, or 4.3%.

20 The Commission considers that complete neutrality in regard to monetary compensatory amounts can only be achieved in intra-Community trade at the price of an increased imbalance in trade with non-member countries or, conversely, at the price of compensatory amounts which no longer conform to the criteria fixed by the Court. It adds that the very small inconvenience which might result for industry in a country with a strong currency such as the Federal Republic of Germany is compensated for by the advantage from which it benefits when it exports to non-member countries. The Commission therefore contends that the method of calculation which it adopted guarantees general neutrality in terms of competition between traders in a country with a revalued currency and traders in a country with a depreciated currency.

21 Finally, the Commission rejects the allegations made by the plaintiff in the main proceedings to the effect that there is no market for maize germ and it produces statistics showing the volume of trade in that product both within the Community and with non-member countries.

General observations

22 It must be borne in mind that according to the settled case-law of the Court (see, most recently, the judgment in Case 145/79, cited above), monetary compensatory

amounts were introduced, both for basic products and for dependent products, in order to correct the effects of fluctuations in exchange rates which, in a system whereby the markets in agricultural products are organized on the basis of common prices, might provoke disturbances in trade in those products and, in particular, undermine the intervention system established for them. The introduction of monetary compensatory amounts is therefore essentially intended to maintain the uniform price system in the common organizations of the market. It does not provide and could not provide additional protection of the markets at the level of agricultural prices in any given Member State compared to the others, an aim which is incompatible with the unity which it is sought to achieve.

23 With regard more particularly to dependent products, it must also be observed, as the Court stated in its judgment of 12 November 1974 (Case 34/74 *Roquette* v *France* [1974] ECR 1217) and its judgment of 15 October 1980 (Case 145/79 *Roquette*, cited above), that whereas monetary fluctuations may be entirely compensated for in regard to basic products, the same is not true in regard to dependent products. According to Article 2 (2) of Regulation No 974/71, the monetary compensatory amounts for the latter are to be equal to the incidence, on the prices of the product concerned, of the application of the compensatory amount to the price of the basic product. The term 'incidence' in that provision merely permits the Commission to take account, when fixing the monetary compensatory amounts, of the effect of the compensatory amounts applied to the basic product on the price of the dependent product.

24 As the Court said in the judgment in Case 145/79, cited above, the calculation of the incidence on the prices of dependent products of the monetary compensatory amount fixed for a basic product causes difficult technical and economic problems with regard to a large number of products whose manufacturing process and composition may vary from region to region in the Community. It is for the Commission to resolve these problems whilst maintaining a degree of consistency and clarity in the system of monetary compensatory amounts which it is required to establish in that sector. For this purpose it must have a wide margin of discretion in particular with regard to the existence or the threat of disturbances in trade, the number of dependent products to which the compensatory amount must be applied and the incidence on the price of the dependent product of the compensatory amount applied to the basic product. The fixing of the

compensatory amount on a processed product cannot be challenged on the sole ground that, for a particular undertaking or group of producers, the calculation of the incidence of the compensatory amount applicable to the basic product is not entirely appropriate, as it may be essential to make general assessments. The Commission cannot, therefore, be required to achieve absolute mathematical equality between the two sets of monetary compensatory amounts.

25 To that must be added a further consideration, based on Article 4 (2) of Regulation No 974/71 which provides that 'no compensatory amount shall be fixed for products for which the amount calculated in accordance with Article 2 is negligible in relation to their average value'. If it is not necessary to fix monetary compensatory amounts when they are negligible in relation to the average value of the products there can also be no obligation to fix them in such a way as to eliminate a difference which represents a negligible percentage of the monetary compensatory amounts themselves and which therefore can be only negligible in relation to the value of the goods.

26 It should also be pointed out that when the Commission fixes the monetary compensatory amounts for dependent products it may only take account of the incidence of the amounts fixed for the basic products, that is to say, the effect of the compensatory amounts applied to the basic product on the price of the dependent products; it may not take extraneous factors into consideration.

27 The Court will now consider the validity of Regulations Nos 746/79 and 3013/80 in the light of those considerations.

The validity of Regulation No 746/79

28 With regard to the sole ground of invalidity advanced by the plaintiff in the main proceedings concerning the difference between the monetary compensatory amounts applicable to maize and those applicable to derived products, it must be held that the difference of 1.45% shown, according to the calculations of the plaintiff in the main proceedings, by a comparison of the two sums, is a negligible one.

29 It must therefore be held that consideration of the first question has disclosed no factor of such a kind as to affect the validity of Regulation No 746/79.

The validity of Regulation No 3013/80

30 The plaintiff in the main proceedings claims that Regulation No 3013/80 is invalid because the monetary compensatory amounts applicable to derived products were fixed at too low a level in relation to the monetary compensatory amounts applicable to maize. According to its calculations, there is a difference of 17.73% for groats and meal intended for the brewing industry and 8.52% for other groats and meal. That is the result of the fact that the regulation at issue relied on the French production process which, as well as groats and meal, flour and bran, produces maize germ for which there is no market and which must therefore be regarded as waste; for that reason it cannot qualify for monetary compensatory amounts. The relevant process should be that used by the mills established in the Federal Republic of Germany and the Benelux countries, which is the process most widely used in the Communities and the best from an economic point of view because instead of germ, it allows the production of kibbled maize-germ extract and maize-germ oil for which there is a market and which consequently ought to have qualified for monetary compensatory amounts.

31 The Commission makes a different calculation, relying on an average production process which is now based not on the French one, but on other figures determined in the light of the judgment in Case 4/79, cited above; it reveals a difference of only 4.3% in relation to the monetary compensatory amounts applicable to meal for the brewing industry and that difference would apparently be less in regard to other meal by virtue of the fact that the monetary compensatory amounts applicable to such meal are higher.

32 It should be noted with regard to the production process to which it refers that the Commission has not misused its discretion by making use of average values concerning the composition of that process, in particular by taking maize-germ into consideration, since the information supplied by the Commission establishes that a market exists for that product.

33 It thus remains to be considered whether a difference of 4.3% between the monetary compensatory amounts applicable to derived products and those applicable to the basic products must be regarded as excessive in the light of the considerations set out above.

34 It must be observed in that connection that the difference between the two sums which were compared in Cases 4/79 (concerning Regulations Nos 1910/76, 2466/76 and 938/77) and 109/79 (concerning Regulation No 938/77), in which the Court delivered judgment on 15 November 1980, was about 30%. In Case 145/79 (concerning Regulation No 652/76) the difference was about 12% but was distorted by the method of fixing the monetary compensatory amount for starch, which had been calculated on the basis of the intervention price for maize without deducting the production refund on starch. If, on the other hand, the calculation is based on the intervention price for maize reduced by the aforementioned production refund, as was laid down in the Court's judgment in that case, the monetary compensatory amount fixed for starch would necessarily be higher, and that would also increase the abovementioned difference.

35 In the light of all those considerations, it must be held that the difference of 4.3% which may be found in this case in the context of the main proceedings is negligible.

36 That finding is not affected by the argument that the loss suffered by traders established in countries with a strong currency is in fact much higher because they suffer the effects of a 'negative' difference whereas producers established in countries with a weak currency benefit from a 'positive' difference of the same magnitude when they export products derived from maize. Taking that argument into consideration would also have the effect of significantly increasing the difference referred to in the aforementioned judgments and would not therefore modify the relationship between that difference and the one to be found in this case.

37 The above finding cannot be altered by the argument advanced by the plaintiff in the main proceedings to the effect that account must be taken of the cost of processing the raw material into derived products, which is higher for German undertakings because it is calculated in a strong currency. Independently of whether that argument is well-founded in law, the influence of such a factor on the difference of 4.3% which has been found to exist cannot in any event be other than negligible.

38 In the light of the considerations set out above, it must therefore be held that consideration of the first question has disclosed no factor of such a kind as to affect the validity of Regulation No 3013/80.

The second question

39 In view of the reply given to the first question there is no need to reply to the second question.

Costs

40 The costs incurred by the Commission of the European Communities, which 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 action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Finanzgericht Hamburg by an order dated 6 January 1984, hereby rules:

Consideration of Commission Regulation No 746/79 of 11 April 1979 amending certain monetary compensatory amounts in the cereals sector (Official Journal L 95, p. 3) and of Commission Regulation No 3013/80 of 21 November 1980 amending Regulation No 2140/79 as regards certain monetary compensatory amounts and Regulation No 2803/80 as regards certain export refunds in the cereals sector (Official Journal L 312, p. 12) has disclosed no factor of such a kind as to affect their validity.

Bosco Due Kakouris

Pescatore Koopmans Everling Bahlmann Galmot Joliet

Delivered in open court in Luxembourg on 3 October 1985.

P. Heim
Registrar

G. Bosco
President of Chamber
acting as President