JUDGMENT OF THE COURT
18 February 1986 *

In Case 35/84

Commission of the European Communities, represented by Enrico Traversa and Thomas van Rijn, both members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Manfred Beschel, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by Oscar Fiumara, avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that the Italian Republic, by imposing restrictions on imports of curds from the Federal Republic of Germany, has failed to fulfil its obligations under Article 30 of the EEC Treaty and Article 22 (1) of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176),

THE COURT

composed of: Lord Mackenzie Stuart, President, K. Bahlmann and R. Joliet (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due and T. F. O'Higgins, Judges,

Advocate General: C. O. Lenz
Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 8 May 1985,

gives the following

* Language of the Case: Italian.

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 application lodged at the Court Registry on 9 February 1984 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by imposing restrictions on imports of curds from another Member State, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty and Article 22 (1) of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products.

2 In 1982 the Commission received complaints from two undertakings producing milk products established in the Federal Republic of Germany, showing that:

(1) Imports of curd cheese into Italy from the Federal Republic of Germany were subjected to systematic health checks periodically and in particular during the summer of 1982;

(2) Lorries transporting the imports were held up at the frontier for several days (in the particular cases in question, for three and seven days) waiting for the results of laboratory analyses;

(3) Decisions with regard to the admission of the imports were not taken until a week or more after completion of the analyses; and

(4) The refusal to admit the curds into Italy, which was communicated orally, was not confirmed in writing or, at best, was confirmed in writing only several months later.

3 By a telex message dated 21 June 1982 the Commission brought the facts reported to it to the attention of the Permanent Representation of Italy. The Commission emphasized that the facts constituted, in its view, infringements of Article 30 of the

EEC Treaty and Article 22 of Regulation No 804/68 and invited the Italian Government to submit its observations.

4 By letter of 5 July 1982, in reply to that telex message, the Permanent Representation of Italy stated that bacteriological checks by sampling of refrigerated curds originating in and imported from the Federal Republic of Germany were justified on the ground of the protection of human health, in view of the poor results of the analyses carried out on consignments of curds from a number of German dairies. The analyses recorded in particular a high level of *Escherichia coli*, showing clearly that the curds were subject to faecal contamination of a completely unacceptable level, having regard to the standards laid down by the World Health Organization in its *Codex Alimentarius*. The Permanent Representation also stated that the German authorities had been requested, in order to improve the standard of hygiene of curds exported to Italy, to adopt the measures necessary to ensure that they were made from milk subjected to heat treatment. As long as the conditions of production, with regard to hygiene and health, of curds imported from Germany were not improved to an appreciable extent, Italy would continue to carry out checks or adopt other measures pursuant to its policy. In the view of the Italian authorities delays in the transportation of curds were inevitable. They could be reduced to a considerable extent if the importers concerned undertook to comply with the rules issued by the Italian Ministry of Health, which would enable the consignments subjected to checks by sampling to be dispatched to their destination subject to the health check, while waiting for the results of the laboratory analyses which normally take a minimum of four working days to effect.

5 Since it was not satisfied with the arguments submitted by the Italian authorities the Commission informed the Italian Government by letter of 7 March 1983 that it considered that the restrictions imposed by Italy on imports of curds infringed Article 30 of the EEC Treaty and Article 22 (1) of Regulation No 804/68 and that they were not justified under Article 36 of the EEC Treaty. Consequently, it requested the Italian Government to submit its observations within two months.

6 Since the Commission received no reply to its letter it delivered to the Italian Government, by letter of 26 October 1983, a reasoned opinion according to which Italy, by imposing restrictions on imports of curds from the Federal Republic of Germany, had failed to fulfil its obligations under Article 30 of the EEC Treaty and Article 22 (1) of Regulation No 804/68. The Commission requested Italy to

adopt the measures necessary to comply with its reasoned opinion within one month of delivery thereof.

7 Since it received no reply to its reasoned opinion the Commission brought an action before the Court under the second paragraph of Article 169 of the EEC Treaty.

8 In support of its application the Commission relies on four objections relating to the following matters:

(a) systematic checks on imported curds;

(b) the detention at the frontier for several days of lorries transporting the curds;

(c) the delay of a week or more before decisions are taken on the admission of the curds;

(d) the absence of written confirmation of refusal to admit the curds into Italy or delay in the provision of such written confirmation.

9 The most serious objection put forward by the Commission concerns the allegation that health checks were carried out systematically by the Italian authorities on consignments of curds from the Federal Republic of Germany. In response to the evidence put forward by the Italian Government in the course of the written procedure, the Commission withdrew that objection in its reply. The Italian Government showed that in 1982 only 84 of 10 000 consignments of imported cheese (including deliveries of curd) had been subject to inspection. In addition, the Italian Government's reply of 11 January 1985 shows that of 19 consignments of curds which were subjected to checks 11 failed to comply with the health standards laid down.

10 Accordingly, the Commission's application relates solely to the three objections of secondary importance. It must be noted that these objections, as originally presented, were bound up with the allegations concerning the systematic nature of the checks and that they have lost much of their force as a result of the withdrawal of those allegations.

11 It must be added that the Commission was unable to convince the Court that its allegations related to events which formed part of a general trend or which were the result of a general practice. On the contrary, the Commission was unable to contradict the Italian Government when it stated to the Court that the events were isolated incidents when there were specific reasons for carrying out intensive checks, namely the discovery in the curds of a high level of *Escherichia coli* showing that they were subject to faecal contamination of a completely unacceptable level.

12 More specifically, the Commission was unable, with regard to the allegation concerning delays, to adduce any evidence to refute the explanations given by the Italian Government that the bacteriological checks by sampling on curds from the Federal Republic of Germany were justified on the ground of the protection of human health in view of the fact that the results of a large number of analyses showed that the standard of hygiene of the curds was unacceptable. Moreover, the Commission was unable to refute the Italian Government's statement that the delays in the transportation of curds could be reduced to an appreciable extent if the importers concerned undertook to comply with the rules issued by the Italian Ministry of Health, which would enable the consignments subjected to checks by sampling to be dispatched to their destination subject to the health check, while waiting for the results of the laboratory analyses.

13 In those circumstances the Commission has failed to establish the existence of an infringement of Article 30 of the EEC Treaty.

14 Since it has not been possible to accept any of the objections put forward by the Commission, its application for a declaration that the Italian Republic has failed to fulfil its obligations must be dismissed.

Costs

15 According to Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the Commission to pay the costs.

Mackenzie Stuart Bahlmann Joliet

Bosco Koopmans Due O'Higgins

Delivered in open court in Luxembourg on 18 February 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President