JUDGMENT OF THE COURT
19 September 1985 *

In Case 192/83

Hellenic Republic, represented by Yannos Kranidiotis, Special Adviser to the Ministry of Foreign Affairs, with an address for service in Luxembourg at the Embassy of the Hellenic Republic, 117 Val-Sainte-Croix,

applicant,

v

Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, and Bernhard Jansen, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Regulation No 1615/83 of 15 June 1983 amending Regulation No 1602/82 fixing the coefficients to be applied to the production aid for tomato concentrates and prunes and to the minimum price for dried plums (prunes d'Ente), and Commission Regulation No 1618/83 of 15 June 1983 fixing for the 1983/84 marketing year the minimum price to be paid to producers and the amount of the production aid for certain products processed from fruit and vegetables,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and C. Kakouris (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann and R. Joliet, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 27 February 1985,

gives the following

* Language of the Case: Greek.

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 12 September 1983, the Hellenic Republic sought to have declared void under the first paragraph of Article 173 of the EEC Treaty Commission Regulation No 1615/83 of 15 June 1983 amending Regulation No 1602/82 fixing the coefficients to be applied to the production aid for tomato concentrates (Official Journal, L 159, p. 48), and Commission Regulation No 1618/83 of 15 June 1983 fixing for the 1983/84 marketing year the minimum price to be paid to producers and the amount of production aid for certain products processed from fruit and vegetables (Official Journal, L 159, p. 52), in so far as it relates to the fixing of production aid for tomato concentrates and peaches in syrup.

Background and subject-matter of the dispute

2 In order to establish the legal background to the dispute, reference should be made to Council Regulation No 516/77 of 14 March 1977 (Official Journal, L 73, p. 1), which consolidated in a single text all the provisions dealing with the common organization of the market in products processed from fruit and vegetables. Under Article 20 of that Regulation the task of organizing the market is entrusted to the Commission, which makes rules in accordance with what is called the 'Management Committee procedure'. In Regulation No 1152/78 of 30 May 1978 (Official Journal, L 144, p. 1), the Council supplemented the scheme by inserting into Regulation No 516/77 a series of new articles numbered 3a to 3c, which set up a system of production aid for certain products, including tomato concentrates and peaches in syrup. According to the preamble to Regulation No 1152/78, the purpose of the system is '[to make] Community products . . . more competitive by adopting the necessary measures to enable them to be sold at prices which compete with those charged by the major non-member producing countries'.

3 Under the terms of Article 3 a the system of aid is based on contracts binding on producers and processors. For deliveries made pursuant to those contracts a 'minimum price' is to be fixed which processors must pay to producers. That minimum price was calculated on the basis of the average of the prices paid by processors for raw material during the marketing year preceding the introduction of the new system; the minimum price was updated each marketing year to take account of changes in both prices for raw material and production costs.

4 Article 3b provides that the amount of the aid is to be fixed in such a way as to make up the difference between the prices of Community products and those of products from non-member countries, the prices for Community products being established by reference to the minimum price fixed according to the criteria laid down in Article 3a and to the 'processing costs' ascertained without regard to those undertakings having the highest costs.

5 Under Article 3c detailed rules for the application of Articles 3a and 3b are to be adopted in accordance with the procedure laid down in Article 20, that is to say, by the Commission acting in accordance with the Management Committee procedure. The fixing of the minimum price and the level of aid follows the same pattern.

6 It was on the basis of Article 3c of Regulation No 516/77 that the Commission fixed the level of aid for successive marketing years. In the case of tomato concentrates the aid is fixed in respect of a product having a standard degree of concentration and a dry-extract content of 28% to 30%, and presented in standard packaging of a given weight, which varies from one marketing year to the next. In Regulation No 1610/78 of 10 July 1978 (Official Journal, L 188, p. 19) the Commission fixed 'coefficients' designed to take account both of the varying degrees of concentration and of the growing impact exerted on the price by packaging which was smaller than the standard presentation prescribed by the Regulation fixing the amount of the aid. It should be pointed out that those coefficients apply to the level of the aid fixed for the standard product, not to the various factors taken into consideration in determining the amount of such aid.

7 That was the state of the Community legislation when the Greek Act of Accession (Official Journal 1979, L 291, p. 17) came into effect. Articles 58 and 59 of the Act of Accession lay down a system whereby Greek agricultural prices are gradually

adjusted to the price levels obtained under the various schemes for the common organization of the market. As a preliminary, Article 58 (2) guarantees to Greek producers market prices equivalent to those obtained under the previous national system. Article 59 (2) deals with products processed from tomatoes or peaches covered by Regulation No 516/77, by providing for adjustment in seven phases, the details of which are laid down in the rest of the article.

8 Article 103 of the Act of Accession sets out the arrangements for extending the system of aid provided for by Regulation No 516/77 to Greece. Article 103 (1) provides that the minimum price referred to in Article 3a of Regulation No 516/77 is to be established on the basis of prices paid to producers in Greece previously under the national system for the product which is to be processed, recorded over a representative period which is to be determined. That period was fixed by Council Regulation No 41/81 of 1 January 1981 (Official Journal, L 3, p. 12).

9 Under Article 103 (3) the amount of Community aid granted in Greece is to be fixed in such a fashion as to compensate for the difference between, on the one hand, the prices of products from non-member countries, determined in accordance with Article 3a of Regulation No 516/77, and, on the other, the prices of Greek products established by reference to the minimum price, ascertained in the manner set out above, and to the processing costs 'obtaining in Greece'.

10 In pursuance of all those provisions the Commission adopted Regulation No 1963/81 of 10 July 1981 (Official Journal, L 192, p. 16) establishing production aid which for the first time distinguishes between the Member States other than Greece, and Greece itself. At the same time, in Regulation No 1962/81 of 10 July 1981 (Official Journal, L 192, p. 13), the Commission fixed coefficients designed to take account of the variable costs due to the packaging of the products. Regulation No 1962/81 is based on the same principles as the original Regulation No 1610/78.

11 Production aid was fixed for the 1982/83 marketing year in accordance with those principles by Commission Regulation No 1585/82 of 12 June 1982; at the same time, the coefficients were incorporated into Commission Regulation No 1602/82 of 22 June 1982 (Official Journal, L 179, p. 16).

12 As regards the 1983/84 marketing year, the aid was fixed by Commission Regulation No 1612/83 of 15 June 1983 (Official Journal, L 159, p. 52). Commission Regulation No 1615/83 of 15 June 1983 (Official Journal, L 159, p. 48) reinstated for that marketing year the coefficients fixed by Regulation No 1602/82.

13 It is only the last two Regulations which the Hellenic Republic, in its application to the Court, seeks to have declared void. It also appears from the claims in the application and the explanations given during the procedure that the action concerns, in fact, only certain aspects of those Regulations, namely:

(a) In Regulation No 1618/83, the amount of aid granted to Greek producers for tomato concentrates (second indent of Article 1 (2)) and peaches in syrup (second indent of Article 6 (2)), the only point in dispute being the determination of the 'processing costs';

(b) in Regulation No 1615/83, the coefficients as applied to packaging smaller than the standard 1.5 kilogram pack adopted by Regulation No 1618/83.

14 It is therefore within that context that the Court must appraise the objections raised by the Hellenic Republic to the two Regulations challenged by the application.

The 'processing costs'

15 In this connection the Hellenic Republic puts forward two sets of arguments, alleging first that the Commission failed properly to appreciate the facts regarding the processing costs for tomato concentrates and peaches in syrup and, secondly, that the methods used for the conversion into Greek drachmas were incorrect.

Assessment of processing costs

16 The Hellenic Republic points out that Article 103 of the Act of Accession requires the Commission to determine the aid payable to Greek producers on the basis of the total Greek production costs, that is, the price of the raw material plus the

processing costs obtaining in Greece. At the Commission's request the Hellenic Republic, in anticipation of the 1983/84 marketing year, communicated the average, weighted costs of processing tomatoes and peaches, established on the basis of a survey conducted among processing units in Greece. The Commission did not accept those figures, on the grounds that they were arbitrary and that the Hellenic Republic had omitted to explain its method of calculation. Applying instead a flat-rate method of calculation, the Commission established the processing costs for the 1983/84 marketing year on the basis of the costs recorded for the previous marketing year, increased by an inflation factor. The Hellenic Republic concludes that, by failing to undertake a specific and well-founded assessment of the processing costs, the Commission infringed a right guaranteed to Greece under the Act of Accession.

17 In its defence the Commission contends that although Article 103 (3) of the Act of Accession requires it in its calculation of aid to give consideration to the processing costs obtaining in Greece, it does not require any particular method to be used in the determination of those costs. In the case of the marketing year at issue, the Commission applied to Greece the same method which it used generally for all Member States, whereby the processing costs declared by the national authorities were accepted provided that they did not exceed the total processing costs approved for the previous marketing year, increased by the rate of inflation recorded during the same year. The inflation rate for Greece which was notified by the currency authorities in the Hellenic Republic was 19.1% during the period under consideration. Since the amounts declared by the Greek authorities exceeded that level, the Commission based its calculations on the processing costs obtaining in the previous marketing year, increased by the Greek inflation rate, these being the 'processing costs obtaining in Greece' for the purposes of Article 103 (3).

18 In order to deal with the objection raised by the Hellenic Republic it is appropriate to begin by clarifying the meaning of Article 103 in the context of the Act of Accession, and its relationship to Regulation No 516/77.

19 Article 2 of the Act of Accession provides that: 'From the date of accession, the provisions of the original treaties and the acts adopted by the institutions of the Communities shall be binding on the Hellenic Republic and shall apply in that

State under the conditions laid down in those Treaties and in this Act.' It follows that Regulation No 516/77 and its implementing measures apply to the Hellenic Republic subject to the special provisions arising from the transitional rules contained in Articles 58, 59 and 103 of the Act of Accession.

20 Under Article 58 the agricultural prices to be applied in Greece are to be fixed 'in accordance with the rules provided for in the common organization of the market in the sector in question'. In addition to the progressive adjustment of those prices at the rate laid down in Article 59, Article 103 provides for two special arrangements regarding the application in Greece of the system of aid set up under Article 3a of Regulation No 516/77. First, the minimum price serving as a basis for calculating the aid is to be ascertained by reference to the prices established under the national scheme operating in Greece before the accession; it should be recalled that the manner of ascertaining that minimum price is not in dispute in this case. Secondly, Article 103 (3) governs the assessment of processing costs: the costs to be taken into account are not those established in the Community as previously constituted but are those 'obtaining in Greece'.

21 Subject to those special rules, Regulation No 516/77 and its implementing measures apply in Greece as they do in the other Member States, in accordance with common criteria and uniform methods of calculation, as laid down by the third paragraph of Article 40 (3) of the EEC Treaty. Those criteria and methods cover the procedures applied by the Commission in its management of the aid scheme, for which it is made responsible by the basic Regulation. The Commission was therefore entitled to apply to the Greek market the method which it had chosen for updating from one marketing year to the next the price levels and other factors relevant to the calculation of aid. It is not in principle contrary to Article 103 (3) to use to that end the inflation rate recorded in Greece for the purpose of revising processing costs, since that method enables a realistic estimate to be made, in Greece, of the development of the industrial costs which play a part in the calculation of the aid.

22 If the Greek Government was of the opinion that the increase in processing costs in the two industries involved exceeded the general rate of inflation during the period under consideration, it was incumbent upon it to furnish evidence of the alleged divergence from the general economic trend.

23 Since the observations submitted by the applicant government during the procedure failed to shed any light on the matter apart from repeating the original figures, the Court asked a specific question on the matter in the course of the preparatory inquiry. The reply given, which confined itself to confirming the figures already known to the Court, disclosed nothing new in support of the assertion that the general rate of inflation could not serve as a reliable index of the true progression of processing costs in Greece between the marketing years 1982/83 and 1983/84.

24 It follows that the first objection of the Hellenic Republic to the assessment of the processing costs obtaining in Greece must be rejected.

Method of conversion

25 In the second place the Hellenic Republic objects that the Commission, in calculating the aid, first converted the price of the Greek products into Italian lire before quantifying the aid in European Currency Units. That method of calculation was manifestly unfair because it had the effect of increasing production costs for States with a lower inflation rate than that prevailing in Italy, and of reducing proportionately the amount of aid payable to States which, like Greece, have a higher inflation rate. Furthermore, according to the Hellenic Republic, the Commission's method of using the prevailing exchange rate for the day on which the aid was calculated distorted the assessment of the processing costs, on account of the devaluation of the drachma in 1982. Since the processing costs which should have been taken into account were those incurred during the relevant marketing year, the Commission should have taken into consideration the conversion rate at the time when the expenses arose, namely LIT 20.45 to the drachma, instead of the conversion rate prevailing at the time when the aid was calculated, which was LIT 17.19. The use of that second rate had, according to the Hellenic Republic, led to an appreciable reduction of the estimated processing costs and hence of the aid itself.

26 On that point the Commission contends in its defence that it has consistently used the lira as the working currency in the calculation of the aid in question, because Italy was — in the Community as previously constituted at least — the main producer of the products in question. The Commission considered it appropriate to extend that method of calculation to Greek products following the accession of Greece. The use of the exchange rate obtaining on the day when the aid is calculated is the best method of adjusting processing costs to take account of

recent information as well as the other data taken into consideration. The Commission further explains that, in the interests of equal treatment, it is bound to carry out the conversions in the same way for all Member States, so that the only point in time taken into consideration for that purpose is, for practical reasons, the moment at which the aid is quantified.

27 The objection raised by the Greek Government calls for the following observations. It should be stated at the outset that the Commission cannot be criticized for choosing the currency of one of the Member States for the purpose of performing the conversions which are indispensable if the amount of the aid is to be expressed in a common denomination. The fact that Italy was traditionally the Community's main producer of tomato concentrates and peaches in syrup justifies the choice of the Italian lira. Reference to a given currency as the accounting currency for the requisite conversions and calculations cannot give rise to any form of distortion, provided that the same currency is used consistently for the same operations.

28 As for the Commission's use of the exchange rate obtaining on the day of its calculation of the aid, that choice may also be regarded as justified in respect of a financial benefit whose purpose is not to offset expenses incurred in the past but to establish the competitive position of Community goods, with a view to the forthcoming marketing year. The Commission therefore had good reason to align on the same day all the data liable to influence the fixing of the aid, including the then current rates of exchange. It should be observed that, had the Commission relied on an outdated exchange rate in the case of any one Member State, it would not only have resulted in unequal treatment for Member States but also, since exchange rates were fluctuating, would have created uncertainties detrimental to the proper functioning of the aid scheme. It follows that the Commission was entitled to apply consistently the exchange rates obtaining on the day on which the aid was calculated.

29 Consequently, this objection must also be rejected.

Objection that the coefficients were incorrectly fixed

30 With regard to Regulation No 1615/83, whereby the coefficients to be applied to aid for tomato concentrates were fixed by reference to the size of the packaging, the Hellenic Republic argues that Greek producers, who habitually present their

product in packaging smaller than the standard presentation prescribed by Regulation No 1618/83, are placed at a disadvantage by the fact that a single coefficient covering the various weight categories is applied to an amount of aid which is lower in the case of Greek producers than the aid granted to producers from other Member States. That difference in treatment is incompatible with the rule prohibiting discrimination in the second paragraph of Article 40 (3) of the EEC Treaty and in Article 103 (3) of the Act of Accession, and is not justified in any way by the statement of grounds given in the disputed Regulation.

31 The Commission argues in its defence that the use of coefficients is derived from experience in international commerce and affords, in technical terms, the most appropriate method of providing flat-rate compensation for the extra expenditure due to the fact that the packaging is smaller than that of the pilot product. The Commission enjoys a broad margin of discretion as to the method to be adopted. Since the Hellenic Republic has agreed to be bound by the secondary legislation in its entirety, it has accepted the provisions of Regulation No 1610/78 introducing the coefficient scheme for the first time. Over successive marketing years that scheme had never given rise to objections either from the established Member States or from the Hellenic Republic.

32 In order to resolve this point of contention it should be recalled that the coefficients contested by the action antedate the accession of the Hellenic Republic. They were designed to give uniform levels of aid throughout the Community as previously constituted, and remained unchanged in principle after the creation of a two-tier system following the accession.

33 The principles on which the coefficient scheme is based cannot be challenged, inasmuch as its purpose, as set out in the preamble to Regulation No 1610/78, is to take account of the effects on the production costs of the difference between the packaging and presentation used by the trade and the standard packaging envisaged by the Regulations fixing the amount of the aid. Furthermore, the Commission is incontestably entitled in this connection to employ the flat rates dicated by experience. Nonetheless, the Commission must be held to have committed a technical error in transposing, to a system of aid which differentiates between Greek producers and those of the other Member States, the machinery of standard coefficients for all producers in the form in which it had operated before the accession of the Hellenic Republic.

34 The reason is that, if it may legitimately be assumed that packaging costs in Greece are not appreciably different from those in the rest of the Community, the application of one and the same coefficient to different levels of aid leads to an unjustified reduction of the aid granted to all Greek producers whose product does not match the specification of the standard packaging prescribed by Article 1 (2) of Regulation No 1618/83. Although the provisions of the disputed Regulation in no way indicate an intention to discriminate against the Hellenic Republic, the fact remains that the application of the coefficients brought about a demonstrable disparity in the treatment of at least some Greek producers. The effect of applying those coefficients in Greece is therefore contrary to the second and third paragraphs of Article 40 (3) of the EEC Treaty, which requires equal treatment for all producers in the Community; furthermore, application of the coefficients is likely to jeopardize the objective of Regulation No 516/77, which is to ensure that Community products are competitively priced in relation to products from non-member countries.

35 Regulation No 1615/83 must therefore be declared void in so far as the system of coefficients leads to inadequate compensation for Greek producers for the extra processing costs caused by the fact that their packaging differs from the standard packaging envisaged by Regulation No 1618/83, with the result that the aid fixed in respect of certain types of product is inadequate.

36 It is the duty of the Commission under Article 176 of the EEC Treaty to fix new coefficients for Greece, or to devise some other system of compensation taking account of the fact that the aid scheme differentiates between Greece and the other Member States.

Costs

37 Under Article 69 (2) of the Rules of Procedure the unsuccesful party shall be ordered to pay the costs. However, under the first paragraph of Article 69 (3), the Court may order the parties to bear their own costs where each succeeds on some and fails on other heads. It may be seen from the foregoing that the objections of the Hellenic Republic must be rejected in so far as they are directed against Regulation No 1618/83, whereas it was successful in its action against Regulation No 1615/83. In those circumstances it is appropriate that the parties should bear their own costs.

On those grounds,

THE COURT

hereby:

(1) Declares void Commission Regulation No 1615/83 of 15 June 1983 amending Regulation No 1602/82 fixing the coefficients to be applied to the production aid for tomato concentrates in so far as the coefficients fixed in that Regulation give rise to unequal treatment as between the Hellenic Republic and the other Member States as regards compensation for the extra costs incurred as a result of the use of packaging smaller than the standard packaging adopted by Article 1 (2) of Commission Regulation No 1618/83 of 15 June 1983 fixing for the 1983/84 marketing year the minimum price to be paid to producers and the amount of production aid for certain products processed from fruit and vegetables;

(2) Dismisses the remainder of the application;

(3) Orders the parties to bear their own costs.

Mackenzie Stuart Bosco Due Kakouris

Pescatore Koopmans Everling Bahlmann Joliet

Delivered in open court in Luxembourg on 19 September 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President