JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 20 MARCH 1980 [1]

Gebrüder Knauf Westdeutsche Gipswerke v Hauptzollamt Hamburg-Jonas (preliminary ruling requested by the Bundesfinanzhof)

"Export levies — outward processing arrangements"

Case 118/79

Agriculture — Common organization of the markets — Cereals — Export levy on maize for the manufacture of starch — Export — Concept — Exportation under outward processing arrangements included

(Regulation No 1132/74 of the Council, Art. 7 (2))

The concept of "export" within the meaning of Article 7 (2) of Regulation (EEC) No 1132/74 on production refunds in the cereals and rice sectors must be interpreted as meaning that any levy which may be introduced in pursuance of that provision must also be imposed on the exportation of the products in question when they are exported under outward processing arrangements and later re-imported as compensating products.

In Case 118/79

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 the court between

GEBRÜDER KNAUF WESTDEUTSCHE GIPSWERKE

and

HAUPTZOLLAMT [Principal Customs Office] HAMBURG-JONAS

1 — Language of the Case: German.

on the interpretation of the word "export" within the meaning of Article 7 (2) of Regulation (EEC) No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors (Official Journal 1974, L 128, p. 24),

THE COURT (Second Chamber)

composed of: A. Touffait, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: G. Reischl
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the procedure and the observations submitted under 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

1. Gebrüder Knauf Westdeutsche Gipswerke, the plaintiff in the main action, declared to the customs authorities in September and October 1974 special maize starch coming under tariff heading 11.08 A I of the Common Customs Tariff for export to Austria under outward processing arrangements which had been authorized by the German customs authorities. It re-imported into the Community the compensating product manufactured from that starch and intended for the building sector.

2. The Hauptzollamt Hamburg-Jonas, the defendant in the main action, charged a total sum of DM 7 103,40 as export levies on the basis in particular of Regulation (EEC) No 2443/74 of the Commission of 27 September 1974 and Regulation (EEC) No 2527/74 of the Commission of 4 October 1974 fixing the export levies on starch products (Official Journal 1974, L 262, p. 5 and L 271, p. 20) and of Regulation (EEC)

No 1981/74 of the Commission of 25 July 1974 laying down detailed rules for the application pursuant to Article 7 (2) of Regulation (EEC) No 1132/74 of an export levy on starches (Official Journal 1974 L 207, p. 9).

3. The objections lodged by Gebrüder Knauf Westdeutsche Gipswerke against the charging of those levies were unsuccessful. The application which they brought before the Finanzgericht [Finance Court] Hamburg was also dismissed.

The undertaking appealed to the Bundesfinanzhof [Federal Finance Court] which in its turn stayed the proceedings and, in accordance with Article 177 of the EEC Treaty, submitted the following question to the Court of Justice for a preliminary ruling:

"Must the word 'export' within Article 7 (2) of Regulation (EEC) No 1132/74 be interpreted as meaning that an export levy must be imposed on products coming within tariff heading 11.08 A of the Common Customs Tariff even if they were exported in September and October 1974 under outward processing arrangements and were later re-imported as processed goods?"

Article 1 (1) of Regulation (EEC) No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors (Official Journal 1974, L 128, p. 24) provides that:

"Member States shall grant a production refund on maize and common wheat for the manufacture of starch equal to the difference per 100 kilograms between the threshold price for each of these products . . . and 8.20 units of account".

The seventh recital of the preamble to that regulation reads as follows:

"Whereas the above-mentioned measures should not disturb the markets in third countries; whereas, therefore, in the event of an appreciable and persistent increase in prices on the said markets, provision should be made for compensatory measures consisting of the charging of a levy on exported products with a view to reducing the advantages granted to Community manufacturers to an appropriate level".

Article 7 (2) of that regulation accordingly provides that:

"If the world market price of, on the one hand, maize or common wheat, and, on the other, . . . appreciably and persistently exceeds 8.20 and . . . units of account . . . an export levy to compensate for the difference between prices on the world market and supply prices for these basic products within the Community shall be introduced for products falling within headings 11.08 A . . . of the Common Customs Tariff. The Commission shall fix the export levy".

4. The order making the reference shows that the undertaking claimed before the Bundesfinanzhof *inter alia* that the Community regulations on export levies contain only outline provisions concerning the rates of the duties and the time when they are to be imposed and that furthermore national law on such levies is to be applied. The undertaking considers that the German provisions in question, in particular Article 52 of the Zollgesetz [Customs Law] and also Article 18 of the Gesetz zur Durchführung der Gemeinsamen Marktorganisationen [Law implementing the common organizations of the markets] provide for exemption from the levy in the case of the exportation of processed products under outward processing arrangements.

The undertaking further claimed that the spirit and objectives of Regulation No 1132/74 preclude the imposition of such a levy since those products are not sold on the markets of non-member countries and accordingly do not disturb those markets but are re-imported into the Community following processing into a different product. It is in particular contrary to that regulation to suppose that the export charge is intended to prevent scarce Community products from being used instead of products from non-member countries.

The defendant in the main action disputed those arguments. It claims that Article 3 (2) of Regulation (EEC) No 645/75 of the Commission of 13 March 1975 laying down common detailed rules for the application of the export levies and charges on agricultural products (Official Journal 1975, L 67, p. 16), which was adopted after the facts giving rise to this action, contains an exhaustive list of the exemptions, excluding exports effected under outward processing arrangements in a non-member country, and merely clarified the existing legal position.

5. The Bundesfinanzhof observes that:

"According to the recitals of the preamble to Regulation No 1132/74 the production refund . . . is granted in order that the starch industry may obtain the basic products which it requires at a lower price than that which would result from the application of the rules of the common organization of the market in starches. The reason for the imposition of an export levy on maize starch is, according to the recitals of the preamble to that regulation, because the markets in non-member countries might be disturbed in the event of an appreciable and persistent increase in the prices of maize, common wheat and broken rice on the said markets. The purpose of the imposition of the export levy is moreover to reduce to an appropriate level the advantages granted to Community manufacturers by the grant of a production refund. This Court has doubts as to whether the objectives of the imposition of the export levy also justify the application of that levy even when goods are exported under outward processing arrangements, since the exported goods do not ultimately burden the markets in non-member countries since (and provided that) they are brought back again into the territory of the EEC after they have been processed. Since they remain the property of the declarant within the Community it is furthermore not immediately evident that there is reason to reduce the advantages granted to him within the Community to an appropriate level."

The Bundesfinanzhof further stated the Regulation No 645/75 is of no assistance for the purpose of the interpretation of the expression "export". It takes the view that it is impossible simply to conclude that the exceptions expressly laid down by the regulation are the only ones which result from the meaning and purpose of the rules and, in particular, that even previously it was necessary to impose levies in the case of exportation under outward processing arrangements.

6. The order making the reference was entered on the Court Register on 26 July 1979.

In accordance with Article 20 of the Statute on the Protocol of the Court of Justice of the EEC, written observations

were lodged by the Commission of the European Communities, represented by its Legal Adviser, Peter Gilsdorf, acting as Agent, assisted by A. Stockburger, of the Frankfurt-am-Main Bar.

The Court, having heard the report of the Judge-Rapporteur and the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry.

By order of 21 November 1979 the Court decided, pursuant to Article 95 (1) of the Rules of Procedure, to assign the case to the Second Chamber.

II — Written observations lodged with the Court by the Commission of the European Communities

The Commission considers that goods which leave the Community under outward processing arrangements and enter non-member countries are strictly speaking "exported" just as much as goods for which customs clearance is obtained directly with a view to their final dispatch to non-member countries.

Assuming that the Council and the Commission had intended to exclude the case of exports under outward processing arrangements from the general obligation to pay the levy they would have made express provision therefor, as the Commission has furthermore done in Regulation No 645/75 for cases other than outward processing arrangements, in particular inward processing arrangements. The Commission emphasizes in this connexion that the inward processing arrangements, unlike outward processing arrangements, are subject to permanent customs supervision.

That interpretation of the rules is confirmed by their spirit and objectives. In fact the charging of the levy is intended primarily to avoid disturbances on the markets in non-member countries which are also caused by the importation of goods at a reduced price under outward processing arrangements and which result primarily from the large quantities of products thus absorbed by the processing industry of non-member countries, in particular when that industry has lower production costs, which, according to the Commission, may be considered usual in outward processing arrangements, and accordingly offers an additional attraction for the undertakings concerned established in the Community. The Commission continues that such a practice may have an appreciable effect, at any rate temporarily, upon the processing of domestic products in non-member countries.

Furthermore, such disturbances might well be caused by the mere fact that cheap Community products are offered to the markets of non-member countries at prices less than the cost price of the products of the latter countries. Undertakings which export their goods under outward processing arrangements are also suppliers to the markets of non-member countries since they are not obliged to re-import the compensating products into the Community. The Commission adds that the very presence on the territory of a non-member country of large quantities of goods which may be introduced at any time into the distribution network may have effects on the development of the market in that country.

According to the seventh recital of the preamble to Regulation No 1132/74 export levies are also intended to reduce to an appropriate level the advantages, in the form of a production refund, granted

to Community manufacturers. The Commission emphasizes in this connexion that the exporter, as a potential supplier on the market in the non-member country, enjoys the great advantage of being able to opt on the basis of the development of the market either for keeping the goods on the market of the non-member country or for their re-importation. Where the compensating product is re-imported there is a dual advantage with regard to competition: on the one hand in relation to foreign competitors since he can offer for sale a cheaper primary product and on the other in relation to national competitors since the processing costs in non-member countries must be considered to be lower.

The Commission adds that it is proper for the Community legislature to oppose such competitive advantages which arise through the cash benefits of the Community. This applies with even greater force since at the time when the events in question took place the Community had no influence on access to the outward processing arrangements since the system at that time was still exclusively under the control of the Member States.

Finally, if the levy were not collected this would produce certain secondary effects: an incentive to make increased use of processing undertakings operating at a lower cost in non-member countries and a reduction in supply in the Community accompanied by a tendency for prices to increase.

The Commission recalls in this connexion that maize, as a basic product for the manufacture of maize starch, was not, during the period in question, widely available in the Community, as shown by the fact that during September and October 1974 it was necessary to charge export levies on maize in order to prevent stocks of maize in the Community from being diverted to the world market by reason of the level reached by the world prices.

The Commission finally mentions the need to supervise the reimportation of compensating products in order to prevent the system of export levies as a whole from being rendered ineffective by resort to the outward processing arrangements. The absence of Community provisions providing for such supervision shows clearly that the authors of the regulation certainly intended that the exports effected under control processing arrangements should also be subject to the levy.

The Commission considers that it is at least doubtful whether the Member States intended and were able to make good that *lacuna* by national provisions concerning subsequent collection.

The Commission adds that on the basis of those considerations it has on other occasions too regarded it as a matter of great importance that on the exportation of goods under outward processing arrangements the charges to be levied at the frontier, such as compensatory amounts or "accession" compensatory amounts, should be collected in accordance with the general provisions. In this connexion it refers in particular to the fourth recital of the preamble to its Directive No 76/527/EEC of 4 June 1976 on the calculation of total or partial relief from import duties under the outward processing procedure (Official Journal 1976, L 153, p. 43). The reason why there is no mention of export levies in that provision is simply that in 1976 they no longer existed. The Commission states finally that there have been no Community provisions on the system of outward processing arrangements since 1976 (cf. Council Directive No 76/119/EEC of 18 December 1975 on the harmonization of provisions laid down by law, regulation or administrative action in respect of outward processing (Official Journal 1976, L 24, p. 58).

The Commission accordingly suggests that the reply to be given to the preliminary question submitted by the Bundesfinanzhof should be in the affirmative.

III — Oral procedure

At the hearing on 24 January 1980 the plaintiff in the main action, represented by F. Köhler, Tax Adviser, and the Commission, represented by A. Stockburger, Advocate, acting as Agent, presented oral argument.

The Advocate General delivered his opinion at the sitting on 14 February 1980.

Decision

1 By order of 19 June 1979, which was received at the Court Registry on 26 July 1979, the Bundesfinanzhof submitted to the Court of Justice pursuant to Article 177 of the EEC Treaty the following question for a preliminary ruling:

"Must the word 'export' within Article 7 (2) of Regulation (EEC) No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors (Official Journal 1974, L 128, p. 24) be interpreted as meaning that an export levy must be imposed on products coming within tariff heading 11.08 A of the Common Customs Tariff even if they were exported in September and October 1974 under outward processing arrangements and were later re-imported as processed goods?"

2 The question was raised in the context of an action involving, on the one hand, a German undertaking which exported special maize starch to Austria under outward processing arrangements which were authorized by the German customs authorities and re-imported the compensating product manufactured from such starch and, on the other, the Hauptzollamt Hamburg-Jonas which, when the goods were exported, charged the levies fixed in the regulations of the Commission adopted on the basis of the provision quoted in the question.

3 The objections of the undertaking and its application lodged with the Finanzgericht Hamburg were unsuccessful. It then appealed to the Bundesfinanzhof claiming in particular that the spirit and objectives of Regulation No 1132/74 precluded the charging of an export levy since the products were not sold on the external markets but were re-imported into the Community after being processed into a different product.

4 According to the order making the reference, whilst the Bundesfinanzhof admits that the wording of the provisions in question tends to favour the view of the customs authorities, it has doubts as to whether the objectives in view in charging an export levy also justify charging that levy where the goods are exported under outward processing arrangements.

5 As the Bundesfinanzhof has stated, it is not sufficient to find that on a purely literal interpretation the word "export" covers cases where goods leave the geographical territory of the Community under outward processing arrangements. It must in addition be considered whether such cases are also covered by the intention of the Community legislature which is, according to the recitals of the preamble to the regulation, to avoid disturbances on the markets in non-member countries.

6 The essential objective of Regulation No 1132/74 is in fact to grant production refunds *inter alia* to maize used for starch manufacture to ensure that its prices are competitive with those of substitute products. Since the prices of maize on the world market usually remain below the prices of substitute products in the Community the exportation of maize starch for which such refunds have been granted does not disturb the markets in non-member countries except in the case of an appreciable and persistent increase in prices on the said markets. In the latter case Article 7 (2) of Regulation No 1132/74 enables the Commission to introduce an export levy to compensate for the difference between prices on the world market and supply prices within the Community with a view to reducing the advantages granted to Community manufacturers to an appropriate level.

7 Since there is no system of Community control ensuring the re-importation of the products exported under outward processing arrangements or subsequent charging of levies, the very presence on the markets in non-member countries of Community goods which are intended to be treated under outward processing arrangements but which are capable of being sold on those markets at a price less than the market price may cause disturbances.

8 Furthermore, the use by the processing industry in non-member countries of cheap products from the Community may adversely affect the processing of domestic products in such non-member countries, which would also constitute a disturbance on the market of such countries.

9 It follows from those considerations that the objectives in view in imposing the export levy thus justify such imposition even if the goods are exported under outward processing arrangements.

10 Moreover, it seems improbable that the Community legislature intended to confer upon the processing industry of non-member countries, which is in competition with the Community industry, the benefit of Community refunds intended to maintain for the Community industry supply prices which are competitive with those of substitute products by reducing prices at the same time to a level below those on the world market.

11 Since the outcome of a literal interpretation is thus confirmed by consideration of the objectives and of the scheme of the provision in question it is necessary to reply to the question submitted that the concept of "export" within the meaning of Article 7 (2) of Regulation (EEC) No 1132/74 of the Council must be interpreted as meaning that any levy which may be introduced in pursuance of that provision must also be imposed on the exportation of the products in question when they are exported under outward processing arrangements and later re-imported as compensating products.

Costs

12 The costs incurred by the Commission of the European Communities, which has 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 on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the Bundesfinanzhof by order of 19 June 1979, hereby rules:

The concept of "export" within the meaning of Article 7 (2) of Regulation (EEC) No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors must be interpreted as meaning that any levy which may be introduced in pursuance of that provision must also be imposed on the exportation of the products in question when they are exported under outward processing arrangements and later reimported as compensating products.

Touffait Pescatore Due

Delivered in open court in Luxembourg on 20 March 1980.

A. Van Houtte
Registrar

A. Touffait
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 14 FEBRUARY 1980 [1]

Mr President,
Members of the Court,

The main action which gave rise to this request for a preliminary ruling concerns the lawfulness of decisions to apply export levies. The decision turns on the interpretation of the word "export" in Article 7 (2) of Regulation (EEC) No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors (Official Journal 1974, L

1 — Translated from the German.