OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 21 October 1987 *

Mr President,
Members of the Court,

A — Facts

1. The question of the charging of clawback on sheepmeat products in respect of which no variable slaughter premium has been granted has come before the Court not only in the form of a direct action brought by the United Kingdom against the Commission,[1] on which I have just submitted my views, but also in the form of a reference for a preliminary ruling by the High Court of Justice of England and Wales.

The facts of the main proceedings before the High Court were as follows.

2. In February 1986 P. M. Johnson and Son (hereinafter referred to as 'Johnson') sold to Livestock Sales Transport Limited [hereinafter referred to as 'LST'] for exportation sheepmeat products which were not eligible for variable slaughter premium. The meat was duly exported. Subsequent to its exportation the Intervention Board for Agricultural Produce, which is responsible in the United Kingdom for charging clawback, sought to recover from LST an amount equivalent to the variable slaughter premium. As a result, LST, supported by Johnson, brought proceedings before the High Court of Justice for a declaration that it was not obliged to pay clawback in respect of the exported consignment on the ground that the provisions of Community law relied on by The Intervention Board were invalid.

3. The High Court of Justice thereupon referred the following question to the Court of Justice for a preliminary ruling:

'Are Commission Regulation (EEC) No 3451/85 of 6 December 1985 and Commission Regulation (EEC) No 9/86 of 3 January 1986, each amending Commission Regulation (EEC) No 1633/84 laying down detailed rules for applying the variable slaughter premium for sheep, invalid in so far as they require clawback pursuant to Article 9 (3) of Council Regulation (EEC) No 1837/80 to be charged in respect of products which are not eligible for variable slaughter premium?'

B — Analysis

4. The submissions of the applicants in the main proceedings, the United Kingdom and the Commission of the European Communities, are largely identical to those which were put forward in Case 61/86. For an appraisal of those submissions I refer to the Opinion I delivered in that case.

* Translated from the German.

1 — Case 61/86 [1988] ECR 431.

5. Consequently, in the context of these proceedings for a preliminary ruling, only one legal point, raised by the applicants in these proceedings alone, remains to be considered, namely the question of breach of the principle of non-discrimination.

6. The applicants in the main proceedings consider that the principle laid down in Article 40 (3) of the EEC Treaty has been infringed in so far as sheepmeat producers in region 5 (Great Britain), who were not granted a slaughter premium in respect of their products, were nevertheless subject to the charging of clawback whereas sheepmeat producers in other regions of the Community who were similarly not granted a slaughter premium did not have to pay clawback.

7. The Commission, however, takes the view that the principle of non-discrimination has not been infringed because variable slaughter premium is granted in region 5 alone and, consequently, sheepmeat producers in that region are in a different situation from that of sheepmeat producers in other regions.

8. If a general comparison is made between the situation of sheepmeat producers in region 5 and that of producers in other regions of the Community, the Commission is certainly correct in its view that the two situations are not comparable.

9. Sheepmeat producers in region 5 receive the benefit of part of the premium intended for them at an earlier date than the other sheepmeat producers in the Community. They therefore have a competitive advantage over the latter so that the situation of producers in region 5 is not comparable with that of producers in other regions of the Community.

10. As the Court has consistently held,[2] the principle of non-discrimination laid down in Article 40 of the EEC Treaty does not prevent similar situations from being treated differently if the differentiation is objectively justified. In addition, it is clear, in view of the objective differences which characterize the legal provisions and the economic conditions in the markets (regions) concerned, that sheepmeat producers in region 5 are not in the same situation as producers in other regions of the Community.

11. Consequently, the prohibition of discrimination has not been infringed in this case.

C — Conclusion

12. In view of my conclusions in Case 61/86, I propose that the Court of Justice should reply to the question referred to it for a preliminary ruling by the High Court of Justice as follows:

2 — See, most recently, its judgment of 11 March 1987 in Joined Cases 279, 280, 285 and 286/84, *Walter Rau Lebensmittelwerke and Others* v *European Economic Community*, [1987] ECR 1069.

'Consideration of Commission Regulation No 3451/85 of 6 December 1985 and Commission Regulation No 9/86 of 3 January 1986 has disclosed no factor of such a kind as to affect the validity of those regulations with regard to the charging of an amount equivalent to the variable slaughter premium on products in respect of which no such premium has been granted.'

13. In addition, a copy of the Opinion and of the Court's judgment in Case 61/86, to which reference has been made in this case, should be forwarded to the High Court of Justice.