JUDGMENT OF THE COURT
2 February 1988 *

In Case 162/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice of England and Wales, Queen's Bench Division, London, for a preliminary ruling in the proceedings pending before that court between

Livestock Sales Transport Ltd and **P. M. Johnson Esq.**

and

Intervention Board for Agricultural Produce,

on the validity of Commission Regulation No 3451/85 of 6 December 1985 (Official Journal 1985, L 328, p. 23) and Commission Regulation No 9/86 of 3 January 1986 (Official Journal 1986, L 2, p. 14), amending Commission Regulation No 1633/84 laying down detailed rules for applying the variable slaughter premium for sheep,

THE COURT

composed of G. Bosco, President of Chamber, acting as President, O. Due and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, K. Bahlmann, R. Joliet and F. Schockweiler, Judges,

Advocate General: C. O. Lenz
Registrar: D. Louterman, Administrator

* Language of the Case: English.

after considering the observations submitted on behalf of

(i) Livestock Sales Transport Ltd and P. M. Johnson, the applicants in the main proceedings, by C. Holme, assisted by S. Isaacs, during the written procedure, and by S. Isaacs, during the oral procedure,

(ii) the United Kingdom of Great Britain and Northern Ireland by B. E. McHenry, assisted by G. Barling, during the written procedure, and by G. Barling, during the oral procedure,

(iii) the Commission of the European Communities by D. G. Lawrence, during both the written and the oral procedure,

having regard to the Report for the Hearing and further to the hearing on 3 June 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 21 October 1987,

gives the following

Judgment

1 By an order of 22 May 1986, which was received at the Court on 4 July 1986, the High Court of Justice of England and Wales, London, referred to the Court for a preliminary ruling, under Article 177 of the EEC Treaty, a question on the validity of Commission Regulation No 3451/85 of 6 December 1985 (Official Journal 1985, L 328, p. 23) and of Commission Regulation No 9/86 of 3 January 1986 (Official Journal 1986, L 2, p. 14), each amending Commission Regulation No 1633/84 laying down detailed rules for applying the variable slaughter premium for sheep.

2 The question was raised in the context of proceedings between Livestock Sales Transport Ltd (hereinafter referred to as 'LST') and P. M. Johnson & Son (hereinafter referred to as 'Johnson') on the one hand and the Intervention Board for Agricultural Produce (hereinafter referred to as 'the Intervention Board') on the other.

3 LST is a Kent company which exports meat and livestock from the United Kingdom. The producer of the sheepmeat in question is Johnson. The Intervention Board is responsible in the United Kingdom for collecting 'clawback' payable by exporters upon the exportation of sheepmeat.

4 In February 1986 Johnson sold to LST for exportation certain sheepmeat products which were not eligible for variable slaughter premium, and that meat was duly exported. By invoices dated 12 March 1986 the Intervention Board sought to recover from LST an amount equivalent to the variable slaughter premium which it claimed was due on the consignments exported.

5 LST, supported by Johnson, brought proceedings before the High Court of Justice, Queen's Bench Division, for a declaration that LST was not obliged to pay clawback on the export of the products in question on the ground that the Community provisions relied on by the Intervention Board were invalid. The applicants in the main proceedings argued essentially that Commission Regulations Nos 3451/85 and 9/86

(a) were incompatible with the principle of non-discrimination laid down in Article 40 (3) of the EEC Treaty;

(b) were incompatible with the free movement of goods;

(c) were adopted by the Commission without its having competence to do so in accordance with the provisions of Article 9 (3) of Regulation No 1837/80, as amended; and

(d) did not satisfy the requirement of sufficiency of reasons laid down in Article 190 of the EEC Treaty.

6 The High Court of Justice considered that the proceedings raised a question of the validity of provisions of Community law and, consequently, decided to stay the proceedings and to refer the following question to the Court of Justice:

'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?'

7 Reference is made to the Report for the Hearing for a more detailed account of the facts of the case, the course of the procedure and the observations pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

8 In order to determine whether the contested provisions of Regulations Nos 3451/85 and 9/86 are valid, it is necessary to ascertain whether they were adopted within the limits of the powers conferred on the Commission by Article 9 (3) of Council Regulation No 1837/80 of 27 June 1980 on the common organization of the market in sheepmeat and goatmeat (Official Journal 1980, L 183, p. 1), as amended by Council Regulation No 871/84 of 31 March 1984 (Official Journal 1984, L 90, p. 35).

9 As the Court held in its judgment of today's date in Case 61/86, *United Kingdom* v *Commission*, [1988] ECR 431, a copy of which is annexed to this judgment, the wording of Article 9 (3) cannot be interpreted as conferring on the Commission a discretion enabling it to require that, when animals and products for which no variable slaughter premium has been paid leave region 5, an amount determined on the basis of that premium is to be charged. As the charging of a sum of money upon exportation to a Member State constitutes in principle an obstacle to the free movement of goods, Article 9 (3) amounts to a derogation from the fundamental principles of any common organization of the market and must therefore be interpreted narrowly.

10 The reply to the question referred to the Court must therefore be that Regulations Nos 3451/85 and 9/86 are invalid in so far as they require that, upon exportation to another Member State, an amount determined on the basis of the variable slaughter premium be charged on animals and products which are not eligible for the grant of the premium.

Costs

11 The costs incurred by the United Kingdom and by the Commission of the European Communities, which have 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the High Court of Justice of England and Wales, London, by order of 22 May 1986, hereby rules:

Commission Regulation No 3451/85 of 6 December 1985 and Commission Regulation No 9/86 of 3 January 1986, each amending Commission Regulation No 1633/84 laying down rules for applying the variable slaughter premium for sheep, are invalid in so far as they require that, upon exportation to another Member State, an amount determined on the basis of the variable slaughter premium be charged on animals and products which are not eligible for the grant of the premium.

Bosco Due Rodríguez Iglesias

Koopmans Bahlmann Joliet Schockweiler

Delivered in open court in Luxembourg on 2 February 1988.

P. Heim
Registrar

A. J. Mackenzie Stuart
President