JUDGMENT OF THE COURT
OF 27 APRIL 1978 [1]

Hellmut Stimming KG
v Commission of the European Communities

Case 90/77

1. *Agriculture — Common organization of the markets — Amendment of rules — Principle of protection of legitimate expectation — Application — Conditions*

2. *Common Customs Tariff — Tariff heading — Amendment — Official ruling as to tariff classification — Expectations of interested parties — Taking account thereof — Obligation — Absence*

1. When rules concerning agriculture are amended, protection of legitimate expectation is required *inter alia* where under the preceding system traders have already informed the competent authorities of their intention to carry out specific transactions over a period extending beyond the time of the introduction of the new system and have irrevocably committed themselves thereto, where appropriate by paying a deposit.

2. Official rulings as to tariff classification are issued general purposes and are of a purely abstract nature, that is to say without any relation to specific transactions, and so do not oblige the Community authorities in any adjustments of the rules concerned which they might consider necessary to take account of any expectations which such documents might have engendered among interested parties.

In Case 90/77

HELLMUT STIMMING KG, Witten (Ruhr), represented by D. Ehle, U. C. Feldmann and U. Wiemann, Advocates at the Cologne Bar, with an address for service in Luxembourg at the office of J. Jansen-Housse, Huissier, 21 Rue Aldringen,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Kalbe, with an address for service in Luxemburg at the office

1 — Language of the Case: German.

of Mario Cervino, Legal Adviser to the Commission of the European Communities, Jean Monnet Building, Kirchberg,

defendant,

Application for compensation,

THE COURT

composed of: H. Kutscher, President, M. Sørensen and G. Bosco (Presidents of Chambers), A. M. Donner, J. Mertens de Wilmars, P. Pecatore, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The facts of the case, the course of the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

On 15 February 1977, Hellmut Stimming KG entered into a contract with the Romanian external trading organization Prodexport for the delivery of 450 000 kg of marinated meat (Sauerbraten). The total value of the contract was DM 2 225 000; the cost price of the goods was DM 660 per 100 kg, including customs duty of 26 % amounting to DM 130.

In 1975, Stimming had obtained from the Oberfinanzdirektion (Principal Finance Office) Munich an official ruling as to tariff classification indicating that marinated meat came within tariff heading 16.02 B III (b) 1 of the Common Customs Tariff (CCT).

A first consignment of 10 tonnes of marinated meat was cleared into free circulation at Passau on 25 March 1977. Those 10 tonnes, delivered in order to test the market, did not come within the 450 tonnes provided for in the contract.

On 14 February 1977, the Council adopted Regulation (EEC) No 425/77 (Official Journal 1977, L 61, p. 1) amending Regulation (EEC) No 805/68 on the common organization of the

market in beef and veal and adapting Regulation (EEC) No 827/68, and Regulation (EEC) No 950/68 on the Common Customs Tariff. That regulation divided the former tariff heading 16.02 B III (b) 1 of the CCT into two subheadings: Subheading 16.02 B III (b) 1 *(aa)* concerns *uncooked prepared* bovine meat, whereas subheading 16.02 B III (b) 1 *(bb)* applies to other prepared meat. Thus as from 1 April 1977, uncooked prepared bovine meat became subject to levies and to a monetary compensatory amount.

Stimming did not become aware of these changes until on 4 April 1977, on reading the Official Gazette of the Federal Republic of Germany (Bundesanzeiger) dated 2 April 1977. On the same day the Oberfinanzdirektion Munich, referring to Regulation No 425/77, informed it that it was revoking the official ruling as to tariff classification. The cost price of the goods was thereby doubled, as is shown by the following calculation:

Cost price	DM	500.00
Customs duty of 20 %	DM	100.00
Levy	DM	542.54
Monetary compensatory amount	DM	67.57
Total	DM	1 210.11

Consequently Stimming immediately stopped importing the marinated meat. On that account Prodexport is claiming a sum of DM 495 000 from Stimming for failure to perform the contract.

Stimming wrote to the Commission on 12 and 22 April 1977 asking it to intervene and apply the provisions of Article 7 of Regulation No 425/77, the terms of which are as follows:

"Should transitional measures be necessary to facilitate the implementation of this regulation, in particular if such implementation on the date provided for were to give rise to substantial difficulties in respect of certain products, such measures shall be adopted in accordance with the procedure laid down in Article 27. They shall be applicable until 31 December 1977."

By a letter of 3 June 1977 the Commission refused to adopt transitional measures.

Subsequently Stimming brought an action against the Commission under the second paragraph of Article 215 of the EEC Treaty. The application was lodged at the Court Registry on 21 July 1977.

In its reply lodged on 7 November 1977, the applicant purported to extend its action and bring it also against the Council of the European Communities. By an order of 10 November 1977, the Court held that the reply was not to be served on the Council, on the grounds that the Rules of Procedure do not allow such an alteration in the person of the defendant.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. However, it asked the Commission to produce certain documents.

II — Conclusions of the parties

In its application, the *applicant* claims that the Court should:

1. Declare that the defendant is required to guarantee performance of the contract concluded by the applicant on 15 February 1977 by way of compensation for the damage which it has caused;
2. Alternatively, declare that the defendant is required to compensate the applicant for the damage arising out of the failure to perform the contract of 15 February 1977;
3. Order the defendant to pay the costs.

In its reply, the applicant extended its conclusions, claiming that the Court should:

1. Declare that the defendant is required, in order to compensate for the damage which it has caused, to authorize the importation free of the levy, of the quantity of marinated meat specified in the contract of 15 February 1977, by adopting a decision ordering the Federal Republic of Germany to admit the quantity of marinated meat at issue into free circulation free of the levy.
2. Alternatively,
   (a) Declare that the Community is required to make good the damage which it caused the applicant by impeding the performance of the contract of 15 February 1977;
   (b) In the further alternative, order the Community to pay the applicant DM 787 500, with interest at 8% as from the date of the damage.

In its defence, the *defendant* contends that the Court should:

1. Dismiss the primary claim as inadmissible;
2. Dismiss the claim in the alternative as inadmissible as to part and unfounded as to the whole;
3. Order the applicant to pay the costs.

III — Submissions and arguments of the parties

Admissibility

According to the *Commission*, the primary claim in the application is not admissible.

The conditions laid down in Article 38 (1) of the Rules of Procedure are not fulfilled in this case, as the wording of the application does not make clear to the defendant what it must to and must not do in the event of an order being made in the terms of the application. In its pleadings, the applicant asks to be exempted from the obligation to pay a levy, that is to say that it is seeking the removal of a financial obstacle which complicates not the performance of the contract but only the subsequent importation and the sale of the goods within the Community. That is not the same thing as "to guarantee performance of the contract".

The only action available in the present case is one under Article 175 of the EEC Treaty.

There is no such interest in the protection of a right as is necessary to enable the application to be treated as an action for a declaration, because the applicant is capable of introducing an action for damages forthwith.

For the same reason such interest is also lacking as regards the alternative claim contained in the application, as the applicant is capable forthwith of assessing the damage suffered by it and of bringing an action for damages.

In its reply, the *applicant* argues that it is already prevented from making any use of Article 175 of the Treaty by the fact that the Commission has defined its position with regard to the applicant's letters.

An action for damages under the second paragraph of Article 215 of the EEC Treaty is an autonomous type of action which is independent of Article 173 of the Treaty, and that must also be true of Article 175 of the EEC Treaty.

As to compensation in kind, the applicant considers that it is permissible to envisage a decision by the competent institution as set out in the conclusions in its reply. The applicant can seek only a measure which individually concerns its situation and which must come within the limits of the acts allowed by the Treaty. The majority of learned writers are agreed in acknowledging the

existence of such a right to an order in the form of a decision. It must be allowed particularly in order to ensure adequate legal protection of legitimate interests. It must be possible for the Commission to provide a fair solution to any difficulties which arise by issuing an order to a Member State in a particular case. A finding that no such power existed would give rise to a legal vacuum.

The applicant has not brought an action for damages, but an action for a declaration of a duty on the part of the Commission, because the applicant considers that the Commission will comply with a declaration in such terms by the Court of Justice.

The applicant considers that it does have an interest in claiming the declaration mentioned in the reply. Nevertheless it has supplemented its action with an action for damages in the alternative.

According to the *defendant*, the principal claim contained in the reply is not admissible as an action for a declaration.

By the express wording of the reply, the applicant waives any claim that the defendant should be immediately ordered to adopt a decision of the kind referred to. The applicant persists in claiming a declaration of a general nature to the effect that the defendant is required to call on the German customs authorities not to claim any levy from the applicant.

If the Court of Justice allowed that claim, the defendant would not know how to execute such a judgment.

An action for a declaration is limited by its subject-matter, that is to say a provisional finding of a legal situation which might ground an action for compensation for damage caused. For that reason, an application for a declaration is nugatory where the compensation demanded can itself be claimed and the defendant can be ordered directly to make compensation in money or in kind.

In this case, a declaration would not touch upon the decisive question for the defendant, namely whether an action for damages can be used to compel the defendant to adopt provisions in favour of third parties the content of which is prescribed in every detail, or whether the defendant is required to make compensation in money.

The primary claim would be inadmissible even if it had been submitted in the form of an action for performance. Under the system of legal protection laid down by the Treaty, applications for the annulment of an unfavourable provision or seeking to obtain a favourable provision from the defendant, for the purposes of Article 189 of the EEC Treaty, can be validly made only within the limits of the procedure laid down in Articles 173 or 175 of the EEC Treaty; the second paragraph of Article 215 of the EEC Treaty has a logical, necessary, autonomous function only in the field of financial compensation, which is not covered by Articles 173 and 175 of the EEC Treaty.

Even from the point of view of compensation by way of restitution in kind, a legal action cannot be used to require the legislature to amend laws in a very precise way.

Substance of the case

Stimming argues that the Commission acted illegally and was also guilty of wrongful conduct in the exercise of its duties.

Article 7 of Regulation No 425/77 enables the defendant to adopt transitional measures in particular cases of hardship. In such cases the defendant also has a duty where necessary to use the power vested in it to adopt regulations, when it is a question of ensuring the observance of the principles of

protection of the legitimate expectation of those concerned, of proportionality and of equality of treatment.

Alternatively, the claim for compensation for damage is based on the general principle of the protection of the legitimate expectation of those concerned, which requires adequate transitional periods, particularly in the case of amendment of tariff classifications. This follows from the case-law of the Court of Justice.

The adequacy of the transitional period is to be assessed in the particular circumstances of each case. In this instance, a transitional period of nine months is absolutely necessary, as that was provided for in principle by Article 7 of Regulation No 425/77.

The amendment of tariff heading 16.02 B III (b) 1 of the CCT could not have been foreseen by the applicant. It placed reliance, as it was entitled to do, on the official ruling as to tariff classification as well as on the Common Customs Tariff itself.

Furthermore, both the recitals in the preamble to Regulation No 425/77 and Article 7 thereof show that there was no overriding public interest which required that transitional measures should not be granted in respect of the contracts which had been entered into. Marinated meat is not a commodity which is produced *ad hoc* but is well-known as such, and it is also not possible to substitute marinated meat for meat within heading 02.01 of the CCT, a substitution which Regulation No 425/77 is designed to prevent according to the recitals in the preamble.

Regulation No 425/77 infringed the binding effected under the General Agreement on Tariffs and Trade (GATT). A significant restriction on goods within bound tariff heading 16.02 B III (b) required approval within GATT or partial withdrawal of the binding.

The taxes on marinated meat are excessive and have an absolutely prohibitive effect; for that reason they infringe both the provisions of Articles 39 and 110 of the EEC Treaty and the principles of proportionality and non-discrimination. In the context of the common organization of the market in beef and veal, the institutions of the Community have failed to follow concurrently the objectives laid down in Articles 39 and 110 of the EEC Treaty; what is more, in the common policy on beef and veal they have concentrated on the aim of increasing the individual earnings of the agricultural community (Article 39 (1) (b) of the EEC Treaty) and have hence given up all freedom of action and any possibility of pursuing the other objectives in both the short and the long term.

The second paragraph of Article 215 of the EEC Treaty provides that the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions. The damage may also be made good in kind, this being a general principle common to the laws of the Member States.

According to the *defendant*, the action has no foundation in law.

The provisions adopted by the Council cannot be changed by the defendant. They are as binding for the defendant as for third parties. If the applicant challenges the legality of the levy system enacted by Regulation No 425/77, the Council, an autonomous legislative institution of the Community, and not the Commission, is responsible for the legality of legislation adopted by it.

The rules of the levy system of Regulation No 805/68 as amended by Regulation No 425/77 lay a duty on the defendant to carry out arithmetical calculations on the basis of prescribed criteria. Those rules do not allow it to grant certain importers particular

individual advantages in the form of personal exemption from levies.

Article 17 of Regulation No 805/68 as amended by Regulation No 425/77 provides that that regulation "shall be applied with due regard to the obligations under international agreements by which the Community is bound". The obligations entered into under GATT are among the obligations referred to in the said article.

However no provision of GATT gives the applicant a right to import goods free of levy which can be directly enforced against the defendant. The applicant was unable to specify which rule of GATT was concerned.

The binding of subheading of 16.02 B III (b) 1 is an old binding which concerns only preserved beef and veal, particularly corned beef, as well as preparations of beef and veal consisting of cooked meat. The original decision formally to extend the conventional rate to all products falling within subheading 16.02 B III (b) 1 was a unilateral concession by the Community which has been progressively withdrawn since 1975 by the adoption of protective measures.

Article 7 of Regulation No 425/77 gives the defendant a margin of discretion for reasons of administrative convenience. The criterion of the protection of legitimate expectation obliges the defendant to adopt particular transitional measures only if the existence or performance of legal obligations between traders is immediately and unforeseeably jeopardized in the absence of any overriding public interest requiring it. Such was not the case in this instance.

Explaining the background to the subject-matter (items 5 and 6 of the defence), the defendant states that the gap in the external protection of the market in beef and veal which was due to the formal distinction between fresh meat within tariff heading 02.01 and prepared meat within tariff subheading 16.02 B III (b) 1 was closed by means of protective measures adopted two years ago. On its own admission, the applicant had imported a consignment of Romanian marinated meat, which was to serve as a test of the market, under the linking system laid down by Regulation No 76/76, which already made the issue of the import licences required for each product within subheading 16.02 B III (b) 1 conditional upon prior purchase of intervention meat. Although from a purely formal point of view it did not have to pay a levy on that occasion, it did make payment of a *de facto* levy which was incorporated in the price paid to the intervention agency prior to the acquisition of the indispensable import licence. That price was deliberately fixed at a higher level so as to recover the amounts of levy which were not directly charged for procedural reasons.

Not only did the levy system laid down by Regulation No 425/77 not entail any profound material alteration in the conditions of importation, but its adaption was also foreseeable. No one could expect the Council to re-open a gap that the defendant had closed after two years of effort.

A prudent and well-informed trader would either have made certain of obtaining at the right time a sufficient number of licences issued within the framework of the protective measure, or before entering into important contracts to be performed after 1 April 1977 he would have waited for the conditions of the import system then applicable to be fixed with certainty. Details of the entry into force on 1 April 1977 of the new provisions for the current levy system were communicated at the right time by Regulation No 3117/76 (Official Journal 1976 L 352, p. 14).

By its legal nature an official ruling as to tariff classification does not contain any guarantee as to the nature or the

amount of the charges levied on imports of products coming within the tariff heading concerned. As a matter of principle the defendant is not responsible for rulings of that kind, which are supplied by a national administrative authority. Furthermore, the ruling cited by the applicant was two years old when the applicant entered into the contract at issue.

The defendant contends that the applicant is seeking to avoid application of the import system by inventing the product, namely a kind of "marinated meat" ready for cooking, and to use the price advantages thus obtained to induce consumers to buy its goods in preference to normal roasting meat. Thus the applicant is seeking to do precisely what the contested obligation to pay levy was designed to prevent.

The defendant is not obliged by the principle of the protection of legitimate expectation to grant the exemption from levy claimed by the applicant. Consequently it is not under an obligation to compensate the applicant.

In its reply, the *applicant* argues that if the regulation at issue is partially illegal, the Commission is also liable on the ground that Article 1 (1) (a) and Article 9 were inserted in Regulation No 425/77 only on its proposal.

Article 17 of Regulation No 805/68 provided nothing different from Article 10 of Regulation No 2759/75 on the common organization of the market in pigmeat (Official Journal 1975 L 282, p. 1), according to which "for products . . . in respect of which the rate of duty has been bound within GATT, the levies shall be limited to the amount resulting from that binding".

It is not necessary to mention specific GATT rules, since binding under GATT is the subject of the combined provisions of Regulation No 805/68 and the Common Customs Tariff.

The defendant *now* wishes to put on the tariff heading an interpretation whereby the binding concerns only preserved beef and veal, particularly corned beef, as well as preparations of beef and veal consisting of cooked meat. The applicant considers that the binding concerns *one particular tariff heading*, and that the products which come within it necessarily benefit from the binding of the rate of customs duty. The Community institutions are not empowered to define the content of a bound tariff heading as they please.

Under the Explanatory Notes to the Customs Co-operation Council Nomenclature (formerly known as the Brussels Nomenclature), which is binding on the Community (judgment of 19 November 1975 in Case 38/75 *Douaneagent der NV Nederlandse Spoorwegen* v *Inspecteur der invoerrechten en accijnzen* [1975] ECR 1439, at p. 1450), marinated meat falls within bound tariff heading 16.02.

The levy system is not at all suited to the marinated meat sector. The beef and veal which that product contains have already been processed and have had ingredients added to them, and this excludes any qualitative comparison with beef and veal as such. Consequently, the system of levies cannot be applied to that product.

Article 7 of Regulation No 425/77 does not primarily refer to "reasons of administrative convenience", but it does make particular mention of substantial *difficulties in respect of certain products*, which was the case in this instance. Furthermore, the defendant is under a general obligation to adopt particular transitional measures. All the requisite conditions are satisfied, and this entails automatic application of the criteria of the protection of legitimate expectation. The defendant contends that the Community is liable only where its decision constitutes a misuse of powers.

The new subdivision of tariff subheading 16.02 B III (b) 1 was not foreseeable by the applicant. The consignment of marinated meat was imported on 25 March 1977 *without an import licence*, subject to customs duties at the rate of 26%. All that emerged from Regulation No 3117/76 was that the protective measures would be repealed and that the normal arrangements for imports would be re-established. Thus the defendant brought into being a situation of confidence upon which the applicant was entitled to base its subsequent conduct.

In its rejoinder, the *defendant* first observes that after 31 December 1977 it is no longer empowered to adopt transitional measures as provided for in Article 7 of Regulation No 425/77. Thus the claim stated under heading BI of the application is unfounded.

The defendant would be bound to give compensation in money only if it was under a legal duty to adopt the decision claimed by the applicant.

Article 7 of Regulation No 425/77 imposes no such duty. Neither can any duty to adopt the decision demanded be inferred from it on the basis of misuse of powers. In order to qualify as misuse of powers, any other action by the defendant would have to be found to be arbitrary, patently mistaken and totally unjustifiable. The defendant has already explained in detail the reasons for which it refused to accede to the applicant's request.

Furthermore, nothing in the applicant's individual situation justified granting it the unilateral import advantages which it is claiming.

By the very fact of challenging the validity of the system of levies in force, the applicant is challenging the validity of Regulation No 425/77 in its entirety. If the said regulation were not valid, Article 7 thereof would not be valid either. That article is the only legal rule which empowered the defendant to grant the applicant the exemption demanded.

The conditions for granting an exemption on the grounds of protection of expectations are not satisfied. Traders must take account of the import rules in force. Exemption from the Community rules on the basis of the protection of legitimate expectation is possible only where earlier Community acts or provisions were likely to give rise to such expectations.

It should be noted that the applicant did not place its confidence in the retention of rules which were favourable to it. When it entered into its contract with its Romanian supplier, it did not take account of the import system laid down by the common organization of the market in beef and veal.

At most, it hoped that the import restrictions still in force at the time of the conclusion of the contract would be replaced by total abolition of restrictions on imports of marinated meat.

Moreover, when it adopted Regulation No 3117/76, the defendant confined itself to pointing out that the rules relating to protective measures would expire on 1 April 1977.

That notification is not necessarily to be understood, as the applicant claims, as meaning that products coming within subheading 16.02 B III (b) 1 could once again be imported under conditions which had long since ceased to apply. The applicant is alone in interpreting the notification in that way.

IV — Oral procedure

The parties presented oral argument at the hearing on 23 February 1978.

The Advocate General delivered his opinion at the hearing on 14 March 1978.

Decision

1 By an application lodged at the Court Registry on 21 July 1977, the applicant brought before the Court an action against the Commission for compensation on the basis of Articles 178 and 215 of the Treaty.

Having entered into a contract on 15 February 1977 with the Romanian external trading organization Prodexport for the delivery of 450 000 kg of marinated meat (Sauerbraten), it considers that it is harmed by the adoption of Council Regulation (EEC) No 425/77 of 14 February 1977 amending Regulation No 805/68 on the common organization of the market in beef and veal and adapting Regulation (EEC) No 827/68, and Regulation (EEC) No 950/68 on the Common Customs Tariff (Journal Officiel L 61, p. 1).

That regulation altered the arrangements for imports as regards *inter alia* the calculation of the levy; and in addition, "whereas certain products submitted as 'prepared meat' falling within subheading 16.02 B III (b) 1 of the Common Customs Tariff were created for the sole purpose of avoiding application of the levies; whereas, to avoid levy-free imports of products which can be substituted for meat falling within heading No 02.01 of the Common Customs Tariff, it is necessary to arrive at a better definition of the products which may be imported free of levies", it amended Article 9 (2) of Regulation No 805/68 so as to apply levies to products falling within a new heading, 16.02 B III (b) 1 (aa), which it introduced in Article 5 (7).

These changes became applicable as from 1 April 1977.

2 Since they fell within the new tariff heading 16.02 B III (b) 1 (aa), the products forming the subject-matter of the aforesaid contract of 15 February 1977 became liable to the amended system of levies.

Those products, which under the old system had been liable to *ad valorem* customs duty of 26% — but also subject to protective measures for several years —, became liable to customs duty of 20% and a levy which at the material time amounted to more than 100% of the purchase price.

The applicant approached the Commission seeking application in its favour of Article 7 of Regulation No 425/77, which provides: "Should transitional measures be necessary to facilitate the implementation of this regulation, in particular if such implementation on the date provided for were to give rise to substantial difficulties in respect of certain products, such measures shall

be adopted in accordance with the procedure laid down in Article 27 [of Regulation No 805/68]. They shall be applicable until 31 December 1977".

The Commission did not adopt the measures sought by the applicant, and the applicant brought this action for compensation claiming, in the words of the reply, that the Court should "declare that the defendant is required, in order to compensate for the damage which it has caused, to authorize the importation, free of the levy, of the quantity of marinated meat specified in the contract of 15 February 1977, by adopting a decision ordering the Federal Republic of Germany to admit the quantity of marinated meat at issue into free circulation free of the levy".

Alternatively the Court is asked to "declare that the Community is required to make good the damage which it caused the applicant by impeding the performance of the contract of 15 February 1977; in the further alternative, order the Community to pay the applicant DM 787 500, with interest at 8% from the date of the damage".

3 The Commission, the defendant to the action, contends that the primary claim should be dismissed as inadmissible and that the claim in the alternative should be dismissed as inadmissible as to part and unfounded as to the whole.

4 As the legal basis of the primary claim and of the alternative claims is the same, the question whether the action is well founded should be considered first.

5 The first point to be considered in relation to the question whether the action is well founded is whether there is a causal nexus between the damage alleged and the conduct of the Commission.

The Commission is criticized for not having used its powers under Article 7 of Regulation No 425/77 in the manner desired by the applicant.

In particular it is alleged that the principle of the protection of legitimate expectation should have prompted it to provide transitional exemptions from the new system where importers who had already accepted commitments to import were surprised by an unforeseeable amendment in the system.

6 Although the wording of Article 7 of Regulation No 425/77 expressly refers not to difficulties which the implementation of the new system might cause for those concerned but rather to difficulties of an administrative nature which might be encountered by the authorities responsible for such implementation, the wording is couched in terms broad enough to enable the Commission if necessary to adopt measures designed to protect the legitimate expectation of traders inasmuch as the amendment introduced is such as to jeopardize it.

Such protection is required *inter alia* where under the preceding system traders have already informed the competent authorities of their intention to carry out specific transactions over a period extending beyond the time of the introduction of a new system and have irrevocably committed themselves thereto, where appropriate by paying a deposit.

However the Commission had already adopted transitional measures in that connexion in its Regulation No 3117/76 of 21 December 1976 amending and repealing the linking systems introduced in the beef and veal sector, by way of protective measures, by Regulations (EEC) No 76/76 and (EEC) No 223/76 (Official Journal L 352, p. 14), which unequivocally announced that an amendment of the system in force at the time was envisaged as from 1 April 1977.

Article 5 of that regulation provides that "Regulations (EEC) No 76/76 and (EEC) No 223/76 are repealed with effect from 1 April 1977. However, they shall remain applicable for operations resulting from tenders for intervention beef lodged up to the third Monday of March 1977".

Thus, by publishing on page 15 of Official Journal L 352 of 22 December 1976 both the warning to traders concerned and the announcement that the previous arrangements would continue to apply in favour of all those who before a certain date had expressed their intention to make use of them for certain current transactions, the Commission had already adopted transitional measures, so that it did not need to consider adopting them under Article 7 of Regulation No 425/77, which is cited above.

7 Moreover the Commission was entitled to take the view that both the division of the old tariff subheading 16.02 B III(b)1 into two new subheadings and the application of the levy system to products falling within the first of those subheadings would not be detrimental to the legitimate expectation of traders.

Those amendments were already foreshadowed by the earlier rules concerning protective measures in the sector in question.

As examples in that connexion it suffices to cite Regulation No 610/75 of the Commission of 7 March 1975 on protective measures for certain beef and veal products falling within subheading 16.02 B III(b)1 of the Common Customs Tariff (Official Journal L 63, p. 37), Commission Regulation No 76/76 of 16 January 1976 setting up a system linking imports of beef and veal products effected by way of protective measures with the sale of beef held by intervention agencies (Official Journal L 10, p. 21), Commission Regulation No 223/76 of 30 January 1976 setting up a system linking imports of beef and veal products effected by way of protective measures with the sale of preserved beef held by intervention agencies (Official Journal L 26, p. 59) and the aforementioned Regulation No 3117/76.

The third recital in the preamble to Regulation No 610/75 and the tenth recital in the preamble to Regulation No 76/76 both noted the gradual development of new import patterns in the case of certain products falling with tariff subheading 16.02 B III (b) 1 which were not covered by the protective measures already adopted but which were replacing products for which import licences and advance fixing certificates were not issued at the time.

In principle all the regulations cited applied the protective measures which they introduced to products falling within the said tariff subheading.

However, in doing so, those regulations excepted from application of those measures certain products defined in Article 1 of Regulation No 610/75 as "prepared or preserved bovine meat or bovine meat offal put up in sealed containers weighing not more than 3 kg net".

Article 1 (2) of Regulation No 76/76 extended that exception and defined the products in greater detail, and that definition was repeated in essentially identical terms in Regulation No 3117/76.

Although those exceptions became irrelevant owing to the amendment of the tariff heading concerned, the definition of the new subheading 16.02 B III (b) 1 (aa) given in Article 9 (1) (j) of Commission Regulation No 586/77 of 18 March 1977 laying down rules for the application of levies on beef and veal ... (Official Journal L 75, p. 10) is such as to exclude its application to products covered by the exceptions cited above.

8 The applicant has also mentioned an official ruling as to classification which was issued in 1975 under German legislation by the competent German authority to the effect that the goods in question did fall within the old subheading 16.02 B III (b) 1 and has alleged that it acted in reliance on that official ruling.

On 25 March 1977 at Passau the applicant imported a consignment of approximately 10 000 kg of marinated meat on the authority of that ruling without the system of protective measures, which was still in force at the time, being applied to it.

9 However it emerges from the applicant's statements at the hearing that it was able to obtain that clearance into free circulation only owing to an amendment of the ruling concerned dated 13 October 1976 stating that the goods came under the above-mentioned exceptions laid down in Regulation No 76/76.

It is clear from those statements that at the time of the amendment the applicant had already realized that any importation of the goods might fall foul of the protective measures then in force and was to be regarded as being very hazardous.

At all events the issue of such a ruling, which by its very nature can refer only to the rules in force at the time and thus cannot protect the person to whom it was issued from amendments to such rules, cannot be considered as equivalent to the issue of certificates, declarations and other documents concerning specific transactions envisaged for a set time and for set quantities.

Whereas documents of the latter kind are capable of giving rise to liability on the part of the Community authorities, rulings as to classification on the other hand are issued for general purposes and are of a purely abstract nature, that is to say without any relation to specific transactions, and so are not such as to oblige those authorities in any adjustments of the rules concerned which they might consider necessary to take account of any expectations which such documents might have engendered among interested parties.

10 It follows from the foregoing that the Commission was entitled to take the view that because of the prior adoption of Article 5 of Regulation No 3117/76, it was not necessary when Regulation No 425/77 entered into force to adopt any further transitional measures under Article 7 thereof in order to protect the legitimate expectation of traders.

Consequently its conduct in that connexion cannot be regarded as having caused the damage alleged by the applicant.

11 The applicant also criticizes the Commission for having acted illegally and for having failed to fulfil its obligations inasmuch as (a) the charging of levies and corresponding monetary compensatory amounts on uncooked prepared beef and veal goes against the rate of customs duty bound at 26% under the General Agreement on Tariffs and Trade (GATT), and (b) the levy and the monetary compensatory amount are so excessive that they infringe the principles of Articles 39 and 110 of the Treaty as well as the principles of proportionality and of non-discrimination.

It is alleged that by its attitude the Commission has committed a serious breach of several superior rules of Community law.

12 The defendant considers this criticism to be misdirected, as the breaches alleged are the result of Regulation No 425/77, which is an act of the Council and thus of another Community institution.

The Commission also contends, as regards the alleged infringement of GATT, that the applicant is unable to specify which rule of that Agreement has been infringed in this case but has merely cited the negotiations concerning the binding of subheading 16.02 B III (b) 1 which concerned only preserved beef and veal, particularly corned beef, as well as preparations of beef and veal made by thoroughly cooking the meat during the manufacturing and preserving process, these being the only products within the subheading which were imported in appreciable quantities at the time of the binding.

The Commission also contends that the original decision formally to extend the conventional rate to all products falling within the subheading at issue was a unilateral concession by the Community which has been progressively withdrawn since the adoption of Regulation No 610/75.

13 As regards the allegedly excessive amount of the levies, the point of reference is the basic levy applicable to cattle, determined by reference to the difference between the guide price and the free-at-frontier offer price.

Under the provisions of Article 12 of Regulation No 805/68 as amended by Regulation No 425/77, the levy may in fact amount to 114% where the market price of adult bovine animals is less than 90% of the guide price.

14 The defendant's arguments have not been refuted by the applicant to the extent required by law.

15 Accordingly the application must be dismissed in its entirety, and it is not necessary to consider whether every head of claim is admissible.

Costs

16 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs if they have been asked for in the successful party's pleading.

The applicant has failed in its submissions, therefore it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application.**

2. **Orders the applicant to pay the costs.**

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 27 April 1978.

A. Van Houtte
Registrar

H. Kutscher
President