JUDGMENT OF THE COURT (Second Chamber)
20 June 1985 *

In Case 124/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hessisches Finanzgericht for a preliminary ruling in the action pending before that court between

H. Spitta & Co., Frankfurt am Main,

and

Hauptzollamt Frankfurt am Main-Ost [Principal Customs Office, Frankfurt am Main-East]

on the validity of the reduction fixed at 143.956 units of account for products falling under subheading 16.02 B III b 1 aa) of the Common Customs Tariff by Article 1 of Commission Regulation No 932/77 of 29 April 1977 fixing the amounts by which import charges on beef and veal originating in the African, Caribbean and Pacific States are to be reduced,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

Advocate General: G. F. Mancini
Registrar: D. Louterman, Administrator

after considering the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community on behalf of:

— H. Spitta & Co., the plaintiff in the main proceedings, by Hilmar Nehm, Rechtsanwalt, Cologne, and

— the Commission of the European Communities, by Bernhard Jansen, a member of its Legal Service,

* Language of the Case: German.

after hearing the Opinion of the Advocate General delivered at the sitting on 2 May 1985,

gives the following

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 order of 25 April 1984, which was received at the Court on 11 May 1984, the Hessisches Finanzgericht [Finance Court, Hesse] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the validity of a provision of Commission Regulation No 932/77 of 29 April 1977 fixing the amount by which import charges on beef and veal originating in the African, Caribbean and Pacific States are to be reduced (Official Journal 1977, L 109, p. 16).

2 That question arose in the context of proceedings concerning the determination of the levy applicable on importation to a consignment of seasoned, frozen beef coming from Madagascar and falling under tariff heading 16.02 B III b 1 aa).

The legal framework

3 The ACP-EEC Convention signed at Lomé on 28 February 1975 (Council Regulation No 199/76 of 30 January 1976 on the conclusion of the Convention, Official Journal 1976, L 25, p. 1) provides in Article 2 (2) (a) that products originating in the ACP States and subject to a common organization of the market or to specific rules introduced under the common agricultural policy are to benefit from more favourable treatment upon importation than is generally applicable.

4 In order to honour that undertaking, the common organization of the market in beef and veal established by Regulation No 805/68 of the Council of 27 June 1968 (Official Journal, English Special Edition 1968 (I), p. 187) was modified, in favour of imports of beef and veal from the ACP States, by Regulation No 1599/75 of the Council of 24 June 1975 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States (Official Journal 1975, L 166, p. 67). Article 2 of

that regulation exempts products covered by the common organization of the market from all customs duties. In addition, it provides that the other charges payable upon importation into the Community are to be reduced by an amount to be fixed quarterly by the Commission and corresponding to 90% of the average of the import duties during a reference period. That reduction is to apply to all imports for which the importer proves that an export tax of an amount corresponding to the reduction referred to has been charged by the exporting State. According to the same regulation, the arrangements for applying the aforementioned provisions are to be adopted in accordance with the procedure provided for in Article 27 of Regulation No 805/68, that is to say, by the Commission under the 'Management Committee' procedure. The aforementioned provisions were repeated in Articles 1 and 3 of Regulation No 3328/75 of the Council of 18 December 1975 (Official Journal 1975, L 329, p. 4).

5 In Regulation No 3376/75 of 23 December 1975 (Official Journal 1975, L 333, p. 44), later amended by Regulation No 3136/76 of 22 December 1976 (Official Journal 1976, L 353, p. 40), the Commission laid down detailed rules for the application of Regulation No 3328/75. Article 4 of Regulation No 3376/75, as amended, divided the Member States into two groups for the purpose of applying the reduction. One group consisted of Ireland and the United Kingdom and the other group consisted of the remaining Member States. With regard to the latter, the amount of the reduction 'was to be equal to 90% of the amount resulting from the levy adjusted, where appropriate, by the monetary compensatory amount applicable for France'.

6 That approach is explained in the following terms by the fourth and fifth recitals in the preamble to Regulation No 3376/75. Having stated that the import charges resulting from the level of the levy applicable differed according to the Member State involved on account of the effect of accession compensatory amounts or monetary compensatory amounts, the Commission observed that 'the precise application of those amounts would result in complex administrative problems and would oblige the non-member countries concerned to levy different amounts according to the destination within the Community'. The Commission considered that 'provision should therefore be made for a standard method of calculating the amounts, on the basis of only two Community regions, namely the new Member States, which still apply accession compensatory amounts and the other Member States; ... in each of those two regions, the compensatory amount applicable to imports in the Member State which absorbs most of the imports in question should be taken as a basis, it being possible also to consider those amounts as close to the average of the compensatory amounts applicable for each of the Member States'.

7 At that point, Council Regulation No 425/77 of 14 February 1977 (Official Journal 1977, L 61, p. 1) was adopted for the purpose of amending Article 1 of Regulation No 805/68 and the corresponding headings of the Common Customs Tariff. That regulation replaced subheading 16.02 B III b 1, which covered a range of preserved meat hitherto exempt from the levy, by two headings drafted as follows:

— 16.02 B III b 1 aa): 'Other prepared or preserved meat or meat offal containing bovine meat or offal, uncooked', and

— 16.02 B III b 1 bb): 'Other prepared or preserved meat or meat offal, containing bovine meat or offal, other'.

8 The structure of the table contained in Article 1 of Regulation No 805/68 was modified so as to place the first of those subheadings — aa) dealing with uncooked preparations of bovine meat — among the headings which attract an import levy, while the other subheading — bb) dealing with cooked preparations — was placed among the headings which carry exemption from the levy.

9 Shortly after those amendments to the Common Customs Tariff, namely on 29 April 1977, the Commission adopted Regulation No 932/77, which is the subject of the question referred to by the Court by the Finanzgericht. In accordance with the provisions of Regulation No 3376/75, the annex to Regulation No 932/77 is composed of two columns in which are indicated the amount of the reductions for Ireland and the United Kingdom, on the one hand, and for the 'other Member States', on the other. For the latter States, the amount indicated in respect of heading 16.02 B III b 1 aa) is 143.956 units of account per 100 kg. In accordance with the provisions described above, that amount represents 90% of the levy, adjusted by the monetary compensatory amount applicable for France.

10 Finally, it should be noted that in Regulation No 622/78 of 30 March 1978 (Official Journal 1978, L 84, p. 15), adopted subsequent to the facts which gave rise to this case, the Commission amended Article 4 of Regulation No 3376/75. The amended version of Article 4 provided that the reduction was to be equal to 90% of the amount resulting from the levy corrected by the monetary compensatory amount valid for the importing Member State. The second, third and fifth recitals in the preamble to the new regulation explain the change in the system in the following terms: After observing that the Community had hitherto been divided into two regions for the purpose of calculating the amount of the reduction in import charges on the products in question, the Commission went on

to state that the amount should in future be calculated 'separately for each Member State on the basis of the monetary compensatory amount applicable to imports in the Member State concerned'. The Commission also observed that the reduction consisted of two components — namely, the levy and the monetary compensatory amount — and added that, since the expression of those components in units of account might create problems for the exporting country as regards the exchange rate to be used, 'the amount by which the charges are reduced should be fixed in national currency for each Member State of destination', the reduction to be taken into account being that applicable 'at the time of export'.

Proceedings before the national court

11 The plaintiff in the main proceedings, H. Spitta & Co., a company registered under German law, is a trader in agricultural products dealing in particular in the importation of prepared beef and veal from Madagascar. In 1976 it bought in Madagascar a consignment of 1 000 tonnes of seasoned, boneless beef which at the time fell under subheading 16.02 B III b 1 of the Common Customs Tariff. The customs formalities on importation into the Federal Republic of Germany did not take place until 24 and 25 May 1977, that is to say after Regulation No 425/77 had come into force, and the goods were therefore classified under the new subheading 16.02 B III b 1 aa) and were as such subject to a levy fixed in accordance with the provisions of Regulation No 932/77. The plaintiff lodged a complaint and, when it was rejected, brought an action before the Hessisches Finanzgericht to contest the charging of the levy.

12 Before the Finanzgericht, Spitta argued, in addition to other points which are not the subject of the present proceedings, that the method of calculating the reduction laid down in Regulation No 932/77 did not correspond to the provisions of Regulation No 3328/75 of the Council, which provided for a reduction of import charges corresponding to 90% of the average of the import charges applicable during the period in question.

13 In order to resolve that dispute, the Hessisches Finanzgericht asked the Court of Justice whether the reduction fixed at 143.956 units of account by Commission Regulation No 932/77 for products falling under subheading 16.02 B III b 1 aa) was valid.

14 In its order for reference the Finanzgericht, after presenting comparative calculations showing the determination of the amount of the reduction in three Member States (France, the United Kingdom and Germany), expressed doubts as to whether the method of calculation introduced by Regulation No 932/77 achieved the objective set out in Regulation No 3328/75 of the Council, namely an effective reduction of 90% in the charges to be levied on importation into Germany. The Finanzgericht considered that that result was not due to an error in calculation but had its origin in the principle embodied in Regulation No 3376/75 of the Commission, which drew a distinction between two regions in the Community, namely the United Kingdom and Ireland, on the one hand, and the remaining Member States, on the other. The Finanzgericht drew attention to the fact that the Commission, in Regulation No 662/78, introduced a more refined method of calculating the reductions. It therefore queried whether Regulation No 932/77 infringed Regulation No 3328/75 of the Council, inasmuch as the result in respect of imports into Germany was that the levy greatly exceeded 10% of the import charges, and whether it also infringed the principle of non-discrimination laid down in Article 40 of the EEC Treaty.

The question of validity

15 The plaintiff in the main proceedings presented the same arguments before the Court of Justice that it had presented before the Finanzgericht. It attempted to show that, having regard to the difference in the monetary compensatory amounts, the residual import charges in Germany were three times what they would have been if the reduction had actually constituted the 90% required by Regulation No 3328/75 of the Council. Under those circumstances, the effect of the Commission's extension to all the Member States of the Community (except Ireland and the United Kingdom) of the reduction applicable for France was to place German importers at a competitive disadvantage. Only the fixing of different reductions for each Member State, as was later done by Regulation No 622/78, would have allowed the reductions to be calculated in accordance with the principles laid down in Regulation No 3328/75 of the Council. The plaintiff in the main proceedings therefore asks the Court to declare Regulation No 932/77 void and to indicate in its decision a rate of reduction which complies with the requirements of Regulation No 3328/75 of the Council.

16 The Commission defends the validity of the contested regulation by arguing essentially that in the implementation of the provisions of Regulation No 3328/75 it enjoyed a margin of discretion on economic questions which permitted it to

determine the amount of the reduction by means of a standard method for the sake of simplifying the export formalities required in the ACP States. At the time when the contested regulation was adopted, the Commission was unaware of any pattern of exports for the goods concerned other than to France and the United Kingdom. It therefore considered that the import charges in those two States constituted a representative value for the whole of the two groups of Member States established by Regulation No 3376/75. When experience later revealed the existence of exports towards other Member States as well, it introduced a more refined system in Regulation No 622/78.

17 The Commission emphasizes that the reductions were not introduced for the benefit of importers but for the benefit of the ACP States, the intention being to allow them the greater part of the sums collected by way of levies on imports into the Community. The system was so organized that the importer would, in any event, pay 100% of the import charges, that is to say, the levy corrected by the monetary compensatory amount valid for the Member State of destination. That was the purpose of the second condition laid down by Article 1 of Regulation No 3328/75 of the Council, which required an importer who wished to benefit from the reduction in import charges to prove that an export tax of an amount corresponding to the reduction had been charged by the exporting country.

18 In order to resolve this question, the terms of Regulation No 3328/75 of the Council must be borne in mind. Article 1 of that regulation provides as follows:

'(1) The charges on imports of the products originating in the ACP States referred to in Article 1 (a) of Regulation (EEC) No 805/68 shall be reduced, within the limits of the quantities specified in Article 2, by an amount to be fixed quarterly by the Commission and corresponding to 90% of the average of the import charges applicable during a reference period.

(2) Paragraph 1 shall apply only to imports for which the importer proves that an export tax of an amount corresponding to the reduction provided for in that paragraph has been charged by the exporting country.'

19 The Finanzgericht rightly pointed out that the essential issue in this case is whether the Commission was legally entitled to draw a distinction in Regulation No 3376/75 between two regions within the Community and to choose the French situation as being representative of all the Member States other than Ireland and the United Kingdom, even though the result of that procedure was that for the Federal Republic of Germany the residual import charges were greater than the

10% to which, according to Article 1 (1) of Regulation No 3328/75, import charges were to be limited.

20 The reply to that question must be that it is not possible in the circumstances of this case to contest the method used by the Commision, which consisted of extending pragmatically to the entire Community (except Ireland and the United Kingdom) the financial conditions for importation applicable to the sole Member State in respect of which a real pattern of trade was known to exist at the time, with the consequence that a single rate of levy was applied in the exporting ACP State.

21 As the Commission has pointed out, the effect of that method was to reduce, in the case of imports into the Federal Republic of Germany, the part of the levy retained by the exporting country to less than the 90% provided for by way of 'reduction' and to increase correspondingly the amount collected by the importing Member State, so that, although the operation reduced the amount received by the ACP State concerned, it left unaltered the total charge to which the importer was liable. In no circumstances can the importer be obliged to pay more than the total import charges resulting from the levy corrected by the compensatory amounts. The requirement in Article 1 (2) of Regulation No 3328/75 that proof must be produced of the amount of the export tax charged by the exporting country provides a guarantee that the importer will in no circumstances be subject to a total charge exceeding the import charges provided for in the provisions governing the common organization of the market in beef and veal, that it to say, the levy corrected by the monetary compensatory amounts.

22 Consequently, the rules which the plaintiff contests cannot have the effect of modifying the conditions of competition between importers in the Community, since those conditions are determined by the fixing of the levies, adjusted by the effect of the monetary compensatory amounts. The method used by the Commission cannot therefore be regarded as a breach of the prohibition of discrimination contained in Article 40 of the Treaty.

23 The reply to the Finanzgericht's question must therefore be that consideration of that question has disclosed no factor of such a kind as to affect the validity of Commission Regulation No 932/77 of 29 April 1977 fixing the amounts by which import charges on beef and veal originating in the African, Caribbean and Pacific States are to be reduced.

24 It is for the national court to verify whether, having regard to any export tax that may have been paid in respect of the consignment of meat in question, thus giving

rise to application of the reduced import charge, the plaintiff in the main proceedings has paid a total amount exceeding the import charges determined by the rules applicable at the time of importation. On the question whether any such tax was paid there is no definite information to be found in the documents submitted to the Court.

Costs

25 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 proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Hessisches Finanzgericht by order of 25 April 1984, hereby rules:

Consideration of the question submitted to the Court has disclosed no factor of such a kind as to affect the validity of Commission Regulation No 932/77 of 29 April 1977 fixing the amounts by which import charges on beef and veal originating in the African, Caribbean and Pacific States are to be reduced.

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 20 June 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber