JUDGMENT OF THE COURT (First Chamber)
29 February 1996 *

In Case C-300/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal Superior de Justicia, Andalusia (Spain), for a preliminary ruling in the proceedings pending before that court between

Tirma SA

and

Administración General del Estado

on the interpretation of Council Regulation (EEC) No 3033/80 of 11 November 1980 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products (OJ 1980 L 323, p. 1), as regards the variable component of the charge applicable to goods resulting from the processing of agricultural products,

THE COURT (First Chamber),

composed of: D. A. O. Edward (Rapporteur), President of the Chamber, P. Jann and M. Wathelet, Judges,

* Language of the case: Spanish.

Advocate General: N. Fennelly,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Spanish Government, by Alberto José Navarro González, Director General for Coordination in Community Legal and Institutional Matters, and Miguel Bravo-Ferrer Delgado, Abogado del Estado, acting as Agents,

— the Commission of the European Communities, by José Luis Iglesias Buhigues, Legal Adviser, and Blanca Rodríguez Galindo, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 14 December 1995,

gives the following

Judgment

1 By order of 23 September 1994, received at the Court on 9 November 1994, the Tribunal Superior de Justicia (High Court of Justice), Andalusia, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Council Regulation (EEC) No 3033/80 of 11 November 1980 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products (OJ 1980 L 323, p. 1), as regards the variable component of the charge applicable to goods resulting from the processing of agricultural products.

That question was raised in the course of proceedings between Tirma SA ('Tirma') and the Cadiz customs authorities concerning payment of the variable component of the customs duties laid down by Regulation No 3033/80.

Article 5(1) of Regulation No 3033/80 provides that, on importation into the Community, goods resulting from the processing of agricultural products are to be subject to a charge consisting of (a) an *ad valorem* duty, which is the fixed component of that charge, and (b) a variable component intended to reflect, for the quantities of basic products considered to have been used in the manufacture of the goods, the difference between the prices of those products in the Community and the prices of imports of those products from third countries, when the total cost of those quantities of basic products is higher in the Community.

4 Article 1(3) of Protocol No 2 to the Act of Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1985 L 302, p. 400, hereinafter 'the Protocol') provides that, except where otherwise provided for in the Protocol, the acts of the institutions of the Community regarding customs legislation for foreign trade are to apply under the same conditions to trade between the customs territory of the Community and the Canary Islands. Article 1(5) lays down an identical rule concerning products falling within Annex II to the EEC Treaty, except where otherwise provided for in the Act of Accession, including the Protocol.

5 Under Article 2(1) and (2) of the Protocol, products originating in the Canary Islands are exempted from customs duties when released for free circulation in that part of Spain which is included in the customs territory of the Community.

6 Article 1(2)(d) of Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt (OJ 1987 L 201, p. 15), now replaced by Article 4(10) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community

Customs Code (OJ 1992 L 302, p. 1), provides that 'import duties' means 'customs duties and charges having equivalent effect, and agricultural levies and other import charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products'.

7 In 1989 Tirma imported from the Canary Islands various consignments of 'caramelos' (caramels) intended for release into free circulation in the Community customs territory, in respect of which the Cadiz customs authorities demanded payment of the variable component of the duties, as laid down by Regulation No 3033/80.

8 Tirma lodged administrative complaints against the calculations carried out by the customs authorities. Those complaints were rejected by four decisions given by the Tribunal Económico Administrativo Regional (Regional Economic Administrative Court), Andalusia, on 2 and 12 December 1991. That court regarded the variable component of the customs duties applicable to processed agricultural products as analogous to compensatory amounts under the common agricultural policy, so that Article 5(1) of Regulation No 3033/80 was applicable to imports of caramels from the Canary Islands into the Community customs territory.

9 Tirma considered that the principle of freedom of movement was applicable to the Canary Islands' intra-Community trade, subject to the exceptions provided for in Articles 1 and 2 of the Protocol, which do not cover processed agricultural products since they are not listed in Annex II to the Treaty, and consequently lodged an administrative appeal against those decisions before the Tribunal Superior de Justicia, Andalusia.

10 Considering that the case raised an issue concerning the interpretation of Community law, the national court stayed the proceedings and requested the Court of Justice to give a preliminary ruling on the following question:

'Do the arrangements laid down in Article 1(5) of Protocol No 2 to the Act of Accession of Spain and Portugal apply to the variable component of the tariff duties on processed agricultural products governed by Regulations (EEC) Nos 3033/80, 3034/80 and 3035/80 despite the fact that such products are not listed in Annex II to the Treaty, or does the exemption provided for in Article 2 of that Protocol apply? Or, if neither of the above applies, must the general principle of free movement of goods apply to trade in processed agricultural products between the Canary Islands and the customs territory of the Community?'

11 First of all, it should be noted that until the entry into force, on 1 July 1991, of Council Regulation (EEC) No 1911/91 of 26 June 1991 on the application of the provisions of Community law to the Canary Islands (OJ 1991 L 171, p. 1), those islands did not form part of the customs territory of the Community, so that they were covered by the Protocol.

12 It should also be noted, as the Advocate General has observed in points 2 and 5 of his Opinion, that the caramels in question, which must be regarded as sugar confectioneries not containing cocoa, are not listed amongst the products falling within Annex II to the Treaty, to which Article 1(5) of the Protocol refers.

13 Article 1(1), (2) and (3) of the Protocol provides that, except where otherwise provided for in the Protocol itself, all goods originating in the Canary Islands are to be subject, when released into the customs territory of the Community, to the Community customs arrangements applying to foreign trade, and thus to Regulation No 3033/80, which lays down the trade arrangements applicable to certain goods resulting from the processing of agricultural products.

14 Article 2(1) and (2) of the Protocol, being exceptions 'otherwise provided for' in the Protocol itself, provides for products originating in the Canary Islands to be exempt from 'customs duties' when released for free circulation in that part of Spain which is included in the customs territory of the Community.

15 The term 'customs duties', which is the subject of the exception to the general rule laid down in Article 1(1), (2) and (3) of the Protocol, must be strictly interpreted in the light of Article 1(2)(d) of Regulation No 2144/87. It is clear from the wording of that provision that 'customs duties' constitute a sub-group of the group of duties called 'import duties', which is a more general term also covering 'agricultural levies' and other import charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products.

16 Furthermore, the variable component provided for in Article 5 of Regulation No 3033/80 is 'intended to reflect, for the quantities of basic products considered to have been used in the manufacture of the goods, the difference between the prices of those products in the Community and the prices of imports of those products from third countries, when the total cost of those quantities of basic products is higher in the Community'.

17 That variable component is therefore analogous to the agricultural levies referred to in Article 1(2)(d) of Regulation No 2144/87, whose purpose in that sphere is, like that of previous regulations, to stabilize the markets (see, to that effect, the judgment in Case 60/75 *Russo* [1976] ECR 45).

18 It follows that the exemption for 'customs duties' laid down by Article 2(1) and (2) of the Protocol does not cover the variable component of the charge provided for in Article 5 of Regulation No 3033/80.

19 The reply to be given to the question referred by the Tribunal Superior de Justicia, Andalusia, must therefore be that the variable component of the charge concerning processed agricultural products, provided for in Article 5 of Regulation No 3033/80, falls within the arrangements laid down in Article 1(1) to (3) of the Protocol, and is not covered by the exemption laid down in Article 2 of that protocol.

Costs

20 The costs incurred by the Spanish Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (First Chamber)

in answer to the question referred to it by the Tribunal Superior de Justicia, Andalusia, by order of 23 September 1994, hereby rules:

The variable component of the charge concerning processed agricultural products, provided for in Article 5 of Council Regulation (EEC) No 3033/80 of

11 November 1980 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products, falls within the arrangements laid down in Article 1(1) to (3) of Protocol No 2 to the Act of Accession of the Kingdom of Spain and the Portuguese Republic, and is not covered by the exemption laid down in Article 2 of that protocol.

Edward Jann Wathelet

Delivered in open court in Luxembourg on 29 February 1996.

R. Grass

Registrar

D. A. O. Edward

President of the First Chamber