JUDGMENT OF THE COURT (First Chamber)
12 December 1996 *

In Case C-241/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice (Queen's Bench Division) for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Intervention Board for Agricultural Produce,

ex parte: **Accrington Beef Co. Ltd and Others,**

on the validity of Articles 1(2) and 2(2) of Commission Regulation (EC) No 214/94 of 31 January 1994 laying down detailed rules for the application of Council Regulation (EC) No 130/94 with regard to the import arrangements for frozen beef falling within CN code 0202 and products falling within CN code 0206 29 91 (OJ 1994 L 27, p. 46),

* Language of the case: English.

THE COURT (First Chamber),

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

Advocate General: P. Léger,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Accrington Beef Co. Ltd and Others, by John Ratliff, Barrister, instructed by Ramsbottom and Co., Solicitors,

— the Government of the United Kingdom, by Stephen Braviner, of the Treasury Solicitor's Department, acting as Agent, assisted by David Anderson, Barrister,

— the Commission of the European Communities, by James Macdonald Flett, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Accrington Beef Co. Ltd and Others, represented by John Ratliff; the Government of the United Kingdom, represented by Stephanie Ridley, of the Treasury Solicitor's Department, acting as Agent, assisted by David Anderson; and the Commission, represented by James Macdonald Flett, at the hearing on 12 September 1996,

after hearing the Opinion of the Advocate General at the sitting on 17 October 1996,

gives the following

Judgment

1 By order of 20 June 1995, received at the Court on 10 July 1995, the High Court of Justice (Queen's Bench Division) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the validity of Articles 1(2) and 2(2) of Commission Regulation (EC) No 214/94 of 31 January 1994 laying down detailed rules for the application of Council Regulation (EC) No 130/94 with regard to the import arrangements for frozen beef falling within CN code 0202 and products falling within CN code 0206 29 91 (OJ 1994 L 27, p. 46).

2 The questions were raised in proceedings between Accrington Beef Co. Ltd and Others (the applicants in the main action, hereinafter 'the applicants') and the Intervention Board for Agricultural Produce ('the Intervention Board'), the authority responsible in the United Kingdom for administration of the common agricultural policy, concerning the conditions of eligibility for the Community tariff quota opened for certain kinds of frozen beef and other products by Article 1 of Council Regulation (EC) No 130/94 opening and providing for the administration of a Community tariff quota for frozen meat of bovine animals falling within CN code 0202 and products falling within CN code 0206 29 91 (1994) (OJ 1994 L 22, p. 3).

3 The quota was fixed at 53 000 tonnes, expressed in weight of boned or boneless meat. The Common Customs Tariff and the levy applicable to the quota are 20% and 0% respectively.

Article 2 of Regulation No 130/94 provides that the quota is to be divided into two parts as follows:

'(a) the first, equal to 80% or 42 400 tonnes, shall be apportioned between importers who can prove they have imported frozen meat falling within CN code 0202 and products falling within CN code 0206 29 91 to which these import arrangements apply during the last three years' (hereinafter 'traditional importers');

'(b) the second, equal to 20% or 10 600 tonnes, shall be apportioned between operators who can prove that they have engaged in trade with third countries involving a minimum quantity and for a period to be determined, in beef and veal other than that to which these import arrangements apply and excluding meat which is the subject of inward or outward processing traffic' (hereinafter 'newcomers').

Detailed rules for application of the regulation, in particular for allocating the quantities available between traditional importers and newcomers, are to be adopted pursuant to Article 4 by the Commission in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), which involves consultation of a management committee.

In accordance with that procedure the Commission adopted Regulation No 214/94, Article 1(1) and (2) of which restates the criteria for allocation of the two parts of the quota referred to in Article 2 of Regulation No 130/94 and provides that the second part is to be reserved for operators who can furnish proof of having 'imported at least 50 tonnes in 1992 and 80 tonnes in 1993 of beef not subject to the quota' or 'exported at least 110 tonnes in 1992 and 150 tonnes in 1993 of beef to third countries'.

7 The export thresholds fixed for the 1994 quota were higher than those set for the 1992 and 1993 quotas, which were 110 tonnes for each of the two reference years [see Commission Regulation (EEC) No 3701/91 of 18 December 1991 laying down detailed rules for the application of the import arrangements provided for in Council Regulation (EEC) No 3667/91 for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (OJ 1991 L 350, p. 34) and Commission Regulation (EEC) No 3771/92 of 22 December 1992 laying down detailed rules for the application of the import arrangements provided for in Council Regulation (EEC) No 3392/92 for frozen beef covered by CN code 0202 and products covered by CN code 0206 29 91 (OJ 1992 L 383, p. 36)].

8 It is provided in Article 1(3) and (4) and Article 3(3), third subparagraph, of Regulation No 214/94 that 'the 42 400 tonnes shall be allocated between the various (traditional) importers in proportion to their imports during the reference years' whereas 'the 10 600 tonnes shall be allocated in proportion to the quantities applied for by eligible (newcomers)' with a maximum of 50 tonnes per application. However, pursuant to Article 4(2), second subparagraph, lots are to be drawn if the number of applications is so high that otherwise each operator would be allocated less than 5 tonnes of the quota.

9 Article 2(2) of Regulation No 214/94 provides in addition that companies arising from mergers where each constituent has the rights reserved to traditional importers pursuant to Article 1(1) are to enjoy the same rights as the companies from which they are formed. In an information note addressed to all the Member States on 5 February 1992 the Commission stated with regard to the corresponding article in Regulation No 3701/91 that those provisions did not apply to applications made by newcomers.

10 The 27 applicant companies are meat producers, wholesalers and traders based in Lancashire. All of them belong to the Slinger group except Red Rose Meat Packers Ltd, which is controlled by the Slinger family.

11 In 1994, 13 of them qualified for the traditional quota and were allocated 2 508 kg each, by virtue of their imports of newcomers' quota beef in 1993. By contrast, the applications of the 27 companies for newcomers' quota in 1994 were all rejected by the Intervention Board, by letters of 8 March and 5 May 1994, on the ground that they did not fulfil the tonnage requirements laid down by Regulation No 214/94; in particular, they had not exported at least 150 tonnes of beef in 1993. They were also informed by the Intervention Board, by letter of 11 February 1994 referring to the Commission's information note of 5 February 1992 mentioned above, that they were not entitled to add together their individual results in order to qualify for newcomers' quota.

12 In the High Court the applicants challenged the validity of Article 1(2) of Regulation No 214/94 fixing the reference quantities for eligibility for the newcomers' quota, in particular with regard to exports, and of Article 2(2) of the regulation in so far as it deprived companies arising from mergers of the right to add together the results achieved by each separately so as to qualify for the same quota in 1994.

13 The High Court decided that it had no jurisdiction to rule unassisted on the validity of those provisions and that it was necessary to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 1(2) of Commission Regulation (EC) No 214/94 invalid and contrary to EC law to the extent that it required operators seeking to qualify for 1994 quota referred to in that sub-article on the basis of their past beef exports to have exported at least 150 tonnes in the previous year, rather than

110 tonnes as had been required in 1993? In particular, is Article 1(2) invalid and contrary to EC law as:

(a) exceeding the powers conferred upon the Commission by Council Regulation No 130/94;

(b) infringing the principle of proportionality;

(c) infringing the principle of legitimate expectations;

(d) infringing the duty to give adequate reasons pursuant to Article 190 of the EC Treaty; and/or

(e) having been adopted without proper consultation of the Beef Management Committee, contrary to Article 4 of Regulation No 130/94 and Article 27 of Regulation No 805/68?

2. Is Article 2(2) of Commission Regulation (EC) No 214/94 invalid and contrary to EC law, to the extent that it excludes companies arising from mergers where each part has rights pursuant to Article 1(2) of that regulation from the opportunity to cumulate their past trading performance? In particular, does Article 2(2) violate:

(a) the principle of non-discrimination, in so far as companies deriving their rights from Article 1(1) of that regulation can merge and cumulate their past trading performance for the purpose of obtaining quota, whereas companies deriving their rights from Article 1(2) cannot; and/or

(b) the guarantee referred to in the second recital to Council Regulation (EC) No 130/94 of continuing access to quota by all interested operators within the Community?'

Admissibility of the plea of illegality

14 The Government of the United Kingdom raises the question whether in the light of the judgment in Case C-188/92 *TWD Textilwerke Deggendorf* v *Germany* [1994] ECR I-833 the applicants' indirect challenge before the High Court of Articles 1(2) and 2(2) of Commission Regulation No 214/94 is out of time because they failed to bring an action for annulment of those provisions within the time-limit provided for in Article 173 of the EC Treaty, as they were entitled to.

15 It is sufficient, on that point, to note that, since the contested provisions are contained in a Community regulation and are addressed in general terms to categories of persons defined in the abstract and to situations determined objectively, it is not obvious that an action by the applicants challenging that regulation under Article 173 of the Treaty would have been admissible.

16 The reference to *TWD* (*Textilwerke Deggendorf*), which concerned a company which was undoubtedly entitled, and which had been informed that it was entitled, to bring an action for annulment of the Community act whose validity it was indirectly challenging before a national court, is therefore irrelevant.

The first question

17 The first question asks the Court to rule on the validity of Article 1(2) of Regulation No 214/94 in so far as it reserves the newcomers' part of the quota to applicants who can prove that they exported to third countries at least 110 tonnes of beef in 1992 and 150 tonnes in 1993.

18 Before the High Court it was claimed that Article 1(2) of Regulation No 214/94 was deficient in a number of respects.

19 In the first place, the applicants claim that the Commission exceeded the powers conferred on it by the Council by failing to take into account when fixing the export thresholds the genuine nature of their activities and the representative nature of their trade with third countries, as provided for in the third recital in the preamble to Council Regulation No 130/94, or the need to guarantee equal and continued access to the quota for all traders concerned. They go on to argue that the Commission was in fact pursuing unlawful aims, seeking both to restrict the number of applications for newcomers' quota in order to avoid having to arrange a ballot despite the fact that balloting is provided for by the Community regulations, and to ensure that the quota was not allocated to 'paper companies', that is to say, companies created solely in order to enable the group to which they belong to exploit the way in which the newcomers' quota is allocated.

20 It must be remembered, however, that in the sphere of the common agricultural policy the Council may find it necessary to confer on the Commission wide implementing powers, since the Commission alone is able to monitor continually and closely trends on the agricultural markets and to act speedily if the situation requires. Wide powers of implementation are all the more justified in the present case in so far as they must be exercised in accordance with the 'management committee' procedure, which allows the Council to reserve its right to intervene

(Joined Cases C-296/93 and C-307/93 *France and Ireland* v *Commission* [1996] ECR I-795, paragraph 22).

21 In this case it is common ground that the Commission had the power, under Article 4 of Regulation No 130/94, to determine by the management committee procedure the eligibility criteria for the newcomers' quota, that is to say, the minimum quantities and the reference period provided for in Article 2(b) of the regulation.

22 Accordingly, it is necessary to consider whether the measures adopted by the Commission reflect the purpose of the basic regulation.

23 The second recital in the preamble to Regulation No 130/94 indicates that the Council was seeking 'a guarantee of ... equal and continuing access by all interested operators within the Community to the quota'. The third recital states that 'the arrangements consist of the allocation by the Commission of the quantities available to traditional operators and to operators engaging in trade in beef and veal' and that 'in order to ensure that the activities of the latter operators are genuine, only quantities of a certain size representative of trade with third countries should be considered'.

24 The last qualification, however, does not mean that the Council intended to establish a direct link between the amounts and quantities to be fixed by the Commission and trends in trade with third countries, but merely that the eligibility criteria were to be such as to ensure equal and continuing access to the quota only for traders who had achieved a significant level of imports or exports.

25 As the Commission and the United Kingdom Government have observed, the proliferation of 'paper companies', reflecting the artificial fragmentation by certain traders of their economic structure, is liable to disrupt the scheme and prejudice the aim of ensuring equal and continuing access to the quota for all operators regardless of their size. Breaking up large operators into smaller units increases the number of applications for quota, thereby reducing the quantities available for genuine small operators, who thus risk being excluded from the quota altogether.

26 The first plea, alleging that the Commission exceeded its powers, must therefore be rejected.

27 Secondly, the applicants argue that the Commission also infringed the principle of proportionality because raising the export threshold meant that small or medium-sized traders were excluded from the quota. The increase was also disproportionate to the changes which had occurred in the volume of trade concerned and, if it was in fact intended to exclude paper companies, it wholly fails in its purpose.

28 The Commission fixed higher export thresholds for the 1994 quota than for the 1992 and 1993 quotas: the latter had been 110 tonnes in each of the two reference years (1990 to 1991 and 1991 to 1992), whereas the thresholds at issue in this case were 110 tonnes for 1992 and 150 tonnes for 1993 in order to qualify for the 1994 quota.

29 Since the aim was to guarantee equal and continuing access to the quota for all interested Community traders, it was reasonable that the effect of the change be to deprive of the right to participate in the quota a large number of undertakings created artificially for the sole purpose of obtaining a large share of the quota, there being no proof that the increase prevented a large number of genuinely small

operators from obtaining a share of the quota. Consequently, the Commission did not manifestly exceed the bounds of its wide powers of discretion when it increased the thresholds.

30 As observed in paragraph 24 of this judgment, moreover, neither the stated purpose nor the terms of the Council's basic regulation require the Commission to establish a direct link between export thresholds and changes in the volume of trade with third countries.

31 Consequently, the plea of infringement of the principle of proportionality must be rejected.

32 Thirdly, the applicants claim that the Commission infringed the principle of the protection of legitimate expectations by raising the thresholds for exports to third countries without first notifying or consulting the traders concerned.

33 The Court has consistently held that traders cannot claim a legitimate expectation that an existing situation capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained, and that that applies particularly in an area such as the common organization of the markets whose purpose involves constant adjustments to meet changes in the economic situation (see, in particular, Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 33).

34 The Commission argues that the tariff quota is administered on an annual basis and that there was nothing in Regulations Nos 214/94 and 130/94 to suggest that the eligibility criteria would remain unchanged. The criteria are always fixed before applications are lodged for the current year, but after the relevant reference period, in order to deter speculation and ensure the smooth running of the scheme.

35 The United Kingdom Government agrees with that analysis.

36 The view taken by the Commission and the United Kingdom Government must be accepted. Any prudent and diligent trader must know that the export thresholds may be altered whenever a new annual quota is adopted. Premature announcement of the new eligibility criteria would encourage the creation of 'paper companies' precisely to meet the new thresholds, thus enabling large groups to obtain the maximum advantage of the quota. As emphasized in paragraph 25 of this judgment, the fragmentation of large undertakings is liable to disrupt the smooth running of the scheme.

37 The plea of infringement of the principle of the protection of legitimate expectations must therefore be rejected.

38 Fourthly, the applicants consider that the Commission has failed to fulfil its duty to state reasons under Article 190 of the EC Treaty. They refer in particular to the recitals in the preamble to Regulation No 214/94 which, they maintain, merely reproduce the stereotype wording contained in the regulations of previous years without any reference to the raising of the export thresholds.

39 The Court has consistently held that the statement of the reasons on which regulations are based is not required to specify the often very numerous and complex matters of fact or of law dealt with in the regulations, provided that the latter fall within the general scheme of the body of measures of which they form part, and that in order to satisfy the requirements of Article 190 of the Treaty it is sufficient that the statement of reasons is appropriate to the nature of the measure in question. The reasoning of the institution which adopted the measure must be stated clearly and unequivocally, so as to inform persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review (see, in particular, Case 250/84 *Eridania and Others* v *Cassa Conguaglio Zucchero* [1986] ECR 117, paragraphs 37 and 38, and *France and Ireland* v *Commission*, cited above, paragraph 72).

40 In this case, as the Commission has pointed out, Regulation No 214/94 refers expressly to Regulation No 130/94, which states the purpose of the scheme and the general principles on which the tariff quota is to be administered. Furthermore, the second recital in the preamble to Regulation No 214/94 underlines the need to ensure smooth transition from the arrangements based on national administration to those administered by the Community, bearing in mind the special aspects of trade in the products in question and the need to restrict access to the second part of the quota to traders able to prove that their business is genuine and that they deal in significant quantities. The fifth recital refers to the need for effective management and the prevention of fraud.

41 The Commission's reasons for changing the eligibility criteria for the newcomers' quota are thus indicated clearly and unequivocally in the recitals in the preamble to Regulation No 130/94, to which Regulation No 214/94 refers, as well as in the recitals in the preamble to the latter regulation.

42 The plea of lack of an adequate statement of reasons must therefore be rejected.

43 Fifthly, the applicants claim that Regulation No 214/94 was not adopted in accordance with the procedure provided for in Article 4 of Regulation No 130/94, because consultation of the management committee was arranged as late as possible so that the committee members were not given the opportunity to reflect on the matter or to consult traders in the beef sector.

44 It is sufficient to note in that regard that the Management Committee was consulted on the Commission's proposal for a regulation and gave a favourable opinion.

45 In any event, as the Advocate General pointed out in paragraph 71 of his Opinion, Regulation No 805/68, to which Article 4 of Regulation No 130/94 refers, does not restrict the time permitted to elapse between referral to the management committee and the issue of its opinion. Article 27(2) merely states that it is to deliver its opinion within a time-limit to be set by the Chairman.

46 Accordingly, consideration of Article 1(2) of Regulation No 214/94 has disclosed no factor capable of affecting its validity.

The second question

47 The second question seeks a ruling on the validity of Article 2(2) of Regulation No 214/94 in so far as it deprives companies arising from mergers and wishing to obtain a share of the newcomers' quota of the possibility of combining their past trading performance.

48 The applicants claim that by depriving them of that option, which is open only to companies deriving rights from Article 1(1) of Regulation No 214/94, the Commission has not only violated the principle of non-discrimination but disregarded the aim of ensuring equal and continuing access to the quota for all interested Community traders. They add that Article 2(2) of Regulation No 214/94 is also unlawful because it contains no statement of the reasons for permitting cumulation only in the case of performance taken into consideration in allocating the traditional quota.

49 The Court has consistently held that the prohibition of discrimination set out in Article 40(3) of the EC Treaty is merely a specific expression of the general principle of equal treatment in Community law, according to which comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified (see, in particular, Case 106/83 *Sermide* v *Cassa Conguaglio Zucchero and Others* [1984] ECR 4209, paragraph 28).

50 As the Commission and the United Kingdom Government have observed, the traditional quota and the newcomers' quota are allocated in different ways.

51 Article 1(3) of Regulation No 214/94 provides that the traditional quota is to be allocated in proportion to their imports between eligible operators, that is to say, those able to prove that within the quota they have imported frozen beef and other products during the last three years.

52 The newcomers' quota, however, is allocated, in accordance with Article 1(4) of Regulation No 214/94, in proportion not to imports or exports, but to the quantities applied for, provided that the application is for a quantity not exceeding 50 tonnes of frozen meat, in accordance with Article 3(3), third subparagraph.

53 The difference in the way in which the quota is allocated, depending on whether it is for traditional importers or for newcomers, must be borne in mind when considering the scope of Article 2(2) of Regulation No 214/94.

54 The effect of that provision is that traditional importers who already fulfil the eligibility requirements may, in the event of merger, cumulate the rights to a share of the quota which each holds.

55 It is thus apparent that the purpose of permitting cumulation of rights to a share of the traditional quota, as provided for in Article 2(2) of Regulation No 214/94, is not to determine the eligibility for the quota of companies arising from mergers which would otherwise not be eligible, but to permit them to cumulate quota shares already held separately by the undertakings involved in the merger.

56 That being so, extending the right to rely on Article 2(2) to undertakings which have merged but which are not eligible for the newcomers' quota in order to make them so eligible would extend the purpose of the provision.

57 Furthermore, if the undertakings involved in the merger were already eligible for newcomers' quota, extending to them the option of cumulating their performance under Article 2(2) would be of no practical value because any subsequent allocation would be based not on the volume of trade already achieved but on the application for a share in the quota — not exceeding 50 tonnes — made by the company resulting from the merger.

58 It is thus evident that the situation of newcomers is not comparable to that of traditional importers as regards eligibility for, and the allocation of, the quota. Consequently, the plea of infringement of the principle of non-discrimination must be rejected.

59 Next, as regards the plea of failure to observe the aim of ensuring equal and continuing access to the quota for all interested Community traders, one can only endorse the Commission's view that the achievement of that aim would be largely compromised were the approach favoured by the applicants to be adopted. The result would be to enable commercial groups to spread their activities artificially over a large number of separate companies in the knowledge that if the thresholds were unexpectedly raised they could continue, by making the necessary mergers after publication of those thresholds, to make multiple applications for a share of the newcomers' quota.

60 Finally, as regards the plea that no statement of reasons was given in support of Article 2(2) of Regulation No 214/94, it must be stated that as indicated in the case-law cited in paragraph 39 of this judgment the reasons for restricting cumulation to traditional importers who are already eligible derive clearly and unequivocally from the conditions for access to the quota and its allocation between the eligible traders, as described above.

61 Consequently, consideration of Article 2(2) of Regulation No 214/94 has not disclosed any factor capable of affecting its validity.

Costs

62 The costs incurred by the United Kingdom 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 questions referred to it by the High Court of Justice (Queen's Bench Division), by order of 20 June 1995, hereby rules:

Consideration in the light of the grounds stated in the order for reference of Articles 1(2) and 2(2) of Commission Regulation (EC) No 214/94 of 31 January 1994 laying down detailed rules for the application of Council Regulation (EC) No 130/94 with regard to the import arrangements for frozen beef falling within CN code 0202 and products falling within CN code 0206 29 91 has disclosed no factor capable of affecting their validity.

Sevón Edward Wathelet

Delivered in open court in Luxembourg on 12 December 1996.

R. Grass

Registrar

L. Sevón

President of the First Chamber