JUDGMENT OF THE COURT (Fifth Chamber)
17 October 1996 *

In Case C-64/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Finanzgericht des Landes Brandenburg (Germany) for a preliminary ruling in the proceedings pending before that court between

Konservenfabrik Lubella Friedrich Büker GmbH&Co. KG

and

Hauptzollamt Cottbus

on the validity of Commission Regulation (EEC) No 1932/93 of 16 July 1993 establishing protective measures as regards the import of sour cherries (OJ 1993 L 174, p. 35),

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, C. Gulmann, D. A. O. Edward, J.-P. Puissochet (Rapporteur) and P. Jann, Judges,

* Language of the case: German.

Advocate General: M. B. Elmer,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Spanish Government, by Alberto José Navarro González, Director General for Legal and Community Institutional Coordination, and Gloria Calvo Díaz, Abogado del Estado, Community Litigation Department, acting as Agents,

— the Commission of the European Communities, by Klaus-Dieter Borchardt, of its Legal Service, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 4 July 1996,

gives the following

Judgment

1 By order of 21 February 1995, received at the Court on 10 March 1995, the Finanzgericht des Landes Brandenburg (Finance Court of Land Brandenburg), referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the validity of Commission Regulation (EEC) No 1932/93 of 16 July 1993 establishing protective measures as regards the import of sour cherries (OJ 1993 L 174, p. 35, hereinafter 'the contested regulation').

2 Those questions were raised in proceedings between Konservenfabrik Lubella Friedrich Büker GmbH&Co. KG (hereinafter 'Lubella') and Hauptzollamt (Principal Customs Office) Cottbus concerning the payment of countervailing charges claimed from that undertaking under the regulation at issue upon the import into Germany on 19 and 20 July 1993 of fresh sour cherries (CN Code 0809 20 60 0100) from Poland.

3 The contested regulation was adopted on the basis of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables (OJ, English Special Edition 1972 (II), p. 437) and of Regulation (EEC) no 2707/72 of the Council of 19 December 1972 laying down the conditions for applying protective measures for fruit and vegetables (OJ, English Special Edition 1972 (28-30 December), p. 3).

4 Article 1 of the contested regulation provides that, on the import of sour cherries (CN codes 0809 20 20 and 0809 20 60) into the Community, a minimum price must be complied with and a countervailing charge equal to the difference between the import price and the minimum price must be levied when the import price is lower than the minimum price.

5 However, the German version of the contested regulation, although referring to the CN codes corresponding to sour cherries, uses the term 'Süßkirschen' ('sweet cherries') in its title, its preamble and the wording of Article 1(1) to describe the products covered by the protective measures. That term was replaced by the term 'Sauerkirschen' ('sour cherries') by a corrigendum published in the German version of the Official Journal of 20 July 1993 (OJ 1993 L 176, p. 29).

6 Before the Finanzgericht des Landes Brandenburg, in which it had instituted proceedings against the notice of assessment served on it, Lubella maintained that the contested regulation was invalid. It argued principally:

— that the adoption of the regulation had not been preceded by the opinion of the competent management committee, as required by Article 33 of Regulation No 1035/72;

— that it did not mention the time-limit within which the Member States might refer the matter to the Council, as provided for by Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of the implementing powers conferred on the Commission (OJ 1987 L 197, p. 33, hereinafter 'the comitology decision');

— that its content was not settled in its initial version, since it was not clear whether the regulation was concerned with sweet cherries or with sour cherries;

— that the amended version of the regulation could only be applied to imports effected on 19 and 20 July 1993 if it was applied with retroactive effect;

— that the contested regulation was not justified by the existence of a serious disturbance or the risk of a serious disturbance of the market;

— that there was no legal basis for it in Regulation No 2707/72;

— that it introduced measures inappropriate to the aim of eliminating disturbances of the market;

— that it was contrary to the principle of the protection of legitimate expectations;

— that it did not contain an adequate statement of the reasons on which it was based; and

— that it had not been followed by the consultations provided for by Articles 14 and 15 of the Interim Agreements concluded on 16 December 1991 by the European Community and the European Coal and Steel Community with the Republic of Poland, the Czech and Slovak Federal Republic and the Republic of Hungary, on trade and trade-related matters, approved respectively by Council Decisions Nos 92/228/EEC (OJ 1992 L 114, p. 1), 92/229/EEC (OJ 1992 L 115, p. 1), 92/230/EEC (OJ 1992 L 116, p. 1) of 25 February 1992 (hereinafter 'the Interim Agreements').

7 The Finanzgericht des Landes Brandenburg shares the doubts of the plaintiff in the main proceedings. It therefore decided to stay the proceedings pending a preliminary ruling from the Court of Justice on the following questions:

'1. Has Commission Regulation (EEC) No 1932/93 of 16 July 1993 as rectified by the corrigendum published in *Official Journal of the European Communities* L 176 of 20 July 1993 at page 29 come into being with legal effect?

2. If so, are the provisions of Regulation (EEC) No 1932/93 also applicable to imports of sour cherries effected until 20 July 1993?

3. If the answer to question 2 is in the affirmative:

(a) Were the preconditions present in 1993 for a measure for the organization of the market for sour cherries?

(b) Is the minimum price system a permissible, appropriate measure for eliminating the disturbance to the market?

(c) Is the minimum price system compatible with the Interim Agreements of 25 February 1992 between the European Community and the Republic of Poland, the Republic of Hungary and the Czech and Slovak Federal Republic?'

8 By those three questions, the national court seeks a ruling from the Court of Justice on the validity of the contested regulation having regard to the various pleas in law put forward before it by the plaintiff in the main proceedings. In those circumstances, it is appropriate to examine each of those pleas in turn.

Infringement of Article 33 of Regulation No 1035/72

9 The Commission and the Spanish Government state that the adoption of the contested regulation was not preceded by consultation of the competent management committee. They consider that the procedure for the adoption of protective measures is governed by Article 29(2) of Regulation No 1035/72, which does not provide for such consultation and does not refer to the procedure provided for in Article 33 of the same regulation.

10 Under Article 29 of Regulation No 1035/72, as amended by Regulation (EEC) No 2454/72 of the Council of 21 November 1972 (OJ, English Special Edition 1972 (November), p. 60), which was applicable at the material time:

'1. Appropriate measures may be applied in trade with third countries if

— by reason of imports or exports, the Community market in one or more of the products referred to in Article 1 experiences or is threatened with serious disturbances which may endanger the objectives set out in Article 39 of the Treaty,

— ...

Such measures may be applied only until ... the disturbance or threatened disturbance disappears ...

2. If the situation mentioned in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the measures shall be communicated to the Member States and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within twenty-four hours following receipt of the request.

3. The measures decided upon by the Commission may be referred to the Council by any Member State within three working days following the date on which they were communicated. The Council shall meet without delay. It may amend or repeal the measure in question in accordance with the voting procedure laid down in Article 43(2) of the Treaty.'

Article 33(1) of the same regulation provides:

'Where reference is made to the procedure laid down in this article, the chairman shall refer the matter to the committee (the Management Committee for Fruit and Vegetables) either on his own initiative or at the request of the representative of a Member State.'

11 It is thus clear from the wording of Article 29 that it does not refer to the procedure laid down in Article 33 but provides for a specific procedure for the adoption of protective measures. That procedure does not involve prior reference to the Management Committee for Fruit and Vegetables. Consequently, there was no requirement for such a reference to be made prior to the adoption of the contested regulation.

Failure to indicate a time-limit for a reference to the Council

12 The Commission and the Spanish Government state that the time-limit within which a Member State may refer to the Council protective measures taken by the Commission is fixed by Article 29(3) of Regulation No 1035/72 and that no provision, certainly not the 'comitology' decision, requires such a time-limit to be mentioned in the regulation introducing such measures.

13 According to Article 3 of the 'comitology' decision:

'The following procedure may be applied where the Council confers on the Commission the power to decide on safeguard measures:

— the Commission shall notify the Council and the Member States of any decision regarding safeguard measures.

It may be stipulated that before adopting this decision the Commission shall consult the Member States in accordance with procedures to be determined in each case,

— any Member State may refer the Commission's decision to the Council within a time limit to be determined in the act in question.

...'

14 It must first be observed that according to the second and third recitals in its preamble, the 'comitology' decision applies only to the implementing powers conferred on the Commission after it enters into force and that it cannot therefore affect the validity of implementing measures which, as in this case, were adopted on the basis of implementing powers conferred on the Commission before it entered into force.

15 It must next be observed that it is clear from Article 3 of that decision that when the Council decided to use that procedure, the time-limit within which any Member State may refer to it the decision adopted by the Commission must be indicated in the act by which the Council conferred on the Commission the power to adopt safeguard measures and not in such decisions as the Commission might adopt on the basis of that power. Accordingly, the Commission was not required in any event to specify a time-limit in the contested regulation.

The content of the contested regulation

16 The Commission and the Spanish Government submit that it is clear from the contested regulation that it is concerned only with sour cherries. They state that all the

language versions of the contested regulation other than the German one expressly mention those products with the corresponding CN codes and that the German version, which initially contained a drafting error affecting only the designation of the products but not their CN codes, was the subject of a corrigendum on 20 July 1993.

17 As the Court has already indicated on several occasions, the need for a uniform interpretation of Community regulations makes it impossible for a given piece of legislation to be considered in isolation and requires that, in case of doubt, it should be interpreted and applied in the light of the versions existing in the other official languages (Case 9/79 *Koschninske* v *Raad van Arbeid* [1979] ECR 2717, paragraph 6, and Case C-372/88 *Cricket St Thomas* v *Milk Marketing Board of England and Wales* [1990] ECR I-1345, paragraph 19).

18 In this case, with the exception of the German version, all the language versions of the contested regulation relate only to sour cherries. It is clear, as the Commission and the Spanish Government maintain, that the German version originally contained a material error, in that it used the term 'Süßkirchen' rather then 'Sauerkirschen' — an error which was subsequently rectified. However, since that version mentioned the CN codes applicable to sour cherries, that ambiguity could perfectly well have been resolved by reference to the other language versions of the regulation. Moreover, it is undisputed that the competent German authorities were informed of that error and were therefore in a position to apply the regulation correctly from the outset. In those circumstances, the content of the contested regulation could not be regarded as uncertain.

Retroactivity of the contested regulation

19 The Commission and the Spanish Government consider that the contested regulation has no retroactive effect and could therefore lawfully be applied to imports effected on 19 and 20 July 1993. They submit that the corrigendum of 20 July 1993, amending the material error contained in the German version of that regulation, did not have the effect of endowing the latter with retroactive effect.

20 It follows from all the foregoing considerations that the scope of the contested regulation was not altered by the amendment published in the German version of the Official Journal on 20 July 1993. In those circumstances, the regulation was capable of being applied as from its date of entry into force.

The existence or threat of a serious disturbance of the market

21 The Commission and the Spanish Government state that the cherry market was exposed to serious risk of disturbance at the time when the contested regulation was adopted. The Commission states, more particularly, that imports of cherries from non-member countries had increased considerably in the course of the 1990 and 1991 marketing years, in particular because of the shortfall in Community production during the latter year, and had remained at a high level in 1992, which, in view of the good Community harvest that year, had led to a collapse of market prices. The first indications which emerged for the 1993 marketing year, in particular information from Germany, had shown that trend, adversely affecting Community products, to be continuing. The Commission also states that the figures given by the plaintiff before the national court, which might give the opposite impression, relate only to imports of sour cherries into Germany and take 1992, an atypical year, as a point of comparison.

22 It is clear from Article 29(1) of Regulation No 1035/72 that one of the two hypotheses envisaged in order to allow the application of protective measures in trade with non-member countries is the existence of a situation in which the market in one of more of the products covered by the common organization of the markets is exposed, or is threatened with exposure, to serious disturbances liable to endanger the objectives pursued by Article 39 of the EC Treaty. It is also clear from Article 1 of Regulation No 2707/72 that, in order to assess whether such a situation exists, account is to be taken in particular of the volume of actual or

foreseeable imports and exports, the availability of products on the Community market, the prices recorded for domestic Community products and the foreseeable trends in such prices (in particular a tendency to rise or fall excessively) and, more particularly with regard to imports, the prices recorded on the Community market for products from non-member countries (in particular a tendency to fall excessively) and the quantities which have been or may be withdrawn.

23 It is apparent both from the preamble to the contested regulation and from the information given to the Court by the Commission, in particular with regard to the quantities of cherries imported from non-member countries and the prices recorded on the markets, which are not challenged by the plaintiff in the main proceedings and are not contradicted by the information which the plaintiff itself produced to the national court, that the Community market in cherries registered a steep increase in the quantities imported from non-member countries in the three years preceding the 1993 marketing year and a steep fall in prices on the market during the preceding year. Nor is it disputed that that trend, adversely affecting Community products, was likely to persist in the absence of measures taken by the Community authorities.

24 In those circumstances, the Commission did not commit a manifest error of assessment by concluding that there were risks of serious disturbances of the market which might endanger the objectives set out in Article 39 of the Treaty (see Case C-205/94 *Binder* [1996] ECR I-2871, paragraph 22).

The legal basis of the measures adopted

25 The Commission and the Spanish Government state that the system of minimum prices introduced by the contested regulation has as its legal basis the combined provisions of Article 29 of Regulation No 1035/72 and Article 3 of Regulation No 2707/72. The Commission considers, more particularly, that although Article 3

of Regulation No 2707/72 provides expressly only for the suspension of imports, it must be interpreted, having regard to the principle of proportionality, as allowing the Commission to adopt measures falling short of a suspension of imports, such an extreme restriction not being compulsory.

26 According to Article 3(1) and (2) of Regulation No 2707/72:

'1. The measures which may be taken pursuant to article 29(2) and (3) of Regulation (EEC) No 1035/72 are:

— when the situation covered by the first indent of paragraph 1 of that article exists, the suspension of imports or exports or the levying of export taxes;

— ...

2. Such measures may only be taken in so far, and for as long, as they are strictly necessary.'

27 The Court has already pointed out, with regard to provisions similar to those at issue in the main proceedings, that, although the imposition of a countervailing charge was not expressly contemplated by those provisions, it cannot be concluded that such a measure was precluded. On the contrary, since those provisions authorized total or partial suspension of imports, it was to be inferred that the Commission was authorized to introduce a less rigid scheme, namely a minimum price with a countervailing charge. Since the Commission was entitled to take protective measures leading to a complete suspension of imports from non-member countries, it was entitled *a fortiori* to adopt less restrictive measures (see Joined Cases

41/70 to 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, paragraph 65, with regard to the rules applicable to the common organization of the markets in fruit and vegetables prior to the adoption of Regulation No 1035/72; Case 345/82 *Wünsche Handelsgesellschaft* v *Germany* [1984] ECR 1995, paragraph 23; Case 77/86 *National Dried Fruit Trade Association* [1988] ECR 757, paragraph 26, and Case 291/86 *Central-Import Münster* v *Hauptzollamt Münster* [1988] ECR 3679, paragraph 39 regarding the rules then in force on the common organization of the market in products processed from fruit and vegetables).

The proportionality of the protective measures

28 The Commission and the Spanish Government state that the protective measures introduced by the contested regulation are proportional to the aim pursued. The Commission considers that the trend observed over the 1993 marketing year prompted the Community authorities initially to establish a system of import licences, which proved insufficient to stem the increase in imports and the fall in prices. For that reason, it decided, at the next stage, no longer to apply the reference prices to imported sour cherries and to establish a system of minimum prices with a countervailing charge. It submits that it thus adopted measures enabling the desired objective of stability to be achieved with the minimum possible adverse impact on trade.

29 On that point it need only be observed that the protective measures adopted were suited to the attainment of the objective pursued, namely to arrest the fall in product prices on the Community market, that they were adopted at a time when a less restrictive system, involving import licences, had proved insufficient and that they

were chosen in preference to more inhibitive measures, in particular measures restricting the volume of imports. In those circumstances, the Commission did not contravene the principle of proportionality.

Breach of the principle of the protection of legitimate expectations

30 The Commission and the Spanish Government submit that the contested regulation does not frustrate the legitimate expectations of the traders concerned. They consider that, with regard to common organizations of the markets, traders cannot legitimately expect that rules will be maintained from one year to the next and that they must therefore, if they are prudent and keep themselves appropriately informed, anticipate changes in such rules designed to adjust them to developments in the market.

31 According to settled case-law of the Court, since the Community institutions enjoy a degree of latitude in the choice of the means needed to achieve their policies, traders cannot entertain a legitimate expectation that an existing situation which is capable of being altered by decisions taken by those institutions within the limits of their discretion will be maintained (see in particular Case 245/81 *Edeka Zentrale* v *Germany* [1982] ECR 2745, paragraph 27, and Case 52/81 *Faust* v *Commission* [1982] ECR 3745, paragraph 27). In this case the fact that shortly before the adoption of the contested regulation the Commission had established a system of import licences prompted by unfavourable market developments means that there is even less reason for upholding a claim of breach of the principle of the protection of legitimate expectations.

Inadequate statement of the reasons on which the contested regulation was based

32 The Commission and the Spanish Government submit that the contested regulation contains an adequate statement of the reasons on which it is based. They consider that, as required by the case-law of the Court for such measures, the preamble to the contested regulation, viewed in the context of the measures adopted

at that time by the Commission in order to stabilize the market, clearly shows the essential reasons for which it was prompted to adopt the measures in question.

33 According to settled case-law of the Court, the statement of reasons required by Article 190 of the EC Treaty must be appropriate to the nature of the legal measure in dispute. It must disclose in a clear and unequivocal fashion the reasoning followed by the Community institution which adopted the measure in question in such a way as to make the persons concerned aware of the justification for the measure and enable the Court to exercise its power of review (*Binder*, cited above, paragraph 25).

34 The preamble to the contested regulation clearly shows that it was because sour cherries were no longer covered by a protective system (application of the reference price having been considered inappropriate for them in view of the situation then prevailing on the market) and because in those circumstances the Community market was at risk of serious disturbance that a system of minimum import prices and countervailing charges, regarded as the most appropriate measure, was introduced.

35 The contested regulation thus contained information enabling interested parties to ascertain the reasons for it and the Court to exercise its power of review. It therefore satisfied the requirements of Article 190 of the Treaty.

Contravention of the Interim Agreements

36 The Commission and the Spanish Government submit that the contested regulation did not infringe Articles 14 and 15 of the Interim Agreements. The Commission, which confines its observations to the agreement concluded with the Republic of Poland, in which the products at issue in the main proceedings origi-

nated, states that negotiations were undertaken with the Polish authorities after the adoption of the protective measures and that they even resulted in more favourable measures for the following marketing year.

37 On that point it need only be observed that, although Article 15 of each of the Interim Agreements requires each of the parties to enter into consultations where either of them has adopted protective measures concerning trade in agricultural products, that provision, which is effective only between the contracting parties and provides merely for a formal step to be taken after the adoption of protective measures, cannot in any event be effectively relied on to contest the validity of the protective measures themselves. That argument must therefore also be rejected.

38 For all the foregoing reasons, it must be stated in reply to the national court that consideration of the questions referred to the Court has disclosed no factor of such a kind as to affect the validity of the contested regulation.

Costs

39 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 (Fifth Chamber),

in answer to the questions referred to it by the Finanzgericht des Landes Brandenburg, by order of 21 February 1995, hereby rules:

Consideration of the questions referred to the Court has disclosed no factor of such a kind as to affect the validity of Commission Regulation (EEC) No 1932/93 establishing protective measures as regards the import of sour cherries.

Moitinho de Almeida Gulmann

Edward Puissochet Jann

Delivered in open court in Luxembourg on 17 October 1996.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber