OPINION OF ADVOCATE GENERAL GULMANN
delivered on 13 October 1992 *

Mr President,
Members of the Court,

1. The question referred to the Court of Justice for a preliminary ruling by the Finanzgericht Hamburg is set against the background of the Community rules aimed at helping to resolve the problem of surpluses in the beef and veal sector by restricting the quantities of such goods that may be sold on the common market.

The rules at issue are concerned with aid for exports and with aid for private storage.

The relevant rules on *aid for exports* are contained in Article 5(1) of Council Regulation No 565/80, [1] under which *export refunds may be paid in advance* if 'the products or goods have been brought under the customs warehousing... procedure with a view to their being exported within a set time limit'. Rules concerning that time limit were laid down in Article 11 of Commission Regulation No 798/80, [2] under which the 'time limit during which the ... products may remain under customs control ... shall be six months ...', and under which the goods had to be exported within 60 days from the date on which they were no longer subject to customs control.

The relevant rules on *advance payment of private storage aid on a flat-rate basis* make the aid conditional *inter alia* on a contract having been concluded between the storer and the warehouse operator. Article 5 of Commission Regulation No 2267/84 [3] provides:

'1. The period of storage shall be either 9, 10, 11 or 12 months, at the storer's option; the storer shall state his preference at the time of submitting the application ... .

2. Entitlement to payment of the aid shall be established only if the meat has remained in storage throughout the storage period.'

* Original language: Danish.
1 — OJ 1980 L 62, p. 5.
2 — OJ 1980 L 87, p. 42.
3 — OJ 1984 L 208, p. 31.

Originally use of both schemes at the same time was precluded (see Article 2(4) inserted in Commission Regulation No 1091/80 [4] by Commission Regulation No 2629/80). [5] That was altered by Regulation No 2267/84, Article 6(1) of which provides:

'By way of derogation from Article 2(4) of Regulation (EEC) No 1091/80 products under a private storage contract may simultaneously be placed under the system laid down in Article 5(1) of Regulation (EEC) No 565/80.'

Article 6(2) of Regulation No 2267/84 provides:

'In this case, by way of derogation from Article 11(2) of Regulation (EEC) No 798/80, the period referred to in that article shall be 12 months.'

2. In November 1984 a German firm, Annuss GmbH & Co. KG (hereinafter 'Annuss') made use of both schemes. A consignment of beef was placed in store under customs control between 8 and 16 November for a period that, according to the contract with the warehouse operator, was to last 12 months.

Problems arose when Annuss was to remove the goods from customs control. The aid for private storage was conditional on the 12-month storage period set out in the contract having expired, that is to say the goods could not leave customs control *until* after the period had expired, and the advance payment of export refunds was conditional on the goods having left customs control *at the latest* on the expiry of the 12-month period applying under that scheme.

A pre-condition for being able to make full use of the two aid schemes at the same time was, therefore, that the two periods run from the same date.

However, in the view of the German customs authorities that was not the case.

They pointed out that:

the 12-month period applying for the export aid paid in advance ran from the day on which a so-called 'payment declaration' was accepted by the customs authorities (see Article 11(2) in conjunction with Article 2(1)

4 — OJ 1980 L 114, p. 18.
5 — OJ 1980 L 270, p. 9.

and Article 3(1) of Regulation No 798/80), [6] and

the 12-month period applying for the private storage aid ran from the day following that on which the operation of putting into storage was completed (see Article 8 of Regulation No 1091/80). [7]

The difference between those rules thus meant that the period for private storage aid began to run later than the period for advance payment of export refunds because the operation of putting into storage took place over several days. [8]

It is common ground that the period under the scheme for aid for exports was exceeded by three days if that period ran from the date of acceptance of the 'payment declaration'.

On that basis the customs authorities found that the time limit had been exceeded and demanded repayment of an amount which, following the adoption of new rules in 1987, was finally fixed at some DM 21 000. [9]

Annuss brought proceedings against the customs authorities claiming that their repayment demand was unlawful on the grounds that the rules in Regulation No 2267/84, which provided for the possibility of the simultaneous application of the two aid schemes, had to be interpreted in such a way that the two time limits also had to run from the same starting point.

3. The Finanzgericht Hamburg has submitted the following question to the Court of Justice:

'Is Article 6(2) of Regulation (EEC) No 2267/84 to be interpreted as meaning that, in derogation from Article 11(2) of Regulation (EEC) No 798/80, the storage period does not expire before the expiry of the period which the exporter has to observe in respect of the aid granted to him for private storage?'

The Finanzgericht has made the following observations regarding its question:

'The exporter will therefore encounter difficulties if he wants to make full use of the

6 — Under Article 2(1) of Regulation No 798/80 the payment declaration is the declaration in which the exporter states his intention to place the products or goods under the customs warehousing or free-zone procedure and to export them after storage and to comply with the conditions for payment of the refund.

7 — Article 8 of Regulation No 1091/80 as amended by Article 7 of Commission Regulation No 2826/82 (OJ 1982 L 297, p. 18) provides:
'...
(2) The first day of the storage period shall be the day following that on which the operation of putting into storage is completed.
(3) Removal from storage may commence on the day following the last day of the period of storage under contract.'

8 — Private storage aid is conditional on a certain minimum quantity being placed in store. Because of the size of that minimum quantity the operation of putting into storage will generally take place over several days.

9 — The relevant rules are set out in Commission Regulation No 3665/87 (OJ 1987 L 351, p. 1). Article 33 (in conjunction with Article 51) provides that the amount to be repaid is to be calculated in the following way:
Except in cases of force majeure the refund is first to be reduced by 15%. That reduced refund is then further reduced by 2% for each day by which the time limit is exceeded. Finally, the percentage by which the refund is thereby to be reduced is increased by 20%.

storage period granted to him under the rules governing aid. Furthermore, it is clear, as is shown by the present case, that even an experienced and law-abiding firm can easily overlook the running of different time periods. This problem is all the more acute since Article 6(2) of Regulation (EEC) No 2267/84 appears to aim at harmonizing the storage period for the purposes of the rules on both storage aid and export refunds.

There can hardly be any weighty Community interests requiring both periods to run at different times. The reason for the difference appears to be that the legislature did not see the difficulties of implementation which it is now seeking to rectify by Article 4(3) and (5) of Regulation (EEC) No 3445/90 (OJ 1990 L 333, p. 30).'

The Commission contends that the question should be answered in the negative and it points out inter alia that Annuss could have complied with the time limits under the applicable rules without difficulty. On the one hand Annuss could have merely entered into a private storage contract for a period of 11 months. On the other, Annuss could have made use of the possibility of cutting short the storage period stipulated in the contract which was introduced by Article 7(1) of Regulation No 2267/84 in conjunction with the new rules on the simultaneous application of the two aid schemes. [10]

10 — Article 7(1) provides:
'On the expiry of a storage period of two months, the Contracting Party may withdraw from store all or part of the quantity of meat under contract, subject to a minimum of 10 tonnes, provided that within 60 days following its removal from storage:
the meat has left the Community's territory ...'.
The amount of the aid is reduced proportionately in accordance with the detailed rules set out in that Regulation.

4. The starting point for the interpretation of Article 6(2) of Regulation No 2267/84 must be the wording of that provision. Article 6(2) merely provides that the period of six months which normally applies in the case of advance payment of export refunds is extended to 12 months in the event of the simultaneous application of the two aid schemes. It does not in any event explicitly alter the starting point for the calculation of that 12-month period.

Article 6(2) can be interpreted as envisaging a possibility of altering the starting point of the period only if the aim of the provision or other factors relevant to its interpretation show that it was intended to be possible to make full use of the two aid schemes for the 12-month period applying for aid for private storage.

The following grounds are given for the new rules on the simultaneous application of the two aid schemes in the preamble to Regulation No 2267/84:

'in view of the exceptional circumstances in the beef market and in order to encourage operators to make use of private storage it should be provided that, for a limited period, products under a private storage contract should be able at the same time to be placed under the system laid down in Article 5(1) of Regulation (EEC) No 565/80 ...; ... in view of the contractual storage periods it is necessary to derogate from Article 11(2) of Regulation (EEC) No 798/80 ... as to the period during which the products may stay under the system laid down in Regulation (EEC) No 565/80.'

The object of the new provisions is thus to encourage operators to make use of private storage. That is done by making it possible for operators also to obtain private storage aid for goods that are to be exported and for which export refunds are being paid in advance. At the same time, there is some coordination of the time limits in so far as the period of six months hitherto applying under the export aid scheme is extended in that particular case to 12 months.

To interpret Article 6(2) as meaning that the 12-month period under the export aid scheme should expire before the 12-month period under the private storage aid scheme would run contrary to that object. The subsequent regulations on the simultaneous application of the two aid schemes which expressly ensured that from 1986 onwards it was possible for the two schemes to be fully applicable at the same time, can, in my view, also be regarded as signifying that such a result was envisaged by the provisions of Article 6(2). [11] The preambles to those regulations do not state any reasons for the changes made. In so far as the provisions in question are concerned, those preambles merely repeat the statement of reasons cited above from the 1984 regulation.

It is moreover difficult to perceive what essential interest of the Community might be linked in the present circumstances to strict compliance with what under the normal rules is the starting point for the time limit under the export aid scheme.

The provision in Article 7 of Regulation No 2267/84 envisaging the possibility of reducing the duration of private storage does not militate against the interpretation of Article 6(2) that I have suggested. That provision was not introduced in order to resolve the problem of different starting points for the 12-month periods. It was introduced so that the 12-month period for private storage would not prevent operators who had found export opportunities before the expiry of the 12-month period from carrying out the export at the time wished by the other contracting party.

For those reasons I consider it justified to conclude on the basis of a purposive interpretation that the 12-month period under the export aid scheme expires at the same time as the period under the private storage aid scheme.

11 — The first indent of Article 4(5) of Commission Regulation No 3445/90 (OJ 1990 L 333, p. 30), which is referred to by the Finanzgericht Hamburg, states that the time limit provided for by the rules on aid for export is extended in the event of the simultaneous application of the scheme of private storage aid 'to cover the duration of the maximum contractual storage period, plus one month'. The second indent of Article 4(5) provides:
'Member States may require that the placing in storage and the placing under the regime as referred to in Article 5(1) of Regulation (EEC) No 565/80 shall commence simultaneously. In this case when a contract for private storage is concluded for a quantity which consists of several lots which are placed in storage on different dates, each of the said lots may be the subject of a separate payment declaration ... .'
Corresponding rules had already been introduced in the regulations which in 1986 to 1989 provided for the possibility of the simultaneous application of the two aid schemes: see Article 6 in
Regulation No 2651/86 (OJ 1986 L 241, p. 14),
Regulation No 2437/87 (OJ 1987 L 225, p. 13),
Regulation No 2675/88 (OJ 1988 L 239, p. 20) and
Regulation No 2965/89 (OJ 1989 L 281, p. 103).

Conclusion

5. I therefore propose that the Court of Justice give the following answer to the question put to it by the Finanzgericht Hamburg:

Article 6(2) of Regulation No 2267/84 is to be interpreted as meaning that, in derogation from Article 11(2) of Regulation No 798/80, the storage period does not expire before the expiry of the period which the exporter has to observe in respect of the aid granted to him for private storage.