JUDGMENT OF THE COURT
16 DECEMBER 1976 [1]

Amministrazione delle Finanze dello Stato v Srl Foral and D. & C. Spa (preliminary ruling requested by the Corte Suprema di Cassazione)

Joined Cases 36 and 37/76

Summary

1. *Agriculture — Pig-meat — Sausages — Packing — Preserving liquid — Levy — Charging on net weight*
(Regulation No 85/63)

2. *Agriculture — Pig-meat — Regulation No 84/66/EEC — Amendment of Regulation No 85/63/EEC — Non-existent — Declaratory effect*

1. Under the system provided for by Regulation No 85/63/EEC, the levy on sausages put up in containers with preserving liquid had to be charged on the net weight after deducting the weight of such liquid.

2. The effect of Regulation No 84/66/EEC was not to alter the scope of Regulation No 85/63/EEC and consequently its effect was merely declaratory of the pre-existing situation.

In Joined Cases 36 and 37/76

Reference to the Court under Article 177 of the EEC Treaty by the Corte Suprema di Cassazione for a preliminary ruling in the actions pending before that court between

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

and

SRL FORAL (36/76)

D. & C. SPA (37/76)

1 — Language of the Case: Italian.

on the interpretation of Regulations No 85/63/EEC of the Council of 18 July 1963 (JO 1963, p. 2175) and No 84/66/EEC of the Council of 28 June 1966 (JO 1966, p. 2216),

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The orders for reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

Between October 1963 and June 1966, the companies Srl Foral and D. & C. Spa effected numerous importations into Italy of sausages in containers also holding a preserving liquid, coming under tariff heading ex. 16.01 B.

The Italian customs authorities charged the import levies referred to in the Community regulations on the organization of the market in pigmeat. On every occasion, when calculating the levy on the basis of the weight of the goods, the Italian customs authorities included the weight of the preserving liquid.

Taking the view that no levy should be charged on that liquid, the two companies initiated proceedings before the 'Tribunale' of Bologna which ruled in their favour in two decisions which were subsequently confirmed by judgments of the Corte d'Appello of Bologna. Then the Amministrazione delle Finanze dello Stato, the defendant at first instance, appealed to the Corte Suprema di Cassazione against the two judgments. By two orders, made on 12 February 1976, this latter court stayed the proceedings and called upon the Court of Justice of the European Communities to give a preliminary ruling pursuant to Article 177 of the EEC Treaty, in order to ascertain:

'1. Whether Regulation No 84/66/EEC, where it provides at Article 2 with

regard to the products under heading ex 16.01 B referred to in Annex II B to Regulation No 85/63/EEC that 'the levy on sausages put up in containers with preserving liquid shall be charged on the net weight after deducting the weight of such liquid', constitutes an interpretation of the said Regulation No 85/63/EEC and consequently has retroactive effect, or whether it creates a new situation;

2. If the latter is the case, whether the absence of any indication in Regulation No 85/63/EEC must be understood as meaning that prior to Regulation No 84/66/EEC it was indeed necessary also to take account of the weight of the said preserving liquid or whether each State might act in this sphere in accordance with its own customs legislation.'

The importations concerned were effected under the system provided for by (EEC) Regulation No 20 of the Council on the progressive establishment of a common organization of the market in pigmeat (JO 1962, p. 945).

The nomenclature of the products subject to the common organization of the market in the sector under consideration was specified in Annex II B to Regulation No 85/63/EEC. This nomenclature is used in the regulations adopted from time to time fixing the levies both in regard to non-Member countries and between the Member States. These regulations (see for example Regulations Nos 88/63/EEC and 89/63/EEC of the Council, JO 1963, pp. 2196 and 2199) always express the amount of the levies per '100 kg of net weight' of the product.

Under the terms of the first recital of Regulation No 84/66/EEC of the Council amending the nomenclature of certain products derived from pigmeat, which appear in Annexes II A and B to Regulation No 85/63/EEC, which came into force on 1 July 1966,

'the description of certain goods contains some inaccuracies which it is necessary to rectify; to that end it should be specified that the relevant weight for calculating the levy, where necessary, of the supplementary amount to be levied on the importation of certain sausages coming under tariff heading 16.01 B is the net weight after deducting the weight of the preserving liquid;...'

Article 2 of this regulation added the following provision to the aforementioned annexes:

'The levy on sausages put up in containers with preserving liquid shall be charged on the net weight after deducting the weight of such liquid'.

The two orders referring the cases to this Court were received at the Registry of the Court on 26 April 1976.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice, written observations were submitted by the Amministrazione delle Finanze dello Stato, by the companies Foral and D. & C. as well as by the Commission of the European Communities.

By an order of 19 October 1976 the Court decided to join the two cases for the purposes of the oral procedure and the judgment.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations

Observations of the companies Foral and D. & C.

The respondents in the main action maintain that Regulation No 84/66 contains only an interpretation of the provisions already in force within the

Community framework on the basis of Regulation No 20/62.

This latter regulation provided in the first place an amendment to the tariff heading under which sausages come, in order to standardize the various descriptions of goods in the various customs tariffs in force in the Member States.

As regards the amount of the levy, Article 4 (2) of the regulation provided that the amount of the intra-Community levy in the pigmeat sector should be determined by precise and strict calculation excluding container and packaging.

The levy was to be calculated on the basis of the following components alone:

(a) basic products referred to in Article 1 (1) (b), and the portion of the levy relating to these was to consist of the weighted average of the levies prescribed for these products,

(b) products other than those referred to in Article 1 (1) (b), but used in the making of sausages, and for these the levy was to be calculated in a similar fashion, on the basis of the weighted average of all the levies, taxes and duties borne by the products used in the making of sausages.

Thus only two components came into the determination of the amount of the levy: the basic products and the other products used in the making of sausages.

Thus, even if the preserving liquid (non-edible brine) was not formally excluded, the Italian State Finance Administration could not have claimed that that liquid was also to be considered as a component in the calculation of the levy.

In the Community rules established by Regulation No 20/62, it was clear that the weight of the preserving liquid did not form part of the basis of assessment to the levy. That exclusion followed from an arithmetical calculation effected on the basis of formally and specifically defined components.

The legislature could not have expressed its intentions any more clearly than it did in Regulation No 84/66. When it made amendments to the description of goods, it intended to specify that it had no wish to bring about any innovations on the subject of the determination of the weight of the goods in question, which, for the purposes of the levy, was to be calculated net, that is after deducting the preserving liquid.

This conclusion is borne out by the whole of the precise and lengthy recitals of Regulation No 84/66. The only points expressly mentioned by the legislature concerned inaccuracies in the nomenclature contained in Regulation No 85/63.

The sole purpose of the note on preserving liquids ('it is necessary to specify') is to interpret and to clarify the previous rules in the Community legal order.

Intra-Community levies constitute payments which are due only on the basis of the provisions of Community law. The nature and the purpose of them are not to be confused with those of customs duties. They are therefore regulated exclusively by the regulations adopted by the Communities, and no national provision on customs can influence them, even for the purposes of interpretation.

On the supposition that Regulation No 84/66 was such as to create a new situation, it follows that the principle by which Community law takes precedence over any provision of internal law which differs from it would apply in like manner. For this creation of a new situation goes no further than the fact of making explicit a principle already appearing implicitly in Regulation No 20/62.

The Italian State's charging, by way of the levy, a higher duty than those provided for in the Community regulations constitutes an unjustified discrimination against Italian importers, and hence an infringement of the principle of equality, causing an unlawful distortion of the conditions of competition.

Furthermore, the other Member States excluded the preserving liquid from the calculations carried out with a view to charging the levy, before Regulation No 84/66 was introduced.

The respondents in the main action propose that in answer to the the questions asked, the Court should rule that Regulation No 84/66 constitutes an interpretation of Regulation No 85/63, and consequently has retroactive effect, or else (should the Court find that Regulation No 84/66 is such as to create a new situation) that at all events the weight of the preserving liquid could not come into the calculation of the levy given that the Member States had to act in accordance with Regulation No 20/62 and not apply their own national legislation.

Observations of the Amministrazione delle Finanze dello Stato

The Italian State Finance Administration points out that the preamble to Regulation No 84/66 acknowledges that certain specifications would be expedient, and in doing so refers expressly and specifically to the 'inesattezze' (inaccuracies) ('imprécisions' in the French text), which appear in the description of certain goods. The view cannot be upheld that a correction constitutes the interpretation of a provision, when there is no doubt that the provision is itself incompatible with the correction. It is also stated in the preamble to Regulation No 84/66 that that regulation concerns *'amendments'* made in Annex II B which are such as to bring about corresponding amendments to Annex II A. It is deemed *'necessary'* to replace certain words, which clearly shows that the regulation is such as to create a new situation. The use of the term 'specified' ('précisé') also points in that direction, since the fact of specifying a provision can create a new situation and since, at all events, retroactive effect is not inevitable.

It cannot be accepted that the criterion defined by Regulation No 20/62 with a view to determining the amount of the levy should be confused with the criterion concerning the application of the levy.

Article 4 (2) of Regulation No 20/62 defined the criterion according to which the amount of the intra-Community levies was to be determined for each Member State, whereas the explanatory note contained in Regulation No 84/66 refers on the contrary to the criterion applicable to the payment and the charging of the levy according to coefficients which were patently already fixed on the goods which are the subject-matter of trade.

Indeed the levy does not coincide with the weighted average of the levies applicable to the various products which go into the making-up of the main product and therefore the determination of the levy does not come down to a simple arithmetical calculation; it falls to be determined 'taking into account in particular' that average.

The liquid at issue is brine. If the basic regulation and Regulation No 85/63 had to be interpreted as implying that brine is to be excluded from the dutiable weight, that implicit exclusion should also apply to all other products preserved in brine. Regulation No 84/66, however, amended the nomenclature only for those products coming under tariff heading 16.01 B I. On the other hand, in respect of the many other products preserved in brine, that liquid is normally included in the dutiable weight, and this does not give rise to any doubts.

The fact of not having included the liquid in which the sausages may be preserved among the factors bearing on the determination of the levy applicable could indeed explain why the Council, when it drew up Regulation No 84/66, acknowledged the necessity of adding a precise reference, providing that the weight of the preserving liquid should be excluded from the calculation of the dutiable weight to which the levy must apply.

The mere fact of the injustice which might follow from the different criterion imposed by the various provisions previously in force does not of itself suffice to confer retroactive effect upon the reference at issue. It is clearly not possible to assert that the reference constitutes an interpretation solely because it is more or less compatible with a criterion intended to produce other effects; on the contrary it must be acknowledged that its very incompatibility with the different collection system which was laid down previously makes it apparent that it creates a new situation.

According to the preliminary provisions of the Common Customs Tariff, Section 1 (C) (2), the dutiable weight shall be taken in principle to be 'in the case of a reference to "gross weight", the aggregate weight of the goods and of all packings thereof and 'in the case of a reference to "net weight" or simply to "weight" without qualification, the weight of the goods themselves without packing of any kind'. 'The term packing means any external or internal containers, holders, wrappings or supports, other than transport devices, in particular transport containers, tarpaulins, tackle or ancillary transport equipment."

In view of this definition, it is quite clearly impossible to exclude the preserving liquid from the calculation of the dutiable weight, unless an express exemption were granted in respect thereof. As regards sausages preserved in a liquid, the Italian national administrative authorities having jurisdiction drew the attention of the Community agencies to the expediency of granting such an exemption.

Following that and after a group of Customs Tariff experts had examined the question in February 1966, the Commission delivered an opinion to the effect that an exception should be provided to the general principle laid down by those definitions (this exception being limited to the case to which its attention had been drawn), and it suggested on that occasion that the formula which should be used should be that of an amendment; the Council drew up the regulation at issue precisely in response to a proposal made in these terms.

One has only to examine the facts preceding the adoption of these provisions to see that the intention of the Community agencies was to provide an exceptional exemption from the general principle.

Had the Council wished to give retroactive effect to the reference in question, it would not have omitted to state so expressly, thus following the criteria normally applied in Community measures. The Council would not have stated pecifically that the regulation would enter into force on 1 July 1966.

Next, the Amministrazione delle Finanze dello Stato sets out a list of other provisions of the Common Customs Tariff under which the preserving liquid is normally included in the dutiable weight. It stresses moreover the particular attention which the Customs Tariff devotes to the amount of the percentage by weight of certain products, which means that when the point is not specifically mentioned in the tariff, the percentage weight of the product is not to be considered. The amount of the percentage of the weight is expressly calculated not only in the same chapter

of the Common Customs Tariff, but also under the heading which immediately follows that which is at issue here (heading 16.02).

These considerations confirm the fact that the liquid in which the sausages were preserved was in principle taken into consideration, in accordance with the criteria applicable to all similar products, in calculating the dutiable weight and that therefore it is only by virtue of the exemption introduced by Council Regulation No 84/66 that it no longer comes into that weight.

The packaging referred to in the customs regulations cannot be packaging serving to ensure the preservation of the products over time, but solely and uniquely such packaging as serves to protect the goods from risks connected with transport. The term 'packaging' thus defined does not include particular substances which are not containers or wrappings but have the (different) purpose of preserving the product from deterioration arising not solely from transport, but arising from other factors affecting the preservation of the product over time or capable of adversely affecting its organoleptic characteristics.

Council Regulation No 84/66 properly so-called, as well as the reasons which determined its adoption, confirms that it is impossible to describe preserving liquid as packaging. Indeed, the problem resolved by Community Regulation No 84/66 would not even have arisen if the preserving liquid in question had already to be considered as a form of packaging (excluded as such from the calculation of the levy) on the basis of the preceding regulations.

With regard to the second of the two questions, whether prior to Regulation No 84/66 it was indeed necessary also to take account of the weight of the said preserving liquid, it should be answered in the affirmative. Before the said regulation entered into force, it was obligatory also to bring the preserving liquid at issue into the calculation of the dutiable weight, in accordance with the indications already given by the Community authorities in the Commission recommendations of 13 March 1961. It is clear that interpretative effect cannot be attributed to a provision granting an exemption and therefore incompatible with the different criterion currently in force. Similarly, there is no doubt that the traders concerned cannot rely upon this new potential provision to claim, after so many years, restitution of all the overpayments made in the meantime in respect of the levy, when it is apparent that the excess charges thus borne have already been included in the calculation of prices and passed on to the third parties who bought the goods.

The administration, the appellant in the main action, therefore considers that the Court should rule that the reference contained in Article 2 (1) I of Council Regulation No 84/66 creates a new situation and therefore does not apply to the calculation of the levy due on products imported before its entry into force.

Observations of the Commission

The Commission points out first of all that, for the purpose of interpreting the expression 'net weight' which appears in the Community regulations fixing the levies, it does not appear permissible for the Member States to have recourse to their own legislation. Indeed the expressions appearing in the Community regulations have a single meaning valid throughout the Community, which excludes the possibility of having recourse to provisions of the Member States in order to interpret or complete them.

The Commission notes, however, that at the time of the importations in dispute, the legal definition of 'net weight' applicable to the problem at issue, was not to be found in Community law. In

the absence of such definition, reference should be made in the first place to the usual meaning of the terms to be interpreted.

The Commission points out that the product at issue is described under heading 16.01 exclusively as 'sausage' and not as 'tinned sausages' or 'preserved sausages'. The liquid which the sausages are in acts as a heat conductor when, immediately before the tin is sealed, the sausages are heated to a high temperature which enables them to be preserved. It also serves to maintain osmotic equilibrium by preventing the sausages from drying out owing to the loss of the liquids which they contain, and in doing so it preserves their appearance. However, this liquid does not alter the organoleptic characteristics of the product.

Therefore taking account of the weight of the liquid when calculating the levy is ruled out by the meaning of the term 'sausage'. The expression 'net weight', appearing in the regulation fixing the amount of the levies, merely confirms this conclusion.

The recommendation of the Commission of 13 March 1961 (JO 1961, p. 880) which applied solely to customs duties, at a time when those duties had not yet been totally abolished as between the Member States, tends in the same direction. Although that recommendation did not apply to levies, it confirms, taking into account the systematic nature of the legal order, the interpretation of the Commission.

An economic factor should be added to these factors pertaining to wording. The weight of the preserving liquid with the sausages is more or less equal to the weight of the sausages themselves. Since it would be absurd from the economic point of view to impose a financial burden on the importation of these liquids, it would have been necessary in this case to take account of the weight of the liquid when the levy was being fixed by the Community institution, by reducing in practice by one half the amount applicable to the sausages themselves without any liquid. However, when the levies were being fixed, account was not taken of the weight of the liquid.

Regulation No 84/66/EEC confirms the correctness of the interpretation suggested on the basis of the preceding provisions. Indeed, in adopting this regulation, the legislature showed that it did not wish to alter the pre-existing situation, but that it wished solely to clarify it. The statement of the reasons on which the regulation was based indicates explicitly that such was the intention of the legislature. Indeed, mention is made there of the expediency of *specifying* that the weight of the preserving liquid must be deducted.

If it is true that the Italian version of the regulation also speaks of certain 'inesattezze' which it was necessary to remedy, the German, French and Dutch versions respectively use the expressions 'Ungenauigkeiten', 'imprécisions' and 'onnauwkeurigheden' which correspond to the Italian concept 'imprecisione'. The coherence of the text should therefore be ensured by giving precedence to the idea of the specifying of an unequivocal rule over that of the correcting of a mistake.

The Commission adds that the clarification made with regard to the liquid was not accompanied by any amendment to the criteria for the calculation of the levies.

The Commission considers that it is not necessary to reach a final decision on the problem, raised by the first question, of whether interpretative measures have retroactive effect, in view of what already follows from the interpretation of the texts prior to 1966.

The Commission proposes the following answer to the question put:

'The levy applicable, under Regulation No 20 of 1962 and its implementing regulations, to sausages under tariff heading ex 16.01 B, put up in containers with preserving liquid, had, from the beginning to be calculated on the weight of the sausages alone, without taking account of the weight of the liquid'.

At the public hearing on 10 November 1976, Mr Arendt, for *the undertakings which are the respondents in the main action,* suggested that the Court should adopt the wording of the answer proposed by the Commission.

Mr Marzano, for the *Amministrazione delle Finanze dello Stato,* considers that it is not enough to acknowledge that the situation prevailing under the regulations prior to Regulation No 84/66 was iniquitous. On the contrary, the Court should find that the *application* of the old rule led to an unjust result.

He adds that if, from the point of view of calculating it, it is absurd to charge the levy on water, the same conclusion is valid in respect of customs duties.

It was not for the Italian authorities themselves to correct the Community rule which led to this absurdity. While waiting for the rule to be corrected, the Italian authorities had to apply it, interpreting it according to the normal rules. Mr Marzano draws the attention of the Court to the fact that in the minutes of the study group, which met in March 1966 to examine the question, note is made of the need to provide 'an exception' for sausages in containers with water. That finding would be meaningless if the exception could already be inferred from the pre-existing rule.

He underlines the risk of attributing an interpretative effect to every regulation which amends or specifies the contents of a rule. The cases *Kurt Siemers* v *Hauptzollamt Reichenhall* ([1971] ECR 919) and *Gervais-Danone* v *Hauptzollamt München* ([1971] ECR 1127) concerned regulations specifying the contents of subheadings of the Common Customs Tariff. In those two cases there was no question of correcting a mistake. The Court did not find that they had any retroactive effect. The present case, however, concerns the rectification of a rule, the application of which entailed, unjust results. The argument based on the method of calculating the levy cannot be upheld. To accept the thesis of the Commission would lead traders to challenge the imposition of every levy on the grounds of the percentage of the weight of basic materials protected by the levy.

Mr Marenco, for the *Commission of the European Communities,* acting as Agent, informs the Court that during the period in question the Netherlands authorities excluded the preserving liquid from the dutiable weight. In Belgium and in France there were no directives, but it seems that the liquid was also excluded. As regards Luxembourg, there are no longer any helpful data. As regards the Federal Republic of Germany, a circular was issued to the effect that the liquid was not to be taken into consideration for the purposes of calculating the dutiable weight for the levy.

As regards the reasons for the introduction of Regulation No 84/66, the Commission confirms that that regulation was proposed on the instigation of the Italian authorities, but it does not have the written request at its disposal.

If the Court follows the Commission's argument to the effect that the regulations prior to Regulation No 84/66 fixing the amount of the levies are to be interpreted as excluding the preserving liquid from the dutiable weight of the product, it would not be necessary for the Court to consider the question of the possible retroactive effect of Regulation No 84/66. If, however, it is necessary to consider that question, the Commission

observes that the provision of that regulation which is at issue presents itself as a rule of interpretation, that is a rule which is not intended to amend the mode of implementing the pre-existing rule. In the *Kurt Siemers* and *Gervais-Danone* cases (cited above), in which the retroactive effect of Commission regulations specifying the contents of tariff headings and subheadings was at issue, notwithstanding the fact that those regulations could only be interpretative, the Court did not find that they had any retroactive effect. The Commission suggests that, even if there already exists a rule of implicit retroactive effect for interpretative provisions in national law, such a rule does not obtain in Community law. At all events, if the legislature wishes to attribute retroactive effect to the provisions which it adopts, it must make express provision to that effect.

The Advocate-General delivered his opinion at the hearing on 1 December 1976.

Law

1 By two judgments which were received at the Court of Justice of the European Communities on 26 April 1976, the united civil Chambers of the Corte Suprema di Cassazione referred to the Court, under Article 177 of the EEC Treaty, two questions concerning the interpretation of the nomenclature appearing as Annex II b to Regulation No 86/63/EEC of the Council (JO 1963, p. 2175) and of Regulation No 84/66/EEC of the Council (JO 1966, p. 2216) amending that nomenclature, the terms of which are as follows:

1. Whether Regulation No 84/66/EEC, where it provides at Article 2 with regard to the products under tariff heading ex 16.01 B referred to in Annex II B to Regulation No 85/63/EEC that 'the levy on sausages put up in containers with preserving liquid shall be charged on the net weight after deducting the weight of such liquid', constitutes an interpretation of the said Regulation No 85/63/EEC and consequently has retroactive effect, or whether it creates a new situation;

2. If the latter is the case, whether the absence of any indication in Regulation No 85/63/EEC must be understood as meaning that prior to Regulation No 84/66/EEC it was indeed necessary also to take account of the weight of the said preserving liquid or whether each State might act in this sphere in accordance with its own customs legislation.'

2 These questions arose in the context of an action between, on the one hand, the national finance administration and, on the other, two importers who imported sausages in containers with preserving liquid during the period

from 1963 to 1967, concerning the issue whether, prior to the entry into force of Regulation No 84/66/EEC, the said liquid had to be excluded from the dutiable weight for the purpose of charging the Community levy.

3 Regulation No 20, on the progressive establishment of a common organization of the market in pigmeat (JO 1962, p. 945), the basic regulation during the period in question, provides for the charging of levies on products coming under heading 16.01 of the Common Customs Tariff, both in intra-Community trade and in trade with third countries.

4 The amount of these levies is determined according to Articles 4 (2) and 5 (3) of Regulation No 20, 'taking into account in particular' the weighted average of the levies applicable to the basic products making up the goods.

5 The successive regulations of the Council determine the amount of the levies by using the detailed nomenclature which appears as Annex II b to Regulation No 85/63, to fix a levy per 100 kg of net weight in respect of each product described in that nomenclature.

6 Sausages and the like, of meat, meat offal or animal blood, coming under heading 16.01 of the Common Customs Tariff are divided up into five groups in respect of each of which a single amount of levy is prescribed.

7 It is common ground that, in respect of the products listed by the regulation under number 16.01 B I of the Tariff, put up in containers with preserving liquid, the competent Italian authorities, until the entry into force of Regulation No 84/66/EEC of the Council, charged the levy on the weight of the sausages and on the weight of the preserving liquid.

8 Regulation No 84/66/EEC amending the nomenclature of certain products appearing in Annex II b to Regulation No 85/63/EEC — adopted on a proposal from the Commission following an approach by the Italian Government — based on the consideration 'that the description of certain goods contains some inaccuracies which it is necessary to rectify,' added, at

Article 2, a footnote (a) to the description of products coming under subheading 16.01 B I to the effect that:

'The levy on sausages put up in containers with preserving liquid shall be charged on the net weight after deducting the weight of such liquid.'

9 With a view to determining the effect of the provision of Regulation No 84/66/EEC which is at issue and on which the first of the two questions turns, it is essential first to consider what interpretation should be placed on the original provision, which was applicable at the time when the disputed importations took place, as it appears in Regulation No 85/63/EEC.

10 The levy on products under subheading 16.01 B I is directed only at sausages proper, independently of the way in which they are put up and irrespective of whether they are immersed in a liquid designed to ensure their preservation.

11 This emerges both from the wording of the subheading and from the fact that, for the purpose of fixing the levy, account was not taken of any preserving liquid, but of the weighted average of the levies on the basic products making up the goods.

12 Although it is true that the amount of the levy on the products manufactured from the basic products is not the result of an arithmetical calculation performed on the levies on the basic products, and that the levy contains a flat-rate component, it is none the less true that its purpose would be exceeded if for a product such as sausages put up in containers with preserving liquid, the weight of such liquid, which is approximately the same as that of the sausages, were taken into account for the purpose of charging the levy.

13 It is to be inferred from this that, under the system provided for by Regulation No 85/63/EEC, the levy on sausages put up in containers with preserving liquid had to be charged on the net weight after deducting the weight of such liquid.

14 It appears from the foregoing that the effect of the new provision made by Regulation No 84/66/EEC is identical to that of Regulation No 85/63/EEC.

15 Therefore its only consequence was to eliminate, by means of a more explicit from of wording, differences in the application of Regulation No 85/63/EEC from one Member State to another.

16 Consequently Regulation No 84/66/EEC left unchanged the meaning, as defined above, of the provisions applicable during the period with which the national court is concerned.

17 Therefore the answer to the questions put should be that the effect of Regulation No 84/66/EEC was not to alter the scope of Regulation No 85/63/EEC, and consequently its effect was merely declaratory of the pre-existing situation.

Costs

18 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

19 As these proceedings are, in so far as the parties to the main action 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

in answer to the questions referred to it by the Corte Suprema di Cassazione by two orders of 12 February 1976, hereby rules:

1. **Under the system provided for by Regulation No 85/63/EEC, the levy on sausages put up in containers with preserving liquid had to be charged on the net weight after deducting the weight of such liquid;**

2. The effect of Regulation No 84/66/EEC was not to alter the scope of Regulation No 85/63/EEC, and consequently its effect was merely declaratory of the pre-existing situation.

Kutscher Donner Pescatore

Mertens de Wilmars Sørensen Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 16 December 1976.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 1 DECEMBER 1976 [1]

Mr President
Members of the Court,

The two cases referred to this Court by the Corte Suprema di Cassazione of Italy for a preliminary ruling both present the same questions of interpretation of regulations adopted by the Council in the context of the common organization of the market in pigmeat during the transitional period of the progressive introduction of that organization.

As the Court is aware, the provisions brought into effect at that time provided for the imposition of levies on imports of agricultural products not only from non-Member countries but also from other Member States.

The point in question here is whether the levy and, where necessary, the supplementary amount applicable to imports of sausages in a preserving liquid were to be calculated on the overall weight of the product and the liquid, or whether on the contrary the weight of such liquid was to be deducted.

Apart from the provisions set out in Article 1 of Regulation No 20/62, the nomenclature of the products coming under the common organization of the market in question was laid down by Annex II B to Council Regulation No 85/63 of 18 July 1963.

Among those products are 'sausages and the like, of meat, meat offal or pig blood,' classified under heading ex 16.01 B of the Common Customs Tariff.

The regulations which from time to time fixed the amount and the method of calculation of the levies refer to this nomenclature. This is the case in

1 – Translated from the French.