

they are composed of meat, not merely of offal.

Sub-heading 16.01 B I c) is a residual heading under which should be classified all sausages and the like and

other similar products composed of meat, offal or blood, within the meaning of the abovementioned Explanatory Notes, which cannot be included under the other headings.

In Case 12/73

Reference to the Court under Article 177 of the EEC Treaty by the Hamburg Finanzgericht, for a preliminary ruling in the action pending before that Court between

CLAUS W. MURAS, merchant,

plaintiff,

and

HAUPTZOLLAMT HAMBURG-JONAS,

defendant

on the interpretation of Article 15 of Regulation No 121/67/EEC of the Council of 13 June 1967, and Article 6 of Regulation No 1041/67/EEC of the Commission of 21 December 1967, and on the interpretation of tariff heading ex. 16.01 B 1 a) and c),

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, H. Kutscher, C. Ó Dálaigh, M. Sørensen and Lord Mackenzie Stuart (Rapporteur), Judges,

Advocate-General: A. Trabucchi

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I— Facts and procedure

The facts and procedure in the case may be summarized as follows:

Article 15 (1) of Regulation No 121/67/EEC of 13 June 1967 on the common organization of the market in pigmeat (OJ No 117, p. 2283) provides that a refund equal to the difference between quotations on the world market and prices within the Community may be granted on export to third countries of products falling under heading c) ex. 16.01 (sausages and the like, of meat, meat offal or animal blood, containing meat or offals of swine) of the Common Customs Tariff.

Under Article 15 (6) of the above Regulation the Council adopted in its Regulation No 177/67/EEC of 26 June 1967 general rules for granting export refunds and criteria for fixing the amount of such refunds (OJ No 130, p. 2614).

Article 6 of Regulation No 1041/67/EEC of the Commission of 21 December 1967, applying detailed rules for the application of export refunds on products subject to a single price system (OJ No 314, p. 9) provides that:

‘A refund shall be granted only in respect of products in free circulation within the Community which are of sound and fair marketable quality and, in the case of products intended for human consumption, which have characteristics or are in a condition such as do not exclude or substantially impair their use for that purpose.’

On 22 April 1968 Claus W. Muras, a merchant of Buchholz in Germany applied for a refund from the defendant for 108 756.9 kg of ‘Rohwürste’ (a certain kind of sausage) exported to Yugoslavia.

The customs authorities took samples of the sausages and, in their decision of 29 April 1968, granted an export refund to the applicant for products classed under sub-heading, 16.01 B I a), of the Common Customs Tariff (sausages and the like, containing meat or offals of swine intended for human consumption), calculated in accordance with Regulation No 222/68/EEC of 23 February 1968 (OJ L 49, 27. 2. 1958, p. 5).

At the rate of 1.80 DM per kg, the total amount of the refunds thus granted to the plaintiff in the main action amounted to 195 762.42 DM.

According to an experts opinion on the samples taken, dated 12 May 1968 and made at the request of the customs authorities, these were ‘a product manufactured from fat and the lowest grade of meat offal’. The merchandise cannot be described as sausage because a vital ingredient, namely meat, is absent. In the home customs territory, this produce would not be marketable as sausage, and if put on the market it would be treated as a *flagrant misrepresentation* under Article 4 (2) of the Food Law. Moreover, this merchandise, on account of its distinctive odour and taste, would have to be the subject of a complaint as being *rotten and unfit for consumption*.

The defendant thereupon by decision of 9 May 1968, claimed repayment of the refund granted, quoting Article 6 of Regulation No 1041/67/EEC of the Commission of 21 December 1967.

The applicant had purchased the sausages exported at a price of 1.10 DM to 1.28 DM plus 5 % VAT per kg. The sale price of the goods sold to a Yugoslav undertaking was approximately 0.20 DM per kg. The applicant had had to pay 0.12 DM per kg agent’s

commission and a 10 % del credere commission.

On 14 May 1968, the applicant filed an objection to the decision seeking repayment of the refund. On 22 January 1969 the applicant started an action before the Hamburg Finanzgericht. The objection was dismissed as unfounded by the defendant by decision of 13 February 1969.

The opinion of the Hamburg Finanzgericht was sought on the dismissal of the objection and by order dated 25 January 1973, that Court decided to suspend its decision and to refer the following questions to this Court for a preliminary ruling.

1. Must Article 15 of Regulation No 121/67/EEC of the Council of 13 June 1969 be interpreted as meaning that a refund on export of products falling under Article 1 of the said Regulation cannot be granted if the amount of the refund appropriate in the particular case exceeds the price in fact paid for the exported product on the home market?
2. If Question 1 is answered in the negative:
 - (a) Is the requirement imposed by Article 6 of Regulation No 1041/67/EEC of the Commission of 21 December 1967, that the exported products must be of sound and fair marketable quality and, in the case of products intended for human consumption, that they must have characteristics or be in a condition such as do not exclude or substantially impair their use for that purpose, to be determined to the market conditions and the foodstuffs legislation of the EEC Member States, or according to those of the recipient country outside the EEC?
 - (b) In interpreting the requirement, mentioned under (a) above, of Article 6 of Regulation No 1041/67, must it be assumed that

a product is not of marketable quality if the amount of the refund appropriate in the particular case exceeds the price in fact paid for the exported product on the home market?

3. If Question 2 (b) is answered in the negative:

How are the descriptions 'sausages and the like' and 'other' (than sausages and black pudding) in Annex II (c) ex. 16.01 B I a) or c) of Regulation No 137/67/EEC of the Council of 13 June 1967, and in the Annex to Regulation (EEC) No 222/68 of the Commission of 23 February 1968, (4) in relation to the phrase 'of sound and fair marketable quality' in Article 6 of Regulation No 1041/67, to be interpreted? Must 'sausages and the like' and 'other' contain a definite minimum quantity of pigmeat, or may they, apart from other ingredients (e.g. bacon, fat, flare fat, rind and seasoning) consist entirely of offal? May water be added to them? Must a certain proportion of fat not be exceeded? Must sausages have been preserved, e.g. by drying in air?

Arguments of the parties to the main action before the national bodies

The *plaintiff* in the main action claims that sausages can be made entirely of offal. The quality is sound and marketable if the product can be offered for sale in normal conditions. In this context the relevant conditions are those of the market of the recipient country.

As regards the price obtained, the applicant's opinion is that EEC law makes no distinction based on the quality of the product exported nor on the cost price and sale price, nor even on the exporter's business calculations. He maintains that the profits made on export should not be any criterion with regard to the right to a refund. Were it otherwise, refunds could only be granted subject to submission of the exporter's balance-sheets and business calculations.

Quite naturally, he took the refund into account in calculating the selling price.

The defendant in the main action maintains that so far as the question whether a refund can be made for the sausages is concerned, the decisive factor should be the date on which the exit certificate was issued. The question whether or not these sausages are fit for human consumption must therefore be determined according to the foodstuffs legislation in force in the national territory. It would be absurd to suppose that the European Economic Community subsidizes exports of offal for which there is no market in the Community. During the first half of 1968, the world market price for sausages and dry sausages was, the defendant states, between 6 and 7 DM per kg.

Grounds of judgment of the Hamburg Finanzgericht

On the first question

When Article 15 of Regulation No 121/67/EEC states that the difference between quotations may be covered by an export refund, this can in the context only be understood to mean that the higher domestic price of the Community may be reduced to the world market price level by means of an export refund and the second recital is to the same effect.

This system of export refunds ought not to result in the amount of the refund's exceeding the price paid on the domestic market for the product exported in such a way that after the grant of the export refund this price would eventually fall below zero.

Of course, Article 15 (1) of Regulation No 121/67/EEC is not in fact concerned with domestic prices. Export refunds are not granted by reference to the manufacturing cost price which has to be substantiated in every individual instance, or to the quotations and prices current on the world market. On the contrary, the amount of the export refund depends on the rate of refund

which the institutions of the EEC fix by regulation... The exit certificate and the application for an export refund are in no way indicative of the value of the goods exported.

The opinion of the Hamburg Finanzgericht is that this does not exclude the possibility that where the purchase price paid for the goods exported is extremely low, it may be necessary, in the course of the refund procedure, to examine the question whether it is in accordance with the spirit and purpose of Article 15 of Regulation No 121/67/EEC to grant an export refund when its amount exceeds the purchase price of the product exported. There is no equalization of prices if the refund manifestly exceeds the value of the subsidized product, including the sale price, as expressed in the purchase price. In the present case, the applicant paid for the product subsequently exported a purchase price of between 1.10 DM and 1.28 DM per kg plus 5 % VAT, and he agreed a sale price of approximately 0.20 DM per kg. The refund, on the other hand, amounted to 1.80 DM per kg.

On the second question

(a) The relevant conditions, in the opinion of the Hamburg Finanzgericht, are not those which exist in each exporting country of the EEC, but those which exist uniformly in all the Member States, since Regulation No 1041/67/EEC is binding in its entirety and directly applicable in all Member States.

(b) If the meaning and purpose of an export refund is to reduce the higher Community price to the level of the world market price it must be assumed that the quality of the sausages exported is such that they will reach on the world market a price which, taking into account the export refund, will be higher than zero.

On the third question

No formal interpretation exists in

Community law for the designation 'sausages and the like' contained in EEC law. Similarly, the explanatory notes to the Brussels Nomenclature, reference to which is a valuable aid to interpretation, according to the judgment of the Court in Case 14/70 — *Deutsche Bakels GmbH v Oberfinanzdirektion München*, Rec. 1970, and in Case 30/71 — *Kurt Siemers and Co./Hauptzollamt Bad Reichenhall*, Rec. 1971, draw no distinction between sausages made of pigmeat and those of other meat. The explanatory notes to the customs tariff of the European Communities, based on Regulation No 97/69/EEC were not published until after the date of export, the decisive date in this case.

According to Margin No 3 of the Brussels explanatory notes, the principal edible offals are the head, the feet, the tail, the udders and specified internal organs. Consequently, even if pigs' heads were not to be classified as pigmeat, the text of the abovementioned EEC Regulations would not exclude the possibility of sausages and the like being manufactured, for instance, from fat, bacon, flare-fat and edible offals as well as seasoning. Sausages and the like may in fact contain '*meat or offals of swine*'. The Finanzgericht doubts whether sausages and the like can be made without the inclusion of pigmeat. Annex I of Regulation No 137/67/EEC includes under the 'pilot' product ex. 02.01 AIII (a) 'hams' and 'shoulders', and sausages and the like are also expressly mentioned as being derived products. According to the Finanzgericht this means that hams and shoulders are to be included among the typical ingredients of sausages and the like. The amount of the refunds laid down in Regulation No 222/68/EEC makes it appear that sausages and the like are to contain not only offals of swine but also a substantial proportion of high quality pigmeat. The refund rate of 45 u.a. per 100 kg of sausages and the like is considerably higher than that for liver sausage, 11.20 u.a. per 100 kg, and half as much again as that for products other than sausages and black

pudding, which is 30 u.a. per 100 kg. Moreover, it is only slightly below the refund rate applicable to hams and cuts thereof, unboned, and to hams, loins and shoulders, and cuts thereof, boned, under heading ex 02.06 B-b-2 or ex. 6, which is 46.9180 u.a. per 100 kg.

For the Federal Republic, sausages and the like are preserved products made chiefly of raw muscle meat, without sinews and finely chopped.

If the products exported cannot be classified as sausages and the like, for example because no pigmeat is present, it is necessary to know whether they can be classed under tariff heading (c) 'other'.

The order containing the reference was lodged at the Registry of the Court on 21 February 1973.

The Commission of the European Communities submitted written observations.

After hearing the report of the Judge Rapporteur, and the opinion of the Advocate-General, the Court decided to commence oral proceedings without any preparatory inquiry.

The oral observations of the plaintiff in the main action and of the Commission of the European Communities were made at the hearing on 3 July 1973.

The plaintiff in the main action was represented by Mr Röhl of the Hamburg Bar.

The Commission of the European Communities was represented by its legal adviser, P. Kalbe.

II — Observations under Article 20 of the Statute

The observations submitted to the Court may be summarized as follows:

A — Observations of the Commission

On the first question

The Commission points out that the

refund granted under the system for the common organization of the agricultural markets is a single sum per unit of weight of products exported, for the award of which commercial value and price are not taken into account. The amount of the refund is calculated by making a general overall comparison between prices inside and those outside the Community.

To grant the same amount of refund per unit of weight for all the different varieties of a product which is defined simply by a nomenclature necessarily of a general character when there may be appreciable differences in price between one variety and another, tends to favour the cheaper variety since in relation to the value of the goods they benefit from a higher percentage of refund than do better, more costly varieties of the same product.

When the refund rates for sausages are being fixed, the Commission is reasonably well-informed of general price levels for basic products, as well as their prices inside and outside the Community. It is therefore in a position to fix refund levels, on the basis of the average quality of current products, in such a way that there is in general no obvious disproportion between the refund and the price of the lowest quality products currently available. The requirement that the products be 'of sound and fair marketable quality' is a useful but not always sufficient, safeguard against abuse.

In support of its claim that refunds are only to be granted where a genuine commercial transaction is concerned, the Commission refers to the wording of Article 15 (1), of Regulation No 121/67/EEC with respect to which the relevant recital states that the granting of refunds 'should serve to safeguard Community participation in international trade in pigmeat'.

There are two aspects to the refund: the reduction of surpluses and, more particularly, compensation for the higher price levels within the Community as

compared with world market prices. The two aspects vary in their importance. For the various products in the pigmeat sector, where there are no permanent surpluses in the Community, the aspect of control of the market by reducing surpluses loses a considerable amount of its relevance.

The Commission considers that the judgment delivered in Case 13/72 — *Government of the Kingdom of the Netherlands v Commission* [1973] E. C. R., 27, where the Court states that refunds could not be refused for exports undertaken by way of food aid does not apply to the present case. In that case the decisive factor was that the exports concerned fell clearly within the framework of the objectives of the common agricultural policy as set out in Article 39 of the EEC Treaty. The facts and issues in the main action in this case are fundamentally different from the issues which fell to be decided in Case 13/72. Deliveries effected on behalf of a Member State within the framework of food aid are quite a different matter from exports where goods are sent beyond the Community frontiers solely in order to obtain the refund.

The issue in this case is clearly one of the abuse both of the legislation — having regard to the purposes for which it was intended — and of common legal institutions.

On the second question

(a) The Commission takes the view that the possibility of marketing 'on normal terms' referred to in the recitals to Regulation No 1041/67/EEC cannot be taken to mean that the right to a refund must depend solely on market conditions and on the legislation of a given recipient country. If such were the case, it would be possible for a refund to be granted for goods which were no longer marketable within the Community. No refund should be refused for a product still marketable within the Community, if it has ceased to be

accepted as marketable in the recipient country in question.

The Community legislature defines the products capable of benefiting from a refund according to *type*, using the nomenclature which is for the most part adopted by the scale of levies or by the Common Customs Tariff. It leaves no doubt that in interpreting this Community nomenclature, only classifications recognized by Community law and the particular modes of interpretation appropriate to this end are relevant. The customs treatment of goods concerned in the recipient country is quite irrelevant.

The Community legislature also defines products capable of benefiting from a refund according to their *quality*. Those provisions which relate to quality are also undeniably independent rules of Community law, with their own intrinsic value, and are to be applied, irrespective of any concepts relating to quality in the recipient countries. The requirement of 'sound and fair marketable' quality imposed by Article 6 of Regulation No 1041/67/EEC is a provision relating to quality. It would be an unjustifiable irrelevance to make the determination of the characteristics of quality uniformly required by the Community legislature by reference to the criteria applicable in the Community or in third countries, depend on the more or less precise formulation of the Community provisions on the subject. The concept of sound and fair marketable quality must therefore also be interpreted by reference to the criteria applicable in the Community and not according to the ideas of recipient countries.

When Article 6 refers to use of a product for purposes not limited to human consumption, the Community legislature is laying down the minimum requirements relating to the *nature* of the products exported. It is possible to arrive at an evaluation of such concepts on the basis of the situation as it exists in the Community.

Surpluses, the reduction of which is to be encouraged by refunds with a view to the control of the market *a priori*, only depress the Community market and its price levels to the extent to which the goods concerned are in fact marketable within the Community. Only where merchandise is marketable within the Community is it necessary to compensate for the differences in prices as against the world market, in order to enable Community products to be exported.

The Commission has therefore concluded that the concept of 'sound and fair marketable' quality, and the principle of unrestricted fitness for consumption, imposed by Article 6 of Regulation No 1041/67/EEC, must be interpreted solely on the basis of criteria applicable within the Community.

(b) The Commission points out that cost prices on the domestic market, thus constitute for sausages and the like one of several criteria in deciding whether in this instance, the goods are of marketable quality: any unusual disparity between the price of goods exported and current prices can be a reliable indication — as experience of daily life shows — that the quality is no longer marketable.

Significant price advantages can be gained only by increasing the fat content. If the fat content is increased considerably, the quality of the merchandise is automatically diminished. The same applies also where dearer meat is replaced by much cheaper offal.

On the third question

In its statement, the Commission first sets out the development of tariff heading 16.01. In Germany the notion of 'Rohwurst', is derived from a comparison with the categories 'Koch-, Brüh-, and Bratwürste'. These are sausages and the like made from untreated meat which is 'not pre-cooked' and fat, with the addition of seasoning, and which, owing to the drying and

bacterial maturation which they have undergone, are edible as they are, that is, without further treatment (as sausages to be spread, or eaten in slices).

When, in the context of the common organization of the markets it became necessary in the sector of pigmeat to distinguish sausages and the like by quality, for example 'salami' and others, the expression 'Rohwurst' known to German terminology and defined according to reasonably objective standards, appeared to be the expression which best answered both economic needs and the purposes of the legislature.

In sub-heading 16.01-BI of the French text of Regulation No 222/68/EEC the expression 'saucisses et saucissons secs' is used. Regulation No 1215/68/EEC, on the subject of refunds, adds 'non cuits' and Regulation No 835/71/EEC says 'saucisses et saucissons secs ou a tartiner, non cuits'. The Italian text contains terms similar to heading 16.01 with the words: 'salsicce, salami e simili...' and under sub-heading B1, with terms already used in Regulation 222/68/EEC, 'salsicce e salami, stagionati, anche da spalmare non cotti'. The original Dutch text 'Worst van alle soorten' becomes 'gedroogde worst en smeerworst, niet gekookt en niet gebakken'.

As far as the tariff classification is concerned, the Commission reaches the following conclusions:

1. Sausages and the like (Rohwurst) means primarily sausages within the meaning of the explanatory notes to the Brussels nomenclature, under heading 16.01, paragraph one.
2. The distinguishing feature, in relation to other kinds of sausage, is that preparation does not involve cooking and the ingredients are neither cooked nor treated beforehand.

The term 'Rohwurst' also applies to sausage which has to some extent been preserved by natural maturation (bacterial).

A sausage must contain meat because it will not reach the necessary state of

preservation if composed entirely of offal. Moreover, the difference between the rates of refund for these sausages and for 'other' can only be explained by the presence of a higher meat content.

The addition of water is incompatible with the concept of dry sausage.

Drying in air is of course one of the most common processes of bacterial maturation, but is not the only one possible.

A dry sausage must not be made solely of fat but must also contain meat. For the purposes of the grant of the refund, the admixture of fat is an important consideration in determining whether goods are of 'sound and fair marketable quality'.

As for the heading 'other' (16.01 B 1c), this is a residual classification. The only requirement for this classification is that such sausages be 'destined for human consumption' and fit therefor.

B — Observations of the plaintiff in the main action

On the first question

The plaintiff in the main action points out that to refuse export refunds where the exporter has purchased his basic materials at an excessively low price would result in the creation of a state of complete legal uncertainty. In the present case there is no question of overstepping the boundary of the law: the regulations in force at the relevant time provided for a refund for dry sausages even if they were composed only of offal or products of inferior quality. At the time there was a surplus of bacon owing to the unpopularity within the Community of products with a high calorific content. This affected the price of lean meat, and so the Community had an interest in getting the surplus exported. The plaintiff therefore believes that the first question should be answered in the negative.

On the second question

The soundness test for merchandise should be applied in accordance with current ideas in the Community. On the other hand, the fact that these surpluses are of no marketable value in the Community means that the test needs to be determined on the basis of marketable value and marketability as they exist in third countries. This argument accords with the history of Article 6 of Regulation No 1041/67/EEC. The expression 'fair marketable quality' was introduced by that Article precisely to remedy the situation in which exporters might export a composite product which was marketable in the Community but not in third countries, in order to divide it into its separate constituents in these countries.

As for question 2 b, it is impossible to maintain that there is any rule of evidence that the price paid for a product may lead to a conclusion as to its normal marketable quality. The claim made by the Commission that there is a

basic recipe accepted throughout the Community is not correct.

On the third question

According to Regulation No 222/68/EEC, sausages can be made entirely from offal. The principle of legal certainty makes it necessary to have regard to the general and unspecific wording of the Regulation in question.

The arguments resorted to by the Commission as regards the so-called normal quality of dry sausages do not accord with reality. Had the new definition of dry sausages in the Annex to Regulation No 2403/69/EEC (OJ No 303, 1969) been in force at the time in question this Regulation would have been superfluous. The Commission could simply have issued an explanatory declaration.

If the sausage in question cannot be considered to be dry sausage, it should be classed under heading ex. 16.01-B-1 c) 'others'.

Grounds of judgment

- 1 By Order of 25 January 1973, lodged at the Registry of the Court on 21 February, the Hamburg Finanzgericht referred a number of questions, pursuant to Article 177 of the EEC Treaty, on the interpretation of Article 15 of Regulation No 121/67/EEC (OJ No 117, p. 2283/67), of Article 6 of Regulation No 1041/67/EEC (OJ No 314, p. 23), of sub-heading 16.01 B 1 a) and c) of Annex II to Regulation No 137/67/EEC (OJ No 122, p. 2395) and of the Annex to Regulation No 222/68/EEC (OJ 1968, L 49, p. 5).

On the first question

- 2 The first question asks the Court to say whether Article 15 of Regulation No 121/67/EEC is to be interpreted as meaning that an export refund cannot be

granted if the amount of the refund exceeds the price in fact paid for the exported product (in this case, a batch of sausages) on the home market.

- 3 This provision lays down that, to allow the export of the products listed in Article 1 of the above Regulation on the basis of world market rates or prices, the difference between these rates and prices and Community prices may be recovered by means of an export refund.

Community prices are calculated in accordance with Article 3 of Regulation No 177/67/EEC (OJ 2614), having regard to prices at the various marketing stages within the Community and prices on export. The Regulation further provides, in the second paragraph of Article 2, that, for the calculation of the refund, account shall be taken of the price for the quantity of feed grain needed to manufacture the product in question. The amount of the refund does not, therefore, depend upon the price in fact paid for the exported product on the home market.

- 4 Thus the grant of a refund is not necessarily excluded if the amount of the refund exceeds the price in fact paid on the home market.

On the first part of the second question

- 5 If Question 1 is answered in the negative, the Court is asked whether the criteria as to quality provided by Article 6 of Regulation No 1041/67/EEC are to be determined according to the commercial customs and the health regulations of the Member States or according to those of the recipient countries.
- 6 Under the provisions of Article 6, the refund is only granted for products 'in free circulation within the Community which are of sound and fair marketable quality and, in the case of products intended for human consumption, which have characteristics or are in a condition such as do not exclude or substantially impair their use for that purpose'.

The seventh Recital of the abovementioned Regulation lays down that only products in free circulation within the Community can benefit under the arrangements provided by that Regulation, and that moreover exported

products must be of such a quality that they can be marketed on normal terms.

It transpires from the grounds given by the Hamburg Finanzgericht that the problem at issue is whether this requirement must be interpreted as an implicit reference to the health regulations of the third countries to which the products are exported or to regulations in force within the Community.

- 7 In the absence of any express reference to the laws or customs of a third country a Community provision must be interpreted in relation to and in the context of its own sources.

The refund system is instrumental in the common organization of markets for the purpose of achieving the objectives set by Article 39, and in particular the stabilization of the Community market provided for by Article 40 (3) and by the fifth Recital of Regulation No 121/67.

To make the grant of a refund dependent upon the laws or customs of a third state would deprive the Community of all certainty in the use of this instrument and would make effective control by the Community impossible.

- 8 Therefore the question whether products for which an export refund is claimed are in conformity with the requirements set out in Article 6 of Regulation No 1041/67 must be examined on the basis of criteria in force within the Community.

On the second part of the second question and the first part of the third question

- 9 The Court is requested by the second part of the second question to state whether it is to be deduced from the fact that the amount of the refund exceeds the price in fact paid for the product on the home market that the product does not conform to the required standards of quality.
- 10 If the answer is negative, the first part of question 3 requests an interpretation of the phrase 'of sound and fair marketable quality'.

- 11 These questions, being closely connected, will be examined together.
- 12 This requirement, contained in Article 6 of Regulation No 1041/67, constitutes a general, objective condition for the grant of a refund, whatever the requirements as to category and quality laid down by the Regulations fixing the amounts of refund for each product.

A product which could not be marketed within the Community under normal conditions and under the description given in the claim for the grant of a refund would not meet these requirements as to quality.

The fact that the amount of the refund exceeds the price in fact paid by the exporter on the home market for the product exported is an indication that doubts should be cast on the quality of the product.

On the second part of the third question

- 13 The second part of the third question is principally concerned to obtain the proper interpretation of the descriptions of the goods designated 'sausages and the like' and 'other', within the meaning of Annex II (c) ex. 16.01 B 1 a) and b) of Regulation No 137/67/EEC of the Council of 13 June 1967 and that of the Annex to Regulation (EEC) No 222/68 of the Commission of 23 February 1968.
- 14 The wording of this sub-heading in the authentic texts in all the official Community languages gives prime importance to the fact that the product in question should have been preserved to a certain extent by a drying process.

In the absence of Community provisions on this subject the explanatory notes to the Brussels Convention on nomenclature for the classification of goods in customs tariffs are authoritative as a valid means of interpreting common headings.

The version of these which was valid at the time of the events leading to the main action states that heading 16.01, 'sausages and the like, of meat, meat offal or animal blood', covers meat or offal products either cooked or uncooked.

In particular, this version states that 'true meat-based sausages and the like (Frankfurter sausages, salami etc.)' come under heading 16.01.

Therefore the product in question must comprise a meat base, not merely offal.

- 15 The classification of a product under sub-heading 16.01 B 1 a) presupposes that its ingredients have been subjected to a drying process and that moreover they are composed of meat, not merely of offal.
- 16 Sub-heading 16.01 B 1 c) is a residual heading in which are classified all sausages and the like and other similar products composed of meat, offal or blood, within the meaning of the abovementioned explanatory notes, which cannot be included under the other headings.

C o s t s

- 17 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable and as these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the observations of the plaintiff in the main action and the Commission of the European Communities;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Article 177;

Having regard to Regulation No 121/67/EEC, especially Article 15;

Having regard to Regulation No 1041/67/EEC, especially Article 6;

Having regard to Regulations Nos 137/67/EEC and 222/68/EEC;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the questions referred to it by the Hamburg Finanzgericht by order of that court dated 25 January 1973, hereby rules:

1. The question whether products for which an export refund is claimed meet the requirements as to quality laid down by Article 6 of Regulation No 1041/67 must be assessed on the basis of criteria in force within the Community.
2. A product which could not be marketed within the Community under normal conditions and under the description given in the claim for a refund would not meet these requirements as to quality.
3. The classification of a product under sub-heading 16.01 B 1 a) presupposes that its ingredients have been subjected to a drying process and moreover that they are composed of meat, not merely of offal.

Lecourt Monaco Pescatore Donner Mertens de Wilmars
Kutscher Ó Dálaigh Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 9 October 1973.

A. Van Houtte
Registrar

R. Lecourt
President