

In Case 803/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Examining Magistrate at the Tribunal de Grande Instance [Court of First Instance], Paris, for a preliminary ruling in the criminal proceedings pending before that court against

GÉRARD ROUDOLFF

on the interpretation of Regulations of the Commission Nos 2010, 2243, 2538, 2645, 2943, 3084 and 3205/74 (Official Journal L 209, p. 34; L 238, p. 31; L 271, p. 52; L 283, p. 18; L 311, p. 38; L 327, p. 7; and L 341, p. 38) and Nos 180, 494 and 735/75 (Official Journal L 20, p. 11; L 53, p. 39; and L 73, p. 29) fixing the export refunds on beef and veal, in order to determine whether cuts of frozen, boned or boneless beef or veal specified as insides of cheeks, thin flanks and shins, when not packed separately, qualify for export refunds,

THE COURT (Second Chamber)

composed of: A. Touffait, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: H. Mayras

Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the submissions and arguments of the parties presented in accordance with Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. During the period from 27 August 1974 to 8 April 1975 the Multi-Agra company of which the accused in the main proceedings, Mr Roudolff, is

chairman and managing director, lodged customs declarations in respect of 704 390 kg of boned or boneless beef or veal exported to Greece and obtained export refunds totalling FF 3 358 209.85 on those goods.

2. The Administration des Douanes [customs administration] found that the meat which had been exported by the Multi-Agra company contained some insides of cheeks of bovine animals, shin and thin flanks which it considered did not qualify for export refunds under the Community regulations. The Administration decided that there had been an infringement of Article 426 (5) of the Code des Douanes [customs regulations] (false declarations, the object or effect of which was to obtain an advantage on exportation).

3. Mr Roudolff maintains that the cheeks, offals, thin flanks and shin fail to qualify for the refunds only if they are packaged separately, and he claims that the investigation concerning the exports in connexion with which he has been charged has established that the cardboard boxes contained the fore-quarters, boned or boneless, as a whole but that it has nevertheless not been shown that the cuts in question had been packaged separately when they were put into the said cardboard boxes.

4. By an order of 7 November 1979 the First Examining Magistrate of the Tribunal de Grande Instance, Paris, stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

“Did the wording of heading 02.01 A II (a) 2 (dd) 22 (ccc) of the Common Customs Tariff in 1974 and 1975 cover exports of cardboard boxes containing

cuts of forequarters of frozen, boned or boneless beef or veal, including certain cuts specified as insides of cheeks, thin flanks and shin, when the latter were not packaged separately, and did such exports thus qualify for export refunds as provided for in Regulations (EEC) Nos 805/68 and 885/68 of the Council of the European Communities?”

5. The products in respect of which export refunds were made available during the period in question were listed in the annexes to Regulations of the Commission Nos 2010, 2243, 2538, 2645, 2943, 3084 and 3205/74 (Official Journal L 209, p. 34; L 238, p. 31; L 271, p. 52; L 283, p. 18; L 311, p. 38; L 327, p. 7; and L 341, p. 38), and Nos 180, 494 and 735/75, fixing the export refunds on beef and veal (Official Journal L 20, p. 11; L 53, p. 39; and L 73, p. 29).

6. In the French language version of Regulations Nos 2010/74 and 2243/74, the subheading in question is worded as follows:

“ex 02.01 A II a) 2.:

Viandes comestibles de l'espèce bovine domestique congelées:

...

dd): autres

...

ex 22: Morceaux désossés, à l'exception des joues, des abats, du flanchet et du jarret, emballés séparément:

...”

In the Italian, Dutch, German, English and Danish language versions the same provisions read as follows:

“...
Pezzi disossati, esclusi le guance, le frattaglie, la pancia, la tibia e il muscolo aderente, confezionati separatamente.”

“...
Delen, zonder been, met uitzondering van kopvlees, slachtafvallen, de wang en de schenkel, afzonderlijk verpakt.”

“...
Teilstücke ohne Knochen, mit Ausnahme von Kopffleisch, Schlachtabfällen, Fleisch- und Knochendünnung und die Hesse getrennt verpackt.”

“...
Boned or boneless, excluding the chaps,¹ the offals, the thin flanks and the shin, packaged separately.”

“...
Udbenet med undtagelse af kæber, slagteaffald, slag og skank, stykkerne emballeret hver for sig”.

The French language version of Regulations Nos 2538, 2645, 2943, 3084, 3205/74 and Nos 180, 494 and 735/75 is worded as follows:

“...
Morceaux désossés:

- à l'exception des joues et des abats pour les exportations à destination des Etats-Unis
- à l'exception des joues, des abats, du flanchet et du jarret, emballés séparément, ...”

7. The order making the reference to the Court was lodged at the Court Registry on 12 November 1979.

Written observations were lodged under Article 20 of the Statute of the Court of Justice of the EEC by the Commission of the European Communities, represented by R. Wainwright, acting as Agent, assisted by F. Lamoureux, both of whom

¹ — *Translator's note:* In Regulations Nos 2010, 2243 and 2538/74 “joutes” in the French version appears as “chaps” in the English version; in the subsequent regulations mentioned “joutes” in the French version appears as “cheeks” in the English versions.

are members of the Legal Department of the Commission.

After 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.

By an order of 13 February 1980 the Court decided to assign the case to the Second Chamber under Article 95 (1) of the Rules of Procedure.

II — Written observation submitted to the Court by the Commission of the European Communities

Noting the reference to the Common Customs Tariff in the question which has been referred to the Court, the Commission makes the preliminary point that the case must be decided on the basis of the agricultural regulations applicable to the export refunds on beef and veal.

It therefore proposes to re-phrase the question which has been referred to the Court as follows:

“Could the description of goods falling within subheading ex 02.01 A II (a) 2 (dd) ex 22 in the annexes to the regulations of the Commission fixing the export refunds on beef and veal be considered, in 1974 and 1975, as covering exports of cardboard boxes containing cuts of forequarters of frozen, boned or boneless beef or veal, including certain cuts specified as insides of cheeks, thin flanks and shin, when the latter were not packaged separately, and could such exports thus qualify for export refunds as provided for in Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187) and Regulation (EEC) No 885/68 of the Council of 28 June 1968 laying down general rules for granting export refunds on beef and veal

and criteria for fixing the amount of such refunds (Official Journal, English Special Edition 1968 (I), p. 237)."

The Commission maintains that a literal interpretation of the French language version of the regulations fixing the amount of the refunds leaves no doubt whatsoever about the fact that the expression "packaged separately" qualifies the words "boned or boneless" meat. If the expression related to the cheeks, shin and thin flanks, there ought not to be a comma between "shin" and "packaged separately". In the opinion of the Commission the rules of syntax do not allow a qualifying adjective which relates to several substantives to be separated from the last substantive by a comma unless an incidental clause is interpolated between them.

The Commission is also of the opinion that the same comment applies to the Italian, Dutch and German language versions. Only the English and Danish language versions can, in its opinion, be ambiguous.

The Commission goes on to recall that heading 02.01 of the Common Customs Tariff refers not only to meat but also to offals. The absence of any reference in the wording of subheading ex 02.01 A II (a) 2, as it appears in the regulations concerning export refunds, to the offals mentioned in the Common Customs Tariff shows that the Community legislature intended to exclude that product from the refunds.

According to the Commission that intention cannot be gainsaid by the

wording of a subdivision of that heading which refers to "boned or boneless, excluding the cheeks, the offals, the thin flanks and the shin, packaged separately". Such a subdivision merely amounts to a more restrictive description or definition of the products of that heading. As far as the Commission is concerned the logical order of the texts supports the conclusion that the regulations could not have reintroduced offals into the subdivision of a heading as cuts of meat which qualify for refunds when they had been expressly excluded by the actual wording of the heading.

The Commission goes on to point out that the purpose of the regulations provides the justification both for the exclusion of cheeks, offals, thin flanks and shin from the provision relating to separate packaging, and the application of the latter solely to boned or boneless cuts.

In its opinion the Community regulations restrict the refunds in practice to quality cuts of meat. These do not include cheeks, offals, thin flanks and shin, which are used for processing. There have always been many ways of using such meat in the Community, so that there is no ground for granting export refunds.

The Commission emphasizes that its regulations fixing the refunds continue expressly to exclude at least thin flanks and shin from qualifying for the refunds. Thus, for example, in Regulation No 2373/79 of 26 October 1979 fixing the export refunds on beef and veal (Official Journal L 272, p. 11), the wording of subheading ex 02.01 A II (b) 4 ex (bb) is

unequivocal: "Meat of bovine animals, Frozen . . . Boned or boneless, excluding the thin flanks and the shin: Each piece individually wrapped".

The Commission goes on to note that the condition requiring separate packaging applies only to boned or boneless cuts of meat, for obvious reasons relating to quality inspections of exported goods. Boned or boneless pieces are small and practically indistinguishable from each other once they have been frozen.

Still according to the Commission, the justification for separate packaging based on the need for inspection demonstrates the illogicality of the argument that cheeks, offals, shin and thin flanks qualify for refunds where they are not packaged separately. In the first place, that view would mean that boned or boneless cuts could not be properly inspected because although the requirement of separate packaging applies to cheeks, offals, shin and thin flanks, it does not apply to boned or boneless cuts. In the second place, it would be impossible to ascertain whether the cuts of cheeks, offals, thin flanks and shin had been mixed with any other meat or not. In the Commission's view, the argument put forward by the accused would make it practically impossible to inspect exported frozen meats at all, which is obviously the reverse of the Community legislature's intention.

On the basis of those considerations the Commission proposes the following reply to the question which has been referred to the Court for a preliminary ruling:

"The description of goods under sub-heading ex 02.01 A II (a) 2 (dd) ex 22 in

the annexes to the regulations of the Commission fixing the export refunds on beef and veal applicable between August 1974 and April 1975 is to be interpreted as restricting the granting of export refunds to frozen cuts of meat which are boned or boneless and packaged separately, excluding cheeks, offals, thin flanks and shin."

III — Oral procedure

1. In reply to a question from the Court, the Commission stated that the words "packaged separately" in the second indent of the subheading in question, as it is worded in Regulations Nos 2538, 2645, 3084 and 3205/74 and Nos 494 and 735/75 refer, on a literal interpretation of the text, to boned or boneless cuts and not to the products listed in that indent.

The Court also asked why the Commission had not included in the regulations referred to in the first question a provision stipulating that products exported to the United States of America should be "packaged separately".

In reply the Commission pointed out that exports of beef and veal from the Community to the United States of America have always been minimal. The requirement of separate packaging was omitted on the following grounds:

— first, the American authorities apply very stringent supervision of imports of beef and veal which enable the risk of fraud to be eliminated;

— secondly, the refunds for exports to the United States of America were fixed at a much lower level than those granted in respect of exports to other third countries in respect of which the requirement of separate packaging remains in force. This low level enables small quantities of beef and veal, including shin and thin flanks, to be exported without incurring the risk of deflection of trade.

Point 1. In his opinion the words “packaged separately” appearing in the second indent of the subheading in question, as it is worded in those regulations, refer to the products listed in that subparagraph. The other regulations which were in force during the period in question should be interpreted in the same manner. The scheme of the regulations referred to under Point 1 has not changed; an attempt has merely been made to improve its drafting.

2. Gérard Roudolff, represented by P. Abensour, Advocate at the Paris Bar, and the Commission, represented by F. Lamoureux, a member of its Legal Department, acting as Agent, presented oral observations at the hearing on 27 March 1980.

The fact that the regulations referred to under Point 1 do not require that products exported to the United States of America should be packaged separately corroborates this view.

3. At the hearing Mr Roudolff, who did not submit written observations, challenged the Commission’s interpretation of the regulations referred to under

Lastly, Mr Roudolff emphasized that the products which he had exported are neither products of inferior quality nor small cuts.

4. The Advocate General delivered his opinion at the sitting on 22 May 1980.

Decision

1 By an order of 7 November 1979 which was received at the Court on the 12th of that month, the Examining Magistrate at the Tribunal de Grande Instance, Paris, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of subheading ex 02.01 A II (a) 2 (dd) ex 22, appearing in the annexes to regulations of the Commission fixing the export refunds on beef and veal for the period from August 1974 to April 1975.

- 2 The question arose in the course of a criminal investigation concerning the chairman and managing director of a French company, charged with having made false declarations during the above-mentioned period in order to obtain export refunds for frozen, boned or boneless beef and veal exported to Greece. The customs authorities ascertained that the exported meat included the insides of cheeks, shin and thin flanks, which in its opinion did not qualify for refunds under the above-mentioned regulations.

- 3 The accused in the main proceedings challenges that interpretation. He maintains that the products in question would only have failed to qualify for the refunds if they had been packaged separately.

- 4 The question asked by the court making the reference is whether the wording of subheading ex 02.01 A II (a) 2 (dd) ex 22 in the annexes to Regulations of the Commission Nos 2010, 2243, 2538, 2645, 2943, 3084 and 3205/74 (Official Journal L 209, p. 34; L 238, p. 31; L 271, p. 52; L 283, p. 18; L 311, p. 38; L 327, p. 7; and L 341, p. 38) and Nos 180, 494 and 735/75 (Official Journal L 20, p. 11; L 53, p. 39; and L 73, p. 29) fixing the export refunds on beef and veal may be regarded as covering exports in cardboard boxes of cuts of forequarters of frozen, boned or boneless beef or veal, including certain cuts specified as insides of cheeks, thin flanks and shin, when the latter were not packaged separately, and whether they therefore qualify for export refunds.

- 5 During the period in question in the present case there were two versions of the disputed subheading, the first, which appeared in Regulations Nos 2010 and 2243/74, being worded in the six languages of the Communities as follows:

“

Morceaux désossés, à l'exception des joues, des abats, du flanchet et du jarret, emballés séparément.”

“ . . .

Pezzi disossati, esclusi le guance, le frattaglie, la pancia, la tibia e il muscolo aderente, confezionati separatamente.”

“ . . .

Delen, zonder been, met uitzondering van kopvless, slachtafvallen, de wang on de schenkel, afzonderlijk verpakt.”

“ . . .

Teilstücke ohne Knochen, mit Ausnahme von Kopffleisch, Schlachtabfällen Fleisch- und Knochendünnung und die Hesse, getrennt verpackt.”

“ . . .

Boned or boneless, excluding the chaps, the offals, the thin flanks and the shin, packaged separately.”

“ . . .

Udbenet med undtagelse af kæber, slagteaffald, slag og skank, stykkerne emballeret hver for sig”.

- 6 In a second version, Regulations Nos 2538, 2645, 2943, 3084 and 3205/74 and Nos 180, 494 and 734/75 incorporated the same modification in all the language versions. It reads [in French] as follows:

“ . . .

Morceaux désossés:

— à l'exception des joues et des abats pour les exportations à destination des Etats-Unis

— à l'exception des joues, des abats, du flanchet et du jarret, emballés séparément, . . .”

- 7 From a linguistic point of view the question is whether the words “emballés séparément” [packaged separately] refer to “morceaux désossés” [boned or

boneless cuts] or whether they refer on the contrary to the exception made for “les joues, les abats, le flanchet et le jarret” [the chaps,¹ the offals, the thin flanks and the shin]. Although in the different versions there are grammatical indications, particularly the punctuation, which seem to support the former interpretation, the text when read as a whole remains ambiguous. The function of the words in question must therefore be examined in the light of the intention and purpose of the regulations in question.

- 8 In that context the Commission claims in its observations that the Community regulations restrict the granting of refunds to quality cuts of meat. These do not include cheeks, offals, thin flanks and shin, which are used for processing and for which as such there are in any case many uses within the Community itself. On that ground there is no justification for granting export refunds. Moreover, as the boned or boneless cuts are small and practically indistinguishable from each other after freezing, it is necessary for each piece to be packaged separately in order to enable them to be inspected.

- 9 The Court is of the opinion that the Commission has demonstrated sufficiently the reason for the requirement concerning separate packaging: it is intended to facilitate inspection and must therefore apply to all cuts which qualify for refunds. The justification for this view is all the more apparent in so far as the interpretation, whereby the words “emballés séparément” refer to the exception, does not appear to be such as to give those words any real purpose. It would mean that cheeks, offals, thin flanks and shin would qualify for refunds when the presence of such cuts is concealed, but that they would fail so to qualify when their presence is easy to establish, something which is hardly in the interests of the Community.

- 10 The reply to the question which has been asked should therefore be that the wording of subheading ex 02.01 A II (a) 2 (dd) ex 22 in the annexes to Regulations of the Commission Nos 2010, 2243, 2538, 2645, 2943, 3084/ and 3205/74 and Nos 180, 494 and 735/75, fixing the export refunds on beef and veal could not be regarded as covering exports of cuts of fore-quarters of frozen, boned or boneless beef or veal, specified as insides of cheeks, thin flanks and shin, or as enabling them to qualify for export refunds.

1 — See Translator's note *ante* p. 2018.

Costs

- 11 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable; as the proceedings are, in so far as the accused in the main proceedings is concerned, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the Examining Magistrate at the Tribunal de Grande Instance, Paris, by an order of 7 November 1979, hereby rules:

The wording of subheading ex 02.01 A II (a) 2 (dd) ex 22 in the annexes to Regulations of the Commission Nos 2010, 2243, 2538, 2645, 2943, 3084 and 3205/74 and Nos 180, 494 and 735/75 fixing the export refunds on beef and veal could not be regarded as covering exports of cuts of forequarters of frozen, boned or boneless beef or veal, specified as insides of cheeks, thin flanks and shin, or as enabling them to qualify for export refunds.

Touffait

Pescatore

Due

Delivered in open court in Luxembourg on 19 June 1980.

A. Van Houtte
Registrar

A. Touffait
President of the Second Chamber