



## Reports of Cases

**Case T-549/13**

**French Republic**  
**v**  
**European Commission**

(Agriculture — Export refund — Poultrymeat — Fixing of the refund at EUR 0 — Obligation to state reasons — Possibility for the Commission to confine itself to a standard statement of reasons — Commission's usual practice in fixing refunds — Article 164(3) of Regulation (EC) No 1234/2007 — Non-exhaustive nature of the prescribed criteria)

Summary — Judgment of the General Court (Fifth Chamber), 14 January 2016

1. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision in line with previous decisions — Whether a summary statement of reasons sufficient — Decision fixing the amount of export refunds*  
*(Art. 296, second para., TFEU)*
2. *Agriculture — Common organisation of the markets — Export refunds — Fixing of amounts — Fixing of the amount at zero for the first time in respect of the products concerned — Lawfulness*  
*(Council Regulation No 1234/2007, Art. 164(3); Commission Regulation No 689/2013)*
3. *Agriculture — Common organisation of the markets — Export refunds — Fixing of amounts — Account taken of the future development of the common agricultural policy and of current negotiations in the WTO as to the abolition or limitation of export refunds — Lawfulness*  
*(Council Regulation No 1234/2007, Art. 164(3); Commission Regulation No 689/2013)*
4. *Agriculture — Common agricultural policy — Discretion of the EU institutions — Scope — Judicial review — Limits*  
*(Arts 40 TFEU to 43 TFEU)*
5. *Agriculture — Common organisation of the markets — Export refunds — Purpose*  
*(Art. 39 TFEU)*
6. *Agriculture — Common organisation of the markets — Export refunds — Fixing of amounts — Elements to be taken into consideration by the Commission*  
*(Council Regulation No 1234/2007, Arts 162(1), and 164(3))*

7. *Agriculture — Common organisation of the markets — Export refunds — Fixing of amounts — Account taken of the market situation — Theoretical calculation based on the difference between EU market prices and world market prices — No obligation to consider the particular situation of exporting undertakings*

*(Council Regulation No 1234/2007, Art. 164(3)(a))*

1. The reasons on which a decision which follows a well-established line of decisions is based may be given in a summary manner, for example by a reference to those decisions. On the other hand, the EU authority must give an explicit account of its reasoning if the decision goes appreciably further than the previous decisions. Where a standard statement of reasons is sufficient because when adopting the act at issue the Commission has followed a well-established line of decisions, the reference in the act at issue to ‘the legal base applicable’ satisfies the obligation to state reasons. Normal practice must be taken to mean the consistent policy of the Commission in the light of existing market conditions.

In that regard, given the periodic nature of the fixing of the amount of export refunds and the uniform procedure applicable for the adoption of the respective regulations, it is permissible for the Commission to have recourse to standard reasons so long as it is acting in accordance with its habitual practice when fixing that amount. That conclusion cannot be called into question on the ground that the Commission generally has a broad discretion in agricultural matters.

(see paras 24, 25, 29, 31, 82, 84)

2. In the context of the fixing of the amount of export refunds by the Commission, the mere fact that that amount was fixed at zero for the first time for the products in question does not automatically mean that the Commission broke with its usual practice. In that regard, the modification of the amount of the export refunds is inherent in the system under which the amount of those refunds is fixed at regular intervals, and the same statement of reasons may therefore cover export refunds the amounts of which differ considerably.

(see paras 45, 46)

3. In the context of the fixing of the amount of export refunds by the Commission, the latter is under no obligation to take account of the fact that negotiations concerning abolition of such refunds are being held within the World Trade Organisation (WTO), so long as those negotiations have not led to the conclusion of a binding agreement. However, it is entirely open to the Commission to take into consideration, when fixing the amount of the refunds, the future development of the CAP and the negotiations within the WTO, although those factors are not explicitly provided for in Article 164(3) of Regulation No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

The adoption of acts of general scope always takes place in a general political and economic context. Although Article 164(3) of Regulation No 1234/2007 explicitly provides for certain criteria that may be taken into consideration, the fact none the less remains that the adoption of a regulation fixing the amount of the export refunds takes place in such a context, which may, where appropriate, be taken into consideration by the Commission. In that regard, it is not always necessary to mention that general context in the statement of reasons for a regulation. Since it is quite normal that the Commission should take the general political and economic context into consideration, the mere fact that it does so does not mean that it is acting outside its usual practice. In addition, the general political and economic context is usually known to the operators concerned.

Therefore, the taking into account of current negotiations within the WTO and future political orientations did not need to be explicitly mentioned in the statement of reasons for Regulation No 689/2013 fixing the export refunds on poultrymeat, unless those factors had not only formed part of the general political and economic context taken into account when the export refunds were fixed, but had been the *raison d'être* of that regulation.

In that regard, where there is a political agreement on the future orientation of the common agricultural policy, that agreement forms part of the general political and economic context that may be taken into consideration by the Commission. The same applies to current negotiations within the WTO. When the Commission takes such matters into account, that does not mean that it exceeds the limits of its discretion, even if the list of criteria set out in Article 164(3) of Regulation No 1234/2007 were considered to be exhaustive. The general context may always have an influence on the exercise of the Commission's discretion and a list, even an exhaustive list, of the criteria which the Commission may take into consideration cannot prevent it from taking that general context into account.

(see paras 57, 58, 60, 61, 66, 71, 73, 157)

4. See the text of the decision.

(see para. 89)

5. The *raison d'être* of export refunds is to allow the European Union to dispose of its surplus stocks of the product in question in the internal market to third countries. The purpose of the export refunds system is not to subsidise any exporter, but to facilitate, where necessary, exports in the context of the attainment of the objectives of the CAP, as laid down in Article 39 TFEU, that is to say, in particular, to stabilise markets and to ensure a fair standard of living for the agriculture community and also reasonable prices for consumers.

(see para. 92)

6. In the matter of the fixing of the amount of export refunds, according to the wording of Article 164(3) of Regulation No 1234/2007, the Commission must take account of 'one or more' of the aspects provided for in that provision. According to that wording, it is even open to the Commission to rely on only one of the aspects provided for in that provision. Nor does that provision establish a hierarchy between those various aspects. There is nothing to prevent the Commission from placing particular importance on, for example, the aspect in Article 164(3)(b) of Regulation No 1234/2007, namely the aims of the common organisation of the markets, which are to ensure equilibrium and the natural development of prices and trade. The Commission may therefore, when fixing the amount of the export refunds, place more importance on the result of the analysis of the market than on the result of the theoretical calculation of the amount of export refunds, based on the difference between prices on the EU market and on the world market.

Moreover, it follows from the formulation of the said Article 164(3) that the Commission is required to take at least one of the aspects listed in that article into account. However, it does not follow from that wording that the list of aspects is exhaustive. The fact that, according to Article 162(1) of Regulation No 1234/2007, the actual grant of export refunds is optional argues in favour of the Commission having a very wide discretion and great flexibility when it fixes the amount of such refunds.

(see paras 96, 148, 150)

7. In the matter of the fixing of the amount of export refunds, the theoretical calculation of the amount of the said refunds, based on the difference between EU and world prices, relates only to the question whether an export refund at a positive amount is necessary for exporters in the sector concerned in order to be able to sell their products in the areas to which those refunds apply.

However, in the context of the global analysis of the market situation, the Commission is not required to consider the particular situation of exporting undertakings. Even if an export refund is necessary for exporters in order for them to be able to sell their products, that does not mean that it is necessary, in the light of the overall market situation, to fix export refunds at a positive amount.

Therefore, it is possible that the analysis of the market situation will allow the Commission to take the view that the market situation in the European Union is stable and that there is no need to fix export refunds at a positive amount in order to ensure market stability and to ensure a fair standard of living for the agricultural community. In such a situation, it is open to the Commission not to grant export refunds or to fix their amount at zero, even if the result of the theoretical calculation of the amount of the export refunds is positive. Such a situation is not limited to those in which there is a shortage of the product concerned or a serious crisis on the EU market.

(see paras 98, 99)