

2. For the precise anatomical definition of the cut of meat called "thin flank" in subheading ex 02.01 A II (a) 4. (bb) of the list appended to Regulation No 2787/81 reference must be made to the method normally used in the Member State or region concerned for cutting and boning bovine carcasses. It is for the national court to establish what that definition is.
3. Regulation No 2787/81 must be interpreted as meaning that export refunds are payable on cuts of meat comprising a portion of thin flank, provided that, having regard to the consumer habits, trade practices and normal methods of cutting and boning beef and veal in the Member State or region concerned, the portion of thin flank does not determine the essential character of the cut.

In Case 327/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry] for a preliminary ruling in the action pending before that court between

EKRO BV VEE- EN VLEESHANDEL, Apeldoorn,

and

PRODUKTSCHAP VOOR VEE EN VLEES, Rijswijk,

on the interpretation of Commission Regulation (EEC) No 2787/81 of 25 September 1981 fixing the export refunds on beef and veal (Official Journal 1981, L 271, p. 44) in relation to boned or boneless cuts of meat which include a piece of "thin flank",

THE COURT (Fifth Chamber)

composed of: Y. Galmot, President of Chamber, Lord Mackenzie Stuart, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice may be summarized as follows:

I — Facts and procedure

Under Article 18 of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187), the difference between the prices of products referred to in that regulation on the world market and prices within the Community may be covered by an export refund. The amount of that refund was established by Commission Regulation (EEC) No 2787/81 of 25 September 1981 (Official Journal, L 271 of 26. 9. 1981, p. 44) which, in the annex thereto, set out the list of procedure for which the export refund is granted.

In that list there appeared, under Common Customs Tariff heading "ex 02.01 A II", „Meat of bovine animals: (a) Fresh or chilled: . . . ; 4. Other: . . . (bb) Boned or boneless, excluding the thin flank, the shin and the shank, each piece individually wrapped”.

On 23 October and 6 November 1981 Ekro BV Vee- en Vleeshandel of Apeldoorn (hereinafter referred to as "Ekro") declared to the collector of customs and excise at Bergh an export transaction to the Vatican City of two consignments of meat, amounting to 2 380 kg and 2 602 kg respectively, which it described as "Veal cuts (boned or boneless) (other), chilled (excluding

thin flank, shin and shank, each piece individually wrapped)". It applied for export refunds in respect of those two consignments of meat.

In each of those consignments there were, *inter alia*, pieces of breast which also included a certain piece of meat cut out in the shape of a pistol, and in the main proceedings it is disputed whether that must be considered to be "thin flank". The total weight of the pieces of breast amounted to 1 156 kg, of which a part amounting to 201 kg was made up by the aforementioned pieces cut out in the shape of a pistol whose definition is disputed.

The Produktschap voor Vee- en Vlees [Cattle and Meat Board], Rijswijk (hereinafter referred to as "the Board"), refused to grant Ekro export refunds in respect of the exportation of the 1 156 kg of breast.

Ekro appealed to the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry] (hereinafter referred to as "the College"), against that refusal.

In that dispute, the parties to the main action are, on the one hand, in disagreement on the question of whether the aforementioned cuts in the shape of a pistol must be regarded as "thin flank". The Board, which answers that question in the affirmative, is of the view that "thin flank" is to be understood as the flank meat situated between the back and the shoulder blade on the one hand and the hindquarters of the animal on the other. Ekro, which answers it in the negative, is of the opinion that "thin

flank” is to be understood as the flank meat belonging to the hindquarters together with the part belonging to the two last ribs.

Furthermore, the parties to the main action disagree on the question of whether a refund is payable in respect of the exportation of a piece of the breast or brisket of a bovine animal which includes a piece of “thin flank”. The Board answers that question in the negative. Ekro answers it in the affirmative, stating that a refund ought to be granted, calculated according to the weight of the meat exported less the weight of the “thin flank” which it includes.

Considering that the dispute concerned questions of interpretation of Community law the College stayed the proceedings and by a decision of 17 December 1982 referred the following two questions to the Court pursuant to Article 177 of the EEC Treaty:

1. On a correct interpretation of heading 02.10. A II (a) 4. ex (bb) of the Common Customs Tariff what is to be understood by “thin flank” and how may “thin flank”, which does not fall within that tariff heading, be distinguished from boned or boneless cuts, which do?
2. Does the correct interpretation of Regulation No 2787/81 mean that no refund may be granted in respect of the export to non-member countries of a boned or boneless cut if a piece of “thin flank” is attached to it, or does it mean rather that in such a case the refund must be granted on the basis of the total weight of the meat exported less the weight of the “thin flank”?

The decision referring the question for a preliminary ruling was lodged at the Registry of the Court on 20 December 1982.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities written observations were submitted by Ekro acting through its Deputy Director, A. Boovman, by the Board, represented by its Secretary J. J. Koch, acting for the President of the Board, by the Government of the Federal Republic of Germany, represented by its Agents, Martin Seidel and Ernst Röder, and by the Commission of the European Communities represented by its Legal Adviser, Robert Caspar Fischer.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preliminary inquiry and to assign the case to the Fifth Chamber in accordance with Article 95 of the Rules of Procedure. It asked the Commission to reply in writing to certain questions.

II — Written observations

1. *Ekro's observations*

By way of observations, Ekro submitted to the Court a copy of a letter which it had sent to the College in which there appears a question which, in its view, is of vital interest in the present proceedings. That third question, which Ekro suggests the Court should also deal

with for reasons of completeness, raises the existence of discrimination resulting from the fact that the refund for boned or boneless cuts is not granted for boned or boneless "thin flank", while the refund for unboned pieces is granted for unboned "thin flank".

2. *Observations of the Cattle and Meat Board*

As to the *first question*, the Board observes that heading 02.01 A II (a) 4. ex (bb) may be understood by reference to the fact that the Commission had established a separate system of refunds, varying according to destination, for beef presented in the form of high-value cuts, in particular boned cuts which were individually wrapped. The refunds fixed for that heading are the highest available for beef. Cuts of low value, such as "thin flank", "shin" and "shank", should not benefit from the higher refund.

In the Netherlands "thin flank" [vang] is understood to mean the part of the animal shown in the sketch annexed to the Board's observations, including the umbilical area. In the absence of an anatomical definition of that term in Community regulations, the Netherlands may and must define it according to the definition generally accepted in the Netherlands. In each Member State, there is a specific term for "thin flank", a term which may not be exactly the same in substance in the different Member States because of the varying traditions in the meat trade. It follows that, at Community level, exporters are not subject to the same applications of the tariff heading in question in the various Member States.

"Thin flank" may therefore be distinguished from boned or boneless

cuts under heading 02.01 A II (a) 4. ex (bb) by removing from the whole carcass, as shown in the sketch annexed to the observations, the part marked as such [4A] (as well as the part shown as shin and shank [schenkel] in that sketch).

As to the *second question* the Board adopts the views of the Commission.

3. *Observations of the Government of the Federal Republic of Germany*

With regard to the *first question*, the Government of the Federal Republic of Germany first emphasizes that the question relates not to the interpretation of the Common Customs Tariff heading mentioned, but to the interpretation of the corresponding heading in the annex to Commission Regulation No 2787/81 of 25 September 1981. In its view, and in conformity with a decision of the Federal Minister of Finance of 18 November 1982, "Knochendünnung" [thin flank with bone] is a piece which is cut out between the eighth and the ninth ribs towards the hindquarter and which includes the part situated around the next five ribs; "Fleischdünnung" [boneless thin flank] includes the abdominal muscles, marked off by the thigh, by the "thin flank" with bone and, at the top, by the part of the sirloin known in Germany as "Roastbeef".

With regard to the *second question* the Government of the Federal Republic of Germany is of the view that an export refund should be granted for a boned or boneless cut including a piece of "thin flank" if the proportion of "thin flank" does not determine the essential nature of the cut.

The regulation leaves in doubt the question of how the cuts of beef which include “thin flank”, “shin” or “shank” should be treated. A cut consisting of shin or shank and of other meat would not be shin or shank, and in the same way a cut consisting of another meat and of “thin flank”. For such cuts three solutions may be put forward:

A boned or boneless cut including “thin flank” may not be eligible for any export refund;

A boned or boneless cut including “thin flank” may be eligible for an export refund only for that part which is not “thin flank”;

A boned or boneless cut including “thin flank” may be eligible for an export refund for the whole cut, if the “thin flank” does not give the cut its essential character.

The first solution was adopted in Commission Regulation (EEC) No 2773/82 of 13 October 1982 fixing the export refunds on beef and veal (Official Journal, L 292, p. 20) which, in Note 7 to the annex thereto, states that only boned cuts which do not consist, “entirely or partially, of thin flanks” are to be eligible for an export refund. That regulation, which entered into force on 1 November 1982, is not applicable in the present case. Before that regulation, the legal situation was different, or at least unclear, as the Commission itself has admitted in a telex message of 3 August 1982 to the Federal Minister of Food.

The second solution mentioned above could only be based upon an express provision.

Therefore, according to the German Government, the third solution must be adopted, the criterion being whether the part comprised of “thin flank” gives the cut its essential nature. In the present case reference must be made to the first part of Article 20 (1) of Council Regulation No 805/68 of 27 June 1968 which provides that the general rules for the interpretation of the Common Customs Tariff and the special rules for its application are to apply to the tariff classification of products covered by the regulation, as decided by the Court in a similar case in a judgment of 1 July 1982 (Case 145/81 *Hauptzollamt Hamburg-Jonas v Ludwig Wünsche & Co* [1982] ECR 2493). According to General Rule of Interpretation 3 (b) of Section I, Part A of the Common Customs Tariff, composite goods must be classified as if they consisted of the material or component which gives them their essential character. Boned or boneless cuts including “thin flank” must therefore be considered eligible for refunds where that part of the meat which is not “thin flank” gives the product its essential character. The whole of the product whose classification depends on the element which gives it its essential character must be treated as if it were composed entirely of that element.

4. *Observations of the Commission*

As a preliminary matter the Commission observes that for the definition of products which are eligible for export refunds, Regulation No 2787/81 is based on the nomenclature of the Common Customs Tariff but often adds special conditions thereto, for example restricting the grant of refunds to one part of the products falling under a heading of the Common Customs Tariff (headings designated “ex”).

The particular nomenclature thus adopted is not to be found in the Common Customs Tariff. Since it belongs to a system having its own legal basis and its own objective, that special nomenclature must indeed be interpreted in the context of the rules of interpretation of the Common Customs Tariff, but also in accordance with the terms and the objectives of the agricultural regulation which established it.

The first question therefore relates to the interpretation of the term "thin flank" within the meaning of the annex to Regulation No 2787/81 and the second question concerns the whole of the category in question and the calculation of the refund.

By contrast with other agricultural markets, the Community market for beef and veal does not have large structural surpluses. Although a relatively selective system of refunds is applied to certain ways of presenting meat and for certain destinations in order to support the participation of the Community in international trade, the low level of Community involvement in the world trade makes it unnecessary to fix refunds for other products in the sector, which explains why refunds are applicable only to limited categories of products. Fresh or chilled meat, boned or boneless cuts, excluding "thin flank", "shin" and "shank", each piece individually wrapped, are relatively expensive kinds of beef or veal whose exportation is of importance to the Community and for which it has fixed a relatively high export refund. The "thin flank", the "shin" and the "shank", on the other hand, are of relatively low value and are intended in particular for the meat processing industry; those cuts traditionally have large markets within the Community, so

that payment of export refunds is not justified.

With regard to the *first question*, the Commission observes that a comparison of the terms used to describe meat in the various Community languages is not always sufficient to guarantee a uniform interpretation. The manner in which slaughtered animals are boned and cut, as well as the presentation of the cuts, varies from one country to another, and even from region to region, so that the same denomination does not always designate precisely the same anatomical section even within the same linguistic area. For that reason certain Community regulations have clarified the terminology with regard to other terms designating different presentations of meat.

As far as "thin flank" is concerned, Community legislation does not contain any precise definition. The Dutch term "vang" indicates the part situated between the thigh, the abdomen and the groin. A publication of the European Productivity Agency of the Organization for European Economic Cooperation dating from 1960, setting out the methods of cutting and the terms in use in the various countries in diagrams and terminological tables, indicates that in butchery, according to the method used in the Netherlands, the "*vanglap*" ["thin flank"] is on the side of the abdomen between the "*spierstuk*" and the "*slip van de lende*" which form part of the hindquarter, on the one hand, and the "*dunne borst*" on the other.

On the basis of the diagrams in question, as well as the terms used in the various Community languages, the Commission

is of the view that it may be concluded that “*vang*” — like the terms used in the other languages — may be understood as meaning the portion of flank on the side of the abdomen lying between the piece belonging to the hindquarters properly so-called and the breast or brisket. There does not appear to be any clear difference between the terminology in use in the various Member States as far as the borderline between the “thin flank” and the hindquarter is concerned. The only point upon which there does not appear to be perfect agreement is the precise demarcation between the “thin flank” and the breast or brisket.

Examining the definitions suggested by the parties to the main action, the Commission observes that Ekro's position is based upon a misunderstanding. There are in fact two methods in use for cutting the hindquarter, namely on the one hand the “*découpe droite*” [straight cut], leaving the “thin flank” attached to the hindquarter in such a way that the forequarter includes the eight to ten other ribs and the breast or brisket, and on the other hand the “*découpe pistola*” [pistol cut], leaving the “thin flank” and the lower parts of the ribs attached to the forequarter. The “thin flank” does not therefore always belong to the hindquarter. Since, in the present case, the disputed piece is cut “in the form of a pistol” it may be thought that it is a “*découpe pistola*” in which the “thin flank” normally remains attached to the forequarter. The criterion according to which the “thin flank” includes only the portion of flank on the last two ribs does not conform to the usual cutting methods in the Netherlands. In the terminology of the various Member States the “thin flank” includes more often the portion of flank on the last three to five ribs. Flank meat of

lower quality is, moreover, not limited to the meat of the last two ribs.

The definition suggested by the defendant in the main action, by contrast, namely the part of the flank between the back and the shoulder blade on the one hand, and the hindquarter on the other, would appear to be too wide or too imprecise. It would be closer to Dutch terminology to define “thin flank” as being the portion of flank between the breast or brisket and the hindquarter.

The answer to the first question should therefore be as follows: for the application of Commission regulation No 2787/81 to exports of the products defined in the annex to that regulation under Common Customs Tariff heading 02.01 A II (a) 4. ex (bb) “thin flank” means the portion of flank lying between the hindquarter and the breast or brisket of the carcass.

With regard to the *second question*, it follows from the terms and the objective of the disputed provision that a refund cannot be granted unless the boned or boneless pieces do not contain any “thin flank”.

To grant a refund when the pieces contain only a small amount of “thin flank” would mean granting a relatively high refund for meat of relatively low value and would indirectly encourage exports of that meat, while “thin flank” would become scarce for the Community meat processing industry. Moreover, since the text does not provide for it, one

cannot require the customs authorities to limit the refund by deducting the weight of the pieces of "thin flank". Furthermore, such an operation would in no way restrict the undesirable development of exports of "thin flank" and would complicate controls. That interpretation was confirmed at a later date than the facts in the present case by Regulation No 2773/82 by the inclusion of Note 7 in the annex thereto.

The second question may therefore be answered to the effect that the refunds provided for by Regulation No 2787/81 may not be granted in respect of exports to non-member countries of boned or boneless cuts which consist, entirely or partially, of thin flanks.

III — The Commission's replies to questions put by the Court

In answer to questions put by the Court to the Commission, the latter gave the following information:

1. There is great diversity in the methods by which beef and veal are butchered and boned, depending on commercial practice and consumer tradition. Those traditions vary from one country to another and often even from one region to another. These differences are still greater as far as concerns the cutting and boning of the forequarters and hindquarters. It is therefore practically impossible to find Community-wide definitions. Each Member State must therefore apply the definitions of the various cuts of meat which are in use in that

State, without, however, losing sight of the purpose of the Community provision. The Commission's suggested reply to the first question of the reference may be explained in that light.

2. Consequently, it is not possible to give a precise Community definition of the exact borderline between the breast or brisket and the "thin flank" or of the extent of the hindquarter of the carcass.
3. At the time of the introduction of the term "thin flank" into Community legislation, the Commission was aware of the possibility that that term would not have exactly the same meaning in each Member State, but it considered that the differences were unimportant and would not justify modification of cutting methods and national descriptions. Nor did it attempt to standardize divergent practices to that end for the purpose of granting export refunds in the various Member States.

IV — Oral procedure

At the sitting on 26 October 1983 oral argument was presented by the following: Peter Wendt, Rechtsanwalt, Hamburg, for Ekro; Ernst Röder, for the Government of the Federal Republic of Germany; and Robert Caspar Fischer, for the Commission.

Ekro stated in particular that, in its view, the first question was asked only if, in view of the answer to the second question, the granting of refunds actually depends on the exact definition of "thin

flank”, which, according to the solution proposed by it, is not the case. If a reply to that question were necessary, the Court would have to rule that, owing to the imprecision of the terms used and the different ways in which they are understood in the various Member States, Commission Regulation No 2787/81 is invalid in so far as it precludes the granting of export refunds on “thin flank”. As regards the second question, the answer must be that the refund must be granted under Regulation No 2787/81 on the whole cut of meat even if it comprises a piece of “thin flank”, provided that the “thin flank” does not give the cut its essential character. At all events, that is not the case if the proportion of “thin flank”

does not exceed 25%. Ekro referred here to the arguments put forward by the German Government during the written procedure and to a comparison of the refunds provided for by Regulation No 2787/81 on the one hand and Regulation No 2773/83 on the other for boned or boneless cuts and unboned cuts; from that comparison it is clear that the insertion of Note 7 by Regulation No 2773/82 changed the previous legal situation as regards the taking into consideration of cuts to which a piece of “thin flank” is attached.

The Advocate General delivered his opinion at the sitting on 14 December 1983.

Decision

- 1 By judgment of 17 December 1982, which was received at the Court on 20 December 1982, the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Commission Regulation (EEC) No 2787/81 of 25 September 1981 fixing the export refunds on beef and veal (Official Journal 1981, L 271, p. 44).
- 2 Those questions were raised in proceedings between Ekro BV Vee- en Vleeshandel (hereinafter referred to as “Ekro”), which is a Netherlands company exporting beef and veal, and the Produktschap voor Vee en Vlees [Cattle and Meat Board, hereinafter referred to as “the Board”], Rijswijk. The dispute concerns the Board’s refusal to grant Ekro refunds on exports of beef and veal to a non-member country under Article 18 of 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 under Commission Regulation No 2787/81.

3 An annex to Commission Regulation No 2787/81 sets out the list of products which qualify for the export refund referred to in Article 18 of Regulation No 805/68. That list includes, under the heading "ex 02.01 A II" of the Common Customs Tariff, "Meat of bovine animals: (a) Fresh or chilled: . . . ; 4. Other: . . . (bb) Boned or boneless, excluding the 'thin flank', the shin and the shank, each piece individually wrapped".

4 In October 1981 Ekro exported to the Vatican City two consignments of veal, weighing 2 380 kg and 2 062 kg, in respect of which it applied for export refunds under the provision cited above. Each of those consignments contained *inter alia* pieces of breast, weighing in total 1 156 kg, to which were attached pieces of meat cut in the shape of a pistol which, according to the Board, must be considered to form part of the "thin flank". The total weight of the last-mentioned pieces was 201 kg. The Board refused to grant Ekro export refunds on the 1 156 kg of breast.

5 Ekro appealed against that refusal to the College van Beroep voor het Bedrijfsleven. It argued, first, that the aforementioned pieces, cut in the form of a pistol and attached to the pieces of breast, were not to be regarded as forming part of the "thin flank" and, secondly, that the refunds ought in any case to be calculated according to the total weight of the meat exported less the proportion of "thin flank" that it comprised, so that even the exportation of pieces of breast of bovine animals to which pieces of thin flank were attached would attract a proportionate refund.

6 To enable it to give judgment the College van Beroep voor het Bedrijfsleven referred the following questions to the Court for a preliminary ruling:

1. On a correct interpretation of heading 02.01 A II 4. ex (bb) of the Common Customs Tariff what is to be understood by "thin flank" and how may "thin flank", which does not fall within that tariff heading, be distinguished from boned or boneless cuts, which do?

2. Does the correct interpretation of Regulation No 2787/81 mean that no refund may be granted in respect of the export to non-member countries of a boned or boneless cut if a piece of “thin flank” is attached to it, or does it mean rather that in such a case the refund must be granted on the basis of the total weight of the meat exported less the weight of the “thin flank”?

The first question

- 7 The purpose of the first question is to establish a precise definition of the cut of meat from bovine animals which is designated “thin flank” in the list annexed to Commission Regulation No 2787/81.
- 8 The Government of the Federal Republic of Germany and the Commission, in their written observations to the Court, and Ekro, in its submissions in the main proceedings, have each argued in favour of a different anatomical definition of the cut in question, explaining, where necessary with the aid of drawings, where that part of the abdominal wall is situated in relation to the hindquarters and forequarters of a bovine carcass and in relation to the ribs and breast.
- 9 It was argued by the Board and by the Commission, in its oral observations, that for the definition of the cut in question the authorities in each Member State should refer to the customs and practices existing in that State as regards the cutting and boning of bovine carcasses. The Commission added, however, that in doing so they must pay heed to the purpose of the refund system set up by the Community regulations.
- 10 It is clear from the evidence before the Court that, as regards the cutting and boning of bovine carcasses, there are many customs and practices, which may vary not only from Member State to Member State but even from region to region. The various cutting and boning methods originate in particular in consumer habits and trade practices in the different Member States and regions. The meaning of the terms used in the various language versions of

Regulation No 2787/81 may therefore vary from one Member State or region to another, depending on the method habitually used to cut and bone bovine carcasses.

- 11 The need for a uniform application of Community law and the principle of equality require that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the Community; that interpretation must take into account the context of the provision and the purpose of the relevant regulations.
- 12 As the Commission has explained, the purpose of the provision in question is to prevent the payment of refunds on low-value cuts of meat, for which there is sufficient demand in the Community meat-processing industry. However, like the various methods for cutting and boning bovine carcasses, the determination of the shape and exact size of the part of the abdominal wall which should be regarded as having a lower value depends on consumer habits and trade practices, which vary from one Member State or region to another. It is therefore impossible to deduce a precise anatomical definition of that part of the carcase from the purpose of the relevant Community provision.
- 13 In the absence of any such indication in Regulation No 2787/81, it cannot be assumed that the Community legislature intended, in a regulation governing refunds on exports of meat, to harmonize or standardize the cutting and boning methods used in the various Member States. On the contrary, it is clear from the Commission's reply to a question put by the Court that when Regulation No 2787/81 was adopted the Commission was aware of the differences in the exact meaning of the terms used in the regulation but considered that they were of minor importance and did not justify modifying the existing practices and methods.
- 14 By thus accepting that those terms might have different meanings the Commission incorporated into its regulation an implied reference to the

cutting and boning methods used in the various Member States and regions. Therefore, notwithstanding the aforementioned principle that provisions of Community law should be interpreted uniformly, it is not for the Court to give a uniform Community definition of those terms.

- 15 For the precise anatomical definition of the cut of meat called "thin flank" reference must therefore be made to the method normally used in the Member State or region concerned for cutting and boning bovine carcasses. It is for the national court to establish what that definition is.

- 16 The answer to the first question must therefore be that it is for the national court to establish what, according to the method normally used to cut and bone beef and veal in the Member State or region concerned, is the precise anatomical definition of the part of the abdominal wall which is designated "thin flank" in subheading ex 02.01 A II (a) 4. ex (bb) of the list annexed to Commission Regulation No 2787/81 of 25 September 1981:

The second question

- 17 By its second question the *College van Beroep voor het Bedrijfsleven* seeks to establish whether a refund must be granted under Regulation No 2787/81 where the pieces of meat exported comprise a piece of "thin flank" and, if so, whether the refund must be calculated on the basis of the total weight of the meat exported or on the basis of that weight less the weight of the "thin flank".

- 18 The Board and the Commission take the view that no export refund is payable if a cut of meat comprises a piece of "thin flank". In their submission, there is no provision in the regulation for the granting of a reduced refund, whilst the granting of a refund calculated on the basis of the total weight of the cut would mean granting a high refund on meat of low value and thus encouraging undesirable exports of such meat, for which there is demand in the Community meat-processing industry. They argue that their view has in fact been confirmed, since the occurrence of the

relevant events, by an amendment of the annex in question effected by Commission Regulation (EEC) No 2773/82 of 13 October 1982 fixing the export refunds on beef and veal (Official Journal 1982, L 292, p. 20).

- 19 It was submitted by the Government of the Federal Republic of Germany and by Ekro, in its oral observations, that, in accordance with Article 20 (1) of Regulation No 805/68 and the General Rules for the Interpretation of the Common Customs Tariff, particularly Rule 3 (b) in Section I, Part A, a cut of meat comprising a piece of "thin flank" must, being a composite product, be classified as if it consisted of the part which gives it its essential character. In Ekro's view, a cut of meat containing up to 20% of "thin flank" may still qualify for refunds.

- 20 In this regard, it must first be observed that Articles 20 (1) of Council Regulation No 805/68 of 27 June 1968, on the basis of which the refunds in question are fixed, provides that: "The general rules for the interpretation of the Common Customs Tariff and the special rules for its application shall apply to the tariff classification of products covered by this regulation". General Rule 3 (b) for the interpretation of the nomenclature of the Common Customs Tariff states that "composite goods . . . shall be classified as if they consisted of the material or component which gives them their essential character".

- 21 Even though Regulation No 2787/81 does not simply refer to the nomenclature of the Common Customs Tariff but establishes its own nomenclature for the purpose of fixing export refunds, that general rule applies to the classification of commodities under the special nomenclature of Regulation No 2787/81, unless some other solution is dictated by the terms of that regulation or by the aims of the system of export refunds.

- 22 As far as the terms of the annex to Regulation No 2787/81 are concerned, the wording of subheading ex 02.01 A II (a) 4. ex (bb) — "boned or boneless, excluding the thin flank, the shin and the shank, each piece individually wrapped" — excludes only cuts consisting entirely of "thin flank", shin or shank; it says nothing about cuts consisting only partly of "thin flank", shin or shank. The interpretation of the provision in force at

the material time cannot be affected by the fact that the uncertainty about the treatment to be accorded to such cuts was subsequently removed without retroactive effect by the insertion in the annex to Regulation No 2773/82 of Note 7, which states that: "Boned cuts which consist, entirely or partially, of thin flanks, shin or shank are ineligible for the refund".

- 23 As regards the aims of the refund system, and in particular the desire to prevent the payment of refunds on meat of low value, it must be borne in mind that, as was explained in reply to the first question, views as to what must be considered meat of low value in this respect vary greatly from one Member State to another. The aims of the refund system cannot therefore be invoked in order to justify discarding the aforementioned general rule for the interpretation of the nomenclature of the Common Customs Tariff when construing the relevant subheading of the annex to Regulation No 2787/81, so as to arrive at the view that the presence in a cut of meat of even a small piece of meat which, according to the methods used in a Member State, may be classified as "thin flank" necessarily prevents refunds from being granted in that Member State.
- 24 The essential character of a cut of meat does not depend, as Ekro has suggested, on a specific percentage of another kind of meat attached to it but must be determined in accordance with the consumer habits, trade practices and normal methods of cutting and boning beef and veal in the Member State or region concerned. These are matters to be decided by the national court.
- 25 The answer to the second question must therefore be that Regulation No 2787/81 must be interpreted as meaning that export refunds are payable on cuts of meat comprising a portion of "thin flank", provided that, having regard to the consumer habits, trade practices and normal methods of cutting and boning beef and veal in the Member State or region concerned, the portion of "thin flank" does not determine the essential character of the cut.

Costs

- 26 The costs incurred by the Government of the Federal Republic of Germany and the Commission, which have submitted observations to the Court, are not recoverable. As the proceedings are, in so far as the parties to the main proceedings are concerned, a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Fifth Chamber)

in answer to the questions submitted to it by the College van Beroep voor het Bedrijfsleven by judgment of 17 December 1982, hereby rules:

1. It is for the national court to establish what, according to the method normally used to cut and bone beef and veal in the Member State or region concerned, is the precise anatomical definition of the part of the abdominal wall which is designated "thin flank" in subheading ex 02.01 A II (a) 4. ex (bb) of the list annexed to Commission Regulation (EEC) No 2787/81 of 25 September 1981.
2. Regulation (EEC) No 2787/81 must be interpreted as meaning that export refunds are payable on cuts of meat comprising a portion of thin flank, provided that, having regard to the consumer habits, trade practices and normal methods of cutting and boning beef and veal in the Member State or region concerned, the portion of thin flank does not determine the essential character of the cut.

Galmot

Mackenzie Stuart

Due

Everling

Kakouris

Delivered in open court in Luxembourg on 18 January 1984.

P. Heim
Registrar

Y. Galmot
President of the Fifth Chamber