

JUDGMENT OF THE COURT (Third Chamber)  
15 July 1993 \*

In Case C-34/92,

REFERENCE to the Court under Article 177 of the EC Treaty by the Finanzgericht Hamburg (Germany) for a preliminary ruling in the proceedings pending before that court between

**GruSa Fleisch GmbH&Co. KG, Import-Export**

and

**Hauptzollamt Hamburg-Jonas,**

on the interpretation and validity of Commission Regulation (EEC) No 2773/82 of 13 October 1982 fixing the export refunds on beef and veal (OJ 1982 L 292, p. 20), replaced by Commission Regulation (EEC) No 1315/84 of 11 May 1984 (OJ 1984 L 125, p. 38), and on the interpretation of Commission Regulation (EEC) No 2891/84 of 15 October 1984 (OJ 1984 L 273, p. 5), which replaced Regulation No 1315/84,

THE COURT (Third Chamber),

composed of: M. Zuleeg, President of the Chamber, J. C. Moitinho de Almeida and F. Grévisse, Judges,

Advocate General: W. Van Gerven,  
Registrar: H. von Holstein, Assistant Registrar,

after considering the written observations submitted:

\* Language of the case: German.

- on behalf of the applicant in the main proceedings, by Dietrich Ehle, Rechtsanwalt, Cologne,
- on behalf of the Commission of the European Communities, by Ulrich Wölker, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of applicant in the main proceedings and of the Commission at the hearing on 21 January 1993,

after hearing the Opinion of the Advocate General at the sitting on 2 March 1993,

gives the following

### Judgment

- 1 By order of 10 December 1991, received at the Court on 10 February 1992, the Finanzgericht Hamburg (Finance Court, Hamburg) (Germany) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation and validity of Commission Regulation (EEC) No 2773/82 of 13 October 1982 fixing the export refunds on beef and veal (OJ 1982 L 292, p. 20), replaced by Commission Regulation (EEC) No 1315/84 of 11 May 1984 (OJ 1984 L 125, p. 38), and on the interpretation of Commission Regulation (EEC) No 2891/84 of 15 October 1984 (OJ 1984 L 273, p. 5), which replaced Regulation No 1315/84.
- 2 These questions were raised in proceedings between the company GruSa Fleisch, Import-Export ('GruSa') and the Hauptzollamt Hamburg-Jonas ('Hauptzollamt') and relate to a demand for the repayment of export refunds granted to GruSa.

- 3 According to the order for reference, in May and June 1984 GruSa applied for and obtained permission from the Hauptzollamt to have seven consignments of beef and veal stored in a warehouse for meats eligible for refunds on account of their exportation to non-member countries.
- 4 Having granted GruSa the export refunds for the consignments of beef and veal mentioned above, the Hauptzollamt demanded repayment of the refunds in question on the grounds that it had subsequently been revealed that the consignments in question contained thin flanks ('Knochendünnung') which, according to the relevant Community legislation, do not qualify for the refund.
- 5 In that respect it should be noted that the products for the exportation of which the refund referred to in Article 18 of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the beef and veal markets (OJ, English Special Edition 1968 (I), p. 187) is payable, listed in the Annexes to Regulations Nos 2773/82 and No 1315/84 in force during the period in question, included, in particular, under the heading 'ex 02.01 A II' of the Common Customs Tariff, 'Meat of bovine animals: a) Fresh or chilled: ... 4. Other: ... ex bb) Boned or boneless [cuts], excluding the thin flanks ["Fleisch- und Knochendünnung"], the shin and the shank, each piece individually wrapped (?)'.
- 6 Moreover, according to note (7) to those annexes, 'Boned cuts which consist, entirely or partially, of thin flanks ("Fleisch- und Knochendünnung"), shin or shank are ineligible for the refund'.
- 7 The documents before the Court show that, according to the cutting method applicable in Germany during the period to which the questions submitted to the Court refer and described in the manual on the cutting-up of beef carcasses, issued by the Deutsche Landwirtschaftsgesellschaft, the 'Knochendünnung' is a portion cut from between the eighth and ninth ribs back to the hindquarters, and including the tissue attached to the next five ribs, whereas 'Fleischdünnung' is understood to mean the soft parts of the belly, delimited by the junction with the leg, the 'Knochendünnung' and (above) the sirloin.

8 It was against that background that the Finanzgericht Hamburg, before which GruSa had brought an action contesting the demand for repayment, referred the following questions to the Court for a preliminary ruling:

1. Are Article 1 of Regulation (EEC) No 2773/82 and Article 1 of Regulation (EEC) No 1315/84, read in conjunction with subheading ex 02.01 A II 4 ex bb) of the Common Customs Tariff (“Boned or boneless [cuts], excluding the thin flanks (‘Fleisch-und Knochendünnung’), the shin and the shank, each piece individually wrapped”), as set out in the annexes to those provisions, to be interpreted as meaning that, in the Federal Republic of Germany, thin flank with bone (“Knochendünnung”) is one of the cuts of beef qualifying for a refund?
2. If not, does Regulation (EEC) No 2891/84 apply with retroactive effect?
3. If the answers to both Question 1 and Question 2 are in the negative, are Regulations (EEC) No 2773/82 and (EEC) No 1315/84 invalid in so far as they exclude “Knochendünnung” from the refund?

9 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

### **The first and third questions**

10 It should be observed at the outset that the German text of the relevant provisions of Regulations No 2773/82 and No 1315/84 expressly excluded the cut of beef or veal designated by the term ‘Knochendünnung’ from export refunds during the period in question.

- 11 However, the national court is uncertain as to whether the exclusion, in Germany, of that cut from export refunds is compatible with the requirements resulting from uniform interpretation of Community law and observance of the principle of equality. On the one hand, comparison with other language versions of the provisions in question, and in particular with the French ('flanchet'), Dutch ('vang') and Italian ('pancia'), shows that in the other Member States the cut excluded from the refund corresponded, in all essential respects, to 'Fleischdünnung'. On the other hand, the purpose of the legislation at issue is to exclude low-value cuts of meat from refunds, albeit that it is not disputed that 'Knochendünnung' is a cut of the same value as one taken from the first to the eighth ribs which is eligible for the refund.
- 12 Should the interpretation advocated by GruSa prove to be incorrect, the national court would like to know whether the legislation in issue is invalid inasmuch as it infringes the principle of non-discrimination set out in the second subparagraph of Article 40(3) of the Treaty, read in conjunction with Article 18 of Regulation No 805/68, cited above, according to which the refund is to be the same for the whole Community.
- 13 In its judgment in Case 327/82 *Ekro BV Vee-en Vleeshandel v Produktschap voor Vee-en Vlees* [1984] ECR 107, paragraphs 13 and 14, the Court held, with regard to what was the precise anatomical definition of the cut referred to as 'thin flanks' in subheading ex 02.01 A II a) 4 ex bb) in the list annexed to Commission Regulation (EEC) No 2787/81 of 25 September 1981 fixing the export refunds on the beef and veal (OJ 1981 L 271, p. 44), which was subsequently replaced by Regulation No 2773/82, that, notwithstanding the principle that provisions of Community law should be interpreted uniformly, it was not for the Court to give those terms a uniform Community definition, particularly in view of the fact that the Community legislature was aware of the differences in the exact meaning of the terms used, differences which were, however, of minor importance and did not justify modifying existing practices and methods.
- 14 In the absence of harmonization or standardization of the cutting and boning methods used in the various Member States, the content of the terms used in the

different language versions of the legislation in question can thus vary from one Member State to another when those differences are only of minor importance, as in the present case.

- 15 As the Commission has pointed out without being contradicted, the cut of beef or veal which corresponds to 'Knochendünnung' can account, at the most, for 4% of beef or veal production in the Member States.
  
- 16 In addition, as GruSa accepts, part of the cut in question was ineligible for the refund in the other Member States during the period in question. The Commission specifically stated at the hearing that in France, for example, the cut of meat ineligible, as thin flank, for the export refund began, for the large beef producers, at the tenth rib.
  
- 17 As regards, next, the purpose of the refund system and in particular the objective of precluding the grant of refunds for low-value cuts of meat, it should be pointed out that, as the Advocate General stated at paragraph 16 of his Opinion, the price on the world market is the sole criterion which enables the value of the cut corresponding, entirely or partially, to 'Knochendünnung' to be determined. In general, that price is several times lower than the world-market price of the cut of beef or veal taken from the first to the eighth ribs, which qualifies for the refund. It may therefore not be inferred from the comparison of those two cuts, from the point of view of their value, that there is an obligation for 'Knochendünnung' to be accorded the benefit of the refund.
  
- 18 It follows from the foregoing considerations that the legislation in issue must be interpreted as meaning that, during the period in question, it excluded 'Knochendünnung' from export refunds.

- 19 In reply to the third question, it should be pointed out that that interpretation is not incompatible with the principle of equal treatment as implemented in Article 18 of Regulation No 805/68, since, as stated above, the differences in content of the terms used are unavoidable in the absence of harmonization or standardization of the cutting and boning methods employed in the Member States, differences which, in their consequences, are still limited.
- 20 It should therefore be stated in reply to the national court that Article 1 of Regulations No 2773/82 and Article 1 of Regulation No 1315/84, read in conjunction with subheading ex 02.01 A II a) 4 ex bb) ('Boned or boneless [cuts], excluding the thin flanks ("Fleisch— und Knochen dünnung"), the shin and the shank, each piece individually wrapped'), as set out in the annexes to those provisions, must be interpreted as meaning that in Germany 'Knochen dünnung' was not, during the period in question, one of the cuts of beef or veal qualifying for export refunds. Consideration of the third question has not revealed any factor of such a nature as to affect the validity of the abovementioned provisions.

### The second question

- 21 In its second question, the national court asks whether Commission Regulation (EEC) No 2891/84 of 15 October 1984 fixing the export refunds on beef and veal (OJ 1984 L 273, p. 5), by virtue of which 'Knochen dünnung' qualifies for the export refund, is to be interpreted as having retroactive effect.
- 22 It is settled case-law of the Court (see, in particular, Case 21/81 *Bout* [1982] ECR 381, paragraph 13), that, in order to ensure observance of the principles of legal certainty and the protection of legitimate expectations, the substantive rules of Community law must be interpreted as applying to situations existing before their

entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to them.

- 23 Thus, as the Advocate General has shown in paragraphs 21 and 23 of his Opinion, there is nothing in Regulation No 2891/84 to allow the conclusion that the regulation is intended to govern situations existing before 16 October 1984, the date on which it entered into force.
- 24 The reply to the second question should therefore be that Regulation No 2891/84 does not apply with retroactive effect.

### Costs

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

On those grounds,

### THE COURT (Third Chamber)

in answer to the questions referred to it by the Finanzgericht Hamburg, by order of 10 December 1991, hereby rules:

1. Article 1 of Commission Regulation (EEC) No 2773/82 of 13 October 1982 and Article 1 of Commission Regulation No 1315/84 of 11 May 1984 fixing the export refunds on beef and veal, read in conjunction with subheading ex 02.01 A II a) ex bb) ('Boned and boneless [cuts], excluding the thin flanks ["Fleisch- und Knochendünnung"], the shin and the shank,



each piece individually wrapped’), as set out in the annexes to those provisions, must be interpreted as meaning that in Germany ‘Knochendünnung’ was not, during the period in question, one of the cuts of beef qualifying for export refunds. Consideration of the third question has not revealed any factor of such a nature as to the validity of the abovementioned provisions.

2. Commission Regulation (EEC) No 2891/84 of 15 October 1984 fixing export refunds on beef and veal does not apply with retroactive effect.

Zuleeg

Moitinho de Almeida

Grévisse

Delivered in open court in Luxembourg on 15 July 1993.

J.-G. Giraud

M. Zuleeg

Registrar

President of the Third Chamber