

1. The prohibition of quantitative restrictions on exports and of all measures having equivalent effect applies not only to national measures but also to measures adopted by the Community institutions.
2. Article 34 relates to measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States.
That does not apply to Community rules which, whilst not laying down identical conditions, prescribe at least equivalent conditions regarding administrative supervision both for exports in bulk of compound feedingstuffs and for the marketing thereof within the country.
3. By prohibiting any discrimination between producers or consumers within the Community, Article 40 (3) of the Treaty requires that like situations should not be treated differently unless such different treatment is objectively justified. There is no discrimination within the meaning of that article when the difference in the method by which the aid is paid corresponds to an objective difference between the export situation, on the one hand, and that of trade within a Member State, on the other.
4. By virtue of the principle of proportionality, measures adopted by Community institutions must not exceed what is appropriate and necessary to attain the objective pursued.
That principle is not breached by rules which prescribe prior administrative supervision to ensure compliance with the conditions for the payment of aid where the sums involved are particularly large and there is a particular danger of fraud.
5. Since the purpose of the rules for granting aid for skimmed milk processed into compound feedingstuffs is to exclude the possibility of aid being paid twice, as well as that of the goods re-entering normal market channels, and thereby to prevent fraudulent practices, the formalities regarding proof must continue to be rigorously applied both to exports and to inland deliveries.

In Case 15/83

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 proceedings pending before that court between

DENKAVIT NEDERLAND BV

and

HOOFDPRODUKTSCHAP VOOR AKKERBOUWPRODUKTEN [Central Board for Agricultural Products]

on the validity of Articles 6 (2) and 7 of Commission Regulation (EEC) No 1725/79 of 26 July 1979 on the rules for granting aid to skimmed milk processed into compound feedingstuffs and skimmed-milk powder intended for feed for calves (Official Journal 1979, L 199, p. 1),

THE COURT (Second Chamber)

composed of: K. Bahlmann, President of Chamber, P. Pescatore and O. Due Judges,

Advocate General: G. F. Mancini

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 observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Legal background to the dispute and summary of the facts

1. Legal background

The dispute in the main proceedings relates to the grant of aid for exports in

bulk of compound animal feedingstuffs processed from skimmed-milk powder. The rules for the grant of the aid are laid down in Commission Regulation No 1725/79 of 26 July 1979. Article 4 (2) of that regulation provides as follows:

“Subject to the provisions of Article 5 and to the provisions of Council Directive 79/373/EEC of 2 April 1979 on the marketing of compound feedingstuffs, compound feedingstuffs shall, for the purpose of this Regulation,

be packed in bags containing not more than 50 kilograms on which shall be printed, in clearly legible characters:

- (a) a statement that the contents are compound feedingstuffs;
- (b) a marking enabling the undertaking benefiting from the aid to be identified. This marking may be in code and in that case shall include the first letter of the name of the country of origin;
- (c) the month and year of manufacture;
- (d) the skimmed-milk powder content of the finished product."

However, according to Article 5 of the regulation, the provisions of Article 4 (2) do not apply to:

"(a) ...

- (b) compound feedingstuffs delivered by tanker or container to a farm or a breeding or fattening concern which uses these compound feedingstuffs under the conditions laid down in Articles 6 and 7."

Article 6 of the regulation provides as follows:

"1. When compound feedingstuffs are delivered by tanker or container the following provisions shall apply:

- (a) the undertaking receiving the aid shall, on application, be authorized to use this form of transport by the competent agency of the Member State on whose territory it is established;
- (b) delivery shall be under administrative supervision. The supervision shall ensure in particular

that delivery is made to a farm or to a breeding or fattening concern which uses feedingstuffs

- 2. In this case the aid shall be paid only when the undertaking has supplied the competent agency with supporting documents establishing that delivery was made under the conditions referred to in paragraph 1 (b)."

According to Article 7 (1) of the regulation:

"When delivery by tanker or container as described in Article 5 (b) takes place in a Member State other than the selling Member State, proof of delivery under the conditions set out in Article 6 (1) (b) shall be furnished by production of the control copy referred to in Article 10 of Regulation (EEC) No 223/77."

Article 7 (3) provides as follows:

"The importing Member State shall check that the consignee complies with the conditions set out in Article 6 (1) (b)."

For the period in respect of which aid is requested, the aid is paid, by virtue of Article 9 (2), without prejudice to cases where the supporting documents are available, only if

- "(a) the applicant shows to the satisfaction of the competent authority that the corresponding quantity of skimmed milk or skimmed-milk powder has been denatured or processed into compound feedingstuffs during the month for which the aid is applied for; and
- (b) the analysis report and inspection report referred to in Article 10 (3), issued after the checks made under Article 10 (1) and (2) (a), (b) and

(c), during the month preceding that for which the aid is applied for, indicate that the provisions of this Regulation are being complied with".

with, shall be furnished by the production of Control Copy T No 5."

The procedure to be followed is governed by Article 12 of the same regulation.

Should the reports referred to in paragraph (b) above indicate that the applicant has not complied with the provisions of the regulation during the previous month in question, payment of the aid for the month which is the subject of the aid application is suspended pending receipt of the analysis report and inspection report issued following the checks made during the month in question and any aid unduly paid out is recovered within four weeks (Article 9 (3)).

Article 58 of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit (Official Journal 1977, L 38, p. 1) provides that:

"In derogation from this regulation, Belgium, Luxembourg and the Netherlands may apply to the Community transit documents the agreements concluded or to be concluded between them with a view to reducing or abolishing frontier formalities at the Belgo-Luxembourg and Belgo-Netherlands frontiers."

Article 10 of the regulation provides that in order to ensure compliance with the provisions of the regulation, Member States are to take certain inspection measures, in particular regarding the use of skimmed milk and skimmed-milk powder in the manufacture of compound feedingstuffs within the meaning of Article 4 (1).

2. *Facts and written procedure*

As regards the production of the control copy required pursuant to Article 7 (1) of the regulation for deliveries in a Member State other than that of the seller, Article 10 of Commission Regulation (EEC) No 223/77 of 22 December 1976 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (Official Journal 1977, L 38, p. 20) provides as follows:

The plaintiff in the main proceedings manufactures animal feedingstuffs processed from skimmed-milk powder in the Netherlands. In respect thereof it receives Community aid which is granted to it pursuant to Article 10 of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition, 1968 (I), p. 176). The plaintiff supplies its products with or without packaging ("in bulk"), both in the Netherlands and abroad. At the present time exports in bulk go only to Belgium.

"Proof that the conditions prescribed by a Community measure as to the use and/or destination of goods imported into, exported from, or moving within the Community have been complied

The conditions applied by the competent Netherlands body, the Hoofdproduktschap voor Akkerbouwprodukten, for payment of the aid differ according to whether the products in bulk are delivered within the Netherlands or in another Member State.

- (a) In the case of bulk deliveries within the Netherlands, the Hoofdproduktschap applies the Netherlands provisions, that is to say the Beschikking Denaturatie- en Verwerkingssteun Magere-Melkpoeder 1980 [1980 Order on denaturing and processing aid for skimmed-milk powder]. Consequently, the producer undertaking must attach a detailed record of all bulk deliveries to the processing report which it must submit each month. On receipt of these supporting documents, the Hoofdproduktschap pays the aid, that is to say at the same time as it receives the application for the month in question.

payment of the aid causes the plaintiff a considerable loss of interest.

Considering that this situation constituted an obstacle to exports which was not only unnecessary but also illegal, Denkvit Nederland BV sent a letter dated 18 December 1981 to the Hoofdproduktschap asking for the aid in respect of products delivered in bulk to Belgium to be paid to it during the month following that in which the delivery took place, subject to the condition, if necessary, that the aid might have to be repaid. The defendant in the main proceedings rejected that application by letter of 3 February 1982. The plaintiff instituted proceedings against that rejection before the College van Beroep voor het Bedrijfsleven.

- (b) In the case of bulk deliveries to another Member State, the Hoofdproduktschap required proof, in accordance with Article 7 of Regulation No 1725/79, by production of the Control Copy T 5 referred to in Article 10 of Regulation No 223/77; instead of that document it accepts, for deliveries in Belgium the Benelux 5 document referred to in Article 58 of Regulation No 222/77. Since those documents must be certified by the State of destination, the aid is in fact not usually paid until one month after the month of the application.

In those proceedings, the plaintiff claimed that the contested decision should be annulled and that the defendant should pay it the aid upon presentation each month of the application together with the corresponding processing and summary reports, if necessary subject to recovery of the aid if the circumstances justified this. In its view, by virtue of Article 58 of Regulation No 222/77 the Benelux countries are empowered and even obliged not to apply Article 7 of Regulation No 1725/79 to deliveries in Belgium and to apply only Article 6 of that regulation in such cases. Moreover, it claims that Articles 6 (2) and 7 of Regulation No 1725/79 are not mandatory because they should be regarded as measures having an effect equivalent to quantitative restrictions on exports, contrary to Article 34 of the EEC Treaty, and as constituting discrimination against exports; they are likewise contrary to the principle of proportionality.

As a result of these different procedures, aid in respect of bulk deliveries to Belgium is paid on average one month later than that for bulk deliveries in the Netherlands and for packaged deliveries during the same period. This delay in the

The defendant contested the claim before the national court and maintained that the provisions of Article 6 and 7 (1) of Regulation No 1725/79, in conjunction with Article 58 of Regulation No 222/77, imposed the mandatory requirement that in the case of bulk exports to Belgium the aid was payable only after receipt of a copy of the Benelux 5 control document.

By order of 25 January 1983, the College van Beroep voor het Bedrijfsleven stayed the proceedings and decided to submit the following question to the Court for a preliminary ruling:

"Must Articles 34, 40 (3) and 43 (3) (b) of the Treaty, Regulation (EEC) No 804/68, the principle of proportionality, or any of these, as well as any other principle underlying the Treaty be construed as meaning that the provisions of Article 6 (2) read together with Article 7 of Regulation (EEC) No 1725/79 are incompatible therewith inasmuch as the effect of those provisions is that the aid referred to in that regulation for skimmed-milk powder which has been processed into compound feedingstuffs in one of the Member States and delivered by tanker or container is paid one month later in respect of exports than it is for inland deliveries?"

The order for reference was received at the Court Registry on 26 January 1983.

In the statement of grounds of its order, the national court states that it considers the plaintiff's first submission not to be relevant, in view of the restrictive nature of exception provided for in Article 58 of Regulation No 222/77 and the spirit of Article 7 of Regulation No 1725/79. However, it is of the opinion that the second submission raises a serious problem and considers that an answer

thereto is required for settlement of the dispute.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the plaintiff in the main proceedings, represented by E. Grabandt of the Hague Bar, and by the defendant in the main proceedings, represented by R. J. M. ten Berge, acting as Agent.

Upon 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, inviting the Commission to attend the hearing.

However, the Court decided to request the Commission to explain, at the hearing, the specific reasons for which Commission Regulation No 1725/79 provides for different treatment for deliveries in bulk intended for export, on the one hand, and for similar deliveries within the domestic market, on the other, and to indicate the grounds for the stricter supervision procedures applied to exports.

By order of 23 November 1983 the Court assigned the case to the Second Chamber.

II — Written observations

The *plaintiff in the main proceedings* observes in the first place that its arguments should be considered in the light of two fundamental conclusions concerning the purpose of Community aid payable in respect of skimmed-milk

powder used for animal feedingstuffs within the framework of the common organization of the market in the milk sector. First, the aid constitutes a precondition for the processing of the skimmed-milk powder into animal feedingstuffs, since it enables the industry to use the basic product in an economically profitable manner. It points out, in the second place, that the aid was introduced in the general interest, so as to enable skimmed-milk powder surpluses to be disposed of and thus to avoid or reduce public storage of the product.

As regards the provisions of Regulation No 1725/79 as a whole, the plaintiff in the main proceedings admits that they are motivated by the fact that the amount of aid paid involves a considerable risk of fraud. That is why the production and sale of the products in question is subject to rigorous conditions and far-reaching obligations and why numerous inspection measures, supported by extremely severe penalties, are provided for. Nevertheless, the whole scheme of Regulation No 1725/79 is founded, by reason of economic necessities, on as rapid as possible a payment of the aid at the end of the month to which it relates and the aid is normally paid before the results of the inspection in respect of the period concerned become available. Verification that the provisions of the regulation have been observed during the period in question does not therefore constitute a precondition for payment of the aid. Conversely, the beneficiary is subject to a strict obligation of repayment if it is found following the prescribed inspections that the regulation has been infringed.

On the other hand, special provisions concerning exports in bulk go further than the general provisions regarding packaged products mentioned above. This applies in particular to the provision pursuant to which the products in question have to be delivered by the manufacturer direct to the addressee, delivery to any intermediary being prohibited, and proof is to be furnished solely by production of Control Copy T 5. As a result, the aid for exports in bulk is generally paid after a delay of one month and this makes exports in bulk considerably less attractive than sales within the Netherlands and the sale of packaged products, entailing a loss of interest amounting to HFL 1.40 per 100 kg in 1981 and HFL 1.05 per 100 kg in 1982. Thus, the loss of interest affects, in particular, exports in bulk which, in the country of destination, must compete with locally produced bulk products which, by virtue of the application of the rules governing sales within the country, are not affected by this loss of interest. This different treatment of exports in bulk constitutes discrimination which is contrary to the superior rules of Community law and is therefore illegal.

Accordingly, the plaintiff in the main proceedings claims in the first place that the discrimination at issue cannot be avoided by the exporter and in the second place that it is unnecessary in view of the system of inspections provided for in Regulation No 1725/79. It raises no objection to the inspection method as such but considers that there is no reason, in the case of exports in

bulk, to replace *subsequent* inspection by *prior* inspection. The effectiveness of a subsequent inspection is beyond doubt, since the aid granted would have to be recovered immediately if it were found on the basis of the documents that the provisions of the regulations had not been observed.

so far as they delay the payment of aid for skimmed-milk powder exported in bulk. Finally, the plaintiff in the main proceedings relies upon the principle of proportionality, since the delay in payment of the aid does not constitute a precondition for the effectiveness of the inspection measures prescribed by Regulation No 1725/79.

The plaintiff goes on to state the reasons for which Articles 6 (2) and 7 of Regulation No 1725/79 are, in its view, invalid. In the first place, they must be regarded as measures having an effect equivalent to quantitative restrictions on exports and are therefore contrary to Article 34 of the EEC Treaty, a provision which is binding not only upon the Member States but also upon the Community institutions. There is no justification for an exception under Article 36 since the discrimination in question is of a purely economic character and is not necessary in order to attain the objective of the inspection system in question. Moreover, considerations relating to the prevention of fraud cannot affect freedom of trade between Member States and Article 36 of the EEC Treaty may not be relied upon in that respect.

The *defendant in the main proceedings* observes that it is incumbent upon the Commission to adopt implementing measures regarding the grant of aid for the products in question. It appears from the recitals (in particular the sixth) in the preamble to Regulation No 1725/79 that the Commission considered it advisable to lay down special inspection arrangements for transport of the products and to prescribe specific conditions for payment of the aid. Accordingly, it considers that the Commission acted within the scope of its formal and substantive powers and in a manner which is not contrary either to the EEC Treaty or to Regulation No 804/68, or to the principle of proportionality or to any other principle upon which the Treaty is based. In any event, it is obliged to apply the contested provisions until such time as they have been declared invalid by a court of competent jurisdiction.

Moreover, the contested provisions are incompatible with Article 2 (3) (h) of Commission Directive 70/50/EEC of 22 December 1969 (Official Journal, English Special Edition 1970 (I), p. 17), with Article 22 (1) of Regulation No 804/68 and with the fundamental principles of the common organization of the markets, namely Article 40 (3) and Article 43 (3) (b) of the EEC Treaty, in

Moreover, it is of the opinion that there is no unjustified discrimination but rather a justified difference, since where aid is granted for the international transport of goods, the risk of fraud is greater than in the case of sales within a country. Thus, there can be no question of breach of the principle of proportionality and there are no grounds for the Court to declare the provisions in question void. For those reasons the defendant in the main

proceedings proposes that the Court reply in the negative to the question submitted for a preliminary ruling.

tificate of the kind provided for in Article 10 of Regulation No 223/77, or in the case of deliveries between Benelux countries, by producing a Benelux 5 certificate.

III — Oral procedure

At the sitting on 26 January 1984, oral argument was presented by the plaintiff in the main proceedings, represented by E. Grabandt, Advocate, and by the Commission, represented by R. C. Fischer, acting as Agent.

In reply to the written question which the Court put ot it before the hearing, the *Commission* stated that, in principle, Regulation No 1725/79 did not provide for different treatment for deliveries in bulk intended for export, on the one hand, and for similar deliveries to the domestic market, on the other. Both were subject to administrative supervision to ensure that the deliveries were made to a form or a breeding or fattening concern which used compound feedingsuffs. In both cases, the aid could be paid only if the undertaking proved that the abovementioned condition had been complied with. This was done by producing a certificate issued by the competent national authorities of the Member State in which delivery took place.

In the Commission's view, the only difference lay in the fact that in the case of inland deliveries, the regulation left the Member States to choose the kind of certificate required whilst in the case of exports to other Member States proof was furnished by producing a T 5 cer-

Furthermore, the Commission stated that implementation of the supervision procedures was the responsibility of the Member States, which were obliged to ensure that there were no delays in the forwarding of Control Copy T 5.

Moreover, even though the Member States were not obliged to use Control T 5, as long as the goods did not leave their territory before proof of the intended or prescribed use or destination had been furnished, there was nothing to stop them using Control Copy T 5 for inland deliveries as well.

Finally, the Commission stated that a Member State should not, when paying the aid, be satisfied with the production of detailed records without any proof as to the use of the goods delivered. Consequently, it pointed out that there was a difference between the requirements of Community law and the Netherlands practice, which partly explained the difference in the time it took for the aid to be paid. In any event, it could be concluded that exports in bulk should be subject to the same rules as deliveries in bulk within a Member State when the latter were dealt with in a way which was contrary to the provisions of Regulation No 1725/79.

The Advocate General delivered his opinion at the sitting on 15 March 1984.

Decision

- 1 By order of 25 January 1983, which was received at the Court on 26 January 1983, 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, a question on the interpretation of Article 34, 40 (3) and 43 (3) (b) of the EEC Treaty, of Article 22 of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176) and of the principle of proportionality. The national court asks whether those rules, read together, are to be construed as meaning that Articles 6 (2) and 7 of Commission Regulation No 1725/79 of 26 July 1979 on the rules for granting aid to skimmed milk processed into compound feedingstuffs and skimmed-milk powder intended for feed for calves (Official Journal 1979, L 199, p. 1) are incompatible therewith.
- 2 That question was raised in the course of an action brought by Denkavit Nederland BV against the Hoofdproductschap voor Akkerbouwprodukten [Central Board for Agricultural Products] for an order that the aid in respect of compound feedingstuffs for animals delivered in bulk from the Netherlands to Belgium should be paid to it as soon as the monthly application and the corresponding processing and summary reports were submitted, subject to the condition that the aid might have to be repaid.
- 3 In the course of those proceedings, the plaintiff maintained, *inter alia*, that the provisions of Articles 6 (2) and 7 of Regulation No 1725/79 imposed in the case of exports a heavier burden of proof as to the use to which products delivered in bulk had been put than in the case of inland deliveries and in consequence the aid in respect of exports was paid on average one month later than that in respect of deliveries to the domestic market of the Member State.
- 4 The plaintiff in the main proceedings thus considers that the provisions at issue should be regarded as measures having an effect equivalent to quantitative restrictions on exports, contrary to Article 34 of the EEC Treaty and Regulation No 804/68, and as constituting discrimination against producers, contrary to Articles 40 (3) and 43 (3) (b) of the EEC Treaty; it also considers them to be contrary to the principle of proportionality.

- 5 The defendant in the main proceedings rejected that view and stated that it was bound by the provisions at issue.
- 6 It was in the light of that factual and legal situation that the College van Beroep voor het Bedrijfsleven submitted the following question to the Court for a preliminary ruling:

“Must Articles 34, 40 (3) and 43 (3) (b) of the Treaty, Regulation (EEC) No 804/68, the principle of proportionality, or any of these, as well as any other principle underlying the Treaty be construed as meaning that the provisions of Article 6 (2) read together with Article 7 of Regulation (EEC) No 1725/79 are incompatible therewith inasmuch as the effect of those provisions is that the aid referred to in that regulation for skimmed-milk powder which has been processed into feedingstuffs in one of the Member States and delivered by tanker or container is paid one month later in respect of exports than it is for inland deliveries?”

- 7 That question, although formally concerned with the interpretation of certain provisions of the EEC Treaty and of Regulation No 804/68, in reality raises the question of the validity of Articles 6 (2) and 7 of Regulation No 1725/79.

The existence of a difference of treatment

- 8 As a preliminary to consideration of the substance of the case, it must be decided to what extent compound feedingstuffs exported in bulk are actually subject to rules different from those applicable to compound feedingstuffs marketed in bulk within the country.
- 9 In that connection, it should be borne in mind that Article 6 (1) (b) of Regulation No 1725/79 provides for administrative supervision of all deliveries in bulk of compound feedingstuffs, in order to ensure that delivery is made to a farm or to a breeding or fattening concern which uses feedingstuffs, without distinguishing between exports and inland deliveries; in the same way, paragraph (2) of that article provides that in both situations the aid is to be paid only when the undertaking has supplied the competent national agency with supporting documents establishing that delivery was made under the conditions referred to in paragraph (1) (b).

- 10 As a result, there is only one difference between the two situations mentioned above and that relates to the type of document which must be supplied to obtain the aid:

As regards, on the one hand, deliveries in bulk to a Member State other than the selling Member State, proof that delivery was made under the conditions referred to in Article 6 (1) (b) may be supplied, according to Article 7 (1) of Regulation No 1725/79, only by production of the control copy referred to in Article 10 of Commission Regulation No 223/77 of 22 December 1976 (Official Journal 1977, L 38, p. 20), that is to say document T 5, except in the case of exports within the Benelux countries, where that proof may be supplied by producing the Benelux 5 document, in accordance with Article 58 of Council Regulation No 222/77 of 13 December 1976 (Official Journal L 38, p. 1).

As regards, on the other hand, deliveries in bulk within the selling Member State, each Member State may, in accordance with Article 14 of Regulation No 223/77 and notwithstanding the specific provisions on this point in Regulation No 1725/79, require that proof is to be furnished in accordance with a national procedure.

- 11 However, it must be emphasized that when a Member State has chosen to apply a national procedure, it must nevertheless ensure that an equivalent result is achieved in conformity with the objective of Article 6 of Regulation No 1725/79.
- 12 Since the supervision requirements are essentially the same for both exports in bulk and inland deliveries in bulk, any delay in the payment of aid in respect of exports is merely the result of the different conditions under which exports are made, that is to say, the fact that in intra-Community trade the document T 5 is in circulation for a greater length of time than a national document within a Member State.

Infringement of Article 34 of the Treaty and of Article 22 of Regulation No 804/68

- 13 The question raised by the national court is intended to ascertain in the first place whether the provisions at issue constitute measures having an effect equivalent to a quantitative restriction on exports within the meaning of Article 34 of the EEC Treaty.

- 14 Article 34 provides that “quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States”.
- 15 The prohibition of quantitative restrictions on exports and of all measures having equivalent effect applies, as the Court has repeatedly held, not only to national measures but also to measures adopted by the Community institutions (judgment of 20 April 1978 in Joined Cases 80 and 81/77 [1978] ECR 927).
- 16 According to well-established case-law of the Court, Article 34 relates to measures “which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States” (see, for example, the judgment of 8 November 1979 in Case 15/89, *Groenveld*, [1979] ECR 3409, paragraph 7 of the Decision).
- 17 That does not apply to Community rules such as those at issue in the present case which, whilst not laying down identical conditions, prescribe at least equivalent conditions regarding administrative supervision both for exports in bulk of compound feedingstuffs and for the marketing thereof within the country.
- 18 That finding is not altered by the fact that the aid available for compound feedingstuffs exported in bulk may be paid later than that paid in respect of inland deliveries. That difference is attributable exclusively to the particular situation of intra-Community traffic, namely the fact that the circulation of documents between the various agencies involved in the Member States necessarily takes more time than the circulation of the same documents within one Member State, and does not constitute a difference of treatment within the meaning of Article 34.
- 19 As the Commission has correctly stated, the only discrimination which may be considered in an application for a preliminary ruling under Article 177 of the Treaty is that which results from incorrect application of the relevant provisions by the national authorities.

- 20 That is equally true of the prohibition of measures having equivalent effect provided for in Article 22 (1) of Regulation No 804/68, which adapts Article 34 to the common organization of the market in milk and milk products.

Infringement of Articles 40 and 43 of the Treaty

- 21 As regards the alleged infringement of Article 40 (3) of the Treaty, that provision states that the common organization of agricultural markets is to "exclude any discrimination between producers or consumers within the Community".
- 22 Since the difference in the method by which the aid is paid corresponds to an objective difference between the export situation, on the one hand, and that of trade within a Member State, on the other, it does not constitute discrimination within the meaning of the aforementioned article which requires that like situations should not be treated differently unless such different treatment is objectively justified (judgments of 15 July 1982 in Case 245/81 *Edeka* [1982] ECR 2745, paragraph 11; of 13 June 1978 in Case 139/77 *Denkavit* [1979] ECR 1317; and 15 September 1982 in Case 106/81 *Kind* [1982] ECR 2885, paragraph 22).
- 23 Those considerations are equally true in the case of the alleged infringement of Article 43 (3) (b), which provides that the common organization of the market must "ensure conditions for trade within the Community similar to those existing in a national market".

Breach of the principle of proportionality

- 24 The last point raised in the question submitted by the College van Beroep voor het Bedrijfsleven relates to breach of the principle of proportionality.
- 25 By virtue of that principle, according to well-established case-law of the Court, measures adopted by Community institutions must not exceed what is appropriate and necessary to attain the objective pursued (judgments of 20 February 1979 in Case 122/78 *Buitoni* [1979] ECR 677, paragraph 16, and of 23 February 1983 in Case 66/82 *Fromançais* [1983] ECR 395, paragraph 8).

- 26 The plaintiff in the main proceedings maintains that the provisions at issue impose a burden on exporters which goes beyond what is necessary to attain the objective of supervision. It would be sufficient, in its view, to prove that delivery was made under the conditions laid down for exports, in accordance with the same rules as those prescribed in Article 6 (2) of Regulation No 1725/79 for deliveries within the country of production, without recourse to document T 5.
- 27 It should be noted in the first place that, according to the fourth recital in the preamble to Regulation No 222/77, the implementation of a Community transit procedure, including the use of uniform control documents, will facilitate transport within the community and in particular simplify the formalities to be carried out when frontiers are crossed.
- 28 It should also be noted that the Community rules at issue require prior administrative supervision and, therefore, the return of the control copy to the competent authorities of the country of production before the aid is paid, both for exports in bulk and for inland deliveries in bulk, whether that document is the T 5 or the Benelux 5, or a document required by the national procedure pursuant to Article 14 of Regulation No 223/77.
- 29 Since the purpose of those rules is to exclude the possibility of aid being paid twice, as well as that of the goods re-entering normal market channels, and thereby to prevent fraudulent practices, the formalities regarding proof must continue to be rigorously applied both to exports and to inland deliveries.
- 30 During the oral procedure the Commission correctly observed that recourse to another method of checking compliance with the conditions laid down in Article 6 (1) (b) of Regulation No 1725/79, namely subsequent inspections followed, if necessary, by repayment of the aid granted, would entail, in particular, excessive administrative work for the Member States responsible for carrying out those inspections.

- 31 It must be stated that the principle of proportionality is not breached by Community rules which prescribe prior administrative supervision to ensure compliance with the conditions for the payment of aid where the sums involved are particularly large and there is a particular danger of fraud.
- 32 Therefore, even though the contested measures entail the result that aid in respect of exports is paid later than aid in respect of inland deliveries, they do not, by reason of the special conditions applicable to intra-Community transit, breach the principle of proportionality.
- 33 The answer to the question submitted by the national Court must therefore be that consideration of the question raised has disclosed no factor of such a nature as to affect the validity of Articles 6 (2) and 7 of Regulation No 1725/79.

Costs

- 34 The costs incurred by the Commission of the European Communities, which presented oral argument in the proceedings before the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (Second Chamber),

in reply to the question submitted to it by the College vana Beroep voor het Bedrijfsleven by order of 25 January 1983, hereby rules:

Consideration of the question raised by the College van Beroep voor het Bedrijfsleven has disclosed no factor of such a nature as to affect the validity of Articles 6 (2) and 7 of Regulation No 1725/79.

Bahlmann

Pescatore

Due

Delivered in open court in Luxembourg on 17 May 1984.

For the Registrar

D. Louterman

Administrator

K. Bahlmann

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI
DELIVERED ON 15 MARCH 1984¹

*Mr President,
Members of the Court,*

1. The purpose of this reference for a preliminary ruling is to obtain an interpretation of the Community rules governing the payment of aid in respect of exports of feedingstuffs made from milk powder. It must be decided whether those rules allow such aid to be paid according to different procedures and at different times depending on whether the products are exported or marketed within the country. For the first category of products, Community rules provide for special inspections to be carried out by the importing country and it is only

when this has been done that the aid is paid. No such inspections are carried out in the case of feedingstuffs sold on the national market (and therefore there are no delays).

Denkavit Nederland BV, a private limited company whose registered office is in Voorthuizen in the Netherlands, exports in bulk feedingstuffs processed from milk powder and is thus granted Community aid pursuant to Article 10 of Regulation No 804 of the Council of 27 June 1968 on the common organization of the market in milk and milk products. In the case of deliveries in bulk to other Member States, the competent

¹ — Translated from the Italian.