

SITPA

JUDGMENT OF THE COURT (Second Chamber)  
24 January 1991 \*

In Case C-27/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal administratif (Administrative Court), Dijon (France) for a preliminary ruling in the proceedings pending before that court between

**Société industrielle de transformation de produits agricoles (Sitpa)**

and

**Office national interprofessionnel des fruits, des légumes et de l'horticulture (Oniflor),**

on the validity of Council Regulation (EEC) No 989/84 of 31 March 1984 introducing a system of guarantee thresholds for certain processed fruit and vegetable products (OJ 1984 L 103, p. 19) and Commission Regulations (EEC) No 1925/84 of 5 July 1984 (OJ 1984 L 179, p. 15), No 2222/85 of 31 July 1985 (OJ 1985 L 205, p. 16), No 2077/86 of 30 June 1986 (OJ 1986 L 179, p. 11) and No 2160/87 of 22 July 1987 (OJ 1987 L 202, p. 32) fixing the minimum price to be paid to producers for tomatoes and the amount of production aid for processed tomato products for the successive marketing years 1984/85, 1985/86, 1986/87 and 1987/88,

THE COURT (Second Chamber)

composed of: T. F. O'Higgins, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges,

Advocate General: C. O. Lenz

Registrar: J. A. Pompe, Deputy Registrar

\* Language of the case: French.

after considering the observations submitted on behalf of:

Sitpa, by Nicole Coutrelis, of the Paris Bar;

the Commission of the European Communities, by Patrick Hetsch, a member of its Legal Department, acting as Agent;

the Council of the European Communities, by Bernhard Schloh, an adviser in its Legal Department, acting as Agent,

having regard to the Report for the Hearing,

after hearing oral argument on behalf of Sitpa, the Commission and the Council at the hearing on 2 October 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 November 1990,

gives the following

### **Judgment**

- 1 By a judgment of 26 December 1989, which was received at the Court on 26 January 1990, the Tribunal administratif, Dijon (France) referred to the Court of Justice under Article 177 of the EEC Treaty a question on the validity of Council Regulation (EEC) No 989/84 of 31 March 1984 introducing a system of guarantee thresholds for certain processed fruit and vegetable products (OJ 1984 L 103, p. 19) and Commission Regulations (EEC) No 1925/84 of 5 July 1984 (OJ 1984 L 179, p. 15), No 2222/85 of 31 July 1985 (OJ 1985 L 205, p. 16), No 2077/86 of 30 June 1986 (OJ 1986 L 179, p. 11) and No 2160/87 of 22 July 1987 (OJ 1987 L 202, p. 32) fixing the minimum price to be paid to producers for tomatoes and the amount of production aid for processed tomato products for the successive marketing years 1984/85, 1985/86, 1986/87 and 1987/88.

- 2 That question was raised in proceedings between the Société industrielle de transformation de produits agricoles (hereinafter referred to as 'Sitpa') and the Office national interprofessionnel des fruits, des légumes et de l'horticulture (hereinafter referred to as 'Oniflhor') concerning the payment of the difference between the aid which would have been payable by Oniflhor but for the abatements decided on by the Commission and the aid actually granted.
- 3 The common organization of the market in products processed from fruit and vegetables, governed by Council Regulation (EEC) No 516/77 of 14 March 1977 (OJ 1977 L 73, p. 1), which was replaced by Council Regulation (EEC) No 426/86 of 24 February 1986 (OJ 1986 L 49, p. 1), comprises a system of production aid; Article 3(3) of Regulation No 516/77, as amended by Council Regulation (EEC) No 988/84 of 31 March 1984 (OJ 1984 L 103, p. 11), and Article 2(3) of Regulation No 426/86 provide that when there is a risk of a major imbalance between production and market outlets, the Council may take appropriate measures, in particular by limiting production aid to a specified quantity.
- 4 Regulation No 989/84, which is based on Regulation No 516/77, fixes a guarantee threshold for each marketing year corresponding to a certain quantity of processed tomato products and provides that if that guarantee threshold is exceeded — the extent to which it is exceeded being calculated on the basis of the average of the quantities produced during the three marketing years preceding the marketing year for which aid is to be fixed — the aid is to be reduced for the following marketing year, depending on the extent to which the threshold has been exceeded.
- 5 That threshold was found to have been exceeded substantially during the 1982/83 and 1983/84 marketing years, and the Commission consequently reduced aid for the 1984/85 to 1987/88 marketing years in Regulations Nos 1925/84, 2222/85, 2077/86 and 2160/87, based on Regulation No 989/84.
- 6 Claiming that the Community legislation at issue was invalid, Sitpa requested Oniflhor to pay it the difference between the aid at the full rate which would have been payable but for the reductions decided on and the amount actually granted. That request was refused, and Sitpa brought an action against that refusal before

the Tribunal administratif (Administrative Court), Dijon, which made the present reference to the Court for a preliminary ruling on the validity of Regulations Nos 989/84, 1925/84, 2222/85, 2077/86 and 2160/87.

- 7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of 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.
  
- 8 In its written and oral observations, Sitpa states that the Commission has infringed its obligation to provide a statement of reasons pursuant to Article 190 of the EEC Treaty, inasmuch as Regulation No 989/84 refers simply to the nature of the market in processed tomato products, without any further particulars, and inasmuch as it contains no indication of the reasons why it was decided to reduce the nominal amount of the aid rather than establish a system of quotas, although express provision for the latter is made in the basic regulation, Regulation No 516/77. The successive regulations adopted by the Commission for the 1984/85 to 1987/88 marketing years offend in the same manner. Moreover, in those regulations the Commission failed to give particulars regarding the extent to which the guarantee threshold was exceeded having regard to the average of the quantities produced during the three marketing years preceding the marketing year for which the aid was fixed, and regarding the method of calculating that aid. In addition, Regulation No 2160/87 contains a factual error.
  
- 9 Sitpa also claims that the Community legislation is invalid on the ground that the Council and the Commission infringed the prohibition of discrimination laid down in Article 40(3) of the Treaty by establishing and implementing a system of aid reduction both *vis-à-vis* French producers, who are not responsible for the excess production over the guarantee threshold, and *vis-à-vis* producers in other Member States, who are so responsible.
  
- 10 It must be observed first that, as the Advocate General pointed out in his Opinion at paragraph 7 et seq., the Court has consistently held that the statement of reasons required by Article 190 of the EEC Treaty must be appropriate to the nature of the measure in question. The statement of the reasons on which a regulation is based cannot be required to specify the often very numerous and complex

matters of fact or of law dealt with in the regulations, provided that the latter fall within the general scheme of the body of measures of which they form part (judgment in Case 250/84 *Eridania v Cassa congruaglio zucchero* [1986] ECR 117).

As regards the determination of the market features justifying the introduction of a system of guarantee thresholds, the preamble to Regulation No 989/84 clearly indicates that they lie in the emergence of the situation referred to in Article 3(3) of Regulation No 516/77 as amended by Council Regulation No 988/84, namely a major imbalance between production and scope for marketing. The second recital in the preamble to Regulation No 989/84 states, moreover, that the guarantee threshold must be fixed in such a way as to correspond to the marketing possibilities for the products in question.

With regard to the reasons for the decision to reduce the nominal amount of the aid rather than introduce a system of quotas, the abovementioned Article 3(3) of Regulation No 516/77, as amended by Regulation No 988/84, provides that if there is a risk of a major imbalance between production and scope for marketing the Council may take appropriate measures. The fact that the Council stated in that provision that those measures include, in particular, limiting production aid to a specified quantity, indicates that the Council can adopt even very strong measures in respect of producers but is not prevented from adopting less severe measures, provided that they are appropriate. Moreover, the third recital in the preamble to Regulation 989/84 states that a reduction in the aid depending on the extent to which the thresholds have been exceeded is the most appropriate response to the market situation.

As regards the submission that Commission Regulations Nos 1925/84 and 2222/85 and, to a lesser extent, Regulations Nos 2077/86 and 2160/87 do not determine the extent to which the guarantee threshold was exceeded having regard to the average of the quantities produced during the preceding three marketing years, it should be observed that the preambles to the regulations at issue do indeed refer only to the marketing year immediately preceding the one for which the aid is to be fixed, during which the guarantee threshold was exceeded. However, that omission is simply an error which is not such as to constitute an irregularity in the statement of the reasons for the regulations, because it cannot mislead those concerned as to the reasons upon which the measure adopted by the

Community authority is based. Moreover, as the Advocate General has pointed out in paragraph 55 et seq. of his Opinion, that error does not appear in all the language versions. The other versions must be taken into consideration if one of the versions of a text is inconsistent with the letter and the spirit of the overall legislative scheme of which it forms part.

- 14 With regard to the submission that there is no indication of the method used to calculate the aid, it must be observed that the preambles to the four Commission regulations at issue mention the legal bases for the calculation of the aid and refer in particular to the relevant provisions of Regulations Nos 516/77 and 426/86 and of Regulation No 989/84.
- 15 Nor has Article 190 of the Treaty been infringed by the factual error committed by the Commission when it adopted Regulation No 2160/87 in finding that the guarantee threshold had been exceeded for all processed tomato products, because that error is not an important part of the statement of reasons, the remainder of which is satisfactory.
- 16 Accordingly, the regulations at issue contain the information that enables those concerned to know the reason for that legislation and the Court to exercise its power of review, and they therefore fulfil the requirements laid down by Article 190 of the EEC Treaty with regard to the statement of reasons.
- 17 As regards the submission based on an infringement of the prohibition of discrimination, Sitpa observes that the system of guarantee thresholds established by the Council and the reductions in aid made by the Commission apply uniformly throughout the Community, so that French processors, who are in no way responsible for the fact that the thresholds were exceeded, are penalized in the same way as the Italian and Greek undertakings which committed the frauds that caused the guarantee thresholds to be exceeded.
- 18 The primary basis of that submission is that the Community institutions should have taken action against frauds committed in Italy and in Greece. However, it

emerges from the judgment in Case C-87/89 *Sonito* [1990] ECR I-1981) that the Commission did not have specific and conclusive evidence regarding the alleged frauds committed in Greece and Italy and could not therefore lawfully call into question the figures supplied by those States.

19 Accordingly, the Council could adopt, on a proposal from the Commission, a regulation introducing a system of guarantee thresholds for the entire Community market in processed fruit and vegetable products, without infringing the prohibition of discrimination. The Commission, for its part, was obliged, pursuant to the Council regulation, to carry out the annual reductions in aid made necessary because the threshold was found to have been exceeded.

20 In so far as that submission must also be understood as accusing the Council and the Commission of having penalized French processors even though it was not an increase in French production that caused the quota to be exceeded, it should be pointed out that in a common organization of markets with no system of national quotas all Community producers, regardless of the Member State in which they are based, must together, in an egalitarian manner, bear the consequences of the decisions which the Community institutions are led to adopt, in the exercise of their powers, in order to respond to the risk of an imbalance which may arise in the market between production and market outlets.

21 Consequently, it must be held that in adopting the regulations at issue the Council and the Commission did not infringe the prohibition of discrimination.

22 It follows from the foregoing that consideration of Council Regulation No 989/84 and of Commission Regulations Nos 1925/84, 2222/85, 2077/86 and 2160/87 has disclosed no factor of such a kind as to affect their validity.

## Costs

- 23 The costs incurred by the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Tribunal administratif, Dijon, by judgment of 26 December 1989, hereby rules:

**Consideration of Council Regulation (EEC) No 989/84 of 31 March 1984 introducing a system of guarantee thresholds for certain processed fruit and vegetable products and of Commission Regulations (EEC) No 1925/84 of 5 July 1984, No 2222/85 of 31 July 1985, No 2077/86 of 30 June 1986 and No 2160/87 of 22 July 1987 fixing the minimum price to be paid to producers for tomatoes and the amount of production aid for processed tomato products for the successive marketing years 1984/85, 1985/86, 1986/87 and 1987/88 has disclosed no factor of such a kind as to affect their validity.**

O'Higgins

Mancini

Schockweiler

Delivered in open court in Luxembourg on 24 January 1991.

J.-G. Giraud

Registrar

T. F. O'Higgins

President of the Second Chamber