

Case C-110/99

Emsland-Stärke GmbH

v

Hauptzollamt Hamburg-Jonas

(Reference for a preliminary ruling
from the Bundesfinanzhof)

(Agriculture — Export refunds — Goods immediately re-imported into the
Community — Abuse of rights)

Opinion of Advocate General Alber delivered on 16 May 2000 I-11571

Judgment of the Court, 14 December 2000 I-11595

Summary of the Judgment

Agriculture — Common organisation of the markets — Export refunds — Non-differentiated refund — Products immediately re-imported into the Community after completion of the customs formalities for release for home use in a non-member country — Loss of right to a refund — Condition — Evidence of abuse — Verification incumbent on national court

(Commission Regulations No 2730/79, Arts 9(1), 10(1) and 20(2) to (6), and No 568/85)

Articles 9(1), 10(1) and 20(2) to (6) of Regulation No 2730/79 laying down common detailed rules for the application of the system of export refunds on agricultural products, in the version resulting from Regulation No 568/85, must be interpreted as meaning that a Community exporter can forfeit his right to payment of a non-differentiated export refund if (a) the product in respect of which the export refund was paid, and which is sold to a purchaser established in a non-member country, is, immediately after its release for home use in that non-member country, transported back to the Community under the external Community transit procedure and is there released for home use on payment of import duties, without any infringement being established and (b) that operation constitutes an abuse on the part of that Community exporter.

rules by artificially creating the conditions for obtaining it. Evidence of this must be placed before the national court in accordance with the rules of national law, for instance by establishing that there was collusion between that exporter and the importer of the goods into the non-member country.

The fact that, before being re-imported into the Community, the product was sold by the purchaser established in the non-member country concerned to an undertaking also established in that country with which he has personal and commercial links is one of the facts which can be taken into account by the national court when ascertaining whether the conditions giving rise to an obligation to repay refunds are fulfilled.

A finding that there is an abuse presupposes an intention on the part of the Community exporter to benefit from an advantage as a result of the application of the Community

(see para. 59 and operative part)