

JUDGMENT OF THE COURT (Third Chamber)
26 March 1987*

In Case 58/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunal d'instance [District Court], Saint-Denis (Réunion) for a preliminary ruling in the proceedings pending before that Court between

Coopérative agricole d'approvisionnement des Avirons (Réunion)

and

Receveur des douanes [Collector of Customs], Saint Denis

and

Directeur régional des douanes [Regional Director of Customs], Réunion

on the interpretation of certain provisions of Regulation No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1), Council Regulation No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (Official Journal 1979, L 175, p. 1), Commission Regulation No 1575/80 of 20 June 1980 laying down provisions for the implementation of Article 13 of Council Regulation No 1430/79 on the repayment or remission of import or export duties (Official Journal 1980, L 161, p. 13), as amended by Commission Regulation No 2640/82 of 30 September 1982 (Official Journal 1982, L 279, p. 67), and the second subparagraph of Article 40 (3) of the Treaty establishing the European Economic Community,

THE COURT (Third Chamber),

composed of: Y. Galmot, President of the Chamber, U. Everling and J. C. Moitinho de Almeida, Judges,

* Language of the Case: French.

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Coopérative agricole d'approvisionnement des Avirons, the plaintiff in the main proceedings, by C. de Guardia, of the Paris Bar,

the Commission of the European Communities, by Christine Berardis-Kayser, a member of its Legal Department,

having regard to the Report for the Hearing and further to the hearing on 27 November 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 5 February 1987,

gives the following

Judgment

- 1 By a judgment of 17 February 1986, which was received at the Court on 3 March 1986, the tribunal d'instance, Saint-Denis (Réunion), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of certain provisions of Regulation No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1), Council Regulation No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (Official Journal 1979, L 175, p. 1), Commission Regulation No 1575/80 of 20 June 1980 laying down provisions for the implementation of Article 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties (Official Journal 1980, 161, p. 13), as amended by Commission Regulation No 2640/82 of 30 September 1982 (Official Journal 1982, L 279, p. 67), and the second subparagraph of Article 40 (3) of the Treaty establishing the European Economic Community.
- 2 Those questions were raised in proceedings brought by the Coopérative agricole d'approvisionnement des Avirons (hereinafter referred to as 'the plaintiff') against the Collector of Customs for Saint-Denis and the Regional Director of Customs

for Réunion for the repayment of all the levies paid by the plaintiff in respect of maize imported from South Africa in 1980, 1981, 1982 and 1983.

- 3 In order to decide that dispute the tribunal d'instance, Saint-Denis, stayed the proceedings and submitted the following questions to the Court:
 1. In so far as the import levy instituted by Regulation No 2727/75 of the Council may be regarded as a variable duty equal to the difference between the prices ruling outside and within the Community and in so far as its purpose is to stabilize the market by compensating for the difference between a lower world price and a higher Community price, is the application of such a levy to a given product not contrary to the spirit of the Community rules and incompatible with the nature of the levy when the real purchase price does not correspond to the fictitious reference price and exceeds not only the latter but also the Community price?
 2. Is it not contrary to the general principles of Community law and in particular to the prohibition of discrimination — applicable to agriculture by virtue of the second subparagraph of Article 40 (3) of the Treaty, according to which the common organization of agricultural markets “shall exclude any discrimination between producers or consumers within the Community” — to treat in the same way situations which are objectively different?
 3. In so far as it is established that persons importing maize into Réunion are obliged by virtue of their geographical situation to obtain supplies outside the Community at a price higher than the Community price,
 - (a) is the charging of an import levy of the kind instituted under Regulation No 2727/75 not contrary both to the letter and to the spirit of that regulation and is it not in breach of the aforesaid principle of non-discrimination, and
 - (b) consequently, should the duties improperly collected not be repaid in the manner provided for in the first paragraph of Article 13 of Council Regulation No 1430/79 where no negligence or deception may be attributed to the importers?

4. If question 3 (b) is answered in the affirmative:

(a) is the limitation period applicable to applications for repayment twelve months, as provided for in Article 2 of Commission Regulation No 1575/80, as amended by Commission Regulation (EEC) No 2640/82, or three years, as provided for in Part A of Title I (Article 2 (2)) of Council Regulation No 1430/79?

(b) what price or what rate or what value must be taken as the basis for assessing whether or not the levy is compatible?

4 Reference is made to the Report for the Hearing for the observations submitted by the parties to the main proceedings and by the Commission, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

5 In its first question, the tribunal d'instance asks in substance whether the import levy instituted by Regulation No 2727/75 of the Council on the common organization of the market in cereals is applicable where the real purchase price does not correspond to the fictitious reference price and exceeds not only the latter but also the Community price.

6 The plaintiff in the main proceedings submits that the economic and geographical situation of the island of Réunion makes it necessary to import maize from South Africa at a cif price substantially exceeding the Community threshold price. In those circumstances, it contends, the application of the levy is contrary to the spirit of the Community legislation.

7 The Commission, on the other hand, argues that in view of the objectives pursued by that legislation the system of levies cannot take account of the prices actually agreed for each individual importation.

8 As the Court held in its judgment of 13 December 1967 in Case 17/67 *Neumann v Hauptzollamt Hof (Saale)* [1967] ECR 441, 'since the levy is based on the Treaty and

not on national law, is applicable simultaneously in all Member States and not only in one, acts as a regulatory device for markets not in a national context but in a common organization, is defined with reference to a price level fixed in the light of the objectives of the common market . . . , it therefore appears as a charge regulating external trade connected with a common price policy . . . '.

9 The aim of the levies is to ensure, by eliminating the difference between prices inside and outside the Community, that Community preference is observed and that the objectives of the common agricultural policy are attained. The system of levies disregards the prices agreed in individual transactions and it is consequently for traders to plan their imports in the light of the legislation in force.

10 The answer to the first question must therefore be that the import levy laid down by Regulation No 2727/75 on the common organization of the market in cereals is applicable even where the real purchase price does not correspond to the fictitious reference price and exceeds not only the latter but also the Community price.

The second question and the first part of the third question

11 In its second question and the first part of its third question, the tribunal d'instance asks in substance whether the application of the levy instituted by Regulation No 2727/75 to maize imported into Réunion constitutes a breach of the prohibition of discrimination set out in the second paragraph of Article 40 (3) of the EEC Treaty.

12 The Commission submits that the situation of Réunion is not objectively different from that of the rest of the Community and that consequently its treatment in a like manner is not discriminatory.

13 The Court observes first of all that, by virtue of Article 227 (2) of the Treaty, the general and particular provisions of the Treaty relating to agriculture, with the exception of Article 40 (4), were applicable to the French overseas departments

from the Treaty's entry into force, and that exceptions may lawfully be made where the economic and social development of those regions so requires it.

- 14 It is for the Community legislature to decide whether the economic, geographic or social circumstances of Réunion make derogations necessary. It was in exercise of that discretion that it adopted Regulation No 594/78 of 20 March 1978 (Official Journal 1978, L 82, p. 10), which exempted rice imports into Réunion from the levy on the ground that no rice is grown there and per capita consumption considerably exceeds that of the Community.
- 15 Furthermore, the second subparagraph of Article 40 (3) of the Treaty provides that the common organization of the agricultural markets must exclude any discrimination between producers or consumers within the Community. According to a consistent line of decisions of the Court, discrimination is defined as treating differently situations which are identical, or treating in the same way situations which are different (judgment of 23 February 1983 in Case 8/82 *Wagner v BALM* [1983] ECR 371).
- 16 With regard to maize, as the Commission points out, the rest of the Community is also a net importer of that cereal and must import it from non-member countries at a high transport cost and without any reduction in the levy. Moreover, if the island of Réunion does not import the maize which it requires from certain ACP maize exporters, thereby benefiting from the exemption from the levy created by Regulation No 435/80 of 18 February 1980 (Official Journal 1980, L 55, p. 4) and lower transport costs, that is merely because its ports do not have silos and maize must be imported in sacks.
- 17 Consequently, it does not appear that in taking the view that the situation of Réunion is not objectively different from that of the rest of the Community and does not, in contrast to what was decided in the case of rice, justify exemption from levies in respect of imports of maize into that territory the Commission exceeded the bounds of its discretion.

- 18 The answer to the second question and the first part of the third question must therefore be that the application of the levy instituted by Regulation No 2727/75 to maize imported into Réunion does not constitute a breach of the prohibition of discrimination set out in the second subparagraph of Article 40 (3) of the EEC Treaty.

The second part of the third question

- 19 In the second part of its third question, the tribunal d'instance asks in substance whether the circumstances surrounding the importation of maize into Réunion constitute 'special circumstances' within the meaning of the first paragraph of Article 13 of Council Regulation No 1430/79 so as to justify the repayment of levies charged on those imports.
- 20 The plaintiff in the main proceedings submits that in the case of Réunion the circumstances surrounding purchases of maize must be held to be special circumstances justifying the repayment or remission of import duties pursuant to Article 13 of Regulation No 1430/79.
- 21 The Commission contends that that article is not applicable in this case. In its view the expression 'special circumstances' refers to the claimant's individual situation in relation to the customs administration and not to objective situations which might be relied on by an indefinite number of economic operators. Article 13 of Regulation No 1430/79 must not become a means whereby a Council regulation can be amended by Commission decisions. If that were to happen the Commission would enjoy a broad discretion which would seriously prejudice the division of powers between the institutions.
- 22 As the Court has held, Article 13 of Regulation No 1430/79 is 'a general equitable provision designed to cover situations other than those which had most often arisen in practice and for which special provision could be made when the regulation was adopted' (judgment of 15 December 1983 in Case 283/82 *Papierfabrik Schoellershammer v Commission* [1983] ECR 4219; judgment of 15 May 1986 in Case 160/84 *Oryzomyli Kavallas v Commission* [1986] ECR 1633). The article is intended to apply where the circumstances characterizing the relationship between a trader and the administration are such that it would be inequitable to require the trader to bear a loss which he normally would not have incurred. As the

Commission rightly observes, the geographical and economic situation of Réunion is of an objective nature and affects an indefinite number of traders, and hence the circumstances in which maize is imported into that territory cannot be regarded as 'special circumstances' within the meaning of Article 13 cited above.

- 23 The answer to the second part of the third question must therefore be that the circumstances in which maize is imported into Réunion do not constitute 'special circumstances' within the meaning of the first paragraph of Article 13 of Regulation No 1430/79 so as to justify the repayment of levies charged on those imports.
- 24 As the fourth question was submitted only in the event that Article 13 of Regulation No 1430/79 should be applicable, it is now nugatory.

Costs

The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, 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 (Third Chamber),

in answer to the questions referred to it by the tribunal d'instance, Saint-Denis (Réunion) by judgment of 17 February 1986, hereby rules:

- (1) The import levy laid down by Regulation No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals is applicable even where the real purchase price does not correspond to the fictitious reference price and exceeds not only the latter but also the Community price.

- (2) The application of the levy instituted by Regulation No 2727/75 to maize imported into Réunion does not constitute a breach of the principle of non-discrimination enunciated in the second subparagraph of Article 40 (3) of the EEC Treaty.
- (3) The circumstances in which maize is imported into the island of Réunion do not constitute special circumstances within the meaning of the first paragraph of Article 13 of Council Regulation No 1430/79 of 2 July 1979 so as to justify the repayment of levies charged on those imports.

Galmot

Everling

Moitinho de Almeida

Delivered in open court in Luxembourg on 26 March 1987.

P. Heim

Registrar

Y. Galmot

President of the Third Chamber