

OPINION OF MR ADVOCATE GENERAL MAYRAS
DELIVERED ON 14 DECEMBER 1978 ¹

*Mr President,
Members of the Court,*

I — Trade in fresh or simply chilled or frozen meat of bovine animals, falling within subheading 02.01 A II of the Common Customs Tariff, has been subject since 1971 to the system of monetary compensatory amounts under Regulation No 1014/71 of the Commission.

On the other hand this system had not been applied to the products referred to in subheading 16.02 B III (b) 1 of the Common Customs Tariff as "Other prepared or preserved meat or meat offal containing bovine meat or offal", at least until Commission Regulation No 3092/76 of 17 December 1976 was adopted.

This is worded as follows (Article 1):

"For fresh, chilled or frozen products, other than minced products, which fall with subheading 16.02 B III (b) 1 of the Common Customs Tariff and which are excluded from clarification in Chapter 2 thereof *solely by reason of simple seasoning* (e.g. with salt and pepper), or the addition of other substances (e.g. vegetables, flours or oil), monetary compensatory amounts shall apply *in trade between Member States* at the level applicable to products of the same description without such treatment which fall within subheading 02.01 A II of the Common Customs Tariff."

On 30 November 1976 Hans Spitta & Co., of Frankfurt am Main entered into a purchasing contract with a French supplier covering in all 25½ tonnes of a product classed as "forequarters of bovine animals and cuts of beef and veal seasoned with pepper falling within tariff

subheading 16.02 B III (b) 1 of the Common Customs Tariff".

The imports of this product into the Federal Republic of Germany were not however effected until 29 December 1976 and 7 January 1977, that is to say, after the entry into force on 20 December 1976 of the above-mentioned Commission Regulation.

In accordance with this instrument the Hauptzollamt (Principal Customs Office) Frankfurt am Main-Ost levied a sum of DM 13 655.01 as monetary compensatory amounts chargeable.

The Hessisches Finanzgericht (Finance Court, Hesse) before which Spitta & Co. contested the notices of assessment has referred the following question to the Court for a preliminary ruling at the request of the plaintiff in the main action:

"Is Commission Regulation No 3092/76 either invalid or inapplicable:

- (a) for absence of the conditions required by Article 1 (1) of Regulation No 974/71 of the Council;
- (b) for failure to make any provision for old contracts
- (c) for restriction of intra-Community trade?"

II — As respects, first, the validity of the regulation in question in regard to the provisions of the basic Regulation No 974/71 of the Council on monetary compensation in the sphere of trade in

¹ — Translated from the French.

agricultural products, as amended on several occasions, it should be remembered, first and foremost, that under Article 1 (1) of this instrument the only condition for the introduction of monetary compensatory amounts is that the exchange rate of the currencies in the Member States should fluctuate by a margin wider than the one permitted by international rules in force on 12 May 1971, that is to say, than the parity set by the International Monetary Fund.

The plaintiff in the main action relies in this connexion on Regulation No 509/73 of the Council of 22 February 1973, amending Article 1 (1) of the basic regulation, on the grounds that in the fresh version thereof this principle is valid only for trade between Member States and non-member countries and not for intra-Community trade.

This statement seems to come from an incorrect interpretation of the regulation which provides for charging or granting monetary compensatory amounts "in trade with the Member States and third countries" and which accordingly has in view intra-Community trade as well as trade between Member States of the Community and third countries.

The same applies to the argument that the application of the system of monetary compensatory amounts to a given product implies a previous alteration of the exchange rates of the States concerned.

Such variations established over a fixed period, assuming they are "representative", affect the rates of the monetary compensatory amounts as determined by the basic regulation and Regulation No 1380/75 of the Commission laying down detailed rules for their application, in particular as regards the fixing of the monetary compensatory amounts.

However the implementation of the system established by Article 1 (1) of the basic regulation is subject only to the condition that the exchange rate of the currency of a given Member State

fluctuate by a margin wider than the one permitted. This condition was in being as regards the Deutschmark from May 1971; it was also fulfilled in relation to the French franc from December 1971.

In December 1976 when the Commission adopted the disputed regulation the variation of each of these currencies, the former upwards and the latter downwards, in relation to the parities notified still existed although in the meantime the "monetary snake" has been introduced.

III — Secondly, monetary compensatory amounts are charged or granted under Article 1 (3) of the basic regulation only where the monetary situation would lead to serious disturbances in trade in agricultural products. According to the Commission the risk of such disturbances, already previously recognized in the case of fresh meat of bovine animals, existed also in the case of meat of bovine animals simply seasoned, in particular, by the addition of a minimum quantity of salt and pepper.

Indeed, on the one hand, this product is subject to the common organization of the market in beef and veal; its price accordingly depends on that of products subject to intervention.

On the other hand the Commission maintains that in December 1976 a risk

of disturbance was indicated by the abnormal increase in imports of seasoned meat into the Federal Republic of Germany especially from the United Kingdom and Ireland during the last month of 1976.

In this respect it relies on the statistics of imports into Germany for the whole of 1976 of products mentioned under the tariff subheading in question.

In fact it emerges from the table which it furnished that imports of these products as a whole showed a substantial increase especially from September onwards. This applies to imports from France which rose from an average of 200 to 300 tonnes in the early months of the year under consideration to over 600 tonnes from September and reached 864 tonnes during December. The case of Italy is less significant; for this State exports of the products in question to the Federal Republic of Germany remained at an average of between 300 and 400 tonnes from March to November though they reached nearly 500 tonnes in December.

It is in fact imports from the United Kingdom and Ireland which show proportionately the most substantial increase, since from a few tonnes from January to September they rose to 1 167 tonnes in December in the case of the United Kingdom and to 2 705 tonnes in the same month in the case of Ireland.

This statistical table does not however of itself provide full evidence of an abnormal increase of imports of beef and veal simply seasoned.

First, because it relates to the entirety of the products falling within subheading 16.02 B III (b) 1 and within this subheading there is no subdivision which enables the respective proportions of this seasoned meat and of other prepared or preserved bovine meat to be ascertained.

Secondly, because the data on which the Commission especially relies, those for December 1976, of necessity could not have been known at the time of the

adoption of Regulation No 3092/76 on 17 December.

These then are the reasons why the Judge-Rapporteur asked the Commission to supply the Court with more precise details covering bovine meat simply seasoned and also to furnish statistics of imports of this product into the Federal Republic of Germany *after* 20 December 1976, the date on which the monetary compensatory amounts were charged and also the figures relating to the first two months of 1977.

On 16 November last the Commission gave at least a partial reply to these questions but these pieces of information, based on the reports of checks by the German customs authorities, seem to me apt to elucidate the facts of the matter.

Although it was not in fact possible to provide the breakdown requested for imports for the period from 1 to 19 December 1976 on the one hand and for the period 20 December to the end of that month on the other, because commercial operators generally make customs declarations monthly, it is evident from the table furnished, relating *exclusively* to imports into the Federal Republic of Germany of *seasoned meat* from certain other Member States for the months of October 1976 to January 1977

inclusive, that during the last three months of 1976 there was an unusual rise, at once very rapid and very large, in these imports especially from Ireland and the United Kingdom.

As regards Ireland the tonnage of imports of this product which was only 335 tonnes in October rose to 1 077 tonnes in November and 1 899 tonnes in December. For the United Kingdom the rise was less substantial: 321 tonnes in November and 496 tonnes in December.

As against this, for January 1977, that is to say after the entry into force of Regulation No 3092/76, a very sharp decrease in these imports is to be observed: 337 tonnes from Ireland and none from the United Kingdom. To my mind there is no doubt that this situation was brought about by the monetary compensatory amounts being put into effect.

The plaintiff in the main action contests these statistical data which it considers to be factually incorrect. The basis of its argument is in essence that the same reports of checks on importation drawn up by the customs authorities are addressed both to the Federal Statistical Office and to the Federal Office for the organization of the agricultural markets. There can thus be no variations in the information received by these two bodies.

Second, Spitta points to a flagrant contradiction between the overall statistics on imports from Ireland covering the entirety of the products falling within tariff subheading 16.02 B III (b) 1 for November 1976, that is to say, 916 tonnes, and the figures shown by the Commission in its recent statement, that is to say, 1 077 tonnes for seasoned meat alone which constitutes only part of this subheading.

In all, it doubts whether the Commission could have had before it statistics specifically applicable to meat simply seasoned because the figures emanating from both the Federal Statistical Office and the Office for the organization of

the agricultural markets relate only to the entirety of the products falling within the above-mentioned tariff subheading.

Nevertheless the plaintiff in the main action admits, contrary it seems to me to its claims, that "the tendency which the Commission does not cease to make use of", that is to say the substantial rise in imports of seasoned meat into the Federal Republic, was "already evident in November 1976" and that it would therefore have been appropriate at that time to adopt a measure containing a transitional time-limit for the benefit of short-term contracts. So, in spite of Spitta's arguments to the contrary, I am in favour of the Commission's arguments and of accepting that a not inconsiderable disturbance in intra-Community trade in the product in question was sparked off especially from November 1976.

I do not think therefore that the Commission has relied on substantially incorrect facts or that it has gone beyond the bounds of the wide discretion which it has in this sphere.

IV — So we now come to the question of the absence, in the disputed regulation, of any provisional arrangement for contracts running at the time at which it entered into force.

In the first place it matters little that the contract in question was performed over a short period, in a few weeks according to what the plaintiff in the main action said, and that it was entered into on 30

November 1976, that is to say, before publication of Regulation No 3092/76.

The decisive factor in this case is that the imports were in fact effected *after* the entry into force of this instrument and this point is not contested.

Indeed from 20 December this regulation was uniformly applicable to all operations within its sphere of application not excepting those arising out of contracts entered into earlier.

Spitta asserts that its contract did not admit of rescission, first because the consignments of seasoned bovine meat which it had bought on 30 November 1976 had clearly been prepared by its supplies when the regulation entered into force and secondly because this meat had in fact already been resold.

However the non-rescindable nature of such a contract, apart from the obligations under private law into which the purchaser has entered is material only to the extent to which he has also undertaken *vis-à-vis* the administration to complete the operation which has been started.

Such is the case-law of the Court as exemplified in particular in the judgments of 14 February 1978 (Case 68/77 *Intercontinentale Fleischhandelsgesellschaft v Commission* [1978] ECR 353, para. 8 at p. 369) and of 27 April 1978 (Case 90/77 *Stimming v Commission* [1978] ECR 995).

Indeed, just as in the IFG case, the import system existing in the present case "required no previous authorization or any firm commitment on the part of the person concerned with respect to the authorities responsible for the management of the organization of the markets in question".

In the second place, the measure taken by the Commission was not unforeseeable by the traders concerned and consequently by the plaintiff. The extension of monetary compensatory amounts to bovine meat simply seasoned

could not have prejudiced the legitimate expectation of those concerned in the maintenance of the previous system which did not apply these amounts. In the judgment of 15 February 1978 (Case 96/77 *Bauche* [1978] ECR 383) the Court, repeating verbatim paragraph 39 of the judgment of 15 May 1975 in Case 74/74 *CNTA v Commission* [1975] 1 ECR 533 at p. 549 clearly laid down that:

"The conditions governing the application and abolition of the system of compensatory amounts in a specific sector do not take into account the individual situations of traders and do not guarantee them a continuous application of the system."

Indeed, the plaintiff could not have been unaware that imports of bovine meat simply seasoned, a product which does not differ appreciably from fresh meat, in fact allowed an escape from the charge of monetary compensatory amounts applicable to such fresh meat or to meat simply chilled or frozen.

In all, the applicant, a dealer in the international meat trade, could not have failed to know either that the products in question are, as I said in my opinion in the *Stimming* case mentioned above, a "sensitive area".

In trade with non-member countries the Commission had moreover so acted as to ensure that, in spite of the opportunities afforded to dealers by the wording of this subheading and made use of to infringe the essential requirements of the common organization of the markets in beef and veal, this meat seasoned with salt and pepper or "prepared" by the addition of other substances was treated in the same way as fresh meat.

In these circumstances any specialist commercial operator who is intelligent and prudent — which Spitta undoubtedly is — should expect that this same equality of treatment as between beef and veal simply seasoned and fresh meat would also be implemented as regards the system of compensatory amounts in intra-Community trade.

I should add that “preparation” of this seasoned meat can be effected in a very short time, and this is moreover confirmed by the plaintiff itself when it calls in aid the shortness of the period for performance of the contract entered into with its supplier.

In these circumstances postponing the entry into force of Regulation No 3092/76 or providing for some transitional period could only have impaired the effectiveness of the measure taken in the general interest of the proper functioning of the common organization of the market in the sector in question. In fact to have acted in this way would have amounted to an instigation to commercial operators to import substantial quantities of seasoned meat before the entry into force of the regulation.

I am of the opinion that the Court should rule that consideration of the question raised by the Hessisches Finanzgericht has disclosed no factor of such a kind as to affect the validity of Commission Regulation No 3092/76 on the application of monetary compensatory amounts to certain beef and veal products.

V — It only remains for me to say briefly what I think about the disputed regulation being restricted to intra-Community trade.

Here again I find the Commission’s argument well founded. In fact since the entry into force on 1 September 1975 of Regulation No 2033/75 of the Commission extending the protective measures (the EXIM system) in particular to seasoned beef and veal (Article 1 (4)), there was virtually no more trade in these products with non-member countries, as appears from *inter alia* the judgment in IFG (Case No 68/77) mentioned above.

Consequently in the absence of any risk of disturbance in this extra-Community trade there was no need to have recourse to the imposition of monetary compensatory amounts. In other words the situation was entirely different from that existing at the end of 1976 for trade between Member States. There is thus no infringement of the prohibition of discrimination based on the second subparagraph of Article 40 (3) of the EEC Treaty.