



MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

(2)

From the Minister

C O N F I D E N T I A L

PRIME MINISTER

Prime Minister

f.s.

Hand - 28/11

Robert Carrington

DUBLIN : SHEEPMEAT

At this morning's briefing I promised to send you the European Court's decision ... against the French on sheepmeat. I now enclose it. The two vital passages are marked:-

(i) In para. 8 on pages 16-17, the Court says that the fact that a common market organisation for sheepmeat has not yet been agreed is no justification for maintaining French national measures that are incompatible with the Treaty.

(ii) In para. 10 on pages 17-18 the Court tells the French that there is nothing stopping them from giving national financial aid to their sheep farmers, so long as they choose a form of aid that is compatible with the Treaty. They cannot therefore claim that it is the prospect of injury to their sheep farmers that prevents them from complying with the Court judgment.

Incidentally, we referred this morning to the fact that the judge was French. In case Giscard contradicts you on this, you should know that one of the judges making up the Court on this occasion (M. Touffait) was French; but the President of the Court (Mr. Kutscher) was German.

You mentioned that Giscard had referred to the fact that our producers did better out of wool than his. As I said, the French sheep breeds and methods of husbandry do not lend themselves to good wool production. But Giscard may also have had in mind that we guarantee the price of wool to our farmers, whereas the French do not. The answer to this is that our wool guarantee is simply a price stabilisation arrangement: we take money away from the producers (organised in the Wool Marketing Board) when the price is high and give it back to them when the price is low. There is no net cost to the Exchequer over a period of years and at present the stabilisation fund is in credit to the tune of £4-5 millions. In other words producers have had to pay in more than they have received.

I am sending copies of this minute to Peter Carrington and Sir Robert Armstrong.

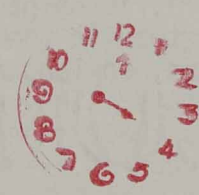
Peter Walker

PETER WALKER
28 November 1979

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
UNITED KINGDOM OF GREAT BRITAIN



28 NOV 1979



Translation from French

COURT OF JUSTICE OF THE
EUROPEAN COMMUNITIES

LUXEMBOURG

JUDGMENT OF THE COURT

of 25 September 1979

In Case 232/78

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

represented by its legal advisers, Messrs R Beraud and P
Kalbe, acting as agents, with an address for service at the
offices of Mr Mario Cervino in the Batiment Jean Monnet,
Kirchberg, Luxembourg,

the plaintiff

versus

THE FRENCH REPUBLIC,

represented by Mr N Museux, acting as agent, with an address
for service at the French Embassy in Luxembourg,

the defendant

the subject of which is a failure to fulfil the obligations
binding on the French Republic pursuant to Articles 12 and 30
of the EEC Treaty.

T H E C O U R T

composed of:

Mr H KUTSCHER, President

Mr MACKENZIE STUART, Section President

Messrs P PESCATORE, M SØRENSEN, A O'KEEFFE, G BOSCO
and A TOUFFAIT, Judges.

Advocate-General: Mr G REISCHL

Registrar : Mr A VAN HOUTTE

renders the present

JUDGMENT

AS REGARDS THE FACTS

I. FACTS AND PROCEEDINGS

1. In the absence of a common organisation of the market in sheepmeat, measures for the stabilisation of this market are adopted in France at national level.

Firstly, a series of aid payments are granted to sheep producer groups under the "sheep production rationalisation plan".

Secondly, having regard to the significant influence of imports over the constitution of market prices in France, stabilisation of domestic prices is sought by means of a system of restrictions on the import of meat both from third countries and from new Member States, including the UK. This system is administered by the Office national interprofessionnel du bétail et des viandes (ONIBEV) "National Joint Trades Livestock and Meat Board".

It is apparent from complaints by British traders and also from two memoranda from the United Kingdom Permanent Representative to the European Communities, sent to the Commission, dated 10 January and 28 February 1978 (Annexes I and II of the statement of claim), that France continued to apply this national system on imports after the end of 1977 in relation to imports of sheepmeat from the UK.

2. By its letter No.SG(78) D/1245 of 2 February 1978, which reached the Permanent Representative of France to the European Communities on 3 February 1978, the Commission invited the French Government to make known its observations on this subject within a period of one month from receipt of this letter.

By a letter from its Permanent Representative to the European Communities dated 18 April 1978, which reached the Commission on 19 April 1978, France set out the serious economic consequences for its market arising from the abolition of the national protection measures in question in the absence of any Community arrangements offering equivalent guarantees.

On 22 May 1978, the Commission issued the reasoned opinion that France, by applying its national system to the import of sheepmeat from the UK beyond 31 December 1977, failed to fulfil the obligations binding on it pursuant to Articles 12 and 30 of the EEC Treaty.

In its reply dated 12 June 1978, which reached the Commission on 15 June 1978, the French Government reiterated the economic reasons leading it to continue applying its system in full to imports from the UK.

3. Feeling that the measures maintained in force by the French Republic were not in accordance with the provisions of the EEC Treaty, the Commission instituted an appeal on 23 October 1978 against the French Republic, the subject thereof being a failure to fulfil obligations binding on it under Articles 12 and 30 of the EEC Treaty.

The appeal was entered in the Court register on 25 October 1978.

On a report from the judge acting as Rapporteur, with the Advocate-General having been heard, the Court decided to initiate the oral proceedings without a prior investigation.

II. CONCLUSIONS OF THE PARTIES

In its ^{proceedings,} statement of claim instituting the the Commission concluded that it might please the Court:

- "1. To declare that the French Republic, by continuing to apply its national restrictive system to the import of sheep from the UK after 1 January 1978, failed to fulfil the obligations binding on it under Articles 12 and 30 of the EEC Treaty.
2. To order the French Republic to pay costs".

In its statement of defence, the Government of the French Republic requested the Court to reject the claim submitted by the Commission.

III. PLEAS AND ARGUMENTS OF THE PARTIES

In its statement of claim, the Commission described the system restricting sheepmeat imports and set up by the French Republic, in the following terms:

- "1. Imports of frozen sheepmeat are in principle prohibited, with certain exceptions having been permitted.
2. The system applied to imports of live animals and to fresh and chilled sheepmeat is based on a "threshold price", protected by a system for the prohibition of imports and of payments". It is operated via the granting or refusal of national import permits. Although a maximum quantity is not laid down, the ONIBEV only issues importers with "allocation certificates", drawn from an "overall import permit", which are awarded to them and limited as regards quantity and period of validity.

These import permits are only issued by the ONIBEV when a certain reference quotation attains or exceeds the threshold price level. When the national reference quotation is lower than this price for one week, the issue of the import certificates is suspended, only to be restored if the threshold price is attained the following week. Imports are stopped if the threshold price is not attained for two consecutive weeks, with the re-opening of the frontier only taking place when the price has been exceeded for two consecutive weeks.

3. Moreover, the ONIBEV levies, on imports of live slaughter animals and fresh or chilled sheepmeat carcasses, a "transfer payment", the amount of which varies in direct relation to the national reference quotation for mutton on the French market. According to the weekly level of this quotation, the transfer payment is fixed at six different standard rates.
4. Both the threshold price level and the amounts of the transfer payments are periodically adjusted to the change in producers' cost prices. The increase in the level of the transfer payments paid by importers has been higher than that in respect of threshold prices, since it has partly taken account of the depreciation of the currencies of mutton-exporting countries in relation to the French Franc in such a way as to lessen the detrimental effect of the absence of any monetary compensation system in the French market organisation".

The Commission points out that the application by a Member State, in intra-Community trade, of

- charges having an effect equivalent to customs duties, such as the French "transfer payments" on sheepmeat imports;
- quantitative restrictions on imports, such as the closing of the French frontier to Community sheepmeat;
- measures having an effect equivalent to these quantitative restrictions, such as the national import permit system.

are incompatible with the provisions of the EEC Treaty on the free movement of goods, viz. Articles 12 and 30.

After the transitional period provided for in the EEC Treaty, the application of national measures derogating from the rules on the free movement of goods could no longer be justified - in trade with any Member State - either by the absence of a common organisation of the market (cf. Case 68/76, Commission v. French Republic, 1977 Casebook, p.515) or by the integration of these [? this] in a national market organisation for the products in question (cf. Case 48/74, Charmasson v. Ministry of Economy and Finance, 1974 Casebook, p.1383).

According to the Commission, restrictions on sheepmeat imports from the UK could no longer be justified under Art.60(2) of the Act of Accession after the end of 1977.

In its statement in defence, the Government of the French Republic points out that, in relation to the UK, the provisions of the Treaty of Rome must be assessed bearing in mind the special terms of the Act of Accession.

Contrary to what is considered to have been laid down in the Rome Treaty, the Act of Accession did not lay down the principle according to which a "transitional period" was to exist. The Act of Accession did not include provision for any "transitional period" but for "derogating provisions" or "transitional measures" which were to end in 1977 subject to "dates, time limits and special provisions" (Art.9(2)). Consequently, the case-law of the Court of Justice, as laid down in the Charmasson case could not be applied to the very different situation arising from the Act of Accession.

Article 60(2) of the Act of Accession is considered to constitute one of the examples of the application of the concept of "special provision" covered by the reservation in Article 9. Taking into account the fundamental structural differences between the British agricultural economy and agriculture in the old Member States, these would, in the course of the accession negotiations, have acknowledged that it was not possible to apply in full the Treaty of Rome rules on freedom of movement between such fundamentally different economies. They would therefore logically have adopted a specific transitional formula on the basis of which the national market organisations could carry on until the Community had provided them with a common organisation in replacement. This could not have been a renunciation of the transitional nature of these provisions but recognition that it was necessary to provide special solutions for exceptional situations.

That this is indeed the interpretation which ought to be applied to Art.60(2) of the Act of Accession would be confirmed by a comparison between this provision and the homologous article of the Rome Treaty, Article 45. Contrary to Article 45 of the Rome Treaty, Art.60(2) of the Act of Accession does not seem to lay down any transitional arrangements or relate to any concept of a specific length of time. Art.60(2) lays down, literally, that the derogations from the provisions of Title 1 and the maintaining of the national organisation are possible "until a common organisation of the market in respect of these products is made to apply". The comparison of the "special provision" of Art.60(2) with other special provisions laid down by the Act of Accession, and in particular Arts. 54 and 64 as well as Protocol No.18 on butter and cheese imports from New Zealand, would seem to confirm the sound basis of what has just been said. The fact , in

effect, emerges from this comparison that while the special provision is intended to last with no condition other than that which it lays down, nothing is said about the length of time of application. On the contrary, while - despite the special provision - the term up until the end of 1977 was adopted as the irrevocable limit, this provision would have been formally written following on from the special provision.

In an annex to its statement in defence, the Government of the French Republic briefly describes the principal characteristics of the sheepmeat market in France which justify maintaining the measures brought into question by the Commission. These characteristics are as follows:

- a) domestic production of sheepmeat is inadequate to meet domestic demand;
- b) the sheep-rearing regions in France are less-favoured mountain and mountain-foot regions;
- c) the price levels in France, compared with other countries, are accounted for by the high production costs and by a difference of conception in the system for the guarantee of farmers' incomes;
- d) the stability of domestic sheepmeat production contrasts with the marked seasonal variations recorded on the markets of other producers.

The system established by the French authorities, which operates on the basis of the threshold price, would make it possible to prevent the market being seriously disturbed by sudden seasonal fluctuations to the detriment of producers' incomes and the stability of prices to consumers. This system is considered comparable in every respect to the mechanisms provided for by the regulations in the case of agricultural products in which the EEC is deficient.

Bearing in mind the mechanisms of the sheepmeat market organisation in France, the existing provisions relating to imports constitute the essential element without which this system would lose any usefulness in maintaining the standard of living of producers who, for the most part, are located in less-favoured operational areas. The abrupt disappearance, with no compensatory arrangements, of this market organisation would have an irremediable effect on them and innumerable farms would go out of business.

In its statement in reply, the Commission chose not to submit a detailed analysis of the arguments developed by the French Government in its statement in defence, and referred to the observations it had submitted in Cases 118/78 (Meijer v. The Department of Trade) and 231/78 (Commission v. The UK) in which the French Republic was a party to the proceedings. The question whether, under Art.9 of the Act of Accession, the applicability of Art.60(2) of this Act is limited in time to 31 December 1977 or whether, on the contrary, this provision allows the Member States to maintain, without any precise limitation in time, obstacles to the free movement of certain agricultural products, which is the central issue in the present dispute, is considered to arise in exactly the same terms as in the two aforementioned cases.

The Government of the French Republic chose not to submit a rejoinder.

IV. ORAL PROCEEDINGS

At the hearing of 14 June 1979, the Commission, represented by Mr R-C Beraud, and the Government of the French Republic, represented by Mr N Museux, were heard submitting their oral observations.

At the hearing, the Commission in particular modified its conclusions and requested the Court of Justice, having regard to the periods laid down in Arts. 35,36 and 42 of the Act of Accession, to find that the French Republic had failed to fulfil its obligation under Arts. 12 and 30 of the EEC Treaty, firstly, since the date of accession, as far as the quantitative restrictions on imports were concerned, such as the closing of the French frontier to sheepmeat from the new Member States; secondly, since 1 January 1975, as far as the measures having an effect equivalent to these quantitative restrictions were concerned, such as the national import system; and finally, since 1 July 1977 as far as the charges having an effect equivalent to customs duties were concerned, such as the transfer payments on sheepmeat imports. To justify this modification to the central issue of its claim, the Commission explained that the claim was based on the premise that Art.60(2) of the Act of Accession could be invoked not only by the new Member States but also by the original Member States and that the provision therefore allowed the latter to oppose the import of products from new Member States during the period from the date of accession to 31 December 1977.

Now, according to the Commission, it emerged from the judgement rendered on 29 March 1979, in the course of the proceedings, by the Court in Case 231/78 (Commission v. UK, not yet published) that the Court intended ruling out the possibility of the original Member States availing themselves of Art.60(2) of the Act of Accession. This was accordingly the reason why the Commission felt it should alter the dates from which the non-fulfilments constituting the subject of the claim were considered to have occurred.

The Advocate-General presented his conclusions for hearing on 4 July 1979.

IN LAW

1. By means of a statement of claim entered in the Court register on 25 October 1978, the Commission referred to the Court, pursuant to Art.169 of the EEC Treaty, an appeal aimed at causing it to be found that "the French Republic, by continuing to apply its national restrictive system after 1 January 1978 to sheepmeat imports from the UK, failed to fulfil the obligations binding upon it under Article 12 and also Article 30 of the EEC Treaty". In its defence, the French Government basically made the point that it was entitled, pursuant to Art.60(2) of the Act of Accession, to maintain the restrictions on imports envisaged, as long as the sheepmeat did not fall within the scope of a common organisation of the market.

Referring in support of its case to the judgment rendered by the Court on 29 March 1979 (Case 231/78, Commission v. the UK), in the course of proceedings, the Commission modified its conclusions at the hearing and requested that the Court should, taking into account the conception which lay at the basis of the judgment, find that the national system applied to sheep-meat imports and maintained by the French authorities was incompatible with Arts. 12 and 30 of the EEC Treaty, as regards certain aspects of it, from 1 July 1977; as regards others, from 1 January 1975; and as regards others still, from the date of accession onwards. According to the Commission, the fact emerges from the aforementioned judgment that only the new Member States were entitled to avail themselves of the provisions of Art. 60(2) of the Act of Accession and that, consequently, in the case of the original Member States, it was in relation to the dates laid down in Arts. 35, 36 and 42 of the Act of Accession that the compliance with the Treaty of restrictions on imports, applicable to products from a new Member State, should be assessed.

3. The new conclusions submitted by the Commission at the hearing are inadmissible inasmuch as they are contrary to the requirements of Article 38 of the Rules of Procedure. Under the terms of this provision, the parties are obliged to define the subject of the dispute in the ^{act} instituting the proceedings. Even if Art. 42 of the Rules of Procedure allows, under certain conditions, the production of new grounds for a claim, a party cannot in the course of proceedings modify the actual subject of the dispute. From this stems the fact that the sound basis of the claim must be examined solely having regard to the conclusions contained in the statement of claim instituting the proceedings, viz. concerning the period subsequent to 1 January 1978.

4. It is clear from the grounds which are at the basis of the judgment of 29 March 1979, which is quoted above, that the effects of Art.60(2) of the Act of Accession expired at the end of 1977. This provision is not therefore applicable in respect of the period for which the Community requested that non-fulfilment on the part of the French Republic should be found. It must therefore remain beyond consideration as far as the solution to the present dispute is concerned. The latter must be decided on the basis of the provisions of the EEC Treaty only, viz. Arts.12 and 30. The arguments drawn by the French Government from the Act of Accession must accordingly be set aside from examination of the dispute.

As regards the substance of the case

5. It is an established fact that imports of sheepmeat into France are subject to a restrictive system applied to imports and based on a "threshold price" which is protected by a system of import prohibition and of "transfer payments". Imports of sheepmeat into France are only authorised when a certain reference quotation in France attains or exceeds the threshold price level. Furthermore, a "transfer payment" whose amount varies in direct relation to the national reference quotation for mutton on the French market is levied on imports of live slaughter animals and fresh or chilled sheep carcasses.

6. The French Government does not contest the fact that this system is contrary to the provisions of the Treaty relating to the elimination of obstacles to the free movement of goods within the Community. However, with a view to justifying the maintaining of this system and its application to imports of sheepmeat from the UK, it puts forward, basically, three arguments. Firstly, it draws attention to the serious economic and social consequences of a dismantling of the national market organisation for the economy of certain economically less-favoured regions, for which sheep-rearing constitutes an import resource. Secondly, it draws attention to the stage reached in the work on setting up a common organisation of the market in sheepmeat, while stressing the detrimental effect of interposing a stage of free trade between the abolition of the national organisation and its replacement by a common organisation. Finally, it makes the point of the competitive inequality which would arise from the fact that it would be obliged to dispense with its own market organisation, whereas in Great Britain a national organisation based on the "deficiency payments" system, whose effect would be to subsidise exports of sheepmeat to France, would continue to exist intact.

7. While not failing to appreciate the reality of the problems which the French authorities must face in the sector under consideration, and the benefit there would be in achieving the setting up, at the earliest opportunity, of a common

organisation of the market for sheepmeat, the Court must point out, as it already stressed in its judgments of 2 December 1974 (Case 48/74, Charmasson, Casebook p.1383) and of 29 March 1979, quoted above, that after the expiry of the transitional period of the EEC Treaty and, as regards the new Member States, the expiry of the transitional periods specifically laid down by the Act of Accession, the operation of a national market organisation could no longer constitute an obstacle to the full effect of the provisions of the Treaty relating to the elimination of restrictions on intra-Community trade, the requirements of the markets concerned being henceforth taken in hand by the Community institutions. The expiry of the transitional periods means, therefore, that the subjects and spheres explicitly attributed to the Community come under the jurisdiction of the Community, so that, while it is still necessary to have recourse to special measures, these will no longer be able to be decided on unilaterally by the Member States concerned, but must be adopted within the framework of the Community order, intended to guarantee that the general interest of the Community is safeguarded.

8. It is accordingly up to the competent institutions, and to them alone, to take, within the appropriate periods, the necessary measures for finding, within a Community framework, an overall solution to the problem of the sheepmeat market and to the special difficulties which arise in this connection in certain regions. The fact that this work has not yet been finalised does not, however, constitute an

adequate reason for a Member State to maintain a national market organisation comprising characteristics incompatible with the requirements of the Treaty relating to the free movement of goods, such as restrictions on imports and the levying of dues on imported products, under whatever designation.

9. The French Republic could not justify the existence of such a system by the consideration that, for its part, the UK would have maintained a national market organisation for the same sector. If the French Republic felt that this system contained aspects incompatible with Community law, it would have the possibility to act, either within the Council or via the Commission, or else finally by way of judicial remedies with a view to having these incompatibilities eliminated. In no case could a Member State take upon itself the authority to adopt, on a unilateral basis, adjustment or protection measures aimed at obviating any disregard by another Member State of the rules of the Treaty.
10. It should therefore be concluded that the national market organisation for sheepmeat maintained by the French authorities is incompatible with the Treaty in that it involves the determination of a threshold price protected by a system for the prohibition of imports and the levying of a charge on sheepmeat imports from another Member State. It should be pointed out that this finding does not prevent the French

authorities adopting, in favour of the sector concerned and pending the establishment of a common organisation of the market, any aid measure whose characteristics were compatible with the provisions of the Treaty.

11. It follows from this that by continuing to apply its national restrictive system to sheepmeat imports from the UK after 1 January 1978, the French Republic failed to fulfil the obligations binding upon it under Arts.12 and 30 of the EEC Treaty.

As regards costs

12. Under the terms of Art.69(2) of the Rules of Procedure, any party losing its case is ordered to pay costs. As the defending party has lost the case on the basis of the grounds it pleaded, it is necessary that it should be ordered to pay costs.

For these reasons,

THE COURT

declares and lays down

- 1) By continuing to apply, after 1 January 1978, its restrictive system to imports of sheepmeat from the United Kingdom, the French Republic has failed to

fulfil the obligations binding it pursuant to
Articles 12 and 30 of the EEC Treaty..

2) The defendent is made liable to pay costs.

KUTSCHER

MACKENZIE STUART

PESCATORE

SØRENSEN

O'KEEFFE

BOSCO

TOUFFAIT

Thus pronounced at a public hearing in Luxembourg,
25 September 1979.

The President

H. KUTSCHER

The Registrar

A. VAN HOUTTE