

BACKGROUND INFORMATION

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AGRICULTURAL BACKGROUND NOTE

No. 4/1977

June 10, 1977

EUROPEAN COURT OF JUSTICE UPHOLDS COMMISSION IN BRITISH AID CASE

An injunction last month by the European Court of Justice, the highest court of the nine-nation European Community, ordering the British government to cease payment of a subsidy to its pig farmers has underlined the precedence of Community law over national governments and temporarily halted an issue of Community contention.

In a May 21 decision, the Court of Justice ordered the United Kingdom of Great Britain and Northern Ireland to stop the 5.5 pence payment per kilogram dead weight that it had made to its pig farmers since January 31. John Silkin, the British agricultural minister, announced shortly afterward that Britain would abide by the European Court's decision, and would withdraw the aid on June 11.

The Court has not yet decided what final action is to be taken in the case. Silkin and EC Agriculture Commissioner Finn Olav Gundelach have agreed that a committee of British and EC experts will reexamine the aid question while the court continues its deliberations.

The issue is particularly controversial because some British politicians are arguing against British membership in the Community at a time when the British Parliament is considering the proposed direct elections to the European Parliament. The injunction against the aid to pig farmers arouses resentment among the agricultural population, who in general support Britain's Community membership.

Some portions of the British consumer population, however, have a tendency to blame the Community's Common Agricultural Policy (CAP) as the primary cause of high food prices. EEC Commissioner Christopher Tugendhat recently set forth facts to disprove that contention in a speech to British Conservatives in Paris.

"In the eight months from August 1976,..." said Tugendhat, "the retail price index went up by 11 per cent and the food price index by 18 per cent..." The products covered by the CAP, he continued, "went up on an average by 9 per cent..." The products not covered by CAP levies, however, which include fruit, vegetables, potatoes, tea and coffee, "went up on an average by a staggering 26 per cent. Indeed in this period tea went up by 64.6 per cent and coffee by 73.5 per cent."

In the case of the British aid to its pork farmers -- bacon is virtually the only consumer product affected -- the Commission of the European Communities contended, and the Court has temporarily upheld by its injunction, that the British aid contravened CAP regulations and therefore Community law.

The British contend that the CAP monetary compensatory amount (MCA) system, which allows subsidies to certain products for intra-EC trade on the basis of the relative strength of the national currencies, gives an unfair advantage to Danish and Dutch bacon over British-produced bacon. The MCA system, according to British sources, allows an adjustment to Danish and Dutch pork producers of 234 pounds sterling per metric ton. The British say that the national aid to their pig farmers did not completely offset the MCA advantage of the Danish and Dutch pork producers, but that it repaid about half and brought British farmers into a fairer position.

The Commission, on the other hand, contends that the trend in the British pig breeding herd runs parallel to that in other Community countries, which is currently undergoing a cyclical increase and a short-term increase in the pig supply so that a surplus of pork is likely to remain for some time. By favoring pork production in Britain, the Commission said, the aid in question threatened to distort competition in the Community. The Commission said the British statement that aid was only a temporary protection against competition from member states did not make the aid compatible with Community regulation, since such aid has always, in principle, been condemned by the Community.

The Court found that Britain's payment of the aid was illegal regardless of the merits of the case. "Even if the member state in question took the view that the aid measure was compatible with the common market and that the contrary decision of the Commission was vitiated by infringement of the rules of the treaty," the ruling said, "that fact could not entitle it to defy the clear provisions... and to act as if that decision were nonexistent in law."

"Indeed," the injunction said, "it is in order to prevent member states from acting as judges in their own cause that the treaty provides them... with the opportunity to refer to the court any infringement of the law on the part of the institutions, so that a decision of the Commission remains binding in its entirety upon the state to which it is addressed...unless the court decides to the contrary."

The Court said further that if a subsequent adjudication of the case decided in favor of the British that the government would then be able to reinstate the aid retroactively.

The decision documented again the jurisdiction of the Court of Justice in proceedings brought against states that fail to fulfill their obligations under Community regulations and the primacy of Community rules over conflicting national rules.

In terms of external Community trade, the Court decision facilitated trade relations because it validated the Community rule of maintaining a single MCA system for Community agricultural products.