

JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 5 MARCH 1980¹

Simmenthal S.p.A.
v Commission of the European Communities

“Common organization of the market in beef and veal”

Case 243/78

Application for annulment — Interest in taking legal action — Events intervening during the proceedings — Application deprived of foundation — Prosecution of the action — Improper nature — Rejection

(EEC Treaty, Art. 173)

If, in the light of events intervening during the proceedings, the applicant should have recognized that its application for annulment was devoid of foundation, it no longer had any interest in prosecuting its action. In those circumstances the prosecution of that action is an abuse of process and the application must be dismissed.

A judgment of the court given in another case between the same parties and concerning a strictly similar question and the decision of the defendant institution adopted pursuant to that judgment may constitute such events.

In Case 243/78

SIMMENTHAL S.P.A., having its registered office in Aprilia (Italy), represented by Emilio Cappelli and Paolo de Caterini, Advocates of the Rome Bar, with an address for service in Luxembourg at the Chambers of Charles Turk, 4 Rue Nicholas Welter,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, H. Bronkhorst, acting as Agent, assisted by Guido Berardis, a member of the

¹ — Language of the Case: Italian.

Legal Department of the Commission, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision No 78/940/EEC of 27 October 1978 fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation (EEC) No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the fourth quarter of 1978 (Official Journal L 326, p. 14),

THE COURT (Second Chamber)

composed of: A. Touffait, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts, the course of the procedure, the conclusions and the arguments and submissions of the parties may be summarized as follows:

I — Facts

1. Article 13 (1) of Regulation No 805/68 of the Council of 27 June 1968 on the common organization of the

market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187) provides that a levy shall be charged on imports into the Community of frozen meat of domestic bovine animals falling within tariff subheading 02.01 A II (a) 2 of the Common Customs Tariff.

2. However, Article 14 (1) of the said regulation provided for frozen meat intended for processing (forequarters

and boned or boneless or unboned meat) to qualify for special import terms consisting of the total or partial suspension of the levy. Article 14 (3) (a) provided for the total suspension of the levy in respect of meat intended for the manufacture of preserved food falling within subheading 16.02 B III (b) 1 of the Common Customs Tariff which does not contain characteristic components other than beef and jelly.

3. On 14 February 1977 the Council adopted Council Regulation No 425/77 amending Regulation No 805/68 (Official Journal L 61, p. 1).

The situation on the beef and veal market which had for several years been characterized by a shortage accompanied by a rise in prices, had then degenerated into a market price slump made worse by massive imports, and import arrangements had to be adjusted to avoid a recurrence of similar situations; the Council therefore considered that certain special systems should be adapted so that account might be taken in annual estimates of both the supplies available to the Community and the Community's needs. It therefore amended *inter alia* Article 14 of Regulation No 805/68 by providing that frozen meat intended for processing which qualified for importation under total suspension of the levy from then on only benefited from this exemption under new conditions:

(a) The Council, on a proposal from the Commission, before 1 December each year, shall draw up an estimate of meat which may be imported under suspension of the levy. This estimate shall take account, on the one hand, of the expected Community supplies of meat of a quality and type of cut suitable for

industrial use, and, on the other, of industrial needs (new Article 14 (2));

(b) The Commission shall determine each quarter the quantities of the said meat which may be imported under total suspension of the levy and shall adopt detailed rules for the application of Article 14 and particularly those concerning control of the end use of imported meat (new Article 14 (4));

(c) Importation under total suspension of the levy shall be made conditional on production of an import licence issued for a quantity falling within the limits laid down each quarter; it may be made conditional, as far as necessary, on production of a purchase contract for frozen meat held by an intervention agency ("linking" system; new Article 14 (3)).

4. The Commission adopted detailed rules for the application of Council Regulation No 425/77 in Commission Regulations Nos 585/77 and 597/77 of 18 March 1977, the first on the system of import and export licences for beef and veal (Official Journal 1977 L 75, p. 5); the second laying down detailed rules for the application of special import arrangements for certain types of frozen beef intended for processing (Official Journal 1977 L 76, p. 1); those regulations were themselves subsequently amended and completed by Commission Regulation No 1384/77 of 27 June 1977 (Official Journal L 157, p. 16) and Commission Regulation No 2901/77 of 22 December 1977 (Official Journal L 338, p. 9) [They were subsequently replaced by Commission Regulations (EEC) Nos 571/78 and 572/78 of 21 March 1978 (Official Journal 1978 L 78, p. 10 and p. 17)].

Those provisions stipulate that in order to qualify for total suspension of the levy the application for a licence or licences lodged by any one applicant must relate to a quantity corresponding to not less than five tonnes of bone-in meat and not more than 10% of the quantity fixed by the Commission, pursuant to the new Article 14 of Regulation No 805/68 for the quarter during which the application for a licence or licences is lodged (Article 3 or Regulation No 1384/77).

Moreover, applications for licences shall be considered only if they are made by a natural or legal person who for at least 12 months has been carrying on business in the meat and livestock sector and is officially registered in a Member State (Article 1 of Regulation No 2901/77).

5. On 22 December 1977 the Commission also adopted Regulation No 2900/77 laying down detailed rules for the sale of beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing (Official Journal L 338, p. 6).

As provided for in Article 1 (1) of that regulation, importation with total suspension of the levy shall be conditional upon the submission of a purchase contract for frozen meat held by an intervention agency, concluded in accordance with the said regulation. Article 1 (2) provides that the sale shall take place by way of tender pursuant to Articles 6 to 14 of Regulation No 216/69 of the Commission of 4 February 1969 on detailed rules of application for the disposal of frozen beef and veal bought in by intervention agencies (Official Journal, English Special Edition

1969 (I), p. 31); that regulation provides *inter alia* that minimum selling prices in a tendering procedure shall be fixed by the Commission, that if the tender is for less than the minimum price it shall be refused and that the contract shall be awarded to the highest tender, provided that when several tenders at the same price are received for the same quantity, the intervention agency shall divide the quantity available in agreement with the tenderers concerned or award it by balloting. Article 1 (2) of Regulation No 2900/77 refers to Regulation No 216/69 "subject to the special and derogating provisions laid down in this regulation".

Article 2 of Regulation No 2900/77 provides that the intervention agencies shall issue partial invitations to tender every quarter "under the tendering system" and that a general notice of invitation to tender shall be published at the latest on the date of publication of the first partial invitation to tender.

Article 3 of the same regulation provides that tenders may be submitted only during the first ten days of each quarter. However, on the first occasion, they might be submitted only between 20 and 30 January 1978. Only tenders for a total quantity of not less than five tonnes and not more than 100 tonnes, expressed as unboned meat, can be accepted.

6. On the basis *inter alia* of Regulations No 216/69, No 2900/77 and No 2901/77 the Commission published on 13 January 1978 (Official Journal C 11, p. 16) a "general notice of periodic invitations to tender for the sale of frozen beef held by the intervention agencies to enable the import with total

suspension of the levy of frozen beef and veal intended for processing”.

7. The Commission published at the same time as the general notice of invitations to tender several partial invitations to tender, including Notice of invitation to tender No It P 1 — Regulation (EEC) No 2900/77 — for the sale of certain frozen unboned (bone-in) beef held in stock by the Italian intervention agency (Official Journal C 11, p. 34).

The partial invitation to tender No It P 1 stated that the Italian intervention agency was offering for sale approximately 4 000 tonnes of frozen unboned beef in accordance with the rules laid down in the general notice of invitations to tender.

8. On 20 January 1978 the joint stock company Simmenthal, whose registered office is at Aprilia, submitted to AIMA (Azienda di Stato per gli Interventi nel Mercato Agricolo: the Italian Intervention Agency for agricultural products) a tender for the purchase of 100 tonnes of frozen unboned beef at a price of LIT 1 240 000 per tonne.

9. On 15 February 1978 the Commission adopted Decision No 78/258/EEC fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation (EEC) No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978 (Official Journal L 69, p. 36).

10. On 23 February 1978 AIMA addressed to Simmenthal a decision of refusal of its tender of 20 January since it did not come within the terms of the invitation to tender.

11. By an application of 13 April 1978 Simmenthal requested the Court, pursuant to the second paragraph of Article 173 of the EEC Treaty, to declare Commission Decision No 78/258 to be void and, in accordance with Article 184, to declare the partial notice of invitation to tender No It P 1 and the general notice of periodic invitations to tender of 13 January 1978, Regulations No 585/77, No 2900/77 and No 2901/77 to be inapplicable.

12. On 22 September 1978 the Commission published partial invitation to tender No It P 4 — Regulation (EEC) No 2900/77 — for the sale of certain frozen unboned (bone-in) beef held in stock by the Italian intervention agency (Official Journal C 225 of 12 September 1978, p. 43).

As provided for in that partial invitation to tender the Italian intervention agency was putting up for sale some 4 019 tonnes of frozen unboned (bone-in) beef in accordance with the rules laid down in the general notice of invitation to tender of 13 January 1978. Notice No It P 4 provided that only tenders which reached AIMA before 10 October 1978 would be taken into consideration.

13. On 6 October 1978 Simmenthal submitted to AIMA a tender for the purchase of 100 tonnes of frozen unboned (bone-in) beef at a price of 950 units of account per tonne.

14. On 27 October 1978 the Commission adopted Decision No 78/940/EEC fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation (EEC) No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the fourth quarter of 1978 (Official Journal L 326, p. 14).

15. Article 1 (1) of that decision in conjunction with the annex thereto fixes the minimum selling prices for frozen beef stored by the intervention agencies which are to be adopted for invitation to tender No It P 4 in the following way:

Products	Minimum selling prices (u.a./tonnes)	
	A	B
Forequarters of:		
“Vitelloni 1”	1 736	1 898
“Vitelloni 2”	1 539	1 929

Article 2 of the said decision provides that for the period 1 October to 31 December 1978 the maximum quantities of meat intended for the manufacture of preserved food which qualify for importation under total suspension of the levy shall be 3 502 tonnes.

16. On 30 October 1978 AIMA informed Simmenthal that its tender had not been accepted since the price tendered was less than the minimum price fixed by the competent Community bodies.

17. On 3 November 1978 Simmenthal requested the Court to declare Decision No 78/940/EEC to be void.

18. The proceedings instituted against Decision No 78/258/EEC by Simmenthal on 13 April 1978, in which

the Government of the Italian Republic intervened in support of the conclusions of the applicant company, culminated in a judgment of the Court of Justice of 6 March 1979 in Case 92/78.

The Court in that judgment held, *inter alia*, that to allow persons or undertakings unconnected with the processing industry to take advantage of the special import arrangements under suspension of the levy was incompatible with the objectives of Regulation No 805/68 and led, on the one hand, to the Commission fixing a minimum price at an abnormally high level and, on the other hand, to setting an exceptionally low ceiling for the tonnage which may be purchased by any one successful tenderer; consequently, the Court annulled Decision No 78/258, but for reasons of legal certainty and taking special account of the established rights of those participants in the invitation to tender whose tenders had been accepted having regard to the minimum price fixed by the Commission, that annulment was restricted to the specific decision to reject the applicant's tender which stemmed from Commission Decision No 78/258.

Consequently the Commission, pursuant to the first paragraph of Article 176 of the EEC Treaty, had to reconsider the particular situation of the applicant and adopt another decision affecting it through the competent intervention agency. It was for the Commission to adopt its decision with due regard to the grounds of that judgment and especially after taking account of the fact that the system introduced by the new Article 14 of Regulation No 805/68 may in no circumstances have the effect of ensuring that the processing industry buys intervention meat at a price lower than

the price for reducing intervention agency stocks usually charged at the relevant time in the case of meat of the qualities in question. The judgment went on to state that the applicant's tender should be rejected if it appeared that it was below that price level.

19. The Commission adopted on 19 April 1979 and sent to the Italian Government on 20 April 1979 a decision "rejecting a tender submitted in answer to an invitation to tender for frozen beef put up for sale by the intervention agencies in accordance with Regulation No 2900/77 for the first quarter of 1978".

The Commission, with reference to the judgment of 6 March 1979, states in the recitals of the preamble to that decision that the tender submitted by Simmenthal in answer to the invitation to tender mentioned in Decision No 78/258 is lower than the price for reducing intervention agency stocks usually charged at the relevant time in the case of meat of the qualities in question and must therefore be rejected.

20. More generally, the Commission accepted the consequences of the judgment of the Court of 6 March 1979 by adopting on 8 June 1979 three regulations:

(a) Regulation (EEC) No 1136/79 laying down detailed rules for the application of special import arrangements for certain types of frozen beef intended for processing and repealing Regulation (EEC) No 572/78 (Official Journal L 141, p. 10);

(b) Regulation (EEC) No 1137/79 amending Regulation (EEC) No 571/78 concerning arrangements for

import and export licences in the beef and veal sector (Official Journal L 141, p. 13);

(c) Regulation (EEC) No 1138/79 fixing the quantities of frozen beef intended for processing which may be imported on special conditions for the second and third quarters of 1979 and repealing Regulations (EEC) No 2900/79 and (EEC) No 535/79 (Official Journal L 141, p. 15).

II — Written procedure

1. Simmenthal lodged an application on 3 November 1978, pursuant to Articles 173, 174 and 184 of the EEC Treaty, for a declaration that Commission Decision No 78/940/EEC of 27 October 1978 is void and that Notice of invitation to tender No It P 4 of 22 September 1978, the General Notice of periodic invitations to tender of 13 January 1978, Commission Regulation No 571/78 of 21 March 1978 and Commission Regulation No 2900/77 of 22 December 1977 are inapplicable.

2. On the same date, 3 November 1978, Simmenthal, pursuant to Articles 185 and 186 of the EEC Treaty and Article 83 (1) of the Rules of Procedure, lodged an application for suspension of the effectiveness of Commission Decision No 78/940/EEC, limited as appropriate to the results of Notice of invitation to tender No It P 4 and for an order that the Commission should instruct the national authorities to suspend the issue of the import licences corresponding to the purchase agreements concluded by the successful tenderers with the intervention agencies and also for the suspension, until publication of the final judgment in Case 92/78, of the application of the special import

arrangements for frozen meat intended for the processing industry for 1979.

3. The President of the Court by an order of 29 November 1978 refused the application and reserved the costs.

4. The written procedure in the principal action, after an extension of the time limit within which the defence was to be lodged, followed the normal course.

5. After hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. However, it asked a question which it request the Commission to answer in writing and Simmenthal to answer at the hearing.

6. By an order of 7 November 1979 the Court, pursuant to Article 95 (1) and (2) of the Rules of Procedure decided to assign the case to the Second Chamber.

III — Conclusions of the parties

1. The *applicant* claims that the Court should:

- (a) Declare Commission Decision No 78/940/EEC of 27 October 1978 to be void within the meaning of Articles 173 and 174 of the EEC Treaty;
- (b) So far as necessary, declare inapplicable within the meaning of Article 184 of the EEC Treaty:

— Notice of invitation to tender No It P 4 of 22 September 1978;

— General notice of periodic invitations to tender of 13 January 1978;

— Commission Regulation (EEC) No 571/78 of 21 March 1978 on the system of import and export licences for beef and veal and repealing Regulation (EEC) No 585/77;

— Commission Regulation (EEC) No 2900/77 of 22 December 1977;

(c) Order the Commission to pay the costs.

2. The *Commission* relies on the wisdom of the Court as to whether the application may be inadmissible, at least if, upon careful examination, it is found to be designed to obtain an interpretation of the judgment of the Court of 6 March 1979 in Case 92/78.

Should the Court decide to give a ruling on the interpretation of the concept of "price for reducing intervention agency stocks usually charged at the relevant time", as used in the said judgment of 6 March 1979, it contends that the interpretation suggested by the applicant should be declared to be unfounded.

As far as the substance of the case is concerned, the Commission states that it refers for all purposes to the considerations which it developed in its defence in Case 92/78.

IV — Submissions and arguments of the parties during the written procedure

A — Admissibility

1. The *Commission* draws attention to the fact that the Court in its judgment of

6 March 1979 in Case 92/78 admitted that the applicant company had an interest in the annulment of the contested decision; "such interest consists either in its being restored sufficiently by the Commission to its original position or in inducing the Commission to make suitable amendments in the future to the system of invitations to tender ...".

(a) On the second point, it should be stated that the Commission has met the requirements mentioned in the judgment of the Court by adopting Regulations Nos 1136, 1137 and 1138/79.

(b) With reference to the applicant company being "restored sufficiently ... to its original position", the judgment directed the Commission to reconsider the tender submitted in answer to invitation to tender No It P 1 and stated that that tender should be rejected if it appeared that it was below the price for reducing intervention agency stocks usually charged at the relevant time in the case of meat of the qualities in question. The usual price for reducing intervention agency stocks was at that time 1 291 units of account (to be precise, 1 290.87 units of account, according to Annex II to Commission Regulation (EEC) No 2836/77 of 19 December 1977 (Official Journal L 327, p. 11)). After the Commission had reconsidered Simmenthal's tender of 20 January 1978 it rejected it by a decision of 19 April 1979 since the price offered by Simmenthal was 1 091.26 units of account. The price which Simmenthal offered on 6 October 1978 in answer to invitation to tender No It P 4 for the fourth quarter of 1978 was even lower, namely 950 units of account; the Commission could only reject that tender.

The applicant cannot therefore derive any advantage from this action; it has no interest in taking action and its application ought to be declared inadmissible.

(c) The application was in fact lodged at the time for the purpose of defeating the plea of inadmissibility raised by the Commission in Case 92/78 and based on the complaint of delay. The applicant has not attacked the decisions relating to the second and third quarters of 1978 but merely the one dealing with the fourth quarter, that is to say the first having any direct value for proving that the Commission's plea has no foundation. This finding is confirmed by the repeated joint applications for further time made in Case 92/78 by the two parties, who were convinced that the judgment in that case would be likely to rob these proceedings of any significance.

(d) it is confirmed by the applicant itself when, in its rejoinder, it confines the subject-matter of its application to the interpretation of the concept "price for reducing intervention agency stocks usually charged at the relevant time"; consequently, it is in fact requesting the Court to interpret a passage in its judgment of 6 March 1979. But proceedings for annulment cannot be transformed into an application for the interpretation of a judgment.

2. As far as the *applicant* is concerned, it considers that its application is unquestionably admissible.

(a) There was no doubt as to its admissibility when it was lodged at the

Registry; admissibility must be considered in conjunction with the actual facts and the legal situation at the moment when the application was lodged. A form of “contingent admissibility” cannot be introduced.

(b) The inadmissibility pleaded by the Commission is based on a measure — the rejection by the Commission of the applicant’s second tender — adopted by one of the parties to the action, the legality whereof is taken for granted. However, that measure may be appealed against; in the event of its being annulled does the present application become for that reason retroactively admissible?

B — The substance

1. The *applicant* in its application originating the proceedings has put forward several submissions very similar to those used in support of its application in Case 92/78, which culminated in the Court’s judgment of 6 March 1979, for the purpose of challenging Commission Decision No 78/940/EEC itself and also the measures of general application upon which it is based, especially Regulations Nos 2900/77, 571/78 and 572/78. In the light of that judgment the applicant in its reply merely states that the parties are not of the same mind as to the meaning of the expression “the price for reducing intervention agency stocks usually charged” and that in this connexion the following considerations should be borne in mind:

(a) The price usually charged cannot be the numerical amount, which is now merely an historical fact resulting from the sales effected when the facts of the case occurred;

(b) That price was charged for meat intended not only for industrial use but for any use whatsoever;

(c) That price derives from provisions many of which were declared invalid by the Court in its judgment in Case 92/78;

(d) it cannot be accepted that the Court, by its judgment of 6 March 1979, by implication declared a measure to be void and then ordered the Commission to adopt another one having the same effect;

(e) The price “usually charged” to which the Court referred is a price which the Commission should have fixed on the basis, on the one hand, of the Court’s recommendation to take account of the grounds of its judgment and, on the other hand, of the price levels applied for meat put up for sale for a mandatory use (industrial use, for export to non-Member States, etc.).

2. The *Commission* takes the view that “price usually charged” should be understood as meaning the normal selling price of stocks paid by traders who, at any time, and even irrespective of other transactions, wish to buy meat held by the intervention agencies. That price, the level of which varies according to the different qualities of meat, is fixed by the Commission.

(a) That interpretation is in keeping with the principles of the “linking”

system provided for in Article 14 of Regulation No 805/68, the aim whereof was to encourage a reasonable balance between the interest of the processing industry in importing beef and veal at world market prices and the need to reduce the pressure on the Community market caused by the stocks accumulated by the intervention agencies, without reference to a price other than that usually charged for reducing stocks, which is a point of reference in connexion with invitations to tender.

The function of the system of invitations to tender is to select the tenders submitted by the traders concerned with a view to the best possible apportionment of the limited quantities of meat which may be imported under special terms, while meeting the need to dispose of the surpluses held by the intervention agencies on the best terms. It is therefore impossible to sell below the price which any trader must pay for meat held by the intervention agencies.

In this connexion the lowest price charged from time to time for special sales to the processing industry cannot be used; such a price is not a "usual" price and, moreover, the processing industry would reap therefrom an additional benefit which would be in no way

justified and is not provided for in the context of the system for linking awards.

(b) The fact that the Court's judgment of 6 March 1979 refers to the price for reducing intervention agency stocks usually charged *at the relevant time* for meat of the qualities in question should be set against the considerations put forward by the applicant.

(c) In answer to a question put to it by the Court in the context of Case 92/78 the Commission pointed out that the price usually charged by the intervention agencies for the purpose of disposing of stocks was 1 291 units of account per tonne; that reply was not at that time challenged by the applicant.

IV — Oral procedure

Simmenthal, represented by Paolo De Caterini, and the Commission, represented by Guido Berardis, presented oral argument and answered the questions put to them by the Court at the hearing on 13 December 1979.

The Advocate General delivered his opinion on 31 January 1980.

Decision

By an application lodged on 3 November 1978 pursuant to the second paragraph of Article 173 of the EEC Treaty the applicant requests the Court to declare Commission Decision No 78/940/EEC of 27 October 1978 fixing the minimum selling price for frozen beef put up for sale by the intervention agencies in accordance with Regulation (EEC) No 2900/77 and specifying

the quantities of frozen beef for processing which may be imported under special terms in the fourth quarter of 1978 (Official Journal L 326, p. 14) to be void.

- 2 By an application lodged on the same date pursuant to Articles 185 and 186 of the EEC Treaty and Articles 83 (1) of the Rules of Procedure the applicant requested the Court to suspend the effects of the decision forming the subject-matter of the principal application and also to suspend the application of the special arrangements for the importation of frozen meat intended for the processing industry for 1979. That application was refused by an Order of the President of the Court in Case 243/78 R of 29 November 1978 ([1978] ECR 2391).
- 3 It should be borne in mind that the Court, before which the same applicant instituted proceedings against Commission Decision No 78/258 of 15 February 1978 adopted for the first quarter of 1978 in connexion with the special selling arrangements as provided for in Article 14 of Regulation No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187), as amended by Council Regulation No 425/77 of 14 February 1977 (Official Journal L 61, p. 1), in its judgment of 6 March 1979 in Case 92/78 ([1979] ECR 777) found in favour of the applicant by declaring the contested decision to be void.
- 4 In paragraphs 108 to 110 of its decision in that judgment the Court, having decided to declare the contested decision to be void, nevertheless continued as follows:

Consequently the Commission, pursuant to the first paragraph of Article 176 of the EEC Treaty, has to reconsider the particular situation of the applicant and adopt another decision affecting it through the competent intervention agency.

It will be for the Commission to adopt its decision with due regard to the grounds of this judgment and especially after taking account of the fact that the system introduced by the new Article 14 of Regulation No 805/68 may in no circumstances have the effect of ensuring that the processing industry buys intervention meat at a price lower than the price for reducing intervention agency stocks usually charged at the relevant time in the case of meat of the qualities in question.

Therefore the applicant's tender should be rejected if it appears it was below that price level.

- 5 The Commission, in pursuance of that judgment, adopted on 19 April 1979 a decision worded as follows:

“THE COMMISSION OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community,

Having regard to Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal, as last amended by Council Regulation (EEC) No 425/77, and in particular Articles 7 (3) and 14 (4) (a) thereof,

Whereas Commission Decision No 78/258/EEC of 15 February 1978 fixed the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation (EEC) No 2900/77 and specified the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978;

Whereas following an application for annulment lodged by a tenderer whose offer could not be accepted, on the basis of the above-mentioned decision, the Court of Justice of the European Communities declared the decision in question to be void in so far as it affected the applicant;

Whereas consequently the Commission has to reconsider the applicant's situation and adopt another decision affecting it through the competent intervention agency;

Whereas the tender submitted by the undertaking in question in response to the above-mentioned invitation to tender was lower than the price for reducing intervention agency stocks usually charged at the relevant time for meat of the qualities in question;

Whereas that tender must consequently be rejected;

Whereas the measures provided for in this decision are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS DECISION

Article 1

1. The tender submitted by Simmenthal S.p.A. in response to the invitation to tender referred to in Commission Decision No 78/258/EEC is rejected.

2. The Italian Intervention Agency (AIMA) shall notify Simmenthal S.p.A. of the contents of this decision.

Article 2

This Decision is addressed to the Italian Republic.”

- 6 Simmenthal has not lodged an application challenging that Commission decision but has conducted proceedings within the framework of the pending application challenging the decision relating to the invitation to tender for the fourth quarter of 1978.
- 7 The Commission in its defence lodged on 18 June 1979 states that Simmenthal’s prosecution of its action is unjustified and serves no useful purpose since the amount offered in Simmenthal’s tender in response to the invitation to tender for the fourth quarter, being 950 units of account per tonne, must *a fortiori* lead to the rejection of that tender. Since the present application is, moreover, only a repetition of the application challenging the invitation to tender for the first quarter, Simmenthal cannot expect to derive any further advantage in the event of its being successful. The Court therefore has sufficient grounds on which to declare this application inadmissible.
- 8 The applicant in its reply submits that the admissibility of an action must be determined in the light of the facts and the legal situation at the moment when that action was brought and that it is impossible to establish a case of “contingent admissibility” during the proceedings. As far as the substance of the problem is concerned, the applicant explains that the expression “price for reducing intervention agency stocks usually charged at the relevant time” leaves open the question of the price level to which the Court intended to refer. In the decision which it adopted in consequence of the judgment of 6 March 1979 the Commission took as the price usually charged for reducing intervention agency stocks the unrestricted price for reducing such stocks applied in the case of sales of frozen meat in the absence of any condition that the meat purchased should be used for a specific purpose. But in this case, where it is intended that an advantage be secured for the processing industry, the prices charged for reducing stocks of meat intended for specific purposes should be taken as the point of reference. In this connexion the applicant makes special reference to the price of 964 units of

account per tonne charged for reducing stocks for social purposes and the price of 950 units of account per tonne, which corresponds precisely to the level of the tender which it had submitted, charged for reducing stocks for industrial purposes.

- 9 The Court considers that reasoning to be unconvincing. Taking into account the prior situation outlined above it is evident that the applicant, as from the date of the judgment of 6 March 1979, and at the latest as from the date of the decision adopted by the Commission in implementation of that judgment, no longer had an interest in prosecuting the proceedings which it had instituted against the Commission's decision relating to the invitation to tender for the fourth quarter of 1978. In fact from that time onwards the applicant could foresee with certainty that its tender, like that relating to the first quarter, would be rejected in view of the principles laid down by the above-mentioned judgment of the Court.

- 10 The issue raised by the applicant concerning the meaning of the expression "price for reducing intervention agency stocks usually charged at the relevant time" is specious, since in the context of the judgment of 6 March 1979 it is absolutely clear that that expression refers to the price which buyers are usually charged in the absence of any particular intended purpose for the meat concerned. The prices mentioned by the applicant refer to wholly exceptional transactions in that they relate to sales of meat for social purposes or of goods which, as they were coming to the end of the period during which their freshness could be guaranteed, were disposed of at a particularly favourable price. Prices charges when exceptional transactions of this kind are concluded cannot be taken as the "usual" prices for reducing stocks.

- 11 It is thus apparent that the prosecution by the applicant of its action has been an abuse of process from the date when the judgment of 6 March 1979 was delivered and, at the latest, as from the date on which the decision adopted by the Commission in implementation of that judgment took effect. The application must therefore be dismissed and the applicant be ordered to pay the whole of the costs including the costs of the application for the adoption of interim measures.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the application;
2. Orders the applicant to pay the costs including the costs of the application for the adoption of interim measures.

Touffait

Pescatore

Due

Delivered in open court in Luxembourg on 5 March 1980.

A. Van Houtte

Registrar

A. Touffait

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL
DELIVERED ON 31 JANUARY 1980¹

*Mr President,
Members of the Court,*

My opinion today is concerned with problems connected with the special import arrangements for frozen beef intended for the processing industry as they have been put into practice since the beginning of 1977. I do not now need to give particulars of these arrangements which are based on the common organization of the market in beef and veal (Regulation (EEC) No 805/68 of the

Council of 29 June 1968: Official Journal, English Special Edition 1968 (I), p. 187) and the rules whereof have been laid down in a series of regulations. They were considered in detail in the judgment of 6 March 1979 in Case 92/78 (*Simmenthal S.p.A. v Commission of the European Communities* [1979] ECR 777), and I would refer the Court to the opinion and judgment in that case.

In the present case, which has also been brought by Simmenthal, the immediate matter at issue has been a Commission

¹ — Translated from the German.