EDITORIAL COMMENTS

The Mutton and Lamb Story: isolated incident or the beginning of a new era?

The so-called "mutton and lamb war" between France and Great Britian is only one of the areas of tension which have characterised the life of the European Community during recent months. What appears at first sight to be a regrettable incident might however have longer lasting effects than the other more general and dramatic events like the rejection of the draft budget for 1980 by the European Parliament in December 1979 or the settlement of the British contribution problem in May 1980.

The facts of the mutton and lamb story are well known:

At the end of the transitional period under the Accession Treaty (31 December 1977), the French import arrangements for mutton and lamb with regard to the new Member States became illegal (by analogy with the *Charmasson* ruling). The Commission brought infringement proceedings against France in October 1978; eleven months later (25 September 1979) the Court of Justice gave judgment and confirmed that the French measures were contrary to the principle of free movement of goods within the Common Market.

Instead of complying with the ruling of the Court, the French government linked the removal of the restrictive import arrangements with the establishment of a common organisation of the market in mutton and lamb which had been under discussion in the Council since 1975. For several weeks, the Commission hoped that the Council would rapidly reach a compromise; instead the attitudes of the French and British delegations hardened. Confronted with growing British pressure on the Commission over discriminatory treatment (the British compared the Commission's tough attitude in the UK pig subsidy case and its flexible position towards the French), the latter felt obliged, in November 1979, to commence new infringement proceedings against France for not complying with the Court's judgment. After another series of attempts to reach a settlement in the Council, the proceedings reached the Court on 14 January 1980.

A few days earlier, France had changed its arrangements from that of requiring imports to be channelled through a State-controlled organisation to imposing an import tax. For procedural reasons, the Commission was therefore obliged to introduce further infringement proceedings and a second action for non-compliance was brought before the Court on 11 March 1980. At the same time, the Commission requested the Court to

prescribe interim measures. These were however refused by Order of 28 March 1980.

While the two main actions for non-compliance followed their normal course before the Court, the Council reached a compromise on the future common organisation of the market during its historic sessions at the end of May 1980. The entry into force of this organisation has however to await the conclusion of self-limitation agreements with the main exporting countries. In the meantime, the French infringement continues; it has even been extended to imports from other Community countries.

These are the facts. They are remarkable in several aspects.

The first aspect is the unique, unprecedented character of the French action. This is indeed the first case of a *deliberate* and wilful refusal to comply with a judgment of the Court. In this respect it is quite different from the tax on exports of Italian art treasures where the delay in implementing the Court's ruling was due essentially to the inefficiency of the Italian administration. (It should be noted that in the analogous case of illegal import restrictions for potatoes, the British government—with Mr. John Silkin as Minister for Agriculture—accepted and implemented rapidly the Court judgment of 29 March 1979 in spite of the absence of a common organisation of the market which has still not been agreed.)

The second aspect is the—rather astonishing—revelation that direct effect of Community law does not guarantee its respect, not even the respect of a Court judgment. The explanation is simple: in order to make direct effect operational, there has to be a plaintiff. In this case, it seems that there is none. The explanation of this phenomenon is more difficult. Have the importers found a way of importing from Great Britain in spite of the restrictive French arrangements. For instance via other Member States? (This could explain the recent extension of the French regime to other Community countries.) Or have they simply given up the idea of availing themselves of their rights under Community law because they fear the powerful French administration?

A third aspect, which is linked to the second, is the absence of a "Community public opinion". If there were such a "Community public opinion", the French government would probably have felt obliged to comply with the ruling of the Court. Instead, it was able to present its refusal to comply as a defence of the Common Market—against the alleged attacks of the British, who were accused of attempting to reduce it to a simple Free Trade Zone.

The fourth aspect is that pressures from Community institutions and other governments also proved ineffective. We have already mentioned the series of Council meetings which remained unsuccessful; the European Parliament was even less efficient, as it never succeeded in adopting a

resolution on the subject. The action of other governments is less well known; in any case, they have obviously not been able to convince their French partners to abandon their dangerous course.

Faced with the failure of the traditional legal and political mechanisms which have assured the respect of Court decisions so far, it is appropriate to raise the question whether one could envisage other means in order to secure compliance with the rulings of the Community judges.

Experts of Community law might draw attention to Article 88 of the ECSC Treaty which allows the Council to impose sanctions on the recalcitrant Member State. They would however immediately have to add that this possibility has never been used; that its introduction into the EEC Treaty would need a Treaty amendment and that such an amendment has no chance of being adopted; that it would remain ineffective as long as the Luxembourg agreement is applied.

The student of public international law might wonder whether Community law would allow the British government (and the Community?) to claim damages from the French. The answer is probably affirmative but the claim would have to be brought before the same Court which had already decided the infringement case. Even if the damages could be quantified and if the Court ruled against France, would there not be the risk of another judgment being flouted?

The international law adept might raise another question: would it be possible to have recourse to retaliatory measures? At first sight, the answer seems simple: according to the case law of the Court, such measures are forbidden in Community law. But what is the legal position, if the Community legal system ceases to function properly?

Even if, in certain extreme situations, retaliatory measures were allowed, they would obviously present a considerable danger of escalation. They would probably lead the Community to the brink of disruption; they should therefore not be envisaged, even in almost hopeless situations.

All this shows that there is at present no legal instrument which ensures, under all circumstances, that the decisions of the Court are fully respected by all Member States. Compliance with the Court's rulings relies finally on a fundamental political understanding: that non-compliance sets a dangerous precedent which can be invoked by other Member States in other circumstances; that the deliberate refusal to implement a Court decision triggers off a process which the author of the refusal is unable to control.

Compliance is therefore basically a question of interest in the Community. A Member State who has such an interest should do everything to avoid flouting a Court decision.

Seen from that angle, the French attitude in the mutton and lamb case is perhaps less catastrophic than it appears to be; given the French interest in

the Community and particularly in the Common Agricultural Policy, the position of the French government does not seem to be motivated by some fundamental political reappraisal or the emergence of a new theory of vital interest in the area of implementation of Community law: its attitude must be considered as a big political mistake—a mistake which France would profoundly regret if it were not to remain an isolated incident, but were to mark the beginning of a new era for the Community.