JUDGMENT OF THE COURT (Third Chamber)
12 December 1985 *

In Case 165/84

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht [Administrative Court] Frankfurt am Main for a preliminary ruling in the proceedings pending before that court between

John Friedrich Krohn (GmbH & Co. KG), Hamburg,

and

Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets], Frankfurt am Main,

on the interpretation of Article 3 (6) of Commission Regulation (EEC) No 2655/82 of 1 October 1982 laying down rules for implementing the import arrangements for 1982 for products falling within subheading 07.06 A of the Common Customs Tariff originating in third countries other than Thailand and amending Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journal 1982, L 280, p. 14),

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: C. O. Lenz
Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of:

John Friedrich Krohn (GmbH & Co. KG), by Dr Jürgen Gündisch, Rechtsanwalt,

* Language of the Case: German.

the Commission, by Dr Peter Karpenstein, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 10 October 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 18 June 1984, which was received at the Court on 2 July 1984, the Verwaltungsgericht Frankfurt am Main, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Article 3 (6) of Commission Regulation No 2655/82 of 1 October 1982 laying down rules for implementing the import arrangements for 1982 for products falling within subheading 07.06 A of the Common Customs Tariff (manioc and other similar roots and tubers) originating in third countries other than Thailand and amending Regulation No 950/68 on the Common Customs Tariff.

2 Those questions arose in proceedings between the Bundesanstalt für landwirtschaftliche Marktordnung (hereinafter referred to as 'the Bundesanstalt') and John Friedrich Krohn (GmbH & Co. KG) (hereinafter referred to as 'Krohn'). By decision of 8 October 1982, the Bundesanstalt rejected an application, submitted by Krohn on 4 October 1982, to be allowed to return import licences for manioc originating in Thailand, which expired on 30 September 1982, and for the release of the corresponding security, which had been lodged in accordance with the provisions of Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1), as amended by Council Regulation (EEC) No 3808/81 of 21 December 1981 (Official Journal 1981, L 382, p. 37) and Council Regulation (EEC) No 1451/82 of 18 May 1982 (Official Journal 1982, L 164, p. 1).

3 The Bundesanstalt's refusal was based on two grounds. First, unlike the provisions of Regulation No 2655/82, the rules applicable to imports from Thailand did not

allow such an application to be granted. Secondly, the conditions required for a case of *force majeure*, laid down in Article 33 (4) and Article 36 of Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (Official Journal 1980, L 338, p. 1), as amended by Regulation No 49/82 of 11 January 1982 (Official Journal 1982, L 7, p. 7) had not been fulfilled.

4 On the basis of the Community rules applicable until the middle of 1982, imports of manioc from non-member countries were permitted upon submission of import licences issued by the Member States without any limitation as to quantity. Such transactions were subject to an import levy of 6% *ad valorem.*

5 However, in order to obtain greater stability on the market in manioc in the EEC, the Council, on 19 July 1982, concluded agreements fixing import quotas for manioc with the Kingdom of Thailand (Council Decision No 82/495/EEC, Official Journal 1982, L 129, p. 52), the Republic of Indonesia (Council Decision No 82/496/EEC, Official Journal 1982, L 219, p. 56) and the Federative Republic of Brazil (Council Decision No 82/497/EEC, Official Journal 1982, L 219, p. 58). Having regard to those agreements, the Council, on 30 September 1982, adopted Regulation (EEC) No 2646/82 on the import system applicable in 1982 to products falling within subheading 07.06 A of the Common Customs Tariff (Official Journal 1982, L 279, p. 81).

6 Article 1 of that regulation limited the possibility of importing the goods in question at a preferential rate of 6% *ad valorem* to the quantities fixed in the context of the aforementioned three agreements. Consequently, quantities of imported manioc in excess of those quotas were thereafter subject to the much higher rate of import levy applicable to barley (about 50% *ad valorem* on the date of the importations which are the subject of the main proceedings).

7 The Commission adopted different rules for import licences which had not been used but which were still valid on 19 July 1982, the date on which the three aforementioned agreements were concluded.

8 With regard to imports of manioc from non-member countries other than Thailand, Article 3 (6) of Regulation No 2655/82 permitted interested parties to

apply within 30 days following the entry into force of the regulation on 2 October 1982 to have licences issued before that date cancelled and the corresponding security released.

9 On the other hand, with regard to imports of manioc from Thailand, Commission Regulation (EEC) No 2092/82, adopted on 22 July 1982 for the purpose of implementing the agreement between the EEC and Thailand (Official Journal 1982, L 218, p. 8), merely provided that products exported from Thailand before 28 July 1982 could, under certain conditions, continue to have the benefit of the preferential 6% *ad valorem* rate. The regulation made no provision for cancellation of import licences issued previously or for the release of the corresponding security.

10 Krohn brought proceedings before the Verwaltungsgericht Frankfurt am Main against the contested decision of 8 October 1982 and the Bundesanstalt's rejection of its various complaints and claimed that the forfeiture of the security was not justified inasmuch as it had no opportunity to use the import licences before the agreement between the EEC and Thailand and Regulation No 2029/82 implementing it entered into force and inasmuch as the introduction of a quota system during the validity of the import licences, that is to say, between 21 May and 30 September 1982, constituted a case of *force majeure* of which it should not be obliged to bear the consequences. Furthermore, Krohn claims that, in this case, the import licences should be cancelled on the basis of an application by analogy of Article 3 (6) of Regulation No 2655/82 on imports from non-member countries other than Thailand.

11 The Verwaltungsgericht Frankfurt am Main therefore referred the following questions to the Court for a preliminary ruling;

'(1) Do the overriding legal principles proscribing arbitrariness and requiring equal treatment necessitate an application by analogy of Article 3 (6) of Commission Regulation (EEC) No 2655/82 of 1 October 1982, (Official Journal, L 280 of 2 October 1982, p. 14), which deals with the import arrangements for products falling under subheading 07.06 A of the Common Customs Tariff originating in non-member countries other than Thailand, to imports of products falling under the same subheading originating in Thailand?

(2) If so, which time-limits and other procedural rules laid down in Regulation No 2655/82 are relevant for the purposes of such analogous application?

(3) If the answer to Question 1 is in the negative, do the import arrangements concluded for 1982 for products falling under subheading 07.06 A of the Common Customs Tariff constitute *force majeure* in so far as they increased by many times the 6% *ad valorem* levy on products not falling within a specific quota?'

Question 1

12 With this question, the Verwaltungsgericht is asking essentially whether Article 3 (6) of Commission Regulation No 2655/82 of 1 October 1982 laying down rules for implementing the import arrangements for 1982 for products falling within subheading 07.06 A of the Common Customs Tariff originating in third countries other than Thailand must be interpreted as applying by analogy to importers of products falling within that subheading and originating in Thailand, who are covered by Commission Regulation No 2029/82.

13 It must be pointed out that the scope of a regulation is normally defined by its own terms and it may not in principle be extended to situations other than those which it envisaged.

14 However, as the Court has decided in its judgments of 20 February 1975 (*Adolf Reich* v *Hauptzollamt Landau* [1975] ECR 261) and 11 July 1978 (*Union Française des Céréales* v *Hauptzollamt Hamburg-Jonas* [1978] ECR 1675), the position may be different in certain exceptional cases. It is clear from those judgments that traders are entitled to rely on an application by analogy of a regulation which would not normally be applicable to them if they can show that the rules applicable to their case:

on the one hand, are very similar to those which it is sought to have applied by analogy; and,

on the other hand, contain an omission which is incompatible with a general principle of Community law and which can be remedied by application by analogy of those other rules.

15 Therefore, the Community rules applicable in 1982 to imports of manioc from Thailand should first be compared with those governing imports of manioc from the other non-member countries concerned.

16 In that connection, Krohn emphasizes that Regulation No 2029/82 concerning imports of manioc from Thailand in 1982 and Regulation No 2655/82 concerning imports of manioc from other non-member countries in 1982 introduced the same system of import restrictions. Both regulations sought to protect the same Community interest and concerned importers whose interests were identical.

17 Although it accepts that the two sets of import rules in question have certain things in common, the Commission stresses the differences between them, particularly in regard to the arrangements for managing the 1982 quota and the way in which import licences issued before the new rules came into force are dealt with.

18 The Commission contends essentially that the licence for imports of manioc from non-member countries other than Thailand were issued between January and July 1982 without systematic records being kept. When the quota system was introduced with effect from 1 January 1982, it was not possible to determine the precise number of licences already issued whereas it was necessary to prevent the annual quota being exceeded. It was therefore possible that importers would be unable to use a considerable number of those licences and it was thus necessary to give importers the possibility of having the licences cancelled and the corresponding security released.

19 According to the Commission, the situation in regard to imports from Thailand was completely different inasmuch as the Thai authorities had controlled exports of manioc to the Community from 1 January 1982 by making them subject to the issue of an export certificate. When the quota system was introduced, the Community authorities thus had a means of ensuring that the preferential quota was respected. Furthermore, each importer was able to obtain information as to how much of the quota had been used and to find out whether the transaction which he envisaged had any change of being carried out at the preferential rate of levy. There was thus no need to make the same facilities regarding cancellation of licences and release of security available to those importers.

20 It must be pointed out that in 1982 importers of manioc from Thailand or other non-member countries were subject to the same legal rules laid down by Regulation No 2727/75 of the Council and Commission Regulation No 3183/80. They

were all affected by the conclusion of quota agreements with Thailand, Indonesia and Brazil, which limited their previously unlimited right to import at a preferential rate of levy of 6%, as provided for in Article 1 of Council Regulation No 2646/82.

21 While it is true that the arrangements for managing the 1982 quotas were slightly different in regard to Thailand than in regard to the other non-member countries, that circumstance, contrary to the Commission's view, in no way shows that the situation of importers of manioc from Thailand was different from that of importers of manioc from other non-member countries. It is clear from the documents before the Court that until 22 July 1982, the Community rules did not take account of the system of export controls established by the Thai authorities and consequently importers in the Community were not required to comply with that system. In the proceedings before the Court it was also established that the Community authorities did not know at the time that the new rules entered into force whether the export certificates issued by the Thai authorities covered quantities already in excess of the quota.

22 In those circumstances, it must be accepted that the legal rules applicable in 1982 to imports of manioc from Thailand corresponded very closely to those governing imports of manioc from other non-member countries at the same period. The concern to take account of legitimate expectations, which according to the third recital in the preamble to Regulation No 2655/82 prompted the adoption of Article 3 (6) of that regulation in favour of importers of manioc from non-member countries other than Thailand, should therefore also have provided a justification for similar measures in favour of importers of manioc from Thailand.

23 In the second place therefore, the Court must consider whether the legal rules applicable to importers of manioc from Thailand contains an omission incompatible with a general principle of Community law which may be made good by an application by analogy of Article 3 (6) of Regulation No 2655/82.

24 It should be noted in that regard that the absence from Regulation No 2092/82 concerning imports from Thailand of any provision permitting holders of previously issued import licences to obtain cancellation of such licences and release of the corresponding security placed those traders in an unfavourable competitive position *vis-à-vis* importers of manioc from other non-member countries.

25 From 28 July 1982, holders of previously issued licences for the import of manioc from Thailand found themselves faced with the choice of either carrying out the importations covered by the licences and paying the very high rate of levy or losing their security. The consequence for them was additional charges which importers of manioc from other non-member countries could avoid by relying on Article 3 (6) of Regulation No 2655/82.

26 The effect of that disadvantage on importers of manioc from Thailand was all the greater by virtue of the fact that from 28 July 1982 they were compelled to operate under a quota system whereas importers of manioc from other non-member countries had an additional period of more than two months to import manioc under previously issued licences at the preferential rate of 6%.

27 Such a situation is contrary to the principle in Community law of equal treatment of traders in comparable situations.

28 Furthermore, the failure to include in Regulation No 2029/82 provisions permitting traders to apply for the cancellation of unused import licences disregards the purpose of the quota agreements concluded in 1982, which was to discourage imports beyond the limit of the quotas fixed. The refusal to release security lodged in connection with previously issued import licences which could not be used to import goods within the limits of the quotas actually encourages importers to carry out the intended transactions notwithstanding the fact that the quota has been exhausted.

29 It follows therefore that by failing to lay down rules under which importers of manioc from Thailand could return previously issued import licences and obtain the release of the security corresponding to them, Commission Regulation No 2029/82 contains a lacuna which is to be filled by applying by analogy Article 3 (6) of Commission Regulation No 2655/82 to those traders.

30 The reply to the Verwaltungsgericht's first question must therefore be that Article 3 (6) of Regulation No 2655/82 of the Commission of 1 October 1982 laying down rules for implementing the import arrangements for 1982 for products falling within subheading 07.06 A of the Common Customs Tariff originating in

third countries other than Thailand must be interpreted as applying to the case of importers of products falling within the said tariff subheading and originating in Thailand as provided for by Commission Regulation No 2029/82 of 22 July 1982.

Question 2

31 Respect for the general principle of equality between traders in comparable situations makes it necessary to decide that the application by analogy of Article 3 (6) of Commission Regulation No 2655/82 to imports originating in Thailand must be made subject to the same conditions concerning time-limits and other procedural requirements as those laid down in the said provision.

32 The reply to Question 2 must therefore be that in the case of imported products falling within tariff subheading 07.06 A of the Common Customs Tariff and originating in Thailand, Article 3 (6) of Regulation No 2655/82 is to be applied subject to the time-limits and other procedural requirements therein laid down.

Question 3

33 Having regard to the replies given to the first two questions, there is no need to rule on Question 3.

Costs

34 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Verwaltungsgericht Frankfurt am Main, by order of 18 June 1984, hereby rules:

(1) Article 3 (6) of Commission Regulation No 2655/82 of 1 October 1982, laying down rules for implementing the import arrangements for 1982 for products falling within subheading 07.06 A of the Common Customs Tariff originating in third countries other than Thailand (Official Journal 1982, L 280, p. 14), must be interpreted as applying to the case of importers of products falling within the said tariff subheading and originating in Thailand as provided for by Commission Regulation No 2029/82 of 22 July 1982.

(2) In the case of imported products falling within tariff subheading 07.06 A of the Common Customs Tariff and originating in Thailand, Article 3 (6) of Regulation No 2655/82 is to be applied subject to the time-limits and other procedural requirements therein laid down.

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 12 December 1985.

P. Heim
Registrar

U. Everling
President of the Third Chamber