JUDGMENT OF THE COURT
20 January 1993 *

In Joined Cases C-106/90, C-317/90 and C-129/91,

Emerald Meats Limited, a company governed by Irish law, whose registered office is in Dublin, represented by John Ratliff, Barrister of the Middle Temple, and Elisabethann Wright, Barrister of the Inn of Court of Northern Ireland, with an address for service in Luxembourg at the offices of Stanbrook and Hooper, 12 Boulevard de la Foire,

applicant,

v

Commission of the European Communities, represented initially by Peter Oliver and subsequently by Thomas Van Rijn and Christopher Docksey, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, representing the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION

in Case C-106/90,

on the one hand, for the annulment

of the decision taken pursuant to Article 6(1) of Commission Regulation (EEC) No 4024/89 of 21 December 1989 laying down detailed rules for the application of the import arrangements provided for in Council Regulation (EEC) No 3889/89 for frozen meat of bovine animals covered by CN code 0202 and

* Language of the case: English.

products covered by CN code 0206 29 91 (OJ 1989 L 382, p. 53) by which the Commission determined to what extent applications for import licences under the Community tariff quota for frozen meat of bovine animals for 1990 should be accepted;

and/or

of that part of Commission Regulation (EEC) No 337/90 of 8 February 1990 determining the extent to which applications in the beef and veal sector for the issue of import licences lodged pursuant to Regulation (EEC) No 4024/89 may be accepted (OJ 1990 L 37, p. 11) which is based on the abovementioned decision; and,

on the other hand, for an order that the European Economic Community should compensate Emerald Meats for the loss which it has and will suffer as a result of the Commission's failure to administer and manage the Community quota correctly;

in Case C-317/90,

for the annulment of Commission Regulation (EEC) No 2983/90 of 15 October 1990 concerning the allocation of the quantities of the import quota for meat of bovine animals, frozen opened by Regulation (EEC) No 3889/89 for which import licence applications have not been lodged (OJ 1990 L 283, p. 36);

and/or

for an order that the European Economic Community should compensate Emerald Meats for the loss which it has and will suffer as a result of the Commission's failure to administer and manage the 'newcomers" part of the Community tariff quota;

and in Case C-129/91,

on the one hand, for the annulment

of the decision taken pursuant to Article 6(1) of Commission Regulation (EEC) No 3885/90 of 27 December 1990 laying down detailed rules for the application of the import arrangements provided for in Council Regulation (EEC) No 3838/90 for frozen meat of bovine animals covered by CN Code 0202 and products covered by CN Code 0206 29 91 (OJ 1990 L 367, p. 136) by which the Commission determined to what extent applications for import licences under the Community tariff quota for frozen meat of bovine animals for 1991 should be accepted;

and

of Commission Regulation (EEC) No 519/91 of 1 March 1991 determining the extent to which applications in the beef and veal sector for the issue of import licences lodged pursuant to Regulation (EEC) No 3885/90 may be accepted (OJ 1991 L 56, p. 12) in so far as that regulation gives effect to the aforementioned decision; and,

on the other hand, for an order that the European Economic Community should compensate Emerald Meats for the loss which it has and will suffer as a result of the Commission's acts and of its failure to administer and manage the 1991 allocation of the aforesaid Community tariff quota in accordance with Community law;

THE COURT,

composed of: G. C. Rodríguez Iglesias, President of the Chamber, acting for the President, M. Zuleeg (President of Chamber), G. F. Mancini, R. Joliet, F. A. Schockweiler, F. Grévisse and M. Diez de Velasco, Judges,

Advocate General: C. Gulmann,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on on 15 May 1992, during which Emerald Meats Ltd was represented by John Ratliff and Elisabethann Wright and by Paul Gallagher, Senior Counsel,

after hearing the Opinion of the Advocate General at the sitting on 18 November 1992,

gives the following

Judgment

1 By applications lodged at the Court Registry on 18 April 1990, 22 October 1990 and 9 May 1991, respectively, Emerald Meats Ltd (hereinafter 'Emerald Meats'), a company governed by Irish Law, brought an action under the second paragraph of Article 173, Article 178 and the second paragraph of Article 215 of the EEC Treaty, first, for annulment of certain measures taken by the Commission in connection with the management of Community tariff quotas for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91, opened for 1990 and 1991 respectively by Council Regulation (EEC) No 3889/89 of 11 December 1989 (OJ 1989 L 378, p. 16) and by Council Regulation (EEC) No 3838/90 of 20 December 1990 (OJ 1990 L 367, p. 3), and, secondly, for an order that the European Economic Community should compensate Emerald Meats for the loss which it has and will suffer as a result of the Commission's failure to administer and manage the relevant Community tariff quotas correctly.

2 Article 1 of Council Regulation (EEC) No 3889/89 (cited above) opening and providing for the administration of a Community tariff quota for meat of bovine animals, frozen, falling within CN code 0202 and products falling within CN code 0206 29 91 (1990) (hereinafter 'the basic regulation') opens for 1990 a Community tariff quota totalling 53 000 tonnes.

3 Under Article 2 of that regulation, that quota of 53 000 tonnes is divided into two parts, the first of which, equal to 90% (hereinafter 'the main quota'), is to be apportioned between importers who can prove they have imported frozen meat falling within the tariff headings in question during the last three years, and the second of which, equal to 10% (hereinafter the 'newcomers' quota'), is to be apportioned between operators who can prove that they engage in trade, involving a minimum quantity and for a period to be determined, with third countries in beef and veal other than that to which the import arrangements at issue apply and excluding meat which is the subject of inward or outward processing traffic.

4 Article 3(1) of Regulation No 3889/89 provides that quantities which have not been covered by an import licence application at 31 August 1990 are to be the subject of a further allocation during the fourth quarter of that year, without account necessarily being taken of the apportionment referred to in Article 2. Pursuant to Article 3(2) of the regulation, Member States are to notify the Commission, before 16 September 1990, of quantities not applied for at 31 August of that year.

5 Pursuant to Article 4 of the basic regulation, the Commission on 21 December 1989 adopted Regulation (EEC) No 4024/89 laying down detailed rules for the application of the import arrangements provided for in Council Regulation (EEC) No 3889/89 for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (OJ 1989 L 382, p. 53, hereinafter 'the implementing regulation'). Article 1(1) and (2) of that regulation set out the criteria for allocating the two parts of the tariff quota provided for in Article 2 of the basic regulation, whilst providing that the newcomers' quota is to be reserved for operators who can furnish proof of having imported and/or exported during 1988 and 1989 at least 50 tonnes of beef per year.

6 Article 1(3) of the implementing regulation provides that 'the proof referred to in paragraphs 1 and 2 shall be provided by means of the customs document of release for free circulation' and that 'Member States may provide that such proof may be furnished by the holder whose name appears in box 4 of import licences'.

7 Article 4(1) of the implementing regulation provides that importers are to present to the competent authorities the application for an import licence, together with the proof referred to in Article 1(3), by 19 January 1990 at the latest, and that the Member States are to forward to the Commission, by 31 January 1990 at the latest, a list of importers containing, in particular, the importers' names and the addresses and the quantities of meat imported under the quota during each of the last three years. Under Article 4(2), the same time-limits are applicable to applications lodged in respect of the newcomers' quota.

8 Under Article 6(1) of the implementing regulation, 'the Commission shall decide to what extent applications may be accepted'. That provision also states that 'subject to the Commission having decided that applications be accepted, import licences shall be issued from 9 February 1990'.

9 In January 1990 Emerald Meats, which has been engaged since 1983 in the import of meat products into the Community, lodged applications with the Irish Department of Agriculture and Food (hereinafter the 'Department of Agriculture') to import products under both the main quota and the newcomers' quota. In support of those applications, Emerald Meats produced certain documents by way of proof as provided for in Article 1(3) of the implementing regulation.

10 The Department of Agriculture rejected the applications in respect of the main quota in so far as they were based on imports made in the 1987 and 1988 reference years, on the ground that Emerald Meats had effected the imports in question only as agent for the recognized meat processors to whom the import licences had been granted. Consequently, on 31 January 1990 the Department of Agriculture forwarded to the Commission, pursuant to Article 4(1) of the implementing regulation, a list in which, on the one hand, Emerald Meats appeared only in respect of the quantities declared for 1989 and, on the other, the recognized meat processors appeared in respect of the quantities which Emerald Meats claimed to have imported in 1987 and 1988.

11 Emerald Meats then brought an action in the High Court, Dublin, against the decision of the Minister of Agriculture refusing to regard it as the importer of the quantities declared in respect of 1987 and 1988. It also informed the Commission that the list forwarded to it by the Department of Agriculture was erroneous, and sent it documents intended to prove that it had to be regarded as the importer, within the meaning of Article 1 of the implementing regulation, of the quantities declared in respect of the three reference years.

12 On 6 February 1990, the Commission sent the Department of Agriculture a telefax asking for explanations and observing that, in connection with the 1989 quota, the Department had listed Emerald Meats as an importer of substantial quantities in 1987 and 1988.

13 On 8 February 1990, having received no reply from the Department of Agriculture, the Commission adopted, on the basis of the details set out in the list which it had been forwarded by the Department of Agriculture, Regulation (EEC) No 337/90 determining the extent to which applications in the beef and veal sector for the issue of import licences lodged pursuant to Regulation (EEC) No 4024/89 may be accepted (OJ 1990 L 37, p. 11, hereinafter the '1990 allocation regulation'). Article 1(1) of the 1990 allocation regulation provides that every application for an import licence lodged in respect of the main quota is to be granted to the extent of 321.581 kg per tonne imported in 1987, 1988 and 1989 and that every application for an import licence lodged in respect of the newcomers' quota is to be granted to the extent of 16.56 tonnes per application. According to Article 1(2) of that regulation, 'Member States shall issue the import licences as from 9 February 1990'.

14 Subsequently, Emerald Meats asked the Commission on several occasions to ensure that the irregularities allegedly committed by the Department of Agriculture in carrying out the implementing regulation were eliminated and that it would be granted the import licences for which it had applied in the meantime. In that context, Emerald Meats also expressed concern that it had still not received the import licence relating to its application in respect of the newcomers' quota even though the Department of Agriculture had accepted its application by including it in the list that it had forwarded to the Commission on 31 January 1990 pursuant

to Article 4(2) of the implementing regulation, and the 1990 allocation regulation provided that the Member States were to issue the import licences as from 9 February 1990.

15 Since its approaches to the Commission yielded no tangible results, Emerald Meats brought the action in Case C-106/90 on 18 April 1990 in which, in addition to seeking an order for damages against the Community, it asked the Court to annul the Commission decision taken pursuant to Article 6(1) of the implementing regulation by which the Commission determined to what extent applications for import licences under the Community tariff quota for frozen meat of bovine animals for 1990 should be accepted, and/or that part of the 1990 allocation regulation which was based on that decision.

16 By a separate document, lodged at the Court Registry on 13 July 1990, Emerald Meats applied for interim measures seeking suspension of the measures which were the subject of its action for annulment and, in addition, an order that the Commission should take such steps as were necessary for the grant to Emerald Meats of the part of the tariff quota to which it claimed it was entitled. That application was dismissed by order of the President of the Court on 14 August 1990, who reserved the costs.

17 On 23 July 1990, the Department of Agriculture informed Emerald Meats that some of the documentary proof relating to imports made in 1988 and 1989 which it had submitted in support for its application to import under the newcomers' quota could not be accepted and that its application therefore had to be rejected.

18 In several letters sent to the Commission in August, September and October 1990, Emerald Meats expressed concern that the quantity to which it considered itself entitled under the newcomers' quota (because its application had initially been included on the list drawn up by the Department for Agriculture and accepted by the Commission at the time when the latter had determined, in the 1990 allocation regulation, to what extent applications lodged pursuant to the implementing regu-

lation could be accepted) might be reallocated, pursuant to Article 3 of the basic regulation, as a quantity not covered by an import licence application at 31 August 1990.

19 In parallel, on 8 October 1990 Emerald Meats commenced proceedings in the Irish courts for an injunction requiring the Department of Agriculture to issue it with the import licence for which it had applied in respect of the newcomers' quota. It officially informed the Commission that it had taken this step by letter dated 15 October 1990.

20 In the meantime, on 11 October 1990 the Department of Agriculture, which, on 26 September 1990, had again informed the Commission that Ireland did not have any quantities not applied for at 31 August 1990 within the meaning of Article 3 of the basic regulation, sent the Commission a telefax stating that 16.56 tonnes had not been utilized.

21 The Commission then adopted on 15 October 1990, pursuant to Article 3 of the basic regulation, Regulation (EEC) No 2983/90 concerning the allocation of the quantities of the import quota for meat of bovine animals, frozen opened by Regulation (EEC) No 3889/89 for which import licence applications have not been lodged (OJ 1990 L 283, p. 36, hereinafter the 'reallocation regulation').

22 On the ground that the 16.56 tonnes to which it claimed to be entitled under the 1990 allocation regulation had been included in the total of 35 tonnes allocated by the reallocation regulation, Emerald Meats brought, on 22 October 1990, its application in Case C-317/90, in which it sought an order for damages against the Community and annulment of the reallocation regulation.

23 On 20 December 1990, the Council, by Regulation No 3838/90, cited above, opened, for 1991, a new Community tariff quota of 53 000 tonnes. On 27 December 1990, the Commission adopted Regulation (EEC) No 3885/90 laying down detailed rules for the application of the import arrangements provided for in Council Regulation (EEC) No 3838/90 for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (OJ 1990 L 367, p. 136). The rules laid down therein are essentially identical to those contained in the basic regulation and the implementing regulation for 1990.

24 In January 1991, fearing that the Department of Agriculture might reject again, under the 1991 quota, the quantities which it declared that it had imported in 1998, and refuse to regard it as having imported in 1990 the quantities to which it claimed to be entitled but which it had not been authorized to import, Emerald Meats lodged import applications in respect of the 1991 quota with the United Kingdom authorities. Although the United Kingdom authorities considered all the applications lodged by Emerald Meats to be valid, in a letter dated 12 February 1991 they identified, at the Commission's request, the quantities which were liable to be the subject of dual applications lodged both in the United Kingdom by Emerald Meats and in Ireland by the meat processors whom the Department of Agriculture had recognized as having been importers of the quantities which Emerald Meats declared it had imported in 1988 and to whom it had issued the import licences claimed by Emerald Meats in respect of the 1990 quota.

25 On 1 March 1991, the Commission adopted Regulation (EEC) No 519/91 determining the extent to which applications in the beef and veal sector for the issue of import licences lodged pursuant to Regulation (EEC) No 3885/90 may be accepted (OJ 1991 L 56, p. 12, hereinafter the '1991 allocation regulation'). In order to avoid the reference quantity's being counted more than once when the main quota was allocated as between the various importers who had applied for an allocation in the event of two or more operators' claiming to have imported the same reference quantity in previous years, Article 2 of that regulation provided that import licences in relation to that reference quantity might only be issued once the importers concerned had lodged a guarantee of an amount equivalent to the basic import levy applicable for the meat in question, plus 10%. The guarantee was to be released once the operator concerned had been definitively identified as the actual importer of the reference quantity in question.

26 Emerald Meats took the view that the 1991 allocation regulation therefore made the rights which it claimed in respect of the 1991 Community quota depend on a decision by the national authorities recognizing it as the importer of the quantities which were allegedly the subject of dual applications. Consequently, on 9 May 1991, Emerald Meats brought the application in Case C-129/91, in which it sought damages against the Community and annulment, first, of the decision taken by the Commission pursuant to Article 6(1) of Regulation (EEC) No 3885/90 deciding to what extent applications for import licences in respect of the Community tariff quota for frozen meat of bovine animals for 1991 were to be accepted and, secondly, of the 1991 allocation regulation in so far as that regulation gave effect to that decision.

27 By order of 16 December 1992, the President of the Court decided to join the three cases for the purposes of the judgment.

28 Reference is made to the Reports for the Hearing for a fuller account of the facts of the cases, the course of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

29 *In limine* it should be noted that the Commission decisions taken pursuant to Article 6(1) of the implementing regulations by which it decided to what extent applications for import licences could be accepted are set out in the 1990 and 1991 allocation regulations and it should therefore be held that the applications for annulment in Cases C-106/90 and C-129/91 in reality relate exclusively to those two regulations.

30 In support of its applications, Emerald Meats relies on several pleas in law and arguments based on the view that it is implicit in the requirements for the Community management of the tariff quotas at issue that the Commission is under a duty to manage and administer those quotas in accordance with the uniform prin-

ciples and common rules laid down in the relevant Community legislation and to make sure that the measures which the Commission itself takes in connection with that management comply therewith. In that respect, Emerald Meats claims that the Commission is under a duty in particular specifically to check information provided by the national authorities, in particular in the lists of applicants provided for in Article 4 of the implementing regulations, which it knows, or should reasonably know, is incorrect or based on an unlawful interpretation of the Community legislation and could in no event constitute a valid basis for its own measures.

31 In that connection, it should first be noted that, under the relevant basic and implementing regulations, the tariff quotas at issue are allocated between operators who can prove that they imported frozen beef during particular reference years. Article 1(3) of each of the implementing regulations states what type of proof is acceptable and it is provided in Article 1(4) and (5) of those regulations that the allocation is to be carried out in proportion to the imports made during the reference years in the case of the main quota and in proportion to the quantities applied for in the case of the newcomers' quota.

32 Next, under Article 2(1) of each of the implementing regulations, operators no longer engaged in any activity in the beef sector on 1 January in the year for which the quota was opened are excluded from access to the quota.

33 Further, under Article 4 of the implementing regulations, importers have to present their applications to the competent authorities in the Member States, together with the requisite documentary proof, and it is those authorities who have to forward to the Commission the list of importers containing *inter alia* their names and addresses and the quantities of meat imported during each of the reference years.

34 Then, under Article 5(1) of the implementing regulations, licence applications are to be admissible only where the applicant declares in writing that he has not lodged and undertakes not to lodge any application under the same special arrangements in any Member State other than that in which the application is lodged. If an applicant lodges applications in respect of the same special arrangements in two or more Member States, none of those applications is admissible.

35 Lastly, under Article 6(1) of the implementing regulations, it is for the Commission to decide to what extent applications may be accepted and, subject to the Commission's having decided that the applications should be accepted, it is for the Member States to issue the import licences applied for.

36 It follows from those provisions that, whilst the Community legislation introduced Community rules on the tariff quotas at issue, as far as the management of the quotas is concerned it divided the tasks and responsibilities as between the Member States and the Commission. Within that division of tasks and responsibilities, it is for the authorities designated by the Member States to receive applications and draw up a list of those eligible under the rules, together with the quantities to be taken into consideration, on the basis of documents presented to them by way of proof. The Commission's task is confined to checking that a given applicant does not appear on more than one list and to determining, having regard to the quantities indicated in the various national lists and to the total quota to be allocated, in what proportion the national authorities can accept the applications admitted by them.

37 Moreover, as the Advocate General pointed out in paragraph 35 of his Opinion, neither the applications themselves nor the documents to be submitted by way of proof have to be sent to the Commission. Likewise, as regards the reallocation, during the fourth quarter of the relevant year, of quantities not applied for, Article 3(2) of the basic regulations merely provides that the Member States' authorities are to notify the Commission, before 16 September of the current year, of quantities not applied for at 31 August of that year, and does not require any other particulars to be furnished of, for instance, the identity of the operators concerned or the reasons why the quantities were not utilized.

38 It follows that, under the Community legislation, the Commission is neither under a duty nor indeed empowered to check the correctness of the lists or information notified to it by the Member States' authorities and that, since it is responsible only for determining the extent to which applications admitted by the national authorities may be accepted, the Commission itself does not allocate or reallocate the quantities thus determined to the persons entitled and, in particular, does not have the power to substitute itself for the national authorities for the purposes of the issue of import licences.

39 Contrary to Emerald Meats' assertion, that finding does not conflict with the Council's intention, as stated in the preambles to the basic regulations, to introduce a Community method for the management of the tariff quotas at issue. Such a management method does not presuppose that all the decisions should be taken by the Commission, but may equally be achieved by decentralized management, involving the Member States' authorities, since economic operators are at liberty to submit their applications in the Member State of their choice and applications are processed in accordance with uniform rules applicable throughout the Community.

40 Nor do the requirements of Community management entail that the Commission ought necessarily to be able to correct wrong decisions taken in specific cases by the national authorities in connection with management of the quotas, since compliance with the common rules and their uniform application throughout the Member States of the Community can be secured either by proceedings under Article 169 of the Treaty for failure to fulfil obligations or in the course of judicial proceedings brought before national courts, which have available the procedure provided for in Article 177 of the Treaty.

41 It follows that Emerald Meats' pleas in law and arguments based on the claim that in this instance the Commission should have checked the information provided to it by the Irish authorities and should not have incorporated them in its own measures must all be rejected.

42 Emerald Meats further argues that the Commission infringed Article 3 of the basic regulation (Regulation No 3889/89, cited above) by accepting that certain quantities should be returned to it for reallocation after 16 September 1990, that is to say, after the date by which the Member States had to notify to the Commission quantities not applied for at 31 August 1990.

43 In that connection, it should first be noted that no specific provision of the relevant Community legislation lays down any consequences for failure to comply with the time-limit provided for in Article 3(2) of Regulation No 3889/89.

44 Further, the quantities which the Member States have to notify to the Commission are those for which no application has been submitted at 31 August and the date of 16 September simply constitutes the deadline laid down for notifying to the Commission the situation existing in each Member State at 31 August. Consequently, if notification is made after 16 September, this can have no effect on the situation existing at 31 August of the year in question and is not capable of adversely affecting economic operators' interests.

45 As the fifth recital in the preamble to the basic regulation indicates, the aim of reallocation in the course of the year is enable the annual quota to be fully utilized, which is in the interests both of the Community operators affected and of the Community's partners in the GATT.

46 It follows that the time-limit of 16 September 1990 is not imperative and that a Member State's failure to comply with it does not exempt the Commission from its obligation to reallocate all unutilized quantities as fully as possible in order to secure the full utilization of the quota.

47 Consequently, that plea in law cannot be accepted either.

48 Lastly, Emerald Meats argues that the requirement laid down in Article 2 of the 1991 allocation regulation for a guarantee to be lodged in order to avoid imports' being carried out twice on the basis of the same reference quantities is first unlawful, on the ground that the Commission is under a duty itself to check whether there are applications likely to give rise to dual imports and to reject those which are not valid, and secondly unreasonable, on the ground that Emerald Meats was not in a position to bear the financial burden entailed by a guarantee.

49 The situation which came about with regard to applications for the 1991 quota was not the situation referred to in Article 5 of the implementing regulation. Whilst that provision covers a case in which one applicant lodges several applications in two or more Member States, the Commission was faced in 1991 with a situation in which several applicants had lodged applications relating to the same reference quantities in two Member States.

50 It follows that the Commission could not merely, under Article 5 of the implementing regulation, declare all the applications in question inadmissible. On the other hand, neither could it substitute itself for the Member States' authorities and correct the lists which they had notified to it or admit the same reference quantities as they stood twice, for this would have unlawfully reduced the quantities available for allocation to other operators in the Community on the basis of the quantities which they had proved they had imported during the reference years.

51 In those circumstances, it does not appear unreasonable that the Commission should have introduced the guarantee system provided for in Article 2 of the 1991 allocation regulation in order to obviate imports' being effected twice on the basis of the same reference quantities.

52 Neither does it appear that the amount of the guarantee is unreasonable, since, subject to a 10% increase to cover any fluctuations in levy rates, it is equal to the basic import levy for the meat in question, which would have in any event to be paid by an operator whose applications were ultimately rejected.

53 Consequently, that plea in law must also be rejected.

54 It follows from the whole of the foregoing considerations that all the applications for annulment must be dismissed.

55 As regards the applications for compensation, it follows, as the Court has consistently held, from the second paragraph of Article 215 of the Treaty that the Community may incur non-contractual liability and the right to compensation for damage suffered may arise only if a series of conditions regarding the illegality of the alleged conduct of the institutions, the reality of the damage and the existence of a causal link between the conduct of the institution and the alleged damage have first been met (see the judgment of 8 April 1992 in Case C-55/90 *Cato* v *Commission* [1992] ECR I-2533).

56 For the reasons already stated, the Commission cannot be held to have acted unlawfully so as to give rise to non-contractual liability of the Community in relation to the adoption of the contested measures.

57 On the contrary, the documents before the Court show that, in intervening with the Irish authorities on several occasions and making various amendments to its own measures to take account of the progress of the proceedings brought by

Emerald Meats in the Irish courts, the Commission afforded Emerald Meats much more extensive assistance than it was under an obligation to give under the legislation at issue.

58 Consequently, there is no need to ascertain whether the other conditions for Community liability are fulfilled and the claims for compensation must also be rejected.

59 Consequently, the applications must be dismissed in their entirety.

Costs

60 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is ordered to pay the costs. However, Article 69(3) provides that the Court may order the costs to be shared or that the parties bear their own costs if each party succeeds on some and fails on other heads or where the circumstances are exceptional. In this connection, the Court observes that, by bringing proceedings against Ireland under Article 169 of the Treaty and by amending the reallocation regulation following the proceedings for interim measures in Case C-317/90 R in order to safeguard the rights asserted by Emerald Meats in respect of the newcomers' quota, the Commission might have led Emerald Meats to believe that its claims were well founded.

61 In view of those circumstances, it is appropriate to decide that each party should bear its own costs, including those relating to the proceedings for interim measures in Case C-106/90 R.

On those grounds,

THE COURT

hereby:

1. Dismisses the applications;

2. Orders each party to bear its own costs, including those relating to the proceedings for interim measures in Case C-106/90 R.

Rodríguez Iglesias Zuleeg Mancini

Joliet Schockweiler Grévisse Diez de Velasco

Delivered in open court in Luxembourg on 20 January 1993.

J.-G. Giraud G. C. Rodríguez Iglesias

Registrar President of the Chamber
For the President