3. Article 5 of Regulation No 3885/90 which, in the context of the management of a Community tariff quota for frozen beef, authorizes the Commission, in a case in which one applicant lodges several applications for import certificates in two or more Member States, to declare all the applications in question inadmissible, does not apply to the case where several applicants lodge applications relating to the same reference quantities in two Member States. In order to obviate a situation where, in such a case, imports were effected twice on the basis of the same reference quantity, Article 2 of Regulation No 519/91, determining the extent to which applications lodged might be accepted, lawfully provided that import certificates relating to that reference quantity could only be issued provided the importers concerned lodged a guarantee, the amount of which was equal to the basic import levy for the meat in question, increased by 10%, the guarantee being released when the operator concerned was definitively identified as the importer of the reference quantity at issue.

REPORT FOR THE HEARING
in Case C-106/90 *

I — Legislative background

1. Article 1 of Council Regulation (EEC) No 3889/89 of 11 December 1989 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) (OJ 1989 L 378, p. 16), opens for 1990 a Community tariff quota totalling 53 000 tonnes expressed in weight of boned or boneless meat.

Pursuant to Article 2 of Regulation No 3889/89, the quota of 53 000 tonnes is to be divided into two parts as follows:

'(a) the first, equal to 90% or 47 700 tonnes, shall be apportioned for importers who can prove they have imported frozen meat falling with CN code 0202 or products falling within CN code 0206 29 91 to which these import arrangements apply during the last three years, with this period being reduced to the last two years for operators having imported such meat or products into Portugal;

* Language of the case: English.

(b) the second, equal to 10% or 5 300 tonnes, shall be apportioned for 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 these import arrangements apply and excluding meat which is the subject of inward or outward processing traffic.'

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) thereof, Member States are to notify the Commission, before 16 September 1990, of quantities not applied for at 31 August of that year.

2. Pursuant to Article 4 of Regulation No 3889/89, 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). Article 1(1) and (2) contain the criteria for allocating the two parts of the tariff quota provided for in Article 2 of Regulation No 3889/89, whilst providing that the second part, namely 5 300 tonnes, is to be reserved for operators who can furnish proof of having imported and/or exported during 1988 and 1989, quantities of beef of at least 50 tonnes per year.

Article 1(3) of Regulation No 4024/89 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.'

Under the terms of paragraphs 4 and 5 of that provision,

'the 47 770 tonnes shall be allocated between the various importers in proportion to their imports during the reference years',

and

'the 5 300 tonnes shall be allocated in proportion to the quantities applied for by importers.'

Article 4(1) of Regulation No 4024/89 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 referred to in Regulation (EEC) No 3889/89, during each of the years in question. In accordance with Article 4(2), the same time-limits are applicable to applications lodged in respect of the quota of 5 300 tonnes reserved for operators who have engaged during the two preceding years in trade with non-member states in meat of bovine animals other than that covered by Regulation No 3889/89. However, applications lodged by the same party under paragraph 2 may relate to an overall quantity not exceeding 50 tonnes of frozen meat, product weight. By Commission Regulation (EEC) No 143/90 of 19 January 1990 modifying 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 1990 L 16, p. 29), the date of 19 January 1990 was replaced by the new date of 24 January 1990.

Pursuant to the first paragraph of Article 5 of Regulation No 4024/89, licence applications are 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 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 are admissible.

Article 6(1) of Regulation No 4024/89 is worded as follows:

'The Commission shall decide to what extent applications may be accepted.

Subject to the Commission having decided that applications be accepted, import licences shall be issued from 9 February 1990.'

3. 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), provides in Article 1 as follows:

'1. Every application for an import licence lodged in accordance with Regulation (EEC) No 4024/89 shall be granted to the following extent:

(a) 321.581 kg per tonne imported in 1987, 1988 and 1989 for importers as defined in Article 1(1) of Regulation (EEC) No 4024/89;

(b) ...

(c) 16.56 tonnes per application in the case of importers as defined in Article 1(2) of Regulation (EEC) No 4024/89.

2. Member States shall issue the import licences as from 9 February 1990.'

II — Facts

1. Emerald Meats Limited (hereinafter 'Emerald Meats') is an undertaking established in Ireland which, *inter alia*, has been engaged since 1983 in the importation of meat products into the European Community.

2. By a letter of 18 January 1990, communicated on 23 January 1990, Emerald Meats lodged an application with the Irish Department of Agriculture and Food (hereinafter the 'Department of Agriculture'), under Article 4(1) of Regulation No 4024/89, mentioned above, for an allocation of that part of the Community quota referred to in Article 1(1) of that regulation (hereinafter the 'main quota'). In support of that application, Emerald Meats produced certain documents by way of proof as provided for in Article 1(3) of Regulation No 4024/89. The application was based on proof of imports in the three preceding years totalling 921 981.81 kgs, that is to say 191 963.58 kgs for 1987, 410 158.13 kgs for 1988 and 319 860.10 kgs for 1989. By a letter of 17 January 1990 Emerald Meats also applied — supplying a certain number of documents by way of proof —under Article 4(2) of Regulation No 4024/89 for an allocation in respect of that part of the tariff quota referred to in Article 1(2) of that regulation (hereinafter the 'newcomers' quota').

3. By a letter of 30 January 1990 to the Commission's Directorate General for Agriculture, Emerald Meats informed the Commission that it had applied for an allocation under Regulation No 4024/89. Emerald Meats also forwarded to the Commission copies of the documents of proof relating to 1989 and stated in its letter that the documents of proof relating to 1987 and 1988 had been previously submitted to the Department of Agriculture in support of an application made in 1989 under Commission Regulation (EEC) No 2327/89 of 28 July 1989 laying down detailed rules for the application of the import arrangements provided for in Council Regulation (EEC) No 4076/88 for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (OJ 1988 L 220, p. 67), and that on that occasion they had been accepted as proof of imports carried out in 1987 and 1988. Emerald Meats went on to state that in the event of the rejection, either in whole or in part, of its application for 1990, it would request the Commission to take a decision in this connection.

4. On 31 January 1990 the Department of Agriculture forwarded to the Commission the lists of importers and applicants mentioned in Article 4 of Regulation No 4024/89. By a letter of 8 February 1990 the Department of Agriculture informed Emerald Meats that its application in respect of the main quota had been granted only in the amount of 311 932 kgs, by reference solely to 1989, given that for 1987 and 1988 the import licences were granted to recognized beef processors and that in those years Emerald Meats effected the imports in question only as agent for those processors.

5. On 31 January 1990 Emerald Meats was told informally by the Department of Agriculture that the latter had not included the total quantities applied for in the list which it was going to communicate to the Commis-

sion; thereupon Emerald Meats on the same day sent a fax to the Commissioner for Agriculture and Rural Development requesting him to intervene urgently so as to enable its applications to be treated in a correct manner. On 1 February 1990 Emerald Meats sent by fax a further letter to the Commission's Directorate General for Agriculture in which it pointed out that it still considered that its applications were not being handled correctly by the Irish authorities; consequently, it requested an urgent meeting with the Commission's departments.

6. On 5 February 1990, at the Commission's request, Emerald Meats delivered to the Commission copies of the documents by way of proof relating to 1987 and 1988.

7. On 6 February 1990 the Commission sent a fax in the following terms to the Department of Agriculture:

'Thank you for sending us the list of applicants for the 1990 GATT — allocations.

May I draw your attention to the fact that in the declarations for the 10% GATT-licences for 1989, your office listed Emerald Meats as an importer of substantial quantities of GATT-meat for the years 1987 and 1988. In your declarations for GATT-allocation 1990 Emerald Meats disappeared as an importer for 1987 and 1988. Could we have an explanation about this change?

On this matter please refer to Regulation (EEC) No 4024/89 which stated in Article 1(1) that "47 700 tonnes shall be reserved for *importers* who can furnish proof of having imported frozen meat covered by CN code 0202 and products covered by CN code 0206 29 91 covered by the quota referred to in Council Regulations (EEC) Nos 3928/86, 234/88 and 4076/88 during the last three years."

Paragraph 3 of the same article stipulates that the *proof* referred to in paragraph 1 shall be provided by means of the *customs document of release for free circulation*.'

8. On 8 February 1990 the Commission adopted Regulation No 337/90, mentioned above, which determines to what extent applications for imports submitted under Regulation No 4024/89 may be accepted.

9. On 9 and 14 February 1990 Emerald Meats lodged with the Department of Agriculture applications for import licences relating respectively to the main quota and to the newcomers quota.

10. By letters of 21 February 1990 addressed to the President of the Commission and to the Commissioner for Agriculture and Rural Development, Emerald Meats requested that investigations should be carried out into the alleged irregularities in the application of Regulation No 4024/89 and stated that it would hold the Commission responsible for all losses suffered as a result of those irregularities. In a letter of 8 March 1990, Emerald

Meats informed the Commission's Directorate General for Agriculture of, *inter alia*, the difficulties it was experiencing in obtaining the import licences applied for.

11. Emerald Meats was unable to obtain satisfaction in the discussions between it and the Commission and those between the Commission and the Department of Agriculture and it therefore brought these proceedings for annulment and for the establishment of non-contractual liability. Prior to initiating proceedings before the Court, Emerald Meats brought an action in the Irish courts against the Department of Agriculture's decision not to regard it as the importer of all the quantities declared.

III — Procedure before the Court and forms of order sought by the parties

1. The application brought by Emerald Meats was registered at the Court on 18 April 1990.

2. By a separate document, lodged at the Court Registry on 13 July 1990, Emerald Meats submitted an application for interim measures under Articles 185 and 186 of the EEC Treaty, asking the Court to order the suspension of the operation of the measures contested in the action for annulment and to order the Commission to take such steps as are necessary for the applicant to be granted, pursuant to Article 1(1) and (2) of Regulation No 4024/89, mentioned above, the share of the tariff quota in issue to which it claims to be entitled.

3. By order of 14 August 1990, the President of the Second Chamber, acting for the President of the Court in accordance with the second paragraph of Article 85 and Article 11 of the Rules of Procedure of the Court, dismissed the application for interim measures.

4. Upon 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.

5. *Emerald Meats*, the applicant, claims that the Court should:

— annul the decision taken by the Commission pursuant to Article 6(1) of Commission Regulation (EEC) No 4024/89 determining 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

— annul the part of Commission Regulation (EEC) No 337/90 based on the above-mentioned decision;

— adjudge that the European Community should pay damages to Emerald Meats for the loss which it has suffered and will suffer as a result of the Commission's failure to administer and manage the Community quota correctly;

— award interest on such damages; and

— order the Commission to pay the costs.

6. The *Commission*, the defendant, contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

IV — Pleas and arguments of the parties

Admissibility

1. According to *Emerald Meats*, the decision taken by the Commission pursuant to Article 6(1) of Regulation No 4024/89, mentioned above, and Regulation No 337/90, mentioned above, constitute distinct, albeit related, acts. Under Article 6(1) of Regulation No 4024/89, the Commission must first decide whether to accept the figures for imports put forward by the national authorities and then apportion the quota for 1990 by reference to previous imports accepted. Regulation No 337/90 constitutes a separate phase, in which those decisions are communicated to the Member States and importers concerned in a binding form. Thus it is 'a conglomeration of decisions' affecting the legal position of Emerald Meats and other applicants.

Emerald Meats goes on to contend that Regulation No 337/90 is of direct and individual concern to it. On the one hand, Member States are left no latitude of discretion, either as to which applications to receive, or as to the manner in which they are to give effect to the Commission's decision taken under Article 6(1) of Regulation No 4024/89. On the other hand, at the time when the Commission drew up and adopted Regulation No 337/90 there was a clearly defined and fixed number of applications, and the names and addresses of the applicants, together with the quantities of meat which they had imported, were specifically known to the Commission. Accordingly, the application for the annulment of Regulation No 337/90 is admissible.

2. In the *Commission's* view, it is wholly artificial to treat the decision taken pursuant to Article 6(1) of Regulation No 4024/89 as being separate from Regulation No 337/90. In fact, this decision is enshrined in Regulation No 337/90. Accordingly, the Court ought not to grant the applicant's claim for the annulment of the decision taken pursuant to Article 6(1) of Regulation No 4024/89.

Substance

1. *Emerald Meats* submits that the Commission is under an obligation to manage and administer in accordance with Community law the tariff quota which is the subject of Regulation Nos 3889/89 and 4024/89, mentioned above, and, in particular, that it has a duty to ensure that its own acts, adopted within the framework of the administration of that quota, are in accordance with Com-

munity law and that, when it knows or ought reasonably to know that the information supplied by a Member State is incorrect, and appears to result from a wrongful interpretation of Community rules, it cannot simply ignore the wrongful nature of the information on which it is relying.

According to Emerald Meats, the system of tariff quota administration in question has moved progressively from an exclusively national system in 1987 (see Council Regulation (EEC) No 3929/86 of 16 December 1986 opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal falling within subheading 02.01 A II (b) of the Common Customs Tariff (1987), OJ 1987 L 365, p. 3) and in 1988 (see Council Regulation (EEC) No 234/88 of 25 January 1988, opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal falling within heading 0202 of the Combined Nomenclature (1988) and for products falling within subheading 0206 29 91 thereof, OJ 1988 L 24, p. 4), towards the present system, which is exclusively a Community one, having passed through a composite system applicable in 1989 (see Council Regulation (EEC) No 4076/88 of 19 December 1988, opening, allocating and providing for the administration of a Community tariff quota for frozen meat of bovine animals falling within CN code 0202 and products falling within CN code 0206 29 91, OJ 1989 L 359, p. 5).

Under the system based exclusively on national administration, the Community quota was apportioned wholly between the Member States which in their turn were free to apportion their national quota in their discretion on the basis of their assessment of economic circumstances and not in accordance with a uniform criterion. Under the system of joint administration, a substantial part of the Community quota continued to be apportioned between the Member States, but a second part, regarded as a 'reserve' Community quota was administered by the Commission. The detailed rules for the administration of that 'reserve' part of the Community quota, which were contained in Commission Regulation No 2327/89, mentioned above, were the forerunners of those applicable with effect from 1990 under the exclusive Community system of administration. Under that system the Member States no longer receive any national quota which they might be free to apportion in accordance with national criteria, but the entirety of the quota is made subject to detailed rules which are uniformly applicable throughout the Community, irrespective of the national authority with which the traders concerned lodge their applications.

Under this system there are no longer any allocation decisions at national level, the decision-making power belonging to the Commission. In that connection Emerald Meats refers to the third recital in the preamble to Regulation No 3889/89 under the terms of which

'a system for allocation by the Commission of the quantities available to the traditional operators on the one hand and to operators involved in trade in beef and veal on the other hand would give the latter progressive access to the benefits of the system in question.'

Moreover, national criteria for allocation were replaced by a Community definition of the categories of operators entitled to lodge applications, and by uniform requirements as to proof. In that context it is particularly worthy of note that Member States were not asked in 1990 to list the names of those persons to whom rights were allocated under their national administrations in previous reference years, but were required to list those who, in respect of the main quota, could prove that they had imported and, in respect of the newcomers' quota, that they imported and/or exported during those years.

Emerald Meats was the importer of all the quantities which it declared to the Department of Agriculture, as is borne out by the documents which it enclosed, in accordance with Article 4 of Regulation No 4024/89, with its applications, namely, on the one hand, the single administrative documents for the 1989 and 1988 imports and the CU 107 forms, that is to say the Irish customs document which was the predecessor of the single administrative document, for its imports in 1987, and also, on the other hand, the import licences for the imports in 1989 on which Emerald Meats' name appears in box 4. Moreover, Emerald Meats in all respects carried out the imports in question for its own account, as is attested by the fact, on the one hand, that it had bought from meat processors certain entitlements covered by import licences received by the latter under the 1987 and 1988 quotas and, on the other hand, that it itself purchased the meat in question from suppliers from outside the Community, paid for the meat, arranged for all the relevant transport and cold storage, and made the necessary insurance arrangements, provided securities through bank drafts and paid 20% duty before selling the imported meat and receiving the proceeds from sales of the meat when released for free circulation within the Community.

According to Emerald Meats, the reasons for the progressive move towards an exclusive Community administration of the tariff quota in question stem from the judgment of the Court in Case 59/84 *Tezi Textiel* v *Commission* [1986] ECR 887. In that case it was held that the full application of the principle of free movement of goods imported from non-EEC countries is conditional upon the establishment of a Common Commercial Policy based, in accordance with Article 113 of the EEC Treaty, on uniform principles. Goods from non-member countries could only be assimilated to goods originating in the Member States 'if those goods are subject to the same conditions of importation, with regard to customs and commercial considerations, irrespective of the State in which they were released into free circulation' (paragraph 31 of the judgment). Consequently, the Commission is obliged both to lay down management rules which are uniformly applicable throughout the Community and to check whether those rules are in practice being uniformly applied throughout the Community.

The applicable regulations are to be interpreted in the light of those principles. Certainly, under Regulation No 4024/89, the 'competent authorities' (Article 4(1)) of the

Member States are under an obligation to receive applications for an import licence to communicate to the Commission the information required. However, the regulation is silent on who is to verify the proof offered by such applications. Yet it does state in Article 1(3) what the proof is to be, namely the customs document of release for free circulation. As to the Commission, it is for it, on the one hand, to decide whether to accept the applications (Article 6(1)) and, on the other hand, to allocate the quota between the importers (Article 1(4) and (5)). In addition, since only the Commission receives the lists of the twelve Member States, only it is in a position to verify whether dual or multiple applications have been made, in relation to the same imports in different Member States, and thus to ensure observance of Article 5 of Regulation No 4024/89. Similarly, where an operator has applied in another Member State than that in which it usually does business, the Commission is better placed than any Member State to verify or have verified whether on 1 January 1990 he was engaged in activity in the beef sector, as required by Article 2(1) of Regulation No 4024/89.

Emerald Meats concludes that, within such a system of Community administration based on uniform principles where it is for the Commission to decide whether to accept applications, the Commission's duties involve not only a mathematical allocation of the Community quota in proportion to the overall declared tonnage of imports, but also verification that the stated rules on proof, admissibility and disqualification have been complied with throughout the Community. Therefore, by omitting to verify the accuracy of the list of importers supplied by the Irish authorities, although it had been informed of the errors contained in that list, the Commission founded the contested decision and/or regulation on erroneous information and infringed Article 113 of the Treaty, together with Regulations Nos 3889/89 and 4024/89. At the same time it failed to fulfil its obligation under Article 155 of the Treaty to ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied, and to ensure observance of the general principle of equality and the principle of good administration. According to Emerald Meats, the general principle of equality in the present case means that any person applying for a share of the Community-managed quota should be given equal treatment, irrespective of his Member State, or of the place where he lodges his application. In its turn, the principle of good administration entails not only that the Community must define and organize a suitable system for the checking of the administrative tasks which it delegates to national authorities but also that it must take steps to rectify errors made by those authorities, especially when they are brought to its notice even before it has taken its own decision.

Finally, Regulation No 337/90, mentioned above, also contains no adequate statement of the reasons on which it is based, for the recitals thereto give no indication as to the extent to which applications were accepted by the Commission, or as to the Commission's position on the issues brought to its attention by Emerald Meats.

Emerald Meats states that its claim for damages concerns in particular the following conduct by the Commission:

the Commission's failure adequately to verify, supervise, and control the collection of applications for the import licences, together with the required proof, and the Commission's failure adequately to verify the list of importers and the quantities of meat imported during the reference years, as forwarded to the Commission by the Irish authorities;

the Commission's failure adequately to verify compliance with Regulation No 4024/89 by the Irish authorities, when errors therein had been brought to the Commission's attention, and the Commission's failure to rectify such errors;

the Commission's failure adequately to define, organize and administer the system of proof provided for in Regulation No 3889/89;

the fact that the Commission allowed the Irish authorities to administer Regulation No 4024/89 incorrectly and thus allowed them in practice to continue their previous nationally managed allocation system;

the Commission's failure to ensure that the Irish authorities implemented Regulation No 4024/89 correctly, if necessary by the rectification of errors committed.

Emerald Meats considers that the causal link between the Commission's wrongful acts and the loss suffered by Emerald Meats is clearly established; if the Commission had correctly organized and verified these administrative steps and, in particular, taken action to check the figures from the Department of Agriculture when informed that those figures were wrong, that is to say before taking the contested decision and/or regulation, Emerald Meats' allocation under the quota would have been correct.

According to Emerald Meats, its loss is both actual and continuing. For 1990 Emerald Meats would have been entitled to approximately 200 tonnes more, if all the quantities which it declared under the main quota had been forwarded to the Commission. Emerald Meats would thus have been able to import approximately 200 tonnes more free of levy during that year, so that its loss for 1990 may be assessed at 200 times the rate of levy, which is 3 557 ECU per tonne, namely at 711 400 ECU. Continuing losses are more difficult to quantify. If, in 1991, the Commission allocates the Community quota on the basis of imports for 1988, 1989 and 1990, the errors made in 1990 will also affect that allocation. In addition, the same errors will affect subsequent allocations. It cannot therefore be excluded that the definitive damage will be such as to jeopardize the economic survival of Emerald Meats.

Emerald Meats is also claiming damages as regards its application for newcomers' quota. Although its application was correctly communicated to the Commission, Emerald Meats had still not received, as at the date of lodgement of its application, the import licences to which it is entitled under Article 1(1)(c) and (2) of Regulation No 337/90. Since the Commission omitted to ensure the proper implementation of that regulation by the Irish authorities, it must also compensate Emerald Meats according to the same criteria for the losses suffered as a result of that improper denial.

2. The *Commission* points out, first, that as a result of the judgment of 27 September 1988 in Case 51/87 (*Commission* v *Council* [1988] ECR 5459) in which the Court held that the division of a Community import quota into national shares was contrary to Articles 9 and 113 of the Treaty unless it was necessary on administrative, technical or economic grounds precluding the Community administration of the quota, Regulation No 3889/89 no longer provides for the division of any part of the quota covered by it into national shares.

The Commission further contests the claim that the damage suffered by Emerald Meats may in any way be attributable to any fault on its part. The Commission was informed of the difficulties encountered by Emerald Meats only by letters of 30 and 31 January and 1 February 1990. It immediately requested Emerald Meats to deliver the requisite documentary proof and also alerted the Irish authorities by a fax dated 6 February 1990. The Irish authorities did not reply until 5 April 1990 when it rejected Emerald Meats' claim, after the Commission had forwarded to them on 27 March 1990 a fresh copy of the letter of 6 February 1990. Only subsequently, during the proceedings for interim measures, did the Commission become aware of the full extent of the dilatory and uncooperative attitude of the Irish authorities, in particular in proceedings brought in the meantime by Emerald Meats before the Irish courts.

According to the Commission, it had no power to act otherwise and in particular could not have delayed the adoption of Regulation No 337/90. The lists which the national authorities must communicate to it in pursuance of Article 4 of Regulation No 4024/89 clearly suffice to enable the Commission to check whether any applicants had lodged applications in more than one Member State. Thus, there is no substance in the applicant's suggestion that Article 5 is an indication of a wider obligation on the Commission to check the applications. Similarly, when the Commission 'decides to what extent applications may be accepted', pursuant to Article 6(1) of Regulation No 4024/89, it merely has to determine what proportion of licences applied for are to be granted, as it did in Regulation No 337/90.

A more extensive duty of verification on the Commission's part is also precluded by prac-

tical considerations. Doubtless, it would have taken days, if not weeks, to determine whether Emerald Meats had imported the quantities declared on its own behalf or as agent. Yet it is plainly against the interests of all the importers in the Community for the issue of licences to be delayed unduly long after the beginning of the calendar year. If the Commission had delayed the adoption of Regulation No 337/90 until the outcome of any investigations, the Commission would have been acting in a manner that was improper and contrary to the principle of good administration since the interests of prospective importers in all the other Member States manifestly outweigh those of Emerald Meats, however important in themselves. Moreover, there was no possibility of adopting a regulation relating to the eleven other Member States and leaving aside the Irish traders, the whole thrust of the new regime being that it applies Community-wide.

In any event, the Commission has no power under the regulations either to grant licences itself to Emerald Meats or to require Ireland to do so. Thus the only step which the Commission might have taken was the commencement of proceedings against Ireland under Article 169 of the Treaty.

Finally, the Commission submits that, even if Emerald Meats' contention that it is entitled to import the disputed quantities in 1990 is correct, that does not as such affect the legality of Regulation No 337/90. In fact, that regulation merely lays down the quantities to be allocated without stipulating to whom they should be allocated. However, the Commission concedes that if the allegation that the Irish authorities wrongly rejected 41 tonnes imported by Emerald Meats in 1987 and 1988, without treating them as part of another company's entitlement, should turn out to be well founded, that would affect the legality of Article 1(1)(a) of Regulation No 337/90. In that case, the total quantity covered by the applications of which the Irish authorities informed the Commission pursuant to Article 4(1) of Regulation No 4024/89 would be erroneous to that very limited extent, and the figure laid down in Article 1(1)(a) of Regulation No 337/90 would equally be erroneous and thus illegal to that extent.

As far as the claim for damages is concerned, the Commission deduces from the foregoing considerations that it has committed no act or omission such as to ground liability under the second paragraph of Article 215 of the Treaty. It considers that it has not only acted without fault, but has gone beyond the call of duty in seeking a solution to the applicant's difficulties both before and after Regulation No 337/90 came into force. Moreover, even if that regulation turns out to be unlawful, that illegality will have occurred for reasons quite beyond the Commission's control. In any event the infringement would relate only to a very small quantity of meat in comparison to the total quantity covered by the regulation, so that it must be deemed to be minor and not capable of grounding its liability.

Finally, the Commission states its concern that justice should be done and that the rules should be properly administered. It is particularly anxious not to become embroiled in the same difficulties in the future and therefore wishes to obtain a finding of fact on Emerald Meats' entitlement as soon as possible. Having regard, however, to the uncooperative conduct of the Irish authorities, in particular before the Irish courts, the Commission proposes that an expert be appointed forthwith to report to the Court by a date to be determined on whether Emerald Meats in 1987, 1988 and 1989 imported the disputed quantities of beef on its own behalf or as an agent for third persons.

3. In its reply *Emerald Meats* states that its application before the Court does not concern the illegality of the practices of the Department of Agriculture but is directed at the acts of the Commission which compounded and reinforced the wrongful acts of the Department of Agriculture. Accordingly, the Commission should be responsible for its part in the errors and misinterpretations of the Department of Agriculture and should be liable for its part in the damage resulting to Emerald Meats.

Emerald Meats contests the view that no matter how blatant the mistake, or how flagrant the incorrectness of a Member State's acts or omissions, the Commission can do nothing, save start Article 169 proceedings. If that were the case, there would be no Community administration of the tariff quota and the Commission would be obliged to carry over Member State errors and misinterpretations into Community acts. In the present case it was particularly necessary to verify the information received because the error in the list communicated by the Department of Agriculture was manifest on the face of it, and the Commission was fully informed of it before adopting the contested decision and/or regulation. In spite of the fact that on 5 February 1990 the Commission had available to it documents proving that Emerald Meats was to be regarded as the importer of all the quantities declared, on 8 February 1990 the Commission, without waiting for any reply from the Department of Agriculture to its letter of 6 February 1990 or otherwise following up on the issue, went on to adopt the contested acts.

According to Emerald Meats, the Commission could perfectly well have delayed adoption of the contested decision and/or regulation for a short period in order to complete its investigation into the errors which had been pointed out to it. First, the Commission's ability to act quickly when required was amply demonstrated by its adoption of Regulation (EEC) No 3135/90 of 29 October 1990 amending Regulation (EEC) No 2983/90 concerning the allocation of the quantities of the import quota for frozen meat of bovine animals, opened by Regulation (EEC) No 3889/89, for which import licence applications have not been lodged (OJ 1989 L 299, p. 41) on the ground that,

'of that total a quantity slightly exceeding 15 tonnes is currently the subject of court proceedings pending in a Member State concerning the decision by the national authorities not to grant an import licence' (third recital in the preamble to Regulation No 3135/90).

Secondly, the Commission could have altered the date of 9 February 1990 laid down in Article 6(1) of Regulation No 4024/89, which was the Commission's own deadline for the acceptance of applications. Furthermore, it is clear from paragraphs 12, 13 and 29 to 31 of the judgment of 6 November 1990 in Case C-354/87 (*Wedell* v *Commission* [1990] ECR I-3847) that in the administration of a Community tariff quota the Commission may take certain practical steps even without a formal decision or regulation in order to verify information received from national authorities. Moreover, that is what the Commission did in the present case by requesting Emerald Meats to furnish documentary evidence in support of its complaint, and the Irish authorities to provide explanations in this connection; however, it did not await the reply of the Irish authorities before adopting the contested decision and/or regulation. Finally, a short delay would only have postponed the allocation of import licences to the other importers, whilst the refusal to address the problems raised by Emerald Meats has deprived it of its rights for at least 1990.

As regards the Commission's proposal that an expert be appointed to determine Emerald Meats' entitlement, the applicant considers that no such appointment is necessary, since its entitlement is absolutely clear and proved beyond doubt. This case turns on the Commission's duty to ensure that it complies with the Community rules in its own acts, a matter which has to be brought before the Court. Emerald Meats points out that Article 1(3) of Regulation No 4024/89 provides that importers are to furnish proof through 'customs documents of release for free circulation', and that it has produced those documents to the Court in an annex to its application.

Moreover, in annexes to its reply, Emerald Meats has produced copies of applications made by other parties with the Department of Agriculture which it received on 5 November 1990 following an order for discovery of documents in proceedings before the Irish courts. Those documents show there were no duplicate applications in respect of the same quantities because those other applications were not accompanied by the requisite proofs. Moreover, there is a wide divergence between the quantities declared by the other applicants and the quantities stated by the Department of Agriculture in the list which it communicated to the Commission pursuant to Article 4(1) of Regulation No 4024/89. As regards the 41 tonnes in respect of which the Commission has conceded that their omission from the list communicated to it is such as to affect the legality of Article 1(1)(a) of Regulation No 337/90, Emerald Meats produced, in an annex to its reply, the copy of a letter from the Department of Agriculture dated

23 July 1990, transmitted to the Commission by fax on 8 August 1990, which confirms that no application was made in respect of that quantity by any other undertaking and that that quantity was therefore not included in the list in question. Emerald Meats disputes that that irregularity may be deemed to be of minor importance and argues that those 41 tonnes of imports effected during the reference years would have entitled it to 13.18 tonnes of the 1990 quota, representing a value of approximately IRL 29 000. Furthermore, that irregularity not only means that in 1990 each importer in the twelve Member States received an incorrect share, but that it also continues to have an impact in the years to come since imports effected in 1990 serve as a basis for determining entitlement in respect of ensuing years.

4. In its rejoinder, the *Commission* points out that by a judgment of 9 July 1991 the High Court in Dublin found in favour of Emerald Meats and awarded damages in the sum of IRL 385 922, together with interest of IRL 30 873.76 against the Department of Agriculture to cover loss on the main quota for 1990. The Commission concludes therefrom that unless and until the High Court's judgment is overturned by the Supreme Court, before which the Department of Agriculture has lodged an appeal, the action brought by Emerald Meats ceases to have any purpose. Moreover, by two faxes of 17 July 1991, the Commission informed the United Kingdom authorities, with which Emerald Meats had in the meantime lodged applications in respect of the 1991 quota, and the Irish authorities, that Emerald Meats' entitlements for 1988, 1989 and 1990 were to be definitively recognized as being those resulting from the findings of the High Court. Accordingly, and in any event, this action now only concerns compensation for loss allegedly suffered in the past in relation to the 1990 quota, so that there is manifestly no reason for the Court to give a decision prior to the definitive conclusion of the proceedings pending before the Irish courts. The Commission adds that, in the event that the Court were to give judgment before the result of the proceedings before the Irish courts' were known, it would be necessary to take account, first, of the fact, that the Commission's liability, if any, would only be secondary in relation to the liability of the Irish authorities and, secondly, of the principle of unjust enrichment which would preclude Emerald Meats from being compensated twice for the same loss.

F. A. Schockweiler
Judge-Rapporteur