REPORT FOR THE HEARING
in Case C-317/90 *

I — Legislative background

1. Article 1 of Council Regulation (EEC) No 3889/89 of 11 December 1989 opening and providing from 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 within 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 for the last two years for operators having imported such meat or products into Portugal;

(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 been 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) include the criteria for the allocation of the two parts of the tariff quota as provided for

* Language of the case: English.

in Article 2 of Regulation No 3889/89, whilst providing that the second part, that is 5 300 tonnes, is to be reserved for operators who can furnish proof of having imported and/or exported during 1988 and 1989, at least 50 tonnes per year of beef.

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 Article 1,

'the 47 700 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 1991 at the latest a list of importers containing in particular the importers' names and addresses and the quantities of meat imported under the quota referred to in Regulation (EEC) No 3889/89 mentioned above, during each of the years in question. Under Article 4(2), the same time limits are applicable to applications made in respect of the 5 300 quota reserved for operators carrying on trade during the two preceding years with non-Member countries in meat of bovine animals other than that governed by Regulation No 3889/89. Applications lodged by the same party under paragraph 2 may not, however, exceed an overall quantity of 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 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 that of 24 January 1990.

By virtue of 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 thereof 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 imports 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.'

4. Pursuant to Article 3 of Regulation No 3889/89, mentioned above, the Commission on 15 October 1990 adopted Regulation 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 1989 L 283, p. 36). Article 1(1) of that regulation states that quantities of meat of bovine animals not covered by import licence applications at 31 August 1990 total 35 tonnes, and that those quantities are to be allocated to the operators referred to in Article 1(1) and (2) of Regulation No 4024/89, mentioned above.

Article 2(1) of Regulation No 2983/90 provides that:

'Operators shall present to the competent authorities the import licence application together with the proof referred to in Article 1(3) of Regulation (EEC) No 4024/89 by 19 October 1990 at the latest',

and that

'Import licence applications shall be for an overall product weight of five tonnes of frozen meat.'

Under Article 3,

'Member States shall send the numbered list of applicants to the Commission by 24 October 1990 at the latest.'

Article 4 is worded as follows:

'1. The Commission shall decide to what extent applications may be accepted. If the total quantity for which licences are applied for exceeds the quantity available, the allocation shall be made by drawing lots, by batches of five tonnes.

2. Subject to the Commission having decided that applications be accepted, import licences shall be issued on 31 October 1990.'

In view of the fact that of the total of 35 tonnes for which licence applications had not been lodged a quantity slightly exceeding 15 tonnes was the subject of court proceedings pending in a Member State concerning the decision by the national authorities not to grant an import licence, the Commission decided to suspend the allocation of those 15 tonnes and on 29 October 1990 adopted Regulation (EEC) No 3135/90 amending 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 1989 L 299, p. 41), which added to Article 4 of Regulation No 2983/90 a paragraph 3 having the following wording:

'3. The allocation provided for in paragraph 1 shall cover 20 tonnes. After 29 November 1990 the Commission shall decide on the allocation of the remaining 15 tonnes.'

Considering that, following those court proceedings, the final balance under the 1990 quota was to be fixed at 20 tonnes, the Commission on 11 December 1990 adopted Regulation (EEC) No 3565/90 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 1990 L 247, p. 16), which replaced the words '35 tonnes' by the words '20 tonnes' in Article 1(1) of Regulation No 2983/90 and deleted Article 4(3) which had been inserted into Regulation No 2983/90 by Regulation No 3135/90.

II — Facts and procedure before the Court

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

2. By a letter of 17 January 1990, Emerald Meats submitted to the Irish Department of Agriculture and Food (hereinafter the 'Department of Agriculture'), an application under Article 4(2) of Regulation No 4024/89, mentioned above, for an allocation under the

tariff quota referred to in Article 1(2) of that regulation (hereinafter the 'newcomers' quota'). In support of its application, Emerald Meats produced certain documents by way of proof as mentioned in Article 1(3) of Regulation No 4024/89, in order to show that, in accordance with Article 1(2) of that regulation, it had imported during 1988 and 1989 at least 50 tonnes per year of beef not subject to the import arrangements in question. By a letter of 18 January 1990 Emerald Meats also submitted an application under Article 4(1) of Regulation No 4024/89 together with a certain number of documents providing proof, in respect of the part of the tariff quota referred to in Article 1(1) of that regulation (hereinafter the 'main quota').

3. On 31 January 1990 the Department of Agriculture communicated to the Commission the list of applicants referred to in Article 4(2) of Regulation No 4024/89 which included Emerald Meats with a quantity applied for of 50 tonnes.

4. On 8 February 1990 the Commission adopted Regulation No 337/90, mentioned above, under the terms of which every application for an import licence lodged in accordance with Regulation (EEC) No 4024/89 in respect of the newcomers' quota is to be granted up to the amount of 16.56 tonnes.

5. By a letter of 14 February 1990 Emerald Meats lodged with the Department of Agriculture an application for an import licence for 16.56 tonnes, together with a bank guarantee in the sum of IR£ 1 447.18.

6. By letters of 8 March and 11 April 1990, Emerald Meats informed the Commission's Directorate General for Agriculture that it had, *inter alia*, still not received the import licence applied for.

7. By an application lodged at the Court Registry on 18 April 1990, Emerald Meats brought proceedings for annulment and for the establishment of non-contractual liability against the Commission (Case C-106/90). In that action, which principally concerns the treatment accorded to Emerald Meats' applications in respect of the main quota, Emerald Meats likewise seeks compensation in respect of the newcomers' quota, on the ground that the Commission unlawfully failed to prevent the Department of Agriculture from wrongly delaying beyond 9 February 1990 the issue of the import licence applied for.

8. By a letter of 16 July 1990 Emerald Meats called upon the Department of Agriculture to issue the import licence applied for within a period of seven days, failing which appropriate legal action would be taken.

9. By a letter of 23 July 1990 the Department of Agriculture informed Emerald Meats that certain of the documents which it had submitted by way of proof of its importations during 1988 and 1989 were not satisfactory and that, consequently, proof of imports of at least 50 tonnes per year had not been furnished, so that its application in

respect of the newcomers' quota had to be rejected.

10. On 13 August 1990, at the hearing in Case C-106/90 R, the Commission indicated that the name of Emerald Meats did in fact appear on the list communicated to it by the Department of Agriculture in accordance with Article 4(2) of Regulation No 4024/89. In a letter dated 22 August 1990 to the Commission's Directorate General for Agriculture and to the Commission's agent in Case C-106/90 — in which Emerald Meats formally requested the Commission to commence Article 169 proceedings against Ireland — Emerald Meats contended, on the one hand, that if its application under the newcomers' quota was wrongly accepted, the figure in Article 1(1)(c) of Regulation No 337/90 was also wrong, inasmuch as all other applicants should have received a quantity greater than 16.56 tonnes and, on the other hand, that the tonnage corresponding to its application could not be returned to the Commission pursuant to Article 3(2) of Regulation No 3889/89, because that tonnage was covered by an application accepted by the Commission at the time when the latter was determining the extent to which applications lodged pursuant to Regulation No 4024/89 might be accepted.

11. By a letter of 28 August 1990 the Commission confirmed in writing to Emerald Meats that its name was on the list submitted to it by the Department of Agriculture under Article 4(2) of Regulation No 4024/89. By a letter of 10 September 1990, addressed once again to the Commission's Directorate General for Agriculture and to the Commission's agent in Case C-106/90, Emerald Meats once again pointed out that the return by the Department of Agriculture to the Commission of the 16.56 tonnes allocated to Emerald Meats and their reallocation by the Commission would be unlawful because, on the one hand, such action would be contrary to Regulation No 337/90 and, on the other, the 16.56 tonnes in question were covered by an import licence application at 31 August 1990. At the same time Emerald Meats informed the Commission that on 4 September 1990 the Department of Agriculture had returned the security filed with the import licence application on 14 February 1990, and warned the Commission that should it fail in its obligation to ensure that a Community administration for the quota is operated, and/or reallocate Emerald Meats' entitlement, Emerald Meats would be forced to raise those matters before the Court of Justice of the European Communities.

12. By a fax dated 26 September 1990 the Department of Agriculture informed the Commission's Directorate General for Agriculture that Ireland had no quantity not applied for on 31 August 1990, as mentioned in Article 3 of Regulation No 3889/89. At a meeting held on 28 September 1990, the Irish representatives on the management committee for beef and veal confirmed to the Commission that there were no unsubscribed quantities to be returned from Ireland.

13. On 2 and 3 October 1990 Emerald Meats sent several letters to the Commission's Directorate General for Agriculture and to the Commissioner for Agriculture and Rural Development. In both those letters Emerald Meats claimed that the infor-

mation given by the Irish representatives at the meeting of the management committee for beef and veal held on 28 September 1990 was incorrect and illegal. In its letter of 2 October 1990 to the Commission's Directorate General for Agriculture, Emerald Meats considered that the fact that the Irish delegation neither declared that Emerald Meats had not yet received the import licence applied for in respect of the 16.56 tonnes, nor returned those quantities for reallocation, once again proved that the Irish authorities were disregarding Regulations No 4024/89 and 337/90. It requested the Commission to obtain an explanation in that connection from the Irish delegation. In its letter of the same date to the Commissioner for Agriculture and Rural Development, Emerald Meats stated, *inter alia*, that:

'by virtue of the fact that they did not return a quantity of 16.56 tonnes due but unlawfully denied to this company, the Irish authorities are again both knowingly and willingly continuing to unlawfully administer these regulations in your name.'

Emerald Meats went on to state that should the incorrect results of the management committee for beef and veal be allowed to form the basis of a regulation intended to reallocate the remainder of the 1990 quota, it would add to the existing exposure of the Commission as a result of its total maladministration of the quota to date, and Emerald Meats would be obliged to contest the legality of any such regulation before the Court of Justice and apply for the suspension of its application under Articles 173 and 185 of the Treaty.

In its letter of 3 October 1990 Emerald Meats requested the Commissioner for Agriculture and Rural Development, as the person responsible, to inform it of the steps which he was going to take to counter the unlawful actions of the Department of Agriculture, and in particular, whether he was going to sign again on behalf of the Commission a regulation, knowing that it would be erroneous and unlawful, or whether he was going to seek a formal explanation from the Irish delegation and put a stop to all that unlawful behaviour.

14. On 8 October 1990 Emerald Meats commenced proceedings in the Irish courts for an injunction requiring the Department of Agriculture to issue to Emerald Meats the import licence applied for.

15. On 11 October 1990 the Commission's Directorate General for Agriculture received from the Irish authorities a fax which stated as follows:

'Re: Article 3 Regulation No 3889/89. Further to our previous fax concerning the above please note that 16.56 tonnes was not used. Apologies for any inconvenience caused.'

As a result, on 12 October 1990, the Commission proposed to the management committee to raise the amount to be reallocated from 20 to 35 tonnes. For technical reasons the figure of 16.56 tonnes was adjusted to 15 tonnes.

16. In a letter of 12 October 1990 to the Commission's Directorate General for Agriculture and to the Commission's agent in Case C-106/90, Emerald Meats pointed out that the Commission could not lawfully include the quantity in question in the total to be reallocated in pursuance of Article 3 of Regulation No 3889/89. Emerald Meats requested a response from the Commission by midday on Monday 15 October 1990 at the latest, failing which it would be forced to bring the matter before the Court of Justice of the European Communities.

17. By a letter to the same addressees, delivered by hand on the morning of 15 October 1990, Emerald Meats informed the Commission that the 16.56 tonnes returned by the Department of Agriculture were the subject of injunction proceedings before the Irish courts started on 8 October 1990, and stated that the return of those 16.56 tonnes to the Commission frustrated those proceedings.

18. A short time afterwards, on the same day, the Commission adopted contested Regulation No 2983/90, mentioned above, under the written procedure. Emerald Meats, considering that the 16.56 tonnes to which it claimed entitlement under Regulation No 337/90 had been included in the total of 35 tonnes, whose allocation was governed by Regulation No 2983/90, brought this action for annulment and for the establishment of non-contractual liability, which was registered at the Court on 22 October 1990.

19. By a separate document lodged at the Court Registry on the same day, Emerald Meats brought an application for interim measures under Articles 185 and 186 of the EEC Treaty whereby, pending judgment in proceedings before the Irish Courts for an injunction, and/or pending judgment in the main proceedings in this case, it sought the suspension of Commission Regulation (EEC) No 2983/90 and/or an interim order that the Commission be prohibited from including in the quantities of quota which are the subject of a further allocation the tonnage which was 'returned' to the Commission by the Department of Agriculture on 11 October 1990.

20. At the end of the hearing on 26 October 1990 dealing with the application for interim measures, Emerald Meats stated that, following proposals made by the Commission's agent out of court during an adjournment of the hearing, it withdrew its application for interim measures except as regards the question of costs. Since the Commission did not oppose the withdrawal and stated that it was prepared to bear its own costs but not those incurred by Emerald Meats, Judge F. A. Schockweiler, 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, in the absence of the President of the Court, the Presidents of the Chambers and the other judges having greater seniority in office, by order of 29 October 1990, ordered that Case C-317/90 R be removed from the register of the court and that each of the parties should bear its own costs.

21. On 29 October 1990 the Commission adopted Regulation No 3135/90, mentioned above, which suspended until after 29 November 1990 the allocation by the Commission of the 15 tonnes which were the subject of the proceedings brought by Emerald Meats before the Irish Courts.

22. On 22 November 1990 the High Court in Dublin granted Emerald Meats the injunction applied for, whilst providing for a stay of execution until 26 November in order to give the Department of Agriculture the possibility of appealing. The latter did not avail itself of that possibility and granted Emerald Meats the import licence applied for.

23. On 11 December 1990 the Commission adopted Regulation No 3565/90, mentioned above, in order to take account of the developing situation.

24. On 19 December 1990 the Commission addressed to Ireland a formal letter before action pursuant to the first paragraph of Article 169 of the Treaty relating both to the main quota and to the newcomers' quota.

25. After hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory enquiry.

III — Forms of orders sought by the parties

1. In its application, *Emerald Meats*, the applicant, claims that the Court should:

— annul Commission Regulation (EEC) No 2983/90 making a further allocation of the Community's tariff quota of frozen bovine meat for 1990, pursuant to Article 3 of Council Regulation No 3889/89; and/or

— award damages against the European Community in favour of 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 part of the said Community tariff quota known as the 'newcomers' quota';

— grant interest on the damages awarded;

— order the Commission to pay the costs.

In its reply, Emerald Meats stated that, even taking into account the steps in mitigation which the Commission had taken, it was maintaining its claim for the remaining damage and costs which it had incurred.

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

— dismiss the action on the ground that it is vexatious;

— order the applicant to pay the costs.

In the alternative, the Commission contends that the Court should:

— dismiss the action as unfounded;

— order the applicant to pay the costs.

IV — Pleas and arguments of the parties

Admissibility

Emerald Meats submits that Regulation No 2983/90, mentioned above, is a decision which, although in the form of a regulation, is of direct and individual concern to it. According to Emerald Meats, Regulation No 2983/90, which is the culmination of the procedure for the allocation of the 1990 quota, purports to reallocate to other importers the 16.56 tonnes of newcomers' quota which had previously been allocated to Emerald Meats under Article 1(1)(c) of Regulation No 337/90, mentioned above. In those circumstances, Emerald Meats submits that it fulfils the criteria laid down by the Court in the judgment in Case C-100/74 *CAM* v *Commission* [1975] ECR 1393, at paragraph 19, in the sense that Regulation No 2983/90

'affects [its] legal position because of a factual situation which differentiates [Emerald Meats] from all other persons and distinguishes [it] individually in a similar way as an addressee.'

Substance

1. In support of its application, *Emerald Meats* makes the following pleas based on

(a) the fact that the Commission knowingly frustrated the judicial process before the Irish Courts;

(b) the infringement of Regulation No 337/90, mentioned above;

(c) the infringement of Regulation No 3889/89, mentioned above;

(d) the infringement of several general principles of Community law.

(a) Emerald Meats states that it informed the Commission in August 1990 that it was considering injunction proceedings in the Irish courts against the Department of Agriculture in respect of its entitlement to newcomers' quota. It was for that purpose that it requested formal confirmation from the Commission that its name was on the list relating to Article 1(2) of Regulation No 4024/89, mentioned above and forwarded to the Commission in January 1990. Moreover, since the Commission was put on notice on the morning of 15 October 1990 that injunction proceedings had been commenced on 8 October 1990 it knew, before or at the time when it adopted the regulation in issue, that the Department of

Agriculture had returned to it the 16.56 tonnes after injunction proceedings had been commenced and that the inclusion of the returned tonnage in any further allocation would frustrate those proceedings. In adopting Regulation No 2983/90, mentioned above, the Commission thus knowingly jeopardized due process in the Irish courts.

(b) Emerald Meats considers that the Commission not only enabled the Department of Agriculture to act in breach of Regulation No 337/90, but, by the adoption of Regulation No 2983/90, the Commission also reinforced and condoned that infringement with its own acts. Article 1(1) of Regulation No 337/90 clearly states that:

'Every application for an import licence lodged in accordance with Regulation (EEC) 4024/89 *shall* be granted to the following extent.'

Moreover, under Article 1(2) of that regulation, which provides that:

'Member States *shall issue* the import licences as from 9 February 1990',

the Department of Agriculture is not entitled to refuse to issue the import licence applied for in respect of quantities which it had already agreed and communicated to the Commission in pursuance of Regulation No 4024/89. Therefore, the Commission was in no position to authorize, by means of the regulation in issue, the reallocation of the quantities not yet allocated to which it knew Emerald Meats to be entitled.

(c) According to Emerald Meats, the deadline for the Member States to notify the Commission of any unused quota, pursuant to Article 3 of Council Regulation No 3889/89, namely 16 September 1990, is binding both on the Commission and the Member States. Therefore, in accepting the 16.56 tonnes returned by the Department of Agriculture on 11 October 1990, the Commission infringed Regulation No 3889/89.

(d) Emerald Meats argues that by accepting the unlawful return of Emerald Meats' newcomers' quota by the Department of Agriculture and including it in the quantity of quota for further allocation under Regulation No 2983/90, the Commission infringed the general principles of the protection of vested rights, legal certainty, the protection of legitimate expectation and non-retroactivity. In fact the Commission has deprived Emerald Meats of rights which it held under Regulation No 337/90, and has in essence given retroactive validity to the infringement of that regulation by the Department of Agriculture.

In regard to the claim for damages for the loss which it has suffered or will suffer as a result of the Commission's failure to administer and manage the Community quota correctly, Emerald Meats refers, in particular, to the following conduct by the Commission:

— The Commission's acceptance of the Department of Agriculture's purported return of tonnage pursuant to Article 3 of Regulation No 3889/89 and the adoption of Regulation No 2983/90 when it knew

that the further allocation of that tonnage would frustrate proceedings brought by Emerald Meats before the Irish courts;

— the Commission's acceptance of the purported return of tonnage and the adoption of the regulation in issue when it knew that such tonnage had previously been allocated to Emerald Meats under Regulation No 337/90;

— the Commission's disregard for the deadline for the return of unused quota, established in Regulation No 3889/89.

Emerald Meats argues that it has suffered losses under various heads. First, there are the losses corresponding to the value of the tonnage in question which, by reference to the Community levy at the rate of 3 557 ECU per tonne, may be assessed at ECU 58 903.5. That may be continuing loss since the tonnage imported by Emerald Meats in 1990 may be used as a reference basis for further allocations of quota in ensuing years. Secondly, denial of the import licence applied for since February 1990 has resulted in an interruption of business and the loss of established goodwill which, taken with the other damage arising from the dispute concerning the main quota, threatens the very survival of Emerald Meats. Finally, account should also be taken of the cost of the bank guarantee provided by Emerald Meats to the Department of Agriculture on 14 February 1990, which was returned to it only on 4 September 1990.

2. The *Commission* submits that the action brought by Emerald Meats should be dismissed forthwith as being vexatious, since Emerald Meats has already obtained full satisfaction at the interlocutory stage. The action for annulment has become otiose, since the contested regulation has been amended and, accordingly, the applicant has obtained the import licence applied for. For the same reason, the claim for damages for loss corresponding to the value of the tonnage in question has also lost its purpose. As to the losses alleged to stem from the unlawful denial of the licence applied for by the Department of Agriculture and the provision of a bank guarantee, those matters relate to the period between 9 February 1990, the date on which Regulation No 337/90 entered into force, and 16 September 1990, the date on which unused quantities were to be returned to the Commission pursuant to Article 3(2) of Regulation No 3889/89; a period during which the Commission had no power to allocate or reallocate any quantities. In fact, under the Community rules in question, the Commission has no power itself to grant import licences to Emerald Meats or to require Ireland to do so. Accordingly, the claims for damages relating to alleged losses are manifestly unfounded.

On an ancillary basis, the Commission maintains that the contested regulation is and remains wholly lawful in all respects. The Commission has a duty, both towards the GATT partners and towards Community meat traders, to ensure in so far as possible that the annual GATT quota is fully used up, so that the Commission was obliged to reallocate even quantities returned by the Mem-

ber States after 16 September 1990. Moreover, under Article 3 of Regulation No 3889/89 it is for the Member States to decide whether quantities were unsubscribed and, if so, to notify them to the Commission which is obliged to reallocate the quantities returned by the Member States.

The allegation by Emerald Meats that the Commission knowingly frustrated the judicial process commenced before the Irish courts fails to take account of the fact that the Commission was informed of those proceedings only on 15 October 1990, when the crucial steps in the adoption of the contested regulation had already been taken and when the written procedure quite simply had expired. In any event, for Emerald Meats now to claim that it was unlawful to return and to reallocate the 16.56 tonnes is to adopt a diametrically opposed attitude to the one it took in particular in its letter of 2 October 1990 to the Commissioner for Agriculture and Rural Development, in which it asserted that it would be unlawful not to return the quantities in question.

As regards the action for damages, the Commission argues that none of the conditions laid down in this connection in the court's case-law are satisfied. On the one hand, it is clear from the foregoing considerations that Emerald Meats has been unable to demonstrate the existence of an unlawful act or omission by the Commission, or the existence of any damage. On the other hand, if any damage has been unlawfully inflicted on the applicant, then Ireland must be primarily responsible, since it failed to grant the import licence applied for. Moreover, the applicant's own conduct has not been reasonable or appropriate, given that it waited until 8 October 1990, long after the deadline of 31 August 1990 laid down in Article 3 of Regulation No 3889/89 and, especially, after receipt of the letter of 23 July 1990 from the Department of Agriculture, before commencing injunction proceedings in the Irish courts.

3. In its reply, *Emerald Meats* considers that the adoption of Regulation No 3135/90, mentioned above, is not sufficient to bring this case to a close. On the one hand, the illegality of Regulation No 2983/90 continues to subsist, even after the adoption of Regulation No 3135/90, since the Commission still did not reject the return of the tonnage in question but, in the latter regulation, merely suspended the allocation until a later date. On the other hand, the adoption of Regulation No 3135/90 shows that the Commission knew that it had acted wrongfully but was willing to take any steps only after Emerald Meats had been forced to the expense and burden of bringing the matter before the Court. Finally, if there is to be a 'Community administration' of the GATT quota, it is of fundamental importance that the Court should rule on the question whether the Commission was legally entitled to accept information provided by the Department of Agriculture which it knew to be manifestly incorrect.

Emerald Meats also claims that, in adopting Regulation No 3135/90 the Commission itself demonstrated that it is wrong to allege

that it lacked the power to cast doubt on the return of the 16.56 tonnes to which Emerald Meats was entitled, and to prevent or delay the adoption of Regulation No 2983/90. Instead of that, and although it knew, as it admitted at the hearing of the application for interim measures on 26 October 1990, that the quantities returned on 11 October 1990 by the Department of Agriculture were those to which Emerald Meats was entitled, the Commission on 15 October 1990 adopted the contested regulation ignoring the fact that its own Regulation No 337/90 was not being applied. According to Emerald Meats the Commission could have rapidly resolved these problems which it was aware of at the meetings of the beef management committee which took place respectively on 28 September 1990, when it knew that Emerald Meats had still not received the import licence applied for, and on 12 October 1990, when it proposed to increase from 20 to 35 tonnes the quantity to be the subject of a reallocation.

As to the alleged contradiction between its present allegations and those which it made in its letter of 2 October 1990 to the Commissioner for Agriculture and Rural Development, Emerald Meats stresses that that letter was not the only one in which it stated its position, but was one of several letters designed to prevent its quota from being unlawfully reallocated, or that tonnage from being simply forgotten. Emerald Meats also asserts that the injunction proceedings were not commenced after an unjustifiable delay, given that it had to wait until it was clear that the Department of Agriculture would definitively deny it its entitlement to the newcomers' quota.

Emerald Meats, however, accepts that through the applications in Cases C-317/90 and C-317/90 R, it has achieved the objective of having the 16.56 tonnes to which it is entitled made available to the jurisdiction of the Irish judge who tried Emerald Meats' interlocutory action and that it has at least provisionally obtained its newcomers' quota for 1990. Accordingly, it is discontinuing that part of its claim for damages relating to the failure to issue the import licence applied for. Moreover, it is no longer seeking damages for the loss represented by the cost of the bank guarantee which it provided, for which the Department of Agriculture is essentially responsible.

As to the loss stemming from the delay with which it received the import licence applied for, Emerald Meats states that it considers the Department of Agriculture to be liable for the period from February 1990 to the end of July 1990, during which period it was not clear, either to Emerald Meats or the Commission, that the Department of Agriculture was in fact proposing to deny Emerald Meats its newcomers' quota. Nevertheless, the Commission remains liable for the delay in issuing import licences experienced in September and October 1990, which could have been avoided by rejecting the manifestly incorrect responses of the Department of Agriculture. The Commission should also be ordered to pay the costs, for its unlawful conduct is at the heart of these proceedings but for whose commencement Emerald

Meats would not have received its entitlement.

4. In its rejoinder, the *Commission* points out that following the application for interim measures this action has become redundant, and in any event the Commission is not liable at all for the alleged loss. Moreover, it refers to the arguments set out in the rejoinder in Case C-106/90.

F. A. Schockweiler

Judge-Rapporteur

REPORT FOR THE HEARING
in Case C-129/91 *

I — Legislative background

1. Article 1 of Council Regulation (EEC) No 3838/90 of 20 December 1990 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 (1991) (OJ 1990 L 367, p. 3) opens for 1991 a Community tariff quota totalling 53 000 tonnes expressed in weight of boned or boneless meat.

Pursuant to Article 2 of Regulation No 3838/90, the quota of 53 000 tonnes is to be divided into two parts as follows:

'(a) the first, equal to 85% or 45 050 tonnes, shall be apportioned between importers who can prove they have imported frozen meat falling within CN code 0202 or products falling within CN code 0206 29 91 to which these import arrangements apply during the last three years;

(b) the second, equal to 15% or 7 950 tonnes, shall 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 these import arrangements apply and excluding meat which is the subject of inward or outward processing traffic.'

Article 3(1) of Regulation No 3838/90 provides that quantities which have not been covered by an import licence application at 31 August 1991 are to be the subject of a further allocation during the fourth quarter of that year, without account necessarily been taken of the apportionment referred to in Article 2. Pursuant to Article 3(2) thereof, Member States are to notify the Commis-

* Language of the case: English.