ORDER OF THE PRESIDENT OF THE COURT
OF 28 MAY 1975 [1]

Firma Karl Könecke
v Commission of the European Communities

Case 44/75 R

In Case 44/75 R

FIRMA KARL KÖNECKE, 28 Bremen 44, Zum Sebaldsbrücker Bahnhof 1, represented by its Manager, Karl Könecke, assisted by Messrs. Modest and Partners, Advocates of Hamburg,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Kalbe,

defendant,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES makes the following

ORDER

Facts

By various contracts made between 30 December 1974 and 6 March 1975, Firma Karl Könecke undertook to import before 7 March 1975 from Brazil via Rotterdam — where they are at present in cold storage — various quantities of cooked or cured meat intended to be processed into finished products in the firm's factories.

On 3 March 1975 the Federal Minister for Youth, the Family and Health granted an authorization to import on condition that the processing should take place within three months from the date of manufacture of the semi-finished product imported. In view of the date of manufacture, the various consignments of meat should therefore be processed by 1 or 10 June 1975. However, since the imported meat was not packed in compliance with the requirements of Regulations Nos 610/75, 888/75 and 1090/75 of the Commission, these consignments have remained in storage in Rotterdam.

On 6 May 1975 the *applicant* commenced an action challenging the legality of these regulations in so far as they suspend free circulation within the Community of products such as those imported, or make such circulation subject to the production of import licences, when — as in the present case — a purchase contract in respect of

1 — Language of the Case: German.

these products was made before 7 March 1975 and they were loaded before 30 March 1975 with a view to their transportation to the Community.

By a separate document lodged on 20 May 1975 the applicant submitted, under Articles 185 and 186 of the EEC Treaty and Article 83 et seq. of the Rules of Procedure of the Court, an application that the Judge responsible for interim measures should:

'1. Suspend the operation of Article 1 of EEC Regulation No 1090/75 of the Commission of 23 April 1975 (OJ L 108, p. 1) in so far as that measure makes the free circulation (in the Community) of products falling under sub-heading 16.02 B III b of the Common Customs Tariff and originating in third countries, viz.

(a) prepared or preserved beef and veal in containers weighing more than 5 kg net;

(b) cooked and frozen beef and veal in containers weighing more than 7 kg net,

subject to the production of import licences, when a sales contract in respect of these products was made before 7 March 1975 with a view to their transportation to the Community.

2. Alternatively, suspend the operation of Article 1 of EEC Regulation No 1090/75 of the Commission of 23 April 1975 (OJ L 108, p. 1) in so far as that measure makes the free circulation (in the Community) of products falling within sub-headings 16.02 B III b1 of the Common Customs Tariff and originating in third countries, viz.

(a) prepared or preserved beef and veal in containers weighing more than 5 kg net;

(b) cooked and frozen beef and veal in containers weighing more than 7 kg net,

subject to the production of import licences when a purchase contract in respect of these products was made before 7 March 1975 and either these products were paid for before 7 March 1975 or the importer made out irrevocable letters of credit in favour of the vendor before 7 March 1975 and these products were loaded before 30 March 1975 with a view to their transportation to the Community.

3. *As a subsidiary alternative,* order the defendant to authorize the applicant to put into free circulation in the Community without production of import licences 46 618 kg net of cooked and frozen beef and veal in containers weighing more than 7 kg net and 264 377 kg net of prepared or preserved beef and veal in containers weighing more than 5 kg net, being products falling within sub-heading 16.02 B III b 1 of the Common Customs Tariff and originating in third countries in respect of which a sales contract was made before 7 March 1975 and which were loaded before 30 March 1975 with a view to their transportation to the Community.

4. *Alternatively* in relation to point 3, order the defendant to authorize the applicant to put into free circulation in the Community without production of import licences the goods mentioned under point 3 in so far as the applicant has before 7 March 1975 made out an irrevocable letter of credit in favour of the vendor.'

The applicant's chief contention is that the principles of legal certainty and of legitimate expectation are violated by the fact that the regulations in dispute, published on 8 March 1975, came into force on 15 March 1975, whereas prior to their adoption the importation of the relevant products was authorized without any restriction.

The applicant further contends that the matter is urgent, since any decision in

the main action can only be too late and very substantial damage — such as to give rise to a possible action under Article 215 of the EEC Treaty — is inevitable. In the case of the cured meat the urgency arises from the closeness of the dates already mentioned. For the cooked meat, although the period for processing has not been laid down by the authorities, the situation is in fact the same. Moreover, the re-exportation of the meat is impossible, since the semi-finished products imported correspond to particular requirement of the applicant's business. The applicant has consequently, and in view of the urgency, requested the Judge responsible for interim measures to grant its request before the defendant has presented its observations.

However, the *Commission* was invited to reply promptly, which it did by a statement lodged at the Registry on 26 May 1975.

It contended that the Judge responsible for interim measures should:

'Dismiss the application submitted by the applicant dated 16 May 1975, which reached the Commission on 21 May 1975, seeking a suspension of operation of Regulation (EEC) No 1090/75 and an interim order to this effect ;

Order the applicant to bear the costs.'

The Commission refrained from questioning the admissibility of the application for interim measures and the account of the facts given by the applicant. It explains the necessity of the regulations by the situation on the meat market and by the fact that importers have circumvented the import prohibitions by resorting to semi-finished products not covered by earlier regulations. It recalls that a period of a week was granted for importations already under way before the entry into force of Regulation No 610/75.

The Commission points out, first of all, that by obtaining the definitive authorization to import which it is requesting, the applicant would obtain in an irrevocable manner the legal benefit which it is seeking by its action for annulment. The interim measure would prejudge the decision on the substance and would confer on the applicant a benefit which it could not obtain in view of the fact that the application in the main action is inadmissible in that it is concerned with regulations of general scope and does not concern the applicant directly or individually. The application for interim measures does not claim any real interim or conservation measures but rather the actual placing of the goods in free circulation, i.e. the definitive and irrevocable import — in defiance of the safeguard measures — of a product intended for immediate processing. The applicant, just like certain of its competitors who were more prescient, ought to have known of the preparation of the measures restricting imports, and this fact weakens the force of its appeal to the principle of the protection of legitimate expectation.

Secondly, the Commission contends that urgent measures are not indispensable in order to safeguard the applicant provisionally against irreparable damage. It is possible to store cooked and frozen meat. Regulation No 1090/75 permits its importation on certain precise conditions. It is possible for it to be processed in the context of inward processing. The cured meat could have been processed abroad or in a free port and then imported for sale to pork butchers. It could have been processed in the applicant's plant by way of inward processing.

Finally, the Commission contends that there are no indications to suggest that the definitive importation requested for the products in question is of the slightest urgency. The warehousing facilities, the methods of importation offered by Regulation No 1090/75 and the possibilities of processing already described refute any suggestion of urgency. Although the processing of the cured meat is urgent, this can be done by way of inward processing, which would

have the advantage of not importing it and thus avoiding an a priori decision on the question of the validity of Regulation No 1090/75. Since the beginning of March the applicant has had no reason to rely on any exception being made from the safeguard measures or on the abrogation of those measures, and could have considered adopting the alternative solutions already mentioned to escape from its difficulties.

The parties, duly summoned, appeared at the hearing on 28 May 1975 and replied to the questions of the Judge responsible for interim measures.

Law

1 The application for the adoption of interim measures seeks substantially the suspension of operation of regulations, and alternatively an order to the Commission to authorize the placing of the disputed goods in free circulation despite the provisions of those regulations.

These two applications constitute respectively a request that 'application of the contested act be suspended' within the meaning of Article 185 of the EEC Treaty and the first paragraph of Article 83 (1) of the Rules of Procedure and a request for 'necessary interim measures' within the meaning of Article 186 of the EEC Treaty and the second paragraph of Article 83 (1) of the Rules of Procedure.

2 The Judge responsible for interim measures cannot – save in exceptional circumstances making it possible to single out the applicant from other persons subject to the law — consider the effect of a general provision as amounting to that of a measure within the meaning of Article 83 (1) of the Rules of Procedure. If it were otherwise, proceedings based on Article 185 would make it possible to obtain de facto the result sought by the main action, while the outcome of the latter remains, as in the present case, doubtful.

3 An application for the adoption of interim measures, when it may have the effect of stultifying a series of regulations, presupposes that the applicant must prove in a particularly clear fashion that he is concerned directly and individually. It is also necessary to take into account the public interest and the impact of such an interim measure on administrative action, especially when, as in the present case, safeguard measures are involved.

As regards the dangers of deterioration of the goods, the applicant has not shown that it is impossible to have recourse to the methods of inward processing or of processing of the imported products or to any other method of avoiding or mitigating possible damage.

The fact that apart from simple administrative representations the applicant has taken no practical steps in this connexion, when it was, at least since 8 March, informed of the state of the regulations, cannot be compensated for by a decision of the Judge responsible for interim measures.

4 Finally, it is not possible to order by means of this procedure a measure of importation which, far from being of a provisional character, would in reality be irrevocable and would confront the Judges responsible for the substantive decision with an irreversible situation.

5 In the present state of the proceedings it is appropriate to reserve the costs.

On those grounds,

as an interim ruling,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES orders:

1. **The application for the adoption of interim measures is dismissed.**

2. **Costs are reserved.**

Done and ordered in Luxembourg on 28 May 1975.

A. Van Houtte
Registrar

R. Lecourt
President