JUDGMENT OF THE COURT
17 October 1995 *

In Case C-478/93,

Kingdom of the Netherlands, represented by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, and J. W. de Zwaan, Deputy Legal Adviser in the same Ministry, acting as Agents, with an address for service in Luxembourg at the Netherlands Embassy, 5 Rue C. M. Spoo,

applicant,

v

Commission of the European Communities, represented by E. de March and T. van Rijn, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Regulation (EEC) No 2920/93 of 22 October 1993 fixing the uniform reduction coefficient for

* Language of the case: Dutch.

determining the quantities of bananas to be allocated to each operator in categories A and B in the context of the tariff quota for the second half of 1993 (OJ 1993 L 264, p. 40),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler (Rapporteur), J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray and L. Sevón, Judges,

Advocate General: M. B. Elmer,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 6 June 1995,

after hearing the Opinion of the Advocate General at the sitting on 13 July 1995,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 23 December 1993, the Kingdom of the Netherlands brought an action under Article 173 of the

EC Treaty for the annulment of Commission Regulation (EEC) No 2920/93 of 22 October 1993 fixing the uniform reduction coefficient for determining the quantities of bananas to be allocated to each operator in categories A and B in the context of the tariff quota for the second half of 1993 (OJ 1993 L 264, p. 40, hereinafter 'the contested regulation').

2 Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ 1993 L 47, p. 1, hereinafter 'the Council regulation') established, with effect from 1 July 1993, a common import system to replace the various national systems.

3 Title IV of the Council regulation, on trade with third countries, opened an annual tariff quota for imports of third-country bananas and non-traditional ACP bananas.

4 Article 19(1) allocated 66.5% of that quota to the category of operators who marketed third-country and/or non-traditional ACP bananas, 30% to the category of operators who marketed Community and/or traditional ACP bananas, and 3.5% to new operators.

5 Article 20 authorizes the Commission to adopt detailed rules, in accordance with the Management Committee procedure, concerning, in particular, the issue of import licences, the frequency of issue of licences and the minimum quantity of bananas which operators are required to have marketed.

6 The 15th recital in the preamble to the Council regulation states that the import licences must 'be granted to natural or legal persons who have undertaken the commercial risk of marketing bananas' and that such grant must '[avoid] disturbing normal trading relations'.

7 Article 2 of Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community (OJ 1993 L 142, p. 6, hereinafter 'the implementing regulation') provides as follows:

'The following tariff quota is hereby opened for the second half of 1993:

(a) 665 000 tonnes for the category of operators who prior to 1992 marketed third-country bananas and/or non-traditional ACP bananas ..., hereinafter referred to as "Category A";

(b) 300 000 tonnes for the category of operators who have marketed Community bananas and/or traditional ACP bananas, hereinafter referred to as "Category B";

(c) 35 000 tonnes for the category of operators who commenced marketing bananas other than Community bananas and/or traditional ACP bananas as from 1992 or thereafter, hereinafter referred to as "Category C".'

8 Article 3(1) of the implementing regulation provides as follows:

'Economic agents ... shall be deemed "operators" in Category A and/or Category B ... where they have engaged in one or more of the following activities ...:

(a) the purchase of green third-country and/or ACP bananas from the producers, or where applicable, the production, consignment and sale of such products in the Community;

(b) as owners, the supply and release for free circulation of green bananas and sale with a view to their subsequent marketing in the Community; the risks of spoilage or loss of the product shall be equated with the risk taken on by the owner;

(c) as owners, the ripening of green bananas and their marketing within the Community.

...'

9 Article 5(1) of the implementing regulation requires the competent national authorities to establish reference quantities every year for each Category A and Category B operator on the basis of the average of the quantities sold during the preceding three years.

10 Article 5(2) attaches to the quantities marketed weighting coefficients which differ according to the activities engaged in and, according to the third recital in the

preamble to the regulation, are intended to take account of the scale of business concerned and of the commercial risks incurred, and to correct the negative effects of counting the same quantities of products more than once at various stages of marketing.

11 Article 5(3) requires the national authorities to notify the Commission each year of the total weighted reference quantities and the total quantities of bananas marketed in respect of each activity by operators registered with them.

12 Article 6 of the implementing regulation provides as follows:

'Depending on the annual tariff quota and the total reference quantities of operators as referred to in Article 5, the Commission shall fix, where appropriate, a single reduction coefficient for each category of operators to be applied to operators' reference quantities to determine the quantity to be allocated to each.

The Member States shall determine the quantities for each operator in Categories A and/or B registered with them and shall notify the latter thereof ...'

13 The second subparagraph of Article 4(5) of the implementing regulation authorizes the Commission to forward the lists drawn up by Member States to the other

Member States with a view to detecting or preventing inaccurate declarations by operators.

14 Articles 2 and 3 of Commission Regulation (EEC) No 1443/93 of 10 June 1993 on transitional measures for the application of the arrangements for importing bananas into the Community in 1993 (OJ 1993 L 142, p. 16) set out the detailed rules under which Member States are to register Category A and B operators, calculate the reference quantity for each and notify the Commission of the total of those reference quantities.

15 For the second half of 1993, the authorities in the Netherlands registered as operators, pursuant to Article 3(1)(b) of the implementing regulation, Dutch traders who purchased green third-country bananas and sent them to the Community in order subsequently to sell them to German operators who carried out the formalities for release into free circulation, on the ground that the Dutch traders continued to bear the commercial risk associated with spoilage or loss of the goods, despite the transfer of ownership.

16 In the opinion of the Commission, communicated to the Member States by way of an interpretative note of 9 September 1993, Article 3(1)(b) of the implementing regulation contains three conditions: the release of green bananas for free circulation, the status of owner at the time when that release takes place, and the sale to another economic agent with a view to subsequent marketing in the Community. According to the Commission, the second clause in Article 3(1)(b) means that operators who release the goods for free circulation without owning them, but who do in fact bear the risks of spoilage or loss, engage in the commercial activity envisaged by that provision.

17 In view of the fact that the total of the reference quantities notified by the Member States exceeded the figures registered by Eurostat (the Statistical Office of the European Communities) in respect of quantities sold on the Community market, the Commission concluded that certain quantities had been counted twice owing to a misinterpretation by some Member States, including the Kingdom of the Netherlands, of the commercial activities referred to in Article 3(1) of the implementing regulation.

18 Following inspections carried out by its staff and contacts with national authorities, including those of the Kingdom of the Netherlands, the Commission reduced the reference quantities notified by the Member States by 19.7% for the Netherlands, 6.3% for Italy and 0.04% for Belgium.

19 In the contested regulation, based on Article 20 of the Council regulation, the Commission applied the figures thus revised to establish the reduction coefficient for determining the quantities of bananas to be allocated to each operator in Categories A and B for the second half of 1993.

20 In the fifth recital in the preamble to the contested regulation, the Commission states that the same quantities were counted twice in respect of the same activity for different operators in several Member States; this was established during checks made with the competent national authorities and a relatively precise assessment was made of the quantities involved. The Commission indicates that the double counting arose from an incorrect application of the criteria for determining the activities conferring entitlement to an allocation from the tariff quota. In the sixth recital, the Commission states that it is necessary to determine the reduction coefficient on the basis of the notifications from the Member States after the quantities counted twice have been estimated and the figures corrected accordingly.

The first plea in law in support of annulment

21 The Kingdom of the Netherlands submits that the Commission misinterpreted Article 3(1)(b) of the implementing regulation by classing the person who completes the substantive customs formalities as an operator for the purposes of that provision, without examining whether that person assumes the commercial risk of spoilage or loss of the product. It claims that according to the fifteenth recital in the preamble to the Council regulation licences must be granted to natural or legal persons who have undertaken the commercial risk of marketing bananas.

22 It should be pointed out in this regard that Article 3(1)(b) of the implementing regulation sets out three cumulative conditions in defining an operator for the purposes of the activity under heading (b): the release of green bananas for free circulation; the status of owner or, failing that, assumption of the risks of spoilage or loss of the goods; and, finally, sale of the goods with a view to their subsequent marketing in the Community.

23 An examination of Article 3(1)(b) demonstrates that the criterion of assumption of the risk of spoilage or loss of the goods is merely an alternative condition which may be relied on where the condition of ownership is not satisfied. This conclusion, moreover, is not at variance with the 15th recital in the preamble to the Council regulation since the commercial risks associated with marketing cannot be confined just to the risk of spoilage or loss of the bananas.

24 The first plea in law must accordingly be rejected.

The second plea in law in support of annulment

25 The Kingdom of the Netherlands contends that the Commission did not have the power to reduce the reference quantities notified by the Member States and that it infringed the principle of equal treatment by making reductions which adversely affected only certain Member States.

26 So far as concerns the complaint of lack of competence, the applicant submits that neither Article 155 of the EC Treaty nor Article 20 of the Council regulation empowers the Commission unilaterally to alter the information submitted by the Member States. The latter have sole responsibility for compiling the list of operators, fixing the reference quantities, as well as for detecting and preventing inaccurate declarations by operators.

27 In reply, the Commission submits that, under Article 155 of the Treaty, it has the task of detecting quantities counted twice and deducting such quantities from the reference quantities notified to it. Like the implementing regulation, the contested regulation is based on Article 20 of the Council regulation, which contains a non-exhaustive list of matters to be covered by detailed rules.

28 In order to determine whether this complaint is well founded, it is necessary to examine the respective powers of the Commission and the Member States with regard to the management of the import quota for bananas.

29 Under the fourth indent of Article 155 of the Treaty, the Commission is required, in order to ensure the proper functioning and development of the common

market, to exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter. Article 20 of the Council regulation confers on the Commission the task of adopting the detailed rules for implementing Title IV of that regulation and gives some details of what those rules are to cover.

30 The Court has consistently held that it follows from the Treaty context in which Article 155 must be placed and also from practical requirements that the concept of implementation must be given a wide interpretation. Since only the Commission is in a position to keep track of agricultural market trends and to act quickly when necessary, the Council may confer on it wide powers in that sphere. Consequently, the limits of those powers must be determined by reference amongst other things to the essential general aims of the market organization (see Case 22/88 *Vreugdenhil and Another* v *Minister van Landbouw en Visserij* [1989] ECR 2049, paragraph 16 and the cases cited therein).

31 Thus, the Court has held that, in matters relating to agriculture, the Commission is authorized to adopt all the measures which are necessary or appropriate for the implementation of the basic legislation, provided that they are not contrary to such legislation or to the implementing legislation adopted by the Council (Case 121/83 *Zuckerfabrik Franken* v *Hauptzollamt Würzburg* [1984] ECR 2039, paragraph 13).

32 It follows that the wording of Article 20 of the Council regulation does not preclude the Commission from adopting detailed implementing rules which, although not expressly referred to in that provision, are necessary for the functioning of the import system.

33 The need to ensure equal treatment for all economic operators in all the Member States and to guarantee the functioning of the import system on the basis of accurate information means that the Commission, which is responsible for managing

the common organization of the market in bananas, may adopt measures to prevent reference quantities from being counted twice when it fixes the reduction coefficient.

34 In the common organization of the market in bananas, Member States have been given no powers, either by the Council or by the Commission, to take decisions in regard to management of the import quota, but are required to assume a number of technical functions on behalf of and subject to the control of the Commission.

35 Pursuant to the 16th recital in the preamble to the Council regulation, Member States must, taking into account marketing structures and on the basis of procedures and criteria adopted by the Commission, conduct a census of operators and establish quantities marketed to be used as a reference for the issue of licences.

36 In that context, the final subparagraph of Article 19(1) of the Council regulation requires Member States to draw up the list of importers and the average quantities of bananas that each operator has sold over the three most recent years for which figures are available.

37 This role of the Member States in the collection and transmission of information cannot, however, prevent the Commission, which is required to ensure the daily management of the common organization of the markets, from checking the accuracy of that information and revising it if there is a danger that the double counting of quantities may distort the basis of the import system.

38 This finding is not invalidated by the judgment in Joined Cases C-106/90, C-317/90 and C-129/91 *Emerald Meats* v *Commission* [1993] ECR I-209, at paragraph 40 of which the Court held that the requirements of Community management do not entail that the Commission ought necessarily to be able to correct wrong decisions taken in specific cases by the national authorities in connection with management of the quotas, since compliance with the common rules and their uniform application throughout the Member States of the Community can be secured either by infringement proceedings under Article 169 of the EC Treaty or in proceedings brought before national courts, which may have recourse to the procedure under Article 177 of the Treaty.

39 The Court pointed out in *Emerald Meats* that the Community institutions had established a decentralized system of management based on a division of tasks and responsibilities as between the Member States and the Commission (see paragraphs 36 and 39).

40 It follows that the common organization of the market in bananas is not based on a decentralized management of the tariff quota in respect of which the Member States have been given a decision-making power.

41 Hence, the complaint relating to the Commission's lack of competence must be rejected as unfounded.

42 The Kingdom of the Netherlands also claims that the Commission infringed the principle of equal treatment by reducing the reference quantities of certain

Member States, without rectifying the instances of double counting in the information of the other Member States which must inevitably exist there according to Eurostat statistics.

43 The Commission acknowledges that there must be instances of double counting in other Member States but explains that, for technical reasons, it has been unable to identify their origin.

44 It must be pointed out, first, that the complaint relied on by the applicant is not specific. Although the Commission does not deny that there may be instances of double counting in other Member States, the applicant has been unable to identify any cases in which Dutch operators have been treated differently from operators from other Member States who were in the same position.

45 Secondly, the applicant cannot criticize the Commission for having carried out necessary readjustments as soon as it became aware of instances of double counting, simply because it was unable to detect or identify other cases in which the rules were wrongly applied or abuses occurring in other Member States.

46 It follows that this head of complaint is also unfounded and that the second plea in law must be dismissed in its entirety.

The third plea in law in support of annulment

47 The Kingdom of the Netherlands submits finally that the Commission has infringed essential procedural requirements by failing to give an adequate account, in the recitals in the preamble to the contested regulation, of the basis of the reductions made. The applicant adds that the Commission thereby breached the duty to cooperate in good faith with the Member States.

48 It is settled case-law that the statement of reasons required by Article 190 of the EC Treaty must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review (see Case C-353/92 *Greece* v *Council* [1994] ECR I-3411, paragraph 19).

49 It is not necessary, however, for details of all relevant factual and legal aspects to be given, in so far as the question whether the statement of the grounds for a decision meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 16 and the cases cited therein).

50 This is *a fortiori* the case where the Member States have been closely associated with the process of drafting the contested measure and are thus aware of the reasons underlying that measure (see Case C-54/91 *Germany* v *Commission* [1993] ECR I-3399).

51 The contested regulation refers, in the fifth and sixth recitals in its preamble, to the instances of double counting established by the Commission and to the need to

make reductions in order to prevent a serious distortion in the way operators are dealt with resulting in a disadvantage to certain operators which would be very difficult to rectify and a disturbance of the tariff quota arrangements.

52 Moreover, the question of the interpretation of Article 3(1)(b) of the implementing regulation was discussed on numerous occasions by the Commission and the Netherlands authorities and the interpretation chosen by the Commission was the subject of a specific note addressed to the Member States on 9 September 1993.

53 The third plea in law must therefore also be rejected.

54 It follows that the action brought by the Kingdom of the Netherlands must be dismissed.

Costs

55 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Kingdom of the Netherlands has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the action;

2. Orders the Kingdom of the Netherlands to pay the costs.

Rodríguez Iglesias Kakouris Edward Hirsch

Mancini Schockweiler Moitinho de Almeida

Kapteyn Gulmann Murray Sevón

Delivered in open court in Luxembourg on 17 October 1995.

R. Grass — Registrar

G. C. Rodríguez Iglesias — President