OPINION OF ADVOCATE GENERAL GULMANN
delivered on 18 November 1992 *

Mr President,
Members of the Court,

1. Emerald Meats Ltd, an Irish company dealing in meat, is claiming in these three cases that the Commission's administration of two Community tariff quotas for frozen meat of bovine animals, which were opened by the Council in 1990 and 1991, was unlawful and involved it in liability towards the company.

Emerald Meats has also brought proceedings before the Irish courts claiming that the administration of the 1990 tariff quota by the Irish Department of Agriculture was contrary to the relevant Community rules.

2. In these cases against the Commission, Emerald Meats is claiming that the Commission regulations under which the Community tariff quotas were allocated should be annulled and that the Commission should be ordered to pay it damages. It argues in particular that the Commission regulations on allocation of the quota are unlawful inasmuch as they were adopted on the basis of decisions taken by the Irish Department of Agriculture which the Commission knew, or ought to have known, to be wrong, and also inasmuch as the Commission unlawfully failed to take account of the interests of Emerald Meats.

Legal background and facts of the cases

3. On the basis of decisions adopted within the GATT, the Council has over many years opened Community tariff quotas under which specified quantities of meat may be imported into the Community without payment of the very high import duties which are otherwise applicable. Obtaining a share of the tariff quotas is thus a matter of considerable economic interest.

Until 1989, the scheme was administered by the distribution of the overall quota among the individual Member States. The Member States then administered their respective national shares of the overall quota. The Member States themselves laid down the criteria to be applied to the allocation of the national quota. It is apparent from these cases that Ireland allocated the 'Irish quota' among Irish meat processing companies on the basis of their meat consumption. Other Member States laid down different allocation criteria. Thus, it appears from the relevant

* Original language: Danish.

documents that one third of the 'British quota' was allocated to hospitals, the armed forces and the like, while the remainder was distributed among meat traders.

4. The principles governing the administration of the tariff quota were changed slightly for 1989. The reason for those changes was the Court's judgment in Case 51/87 *Commission* v *Council*, [1] in which it was held that the apportionment of quotas into national shares will normally be in breach of the EEC Treaty rules on the Common Customs Tariff and on the common commercial policy in so far as such a scheme may lead to distortions and deflections of trade. The greater portion of the 1989 tariff quota was administered in the same way as before, while a smaller portion was administered by the Commission on the basis of rules corresponding to those which were to be applied in 1990 and subsequent years to the entire tariff quota.

5. The 1990 and 1991 quotas, each of which amounted to 53 000 tonnes, were administered on the basis of regulations adopted by the Council and Commission. Each year the Council adopted a regulation opening the quota and laying down the main administrative rules (the Council's '*quota-opening regulation*'). Pursuant to the powers conferred on it by the quota-opening regulation, the Commission adopted each year a regulation laying down more detailed administrative rules (the Commission's '*implementing regulation*'). [2]

6. The greater portion of the 1990 quota was allocated, on application, to traditional importers, that is to say, importers who could prove that over the three preceding years (the *reference years*) they had imported meat coming under the tariff quotas for those years. This portion will hereinafter be referred to as the '*main quota*'. The other much smaller portion of the quota was allocated, on application, to importers who could show that they had, during the two preceding reference years, imported or exported a minimum of 50 tonnes of meat of bovine animals which was not covered by the tariff quotas for those years. This portion will hereinafter be referred to as the '*newcomers' quota*'.

Proof of imports during the reference years was to be provided by customs documents of release for free circulation. Undertakings which wished to obtain a share of the quota were required to apply to the competent national authorities. On the basis of the applications and the proof furnished, those authorities were to draw up a list of importers and the quantities of meat which they

1 — [1988] ECR 5459.

2 — See 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) and Commission Regulation (EEC) No 4024/89 of 21 December 1989 laying down detailed rules for the application of the import arrangements provided for in Council Regulation (EEC) No 3889/89 for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (OJ 1989 L 382, p. 53).
The two regulations governing the 1991 quota, which bore the same titles as the 1990 regulations, were Council Regulation (EEC) No 3838/90 (OJ 1990 L 367, p. 3) and Commission Regulation (EEC) No 3885/90 (OJ 1990 L 367, p. 136).

had imported during the reference years. The lists were sent to the Commission, which, on the basis of the information received, issued a regulation (the '*allocation regulation*') laying down the quantities which could be allocated to traditional importers. This it did by setting out the amount of meat, in kilogrammes, which could be imported during the year in question on the basis of the importation of one tonne of meat during the reference years. The regulation also allocated the newcomers' quota. Article 1 of the 1990 allocation regulation provided as follows:

'1. Every application for an import licence ... shall be granted to the following extent:

(a) 321.581 kg per tonne imported in 1987, 1988 and 1989 [by traditional importers] ...;

(b) ...;

(c) 16.56 tonnes per application in the case of [newcomers] ... .

2. Member States shall issue the import licences as from 9 February 1990.' [3]

On the basis of the allocation regulation and after the date specified, the authorities in the Member States were to issue import licences to the approved applicants.

The periods within which Member States and the Commission were required to deal with applications were short: approximately three weeks separated the date on which applications were to be submitted by importers from that on which the import licences could be issued.

7. Problems arose in Ireland concerning the processing of applications for the 1990 quota. The problems stemmed from the fact that the Irish Department of Agriculture received 'double applications', that is to say, applications from different undertakings relying on imports of the same quantities of meat in the reference years. The applications in question were received, on the one hand, from Emerald Meats and, on the other, from 12 meat processing companies. The double applications related to the *main quota*, which was intended for allocation to traditional importers.

The problems arose against the background of a number of commercial provisions adopted during the reference years in which the allocation of tariff quotas had been made on the basis of criteria laid down by the Irish authorities. As mentioned above, the Irish tariff quota for those years was allocated among meat processing companies in proportion to their meat consumption. However, the meat processing companies had in large measure decided to sell their rights to obtain import licences. Under the Irish allocation criteria applicable at the time, such a

3 — The 1990 allocation regulation was 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). The 1991 allocation regulation was Commission Regulation (EEC) No 519/91 of 1 March 1991 determin-ing the extent to which applications in the beef and veal sector for the issue of import licences lodged pursuant to Regulation (EEC) No 3885/90 may be accepted (OJ 1991 L 56, p. 12).

sale could take place without affecting the meat processing companies' entitlement to receive a share of the main quota the following year. Emerald Meats was the main company to purchase the rights of meat processing companies to obtain import licences. It has been stated that in 1988 Emerald Meats 'purchased' in this way more than 90% of the total Irish tariff quota (which in that year came to 418 tonnes). It is evidently not disputed that Emerald Meats was fully in charge of the importation and resale and that it was the company which was mentioned as importer on the relevant *customs documents*.

The Irish Department of Agriculture, however, had insisted in 1987 and 1988 that *import licences* should mention that the importer was 'Emerald Meats, acting on behalf of [the meat processing company in question]'. That procedure was amended in 1989 when it was stated in the import licences that the importer was the meat processing company in question but that the import licence in question had been transferred to Emerald Meats.

The Department of Agriculture took the view that the transactions conducted between the processing companies and Emerald Meats had not, so far as the reference years 1987 and 1988 were concerned, made Emerald Meats an importer within the meaning of the relevant Community rules inasmuch as the company had merely acted as an agent for the processing companies. On the other hand, the Department of Agriculture came to the conclusion that, so far as 1989 was concerned, Emerald Meats was to be treated as an importer within the meaning of the Community rules. The Department drew up the list which it sent to the Commission in 1990 on the basis of that understanding of the law, namely that the 1990 list mentioned the processing companies as importers for the reference years 1987 and 1988, while Emerald Meats was treated as importer in respect of imports during 1989.

8. Emerald Meats was informed of the Department of Agriculture's decision before the list was sent to the Commission. It thereupon took two steps. At the end of January 1990, it brought proceedings against the Department of Agriculture before the High Court in Dublin and at the same time raised the matter with the Commission. Emerald Meats argued before the Commission that the Department of Agriculture's conduct was in breach of the relevant Community rules and pointed out that, so far as the portion of the 1989 quota administered by the Community was concerned, the Department had accepted Emerald Meats as the importer in the reference years 1987 and 1988. Emerald Meats requested the Commission to intervene in the case and, following this request, it forwarded to the Commission a copy of the documents which provided evidence of its imports in 1987 and 1988. On 6 February 1990, the Commission sent a fax to the Department of Agriculture drawing attention to the Irish authorities' acceptance in 1989 of Emerald Meats as an importer for the reference years 1987 and 1988 and at the same time referring to the rules in the implementing regulation relating to persons entitled and the manner in which proof of entitlement was to be provided.

9. On 8 February 1990 the Commission, which had not received a reply to its communication to the Department of Agriculture, adopted the allocation regulation. The Commission adopted that regulation on the basis of the information contained in the list prepared by the Irish Department of Agriculture.

The Irish Department of Agriculture informed Emerald Meats on the same day that its application had been approved in respect of the imports in 1989 but had been rejected in respect of the imports in 1987 and 1988 because:

'... on examination of the situation, it is clear that you were acting in the capacity of agent on behalf of a number of beef processors. In 1987 and 1988 as in previous years, licences to import beef under GATT quota arrangements were made available only to recognized beef processors. The relevant licences were issued at the prior request of each of the principals concerned so as to reflect the fact that you were acting in the capacity of agent on their behalf.'

10. In April 1990, Emerald Meats brought an action before the Court of Justice against the Commission in which it sought the annulment of the decision on which the Commission's allocation was based and of the regulation in which that decision was contained in so far as they failed to take account of the company's legitimate request. Emerald Meats also claims that the Commission is under an obligation to compensate it for the loss which it incurred by reason of the adoption of the regulation.

This is the subject-matter of Case C-106/90.

11. Emerald Meats had also applied to the Department of Agriculture for a share of *the 1990 newcomers' quota*. That application had been approved by the Department and had been included on the list submitted to the Commission. The Commission's allocation regulation therefore also covered the application by Emerald Meats. Emerald Meats applied to the Department of Agriculture for issue of an import licence. This the Department failed to grant. On 16 July 1990, Emerald Meats set the Department a period of eight days in which to issue the licence and stated that if this was not done it would take appropriate legal action. The Department informed Emerald Meats on 23 July 1990 that a number of the documents which the latter had submitted as proof of imports in 1988 and 1989 could not be accepted and that Emerald Meats therefore did not satisfy the conditions for obtaining a share of the quota. On 8 October 1990 Emerald Meats applied to the High Court in Dublin for an interlocutory injunction requiring the Department of Agriculture to issue the import licences.

12. Emerald Meats had already earlier that year informed the Commission of the manner in which the Department of Agriculture had dealt with its application for a share of the newcomers' quota and in its claims in Case C-106/90 it has sought compensation in respect of the loss incurred by reason of the Commission's conduct in that regard.

13. In order to understand the subsequent processing of the applicant's application for import licences, it is necessary to bear in mind that the Council's quota-opening regulation provided that Member States should inform the Commission of quantities in respect of which import licences had not been applied for by the end of August, in order that the Commission could *re-allocate the unused portion of the tariff quota.* Member States were to forward this information to the Commission before 16 September and the Commission was then required to adopt a regulation on the allocation of the unused portion of the quota. The Irish Department of Agriculture had originally informed the Commission that the tariff quota had been fully used up in Ireland. It was not until 11 October 1990 that the Department informed the Commission that 16.56 tonnes of meat were available for re-allocation. Emerald Meats pointed out to the Commission a few days later that it was entitled to that amount. On 15 October, Emerald Meats had delivered to the Commission by hand a letter stating that it had applied to the High Court for the interlocutory injunction referred to above. The Commission nonetheless proceeded on the same day to adopt a regulation on the re-allocation of 35 tonnes of meat (the '*re-allocation regulation*'). [4] That quantity also covered the amount at issue in the dispute between the Department of Agriculture and Emerald Meats.

14. On 22 October 1990, Emerald Meats instituted proceedings against the Commission for the annulment of the re-allocation regulation and for damages. At the same time, it also applied to the Court for interim measures. Following out-of-court proposals made by the Commission during an adjournment of the hearing on that application, Emerald Meats withdrew its application and on 26 October the Commission adopted a new regulation under which the allocation of 15 of the 35 tonnes was suspended until 29 November 1990. [5]

15. On 22 November 1990 the High Court upheld the application by Emerald Meats for an interlocutory injunction and ordered the Department of Agriculture to issue the import licence. The Department subsequently issued to Emerald Meats an import licence for 16.56 tonnes. On 11 December 1990 the Commission adopted a regulation in which the quantity for re-allocation was definitively set at 20 tonnes. [6] Emerald Meats has continued with the main proceedings against the Commission and is therefore still seeking the annulment of the original re-allocation regulation and damages in respect of the loss which it has incurred. *This is the subject-matter of Case C-317/90.*

16. In December 1990 the Commission commenced Treaty infringement proceedings against Ireland taking the view that the action of the Department of Agriculture, as described above, breached Ireland's obligations under the Treaty. Those Treaty infringement proceedings are still pending, although the matter has not yet been

4 — See 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 applica-tions have not been lodged (OJ 1990 L 283, p. 36).

5 — See Regulation (EEC) No 3135/90 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 299, p. 41).

6 — See 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 347, p. 16).

brought before the Court of Justice. In reply to a question put by the Court, the Commission has provided an account of those proceedings (see point 2 in the addendum to the Reports for the Hearing).

In a letter of 11 January 1991, the Commission confirmed to Emerald Meats that it had commenced Treaty infringement proceedings against Ireland. The Commission stated, *inter alia*, that it had stressed in its opening letter the importance of the customs document as proof of status as an importer, and added that:

'such proof could only be rebutted by strong evidence; and that in this case the Commission is not aware of any evidence which would suggest that Emerald Meats was only the agent of the importer of the quantities concerned.'

The Commission added that unless such evidence was produced it would continue to take the view that Emerald Meats was to be regarded as entitled to a share of the tariff quota.

17. *The 1991 tariff quota* was administered under rules which were substantially the same as those governing the administration of the 1990 quota. [7]

18. Emerald Meats, which suspected (and subsequently received confirmation) that the Irish Department of Agriculture intended to maintain its practice from the administration of the 1990 quota, lodged an application with the United Kingdom authorities covering all the imports which, in its opinion, entitled it to a share of the 1991 main quota. It informed the Commission of that application.

19. On 6 February 1991, the Director General of the Commission's Directorate-General for Agriculture sent a telex to the Irish and United Kingdom authorities asking them to identify all the applications concerned by the legal proceedings which Emerald Meats had instituted in Ireland in respect of the allocation of the 1990 quota and to forward to the Commission before 7 February 1991 copies of those applications together with the supporting documents. He also stressed the need to process applications lodged in both the United Kingdom and Ireland in such a way as to avoid taking account of the same reference quantity twice.

By letter of 12 February 1991, the United Kingdom authorities informed the Commission that they regarded the application of Emerald Meats as valid; however, they also pointed out that, at a meeting with the Irish authorities arranged in response to the Commission's request, it had become apparent that double applications had been made in the United Kingdom and Ireland in respect of certain specified quantities.

20. It was thus clear that simultaneous acceptance of the United Kingdom and Irish lists would result in licences being issued on the basis of imports of the same quantities of meat. In order to resolve that problem, the Commission decided to postpone the adop-

7 — See the references to the regulation.

tion of the allocation regulation, which should have been adopted before 18 February 1991, and instead informed the competent authorities in all Member States, by telex of 21 February 1991, that they were authorized as from 25 February 1991 to issue temporary import licences in accordance with a draft version of the 1991 allocation regulation, subject to the lodging of a guarantee to be released immediately after the entry into force of the allocation regulation. The Commission adopted that regulation on 1 March 1991. [8] It provided that in cases where 'double applications' had been made, the issue of import licences would be made subject to the lodging of a guarantee equivalent to the basic import levy applicable for the meat in question at the moment of the delivery of the licence, plus 10%. It also provided that the guarantee

'shall be released once the trader who lodged it has been definitively identified as the actual importer of the reference quantity in question.'

21. Emerald Meats took the view that, by adopting that regulation, the Commission had infringed its rights and on 9 May 1991 it brought proceedings before the Court against the Commission for the annulment of the regulation and for the payment of damages by the Commission. *This is the subject-matter of Case C-129/91.*

22. On 9 July 1991 the High Court in Dublin delivered judgment in the case brought by Emerald Meats against the Department of Agriculture in January 1990. [9] That judgment held that:

(a) the Department was under an obligation, so far as the applications of Emerald Meats in respect of the 1990 quota were concerned, to accept the customs documents for release into free circulation submitted by Emerald Meats as constituting the proof referred to in the implementing regulation; and

(b) the entitlement of Emerald Meats to a share of the 1990 quota ought to have been calculated on the basis of total meat imports of 863 tonnes in the reference years 1987, 1988 and 1989.

The High Court based its judgment, *inter alia*, on the view that the relationship of agent and principal between Emerald Meats and the meat processing companies, which was referred to as a matter of fact in the relevant import licences for 1987 and 1988, was entirely fictitious.

23. The judgment also upheld the interlocutory injunction issued in November 1990 under which the Department of Agriculture was required to issue import licences to Emerald Meats under the newcomers' quota. One of the matters to which the High Court attached importance in that regard was that although the original documentary proof of importation of the requisite 50 tonnes was defective, Emerald Meats should have been given an opportunity to correct that defect since it could be assumed that it would have been in a position to supply the necessary proof.

8 — See Regulation (EEC) No 519/91 determining the extent to which applications in the beef and veal sector for the issue of import licences lodged pursuant to Regulation (EEC) No 3885/90 may be accepted (OJ 1991 L 56, p. 12).

9 — That judgment was published in the *Common Market Law Reports* for 1992 at page 462 et seq.; a copy was produced by Emerald Meats in these proceedings.

24. In addition, the High Court ordered the Department of Agriculture to pay damages to Emerald Meats in the amount of IR£ 385 922. [10] That compensation corresponded to the loss which Emerald Meats had incurred as a result of the Department of Agriculture's unlawful refusal to issue import licences for 177 of the 277 tonnes to which Emerald Meats was entitled in 1990.

The High Court, in an order delivered on 19 July, considered *inter alia* whether Emerald Meats should be awarded general damages for the severe disruption of its business and relations with other traders. The High Court decided that Emerald Meats was not entitled to damages of that kind.

25. The Department of Agriculture appealed to the Supreme Court against the High Court's judgment. It claims in its appeal that the High Court based itself in several respects on a misinterpretation of the position in law and in fact.

26. With reference to the High Court's judgment, the Commission informed the United Kingdom authorities on 17 July 1991 that Emerald Meats was entitled to import licences without being required to lodge a guarantee. At the same time, the Commission called on the Irish Department of Agriculture to

'take due account of [the High Court's] judgment in calculating and allocating the definitive GATT-licence entitlements for 1991 and future years, in particular by reviewing the reference quantities of the companies concerned by the judgment.'

27. On 16 October 1991 the Commission adopted a regulation amending the 1991 implementing regulation. [11] A new Article 1(a) was thereby inserted into the 1991 implementing regulation and provided that:

'The Irish authorities shall revise the entitlements to the GATT quota in 1990 and the imports eligible pursuant to [the 1990 quota-opening regulation] in the light of the judgment of the Irish High Court of 9 July 1991. They shall communicate their decision to the Commission and to the other Member States.

Notwithstanding Article 1(1) and (3), that decision shall determine the reference quantity for 1990 for the importers concerned pursuant to Article 1(1).'

28. It would appear that the Department of Agriculture has now taken the necessary steps to comply with the High Court judgment and thereby confer on Emerald Meats a legal status corresponding to that implicit in the new Article 1(a). Emerald Meats has confirmed that the number of import licences issued to it in 1991 and 1992 suggests that its applications in respect of the 1990 main

10 — Interest of 8% was to be payable on these damages from 20 July 1990. Emerald Meats was also awarded BFR 662 926 to cover the costs which it incurred in bringing its applica-tion for interim measures before the Court of Justice at the same time as it began proceedings in Case C-317/90 (see point 14 above).

11 — See Regulation (EEC) No 3021/91 (OJ 1991 L 287, p. 11).

quota were processed in accordance with the High Court judgment.

29. The Irish Supreme Court has not yet delivered judgment on the appeal. By an order of 16 July 1992, however, it decided that the compensation which the High Court had awarded to Emerald Meats and which, on account of the appeal by the Department of Agriculture, had not been paid within the prescribed period, should be paid out to Emerald Meats.

The division of jurisdiction between the national authorities and the Commission in matters relating to the administration of Community quotas

30. Emerald Meats claims that the Irish Department of Agriculture made a serious mistake and that the Commission was under a duty to rectify that mistake or take some other appropriate action.

It is important when considering these cases to bear in mind that the alleged mistake by the Department of Agriculture was made in the exercise of the functions conferred on it by the relevant Community regulations and that the cases are therefore based on *allegedly unlawful national administrative decisions*. Thus, the issue is not simply whether the Commission received 'information' from the national authorities which it could simply apply or refrain from applying when adopting the allocation regulations.

It is then necessary to identify *the possibilities open to the Commission to correct the allegedly unlawful national administrative measures*. The most obvious possibility would have been for the correction to take the form of the Commission either requesting the Department of Agriculture to take a fresh and correct decision or itself adopting a decision to replace that taken by the Department on the entitlement of Emerald Meats to a share of the tariff quota.

31. The first and central question in the three cases is therefore whether or not the Commission has the power to verify and, where necessary, correct decisions which are taken by national authorities in processing applications for a share of tariff quotas and form the basis of the lists which those authorities send to the Commission.

As a matter of principle, the Commission takes the view that it does not have any such power. In its opinion, it follows from the division of functions between the national authorities and the Commission, as laid down in the implementing regulations, that it must base itself on the lists provided by the national authorities when adopting regulations determining the quantities for which import licences may be issued. Legal disputes relating to the decisions on which the lists of national authorities are based must be resolved by national courts. The only mandatory course of action for the Commission where it finds that national authorities are misapplying Community rules is to bring Treaty infringement proceedings against the Member State in question under Article 169.

Emerald Meats, on the other hand, takes the view that the Commission is under a duty, when adopting an allocation regulation, to refrain from relying on the lists submitted if it is aware, or ought to be aware, that the information contained therein is manifestly wrong. Emerald Meats expressed its opinion in the following terms:

'where information received from a Member State authority is manifestly wrong and to be used for or incorporated in the Community's administrative acts, affecting traders throughout the Community, then the Commission has a duty to verify that information, and to take simple practical steps to ensure that it complies with the relevant EEC regulations.' [12]

32. An important question in terms of both principle and practice is whether the Commission has a duty to verify and, where necessary, to correct the decisions on which national lists are based. The starting point for any reply to that question must be the contents of the relevant regulations considered in the light of the purpose behind the introduction of the Community administration of tariff quotas. Account must also be taken of the consequences which that reply may have for the practical administration of tariff quotas and for the legal remedies available to traders in cases where they believe that an administrative mistake has been made. On a more general level, it is important for the purposes of the reply to determine what general powers the Commission has at its disposal to take action regarding a mistake made by national authorities in administering Community rules.

12 — See the reply in Case C-129/91 (point 20 on p. 10).

33. It may be appropriate to state at the outset that, after some hesitation, I have come to the conclusion that the division of functions laid down in the relevant regulations means that the Commission does not have the power to rectify decisions which form the basis of the lists submitted to it.

I shall set out the reasons for reaching this conclusion below in points 34 to 55.

It is, however, necessary to consider whether that result might require modification if it can be demonstrated that the Commission failed to take action regarding a general misinterpretation and misapplication of the evidentiary rules in the regulations. I shall address that question below at points 57 to 64.

34. Article 2 of Council Regulation No 3889/89 (the 1990 quota-opening regulation) provides that the main quota 'shall be apportioned for importers who can prove that they have imported [quota meat] during the last three years ...'. Article 1(1) of Commission Regulation No 4024/89 (the 1990 implementing regulation) reiterates that rule.

Article 1(3) of the latter regulation provides that:

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

Article 2(1) provides that:

'Operators referred to in Article 1(1) who, at 1 January 1990, were no longer engaged in any activity in the beef sector shall not qualify under the arrangements provided for in this regulation.'

Article 3 provides that:

'Eligibility under the import arrangements provided for in Article 1 shall be subject to presentation of an application for an import licence.'

The first sentence of Article 4(1) provides that 'importers shall 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.' [13]

The second sentence of Article 4(1) provides that:

'The Member States shall forward to the Commission by 31 January 1990 at the latest a list of importers containing in particular the importers' names and addresses and the quantities of meat imported ... during each of the years in question.'

Article 5 provides as follows:

'Licence applications referred to in Article 4 shall be admissible only where the applicant declares in writing that he has not lodged and undertakes not to lodge any application under the same special arrangements in any Member State other than that in which application is lodged; if an applicant lodges applications in respect of the same special arrangements in two or more Member States, none of the applications shall be admissible.

All applications from the same applicant shall be regarded as a single application.'

Article 6(1) provides that:

'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.' [14]

The rules in Commission Regulation No 3885/90 (the 1991 implementing regulation) correspond in all material respects to the above provisions. [15]

13 — This period was extended to 24 January 1990 by Commission Regulation (EEC) No 143/90 (OJ 1990 L 16, p. 29).

14 — The word 'godkendelse' [approval] in the Danish version of the regula-tion does not correspond to the terms used in the other language versions. For example, the French version reads 'sous réserve de cette décision d'acceptati-on de demande par la Commission ...', while the German text is as follows: 'vorbehaltlich einer Entscheidung der Kommission über die Annahme der Anträge ...'. Henceforth, I shall replace the Danish word 'godkendelse' with the word 'beslutning' [decision] .

15 — It should nevertheless be mentioned that the provision in Article 1(3) concerning proof refers in its second sentence only to the reference years 1988 and 1989 as those in which Member States may provide that the proof of import may be furnished by the holder whose name appears in box 4 of import licences.

35. *The regulations therefore presuppose an administrative procedure in which certain functions are performed by the authorities of the Member States and others by the Commission.* Applications are submitted to the national authorities along with supporting proof. It is the national authorities which must resolve any matters of doubt relating to the admission of applications, including whether the operators in question are no longer engaged in any activity in the beef sector within the meaning of Article 2 and in particular whether the applicants can be accepted as importers in the reference years. Needless to say, those decisions must be taken on the basis of the relevant Community rules; however, they may also (as the present cases demonstrate) entail decisions on issues of national law and on the factual situation. The cases involve administrative measures taken by national authorities, which in appropriate cases may be contested in accordance with the national rules on challenging national administrative measures.

It is important in this connection that the lists which the national authorities must send to the Commission are required only to mention the names and addresses of the importers, along with the quantities of meat which they imported in the reference years. Neither the actual applications nor the documentary proof have to be sent to the Commission.

36. Only on one point do the relevant Community rules provide for independent verification by the Commission. Under Article 5, it is for the Commission to examine whether applications in respect of the same quantities of meat have been lodged in two or more Member States; if that proves to be the case, the Commission is required to declare the applications inadmissible. The Commission alone may, on the basis of the lists submitted, check whether applicants have submitted such double applications, and the consequences of non-compliance with that requirement are expressly laid down and easy to administer.

37. Under Article 6 it is the task of the Commission to decide to what extent applications may be accepted. In my opinion, nothing more can be read into that provision than that the Commission is necessarily the institution which, in the light of the quantity of meat for allocation and the total quantities of meat imported in the reference years, is required to notify Member States of the quantities which national authorities may allocate to applicants when import licences fall to be issued. Only that decision is expressly referred to in the Commission's allocation regulations. There is nothing in that provision that presupposes a duty on the part of the Commission to check the information contained in the lists submitted to it.

38. Finally, under the regulations it is the national authorities which issue import licences to applicants.

39. This examination of the regulations demonstrates that there is a clear division of functions between the national authorities and the Commission and that accordingly it is the national authorities which have the task of resolving matters of doubt arising with regard to the processing of applications.

40. *Neither* expressly *nor* implicitly *are applicants given the opportunity to complain to the Commission about decisions taken by national authorities.* There is no traditional relationship of superordination/subordination between the Commission and national authorities. The Commission does not have any general power to issue instructions to such authorities. No such power can be read into *Article 155 of the Treaty*, nor can that article be construed as imposing on the Commission a general duty, when administering tariff quotas, to verify the legality of the decisions on which the lists of applicants submitted to it are based. Article 155 imposes a general duty on the Commission to ensure that Community law is implemented in the Member States. If the Commission should find that Community rules have not been properly implemented, it may ensure that such implementation is carried out by initiating Treaty infringement proceedings against the Member State in question under Article 169 of the Treaty.

41. *In my opinion, an independent duty of verification by the Commission must in any event be excluded on practical grounds alone.* A very high number of applications are made to the national authorities each year (in excess of 2 000, according to the information given) and the period elapsing between the Commission's receipt of the lists and its adoption of the allocation regulation is so brief that it is only with great difficulty that the regulations could be read as imposing a requirement for the Commission to carry out independent verification. Furthermore, the Commission is not in a position to carry out such verification since there is no requirement that documentary proof be enclosed with the list.

42. Applicants who consider that *decisions by the national authorities* infringe their rights must raise the matter *within the confines of their national judicial system.* It is therefore ultimately the national courts which must decide whether or not the administrative decisions underlying the lists sent to the Commission are lawful.

Emerald Meats has indeed acted accordingly by bringing proceedings before the High Court against the Department of Agriculture. That is the procedure which is generally applicable in cases where national authorities administer Community rules, [16] and is also, in my view, the procedure to be followed in the present case. The fact that the Community administration of tariff quotas presupposes that it is the Commission which must lay down the definitive allocation figures does not alter the fact that the national decisions on which the allocation is based must be contested within the confines of the national judicial system.

National courts must resolve actual disputes on the basis of the relevant Community rules and the relevant national rules of private and public law, and on the basis of their determination of the facts in the light of the requisite

16 — This follows from the case law of the Court, in which it has consist-ent-ly been held that the review of the legality of the manner in which national authorities apply Community rules is in the first instance a matter for national courts; see, for example, the judgment in Case 133/79 *Sucrimex and Westzucker* v *Commission* [1980] ECR 1299, at paragraph 24 of which the Court stated that:
'A review of administrative acts of Member States in applying Community law is primarily a matter for national courts without prejudice to their power to refer questions for a preliminary ruling to the Court under Article 177 of the EEC Treaty. In the circumstances the remedy to be envisaged is an action before the national courts, to which the applicants have in fact already applied.'
See also the Court's judgments in Case 12/79 *Wagner* v *Commission* [1979] ECR 3657 and in Case 217/81 *Interagra* v *Commission* [1982] ECR 2233. A similar view was also forcefully expressed by the Court in its judgment in Case 109/83 *Eurico* v *Commission* [1984] ECR 3581.

evidence. If questions of interpretation of Community law rules arise in proceedings before the national courts, those questions must be referred to the Court of Justice for a preliminary ruling.

The proceedings before the High Court in the dispute between Emerald Meats and the Irish Department of Agriculture constitute, in my opinion, the best possible confirmation of this view. The judgment of the High Court is not just based on an interpretation of the relevant Community rules but also takes into consideration the private law relationship between undertakings which have applied for a share of the tariff quota. In addition, the High Court's judgment was delivered after presentation of all the evidence.

43. If the relevant Community rules were to be interpreted as entailing that the Commission had an independent power of review, the result would be that an undertaking which considered its rights to have been infringed during the processing of its application by the national authorities could complain to the Commission and, if the Commission dismissed that complaint, could then bring an action before the Court for the annulment of the Commission decision dismissing that complaint. If the undertaking at the same time also brought proceedings before the national courts, that would give rise to 'parallel' proceedings in which the fundamental problem posed would in each case be more or less the same inasmuch as the issue to be resolved would be whether the original decisions taken by the national authorities were correct. Serious problems could arise in this regard in cases where differing decisions on the substantive legal issues were reached by the Court of Justice and by the national courts. In my opinion, the present cases demonstrate the serious drawbacks to which such parallel proceedings might give rise, since it is conceivable that the Court of Justice, in its judgment on these cases, may have to decide, either directly or indirectly, on the question whether Emerald Meats was substantively entitled to a share of the tariff quota. That is an issue on which, as I have pointed out, the High Court has already ruled and which the Supreme Court will be required to decide on appeal.

44. In so far as the Court might be required in the present cases to decide, either directly or indirectly, the issue of the legality of the decisions taken by the Irish Department of Agriculture, one cannot overlook the restricted basis of the Court's judgments, resulting, in the first place, from the fact that the cases were brought against the Commission, whose position of principle is as set out in point 16 above, and, secondly, from the circumstance that the Court is only indirectly acquainted with the legal views of the Irish authorities.

45. I find that there are therefore cogent legal and practical reasons militating against interpreting the implementing regulations as implying that the Commission has the powers to verify and take action regarding the decisions which form the basis of the lists submitted by Member States (subject to the reservation mentioned above regarding applications lodged in two or more Member States in respect of the same quantities of meat).

46. I believe that the Court's judgment in Case 207/86 *Apesco* v *Commission* [17] provides support for this view. That case involved a somewhat similar situation to these cases. An association of Spanish fishing companies brought an action against the Commission seeking the annulment of a Commission decision approving a list compiled by the Spanish authorities of vessels entitled to fish in certain waters. The relevant rules were laid down in the Act of Accession of Spain and Portugal to the European Economic Community. One of the articles therein provided that the Spanish authorities were to prepare such a list and that it was to be *checked* and *approved* by the Commission. The rules in question contained a number of conditions to which Commission approval of the list was subject. Those conditions were laid down clearly and it was possible for the Commission to check, on the basis of the information available to it, whether they had been satisfied.

The applicant did not claim that the Commission's approval was unlawful on the ground that those conditions had not been satisfied. However, it argued that the Commission had disregarded the Act of Accession by approving a draft list drawn up on the basis of Spanish law, even though the Act of Accession, in the applicant's opinion, laid down exhaustive rules on the matter. In rejecting that submission, the Court ruled that the Spanish authorities could also carry out their selection of fishing vessels in accordance with rules of national law. However, the Court also held that it was for the Commission to check whether the Spanish rules were in conformity with the principle of equality laid down in Article 40(3) of the Treaty and, if not, to initiate Treaty infringement proceedings under Article 169.

In the second place, the applicant had argued that the Commission had ignored the principle of equality by approving the draft list, even though it granted more fishing rights to some vessels than to others. On this issue, the Court ruled that:

'It should be recalled in that connection that, as explained above, the Act of Accession lays down a series of rules with which the Spanish authorities must comply when drawing up draft periodical lists and that the Commission must check whether those rules have been complied with when it approves the lists. The Act of Accession does not, however, require that the draft lists should state the reasons for which some vessels obtain fewer fishing rights than others or none at all, or mention to which organizations the operators of the various vessels belong.

It is thus apparent that the system introduced by the Act of Accession does not put the Commission in a position to judge whether the Spanish authorities have complied with the principle of equality between operators or associations of operators of vessels when drawing up any particular draft list.

It follows that although it is incumbent upon the Commission to check whether the internal rules that the Spanish authorities apply when drawing up the draft lists are compatible with Community law, it is not its task to examine whether the principle of equality

17 — [1988] ECR 2151.

has been complied with in every case. Such review falls within the jurisdiction of the national courts to which the procedure under Article 177 of the Treaty is available' (paragraphs 26 to 28).

It can thus be seen that, notwithstanding the fact that the Commission had a duty under the Act of Accession to check the list drawn up by the Spanish authorities, the Court found that the Commission did not have to examine whether the principle of equality had been complied with in each individual case. One of the reasons for this was the limited scope which the Commission had to carry out such an examination. The review of legality was a matter which had to be conducted by the national courts. That had necessarily to be the case even though the Commission had a clear and easily applicable opportunity to respond by refusing to approve the list.

47. In these cases, no obligations to carry out checks have been imposed on the Commission and it is also not practically possible for it (partly on account of the strict time limits referred to above) to examine each individual case.

48. The interpretation of the law I am proposing *is not at variance with the considerations underlying the administration of tariff quotas at Community level.* The result does not imply that there is a risk that trade will be diverted or distorted. Undertakings may apply in the Member State they choose and an adequate basis has been laid down for a uniform administration through the fixing of common criteria for deciding who is entitled to a share of the tariff quota and how proof is to be adduced before national courts in that regard.

49. My interpretation of the law accords with the Commission's basic views on the legal position.

According to Emerald Meats, however, the Commission, which has obviously had difficulties in dealing with the present cases, acted in several respects in a manner not consonant with its own position of principle.

The argument of Emerald Meats on that point cannot be accepted. It is not possible to claim that the manner in which the Commission acted in the cases in question was to any major extent at variance with the Commission's position of principle.

50. It is clear that the Commission may, if it becomes aware of specific problems linked to the treatment of applications by national authorities, raise those issues with the authorities concerned. That follows from the duty imposed on the Commission by Article 155 of the Treaty to ensure that Community law is applied. It is clear from the course of the proceedings that the Commission attempted in the present cases to resolve the problems which arose through a variety of approaches to the Irish authorities of a non-binding nature. Such approaches do not amount to a departure from the Commission's view of the law. [18]

51. The fact that the Commission implemented the measures described in points 19 and 20 above in order to resolve the prob-

18 — On this point, see the judgment in the *Enrico* case cited above in footnote 16.

lems which arose in the allocation of the 1991 quota as a result of double applications lodged in the United Kingdom by Emerald Meats and in Ireland by the meat processing companies is also not at variance with that view. I have already mentioned that the regulations expressly conferred on the Commission the task of preventing import licences being issued to two applicants who based their entitlement to import on the same quantity of meat.

52. Nor did the Commission act contrary to its view of the law when, in adopting the regulations, it sought to prevent situations arising which could have jeopardized the solution of the legal proceedings then pending before the High Court. That was the case with the adoption of the 1990 re-allocation regulation, since it had become clear that the High Court would shortly thereafter be adjudicating on the claim by Emerald Meats for import licences in respect of its share of the newcomers' quota (see point 14 above). It was also the case with the adoption of the 1991 allocation regulation, where the situation was that the High Court wished to determine who would substantively be entitled to a share of the 1990 quota and thereby also who would in fact be entitled to a share of the 1991 quota (see point 20 above).

53. It must similarly be evident that the Commission did not act at variance with its initial position of principle, since it amended the 1991 implementing regulation in the light of the High Court's judgment of 9 July 1991 (see point 27 above).

54. Finally, Emerald Meats cannot reasonably argue that the Commission acted contrary to its view of the law in adopting Decision 91/590/EEC [19] re-allocating the remaining quantities of the 1991 tariff quota to four named undertakings. The purpose of the decision was to rectify mistakes in the original allocation of the tariff quota and it was adopted following a request by the Member States which made those mistakes.

55. There is therefore nothing in the Commission's approach to justify any arguments against the result which I have set out above, to the effect that the Commission, when administering the tariff quota, is not empowered in specific cases to rectify incorrect decisions taken by national authorities in connection with the approval of applications for a share of the tariff quota.

56. It is not necessary to consider whether the position would in any way be different if the decisions of the national authorities contained such gross and manifest defects that they had to be treated as null and void. It is clear to me that the Department of Agriculture's decisions do not contain such defects. The very particular circumstances which existed in connection with the administration

19 — Commission Decision 91/590/EEC of 5 November 1991 on the allocation of the remaining quantity of the import quota for meat of bovine animals, frozen, pursuant to Article 3 of Council Regulation (EEC) No 3838/90 (OJ 1991 L 316, p. 41).

of the Irish tariff quota in the reference years do not, in my opinion, make it obvious that the Department of Agriculture's decisions on the applicant's substantive entitlement to a share of the tariff quota were incorrect.

57. On the other hand, it is necessary to consider whether the Commission, as mentioned above, has a duty to take action regarding decisions of national authorities in cases where those decisions are based on a general misinterpretation and misapplication of the evidentiary rules laid down in the implementing regulations.

58. The relevant regulations establish a division of functions between the national authorities and the Commission. The national authorities must be in a position to reach a decision on an applicant's entitlement within a very short time. Such a system can function only if the criterion for entitlement is clear and the requirement of proof to be submitted along with the application is easy to administer. The Community system sets out a clear criterion for entitlement, that is to say, status as an importer of meat in specified reference years and the method of proof — production of customs documents — is also clearly laid down and easy to administer. It is crucial to the proper functioning of the system that the Member States apply it correctly — in other words, that they accept those applicants who can provide the requisite proof. It can be assumed in these cases that Emerald Meats had submitted the requisite customs documents and had therefore satisfied the conditions for recognition as an importer within the meaning of the Community rules. [20]

59. In the light of the central importance of the evidentiary rule to the proper functioning of the administrative system, it could be argued that the Commission is entitled and obliged to take action regarding the national authorities' application of the evidentiary rule if the Commission is shown that in purely factual terms the evidentiary rule was misapplied.

60. It may be assumed that the Irish Department of Agriculture took the view that it was entitled not to apply the evidentiary rule in cases where it found that the underlying legal relationship between the applicants involved showed that the applicant mentioned as importer on the relevant customs

20 — As already mentioned, the evidentiary rules are to be found in Article 1(3) of the implementing regulations. That provision enables Member States to 'provide that the proof of import may be furnished by the holder whose name appears in box 4 of import licences'. The meaning of that rule is not altogether easy to ascertain. It may indeed conceivab-ly be construed as meaning that the person mentioned in box 4 as the holder of the licence is to be treated as the importer. It can consequently also not be ruled out that the Irish Department of Agriculture may have used that rule as the basis for its finding that the meat processing companies were to be regarded as importers in the reference years 1987 and 1988 since, as mentioned above in point 7, they were in fact referred to in box 4 of the import licences as the holders thereof inasmuch as Emerald Meats, according to the information in that box, was acting on their behalf. In my view, however, there is no need to examine this matter in any greater detail. On the one hand, that possible interpretation is open to question. On the other, the provision presupposes that the Member States 'have decided' that such an alternative to the evidentiary rule in the first point should apply. There is nothing in these cases to suggest that the Department of Agriculture adopted a decision on the use of that rule and communi-cated that decision to potential applicants. At any rate, the circular issued by the Department in January 1990 concerning the procedure to be followed by applicants makes no reference to such a decision, and the corresponding circular for 1991 is not clear on this point. Further-more, the High Court, in its judgment of 9 July 1991, did not attach any importance to that provision.

documents was not the importer who had actual entitlement.

61. However, such an interpretation is, in my opinion, at variance with both the objective and function of the evidentiary rule. That rule is designed to ensure a clear legal position, on the basis of which the authorities can take a large number of decisions rapidly and without detailed examination of the circumstances of law and fact involved. The use of the customs documents as proof represents an appropriate means of achieving that result.

62. The customs document, of course, does not constitute definitive and incontrovertible proof of substantive entitlement to a share of the tariff quota, since it is possible that the company which is actually the importer on the basis of the underlying substantive legal position is not the one mentioned as importer in the customs document. [21]

The main objective of the evidentiary rule, however, is to indicate the result on which national authorities must base themselves when confronted with problem cases in the course of processing applications. In such cases, they must decide such matters in accordance with the evidentiary rule, that is to say, they must accept as importer the person or company referred to as the importer in the customs document. The underlying substantive legal dispute may subsequently be resolved in proceedings between the parties concerned before the national courts.

63. It may be claimed on this basis that the evidentiary rule is an element of such importance in the Community administration of the tariff quota that the Commission may and must take action when it becomes aware that the authorities of a Member State are not complying with that rule. It can also be argued that it is not sufficient that such action should take the form of initiating Treaty infringement proceedings, but that the Commission, if sufficiently informed of the facts of the case before it adopts the allocation regulation, ought to act then. The Commission's intervention in such a case would, in fact, be relatively straightforward. The Commission could order national authorities to apply the evidentiary rule in the case of double applications and to issue import licences in accordance with the proper application of that rule. The Commission's action would not prejudice the final decision as to which of several applicants was entitled on the basis of the underlying legal position.

A duty for the Commission to take action in situations of this kind therefore does not present the same drawbacks in practice and in principle as a general power of verification vested in that institution.

64. But I have decided to propose that the Court should hold that, even in this situation, the Commission does not have the possibility of intervening, and this for two rea-

21 — Under Article 2 of Council Regulation (EEC) No 3632/85 of 12 December 1985 defining the conditions under which a person may be permitted to make a customs declaration (OJ 1985 L 350, p. 1) 'any person able to produce ... to the competent customs authority ... the goods in question as well as all documents production of which is stipulated by the provisions governing the customs regime requested for the goods' may make the customs declaration and thus give his own name as importer on the customs document. That person is therefore not necessarily the same as the one who in other respects is in substance to be regarded as the importer of the goods in question.

sons. In the first place, it is difficult in this regard also to find some authority for the Commission to order the authorities in the Member States to perform their duties under regulations in a particular way. Secondly, it is important even in this situation to maintain the clear and definite division of functions under the regulations between the national authorities and the Commission, with the consequences that entails for the division of jurisdiction between national courts and the Court of Justice.

In the light of the fact that the relevant Community rules do not envisage the power for the Commission to take action, it may be assumed in this situation also that the Commission's scope for action regarding the Member States' misapplication of the evidentiary rule is limited to the initiating of Treaty infringement proceedings under Article 169. That is the possibility generally envisaged by the Treaty for action by the Commission where it considers that Member States have failed to comply with their obligations under Community law. It should not be overlooked in that connection that Article 186 of the Treaty empowers the Court to prescribe any necessary interim measures in cases brought before it. It is therefore possible for the Commission, also in cases such as these, to apply for interim measures if it considers that these are urgently required and that there exist factual and legal reasons which directly justify such measures.

65. The Court has consistently held that the Commission is not obliged to implement the procedure under Article 169 of the Treaty, but has a discretionary power precluding the right of individuals to require it to adopt a particular position or to bring an action for annulment against its refusal to initiate Treaty infringement proceedings. [22] In my view, it can be argued with some cogency that this legal position means that there must be clear justification in the relevant rules of secondary Community law for the assumption that they impose a duty on the Commission to intervene in the event of misapplication of Community rules by Member States.

66. It follows from the considerations outlined above that, in the context of these cases, the Commission was not empowered to take binding and direct action against the decisions of the Irish Department of Agriculture in connection with the applications and the import licences.

The disputes which have arisen in connection with the Department's administration of the tariff quota should be dealt with under the national system of legal remedies.

22 — See, for example, the judgment in Case C-87/89 *Sonito and Others* v *Commis-sion* [1990] ECR I-1981, at paragraph 6, and the Court's order in Case C-72/90 *Asia Motor France* v *Commission* [1990] ECR I-2181, in which the Court held that:
'In so far as the action for damages is based on liability arising from the Commission's failure to act under Article 30 of the Treaty, since the Commission is under no obligation to initiate proceedings under Article 169 (judgment of 14 February 1989 in Case 247/87 *Star Fruit*) the only conduct which may be challenged as the source of damage is that of the French State' (paragraph 13).

67. I shall go on to examine the consequences of this legal view for the claims for annulment and compensation brought by Emerald Meats in these cases.

The claims for annulment

68. It is first of all necessary to consider whether it is appropriate to examine the merits of the claims for annulment.

69. The Commission argues that the Court should decline to take a decision on that part of the claims for annulment in Cases C-106/90 and C-129/91 which relates to the decisions adopted by the Commission pursuant to Article 6(1) of the implementing regulation determining the extent to which applications could be accepted. The Commission submits that the decisions in question are contained in the allocation regulations and that it is consequently an 'abuse of process' to seek the separate annulment of those decisions. That is a view I share with the Commission.

70. It is beyond doubt, moreover, that Emerald Meats satisfies the requirements which Article 173 of the Treaty lays down for the acceptance of an application by a private undertaking for the annulment of the regulations in question. Those regulations directly and individually affect the legal position of the individual applicant (on this point, see the Court's judgment in *Weddel* v *Commission*). [23]

23 — Case C-354/87 [1990] ECR I-3847.

71. However, it is not sufficient *per se* to establish that Emerald Meats also has a sufficient legal interest to have its claims for annulment upheld. Of course, the Court proceeds on the basis that the applicant's legal interest must be assessed on the basis of the situation which existed when the application was lodged, but the Court has also ruled that the legal interest may cease by reason of events which occur during the proceedings in the case. [24] Such subsequent events may mean that the application no longer serves any purpose or that there are no longer reasonable grounds for ruling on the claims for annulment. The Commission has submitted that it is at present doubtful whether the applicant has any legal interest in an examination of the claims for annulment. That is particularly clear with regard to Case C-317/90, in which the Commission contends that the Court should dismiss the action forthwith on the ground that the further pursuit of the action must be treated as vexatious.

I mentioned at point 28 above that the present legal status of Emerald Meats corresponds to what it would have been had the Irish Department of Agriculture originally approved the applications. Obviously, this does not preclude the company from still having a claim for damages, but it does, in my opinion, mean that it no longer has a legal interest in the examination of its claims for annulment. It is significant in this connection that the Court will have occasion, when examining the claims for compensation, to rule on the legality of the manner in which the Commission acted.

24 — See judgments in Case 92/78 *Simmenthal* v *Commission* [1979] ECR 777, at paragraph 32; in Case 243/78 *Simmenthal* v *Commission* [1980] ECR 593, at paragraphs 9 and 11; and in Case 76/79 *Könecke* v *Commission* [1980] ECR 665, at paragraphs 8 and 9.

I would for that reason propose that the Court should decide that it is not necessary to rule on the claims for annulment in the three cases. [25]

The claims for damages

72. Emerald Meats has sought damages from both the Irish Department of Agriculture and the Commission.

As mentioned above at point 24, the High Court, in its judgment of 9 July 1991, awarded Emerald Meats damages in respect of the loss which it had incurred by reason of the Department's failure to issue import licences in 1990. However, the High Court also held that it was not entitled to general damages for the severe disruption of its business and its relationship with other traders.

Emerald Meats claims that the Commission is separately liable for damages. If the Commission had acted in accordance with its obligations, Emerald Meats believes that the damage would never have occurred. It has limited its claim for damages from the Commission so that the loss already covered by the judgment of the High Court is not included. Its claim against the Commission is nonetheless still considerable, totalling some IR£ 600 000. The individual headings in respect of which damages are sought are listed in the addendum to the Reports for the Hearing and cover *inter alia*:

(1) the financial loss suffered through loss of trade;

(2) the costs (not including lawyers' fees) incurred by reason of the present cases and those before the Irish courts;

(3) interest on a sum representing the value of the quota of which Emerald Meats was deprived in 1990;

(4) the financial loss incurred by Emerald Meats owing to the drop in the market price of frozen meat between February 1991 and July 1991.

73. It is necessary to consider at the outset whether it is appropriate to consider the merits of the claims for damages.

As I have already mentioned, Emerald Meats takes the view that the damage it suffered is attributable to unlawful conduct on the part of the Irish Department of Agriculture and the Commission.

It brought its action for damages against the Department of Agriculture before an Irish court. That court ruled on the questions of the basis of liability and the measure of dam-

25 — As already mentioned, the Commission argued that the applicant's claim for annulment in Case C-317/90 should be dismissed forthwith on the ground that it was *vexatious*. As this case is one of a series of cases which Emerald Meats has brought for the purpose, *inter alia*, of obtaining recognition of what it believes to be the Commission's obligations to safeguard its inter-ests, I do not consider that there are sufficient grounds for upholding the Commission's claims in that regard.

ages under Irish law. Emerald Meats claims that it is not possible under Irish law for it to be awarded further damages.

At the same time, it also brought an action before the Court seeking damages from the Commission. It takes the view that the Commission has made itself separately liable under Community law and argues that its claim for damages is such as to be covered by the relevant rules of Community law.

74. These cases differ from the normal instances where questions arise concerning the liability of authorities in connection with the application of Community rules.

In normal cases, damage is caused either:

(a) by the conduct of national authorities in misinterpreting or misapplying Community rules;

or

(b) in fact by the Council or the Commission, or both, through general rules or decisions which determined the conduct of the national authorities to which the damage is directly attributable. [26]

75. Cases coming within the first group are decided by national courts on the basis of the national law on damages. Under the Court's case law there is more uncertainty whether cases in the second group fall to be decided by national courts or the Court of Justice, or by both. There is considerable case law on this matter in which the Court has held that actions for damages must, subject to certain conditions, be brought against national authorities and dealt with by national courts. This applies particularly in cases where the essential purpose of the action for damages is to recover an amount already paid or to secure payment of an amount unlawfully withheld. The cases concerned were typically those in which it was reasonable to assume that the person who had suffered damage could receive full indemnification from national courts.

In its judgment in *Roquette Frères* v *Commission*, [27] the Court stated as follows:

'The Court has consistently held that the action for compensation provided for in Article 178 and the second paragraph of Article 215 of the EEC Treaty was introduced as an autonomous form of action with a particular purpose to fulfil within the system of remedies. Although its admissibility may be conditional in certain cases on the prior exhaustion of the remedies available under domestic law for obtaining satisfaction from the national authorities, it is essential, in order for that condition to apply, that those remedies under domestic law effectively ensure protection for individuals aggrieved by measures of Community institutions (judgments of 12 April 1984 in Case 281/82 *Unifrex* v *Commission and Council* [1984] ECR 1969, and of 26 February 1986 in Case 175/84 *Krohn* v *Commission* [1986] ECR 753)' (paragraph 15). [28]

26 — In this connection, see F. Schockweiler, *La responsabilité de l'autorité nationale en cas de violation du droit communautaire*, RTD eur. 1992, p. 27, particularly section I.

27 — Case 20/88 [1989] ECR 1553.

28 — The Court also stated that it was appropriate for it to verify, of its own motion, whether that procedural requirement had been complied with.

76. The present cases are unusual in so far as, if one accepts the premiss of Emerald Meats, there is a separate basis of liability for both the Irish Department of Agriculture and the Commission inasmuch as their conduct jointly gave rise to the damage.

That difference does not, in my opinion, in itself render the above case law on the jurisdiction of national courts inapplicable. It might even be claimed that there is all the more reason to apply that case-law in instances where the damage suffered actually results not only from the Commission's conduct, but also from the autonomous conduct of the national authorities.

In my view, however, there is no need in these cases to go into those questions in greater detail. The Court has indicated in its case law that an action may be dismissed on that ground only if it appears reasonable to assume in advance that the applicant will be able to obtain full satisfaction from national courts. The Court's judgment of 8 April 1992 in *Cato* v *Commission* [29] is significant in this connection for two reasons. In the first place, that case involved a situation somewhat similar to these cases (presence of concomitant causes of damage); secondly, the Court considered the merits of the applicant's claim for damages and thereby dismissed an objection that the action should have been brought before the national courts. Moreover, in its judgment of 13 March 1992 in *Vreugdenhil* v *Commission*, [30] the Court rejected the Commission's procedural objection that remedies under domestic law had not been exhausted by ruling that:

'It must be pointed out in that regard that the combined provisions of Articles 178 and 215 of the Treaty confer exclusive jurisdiction on the Court of Justice to rule in actions seeking compensation for alleged damage attributable to the Community, which is bound, under the second paragraph of Article 215 of the Treaty, to make good, in accordance with the general principles common to the laws of the Member States, any damage caused by its institutions or by its servants in the performance of their duties (judgment in Joined Cases 106 to 120/87 *Asteris and Others* v *Commission* [1988] ECR 5515, at paragraph 14' (paragraph 14).

In these cases, also, the Court should not decline to rule on the substance of the claim for damages.

It is in my opinion beyond doubt that at least some of the heads of claim brought against the Commission would not be recoverable from the Irish Department of Agriculture.

Moreover, it might be necessary, in connection with the substance of the cases, to decide whether the applicant's claim for damages against the Commission should be

29 — Case C-55/90 [1992] ECR I-2533. In his first opinion in this case, delivered on 18 June 1991, Advocate General Darmon carried out a comprehensive review of the case-law relevant to this point.

30 — Case C-282/90 [1992] ECR I-1937. In his opinion of 16 January 1992 in that case, Advocate General Darmon rejected the Commission's pro-cedural objection and concluded: 'It cannot therefore be argued against Vreugdenhil that its action is inadmissible on the ground that it did not exhaust domestic legal remedies, even though the pursuit of those remedies was the natural channel by which it could receive compensation for the injury alleged, inasmuch as those legal remedies would not have allowed it to obtain that result' (point 35).

reduced or even dismissed completely on the ground that Emerald Meats could have received damages for the loss in question from the Irish Department of Agriculture if it had brought its claim against the Department or if the High Court's decision on the claims for damages had been appealed.

It will, however, be unnecessary to examine these questions, which are difficult and in any case were not the subject of extensive discussion during the proceedings, if the Court accepts my views on the question whether the Commission has incurred any liability at all.

77. As I have already reached the conclusion that the Commission is not empowered to take binding steps against decisions of the Irish authorities in connection with the administration of the 1990 and 1991 tariff quotas, the Court should dismiss the claims for damages against the Commission on the grounds that the manner in which the Commission acted was not unlawful *vis-à-vis* Emerald Meats.

I also take the view that the Commission provided all possible assistance to Emerald Meats within the scope allowed by Community law.

78. In case the Court should find that the Commission did have a duty to intervene with the Irish Department of Agriculture in order *to ensure that the latter administered the tariff quota in accordance with the applicable evidentiary rules*, I shall make the following brief comments on the issues of the basis of liability and damages.

79. The Court should rule that there is no basis of liability in Case C-317/90. That case does not involve a situation in which the Commission could have intervened with the Department of Agriculture on the ground that it had failed to apply the evidentiary rules set out in the regulations. I have already mentioned above at point 11 that the reason for the Department's refusal was that it had found that the supporting documents submitted did not constitute sufficient proof of meat imports in the quantities required to qualify for a share of the newcomers' quota. The sequence of events in the case also demonstrated that the Commission had in fact acted in the applicant's interest by first suspending and subsequently amending the regulation opening the re-allocation quota as soon as it became aware that a decision on that question was to be given by the High Court.

80. With regard to the other two cases on the administration of the main 1990 and 1991 quotas, it is more difficult to decide whether a basis of liability exists.

81. If the Commission had a duty to intervene with the Department of Agriculture in view of the latter's incorrect application of the evidentiary rules, there may be grounds to support the view that the Commission ought to have taken steps in connection with the adoption of the allocation regulation for the 1990 tariff quota. As mentioned above at point 8, Emerald Meats had drawn the Commission's attention to the problem one week before the allocation regulation was due to be adopted definitively. It had pointed out that, on the basis of customs documents

from 1987 and 1988, it had been included without any problem on the Department of Agriculture's list of companies entitled to a share of the portion of the 1989 tariff quota administered by the Community. Emerald Meats had also emphasized that it was referred to as importer on the customs documents and that it had sent the Commission copies of the relevant customs documents before the regulation was adopted. The Commission had therefore sufficient grounds on which to request an explanation from the Irish authorities. While the Commission did raise the issue with the Irish authorities, it failed to pursue the matter before the adoption of the allocation regulation. It would not really have been impracticable to obtain clarification of the matter from the Irish authorities, which had a duty under Article 5 of the Treaty to provide the Commission with all necessary information, and it would have been possible for the Commission to postpone the adoption of the allocation regulation, as subsequently happened with regard to the adoption of the 1991 allocation regulation (see point 20 above).

In my opinion, however, it would be imposing a greater requirement on the Commission than is reasonable if one were to assume that the Commission rendered itself liable by not taking such steps. The departments of the Commission were faced with new and difficult questions and found themselves in a situation where there was, after all, considerable uncertainty as to the true facts of the case. The departments in question were under time pressure. Against that background, I consider that it was justifiable for the Commission to decide that it was more important to secure the adoption of a general allocation regulation for the sake of all the applicants in the Member States rather than to attempt there and then to resolve the problem raised by Emerald Meats. Moreover, the Commission might reasonably have assumed that it would be possible to resolve that problem later, either in discussions with the Irish authorities or by means of the action brought by Emerald Meats before the Irish courts. [31]

82. As far as the allocation of the 1991 tariff quota is concerned, the position differs in at least two aspects. In the first place, in the course of 1990 the Commission had been able to obtain clarification of the legal and factual position with regard to the administration by the Irish authorities of the 1990 tariff quota. Secondly, Emerald Meats had lodged an application with the United Kingdom authorities, which had informed the Commission that in their view that application could be approved. The problem for Emerald Meats with regard to the 1991 tariff quota, therefore, was not that its application had not been approved by the competent national authorities, but rather that it could be given import licences only if it satisfied the requirement imposed by the Commission's allocation regulation that it lodge a guarantee (see point 20 above). The legal problem connected with the administration of the 1991 quota is therefore whether the Commission's requirement that a guarantee be lodged in the case of existing double applications was unlawful on the ground that the Commission knew, or ought to have known, at that time that the Irish authorities' approval of the applications from the processing companies was based on a misappli-

31 — The Commission argued in Case C-106/90 that the allocation regulation was lawful and that its conduct was accordingly not unlawful on the ground that the regulation merely laid down the quantities of meat that could be allocated to the individual applicants and thus did not determine which applicants could receive a share of the quota. That view must be incorrect. The allocation regulation is based on the lists submitted to the Commission and must therefore be regarded as the legal basis on which applicants included on the list may be issued import licences after the period laid down in the regulation.

cation of the evidentiary rules. If the Court should find that the Commission ought at that stage to have intervened with the Irish authorities, the consequence, in my opinion, must be that the Commission acted unlawfully in requiring Emerald Meats to lodge a guarantee. My conclusion on the above basis is therefore that the Commission acted in a manner rendering it liable to Emerald Meats by requiring the lodging of a guarantee.

83. It is therefore necessary to examine whether, as a result of the guarantee required, Emerald Meats incurred a loss for which the Commission has a duty to pay compensation, and also whether there is a causal connection between the conduct giving rise to liability and the loss.

Emerald Meats has argued that its financial position (which was moreover a direct consequence of the unlawful administration of the tariff quotas) was so bad that it was not able to lodge the guarantee required either directly or by means of a bank guarantee and that it was for that reason not able to have the import licences issued to it until several months after the date on which it could have obtained them if no guarantee had been required. That delay caused Emerald Meats considerable loss for which it claims that the Commission is obliged to pay compensation.

84. It is clear that Emerald Meats could have sought compensation from the Commission for the expense it would have incurred if it had lodged the guarantee. More questionable is whether it can claim damages for the loss occasioned by the delay in the issue of import licences if the only reason for that delay is that its financial position prevented it from lodging a guarantee. As mentioned above, the Commission did not incur liability towards Emerald Meats for the conduct which, in the opinion of the latter, was the cause of its financial position. In my view, the Commission's argument must be accepted that a company which wishes to share in the very considerable economic advantages associated with the obtaining of import licences may also be expected to be able to lodge the required guarantee for payment of the import duties which may be levied if it transpires that the company is not entitled to a share of the tariff quota. The necessary causal connection between the Commission's unlawful conduct and the alleged loss is therefore lacking.

85. I therefore conclude that the Commission should not be ordered to pay Emerald Meats damages in respect of the administration of the 1991 tariff quota either.

Costs

86. The Court should consider making use of the possibilities under Article 69(3) of the Rules of Procedure and order that the parties bear their own costs. In my opinion, there are exceptional circumstances in these cases to justify such a decision. Particular reference may be made to the 'novelty and complexity' of the cases. I would also attach some significance to the fact that Emerald

Meats, which has evidently incurred considerable expense in bringing its case, was in a position where it was convinced that the Commission had a duty to intervene with the Irish authorities and the Commission in any event throughout the greater part of the proceedings showed that it considered that the application by Emerald Meats was justified and ought to have been approved by the Irish authorities. It may perhaps also be questioned whether the Commission intimated to Emerald Meats with sufficient clarity and consistency that it did not, under the administrative system, have powers of verification or intervention *vis-à-vis* the authorities of the Member States.

The possibility of staying these proceedings until the Supreme Court has delivered its judgment

87. If the Court concurs with my views on the resolution of the procedural and substantive problems in these cases, it is proper that it should deliver judgment without awaiting the decision of the Supreme Court on the appeal pending before it.

However, I also observed above that it may be difficult to rule on these cases without at the same time deciding questions which may be directly or indirectly relevant to issues in the proceedings before the Supreme Court, and that this is not altogether unexceptionable when one considers that the Court of Justice is acquainted only indirectly with the legal views and supporting arguments of the Irish authorities.

In addition, if the Court should disagree with me and find that the Commission had already incurred liability in respect of the administration of the 1990 tariff quota, it is possible that the Supreme Court's judgment may be relevant to a decision on the claim by Emerald Meats for damages. If the Supreme Court should uphold the Irish Department of Agriculture's contention that it acted correctly in accepting the applications from the meat processing companies, such a result may have relevance for the decision by the Court of Justice on the claim for damages brought by Emerald Meats against the Commission.

There may therefore, in my view, be grounds for the Court to consider whether it should stay the proceedings until the Supreme Court has delivered judgment on the appeal pending before it. [32]

32 — That was what the Court decided in its judgment in Joined Cases 5/66, 7/66 and 13/66 to 24/66 *Kampffmey-er and Others* v *Commission* [1967] ECR 245.
The Court held, *inter alia*, that:
It is necessary to avoid the applicants' being insufficiently or excessively compensated for the same damage by the different assessment of two different courts applying different rules of law. Before determining the damage for which the Community should be held liable, it is necessary for the national court to have the opportunity to give judgment on any liability on the part of the Federal Republic of Germany. This being the case, final judgment cannot be given before the applicants have produced the decision of the national court on this matter ...' (page 266).
In my opinion, that judgment demonstrates that there may be cases in which it is appropriate for the Court to stay proceedings in a case pending before it. As I understand it, however, that judgment does not imply that this must be done in every case in which actions for damages brought by the same applicant are pending before the Court of Justice and a national court.

Conclusion

88. Unless the Court decides to stay the proceedings, I take the view that the Court should in the three cases, for the reasons outlined above:

(1) Rule that there is no need to give a decision on the applicant's claims for annulment;

(2) Dismiss the applicant's claims for damages against the Commission;

(3) Order the parties to bear their own costs.