JUDGMENT OF THE COURT
9 November 1995 *

In Case C-466/93,

REFERENCE to the Court under Article 177 of the EC Treaty by the Verwaltungsgericht Frankfurt am Main, Germany, for a preliminary ruling in the proceedings pending before that court between

Atlanta Fruchthandelsgesellschaft mbH and Others

and

Bundesamt für Ernährung und Forstwirtschaft,

on the validity of Title IV and Article 21(2) of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ 1993 L 47, p. 1),

THE COURT,

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

* Language of the case: German.

Advocate General: M. B. Elmer,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Atlanta Fruchthandelsgesellschaft mbH and Others, by E. A. Undritz and G. Schohe, Rechtsanwälte, Hamburg,

— the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and B. Kloke, Regierungsrat in that Ministry, acting as Agents,

— the Spanish Government, by A. Navarro González, Director-General of Community Legal and Institutional Coordination, and Rosario Silva de Lapuerta, Abogado del Estado, of the State Legal Service, acting as Agents,

— the French Government, by C. de Salins, Deputy Director in the Legal Affairs Department of the Ministry of Foreign Affairs, and N. Eybalin, Secretary for Foreign Affairs in that Department, acting as Agents,

— the Council of the European Union, by A. Brautigam, Legal Adviser, acting as Agent,

— the Commission of the European Communities, by U. Wölker, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Atlanta Fruchthandelsgesellschaft mbH and Others, the German Government, the Spanish Government, the United Kingdom,

represented by E. Sharpston, Barrister, and the Commission at the hearing on 28 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 5 July 1995,

gives the following

Judgment

1 By order of 1 December 1993 received at the Court Registry on 14 December 1993, the Verwaltungsgericht (Administrative Court) Frankfurt am Main referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the validity of Title IV and Article 21(2) of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ 1993 L 47, p. 1, hereinafter 'the Regulation').

2 Those questions arose in proceedings between Atlanta Fruchthandelsgesellschaft mbH and 17 other companies in the Atlanta group (hereinafter 'the Atlanta companies') and the Bundesamt für Ernährung und Forstwirtschaft (Federal Office of Food and Forestry, hereinafter 'the Bundesamt') on the allocation of import quotas for third-country bananas.

3 Title IV of the Regulation, on trade with third countries, provides in Article 18 that a tariff quota of two million tonnes (net weight) is to be opened each year for imports of third-country bananas and non-traditional ACP bananas. Within the framework of that quota, imports of non-traditional ACP bananas are to be

subject to a zero duty and imports of third-country bananas to a levy of ECU 100 per tonne. Outside that quota, imports of non-traditional ACP bananas are to be subject to a levy of ECU 750 per tonne and imports of third-country bananas to a levy of ECU 850 per tonne.

4 Article 19(1) subdivides the tariff quota: 66.5% is to be opened to the category of operators who have marketed third-country and/or non-traditional ACP bananas, 30% to the category of operators who have marketed Community and/or traditional ACP bananas, and 3.5% to the category of operators established in the Community who have started marketing bananas other than Community and/or traditional ACP bananas from 1992.

5 Article 21(2) of the Regulation discontinues the annual duty-free import quota for bananas enjoyed by the Federal Republic of Germany under the Protocol annexed to the Implementing Convention on the Association of the Overseas Countries and Territories with the Community provided for in Article 136 of the Treaty.

6 In accordance with the Community legislation, the Atlanta companies, which were traditional importers of third-country bananas, received from the Bundesamt provisional import quotas for third-country bananas for the period from 1 July to 30 September 1993.

7 Since they considered that the Regulation had limited their import possibilities, the Atlanta companies lodged complaints with the Bundesamt.

8 The Verwaltungsgericht Frankfurt am Main, hearing the application against the rejection of those complaints, stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'1 Are the provisions of Title IV, in particular Articles 17, 18, 19, 20 (second paragraph) and 21(2) of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ 1993 L 47, p. 1) invalid simply because the adoption of the Regulation involved breaches of essential procedural requirements, in that

(a) the Council, in breach of the third subparagraph of Article 43(2) and Article 149(1) of the EEC Treaty, adopted a version of Regulation (EEC) No 404/93 which differed substantially from the proposal from the Commission (OJ 1992 C 232, p. 3), or referred to an amended version of the Commission's proposal which had been adopted in a manner which did not comply with the Commission's Rules of Procedure;

(b) the Council, in breach of the third subparagraph of Article 43(2) of the EEC Treaty, adopted a version of Regulation (EEC) No 404/93 which differed substantially from the Commission's original proposal, without again consulting the European Parliament;

(c) the Council, in breach of Article 190 of the EEC Treaty, did not state any appropriate legal basis for raising the import duty on fresh bananas, did not state any reasons for raising the import duty and subdividing the tariff quota and in addition did not refer to the relevant proposal from the Commission?

2 If the answer to Question 1 is that Regulation (EEC) No 404/93 was adopted without any procedural error and accordingly is valid, the court seeks answers to the following questions:

(a) Could the tariff quota specified in the Protocol on the tariff quota for imports of bananas annexed to the Implementing Convention on the Association of the Overseas Countries and Territories with the Community provided for in Article 136 of the Treaty be discontinued only under the conditions set out in Article 236 of the EEC Treaty, and is Article 21(2) of Regulation (EEC) No 404/93 consequently invalid?

(b) Are Articles 42, 43 and 39 of the EEC Treaty a sufficient legal basis for the provisions of Title IV of Council Regulation (EEC) No 404/93?

(c) Are the provisions of Title IV, in particular Articles 17 to 19 and the second paragraph of Article 20, of Council Regulation (EEC) No 404/93 invalid because

(aa) they infringe the principles of freedom of competition (Articles 38(2), 3(f) and 85 et seq. of the EEC Treaty),

(bb) they infringe the prohibition of discrimination (second subparagraph of Article 40(3) of the EEC Treaty),

(cc) they infringe the applicants' right to property,

(dd) they infringe the principle of protection of legitimate expectations recognized in Community law and

(ee) they infringe the principle of proportionality recognized in Community law?'

9 In answering those questions, it should be noted that the Federal Republic of Germany brought an action for annulment of the Regulation, in which it relied on a number of pleas in law which cover most of the national court's questions on the validity of the Regulation.

10 That action was dismissed by the Court as unfounded by judgment of 5 October 1994 (Case C-280/93 *Germany* v *Council* [1994] ECR I-4973).

11 Neither the order for reference nor the observations submitted to the Court have added anything new to alter the Court's findings in that judgment. In particular, while the applicants in the main proceedings referred to difficulties in applying the Regulation and the resulting consequences for their activities, such circumstances cannot affect the validity of the Regulation, which alone is the subject of the Verwaltungsgericht's questions.

12 With respect to the part of Question 1(c) which refers to an alleged breach of Article 190 of the Treaty on the ground that the Council did not provide an appropriate statement of its reasons for raising the import duty and subdividing the tariff quota, that point was not addressed by the Court in its judgment in *Germany* v *Council*, cited above, and must therefore be examined in the present proceedings.

13 The Regulation established a common system for imports which replaced the various national arrangements and in particular the special arrangement whereby the Federal Republic of Germany was permitted to import an annual quota of third-country bananas free of customs duty.

14 That common system is based on a tariff quota with a customs duty of ECU 100 per tonne, calculated on the basis of the 20% customs duty which the Community had consolidated at GATT level and which applied in the Benelux countries, Denmark and Ireland.

15 There can therefore be no question of raising the import duty on the Community market as a whole, but at most on the German market, which no longer benefits from the derogation.

16 As regards the criticism by the national court of the lack of reasons for the rate of import duty adopted, the Court has consistently held that the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. The reasoning of the institution which adopted the measure must be stated clearly and unequivocally, so as to inform persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review. It also follows from that case-law that the statement of reasons for a measure is not required to detail every relevant point of fact and law, as the question whether the statement of reasons satisfies the requirements of Article 190 of the Treaty must be considered with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question. Consequently, if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for each of the technical choices made by the institution (see *inter alia* the

judgments in Case 250/84 *Eridania Zuccherifici Nazionali* v *Cassa Conguaglio Zucchero* [1986] ECR 117, paragraphs 37 and 38, and, most recently, Case C-478/93 *Netherlands* v *Commission* [1995] ECR I-3081, paragraphs 48 and 49).

17 In the case of the regulation which is the subject of the Verwaltungsgericht's questions, the Court notes, firstly, that the eleventh recital in the preamble makes it clear that imports not falling within the tariff quota are to be subject to sufficiently high rates of duty to permit Community production and imports of traditional ACP bananas to be disposed of in acceptable conditions. Secondly, the 13th and 14th recitals in the preamble to the Regulation unequivocally show the reasons by which the Council was guided in defining the criteria for subdividing the tariff quota.

18 Consequently, the argument that the Regulation is invalid because of an inadequate statement of reasons, contrary to Article 190 of the Treaty, must also be rejected.

19 The Verwaltungsgericht has not raised any grounds of invalidity capable of altering the assessment of the Regulation's validity. In those circumstances, the answer to that court's questions must be that consideration of Title IV and Article 21(2) of the Regulation, in the light of the grounds of the order for reference, has disclosed no factor of such a kind as to affect their validity.

Costs

20 The costs incurred by the German, Spanish and French Governments and the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Verwaltungsgericht Frankfurt am Main by order of 1 December 1993, hereby rules:

Consideration of Title IV and Article 21(2) of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas, in the light of the grounds of the order for reference, has disclosed no factor of such a kind as to affect their validity.

Rodríguez Iglesias Kakouris Edward Puissochet

Hirsch Mancini Schockweiler Moitinho de Almeida

Kapteyn Gulmann Murray Jann Ragnemalm

Delivered in open court in Luxembourg on 9 November 1995.

R. Grass — Registrar

G. C. Rodríguez Iglesias — President