Case C-106/90 R

Emerald Meats Ltd
v
Commission of the European Communities

(Tariff quota — Beef and veal — Import licences)

Order of the President of the Court, 14 August 1990 3377

Summary of the Order

Application for interim measures — Suspension of operation — Interim measures — Conditions for granting — Prima-facie *case — Appropriateness of the measures applied for (EEC Treaty, Arts 185 and 186; Rules of Procedure, Art. 83 (2))*

ORDER OF THE PRESIDENT OF THE COURT
14 August 1990 *

In Case C-106/90 R,

Emerald Meats Ltd, a company governed by Irish law, whose registered office is in Dublin, represented by John Ratliff, barrister of the Middle Temple, of Stanbrook and Hooper, Brussels, instructed by John Lavery, solicitor, of Lavery,

* Language of the case English.

Kirby & Company, Dublin, with an address for service in Luxembourg at the offices of Stanbrook and Hooper, 3 rue Thomas-Edison,

applicant,

v

Commission of the European Communities, represented by Peter Oliver, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for:

(a) an order suspending the operation of:

(i) the decision taken by the Commission pursuant to Article 6(1) of 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 (Official Journal 1989 L 382, p. 53) determining to what extent applications for import licences under the Community tariff quota for frozen meat of bovine animals for 1990 should be accepted,

(ii) that part of 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 (Official Journal 1990 L 37, p. 11) which is based on the abovementioned decision,

(b) an interim order that the Commission should take such steps as are necessary for the applicant to be granted, pursuant to Article 1(1) and (2) of Regulation No 4024/89, that share of the tariff quota in issue to which it claims to be entitled,

THE PRESIDENT OF THE SECOND CHAMBER

acting for the President of the Court in accordance with the second paragraph of Article 85 and Article 11 of the Rules of Procedure of the Court,

after hearing the views of Mr Advocate General Mischo,

makes the following

Order

1 By an application lodged at the Court Registry on 18 April 1990, Emerald Meats Ltd brought an action under the second paragraph of Article 173 and Articles 178 and 215 of the EEC Treaty seeking:

(a) the annulment of:

(i) the decision taken by the Commission pursuant to Article 6(1) of 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 (Official Journal 1989 L 382, p. 53) deciding to what extent applications for import licences under the Community tariff quota for frozen meat of bovine animals for 1990 (hereinafter referred to as 'the tariff quota') should be accepted, and/or

(ii) that part of 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 (Official Journal 1990 L 37, p. 11) which is based on the abovementioned decision, and

(b) an order that the European Economic Community should pay the applicant damages for the loss which it has suffered and will suffer as a result of the Commission's failure to administer and manage the Community quota correctly.

2 By a separate document, lodged at the Court Registry on 13 July 1990, Emerald Meats submitted an application for interim measures under Article 186 of the EEC Treaty, asking the Court to order the suspension of the operation of the measures contested in the main action and to order the Commission to take such steps as are necessary for the applicant to be granted that share of the tariff quota in issue to which it claims to be entitled.

3 Article 1 of 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) (Official Journal 1989 L 378, p. 16) opens a Community tariff quota totalling 53 000 tonnes for 1990.

4 Under Article 2 of the regulation, that total is to be divided into two parts the first of which, equal to 90%, is to be apportioned for importers who can prove they have imported frozen meat falling within the relevant CN codes during the last three years and the second of which, equal to 10%, is to be apportioned for operators who can prove that they engage in trade, involving a minimum quantity and for a period to be determined, with non-member countries in beef and veal other than that to which the import arrangements apply and excluding meat which is the subject of inward or outward processing traffic.

5 Article 3(1) of the regulation provides that quantities which have not been covered by an import licence application at 31 August 1990 are to be the subject of a further allocation during the fourth quarter of that year, without account necessarily being taken of the apportionment referred to in Article 2.

6 Article 1(1) and (2) of Regulation No 4024/89, cited above, reiterates the criteria for the apportionment of the two parts of the tariff quota. Article 1(3) of that regulation provides that proof of having imported frozen meat falling within the relevant CN codes during the last three years is to be provided by means of the customs document of release for free circulation. In accordance with that paragraph, Member States may provide that such proof may be furnished by the holder whose name appears in box 4 of the import licence.

7 Article 4(1) of Regulation No 4024/89 provides that importers are to present to the competent authorities the application for an import licence together with the proof referred to in Article 1(3) by 19 January 1990 at the latest, and that the Member States are to forward a list of importers to the Commission by 31 January 1990 at the latest.

8 Article 6(1) empowers the Commission to decide to what extent applications may be accepted.

9 Emerald Meats is an undertaking established in Ireland which imports meat products into the Community. In January 1990 it lodged an application pursuant to Article 1(1) of Regulation No 4024/89 for an import licence under the tariff quota and produced, in support of its application, certain documents in order to provide proof in accordance with Article 1(3).

10 Taking the view that, in respect of two-thirds of the quantities it imported in 1987, 1988 and 1989, Emerald Meats had acted as agent for meat processors who had previously been given a tariff quota allocation under the Irish national sub-quota and had themselves submitted applications for 1990, the Irish Department of Agri-

culture, in accordance with Article 4 of Regulation No 4024/89, forwarded to the Commission a list of importers' names, in which Emerald Meats was shown as having imported a quantity equivalent to only one-third of that which the company had declared.

11 At the end of January 1990, Emerald Meats, claiming that the Irish Department of Agriculture had incorrectly assessed the quantities it had imported, raised the matter with the Commission, which immediately requested details from the Irish authorities.

12 On 8 February 1990, the Commission adopted Regulation No 337/90, cited above, Article 1(1)(a) of which provides that every application for an import licence lodged in accordance with Regulation No 4024/89 is to be granted to the extent of 321.581 kg per tonne imported in 1987, 1988 and 1989 for importers as defined in Article 1(1) of Regulation No 4024/89. Article 1(2) of Regulation No 337/90 provides that Member States are to issue the import licences as from 8 February 1990.

13 Commission Regulation (EEC) No 143/90 of 19 January 1990 modifying Regulation (EEC) No 4024/89 (Official Journal 1990 L 16, p. 29) deferred the closing date for lodging applications for import licences to 24 January 1990.

14 Emerald Meats was unable to obtain satisfaction in the discussions between it and the Commission and those between the Commission and the Irish Department of Agriculture and on 18 April 1990 it therefore brought an action seeking a declaration that the contested measures were void and damages in respect of non-contractual liability; on 13 July 1990 it submitted the present application for interim measures.

15 Even before starting proceedings before the Court, Emerald Meats had brought an action in the Irish courts against the Irish Department of Agriculture's decision not to regard it as the importer of all the quantities declared.

16 Article 185 of the EEC Treaty provides that actions before the Court of Justice are not to have suspensory effect. However, in accordance with Article 186 of the EEC Treaty, the Court may in any cases before it prescribe any necessary interim measures.

17 Under Article 83(2) of the Rules of Procedure of the Court, an order for interim measures may be made only if there are circumstances giving rise to urgency and factual and legal grounds establishing a prima-facie case for the interim measures applied for.

18 With regard to the factual and legal grounds establishing a prima-facie case for the interim measures, the applicant claims that Regulation No 337/90 in fact constitutes a decision which, although in the form of a regulation, is of direct and individual concern to the applicant, and that an action against that decision is therefore admissible. Regulation No 4024/89 establishes a system of Community administration of the tariff quota under which the Commission is empowered to take the decisions as to the allocation of shares. The applicant complied with the conditions of proof contained in the Community rules, which apply uniformly throughout the Community, and the Commission had a duty to verify the information supplied to it by Ireland and rectify any mistakes brought to its attention.

19 The Commission maintains that under Article 4 in conjunction with Article 6 of Regulation No 4024/89 the Member States are to forward to the Commission a list of importers and the Commission is to decide what proportion of the licences applied for are to be granted, as it did in Regulation No 337/90. The Commission has no wider duty of verification. Nor could it have delayed adopting Regulation No 337/90 until the outcome of any investigation.

20 With regard to the interim measures applied for, the Commission submits that it has no power under the Community rules to grant Emerald Meats the licences it has applied for or to order Ireland to do so.

21 In the Commission's submission, even if the operation of the alleged decision taken pursuant to Article 6(1) of Regulation No 4024/89, or of any part of Regulation No 337/90, were suspended, it would still not have the power to grant the applicant the relief which it seeks.

22 Without there being any need to take a decision, at the stage of the present application for interim measures, on the admissibility of the application for the annulment of a measure which appears, on the face of it, to be of general application, it must be observed that Emerald Meats has failed to establish, even prima facie, in what way the annulment of that measure could give it satisfaction.

23 The applicant's claims actually relate not to the determination of the quantities of meat of bovine animals which each individual operator may import under the global Community quota on the basis of imports in 1987, 1988 and 1989, but to the fact that the competent Irish national authorities have — wrongly, it is claimed — failed to take into consideration certain imports by Emerald Meats during the reference years.

24 With regard to the application for the suspension of the operation of Regulation No 337/90, it must be pointed out that Emerald Meats has been unable to establish how a decision of the Court ordering the suspension of the rules governing the apportionment of the Community quota among individual operators could lead to the granting of import licences for the quantities to which the applicant claims to be entitled.

25 With regard to the application for an order requiring the Commission to take such steps as are necessary for Emerald Meats to be granted the import licences to which it claims to be entitled under the two parts of the tariff quota in view of its imports during 1987, 1988 and 1989, it must be stressed that such an order could

be envisaged only if the Commission had the power to give the Member States instructions regarding the grant of licences to specific traders.

26 However, Emerald Meats has failed to make out a prima-facie case for concluding that, if the contested provisions were annulled, the Commission would itself have the power to apportion the tariff quota among the individual operators.

27 In those circumstances, it must be held that Emerald Meats has failed to substantiate the factual and legal grounds establishing a prima-facie case for the interim measures applied for.

28 The Commission expresses its concern that justice should be done and the regulations properly administered and states that it is anxious not to become embroiled in the same difficulties next year; it therefore proposes that, pursuant to Article 22 of the Statute of the Court of Justice of the European Communities and Article 45 of the Rules of Procedure, an expert should be appointed to determine Emerald Meats' entitlement.

29 At the present stage of the proceedings and in view of the position taken by the Commission, which denies that it has any power to adopt measures which could give Emerald Meats satisfaction, it does not appear that the findings which an expert could reach could be of any decisive interest in the settlement of the dispute in the main action.

30 There are therefore no grounds for ordering an expert's report on the points referred to by the Commission.

On those grounds,

THE PRESIDENT OF THE COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

hereby orders:

(1) The application for interim measures is dismissed;

(2) The costs are reserved.

Luxembourg, 14 August 1990.

For the Registrar

D. Louterman

Principal Administrator

For the President

F. A. Schockweiler

President of Chamber