ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
27 February 2002 *

In Case T-139/01,

Comafrica SpA, established in Genoa (Italy),
Dole Fresh Fruit Europe Ltd & Co., established in Hamburg (Germany),
represented by B. O'Connor, Solicitor, and P. Bastos Martin, Barrister,

applicants,

v

Commission of the European Communities, represented by L. Visaggio and K. Fitch, of its Legal Service, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for, on the one hand, annulment of Commission Regulation (EC) No 896/2001 of 7 May 2001 laying down detailed rules for applying Council

* Language of the case: English.

Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community (OJ 2001 L 126, p. 6) and Commission Regulation (EC) No 1121/2001 of 7 June 2001 fixing the adjustment coefficients to be applied to each traditional operator's reference quantity under the tariff quotas for imports of bananas (OJ 2001 L 153, p. 12) and, on the other hand, for damages and interest in compensation for the loss allegedly caused to the applicants by the adoption of Regulations No 896/2001 and No 1121/2001,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges,

Registrar: H. Jung,

makes the following

Order

1 Comafrica SpA and Dole Fresh Fruit Europe Ltd & Co. market bananas in the Community. They are incorporated in Italy and Germany respectively where they are registered with the competent national authorities as traditional operators A/B for the purposes of Commission Regulation (EC) No 896/2001 of 7 May 2001 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community (OJ 2001 L 126, p. 6).

2 By application lodged at the Court Registry on 19 June 2001, the applicants brought this action seeking annulment of Commission Regulations (EC) No 896/2001 and No 1121/2001 of 7 June 2001 fixing the adjustment coefficients to be applied to each traditional operator's reference quantity under the tariff quotas for imports of bananas (OJ 2001 L 153, p. 12) (hereinafter 'the contested regulations') together with compensation for the loss allegedly caused to them by the adoption of those regulations.

3 By application lodged at the Court Registry on 5 October 2001 the Kingdom of Spain, represented by R. Silva de Lapuerta, acting as Agent, having an address for service in Luxembourg, applied to intervene in the action in support of the order sought by the Commission. That application was notified to the parties in accordance with Article 116(1) of the Rules of Procedure of this Court. The Commission and the applicants lodged their observations on 18 and 22 October 2001 respectively.

4 By application lodged at the Court Registry on 25 October 2001, Simba SpA, established in Milan (Italy), represented by S. Carbone and F. Mundari, avvocati, applied to intervene in support of the orders sought by the applicants. That application was notified to the parties pursuant to Article 116(1) of the Rules of Procedure. The applicants and the Commission lodged observations on 9 and 23 November 2001 respectively.

5 By letter lodged at the Court Registry on 22 October 2001, the applicants requested confidential treatment of certain matters in their application as against the Kingdom of Spain. By letter lodged at the Court Registry on 9 November 2001 they made the same request as against Simba. The applicants lodged a non-confidential version of their application.

6 By letter lodged at the Court Registry on 18 December 2001, the applicants applied for confidential treatment of annex 2 to their reply as against the Kingdom of Spain and Simba. They furnished a non-confidential version of that pleading.

7 The President referred the applications to the Court of First Instance (Fifth Chamber) on the terms laid down in Article 116(1) of the Rules of Procedure.

The Kingdom of Spain's application to intervene

8 No objection has been raised to the application to intervene made by the Kingdom of Spain.

9 That application having been made pursuant to Article 37, first paragraph, of the EC Statute of the Court of Justice, and having been lodged in accordance with Article 115(1) and (2) of the Rules of Procedure of this Court, the Kingdom of Spain will be admitted as intervener in support of the Commission.

On the application to intervene by Simba

Arguments of Simba and the parties

10 In support of its application to intervene Simba argues that it has an interest in the result of the case in that it too is directly and individually concerned by the

contested regulations. It argues, in particular, that it markets bananas in the Community, that it is registered as a 'traditional operator A/B' with the competent authorities in Italy and that 'its reference quantities had been "taken into account for 1998", in accordance with Article 4(1) of [Regulation No 896/2001]'. It submits that the contested regulations severely limit its opportunities to import, process, distribute and market bananas.

11 It contends, moreover, that its application was lodged within the time-limit prescribed by Article 115(1) of the Rules of Procedure. It points out in that regard that the six-week period prescribed in that provision ended on 13 October 2001. As that was a Saturday, the time allowed was extended until 15 October 2001. With the addition of the 10 days' extension on account of distance, the time-limit expired on 25 October 2001.

12 The applicants state that they do not propose to make any submissions on the application to intervene made by Simba.

13 The Commission, on the other hand, is opposed to the application.

14 In the first place it submits that it is manifestly inadmissible in that it was not made within the six-week period prescribed in Article 115(1) of the Rules of Procedure, extended by 10 days on account of distance by virtue of Article 102(2) of those Rules. Under those provisions the application to intervene should have been lodged by 23 October 2001 at the latest.

15 In the second place the Commission argues that Simba does not have 'a direct and existing interest in the result of the case'. It submits that the application is manifestly inadmissible in so far as it relates to the claim for damages and the request for measures of inquiry and inadmissible so far as concerns the claim for annulment. As regards the latter, the Commission submits that Simba will be affected by the forthcoming judgment in the same way as any other operator in the banana sector. It points out that the company could have brought its own action for annulment of the contested regulations within the two-month time-limit prescribed in the fifth paragraph of Article 230 EC while maintaining that any such action would in any event be declared inadmissible given that Simba is neither directly nor individually concerned by the contested regulations.

Findings of the Court

16 It is necessary to determine first whether the intervention application has been made within the prescribed time-limit.

17 Article 115(1) of the Rules of Procedure provides:

'An application to intervene must be made either within six weeks of the publication of the notice referred to in Article 24(6) or, subject to Article 116(6), before the decision to open the oral procedure as provided for in Article 53.'

18 Article 116(6) provides:

'Where the application to intervene is made after the expiry of the period of six weeks prescribed in Article 115(1), the intervener may, on the basis of the Report for the Hearing communicated to him, submit his observations during the oral procedure.'

19 Article 101(1)(b) of the Rules of Procedure provides that 'a period expressed in weeks... shall end with the expiry of whichever day in the last week..., or falls on the same date... as the day during which the event or action from which the period is to be calculated occurred or took place'. Pursuant to Article 101(2) of those Rules, '[if] the period would otherwise end on a Saturday, Sunday or official holiday, it shall be extended until the end of the first following working day'.

20 By virtue of Article 102(2) of the Rules of Procedure 'the prescribed time-limits shall be extended on account of distance by a single period of 10 days'.

21 In this case notice of the commencement of the action was published in the *Official Journal of the European Communities* on Saturday 1 September 2001 (OJ 2001 C 245, p. 26). It follows that the period of six weeks prescribed in Article 115(1) of the Rules of Procedure, extended by 10 days on account of distance, expired on 23 October 2001 at midnight. As that day was neither a Saturday nor a Sunday but a Tuesday, and was not an official holiday, no postponement on the basis of Article 101(2) of the Rules was warranted. In this regard, it must be borne in mind that this last provision does not fall to be applied unless the total period, including the extension on account of distance, expires on

a Saturday, a Sunday or on an official holiday (order of the Court of First Instance in case T-85/97 *Horeca-Wallonie* v *Commission* [1997] ECR II-2113, paragraph 25). The calculation of the time-limit put forward by Simba (see paragraph 11 above) cannot therefore be accepted.

22 The Court therefore holds that Simba has not made its application to intervene within the six-week period prescribed in Article 115(1) of the Rules of Procedure. It does not follow, however, that the application therefore falls to be dismissed as inadmissible. By virtue of that provision as read in conjunction with Article 116(6) of the Rules of Procedure, Simba would be entitled, should it wish to do so and subject to its establishing an interest in the result of the case (see paragraphs 23 to 27 below) to submit its observations at the hearing in the case on the basis of the Report for the Hearing.

23 It is therefore necessary to determine whether Simba has established an interest in the result of the case in accordance with Article 37, second paragraph, of the EC Statute of the Court of Justice.

24 It follows from settled case-law that the concept of an interest in the result of the case for the purposes of that provision is to be understood as a direct and existing interest in the grant of the order sought (order of the President of the First Chamber of the Court of First Instance in case T-138/98 *ACAV and Others* v *Council* [1999] ECR II-1797, paragraph 14).

25 While it is unnecessary at this stage of the procedure to decide whether Simba is directly and individually concerned by the contested regulations, it is necessary to ascertain whether it has sufficiently proved its direct and existing interest in the grant of the claim for annulment. It is, in fact, common ground that Simba, like the applicants, imports and markets bananas in the Community and that it is registered with the competent national authorities as a 'traditional operator A/B' pursuant to Regulation No 896/2001. Furthermore, it is not disputed by the

parties that Simba's reference quantity was calculated in accordance with the provisions of Article 4(1) of that regulation and that it was affected by the adjustment coefficient fixed pursuant to Regulation No 1121/2001, which was adopted on the basis of Article 5 of Regulation No 896/2001. It follows that that company is directly affected by the contested regulations, so that its interest in the result of the case is certain.

26 In those circumstances it is appropriate to admit Simba as an intervener in the action in support of the applicants claim for annulment.

27 On the other hand, Simba has not put forward any argument demonstrating that it has any direct or existing interest in the grant of the claims for damages brought by the applicants so that the application to intervene must be dismissed in that regard.

The requests for confidential treatment

28 The applicants request confidential treatment, as against both the Kingdom of Spain and Simba, of certain matters contained in the case-file namely:

— paragraphs 126 to 131 of the application, containing figures relating to the losses allegedly sustained by the applicants;

— Annex 2 to the reply, containing the replies given by the applicants to written questions put to them by the President of this Court in the course of the proceedings for interim relief (Case T-139/01 R).

29 As Simba applied to intervene after the expiry of the period of six weeks prescribed in Article 115(1) of the Rules of Procedure, it will receive in due course only the Report for the Hearing prepared in this case, on the basis of which it may submit its observations at the hearing.

30 So far as concerns the Kingdom of Spain, the pleadings to be furnished at this stage will include the non-confidential versions of the application and the reply furnished by the applicants. If necessary, a decision on the merits of the application for confidential treatment will be taken at a later stage in the light of any objection or observations which may be lodged.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

hereby orders:

1. The Kingdom of Spain is admitted as intervener in this case in support of the Commission.

2. The Registrar will furnish the Kingdom of Spain with the non-confidential versions of the application and the reply.

3. A date shall be fixed by which the Kingdom of Spain may lodge its observations on the application for confidentiality. A decision on the merits of the application for confidentiality is reserved for that purpose.

4. A date shall be fixed by which the Kingdom of Spain may lodge a statement in intervention without prejudice to its right to lodge a supplementary statement following a decision on the merits of the application for confidential treatment.

5. Simba SpA is admitted as intervener in support of the applicants' claim for annulment. Pursuant to Article 116(6) of the Rules of Procedure, the Registrar shall furnish to it in due course the Report for the Hearing, on the basis of which it may submit its observations.

6. Costs are reserved.

Luxembourg, 27 February 2002.

H. Jung

Registrar

J. D. Cooke

President