JUDGMENT OF THE COURT (Sixth Chamber)
26 October 1994 *

In Case C-430/92,

Kingdom of the Netherlands, represented by J. W. de Zwaan and T. Heukels, Assistant Legal Advisers at the Ministry of Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the Netherlands Embassy, 5 Rue C. M. Spoo,

applicant,

v

Commission of the European Communities, represented by H. van Lier, Legal Adviser, and B. Rodríguez, of its Legal Service, acting as Agents, assisted by J. Stuyck, of the Brussels Bar, with an address for service in Luxembourg at the office of G. Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision C (92) 2655 fin. of 6 November 1992 refusing a derogation from the definition of the concept of

* Language of the case: Dutch.

'originating products' in respect of pre-recorded video cassettes falling within code 8524 of the Combined Nomenclature requested by the Netherlands Antilles,

THE COURT (Sixth Chamber),

composed of: F. A. Schockweiler and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris (Rapporteur) and J. L. Murray, Judges,

Advocate General: C. Gulmann,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 5 May 1994,

after hearing the Opinion of the Advocate General at the sitting on 29 June 1994,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 December 1992 the Kingdom of the Netherlands brought an action under the first paragraph of Article 173 of the EEC Treaty seeking the annulment of Commission Decision C (92) 2655 fin. of

6 November 1992 refusing a derogation from the definition of the concept of 'originating products' in respect of pre-recorded video cassettes falling within code 8524 of the Combined Nomenclature requested by the Netherlands Antilles ('the contested decision').

2 The most recent decision adopted by the Council under Article 136 of the EEC-Treaty was Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1, and corrigendum in OJ 1991 L 331, p. 23, 'the OCT decision'). Article 101(1) of the decision provides that 'products originating in the OCT shall be imported into the Community free of customs duties and charges having equivalent effect'.

3 'Products originating in the OCT' is defined in Title I of Annex II of the OCT decision. Article 1 of the annex provides that a product shall be considered to be originating in the OCT if it has been either wholly obtained or sufficiently worked or processed there.

4 Article 3 of the same annex determines the requirements which must be met in order for products to be regarded as sufficiently processed in the OCT. For some products, however, the provision refers to Annex 2 to Annex II which lists the working or processing required to be carried out in the OCT on non-originating materials in order that the product may be regarded as an originating product.

5 Article 30 of Annex II provides for derogations to those rules regarding origin, thus enabling products which could not be regarded as products originating in the OCT on the basis of the abovementioned rules to acquire the status of originating products. The first paragraph of that article reads as follows:

'Derogations from this Annex may be adopted where the development of existing industries or the creation of new industries justifies them.

The Member State or, where appropriate, the relevant authorities of the country or territory concerned shall notify the Community of its request and shall give the reasons for the request in accordance with paragraph 2.

The Community shall respond positively to all requests which are duly justified in conformity with this article, in particular when substantial processing or working is carried out in the requesting OCTs, and which cannot cause serious injury to an established Community industry.'

The second paragraph lists the matters which must be covered by the information which the Member State or country or territory making the request must furnish. The paragraph refers to a form given in Annex 9 to Annex II, which must be filled out by the requesting country.

6 Article 30(8) provides:

'(a) The Council and the Commission shall take all the necessary measures to ensure that a decision is taken promptly and in any case not later than

60 working days after receipt of the request by the Chairman of the Committee on Origin. In this context, Decision 90/523/EEC shall apply *mutatis mutandis* to the OCT;

(b) If a decision is not taken within the time-limit referred to in subparagraph (a), the request shall be considered as accepted.'

7 Council Decision 90/523/EEC of 8 October 1990 on the procedure concerning derogations from the rules of origin set out in Protocol No 1 to the Fourth ACP-EEC Convention (OJ 1990 L 290, p. 33), to which the abovementioned paragraph 8(a) refers, provides in Article 2 that the representative of the Commission shall submit to the Committee on Origin set up by Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods (OJ, English Special Edition 1968 I, p. 165), as last amended by Regulation (EEC) No 1769/89 (OJ 1989 L 174, p. 11), a draft common position within 20 working days after the receipt of a request for derogation. The Committee's opinion is to be delivered by the majority laid down in Article 148(2) of the EEC-Treaty. The Commission is to adopt the common position of the Community, if that position is in accordance with the opinion of the Committee.

8 It appears from the file in this case that by letter of 27 May 1992 the Government of the Netherlands Antilles submitted a request to the Chairman of the Committee on Origin, through the offices of the Permanent Representative of the Netherlands to the Communities, for derogation under Article 30 of Annex II to the OCT decision. The request, which was received by the addressee on 1 June 1992, concerned pre-recorded video cassettes produced in Curaçao using material imported from Korea, Japan and the United States, and exported subsequently to the Com-

munity and the United States. The request included the form mentioned in Annex 9 to Annex II of the OCT decision, duly completed, and referred to the benefits of the proposed investment for the economy of the Antilles, and to the reasons for which the rule on origin could not be met by the finished product.

9 Following that request, the Commission sent to the Committee on Origin, on 5 June 1992, a note expressing its reservations concerning, *inter alia*, the sensitivity of the product in question and the fact that the work to be performed in the Netherlands Antilles appeared to be a relatively minor operation. It also drew the Committee's attention to the fact that the 60 working day time-limit provided for in the rules had commenced on 1 June 1992.

10 On 31 July 1992 the Commission wrote to the Netherlands Government indicating that it required further explanation on some matters before a decision could be made on the request for derogation. It also stated that the 60 working day time-limit would commence from the date on which it received adequate information on those matters.

11 The Netherlands Government replied by letter of 18 August 1992, in which it referred the Commission as regards certain matters raised in the letter of 31 July 1992 to information set out in the standard form attached to the request for derogation and pointed out that the Commission's observations concerned the merits of the request. At a meeting of the Committee on Origin on 7 October 1992 the representative of the Netherlands also made a declaration to the effect that the 60 working day time-limit had expired on 31 August 1992 and that the request for a derogation must be regarded as impliedly accepted.

12 In the contested decision, which was addressed to the Netherlands and to the Netherlands Antilles, the Commission refused the request for derogation.

13 In the application the Netherlands Government relies primarily on the argument that Article 30(8) of Annex II to the OCT decision, cited above, does not allow for an extension of the 60 working day time-limit, which is, moreover, wholly sufficient to allow the Committee on Origin and the Commission to seek additional information. The Chairman of the Committee on Origin received the request on 1 June 1992, and therefore the request must be regarded as having been impliedly accepted on the expiry of that time-limit, that is to say, well before 6 November 1992, the date on which the contested decision was adopted.

14 The Commission contends that according to Article 30(1), third subparagraph, cited above, requests for derogation must be duly justified in order to be accepted and that the time-limit only begins to run from the moment when they comprise all the information necessary to enable the Community to consider them. In this case, the request submitted by the Government of the Netherlands Antilles did not include all the necessary information.

15 Those conflicting views call for an interpretation of Article 30(8)(a) of Annex II to the OCT decision, which states that the time-limit of 60 working days begins to run after 'receipt of the request by the Chairman of the Committee on Origin'.

16 That wording indicates that it is sufficient, in order to start the 60 day period run-

ning, for the request to have been received by the Chairman of the Committee, provided, however, that it satisfies the formal requirements.

17 The second subparagraph of Article 30(1) of Annex II, read in conjunction with Article 30(2), indicates what is necessary for a request to be regarded as meeting the formal requirements: it must be accompanied by a file containing the fullest possible information, covering in particular the points listed in Article 30(2). The information must be furnished by the Member State or country or territory making the request by means of the form given in Annex 9 to Annex II.

18 That form comprises 21 boxes to be filled out by the requesting country or territory. The information asked for includes the commercial description, the customs classification and the value of third country, ACP, EEC or OCT materials, the working and processing to be made in those countries, the value added by that working, the anticipated annual exports to the Community, the value of the finished product, the reasons why the rule of origin for the finished product cannot be fulfilled, the amount of investments made or foreseen, the staff to be employed, the duration requested for the derogation and, finally, 'possible developments' to overcome the need for a derogation.

19 In the light of that it must be considered whether it is sufficient, in order for the 60 working day time-limit to begin to run, for the request to include the information requested in a manner which satisfies the formal requirements, so that the Committee on Origin and the Commission are in a position to decide on the

merits whether the request is to be accepted or rejected. Consequently, it is not necessary for the information to be regarded by the Commission as sufficient to justify the request for the time-limit to begin to run, since the question whether a request meets the formal requirements is distinct from consideration of its merits.

20 If the request satisfies the formal requirements as indicated above and the time-limit has validly commenced to run, the decision whether to accept or reject the request must be taken within that time-limit. The provisions considered above do not, however, prevent the Commission from seeking additional information, but if it does so the period in question is not thereby interrupted or extended and if the information is not forthcoming the Commission may make a decision on the basis of the information it has. If a decision is not made within the time-limit the request must be regarded as accepted, as provided for in Article 30(8)(b).

21 That interpretation is borne out by the fact that the time-limit was introduced for the first time into the association scheme by the OCT decision of 25 July 1991.

22 The scheme of association with overseas countries and territories, provided for by Articles 131 to 136 of the EEC Treaty, confers advantages on those countries and territories in order to further their economic and social development. Those advantages are reflected in both the customs exemptions applicable to products originating in the OCT when they are imported into the Community and in the derogations to the rules on origin introduced by Article 30 of Annex II to the

OCT decision which provides *inter alia* in paragraph (1), third subparagraph, referred to above, that the Community 'shall respond positively to all requests which are duly justified ...'. The provisions regarding the definition of 'originating products' are therefore to be interpreted in the light of that fundamentally favourable approach of the Community towards the OCT and to requests which are not liable to cause serious injury to an economic sector of the Community.

23 It must also be noted that the time-limit in question was introduced precisely in order to ensure that requests for derogation from the rules on origin are dealt with rapidly and efficiently by the Community authorities, and to provide legal certainty.

24 The interpretation set out above is the only one capable of guaranteeing rapid settlement of the situation by ensuring that requests are accepted or rejected within the time-limit. Moreover, it serves the interests of the OCT inasmuch as they may, if their requests are rejected, either refer the decision immediately to review by the Court or speedily submit a new request which includes the information referred to in the reasons for rejecting the original request.

25 The interpretation favoured by the Commission, by contrast, fails to distinguish clearly between the moment when the time-limit is considered to commence to run and consideration of the merits of the request. It also enables the Community

authorities to protract the procedure and fails to make clear, until the decision on the merits has been taken, whether or not the time-limit has already begun to run. That conflicts with the purposes of the association scheme, which are explained above, and with the requirements of legal certainty.

26 In this case, the reasons given for the contested measure do not establish that the request failed to satisfy the formal requirements, but indicate that after the Commission commenced its consideration of the merits of the request it had doubts as to whether it was justified and sought additional information from those concerned. Since that step on the part of the Commission was not capable of interrupting the 60 working day time-limit the request submitted by the Government of the Netherlands Antilles must be regarded, in accordance with Article 30(8)(b), as impliedly accepted on the expiry of that time-limit.

27 Accordingly, the contested decision is unlawful because the Commission was no longer empowered *ratione temporis* to reject the request following its implied acceptance, and it must therefore be annulled.

Costs

28 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for. Since the Commission has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Annuls Commission Decision C (92) 2655 fin. of 6 November 1992 refusing a derogation from the definition of the concept of 'originating products' in respect of pre-recorded video cassettes falling within code 8524 of the Combined Nomenclature requested by the Netherlands Antilles.**

2. **Orders the Commission to pay the costs.**

Schockweiler Kapteyn Mancini

Kakouris Murray

Delivered in open court in Luxembourg on 26 October 1994.

R. Grass F. A. Schockweiler

Registrar President of the Sixth Chamber