ORDER OF THE COURT
23 FEBRUARY 1983 [1]

Chris International Foods Ltd
v Commission of the European Communities

Joined Cases 91 and 200/82

Procedure — Intervention — Non-member country — Permission to intervene — Conditions
(Statute of the Court of Justice of the EEC, Art. 37, second paragraph)

In Joined Cases 91 and 200/82

CHRIS INTERNATIONAL FOODS LTD,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES,

defendant,

supported by

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND IRELAND,

interveners.

By applications lodged at the Court Registry on 18 March and 5 August 1982 the applicant brought before the Court two actions under Article 173 of the EEC Treaty claiming that the Court should declare void the decisions of the Commission of 18 December 1981 and 28 May 1982 adopted on the basis of Article 115 of the EEC Treaty authorizing the United Kingdom not

1 — Language of the Case: English.

to apply Community treatment to fresh bananas falling within heading No 08.01 of the Common Customs Tariff, originating in certain dollar-area countries and in free circulation in the other Member States, together with an action for damages under Articles 178 and 215 of the EEC Treaty for loss of profit resulting from the said decisions.

In both its statements of defence the Commission contends that the applications to have the decisions declared void are inadmissible, but does not make any application by a separate document for a decision on the preliminary objection, as provided for by Article 91 (2) of the Rules of Procedure. The Commission points out that the contested decision is addressed to the United Kingdom and contends that it is not of direct and individual concern to the applicant.

As regards the action for damages in Case 91/82, the Commission does not formally contest its admissibility but submits that it has been brought too soon inasmuch as no United Kingdom court has dealt with the question of the validity of the Commission decision or the refusal of an import licence by the United Kingdom. In Case 200/82 the Commission contends that the application for damages is inadmissible since the sum claimed is wholly hypothetical and the applicant has not indicated the nature of the evidence upon which it relies, as required by Article 31 (1) (e) of the Rules of Procedure.

The applicant has replied to these contentions in its reply. The Court takes the view that it is appropriate that it should decide of its own motion to consider the objection of inadmissibility before examining the substance of the case.

By letter of 24 September 1982, lodged at the Court Registry on 8 October 1982, the Ministry of External Affairs of the Commonwealth of Dominica stated that it intended to apply to intervene in the action at the appropriate time in support of the Commission's conclusions.

The parties have supplied their observations on that letter. The Commission is of the opinion that the expression "any other person" appearing in Article 37 of the Statute of the Court of Justice of the EEC is capable of covering States which are not members of the Community, such as Dominica. The Commission has mentioned the fact that the contested decision was intended to protect the traditional United Kingdom market for bananas imported from ACP countries, including Dominica, in compliance with the undertakings entered into by the Community within the scope of the Second Lomé

Convention. Dominica thus has an interest in intervening. The Commission draws the Court's attention to the fact that the letter did not in all respects comply with the requirements of Article 93 of the Rules of Procedure.

The applicant points out the unusual nature of an application by a non-member country to intervene in an action before the Court, but considers that Dominica's intervention might assist in throwing light on the issues involved and that the intervention might be allowed if the intervener is able to establish reasons for its interest in the result of the case.

An application to intervene, in due and proper form, was lodged on 2 December 1982.

The Court is of the opinion that Dominica is a person which has established a sufficient interest in the result of the case, within the meaning of the second paragraph of Article 37 of the Statute of the Court, and that it must therefore be allowed to intervene.

Having regard to the second paragraph of Article 37 of the Statute of the Court of Justice of the EEC,

Having regard to Article 93 of the Rules of Procedure,

Having regard to Article 92 (2) of the Rules of Procedure,

THE COURT

composed of J. Mertens de Wilmars, President, P. Pescatore, A. O'Keeffe and U. Everling (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco, T. Koopmans, O. Due, K. Bahlmann and Y. Galmot, Judges,

Advocate General: S. Rozès
Registrar: P. Heim

hereby orders as follows:

1. **The subsequent proceedings, including the rejoinder, shall be restricted at the present stage to the question of the admissibility of the applications.**

2. **Dominica is allowed to intervene on the question of admissibility.**

3. **That a period be fixed for the intervener to lodge its written observations.**

4. **That a copy of each pleading be served on the intervener by the Registrar;**

5. **That the costs be reserved.**

Luxembourg, 23 February 1983.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President