

JUDGMENT OF THE COURT

15 January 1987 *

In Case 175/84

Krohn & Co. Import-Export (GmbH & Co. KG), Hamburg, represented by Modest, Gündisch and Landry, Rechtsanwälte, Hamburg, with an address for service in Luxembourg at the Chambers of E. Arendt, 34 B rue Philippe-II,

applicant,

v

Commission of the European Communities, represented by Peter Karpenstein, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for compensation under Article 178 and the second paragraph of Article 215 of the EEC Treaty in respect of the damage suffered as a result of the refusal of the Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets], Frankfurt am Main, acting on instructions given by the Commission of the European Communities, to issue the import licences requested by the applicant,

THE COURT

composed of: Lord Mackenzie Stuart, President, Y. Galmot, C. Kakouris, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann and J. C. Moitinho de Almeida, Judges,

Advocate General: G. F. Mancini,
Registrar: P. Heim

having regard to the Report for the Hearing and further to the hearing on 9 July 1986,

* Language of the Case: German.

after hearing the Opinion of the Advocate General delivered at the sitting on 20 November 1986,

gives the following

Judgment

- 1 By an application lodged at the Court Registry on 4 July 1984, Krohn and Co. Import-Export (GmbH & Co., KG) brought an action against the Commission under the second paragraph of Article 215 of the EEC Treaty for compensation for damage incurred as a result of the refusal of the Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets, hereinafter referred to as 'the Federal Office'], acting on instructions given by the Commission, to grant the import licences requested by the applicant for products falling under subheading 07.06 A of the Common Customs Tariff (manioc) originating in Thailand.
- 2 It should be noted that by judgment of 26 February 1986 the Court, adjudicating of its own motion pursuant to Article 92 (2) of the Rules of Procedure, held *inter alia* that the refusal to issue the import licences requested by the applicant was attributable in the circumstances not to the Federal Office but to the Commission. The Court declared that the application was admissible and that the action could proceed to consideration of the substance and to a decision.
- 3 Reference is made to the Report for the Hearing for the relevant legislation, the facts of the case and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 4 The refusal to issue the import licences requested by the applicant was decided upon in December 1982 pursuant to the provisions of the Cooperation Agreement between the European Economic Community and the Kingdom of Thailand on manioc production, marketing and trade (hereinafter referred to as 'the Cooperation Agreement'), which was approved on behalf of the Community by the Council in Decision 82/495/EEC of 19 July 1982 (Official Journal 1982, L 219, p. 52), and pursuant to the detailed rules for implementing that agreement which were laid down by the Commission in Regulation (EEC) No 2029/82 of 22 July 1982 (Official Journal 1982, L 218, p. 8).

- 5 Article 1 of the Cooperation Agreement restricts imports of manioc into the Community at the preferential rate of 6% *ad valorem*, for the duration of the agreement (January 1982 to December 1986), to the quotas specified therein. Compliance with those quotas is ensured by a system of double checks which, according to Article 5 of the Cooperation Agreement, requires the Thai authorities to issue export certificates only within the limits of the quotas specified in the agreement, and the Community authorities to issue import licences conferring entitlement to the preferential rate only subject to presentation of an export certificate.
- 6 However, before the adoption of the Cooperation Agreement and of Regulation No 2029/82 in July 1982, manioc was imported from Thailand without reference to export certificates solely under the import licences issued by the authorities of the Member States in accordance with Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products (Official Journal 1980, L 338, p. 1).
- 7 Although the import licences issued in the first half of 1982, before the adoption of the Cooperation Agreement, were not included in central Community accounting records, compliance with the quota fixed by the Cooperation Agreement for the whole of 1982 was none the less to be assured with the assistance of the Thai authorities. As from 1 January 1982 the Thai authorities had proceeded to issue export certificates systematically for any quantity of manioc shipped from Thai ports to the Community and had included the corresponding quantities in their accounting records. They were to discontinue the issue of export certificates once the quota fixed for 1982 was used up.
- 8 Those were the circumstances in which Krohn submitted to the Federal Office on 16 November 1982, in support of its request for the issue of import licences, export certificates granted to it by the Thai authorities on 18 August and 7 September 1982.
- 9 In view of the time that had elapsed between the issue of the export certificates by the Thai authorities and the submission of the request for the issue of import

licences, the Commission considered it necessary to determine whether the quantity of manioc for which the import licences were sought was the same as that for which the export certificates had been issued. For those purposes, it demanded that Krohn specify the date of shipment of the manioc in Thailand, the name of the vessel on which it was carried, and the place in which and the date on which it was likely to be cleared through customs. As Krohn refused to furnish that information, the Commission notified the Federal Office that it would not be possible to issue the import licences requested by the applicant.

- 10 Krohn contends that the Commission's decision is unlawful and for that reason constitutes a wrongful act for which the Commission is liable on a non-contractual basis.
- 11 In that regard, Krohn maintains in the first place that the requirements imposed by the Commission are not laid down in Regulation No 2029/82, and were prescribed only by Regulation No 499/83 of 2 March 1983, which was adopted after the contested decision. Nor are those requirements essential for the purpose of ensuring compliance with the Cooperation Agreement, which does not require goods covered by an export certificate and those forming the subject of a request for an import licence to be absolutely identical but merely prescribes that the imported quantities must be checked.
- 12 Since it is necessary to assess the legality of the requirements imposed on Krohn by the Commission, it must be ascertained whether they are in conformity with the provisions of Regulation No 2029/82, interpreted in the light of the objectives of the Cooperation Agreement with which that regulation is designed to ensure compliance.
- 13 It is true, as Krohn points out, that Article 6 of Regulation No 2029/82, which specified the information that a request for an import licence and the import licence itself must contain, does not refer to the information required by the Commission. It must therefore be acknowledged that, at the time, applicants for import licences could not systematically be required to furnish such information, which did not become compulsory until the adoption of Commission Regulation (EEC) No 499/83 of 2 March 1983, whose purpose was to reinforce by those means the previous system of controls.

- 14 However, that finding does not answer the question whether or not, in circumstances such as those of this case and on the basis of the other provisions of Regulation No 2029/82, the Commission was entitled to demand from the trader concerned additional information which was not systematically required by the rules in force.
- 15 It should be noted in that respect that Article 7 of Regulation No 2029/82 empowers the Commission to prevent the national authority from issuing the import licences sought where 'the conditions laid down in the Cooperation Agreement have not been fulfilled'. Those conditions include the rule laid down in Articles 1 and 5 of the Cooperation Agreement to the effect that manioc exports from Thailand to the Community may not exceed the agreed quantities, namely 5 million tonnes for 1982. Hence the Commission was entitled, with a view to ensuring the proper application of the aforesaid provisions, to ascertain that the import licences requested by Krohn were not of such a kind as to result in that quota being exceeded.
- 16 In that regard it must be borne in mind that, when the Cooperation Agreement entered into force, a number of import licences issued previously were still valid and consequently enabled their holders to import the corresponding goods after the adoption of the Cooperation Agreement without having to present the export certificates issued by the Thai authorities. Accordingly, certain traders might have been tempted to keep those export certificates and re-utilize those that were still valid for the purpose of requesting new import licences under the system established by Regulation No 2029/82. Hence there was a risk that a single export certificate might serve to import the quantity of manioc specified therein into the Community twice.
- 17 In order to defeat manoeuvres of that kind, which jeopardized compliance with the quotas fixed by the Cooperation Agreement, the Commission was entitled, pursuant to Article 7 of Regulation No 2029/82, to ascertain in case of doubt that a quantity of manioc for which an import licence was sought was the same as that for which the export certificate produced had been issued. It should be pointed out in that regard that the export certificate annexed to the regulation contains a box for the name of the vessel carrying the manioc covered by the certificate, which enables the Commission to check that information.

- 18 That was the very purpose, in this case, of the Commission's request for additional information from Krohn. In the proceedings before the Court, the applicant acknowledged that the export certificates dated 18 August and 7 September 1982, which it produced in support of its request for the issue of import licences dated 16 November 1982, related to goods already imported under cover of an import licence pre-dating the entry into force of the Cooperation Agreement.
- 19 Hence, by demanding additional information from Krohn and by refusing to issue the import licences requested by the applicant, the Commission correctly applied Article 7 of Regulation No 2029/82. The first submission must therefore be rejected.
- 20 The applicant contends in the second place that the refusal to issue import licences jeopardizes the rights which it lawfully acquired before and after the adoption of the Cooperation Agreement by the issue of import licences and export certificates.
- 21 This submission cannot be accepted either.
- 22 In the first place, in the case of the rights conferred upon Krohn by the import licences issued prior to the adoption of the Cooperation Agreement, it is not disputed that they were complied with in full since the corresponding goods were imported on the terms laid down.
- 23 In the second place, the rights conferred upon Krohn by the export certificates dated 18 August and 7 September 1982 were also complied with since the quantities of manioc to which the certificates related were imported under the import licences mentioned earlier. However, for the reasons already given, those export certificates in no way conferred upon Krohn, contrary to the applicant's contention, the right to import the corresponding quantities of manioc a second time under the new import licences provided for by Regulation No 2029/82.
- 24 It follows from all the aforesaid considerations that the Commission's decision, which is the cause of the damage alleged by the applicant, is in no way unlawful.

- 25 In those circumstances, and without there being any need to consider whether the other conditions for establishing the liability of the Community are satisfied, the application for compensation must be dismissed.

Costs

- 26 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the applicant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- (1) Dismisses the application;**
- (2) Orders the applicant to pay the costs.**

Mackenzie Stuart Galmot Kakouris O'Higgins Schockweiler
Bosco Koopmans Due Everling Bahlmann Moitinho de Almeida

Delivered in open court in Luxembourg on 15 January 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President