

ORDER OF THE PRESIDENT OF THE COURT  
21 DECEMBER 1962<sup>1</sup>

In Case 25/62 R2

PLAUMANN & Co., Hamburg 1, Fruchthof, represented by Harald Ditges, Cologne-Marienburg, Von-Groote-Strasse 7, and for the oral proceedings by D. Ehle of the same address, with an address for service in Luxembourg at the offices of Mr Audry, Fédération des commerçants, 8 Avenue de l'Arsenal,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by Hubert Ehring and in the oral proceedings by Claus-Dieter Ehlermann, Legal Adviser to the European Executives, acting as Agents, assisted by Professor Ernst Steindorff of the Faculty of Law of the University of Tübingen, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 Place de Metz,

defendant,

Application for the adoption of an interim measure in Case 25/62 (refusal to authorize the Federal Republic of Germany to suspend in part customs duties on 'clementines, fresh' as regards third countries).

Issues of fact and of law

On 20 July 1962 the applicant lodged at the Court Registry an application for the annulment of the Decision SIII 03079 of 22 May 1962 addressed to the Government of the Federal Republic of Germany whereby the Commission of the EEC rejected the request of the Federal Republic of Germany for authorization to make an 'ex tariff heading clementines' (customs duty at 10%).

On 6 December 1962 the applicant lodged at the Court Registry an application for the adoption of the following interim measure:

'a declaration that the defendant is re-

quired to authorize the Federal Republic of Germany to suspend provisionally, to the extent of 3%, subject to security being given, the application of the customs duty in force for "clementines, fresh" (tariff heading No ex 08.02B of the Common Customs Tariff), for the period from 1 January 1962 to 31 December 1962.'

In addition the applicant asks that the defendant be ordered to bear the costs of the proceedings in connection with the proposed interim measure.

The applicant previously made a similar application on 16 August 1962 (Case

1 — Language of the Case: German.

25/62 R1) which was dismissed by Order of the President of the Court of 31 August 1962.

Both applications are made on basically the same grounds. However, the applicant, in support of the present application, produces the following declaration of the German Federal Minister of Finance of 27 November 1962:

'The Federal Minister of Finance Bonn, 27 November 1962 III B/5—Z 1265—209/62.

#### Certificate

for the attention of the President of the Court of Justice of the European Communities in *Luxembourg*.

*Subject:* Application by Plaumann & Co of Hamburg, represented and assisted by Mr Ditges of Cologne, v the Commission of the European Economic Community in the matter of the refusal of an authorization for the partial suspension of the customs duty on clementines, fresh, tariff heading 08.02B.

*in this case:* an application made under Article 186 of the EEC Treaty for the adoption of an interim measure.

In agreement with the Federal Minister of Food, Agriculture and Forests and the Federal Minister of Economics I hereby notify Plaumann and Co. of Hamburg, represented and assisted by Mr Ditges of Cologne, as follows:

1. If the President of the Court of Justice of the European Communities in Luxembourg orders the defendant under Article 186 of the EEC Treaty to authorize the Federal Republic of Germany provisionally to suspend in part the customs duty on clementines, fresh, tariff heading 08.02B, for the period from 1 January 1962 to 31 December 1962 by reducing it from 13% to 10% of the value, I am prepared, subject to the provision of security, to suspend payment of the excess amount of the

customs duty and proportionate compensatory tax equivalent to the difference between 13% and 10% of the value with effect from the date of notification of the decision of the Court (on the adoption of the interim measure) to the date of notification of the decision in the main action.

2. If the applicant succeeds in the main action the reduction from 13% to 10% of the customs duty on the products mentioned at 1. above would not be applied retroactively from 1 January 1962 but at the earliest from the date of notification of the decision of the Court in the main action. This accords with the practice consistently adopted by the Federal Government.
3. In the event of the applicant's succeeding in the main action I am prepared, in view of the particular circumstances of this case, by way of an exception, to apply the reduced customs duty retroactively from the date of the decision of the Court on the adoption of the interim measure (cf. 1. above).

On behalf of the Minister  
Dr Bolder'

By memorandum of 13 December 1962 the defendant has asked that the fresh application be dismissed as inadmissible or at least as unfounded and that the applicant be ordered to bear the costs of these proceedings or alternatively that the question of costs be reserved.

At the hearing on 21 December 1962 before the President of the Court, Dr D. Ehle, acting on behalf of Mr Ditges, appeared for the applicant, and Dr Claus-Dieter Ehlermann, member of the Legal Department of the European Executives, representing Mr Ehring, appeared for the defendant. The parties maintained their conclusions.

## Grounds

The declaration of the Federal Minister of Finance set out above and produced by the applicant in fact removes the foundation from the statement in the second paragraph of the Grounds of the order of 31 August 1962. This statement must accordingly be disregarded for the purpose of the decision on the present application.

1. The applicant has stated that it would be impossible to pass on to its customers the excess customs duty which it would have to pay if its application were dismissed. This is contested by the defendant.

Having regard to the relatively small increase in the selling price of clementines in this event, and taking account of commercial practices and the behaviour of consumers in shopping at the end of the year—circumstances which it may be assumed are known to the Court—the arguments of the applicant do not appear to be sufficiently convincing.

2. The applicant has further stated that during the period in which it alleges the interim measure would have its effects, that is to say, from 21 to 31 December 1962, it would still take approximately one sixth of its total imports of clementines since 31 August 1962. It has further argued that the additional costs which this increase in customs duties would involve in respect of imports made during the last eleven days of the year 1962 would amount to some 7 000 DM. This claim is disputed by the defendant.

It is not necessary to go into the question whether the applicant's arguments are correct, for if they were, quite apart from the considerations mentioned at 1. above, the interim measure asked for by the applicant would procure for it only a relatively small benefit.

3. As already set out in the order of 31 August 1962, to which reference is made, the interim measure asked for would on the contrary have far-reaching legal effects and could be justified only by wholly exceptional circumstances and if it were highly likely that the applicant would otherwise suffer serious damage, but it has not been proved that this would be so.

4. There is a further point to be made. The defendant, as it did in its observations on the first application, even now insists, in support of its conclusions for the dismissal of the application for the adoption of the interim measure, that it is improbable that the main application will be found to be either admissible or well-founded.

This argument misconceives the purely protective nature of interim measures, which would in any event apply in the present case. The application for the adoption of an interim measure is not intended to prejudge the decision in the main action and the arguments on inadmissibility or absence of grounds in the main action are irrelevant and must be dismissed.

On those grounds,

Having regard to Articles 185 and 186 of the Treaty establishing the European Economic Community and to Article 36 of the Protocol on the Statute of the Court of Justice of the European Economic Community;

Having regard to Articles 83, 84, 85 and 86 of the Rules of Procedure;

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
hereby orders :

1. The application is dismissed;
2. The costs are reserved.

Luxembourg, 21 December 1962

H. W. Daig

Attaché for Registrar

A. M. Donner

President