

Joined Cases T-79/96, T-260/97 and T-117/98

Camar Srl and Tico Srl

v

**Commission of the European Communities and Council of the
European Union**

(Common organisation of the markets — Bananas — Request for additional
import licences — Adjustment of tariff quota where necessary —
Transitional arrangements)

Judgment of the Court of First Instance (Fourth Chamber), 8 June 2000 . . . II-2198

Summary of the Judgment

1. *Actions for failure to act — Jurisdiction of the Community judicature — Substitution for the defaulting institution — Not permissible*
(EC Treaty, Arts 175, second para., and 17 (now Arts 232, second para., EC and 233 EC))

2. *Actions for failure to act — Natural or legal persons — Actionable omissions — Failure to adopt measures enabling an economic operator to overcome supply difficulties owing to the crisis in Somalia — Measure of direct and individual concern to individuals — Admissibility*
(EC Treaty, Art. 173, fourth para. (now, after amendment, Art. 230, fourth para., EC) and Art. 175, third para. (now Art. 232, third para., EC))
3. *Actions for annulment — Actionable measures — Definition — Measures having binding legal effects — Decision expressing a refusal — Included — Condition*
(EC Treaty, Art. 173 (now, after amendment, Art. 230 EC))
4. *Agriculture — Common organisation of the markets — Bananas — Import scheme — Tariff quota — Transitional measures intended to facilitate transfer to the Community scheme — Supply difficulties of an economic operator due to the crisis in Somalia — Failure by the Commission to take the necessary measures — Decision by the Commission refusing an application for transitional measures — Illegality*
(Council Regulation No 404/93, Art. 30)
5. *Agriculture — Common organisation of the markets — Bananas — Import scheme — Tariff quota — Adjustment in the course of a marketing year — Conditions*
(Council Regulation No 404/93, Art. 16(3))
6. *Actions for damages — Imminent and foreseeable damage — Finding that the Community is liable — Action before the Court — Admissibility*
(EC Treaty, Art. 215 (now Art. 288 EC))
7. *Non-contractual liability — Conditions — Unlawfulness — Administrative measures — Meaning — Decision to refuse provisional measures in the framework of the tariff quota scheme for the import of bananas — Included*
(EC Treaty, Art. 215, second para. (now Art. 288, second para. EC))

1. In an action for a declaration of failure to act, the Community judicature cannot substitute itself for the Commission and by final judgment adopt the provisions which the Commission should have adopted in order to fulfil its obligation to act as provided for in Community law.
2. Just as the fourth paragraph of Article 173 of the Treaty (now, after amendment, the fourth paragraph of Article 230 EC) allows individuals to bring an action for annulment against a measure of an institution not addressed to them provided that the measure is of direct and individual concern to them, the third paragraph of Article 175 (now Article 232, third paragraph, EC) must be interpreted as also entitling them to bring an action for failure to act against an institution which they

(see para. 67)

claim has failed to adopt a measure which would have concerned them in the same way.

ferentiated it from all other banana traders.

(see paras 79, 81, 84)

A trader must be regarded as directly concerned by the Commission's failure to adopt, on the basis of Article 30 of Regulation No 404/93 on the common organisation of the market in bananas, the measures which would have enabled it to obtain supplies of bananas from third countries following the situation resulting from the civil war in Somalia because there is no doubt that it would have been directly concerned by the measures requested since, if the Commission had adopted them, the national authorities would have had a purely executive role in applying them.

3. Measures producing binding legal effects capable of affecting the interests of the applicant by bringing about a distinct change in his legal position constitute an act or a decision which may be the subject of an action under Article 173 of the Treaty (now, after amendment, Article 230 EC) for a declaration that it is void. Moreover, where a decision of the Commission amounts to a rejection, it must be appraised in the light of the nature of the request to which it constitutes a reply. In particular, a refusal constitutes an act in respect of which an action for annulment may be brought under Article 173 of the Treaty provided that the act which the Community institution refuses to adopt could itself have been contested under that provision.

(see paras 91-92)

That trader must also be regarded as individually concerned by such a failure in that, as it was, before 1991, the sole importer of Somali bananas into the Community, and therefore the only one to suffer damage as a result of the civil war, its situation would have had to be taken into consideration by the Commission if it had taken action under Article 30. The trader's factual circumstances therefore sufficiently dif-

4. The application of Article 30 of Regulation No 404/93 on the common organisation of the market in bananas, which requires the Commission to adopt the transitional measures it judges necessary, is subject to the condition that the specific measures which the Commission must adopt are

intended to assist transition from national arrangements to the common organisation of the market and that they are necessary for that purpose. Consequently, even if a trader's difficulties in obtaining supplies of bananas are associated with the civil war which occurred in Somalia at the end of 1990, they are a direct consequence of the introduction of the common organisation of the market because the system in fact significantly reduced the scope provided under the previous Italian arrangements for it to replace the shortfall in Somali bananas. Those difficulties thus had very serious consequences for the viability of that trader's economic activity and could have endangered the continuation of that activity. They therefore constituted 'difficulties of a sensitive nature' which, for the purposes of Article 30 of Regulation No 404/93, give rise to an obligation on the Commission to take the measures it judges necessary.

It follows that the applications for a declaration that the Commission unlawfully failed to take the necessary measures as provided for in Article 30 to enable it to overcome the difficulties of supply due to the crisis in Somalia and that the Commission's decision refusing to take transitional measures under the tariff quota scheme for the import of bananas was unlawful, are well founded.

(see paras 138, 143, 149, 153)

The Commission committed a manifest error of appraisal in considering that the trader was capable of overcoming the difficulties caused by the transition from the national arrangements to the Community system by relying on the operation of the market because the only way to enable the trader to deal with the difficulties it faced was for the Commission to adopt transitional measures as provided for in Article 30. The adoption of such measures was therefore manifestly necessary.

5. Article 16(3) of Regulation No 404/93 on the common organisation of the market in bananas requires the institutions to adjust the annual tariff quota for imports of third-country bananas and non-traditional ACP bananas where this is found to be necessary during the marketing year in order to take account of exceptional circumstances affecting import conditions. The quota must be reviewed during the marketing year only if, as a result of exceptional circumstances, production of Community bananas and imports of traditional ACP bananas do not reach the levels forecast or if the actual

consumption of bananas in the Community exceeds the forecast.

must prove the unlawfulness of the alleged conduct of the institution concerned, actual damage and the existence of a causal link between that conduct and the alleged damage.

(see para. 162)

6. Article 215 of the Treaty (now Article 288 EC) does not prevent the Court from being asked to declare the Community liable for imminent damage foreseeable with sufficient certainty, even if the damage cannot yet be precisely assessed. To prevent even greater damage it may prove necessary to bring the matter before the Court as soon as the cause of damage is certain. Where damage that could result from the factual situation and the rules is imminent, the applicant may refrain from specifying the amount of damage for which the Community might have to pay compensation and merely ask for the Community to be found liable.

In the field of administrative action, any infringement of law constitutes illegality which may give rise to liability on the part of the Community. A decision by which the Commission refused to take provisional measures to allow the annual quantity allocated to a trader in order to obtain import licences for traditional ACP bananas to be calculated on the basis of the quantities which it marketed in 1988, 1989 and 1990 — even if it was based on Article 30 of Regulation No 404/93 on the common organisation of the market in bananas, which requires the Commission to take the measures it judges necessary to assist the transition from national arrangements to the common organisation of the markets and which gives the Commission broad discretionary power — is nevertheless an individual decision and therefore administrative in nature.

(see paras 192-193, 221)

7. In order for the Community to incur non-contractual liability, the applicant

(see paras 204-206)