

Case T-254/97

Fruchthandelsgesellschaft mbH Chemnitz

v

Commission of the European Communities

(Bananas — Imports from ACP States and third countries —
Application for import licences — Case of hardship —
Transitional measures — Regulation (EEC) No 404/93)

Judgment of the Court of First Instance (Fifth Chamber), 28 September
1999 II-2746

Summary of the Judgment

1. *International agreements — World Trade Organisation — Report drawn up the Standing Appellate Body — Scope — Decision of the Dispute Settlement Body adopting that report — Direct effect — Conditions*
(Council Regulation No 404/93)
2. *Agriculture — Common organisation of the markets — Bananas — Import arrangements — Tariff quota — Transitional measures to assist the transition to the Community arrangements — Conditions — Difficulties due to the establishment of the common organisation of the market — Limits — Undertakings in the former German Democratic Republic, privatised after German reunification*
(Council Regulation No 404/93, Art. 30)

3. *Agriculture — Common organisation of the markets — Bananas — Import arrangements — Tariff quota — Opening and subdivision of the quota — Whether discriminatory — No discrimination — Right of property — Freedom to pursue a trade or business — Whether breached — No such breach*
(Council Regulation No 404/93)

4. *Actions for annulment — Pleas in law — Misuse of powers — Meaning*

1. An economic operator cannot rely on a report drawn up by the Standing Appellate Body of the World Trade Organisation (WTO), or on the decision of the WTO's Dispute Settlement Body adopting that report, in order to claim that the arrangements establishing a common organisation of the market in bananas, introduced by Regulation No 404/93, no longer exist. The report at issue concluded that there were certain discriminatory elements in those arrangements, but did not find the arrangements as a whole to be incompatible with the General Agreement on Tariffs and Trade (GATT) or with the General Agreement on Trade in Services (GATS). Moreover, the Commission adopted amendments to those arrangements with a view to bringing them into compliance with the report and with the decision of the Dispute Settlement Body. Furthermore, in order for a provision in a decision to have direct effect on a person other than the addressee, that provision must impose on the addressee an unconditional and sufficiently clear and precise obligation vis-à-vis the person concerned.

2. Article 30 of Regulation No 404/93 on the common organisation of the market in bananas — the aim of which is to assist the transition from the

national arrangements existing before the common organisation of the market — empowers the Commission to take specific transitional measures to deal with disturbances in the internal market brought about by that transition, the purpose of those measures being to address difficulties encountered by traders following the establishment of the common organisation of the market but originating in the state of national markets prior to the entry into force of the above Regulation. The Commission must in this regard take into account the situation of traders who, under national legislation in force prior to Regulation No 404/93, took certain action without being able to foresee the consequences of such action after establishment of the common organisation of the market.

However, the difficulties encountered by undertakings from the former German Democratic Republic which were privatised after the reunification of Germany are not due to the establishment of the common organisation of the market and do not fall within the scope of Article 30 of Regulation No 404/93.

3. While it is true that not all undertakings are affected in the same way by Regulation No 404/93, the difference in treatment appears to be inherent in the objective of integrating previously compartmentalised markets, bearing in mind the different situations of the various categories of economic operators before the introduction of the common organisation of the market in bananas.

to import third-country bananas — resulting from the opening of the tariff quota and the machinery for its subdivision — are inherent in the objectives of general Community interest pursued by the establishment of the common organisation of the market in bananas and therefore do not improperly impair the freedom of traditional traders in third-country bananas to pursue their trade or business.

Furthermore, no economic operator can claim a right to property in a market share which he held before the adoption of the common organisation of the market. Restrictions on the right

4. A decision is tainted by misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken to achieve an end other than that stated.