

Case T-6/97 R

Comafrika SpA and Dole Fresh Fruit Europe Ltd & Co.

v

Commission of the European Communities

(Common organization of the markets — Bananas — Provisional reduction coefficient — Suspension of operation — Interim measures — Admissibility of the application for interim measures — Serious and irreparable harm)

Order of the President of the Court of First Instance, 3 March 1997 II - 294

Summary of the Order

1. *Applications for interim measures — Conditions for admissibility — Suspension of operation of a measure — Request for suspension of operation of a measure producing effects erga omnes*
(*EC Treaty, Art. 185*)
2. *Applications for interim measures — Interim measures — Request for a measure of organization of procedure or of inquiry — Inadmissible*
(*EC Treaty, Art. 186; Rules of Procedure of the Court of First Instance, Arts 64 and 65*)

3. *Applications for interim measures — Interim measures — Request for a measure affecting the internal organization of a Community institution — Inadmissible*
(EC Treaty, Art. 186)
4. *Applications for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Serious and irreparable harm — None suffered by an importer of bananas seeking a more favourable reduction coefficient than that provisionally fixed*
(EC Treaty, Arts 185 and 186; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. Article 185 of the Treaty gives the Court of Justice and the Court of First Instance jurisdiction to order suspension of the application of any act contested before them within the framework laid down by the first paragraph of Article 173, and any person who has contested such an act, even if it produces general effects, may apply for suspension of its operation. Any effects which the order suspending operation may have as regards third parties who have not applied for such an urgent measure are taken into consideration by the judge hearing the application for interim measures when examining the merits of the application, in particular when balancing the interests involved and assessing whether the effects of any suspending order should be circumscribed.

since it does not seek to prevent serious and irreparable harm pending a decision on the merits.

2. In the context of interlocutory proceedings, a request for the adoption not of interim measures but of a measure, such as examination of the working methods of the Commission, which is by nature a measure of organization of procedure or of inquiry falling within the jurisdiction of the Court of First Instance under Articles 64 and 65 of its Rules of Procedure, must be dismissed as inadmissible

3. As regards urgent measures other than suspension of the operation of a Community act, the powers of the judge hearing an interim application are limited to the possibility of requiring one of the parties to the proceedings, including an institution, to ensure that a certain result is achieved pending the proceedings in the main action. The means necessary to achieve that result, particularly where they concern the internal organization of an institution, are not, in principle, taken into account when assessing the conditions which must be met for such measures to be adopted and may not, *a fortiori*, form the subject-matter thereof. A request seeking the adoption of a measure affecting the defendant institution's powers with regard to its own internal organization, such as its use of resources and staff, must therefore be dismissed as inadmissible.

4. When examining the urgency of a request for interim measures made by an importer of bananas from non-member

countries, seeking to have a reduction coefficient more favourable than that provisionally fixed by the Commission applied to the reference quantity determining its future import rights, the requirement of urgency set out in Article 104(2) of the Rules of Procedure of the Court of First Instance is not met when the loss of market share alleged by the applicant, which forms part of a gradual

loss suffered since the common organization of the market in the sector was set up, cannot be regarded, for an undertaking of its size, as being such as to cause it serious harm and when it cannot be ruled out that the loss of market share may be recouped once the definitive reduction coefficient is fixed and is thus not irreparable.