

In Case 24/62

GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY, represented by Arved Deringer, advocate at the Oberlandesgericht at Cologne, acting as Agent, with an address for service in Luxembourg at the Chancery of the Embassy of the Federal Republic of Germany, 3 Boulevard Royal,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by Hubert Ehring, Legal Adviser of the European Executives, acting as Agent, assisted by Hans Peter Ipsen, Professor of the University of Hamburg, with an address for service in Luxembourg at the office of Henri Manzanarès, Secretary of the Legal Service of the European Executives, 2 Place de Metz,

defendant,

Application for the annulment of a Decision of the Commission of the European Economic Community of 11 May 1962, published in the *Official Journal of the European Communities* of 9 June 1962, to the extent that it refuses a request by the applicant for the grant, in respect of the year 1962, of a tariff quota of 450 000 hectolitres of wine intended for distillation;

THE COURT

composed of: A. M. Donner, President, L. Delvaux and R. Lecourt (Rapporteur), (Presidents of Chambers), Ch. L. Hammes, R. Rossi, A. Trabucchi and W. Strauß, Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The Federal Republic of Germany has submitted that, in order to manufacture a spirit of ordinary quality and low

price, it must import wines of which the alcohol level is increased by the addition of wine spirit. It obtained supplies of such wines from third countries at prices which it considered attractive.

In this way it had succeeded in 'interesting new and substantial sections of the population . . . in buying spirits with the result that a definite market was created for the sale of spirits at particularly low prices for direct consumption'.

The entry into force of the common external tariff, however, had the result of raising, suddenly and to very substantial degrees, the duty applicable to wines imported from third countries. According to the applicant this could produce a 60% rise in the price of wine for distilling, with extremely serious consequences for the German production of cheap spirits.

On 16 June 1961 the Federal Republic of Germany therefore requested the Commission of the EEC to grant a tariff quota for 1962 of 500 000 hectolitres of wine at the rate of 4.60 DM per hectolitre, this quota being subject to adjustment each year. This request was later reduced, orally, to 450 000 hectolitres, and was subsequently made the subject of a Decision of the Commission of 11 May 1962, notified on 22 May 1962, granting a quota of 100 000 hectolitres for the then current year (application, pp. 4-9, statement of defence, pp. 3 and 4).

On 26 July 1962 the Federal Republic of Germany instituted proceedings against this Decision to the extent that it refused the remainder of the request.

II—Conclusions of the parties

The applicant claims that the Court should:

'1. annul the Decision of the Commission of the European Economic Community, doc. ref. III/IV/COM(62)82 of 11 May 1962 to the extent that it refuses the applicant's request for the grant of a tariff quota for the year 1962 of 450 000 hectolitres of wine intended for distilling;

2. order the defendant to pay the costs'.

The defendant contends:

'that the application should be dismissed and that the costs of the proceedings should be borne by the applicant'.

III—Arguments of the parties

A—*Infringement of an essential procedural requirement under Article 190*

The *Federal Republic of Germany* alleges that there has been an infringement of Article 190 of the Treaty, which requires the Commission to state the reasons on which its decisions are based. It says that the Decision at issue scarcely deviates 'from the form of a number of earlier decisions relating to the grant of tariff quotas', and that it uses 'general expressions' (application, p. 10) and is characterized by an absence of precise details, especially with regard to offer and acceptance, the adequacy of production within the Common Market, the concept of serious disturbance, the refutation of the applicant's figures, etc.

The *Commission* submits that it has a duty to issue decisions on numerous requests for quotas which compel it for reasons of 'rationalization of work' and because of limited staff to 'reduce to essentials the statement of reasons for its decisions'. In any event the Decision was sufficiently reasoned for its purpose to emerge clearly. The Commission was not obliged to supply a legal opinion, or to submit the applicant's argument to a critical analysis, particularly when the request assumed 'the form of an application for permission to derogate from the Treaty'. Finally it had demonstrated the adequacy of wine production in the Community and the risks of a serious disturbance of the market if the tariff quota sought were granted (statement of defence, pp. 35-41; Rejoinder, pp. 32-37).

B—Infringement of Article 25 of the Treaty

The *Federal Republic of Germany* states that paragraph (3) of Article 25, as distinct from paragraphs (1) and (2) of that Article, stipulates only a negative prerequisite for the grant of tariff quotas, '... provided that no serious disturbance of the market of the products concerned results therefrom', and that, once this proves to be the case, the Commission has not merely the power but the duty to grant the quota requested.

The *Commission* considers on the other hand that acceptance of the Federal Republic's argument would mean ignoring 'the legal nature of the power to grant quotas conferred upon it by Article 25 (3)'.

The *Federal Republic of Germany* states that the refusal of a quota presupposes that a disturbance is almost certain.

The *Commission* replies that Article 25 (3) leaves it the task of assessing the probable future development of the market and that such an estimate must, by its very nature, be concerned with mere probabilities.

The *Federal Republic of Germany* complains that the Commission did not make any accurate assessment of the production of wine in the Community and failed to take account of the threats to the German spirits industry which can no longer, under the control of the common external tariff, satisfy the demand for cheap spirits.

The *Commission* replies that, for the purpose of establishing the likelihood of a disturbance, the market to be considered is the one which the Treaty intended for the purpose of increasing inter-Community trade and that the common external tariff is one of the 'essential elements' of the common agricultural policy. It considers that the grant of a quota constitutes exceptional treatment. It maintains that events subsequent to the commencement of the proceedings prove that the German

industry was in a position to adapt itself to using the qualities of wine available in the Community (rejoinder, pp. 3-5).

The parties disagree on whether, as a matter of law, Article 25 (3) confers a discretionary power on the Commission.

C—Infringement of Article 29 of the Treaty

The *Federal Republic of Germany* submits that the Commission failed to cite Article 29 and neglected one of the requirements of that Article in that it gave no indication of the extent to which the refusal of a quota is compatible with 'a rational development of the processing industry and an expansion of consumption within the Community.'

The *Commission* considers that the finding that there was a serious risk of disturbance did not necessitate any mention of the criteria laid down in Article 29.

The *Federal Republic of Germany*, moreover, pleads the fact that since it was not possible, during the negotiations on the duties applicable to List G, to obtain unanimity on the German Customs Tariff for wines for distilling, the Federal Republic of Germany then accepted that a duty should be fixed at an increased rate 'in consideration of the Commission's promise to grant it tariff quotas'. In the final document of the Agreement of 2 March 1960 Member States acknowledged the intention of the Federal Republic of Germany, and the Commission demonstrated its willingness to grant the quotas pursuant to the said Agreement.

The *Commission* observes that, when the Agreement was concluded, it had declared that it was ready to grant 'quotas . . . within the framework of Article 25 (3) and (4) . . . when the state of the market within the Community does not allow . . . an adequate supply in quantity and in quality on conditions enjoyed by other consumers within the Community' and that it did

not have the powers to go beyond the Treaty and therefore to promise to exceed the limits of Article 25 (3) and (4). It maintains that having established that German producers within the Community could obtain an adequate supply both in quantity and in quality 'on conditions enjoyed by other consumers within the Community', the Commission considered it impossible to grant, without risking serious disturbance, a quota exceeding 100 000 hectolitres (statement of defence, pp. 13-15, 30, 32-34). The parties supported these submissions with various economic arguments which they also use as a basis for a number of other submissions. They differ on the

question whether the market situation in the Community could enable German manufacturers to obtain a satisfactory supply in quantity, quality and price conditions. They supplied a number of details on this matter either voluntarily or in reply to questions put by the Court.

IV—Procedure

The written and oral procedures followed the normal course. Questions were however put to the parties, which answered them in the course of the oral procedure.

Grounds of judgment

The Government of the Federal Republic of Germany requested the grant of a tariff quota of 450 000 hectolitres of wine and the Commission by its Decision of 11 May 1962 allowed this request to the extent of 100 000 hectolitres but refused it as to the remainder.

The Federal Republic of Germany instituted proceedings against this Decision, in which it alleged an infringement of the Treaty, insufficiency of reasons and misuse of power, submitting in particular that this Decision infringes Article 25 of the Treaty, which requires the Commission to grant the whole quota requested as soon as it has been established that there is no danger of serious disturbance, and also Article 29 which requires the Commission to be guided by the need to promote trade with third countries.

For the purpose of examining these complaints, it is important to place the above-mentioned Articles within the context of the Treaty as a whole and to consider, in relation to the fundamental provisions of Articles 2, 3 and 9, and the guiding principles of Article 29, the power vested in the Commission by Article 25 to evaluate the legality and the expediency of the grant applied for.

Article 25 contains derogations from the common external tariff, which constitutes one of the 'foundations' of the Community provided for by Article 3 and set up by Articles 18 et seq., from which the said Article 25 allows exemptions only under specific conditions.

Article 9, which opens the second part of the Treaty dealing with 'the foundations of the Community' specifies, moreover, that the Community 'shall be based' upon a customs union, thereby implying the adoption by Member States of 'a common customs tariff in their relations with third countries'. Article 25 provides an exception to this common tariff with a view to remedying difficulties which may result from the alignment of national duties with those of the Common Customs Tariff in supplying the demands of a Member State.

This interpretation is all the more imperative since Article 25 derogates from Article 2, which provides for the establishment of a single market, the purpose of which is to cause Member States to develop their economic relationships within the Community.

The Commission was obliged to adhere to these rules which are unaffected by the Declarations of 2 March 1960 referring to Article 25. In arriving at its decisions, it must be guided by the whole of the considerations set out in Article 29, whilst having regard to the fundamental rules of Articles 2 and 3. It is within the framework of these principles that the discretionary power granted to the Commission by Article 25 must be exercised.

Taken as a whole, this Article implies that the Commission has a duty to evaluate the state of the market for the products concerned and the difficulties encountered in connection with supplying the demands of the Member State which has made the request for Article 25 (3) to be applied. It must, in addition, ascertain whether the special precondition of that provision has been satisfied, according to which the Commission has a duty to consider the nature of any disturbance, its seriousness and its likelihood. Finally, having found that the said Article 25 (3) is applicable, the Commission, guided by the principles mentioned above, and by the criteria laid down in Article 29, 'may' still evaluate the expediency and amount of any quota.

It follows, therefore, from the wording and the general scheme of Article 25, that the Commission's discretionary power, which it exercises independently within the limits laid down by the Treaty and subject to review by the Court, is in no way fettered.

Although it appears that these rules have not been disregarded, the applicant on the other hand rightly submits that the statement of reasons for the Decision is deficient and that therefore Article 190 is contravened.

In imposing upon the Commission the obligation to state reasons for its decisions, Article 190 is not taking mere formal considerations into account but seeks to give an opportunity to the parties of defending their rights, to the Court of exercising its supervisory functions and to Member States and to all interested nationals of ascertaining the circumstances in which the Commission has applied the Treaty. To attain these objectives, it is sufficient for the Decision to set out, in a concise but clear and relevant manner, the principal issues of law and of fact upon which it is based and which are necessary in order that the reasoning which has led the Commission to its Decision may be understood. Apart from general considerations, which apply without distinction to other cases, or which are confined to repeating the wording of the Treaty, the Commission has been content to rely upon 'the information collected', without specifying any of it, in order to reach a conclusion 'that the production of the wines in question is amply sufficient'.

This elliptical reasoning is all the more objectionable because the Commission gave no indication, as it did belatedly before the Court, of the evolution and size of the surpluses, but only repeated, without expanding the reasons for it, the same statement 'that there was no indication that the existing market situation within the Community did not allow these branches of the industry in the German Federal Republic a supply which is adequate in quantity and in quality'. On the other hand, although it maintained that the production of the Community was sufficient, the Commission restricted itself to 'deducing from this' that 'the grant of a tariff quota of the volume requested might therefore lead to serious disturbances of the market in the products in question', but these disturbances were not specified. Thus it neither described the risk involved in this case, nor did it disclose what it considered to be the necessary and sufficient connexion in the present case between the two concepts which it links one with the other by a simple deduction. However, by granting a restricted quota notwithstanding its description of production as 'amply sufficient', and thereby admitting that Article 25 (3) applied, the Commission thus conceded that this factor was not enough to make it possible 'to deduce from it' the risk of serious disturbance.

Thus the statement of reasons expressed appears on this point to be contradictory, since in spite of its statement with regard to an adequate supply and of the automatic conclusion to be drawn therefrom the Commission grants a quota and thereby implies that it would not cause any serious disturbance. Moreover, several, of the recitals in the German text, which is authentic, lack the necessary clarity.

It follows from these factors that the inadequacy, the vagueness and the inconsistency of the statement of reasons for the Decision, both in respect of the refusal of the quota requested and of the concession of the quota, granted, do not satisfy the requirements of Article 190.

Those parts of the Decision which have been submitted to the Court must therefore be annulled.

Costs

Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to Articles 2, 3, 9, 25, 29 and 190 of the Treaty establishing the European Economic Community;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69 (2);

THE COURT

hereby:

- 1. Annuls the Decision of the Commission of the European Economic Community of 11 May 1962 published in the Official Journal of the European Communities of 9 June 1962 at pages 1368-1369 as regards those parts of the said Decision which have been submitted to the Court;**
- 2. Orders the defendant to pay the costs.**

Donner

Delvaux

Lecourt

Hammes

Rossi

Trabucchi

Strauß

Delivered in open court in Luxembourg on 4 July 1963.

A. Van Houtte

Registrar

A. M. Donner

President