

ORDER OF THE COURT

5 November 1986 *

In Case 117/86

Union de Federaciones Agrarias de España (UFADE), whose registered office is in Madrid, represented by Blas Camacho Zancada, of the Madrid Bar, with an address for service in Luxembourg at the office of Mareile Aldinger-Tziovas, 15 B boulevard Grande-Duchesse Charlotte,

applicant,

v

Council of the European Communities, represented by Antonio Sacchetti, Director of its Legal Department, Arthur Brautigam, Principal Administrator in the same department and José Elizalde, a member of the Secretariat General of the Council, acting as Agents, with an address for service in Luxembourg at the office of J. Käser, of the European Investment Bank,

and

Commission of the European Communities, represented by its Legal Adviser, Jean-Claude Séché, and Carlos Palacio de Oriol, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremli, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendants,

APPLICATION for a declaration that Council Regulation (EEC) No 569/86 of 25 February 1986 and Commission Regulation (EEC) No 574/86 of 28 February 1986 are void,

THE COURT

composed of: Lord Mackenzie Stuart, President, Y. Galmot, C. Kakouris, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: M. Darmon

Registrar: P. Heim

* Language of the Case: Spanish.

after hearing the views of the Advocate General,
 makes the following

ORDER

- 1 By an application lodged at the Court Registry on 20 May 1986, the Union de Federaciones Agrarias de Espana (UFADE), a Spanish association of agricultural trade organizations brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Council Regulation (EEC) No 569/86 of 25 February 1986 laying down general rules for the application of the supplementary mechanism applicable to trade (Official Journal 1986, L 55, p. 106) and Commission Regulation (EEC) No 574/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism (Official Journal 1986, L 57, p. 1) are void.

- 2 The supplementary trade mechanism (hereinafter referred to as 'the STM') between Spain and the European Community as constituted prior to the accession of Spain and Portugal (hereinafter referred to as 'the Community of Ten') is provided for in Articles 81 *et seq.* of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties (Official Journal 1985, L 302, p. 23). It applies in particular to Spanish exports of new potatoes and products of the wine sector as well as, with effect from 1 January 1990, to Spanish exports of fruit and vegetables, subject to any decision to the contrary by the Council.

- 3 The regulations at issue, by laying down general and detailed rules for the application of the STM, established a system of licences and securities for exports of the Spanish agricultural products in question to the Community of Ten. The applicant considers that that system is neither provided for nor authorized by the Act of Accession and that, in addition, it infringes the provisions of the EEC

Treaty concerned with free movement of goods and is in breach of the principles of proportionality and Community preference.

- 4 In support of the admissibility of its application the applicant contends that it is required, according to its statutes, to defend the general trade interests of persons who, in the countryside, assume the risks inherent in farming, forestry and animal husbandry and to promote the marketing of agricultural and livestock products. The regulations at issue are of direct and individual concern to it because their implementation has an effect on the position of the Spanish producers and exporters represented by it and because they impose an obligation on Spanish exporters without the need for any subsequent action on the part of a national or Community authority. In addition, the regulations consist of a series of decisions relating to specific persons characterized in relation to other persons by certain specific trade interests which are protected by the applicant.
- 5 By applications lodged at the Court Registry on 25 July 1986 and 1 August 1986 respectively, the Council and the Commission raised objections of inadmissibility under Article 91 (1) of the Rules of Procedure of the Court and claimed that the Court should declare the applicant's application inadmissible without considering the substance of the case.
- 6 The two institutions contend in particular that the regulations in question are addressed in abstract, objective and general terms to all present and future importers and exporters intending to release the products to which the STM applies for consumption in Spain or in the Community of Ten. Consequently, the regulations apply to objectively determined situations and produce legal effects with regard to categories of persons described in a generalized and abstract manner. In addition, the interests which the applicant is called upon to defend according to its statutes are not the same as those affected by the regulations at issue. The STM licence does not affect the interests of agricultural producers but those of traders dealing in the products in question. The applicant is, in fact, not a trade organization in the commercial sector. In so far as the applicant maintains that the collective interests of Spanish farmers are necessarily harmed by unfavourable developments on the export markets for products exported to the Community of Ten and subjected to the STM, the interest in question is indirect and uncertain. Moreover, the Court has in its decisions consistently refused to

accept that an act which affects the general interests of a particular class of traders is of individual concern to an association in its capacity as representative of that category of persons.

- 7 According to Article 91 (3) of the Rules of Procedure the remainder of the proceedings concerning a preliminary objection is to be oral unless the Court decided otherwise. The Court considers that it is not necessary to open the oral procedure and therefore decides, pursuant to Article 91 (4) of the Rules of Procedure, to give a ruling on the application on the basis of the written submissions.
- 8 The second paragraph of Article 173 of the EEC Treaty confers on individuals the right to challenge any decision which, although adopted in the form of a regulation, is of direct and individual concern to them. As the Court stated in its judgment of 17 June 1980 (Joined Cases 789 and 790/79 *Calpak and Another v Commission* [1980] ECR 1949) the objective of that provision is in particular to prevent the Community institutions from being in a position, merely by choosing the form of a regulation, to exclude an application by an individual against a decision which concerns him directly and individually; the provision is thus intended to make it clear that the choice of form cannot change the nature of the measure.
- 9 By virtue of the second paragraph of Article 189 of the EEC Treaty the criterion for distinguishing between a regulation and a decision is whether the measure at issue is of general application or not. The essential characteristic of a decision arises from the limitation of the persons to whom it is addressed, whereas a regulation, being essentially of a legislative nature, is applicable not to a limited number of persons, named or identifiable, but to categories of persons viewed in the abstract and in their entirety. It is therefore necessary to determine the nature of the provisions which are contested in this case.
- 10 By Regulation No 569/86 laying down general rules for the application of the STM the Council made the release for consumption of the production in question conditional upon the presentation of an STM licence and the lodging of a security. By Regulation No 574/86 the Commission laid down detailed rules for the application of the STM and, in particular, in relation to the STM licence. The regulation provides that the release for consumption of the quantity of the product referred to in the licence must take place during the period of validity of the

licence, specifies the information which the licence must contain and provides for possible transfer of the rights deriving from the STM licence.

11 The obligations contained in the regulations in question are imposed during the whole period in which the STM is in force on all persons concerned, present or future, wishing to export or import products subject to the STM. Their provisions are addressed in abstract and general terms to indeterminate categories of persons and they apply to objectively determined situations. It follows that the regulations in question have general application within the meaning of Article 189 of the EEC Treaty and cannot be regarded as a decision or a body of decisions which, although adopted in the form of a regulation, is of direct and individual concern to the applicant.

12 In addition, the Council and the Commission correctly contend that it follows from a consistent line of decisions of the Court and in particular from its judgment of 14 December 1962 (Joined Cases 16 and 17/62 *Confédération nationale des producteurs de fruits et légumes v Council* [1962] ECR 471) that it is not possible to accept the principle that an association, in its capacity as representative of a category of entrepreneurs, is individually concerned by a measure affecting the general interests of that category. Consequently, the fact that the general interests of Spanish farmers are affected by the regulations at issue does not mean that the applicant has an individual interest, in its capacity as the representative of those farmers, in bringing an action for a declaration that those regulations are void.

13 It follows from the foregoing that the application must be dismissed as inadmissible.

Costs

14 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,
after considering the report presented by the Judge-Rapporteur,
after hearing the views of the Advocate General,

THE COURT

hereby orders as follows:

- (1) **The application is dismissed as inadmissible;**
- (2) **The applicant shall pay the costs.**

Luxembourg, 5 November 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President