

JUDGMENT OF THE COURT (Third Chamber)
28 October 1987 *

In Case 254/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the Simvoulío Epikratias (Greek Council of State) for a preliminary ruling in the proceedings pending before that court between

Damianos Soph. Symeonidis Anonimos Emboriki Eteria Sigaretton kai Ikodomikon Epichirisseon AE

and

Minister for Commerce

on the interpretation of Commission Decision 84/38/EEC of 11 January 1984 authorizing Greece to take protective measures in respect of certain imports (Official Journal 1984, L 23, p. 37),

THE COURT (Third Chamber),

composed of: J. C. Moitinho de Almeida, President of Chamber, U. Everling and Y. Galmot, Judges

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

after considering the written observations submitted on behalf of the Commission of the European Communities, by Xénophon Yataganas, acting as Agent,

the Greek Government, by Stelios Perrakis, acting as Agent,

* Language of the Case: Greek.

having regard to the Report for the Hearing and further to the hearing on 10 June 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 2 July 1987,

gives the following

Judgment

- 1 By a judgment of 20 June 1986 which was received at the Court on 1 October 1986, the Greek Council of State referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 6 and 7 of Commission Decisions 84/38/EEC and 84/64/EEC of 11 January 1984 and 27 January 1984 respectively (Official Journal 1984, L 23, p. 37, and L 36, p. 29).
- 2 Those questions were raised in proceedings brought against the Minister for Commerce by Damianos Soph. Symeonidis AEE Sigaretton kai Ikodomikon Epichirisseon AE (hereinafter referred to as 'the applicant'). The applicant sought the annulment of a list of allocation of cigarettes originating in the the EEC in which, along with eight existing importers, the applicant appeared as the only new importer and its import entitlement was set at 34 004 kg. That list is established by the Import Permit Committee, an agency of the Ministry of Commerce, and constitutes the basis on which import permits are issued.
- 3 Pursuant to Article 130 of the Act of Accession of Greece, in Decision 84/38/EEC the Commission had authorized Greece to introduce a monitoring system for cigarettes falling within subheading 24.02 A of the Common Customs Tariff, (Article 2 (6) and Article 4). That system was amended by Decision 84/64/EEC, which authorized a system of restrictions on imports, setting the volume of the quota at 1 100 tonnes (Article 2). In administering that quota, the Greek authorities were to respect existing trade patterns (Article 6) and the shares to be reserved for new importers were not to exceed 10% of the total quota mentioned above. That more

restrictive system replaced the former rules and constitutes the only system applicable to the facts forming the basis of the main proceedings.

- 4 Pursuant to Decision 84/64/CEE, the Ministry of Commerce made orders laying down in particular a rule that the import entitlement of new importers could not exceed that of the smallest existing importer. Pursuant to those orders an allocation list was issued for cigarettes (falling within tariff subheading 24.02 A) originating in the EEC, in which the applicant appeared, along with eight existing importers, as the only new importer, and its import entitlement was set at 34 004 kg.

- 5 The applicant is seeking the annulment of that list and all related administrative acts arguing that it was entitled to import a quantity of cigarettes equal to 10% of the aforementioned quota.

- 6 The Greek Council of State stayed proceedings and referred the following questions to the Court:
 - (a) Does Commission Decision 84/64/EEC, adopted in accordance with Article 130 of the Act of Accession of Greece, and more specifically Articles 6 and 7 thereof, mean that in the case of a single new importer of cigarettes the competent Greek authorities are under the obligation, and the new importer has a corresponding right, to set his import entitlement at 10% of the total quota of 1 100 tonnes, or was that percentage enacted as an upper limit in order to obviate the risk of disturbances in existing patterns of trade, in which case the competent Greek authorities may set the import entitlement of the sole new importer at a level lower than 10% in order to achieve equality of treatment with the smallest existing importer, assuming that the entire quota of 1 100 tonnes is used?

 - (b) In the light of the answer to the first question and of the nature of the protective measures taken under Article 130 of the Act of Accession of Greece, may an individual importer rely directly on the aforementioned

measures in proceedings before a national court for the annulment of an individual administrative measure?’

- 7 Reference is made to the Report for the Hearing for a fuller account of the facts, the background to the main proceedings and the observations submitted by the Commission and the Greek Government.

The first question

- 8 It must be observed that Article 7 of Decision 84/64/EEC provides that ‘The shares to be reserved for new importers shall not exceed 10% of the total limits’. That provision cannot be interpreted to mean that that overall share must be allocated in full to new importers. Its purpose is simply to avoid the risk that, in a situation where imports are restricted, the activities of new importers might interfere with existing patterns of trade.
- 9 When issuing import permits to new importers, Greece was bound, in accordance with Article 6 of the abovementioned decision, to respect existing trade patterns. If the applicant, as the only new importer, had been allocated the share of 110 tonnes, it would have enjoyed more favourable treatment than existing importers, the smallest of which was given the same share as the applicant.
- 10 The Greek authorities’ interpretation of the provisions in question according to which the quantity which new importers were entitled to import could not be higher than that allocated to the smallest existing importer does, therefore, correspond to the objectives of the Community legislation on condition that that smallest quota is not for an insignificant amount.
- 11 Thus the reply to the first question must be that Articles 6 and 7 of Decision 84/64 should be interpreted as meaning that the Greek authorities may, provided that the whole of the overall quota of 1 100 tonnes is allocated, set the share of a new importer at a figure less than 10% of the overall quota, that share being identical to the smallest shares allocated to existing importers, in such a manner as to ensure that existing patterns of trade are observed.

- 12 In view of the answer to the first question, it is not necessary to reply to the second question.

Costs

- 13 The costs incurred by the Greek Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds

THE COURT (Third Chamber),

in answer to the questions referred to it by the Greek Council of State by a judgment of 20 June 1986, hereby rules:

Articles 6 and 7 of Decision 84/64 should be interpreted as meaning that the Greek authorities may, provided that the whole of the overall quota of 1 100 tonnes is allocated, set the share of a new importer at a figure less than 10% of the overall quota, that share being identical to the smallest shares allocated to existing importers, in such a manner as to ensure that existing patterns of trade are observed.

Moitinho de Almeida

Everling

Galmot

Delivered in open court in Luxembourg on 28 October 1987.

P. Heim

Registrar

J. C. Moitinho de Almeida

President of the Third Chamber