

Case T-259/01

Nutrinveste — Comércio Internacional, SA

v

Commission of the European Communities

(Regulation (EEC) No 2200/87 — Food aid — Transfer of the burden of risk — Deduction from payments)

Judgment of the Court of First Instance (Fourth Chamber), 11 February 2004 II - 652

Summary of the Judgment

1. *Agriculture — Common agricultural policy — Food aid — Implementation — Delivery of products — Transfer of the burden of risk from the supplier to the recipient — Point of departure — Goods actually made available after unloading — Effects*

(Commission Regulation No 2200/87, Art. 15)

2. *Agriculture — Common agricultural policy — Food aid — Implementation — Delivery of products — Rights and obligations arising from the award not transmissible — Effect — Successful tenderer's responsibility maintained when transport handled by another undertaking*
 (Commission Regulations Nos 2200/87, Art. 12(3) and 2608/97)

1. Where delivery is to be made 'free-at-destination', Article 15 of Regulation No 2200/87 laying down general rules for the mobilisation in the Community of products to be supplied as Community food aid links the transfer from supplier to beneficiary of the burden of the risks to which the goods may be exposed to their being actually made available, after unloading, inside the warehouse at their destination. These risks cover all loss and damage to which the goods may be exposed. As regards the contractual relationship between the Commission and the successful tenderer, it is accordingly unnecessary to establish the reasons for which any losses of goods may have arisen, if they arose before the actual supply of the goods to the warehouse at their destination.

unloading of the different boxes coming from the different containers. Given that the risk in the goods remains with the successful tenderer up to the time when the goods are actually unloaded and placed in the warehouse at their destination, the successful tenderer, or its representative, is also under a duty to ensure that unloading is properly carried out.

(see paras 46, 47, 64)

Likewise, if the unloading of the goods in the warehouses at their destination is incorrectly handled, it is the duty of the carrier, as the successful tenderer's representative, to act so as to avoid any errors in the calculation and the

2. Article 12(3) of Regulation No 2200/87 laying down general rules for the mobilisation in the Community of products to be supplied as Community food aid provides that 'the rights and obligations arising from the award shall not be transmissible'. The fact that carriage of the goods was handled

by an undertaking other than the successful tenderer thus does not alter in any way the successful tenderer's duty to deliver the quantity agreed in the contract to the place specified in Regulation No 2608/97 on the supply of vegetable oil as food aid.

unloading and actually making the goods available inside the warehouses at their destination, as the goods were under the control of the successful tenderer who, accordingly, should have organised their monitoring during these operations.

There is no need in this regard to establish the reasons for the delay in

(see paras 55, 56)