JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
1 February 2001 *

In Case T-1/99,

T. Port GmbH & Co. KG, established in Hamburg (Germany), represented by G. Meier, lawyer,

applicant,

v

Commission of the European Communities, represented by K.-D. Borchardt and H. van Vliet, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for compensation for the loss allegedly suffered by the applicant as a result of the introduction of the export licence system by Commission Regulation (EC) No 478/95 of 1 March 1995 on additional rules for the application of Council Regulation (EEC) No 404/93 as regards the tariff quota

* Language of the case: German.

arrangements for imports of bananas into the Community and amending Regulation (EEC) No 1442/93 (OJ 1995 L 49, p. 13),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: R. García-Valdecasas, President, P. Lindh and J.D. Cooke, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 June 2000,

gives the following

Judgment

Legislative background

1 Title IV of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas (OJ 1993 L 47, p. 1) replaced the various national systems with a common system of trade with third countries.

2 Under the first paragraph of Article 17 of Regulation No 404/93:

'Any importation of bananas into the Community shall be subject to the submission of an import licence issued by the Member States at the request of any party concerned, irrespective of his place of establishment within the Community, without prejudice to the special provisions made for the implementation of Articles 18 and 19.'

3 Article 18(1) of the original version of Regulation No 404/93 provided for a tariff quota of two million tonnes (net weight) to be opened each year for imports of third-country bananas from non-ACP States ('third-country bananas') and non-traditional imports of bananas from ACP States ('non-traditional ACP bananas'). Under that quota, imports of third-country bananas were subject to a levy of ECU 100 per tonne and non-traditional ACP bananas to a zero duty.

4 Article 19(1) of Regulation No 404/93 subdivided the tariff quota opened as follows: 66.5% to the category of operators who had marketed third-country and/or non-traditional ACP bananas (category A), 30% to the category of operators who had marketed Community and/or traditional ACP bananas (category B) and 3.5% to the category of operators established in the Community who had started marketing bananas other than Community and/or traditional ACP bananas from 1992 (category C).

5 Article 20 of Regulation No 404/93 made the Commission responsible for adopting detailed rules for the implementation of Title IV.

6 The Commission accordingly adopted Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community (OJ 1993 L 142, p. 6).

7 On 19 February 1993 the Republic of Colombia, the Republic of Costa Rica, the Republic of Guatemala, the Republic of Nicaragua and the Republic of Venezuela requested the Commission to open consultations under Article XXII:1 of the General Agreement on Tariffs and Trade ('GATT') in relation to Regulation No 404/93. The consultations were unsuccessful and therefore in April 1993 those States initiated the dispute-settlement procedure provided for in Article XXIII:2 of the GATT.

8 On 18 January 1994 the panel set up under that procedure submitted a report concluding that the import system introduced by Regulation No 404/93 was incompatible with the GATT rules. The report was not adopted by the parties to the GATT.

9 On 28 and 29 March 1994 the Community reached an agreement with the Republics of Colombia, Costa Rica, Nicaragua and Venezuela, known as the Framework Agreement on Bananas ('the Framework Agreement').

10 Point 1 of the second part of the Framework Agreement sets the basic overall tariff quota at 2 100 000 tonnes for 1994 and at 2 200 000 tonnes for 1995 and subsequent years, without prejudice to any increase due to enlargement of the Community.

11 Point 2 lays down the percentages of that quota allocated to Colombia, Costa Rica, Nicaragua and Venezuela respectively. Those States receive 49.4% of the total quota, while the Dominican Republic and the other ACP States are granted 90 000 tonnes for non-traditional imports, the balance being allocated to other third countries.

12 Point 6 provides in particular:

'The supplying countries with country quotas may deliver special export certificates for up to 70% of their quota, which, in turn, constitute a prerequisite for the issuance, by the Community, of certificates for the importation of bananas from said countries by Category A and Category C operators.

Authorisation to deliver the special export certificates shall be granted by the Commission in order to make it possible to improve regular and stable trade relations between producers and importers and on the condition that the export certificates will be issued without any discrimination among the operators.'

13 Point 7 fixes the in-quota customs duty at ECU 75 per tonne.

14 Points 10 and 11 provide:

'This agreement will be incorporated into the Community's Uruguay Round Schedule.

This agreement represents a settlement of the dispute between Colombia, Costa Rica, Venezuela and Nicaragua and the Community on the Community's banana regime. The parties to this agreement will not pursue the adoption of the GATT panel report on this issue.'

15 Points 1 and 7 of the Framework Agreement were incorporated in Schedule LXXX to GATT 1994, which lists the Community customs concessions. GATT 1994 in turn constitutes Annex 1A to the Agreement establishing the Word Trade Organisation ('the WTO'). An annex to Schedule LXXX reproduces the Framework Agreement.

16 On 22 December 1994 the Council unanimously adopted Decision 94/800/EC concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1).

17 In accordance with Article 1(1) of that decision, the Agreement establishing the WTO and also the Agreements in Annexes 1, 2 and 3 to that Agreement, of which the 1994 GATT is one, have been approved on behalf of the European Community with regard to that portion of them which falls within the competence of the Community.

18 On 22 December 1994 the Council adopted Regulation (EC) No 3290/94 on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations (OJ 1994 L 349, p. 105). The regulation includes

Annex XV relating to bananas, which provides that Article 18(1) of Regulation No 404/93 is to be amended so that, for 1994, the tariff quota is fixed at 2 100 000 tonnes and, for the following years, at 2 200 000 tonnes. In the framework of that tariff quota, imports of third-country bananas are to be subject to a customs duty of ECU 75 per tonne.

19 On 1 March 1995 the Commission adopted Regulation (EC) No 478/95 on additional rules for the application of Regulation No 404/93 as regards the tariff quota arrangements for imports of bananas into the Community and amending Regulation No 1442/93 (OJ 1993 L 49, p. 13). Regulation No 478/95 lays down the measures necessary for implementation, no longer on a transitional basis, of the Framework Agreement.

20 Article 1(1) of Regulation No 478/95 provides:

'The tariff quota for imports of bananas from third countries and non-traditional ACP bananas referred to in Articles 18 and 19 of Regulation (EEC) No 404/93 shall be divided into specific shares allocated to the countries or groups of countries referred to in Annex I...'

21 Annex I contains three tables: the first sets out the percentages of tariff quota reserved to the Latin American States in the Framework Agreement; the second divides the quota of 90 000 tonnes of non-traditional ACP bananas and the third provides for all the other third countries to receive 50.6% of the total quota.

22 Article 3(2) of Regulation No 478/95 provides:

'For goods originating in Colombia, Costa Rica or Nicaragua, the application for an import licence of Category A or C, as referred to in Article 9(4) of Regulation (EEC) No 1442/93, shall also not be admissible unless it is accompanied by an export licence currently valid for a quantity at least equal to that of the goods, issued by the competent authorities...'

23 By judgment given on 10 March 1998 in Case C-122/95 *Germany* v *Council* [1998] ECR I-973, the Court of Justice annulled the first indent of Article 1(1) of Council Decision 94/800 to the extent that the Council thereby approved the conclusion of the Framework Agreement, in so far as the latter exempts Category B operators from the export-licence system for which it provides.

24 In that judgment the Court of Justice held that, with regard to that exemption, the plea alleging breach of the general principle of non-discrimination laid down in the second subparagraph of Article 40(3) of the EC Treaty (now, after amendment, the second subparagraph of Article 34(2) EC) was well founded (paragraph 72). It reached that conclusion after finding, first, that Category B operators benefited, in the same way as Category A and C operators, from the quota increase and the concomitant lowering of customs duties under the Framework Agreement and, second, that the restrictions and differences in treatment to which Category A and C operators were subject as a result of the banana import regime set up by Regulation No 404/93 also applied to the part of the quota corresponding to that increase (paragraph 67).

25 The Court of Justice considered that, in those circumstances, in order to justify recourse to a measure such as the one at issue in this case, it was for the Council

to demonstrate that the balance between the various categories of operators established by Regulation No 404/93 and disturbed by the increase in the tariff quota and the concomitant lowering of customs duties, could have been restored only by granting a substantial advantage to Category B operators and, thus, at the cost of introducing a new difference in treatment detrimental to the other categories of operators (paragraph 68). It considered that, in the case in point, the Council's statement that that balance had been disturbed, and the mere assertion that exemption of Category B operators from the export-licence system was justified by the need to restore that balance, had not established that to be the case (paragraph 69).

26 In its judgment of 10 March 1998 in Joined Cases C-364/95 and C-365/95 *T. Port* [1998] ECR I-1023 the Court of Justice, having in essence followed reasoning identical to that followed in *Germany* v *Council*, cited above, ruled:

'Regulation [No 478/95] is invalid to the extent to which Article 3(2) thereof imposes only on Category A and C operators the obligation to obtain export licences for bananas from Colombia, Costa Rica or Nicaragua' (point 2).

Facts and procedure

27 The applicant is an importer of fruit, established in Germany, and has for a long time traded in third-country bananas. It was a Category A operator.

28 At a date not specified by the applicant, it concluded contracts with producers in Costa Rica for the delivery of bananas which were to be marketed in the Community. It claims that it was obliged to that end to purchase export licences from that State.

29 By application lodged at the Registry of the Court of First Instance on 4 January 1999, the applicant brought this action for damages.

30 On hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure.

31 The parties presented oral argument and their replies to the Court's questions at the hearing on 27 June 2000.

Forms of order sought by the parties

32 The applicant claims that the Court should:

— order the Community to make good its loss, in the sum of DEM 828 337.10, in respect of the price of the export licences which it was required to purchase;

— order the Community to make good its loss, in the sum of DEM 126 356.80, in respect of the cost of borrowing money in order to purchase those licences;

— order that the damages should bear interest at the rate of 4% from the date on which the proceedings were brought;

— order the defendant to pay the costs.

33 The Commission contends that the Court should:

— dismiss the application as inadmissible or, in the alternative, as unfounded;

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

34 Although it has not raised a formal plea of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance, the Commission challenges the admissibility of the application on the ground that the applicant has not adduced sufficient evidence of the existence and extent of the alleged loss or the existence of a causal link between the unlawful conduct complained of and that loss.

35 The applicant contends in response that the certified statements annexed to its pleadings prove to the requisite legal standard that the two conditions necessary for the Community to incur non-contractual liability have been fulfilled.

Findings of the Court

36 Under Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application is to state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based.

37 That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary, without

any further information. In order to guarantee legal certainty and sound administration of justice it is necessary, in order for an action to be admissible, for the basic legal and factual particulars relied on to be indicated, at least in summary form, coherently and intelligibly in the application itself (order in Case T-85/92 *De Hoe* v *Commission* [1993] ECR II-523, paragraph 20, and judgment in Case T-113/96 *Dubois et Fils* v *Council and Commission* [1998] ECR II-125, paragraph 29).

38 In order to satisfy those requirements, an application seeking compensation for damage allegedly caused by a Community institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons for which the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (*Dubois et Fils*, paragraph 30).

39 In the present case, the application makes it quite clear that T. Port complains that the Commission adopted Article 3(2) of Regulation No 478/95, which has been declared invalid by the Court of Justice. Furthermore, the application plainly states that the applicant suffered loss inasmuch as, between 1996 and 1998, it paid the sum of DEM 828 337.10 in order to buy export licences in Costa Rica and also the sum of DEM 126 356.80 by way of bank interest on the sums drawn, for the purposes of those purchases, on a line of credit made available by its bank. Finally, the application states that T. Port purchased those licences because it was obliged to take delivery of bananas under the contracts it had concluded with Costa Rican producers and, according to Article 3(2), for the category of operators to which the applicant belonged, production of those licences was a pre-condition for the issue by the Community of licences to import bananas from that country.

40 The applicant has, accordingly, given a sufficient description of the nature and extent of the alleged damage and of the reasons for which it considers there to be

a causal link between the unlawful conduct which it alleges against the Commission and that damage. The objections raised by the Commission against the evidence adduced by the applicant relate to assessment of the merits of the application and must, therefore, be considered under that head. Moreover, at the hearing the Commission stated that the arguments it put forward in support of its objection of inadmissibility also referred to the substance of the case.

41 It follows that the application satisfies the formal requirements of Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure and that it must be declared to be admissible.

Substance

42 The Community's non-contractual liability under the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) depends on the coincidence of a set of conditions as regards the unlawfulness of the acts alleged against the Community institution, the fact of damage and a causal link between the conduct of the institution and the wrongful act complained of (Joined Cases C-258/90 and C-259/90 *Pesquerias De Bermeo and Naviera Laida* v *Commission* [1992] ECR I-2901, paragraph 42, and Case T-168/94 *Blackspur and Others* v *Council and Commission* [1995] ECR II-2627, paragraph 38).

43 In the present case, the conditions relating to actual damage and to a causal link may appropriately be considered together.

Arguments of the parties

44 In the first place, the applicant maintains that the loss it has suffered corresponds to the price it paid in order to purchase licences to export bananas from Costa Rica between 1996 and 1998, namely, DEM 828 337.10.

45 In its submission, the certified statement of its auditor — Annex No 2 to the application — is sufficient evidence of the actual fact of such loss. The certified statements of the same auditor annexed to the reply demonstrate that it did in fact import bananas from Costa Rica into the Community. For the rest, it serves no useful purpose to know the essential terms of the delivery contracts concerned.

46 Furthermore, the applicant notes that the increase in tariff quota had repercussions on the Community banana market in general, reflected in a fairly uniform market price, but that it, unlike traders in bananas from third countries not parties to the Framework Agreement, had to bear the costs of purchasing export licences. It points out that the table produced by the Commission in its pleadings shows that the divergence between the average 'cif' (cost, insurance, freight) price for Ecuador and the price for Costa Rica widened in 1996 and 1997, and maintains that that was a result of the increase in the price of bananas due to the requirement to purchase export licences in Costa Rica but not in Ecuador.

47 Lastly, the applicant submits that the Commission cannot be allowed to establish in this action that the export licence system is necessary since the Court of Justice, in *Germany* v *Council* and *T. Port*, has without possibility of appeal already declared that such has not been proved to be the case.

48 In the second place, the applicant claims that the damage alleged corresponds to the bank interest it paid for the use of a line of credit made available to it by its bank so that it could purchase the export licences in question. The damage, amounting to DEM 126 356.80, is proved by the certified statement of its auditor of 21 December 1998 and by the letter from its bank of 28 December 1998.

49 As regards the causal link between the allegedly unlawful conduct of the Commission, namely its unlawful adoption of Article 3(2) of Regulation No 478/95, and the damage alleged, the applicant states that in order to honour its contracts with Costa Rican producers for the delivery of bananas and to market the goods in the Community it was obliged to purchase export licences and to incur those expenses.

50 The Commission submits that the applicant has not adduced sufficient evidence of the existence and extent of the damage alleged or of a causal link between the allegedly unlawful conduct and that damage.

51 It argues that the auditor's certified statement in Annex 2 to the application is not conclusive, since it merely sets out total sums in the abstract. It points out in particular that the applicant gives no details of its contracts for the delivery of bananas, of the quantities of bananas intended for the Community market, the circumstances in which the bananas were imported, the date on which the export licence system was set up in Costa Rica, the costs involved in that system or the number of export licences purchased.

52 The Commission also states that it has not been established that the applicant did actually import bananas from Costa Rica into the Community and observes that it is not impossible that some of the export licences might have been transferred to other operators. The auditor's certified statements concerning import duties paid by the applicant between 1995 and 1998, which are annexed to the reply, are irrelevant since they do not mention the quantities of bananas imported into the Community by the applicant.

53 Moreover, the Commission notes that the increase in tariff quota and the reduction in customs duties agreed under the Framework Agreement largely set off the disadvantage for operators in Categories A and C of having to obtain export licences. Those last two measures have made it easier to import third-country bananas into the Community, to the detriment of Community and traditional ACP bananas. On the one hand, the increase in tariff quota has led to growth in overall supply and, consequently, exerted downward pressure on market prices. That drop in prices has principally affected Community and traditional ACP bananas which are, for various reasons, the dearest on the Community market. On the other hand, the reduction in customs duty for third-country bananas imported within the tariff quota has appreciably diminished the levelling off of prices. Moreover, the Commission annexes to its defence a table from which it would appear that the average cif prices paid from 1994 to 1997 for bananas imported into the Community were the same, whether the bananas came from Colombia, Costa Rica or Nicaragua or from other Latin American States such as Ecuador.

54 Finally, the Commission claims that it is not impossible that the applicant may have passed on to the end customer the costs of purchasing the export licences.

Findings of the Court

55 According to settled case-law, it is for the party seeking to establish the Community's liability to adduce conclusive proof as to the existence or extent of the damage he alleges (Case C-362/95 P *Blackspur and Others* v *Council and Commission* [1997] ECR I-4775, paragraph 31, and Case T-537/93 *Tromeur* v *Council and Commission* [2000] ECR II-2457, paragraph 36).

56 In this instance, the damage alleged has two components. First, it consists of the costs of the applicant's purchase of licences to export bananas from Costa Rica. Second, it consists of the bank interest paid on the sums drawn on a line of credit made available to the applicant by its bank.

57 With regard to the first head of damage, the applicant has produced a certified statement of its auditor in which the latter declares that 'from 1996 to 1998, [it] disbursed DEM 828 337.10 on purchasing export licences for bananas from Costa Rica'. It is clear from its pleadings and from what it said at the hearing that in the applicant's view the expenditure mentioned in that certified statement in itself constitutes the loss it has suffered and that there is no point in considering what effect that expenditure actually had on the profitability of the corresponding commercial transactions. The applicant submits that it is not, therefore, incumbent on it to supply any further particulars or evidence.

58 That approach cannot be accepted, for several reasons.

59 In the first place, there is nothing in the certified statement referred to which makes it possible to determine whether the sum really corresponds to the cost of purchasing export licences.

60 In the second place, even on the assumption that that sum is unarguably genuine, it has by no means been established that the applicant itself actually used all the export licences corresponding to that sum in order to import bananas into the Community. That evidence is indispensable since, as the Commission has pointed out and the applicant has not denied, the export licences held by one operator could, in practice, be sold to another operator, or indeed be exchanged for import licences.

61 The two certified statements of the auditor, annexed to the reply, are not in this regard conclusive. They simply state that in 1996, 1997 and 1998 respectively the applicant paid DEM 767 225.38, DEM 489 029.36 and DEM 1 419.11 by way of 'import duties on imports of bananas from Costa Rica'. In the absence of any information regarding the quantities of bananas to which those total amounts relate, or the quantities to which the abovementioned amount of DEM 828 337.10 relates, or the parameters used by the auditor in arriving at those sums, it cannot be established with the requisite certainty that the quantities of bananas imported from Costa Rica into the Community by the applicant between 1996 and 1998 correspond to the quantities of bananas in respect of which it purchased export licences in that country. In addition, and in any event, the possibility remains that some of the import duty paid by the applicant relates to bananas imported into the Community under Category B import licences which did not require the production of an export licence. It may be noted in this connection that it is stated in one of the certified statements referred to above that the applicant purchased 'additional licences for imports of bananas from Costa Rica', without specifying the category to which the licences related.

62 The applicant ought to have taken all the greater care to communicate information on those various points because, both in its defence and in its rejoinder, the Commission expressly drew the applicant's attention to the fact that such information was essential if the existence and extent of the damage alleged were to be established. Notwithstanding those observations, the applicant — as it acknowledged at the hearing in response to a question put by the Court of First Instance — has deliberately chosen not to supply the information.

63 In the third place, even if the applicant did use on its own account all the export licences it had acquired, its method of determining loss, which is to claim that the loss is equal to the expense incurred, cannot be accepted.

64 First, it is not inconceivable that, as the Commission has claimed, the cost of purchasing the export licences has been partly, or indeed wholly, passed on by the applicant in its sale prices. That suggestion is all the more plausible because the quantities of bananas the importation of which into the Community depended on the issuing of an export licence represented a substantial proportion of the tariff quota.

65 The applicant has not put forward anything to suggest that it was not possible to pass on the cost, nor has it even denied having done so in this case. It has merely objected that that argument was raised by the Commission for the first time at the hearing and cannot therefore be taken into consideration by the Court. That objection cannot be upheld, since the Commission expressly pointed out in its pleadings the need for information concerning the cost factors linked to the export licence regime and concerning the circumstances in which the bananas were imported. Since the applicant has deliberately chosen to adopt an especially restrictive approach with regard to the furnishing of evidence, it is not reasonable for it to complain that the Commission expressed some of its criticisms in greater detail at the hearing.

66 Second, the Commission's submission that the disadvantage constituted by the obligation on the part of Category A and C operators to acquire export licences was offset, at least in part, by the two other accompanying measures laid down in the Framework Agreement, namely the increase of 200 000 tonnes in tariff quota and the reduction of ECU 25 per tonne in the customs duty applicable to imports of third-country bananas within that quota, would not seem to be groundless. It is true that those measures benefited Category B operators too, since part of the tariff quota was reserved for them also. However, they benefited to a lesser extent only, since their share was limited to 30%, the other 70% being allocated to Category A and C operators.

67 It follows that the mere fact, assuming it to have been proved, that an operator has borne additional costs connected with its business dealings does not necessarily imply that it suffered a corresponding loss. In this instance, by deliberately confining itself to basing its application on the single fact that it had incurred certain costs, the applicant has therefore not adduced sufficient proof of having actually sustained loss.

68 With a view to establishing the existence and extent of the loss arising from payment of bank interest, the applicant has produced a letter from its bank and a certified statement of its auditor.

69 The letter from the bank states:

'... we write to confirm that since 1 January 1996 we have granted lines of credit to your undertaking in order to finance its activity.

For the various cash uses made of that line of credit we have charged you debit interest as follows:

— from 1 January 1996 to 21 April 1996: 7.5% per annum

— from 22 April 1996 to 18 May 1998: 7.0% per annum

— since 19 May 1998: 6.75% per annum

...'

70 In his certified statement the auditor states:

'... our calculations show that the cost of payment of interest on the external financing of the expenses indicated in the document annexed hereto is as follows:

Interest payable on the purchase of export licences: DEM 126 356.80

...

In order to calculate the interest on purchase of the export licences, we have taken as the date of cash use of the credits the date of the corresponding licence.

...'

71 That evidence is not convincing.

72 On the one hand, the letter from the bank makes it clear that the line of credit was made available to the applicant to 'finance its activity' generally. The applicant has not adduced any concrete evidence to demonstrate that it had recourse to that line of credit in order to purchase export licences in Costa Rica rather than to carry out any other transactions. On the contrary, the auditor's statement that, in order to calculate the interest, he adopted 'as the date of cash use of the credits the date of the corresponding [export] licence' suggests that the line of credit was used to cover indeterminate expenditure as a whole. If the applicant had actually drawn sums on the line of credit in order to purchase export licences, the auditor would have calculated the interest payable on those sums by taking account, on each occasion, of the date on which they were drawn.

73 On the other hand, in order to enable the Commission and the Court to ascertain whether the sum claimed was justified, it was incumbent on the applicant, in addition to showing how the sums borrowed were used, to specify the exact amounts drawn, the reference period of each loan taken out and the successive interest rates charged. In this action, the applicant has done no more than indicate the various interest rates in force and the total amount of interest allegedly paid.

74 Finally, and in any event, the damage consisting of payment of bank interest is incidental in relation to the damage represented by the cost of purchasing the export licences. Since the latter damage has not been sufficiently proved (see paragraphs 59 to 67 above), the applicant cannot obtain compensation for the former.

75 It follows that, since the applicant has not sufficiently established the existence and extent of the alleged damage, the Community cannot incur non-contractual liability.

76 Furthermore, the applicant has not adduced evidence to show that there was any direct causal link between the unlawful conduct of which it accuses the Commission, namely the introduction of the export licence regime under Regulation No 478/95, and the damage it has allegedly sustained, as required by settled case-law (Case T-168/94 *Blackspur and Others* v *Council and Commission* [1995] ECR II-2627, paragraph 40, and Case T-231/97 *New Europe Consulting and Brown* v *Commission* [1999] ECR II-2403, paragraph 57).

77 In its application it claims that 'the infringement adversely affecting it is... the cause of the loss for which [it] demands compensation'. It explains that it 'was obliged to take delivery of goods from its producer in Costa Rica' and that 'in order to obtain import licences for those bananas and to be able to market them in the Community, it had to prove the existence of corresponding export licences to the competent German authority when applying for the import licences'.

78 It must be observed that the applicant has not, however, adduced any evidence to prove that there was any such obligation to supply, notwithstanding the fact that

in its pleadings the Commission expressly emphasised that it was necessary to ascertain the extent of that obligation and also the other essential conditions resulting from the delivery contracts concluded with the Costa Rican producers.

79 What is more, indeed, the applicant has neither maintained nor, *a fortiori*, proved that it had concluded those contracts before Regulation No 478/95 was adopted. In its application it merely states that 'since 1995 it has had import contracts with Costa Rican banana producers'. On being asked at the hearing to supply further details concerning that claim, it did no more than say, vaguely, that those contracts had been 'negotiated' in 1995 and that the imports of bananas in question had begun during the following year.

80 The various items of information relating to those contracts are especially necessary since it is not inconceivable that the alleged damage was, wholly or partly, the consequence of a purely commercial decision taken by the applicant to conclude delivery contracts with Costa Rican producers rather than with producers of another third country which has not introduced an export licence regime. Accordingly, even if the presumption must be that the delivery contracts in question were concluded before Regulation No 478/95 was adopted — which would seem doubtful — it could have been established that no such decision was taken only if the applicant had set out the legal or factual reasons for which it could not have freed itself from those contractual commitments between 1995 and 1998. If it must be presumed — as seems to be the case here — that it concluded those contracts after the regulation was adopted, then it ought to have explained why it had been able to approach only Costa Rican producers.

81 It follows that in the circumstances of this case none of the conditions which are essential if the Community is to incur liability vis-à-vis the applicant has been satisfied. Accordingly, without there being any need to rule on the legality of the conduct for which the Commission is criticised, the action for damages must be dismissed as unfounded.

Costs

82 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs.**

García-Valdecasas Lindh Cooke

Delivered in open court in Luxembourg on 1 February 2001.

H. Jung P. Lindh

Registrar President