JUDGMENT OF THE COURT
1 APRIL 1965[1]

Getreide-Import Gesellschaft mbH
v Commission of the European Economic Community[2]

Case 38/64

Summary

Measures adopted by an institution — Applications by individuals against a decision addressed to another person — Decision of individual concern to them — Concept (EEC Treaty, second paragraph of Article 173)

Cf. summary in Case 1/64, Rec. 1964, p. 815.

In Case 38/64

GETREIDE-IMPORT GESELLSCHAFT MBH, with a registered office in Duisburg, represented by its managers, Wilhelm Specht and Wilhelm Breder, assisted by Kurt Redeker of the Bonn Bar, with an address for service in Luxembourg at the Chambers of Georges Reuter, 7 avenue de l'Arsenal,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by Claus-Dieter Ehlermann, member of the Legal Department of the European Executives, acting as Agent, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application for annulment of the Decisions of the Commission of the EEC of 23, 24 and 25 June 1964 fixing c.i.f. prices for sorghum (Official Journal, Agricultural Supplement of 1 July 1964, pp. 499 et seq.);

1 - Language of the Case: German.
2 - CMLR.

THE COURT

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

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

The applicant company is an importer of cereals and fodder of all kinds; it is, in this field, one of the largest undertakings in the Federal Republic. By its own account it is the most important importer of fodder into the Federal Republic of Germany. Sorghum is one of the fodders which for several years the applicant has imported in large quantities into the Federal Republic.

On 26 June 1964 the applicant applied for an import licence for 1 000 metric tons of sorghum originating in the United States at rates of levy determined in advance, pursuant to Article 17 (2) of Regulation No 19 of the Council of the European Economic Community on the progressive establishment of a common organization of the market in cereals (Official Journal of 20 April 1962, pp. 933 et seq.), hereinafter referred to as 'Regulation No 19'. In accordance with this application the applicant obtained import licence No 540 140/17 810. This gives, for 1 000 kg of sorghum originating in the United States, the following rates of levy:

Month of importation:	June 1964	July 1964	August 1964	September 1964
Rates of levy in DM per metric ton:	208.70	192.20	192.20	194.30

These rates of levy, given in DM per 1 000 kg, for the 'unloading of sorghum originating in the United States during the month of June', are based on the c.i.f. price of 51 dollars fixed by the Decision of the Commission of 25 June 1964 taken pursuant to Article 10 of Regulation No 19 and valid until 26 June 1964.

On 24 August 1964 the company made an application against the said Decision of the Commission of 25 June 1964. In the alternative, the company also contests the earlier Decisions of the Commission of 23 and 24 June concerning the 'c.i.f. price', by which the Commission fixed the c.i.f. price for sorghum at 51.20 dollars for the period from 23 to 25 June 1964.

II — Conclusions of the parties

In its application instituting the proceed-

ings, the applicant claims that the Court should:

'Annul the Decision of the Commission of 25 June 1964 fixing the c.i.f. prices of cereals, flour, groats and meal (in this instance: 'sorghum') (Official Journal, Agricultural Supplement of 1 July 1964, p. 501);
annul the Decisions of the Commission of 23 and 24 June 1964 fixing the c.i.f. prices of cereals, flour, groats and meal (in this instance: 'sorghum') (Official Journal, Agricultural Supplement of 1 July 1964, pp. 499 and 500).'

In its statement of defence presented on 29 September 1964, the Commission contends that the Court should:

'Give a preliminary ruling on the admissibility of the application under Article 91 of the Rules of Procedure;
dismiss the application as inadmissible;
order the applicant to pay the costs.'

In its reply of 30 November 1964, the applicant contends that the Court should:

'Dismiss the application under Article 91 of the Rules of Procedure for a preliminary ruling on the admissibility of the application.'

III — Submissions and arguments of the parties on admissibility

The defendant claims that the application, based on the second paragraph of Article 173 of the EEC Treaty, is inadmissible in that the procedural requirements which under this Article must exist before an application for annulment may be lodged by any natural or legal person are not fulfilled in this case.

The defendant claims that:

Under the terms of the second paragraph of Article 173 a natural or legal person may only institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

The present proceedings are thus only admissible if the Decision of the Commission, addressed to the Federal Republic of Germany, was of direct and individual concern to the applicant. The defendant considers that the contested Decisions are of direct but not of individual concern to the applicant.

1. In analysing the nature of the Decisions determining c.i.f. prices, the defendant makes the following statements:

A. The Decisions on the c.i.f price determine the amounts of the levy as regards third countries for all products governed by Regulation No 19.

(a) C.i.f. prices were fixed for all the products referred to in Article 1 (a), (b) and (c) of Regulation No 19, that is, for cereals, flour, groats and meal. For each of these products the amount of the levy as regards third countries is in principle equal to the threshold price in the importing Member State after deduction of the c.i.f. price fixed for that Member State.

The amount of the levy thus fixed for a specific day is charged on all imports from third countries which take place on that date; it is moreover a factor in determining the amount of the levy fixed in advance (that is, one which will concern only future imports) for applications presented on the same day. The c.i.f. price is also one of the two factors used in the calculation of the premiums which are added to the amount of the levy fixed in advance.

(b) No c.i.f. price was fixed for the processed products referred to in the Annex to Regulation No 19, hereinafter refered to as 'processed products'. The amounts of the levies on these products applicable to third countries are also determined by the c.i.f. prices. The amounts of the levies on processed products are made up of a variable component and of a fixed component. The variable component must correspond to the charge imposed on the cereal used in

the manufacture of this product. Where this product contains no cereal, the impact upon it of the variable component must be sufficient to maintain the relationship which experience has shown to exist between the price of the product in question and that of the competing processed cereal-based product(s).

The amount of the levy applicable to a processed product, fixed for a specific date on the basis of the variable component determined in this way, is charged on all imports from third countries which take place on that day; to the extent that the amounts of levies may be fixed in advance, this amount is, in addition, a component in the calculation of such levies for applications presented on the same day.

B. In addition, the Decisions concerning c.i.f. prices determine

— the maximum refunds which may be granted on exports to third countries for all products governed by Regulation No 19;

— the maximum refunds which may be granted on exports to Member States for the products referred to in Article 1 (a), (b) and (c) of Regulation No 19.

C. (a) Each working day the Commission fixes the c.i.f. prices for the products referred to in Article 1 (a), (b) and (c) of Regulation No 19 by means of a Decision addressed to all Member States. In accordance with the second paragraph of Article 191 of the Treaty Member States are informed of these prices on the same day. In the case of the Federal Republic, these Decisions are communicated by teleprinter to the delegation of the Federal Republic of Germany to the European Economic Community and the European Atomic Energy Community.

(b) The decision fixing c.i.f. prices determines for each Member State a specific c.i.f. price for a particular category of cereal. In each case the c.i.f. price must be fixed for the frontier crossing point indicated by each Member State. The c.i.f. price will only be uniform when a single frontier crossing point exists for the whole Community, in accordance with Article 13 (d) of Regulation No 19.

D. The calculations required by the Decision on c.i.f. prices regarding the fixing of the amounts of levies and refunds, the fixing and collection of such levies and the fixing and grant of such refunds shall be made by the Member States.

2. A reply to the question whether the Decision is of individual concern to the applicant depends basically on its legal repercussions. It is therefore necessary to decide who is concerned by the c.i.f. price.

The c.i.f. price for sorghum concerns:

— first, all importers of sorghum;

— importers of processed products, for whom the levy is composed of a variable component which is wholly or partly determined according to the c.i.f. price of sorghum;

— exporters of sorghum: it fixes the maximum refund which may be granted on exports of this product to third countries and to Member States;

— exporters of the above-mentioned processed products;

— any potential purchaser from or vendor to these importers or exporters, that is, all possible consumers and suppliers of sorghum or of processed products.

Turning to the question of those individually concerned by the Decision, it is unacceptable to consider merely potential importers of sorghum or processed products into the Federal Republic and their possible consumers and suppliers. The c.i.f. price for sorghum fixed for the Federal Republic must not be considered in isolation, since the c.i.f. prices fixed as regards each Member State for a given category of cereals are,

in principle, based on a single offer representing for all Member States the most favourable purchasing possibility available on the world market. This being so, the differences in the c.i.f. price levels are merely the result of differences in the cost of transport to the various frontier crossing points.

The defendant concludes from this that the contested Decisions fixing c.i.f. prices merely concern categories of persons defined in the abstract. Neither when these Decisions were adopted, nor when the Member States fixed the amounts of both the levies and refunds in accordance with them, was it possible to know the number of persons belonging to these categories. The applicant was only affected as a member of one of these categories defined in the abstract, and not by virtue of certain qualities of its own or by particular circumstances which distinguish it from all other persons. Thus it does not satisfy the criteria required by the judgments in Cases 25/62 and 1/64 in order that the decisions given be of individual concern to the parties involved.

In answer to the defendant the applicant sets out the following arguments:

According to German administrative phraseology, the measure introduced by the defendant is an 'Allgemeinverfügung' (decision of general application). It is taken for a clearly defined period, in general 24 hours, and applies to commercial transactions which take place within that period. Therefore, although it is true that the number of persons to whom the decision is addressed is not defined, this may be so because the category is limited to natural or legal persons importing or exporting the products referred to in the Decision in question within that time-limit.

In order for it to be concerned individually, the case-law of the Court requires the applicant, or the category to which it belongs, to show specific features distinguishing it from all other persons. The applicant fulfills this condition, since it applied for the licences in the 24-hour period during which the contested Decisions were applicable; the applicant therefore shows all the specific features to which case-law has until now attached basic importance.

IV — Procedure

At the hearing on 4 February 1965 the Court heard the parties on the objection of inadmissibility raised by the defendant.

At the hearing on 11 March 1965, the Advocate-General delivered his opinion on the inadmissibility of the application and the payment of costs by the applicant.

Grounds of judgment

The admissibility of the application

The contested Decisions are addressed to the Federal Republic of Germany.

The second paragraph of Article 173 of the EEC Treaty provides that any natural or legal person may institute proceedings against a decision which is not addressed to that person, on condition that it is of direct and individual concern to that person.

The defendant maintains that the contested Decision is not of individual concern to the applicant, within the meaning of that provision.

Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed.

The applicant claims to be in a special situation as regards the effects of the contested Decision, in that not only does it belong to a group of importers affected by the said Decision but also that its request for an import licence, made on 26 June 1964, distinguishes it from all other importers.

This claim is unfounded.

It is clear from the regulations applicable to measures such as the contested Decision that its effects are not intended to be limited to imports alone but extend also to exports of the product in question, either to other Member States or to third countries.

Moreover, the purely fortuitous fact that after the contested Decision was made only the applicant considered it advisable to apply for an import licence on the date in question is not sufficient to differentiate it from the other importers and to distinguish it individually as required by Article 173 of the Treaty.

In view of the above, the contested Decision cannot be regarded as of individual concern to the applicant.

This being so, the present application for annulment must be declared inadmissible.

Costs

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

Having failed in its application, the applicant must 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 the second paragraph of Article 173 of the Treaty establishing the European Economic Community;

Having regard to the Protocol on the Statute of the Court of Justice annexed to the Treaty establishing 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 orders:

1. **Dismisses Application 38/64 as inadmissible;**
2. **Orders the applicant to pay the costs of the action.**

Hammes Donner Lecourt

Delvaux Trabucchi Strauß Monaco

Delivered in open court in Luxembourg on 1 April 1965.

A. Van Houtte
Registrar

Ch. L. Hammes
President

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 11 MARCH 1965[1]

Mr President,
Members of the Court,

Getreide-Import, a trading company incorporated under German law with the object of carrying on foreign trade and in particular the import of cereals and animal feeding-stuffs, is applying to you for the annulment of a Decision of the Commission of the European Economic Community of 25 June 1964 which, in the context of Regulation No 19 on the progressive establishment of a common organization of the market in cereals, fixed the c.i.f. prices of these cereals, and in particular of sorghum, for 26 June 1964. It maintains that, contrary to the provisions of Article 10 (2) of Regulation No 19 and Article 1 (1) of Regulation No 68, this price was not fixed on the basis of the most favourable offers on the world market. It also contends that, contrary to Article 190 of the EEC Treaty, no reasons were given for this Decision. Alternatively and on the same grounds, it requests you to annul the Decisions of the Commission of 23 and 24 June 1964 determining this price for 24 and 25 June 1964 respectively.

As in other similar cases either already settled or still pending before you, the Commission contends that this application is inadmissible and has requested that a decision be given on this preliminary objection under Article 91 of the Rules of Procedure of the Court.

In my opinion, therefore, I will only deal with the problems of admissibility under the second paragraph of Article 173 of the Treaty, which was the only question to be discussed at the hearing.

1 Translated from the French.