

Case C-43/98 P(R)

Camar Srl

v

**Commission of the European Communities and
Council of the European Union**

(Appeal — Order of the President of the Court
of First Instance on an application for interim measures —
Urgency — Article 30 of Regulation (EEC) No 404/93)

Order of the President of the Court, 15 April 1998 I - 1818

Summary of the Order

- 1. Appeals — Pleas in law — Incorrect assessment of the facts — Inadmissibility — Application to appeals brought against an order on an application for interim measures (EC Treaty, Art. 168a; EC Statute of the Court of Justice, Arts 50, second para., and 51)*
- 2. Applications for interim measures — Provisional measures — Conditions for granting — Serious and irreparable damage — Material circumstances of the applicant company — Assessment in the light of the situation of the group to which it belongs (EC Treaty, Art. 186; Rules of Procedure of the Court of Justice, Art. 83(2); Rules of Procedure of the Court of First Instance, Art. 104(2))*

3. *Applications for interim measures — Provisional measures — Conditions for granting — Serious and irreparable damage — Prima facie case — Dismissal of the application on the sole ground of lack of urgency — Consequences in the context of an appeal*
 (EC Treaty, Art. 186; Rules of Procedure of the Court of Justice, Art. 83(2); Rules of Procedure of the Court of First Instance, Art. 104(2))

4. *Applications for interim measures — Provisional measures — Conditions for granting — Transition to the Community scheme in the banana sector — Measures sought to make good the refusal of the Commission to take transitional measures — Application of the general conditions for granting*
 (EC Treaty, Art. 186; Rules of Procedure of the Court of Justice, Art. 83(4); Rules of Procedure of the Court of First Instance, Art. 104(2); Council Regulation No 404/93, Art. 30)

1. Article 168a of the Treaty and Article 51 of the Statute of the Court of Justice, under which an appeal may lie only on points of law and may not extend to any assessment of the facts, apply equally to appeals brought under the second paragraph of Article 50 of the said Statute against decisions of the Court of First Instance on applications for interim relief.

for interim measures on the ground of lack of urgency of the measures sought, without any consideration of whether the main action appeared *prima facie* well founded, pleas which relate to the existence of a *prima facie* case but do not call into question the lack of urgency cannot form grounds for setting aside, even partially, the order under appeal.

2. In order to assess the risk of serious and irreparable damage which it is claimed will result for an undertaking importing bananas from a Commission decision refusing to grant it additional import licences, the judge hearing the application for interim measures may assess the material circumstances of the undertaking by taking into consideration *inter alia* the characteristics of the group to which the applicant is linked by way of its shareholders.

4. When the judge hearing an application for interim measures to make good the refusal of the Commission to act pursuant to Article 30 of Regulation No 404/93, relating to the transitional measures intended to assist transition to the scheme established by the common organisation of the market in bananas, the conditions to which the adoption of the measures sought is subject do not differ from the general conditions for interim relief.

3. In the context of an appeal brought against an order dismissing an application

More specifically, while Article 30 of Regulation No 404/93 permits, and, in certain circumstances, requires the Commission to take definitive measures to regulate cases of unreasonable hardship, the judge hearing the application for interim measures in the context of a main application brought against the Commission for annulment or declaration of failure to act must adopt only the interim measures which appear necessary in order to avoid, pending the Court's decision on the substance, the applicant suffering serious and irreversible damage which could

not be made good by a judgment in the main proceedings in favour of the applicant.

The judge hearing the application for interim measures will not therefore take the place of the Commission and apply Article 30 of Regulation No 404/93, for that would lead him to do more than adopt only the measures necessary to ensure that the final decision subsequently to be given in the main action will be fully effective.