

I am therefore of opinion that the application should be dismissed. Under the provisions of our Rules of Procedure the costs of the proceedings must be borne by the applicant.

ORDER OF THE PRESIDENT OF THE COURT
31 AUGUST 1962¹

In Case 25/62 R1

PLAUMANN & Co., Hamburg 1, Fruchthof, assisted by Harald Ditges, Marienburg, Von-Groote-Strasse 7, with an address for service in Luxembourg at the offices of Mr Audry, Fédération des commerçants, 8 Avenue de l'Arsenal,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by Hubert Ehring, Legal Adviser to the European Executives, acting as Agent, assisted by Professor Ernst Steindorff of the University of Tübingen, 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 the adoption of an interim measure in Case 25/62 (refusal to authorize the Federal Republic of Germany to suspend in part customs duties on 'clementines, fresh' as regards third countries).

Issues of fact and of law

On 20 July 1962 the applicant lodged at the Court Registry an application for the annulment of the Decision SIII 03079 of 22 May 1962 addressed to the Government of the Federal Republic of Germany whereby the Commission of the EEC rejected the request of the Federal Republic of Germany for authorization to make an 'ex tariff heading clementines' (customs duty at 10%).

On 16 August 1962 the applicant lodged at the Court Registry an application for the adoption of the following interim measure:

'a declaration that the defendant is required to authorize the Federal Republic of Germany to suspend provisionally, to the extent of 3%, subject to security being given, the application of the customs duty in force

— Language of the Case: German.

for "clementines fresh" (tariff heading No ex 08.02B of the Common Customs Tariff), for the period from 1 January 1962 to 31 December 1962.' In addition the applicant asks that the defendant be ordered to bear the costs of the proceedings in connection with the proposed interim measure.

The defendant in a memorandum lodged on 24 August contended that this application should be dismissed as inadmissible or at least as unfounded and that the applicant should be ordered to pay the costs of the proceedings, or alternatively that the question of costs be reserved.

Grounds

The applicant bases its application on the claim that, even if in the main action the Court were to annul the refusal of the Commission to grant to the Federal Republic of Germany an import quota for clementines for 1962 at the rate of 10% instead of the normal rate of 13%, this decision would come too late to prevent imports, in particular those to be made in the last quarter of that year, from being charged in the meantime with customs duty at 13%. The applicant maintains that on these grounds and because it is afraid that, even if it were successful in the main action, it would be unable according to German customs practice to recover the amounts overpaid, it has a compelling interest in the Federal Government's being authorized, pending judgment on the main issue, to levy a customs duty of only 10% on the importation of clementines and to accept security for the remaining 3%, this to be forfeited if the application be dismissed, with the result that the customs duty would then be paid at the rate of 13%.

The applicant is thus asking for more than a mere suspension of the operation of the Decision which it is contesting. It seeks rather to prejudice the results by assuming beyond doubt that these will lead to a decision in its favour in the main action, that is to say, that the Commission will then be required in each case to grant the contested authorization and moreover that the Federal Government will avail itself of this authorization and, indeed, with retroactive effect.

It is true that Article 186 of the EEC Treaty does not clearly exclude such measures; nevertheless so far-reaching an interim measure could be justified only by wholly exceptional circumstances and if there were very good reasons for thinking that the party concerned would otherwise suffer serious and irreparable damage.

It may be assumed, and it is not disputed by the applicant, that the latter, even if the present application were accepted, would have to take account, in fixing the prices to be paid by its customers, of the risk of an unfavourable decision in the main action. It therefore matters little whether the interim measure

asked for is adopted or not because it can have no influence on the fixing of prices. On these grounds alone it is in no way proved that failure to repay the customs duties overpaid would, in any event, cause damage to the applicant. On the other hand it is very possible that the repayment would redound to its especial advantage.

Moreover it is by no means certain that the customs duties overpaid would not be repaid to the applicant in whole or in part if the applicant succeeded in the main action. Even if it must be admitted that the tax regulations in force in the Federal Republic of Germany give the applicant no unconditional right to repayment, the competent administrative authorities would be at liberty to use their discretion in making such repayment. If the Federal Republic were to avail itself for 1962 of an authorization resulting from the applicants' possible success in the main action it is not improbable that the authorities would act on those lines, especially as the Federal government, according to the applicant's own statement, views its arguments favourably.

Moreover it must not be overlooked that the applicant would have the opportunity to act directly by availing itself of the methods of recourse provided under German law against decisions of the German customs authorities imposing on it duties amounting to 13%.

For these reasons the urgency of and the necessity for the measure requested have not been sufficiently established.

In these circumstances it is not necessary to examine the other arguments set out by the defendant on the admissibility and validity of the application for the adoption of an interim measure and of the application in the main action.

On those grounds,

Having regard to Articles 185 and 186 of the Treaty establishing the European Economic Community, Article 36 of the Protocol on the Statute of the Court of Justice of the European Economic Community and Articles 83, 84, 85 and 86 of the Rules of Procedure;

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES hereby orders :

1. **The application is dismissed;**
2. **The costs are reserved.**

Luxembourg, 31 August 1962

H. W. Daig

Attaché for Registrar

A. M. Donner

President