Action brought on 13 February 1991 by the Commission of the European Communities against the Hellenic Republic

(Case C-65/91)

(91/C 86/09)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 13 February 1991 by the Commission of the European Communities, represented by Theophanis Christoforou and Maria-Anna Paraskevas, members of its Legal Department, with an address for service in Luxembourg at the office of Guido Berardis, a member of its Legal Department, Wagner Building, Kirchberg.

The applicant claims the Court should:

1. Declare that by including matches (heading No 36.06 of the Common Customs Tariff) in its unpublished 'List D', resulting in refusal to issue import permits for those products originating in Sweden and, for a certain period, in Bulgaria, the Hellenic Republic has failed to fulfil its obligations under Article 1 (2) of Regulation (EEC) No 288/82 (1), Article 6 of Regulation (EEC) No 3420/83 (2), as amended, and Article 13 of the 1972 Agreement between the European Economic Community and the Kingdom of Sweden, as amended by the 1980 Additional Protocol to the Agreement consequent upon the accession of the Hellenic Republic to the Community (3);

2. Declare that by refusing to produce to the Commission the laws, regulations and other provisions concerning the importation procedure, in particular those concerning 'List D', and the provisions applicable at the time of the refusal to issue import permits and/or at present, the Hellenic Republic has failed to fulfil its obligations under Article 5 (1) of the EEC Treaty;

3. Order the Hellenic Republic to pay the costs.

Contentions and main arguments adduced in support:

Before the accession of the Hellenic Republic to the European Communities the production and sale of matches was subject to a State monopoly of a commercial character.

Article 40 (1) of the Act of Accession of the Hellenic Republic to the European Communities provides that State monopolies of a commercial character must be adjusted by 31 December 1985. Consequently, from 1 January 1986 no restriction could be applied to the importation into Greece of matches from non-member countries unless such restrictions were provided for in the relevant provisions of Community law. It appears from the information given to the Commission by the complainant companies that from 7 May 1986 the Greek authorities imposed as a condition for the importation of matches from non-member countries the issue of a permit as described above, although neither for matches from Bulgaria or matches from Sweden was any quantitative restriction provided for in the relevant legislation (Regulations (EEC) No 3420/83 and (EEC) No 288/82 respectively, and the 1972 Agreement between the EEC and Sweden). Although Articles 24 to 27 of the Agreement with Sweden lay down procedures for the adoption of protective measures, the Greek authorities did not make use of those procedures but instead submitted on 21 July 1987 a request for Community surveillance under Regulation (EEC) No 288/82, on the ground that the market share of the national match company, which enjoyed a monopoly before the accession of Greece to the Communities, had fallen to 60 %. On 3 August 1987 the Commission refused to order Community surveillance, but allowed Greece to apply national surveillance. For those reasons the Commission considers that at least for the period from February to 3 August 1987 the defendant has failed to fulfil its obligations under Article 1 (2) of Regulation (EEC) No 288/82 and Article 13 of the 1972 Agreement between the EEC and Sweden, as subsequently amended. Since the defendant has failed to notify to the Commission the national surveillance measures taken on 3 August 1987, as required by Articles 12 (3) and 14 of Regulation (EEC) No 288/82, it has also failed to fulfil its obligations under those provisions.

Moreover, the refusal of the Greek authorities to cooperate with the Commission and provide the necessary information on 'List D', which is drawn up by the Ministry of Commerce and kept secret by the Bank of Greece without ever being published, constitutes an infringement of Article 5 (1) of the EEC Treaty.

(1) OJ No L 35, 9. 2. 1982, p. 1.
(2) OJ No L 346, 8. 12. 1983, p. 6.
(3) OJ No L 300, 31. 12. 1972, p. 186; and OJ No L 357, 30. 12. 1980, p. 104.

Action brought on 15 February 1991 by Emerald Meats Limited against the Commission of the European Communities

(Case C-66/91)

(91/C 86/10)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 15 February 1991 by Emerald Meats Limited, of Emerald House, 8 Herbert Street, Dublin, represented by John Ratliff, Barrister of the Middle Temple, and Elisabethann Wright, Barrister of the Inn of Court of Northern Ireland; instructed by John Lavery, of Lavery, Kirby & Company Solicitors, Main Street, Blackrock, Co. Dublin, with an address for service c/o Stanbrook and Hooper, 3 rue Thomas Edison, L-1445 Luxembourg.

The applicant claims that the Court should:

1. Annul the Commission's decision, dated 6 February 1991, to the exent that it indicates that the Commission has decided to:

   — allocate the 1991 GATT quota concerned, without ensuring that Emerald Meats receives its entitlement in 1990 and 1991,

   — withhold the issue of the corresponding import licences until after proceedings before the national courts, and

   — prohibit issue of import licences until the final outcome of those proceedings, unless a guarantee equivalent to the levy increased by 20 % is provided;

2. Order damages from the European Community for the loss which Emerald Meats has and will suffer as a result of the Commission's failure to administer and manage the 1991 allocation of the said Community tariff quota in accordance with Community Law;

3. Order interest to be paid on such damages;

4. Order the Commission to pay the applicant's costs in the action.

Contentions and main arguments adduced in support:

The application relates to Emerald Meats' entitlement to GATT quota pursuant to Commission Regulation (EEC) No 3885/90. The case follows chronologically from cases C-106/90 (1) and C-371/90 (2).

The decision of 6 February 1991 is a telex from the Director-General for Agriculture to the United Kingdom and Irish authorities which is contrary to the Treaty because:

1. The Commission cannot lawfully take a decision and adopt a regulation allocating the 1991 GATT quota to the traders concerned, and then order that licences will not be issued to certain applicants pending a national court ruling. That is not Community management of the Community quota.

2. The whole approach of the Commission is based upon the incorrect premise that there are 'dual', matching and numerically identical applications. This is wrong because only Emerald Meats' application is valid. Nor are the imports claimed by Emerald Meats and the beef processors in Ireland the same. The figure for 'dual' applications which the Commission proposes to use in its decision apportioning and allocating 1991 quota will therefore be wrong, as will be the corresponding regulation. The decision and regulation will therefore be unlawful to that extent.

3. The whole approach of the Commission that Emerald Meats' entitlement can be put into abeyance for some brief period (i.e. until after the hearings before the Irish courts) is also wrong. There is a clear risk that the Irish proceedings may be delayed, and that judgment may not be received for some time.

4. The Commission has no power under the regulations concerned to require provision of the proposed guarantee, increased by 20 %. The requirement is unlawful and penal and will in effect prevent Emerald Meats from using its entitlement. Moreover, the Commission appears to be using the guarantee for the ulterior purpose of giving the Commission and/or the relevant authorities a form of insurance against possible claims.

(1) OJ No C 126, 22. 5. 1990, p. 3.
(2) OJ No C 310, 11. 12. 1990, p. 11.