

JUDGMENT OF THE COURT (Sixth Chamber)
19 November 1998 *

In Case C-284/94,

Kingdom of Spain, represented by Alberto Navarro González, Director-General for Community Legal and Institutional Coordination, and Gloria Calvo Díaz, Abogado del Estado, of the State Legal Service, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

applicant,

v

Council of the European Union, represented by Bjarne Hoff-Nielsen, Legal Adviser, Guus Houttuin and Diego Canga Fano, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Directorate, European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

defendant,

supported by

Commission of the European Communities, represented by Miguel Díaz-Llanos, Legal Adviser, Patrick Hetsch and Carlos Gómez de la Cruz, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the latter's office, Wagner Centre, Kirchberg,

intervener,

* Language of the case: Spanish.

APPLICATION for the annulment of Council Regulation (EC) No 1921/94 of 25 July 1994 amending Regulation (EC) No 519/94 on common rules for imports from certain third countries (OJ 1994 L 198, p. 1),

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, G. F. Mancini (Rapporteur) and J. L. Murray, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 20 June 1996,

after hearing the Opinion of the Advocate General at the sitting on 26 September 1996,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 20 October 1994, the Kingdom of Spain brought an action under the first paragraph of Article 173 of the EC Treaty for the annulment of Council Regulation (EC) No 1921/94 of 25 July 1994 amending Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries (OJ 1994 L 198, p. 1, 'the contested regulation').

Relevant provisions and facts of the case

- 2 Before the entry into force of Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ 1994 L 67, p. 89), as amended by the contested regulation, imports of products originating in State-trading countries, including the People's Republic of China ('China'), were governed by several Council regulations.

- 3 In particular, Council Regulation (EEC) No 1766/82 of 30 June 1982 on common rules for imports from the People's Republic of China (OJ 1982 L 195, p. 21) applied to imports which were not in principle subject to any quantitative restrictions, whilst Council Regulation (EEC) No 3420/83 of 14 November 1983 on import arrangements for products originating in State-trading countries, not liberalised at Community level (OJ 1983 L 346, p. 1), applied *inter alia* to imports from China which did not fall within the scope of Regulation No 1766/82.

- 4 Under Article 2(1) of Regulation No 3420/83, the putting into free circulation of the products listed in Annex III to that regulation, including certain toys from China, was subject to quantitative restrictions in one or more Member States as indicated in that annex. Article 3(1) provided that before 1 December of each year the Council was to lay down, in accordance with Article 113 of the EEC Treaty, the import quotas for those products to be opened by the Member States for the following year in respect of the various State-trading countries. Article 3(2) provided that if no such decision had been adopted, the existing import quotas were to be extended on a provisional basis for the following year.

- 5 Articles 7 to 10 of Regulation No 3420/83 established various procedures enabling the import arrangements to be amended at the request of a Member State, or by decision taken by the Commission in accordance with Article 9(1), (3) or (4) or, where appropriate, by decision taken by the Council.
- 6 Regulation No 3420/83 was most recently amended by Council Regulation (EEC) No 2456/92 of 13 July 1992 fixing the import quotas to be opened by Member States in respect of State-trading countries in 1992 (OJ 1992 L 252, p. 1). With regard to toys from China, quotas for Germany and Spain were opened for 1992 by Article 1 of and Annex VIII to the last-mentioned regulation.
- 7 In accordance with Article 5 of Regulation No 2456/92, Article 3(2) of Regulation (EEC) No 3420/83 providing for the automatic extension of the previous year's quotas, was not to apply in 1993. That derogation was justified in the fifth recital in the preamble to the regulation by the need to replace the arrangements then in existence, based on maintaining national rules, which were incompatible with the functioning of the single market, with a Community mechanism covering all restrictions remaining on 31 December 1992.
- 8 The Community mechanism thus envisaged was not, however, introduced for 1993 and no new regulation fixing import quotas was adopted. Nevertheless, between 1 March 1993 and 19 January 1994, on the basis of Article 9(1) and (3) of Regulation No 3420/83, the Commission adopted six decisions authorising the Kingdom of Spain to open quotas for toys from China falling within HS/CN Code 9503. No other Member State requested quotas to be set for those products.
- 9 Regulation No 519/94, applicable from 15 March 1994, repealed Regulations Nos 1766/82 and 3420/83. The first recital in the preamble to that regulation states that while 'the common commercial policy should be based on uniform principles', Regulations Nos 1766/82 and 3420/83 still allowed exceptions and derogations enabling Member States to continue applying national measures to imports of products originating in State-trading countries. According to the fourth recital in the

preamble, 'in order to achieve greater uniformity in the rules for imports, it is necessary to eliminate the exceptions and derogations resulting from the remaining national commercial policy measures, and in particular the quantitative restrictions maintained by Member States under Regulation (EEC) No 3420/83'. The fifth and sixth recitals state that the principle of liberalisation of imports must form the starting point for such harmonisation, except for 'a limited number of products originating in the People's Republic of China'. As explained in the sixth recital, 'owing to the sensitivity of certain sectors of Community industry', those products should be subject to quantitative quotas and surveillance measures applicable at Community level.

- 10 Article 1(2) of Regulation No 519/94 provides that imports into the Community of the products referred to are to take place freely and so are not to be subject to any quantitative restrictions, without prejudice to any safeguard measures or the Community quotas referred to in Annex II. Article 1(3) provides that imports of the products referred to in Annex III are to be subject to Community surveillance. Annexes II and III apply exclusively to products from China.
- 11 Annex II sets quotas for certain categories of toys originating in China. More specifically, annual quotas of ECU 200 798 000, ECU 83 851 000 and ECU 508 016 000 were fixed for toys falling within HS/CN Codes 9503 41 (stuffed toys representing animals or non-human creatures), 9503 49 (other toys representing animals or non-human creatures) and 9503 90 (certain miscellaneous toys) respectively, before the amendments made by the contested regulation. Thus, for the period from 15 March to 31 December 1994, those quotas amounted to ECU 158 965 083, ECU 66 382 042 and ECU 402 179 333 respectively.

- 12 Other products which were previously subject to national restrictions, including *inter alia* construction sets and toys, puzzles and playing cards, which fall within HS/CN Codes 9503 30, 9503 60 and 9504 40 respectively, are covered by Annex III to the contested regulation and are therefore subject to Community surveillance.
- 13 Article 1 of the contested regulation amended Regulation No 519/94 by providing that the quota for the toys falling within Code HS/CN 9503 41 was to be raised from ECU 158 965 083 to ECU 204 500 000 for the period from 15 March to 31 December 1994.
- 14 The first two recitals in the preamble to the contested regulation state that, in adopting Regulation No 519/94 and in setting the level of the quotas for certain products originating in China, the Council strove to find a balance between appropriate protection of the sectors of the Community industry concerned and maintaining an acceptable level of trade with China, taking into account the various interests involved. With regard to the operation of the quota for toys falling within Code CN 9503 41, the third recital mentions disruptions occurring in trade with China which have affected Community economic sectors involved in the import, marketing and processing of those toys. In those circumstances and without prejudice to a review of the situation, it seemed appropriate, as stated in the fourth recital, to increase the quota in question in order to ease the transition between the previous import regime and the regime established by Regulation No 519/94.
- 15 In support of its application, the Spanish Government raises two pleas in law, one alleging failure to state adequate reasons for the contested regulation, and the other alleging breach of the principle of protection of legitimate expectations.

Failure to state adequate reasons

- 16 In the first place, the Spanish Government claims that the contested regulation is contrary to Article 190 of the EC Treaty in that it does not contain an adequate statement of the reasons on which it was based.
- 17 In that regard, the Spanish Government points out that the statement of reasons must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its power of review (see, in particular, Case C-353/92 *Greece v Council* [1994] ECR I-3411).
- 18 Furthermore, as the Court ruled in Case C-358/90 *Compagnia Italiana Alcool v Commission* [1992] ECR I-2457, where the institution possesses a wide power for the assessment of complex economic situations and exercises that power, it must take account of factors which may lead to disturbances of the market and it has a duty not only to identify the factors which influenced its decision but also to state their effect.
- 19 In its judgment in Case C-181/90 *Consorgan v Commission* [1992] ECR I-3557, moreover, the Court held that, while a statement of reasons in summary form was sufficient to justify a decision rejecting a request for assistance from the European Social Fund, a subsequent decision reducing the amount of the assistance originally approved, thus entailing more serious consequences for the applicant, must clearly state the grounds justifying it.
- 20 The Spanish Government considers that, although those judgments concern decisions of the Commission, they are of general application since the principles they lay down are not confined by the Court to certain specified Community rules and the purpose of the obligation to state reasons is not conditional on the nature of the act.

- 21 So far as concerns the legal context of the contested regulation, the Spanish Government observes that the quota in issue was introduced by Regulation No 519/94 as part of a vast programme intended to harmonise the commercial rules applying to trade with State-trading countries, on account of 'the sensitivity of certain sectors of Community industry' (sixth recital in the preamble to that regulation). The level of that quota was set having regard to the trend reflecting an exponential increase in imports of Chinese toys and the state of the Community market.
- 22 In the Spanish Government's view, in the contested regulation the Council raised the quota in question by 28.64% just four months after the entry into force of Regulation No 519/94 without giving adequate reasons for that increase. In particular, the amendments made do not appear to be justified by any changes in the circumstances which led to the fixing of the original quota.
- 23 The contested regulation thus introduced a significant alteration but did not provide any reasons not only to identify the factors which led to the adoption of the measure but also to explain its effect, so as to enable the persons concerned to defend their rights and the Court to exercise its power of review. The reference in the third recital in the preamble to 'disruptions ... in trade with the People's Republic of China' is, in the applicant's view, no more than a factual observation insufficient to justify the manner in which the institution exercises the wide discretion it enjoys (see *Compagnia Italiana Alcool v Commission*, cited above).
- 24 The Council argues that the Spanish Government is attempting to apply the Court's case-law on the statement of reasons for decisions of the Commission to this case, which concerns a Council regulation, whereas an act of that kind is not necessarily subject to the same requirements as a decision. The recitals in the preamble to the contested regulation are detailed and exhaustive, and are not confined to a mere reference to disruptions in trade. On the contrary, they clearly demonstrate what led the Council to adopt the measure in question and they thus comply with the obligation to state reasons laid down in Article 190 of the Treaty.

- 25 Moreover, according to the Council, since the contested regulation merely alters the level of a quota fixed by Regulation No 519/94, it has not had a significant effect on the present situation. In any event, it is for the Community institutions to assess any disruptions affecting the economic situation in which the regulation is adopted and to decide on the measures to be taken as a result.
- 26 The Commission likewise maintains that the reasons stated in the preamble to the contested regulation are sufficiently clear and precise. The adjustment to the amount of the quota for 1994 was necessary on account of the disruptions in trade with China. In particular, the Council had endeavoured to strike a fair balance between all the interests involved, that is to say, between, on the one hand, the need to protect sectors of the Community industry concerned and, on the other, the need to maintain an acceptable level of trade with China. Any attempt to reconcile those interests necessarily involves the exercise of a wide discretion by the Council.
- 27 Furthermore, although no specific detailed reasons were given for the choice made in respect of the products subject to quota, the chief matters of law and fact on which the regulation is based and the reasons which led the Council to adopt it were set out clearly and unequivocally in the preamble to the contested regulation.
- 28 In that connection, the Court, as the Council was right to point out, has consistently held (since its judgment in Case 5/67 *Beus v Hauptzollamt München* [1968] ECR 83, at p. 95) that the extent of the requirement to state reasons depends on the nature of the measure in question, and that in the case of measures intended to have general application the preamble may be limited to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other.

- 29 It follows that the case-law cited by the Spanish Government, which relates to Commission decisions of individual concern to the applicants, is irrelevant in the case of measures of general application such as the contested regulation.
- 30 Furthermore, the Court has repeatedly held that if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (see, *inter alia*, Case 250/84 *Eridania and Others v Cassa Conguaglio Zuccheri* [1986] ECR 117, paragraph 38).
- 31 In the present case, the Council first set out in the preamble to the contested regulation the circumstances in which it had set the original level of the contested quota and the aims it had thus pursued. It went on to explain that implementation of the quota had caused disruptions affecting the economic sectors concerned, from which it concluded that the quota should be increased in order to ease the transition between the previous import regime and the new regime.
- 32 The statement of reasons must therefore be deemed to contain a clear description of the material situation and of the objectives pursued which, having regard to the circumstances of the case, would appear to be sufficient.
- 33 First of all, and without there being any need to ascertain whether the change made by the contested regulation is one of substance, it must be recalled that the Community institutions enjoy a margin of discretion in their choice of the means needed to achieve the common commercial policy (see, to this effect, Case 245/81 *Edeka Zentrale v Germany* [1982] ECR 2745, paragraph 27; Case 52/81 *Faust v Commission* [1982] ECR 3745, paragraph 27; Case 256/84 *Koyo Seiko v Council* [1987] ECR 1899, paragraph 20; Case 258/84 *Nippon Seiko v Council* [1987] ECR 1923, paragraph 34, and Case 260/84 *Minebea v Council* [1987] ECR 1975, paragraph 28).

- 34 In particular, it is for the Council to determine whether, in the light of the consequences resulting from implementation of the legislation it has enacted, it is necessary to amend it in certain respects. Accordingly, and in contrast to the view taken by the Spanish Government, the Council was not required to set out in the statement of reasons the changes in the circumstances which led to the fixing of the original quota.
- 35 Second, since the Council had explained the objectives pursued, it was not required to justify the technical choices made, in particular the size of the increase in the contested quota.
- 36 It follows that the first plea in law must be rejected.

Breach of the principle of protection of legitimate expectations

- 37 In the second place, the Spanish Government claims that, in adopting the contested regulation, the Council acted in breach of the principle of protection of legitimate expectations, inasmuch as it failed to take into account the situation of the Member States and of the traders concerned. While there was no change in the actual circumstances, an alteration in the status quo established by the earlier regulation was imposed on the traders at very short notice, even though it was not justified by a higher public interest. That resulted in serious damage to all the traders who, having regard to the former regulation, had terminated or postponed their contracts.
- 38 The Spanish Government considers itself entitled to plead a breach of the legitimate expectations of the traders concerned, in particular the Spanish traders, in an action for annulment, especially in view of the fact that the interested parties could not in the circumstances bring such an action themselves.

- 39 Furthermore, a prudent and reasonable trader cannot be expected to foresee a change rendering the previous quota entirely devoid of substance barely four months after its introduction. The traders concerned cannot therefore be blamed for lack of care or be required to bear risks over and above the normal risks inherent in carrying on their activity.
- 40 The Council is doubtful, first, as to whether it was possible for the contested regulation to breach any legitimate expectation on the part of the Kingdom of Spain. Second, even if a Member State were entitled to plead a breach of the principle of protection of legitimate expectations on the part of the traders concerned, the conclusion would have to be drawn that the Council has respected that principle in full. Any introduction or alteration of Community quotas has an effect on trade and the possibility that the effect on trade will be significant is one of the economic risks inherent in the sectors concerned and is well known to every prudent and reasonable trader. Finally, the Council is doubtful as to whether legitimate expectations can be relied upon where the only possible consequence for the traders concerned of the increase in the quota is a different level of competition on the Community toy market. In any event, it is for the applicant government to adduce evidence of the existence of legitimate expectations on the part of the traders affected by Regulation No 519/94.
- 41 For its part, the Commission argues that while a prudent and reasonable trader is capable of foreseeing the adoption of a Community measure likely to affect his interests, he cannot plead a breach of the principle of protection of legitimate expectations when that measure is adopted. In this case, the Spanish Government's assertions with regard to the breach of legitimate expectations are not based on any evidence, not even *prima facie* evidence. In any event, there was nothing that would have led a prudent and reasonable trader to believe that the Council would not alter the quota. In addition, both the Spanish authorities and the traders in that sector played a very active part in the process of drafting both Regulation No 519/94 and the contested regulation, which meant that they were aware, well in advance, of the

content of those regulations. Finally, Regulation No 519/94 made express provision not only for quantitative quotas to be introduced but also for them to be altered, so as to enable them to be adjusted at regular intervals in line with the changing economic situation. Consequently, it was known that the quotas set might be adjusted, or even abolished, and such action was foreseeable.

- 42 It must be stated at the outset that, although the Spanish Government alleges that the contested regulation adversely affects the legitimate expectations of the Member States as well, in all essential respects its arguments refer to breach of the legitimate expectations of the traders concerned. Nevertheless, despite the doubts expressed by the Council, there is nothing to prevent a Member State from claiming in an action for annulment that an act of the institutions frustrates the legitimate expectations of particular individuals (see, in this respect, Case 278/84 *Germany v Commission* [1987] ECR I, paragraphs 34 to 36; Case 203/86 *Spain v Council* [1988] ECR 4563, paragraphs 17 to 20, and Case C-169/95 *Spain v Council* [1997] ECR I-135, paragraphs 49 to 54).
- 43 As regards the question whether this plea in law is well founded, it should be recalled, first, that since, according to settled case-law, the Community institutions enjoy a margin of discretion in the choice of the means needed to achieve the common commercial policy, traders cannot claim to have a legitimate expectation that an existing situation which is capable of being altered by decisions taken by those institutions within the limits of their discretionary power will be maintained (*Edeka Zentrale v Germany*, cited above, paragraph 27; *Faust v Commission*, cited above, paragraph 27; *Koyo Seiko v Council*, cited above, paragraph 20; *Nippon Seiko v Council*, cited above, paragraph 34; and *Minebea v Council*, cited above, paragraph 28).
- 44 Second, in the present case, it is expressly stated in Regulation No 519/94, in particular in the sixth recital in the preamble and in Articles 1(4) and 4(3), that the quotas referred to in Annex II could be adjusted. In those circumstances, measures of the kind laid down by the contested regulation were, by and large, foreseeable by the traders concerned.

- 45 It follows that, in adopting the contested regulation, the Council has not acted in breach of the principle of protection of legitimate expectations, with the result that this plea in law cannot be upheld.
- 46 Since neither of the pleas raised by the Spanish Government is well founded, the application must be dismissed in its entirety.

Costs

- 47 Under Article 69(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 Kingdom of Spain has been unsuccessful, it must be ordered to pay the costs, in keeping with the form of order sought by the Council. Under Article 69(4) of the Rules of Procedure, the Member States and institutions which intervene in the proceedings are to bear their own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

- 1) Dismisses the application;

- 2) Orders the Kingdom of Spain to pay the costs;
- 3) Orders the Commission of the European Communities to bear its own costs.

Kapteyn

Mancini

Murray

Delivered in open court in Luxembourg on 19 November 1998.

R. Grass

P. J. G. Kapteyn

Registrar

President of the Sixth Chamber