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INFORMATION MEMO

Judgements by the Court of Justice on two German appeals concerning tariff quotas and suspensions or alterations of duties for oranges, tangerines and clementines (July 15)

(a) Case 34/62, Government of the Federal Republic of Germany
v. EEC Commission

Under arrangements for the progressive introduction of the common external tariff, the duty on oranges imported from non-member countries was fixed at 11.5% for the period from April 1 to October 15, 1962 and at 13% for the period from October 16, 1962 to March 31, 1963. On June 16, 1961 the Federal Republic of Germany applied to the Commission for permission to suspend this duty partially and to apply a rate of 10%. This was refused on January 5, 1962 and the Federal Republic then applied for a tariff quota of 580 000 metric tons at a 10% duty. On July 30, 1962 the Commission refused this application also, pointing out that German imports of Italian oranges were on the decline, despite heavier consumption. The German Government's appeal was against this decision.

The appellant alleged violation of a major procedural requirement (insufficient motivation), misuse of powers ("détournement de pouvoir") and infringement of Articles 25(3 e), 29 and 39. On this last point, it was argued that the consumer price of the products at issue (oranges) would increase as a result of the implementation of the CET, whereas Community production in any case fell short of consumer requirements in Germany. Reference to the need to increase producers' incomes and to the proper working of the common agricultural policy was irrelevant. Moreover, the appellant alleged that in respect of authorization to suspend customs duties the Commission had made use of the discretionary powers it claimed to possess to encourage the production of apples, pears and peaches despite the fact that Article 25(3 e) did not empower it to take into account the possible effects of its decision on other Community commodities.

Since the appellant in this case was a Member State and not a private person, the question of admissibility did not arise as in case 25/62 below, and the Advocate General dealt only with the merits of the dispute itself, that is to say the law on the granting of tariff quotas and authorizations to suspend common external duties. In his submissions, he moved annulment of the Commission's decision on grounds of insufficient motivation and mistakes of fact.

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The appeal was rejected by a judgement of July 15, 1963. The Court ruled that the decision attacked was sufficiently motivated and that it did not involve a misuse of powers: the Commission was fully entitled to base its decision on grounds other than those put forward by the Governments consulted. The Executive was required to weigh all the relevant factors, whether or not the Governments concerned had raised them or not.

The Court also ruled that the decision was motivated as required by the law: the fact that the powers conferred on the Commission by Article 25(3) were wider than those laid down in Article 25 (1 and 2) did not mean that the Commission was obliged to accept all applications for quotas, etc. not involving the risk of serious market disturbances. In deciding whether to grant a tariff quota under Article 25, the Commission must apply the criteria of Article 29 and keep within the general framework and fundamental rules of the Common Market (see below, case 24/62). In particular, the Commission was legally entitled to consider the possible effects of suspending a duty or authorizing a quota not only on the market for the commodities designated in the application but also on that for competing commodities ("products at issue").

For the purposes of granting a tariff quota, the Commission must also bear in mind the objectives set out in Article 39, although its provisions are not comparable in importance with those of Article 29. The notion of "reasonable prices in supplies to consumers" in Article 39 (1 e) must be appraised in the setting of the Treaty's agricultural policy: there is no question of interpreting it as meaning the lowest possible prices.

(b) Case 25/62, Plaumann & Co. v. EEC Commission

(Arrangements for importing tangerines and clementines from outside the Community.)

This appeal was by a Hamburg importer and wholesale dealer, who alleged that he was bound to suffer heavy losses because of the rejection of the Federal German Government's application for partial suspension of the 13% CET duty on tangerines and clementines and its replacement by a 10% duty. This application was subsequently altered to a request for a sub-heading in the CET for clementines with a 10% duty, which was also rejected by the Commission.

The appellant moved the Court to quash the Commission's negative decision and to award damages. He alleged infringement of the Treaty, notably Articles 25 (3 e), 29 and 39, violation of major procedural requirements and misuse of powers (in the sense that the Commission had used the discretionary powers it claimed to possess to encourage Community production of tangerines).

The Commission argued that the appeal was inadmissible since the decision attacked was addressed to a Member State and was not of direct and individual concern to the appellant. Alternatively, it con-

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validity of the grounds advanced by the appellant: the objectives laid down in Articles 29 and 39 which it had to bear in mind in applying Article 25 (3 e) must be read together. If they cannot be reconciled, the Commission must give preference to the objectives which seemed most important in the specific case. It was therefore exercising a discretionary power which, unless there was an actual misuse of powers, was subject only to parliamentary control.

The Advocate General submitted that the nullity suit and the claim for damages were inadmissible: it was only if the Federal Republic of Germany made use of the authorization or accepted the Commission's refusal that the latter could affect individuals directly. Moreover, the appellant had produced no evidence of an individual interest. On the question of the merits of the action itself, the claim for compensation had no legal basis, since Articles 25 (3 e) and 29 could not be considered as granting a right to protection against an administrative mistake.

In a judgement of July 15, 1963, the Court ruled the nullity suit inadmissible: a person other than the addressee of a decision can only claim that he is individually concerned in this decision if it affects him by reason of certain qualities peculiar to him, or by reason of a de facto situation setting him apart from other persons and therefore singling him out in a way similar to that in which the addressee of an individual decision is singled out.

As to the claims for compensation the appellant had made in his reply to defence - which in fact were only an amplified version of the original appeal for a finding that the act attacked could entail a loss for the appellant - the Court deemed them an admissible development of the original submissions. But on the merits of the case itself, it rejected the claims on the grounds that an administrative act not declared null and void could not by itself constitute an injury to the administered persons entitling them to damages.