

**Mebrom NV (represented by: K. Van Maldegem and C. Mereu, avocats) v.
Commission of the European Communities (represented by: X. Lewis, acting as
Agent)**

"Appeal brought against the judgment of the Second Chamber of the Court of First Instance of 22 May 2007 in Case T-216/05 Mebrom v Commission by which the Court dismissed as unfounded an action for annulment of Decision A(05)4338-D/6176 of the Commission of 11 April 2005 refusing to allocate to the appellant quotas for the import of methyl bromide into the European Union in accordance with Articles 6 and 7 of Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer (OJ 2000 L 244, p. 1) — Incorrect application of Community law — Inadequate reasoning — Breach of Article 220 EC"

[Note: Language of the Case: English]

[Note: Not yet published]

JUDGMENT OF THE COURT (Sixth Chamber)

2 April 2009 (*)

(Appeal – Protection of the ozone layer – Import of methyl bromide into the Union – Refusal to allocate import quotas for 2005 – Legitimate expectations – Legal certainty)

In Case C-373/07 P,

APPEAL under Article 56 of the Statute of the Court of Justice lodged on 1 August 2007,

Mebrom NV, established in Rieme-Ertvelde (Belgium), represented by K. Van Maldegem and C. Mereu, avocats,

appellant,

the other party to the proceedings being:

Commission of the European Communities, represented by X. Lewis, acting as Agent, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Sixth Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, K. Schiemann and J. Makarczyk, Judges,

Advocate General: M. Poiares Maduro,

Registrar: R. Grass,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its appeal, Mebrom NV ('Mebrom') asks the Court to set aside the judgment of the Court of First Instance of the European Communities of 22 May 2007 in Case T-216/05 Mebrom v Commission [2007] ECR II-1507 ('the contested judgment'), by which the Court of First Instance dismissed as unfounded its action seeking annulment of the decision of the Commission of the European Communities of 11 April 2005 refusing to allocate it an import quota for methyl bromide for 2005 ('the contested decision').

The court dismissed an appeal against a judgment of the Court of First Instance's judgment upholding a decision of the Commission of the European Communities to change the system for the allocation of import quotas in respect of methyl bromide where, inter alia, it found that the decision had not breached the principle of the protection of legitimate expectation.

Legal context

2 The European Economic Community became a party to the Convention for the protection of the ozone layer, concluded in Vienna on 22 March 1985, and to the Protocol on substances that deplete the ozone layer, adopted in Montreal on 16 September 1987 ('the Montreal Protocol'), by Council Decision 88/540/EEC of 14 October 1988 (OJ 1988 L 297, p. 8).

3 In 1997, the parties to the Montreal Protocol agreed to reduce the production and import of methyl bromide in stages and to prohibit, from 1 January 2005, the production and import of that pesticide in developed countries other than for 'critical' uses.

4 Pursuant to Decision IX/6 of the parties to that Protocol ('Decision IX/6'), a use of methyl bromide qualifies as 'critical' if the nominating party establishes, first, that the lack of availability of methyl bromide for that use would result in a significant market disruption and, second, that there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances referred to in the nomination.

5 In addition, Decision IX/6 requires that production and consumption of methyl bromide for critical uses is to be permitted only if:

- all technically and economically feasible steps have been taken to minimise the critical use and any associated emission of methyl bromide;
- methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide; and
- it is demonstrated that an appropriate effort is being made to evaluate, commercialise and secure national regulatory approval of alternatives and substitutes.

6 Article 2 of Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer (OJ 2000 L 244, p. 1), as amended by Commission Regulation (EC) No 2077/2004 of 3 December 2004 (OJ 2004 L 359, p. 28) ('the Regulation'), provides:

'For the purposes of this Regulation:

...

- "undertaking" means any natural or legal person who produces, recycles for placing on the market or uses controlled substances for industrial or commercial purposes in the Community, who releases such imported substances for free circulation in the Community, or who exports such substances from the Community for industrial or commercial purposes.'

7 Recital 4 in the preamble to the Regulation states:

‘It is necessary for action to be taken at Community level to carry out the Community’s obligations under the Vienna Convention and the latest amendments and adjustments to the Montreal Protocol, in particular to phase out the production and the placing on the market of methyl bromide within the Community and to provide for a system for the licensing not only of imports but also of exports of ozone-depleting substances.’

8 Thus, the Regulation prohibited the production and import of methyl bromide with effect from 1 January 2005, save for critical uses.

9 Article 3(2)(i) of the Regulation provides:

‘Subject to paragraphs 5 to 10, each producer shall ensure that:

...

(d) it produces no methyl bromide after 31 December 2004.

...’

10 Article 3(2)(ii) of the Regulation provides:

‘In the light of the proposals made by Member States, the Commission shall, in accordance with the procedure referred to in Article 18(2), apply the criteria set out in Decision IX/6 ..., together with any other relevant criteria agreed by the Parties, in order to determine every year any critical uses for which the production, importation and use of methyl bromide may be permitted in the Community after 31 December 2004, the quantities and uses to be permitted and those users who may take advantage of the critical exemption. Such production and importation shall be allowed only if no adequate alternatives or recycled or reclaimed methyl bromide is available from any of the Parties.

...’

11 Article 4(2)(i) of the Regulation provides:

‘Subject to paragraphs 4 and 5, each producer and importer shall ensure that:

...

(d) it does not place any methyl bromide on the market or use any for its own account after 31 December 2004.

...’

12 Article 4(2)(ii) of the Regulation states:

‘Subject to paragraph 4, the placing on the market and the use of methyl bromide by undertakings other than producers and importers shall be prohibited after 31 December 2005.’

13 Article 4(4)(i) of the Regulation provides:

‘...’

(b) paragraphs 1, 2 and 3 shall not apply to the placing on the market and use of controlled substances if:

...

– they are used to meet ... the licensed requests for critical uses of those users identified as laid down in Article 3(2) ...’

14 Article 6(1) of the Regulation provides:

‘The release for free circulation in the Community ... of controlled substances shall be subject to the presentation of an import licence. Such licences shall be issued by the Commission after verification of compliance with Articles 6, 7, 8 and 13 ...’

15 Article 7 of the Regulation states:

‘The release for free circulation in the Community of controlled substances imported from third countries shall be subject to quantitative limits. Those limits shall be determined and quotas allocated to undertakings for the period 1 January to 31 December 1999 and for each 12-month period thereafter in accordance with the procedure referred to in Article 18(2). They shall be allocated only:

(a) for controlled substances of groups VI and VIII as referred to in Annex I;

(b) for controlled substances if they are used for essential or critical uses or for quarantine and preshipment applications;

...’

16 Group VI in Annex I to the Regulation refers to methyl bromide.

17 Point I of the notice to importers in the European Union in 2005 of controlled substances that deplete the ozone layer, regarding the Regulation (OJ 2004 C 187, p. 11; ‘the 2004 Notice’) states as follows:

‘This Notice is addressed to undertakings that intend to import the following substances into the European Community from sources outside the European Community from 1 January 2005 to 31 December 2005.

...

Group VI: methyl bromide,

...’

18 Point II of 2004 Notice is worded as follows:

‘Article 7 of [the] Regulation ... requires that quantitative limits be determined and quotas allocated to producers and importers for 1 January 2005 to 31 December 2005 in accordance with the procedure referred to in Article 18(2) for the import of the substances listed under Groups I to IX of Annex I to this Notice ...

Quotas shall be allocated for:

(a) methyl bromide ... for critical uses in accordance with [inter alia Decision] IX/6 ... and any other relevant criteria agreed by the Parties to the Montreal Protocol and Article 3(2)(ii) of the Regulation; ... critical uses [shall be] approved by the Commission, pursuant to Article 18 of the Regulation;

...’

19 Point VII of the 2004 Notice states:

‘The Commission hereby gives notice to an undertaking that is not in possession of a quota for 2004 and who wishes to apply to the Commission for an import quota from 1 January 2005 to 31 December 2005, to make itself known to the Commission no later than 3 September 2004 ...’

20 Point IX states:

‘Once the applications have been received, they will be considered by the European Commission and import quotas will be set for each importer and producer in consultation with the Article 18 Management Committee. The allocated quota will be available on the [Ozone Depleting Substances] website [“the ODS website”] and all applicants will have the Decision notified by post.’

21 Point X states:

‘In order to import controlled substances in 2005, undertakings in receipt of a quota must apply to the Commission via the ODS website for an import licence using the import licence application. Provided the Commission services are satisfied that the request is in accordance with the quota authorised and conforms to the requirements of [the] Regulation ..., an import licence will be issued. The Commission reserves the right to withhold an import licence when the substance to be imported is not as described or may not be used for the purposes authorised or cannot be imported in compliance with [the] Regulation.’

Background to the dispute

22 Until 31 December 2004, eight importers, including Mebrom, were entitled to apply to the Commission for import licences for methyl bromide and could obtain authorisation to import a quota of that pesticide calculated on the basis of their market share in 1991. The Commission granted Mebrom import quotas for 1996 to 2004. Accordingly, in 2004 Mebrom was able to import approximately 37% of the total quantity of methyl bromide imported into the Community.

23 On 30 August 2004 Mebrom, prompted by the 2004 Notice, submitted an application to the Commission seeking a methyl-bromide import quota for critical uses in respect of 2005.

24 In an email sent on 10 December 2004 to all ODS site users, the Commission stated that ‘[t]he quota for 2005 [would] be available on [its] website on ... 13 December 2004’. It also stated that the ‘import decision’ was being prepared and would be notified to each importer as soon as it was adopted. The Commission added that all imports as of 1 January 2005 would be attributed to the 2005 quota.

25 However, the Commission amended the manner in which import licences were granted. It took the view that, with effect from 1 January 2005, only fumigators would be able to apply for methyl bromide to be imported and obtain user licences for this purpose, following which and on the basis of which importers would obtain, as necessary, corresponding import licences. That precluded an actual importer from holding an import quota on whatever basis.

26 On 1 March 2005, in the absence of additional information from the Commission, Mebrom asked the Commission to notify it, pursuant to Article 7 of the Regulation and to the 2004 Notice, of the decision allocating it a quota for 2005 for the import of methyl bromide into the Union for critical uses.

27 By the contested decision, the Commission replied to Mebrom that it was no longer possible to allocate it such a quota. It stated that, pursuant to Article 4(2)(i)(d) of the Regulation, the eight importers which had hitherto been entitled to import quotas for controlled uses of methyl bromide, calculated on the basis of their market share in 1991, were no longer entitled to such quotas with effect from 1 January 2005 and that only fumigation undertakings could benefit from the derogation for critical uses under Article 3(2)(ii) of the Regulation.

The proceedings before the Court of First Instance and the contested judgment

28 By application lodged at the Registry of the Court of First Instance on 31 May 2005, Mebrom sought the annulment of the contested decision and an order that the Commission allocate it an import quota for methyl bromide for 2005.

29 By separate document, the Commission raised an objection of inadmissibility by which it submitted that both Mebrom’s request for an order of the Court of First Instance requiring the Commission to allocate it an import quota and the action for annulment were inadmissible. By order of the Court of First Instance of 15 May 2006, a decision on that objection was reserved for the final judgment.

30 By the contested judgment, the Court of First Instance dismissed the request for an order as

inadmissible and dismissed the action for annulment on its substance without ruling on its admissibility.

31 The first and second pleas of the application, which were considered together, alleged incorrect implementation of the overall legal framework, resulting from the Regulation and Article 7 thereof, that relates to substances which deplete the ozone layer.

32 In order to reject those two pleas, the Court of First Instance relied on both the wording and the general scheme of the Regulation. The Court took the view that Article 7 of the Regulation did not require the Commission to allocate import quotas to importers and that Article 6(1) did not preclude the grant of two separate licences for each import operation, one to the user and the other to the importer. The Court also pointed out that Articles 3 and 4 of the Regulation required that the use and marketing of methyl bromide in 2005 be limited strictly to critical uses. The Court added that, consequently, Articles 6 and 7 of the Regulation pursued the objective of limiting imports of methyl bromide to that which was strictly necessary in connection with specifically identified critical uses.

33 The Court of First Instance deduced therefrom that the method for granting import licences adopted by the Commission with effect from 1 January 2005 prevented importers from building up stocks, gave practical effect to Articles 3, 4, 6 and 7 of the Regulation and ensured a coherent application of those provisions. Consequently, it took the view that the Regulation did not require the Commission to allocate an import quota to Mebrom for methyl bromide for 2005.

34 Next, the Court held that an alert reader was able to infer from the 2004 Notice that the Commission was going to change its administrative practice because, unlike the corresponding notice published in the preceding year by that institution (OJ 2003 C 162, p. 10; 'the 2003 Notice'), the 2004 Notice contained a reference to Decision IX/6 and to Article 3(2)(ii) of the Regulation. It also pointed out that the fact that the 2004 Notice referred to both producers and importers could be explained by the fact that it related to all ozone-depleting substances.

35 In addition, the Court of First Instance held that the Commission's email of 10 December 2004 did not confirm to Mebrom that it would receive an individual import quota for methyl bromide for critical uses in respect of 2005, pointing out that that document was sent to all the ODS site users and that it announced that all quotas were to be published, for all controlled substances and for all uses.

36 The Court of First Instance also held that the practice followed by the Commission with effect from 1 January 2005 did not lead to distortion of competition.

37 Consequently, the Court of First Instance held that the first two pleas advanced by Mebrom in support of its action should be rejected as unfounded.

38 Having regard to the reasoning thus followed, the Court of First Instance also rejected as unfounded Mebrom's third plea, alleging that the Commission acted outside the powers granted to it by the Regulation.

39 Finally, with regard to the fourth plea, alleging infringement of the principle of the protection of legitimate expectations and the principle of legal certainty, the Court of First Instance firstly took the view that neither Articles 3, 4, 6 and 7 of the Regulation, nor the 2004 Notice, nor the Commission's email of 10 December 2004 guaranteed importers that they would be allocated an import quota for methyl bromide for 2005.

40 In that regard, the Court of First Instance pointed out that a prudent and alert economic operator who could have foreseen the adoption of a Community measure likely to affect his interests cannot rely on the principle of the protection of legitimate expectations if such a measure is adopted and that Mebrom, which had admitted that it expected changes in the import scheme for methyl bromide with effect from 1 January 2005, should accordingly have sought specific information concerning forthcoming changes.

41 The Court of First Instance also held that it was apparent from the 2004 Notice that the earlier method for the allocation of import quotas for methyl bromide would be amended for 2005 and that accordingly the Commission had not acted in such a way as to give rise to a legitimate expectation in

the continuation of the method which applied in previous years. It added that the Commission's email of 10 December 2004 did not guarantee either that Mebrom would be allocated an individual quota for methyl bromide for critical uses in respect of 2005.

42 Finally, the Court of First Instance took the view that the principle of legal certainty had not been infringed.

43 Since the four pleas raised by Mebrom in support of its action were held to be unfounded, the Court of First Instance dismissed the action in its entirety.

Forms of order sought

44 Mebrom claims that the Court should:

- declare the appeal admissible and well founded;
- set aside the contested judgment;
- declare its claims at first instance admissible and well founded;
- annul the contested decision or, in the alternative, refer the case back to the Court of First Instance to rule on the merits; and
- order the Commission to pay the costs of both cases.

45 The Commission contends that the Court should:

- dismiss the appeal; and
- order the appellant to pay the costs.

The appeal

46 Mebrom raises four pleas, alleging, respectively, infringement of the Regulation, infringement of Article 48(1) of the Rules of Procedure of the Court of First Instance, breach of the principles of the protection of legitimate expectations and of legal certainty and infringement of the duty to give reasons.

The first plea

47 By its first plea, divided into three parts, Mebrom submits that the Court of First Instance erred in law in holding that the contested decision did not infringe the Regulation. In that regard, it submits, firstly, that Articles 3, 4, 6 and 7 of that regulation preclude the adoption of the new system for allocation of quotas for critical uses of methyl bromide for the period after 31 December 2004, secondly, that the 2004 Notice and the Commission's email of 10 December 2004 show that the Commission considered itself bound to continue to allocate an import quota for methyl bromide to Mebrom for 2005 and, thirdly, that the Court ought to have determined whether the Commission could have continued to award such quotas to importers after 31 December 2004.

The first part of the first plea

- Arguments of the parties

48 By the first part of its first plea, Mebrom submits that the Court of First Instance erred in law by holding, in paragraph 74 of the contested judgment, that Article 7 of the Regulation leaves the Commission free to choose which categories of undertaking from among those referred to in Article 2 of the Regulation can receive quotas. In particular, it submits that that regulation refers expressly to 'users', and not to 'undertakings', when only the former are meant.

49 In that regard, Mebrom submits that the Court of First Instance erred in law by holding, in particular

in paragraphs 80 and 86 of the contested judgment, that the Regulation has the objective of preventing importers from building up stocks. Mebrom submits that such an interpretation cannot be accepted inasmuch as Decision IX/6 makes the production and consumption of methyl bromide for critical uses subject to the condition that the product not be available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide and another provision of the Regulation, Article 4(5), permits transfer of quotas for that pesticide.

50 The Commission submits that, since the appellant does not dispute the reasoning followed by the Court of First Instance in paragraphs 73 and 75 to 78 of the contested judgment, which, according to the Commission, are fundamental to the reasoning of the Court of First Instance since it sets out therein its interpretation of the Regulation and its understanding of the manner in which the system for the allocation of quotas for critical uses of methyl bromide works after 31 December 2004, the first part of the first plea and, furthermore, the appeal in its entirety must fail as inoperative.

51 In the alternative, it submits that the first part of the first plea is, in any event, unfounded and submits in particular that Article 7 of the Regulation did not require it to allocate import quotas to all undertakings since some of them, such as producers, recyclers or exporters, have no need for quotas in the normal course of business.

– Findings of the Court

52 At the outset, it must be stated that the fact that Mebrom did not specifically contest the reasoning in paragraphs 73 and 75 to 78 of the contested judgment cannot lead to the first part of its first plea nor, a fortiori, the appeal in its entirety being dismissed as inoperative. It is sufficient merely to note that, in those paragraphs, the Court of First Instance mainly set out the legal framework applicable to methyl bromide and the practice followed by the Commission in respect of the grant of licences and import quotas for that pesticide with effect from 1 January 2005. Accordingly, those sections of the judgment cannot be considered in themselves decisive for the remainder of the reasoning which led the Court of First Instance to dismiss the first two pleas, alleging breach of the applicable legal framework, as unfounded.

53 By the first part of the first plea, Mebrom submits, essentially, that the Court of First Instance erred in law by holding that the new system set up by the Commission with effect from 1 January 2005, which precludes allocation of import quotas for methyl bromide to importers and permits their allocation only to Member States and for the sole purpose of critical uses, leaving it to the Member States subsequently to divide them up between fumigator-users only, constitutes an unlawful implementation of Articles 3, 4, 6 and 7 of the Regulation.

54 In Article 7, the Regulation merely provides that methyl bromide quotas may be allocated to undertakings, that concept being defined broadly in Article 2 as covering producers, recyclers and users as well as importers and exporters of controlled substances.

55 Since some of those undertakings, such as producers, recyclers or exporters, do not use import quotas for that product in the normal course of business, it may be deduced that Article 7 of the Regulation does not have the effect accorded to it by the appellant and therefore that it does not require the Commission to allocate an import quota to any undertaking within the meaning of that regulation. Accordingly, the Court of First Instance did not err in law by holding that the wording of that provision does not require the Commission to allocate an import quota to importers or to any other undertaking.

56 Furthermore, even though that provision does not provide expressly for a change to its system of application with effect from 1 January 2005, such a change was none the less foreseeable in the light of the alteration, planned and precisely set out in the Regulation, of the overall legal regime relating to the use of methyl bromide with effect from that date.

57 First, Article 3(2)(ii) of the Regulation provides that, after 31 December 2004, the production, import and use of methyl bromide can no longer be authorised except for the purposes of critical uses and only in respect of certain users designated by the Commission and, second, Article 4(2)(d) of that regulation states that producers and importers may not place any methyl bromide on the market or use any for their own account after that date.

58 It also follows from those provisions that, as the Court of First Instance was fully entitled to find, one of the objectives of the Regulation is to ensure that imports of methyl bromide with effect from 1 January 2005 are limited to that which is strictly necessary in connection with specifically identified critical uses.

59 When interpreting a provision of a Community measure, account should be taken of its context and the objective pursued by the legislation at issue (see, to that effect, Case 327/82 Ekro [1984] ECR 107, paragraph 11, and Case C-323/03 Commission v Spain [2006] ECR I-2161, paragraph 32).

60 It follows that the Court of First Instance was able lawfully to hold that the system set up by the Commission with effect from 1 January 2005, which, moreover, gives practical effect to Articles 3, 4, 6 and 7 of the Regulation, was in conformity with that regulation.

61 The first part of the first plea must therefore be rejected as unfounded.

The second part of the first plea

– Arguments of the parties

62 By the second part of its first plea, Mebrom submits that the Court of First Instance erred in law by holding, in paragraph 84 of the contested judgment, that it did not follow from the 2004 Notice that the Commission considered itself bound to allocate quotas for methyl bromide to importers for 2005 and, in paragraph 85 of that judgment, that the Commission's email of 10 December 2004 did not guarantee Mebrom that it would receive an import quota for critical uses for that year.

63 Mebrom submits, first, that it was not possible to deduce from the change in the wording of that notice in comparison to that of the 2003 Notice that the Commission no longer intended to apply Article 7 of the Regulation in the same way from 1 January 2005 and, second, that the 2004 Notice was addressed expressly to importers alone. It also states that the 'alert reader' test which the Court of First Instance used in paragraph 84 of the contested judgment is not established in the case-law.

64 Mebrom also takes the view that, contrary to the findings of the Court of First Instance, the Commission's email of 10 December 2004 did not concern all uses of controlled substances.

65 The Commission submits that the wording of the 2004 Notice indicated that the allocation of import quotas for methyl bromide would be subject to a new legal regime with effect from 1 January 2005. It adds that the reference by the Court of First Instance to the 'alert reader' test was in any event superfluous.

– Findings of the Court

66 Contrary to the appellant's submissions, the 2004 Notice contains no indication such as to give rise to the view that the Commission considered itself bound to allocate quotas to importers for 2005. Also, as stated in the contested judgment, the fact that that notice refers expressly to Decision IX/6 and to Article 3(2)(ii) of the Regulation clearly shows that the Commission intended from then on to apply Article 7 of that regulation under conditions different from those which obtained in previous years. It follows that the Court of First Instance did not give an interpretation of that notice that is wrong in law.

67 The same is true of the Court of First Instance's interpretation of the email of 10 December 2004 that the email did not mean that Mebrom would receive an import quota for methyl bromide for critical uses for 2005. That document referred to both the production and the import and export of all controlled substances. Accordingly, it clearly did not provide any assurance to Mebrom with regard to obtaining a quota for methyl bromide for 2005. It follows that, in this regard, the judgment of the Court of First Instance is not vitiated by any distortion.

68 Consequently, the second part of the first plea is unfounded and must be rejected.

The third part of the first plea

– Arguments of the parties

69 By the third part of its first plea, Mebrom submits that the Court of First Instance erred in law by holding, in paragraph 83 of the contested judgment, that it was not necessary to examine whether the Commission could have continued to award import quotas for methyl bromide to importers with effect from 1 January 2005.

70 Mebrom takes the view that it was for the Court of First Instance to review, even of its own motion, the manner in which the Commission exercised its discretion in order to ascertain in particular whether the choice no longer to allocate such quotas to importers was disproportionate and discriminatory. In that regard, the appellant refers to Case C-269/90 Technische Universität München [1991] ECR I-5469, paragraph 14, and Case C-326/05 P Industrias Químicas del Vallés v Commission [2007] ECR I-6557, paragraphs 76 and 77.

71 The Commission takes the view that the Court of First Instance was not required to undertake such an examination, and refers to Case C-244/06 Dynamic Medien [2008] ECR I-505, paragraph 49. It also submits that Mebrom did not dispute at first instance that the system set up with effect from 1 January 2005 is proportionate and non-discriminatory.

– Findings of the Court

72 It follows from the case-law of the Court of Justice that, even where the Commission has a broad discretion, the exercise of that discretion does not escape judicial review since the Community judicature has the task of verifying whether the relevant procedural rules have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of appraisal or a misuse of powers (see, to that effect, inter alia, Industrias Químicas del Vallés v Commission, paragraph 76 and the case-law cited).

73 Nevertheless, if an applicant does not raise a plea alleging that the decision which it contests is unlawful having regard to those different factors, the Community judicature is not required of its own motion to undertake that review.

74 Here, it is apparent from the documents in the case that Mebrom did not expressly advance particular criticism in this regard in its action before the Court of First Instance. Nor does Mebrom specify, in the context of its appeal, how a finding that the Commission could have continued to allocate import quotas to importers for 2005 would render the system which was set up unlawful.

75 In those circumstances, no complaint can be raised that the Court of First Instance did not of its own motion examine whether the Commission, under the Regulation, could have continued to allocate import quotas for methyl bromide to importers after 31 December 2004.

76 Accordingly, the third part of the first plea is unfounded and must be rejected.

77 Since all three parts of the first plea are unfounded, that plea must be rejected in its entirety.

The second plea

Arguments of the parties

78 By its second plea, Mebrom submits that the Court of First Instance infringed Article 48(1) of its Rules of Procedure by referring, in paragraph 84 of the contested judgment, to the 2003 Notice, since no reasons were given for the Commission's late submission of that evidence at the hearing. The appellant submits that, in paragraph 106 of the contested judgment, the Court of First Instance relied on that evidence alone to reject Mebrom's argument that the Commission had, by its administrative practice, given rise to a legitimate expectation of being granted an import quota for methyl bromide for 2005.

79 The Commission, which accepts that it relied on the 2003 Notice for the first time at the hearing before the Court of First Instance, submits that it is not a discrete piece of evidence, but a document which served merely to corroborate its interpretation of the 2004 Notice.

Findings of the Court

80 Although it is not contested that it was only at the hearing before the Court of First Instance that the Commission relied for the first time on the terms of the 2003 Notice, that notice, which was moreover published, like the others, in the Official Journal of the European Union, cannot in any event be regarded as a mere piece of evidence which the Commission should have supplied before the hearing, but forms part of the dispute's legal background which the Court not only may but, as the case may be, must take into consideration of its own motion and to which the parties may also refer at any stage of the proceedings.

81 The second plea is unfounded and, consequently, must be rejected.

The third plea

82 By its third plea, divided into three parts, Mebrom submits that the Court of First Instance erred in law by rejecting its plea alleging breach of the principle of the protection of legitimate expectations and of the principle of legal certainty.

The first part of the third plea

– Arguments of the parties

83 By the first part of its third plea, Mebrom submits that the contested judgment is vitiated by contradictory reasoning, in particular a contradiction between paragraphs 103 and 109 thereof, where the Court of First Instance held, firstly, that a diligent undertaking in Mebrom's position should have sought specific information concerning likely changes to the system for the allocation of quotas and, secondly, that neither the Regulation nor the 2004 Notice prevented the persons concerned from resolving themselves with sufficient certainty any doubts they had as to the scope or meaning of Article 7 of the Regulation.

84 The Commission takes the view that paragraphs 103 and [109] of the contested judgment are in no way contradictory.

– Findings of the Court

85 The question whether the grounds of a judgment are insufficient or contradictory is a question of law which may, as such, be raised on appeal (see, to that effect, *inter alia*, Case C-401/96 P *Somaco v Commission* [1998] ECR I-2587, paragraph 53).

86 However, the contested judgment is not contradictory, since the reasoning referred to by the appellant relates to distinct questions. It is apparent from simply reading paragraph 103 that there the Court of First Instance is ruling, in the context of analysis of the plea alleging breach of the principle of the protection of legitimate expectations, on the lack of diligence of an operator such as Mebrom faced with a foreseeable change in the legal framework for methyl bromide likely to have great economic importance for its import activities, whereas, in paragraph 109, in the context of the analysis relating to the principle of legal certainty, it holds that neither the Regulation nor the wording of the 2004 Notice contained any ambiguity such as to prevent Mebrom from foreseeing that it would be refused an import quota and that quotas would be allocated to users, which does not mean that Mebrom was not bound, in order to resolve any uncertainty, and like any major economic operator, to seek specific information concerning forthcoming changes.

87 The first part of the third plea is, accordingly, unfounded and must be rejected.

The second part of the third plea

– Arguments of the parties

88 By the second part of its third plea, Mebrom submits, firstly, that the Court of First Instance erred in law by holding, in paragraph 106 of the contested judgment, that the Commission's practice had not given rise to a legitimate expectation that the system in force until the end of 2004 for the allocation of

import quotas for methyl bromide would be continued. The appellant submits in that regard that the Commission did not fulfil its obligation to warn the undertakings concerned clearly and precisely about the change to that system and relies on the order in Case 152/88 R Sofrimport v Commission [1988] ECR 2931, paragraph 23.

89 Secondly, Mebrom submits that the Court of First Instance also erred in law by holding, in paragraph 107 of the contested judgment, that, by its email of 10 December 2004, the Commission had not given Mebrom any guarantee that it would receive an individual quota for methyl bromide for critical uses in respect of 2005. Mebrom submits in that regard that the Court of First Instance should have taken into account the fact that that email, sent by the authority empowered to allocate import quotas, also stated that a decision on imports, which was being prepared, would be notified to each importer.

90 The Commission submits that it was not obliged to expressly warn the undertakings concerned of the change in its administrative practice since that change resulted from Community legislation. In that regard, it refers to Case 84/85 United Kingdom v Commission [1987] ECR 3765, paragraphs 19 and 20.

– Findings of the Court

91 Essentially, in this part of the plea it is submitted that the Court of First Instance erred in law when it found that the Commission had not breached the principle of the protection of legitimate expectations by changing its earlier administrative practice.

92 In that regard, it is sufficient to note that, although the change to the Commission's administrative practice with regard to methyl bromide with effect from 1 January 2005 was admittedly not set out in detail in the Regulation, it was none the less foreseeable in principle, in the light in particular of Article 3 and 4 of that regulation. Furthermore, it is undisputed that Mebrom, which was one of the eight importers which, up to that date, were allocated an import quota for that pesticide, expected changes to the applicable regime from 1 January 2005.

93 Moreover, although the 2004 Notice does not set out in detail the forthcoming changes to practice, nor does it state that the current practice will be continued and, above all, as is apparent from the analysis set out above in the examination of the second part of the first plea, the Court of First Instance was right in holding that Mebrom was in a position to deduce from that notice that the Commission intended, in 2005, no longer to apply Article 7 of the Regulation in the same way as in 2004.

94 Accordingly, the Court of First Instance was able lawfully to deduce from those findings that the Commission had not, by its practice, created a legitimate expectation that the system for allocation of import quotas for methyl bromide to importers would continue beyond 31 December 2004.

95 In addition, having regard to the response to the second part of the first plea, the view cannot be taken that the Court of First Instance misinterpreted the Commission's email of 10 December 2004 by holding, in paragraph 107 of the contested judgment, that that email did not in any way guarantee that Mebrom would be granted an individual quota for methyl bromide for critical uses in respect of 2005.

96 Consequently, the second part of the third plea is unfounded and must also be rejected.

The third part of the third plea

– Arguments of the parties

97 By the third part of its third plea, Mebrom submits that in paragraph 109 of the contested judgment the Court of First Instance misunderstood Mebrom's complaint alleging breach of the principle of legal certainty, on the ground that it was pleading, in that regard, not a lack of clarity of Articles 3, 4, 6 and 7 of the Regulation, but that the Commission had breached that principle when applying them.

98 The Commission submits that the Court of First Instance did not merely review the clarity of the Regulation, but also examined the Commission's administrative practice.

– Findings of the Court

99 As is apparent from paragraph 97 of the contested judgment and from the documents in the case, Mebrom invoked before the Court of First Instance, in the context of its fourth plea in so far as that plea alleged breach of the principle of legal certainty, the need for Community rules to be clear and submitted that the Commission's refusal to allocate an import quota to it for methyl bromide with effect from 1 January 2005 and the Commission's choice to amend the system applicable rendered the entire import system for that pesticide totally unpredictable and contrary to the Regulation.

100 Mebrom cannot, accordingly, successfully submit that the Court of First Instance misunderstood its arguments in ruling, in paragraph 109 of the contested judgment, on the clarity of the legal framework applicable to methyl bromide.

101 In addition, in that paragraph, the Court of First Instance did not merely assess, in the context of that plea, whether the applicable texts were sufficiently clear, but also based its finding on the fact that the 2004 Notice made it possible for Mebrom to be aware that the Commission intended, in 2005, no longer to apply Article 7 of the Regulation in the same way as in 2004.

102 Accordingly, the Court of First Instance did not misunderstand the complaint alleging breach of the principle of legal certainty raised before it by Mebrom, so that the third part of the third plea must be rejected as unfounded.

103 Since none of the parts of the third plea has been upheld, that plea must be rejected in its entirety.

The fourth plea

Arguments of the parties

104 By its fourth plea, Mebrom submits that the contested judgment lacks sufficient reasoning. It submits that the Court of First Instance failed to interpret Article 7 of the Regulation correctly and that it also erred in law by holding that that article pursued the objective of preventing importers from building up stocks of methyl bromide.

105 The Commission takes the view that Mebrom has not put forward any arguments to support this plea and submits that, in reality, it contends not that there is a lack of reasoning, but that the reasoning is incorrect.

Findings of the Court

106 As recalled in paragraph 85 of the present judgment, the question whether reasoning of a judgment of the Court of First Instance is insufficient is a question of law which may, as such, be raised on appeal.

107 However, in the present case, under cover of such a plea, Mebrom actually disputes the interpretation by the Court of First Instance of Articles 3, 4, 6 and 7 of the Regulation.

108 In the light of the response given in the context of the first part of the first plea, there is, accordingly, no need to rule on the fourth plea.

109 Since none of the pleas in the appeal has been successful, the appeal must be dismissed.

Costs

110 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, 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 Commission has applied for costs and Mebrom has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Sixth Chamber) hereby:

1. Dismisses the appeal;
2. Orders Mebrom NV to pay the costs.

[Signatures]

* Language of the case: English.
