

AUSTRALIAN MEAT AND LIVESTOCK CORPORATION V. BLOCK ET AL: MEAT IMPORT  
COUNCIL OF AMERICA INTERVENING \*

United States Court of International Trade, Restani J. Court No.84-4-00535,  
6 June, 1984.

Voluntary Restraint Agreements are a significance barrier to freedom of international trade. Together with Order Marketing Agreements, they are frequently utilized to protect domestic industries from import protection, sometimes in breach of GATT obligations. Voluntary Restraint Agreements ("VRA'S") and Orderly Marketing Agreements ("OMA'S") are negotiated in the context that the importing country may, in their absence, impose unilateral restrictions. To this extent "Voluntary" is a misnomer. (A VRA differs from an OMA in that under the former, the importing country does not apply restrictions to enforce the agreement; see William R. Cline, Trade policy in the 1980's, Institute for International Economics, Washington 1982 at 372). In this case, the Australian Meat and Livestock Corporation sought a preliminary injunction and summary judgement in the US Court of International Trade to restrain the US Secretary of Agriculture, the US Trade Representative and the US Secretary of State from negotiating VRA's in respect of meat imports into the United States. The plaintiff alleged that the "minimum access floor" of 1.25 billion pounds was a statutory guarantee of market access and hence the defendants could not negotiate VRA's for less than the minimum access floor.

Judge Restani found that the plaintiff had standing to bring the action, and that damage from the disruption of its trade was directly traceable to the defendants' acts. The plaintiffs action was also found to be "ripe" for adjudication, and was justiciable. On the merits, the question was essentially one of US statutory interpretation, and did not involve an examination of GATT obligations. Judge Restani held that neither the plain language of the statutory provision, nor the legislative history and the statutory scheme governing import restrictions, supported the plaintiffs interpretation. However, in a significant passage, the Court has indicated that VRA's must be truly voluntary. As Judge Restani said, the minimum access floor is not "a dead letter. Defendants cannot unilaterally impose voluntary restraint agreements. They must choose not to voluntarily restrain imports and if they choose they may rely on the minimum access floor to limit any quotas...." An unanswered question would be how the floor would be allocated if only some exporting countries negotiated VRA's. Further, in the event that VRA's could not be negotiated, congression intervention to amend the statutory provision could not be ruled out. This possibility would ensure that VRA's could never be truly voluntary.

[Plaintiffs motion for preliminary injunction and summary judgement denied, intervenor's cross-motion for summary judgement denied, defendant's cross-motion for summary judgement granted].

Clifford & Warnke (Paul C. Warnke, Esq. and Bryan Jay Yolles, Esq. for plaintiffs.

Barnes, Richardson & Colburn (Rufus E. Jarman, Jr., Esq. and Carl J. Laurino, Jnr., Esq.) for Intevenor.

Richard K. Willard Acting Assistant Attorney-General,

David M. Cohen, Director, Commercial Litigation Branch and Velta A. Melnbrensis, Esq., for defendants.

Bishop, Liberman, Cook, Purcell & Reynolds (Charles R. Johnston, Jr. Esq., Joseph Tasker, Jr., Esq., and Ronelle W. Adams, Esq.,) for amicus curiae.

OPINION and ORDER

RESTANI, Judge: In this action, plaintiffs seek a declaration that defendants may not negotiate voluntary restraint agreements concerning certain meat products that result in meat imports less than the minimum access floor contained in the Meat Import Act of 1979, Pub. L. No. 96-177, 93 Stat. 1291 (1979). Plaintiffs also seek an injunction to bar defendants from negotiating such agreements. Defendants contend that they have plenary authority to negotiate voluntary restraint agreements pursuant to the terms of the Agricultural Act of 1956 as amended, 7 USC para 1854 (1982), and that the Meat Import Act in no way limits this power. Defendants also contend that plaintiffs lack standing, the matter is not ripe for adjudication, the case poses nonjusticiable questions, and the court lacks jurisdiction over intervenor's claims.

This action is before the court on plaintiffs' motion for a preliminary injunction, and cross-motions for summary judgment, consolidated pursuant to Rule 65(a)(2). At oral argument the court ruled that the court has jurisdiction over intervenor's claim pursuant to 28 U.S.C S1581(i). See United States Cane Sugar Refiners' Association v. Block, 69 CCPA 172, 683 F 2d 399 (1982). The court reserved judgment on the standing, ripeness and justiciability of the issues presented, and on the merits of the motions.

The President may negotiate voluntary restraint agreements limiting imports to the United States pursuant to S204 of the Agricultural Act of 1956. Section 204 provides in relevant part:

The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States [of] any agricultural commodity or product manufactured therefrom or textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles or textile products to carry out any such agreement.

7 USC para1854. Pursuant to this section, President Nixon delegated to the defendants in this action, the Secretary of Agriculture, the Secretary of State and the Special Representative for Trade Negotiations (now the United States Trade Representative), the authority to negotiate bilateral agreements restricting imports into the United States of the meat products at issue in this action. Executive Order 11539, 35 Fed. Reg.10733 (1970).

Since 1970 defendants have negotiated a number of voluntary restraint agreements limiting meat imports.

In 1979, Congress passed the Meat Import Act of 1979 (1979 act). The 1979 act amended the Meat Import Act of 1964 (1964 act), to restructure certain statutory limitations on imports of meat products. The 1979 act requires the Secretary of Agriculture every three months to estimate what quantity of meat products would be entered during the calendar year in the absence of import restrictions. If the Secretary's estimate is 110% or more of a statutorily determined level, then paragraph (f)(1) requires that:

if there is no limitation in effect under this section for such calendar year with respect to meat articles, the President shall by proclamation limit the total quantity of meat articles which may be entered during such calendar year, except that no limitation imposed under this paragraph for any calendar year may be less than 1,250,000,000 pounds. Meat Import Act of 1979 S2(f)(1).

Since the 1979 act was enacted, defendants have negotiated a number of voluntary restraint agreements with meat exporting countries to prevent meat imports from reaching the trigger level. In 1983, the trigger level was less than the 1.25 billion pound minimum access floor in subsection (f)(1). Defendants negotiated bilateral agreements with Australia, New Zealand, and Canada to limit imports of meat products below the 110% trigger level. This led to total meat imports in 1983 below the minimum access floor. In 1984 the trigger level once again is less than the 1.25 billion pound minimum access floor.

Plaintiffs contend that the minimum access floor contained in the 1979 act is a statutory guarantee of market access for imports. Thus plaintiffs argue that defendants have no authority to negotiate voluntary restraint agreements for less than the minimum access floor. Plaintiffs documented in detail the injuries they suffered in 1983 due to import restraints beneath the access floor. They contend that they face similar disruption this year because of the likelihood that imports will again be restrained below the minimum access level and that the current uncertainty over market access is presently damaging their business operations.

Initially the court must determine the issues of standing, ripeness and justiciability

Plaintiffs contend that they have standing pursuant to 28 U.S.C. 2631 (i) which reads:

Any civil actions of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)-(h), of this section, may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.

Id. Defendants contend that plaintiffs are not within the zone of interests protected by the statutes at issue, that plaintiffs' grievance is so generalized and broadly shared that the court should not hear it, and that plaintiffs have not demonstrated injury in fact.

The court finds plaintiffs clearly to be within the zone of interests protected by the Meat Import Act of 1979. Plaintiffs are trade associations representing meat importers and exporters as well as individual exporters whose commercial livelihood in large parts depends on meat imports to the United States. The 1979 act sets statutory limits on meat imports which directly affect their business. And the legislative history makes clear that one of the objectives of the 1979 act was "[t]o provide reasonable access to the U.S. market for imported beef and veal"

S.Rep. 96-465, 96th Cong., 1st Sess.1, reprinted in 1979 U.S. CODE CONG. & AD NEWS. 2654 (Senate Report). For similar reasons the court finds that plaintiffs' grievances are not generalized. Plaintiffs face damage to their commercial livelihood, not merely a generalized, abstract concern for an issue. United States Cane Sugar Refiners' Association v. Block, 5 CIT, 544 F.Supp. 883 (1982), aff'd 69 CCPA 172, 683 F.2d 399 (1982) American Association of Exporters and Importers Textile and Apparel Group v. United States, 7 CIT \_\_\_ Slip Op. 84-21 (March 14, 1984), app. pending No. 84-1060.

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\* (The text of the opinion and order, and plaintiffs pleadings, were supplied by Ms. Janet Spence, Economist, Australian Meat and Livestock Corporation, Sydney).