The applicant furthermore invokes a violation of its right to a fair trial. According to the applicant, there was no fair and independent hearing in the matter. The applicant also invokes a violation of the right of access to documents. In addition, the Commission violated the principle of good administration by not dealing with the matter within a reasonable time limit.

Finally, the applicant submits that the Commission has misused its powers by implementing Article 24 of Regulation (EEC) 4253/88 [1]. According to the applicant, Article 24 should only be used in the event of impropriety. In the present case, the Commission should have applied Article 23 of the regulation to recover the money overpaid as a result of mistakes.

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(1) Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

Action brought on 6 September 2002 by Ritek Corporation and Prodisc Technology Inc. against the Council of the European Union

(Case T-274/02)

(2002/C 289/51)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 6 September 2002 by Ritek Corporation, Hsin Chu Industrial Park, Taiwan R.O.C. and Prodisc Technology Inc., Taipei Hsien, Taiwan R.O.C, represented by Dr Konstantinos Adamantopoulos, Barrister, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare, pursuant to Article 230 and 231 of the Treaty, that Council Regulation (EC) 1050/2002 of 13 June 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of recordable compact disks originating in Taiwan is null ad void;

— order that the costs of and occasioned by these proceedings be borne by the defendant.

Pleas in law and main arguments

The applicants are producers of CD-Rs established in Taiwan and export CD-Rs to the Community. In February 2001, an anti-dumping complaint was lodged before the Commission by the Committee of European CD-R Manufacturers. Following this complaint, the Commission initiated an investigation regarding imports originating in Taiwan. Provisional anti-dumping measures were imposed by Commission Regulation 2479/2001 [1]. These measures were made definitive by Council Regulation 1050/2002 [2]. The applicants contest the latter regulation with their present action.

The applicants allege infringement of Articles 2(10) and 2(11) of Regulation 384/96 on protection against dumped imports from countries not members of the European Community [3]. According to the applicants, the Council committed a manifest error in the assessment of the facts and of law by finding that the applicants engaged in 'targeted dumping' practices and allowed use of the average-to-transaction methodology in the calculation of the dumping margin of the applicants.

According to the applicants, no exceptional treatment of certain transactions to certain customers, in certain regions or in certain time periods, i.e. no targeted dumping, took place during the investigation period. The applicants submit that export and domestic price patterns were almost identical and that the prices for CD-Rs declined worldwide. In these circumstances, there was, according to the applicants, no place for disguising the effects of dumping through targeted dumping.

The applicants furthermore claim that by using the average-to-transaction methodology which refers to constructed normal values, the Commission failed to address the purpose of targeted dumping, which is to conceal dumping by charging different export prices. According to the applicants, the Commission should refer to actual prices when investigating targeted dumping.

Secondly, the applicants allege infringement of Article 2 of Regulation 384/96. The applicant claims that the Council made a manifest error of assessment of the facts in calculating the dumping margin of the applicants by using the 'zeroing

technique'. Using this technique, the transactions of the applicants that are made at a price higher then the average price, are brought down to a price equal to the average price. According to the applicants, the Commission did not apply the average-to-transaction methodology correctly as a result of using the 'zeroing technique'. The applicants submit that the objective of the average-to-transaction methodology is to ensure a fair comparison and not to yield higher dumping margins.

(1) Commission Regulation (EC) No 2479/2001 of 17 December 2001 imposing a provisional anti-dumping duty on imports of recordable compact disks originating in Taiwan (OJ L 334, p. 8).
(2) Council Regulation (EC) No 1050/2002 of 13 June 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of recordable compact disks originating in Taiwan (OJ L 160, p. 2).
(3) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996, L 56, p. 1).

Action brought on 12 September 2002 by Forum 187 asbl against the Commission of the European Communities

(Case T-276/02)

(2002/C 289/52)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 September 2002 by Forum 187 asbl, Brussels, Belgium, represented by Mr Alastair Sutton, barrister and Mr James Killick, barrister.

The applicant claims that the Court should:

— Annul the Commission's Notice of its decision to initiate the procedure laid down in Article 88 (2) of the EC Treaty published in the OJ C 147, p. 2 on 20 June 2002.

— Order the Commission to pay the costs.

— Take such other or further steps as justice may require.

Pleas in law and main arguments

The applicant is an association bringing together more than 230 multinational companies, who together have invested hundreds of millions of euros in the establishment of coordination centres in Belgium, based on legislation dating from the early 1980s permitting the establishment of coordination centres for multinational companies. It explains that this legislation was found by the Commission on two separate occasions in 1984 and 1987 to fall outside Community rules on state aids and that, encouraged by these findings, the coordination centres invested in Belgium and have, over the last 15 years, significantly expanded their presence there.

The applicant states that the Commission's decision to initiate the procedure laid down in Article 88(2) EC in respect of this Belgian legislation (the contested decision) abruptly, arbitrarily and without any adequate reasoning re-classifies it as an aid within the meaning of Article 87(1) and reaches preliminary negative conclusions as to its compatibility with the common market, thereby 'at a stroke' removing legal certainty and infringing the legitimate expectations of the Belgian Coordination Centres.

The applicant submits that the Commission's decision is unlawful, being in breach of Article 1(b)(v) of Regulation 659/1999, and has no other basis in Community law. The Commission's alternative legal basis for its decision to the effect that it is entitled to reverse a decision taken 15 years earlier (either under Article 1(b)(v) or under general administrative principles) is likewise unfounded in Community law and should be annulled. In particular, this alternative legal basis for the Commission decision infringes the principles of legal certainty and legitimate expectations. The applicant considers therefore that, especially taking into account the novel legal basis upon which the decision purports to be taken and the substantial economic interests involved, the decision is inadequately reasoned, in breach of Article 253, and should be annulled.

Action brought on 10 September 2002 by Dyson Limited against the Office for the Harmonisation in the Internal Market

(Case T-278/02)

(2002/C 289/53)

(Language of the case: English)

An action against the Office for the Harmonisation in the Internal Market was brought before the Court of First Instance