Action brought on 6 March 2003 by Fédération des Industries Condimentaires de France and Others against the Commission of the European Communities

(Case T-90/03)

(2003/C 112/76)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 6 March 2003 by the Fédération des Industries Condimentaires de France, established in Paris, the Confédération Générale des Producteurs de Lait de Brebis et des Industriels de Roquefort, established in Millau (France), the Comité Économique Agricole Régional Fruits et Légumes de Bretagne, established in St-Martin-des-Champs (France) and the Comité Interprofessionnel des Palmipèdes à Foie Gras, established in Paris, represented by Michel-Jean Jacquot and Olivier Prost, lawyers.

The applicants claim that the Court should:

— order the Commission to compensate the applicants (including their members who have suffered damage) for the material damage suffered in the period from 29 July 1999 to 9 July 2002, amounting to EUR 9 805 251 for the Fédération des Industries Condimentaires de France, EUR 5 190 000 for the Confédération Générale des Producteurs de Lait de Brebis et des Industriels de Roquefort, EUR 33 451 860 for the Comité Économique Agricole Régional Fruits et Légumes de Bretagne and EUR 4 925 000 for the Comité Interprofessionnel des Palmipèdes à Foie Gras, or any other amount which the Court may deem appropriate or as may be increased in the course of proceedings;

— order the Commission to compensate the applicants (including their members) for the non-material damage suffered in the period from 29 July 1999 to 9 July 2002, amounting to EUR 200 000 for each of the four applicants, or any other amount which the Court may deem appropriate or as may be increased in the course of proceedings;

— order the Commission to compensate the applicants (including their members who have suffered damage) for the material damage suffered as a result of the decision adopted on 9 July 2002 (and until the applicants' products are removed from the list of American measures), amounting to EUR 3 268 417 per year for the Fédération des Industries Condimentaires de France, EUR 1 730 000 per year for the Confédération Générale des Producteurs de Lait de Brebis et des Industriels de Roquefort, EUR 11 150 620 per year for the Comité Économique Agricole Régional Fruits et Légumes de Bretagne and EUR 1 641 666 per year for the Comité Interprofessionnel des Palmipèdes à Foie Gras, or any other amount which the Court may deem appropriate or as may be increased in the course of proceedings;

— order the Commission to compensate the applicants (including their members) for the non-material damage suffered as a result of the decision adopted on 9 July 2002 (and until the applicants' products are removed from the list of American measures), amounting to EUR 200 000 for each of the four applicants (harm to their image in the United States) and EUR 200 000 for each of the four applicants (harm to their credibility), or any other amount which the Court may deem appropriate or as may be increased in the course of proceedings.

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The purpose of the present application is to seek compensation for the damage allegedly caused by the Commission's purported failure to take action in the face of retaliatory measures taken by the United States of America in the context of the WTO following the adoption by the Community of legislation prohibiting the importation of certain substances having a hormonal action ([1]). Those measures are applied selectively. Thus, so far as concerns mustard, Roquefort cheese, shallots and foie gras (with which the present application is concerned), the United States measures applied to all the Member States except the United Kingdom.

The Commission's failure to take action arises from its decision terminating the examination procedures concerning obstacles to trade, within the meaning of Council Regulation (EC) No 3286/94, consisting of trade practices maintained by the United States of America in relation to imports of prepared mustard ([2]). The applicants have brought an action ([3]) for the annulment of that decision.

The applicants take the view that the non-contractual liability of the Commission is incurred as a result of:

— its failure to take action following the adoption by the United States of the measures in issue. They plead in that respect infringement of Articles 113 and 211 EC, stating that, by its inaction, the Commission tacitly approved the United States measures, thus also putting in question the logic itself of the common commercial policy;

— the adoption of its decision of 9 July 2002. In that respect, the applicants refer to the pleas in law and arguments put forward in Case T-317/02, cited above.1

(1) See, in particular, Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of ß-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (OJ 1996 L 125, p. 3).
(2) OJ 2002 L 195, p. 72.
(3) Case T-317/02 (OJ 2002 C 323, p. 37).

Action brought on 10 March 2003 by SGL Carbon AG against the Commission of the European Communities

(Case T-91/03)

(2003/C 112/77)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 March 2003 by SGL Carbon AG, Wiesbaden (Germany), represented by M. Klusmann and P. Niggemann, Rechtsanwälte.

The applicant claims that the Court should:

— annul the contested decision in so far as the applicant is concerned;

— in the alternative, reduce appropriately the amount of the fine imposed on the applicant in the contested decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant manufactures various graphite products, including 'specialty graphite'. The defendant complained that the applicant and other manufacturers and distributors of isostatic specialty graphite had participated in a continuing agreement and/or concerted practices which affected the market for isostatic specialty graphite in the European Community and the European Economic Area. The alleged infringements relate primarily to the period from July 1993 to February 1998. In addition, the defendant also alleged that the applicant and UCAR, another manufacturer of specialty graphite, had committed a further infringement of Article :81(1) EC inasmuch as they had participated, in the period from February 1993 to November 1996, in agreements and concerted practices in the extruded specialty graphite sector. By the contested decision, the defendant imposed on the applicant a fine of EUR 18.94 million for the isostatically pressed specialty graphite sector and a fine of EUR 8.81 million for the extruded specialty graphite sector.

The applicant relies on five pleas in law:

— Breach of the principle of non bis in idem and the principle of proportionality. The applicant argues that the defendant infringed the prohibition of double jeopardy inasmuch as it failed to take into consideration in its decision the fines already imposed in North America on the international part of the cartel, and inasmuch as it carried out a second administrative-fine proceeding against, among others, the applicant in the graphite electrode sector. In the alternative, the applicant argues that, even if a second proceeding might have been lawful, the defendant should nevertheless have taken into account the fines already imposed when determining the amount of the fine.

— Breach of the principle of the right to a fair hearing and of the applicant's rights of defence. The applicant argues that, in its decision, the defendant surprisingly re-evaluated the contributions of LCL and the applicant to the infringement and therefore deprived the applicant of the opportunity to state its views on this matter adequately during the administrative proceeding. The defendant also appointed case handlers who did not have a sufficient command of the German language, with the result that the defendant failed to give full consideration to the applicant's submissions.

— Infringement of essential procedural requirements and of the obligation to state reasons under Article 253 EC inasmuch as the defendant took as the basis for its decision incorrect and defective market data.

— Infringement of Article 15(2) of Regulation No 17/62/EEC on account of allegedly erroneous determination of the fines. The applicant argues that, in determining the fines, the defendant took account of the gravity of the offence in an inadmissible way, wrongly imputed to the applicant the role of a cartel leader, disregarded the upper limit of penalties, failed to take into consideration the applicant's ability to pay and the supposed absence of any requirement of a deterrent effect, and failed to give due recognition to the applicant's contributions by way of cooperation.

The applicant further claims that the interest imposed on the fine is unlawful.