

Pleas in law and main arguments:

By three letters dated 27 October 2003 the second applicant presented to the Commission three requests for access to documents connected to the question of whether tooth-bleaching products should be classified as cosmetic products or as medical devices. More particularly, the second applicant requested access to documents relating to a complaint made on behalf of the first applicant to the Commission contesting the classification of such products by the United Kingdom Authorities, to documents relating to the preparation of the answer by Commissioner Borino to a written question to the Commission on such products and finally to all documents of the Commission relating to the question of the classification of such products. At the same time the second applicant, who is a solicitor, declared in his application that he was acting on behalf of the first applicant.

Confirmatory applications were filed on 16 December 2003. On 17 December 2003 the Commission replied to the initial applications and the applicants filed a further confirmatory application on 7 January 2004 which purported to withdraw the three previous confirmatory applications of 16 December. The Commission replied to the application of 7 January 2004 by a letter dated 5 April 2004. Enclosed with this letter were a number of documents.

The applicants contend that the administrative procedure revealed that, apart from the documents disclosed to the applicants by the letter of 5 April 2004, a number of documents on the matters in question certainly exist and other documents may also be presumed to exist. According to the applicants all these documents are within the scope of the initial application and within the possession of the Commission, but have not been disclosed to the applicants. On this basis the applicants consider the letter of 5 April 2004 as a decision to refuse access to all these documents, and request its annulment. In support of their application they invoke a violation of Article 8 of Regulation 1049/2001⁽¹⁾ Official Journal L 145, 31/05/2001 p. 43-48 and of this regulation in general. They further submit that the Commission failed to give reasons for not granting access to the documents that certainly exist, nor has it invoked any exceptions to the right of access in order to justify its refusal.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Action brought on 28 June 2004 by the Republic of Poland against the Commission of the European Communities

(Case T-257/04)

(2004/C 251/38)

(Language of the case: Polish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the

European Communities on 28 June 2004 by the Republic of Poland, represented by Jarosław Pietras, acting as Agent.

The applicant claims that the Court should:

- declare invalid Articles 3 and 4(3) and (5), eighth indent, of Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2003 L 293, p. 3), as amended by Commission Regulation (EC) No 230/2004 of 10 February 2004 (OJ 2004 L 39, p. 13) and Commission Regulation (EC) No 735/2004 of 20 April 2004 (OJ 2004 L 114, p. 13);
- order the Commission of the European Communities to pay the costs of the proceedings.

Pleas in law and main arguments

With regard to Article 3 of Regulation No 1972/2003 the applicant raises the following heads of complaint:

- infringement of the principle of the free movement of goods through the introduction of customs duties in the amount of a customs rate applicable erga omnes and exceeding the level of customs rates in force during the period prior to Poland's accession to the European Union;
- lack of competence on the Commission's part and breach of Articles 22 and 41, first paragraph, and Part 5 of Annex IV to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded⁽¹⁾ through the adoption of measures altering the conditions defined in that Act for the adoption by the Republic of Poland of the rules governing the customs union;
- infringement of the principle of non-discrimination on grounds of nationality by reason of the adoption of measures providing for treatment of persons from Poland that differs from that of persons from the Community of 15 States who are in a comparable position;
- breach of a fundamental procedural requirement by virtue of the inadequate reasoning of the measures adopted;
- infringement of the principle of the protection of legitimate expectations by reason of the introduction of a method, at variance with the conditions laid down in the abovementioned Act of Accession, for dealing with products which were in temporary storage on 1 May 2004, were covered by customs procedures or were in transit within the enlarged Community, and in particular by reason of the introduction of customs duties exceeding the level of customs rates in force during the period prior to Poland's accession to the European Union.

With regard to Article 4(3) of Regulation No 1972/2003 the applicant argues that the Commission lacked competence and that there has been a breach of the first paragraph of Article 41 of the abovementioned Act of Accession and infringement of the principles of proportionality and non-discrimination on grounds of nationality, in so far as the level of duty laid down in the contested provision exceeds the differential between the Community customs rate and the Polish rate as on 30 April 2004.

With regard to the eighth indent of Article 4(5) of Regulation No 1972/2003 the applicant argues that the Commission lacked competence and that there has been a breach of the first paragraph of Article 41 of the abovementioned Act of Accession and infringement of the principle of proportionality in so far as the contested provision covers products for which the Polish customs rate for imports on 30 April 2004 was greater than or equal to the Community rate and also products in respect of which there was, on 1 May 2004, no evidence of surplus stocks at national level.

With regard to all of the contested provisions of Regulation No 1972/2003, the applicant argues that the Commission abused its powers by adopting measures the real objective of which was not to facilitate Poland in adopting the rules of the Common Agricultural Policy but rather to protect the market of the Community of 15 States against competition from Polish agricultural producers.

(¹) OJ 2003 L 236, p. 33.

Action brought on 28 June 2004 by the Republic of Poland against the Commission of the European Communities

(Case T-258/04)

(2004/C 251/39)

(Language of the case: Polish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 June 2004 by the Republic of Poland, represented by Jarosław Pietras, acting as Agent.

The applicant claims that the Court should:

- declare invalid Articles 5, 6(1), (2) and (3), 7(1) and 8(2)(a) of Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2004 L 9, p. 8);
- order the Commission of the European Communities to pay the costs of the proceedings.

Pleas in law and main arguments

With regard to Article 5 of Regulation No 60/2004 the applicant raises the following heads of complaint:

- infringement of the principle of the free movement of goods through the introduction of customs duties in the amount of a customs rate applicable erga omnes and exceeding the level of customs rates in force during the period prior to Poland's accession to the European Union;
- lack of competence on the Commission's part and breach of Articles 22 and 41, first paragraph, and Part 5 of Annex IV to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (¹) through the adoption of measures altering the conditions defined in that Act for the adoption by the Republic of Poland of the rules governing the customs union and through the inclusion by the contested provision of products that are not covered by the Common Agricultural Policy;
- infringement of the principle of non-discrimination on grounds of nationality by reason of the adoption of measures providing for treatment of persons from Poland that differs from that of persons from the Community of 15 States who are in a comparable position;
- breach of a fundamental procedural requirement by virtue of the inadequate reasoning of the measures adopted;
- infringement of the principle of the protection of legitimate expectations by reason of the introduction of a method, at variance with the conditions laid down in the abovementioned Act of Accession, of dealing with products which were in temporary storage on 1 May 2004, were covered by customs procedures or were in transit within the enlarged Community, and in particular by reason of the introduction of customs duties exceeding the level of customs rates in force during the period prior to Poland's accession to the European Union.

With regard to Article 6(1) and (2) of Regulation No 60/2004, the applicant argues that the Commission lacked competence and that there has been a breach of Article 22, the first paragraph of Article 41 and Part 4 of Annex IV to the abovementioned Act of Accession, in conjunction with Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (²) — to the extent to which the contested provisions provide for account to be taken by the Commission of processed products containing sugar (sugar equivalent) when determining the existence of surplus quantities of sugar and isoglucose and impose a prohibition on the elimination of surplus quantities of sugar and isoglucose by way of exportation of processed products containing sugar (sugar equivalent).