Form of order sought

— declare that Regulation (EC) No 1049/2001 is inapplicable;

— in the alternative, declare an error of law in the application of Regulation (EC) No 1049/2001 in conjunction with Regulation (EC) No 45/2001;

— consequently, annul the Decision of the European Data Protection Supervisor 2008-0600;

— declare that the request for access to the document does not satisfy the conditions laid down in Regulation No 45/2001;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of the decision of the European Data Protection Supervisor by which the latter found that the disclosure during national legal proceedings of certain data concerning the applicant's career in the Commission of the European Communities is not contrary to the provisions of Regulations No 45/2001 ([1]) and No 1049/2001. ([2])

In support of its action, the applicant claims that:

— the contested decision is unfounded inasmuch as it is based on Regulation No 1049/2001 which is inapplicable in the present case, since the request for access does not concern a document within the meaning of Regulation No 1049/2001, but exclusively an item of personal data.

— even if Regulations No 1049/2001 and No 45/2001 were to apply in conjunction with one another in the present case, the defendant, when applying them, erred in considering that the conditions imposed by Regulation No 45/2001 concerning the processing of personal data apply only where the exception provided for in Article 4(1)(b) of Regulation No 1049/2001 regarding access to documents is applicable;

— the defendant infringed the provisions of Regulation No 45/2001 inasmuch as the request for access did not concern a document and was not based on any of the conditions for permitting the processing of personal data.

([1]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

([2]) 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 (OJ 2001 L 145, p. 43).

Action brought on 24 April 2009 — Shanghai Biaowu High-Tensile Fastener and Shanghai Prime Machinery v Council

(Case T-170/09)

(2009/C 153/89)

Language of the case: English

Parties

Applicants: Shanghai Biaowu High-Tensile Fastener (Shanghai, China) and Shanghai Prime Machinery (Shanghai, China) (represented by: K. Adamantopoulos and Y. Melin, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron and steel fasteners originating in the People's Republic of China, insofar as:

— the three-month time limit for disclosing market economy treatment findings was not respected, in breach of the second paragraph of Article 2(7)(c);

— it unjustifiably rejects the applicants' market economy treatment claim in breach of Article 2(7)(c), first part of the first indent, of the basic Regulation;

— it unjustifiably rejects the applicants' market economy treatment claim in breach of Article 2(7)(c), second part of the first indent, of the basic Regulation;

— its findings are based on insufficient information in breach of the duty of examining carefully and impartially all the relevant aspects of each individual case as guaranteed by the Community legal order in administrative procedures;

— it places a burden of proof on exporting producers seeking market economy treatment inconsistent with general principles of Community law, in particular the principle of sound administration;

— it is in breach of Articles 1.1 and 1.2, Article 2, Article 3.1, Article 5, Article 6, Article 8, Article 10.1, Article 11 and Article 15 of the basic anti-subsidy Regulation as it uses the rejection of market economy treatment in order to countervail subsidies;

— it fails to adjust a difference demonstrated to affect price comparability, in breach of Article 2(10) of the basic Regulation,

— it fails to give reasons for maintaining the market economy treatment rejection in breach of Article 253 EC;

— its findings were based on a procedure in breach of the fundamental right of defence of the applicants, preventing them from effectively contesting some findings essential to the calculation of the duties, and the outcome of the investigation; and

— order the Council to bear the costs of these proceedings.

Pleas in law and main arguments

The applicants seek the annulment of the contested regulation on the following grounds:

In respect of their first head of claim, the applicants submit that the second subparagraph of Article 2(7)(c) of the basic Regulation has been breached as the market economy treatment ("MET") decision was disclosed after the three-month time limit established in this Article, and after the Commission had all essential information to calculate the applicants' dumping margin.

In respect of their second head of claim, the applicants submit that the contested regulation is in breach of the first indent of Article 2(7)(c) as it rejected the applicants' claim for MET even though the applicants had demonstrated that they take their business decisions purely on response to market signals without any State interference. According to the applicants the contested regulation failed to identify any fact that would point to any State interference prior to, during or after the period of investigation. The applicants moreover contend, in respect of their third head of claim, that the contested regulation is in breach of the first indent of Article 2(7)(c) as it rejected the applicants' claim for MET after the applicants had overcome their burden of proof and demonstrated that the costs of major inputs reflect market values.

In respect of their fourth head of claim, the applicants contend that the facts of the case lack careful and impartial examination. More precisely, the conclusion that raw material prices in China were distorted due to subsidization, which was used as the grounds for considering that the applicants did not buy input at market value, was based on insufficient information and the Commission did not properly assess the evidence concerning the steel sector in China.

In respect of their fifth head of claim, the applicants submit that the contested regulation is in breach of general principles of EC law and in particular, the principle of sound administration, also set out in Article 41 of the Charter of Fundamental Rights, since an unreasonable burden of proof was imposed on them in order to demonstrate that market economy conditions prevail, as required by Article 2(7)(b).

In respect of their sixth head of claim, the applicants put forward that the contested regulation is in breach of the anti-subsidy regulation as it allegedly used MET rejection in an anti-dumping investigation to compensate for subsidies that could only be addressed by the anti-subsidy basic Regulation after due investigation.

In respect of their eighth claim, the applicants argue that there is no legal basis for denying adjustment to the normal value based on the argument that raw material price is distorted, contrary to the reasons given by the EU institution in order to reject their claim for adjustment under Article 2(10)(k) of the basic Regulation.

In respect of their ninth head of claim, the applicants claim that in the definitive disclosure document proposing the imposition of definitive measures, the Commission simply rephrased and repeated the same argument used in the MET disclosure document, without analysing the evidence provided and giving reasons for the rejection. Moreover, the applicants claim that the contested regulation did not provide any reasons for confirming the rejection of the evidence provided by the applicants.

Finally, in respect of their last head of claim, the applicants submit that their rights of defence were breached, since they were prevented from accessing essential information regarding the calculation of normal value and dumping margins.

Action brought on 24 Avril 2009 — Gem-Year et Jinn-Well Auto-Parts (Zhejiang) v Council

(Case T-172/09)

(2009/C 153/90)

Language of the case: English

Parties

Applicants: Gem-Year Industry Co. Ltd and Jinn-Well Auto-Parts (Zhejiang) Co. Ltd (represented by: K. Adamantopoulos and Y. Melin, lawyers)