

10(1) and 11, nor did it establish, on the basis of facts, the existence of countervailable subsidies and injury caused thereof as required by Article 15 of the basic anti-subsidy regulation as it uses the rejection of market economy treatment in order to countervail subsidies.

⁽¹⁾ OJ 2009 L 29, p. 1

⁽²⁾ Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1) as amended by Council Regulation (EC) No 2117/2005 (OJ 2005 L 340, p. 17)

⁽³⁾ Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community (OJ 1997 L 288, p. 1)

Action brought on 27 April 2009 — Complejo Agrícola v Commission

(Case T-174/09)

(2009/C 153/91)

Language of the case: Spanish

Parties

Applicant: Complejo Agrícola, SA (Madrid, Spain) (represented by: A. Menéndez Menéndez and G. Yanguas Montero, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare the present action admissible;

— annul in part Article 1 of, in conjunction with Annex 1 to, Commission Decision 2009/95/EC of 12 December 2008, ⁽¹⁾ in so far as they concern the declaration as a site of Community importance of “Acebuchales de la Campiña sur de Cádiz” Code ES6120015 (“SCI Acebuchales”) and restore fully the exercise of COMPLEJO AGRÍCOLA’s right of ownership over that part of its farm which does not have sufficient environmental value for it to be declared a site of Community importance (“SCI”);

— order the Commission to pay the costs.

Pleas in law and main arguments

The decision challenged in the present proceedings adopts the second updated list of SICs for the Mediterranean biogeographical region in accordance with Article 4(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. ⁽²⁾ The SICs which were designated or retained in the contested decision included the SCI Acebuchales with an area of 26 475,31 hectares and with the following coordinates: longitude 5° 57’ 4” W and latitude 36° 24’ 2”.

In accordance with the contested decision, a surface area of 1 759 hectares of the farm of which the applicant is the owner (‘the farm’) is included in the SCI Acebuchales. Since the declaration of Acebuchales as an SCI, the legal protection regime laid down in Article 6(2), (3) and (4) of Directive 92/43 has applied automatically to that area of land. That regime

restricts the applicant’s ability to use and to enjoy the part of the farm included in SCI Acebuchales.

The applicant makes the following submissions in support of its claim:

— in the determination of the perimeter of SCI Acebuchales, which affects the farm, the Commission exceeded its powers as a consequence of its erroneous application of the criteria established in Annexes I, II and III to Directive 92/43.

As established in the Environmental Impact Assessment carried out by the environmental consultants Istmo ‘94, of the 1 759 hectares of the farm affected by SCI Acebuchales, 877 hectares do not satisfy the environmental conditions required by Directive 92/43 for them to be included in an SCI area. The Commission’s erroneous application of the criteria of Annex III to Directive 92/43 has resulted in a large tract of land owned by the applicant lacking in environmental value being regarded as an SCI area, which, moreover, entails an infringement of the principles of proportionality and legality which shape Community law.

— there has been an unjustified and disproportionate restriction of the ability to use and enjoy inherent in the applicant’s right of ownership over those areas of the farm affected by SCI Acebuchales which are lacking in environmental value.

— the applicant had no opportunity to participate in the procedure for declaring Acebuchales to be an SCI, nor even to learn of its existence, before the publication of the contested decision: that has resulted in an infringement of the principles of *audi alteram partem* and legal certainty.

⁽¹⁾ Commission Decision of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Mediterranean biogeographical region (notified under document number C(2008) 8049) (OJ 2009 L 43, p. 393).

⁽²⁾ OJ 1992 L 206, p. 7.

Action brought on 6 May 2009 — Government of Gibraltar v Commission

(Case T-176/09)

(2009/C 153/92)

Language of the case: English

Parties

Applicant: Government of Gibraltar (represented by: D. Vaughan, QC and M. Llamas, Barrister)

Defendant: Commission of the European Communities

Form of order sought

— annul Decision 2009/95/EC to the extent that it extends ES6120032 to British Gibraltar Territorial Waters (both within and outside UKGIB0002) and to an area of the High Seas;