— order the European Commission to pay the costs.

**Pleas in law and main arguments**

By the present action, the applicant seeks the annulment of Commission Decision C(2009) 10005 final of 16 December 2009, informing the French authorities that the repayment to the applicant of import duties on cans of tuna originating in Thailand is not justified (file REM 07/08).

In support of its action, the applicant submits that the Commission failed to fulfil its obligation to guarantee that importers, established in France or in other Member States in which customs offices are legally closed on Sundays, who lodged their customs declarations on Monday 2 July 2007 would have equal and non-discriminatory access to quota No 09.2005 for the period 2007/2008,

— by not taking, in the circumstances of the present case in which that quota was opened on Sunday, 1 July 2007, regulatory measures that would have made it possible to treat those importers in a manner that is equal and free from discrimination;

— by not postponing the date of opening of that quota until Monday, 2 July 2007, even though the quota in question was very critical.

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## Action brought on 22 March 2010 — Communauté de communes de Lacq v Commission

**(Case T-132/10)**

(2010/C 148/61)

*Language of the case: French*

**Parties**

*Applicant:* Communauté de communes de Lacq (Mourenx, France) (represented by: J. Daniel, lawyer)

*Defendant:* European Commission

**Form of order sought**

— Order the European Union to pay the applicant the sum of EUR 10 000 000 because of the unlawfulness and deficiency of the Commission's behaviour in the light of the breach, by ACETEX, of its undertakings;

— order the European Union to pay the applicant EUR 25 000 by way of non -recoverable costs;

— order the European Union to pay the costs.

**Pleas in law and main arguments**

By its action, the Communauté de communes de Lacq (Community of the communes of Lacq) seeks damages for the harm allegedly suffered as a result of the Commission's decision to declare compatible with the common market and the functioning of the EEA Agreement the concentration involving the acquisition, by Celanese Corporation, of control of Acetex Corporation, without acknowledging the legal value to an alleged undertaking by Celanese, in particular the commitment to continue the operation of the Acetex factory in Pardies for five years (Case COMP/M.3625 — Blackstone/Acetex).

In support of its action, the applicant submits that the Commission infringed the principles of legal certainty and legitimate expectations since, through its interpretation of the EC Merger Regulation, [1] it deprived all third parties to concentrations (employees and local officials) of protection, even though, in the light of the commitments given by Celanese Corporation, it was certain that employees would be protected against a cessation of activity for five years.

The applicant thus certainly suffered significant damage. Indeed, local authorities in that area are deprived of important fiscal resources and have to pay out numerous social benefits because of the closure of the site. Numerous redundancies must be expected, both among employees of Acetex and also among employees of companies whose activities were closely linked to that of Celanese Corporation.

In the alternative, if it cannot be established that there was tortious liability on the part of the European Commission, the applicant asks that the Commission be held strictly liable. There can be no doubt as to the damage suffered by the applicant and its unusual and special nature and that that damage was directly caused by the refusal of the European Commission to sanction Celanese Corporation.

(1) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1)

## Action brought on 19 March 2010 — FESI v Conseil

**(Case T-134/10)**

(2010/C 148/62)

*Language of the case: English*

### Parties

*Applicant:* Fédération européenne de l'industrie du sport (FESI) (Brussels, Belgium) (represented by: E. Vermulst and Y. Van Gerven, lawyers)

*Defendant:* Council of the European Union

### Form of order sought

— annul Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (1) in its entirety or alternatively as far as the applicant and its members, particularly its four sampled members are concerned (Adidas AG, Nike European Operations BV, Puma AG and Timberland Europe BV);

— order the Council to disclose the production data for each sampled Union producer which was the basis of sample selection in the review investigation as well as the employment data for each sampled Union producer;

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

### Pleas in law and main arguments

In support of its claims, the applicant puts forward seven pleas in law.

First, it submits that by not requiring the complainant European Union producers to complete sampling forms, the Council erred in the application of Article 17(1) of the basic regulation (2), committed a manifest error of appraisal and violated the rights of defence and the principle of non-discrimination. In particular, the applicant claims that the European Union institutions did not require the complainant EU producers to complete sampling forms and therefore, the EU producers' sample was selected in the absence of requisite data, on the basis of limited — unverifiable — data provided by the complainants. The applicant argues that, consequently, they were precluded from verifying the suitability of the sample selected. It further contends that the EU institutions treated interested parties placed in comparable situations in a different manner without any objective reasons and breached the fundamental principle of non-discrimination.

Second, the applicant claims that in the selection of the EU producers' sample the Council committed a manifest error of appraisal and violated Article 17(1) of the basic regulation. It submits that the EU producers' sample did not constitute the largest representative volume of production or sales that could reasonably be investigated in the time available within the meaning of Article 17(1) of the basic regulation and the sample was predominantly selected on the basis of criteria not mentioned in this provision.

Third, the applicant contends that the Council violated Article 6.10 of the World Trade Organization Anti-dumping Agreement by not applying Article 17(1) of the basic regulation in conformity with the former. The Council did not establish a sample of EU producers that represented the largest percentage of volume of production or sales as required by Article 6.10 of the WTO Anti-Dumping Agreement.