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 SCIs 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;

— order the Commission to pay the applicant's legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

By means of present application, the applicant seeks the partial annulment of Commission Decision 2009/95/EC 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) [1] insofar as it designates ES6120032 "Estrecho oriental" site so as to include Gibraltar Territorial Waters (both within and outside UKGIB0002) and an area of the High Seas.

The applicant puts forward the following pleas in law in support of its claims.

First, the applicant submits that the contested decision is in breach of the EC Treaty in that:

— the Commission made manifest errors of law in that, in breach of Article 299 EC, it has designated an area of one Member State, British Gibraltar Territorial Waters, as forming part of another Member State, Spain;

— it was adopted in breach of Articles 3(2) and 4(1) of the Directive 92/43/ECC [2] and in manifest violation of the scheme of that directive, as it purports to attribute "site of Community importance" status to a large part of the site ES6120032 which is not in Spanish territory and which is national to another Member State and in clear breach of Article 2 of the same directive to a part of the High Seas which do not form part of the European territory of Member States and over which Spain does not, and cannot, exercise any jurisdiction or sovereignty;

— it contains an error in law in that it purports to grant "site of Community importance" status and Directive 92/43/ECC obligations to parts of ES6120032, being under Spanish sovereignty, which overlap with UKGIB0002, being under United Kingdom sovereignty, thereby purporting to apply two separate and distinct legal, penal, administrative and monitoring regimes in the same site area;

— it was adopted in breach of Article 300(7) EC and provisions of Part XII of the United Nations Convention on the Law of the Sea 1982 (UNICLOS), the Barcelona Convention on the Protection of the Mediterranean Sea 1976 and the 1995 Protocol to that Convention as it requires Spain to comply with the same environmental obligations in the part of British Gibraltar Territorial Waters included in ES6120032 as are required to be complied with by the UK/Gibraltar in the same area;

Second, the applicant claims that the contested decision is vitiated by manifest errors of facts which lead the Commission to an improper application of the law and infringements of the EC Treaty since it is based on information which is false and misleading.

Third, the applicant contends that the contested decision was adopted in breach of the principle of legal certainty in that the automatic effect of the "overlapping" designation of the sites is to apply two systems of law (Gibraltar's and Spain's law implementing the Directive 92/43/ECC) in the same area for the same purpose.

In the alternative, the applicant claims that the contested decision was adopted in breach of the principles set for in Articles 2, 3, 89 and 137(1) UNICLOS as a matter of customary international law. As a further alternative, it submits that the decision, to the extent it designates ES6120032 as encompassing British Gibraltar Territorial Waters is in breach of the principle of customary international law that the territorial sea extends, as a minimum, to three nautical miles.

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[1] OJ 2009 L 43, p. 393

[2] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ 1992 L 206, p. 7

Action brought on 11 May 2009 — Spa Monopole v OHIM — Club de Golf Peralada (WINE SPA)

(Case T-183/09)

(2009/C 153/93)

Language in which the application was lodged: English

Parties

Applicants: Spa Monopole, compagnie fermière de Spa SA/NV (Spa, Belgium) (represented by: L. De Brouwer, E. Cornu and O. Klimis, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Club de Golf Peralada, SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 March 2009 in joined cases R 1231/2005-4 and R 1250/2005-4; and

— Order OHIM to pay the costs

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark "WINE SPA", for goods and services in classes 3, 5, 16, 24, 25 and 42

Proprietor of the mark or sign cited in the opposition proceedings: The applicant