

JUDGMENT OF THE COURT (First Chamber)

10 March 2005<sup>\*</sup>

In Case C-342/03,

APPLICATION for annulment under Article 230 EC, brought on 4 August 2003, by

**Kingdom of Spain**, represented by N. Díaz Abad, acting as Agent, with an address for service in Luxembourg,

applicant,

v

**Council of the European Union**, represented by M. Bishop and D. Canga Fano, acting as Agents,

defendant,

<sup>\*</sup> Language of the case: Spanish.

supported by:

**Commission of the European Communities**, represented by X. Lewis and R. Vidal Puig, acting as Agents, with an address for service in Luxembourg,

intervener,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, N. Colneric, J.N. Cunha Rodrigues, M. Ilešić (Rapporteur) and E. Levits, Judges,

Advocate General: F.G. Jacobs,  
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 2 December 2004,

gives the following

### **Judgment**

- 1 By its application, the Kingdom of Spain is asking the Court to annul Council Regulation (EC) No 975/2003 of 5 June 2003 opening and providing for the administration of a tariff quota for imports of canned tuna covered by CN codes 1604 14 11, 1604 14 18 and 1604 20 70 (OJ 2003 L 141, p. 1).

## Relevant provisions

2 Article 1 of Regulation No 975/2003 provides that, '[f]rom 1 July 2003, imports of canned tuna covered by CN codes 1604 14 11, 1604 14 18 and 1604 20 70 originating in any country shall be eligible for a tariff rate of 12% within the limits of the tariff quota opened in accordance with this Regulation'.

3 Article 2 of that regulation states:

'The tariff quota shall be opened annually for an initial period of five years. Its volume for the first two years shall be fixed as follows:

— 25 000 tons from 1 July 2003 to 30 June 2004,

— 25 750 tons from 1 July 2004 to 30 June 2005.'

4 Article 3 of that regulation provides for the allocation of the quota in the following manner:

'The tariff quota shall be divided into four parts, as follows:

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- (a) a quota of 52% of the annual volume, with the order number 09.2005, for imports originating in Thailand; and
- (b) a quota of 36% of the annual volume, with the order number 09.2006, for imports originating in the Philippines; and
- (c) a quota of 11% of the annual volume, with the order number 09.2007, for imports originating in Indonesia; and
- (d) a quota of 1% of the annual volume, with the order number 09.2008, for imports originating in other third countries.'

5 Regulation No 975/2003 was adopted in the following circumstances.

- 6 At the end of 2001, the European Community, Thailand and the Philippines agreed to hold consultations to examine to what extent Thai and Philippine legitimate interests were being unduly impaired by the preferential tariff treatment for canned tuna originating in the African, Caribbean and Pacific group of States (hereinafter 'the ACP States'). At that time, imports of canned tuna originating in Thailand, the Philippines and other countries were subject to customs duty at the ordinary or 'most-favoured nation' rate of 24%.

- 7 The consultations having failed to achieve a mutually acceptable solution, the Community, Thailand and the Philippines agreed to refer the matter to mediation within the World Trade Organisation (hereinafter 'the WTO').
- 8 On 20 December 2002, the mediator delivered his opinion, recommending that the Community open an annual tariff quota of canned tuna originating in Thailand and the Philippines subject to customs duty at 12%.

### **Procedure before the Court**

- 9 The Kingdom of Spain has brought an action for annulment by which it claims that the Court should annul Regulation No 975/2003 and order the Council to pay the costs.
- 10 The Council contends that the action should be dismissed and the Kingdom of Spain ordered to pay the costs.
- 11 By order of 15 January 2004, the Commission of the European Communities was granted leave to intervene in support of the form of order sought by the Council.
- 12 In anticipation of that grant of leave to intervene, the Kingdom of Spain had, by letter of 4 November 2003, applied for certain aspects of the application to be treated confidentially under Article 93(3) of the Rules of Procedure. That application was rejected.

## The action

- 13 In support of its action, the Kingdom of Spain relies on eight pleas in law alleging, respectively, breach of the principle of Community preference, distortion of competition, procedural irregularities, infringement of the Partnership agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ 2000 L 317, p. 3) and approved on behalf of the Community by Council Decision 2003/159/EC of 19 December 2002 (OJ 2003 L 65, p. 27; hereinafter 'the Cotonou Agreement'), infringement of the preferential agreements with the ACP States and the States belonging to the 'special arrangement to combat illegal drug production and trafficking', breach of the principle of legitimate expectations, failure to state reasons and misuse of powers.

### *The first plea in law, alleging breach of the principle of Community preference*

#### Arguments of the parties

- 14 The Spanish Government states that Community preference is one of the principles of the EC Treaty and that it is the basis of the Common Customs Tariff. The Community's interest must be taken into account and the development of Community production must be ensured. Regulation No 975/2003 infringes that principle, since the measures which it contains could have been enacted only if Community production was insufficient. Such insufficiency was not established in this case. In that regard, that government makes clear that Spain is, in world terms, the third producer and second exporter of canned tuna and that more than 80% of the total of those exports is used to supply the Community market.

- 15 The Spanish Government emphasises the importance of the canned tuna sector for the Spanish economy and, more particularly, for that of the Autonomous Community of Galicia, which is already confronted by grave economic problems and which provides 90% of Spanish production of those canned products. It is therefore a case of a sensitive product which requires a high level of tariff protection to remain competitive compared to products from other countries.
- 16 The Council, for its part, notes that the principle known as ‘Community preference’ is not a legal requirement. That principle means only that Community producers must be treated more favourably than non-member country producers. The Community is not prohibited from adopting measures capable of adversely affecting Community producers. The said principle is not infringed in this case, since the imports of canned tuna, within the limits of the tariff quota provided for by Regulation No 975/2003, are subject to a duty of 12%, so that Community producers continue to enjoy more favourable treatment than that accorded to non-member countries.
- 17 The Commission states that ‘Community preference’ is only one of the political considerations which the institutions may take into account, among others, in fixing rates of customs duty. If the institutions have to observe ‘Community preference’ in all circumstances, the sphere of action of the common commercial policy would be confined within narrow margins incompatible with the Treaty.

### Findings of the Court

- 18 It is accepted that ‘Community preference’ is one of the political considerations on which the Community institutions have based themselves in adopting trading arrangements with non-member countries.

- 19 However, as the Court has already made clear, that preference is by no means a legal requirement infringement of which could result in the invalidity of the measure concerned (Case C-353/92 *Greece v Council* [1994] ECR I-3411, paragraph 50).
- 20 It follows that the first plea in law must be rejected, without the necessity of considering the state of the supply of the Community market and the repercussions of Regulation No 975/2003 on the Community economy.

*The second plea in law, alleging distortion of competition*

Arguments of the parties

- 21 The Spanish Government claims that the opening of the tariff quota provided for by Regulation No 975/2003 creates distortion in the conditions of competition on the canned tuna market, because it harms the Community industry and thus provokes imbalances on the market. On that point, the government produces tables of figures and Spanish producers' statements which show that they have suffered a decrease in their orders and therefore substantial losses as a result of that regulation. It also maintains that the differences as far as concerns social costs, protection of the environment and quality control of the products create inequality in the conditions of competition between Thailand and the Philippines, on the one hand, and the Community, on the other hand.
- 22 The Council contends that, even if it was established that the quota could have damaging repercussions on Community producers, it does not necessarily follow that there have been undue distortions in the conditions of competition.



- 23 The Commission maintains that no rule of Community law prohibits the adoption of tariff measures capable of altering the conditions of competition in the sense alleged by the Spanish Government.

## Findings of the Court

- 24 As the Commission correctly observed, Community law does not prohibit the adoption of tariff measures, the possible effects of which on competition are confined to those alleged by the Spanish Government in this case.

- 25 As the Advocate General pointed out in point 12 of his Opinion, such a prohibition would prevent the Community contributing to the progressive removal of restrictions on international trade. In fact, any reduction in customs duties is liable to have some effect on competition between goods imported from non-member countries and the equivalent Community products, to the disadvantage of the Community producers. If Spain's argument were taken to its logical conclusion, it would mean that the Community could never reduce duties on imported goods. That clearly cannot be the case.

- 26 On those grounds, the second plea in law must also be rejected.

*The third plea in law, alleging procedural irregularities*

## Arguments of the parties

- 27 The Spanish Government observes that Regulation No 975/2003 was adopted in breach of administrative procedure because it was not based on any technical study establishing that its adoption was necessary. No report was drawn up revealing the level of supply and the effects of the opening of the quota for canned tuna. Consequently, the obligation for the competent institution to examine carefully and impartially all the relevant elements of the case in point was broken. The examination by the WTO mediator cannot be substituted for that of the Council, given that his recommendations are not binding and that the Council cannot delegate the development of the common commercial policy to a third party.
- 28 The Council maintains that it is not bound to make an impact assessment prior to deciding on a proposal from the Commission based on Article 133 EC. In any event, Regulation No 975/2003 was not adopted in the absence of numerical data. In that regard, the Council notes that the figures relating to the rate and tonnage of the tariff quota for canned tuna correspond broadly to the figures presented by the WTO mediator who had analysed the market situation.
- 29 The Commission points out that Regulation No 975/2003 was not adopted as part of an administrative procedure, but as part of the legislative procedure under Article 133 EC. The legislature enjoys a wider discretion than the administrative authorities.

## Findings of the Court

30 As set out in paragraphs 18 to 20 of this judgment, the implementation of the common commercial policy is not subject to ‘Community preference’. Consequently, it was not, in any event, for the Council to examine, in the course of adopting Regulation No 975/2003, the foreseeable effect of the tariff quota on the canned tuna industry in the Community and to draw up, to that end, a technical report describing the current situation of the Community supply in that sector of the economy.

31 As a result, the third plea in law must also be rejected.

### *The fourth plea in law, alleging infringement of the Cotonou Agreement*

## Arguments of the parties

32 The Spanish Government pleads an infringement of Article 12 of the Cotonou Agreement. Under that article, the Community must, where it intends to take a measure which might affect the interests of the ACP States, inform them in good time of its intentions. In this case, no such notification occurred.

33 The Council maintains that the Commission’s proposal concerning Regulation No 975/2003 is a public document, and that a lack of formal notification of that

proposal cannot therefore have legal consequences on the legal validity of that regulation. In addition, the notification obligation invoked by the Spanish Government is marginal to the Council's decision-making process and does not constitute an essential procedural requirement in the drawing up of the regulation. In any event, the ACP States were kept regularly informed of developments.

- 34 The Commission states that it kept the ACP States regularly informed, and that its proposal was made public. It points out that Article 12 of the Cotonou Agreement does not vary the legislative procedure under Article 133 EC and that the notification provided for by Article 12 is purely informative. It is not therefore a question of an essential procedural requirement, the omission of which may entail the annulment of Regulation No 975/2003.

## Findings of the Court

- 35 Article 12 of the Cotonou Agreement provides that '... where the Community intends, in the exercise of its powers, to take a measure which might affect the interests of the ACP States, as far as this Agreement's objectives are concerned, it shall inform in good time the said States of its intentions. Towards this end, the Commission shall communicate simultaneously to the Secretariat of the ACP States its proposal for such measures. ...'
- 36 Even assuming that the tariff quota at issue 'might have affected the interests of the ACP States, as far as [the Cotonou Agreement's] objectives are concerned', and that an infringement of Article 12 of the Cotonou Agreement could entail the annulment of Regulation No 975/2003, there was no infringement of that article, because the ACP States were duly informed of the intended measure.

37 That is clear, particularly, from the minutes of the meetings with those States on 1 and 25 March 2003, according to which they were informed, first, that the Commission was in favour of accepting the WTO mediator's opinion, and, on the other hand, that it had submitted a proposal to that effect to the Council.

38 It follows that the fourth plea in law must be rejected.

*The fifth plea in law, alleging infringement of the preferential agreements with the ACP States and the States belonging to the 'special arrangement to combat illegal drug production and trafficking'*

#### Arguments of the parties

39 The Spanish Government submits that the tariff quota provided for by Regulation No 975/2003 negates the preferential agreements made by the Community with the ACP States and the States belonging to the 'special arrangement to combat illegal drug production and trafficking' (hereinafter 'the arrangement to combat drugs'), since that quota makes canned tuna originating from those States subject to competition with that originating from States with more developed industries.

40 The Council points out that the quota opened by virtue of Regulation No 975/2003 is subject to a customs duty of 12%, whereas canned tuna from the ACP States

enjoys a nil rate of customs duty. It makes clear, further, that the adoption of that regulation put an end to a long-standing dispute with the Kingdom of Thailand and the Republic of the Philippines and enabled a probable adverse decision by the WTO to be avoided.

- 41 The Commission submits that that regulation does not in any way infringe the Cotonou Agreement or the arrangement to combat drugs. In that regard, it sets out the differences between the tariff regimes in question.

## Findings of the Court

- 42 The systems of preferential treatment invoked for the purposes of this plea in law concern, in reality, only exemptions, accorded under the Cotonou Agreement, from customs duties, on the one hand, and those resulting from the arrangement to combat drugs under Council Regulation (EC) No 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004 (OJ 2001 L 346, p. 1), on the other hand.
- 43 It must be held that, by adopting Regulation No 975/2003, the Council established a tariff quota which is not linked to that agreement or that arrangement and which does not affect the exemptions from customs duties accorded thereby. As a result, there is no conflict between Regulation No 975/2003 and the Cotonou Agreement or the arrangement to combat drugs.

44 The fifth plea in law must therefore also be rejected.

*The sixth plea in law, alleging breach of the principle of legitimate expectations*

Arguments of the parties

45 The Spanish Government submits that Regulation No 975/2003 infringes the principle of the protection of legitimate expectations of Community operators who have made investments in the ACP States and in the States belonging to the arrangement to combat drugs.

46 The Council and the Commission point out that the Community enjoys a discretion in the choice of the means necessary for achieving the common commercial policy, and that it regularly makes use of it. They conclude that economic operators cannot therefore base their legitimate expectations on the maintenance of an existing situation.

Findings of the Court

47 Any trader on the part of whom an institution has inspired reasonable expectations may rely on the principle of the protection of legitimate expectations. Further, there is nothing to prevent a Member State from claiming in an action for annulment that

an act of the institutions frustrates the legitimate expectations of particular traders (Case C-284/94 *Spain v Council* [1998] ECR I-7309, paragraph 42, and Joined Cases C-37/02 and C-38/02 *Di Lenardo and Dilexport* [2004] ECR I-6911, paragraph 70).

- 48 However, if those traders can foresee the adoption of the Community measure which affects their interests, the benefit of the principle of the protection of legitimate expectations cannot be invoked (Case C-22/94 *Irish Farmers Association and Others* [1997] ECR I-1809, paragraph 25, and *Di Lenardo and Dilexport*, cited above, paragraph 70).
- 49 In this case, since the Community institutions enjoy a margin of discretion in the choice of the means needed to achieve the common commercial policy, traders cannot claim to have a legitimate expectation that an existing situation will be maintained (see, to that effect, *Spain v Council*, cited above, paragraph 43).
- 50 Consequently, the traders concerned could not have harboured any expectation based on the maintenance of the rate of customs duty which applied to imports of canned tuna originating in Thailand and the Philippines during the consultations and mediation between those countries and the Community. It was, on the contrary, foreseeable that those procedures could lead to a reduction in that rate.
- 51 It follows that in adopting Regulation No 975/2003 the Council did not infringe the principle of the protection of legitimate expectations and that that plea in law must therefore be rejected.



*The seventh plea in law, alleging failure to state reasons*

## Arguments of the parties

- 52 There is, the Spanish Government submits, no proper statement of reasons for Regulation No 975/2003, since, in the first recital in the preamble, it confines itself to referring to the WTO mediator's report, which is not binding on the Community. In addition, that regulation fails to address the problem in its entirety, since it does not examine the effect of its measures on the canned tuna industry in the Community.
- 53 The Council and the Commission contend that the recitals in the preamble to Regulation No 975/2003 give sufficient reasons for its adoption.

## Findings of the Court

- 54 The statement of reasons required by Article 253 EC must show clearly and unequivocally the reasoning of the institution which enacted the measure, so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review (*Greece v Council*, cited above, paragraph 19, and Case C-301/97 *Netherlands v Council* [2001] ECR I-8853, paragraph 187).
- 55 In the case of a measure intended to have general application, as here, the preamble may be limited to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other (*Spain v Council*, paragraph 28, and *Netherlands v Council*, paragraph 189).

- 56 In this case, the first recital in the preamble to Regulation No 975/2003 summarises transparently and clearly the situation which has led to the opening of the tariff quota for which it provides.
- 57 The second recital in the preamble to that regulation sets out its principal objective, namely to settle a long-standing commercial dispute between the Community, on the one hand, and the Kingdom of Thailand and the Republic of the Philippines, on the other.
- 58 Finally, the following recitals explain the reasons which led to the adoption of the detailed rules of the tariff quota. They explain, in particular, that it was opportune to fix, as part of the settlement of that commercial dispute, the shares of the tariff quota, on the one hand for the countries with a substantial interest in supplying canned tuna and, on the other hand, for all the other countries.
- 59 The statement of reasons in Regulation No 975/2003 contains, therefore, a clear description of the factual situation and of the objectives pursued by the Community legislature. That statement of reasons has also proved sufficient to enable the Spanish Government to check its contents and to assess the possibility of putting the legality of that regulation in issue.
- 60 Moreover, as was said in paragraph 30 of this judgment, it was not for the Council to examine the tariff quota's effect on the canned tuna industry in the Community. Consequently, contrary to the Spanish Government's argument, that question did not have to be covered in the statement of reasons for Regulation No 975/2003.

61 The seventh plea in law must therefore also be rejected.

*The eighth plea in law, alleging misuse of powers*

Arguments of the parties

62 The Spanish Government pleads misuse of powers on the ground that the tariff quota for canned tuna was allocated for almost all the recipient States, including Indonesia, arbitrarily and the balance was allocated to non-member countries. It submits that the percentages fixed in Article 3 of Regulation No 975/2003 conflict with the very concept of quotas and seem rather to be the result of a political negotiation. Furthermore, the measure adopted is contrary to the purpose for which it was established, because the Council has failed to take into account the guidelines intended to meet the Community's most urgent requirements as regards the product concerned. Finally, the tariff preferences accorded by that regulation create a dangerous precedent, in that other States will feel themselves to be victims of discrimination and will therefore demand similar tariff preferences.

63 The Council and the Commission contend that the circumstances of the case do not come within the meaning of misuse of powers as defined by the Court's case-law.

Findings of the Court

64 As the Court has held time and again, a measure is only vitiated by misuse of powers if it appears, on the basis of objective, relevant and consistent evidence to have been

taken with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (Case C-48/96 P *Windpark Groothusen v Commission* [1998] ECR I-2873, paragraph 52, and Case C-110/97 *Netherlands v Council* [2001] ECR I-8763, paragraph 137).

65 The Spanish Government has not adduced any such evidence.

66 Quite the contrary, the tariff quota fixed by Articles 2 and 3 of Regulation No 975/2003 manifestly meets the objectives in the second and third recitals in its preamble, namely to settle a long-standing dispute with the Kingdom of Thailand and the Republic of the Philippines and to fix, as part of the settlement of that dispute, the shares of the tariff quota for the countries with a substantial interest in supplying canned tuna, on the one hand, and for all the other countries, on the other.

67 As regards the Spanish Government's argument that that regulation creates a precedent because other States will demand similar preferences, it is sufficient to hold that such an allegation, even were it established, could not in any case show that the quota in question was opened with the aim of achieving purposes other than those stated or of evading a procedure specifically provided by the Treaty for dealing the circumstances of the case.

68 It follows from the foregoing that the eighth plea in law must be rejected.

- 69 Since none of the pleas in law raised by the Spanish Government can be upheld, the action must be dismissed.

### **Costs**

- 70 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of Spain has been unsuccessful, the latter must be ordered to pay the costs. Under Article 69(4) of those Rules, the Commission, as an intervener, must bear its own costs.

On those grounds, the Court (First Chamber) hereby:

- 1. Dismisses the action;**
- 2. Orders the Kingdom of Spain to pay the costs, except those incurred by the Commission of the European Communities, which must bear its own costs.**

[Signatures]