

Action brought on 28 January 2005 by Ritec International Limited against the Commission of the European Communities

(Case T-40/05)

(2005/C 93/63)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 January 2005 by Ritec International Limited, established in Enfield (United Kingdom), represented by P.H.L.M. Kuypers and M.J. Osse, lawyers with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare that the applicant does not require to obtain an exemption under Article 5(7) Regulation 2037/2000/EC for its particular use of HCFC-141b in the product 'ClearShield';
- in the alternative, order the Commission to take as soon as possible a new decision in accordance with the ruling of the Court, should the Court declare that the applicant is required to obtain an exemption under Article 5(7) Regulation 2037/2000 for its particular use of HCFC-141b in the product 'ClearShield';
- declare that the applicant has sufficiently demonstrated that for its particular use of HCFC-141b in the product 'ClearShield' no technically and economically feasible alternative substance or technology is available nor can be used in the sense of Article 5(7) Regulation 2037/2000;
- order the Commission to pay all the costs in these proceedings.

Pleas in law and main arguments

Article 5(7) of Regulation 2037/2000/EC⁽¹⁾ allows the Commission, following a request by a competent authority of a Member State, to authorise a time-limited exemption allowing the use and placing on the market of hydrochlorofluorocarbons, in cases where it is demonstrated that, for a particular use, technically and economically feasible alternative substances or technologies are not available or cannot be used. The competent authority of the United Kingdom filed such a request to obtain, for the applicant, an exemption for its particular use of HCFC-141b in its product 'ClearShield', a glass protection product. On 23 November 2004 the Commission rejected this application.

The applicant considers that the Commission misunderstood the way in which the applicant uses HCFC-141b and further contests the Commission's assertions that products similar to non-flammable 'ClearShield' are marketed, that the applicant

was planning to release the flammable 'ClearShield' or a spray booth in 2005, that flammable glass protection products can be rendered safe for the applicator when the flammable product is applied in a spray booth, and that it has had sufficient time to replace the use of HCFC-141b with alternatives. It further contends that the contested decision fails to take into account that the applicant has found an alternative to the use of HCFC-141b. At the same time the applicant challenges the Commission's finding that several non-HCFC alternatives are available but not yet implemented due to flammability concerns or that they are used by other companies within the EU market. The applicant submits that it has found only one alternative which is not commercially available.

The applicant further challenges the Commission's findings that use of HCFC-141b had already been banned under Regulation 3093/1994⁽²⁾ and that an exemption under Article 5 (7) of Regulation 2037/2000 was necessary for the applicant's continued use of that substance. According to the applicant its particular use of HCFC-141b is not covered by regulation 2037/2000 or, at the very least, will be prohibited only after 2015.

Finally, the applicant alleges that the Commission's decision infringes Article 253 EC by failing to state the reasons on which it is based.

⁽¹⁾ Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer, OJ L 244 p. 1.

⁽²⁾ Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer, OJ L 333 p. 1.

Action brought on 28 January 2005 by Dimon Incorporated against the Commission of the European Communities

(Case T-41/05)

(2005/C 93/64)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 January 2005 by Dimon Incorporated, established in Danville, Virginia (USA), represented by L.Bergkamp, H. Cogels and J. Dhont, lawyers.

The applicant claims that the Court should:

- declare Articles 1, 3 and 5 of the contested decision null and void to the extent that they refer to Dimon Inc.;
- in second order, reduce the amount of the fine imposed on Agroexpansion S.A. and on a joint and severally basis to Dimon Inc.;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant contests the decision of the Commission of 20 October 2004 relating to a proceeding under Article 81(1) EC (Case COMP/C.38.238/B.2 - Raw tobacco Spain). The applicant claims that it is not the correct addressee of the decision.

In support of its application, the applicant invokes an infringement of Article 81(1) EC, Article 23(2) of Regulation No 1/2003 ⁽¹⁾ and of the principle of proportionality. According to the applicant, the Commission made a manifest error in finding that the applicant exercised a decisive influence over Agroexpansion during the infringement period and has therefore incorrectly addressed the decision to the applicant and has exceeded the maximum limit for the amount of the fine that can be imposed on Agroexpansion, since the Commission has taken into consideration the Dimon's group turnover for calculating the maximum ceiling of the fine.

The applicant furthermore submits a violation of the principle of proportionality and liability to the extent that the applicant has been held liable for a single and complex long term cartel agreement carried out by Agroexpansion of which the applicant was not informed.

The applicant also submits a violation of the principle of proportionality and liability and of Article 23(2) of Regulation No 1/2003. According to the applicant, it should not have been held liable for the infringements that occurred before Agroexpansion became part of the Dimon group.

Finally, the applicant submits a violation of the principle of legitimate expectations in the application of a mitigating factor, pursuant to Section 3 of the Commission's Guidelines of

1998 ⁽²⁾, following the early termination of the infringement as soon as the Commission began the investigation.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1)

⁽²⁾ Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ C 9, p. 3)

Action brought on 31 January 2005 by Rhiannon Williams against the Commission of the European Communities

(Case T-42/05)

(2005/C 93/65)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 31 January 2005 by Rhiannon Williams, residing in Brussels (Belgium), represented by S. Crosby and C. Bryant Solicitors.

The applicant claims that the Court should:

- annul the decision of the Commission of 19 November 2004 to refuse to give access to the documents which, although not identified in the contested decision, must be presumed to exist;
- annul the decision of the Commission of 19 November 2004 to refuse to give access to all or any of documents 9, 16, 17, 27, 29, 32, 33, 34 and 46, as identified in the contested decision;
- order the defendant to pay the applicant's costs.

Pleas in law and main arguments

The applicant is a doctoral research fellow and is carrying out a project on the impact of globalisation on Community environment and development cooperation law and policy. For this, the applicant has asked for access to documents in order to review the background to recent legislation about genetically modified organisms (GMO). Following the request of the applicant, access to only part of the documents was granted.