The applicant contends that the Council has infringed essential procedural requirements and misused its powers by adopting the contested regulation without properly considering the underlying proceedings conducted by the Commission.

According to the applicant, the Commission i) did not properly examine the standing of the complainants and/or failed to make a proper determination of their standing, ii) considered irrelevant information and/or failed to take available information into account, iii) made an inadequate assessment of the injury to the relevant Community industry, iv) failed to establish that there was a Community interest in imposing duties on imports, and v) infringed the applicant's rights of defence.

The applicant alleges that this amounts to an abuse of powers.

([1]) OJ 2006 L 270, p. 4.

Action brought on 4 December 2006 — Calebus v Commission

(Case T-366/06)

(2007/C 20/44)

Language of the case: Spanish

Parties

Applicant: Calebus, S.A. (Almería, Spain) (represented by: R. Bocanegra Sierra, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision 2006/613/EC of 19 July 2006 (OJ 2006 L 259, p.1) approving the list of sites of Community importance for the Mediterranean biogeographical region, in relation to the inclusion of the farm 'Las Cuerdas' as a SCI 'ES6110006 Ramblas de Gergal, Tabernas y Sur de Sierra Alhamilla', appearing on that list, and order the Commission to change the delimitation of that SCI so as to exclude the farm referred to.

Pleas in law and main arguments

In support of its claims, the applicant submits that the contested decision is:

— contrary to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, ([1]) in so far as it includes some areas of the appellant's property in SCI ES 6110006 which lack the necessary environmental requirements; and

— arbitrary, in that it has excluded, in that same zone, areas which have the required environmental values which call for classification as a SCI.

([1]) OJ L 206, 22.7.1992, p. 7

Action brought on 4 December 2006 — Kuwait Petroleum Corp. and others v Commission

(Case T-370/06)

(2007/C 20/45)

Language of the case: English

Parties

Applicants: Kuwait Petroleum Corp. (Shuwaikh, Kuwait), Kuwait Petroleum International Ltd (Woking, United Kingdom), and Kuwait Petroleum (Nederland) BV (Rotterdam, The Netherlands) (represented by: D.W. Hull, Dr. G. M. Berrisch, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission's Decision C(2006)4090 of 13 September 2006 insofar as it applies to the applicants; in the alternative

— reduce the amount of the fine imposed;

— in any event, order the Commission to bear the costs of these proceedings.

Pleas in law and main arguments

By a decision adopted on 13 September 2006 (the 'contested decision'), the Commission imposed on Kuwait Petroleum Corp. ('KPC'), Kuwait Petroleum International Ltd ('KPI') and Kuwait Petroleum (Nederland) BV ('KPN'), the applicants, jointly and severally, a fine of EUR 16.632 million for infringing Article 81 EC by fixing prices in the Dutch bitumen market. Each of the applicants hereby seeks the annulment of the contested decision or, in the alternative, a reduction of the fine on the following grounds:

In their first plea, the applicants claim that the Commission committed a manifest error of law and fact because it applied a wrong legal standard in holding KPC and KPI liable for acts of KPN and because it failed to provide adequate evidence under the correct legal standard. Precisely, it is claimed that the Commission, in the contested decision, found that both KPC and KPI are liable for the involvement of KPN's managers in the Dutch bitumen cartel on the grounds that KPN is a wholly-owned subsidiary of KPC and that each of KPC and KPI exercise broad supervisory powers over KPN. The applicants submit that a parent company may not be held liable on the basis of shareholdings and broad supervisory powers alone, and that the Commission must establish that the parent company exercised sufficient control over the subsidiary's conduct on the market affected by the infringement that it would be reasonable to assume that the subsidiary did not act autonomously with respect to the infringement.

The applicants further submit, in their second plea, that the contested decision should be annulled or, in the alternative, the fine reduced, because the Commission allegedly erred as a matter of law in fining the applicants in contravention to the 2002 Leniency Notice [1], which provides that, when a leniency applicant provides evidence relating to facts that were previously unproven and those facts have a direct bearing on the gravity or duration of the cartel, the Commission may not use such facts against the leniency applicant.

Finally, in their third plea, the applicants submit that the Commission committed a manifest error of assessment in determining the percentage of the reduction in the fine pursuant to the 2002 Leniency Notice, and accordingly argue that the fine should be reduced by the maximum amount of 50 %.

[1] Notice on Immunity from Fines and Reduction of Fines in cartel cases, OJ (2002) C 45, p. 3.

Action brought on 14 December 2006 — IMI and Others v Commission

(Case T-378/06)

(2007/C 20/46)

Language of the case: English

Parties

Applicants: IMI plc (Birmingham, United Kingdom), IMI Kynoch Ltd (Birmingham, United Kingdom), Yorkshire Fittings Limited (Leeds, United Kingdom), VSH Italia Srl (Bregnano, Italy), Aquatis France SAS (La Chapelle St. Mesmin, France), and Simplex Armaturen + Fittings GmbH & Co. KG (Ravensburg, Germany) (represented by: M. Struys and D. Arts, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Articles 2(b)1. and 2(b)2. of the decision of the Commission of 20 September 2006 as amended by the decision of the Commission of 29 September 2006 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Fittings — C(2006) 4180 final);

— alternatively reduce the fines imposed on the applicants; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek the partial annulment of Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Fittings, by which the Commission found that the applicants, together with other undertakings, had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by fixing prices, agreeing on price lists, agreeing on discounts and rebates, agreeing on implementation mechanisms for introducing price increases, allocating national markets, allocating customers and exchanging other commercial information.

In support of their application, the applicants submit that the Commission has violated the principles of proportionality and of non-discrimination as the fine imposed on the applicants in the contested decision is excessive in terms of the size of the applicants as well as of the relevant market when compared to the Commission's approach in its previous decisions. By including sales of press fittings in the size of the relevant market for the purpose of assessing the gravity of the infringement, the Commission has committed a manifest error of assessment.

The applicants further submit that the Commission committed a manifest error of assessment by considering that the applicants did not provide the evidence of the link between the UK and pan-European arrangements. The Commission provided an inadequate statement of reasons in that regard. Furthermore, by refusing to grant the applicants a reduction in their fines for their cooperation outside the Leniency Notice [1] for providing evidence of a link between the UK and the pan-European cartel, while granting the company FRA.BO a reduction in its fine on the same basis for providing evidence of post-inspection continuation, the Commission breached the principle of equal treatment.