— it is in breach of Articles 1.1 and 1.2, Article 2, Article 3.1, Article 5, Article 6, Article 8, Article 10.1, Article 11 and Article 15 of the basic anti-subsidy Regulation as it uses the rejection of market economy treatment in order to countervail subsidies;

— it fails to adjust a difference demonstrated to affect price comparability, in breach of Article 2(10) of the basic Regulation,

— it fails to give reasons for maintaining the market economy treatment rejection in breach of Article 253 EC;

— its findings were based on a procedure in breach of the fundamental right of defence of the applicants, preventing them from effectively contesting some findings essential to the calculation of the duties, and the outcome of the investigation; and

— order the Council to bear the costs of these proceedings.

Pleas in law and main arguments

The applicants seek the annulment of the contested regulation on the following grounds:

In respect of their first head of claim, the applicants submit that the second subparagraph of Article 2(7)(c) of the basic Regulation has been breached as the market economy treatment ("MET") decision was disclosed after the three-month time limit established in this Article, and after the Commission had all essential information to calculate the applicants' dumping margin.

In respect of their second head of claim, the applicants submit that the contested regulation is in breach of the first indent of Article 2(7)(c) as it rejected the applicants' claim for MET even though the applicants had demonstrated that they take their business decisions purely on response to market signals without any State interference. According to the applicants the contested regulation failed to identify any fact that would point to any State interference prior to, during or after the period of investigation. The applicants moreover contend, in respect of their third head of claim, that the contested regulation is in breach of the first indent of Article 2(7)(c) as it rejected the applicants' claim for MET after the applicants had overcome their burden of proof and demonstrated that the costs of major inputs reflect market values.

In respect of their fourth head of claim, the applicants contend that the facts of the case lack careful and impartial examination. More precisely, the conclusion that raw material prices in China were distorted due to subsidization, which was used as the grounds for considering that the applicants did not buy input at market value, was based on insufficient information and the Commission did not properly assess the evidence concerning the steel sector in China.

In respect of their fifth head of claim, the applicants submit that the contested regulation is in breach of general principles of EC law and in particular, the principle of sound administration, also set out in Article 41 of the Charter of Fundamental Rights, since an unreasonable burden of proof was imposed on them in order to demonstrate that market economy conditions prevail, as required by Article 2(7)(b).

In respect of their sixth head of claim, the applicants put forward that the contested regulation is in breach of the anti-subsidy regulation as it allegedly used MET rejection in an anti-dumping investigation to compensate for subsidies that could only be addressed by the anti-subsidy basic Regulation after due investigation.

In respect of their eighth claim, the applicants argue that there is no legal basis for denying adjustment to the normal value based on the argument that raw material price is distorted, contrary to the reasons given by the EU institution in order to reject their claim for adjustment under Article 2(10)(k) of the basic Regulation.

In respect of their ninth head of claim, the applicants claim that in the definitive disclosure document proposing the imposition of definitive measures, the Commission simply rephrased and repeated the same argument used in the MET disclosure document, without analysing the evidence provided and giving reasons for the rejection. Moreover, the applicants claim that the contested regulation did not provide any reasons for confirming the rejection of the evidence provided by the applicants.

Finally, in respect of their last head of claim, the applicants submit that their rights of defence were breached, since they were prevented from accessing essential information regarding the calculation of normal value and dumping margins.

Action brought on 24 Avril 2009 — Gem-Year et Jinn-Well Auto-Parts (Zhejiang) v Council

(Case T-172/09)

(2009/C 153/90)

Language of the case: English

Parties

Applicants: Gem-Year Industry Co. Ltd and Jinn-Well Auto-Parts (Zhejiang) Co. Ltd (represented by: K. Adamantopoulos and Y. Melin, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron and steel fasteners originating in the People's Republic of China, insofar as

  — it made a manifest error in the assessment of the facts in order to conclude that the complaining community producers had standing, in breach of Articles 5(1) and 5(4) of the basic Regulation;

  — it breached Article 1(1), (2) and (4), Article 2(8) and Article 5(2) and (10) of the Basic Regulation by imposing anti-dumping duties against several different products;

  — it breached Article 3(3) and (4) of the basic Regulation in that it finds that the Community industry suffered material injury on the basis of a manifest error in the assessment of the facts of the case;

  — it unjustifiably rejects the market economy treatment claims of Chinese exporting producers in breach of Article 2(7)(c), second part of the first indent, of the basic Regulation;

  — it is in breach of Article 2(7)(c), as interpreted in line with the WTO Agreement and paragraph 15 of China's Protocol of Accession to the WTO, in that it rejected the claim for market economy treatment of producers in the fastener industry based on a situation prevailing in another industry;

  — its findings are based on insufficient information in breach of the duty of examining carefully and impartially all the relevant aspects of each individual case as guaranteed by the Community legal order in administrative procedures;

  — it is in breach of Articles 1(1) and 1(2), Article 2, Article 3(1), Article 5, Article 6, Article 8, Article 10(1), Article 11 and Article 15 of the basic anti-subsidy Regulation as it uses the rejection of market economy treatment in order to countervail subsidies;

— order the Council to bear the costs of these proceedings

Pleas in law and main arguments

By means of their application, the applicants seek the annulment of Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron and steel fasteners originating in the People's Republic of China ([1]), on the basis of the following grounds:

The applicants submit that the Council made a manifest error in the assessment of the facts applied in the case in order to conclude that the complainants had standing under Articles 5(1) and 5(4) of the basic regulation ([2]), as it should allegedly have taken into account the margin of error in the statistics it used for calculating the total community production and should have corrected this figure accordingly. Moreover, the applicants claim that the contested regulation is in breach of Articles 1(1), (2) and (4), 2(8), 5(2) and (10) of the basic regulation by imposing anti-dumping duties against several different products, where an anti-dumping investigation can cover no more than one single product. Further, the applicants put forward that the Council made a manifest error in the assessment of the facts of the case and breached Article 3(3) and (4) of the basic regulation when it concluded in recital 161 of the contested regulation that the Community industry suffered material injury, whereas this finding rests solely on one negative injury indicator, on one contradictory finding, and on several speculative assessments.

The applicants also argue that the contested regulation is in breach of the second part of the first indent of Article 2(7)(c), as it rejected the claim for market economy treatment of Chinese exporting producers on the ground that their cost of major inputs did not reflect international, non-distorted market price, whereas this provision simply requires companies claiming market economy treatment to demonstrate that they purchase their main input at market value.

Furthermore, it is submitted that the contested regulation is in breach of Article 2(7)(c), as interpreted in line with the WTO Agreement and paragraph 15 of China's Protocol of Accession to the WTO, in that it rejected the claim for market economy treatment of producers in the fastener industry based on a situation prevailing in another industry. In addition, the applicants contend that the findings of the contested regulation are based on insufficient information in breach of the duty of examining carefully and impartially all the relevant aspects of each individual case as guaranteed by the Community legal order in administrative procedures.

Finally, the applicants claim that the contested regulation is in breach of Articles 1(1) and 1(2), Article 2, Article 3(1) of the anti-subsidy basic regulation ([3]) as it did not determine whether subsidies found to exist during the anti-dumping investigation were subsidies as defined in those articles; in other words, that a financial contribution took place, was specific, conferred a benefit and that the EU industry was injured as a consequence of it. Similarly, according to the applicants, the Commission never analysed the injury, in accordance with Article 8 of the anti-subsidy basic regulation, or calculated the benefit conferred upon the recipient as mandated by Articles 5 and 6 of the said regulation. In addition, the applicants claim that the Commission did not follow the procedures set out in Articles

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;