

Form of order sought

- Order the Commission of the European Communities to pay compensation totalling EUR 1 562 008 915,03 to Formenti Seleo SpA, which is in liquidation under special administration, together with statutory interest with effect from the date of declaration of insolvency or, in the alternative, to the extent which the Court may consider equitable;
- order the Commission of the European Communities to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant company, one of the main manufacturers in Italy of colour televisions, was declared insolvent and placed under special administration following the wide-scale importation into the European market of colour televisions manufactured by Turkish companies which were sold at prices that amounted to dumping.

That situation arose within the Community as a direct result of the infringement by the Turkish Republic of the Association Agreement concluded with the EC in 1963 and subsequent supplementary measures, in so far as the Turkish Government established a legal framework designed to avoid its obligations under the Association Agreement with the Community with regard, in particular, to the determination of the Turkish origin of colour televisions imported into the Community, the Commission having been aware since at least 1993 of such circumventions.

In particular, Formenti Seleo SpA maintains that the Commission is liable on the following grounds, which are capable of establishing its non-contractual liability to it and its consequent obligation to pay compensation for damage:

- (1) infringement of its obligations under the Association Agreement and the Additional Protocol thereto, in so far as, either during the transitional period for the implementation of the customs union between the Community and the Turkish Republic or until 1994, or, in particular, at the time when full customs union was accomplished, it failed to ensure that the relevant customs legislation was correctly applied, even though it was aware that the Turkish Republic was disregarding the agreements.
- (2) Infringement of Article 211 EC and the principle of sound administration, since, in so far as the Association Agreement and the Additional Protocol form part of Community law, the Commission is also obliged to monitor the implementation of those provisions and to ensure sound administration.

- (3) Infringement of the principle of the protection of legitimate expectations, since, as a result of the conduct referred to above, it frustrated the expectation of individual Community commercial operators, and in particular that of the applicant, that the customs union with Turkey would function properly, an expectation that should have been met by means of the checks and controls which the Commission failed to carry out.
- (4) Infringement and/or misapplication of the rules on anti-dumping, since the Commission, even though it had been aware since 1993 of the serious irregularities committed by Turkish exporters, failed to adopt protective measures against such exporters and acted without the diligence and prudence normally to be expected of an administration.

Action brought on 27 May 2009 — Astrim and Elyo Italia v Commission**(Case T-216/09)**

(2009/C 167/45)

*Language of the case: Italian***Parties**

Applicants: Astrim SpA (Rome, Italy) and Elyo Italia Srl (Sesto San Giovanni, Italy) (represented by: M. Brugnoletti, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul the Commission's decision which found to be incomplete the bid submitted by the applicant group in response to call for tenders No 2008 — C04 005 for a contract to provide services covering the maintenance of the Joint Research Centre, ⁽¹⁾ communicated by letter of 27 March 2009 and supplemented by a communication of 3 April 2009, together with all subsequent and related decisions, including the decision to award the tender to other undertakings.
- In the alternative, annul point 17 of call for tenders No 2008 — C04 005, in so far as it laid down a general criterion for elimination from the tendering procedure.

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicants in this case seek the annulment of the decision by which the Commission eliminated the bid they submitted in response to call for tenders No 2008 — C04 005 for a contract to provide services covering the maintenance of the Joint Research Centre and awarded the contract to other companies.

The applicants put forward three grounds in support of their application:

By the first ground, the applicants submit that the Commission infringed point 17 of the invitation to tender, Articles 92 and 89 of Council Regulation No 1605/2002 ⁽²⁾ and the principles of transparency and equal treatment in so far as it decided to exclude the applicants' bid on the basis of the incorrect assessment that it was incomplete since a number of prices were not stated, whereas the applicant group deliberately chose to offer a price of zero.

By their second ground, the applicants maintain that adequate reasons are not given for the elimination provision, in so far as point 17 of the invitation to tender does provide for automatic elimination where one part of the bid has not been completed but simply provides that elimination is possible, leaving the Commission free to decide whether or not to eliminate the tenderer. Since such a decision is discretionary, adequate reasons must be given for it, which was not the case as regards the elimination provision adopted by the Commission.

By the third ground, which is relevant only in the event that the Court does not uphold the first two grounds, the applicants seek the annulment of point 17 of the invitation to tender on the ground that it infringes Articles 92 and 89 of Council Regulation No 1605/2002 in so far as that point lays down a general elimination criterion.

⁽¹⁾ OJ 2008/S 2008-274999 of 25 October 2008.

⁽²⁾ Council Regulation No 1605/2002 (EC, Euratom) of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities.