

The essence of the applicant's pleas in law and main arguments are similar to those in Cases T-186/97⁽¹⁾, T-187/97, T-191/97, T-192/97, T-210/97 and T-211/97.

⁽¹⁾ OJ 1997 C 318, p. 17.

Action brought on 8 March 2000 by I.P.O.S.E.A. di Giusto Masiello & Figli v Commission of the European Communities

(Case T-49/00)

(2000/C 149/67)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance on 8 March 2000 by I.P.O.S.E.A. di Giusto Masiello & Figli, represented by Andrea Guarino and Alain Lorang, of the Rome and Luxembourg Bars respectively.

The applicant claims that the Court of First Instance should:

- Annul Commission Regulation No 2626/99;
- Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant in this case, an importer of preserved vegetables for human consumption, takes exception to Commission Regulation (EC) No 2626/99 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾. One of the main products in which it deals is cooked mushrooms of the 'agaricus' variety preserved in vinegar. Salt is then added to them, in a concentration varying between 15 and 25 %.

Under the combined nomenclature established by Regulation No 2685/87, mushrooms of the 'agaricus' variety could be classified under three headings. To resolve this problem, Commission Regulation (EC) No 1196/97 of 27 June 1997 concerning the classification of certain goods in the combined nomenclature was adopted⁽²⁾.

The contested regulation, it is claimed, entirely upset the existing situation. Its effect is to exclude from the scope of code 2001 90 50 mushrooms preserved in vinegar which still have a salt content in excess of 2,5 % even if such salt is added only for the purposes of preparation and not preservation. Those products will henceforth be subjected to the severest tariff conditions laid down for code 2003 10 of the combined nomenclature.

In support, the applicant claims:

- The Commission lacks competence by virtue of Article 26 of the EC Treaty;
- Article 9 of Regulation No 2658/87, the legal basis of the contested regulation, has been infringed and misapplied, in that the powers of the Commission provided for therein, being of an executive nature, may not be used in order to amend provisions of a substantive nature which define the tariff conditions for goods. Secondly, in this case the requirements for amending the pre-existing provisions are not satisfied;
- The principle of equal treatment has been infringed in that the new regulation is extremely onerous only for the producers and importers of mushrooms which are preserved in vinegar but are prepared using a high salt content.

The applicant also considers that the contested regulation contains an inadequate and contradictory statement of reasons and infringes the principle of proportionality and the principle of the protection of legitimate expectations.

⁽¹⁾ OJ L 321 of 14.12.1999, p. 3.

⁽²⁾ OJ L 170 of 28.6.1997, p. 13.

Action brought on 8 March 2000 by Dalmine SpA against the Commission of the European Communities

(Case T-50/00)

(2000/C 149/68)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8 March 2000 by Dalmine SpA, represented by Mario Siragusa and Francesca Maria Moretti, of the Rome and Venice Bars.