

**Action brought on 13 May 2002 by the Kingdom of Spain
against the Commission of the European Communities**

(Case C-173/02)

(2002/C 169/37)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 13 May 2002 by the Kingdom of Spain represented by S. Ortiz Vaamonde, Abogado del Estado, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais.

The applicant claims that the Court should:

- annul the Commission's decision of 12 March 2002 declaring the aid paid to producers of cows' milk for the purchase of reference quantities incompatible with the common market and ordering it to be repaid; and
- order the Commission to pay the costs.

Pleas in law and main arguments

Infringement of Articles 87 EC and 88 EC in that the measure at issue is protected by the regulation on the common organisation of the market (COM) in milk and milk products. The measures at issue cannot be challenged as contrary to the COM in a case in which the latter specifically provides for mechanisms comparable to those adopted and which are directed to the same end. The aid granted is not intended to cover operating costs but is granted in respect of a production right, which is a capital asset of the agricultural holding itself. The aid is consonant with the objectives laid down in the rules establishing the additional levy, namely the restructuring of the milk sector, given that its aim is to improve production structures in the dairy sector, which is fundamental to the regional economy of Asturias. The fact that it does not exactly coincide with the mechanism provided for in the COM does not render it contrary to the scheme, since the degree of intervention involved is less than that provided for and authorised. Instead of allocating quotas free of charge as provided for in the first indent of Article 8 of Regulation (EEC) No 3950/92⁽¹⁾, the Asturian authorities are making more efficient use of public resources, enabling a group of farmers

to gain access to an additional quota which it would be impossible to finance in full (by means of an allocation free of charge), given the limited funds available. Finally, the aid granted does not, and cannot, affect either prices or the total quantities produced.

⁽¹⁾ Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector, amended by Council Regulation (EC) No 1256/1999 of 17 May 1999 (OJ L 160 of 16.6.1999, p. 73).

**Reference for a preliminary ruling by the Hoge Raad der
Nederlanden by judgment of that Court of 8 March 2002
in the appeal brought by Streekgewest Westelijk Noord-
Brabant and Staatssecretaris van Financiën**

(Case C-174/02)

(2002/C 169/38)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) of 8 March 2002, received at the Court Registry on 10 May 2002, for a preliminary ruling in the appeal brought by Streekgewest Westelijk Noord-Brabant and Staatssecretaris van Financiën, on the following questions:

1. May only an individual who is affected by a distortion of cross-border competition as a result of an aid measure rely on the last sentence of Article 93(3) of the EC Treaty (now the last sentence of Article 88(3) EC)?
2. Where an aid measure within the meaning of the last sentence of Article 93(3) of the EC Treaty (now the last sentence of Article 88(3) EC) consists of an exemption from a tax (which is to be construed as also meaning a reduction in or relief on such tax) whose proceeds are paid into the public coffers, and no provision in that respect is made for suspending the exemption pending the notification procedure, must that tax be regarded as part of that aid measure, by virtue of the very fact that the levying of the tax on persons who do not enjoy an exemption is the means whereby a favourable effect is produced, so that as long as the implementation of that aid measure is not permitted under the abovementioned provision, the prohibition laid down therein is also applicable to (the levying of) that tax?