According to the Commission there can be no doubt that the effect of that prohibition is to restrict the use of trailers lawfully produced and sold in Members States where there is no such prohibition, thereby establishing an obstacle to their importation and sale in Italy.

Consequently, the Commission submits that the Italian Republic has failed to fulfil its obligations under Article 28 EC.

Appeal brought on 4 March 2005 by European Federation for Cosmetic Ingredients (EFfCI) against the order made on 10 December 2004 by the Third Chamber of the Court of First Instance of the European Communities in Case T-196/03 between European Federation for Cosmetic Ingredients (EFfCI) and European Parliament and Council of the European Union

(Case C-113/05 P)

(2005/C 115/24)

(Language of the case: English)

An appeal against the order made on 10 December 2004 by the Third Chamber of the Court of First Instance of the European Communities in Case T-196/03 [1] between European Federation for Cosmetic Ingredients (EFfCI) and European Parliament and Council of the European Union, was brought before the Court of Justice of the European Communities on 4 March 2005 by European Federation for Cosmetic Ingredients (EFfCI), established in Brussels (Belgium), represented by K. Van Maldegem and C. Mereu, lawyers.

The Appellant claims that the Court should:

— declare the present appeal admissible and well-founded;

— set aside the order of the Court of First Instance of 10 December 2004 in Case T-196/03;

— declare the Appellant's requests in Case T-196/03 admissible;

— rule on the merits or, in the alternative, refer the case to the Court of First Instance to rule on the merits; and

— order the European Parliament and the Council of the European Union to bear all the costs and expenses of both proceedings.

Pleas in law and main arguments:

1. The Appellant challenges paragraph 16 of the contested order, which rejects his request to examine the substance before ruling on admissibility or, in the alternative, to reserve any decision until judgment in the main proceedings. The Appellant submits that this rejection is unlawful because the Court of First Instance misinterprets Article 114(4) of the Rules of Procedure and infringes the principle of effectiveness and the duty to state reasons. The Court of First Instance should have interpreted Article 114(4) of the Rules of Procedure broadly and having due regard to the circumstances of the case in accordance with the legal principle of effectiveness. The Appellant also claims that the Court of First Instance has infringed its duty to state reasons by not giving further explanations for the rejection other than that *'it has sufficient information from the documents in the file to give a decision on the applications'*.

2. The Appellant submits that the Court of First Instance has erred in law by dismissing the Appellant's submissions and concluding that:

   (a) the anticompetitive effects produced by the contested measure on the Appellant do not distinguish him from other undertakings. The Appellant submits that other undertakings which do not supply the cosmetics sector, or which supply the cosmetics sector only and do not test their ingredients on animals or do not use CMR substances are in a different situation from that of the Appellant. The Appellant further submits that the Court of First Instance misinterprets the rationale stemming from the *Extramet* case.

   (b) the Appellant did not refer to any binding provision superior to the contested measure which might have compelled the Parliament and the Council to take into account the negative effects of the contested measure: the Appellant submits that Article 3(g) EC constitutes a binding provision compelling the Parliament and the Council to ensure that competition in the internal market is not distorted.

   (c) the Appellant's patents are not as such that the contested measure makes their commercial use immediately and definitively unlawful and, by consequence, make the Appellant 'individually concerned' by the contested measure. The Appellant submits that the fact that the contested measure expropriates him from his patented (exclusive) right makes him individually concerned in accordance with the *Codorniú* case.

(d) the Appellant's claim that he is individually concerned because he participated in the procedure leading to the adoption of the contested measure on the basis of Article 13 of Directive 76/768 and its participation in the adoption of the contested measure is inadmissible: the Appellant submits that the Court of First Instance wrongly concluded that Article 13 refers only to individual measures, since Directive 76/768 does not provide for the possibility to adopt such measures.

3. Moreover, the Appellant claims that the Court of First Instance infringed the right to complete and effective judicial protection and the right to a fair hearing. The Appellant submits that his right to complete and effective judicial protection should have resulted in, at a minimum, the Court of First Instance hearing the substance of the case instead of refusing the Appellant's legal standing based on mere formal arguments.

(1) OJ C 184, 02.08.2003, p. 50.

Reference for a preliminary ruling from the Conseil d'État (France), acting in its judicial capacity, by order of that court of 10 January 2005 in Ministre de l'Économie, des Finances and de l'Industrie v Gillan Beach

(Case C-114/05)

(2005/C 115/25)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by order of the Conseil d'Etat (France), acting in its judicial capacity, of 10 January 2005, received at the Court Registry on 8 March 2005, for a preliminary ruling in the proceedings between Ministre de l'Economie, des Finances and de l'Industrie and Gillan Beach, a company, on the following question:

Whether an overall service provided by an organiser to exhibitors at a fair or in an exhibition hall falls within the scope of the first indent of Article 9(2)(c) of the Sixth Council Directive 77/388 of 17 May 1977 (1), Article 9(2)(a) of that directive or within any other of the categories of supply of services referred to in Article 9(2) of the directive.

(1) OJ L 145 of 13.6.1977, p. 1.

Reference for a preliminary ruling from the Tribunal de commerce de Nancy by judgment of that court of 14 February 2005 in Ets Dhumeaux et Cie SA — Société d'Etudes et de Commerce 'SEC' v ALBV SA, ALBV SA v Tragex Gel — Institut d'expertise vétérinaire 'IEV', ALBV SA v Cigma International SA and ALBV SA v Mr Gustin in his capacity as administrator of Tragex Gel

(Case C-116/05)

(2005/C 115/26)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal de commerce de Nancy (France) of 14 February 2005, received at the Court Registry on 10 March 2005, for a preliminary ruling in the proceedings between Ets Dhumeaux et Cie SA — Société d'Etudes et de Commerce 'SEC' and ALBV SA, ALBV SA and Tragex Gel — Institut d'expertise vétérinaire 'IEV', ALBV SA and Cigma International SA and ALBV SA and Mr Gustin in his capacity as administrator of Tragex Gel on the following questions:

— Where the export of beef and veal on which refunds are granted requires the presentation of a health certificate formally drawn up by the competent veterinary authority after daily inspections of the cutting plant for that meat, must the principle of legitimate expectations be interpreted as meaning that the recipients of that certificate (the intermediary purchaser, the exporter) may legitimately expect it to correspond with the product origin indicated, such that any errors, faults or negligent acts committed by those authorities in exercising their powers must be regarded as exceeding the ordinary risks of business borne by those recipients and must lead the Member State in question to assume directly the financial and other consequences thereof, in particular vis-à-vis the EAGGF?