

The applicant relies on the following claims:

- The adoption of Regulation (EC) No 832/2005 was in breach of essential procedural requirements: the principle of joint responsibility, since commissioner Fischer Boel was empowered to determine the amount of sugar to be eliminated before the adoption of the regulation;
- As regards the provisions in application of the EC Treaty, Regulation (EC) No 832/2005 infringes Regulation (EC) No 60/2004, which is its legal basis, since:
  - (a) contrary to Article 6 of Regulation (EC) No 60/2004, Regulation (EC) No 832/2005 includes, in determining the excess quantity of sugar, the quantity of sugar held in private households;
  - (b) contrary to Article 6(1)(c) of Regulation (EC) No 60/2004, the Commission did not take into account the specific circumstances of stockpiling in Estonia;
- Breach of the obligation to state reasons laid down in Article 253 EC, since in Regulation (EC) No 832/2005 no reasons are given with respect to the inclusion in the calculation of the amount of excess stocks of sugar held in private households and with respect to the failure to take into account the circumstances of stockpiling;
- Breach of the principle of sound administration, since when adopting Regulation (EC) No 832/2005 the Commission did not take into account the specific circumstances of stockpiling in Estonia, including the EU's own contribution to increased imports of sugar;
- Breach of the principle of good faith, since no measures of any sort were adopted to deter increased exports from the EU to Estonia, and Estonia's countermeasures were blocked;
- Breach of the principle of non-discrimination, since the calculation of excess sugar stocks laid down by Regulation (EC) No 832/2005 discriminates against Estonia compared to States which have previously acceded, and any measures implementing Regulation (EC) No 832/2005 would bring about discrimination against Estonian undertakings or households compared to the corresponding groups in States which have previously acceded or compared to undertakings in the so-called old Member States;
- Infringement of the right to property of undertakings and/or private households, since any measures implementing Regulation (EC) No 832/2005 would impose a restriction on them which could not be justified by a legitimate aim and would be a disproportionate interference with their rights;
- Breach of the principle of proportionality, since the obligation laid down in Regulation (EC) No 832/2005 to elimi-

nate a quantity of sugar corresponding to the amount of sugar held in private households does not fulfil a legitimate objective and is a disproportionate interference with their rights.

(<sup>1</sup>) OJ L 138 of 1.6.2005, p. 3.

### Action brought on 8 September 2005 — Kingdom of Spain v Commission of the European Communities

(Case T-341/05)

(2005/C 271/49)

Language of the case: Spanish

#### Parties

*Applicant:* Kingdom of Spain (represented by: J.M. Rodríguez Cárcamo, abogado del Estado)

*Defendant:* Commission of the European Communities

#### Form of order sought

The applicant claims that the Court should:

- annul the inclusion of Ceuta and Melilla in the L01 category in the Annex to Commission Regulation (EC) No 909/2005 of 16 June 2005 fixing the export refunds on milk and milk products;
- order the Commission to pay the costs.

#### Pleas in law and main arguments

This action is brought against Commission Regulation (EC) No 909/2005 of 16 June 2005 fixing the export refunds on milk and milk products, (<sup>1</sup>) in so far as it excludes Ceuta and Melilla as destinations qualifying for export refunds for milk products in general. The objective of such an exclusion is to put an end to certain unlawful commercial transactions consisting in exporting certain products to those two destinations and collecting the relevant refund, before processing the products and re-importing them into Community territory without paying any customs duties.

In support of its claims, the Kingdom of Spain invokes:

- infringement of Article 31(3) of Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products, <sup>(2)</sup> either because there is no justification for the contested measure in any of the reasons stated in Article 31 or, in the alternative, because the measure is based on facts which have not been proved.
- infringement of Article 31(2) of that regulation on the ground that account has not been taken of the nature of the product. It is stated in that regard that, even supposing that the elimination of fraud could justify the abolition of refunds for a specific destination, the measure was adopted

with account being taken only of the destination of the export, affecting without distinction all products whose export to Ceuta and Melilla was eligible for a refund. It is also claimed that there is an infringement of the same provision on account of the discrimination between producers to which the contested measure is said to give rise.

- infringement of the principle of non-discrimination.
- misuse of powers.

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<sup>(1)</sup> OJ L 154 of 17.6.2005, p. 10.

<sup>(2)</sup> OJ L 160 of 26.6.1999, p. 48.