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Press and Information

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Judgment of the Court of First Instance in Case T-317/02

Fédération des industries condimentaires de France (FICF) and Others v Commission of the European Communities

THE COURT OF FIRST INSTANCE RULES FOR THE FIRST TIME ON THE TRADE BARRIERS REGULATION (“TBR”)

The Commission’s decision not to take action against the retaliatory measures taken by the United States in relation to “prepared mustard” imported from France is confirmed

Between 1981 and 1996, the Council of the European Union adopted several directives against the use of certain substances having a hormonal action in animal feedstuffs, in order to protect human health. In January 1998, following a complaint lodged by the United States of America, the Appellate Body of the World Trade Organisation (“WTO”) declared that Community legislation to be contrary to the WTO rules.

In July 1999, as the Community legislation had still not been adjusted to comply with those rules, the Dispute Settlement Body of the WTO authorised the United States to suspend tariff concessions to the extent of USD 116 800 000 per year and to impose additional customs duties of 100% on a number of products coming from the Member States of the European Union, including “prepared mustard”. However, the United States decided not to apply the suspension to products coming from the United Kingdom.

In June 2001, the Fédération des industries condimentaires de France (“FICF”), a group representing the principal French producers of prepared mustard, lodged a complaint with the European Commission under the Trade Barriers Regulation (“TBR”),¹ concerning the selective nature of the American retaliatory measures, which were applied only to some of the Member States and not to the European Community as a whole. The complaint also maintained that the obstacle to trade created by the United States caused adverse trade effects as regards exports of “prepared mustard” by the members of the FICF, and that it was in the interests of the Community under international trade rules to initiate a complaint procedure in relation to the measures taken by the United States.

¹ Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community’s rights under international trade rules, in particular those established under the auspices of the World Trade Organisation (WTO) (OJ 1994 L 349, p. 71)

In accordance with the TBR, the Commission decided to open an examination procedure, which was subsequently extended to three other trade organisations representing producers of foie gras, Roquefort and shallots. In 2002, it terminated the procedure, taking the view that no specific action was necessary in the interests of the Community, as the selective withdrawal of concessions by the United States did not cause adverse trade effects within the meaning of the TBR.

The FICF and the other organisations concerned then requested the Court of First Instance to set aside the Commission's decision. In their opinion, the Commission had misconstrued the definition of obstacles to trade under the TBR. Furthermore, the narrow approach taken by the Commission also led to a false appreciation of what constituted "adverse trade effect". Lastly, the Commission had confused the "interests of the Community" with the interests of the complainants and had not taken account of the interests of the other parties concerned.

The Court of First Instance notes first of all that under the TBR the Community may take action pursuant to international trade rules against an obstacle to trade created by a third country on the basis of **three cumulative conditions**: there must be an **obstacle** to trade which produces **adverse trade effects** and action must be necessary **in the interests of the Community**.

The Court of First Instance goes on to consider that **the Commission correctly took into account all the essential and indissociable elements of the concept of an obstacle to trade**. As regards adverse trade effects, the Court finds that the increase in exports of "prepared mustard" between 1996-1998 and 2000 from the United Kingdom to the United States, in terms both of value and volume, was extremely small in size and proportion in comparison with exports from the other Member States of the Community. Therefore, even if exporters from Member States other than the United Kingdom would themselves have benefited from that increase if the retaliatory measures taken by the United States extended to "prepared mustard" from the United Kingdom – which the applicants failed to show – those exporters would not have been able to enjoy greater opportunities for export.

Lastly, the Court of First Instance points out that an assessment of the interests of the Community requires a **balancing of the interests of the various parties involved against those of the Community generally**. The examination procedure did not exclude the possibility of a long-term Community interest in taking action in the future, but **the Commission terminated it by reason of the absence of a specific Community interest in challenging an obstacle to trade which does not produce adverse trade effects within the meaning of the TBR**. The Court holds that a complainant may not urge the Community to take action on principle to protect the general interest without, at the least, having itself suffered adverse trade effects within the meaning of the TBR. Accordingly, contrary to what the French producers claim, **the Commission did not confuse the interests of the Community with those of the FICF**.

Moreover, even though the contested decision does not refer to the parties interested other than the FICF, the Court of First Instance finds that the Commission considered their interests when it carried out its examination.

In the light of all of the above, the Court of First Instance **dismisses the action** brought by the FICF and the other organisations and **confirms the Commission's decision** not to take action against the retaliatory measures of the United States.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: FR, EN, DE, IT

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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