

## Case T-136/95

### **Industria del Frio Auxiliar Conservera SA** **v** **Commission of the European Communities**

(Health policy — Protective measures — Decision 95/119/EC —  
Principle of legal certainty — Principle of the protection  
of legitimate expectations — Principle of proportionality —  
Principle of equal treatment — Statement of reasons — Misuse of powers)

Order of the Court of First Instance (Second Chamber), 15 September 1998 ... II - 3303

#### Summary of the Order

*Agriculture — Approximation of laws concerning health policy — Veterinary inspections on products from third countries — Total prohibition on imports of consignments of fishery products originating in Japan — Breach of the principles of legal certainty, the protection of legitimate expectations, proportionality and equal treatment — Inadequate statement of reasons — Misuse of powers — None*

*(Commission Decision 95/119)*

In so far as Commission Decision 95/119 concerning certain protective measures with regard to fishery products originating in Japan imposed a total ban on imports of consignments of such products, following a finding by Commission experts of serious shortcomings relating to hygiene and control in their production and storage conditions, it does not infringe the principles of legal certainty, the protection of legitimate expectations, proportionality or equal treatment; nor is it tainted by an inadequate statement of reasons or by misuse of powers.

As regards specifically the principle of legal certainty, the decision did not have retroactive effect because it did not relate to imports made into the Community before it came into force. The fact that the decision also applied to goods en route to the Community at the time of its publication, and which it therefore actually affected, does not alter the fact that it took immediate effect, that is to

say, it applied to all goods imported from the day on which it was published.

As regards the principle of proportionality, the Commission was not bound to provide for a special regime for traders with goods en route to the Community, since there is already provision for veterinary inspections on importation — less effective and less reliable — where health and hygiene requirements have been satisfied from the start and, secondly, since the importance of the objective pursued, namely the protection of public health, may justify restrictions which have adverse consequences for certain traders. Moreover, since the measure taken was not more trade-restrictive than required to achieve the appropriate level of sanitary or phytosanitary protection, and the Commission based its decision on reliable conclusions reached by experts, the decision does not breach the applicable provisions of the GATT.