

Case T-152/95

Odette Nicos Petrides Co. Inc.
v
Commission of the European Communities

(Common organization of the market in raw tobacco — Management by
the Commission — Action for damages — Time-bar —
Principle of proportionality — Principle of equal treatment)

Judgment of the Court of First Instance (Fourth Chamber), 17 December
1997 II - 2429

Summary of the Judgment

1. *Agriculture — Common organization of the markets — Raw tobacco — Disposal of stocks held by intervention agencies — Commission's discretion — Scope — Consequences (Commission Regulation No 3389/73)*
2. *Agriculture — Common organization of the markets — Raw tobacco — Disposal of stocks held by intervention agencies — Decision to award a contract — Time-limit — Not observed — Commission not liable except in the event of negligence (Commission Regulation No 3389/73, Art. 6(1))*

3. *Agriculture — Common organization of the markets — Raw tobacco — Disposal of stocks held by intervention agencies — Guarantee conditions imposed on undertakings taking part in a tendering procedure — Exclusion of undertakings not meeting those conditions — Discrimination — None*
 (Commission Regulation No 3389/73, Art. 5(1))

1. In managing the common organization of the market for tobacco, and more particularly with regard to the disposal of tobacco held by intervention agencies, the Commission is required to adopt a commercial approach. It must decide whether or not to accept tenders for lots offered for sale by tender, having regard to all the information in its possession when it makes its decision. It enjoys considerable latitude in that regard since the decisions concerned must balance various factors, such as the prices tendered for the various lots and the costs of storing unsold lots. In those circumstances, even decisions which may subsequently prove to be open to criticism do not necessarily cause the Commission to incur liability in the absence of a manifest error of assessment on its part.
2. Since no sanction is imposed for failure by the Commission to comply with the time-limit for taking decisions to award contracts imposed by Article 6(1) of Regulation No 3389/73 laying down the procedure and conditions for the sale of tobacco held by intervention agencies, that time-limit cannot be regarded as mandatory and failure to comply with it does not cause the Commission to incur liability unless it is the outcome of negligence on its part.
3. In its management of the common organization of the market for tobacco, the Commission is required in particular to ensure that disposal of tobacco held by intervention agencies does not disturb the market. The Commission's insistence on strict financial guarantees from undertakings wishing to take part in tendering procedures is indicative of the fact that it is properly fulfilling its duty. That requirement necessarily means that undertakings not in a position to meet those conditions are shut out and such an effect, which is inherent in any guarantee condition, does not therefore constitute a breach of the principle of equal treatment.