

Case T-91/05

Sinara Handel GmbH

v

**Council of the European Union and
Commission of the European Communities**

(Preliminary issues — Plea of inadmissibility — Action for damages — Loss of profit — Application for repayment of anti-dumping duties — No jurisdiction)

Order of the Court of First Instance (Third Chamber), 5 February 2007 . . . II - 248

Summary of the Order

1. *Actions for damages — Subject-matter — Action for compensation brought against the Community under Article 288, second paragraph, EC — Exclusive jurisdiction of the Court — Verification of the nature of the action*
(Arts 234, first para., subpara. (b), EC, 235 EC, 288, second para., EC; Council Regulation No 2913/92, Arts 243 to 246)

2. *Procedure — Application initiating proceedings — Formal requirements*

(Art. 288 EC; Statute of the Court of Justice, Arts 19 and 46, first para.; Rules of Procedure of the Court of First Instance, Art. 44(1)(c))

1. The combined provisions of Articles 235 EC and 288 EC give the Community Courts exclusive jurisdiction to hear actions seeking compensation for damage attributable to the Communities, whereas only the national courts have jurisdiction to entertain an action for the recovery of amounts wrongfully charged by a national administration on the basis of Community rules which are subsequently declared invalid.

isdiction of the national courts, which are required to rule on its merits, using, if they are in doubt as to the validity of the Community legislation, the preliminary reference procedure laid down by Article 234 EC.

It is for that reason that the Community Courts, when hearing a claim for compensation under the abovementioned provisions, cannot be absolved from scrutinising the true nature of actions brought before them on the sole ground that the alleged wrongdoing is attributable to a Community institution.

The alleged damage, even if the figure does not exactly correspond to the amount of duties paid, the claimant undertaking having taken into account in determining the amount the additional tax which it would have had to pay on its profit if it had not had to pay those duties, arises directly, necessarily and exclusively from the payment of those anti-dumping duties.

Such scrutiny tends to suggest that, as is confirmed by the provisions of Articles 243 to 246 of Regulation No 2913/92 establishing the Community Customs Code, a claim which, although submitted as a claim for loss of earnings, amounts to an application for repayment of anti-dumping duties paid by an undertaking pursuant to an allegedly unlawful Community regulation falls within the jur-

(see paras 47-53, 60, 79)

2. In order to guarantee legal certainty and the sound administration of justice, it is necessary, for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. In order to satisfy those requirements, an application seeking compensation for damage caused by a Community institution must state the evidence from which, *inter alia*, the damage allegedly sustained by the applicant and, in particular, the nature and extent of that damage can be identified. It is only exceptionally that it is not essential to specify the exact extent of the damage in the application and to state the amount of compensation sought, given that the applicant must establish, or at least indicate, the existence of any such circumstances in the application.

The fact that the Community Courts are able to decide, by way of interlocutory judgment, on the principle of the Community's non-contractual liability whilst reserving the precise determination of the compensation to a later decision, cannot in any way absolve an applicant

from observance of the minimum formal requirements laid down in Article 44(1)(c) of the Rules of Procedure of the Court of First Instance. It follows that an applicant who seeks such an interlocutory judgment from the Court of First Instance continues to be bound to provide the evidence necessary to identify the conduct of which the Community is accused, of the nature and type of its loss and of the causal link between the conduct and that loss, and must state the reasons justifying dispensation from the requirement that the application must contain a detailed quantification of the loss claimed.

In any event, it is not for the Court of First Instance to make a theoretically abstract ruling on the appropriate method of calculation to determine the loss of profit suffered by an undertaking. It is for the undertaking concerned to particularise sufficiently the various elements of such a loss of profit.

(see paras 108-111, 119-121)