

Contentions and main arguments adduced in support

— Lack of powers of the Commission

The Commission may not make a decision under Article 16 (2) and the second paragraph of Article 19 of Regulation (EEC) No 2176/84 ⁽¹⁾, because at the time of making its application for a refund the applicant acquired an irrevocable right to have the claim decided upon by the appropriate national authorities pursuant to Article 15 (2) of Regulation (EEC) No 3017/79 ⁽²⁾.

— Illegality of the contested decision

The intention of both Article 15 of Regulation No 3017/79 and Article 16 of Regulation No 2176/84 is that regard should be had to the circumstances of the applicant for a refund and its suppliers (the 'actual dumping margin'), whereas the Commission took a general view and disregarded evidence provided by the applicant. If doubts were entertained as to the written statements of the applicant's Turkish suppliers inquiries should have been made.

— Illegality of Council Regulation No 789/82 ⁽³⁾, imposing an anti-dumping duty

The permitted duration of the proceeding, laid down in Article 7 of Regulation No 3017/79, was considerably exceeded, without any reason being given. The circumstances of the three Turkish firms selected are not representative. The necessary element of injury to Community industry cannot be regarded as having been established, since according to the Commission's own figures the price difference between the imported goods and those of the Community producers is in part significantly higher than the stated dumping margin. The Council and the Commission unlawfully failed to exclude application of the anti-dumping duty to existing contracts, so that the Regulation is indirectly retroactive in its effect. Having regard in particular to the duration of the proceeding and to the fact that the proceeding had virtually come to a standstill before massive intervention on the part of the British and French manufacturers concerned and their respective governments led to a finding of dumping, the applicant cannot be accused of failure to take adequate precautions.

⁽¹⁾ OJ No L 201, p. 1.

⁽²⁾ OJ No L 339, p. 1.

⁽³⁾ OJ No L 90, p. 1.

Action brought on 14 January 1985 by 1. Akzo Chemie BV (Netherlands, 2. Akzo Chemie UK Ltd (United Kingdom) against the Commission of the European Communities

(Case 5/85)

(85/C 43/10)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 14 January 1985 by 1. Akzo Chemie BV (Netherlands), 2. Akzo Chemie UK Ltd (United Kingdom), represented by Ivo Van Bael and Jean-François Bellis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Elvinger and Hoss, 15 Côte d'Eich.

The applicant claims that the Court should:

- Declare the application admissible and well founded;
- Accordingly declare void the contested decision of the Commission of 6 November 1984 ⁽¹⁾;
- Prohibit the Commission from using in any way the documents and information obtained by it in the course of the investigations carried out pursuant to the contested decision;
- Order the Commission to pay the costs.

Contentions and main arguments adduced in support

- Breach of the fundamental principles laid down in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. There was no 'specific power conferred by law' (that is, under Article 14 of Regulation No 17) since the prescribed procedure was not followed by the Commission in this case.
- Misuses of the delegation of authority (Article 27 of the provisional rules of procedure of the Commission, Official Journal No L 199, 1975, p. 43, and a decision not published in the Official Journal delegation to the member of the Commission responsible for competition matters authority to take decisions under Articles 11 and 14 of Regulation No 17). Full effect must again be given to the principle of collective

⁽¹⁾ Regarding an investigation to be carried out at the premises of Akzo Chemie BV and Akzo Chemie (UK) Ltd under Article 14 (3) of Regulation No 17 (Case IV/30.698).

responsibility where the undertaking concerned relies on misuse of powers and violation of the rights of the defence as grounds for its provisional refusal to undergo an announced investigation.

- Insufficient statement of reasons. The contested decision does not in any way answer, even summarily, the arguments put forward by the applicants for the postponement of the planned investigation.
- Infringement of Article 14 (4) of Regulation No 17. It was materially impossible during the short period within which the contested decision was taken, for the Commission to 'consult' the competent Netherlands authority in compliance with its 'standard administrative practice' (cf. Answer of the Commission to a parliamentary question, Official Journal No C 310, 1979, p. 31).

Action brought on 21 January 1985 by the Consorzio Cooperativo d'Abruzzo against the Commission of the European Communities

(Case 15/85)

(85/C 43/11)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 21 January 1985 by Consorzio Cooperativo d'Abruzzo, whose registered office is at Ortona, in the person of its chairman Felice Paolucci, represented by Giovanni Maria Ubertazzi and Fausto Capelli of the Milan Bar, and by Antonio Minutolo, of Lanciano, with an address for service in Luxembourg at the Chambers of Louis Schilz, 38 Boulevard Grande-Duchesse Charlotte.

The applicant claims that the Court should:

- Declare void the Commission's Decision of 31 October 1984, notified on 14 November 1984, which reduced (to Lit 3 156 318 792) the contribution from the Guidance Section of the EAGGF to the construction of a regional centre for the processing of grape must and for the collective bottling of wine in Ortona (Chieti);
- Declare valid and irrevocable the Commission's Decision of 7 April 1982, notified on 27 April 1982, which granted a contribution of Lit 4 298 543 500;

- Order the Commission to grant contributions at the level established by that Decision and in accordance with the state of progress of the work contracted out by the applicant;
- Order the Commission to pay the costs of the case, and to declare the judgment immediately enforceable.

Contentions and main arguments adduced in support

- Infringement of essential procedural requirements: failure to give any, or any proper, statement of reasons;
- Misuse of powers;
- Breach of the fundamental principles of:
 - legal certainty; the 1982 Decision, properly adopted according to the rules in force at the time when it was approved, produced, in substance, the effects envisaged therein, and therefore any amendment issued subsequently would contravene the principle of legal certainty; and
 - the protection of legitimate expectations; the reduction of the contribution originally granted, now that the subcontracted work is practically finished, exposes the Consorzio to further liabilities, quite unrelated to its conduct. The absence of the slightest indication of reasons for the reduction affords the clearest evidence of the unforeseeability of the contested amendment.

Action brought on 22 January 1985 by the Commission of the European Communities against the Italian Republic

(Case 17/85)

(85/C 43/12)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 22 January 1985 by the Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department, with an address for service in Luxembourg at the office of George Kremlis, also a member of its Legal Department, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

- Declare that, by failing to adopt within the prescribed period the measures needed to comply with Council Directive No 78/660/EEC of 25 July 1978 on the annual accounts of certain types