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Press and Information

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Judgments of the Court of First Instance in Cases T-69/00, T-151/00, T-301/00, T-320/00, T-383/00 and T-135/01

Fabricca italiana accumulatori motocarri Montecchio SpA (FIAMM) and FIAMM Technologies and Others v Council of the European Union and Commission of the European Communities
Beamglow Ltd v European Parliament, Council of the European Union and Commission of the European Communities

THE COMMUNITY CAN BE CALLED UPON TO COMPENSATE FOR DAMAGE CAUSED BY ITS INSTITUTIONS EVEN IN THE ABSENCE OF UNLAWFUL CONDUCT ON THEIR PART

However, the Court of First Instance dismisses the actions brought by companies whose products exported to the United States were subject to increased customs duty, because the commercial damage suffered was not unusual

The Agreement establishing the World Trade Organisation (WTO) is intended to reduce customs tariffs and other barriers to trade between the contracting parties. In 1993 the Council of the European Union adopted a regulation introducing for the Member States common rules for the import of bananas (the COM for bananas)[1]. This regulation contained preferential provisions for bananas from certain African, Caribbean and Pacific States. Following complaints lodged with the Dispute Settlement Body (DSB) of the WTO by countries in the dollar area, including the United States, the DSB held that the Community regime governing the import of bananas was incompatible with the WTO agreements.

In 1998 the Council of the European Union adopted a regulation amending that regime.

Since the United States took the view that the new regime was still not compatible with the WTO agreements, it requested, and obtained, authorisation from the DSB to impose increased customs duty on imports of Community products appearing on a list drawn up by the United States authorities, in respect of trade amounting to up to USD 191.4 million per year. [2]

[1] Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas (OJ 1993 L 47, p. 1).
[2] In 2001 the Community amended the COM for bananas by Council Regulation (EC) No 216/2001 of 29 January 2001 amending Regulation No 404/93 (OJ 2001 L 31, p. 2). The United States suspended application of the increased customs duty with effect from 30 June 2001.

Six companies established in the European Union brought proceedings before the Court of First Instance of the European Communities claiming compensation from the Commission and the Council of the European Union for the damage alleged to have been suffered by them because the United States retaliatory measures applied to their exports to the United States.[3]

Proceedings were brought by FIAMM and FIAMM Technologies and by G. Fedon & Figli, Italian companies whose fields of business respectively cover stationary batteries and spectacle cases and accessories; by two French companies, Le Laboratoire du Bain, which manufactures and exports effervescent bath products, and Groupe Fremaux, which specialises in the making of cotton bed-linen a proportion of which it markets in the United States through its United States subsidiary Palais Royal, Inc; by CD Cartondruck AG, a German company which produces folding boxes made of printed and decorated paperboard, intended as packaging for up-market branded products; and by a United Kingdom company, Beamglow Ltd, which produces folding boxes made of printed and decorated paperboard, intended as packaging for products such as cosmetics and fragrances.

With regard to non-contractual liability of the Community for unlawful conduct of its institutions, the Court recalls that in order for such liability to be incurred three conditions must all be met: the institutions' conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct of which the institutions are accused and the damage.

The Court points out that the WTO agreements are not among the rules in the light of which the Community Courts review the legality of action by the Community institutions. Consequently, it is not possible to establish in the present instance that the conduct of which the Council and the Commission are accused is unlawful.

Accordingly, the applicants' actions for damages must be dismissed in so far as they require that conduct to be unlawful.

With regard to the rules governing liability which the Community may incur even in the absence of unlawful action by its institutions, the Court states that where, as here, it cannot be established that the conduct of the defendant institutions (the Council and the Commission) is unlawful, undertakings which bear a disproportionate part of the burden resulting from the Community institutions' conduct may, under certain conditions, obtain compensation for the damage to them.

The Court states that the EC Treaty requires the Community to pay compensation for certain damage caused by conduct of its institutions not shown to be unlawful. For this purpose, each of the following conditions must be met: actual damage must be sustained, there must be a causal link between the damage and the conduct of the Community institutions and the damage sustained must be unusual and special in nature.

The Court holds that here the condition relating to the sustaining of actual damage is met, since the statistics adduced by the Commission show an appreciable reduction in exports to the United States of the applicants' products.

The second condition, relating to the existence of a direct causal nexus between the damage sustained and the conduct of the Community institutions, is also held to be met in the present

[3] Beamglow also claimed compensation from the European Parliament, but the Court of First Instance has today declared this part of the action inadmissible.

instance. It is the Council's and the Commission's conduct, namely the adoption of the Community regime governing the import of bananas, which led the United States to adopt its retaliatory measures. The defendant institutions' conduct is therefore the immediate cause of the damage suffered.

However, the Court finds, with regard to the condition requiring unusual damage, that in the present instance the applicant undertakings cannot have suffered damage of that kind. Damage which businesses may suffer is unusual only when it exceeds the limits of the economic risks inherent in operating in the sector concerned.

The Court holds that the applicants have not established that the commercial damage suffered by them because of the conduct of the Council and the Commission was in excess of the limits of the risks inherent in their export operations.

Consequently, the Court dismisses the actions.

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.

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