

3. If the reply to the second question is in the negative:

Is heading 1517 of the Combined Nomenclature to be interpreted as meaning that a capsule casing consisting of 313,97 mg of gelatin mass (47,3 % gelatin, 17,2 % glycerine, 35,5 % water), 4,30 mg of paste consisting of 50 % titanium dioxide and 50 % glycerine, and 1,73 mg of paste consisting of 25 % quinoline yellow lacquer and 75 % glycerine leads to the exclusion of the capsules described above from that heading?

(<sup>1</sup>) OJ 1987 L 256, p. 1.

**Appeal brought on 22 September 2008 by Complejo Agrícola against the judgment delivered on 14 July 2008 in Case T-345/06 Complejo Agrícola SA v Commission of the European Communities, supported by the Kingdom of Spain**

(Case C-415/08 P)

(2008/C 313/22)

*Language of the case: Spanish*

**Parties**

*Appellant:* Complejo Agrícola SA (represented by: A. Menéndez Menéndez and G. Yanguas Montero, lawyers)

*Other parties to the proceedings:* Commission of the European Communities and the Kingdom of Spain

**Form of order sought**

- allow the appeal;
- annul the judgment of the Court of First Instance of 14 July 2008, notified to the appellant on 18 July 2008 ('the CFI judgment') in which the CFI: (a) declared the action for annulment brought by Complejo Agrícola ('the action for annulment') against Commission Decision 2006/613/EC (<sup>1</sup>) of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region ('Decision 2006/613'), and (b) ordered Complejo Agrícola to bear its costs and to pay those of the Commission of the European Communities ('the Commission');
- refer the case back to the CFI in order for it to uphold the action for annulment and give a ruling on the substance of

the claims put forward by Complejo Agrícola in the action for annulment;

- order the Commission to pay the costs incurred by Complejo Agrícola in these proceedings.

**Pleas in law and main arguments**

The CFI judgment recognises that Decision 2006/613 is a measure which is capable of being challenged. However, in the judgment the CFI denies that Complejo Agrícola has standing to challenge it because, in its opinion, Decision 2006/613, which declares as a site of Community importance (SCI) Acebuchales de la Campiña Sur de Cádiz — cod. 6120015 ('SCI Acebuchales') that affects part of the Finca 'Las Lomas', which is owned by Complejo Agrícola, is not of direct concern to it as it does not impose any specific obligations on Complejo Agrícola and requires national implementing rules.

Complejo Agrícola takes the view that the order of the CFI incorrectly interprets Article 230 of the Treaty Establishing the European Community ('EC Treaty'), as it has been interpreted by the most recent case-law, Complejo Agrícola does have *locus standi* to challenge Decision 2006/613 as that decision is of direct and individual concern to it. That is why the order under appeal must be annulled.

Complejo Agrícola is directly concerned by Decision 2006/613 if it is analysed either in accordance the formal jurisprudential interpretation of direct concern, which is no longer current, or in accordance with the substantive interpretation now adopted by the Court.

The order under appeal compares Complejo Agrícola's situation with earlier precedents with which it has nothing in common, without analysing the specific circumstances of this case. In accordance with the case-law currently applicable, Complejo Agrícola's situation must lead to the recognition of its *locus standi*. The main difference between this case and those examined in the cases mentioned in the order of the CFI is that, when it adopted Decision 2006/613, the Spanish legislation on the protection of SCIs had already been approved and the legal consequences of the adoption of Decision 2006/613 for Complejo Agrícola were already well known so that the possibility that the Spanish State would not apply Decision 2006/613 was purely theoretical. That situation is not altered, as the CFI's order states, by the fact that in the future the Spanish state may amend the rules.

(<sup>1</sup>) OJ L 259, p. 1.