procedures laid down by national legislation with a view to recovery, concerns only irregularities occurring after the regulation began to apply and cannot concern irregularities which took place decades ago, when a different legal regime was in force which did not lay down a corresponding time-limit, the control being restricted to the observance of a reasonable period.

By the fourth plea for annulment, the applicant submits that the Commission's claim that the sums should be charged to the applicant, after the passing of 15 to 20 years from the irregularity relied upon, is time-barred because of the excessive duration of the procedure, or in the alternative the principle of legal certainty has been infringed.

Finally, by the fifth plea for annulment, the applicant submits that, since there is no irregularity in cases 3, 4, 6 and 8 to 13, the 24-month rule in Article 31(4) of Regulation (EC) No 1290/2005 applies in respect of any instance of recovery, and therefore the charging of the corresponding sums which are referable to a period far in excess of 24 months from notification of the inspection findings is misconceived and must be annulled.

(1) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

Action brought on 27 April 2009 — Biofrescos — Comércio de Produtos Alimentares Lda v Commission of the European Communities

(Case T-159/09)

(2009/C 153/86)

Language of the case: Portuguese

Parties

Applicant: Biofrescos — Comércio de Produtos Alimentares Lda (Linda-a-Velha, Portugal) (represented by: A. Magalhães e Menezes, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission's decision of 16 January 2009 rejecting the applicant's request for remission of import duties in the sum of EUR 41 271,09 and ordering that that amount be entered into the accounts *a posteriori*;

Pleas in law and main arguments

Between September 2003 and February 2005, the applicant imported a number of consignments of frozen prawns from Indonesia, for which it sought remission of import duties pursuant to Articles 220(2)(b), 236 and 239(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. (1)

The applicant submits that the Commission infringed, at the very least, those provisions in so far as: first, it made no observations on any of the arguments put forward by the applicant in its request for remission of import duties; secondly, the reasons given by the Commission were inadequate, misleading and incomprehensible; thirdly, it misinterpreted the error made by the Indonesian authorities themselves; fourthly and last, the Commission deemed to be proved facts which are not actually proved, the burden of proving which fell, subsequently, to the bodies involved in the procedure and not the applicant.

(1) OJ 1996 L 97, p. 38.

Action brought on 21 April 2009 — Ilink Kommunikationssysteme v OHIM (ilink)

(Case T-161/09)

(2009/C 153/87)

Language in which the application was lodged: German

Parties

Applicant: Ilink Kommunikationssysteme GmbH (Berlin, Germany) (represented by B. Schütze, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the contested decision of the Office for Harmonisation in the Internal Market of 5 February 2009 in Case R 1849/2007-4; and

— order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'ilink' for goods and services in Classes 9, 16, 38 and 42

Decision of the Examiner: Registration refused in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 (now Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (1)), since the trade mark applied for has the requisite distinctive character and there is no need for it to be allowed to remain available.

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 3 April 2009 — Kitou v European Data Protection Supervisor

(Case T-164/09)

(2009/C 153/88)

Language of the case: French

Parties

Applicant: Erasmia Kitou (Brussels, Belgium) (represented by: S. Pappas, lawyer)

Defendant: European Data Protection Supervisor

Form of order sought

— declare that Regulation (EC) No 1049/2001 is inapplicable;

— in the alternative, declare an error of law in the application of Regulation (EC) No 1049/2001 in conjunction with Regulation (EC) No 45/2001;

— consequently, annul the Decision of the European Data Protection Supervisor 2008-0600;

— declare that the request for access to the document does not satisfy the conditions laid down in Regulation No 45/2001;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of the decision of the European Data Protection Supervisor by which the latter found that the disclosure during national legal proceedings of certain data concerning the applicant's career in the Commission of the European Communities is not contrary to the provisions of Regulations No 45/2001 ([1]) and No 1049/2001. ([2])

In support of its action, the applicant claims that:

— the contested decision is unfounded inasmuch as it is based on Regulation No 1049/2001 which is inapplicable in the present case, since the request for access does not concern a document within the meaning of Regulation No 1049/2001, but exclusively an item of personal data.

— even if Regulations No 1049/2001 and No 45/2001 were to apply in conjunction with one another in the present case, the defendant, when applying them, erred in considering that the conditions imposed by Regulation No 45/2001 concerning the processing of personal data apply only where the exception provided for in Article 4(1)(b) of Regulation No 1049/2001 regarding access to documents is applicable;

— the defendant infringed the provisions of Regulation No 45/2001 inasmuch as the request for access did not concern a document and was not based on any of the conditions for permitting the processing of personal data.

([1]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

([2]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 24 April 2009 — Shanghai Biaowu High-Tensile Fastener and Shanghai Prime Machinery v Council

(Case T-170/09)

(2009/C 153/89)

Language of the case: English

Parties

Applicants: Shanghai Biaowu High-Tensile Fastener (Shanghai, China) and Shanghai Prime Machinery (Shanghai, China) (represented by: K. Adamantopoulos and Y. Melin, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron and steel fasteners originating in the People's Republic of China, insofar as:

— the three-month time limit for disclosing market economy treatment findings was not respected, in breach of the second paragraph of Article 2(7)(c);

— it unjustifiably rejects the applicants' market economy treatment claim in breach of Article 2(7)(c), first part of the first indent, of the basic Regulation;

— it unjustifiably rejects the applicants' market economy treatment claim in breach of Article 2(7)(c), second part of the first indent, of the basic Regulation;

— its findings are based on insufficient information in breach of the duty of examining carefully and impartially all the relevant aspects of each individual case as guaranteed by the Community legal order in administrative procedures;

— it places a burden of proof on exporting producers seeking market economy treatment inconsistent with general principles of Community law, in particular the principle of sound administration;