General Court of the European Union
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Press and Information

Judgment in Case T-481/11
Spain v Commission

The Commission was correct in introducing compulsory labelling for citrus fruits that are subject to post-harvest processing using preserving agents or other chemical substances

That obligation, which ensures a uniform high level of protection for consumers both inside and outside the EU, is not discriminatory

A provision of EU law on the marketing of citrus fruits (that is, lemons, mandarins and oranges)[1] provides that the packaging of those fruits must bear a label indicating, where appropriate, the preserving agents or other chemical substances used in post-harvest processing.[2] By adopting that provision, the Commission sought to ensure the correct application of EU legislation on food additives. To that end, it departed from a standard[3] adopted by the UNECE[4] under which such labelling is optional (the indication of the use of preservatives or other chemical substances being required only where the legislation of the importing country requires it).

Spain brought an action before the General Court seeking the annulment of that provision.

By today's judgment, **the General Court dismisses Spain's action.**

First of all, the General Court notes that **the Commission was not obliged to adopt, at EU level, a marketing standard for citrus fruit identical to the UNECE standard.** Even though, when adopting marketing standards for one or more products, the Commission must take into account – among other factors – standards adopted within the UNECE framework, it is not required to transpose the corresponding UNECE standard.

Spain complains that the Commission has infringed the principle of equal treatment and non-discrimination between producers. According to that Member State, only citrus fruit producers are subject to the labelling obligation mentioned above, even though other fruits are also treated with several substances post-harvest. In its view, that situation would lead to discrimination which is not justified objectively. It adds that compulsory labelling could lead the consumer to believe that citrus fruits are the only fruits to be treated with chemical products post-harvest, which would have a detrimental effect on marketing and consumption of those fruits, thereby placing them at a competitive disadvantage. In that regard, the General Court observes that the objective of the compulsory labelling is to ensure that consumers of the citrus fruits concerned are better informed, by drawing, where appropriate, their attention to the fact that those fruits have been treated post-harvest with preserving agents or other chemical substances. This is necessary because citrus fruits have particular characteristics in relation to post-harvest processing. As a general rule,

[1] Pomelos, grapefruits and limes are excluded from the scope of that marketing standard. That exclusion is justified, inter alia, by their low volume of sales in Europe.

[2] Part B 2, paragraph VI D, fifth indent of Annex I to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1). Regulation No 1234/2007 ('Single CMO Regulation') establishes a common organisation of agricultural markets and on specific provisions for certain agricultural products.

[3] UNECE Standard FFV-14 concerning the marketing and commercial quality control of citrus fruit.

[4] United Nations Economic Commission for Europe. This Commission currently brings together 56 countries from Europe (including all of the Member States of the European Union), the Commonwealth of Independent States and North America. The Working Party on Agricultural Quality Standards tasked with determining, inter alia, common standards for perishable foodstuffs forms part of the organisational structure of the UNECE.

the peel of citrus fruits is not consumed with the flesh, but is thrown away, as is the case with various other fruits (bananas, watermelons, melon). Nevertheless, the peels of citrus fruits have a specific culinary use, as they can be used in the preparation of jams and liqueurs (such as *limoncello)* or to flavour certain culinary preparations such as biscuits or soups. **As regards the objective of providing consumers with information concerning the substances used during post-harvest processing, citrus fruit producers are thus in a different situation to that of producers of other fruit and vegetables. Consequently, the principle of equal treatment and non-discrimination is not infringed.**

According to Spain, the labelling obligation refers to a specific substance: orthophenylphenol and its sodium salt, known as 'sodium orthophenylphenate' (OPP). That substance is used as a preserving agent for fruits and as a disinfectant for storage facilities. Spain claims that the labelling requirements relating to OPP should have been defined within the framework of the pesticides legislation. The General Court rejects that argument, pointing out that the Commission merely took into account the desire of the EU legislature lay down a labelling obligation for foodstuffs treated with that substance.

The General Court also considers that the principle of proportionality has not been infringed. For almost all fruits and vegetables, there are special labels indicating that they are organic and that they have not been treated with chemical substances. Thus, consumers are, in general, aware that fruit and vegetables without such labels are likely to have been chemically treated. In perceiving the special labelling of citrus fruits, consumers will not therefore come to the mistaken conclusion that fruit and vegetables without such labelling have not been treated with chemical substances.

In addition, Spain submits that since the labelling obligation also covers citrus fruit intended for export, it entails a competitive disadvantage for citrus fruits originating in the EU on the markets of third countries where there is no requirement to use labelling similar to that required under EU legislation. On those markets, citrus fruits originating in the EU would come into competition with citrus fruits from other countries which, likewise, do not require such labelling. Consumers in the importing country concerned could thus form the mistaken impression that the products originating in third countries have not been treated with chemical substances post-harvest, which could lead consumers to prefer such products to those from the EU. The General Court rules that the high level of consumer protection provided by EU policies must be guaranteed to consumers both inside and outside the EU. **The labelling relating to the possible post-harvest processing of citrus fruits is necessary in order to ensure adequate consumer protection. Therefore, it is not acceptable to distinguish in that regard between consumers within the EU and those outside. Furthermore, that uniform high level of consumer protection helps to maintain and strengthen their position on international markets. It is part of the image of quality and reliability of products originating in the EU.** That image could be affected in the event that the health of consumers outside the EU were to be harmed as a result of a lack of labelling regarding the post-harvest processing of citrus fruits from the EU.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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