

made at first instance more than 10 years before the date of entry into force of that provision and the tax authorities have been unsuccessful at first and second instance.

(<sup>1</sup>) OJ C 30, 29.1.2011.

**Order of the Court of 22 March 2012 — Cantiere navale De Poli SpA v European Commission**

(Case C-167/11 P) (<sup>1</sup>)

*(Appeal — Article 119 of the Rules of Procedure — State aid — Incompatibility with the common market — Commission Decision — Alteration to existing aid — Regulation (EC) No 794/2004 — Regulation (EC) No 1177/2002 — Temporary defensive mechanism for shipbuilding)*

(2012/C 194/10)

Language of the case: Italian

**Parties**

*Appellant:* Cantiere navale De Poli SpA (represented by: A. Abate and A. Franchi, avvocati)

*Other party to the proceedings:* European Commission (represented by: V. Di Bucci and C. Urraca Caviedes, Agents)

*Intervener in support of the applicant:* Italian Republic (represented by: G. Palmieri, Agent, P. Gentili, avvocato dello Stato)

**Re:**

Appeal brought against the judgment of the General Court (Eighth Chamber) of 3 February 2011 in Case T-584/08 *Cantieri Navale De Poli v Commission*, by which the Court dismissed the action for annulment of Commission Decision 2010/38/EC of 21 October 2008 on State aid C-20/08 (ex N 62/08) which Italy is planning to implement through a modification of scheme N 59/04 concerning a temporary defensive mechanism for shipbuilding (OJ 2010 L 17, p. 50)

**Operative part of the order**

1. *The appeal is dismissed.*
2. *Cantiere navale De Poli SpA is ordered to pay the costs.*
3. *The Italian Republic is to bear its own costs.*

(<sup>1</sup>) OJ C 173, 11.6.2011.

**Order of the Court of 22 March 2012 — Italian Republic v European Commission**

(Case C-200/11 P) (<sup>1</sup>)

*(Appeal — Article 119 of the Rules of Procedure — State aid — Incompatibility with the common market — Commission decision — Action for annulment — Regulation (EC) No 659/1999 — Article 1(c) — Alteration of existing aid — Regulation (EC) No 794/2004 — Article 4(1) — Temporary defensive mechanism for shipbuilding)*

(2012/C 194/11)

Language of the case: Italian

**Parties**

*Appellant:* Italian Republic (represented by: G. Palmieri, agent, P. Gentili, avvocato dello Stato)

*Other party to the proceedings:* European Commission (represented by: V. Di Bucci and C. Urraca Caviedes, agents)

**Re:**

Appeal against the judgment of the General Court (Eighth Chamber) of 3 February 2011 in Case T-3/09 *Italy v Commission*, by which the General Court dismissed an application for annulment of Commission Decision 2010/38/EC of 21 October 2008 on State aid C 20/08 (ex N 62/08) which Italy is planning to implement through a modification of scheme N 59/04 concerning a temporary defensive mechanism for shipbuilding (OJ 2010 L 17, p. 50)

**Operative part of the order**

1. *The appeal is dismissed.*
2. *The Italian Republic is ordered to pay the costs.*

(<sup>1</sup>) OJ C 204, 9.7.2011.

**Order of the Court (Sixth Chamber) of 8 March 2012 (reference for a preliminary ruling from the Hof van Cassatie van België, Belgium) — Koninklijke Federatie van Belgische Transporteurs en Logistiek Dienstverleners (Febetra) v Belgische Staat**

(Case C-333/11) (<sup>1</sup>)

*(Article 104(3), first subparagraph, of the Rules of Procedure — TIR Convention — Community Customs Code — Excise duties — Transport carried out under cover of a TIR carnet — Unlawful unloading — Determination of the place of the offence — Recovery of customs and excise duties — Jurisdiction)*

(2012/C 194/12)

Language of the case: Netherlands

**Referring court**

Hof van Cassatie van België

**Parties to the main proceedings**

*Applicant:* Koninklijke Federatie van Belgische Transporteurs en Logistiek Dienstverleners (Febetra)

*Defendant:* Belgische Staat

**Re:**

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Article 454(3), second subparagraph, of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1992 L 253, p. 1), of Articles 6(1) and 7(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) and of Article 37 of the Customs Convention on the International Transport of Goods under cover of TIR carnets (TIR Convention) — Offences or irregularities — Place of the offence or irregularity — Place deemed to be where the offence or irregularity is detected, where it is impossible to determine the place where it was committed

**Operative part of the order**

1. Article 454(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 1662/1999 of 28 July 1999, must be interpreted as meaning that a guaranteeing association may prove the place where an offence or irregularity was committed by relying on the place where the TIR carnet was accepted and/or where the seals were affixed. If that association succeeds in reversing the presumption of jurisdiction of the customs authorities of the Member State on the territory of which an offence or irregularity was detected in the course of transport under cover of a TIR carnet in favour of those of the Member State on the territory of which that offence or irregularity was actually committed — which is for the referring court to determine — the customs authorities of that latter State assume jurisdiction to recover the customs debt.
2. Articles 6(1) and 7(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as amended by Council Directive 96/99/EC of 30 December 1996, must be interpreted as meaning that the customs authorities of the Member State on the territory of which the goods were discovered, seized and confiscated enjoy jurisdiction to recover the excise duty, even if those goods were introduced into the territory of the European Union in another Member State, in so far as those goods are held for commercial purposes, which is for the referring court to establish.

<sup>(1)</sup> OJ C 269, 10.9.2011.

**Order of the Court (Fifth Chamber) of 29 March 2012 — Lancôme parfums et beauté & Cie v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Focus Magazin Verlag GmbH**

(Case C-334/11 P) <sup>(1)</sup>

**(Appeal — Community trade mark — Word mark ACNO FOCUS — Opposition by the proprietor of the national word mark FOCUS — Refusal of registration — Article 43(2) and (3) of Regulation (EC) No 40/94 — Earlier mark registered for not less than five years)**

(2012/C 194/13)

*Language of the case:* English

**Parties**

*Appellant:* Lancôme parfums et beauté & Cie (represented by: A. von Mühlendahl, Rechtsanwalt)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, acting as Agent), Focus Magazin Verlag GmbH (represented by: R. Schweizer and J. Berlinger, Rechtsanwälte)

**Re:**

Appeal against the judgment of the General Court (Eighth Chamber) of 14 April 2011 in Case T-466/08 *Lancôme v OHIM* by which that Court dismissed an action for annulment brought by the applicant for the word mark 'ACNO FOCUS' for goods in Class 3 against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 29 July 2008 in Case R 1796/2007-1 dismissing the appeal against the Opposition Division's decision refusing registration of that mark in the opposition proceedings brought by the proprietor of the national word mark 'FOCUS' for goods and services in Classes 3, 5, 6, 7, 8, 9, 14, 15, 16, 18, 20, 21, 24, 25, 26, 28, 29, 30, 33, 34, 36, 38, 39, 41 and 42 — Interpretation and application of Article 43(2) and (3) of Regulation No 40/94 (now Article 42(2) and (3) of Regulation No 207/2009) — Meaning of genuine use of a trade mark

**Operative part of the order**

*The Court (Fifth Chamber):*

1. Dismisses the appeal;
2. Orders Lancôme parfums et beauté & Cie to pay the costs.

<sup>(1)</sup> OJ C 282, 24.9.2011.