Action brought on 22 October 2009 — Dashiqiao Sanqiang Refractory Materials v Council

(Case T-423/09)

(2009/C 312/62)

Language of the case: French

Parties

Applicant: Dashiqiao Sanqiang Refractory Materials Co. Ltd (Dashiqiao City, China) (represented by: J.-F. Bellis and R. Luff, lawyers)

Defendant: Council of the European Union

Form of order sought

— annul the anti-dumping duty imposed with respect to the applicant by Council Regulation (EC) No 826/2009 of 7 September 2009 amending Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China (OJ 2009 L 240, p. 7), in so far as the anti-dumping duty that it sets exceeds that which would be applicable if that duty had been determined on the basis of the method applied in the original investigation in order to take account of the fact, in accordance with Article 2(10) of the basic regulation, that Chinese export VAT was not refunded;

— order the Council to pay the costs.

Pleas in law and main arguments

By this action, the applicant, a company established in China, seeks the annulment of Council Regulation (EC) No 826/2009 of 7 September 2009 amending Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China, [1] in so far as the anti-dumping duty that it sets exceeds that which would be applicable if that duty had been determined on the basis of the method applied in the original investigation in order to take account of the fact, in accordance with Article 2(10) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [2] (basic regulation), that Chinese export VAT was not refunded.

The applicant puts forward two pleas in support of its action.

First, the applicant submits that the method used by the Commission in the review which gave rise to the contested regulation to deal with the fact that export VAT was not refunded infringes the principle of fair comparison between the export price and the normal value laid down by Article 2(10) of the basic regulation. Instead of deducting from the export price the non-refunded amount of export VAT, as it had done in the original investigation, the Commission, relying on an incorrect interpretation of Article 2(10)(b) of the basic regulation, compared the export price with the normal value on a VAT-inclusive basis.

Second, the applicant submits that the Regulation is also vitiated by an infringement of Article 11(9) of the basic regulation since the method applied to take account of the fact that VAT was not refunded in the comparison between the export price and the normal value differs radically from that applied in the original investigation without any valid justification.

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[1] OJ 2009 L 240, p. 7.
[2] OJ 1996 L 56, p. 1.

Action brought on 14 October 2009 — Goodyear Dunlop Tyres UK Ltd v OHIM — Sportfive (QUALIFIER)

(Case T-424/09)

(2009/C 312/63)

Language in which the application was lodged: German

Parties

Applicant: Goodyear Dunlop Tyres UK Ltd (Birmingham, United Kingdom) (represented by: M. Graf, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Sportfive GmbH & Co. KG (Cologne, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 August 2009 in case R 1291/2008 4;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Goodyear Dunlop Tyres UK Ltd

Community trade mark concerned: the word mark "QUALIFIER' for goods in Class 12 (Application No 4 877 262)

Proprietor of the mark or sign cited in the opposition proceedings: Sportfive GmbH & Co. KG