In the alternative, if it cannot be established that there was tortious liability on the part of the European Commission, the applicant asks that the Commission be held strictly liable. There can be no doubt as to the damage suffered by the applicant and its unusual and special nature and that that damage was directly caused by the refusal of the European Commission to sanction Celanese Corporation.

(1) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1)

Action brought on 19 March 2010 — FESI v Conseil

(Case T-134/10)

(2010/C 148/62)

Language of the case: English

Parties

Applicant: Fédération européenne de l'industrie du sport (FESI) (Brussels, Belgium) (represented by: E. Vermulst and Y. Van Gerven, lawyers)

Defendant: Council of the European Union

Form of order sought

— annul Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (1) in its entirety or alternatively as far as the applicant and its members, particularly its four sampled members are concerned (Adidas AG, Nike European Operations BV, Puma AG and Timberland Europe BV);

— order the Council to disclose the production data for each sampled Union producer which was the basis of sample selection in the review investigation as well as the employment data for each sampled Union producer;

— order the Council to pay the costs of the proceedings.

Pleas in law and main arguments

In support of its claims, the applicant puts forward seven pleas in law.

First, it submits that by not requiring the complainant European Union producers to complete sampling forms, the Council erred in the application of Article 17(1) of the basic regulation (2), committed a manifest error of appraisal and violated the rights of defence and the principle of non-discrimination. In particular, the applicant claims that the European Union institutions did not require the complainant EU producers to complete sampling forms and therefore, the EU producers' sample was selected in the absence of requisite data, on the basis of limited — unverifiable — data provided by the complainants. The applicant argues that, consequently, they were precluded from verifying the suitability of the sample selected. It further contends that the EU institutions treated interested parties placed in comparable situations in a different manner without any objective reasons and breached the fundamental principle of non-discrimination.

Second, the applicant claims that in the selection of the EU producers' sample the Council committed a manifest error of appraisal and violated Article 17(1) of the basic regulation. It submits that the EU producers' sample did not constitute the largest representative volume of production or sales that could reasonably be investigated in the time available within the meaning of Article 17(1) of the basic regulation and the sample was predominantly selected on the basis of criteria not mentioned in this provision.

Third, the applicant contends that the Council violated Article 6.10 of the World Trade Organization Anti-dumping Agreement by not applying Article 17(1) of the basic regulation in conformity with the former. The Council did not establish a sample of EU producers that represented the largest percentage of volume of production or sales as required by Article 6.10 of the WTO Anti-Dumping Agreement.

Fourth, the applicant argues that in determining likelihood of continuation of injury, the Council breached Articles 3(l), 3(2), 3(5) and 11(2) of the basic regulation and made manifest error of assessment of the facts. In the applicant's view, the Council wrongly established likelihood of continuation of injury in the absence of measures on the basis of the finding of continued injury during the review investigation period ("RIP") to the EU industry based on the macroeconomic data that included data of producers not part of the EU industry and on the basis of unverified data. Additionally, the microeconomic indicators were evaluated on the basis of the data of an unrepresentative sample of EU producers.

Fifth, the applicant claims that by granting confidential treatment to the identity of the complainant EU producers, the Council violated Article 19(1) of the basic regulation and breached the rights of defence since it granted confidential treatment without good cause and without thoroughly examining the confidentiality claims.

Sixth, it submits that in the establishment of the product control number ("PCN") system for the classification of the product under consideration, the Council violated Article 2(10) and 3(2) of the basic regulation, and the principle of diligence and sound administration. The applicant considers that the PCN system used and the reclassification of certain footwear categories in the middle of the investigation precluded a fair comparison between the normal value and export price. Furthermore, in the applicant's view, this also precluded an objective examination of both the volume of the dumped imports and the effects of the dumped imports on prices in the domestic market for like products and the consequent impact of these imports on domestic producers of such products. The applicant also submits that the Council did not examine carefully and impartially all the relevant elements and the duly substantiated reasons necessitating a change in the PCN system as suggested by the applicant.

Finally, the applicant claims that in selecting the analogue country, the Council violated the principle of diligence and sound administration, committed a manifest errors in the assessment of the facts and violated Article 2(7)a of the basic regulation. The applicant considers that the Council committed serious procedural irregularities in the selection of Brazil as the analogue country since this selection was not done in an appropriate and reasonable manner in this case.

([1]) OJ 2009 L 352, p. 1

([2]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1)

Action brought on 16 March 2010 — M v EMEA

(Case T-136/10)

(2010/C 148/63)

Language of the case: English

Parties

Applicant: M (represented by: C. Thomann, Barrister and I. Khawaja, Solicitor)

Defendant: European Medicines Agency (EMEA)

Form of order sought

— award damages pursuant to Article 340 TFUE for the losses sustained as a result of breaches, to be calculated or such other sums as the Court may rule appropriate;

— interest on such sums as are found to be due at a rate equivalent to that applied pursuant to section 35A of the Supreme Court Act 1981 or such other sum as the Court may rule to be appropriate;

— costs;

— such further additional relief that the General Court considers appropriate.