

— order the European Commission to pay the sum of EUR 11 821,35, together with default interest at the statutory rate applicable in Belgium from 16 June 2010;

— order the European Commission to pay all the costs and expenses inclusive, the amount of which is provisionally fixed at EUR 5 000.

Pleas in law and main arguments

By the present action, based on an arbitration clause, the applicant requests the General Court, in essence, to declare that, for the purposes of calculation of the applicant's general costs to be met by the Commission (in respect of contracts concluded under the eTen programme specifically), that is to say, that part of the general costs capable of being connected to the services of the staff working on the project, not including sub-contractors in the applicant's staff, since those sub-contractors do not incur any general costs to be borne by the applicant. Consequently, the costs of sub-contracts should not be included in the total amount of personnel costs by which the total amount of general costs is divided to arrive at the denominator to be used to determine the percentage of eligible general costs.

In support of its action, the applicant submits that, since sub-contractors' costs do not form part of the *eligible personnel costs*, the fact of including sub-contractors in the applicant's staff when calculating the amount of the total personnel costs to be used to determine the percentage of *eligible general costs* gives rise to an inconsistency.

In addition, the fact of including sub-contractors in the applicant's staff causes damage to the applicant, since that method results in an increase in the amount of the denominator and, in consequence, gives a proportional decrease in the percentage of eligible general costs.

Action brought on 11 August 2010 — Van Parys v Commission

(Case T-324/10)

(2010/C 274/41)

Language of the case: Dutch

Parties

Applicant: Léon Van Parys NV (Antwerp, Belgium) (represented by: P. Vlaemminck and A. Hubert, lawyers)

Defendant: European Commission

Form of order sought

— annul the European Commission decision of 6 May 2010 in file REC 07/07, which found that it was justified in a specific case to proceed with post-clearance entry in the accounts of import duties and to proceed with remission of those duties in respect of one debtor but not in the case of another debtor;

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

Pleas in law and main arguments

It is alleged that, over the period from 22 June 1998 to 8 November 1999, the applicant and its customs agent submitted false Spanish AGRIM certificates to the customs authorities in Antwerp for the importation of bananas from Ecuador. As a result of this, it is alleged that a claim was improperly made for the application of the preferential tariff.

All of the allegedly false Spanish certificates which gave rise to the post-clearance recovery claim were obtained by the applicant via its Portuguese intermediary, with whom, in his capacity as fiscal representative, the applicant, through its Italian subsidiary, had operated for many years for the purchase of Spanish and Portuguese licences.

The Belgian Customs and Excise Duty Administration submitted an application to the European Commission for non-post-clearance recovery and/or remission in respect of the customs duties recovered post-clearance. With regard to the imports in 1999, the European Commission issued a negative decision. It is against that decision that the applicant has brought the present action for annulment.

The applicant invokes six grounds in support of the annulment of the abovementioned decision.

First, the applicant claims that there has been a breach of Article 239 of the Community Customs Code, of the provisions of Regulations (EEC) No 1442/93 and (EC) No 2362/98, and invokes the recognised commercial usages as described by the World Trade Organisation. It contends that the Commission breached those provisions, which permitted the purchase of the use of import licences by means of the commercial method employed by the applicant, and as a result wrongly found the applicant guilty of negligence.

Second, the applicant alleges a breach of Article 239 of the Community Customs Code and infringement of the principle of proportionality. The Commission found that the established falsifications of Spanish import certificates went beyond the normal commercial risk and that those falsifications had to be regarded as constituting a particular situation. The applicant, however, disputes the assertion that it failed to act as a prudent trader and that the conditions set out in Article 239 of the Community Customs Code have consequently not been satisfied.

Third, it is alleged that the Commission has breached Article 239 of the Community Customs Code, Article 211 of the EC Treaty and has infringed the principle of legitimate expectations and the general legal principle of *patere legem quam ipse fecisti*. The applicant submits that the Commission has imposed on the applicant more stringent requirements of care than were dictated by the legislation and more stringent than was usual in the sector, whereas the Commission and the Spanish authorities failed to comply with their own statutory obligations.

Fourth, the applicant claims that there has been a breach of Article 239 of the Community Customs Code and infringement of the principle of equality by reason of the fact that the Commission unjustifiably treated the imports in 1998 in a manner different to that in which it treated the imports in 1999.

Fifth, the applicant alleges that there has been a breach of Article 220(2)(b) of the Community Customs Code. In its view, it is not possible, without more, to establish that there was no error on the part of the Spanish customs authorities within the meaning of Article 220(2)(b).

Sixth, the applicant contends that there has been a breach of essential procedural requirements, in particular the applicant's rights of defence.

Action brought on 12 August 2010 — Yoshida Metal Industry/OHMI — Pi-Design (surface covered with black circles)

(Case T-331/10)

(2010/C 274/42)

Language in which the application was lodged: English

Parties

Applicant: Yoshida Metal Industry Co., Ltd (Niigata, Japan) (represented by: S. Verea, K. Muraro and M. Balestrieri, lawyers)

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

Other party to the proceedings before the Board of Appeal: Pi-Design AG, (Triengen, Switzerland)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 May 2010 in case R 1235/2008-1;
- Confirm the decision of the Cancellation Division of 21 July 2008 regarding Community trade mark application No 1371244;
- Confirm the validity of Community trade mark registration No 1371244;
- Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The figurative mark representing a surface covered with black circles for goods in classes 8 and 21 — Community trade mark registration No 1371244

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Trade mark right of the party requesting the declaration of invalidity: The party requesting the declaration of invalidity grounded its request on absolute grounds for refusal pursuant to Article 7 of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Rejected the application for declaration of invalidity of the Community trade mark