Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 ([1]), as there is a likelihood of confusion between the marks at issue.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 28 January 2011 — Recombined Dairy System v Commission

(Case T-65/11)

(2011/C 103/43)

Language of the case: Danish

Parties

Applicant: Recombined Dairy System (Horsens, Denmark) (represented by: T.K. Kristjánsson and T. Gønge, lawyers)

Defendant: European Commission

Form of order sought

— Annul Article 1(2) and (4) of the European Commission's Decision of 12 November 2010 (Case C(2010) 7692 (REC 03/08), addressed to the Danish tax authorities, finding that post-clearance entry of an amount of EUR 1 406 486,06 (DKK 10 492 385,99) in the accounts of import duties, referred to in the Kingdom of Denmark's request of 6 October 2008, is justified, and that a waiver of import duties in the amount of EUR1 234 365,24 (DKK 9 208 364,69), referred to in the Kingdom of Denmark's request of 6 October 2008, is not justified.

— Order the Commission to pay the costs.

Pleas in law and main arguments

The Commission's finding that a post-clearance entry is justified and that a waiver of the import duties in question is not justified is based on an assessment of whether there was error on the part of the authorities under Article 236, cf. Article 220(2)(b), and particular circumstances under Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing a Community Customs Code. ([1])

In the contested decision, the Commission found that:

— there was no error on the part of the authorities in relation to two products for which the applicant had obtained Binding Tariff Information (BTI);

— there was error on the part of the authorities in relation to one product, in respect of which the tax authorities had informed the applicant that a BTI was not necessary, as the applicant was in possession of a BTI for a product which was identical for customs duty purposes;

— there was no error on the part of the authorities for two other products, for which the applicant had not requested BTIs, as the products were identical for customs duty purposes to products for which the applicant had obtained BTIs.

The Commission further found that there were particular circumstances for the two products for which BTIs had been issued and for the product for which it had been decided that a BTI was not necessary, but that there were no particular circumstances for the last two products, as the applicant had not requested BTIs for those products.

The applicant puts forward the following in support of its application:

1. First plea: there was an error on the part of the authorities in respect of all five products for the entire period, since the customs authorities' classification under heading 3504 in the BTIs issued caused the applicant to have a legitimate expectation that that classification was correct.

2. Second plea: there are particular circumstances concerning the two products in respect of which BTIs were not requested, as it is beyond the scope of normal business risk that the customs authorities will, after many years, change their interpretation of the Customs Tariff with retroactive effect. ([2])

([1]) OJ 1992 L 302, p. 1.
([2]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1).

Appeal brought on 7 February 2011 by Erika Lenz against the judgment of the Civil Service Tribunal delivered on 14 December 2010 in Case F-80/09 Lenz v Commission

(Case T-78/11 P)

(2011/C 103/44)

Language of the case: German

Parties

Appellant: Erika Lenz (Osnabruck, Germany) (represented by V. Lenz and J. Römer. lawyers)

Other party to the proceedings: European Commission