

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Community trade mark registration No 4226148 of the word mark 'BALLON D'OR', for amongst others goods and services in classes 9, 14, 16, 25 and 41

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Annulled the decision of the Opposition Division and partially accepted the opposition and the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assumed that there is a perceived conflict between the Community trade mark application and the earlier mark.

Action brought on 8 August 2011 — Gold East Paper (Jiangsu) and Gold Huasheng Paper (Suzhou Industrial Park) v Council

(Case T-443/11)

(2011/C 298/43)

Language of the case: English

Parties

Applicants: Gold East Paper (Jiangsu) Co. Ltd (Jiangsu, China) and Gold Huasheng Paper (Suzhou Industrial Park) Co. Ltd (Jiangsu, China) (represented by: V. Akritidis, Y. Melin and F. Crespo, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Regulation (EU) No 451/2011 of 6 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coated fine paper originating in the People's Republic of China (OJ 2011 L 128, p. 1); and

— Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on eight pleas in law.

1. First plea in law, alleging an infringement of an essential procedural requirement under the second subparagraph of

Article 2(7)(c) of the basic anti-dumping regulation⁽¹⁾, in that the Commission rejected the applicants' claim for market economy treatment on the basis of the effect of this rejection on the applicants' dumping margin.

2. Second plea in law, alleging an infringement of a second procedural requirement under the second subparagraph of Article 2(7)(c) of the basic anti-dumping regulation, and breach of the fundamental principle of the rights of defence and observance of due process, as the Commission failed to forward certain material information to the anti-dumping advisory committee.

3. Third plea in law, alleging manifest errors in the appreciation of the facts of the case, as well as a lack of sufficient reasoning, in breach of Article 2(7)(c) of the basic anti-dumping regulation, in rejecting the applicants' claim for market economy treatment.

4. Fourth plea in law, alleging breach of the principle of sound administration, as well as of Articles 18(1) (3) and (6) of the basic anti-dumping regulation, as the investigation was handled in an unfair and partial way, while imposing an excessive burden of proof.

5. Fifth plea in law, alleging breach of Article 3(2) of the basic anti-dumping regulation and lack of reasoning, in that the European institutions concerned conducted their investigation in such a way that it became more likely that, as a result of the fact-finding or evaluation process, they would determine that the EU industry is injured.

6. Sixth plea in law, alleging breach of Article 3(1) and 9(4) of the basic anti-dumping regulation, in that Council Implementing Regulation (EU) No 451/2011 set target profit margin that the EU industry never achieved in the past.

7. Seventh plea in law, alleging that the decision to exclude web-fed rolls from the product concerned and the like product was based on manifest errors in the assessment of the facts of the case, and resulted in a breach of Article 3 (injury), Article 4(1) (Union industry) and Article 5(4) (standing) of the basic anti-dumping regulation.

8. Eighth plea in law, alleging breach of Article 3(2) and Article 3(7) of the basic anti-dumping regulation, in that there is no assessment in the contested regulation of whether the duty imposed does not go beyond what is necessary to offset the injury caused by the dumped imports.

⁽¹⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51)