Defendant: European Commission

Form of order sought

— Declare the application admissible;

— Partially annul Article 1 of Commission Decision K(2011) 8826, Article 1 of Commission Decision C(2011) 8803 and Article 1 of Commission Decision K(2011) 8801, all three decisions being dated 6 December 2011, insofar as they only grant a partial refund of the anti-dumping duties paid by the applicant and unlawfully retain additional amounts of refunds of anti-dumping duties legitimately due to the applicant;

— Order maintenance in force of the contested decisions until the European Commission has adopted measures necessary to comply with any judgment of the Court; and

— Order the defendant to pay the legal costs and expenses of the procedure.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging that the defendant committed a manifest error of assessment in applying an appropriate and reasonable unrelated EU importer profit margin, thereby failing to establish a reliable export price for the purpose of calculating the correct anti-dumping refund amount leading to infringements of Articles 2(9) and 18(3) of Council Regulation (EC) No 1225/2009. ([1])

2. Second plea in law, alleging that the defendant committed a manifest error of assessment by deducting anti-dumping duties as a cost in the calculation of the export price thereby failing to establish a reliable dumping margin for the purpose of calculating the correct anti-dumping refund amount and in doing so violated Articles 2(9), 2(11) and 11(10) of Council Regulation (EC) No 1225/2009.

3. Third plea in law, alleging that the defendant failed to inform it of the necessary requirements for satisfying Article 11(10) of Council Regulation (EC) No 1225/2009 in a prompt and adequate manner thereby committing violations of the rights of defence enshrined in EU general law as well as the principle of sound administration also established in EU general law and also Article 41 of the Charter of Fundamental Rights of the European Union.

([1]) Council Regulation (EC) 1225/2009 on Protection Against Dumped Imports From Countries not Members of the European Community, OJ 2009 L 343, p. 51.

Action brought on 15 February 2012 — Nu Air Compressors and Tools v Commission

(Case T-76/12)

(2012/C 118/49)

Language of the case: English

Parties

Applicant: Nu Air Compressors and Tools SpA (Robassomero, Italy) (represented by: R. MacLean, Solicitor)

Defendant: European Commission

Form of order sought

— Annul Article 1 of Commission Decision C(2011) 8824 final and Article 1 of Commission Decision C(2011) 8812 final, both dated 6th December 2011, insofar as they only grant partial refunds of the anti-dumping duties paid by the applicant on imports of Chinese-made compressors applied under Council Regulation (EC) 261/2008 of 17 March 2008 imposing a definitive anti-dumping duty on certain compressors originating in the People's Republic of China ([1]);

— Maintain in force contested Decisions until the European Commission has adopted measures necessary to comply with any judgment of the General Court, given in the present case; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging

— that the European Commission committed a manifest error of assessment in applying an appropriate and reasonable unrelated EU importer profit margin, thereby failing to establish a reliable export price for the purpose of calculating the correct anti-dumping refund amounts leading to infringements of Articles 2(9) and 18(3) of the Basic Anti-Dumping Regulation ([2]).

2. Second plea in law, alleging

— that the European Commission committed a manifest error of assessment by deducting anti-dumping duties as a cost in the calculation of the export price thereby failing to establish a reliable dumping margin for the purpose of calculating the correct anti-dumping refund amounts and in doing so violated Articles 2(9), 2(11) and 11(10) of the Basic Anti-Dumping Regulation.

3. Third plea in law, alleging

— that the European Commission failed to inform the applicant of the necessary requirements for satisfying Article 11(10) of the Basic Anti-Dumping Regulation in a prompt and adequate manner thereby violating its rights of defence, as well as the principle of sound administration established in EU law and provided for in Article 41 of the Charter of Fundamental Rights of the European Union.

4. Fourth plea in law, alleging

— that in a result, the European Commission unlawfully retained additional amounts of refunds of EU anti-dumping duties legitimately due to the applicant through the above-mentioned infringements of EU law.

(1) OJ L 81, 20.03.2008, p. 1
(2) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51)

Action brought on 15 February 2012 — Beco v Commission

(Case T-81/12)

(2012/C 118/50)

Language of the case: German

Parties

Applicant: Beco Metallteile-Handels GmbH (Spaichingen, Germany) (represented by: T. Pfeiffer, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 13 December 2011 (Az. K(2011) 9112 final);

— order the Commission to pay the costs, pursuant to Article 87(2) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of its action, the applicant claims that its application for a refund of anti-dumping duties, which was refused by the Commission's decision of 13 December 2011, was, contrary to the Commission's view, not lodged out of time and was therefore admissible.

The applicant states in this respect that the application was lodged within the 6-month period, in accordance with Article 11(8) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community. (1) According to the wording of Article 11(8) of Regulation No 384/96, the application for a refund is subject to the condition that the duties determined have been paid by the applicant for a refund. Contrary to the view of the Commission, the 6-month period laid down in Article 11(8) of Regulation No 384/96 cannot expire before the application for a refund is admissible.

Furthermore, in accordance with the Commission notice concerning the reimbursement of anti-dumping duties of 29 May 2002, (2) applications for refunds can 'only be submitted in respect of transactions for which anti-dumping duties have been fully paid' (point 2.1(b)). That notice also states expressly that an importer may apply for a refund only if he 'can demonstrate that he has paid anti-dumping duties either directly or indirectly for a specific importation' (point 2.2(a)).

The applicant further claims that the decision of 13 December 2011 infringes the applicant's legitimate expectation based on the Commission notice of 29 May 2002 as well as the principle of good faith.

The applicant further submits that the decision of 13 December 2011 infringes the principle of legal certainty.

(1) 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).
(2) Commission notice concerning the reimbursement of anti-dumping duties (2002/C 127/06) of 29 May 2002 (OJ 2002 C 127, p. 10).

Action brought on 20 February 2012 — Chico's Brands Investments v OHIM — Artsana (CHICO'S)

(Case T-83/12)

(2012/C 118/51)

Language in which the application was lodged: English

Parties

Applicant: Chico's Brands Investments, Inc. (Fort Myers, United States) (represented by: T. Holman, Solicitor)