

3. Third plea: inadequate statement of reasons and incorrect legal basis

- The Commission did not provide an adequate statement of reasons for the contested decision in respect of the applicant's financial responsibility with the result that it is not possible to check if it is correct and consistent with substantive law, thereby breaching Article 296 TFEU and the Commission's internal procedural rules.
- The Commission, moreover, did not provide an adequate legal basis to justify its decision that there was, in this case, a loss of traditional own resources and that the applicant would be financially responsible for such a loss.

4. Fourth plea: infringement of the rights of defence and the right to be heard

- The Commission did not inform the applicant, prior to the adoption of the contested decision, of all the elements of fact and law on which its decision is based, thereby infringing the principles of the rights of defence and the right to be heard.

5. Fifth plea: the Commission's failure of inspection

- The applicant's error in the communication concerning the application for issue of an import licence is a consequence of defects in the AMIS-quota electronic information system, which the Commission created and manages; accordingly the applicant is not responsible for the error made.

6. Sixth plea: infringement of the principles of proportionality, legal certainty and the avoidance of unjust enrichment

- The applicant contends that, in view of the fact that no loss of traditional own resources was proven, the imposition of financial responsibility for an error when encoding the data in the Commission's defective computer system means that the EU will be unjustly enriched.
- Moreover, the principle of legal certainty was infringed because there is no procedure for correcting mistakes for situations in which unjust enrichment may occur.
- The applicant further argues that the legislation under which it is not possible to correct administrative errors committed in the context of a procedure for issuing import licences even though no market operator suffers a loss as a result of the error being corrected — and which results in the Member State becoming as a matter of course financially responsible — is also contrary to the principle of proportionality.
- The Commission, by failing to bring to a close, within a reasonable period, the procedure for determining the applicant's financial responsibility, also infringed the principle of legitimate expectations.

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**Action brought on 7 August 2014 — Xinyi PV Products (Anhui) Holdings v Commission**

**(Case T-586/14)**

(2014/C 372/25)

*Language of the case: English*

**Parties**

*Applicant:* Xinyi PV Products (Anhui) Holdings Ltd (Anhui, People's Republic of China) (represented by: Y. Melin and V. Akritidis, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- Annul Commission Implementing Regulation (EU) No 470/2014 of 13 May 2014<sup>(1)</sup> imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China, as far as it applies to Xinyi PV Products (Anhui) Holdings Ltd; and

- Order the Commission, and any intervener who may be allowed to support the Commission in the course of the proceedings, to bear the costs of these proceedings.

### **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 Commission committed a manifest error of assessment of the facts and the law in considering that the applicant's production costs and financial situation are subject to significant distortions carried over from the former non-market economy system, in breach of Article 2(7)(c) of the basic Regulation, third indent.
2. Second plea in law, alleging that the Commission made a manifest error of assessment and failed to adduce consistent evidence in deducting from the applicant's export price a sales agent commission equivalent to the mark-up charged to the applicant by a related company in Hong Kong, without adducing adequate evidence that this related company was indeed operating as a commission-based agent, in breach of Article 2(10)(i) of the basic Regulation.
3. Third plea in law, alleging that the Commission did not calculate the applicant's export price on the basis of the price actually paid or payable for the product when sold to the EU, nor is it based on the price at which the exported product is first resold to an independent buyer in the EU, in breach of Article 2(8) and (9) of the basic Regulation.
4. The fourth plea in law, alleging that the Commission failed to disclose the essential facts and evidences making it possible to understand how it calculated the applicant's dumping and injury margins, in breach of Article 20 of the basic Regulation and of Article 41 of the Charter of Fundamental Rights of the EU.

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<sup>(1)</sup> Commission Implementing Regulation (EU) No 470/2014 of 13 May 2014 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China (OJ L 142, p. 1).

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### **Action brought on 11 August 2014 — Cham and Bena Properties v Council**

**(Case T-597/14)**

(2014/C 372/26)

*Language of the case: French*

### **Parties**

*Applicants:* Cham Holding Co. SA and Bena Properties Co. SA (Damascus, Syria) (represented by: E. Ruchat and C. Cornet D'Elzius, lawyers)

*Defendant:* Council of the European Union

### **Form of order sought**

The applicants claim that the General Court should:

- declare the applicants' action admissible and well founded;
- consequently, order the European Union to pay compensation for the loss suffered by the applicants arising from the suspension of the 'Yasmeen Rotana' project, in the region of EUR 43 000 000.
- order the appointment of an expert to establish the total amount of the loss suffered by the applicants;
- order the Council of the European Union to pay the costs of the proceedings.