Parties to the main proceedings

Appellant: Syndicat OP 84

Respondent: Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR) venant aux droits de l'ONIFLHOR

Questions referred

1. Must the 'scrutiny period' from 1 July of one year to 30 June of the following year, as referred to in Article 2(4) of Council Regulation No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the EAGGF, [1] be understood as the period during which the authorities responsible for the scrutiny must inform the producer organisation of the planned inspection, and commence and complete the scrutiny procedure in its entirety on-site and on paper and communicate the results of that scrutiny, or must it be understood as the period during which only some of those procedural steps have to be carried out?

2. Where the conduct or the shortcomings of the producer organisation make it impossible to carry out effectively an inspection initiated during one scrutiny period, may the authorities — despite the absence of express provision to that effect in [Regulation No 4045/89] — carry out the scrutiny procedure during the subsequent scrutiny period, without causing the procedure to be vitiated by a defect which the organisation under scrutiny could rely on against the decision setting out the inferences to be drawn from the findings of that inspection?

3. If the previous question falls to be answered in the negative, may the authorities, where the conduct or the shortcomings of the producer organisation make an effective scrutiny impossible, require repayment of the financial assistance received? Does such a measure constitute one of the penalties for which provision may be made pursuant to Article 6 of [Regulation No 4045/89]?

[1] Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18).

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 9 January 2012 — Colloseum Holding AG v Levi Strauss & Co.

(Case C-12/12)

(2012/C 89/20)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Colloseum Holding AG

Defendant: Levi Strauss & Co.

Questions referred

Is Article 15(1) of Regulation (EC) No 40/94 [1] to be interpreted as meaning that:

1. a trade mark which is part of a composite mark and has become distinctive only as a result of the use of the composite mark can be used in such a way as to preserve the rights attached to it if the composite mark alone is used?

2. a trade mark is being used in such a way as to preserve the rights attached to it if it is used only together with another mark, the public sees independent signs in the two marks and, in addition, both marks are registered together as a trade mark?

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Appeal brought on 13 January 2012 by Dashiqiao Sanqiang Refractory Materials Co. Ltd against the judgment of the General Court (First Chamber) delivered on 16 December 2011 in Case T-423/09 Dashqiao Sanqiang Refractory Materials Co. Ltd v Council

(Case C-15/12 P)

(2012/C 89/21)

Language of the case: French

Parties

Appellant: Dashiqiao Sanqiang Refractory Materials Co. Ltd (represented by: J.-F. Bellis and R. Luff, avocats)

Other parties to the proceedings: Council of the European Union, European Commission

Form of order sought

— Declare this appeal admissible and well founded;

— Annul the judgment of the General Court of the European Union of 16 December 2011 in Case T-423/09 *Dashiqiao Sanqiang Refractory Materials Co. Ltd* v *Council* and rule on the dispute which forms its subject-matter;

— Uphold the claims submitted at first instance and, accordingly, annul the antidumping duty imposed on the appellant under Council Regulation (EC) No 826/2009 of 7 September 2009 amending Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China, [1] in so far as the antidumping duty which it sets exceeds that which would be applicable if it had been determined on the basis of the method applied during the initial investigation to take account of the non-refund of the Chinese VAT on export in accordance with Article 2(10) of the basic regulation; [2]

— Order the Council to pay the costs of both instances.

Pleas in law and main arguments

The appellant raises three pleas in law in support of its appeal, challenging the rejection by the General Court of its second plea for annulment alleging infringement by the Council and the Commission of Article 11(9) of the basic antidumping regulation.

By its first plea in law, the appellant submits that the General Court errs in law inasmuch as it refuses to rule on the question of which method of comparison between the export price and the normal value had been applied in the initial investigation and therefore could not validly conclude that there was no change of methodology for the purposes of Article 11(9) of the basic regulation in the review investigation. In reality, there was a radical change in method of comparison between the initial investigation, when the comparison was made on a 'VAT excluded' basis, and the review, when the comparison was made on a 'VAT included' basis. Application of the latter methodology led to a higher dumping margin than that which would have resulted from application of the methodology used in the initial investigation.

By its second plea in law, the appellant argues that the General Court errs in law inasmuch as it considers that the institutions are bound no longer to apply the method of comparison between the export price and the normal value applied in the initial investigation if that leads to an adjustment not authorised under Article 2(10)(b) of the basic regulation, thus confusing the concepts of 'adjustment' and 'method of comparison'.

By its third plea in law, the appellant submits that the General Court errs in law inasmuch as it concludes that the difference in the rate of refund of VAT on export between the period covered by the initial investigation and that covered by the review constitutes a change in circumstances which justifies a change in methodology, whereas it was not proven that that difference rendered the method of comparison used in the initial investigation inapplicable. Since the exception on the ground of a 'change in circumstances' is to be interpreted strictly, the reasoning in paragraphs 62 to 64 of the judgment under appeal clearly does not meet that rigorous requirement.

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[1] OJ 2009 L 240, p. 7.

[2] 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).

Reference for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 16 January 2012 — Efir OOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' Plovdiv

(Case C-19/12)

(2012/C 89/22)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Efir OOD

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' Plovdiv

Questions referred

1. Must Article 62(1) and (2) of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax be interpreted as meaning that the concept of a chargeable event relates to both taxable and exempt transactions?

2. Should Question 1 be answered in the negative: Is a national provision such as that applicable in the main proceedings, under which a chargeable event also occurs at the time of an exempt transaction, permissible?