

## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (Third Chamber) of 15 November 2012 — Zhejiang Aokang Shoes Co. Ltd v Council of the European Union, Wenzhou Taima Shoes Co. Ltd, European Commission, Confédération européenne de l'industrie de la chaussure (CEC), B.A.L.A. di Lanciotti Vittorio & C. Sas**

(Case C-247/10 P) <sup>(1)</sup>

**(Appeal — Dumping — Regulation (EC) No 1472/2006 — Imports of certain footwear with uppers of leather originating in China and Vietnam — Regulation (EC) No 384/96 — Article 2(7)(b) — Market economy treatment — Article 9(6) — Individual treatment — Article 17(3) — Sampling — Article 20(5) — Rights of the defence)**

(2013/C 9/05)

Language of the case: English

**Parties**

**Appellant:** Zhejiang Aokang Shoes Co. Ltd (represented by: M. Sánchez Rydelski, Rechtsanwalt)

**Other parties to the proceedings:** Council of the European Union (represented by: J.-P. Hix and R. Szostak, Agents, and by G. Berrisch, Rechtsanwalt, and N. Chesaites, Barrister), Wenzhou Taima Shoes Co. Ltd, European Commission (represented by: H. van Vliet and T. Scharf, Agents), Confédération européenne de l'industrie de la chaussure (CEC), B.A.L.A. di Lanciotti Vittorio & C. Sas

**Re:**

Appeal lodged against the judgment of the General Court (Eighth Chamber) in Joined Cases T-407/06 and T-408/06 *Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council* [2010] ECR II-747, by which the General Court dismissed an action for the annulment in part of Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (O) 2006 L 275, p. 1).

**Operative part of the judgment***The Court:*

1. Sets aside the judgment of the General Court of the European Union of 4 March 2010 in Joined Cases T-407/06 and T-408/06 *Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council*;
2. Annuls Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam in so far as it concerns *Zhejiang Aokang Shoes Co. Ltd*;
3. Orders the Council of the European Union to pay the costs incurred by *Zhejiang Aokang Shoes Co. Ltd.* both at first instance and in connection with the present proceedings;
4. Orders the European Commission to bear its own costs, both at first instance and in connection with the present proceedings.

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<sup>(1)</sup> OJ C 209, 31.7.2010.

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**Judgment of the Court (Fourth Chamber) of 8 November 2012 — European Commission v Republic of Finland**

(Case C-342/10) <sup>(1)</sup>

**(Failure of a Member State to fulfil obligations — Free movement of capital — Article 63 TFEU — EEA Agreement — Article 40 — Taxation of dividends paid to non-resident pension funds)**

(2013/C 9/06)

Language of the case: Finnish

**Parties**

**Applicant:** European Commission (represented by: R. Lyal and I. Koskinen, acting as Agents)

*Defendant:* Republic of Finland (represented by: J. Heliskoski, acting as Agent)

*Interveners in support of the defendant:* Kingdom of Denmark (represented by: C. Vang, acting as Agent), French Republic (represented by: G. de Bergues and N. Rouam, acting as Agents), Kingdom of the Netherlands (represented by C. Wissels and M. Noort, acting as Agents), Kingdom of Sweden (represented by: A. Falk and S. Johannesson, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by H. Walker, acting as Agent, and G. Facenna, Barrister)

#### Re:

Failure of a Member State to fulfil obligations — Infringement of Art. 63 TFEU and Art. 40 of the EEA Agreement — Tax discrimination — National legislation making dividends paid by resident companies to foreign pension funds subject to a stricter tax regime than that applicable to national pension funds

#### Operative part of the judgment

*The Court:*

1. Declares that, by introducing and maintaining in force a scheme under which dividends paid to foreign pension funds are taxed in a discriminatory manner, the Republic of Finland has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the European Economic Area Agreement of 2 May 1992.
2. Orders the Republic of Finland to bear its own costs and to pay those incurred by the European Commission.
3. Orders the Kingdom of Denmark, the French Republic, the Kingdom of the Netherlands, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.

<sup>(1)</sup> OJ C 234, 28.8.2010.

**Judgment of the Court (First Chamber) of 8 November 2012 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Hildesheim v BLC Baumarkt GmbH & Co. KG**

(Case C-511/10) <sup>(1)</sup>

*(Sixth VAT Directive — Article 17(5), third subparagraph — Right to deduct input tax — Goods and services used for both taxable and exempt transactions — Letting of a building for commercial and residential purposes — Criterion for calculating the deductible proportion of VAT)*

(2013/C 9/07)

Language of the case: German

#### Referring court

Bundesfinanzhof

#### Parties to the main proceedings

*Applicant:* Finanzamt Hildesheim

*Defendant:* BLC Baumarkt GmbH & Co. KG

#### Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the third subparagraph of Article 17(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Right to deduct input tax — Goods and services used for both taxable and exempt transactions — Letting of a building for commercial and residential purposes — Calculation of the deductible proportion on the basis of the turnover attributed to the commercial tenants — National legislation prescribing that the proportion is to be calculated on the basis of the building's floor area attributed to those tenants

#### Operative part of the judgment

*The third subparagraph of Article 17(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as allowing Member States, for the purposes of calculating the proportion of input value added tax deductible for a given operation, such as the construction of a mixed-use building, to give precedence, as the key to allocation, to an allocation key other than that based on turnover appearing in Article 19(1) of that directive, on condition that the method used guarantees a more precise determination of the said deductible proportion.*

<sup>(1)</sup> OJ C 30, 29.1.2011.

**Judgment of the Court (Fifth Chamber) of 8 November 2012 — European Commission v Hellenic Republic**

(Case C-528/10) <sup>(1)</sup>

*(Failure to fulfil obligations — Transport — Development of the Community's railways — Directive 2001/14/EC — Articles 6(2) to (5) and 11 — Railway infrastructure capacity and charges levied for the use of railway infrastructure — Regulatory body — Failure to transpose within the prescribed period)*

(2013/C 9/08)

Language of the case: Greek

#### Parties

*Applicant:* European Commission (represented by: G. Zavvos and H. Støvlbæk, acting as Agents)

*Defendant:* Hellenic Republic (represented by: S. Chala)