Appeal brought on 24 November 2010 by Usha Martin Ltd against the judgment of the General Court (Fifth Chamber) delivered on 9 September 2010 in Case T-119/06: Usha Martin Ltd v Council of the European Union, European Commission

(Case C-552/10 P)

(2011/C 55/31)

Language of the case: English

Parties

Appellant: Usha Martin Ltd (represented by: V. Akritidis, Δικηγόρος, Y. Melin, avocat, E. Petritsi, Δικηγόρος)

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

Form of order sought

The appellant claims that the Court should:

1. Set aside in its entirety the aforementioned Judgement of the General Court (Fifth Chamber) of 9 September 2010 in Case T-119/06;

2. Accept, by giving a final judgement itself, the application:

   (a) for annulment of Commission Decision of 22 December 2005 amending Commission Decision 1999/572/EC accepting undertakings in connection with the anti-dumping proceedings concerning imports of steel wire rope and cables originating in, inter alia, India [1] (the 'Contested Decision') insofar as it related to the Appellant and withdraws a minimum price undertaking previously in force, and

   (b) for annulment of Council Regulation (EC) No 121/2006 amending Council Regulation (EC) No 1858/2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating in, inter alia, India [2] (the 'Contested Regulation') insofar as it relates to the Appellant and gives effect to the Contested Decision withdrawing a minimum price undertaking previously held by the Appellant;

   or, in the alternative, refer the matter back to the General Court.

3. Order the Council and the Commission, in addition to paying their own costs, to bear all costs occasioned to the Appellant in the course of the present proceedings and the proceedings before the General Court.

Pleas in law and main arguments

The appellant submits that the General Court committed errors in law at paragraphs 44 to 56 of the contested Judgement, in particular in finding that the lawfulness of the Commission Decision withdrawing the acceptance of an undertaking cannot, as such, be called into question by reference to the principle of proportionality by erroneously holding that: (i) the proportionality principle does not apply to the decision to withdraw an undertaking because such a decision is equivalent to the imposition of duties *per se*; and (ii) any breach is sufficient in itself to trigger withdrawal without such withdrawal being subject to the proportionality principle test.

The appellant also submits that the General Court erroneously assessed the facts of the case and heavily distorted them when it held that '*it is common ground between the parties that there was no compliance with the undertaking*' insofar as the said statement erroneously implies admittance by the Appellant of a breach of the undertaking, *quod non*, in the sense of Article 8 of the basic anti-dumping Regulation.

The applicant submits that the General Court erroneously concluded that the lawfulness of the withdrawal of the undertaking cannot be called into question by reference to the principle of proportionality either on the basis that any breach is sufficient to trigger withdrawal or by associating the withdrawal measure with a measure of imposing duties. In effect, the General Court erroneously considers that the principle of proportionality never applies at the level of withdrawal of an undertaking and fails to apply the test of 'manifest inappropriateness' of a measure, contrary to the established case law of the European Courts and contrary to the introductory recitals of the contested Judgement in particular paragraphs 44 to 47. The General Court erroneously concludes that withdrawal of an undertaking *per se* cannot be called into question as regards its lawfulness by virtue of the general principle of proportionality. In addition, by erroneously holding that there was common ground between the parties that there was no compliance with the undertaking, implying that there was breach of an undertaking in the sense of Article 8(9) of the basic anti-dumping Regulation, the General Court has manifestly distorted the facts of the case, as argued by the Appellant, and has therefore, erred in law by erroneously appraising the arguments of the Appellant.

[1] OJ L 22, p. 54
[2] OJ L 22, p. 1

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 29 November 2010 — Deli Ostrich NV v Belgische Staat

(Case C-559/10)

(2011/C 55/32)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: Deli Ostrich NV

Defendant: Belgische Staat

Question referred

The Rechtbank van eerste aanleg te Antwerpen asks the Court of Justice to give a ruling on which tariff subheading should be applied, as at the date of the declaration of 22 October 2007, in respect of import duties on meat from camels which, indisputably, are not kept in captivity.

Action brought on 6 December 2010 — European Commission v Republic of Austria

(Case C-568/10)

(2011/C 55/33)

Language of the case: German

Parties

Applicant: European Commission (represented by: Maria Condou-Durande and W. Bogensberger, Agents)

Defendant: Republic of Austria

Form of order sought

— declare that, by introducing rules under which students who are third-country nationals may be granted a work permit only after the labour-market situation in Austria has been examined in order to ensure that the vacancy cannot be filled by someone registered as unemployed, the Republic of Austria has failed to fulfil its obligations under Article 17(1) of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; [1]

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission considers that the provisions of Austrian law systematically deny students who are third-country nationals access to the labour market, in that they are issued a work permit for a vacant position only if a check has been previously carried out as to whether the position cannot be filled by a person registered as unemployed. Consequently, according to the Commission, the number of work permits issued for this category of persons is very low. For that reason, only 10 % of students who are third-country nationals, in comparison with 70 % of Austrian students, have the possibility to finance part of the costs of their studies by means of employment.

In the view of the Republic of Austria, these restrictions are justified. It claims that, because of its free access to university and low university fees, Austria is particularly attractive for third-country nationals. Due to their inadequate knowledge of German and lack of professional qualifications, they generally find employment in unqualified areas and thereby increase yet further the currently high unemployment rate in this sector.

[1] OJ 2004 L 375, p. 12.

Action brought on 9 December 2010 — European Commission v Kingdom of the Netherlands

(Case C-576/10)

(2011/C 55/34)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: M. van Beek and C. Zadra, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— rule that, by failing to comply with the law of the European Union on public contracts, in particular Directive 2004/18/EC, [1] in the context of the award of a public works concession by the municipality of Eindhoven, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 2 and Title III of Directive 2004/18/EC;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The Commission has concluded that the coooperation agreement which the municipality of Eindhoven entered into on 11 June 2007 with the company Hurks Bouw en Vastgoed B.V. is a public works concession within the terms of Article 1(3) of Directive 2004/18/EC.

In view of the fact that the public works concession has an estimated value which is greater than the applicable threshold value, it ought to have been the subject of a call for tenders in accordance with Directive 2004/18/EC, in particular Article 2 and Title III thereof. In addition, the public contracts awarded by Hurks Bouw en Vastgoed B.V. for works to an estimated value in excess of the applicable threshold value must be publicised in accordance with Articles 63 to 65 of Directive 2004/18/EC.

The fact that the municipality of Eindhoven did not apply Directive 2004/18/EC, and in particular Article 2 and Title III thereof, when awarding the public works concession in question to Hurks Bouw en Vastgoed B.V. leads the Commission to the conclusion that there has been a breach of that directive.