

As a result of that amendment, ingots of a diameter greater than 380 mm — which had until then been exempt from duty under the previous legislation — were made liable, with effect from 1 July 2010, for payment of the Common Customs Tariff. On the other hand, ingots of a diameter of 380 mm or less will continue to be exempt from the duty until 31 December 2013.

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

1. Failure to state reasons for the decision, or failure to state adequate reasons. On this point, it is argued that inadequate reasons are given in the contested Regulation for the amendment to the description of the product designated by CN Code 8108 20 00, TARIC 20: it is merely stated that the amendment is necessary 'in order to take account of technical product developments and economic trends on the market'. Despite the requirements under the case-law, that statement does not enable the applicant to know the reasons for the measure so as to be able to defend its own rights; nor does it enable the EU Courts to exercise their powers of review.
2. Breach of the principles of legal certainty and the protection of the applicant's legitimate expectations. According to the applicant, in so far as the contested Regulation concerns the description of the product in question, it fails to comply with the principle of legal certainty, in that the amendments made were not predictable on the basis of previous practice or the information given in the Commission Communication concerning autonomous tariff suspensions and quotas (OJ 1998 C 128, p. 2). That entails also breach of the principle of the protection of the legitimate expectations entertained by the applicant, which had in good faith placed its trust in (i) the previous description and period of validity of the tariff suspension relating to the products in question, as provided under the legislation in force before the amendment and (ii) the criteria identifiable in previous practice and set out in the above Communication as the basis for any amendment of the description or for the premature cancellation of that tariff suspension.
3. Breach of the principle of equal treatment. According to the applicant, the contested Regulation introduces, without putting forward any plausible justification, a difference in treatment as between the importers of raw ingots from the fusion of titanium and titanium alloys, of a diameter of not more than 380 mm (for whom the tariff is suspended) and importers of titanium ingots of a greater diameter.
4. Breach of the principle of proportionality. The applicant maintains on this point that, so far as the product in question is concerned, the contested Regulation is disproportionate in relation to the purported need to 'take account of technical product developments and economic trends on the market', in that (i) there have been no economic or technical developments in the titanium alloy ingots sector which were so significant as to make it necessary for the import rules to undergo the amendment introduced by the

contested Regulation and (ii) the drastic and unexpected nature of those amendments — which were not accompanied by a transitional period — is inconsistent with the aims pursued by that Regulation.

**Action brought on 28 September 2010 — ESGE v OHIM — Kenwood Appliances Luxembourg (KMIX)**

**(Case T-444/10)**

(2010/C 317/78)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* ESGE AG (Bussnang, Switzerland) (represented by: J. Klink, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

*Other party to the proceedings before the Board of Appeal of OHIM:* Kenwood Appliances Luxembourg SA (Luxembourg, Luxembourg)

**Form of order sought**

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 July 2010 in Case R 1249/2009-2;
- Amend the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 July 2010 in Case R 1249/2009-2 so that the Opposition Division's decision of 21 August 2008 in Case B 1252958 is annulled;
- Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs of the proceedings, including the costs incurred in the course of the appeal procedure.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Kenwood Appliances Luxembourg SA

*Community trade mark concerned:* the word mark 'KMIX' for goods in Classes 7 and 11

*Proprietor of the mark or sign cited in the opposition proceedings:* the applicant

*Mark or sign cited in opposition:* the word mark 'BAMIX' for goods in Classes 7 and 40

*Decision of the Opposition Division:* rejection of the opposition

*Decision of the Board of Appeal:* dismissal of the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 <sup>(1)</sup> as there is a likelihood of confusion between the marks at issue.

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

**Action brought on 28 September 2010 — HerkuPlast Kubern v OHIM — How (eco-pack)**

(Case T-445/10)

(2010/C 317/79)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* HerkuPlast Kubern GmbH (Ering, Germany) (represented by: G. Württenberger and R. Kunze, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

*Other party to the proceedings before the Board of Appeal of OHIM:* Heidi A.T. How (Harrow, United Kingdom)

**Form of order sought**

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 27 July 2010 in Case R 1014/2009-4;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Heidi A.T. How.

*Community trade mark concerned:* Figurative mark including the word element 'eco-pack', for goods in Class 16.

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant.

*Mark or sign cited in opposition:* German word mark and international registration 'ECOPAK' for goods in Class 20.

*Decision of the Opposition Division:* Opposition rejected.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 <sup>(1)</sup> as there is a likelihood of confusion between the marks at issue, and infringement of Articles 75 and 76 of Regulation (EC) No 207/2009 in so far as the Board of Appeal dismissed altogether the existence of any likelihood of confusion, its reasoning is, at various points, inherently contradictory and it inappropriately rejected as irrelevant arguments submitted by the applicant that are in fact relevant.

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

**Appeal brought on 24 September 2010 by Luigi Marcuccio against the order of the Civil Service Tribunal delivered on 9 July 2010 in Case F-91/09, Marcuccio v Commission**

(Case T-450/10 P)

(2010/C 317/80)

*Language of the case:* Italian

**Parties**

*Appellant:* Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

*Other party to the proceedings:* European Commission

**Form of order sought by the appellant**

— In any event, set aside in its entirety and without exception the order under appeal.

— Declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible.

— Allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance.

— Order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings.

— In the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.