— accordingly reduce, in the exercise of its unlimited jurisdiction, the amount of the Decision's fine imposed on the Appellants by an amount corresponding to 37 % of the fine;

— set aside the Judgment of the General Court of 27 September 2012 in Case T-82/08, Guardian Industries Corp. and Guardian Europe Sàrl v Commission, in so far as the General Court held the Commission's letter of 10 February 2012 to be admissible;

— accordingly, declare the Commission's letter to be inadmissible and strike it from the record;

— further reduce, in the exercise of its unlimited jurisdiction, the Decision's fine imposed on the Appellants by an amount not inferior to 25 % of the original fine in order to remedy the General Court's failure to grant effective judicial review within a reasonable time under Article 47 of the Charter; and

— order the Commission to pay the Appellants' costs relating to this Appeal and the procedure before the General Court.

Pleas in law and main arguments

The appellants submit that the contested judgment should be set aside on the following grounds:

First, the Judgment breaches the principle of equal treatment by upholding the Decision's exclusion of captive sales when calculating the fines imposed on the Decision's other addressees and failing to rectify the resulting discrimination against Guardian. This ignored a consistent body of case-law requiring that captive sales be treated the same as external sales when calculating fines, lest this result in an unfair advantage to integrated producers. The General Court's reasoning — that the Decision related only to 'sales of flat glass to independent customers' — cannot justify the discrimination against Guardian.

Second, the Judgment breaches the General Court's rules on time limits and fundamental principles of rights of the defence and equality of arms by declaring admissible the Commission's letter of 10 February 2012. In that letter, sent one working day before the hearing, the Commission purported to introduce into the record new information that was not already before the Court, even though the Commission had had many earlier opportunities to do so.

Third, more than three years and five months passed between the closure of the written procedure and the General Court's decision to open the oral procedure. This delay infringed the Appellants' right under Article 47 of the Charter to an effective remedy and hearing within a reasonable time. It exceeds what this Court has considered unreasonable in the past, and cannot be explained by any factors such as complexity or the volume of evidence before the General Court. On the contrary, this was a straightforward case with Guardian the only company to lodge an application to annul the Decision. The evidentiary record was limited to a handful of short documents and statements, all in the language of the procedure. Guardian did all it could to simplify and speed up the General Court's handling of its appeal, including by foregoing a second round of written pleadings despite the importance of its appeal and — given the infringement's extremely short duration — the unprecedented fine imposed by the Commission.

Appeal brought on 11 December 2012 by Kuwait Petroleum Corp., Kuwait Petroleum International Ltd, Kuwait Petroleum (Nederland) BV against the judgment of the General Court (Sixth Chamber) delivered on 27 September 2012 in Case T-370/06: Kuwait Petroleum Corp., Kuwait Petroleum International Ltd, Kuwait Petroleum (Nederland) BV v European Commission

(Case C-581/12 P)

(2013/C 55/06)

Language of the case: English

Parties

Appellants: Kuwait Petroleum Corp., Kuwait Petroleum International Ltd, Kuwait Petroleum (Nederland) BV (represented by: D.W. Hull, Solicitor, G. Berrisch, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the Contested Judgment;

— to either (i) annul Article 2(i) of the Contested Decision [1] insofar as it imposes a fine on the Appellants; (ii) reduce the amount of the fine imposed on the Appellants, or (iii) refer the case back to the General Court; and

— order the Commission to pay the costs of the appeal and of the proceedings before the General Court.

Pleas in law and main arguments

By a judgment dated 27 September 2012 (the 'Contested Judgment'), the General Court upheld a Commission decision adopted on 13 September 2006 imposing on Kuwait Petroleum Corporation ('KPC'), Kuwait Petroleum International

Limited ('KPI'), and Kuwait Petroleum (Nederland) BV ('KPN') (KPC, KPI, and KPN will be referred to collectively as the 'Appellants'), jointly and severally, a fine of EUR 16 632 million for infringing Article 81 EC by fixing prices in the Dutch bitumen market. Each of the Appellants hereby seeks either the annulment of the Contested Judgment insofar as it imposes a fine, reduction of the fine, or referral back to the General Court on the following grounds:

1. The Contested Judgment should be annulled insofar as it imposes a fine or, in the alternative, referred back to the General Court, because the Contested Judgment is vitiated by an error of law in that the General Court misinterpreted the last paragraph of Point 23(b) of the 2002 Leniency Notice, which provides that, when a leniency applicant 'provides evidence relating to facts previously unknown to the Commission which have a direct bearing on the gravity or duration of the suspected cartel,' the Commission may not take those facts into account when setting the fine on the leniency applicant. The General Court ruled that a fact is 'unknown' to the Commission only if the Commission has no knowledge whatsoever of a fact. Thus, even if the Commission only has a very general idea about the existence of a cartel and no direct evidence that will allow it to prove the facts relating to the cartel, a leniency applicant that provides such evidence will not be able to benefit from the immunity provided for in the last paragraph of Point 23(b). The Appellants submit that this interpretation of this paragraph is too narrow and wrong as a matter of law.

2. The Contested Judgment is vitiated by an error of law in that the General Court failed to properly consider the evidence put forward by the Appellants before concluding that the value of the evidence submitted to the Commission by KPN in the context of its leniency application was diluted by intervening submissions of other parties. The General Court could not have arrived at this conclusion without examining the evidence submitted by KPN and comparing it to the evidence submitted by the other parties, which it did not even attempt to do.

([1]) Decision C(2006) 4090 final relationg to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands), OJ (2007) L196/40

Request for a preliminary ruling from the Riigikohus (Estonia) lodged on 12 December 2012 — Sintax Trading OÜ v Maksu- ja Tolliameti Põhja maksu- ja tollikeskus

(Case C-583/12)

(2013/C 55/07)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: Sintax Trading OÜ

Defendant: Maksu- ja Tolliameti Põhja maksu- ja tollikeskus

Third party: OÜ Acerra

Questions referred

1. May the 'proceedings … to determine whether an intellectual property right has been infringed' referred to in Article 13(1) of Regulation No 1383/2003 ([1]) also be conducted within the customs department or must 'the authority competent to decide on the case' dealt with in Chapter III of the regulation be separate from the customs?

2. Recital 2 in the preamble to Regulation No 1383/2003 mentions as one of the objectives of the regulation the protection of consumers, and according to recital 3 in the preamble a procedure should be set up to enable the customs authorities to enforce as effectively as possible the prohibition of the introduction into the Community customs territory of goods infringing an intellectual property right, without impeding the freedom of legitimate trade in accordance with recital 2 in the preamble to the regulation and recital 1 in the preamble to implementing regulation No 1891/2004. ([2]) Is it compatible with those objectives if the measures laid down in Article 17 of Regulation No 1383/2003 can be applied only if the right-holder initiates the procedure mentioned in Article 13(1) of the regulation for determination of an infringement of an intellectual property right, or must it also be possible, for the effective pursuit of those objectives, for the customs authorities to initiate the corresponding procedure?

([1]) Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ 2003 L 196, p. 7).

([2]) Commission Regulation (EC) No 1891/2004 of 21 October 2004 laying down provisions for the implementation of Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ 2004 L 328, p. 16).