Question referred

Must Article 5(1) of Regulation No 44/2001 [1] be interpreted as meaning that a claimant who alleges that he has suffered damage by an anticompetitive act of his contractual partner domiciled in another Contracting State, which is to be regarded in German law as a tortious act, is raising claims against that person based on contract, even in so far as he bases his action on claims relating to tort?

[1] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2001 L 12, p. 1.

Appeal brought on 20 December 2012 by Gem-Year Industrial Co. Ltd, Jinn-Well Auto-Parts (Zhejiang) Co. Ltd against the judgment of the General Court (Seventh Chamber) delivered on 10 October 2012 in Case T-172/09: Gem-Year Industrial Co. Ltd v Council of the European Union

(Case C-602/12 P)

(2013/C 101/12)

Language of the case: English

Parties

Appellants: Gem-Year Industrial Co. Ltd, Jinn-Well Auto-Parts (Zhejiang) Co. Ltd (represented by: Y. Melin, V. Akritidis, avocats)

Other parties to the proceedings: Council of the European Union, European Commission, European Industrial Fasteners Institute AISBL (EIFI)

Form of order sought

The appellants claim that the Court should:

1. Set aside in its entirety the judgment of the seventh chamber of the General Court of 10 October 2012 in Case T-172/09, Gem-Year and Jinn-Well Auto-Parts (Zhejiang) v Council.

2. Accept, by giving a final judgment itself,

   — the third plea in law of the application, concerning the absence of injury suffered by the Community industry, in breach of Article 3 of the basic Regulation [1]; and

   — the seventh plea in law concerning the illegal countervailing of a subsidy through the rejection of market economy treatment, in breach of Regulation No 2026/97 [2] and Article 2(7)(c) of the basic Regulation.

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

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

Pleas in law and main arguments

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

Firstly, in view of the facts before the General Court, it is clear that there is no evidence that the Union fasteners industry was suffering injury caused by dumped imports from China, in the sense of Article 3 (2), (5) and (6) of the basic anti-dumping Regulation [3]. This first ground is divided into the following two parts:

(i) The General Court distorted the clear sense of the evidence before it when it considered that the profit margin achieved by the Union fasteners industry during the period under consideration (from 1 January 2003 until 30 September 2007) was negatively affected, in a material way, by dumped imports from China; whereas the evidence in the file shows that profits fluctuated during that period, and were at their second highest during the last year (4.4 %), which is also when dumped imports from China were the highest, and were close to their maximum historical level of 4.7 % (in 2004), which is just below the target profit (5 %) used by the Commission to calculate the underselling margin.

(ii) The evidence before the Court depicts a growing and more prosperous Union industry, notably during the investigation period. It does not depict a case of material injury but rather a case of a hypothetical missed opportunity to take full advantage of the growing domestic EU market. By deciding on this basis that the EU Institutions were right to consider that there was material injury caused by dumped imports, the General Court erred in the legal categorisation of the facts it had established, so that Article 3 (2), (5) and (6) of the basic Regulation was not applied properly.

Secondly, the General Court erred in law when it considered that a claim for market economy treatment under Article 2(7)(c) of the basic Regulation could be rejected on the basis of a finding that an upstream industry was subsidised. This amounts to the countervailing of these subsidies otherwise than following an investigation initiated under Council Regulation no 2026/97 (the then applicable basic anti-subsidy Regulation). This is an illegal interpretation of Article 2(7)(c) of the basic Regulation, and a breach of Council Regulation No 2026/97.

(1) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community
OJ L 56, p. 1

(2) Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community
OJ L 288, p. 1

(3) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community
OJ L 343, p. 51

Request for a preliminary ruling from the Verwaltungsgericht Hannover (Germany) lodged on 21 December 2012 — Pia Braun v Region Hannover

(Case C-603/12)

(2013/C 101/13)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: Pia Braun

Defendant: Region Hannover

Question referred

Does the right to freedom of movement and freedom of residence conferred on a Union citizen by Articles 20 and 21 TFEU preclude — in a case such as the present one, in which a student who still lives with her parents in a Member State neighbouring Germany and whose parents commute to Germany for work has applied for an education grant for studies in a third Member State — a regulatory system in national law under which German nationals with a permanent residence outside the Federal Republic of Germany may be awarded an education grant to attend an education establishment situated in a Member State of the European Union only if special circumstances of the individual case justify the grant and, pursuant to which, the approval of the grant is left, as to the remainder, to the discretion of the competent national authorities?

Request for a preliminary ruling from the Commissione tributaria provinciale di Genova (Italy) lodged on 24 December 2012 — Dresser Rand SA v Agenzia delle Entrate — Direzione Provinciale Ufficio Controlli

(Case C-606/12)

(2013/C 101/14)

Language of the case: Italian

Requesting court

Commissione tributaria provinciale di Genova

Parties to the main proceedings

Applicant: Dresser Rand SA

Defendant: Agenzia delle Entrate — Direzione Provinciale Ufficio Controlli

Questions referred

1. Does the transfer of goods to Italy from another Member State for the purpose of verifying whether those goods may be adapted to other goods acquired within Italy, without anything being done to the goods brought into Italy, come within the notion of 'work on the goods' referred to in Article 17(2)(f) of Directive 2006/112/EC (1) and, in this connection, is it appropriate to assess the nature of the transactions which took place between F.B. ITMI and DR-IT?

2. Is Article 17(2)(f) of Directive 2006/112/EC to be interpreted as precluding the Member States from providing in their legislation or practices that the dispatch or transport of goods is not to be treated as a transfer to another Member State except on condition that the goods are returned to the Member State from which they were initially dispatched or transported?

(1) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Commissione tributaria provinciale di Genova (Italy) lodged on 24 December 2012 — Dresser Rand SA v Agenzia delle Entrate — Direzione Provinciale Ufficio Controlli

(Case C-607/12)

(2013/C 101/15)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Genova