

envisaged cessation of fishing would cause him harm because he would lose the opportunity to fish against his whole quota.

Second, the appellant considers that the General Court infringed Article 7(1) of Regulation (EC) No 2371/2002 ⁽²⁾ and made a manifest error of assessment. Under Article 7 of that Regulation, only a serious threat to the conservation of marine resources would allow the Commission to adopt emergency measures. However, the Commission does not prove that there was fishing outside quotas during the 2008 bluefin tuna fishing season.

Third, the adoption of Regulation (EC) No 530/2008 restricted the appellant's activity, thereby infringing Article 15(1) of the Charter of Fundamental Rights which provides that everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

Fourth, the adoption of Regulation (EC) No 530/2008, which prohibits bluefin tuna fishing from 16 June 2008, infringes the principle of legal certainty, whereas individuals should be entitled to work under clear and fixed rules.

Fifth, the adoption of Regulation (EC) No 530/2008 infringes the principle of the protection of legitimate expectations. According to the appellant, persons have the right to be reasonably sure that the undertakings they have been given will be respected. Bluefin tuna fishing was initially authorised in France until 30 June 2008, meaning that the appellant had a legitimate expectation that he would be able to carry on fishing until that date.

Finally, the adoption of Regulation (EC) No 530/2008 infringed the appellant's right of property which is however protected by Article 1 of the First Protocol to the ECHR. Since bluefin tuna coming from fishing is 'property' within the meaning of that Article, the envisaged cessation of fishing would cause the appellant serious economic loss and deprive him of a potential debt.

⁽¹⁾ Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and in the Mediterranean Sea (OJ 2008 L 155, p. 9).

⁽²⁾ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ 2002 L 358, p. 59).

Appeal brought on 21 December 2012 by Ballast Nedam NV against the judgment delivered by the General Court (Sixth Chamber) on 27 September 2012 in Case T-361/06 Ballast Nedam v Commission

(Case C-612/12 P)

(2013/C 71/16)

Language of the case: Dutch

Parties

Appellant: Ballast Nedam NV (represented by: A.R. Bosman and E. Oude Elferink, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

- Set aside in full or in part the decision of the General Court as set out in the operative part of the judgment under appeal.
- in the event that the appeal is allowed:
 - uphold in full or in part the form of order sought by Ballast Nedam at first instance;
 - order the Commission to pay the costs of the proceedings at both instances.

Pleas in law and main arguments

Ballast Nedam puts forward two pleas in support of its appeal.

By its **first plea**, Ballast Nedam submits that the General Court infringed Article 27(1) of Regulation 1/2003 ⁽¹⁾ and the rights of the defence by failing to annul (in part) the Commission's decision ⁽²⁾ in so far as that decision was directed at Ballast Nedam. The General Court failed to take account of the fact that, in the present case, the statement of objections of 18 October 2004 did not satisfy the relevant requirements of EU law.

In support of that submission, Ballast Nedam claims in the first place that, in the judgment under appeal, the General Court on the one hand recognised that the statement of objections was unclear on an essential point but did not on the other hand conclude from this that the rights of the defence had not been guaranteed by the Commission.

In the second place, Ballast Nedam directs a complaint against the General Court's assessment that, in the statement of objections, the Commission adduced sufficient material to make it

possible to ascertain which facts and circumstances it used in support of its finding of an infringement and stated unequivocally which legal persons could except to be fined. In so far as that assessment concerns Ballast Nedam, it is based on a misinterpretation of the case-law of the Court of Justice on the requirements that the content of a statement of objections must satisfy. It is relevant in this respect that the subsidiary which committed the infringement imputed to Ballast Nedam is not identified in the statement of objections.

In the third place, Ballast Nedam challenges the General Court's assessment that on the basis of the statement of objections it could not have been unaware that, as parent company of Ballast Nedam Grond en Wegen B.V. ('BN Grond en Wegen'), it would be the addressee of the final Commission decision. In so doing, the General Court *inter alia* misconstrued the scope of the case-law of the Court of Justice which provides that a statement of objections must indicate in what capacity the allegations are being made against the undertaking.

In the fourth place, in assessing whether the Commission had respected the rights of the defence, the General Court wrongly took account of an alleged reaction by Ballast Nedam to the content of the statement of objections.

By its **second plea**, Ballast Nedam claims that the General Court infringed EU law by misapplying fundamental principles applicable in the context of imputing cartel infringements to parent companies. In the submission of Ballast Nedam, the General Court erred in law in finding that the Commission was entitled to hold Ballast Nedam liable for an infringement of Article 81 EC, even though that infringement has not been established by the Commission.

In support of its second plea, Ballast Nedam refers in the first place to the fact that in the judgment of 24 March 2011 in Case T-382/06 *Tomkins v Commission* (2011) ECR II-1157) it was held that the liability of a parent company cannot exceed that of the subsidiary to which the infringement is imputed. This means that an infringement cannot be imputed to a parent company if and in so far as it has not been established by the Commission.

In that connection, Ballast Nedam submits that the Commission's margin of assessment in deciding which entities within an undertaking are to be held liable for an infringement is not so extensive that a parent company can be held liable for an infringement which has not been established.

In the second place, Ballast Nedam takes issue with the fact that the General Court took into account that Ballast Nedam did not rebut the presumption that it exercised decisive influence over

BN Grond en Wegen's conduct on the market. That circumstance is closely linked to the infringement of the rights of the defence and is moreover irrelevant from a legal point of view.

(¹) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

(²) Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 (EC) (Case COMP/F/38.456 — Bitumen (Netherlands)).

Request for a preliminary ruling from the Cour de cassation (France) lodged on 2 January 2013 — Directeur général des douanes et droits indirects, Chef de l'agence de la direction nationale du renseignement et des enquêtes douanières v Humeau Beaupreau SAS

(Case C-2/13)

(2013/C 71/17)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellants: Directeur général des douanes et droits indirects, Chef de l'agence de la direction nationale du renseignement et des enquêtes douanières

Respondent: Humeau Beaupreau SAS

Question referred

In the process of manufacturing footwear, must the operations of shaping the counter of an upper and of roughing of that upper and an outer sole, prior to their assembly, be classified as 'assembly operations' or 'working operations for completion into the finished state', within the meaning of point VII of the Explanatory Notes to General Rule 2(a) on the Interpretation of the Harmonised System?