

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

*Defendant:* European Commission and the European Union, represented in the present case by the European Commission

### Form of order sought

- Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 June 2013 in Case R 1308/2012-5 concerning Community trade mark registration 010355527, Word: SUBSCRIBE and the preceding decision of the Trade Mark Department of OHIM of 22 May 2012, in so far as protection was denied to the mark;
- Order OHIM to pay the costs.

### Pleas in law and main arguments

*Community trade mark concerned:* Word mark 'SUBSCRIBE' for goods and services in Classes 9, 16 and 42 — Community trade mark registration No 10 355 527

*Decision of the Examiner:* Rejection of the application

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

*Pleas in law:*

- Infringement of Article 7(1)(b) and (2) of Regulation No 207/2009;
- Infringement of Article 83 of Regulation No 207/2009 in conjunction with the principle of equal treatment and Articles 6 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 in the version of Protocol No 11, which entered into force on 1 November 1998;
- Infringement of Article 56 of the Treaty on the Functioning of the European Union.

### Action brought on 5 August 2013 — T & L Sugars and Sidul Açúcares v Commission

(Case T-411/13)

(2013/C 274/42)

*Language of the case:* English

### Parties

*Applicants:* T & L Sugars Ltd (London, United Kingdom); and Sidul Açúcares, Unipessoal Lda (Santa Iria de Azóia, Portugal) (represented by: D. Waelbroeck, lawyer, and D. Slater, Solicitor)

### Form of order sought

The applicants claim that the Court should:

- Annul a number of Commission regulations putting cane sugar refiners at a competitive disadvantage, namely (i) Regulations 505/2013 <sup>(1)</sup> and 629/2013 <sup>(2)</sup> laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2012/2013; (ii) Regulations 574/2013 <sup>(3)</sup> and 677/2013 <sup>(4)</sup> fixing an allocation coefficient for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy; and (iii) Regulation 460/2013 <sup>(5)</sup> on the minimum customs duty to be fixed in response to the third partial invitation to tender and Regulation 542/2013 <sup>(6)</sup> on the minimum customs duty to be fixed in response to the fourth partial invitation to tender; and declare admissible and well founded the plea of illegality under Article 277 TFEU against Regulation 36/2013 <sup>(7)</sup> opening a standing invitation to tender for the 2012/2013 marketing year for imports of sugar of CN codes 1701 14 10 and 1701 99 10 at a reduced customs duty;
- In the alternative, declare the plea of illegality under Article 277 TFEU against Regulations 505/2013 and 629/2013 admissible and well founded;
- Declare Article 186(a) of Regulation 1234/2007 <sup>(8)</sup> (the Recast Regulation) illegal under Article 277 TFEU to the extent these do not correctly transpose the relevant provisions of Regulation 318/2006 <sup>(9)</sup>;
- Condemn the EU as represented by the Commission to repair any damage suffered by the applicants as a result of the Commission's breach of its legal obligations and to set the amount of this compensation for the damage suffered by the Applicants during the period 1st April 2013 to 30th June 2013 at 42 261 036 EUR plus any ongoing losses suffered by the applicants after that date or any other amount reflecting the damage suffered or to be suffered by the applicants as further established by them in the course of this procedure especially to take due account of future damage, all the aforementioned amounts to be augmented by interest from the date of judgment by your Court until actual payment; and
- Order the Commission to pay all costs and expenses in these proceedings.

### Pleas in law and main arguments

In support of the action, the applicants rely on eight pleas in law.

1. First plea in law, alleging a violation of the principle of non-discrimination, as on the one hand, Regulations 505/2013 and 629/2013 provide for fixed, generally applicable 177 EUR and 148 EUR per tonne Surplus Levy — i.e. less than half to the usual 500 EUR per tonne — applying to a specific quantities (a total of 300 000 tonnes) of sugar, divided equally only between beet producer applicants. On the other hand, Regulation 36/2013 provides for an unknown, unpredictable customs duty, applicable only to auction winners (who can be cane refiners, beet processors, or any other third party) and for an unspecified total amount.
2. Second plea in law, alleging a violation of the Recast Regulation/absence of an appropriate legal basis, since as regards Regulations 505/2013 and 629/2013, the Commission has no power whatsoever to increase quotas and is on the contrary required to impose high, dissuasive levies on the release of out-of-quota sugar on the EU market. As regards the tax auctions, the Commission clearly has no mandate or power to adopt this kind of measure, which was never envisaged in the basic legislation.
3. Third plea in law, alleging a violation of the principle of legal certainty, as the Commission created a system whereby customs duties are not predictable and fixed through the application of consistent, objective criteria, but are rather determined by subjective willingness to pay (moreover of actors that are subject to very different pressures and incentives in this regard) with no actual link with the actual products being imported.
4. Fourth plea in law, alleging a violation of the principle of proportionality, in so far as the Commission could easily have adopted less restrictive measures to tackle the supply shortage, which would have not been taken exclusively to the detriment of importing refiners.
5. Fifth plea in law, alleging a violation of legitimate expectations, as the applicants were legitimately led to expect that the Commission would use the tools available in Regulation 1234/2007 to restore the availability of supply of raw cane sugar for refining. The applicants were also legitimately led to expect that the Commission would preserve the balance between importing refiners and domestic sugar producers.
6. Sixth plea in law, alleging a violation of the principle of diligence, care and good administration, since in managing the sugar market, the Commission repeatedly committed fundamental errors and self-contradictions that demonstrate at best a lack of understanding about basic market mech-

anisms. For instance, its balance sheet — which constitutes one of the main tools for the content and timing of market intervention — was grossly incorrect and based on a flawed methodology. Moreover, the actions taken by the Commission were manifestly inappropriate in light of the supply shortage.

7. Seventh plea in law, alleging a violation of Article 39 TFEU since the Commission failed to achieve two of the objectives set out in this Treaty provision.
8. Eighth plea in law, alleging a violation of Council Regulation 1006/2011 <sup>(10)</sup>. The duties applied to white sugar are indeed only fractionally higher than for raw sugar, the difference being as low as 20 EUR per tonne. This contrasts sharply with the 80 EUR difference between the standard import duty for refined sugar (419 EUR) and raw sugar for refining (339 EUR) which are set out in Council Regulation 1006/2011.

In addition, in support of their request for damages, the applicants allege that the Commission exceeded gravely and manifestly the margin of discretion conferred to it by Regulation 1234/2007, through its passivity and inappropriateness of action. Furthermore, the Commission failure to adopt adequate measures constitutes a manifest infringement of a rule of law ‘intended to confer rights on individuals’. The Commission violated in particular the EU general principles of legal certainty, non-discrimination, proportionality, legitimate expectations and the duty of diligence, care and good administration.

<sup>(1)</sup> Commission Implementing Regulation (EU) No 505/2013 of 31 May 2013 laying down further exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during the 2012/2013 marketing year (OJ 2013 L 147, p. 3)

<sup>(2)</sup> Commission Implementing Regulation (EU) No 629/2013 of 28 June 2013 laying down further exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during the 2012/13 marketing year (OJ 2013 L 179, p. 55)

<sup>(3)</sup> Commission Implementing Regulation (EU) No 574/2013 of 19 June 2013 fixing an allocation coefficient for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy during the 2012/2013 marketing year (OJ 2013 L 168, p. 29)

<sup>(4)</sup> Commission Implementing Regulation (EU) No 677/2013 of 16 July 2013 fixing an allocation coefficient for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy during the 2012/2013 marketing year (OJ 2013 L 194, p. 5)

<sup>(5)</sup> Commission Implementing Regulation (EU) No 460/2013 of 16 May 2013 on the minimum customs duty for sugar to be fixed in response to the third partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 36/2013 (OJ 2013 L 133, p. 20)

- (<sup>6</sup>) Commission Implementing Regulation (EU) No 542/2013 of 13 June 2013 on the minimum customs duty for sugar to be fixed in response to the fourth partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 36/2013 (OJ 2013 L 162, p. 7)
- (<sup>7</sup>) Commission Implementing Regulation (EU) No 36/2013 of 18 January 2013 opening a standing invitation to tender for the 2012/2013 marketing year for imports of sugar of CN codes 1701 14 10 and 1701 99 10 at a reduced customs duty (OJ 2013 L 16, p. 7)
- (<sup>8</sup>) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1)
- (<sup>9</sup>) Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector (OJ 2006 L 58, p. 1)
- (<sup>10</sup>) Commission Regulation (EU) No 1006/2011 of 27 September 2011 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2011 L 282, p. 1)

**Action brought on 9 August 2013 — Chin Haur Indonesia v Council**

(Case T-412/13)

(2013/C 274/43)

*Language of the case: English*

**Parties**

*Applicant:* Chin Haur Indonesia, PT (Tangerang, Indonesia) (represented by: T. Müller-Ibold and F.-C. Laprévotte, lawyers)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- Partially annul Articles 1(1) and 1(3) of the Council Implementing Regulation (EU) No 501/2013 (<sup>1</sup>) as far as they extend the anti-dumping duty to the applicant and deny the applicant's exemption request;
- Order the Council to pay the applicant's legal and other costs and expenses in relation to this matter; and
- Take any other measures that the Court considers appropriate.

**Pleas in law and main arguments**

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging that the Commission and the Council failed to demonstrate circumvention with respect to Indonesian imports and thus committed a manifest error of assessment, as:
  - The conclusion that a change in the pattern of trade had occurred is manifestly erroneous;
  - The Council wrongly asserted that Indonesian producers, in particular the applicant, were transshipping bicycles from China to EU.
2. Second plea in law, alleging that the Council wrongly found that the applicant was non-cooperative and that such non-cooperation justified a denial of its exemption, as:
  - The applicant cooperated to the best of its ability;
  - The finding of non-cooperation is unwarranted;
  - The Council's finding of non-cooperation constitutes a failure to state reasons;
  - The Council failed to take into account additional information provided by the applicant.
3. Third plea in law, alleging that the applicant's due process rights have been violated in the investigation, as:
  - The Commission did not abide by its obligation to consider impartially the evidence before it;
  - The Commission's investigation contained procedural irregularities.
4. Fourth plea in law, alleging that the denial to grant the applicant an exemption constitutes a violation of the principle of equal treatment, as:
  - The Commission discriminated against the applicant by granting an exemption to similarly-placed exporters and by refusing the applicant's exemption request;
  - The applicant was wrongly granted the same treatment as completely non-cooperating producers.
5. Fifth plea in law, alleging that the Implementing Regulation's findings on injury and dumping are inconsistent with the basic anti-dumping regulation, as:
  - The finding of an undermining of the remedial effect of the anti-dumping duty is erroneous.