## Action brought on 4 February 2014 — Red Bull v OHIM — Automobili Lamborghini (Representation of two bulls)

**(Case T-73/14)**

(2014/C 102/59)

*Language of the case: German*

### Parties

*Applicant:* Red Bull GmbH (Fuschl am See, Austria) (represented by: V. von Bomhard, J. Fuhrmann and A. Renck, lawyers, and I. Fowler, solicitor)

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

*Other party to the proceedings before the Board of Appeal:* Automobili Lamborghini SpA (Sant' Agata Bolognese, Italy)

### Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 November 2013 in Case R 1263/2012-1;

— order the defendant and, in the event of the formal intervention, also the other party before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant.

### Pleas in law and main arguments

*Registered Community trade mark in respect of which an application for revocation has been made:* Figurative mark representing two bulls for goods in Class 12 (Community trade mark No 3 629 342)

*Proprietor of the Community trade mark:* Applicant

*Party applying for revocation of the Community trade mark:* Automobili Lamborghini SpA

*Decision of the Cancellation Division:* The application for revocation was granted

*Decision of the Board of Appeal:* Appeal dismissed

*Pleas in law:* Infringement of Article 51(1)(a) of Regulation No 207/2009

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## Action brought on 4 February 2014 — PT Musim Mas v Council

**(Case T-80/14)**

(2014/C 102/60)

*Language of the case: English*

### Parties

*Applicant:* PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) (Medan, Indonesia) (represented by: J. García-Gallardo Gil-Fournier, lawyer, C. Humpe, Solicitor and A. Verdegay Mena, lawyer)

*Defendant:* Council of the European Union

### Form of order sought

The applicant claims that the Court should:

— Annul Articles 1 and 2 of Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), in so far as it relates to the applicant; and

— Order the defendant to pay the applicant's costs for this action.

**Pleas in law and main arguments**

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

1. First plea in law, alleging breaches of (i) Articles 1(1), 7(2) and 9(3) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against imports from countries not members of the European Community (OJ 2009 L 343, p. 51) by the Council of the European Union, as well as, a breach of (ii) the principles of good administration, of proportionality and of non-discrimination by the Council of the European Union when ordering the definitive collection of the provisional anti-dumping measures imposed on the applicant, as:

   — On the basis of Article 1(1) of Council Regulation (EC) No 1225/2009, no anti-dumping measures can be imposed on exporters, such as the applicant, whose products are found not to be dumped. There is therefore no legal basis for imposing provisional anti-dumping duties on the applicant let alone for ordering the collection of such duties;

   — The Council breached Article 7(2) of Council Regulation (EC) No 1225/2009 by imposing and definitively collecting a provisional dumping duty of 2,8% on the applicant in excess of its correct provisional margin of dumping;

   — Article 9(3) of Council Regulation (EC) No 1225/2009 prohibits the imposition of provisional duties by the Commission where the provisional dumping of margin is less than 2%. The Council breached Article 9(3) of Council Regulation (EC) No 1225/2009 by ordering the definitive collection of provisional duties imposed on the applicant;

   — In light of the errors made by the European Commission when calculating the applicant's provisional margin of dumping, the Council should have concluded that the Commission failed to examine carefully and impartially all the relevant aspects of the case. Such failure amounts to a breach of the principle of good administration;

   — The Council's actions in definitively collecting the wrongly imposed provisional duties from the applicant must be considered as disproportionate to the objective of Council Regulation (EC) No 1225/2009 and, consequently, a breach of the principle of proportionality;

   — By requiring the applicant's wrongly calculated provisional dumping duties to be definitely collected and not requiring P.T. Cilandra Perkasa to pay provisional dumping duties, the Council has discriminated between two undertakings whose situations are comparable. Accordingly, the applicant submits that the Council is in breach of the principle of non-discrimination.

2. Second plea in law, alleging breaches of Articles 20(2), 2(5), 2(8) and 2(l0)(i) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against imports from countries not members of the European Community, as the Council of the European Union:

   — Failed to disclose the essential facts in connection with the alleged existence of a 'particular market situation' against Article 20(2) of Council Regulation (EC) No 1225/2009;

   — Adjusted the applicant's costs of production due to the alleged existence of a 'particular market situation' within the framework of Article 2(5) of Council Regulation (EC) No 1225/2009;

   — Failed to consider the applicant's use of Palm Fatty Distillates as a raw material;

   — Failed to consider the double counting premium as part of the applicant's export price and breaching Article 2(8) of Council Regulation (EC) No 1225/2009; and

   — Failed to consider the applicant and its related companies as a single economic entity violating Article 2(10)(i) of Council Regulation (EC) No 1225/2009.