

- (b) What criterion or what perspectives should the national court apply, when assessing its jurisdiction on the basis of Article 5(3) of Regulation (EC) No 44/2001, in order to determine where, in the present case, the financial damage — whether it be direct or derived financial damage — occurred or is deemed to have occurred?
3. If the answer to Question 1 is in the affirmative: must Regulation (EC) No 44/2001 be interpreted as meaning that the national court which is required to determine whether it has jurisdiction pursuant to that regulation in the present case is obliged, when making its determination, to proceed on the basis of the relevant submissions of the claimant or applicant in that regard, or is it obliged also to take into account the arguments put forward by the defendant to refute those submissions?

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<sup>(1)</sup> Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

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**Appeal brought on 22 January 2015 by the Kingdom of Spain against the judgment of the General Court (Eighth Chamber) delivered on 13 November 2014 in Case T-481/11 Spain v Commission**

**(Case C-26/15 P)**

(2015/C 089/14)

*Language of the case: Spanish*

**Parties**

*Appellant:* Kingdom of Spain (represented by: A. Rubio González, acting as Agent)

*Other party to the proceedings:* European Commission

**Form of order sought**

The appellant claims that the Court should:

- declare that the present appeal is well founded and set aside the judgment of the General Court of 13 November 2014 in Case T-481/11 *Spain v Commission*;
- annul the fifth indent of point D of section VI of Part 2 of Annex I to Commission Implementing Regulation (EU) No 543/2011 <sup>(1)</sup> of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors;
- order the respondent to pay the costs.

**Pleas in law and main arguments**

Error of law as regards the scope of the obligation to state reasons. The reasoning on which the General Court relies does not correspond with the necessary clarity and lack of ambiguity that the statement of reasons for a regulation must satisfy in order to meet the requirements of Article 296 TFEU. In fact, the General Court filled the gaps in the statement of reasons for the contested regulation and substituted its own reasoning for the statement of reasons of the contested measure.

Error of law as regards the principle of equal treatment. The General Court's reasoning on this issue is not based on appropriate criteria for making the comparison. The General Court based its reasoning on an allegedly well-known fact, which is not supported by fact or science, namely the distinction between fruits with thick rind and those with thin rind and the inclusion of citrus fruit in the first category.

Error of law as regards judicial review of the principle of proportionality. The review by the General Court as to the proportionality of a restriction on the trade in goods imposed by an institution must be carried out having regard to the Commission's broad margin of discretion. However, the General Court did not carry out its judicial review in accordance with the Tetra Laval<sup>(2)</sup> case-law. First, it did not review properly the relevance and appropriateness of the elements on which the adopted decision is based as regards the grounds justifying the restriction. Second, it did not examine correctly the conclusions drawn from the data, so that the restriction goes beyond what is necessary in order to achieve the objective pursued.

<sup>(1)</sup> OJ 2011 L 157, p. 1.

<sup>(2)</sup> Judgment of 15 February 2005 in *Commission v Tetra Laval* (C-12/03 P, EU:C:2005:87), paragraph 39.

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**Appeal brought on 27 January 2015 by Photo USA Electronic Graphic, Inc. against the judgment of the General Court (Third Chamber) delivered on 18 November 2014 in Case T-394/13: Photo USA Electronic Graphic, Inc. v Council of the European Union**

**(Case C-31/15 P)**

(2015/C 089/15)

*Language of the case: English*

#### **Parties**

*Appellant:* Photo USA Electronic Graphic, Inc. (represented by: K. Adamantopoulos, avocat)

*Other parties to the proceedings:* Council of the European Union, European Commission, Ancap SpA, Cerame-Unie AISBL, Confindustria Ceramica, Verband der Keramischen Industrie eV

#### **Form of order sought**

The appellant claims that the Court should:

- set aside the Judgment of the General Court of the European Union of 18 November 2014 in Case T-394/13 *Photo USA Electronic Graphic, Inc. v Council* by which the General Court dismissed the application for annulment of Council Implementing Regulation (EU) No 412/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China<sup>(1)</sup>;
- complete the analysis and annul Regulation (EU) No 412/2013; and
- order the Council of the European Union to pay the Appellant's costs of this appeal as well as those of the proceedings before the General Court in Case T-394/13.

#### **Pleas in law and main arguments**

The Appellant submits that the General Court's findings with respect to Appellant's first, third and fourth pleas before the General Court are vitiated by several errors of law as well as a distortion of the evidence submitted. The Appellant therefore submits that the contested judgment should be set aside. In addition, the Appellant submits that the facts underlying the first, second and third pleas are sufficiently established so as to enable the Court of Justice to decide on those pleas.

As concerns the first plea, the Appellant advances two grounds of appeal. First, by imposing, in essence, on the Appellant the burden of proof that the Institutions made an error in their assessment in respect of each of the factors they deemed relevant, the General Court erred in law. As established in the previous jurisprudence of the General Court, it is sufficient for the Appellant to demonstrate either that (1) the Institutions erred in their assessment of the factors they deemed relevant or that (2) the application of other more relevant factors necessitated their exclusion. In that context, the determination that the Institutions made an error in their assessment in respect of 2 factors out of the 3 that the Institutions deemed relevant is sufficient to discharge the Appellant's burden of proof. Furthermore, in arriving at its findings the contested judgment distorted the evidence and the facts before the General Court.