

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission breached Article 18 of the Basic Regulation⁽¹⁾, Article 6.8 and Annex II of the ADA⁽²⁾, when it considered the Applicant a partially non-cooperating producer and applied facts available to it, and made a manifest error of assessment. According to the Applicant, in addition, the consequences from partial non-cooperation were manifestly inappropriate in light of the limited deficiencies found.
2. Second plea in law, alleging that the Commission breached the right to a fair hearing and the rights of defence of the Applicant by limiting the opportunities for the Applicant to defend itself against the Commission's adverse findings. According to the Applicant, the Commission effectively rejected/disregarded any additional information or argument from the Applicant concerning its partial non-cooperation status.
3. Third plea in law, alleging that the Commission failed to establish a correct dumping margin in accordance with Article 2(12) of the Basic Regulation after it breached Article 2(3), Article 2(4), misinterpreted Article 2(9), and made manifest errors of assessment and alleging that the Commission failed to make a fair comparison in accordance with Article 2(10) of the Basic Regulation.
4. Fourth plea in law, alleging that the Commission breached Article 3(2) and 3(5) of the Basic Regulation and Article 3.1 of the ADA, distorted the evidence before it and made manifest errors of assessment, by wrongly assessing the injury indicators and not carrying out an objective examination of the state of the Union industry. According to the Applicant, the Commission relied only on selected economic indicators of the state of the Union industry and neglected key indicators which would have revealed a different, more positive state of the Union industry. The Applicant further puts forward that the Commission took a biased approach favoring its injury findings and distorting evidence before it by failing to examine the 'free' and 'captive' markets of the product concerned as a whole and together for all indicators, and choosing to make a separate 'three-way assessment' which distorted the overall assessment.
5. Fifth plea in law, alleging that the Commission breached Article 3(7) of the Basic Regulation, as it wrongly assessed the causal link between allegedly dumped imports and the situation of the Union industry. The Applicant further puts forward that the Commission failed in its duty not to attribute other factors causing injury to the allegedly dumped imports and overlooked other factors which jointly and severally were capable of breaking the causal link.
6. Sixth plea in law, alleging that the Commission wrongly determined the injury elimination level, breaching Articles 2(9), 9(4) of the Basic Regulation and making a manifest error of assessment. In particular, according to the Applicant, the Commission determined an unreasonable and excessive profit margin for the Union industry and committed a manifest error of assessment in applying, for injury margin purposes, and by analogy, the adjustment for reasonable selling, general and administrative costs and a profit of an unrelated importer, foreseen in Article 2(9) of the Basic Regulation.

⁽¹⁾ 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).

⁽²⁾ WTO Anti-dumping Agreement.

Action brought on 2 November 2016 — Oakley v EUIPO — Xuebo Ye (Representation of a silhouette in the shape of an ellipse)

(Case T-754/16)

(2017/C 014/49)

Language in which the application was lodged: Spanish

Parties

Applicant: Oakley, Inc. (Foothill Ranch, California, United States) (represented by: E. Ochoa Santamaría and V. Rodríguez Pombo, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Xuebo Ye (Wenzhou, China)

Details of the proceedings before EUIPO

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: European Union figurative mark (Representation of a silhouette in the shape of an ellipse) — Application for registration No 13 088 191

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 31/08/16 in Case R 2608/2015-4

Form of order sought

The applicant claims that the Court should:

- declare the application admissible together with all the associated documents and the corresponding copies;
- rule that the evidence offered may be submitted;
- grant the application, annulling the contested decision and refusing the application for registration of EU trade mark No 13 088 19, pursuant to Article 8(1)(b) and (5) of Regulation No 207/2009;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 8(1)(b) and (5) of Regulation No 207/2009.

Action brought on 31 October 2016 — ArcelorMittal Belval & Differdange and ThyssenKrupp Steel Europe v ECHA

(Case T-762/16)

(2017/C 014/50)

Language of the case: English

Parties

Applicants: ArcelorMittal Belval & Differdange SA (Esch-sur-Alzette, Luxembourg) and ThyssenKrupp Steel Europe AG (Duisburg, Germany) (represented by: H. Scheidmann and M. Kottmann, lawyers)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicants claim that the Court should:

- annul the ECHA's decision of 26 September 2016 (reference ATD/52/2016);
- alternatively, annul the ECHA's decision of 19 August 2016 (reference ATD/52/2016) to the extent that it rejects the applicants' request for access to their file;
- order the ECHA to bear the costs.