

- Where appropriate, declare Articles 15, 18, 20, 21, 22 and/or 24 of Regulation No 806/2014 inapplicable, in accordance with Article 277 TFEU;
- Order SRB and the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Cases T-478/17, *Mutualidad de la Abogacía and Hermandad Nacional de Arquitectos Superiores y Químicos v Single Resolution Board*, T-481/17, *Fundación Tatiana Pérez de Guzmán el Bueno and SFL v Single Resolution Board*, T-482/17, *Comercial Vascongada Recalde v Commission and Single Resolution Board*, T-483/17, *García Suárez and Others v Commission and Single Resolution Board*, T-484/17, *Fidesban and Others v Single Resolution Board*, T-497/17, *Sánchez del Valle and Calatrava Real State 2015 v Commission and Single Resolution Board*, and T-498/17, *Pablo Álvarez de Linera Granda v Commission and Single Resolution Board*.

Action brought on 20 September 2017 — DNV GL v EUIPO (Sustainable)

(Case T-644/17)

(2017/C 374/73)

Language of the case: English

Parties

Applicant: DNV GL AS (Høvik, Norway) (represented by: J. Albers, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'Sustainable' — Application for registration No 15 372 832

Contested decision: Decision of the Second Board of Appeal of EUIPO of 12 July 2017 in Case R 2/2017-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- register the European Union trade mark application No 15 372 832 'Sustainable' for all applied for goods and services;
- order EUIPO to pay the costs of the proceedings.

Plea in law

- Infringement of Articles 7(1)(b), 7(1)(c) and 7(2) of Regulation No 207/2009.

Action brought on 25 September 2017 — Jinan Meide Casting v Commission

(Case T-650/17)

(2017/C 374/74)

Language of the case: English

Parties

Applicant: Jinan Meide Casting Co. Ltd (Jinan, China) (represented by: R. Antonini, E. Monard and B. Maniatis, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Commission Implementing Regulation (EU) No 2017/1146 of 28 June 2017 reimposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, manufactures by Jinan Meide Castings Co., Ltd.; and
- order the Commission to bear the costs of these proceedings.

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 a violation of Article 2(7)(a) of the Basic Regulation ⁽¹⁾ by the reliance on (i) low volume sales outside the ordinary course of trade and (ii) unreliable cost data to arbitrarily exclude sales

The applicant submits that the normal value determination made by the Commission violates Article 2(7)(a) of the Basic Regulation for two reasons.

- First, so the applicant states, the normal value determination is distorted by the inclusion of sales of product control numbers (PCN's) that were only sold in very small volumes by the analogue country producer. The applicant claims that it demonstrated that the prices of such low volume sales were not reliable and resulted in an unreasonable determination of the normal value. Moreover, so the applicant claims, the low volume sales do not reflect normal behavior on the part of purchasers and result from normal patterns of price formation, and are accordingly not in the ordinary course of trade, thus not permitting a proper comparison. According to the applicant, the Commission stressed that it carried out an ordinary course of trade test, but failed to address the foregoing.
 - Second, according to the applicant, the Commission did not obtain reliable cost data by PCN from the analogue country producer. The applicant claims that it therefore developed a methodology to calculate such PCN-specific cost data, but that in reality, this methodology was a mere presumption that all transactions that were priced below 92,14 % of the average price of the PCN were not profitable, rather than a PCN-by-PCN profitability check. The applicant puts forward that such a general assumption is entirely unreasonable, and leads to an arbitrary exclusion of sales transactions and an unjustified increase of the normal value. The applicant comes to the conclusion that the reliance on such methodology and unreliable data to arbitrarily exclude lower priced sales from the normal value determination to its detriment violates Article 2(7)(a).
2. Second plea in law, alleging a violation of Article 2(10) of the Basic Regulation and Article 2.4 of the WTO Anti-Dumping Agreement and the principle of good administration by rejecting the adjustments for level of trade, credit terms, packing cost and differences in raw materials and productivity and by imposing an unreasonable burden of proof on the applicant.
 - According to the applicant, all of its sales were made to end-users whereas the analogue country producer sold both to end-users and to traders. The applicant puts forward that it submitted abundant evidence showing that there was a consistent difference in pricing and that despite this, the Commission rejected the requested adjustment for the differences in level of trade.
 - The applicant argues that the Commission further rejected to revise the calculation of the adjustment for packing costs, even though the applicant submitted evidence that the value of the adjustment was erroneous as a result of the use of a wrong allocation key. According to the applicant, the Commission thus violated its obligations by allocating the total packing cost over the total turnover rather than over the turnover of the products produced by the analogue country producer itself.
 - The applicant further submits that the Commission also rejected to make an adjustment for credit costs to the bulk of sales by the analogue country producer. According to the applicant, the applicant demonstrated that the evidence on record contradicted the Commission's position that had initially led it to not make such adjustment, and rather than drawing the right conclusions about the need to make adjustments for credit terms, the Commission made an adjustment for a single specific customer in violation of its obligations.

- Finally, so the applicant states, the Commission recognized that there were differences between the raw materials used and the productivity of the analogue country producer and the applicant, but rejected to make any adjustments for these differences. In this respect, so the applicant states, the Commission *inter alia* ignored the statements by the analogue country producer itself which demonstrated that these differences existed and had an impact on price comparability.
 - According to the applicant, the Commission further imposed an unreasonable burden of proof on Jinan in violation of its obligations under Article 2(10) of the basic Regulation, Article 2.4 of the Anti-Dumping Agreement and the principle of sound administration, in relation to each of the requested adjustments addressed above.
3. Third plea in law, alleging a violation of Articles 2(7)(a), 2(10), 2(10)(a) and 2(11) of the Basic regulation by means if the dumping margin determination with respect to non-matching product types.
- The applicant puts forward that by determining the normal value for non-matching product types on the basis of the average normal value adjusted by the value of the product differences which was determined on the basis of the difference between the export prices charged by the applicant, the Commission adopted an unreasonable methodology to determine the normal value, in violation of Article 2(7)(a) of the Basic Regulation. According to the applicant, this is based on the assumption that the market value of the differences in physical characteristics is reflected in the export prices, whereas in reality the export prices of the matching product types used as proxy reflect, based on the findings of the Commission, at least partially the dumping. According to the applicant, the methodology incorporates an assumption that the exports of the non-matching product types in question are priced at a level that is dumped at the exact same margin as that found to exist for the matching product types. The applicant considers this assumption unreasonable and unverifiable.
 - The applicant further submits that by adopting a methodology that results in an assumption of dumping for the non-matching product types at the same level as that for the matching product types, the dumping margin eventually obtained does not reflect the full degree of dumping being practiced contrary to Article 2(11) of the Basic Regulation.
4. Fourth plea in law, alleging a violation of Articles 3(1), 3(2) and 3(3) of the Basic Regulation by relying on inaccurate import data or violation of Article 3, Article 9(4) and 9(5) of the Basic regulation by imposing duties on the applicant without any finding of injury or causation.
- Unless the Court were to consider that the Contested Regulation incorporates the injury and causation findings included in the Annulled Regulation ⁽²⁾ by reference, the applicant submits that in view of the annulment of the Annulled Regulation as a whole with respect to the applicant, the Contested Regulation imposes anti-dumping duties on the imports by the applicant without having regard to the requirements laid down with respect to elements other than dumping. According to the applicant this leads, *inter alia*, to a violation of Article 9(4) of the Basic Regulation, as a definitive anti-dumping duty is being imposed without a finding of injury and causation, and Article 9(5) of the Basic Regulation, as a definitive anti-dumping duty has been imposed on a source that was not found to be causing injury. The applicant puts forward that in the absence of any injury findings in a Regulation that exists with respect to the applicant, the Commission also violated Article 3 of the Basic Regulation which deals with the determination of injury. The applicant further submits that the statement of reasons is also lacking.
 - Alternatively, so the applicant claims, the Commission violated Articles 3(1), 3(2) and 3(3) of the Basic Regulation by relying on inaccurate import data. Indeed, according to the applicant, for the finding of injury, reliance was made on import data which, on the basis of the information available to the Commission, clearly included imports of products that cannot be considered to be the product concerned. The applicant puts forward that the Commission, however, failed to take the necessary steps to verify the accurateness of the import data and to correct them by excluding imports of products that cannot be considered to be the product concerned. The applicant comes to the conclusion that as a result, the Commission violated Articles 3(1), 3(2) and 3(3) of the Basic Regulation.

5. Fifth plea in law, alleging a violation of Article 266 TFEU and Article 9(4) of the 2009 Basic Regulation as the Council should have implemented the judgment, not the Commission

According to the applicant, the procedure provided for by the 2009 Basic Regulation, which by the Commission's own admission was the law applicable to the reinvestigation, requires an imposition by the Council acting on a proposal submitted by the Commission after consultation of the Advisory Committee. The applicant states that this procedure was not followed and that therefore, the Contested Regulation was adopted in violation of Article 9(4) of the 2009 basic Regulation and Article 266 TFEU which requires the institution whose act has been declared void to take the necessary measures to comply.

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- (¹) References to the Basic Regulation are deemed to refer in primary order to the 2009 Basic Regulation (Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members to the European Community, OJ 2009, L 343, p. 51) and in subsidiary order to the corresponding provision of the 2016 Basic Regulation (Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union, OJ 2016, L 176, p. 21).
- (²) Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia (OJ 2013, L 129, p. 1).
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