

- concluded that the Commission did not infringe Articles 2(a), 2(b) and 3(1)(a) of the Basic Regulation when it attributed financial contributions by governments and public bodies linked to the Government of the People's Republic of China to the government of the country of origin or export, namely the Government of the Arab Republic of Egypt;
- found that the Commission did not violate Articles 4(2) and 4(3) of the Basic Regulation when it concluded that the Government of Egypt has the status of authority which granted the preferential financing that was granted by the Government of China;
- concluded that the Commission did not violate Articles 3(1)(a)(ii), 3(2) and 5 of the Basic Regulation when calculating the amount of the benefit conferred to Jushi under the duty drawback scheme; and
- deemed that the Commission did not violate Articles 3(2) and 4(2)(c) of the Basic Regulation when determining that the tax treatment of foreign exchange losses conferred a benefit to the Appellants and constituted a specific subsidy.

With regard to the first ground of appeal, the Appellants in essence submit that the General Court erred in law when it considered that the Commission's use of the Appellants' combined total turnover from all products as an appropriate denominator for the calculation of the benefit in percentage (that is the amount of countervailable subsidy) was not vitiated by a manifest error of assessment.

With regard to the second ground of appeal, the Appellants in essence submit that the General Court erred in law when it concluded that the Basic Regulation does not rule out the possibility that, even if the financial contribution does not come directly from the government of the country of origin or export, that financial contribution may be attributed to it, under Articles 2(b) and 3(1) of the Basic Regulation.

With regard to the third ground of appeal, the Appellants in essence submit that the General Court erred in law when it concluded that the Government of Egypt has the status of authority which granted the preferential financing that was granted by the Government of China. Instead, the General Court should have concluded that the Commission violated Articles 4(2) and (3) of the Basic Regulation because it was the Chinese entities providing the financial contributions that were the granting authority.

With regard to the fourth ground of appeal, the Appellants in essence submit that the General Court erred in law when it concluded that the only comparable situation for the purpose of determining whether Jushi received a benefit is that of an undertaking established, like Jushi, in the Suez Canal Economic Zone (SCZone) which sells products containing materials that have benefited from exemption from customs duties to an undertaking established outside the SCZone.

With regard to the fifth ground of appeal, the Appellants in essence submit that the General Court erred in law when it concluded that the Commission did not consider that the tax treatment in itself constituted a subsidy capable of being the subject of a countervailing measure and that the Applicants at first instance failed to adduce evidence that might render implausible the factual assessments made by the Commission in the contested implementing regulation regarding the fact that the tax treatment benefited all undertakings with liabilities in foreign currencies.

(¹) OJ 2020, L 189, p. 1.

Action brought on 27 April 2023 — European Commission v Hungary

(Case C-271/23)

(2023/C 216/44)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: L. Baumgart, M. Carpus Carcea and Zs. Teleki, acting as Agents)

Defendant: Hungary

Form of order sought

The Commission claims that the Court should:

- declare that, by not following the European Union's position, at the reconvened sixty-third session of the Commission on Narcotic Drugs of the United Nations Economic and Social Council, in respect of amending the scheduling of cannabis and cannabis-related substances, Hungary has (i) failed to fulfil its obligations under Council Decision (EU) 2021/3,⁽¹⁾ which was binding on Hungary in accordance with Article 218(9) TFEU, in conjunction with the fourth paragraph of Article 288 TFEU; (ii) interfered in the exclusive external competence of the European Union laid down in Article 3(2) TFEU; and (iii) breached the principle of sincere cooperation enshrined in Article 4(3) TEU;
- order Hungary to pay the costs.

Pleas in law and main arguments

First plea in law: At the session of the Commission on Narcotic Drugs held on 2 December 2020, Hungary voted contrary to the provisions of the Council Decision establishing the position of the European Union. The Council Decision, which was adopted on the basis of Article 218(9) TFEU, and which establishes the positions to be adopted on the European Union's behalf, was binding on Hungary under the fourth paragraph of Article 288 TFEU.

Second plea in law: In accordance with Article 3(2) TFEU, Council Decision (EU) 2021/3 concerns an exclusive external competence of the European Union, and Hungary therefore should not have established its own position in that respect.

Third plea in law: By voting contrary to the European Union's position, without the prior agreement of the EU institutions, Hungary breached the principle of sincere cooperation laid down in Article 4(3) TEU.

The Commission sent Hungary a letter of formal notice on 18 February 2021 and a reasoned opinion on 12 November 2021 and considered Hungary's replies to be unsatisfactory.

⁽¹⁾ Council Decision (EU) 2021/3 of 23 November 2020 on the position to be taken, on behalf of the European Union, at the reconvened sixty-third session of the Commission on Narcotic Drugs, on the scheduling of cannabis and cannabis-related substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971 (OJ 2021 L 4, p. 1).

Appeal brought on 27 April 2023 by Jushi Egypt for Fiberglass Industry SAE against the judgment of the General Court (First Chamber, Extended Composition) delivered on 1 March 2023 in Case T-540/20, Jushi Egypt for Fiberglass Industry v Commission

(Case C-272/23 P)

(2023/C 216/45)

Language of the case: English

Parties

Appellant: Jushi Egypt for Fiberglass Industry SAE (represented by: B. Servais and V. Crochet, avocats)

Other parties to the proceedings: European Commission and Association des producteurs de fibres de verre européens (APFE)

Form of order sought

The appellant claims that the Court should:

- annul the judgment under appeal,
- accept the first, third and fourth pleas in law of the action for annulment brought by Jushi Egypt for Fiberglass Industry S.A.E, and
- order the Appellee and any intervening party to pay the costs including those incurred at first instance.