Concerning the claimed Dubai origin, the applicant alleges the institutions have erred in law by making an incorrect origin analysis as the Commission allegedly used the criterion whether or not there was a change in the tariff heading of the product concerned, whereas the applicant finds that the relevant criteria are the following:

i) Last substantial process or operation;

ii) the operation must be economically justified;

iii) the operation must be carried out in an undertaking equipped for the purpose; and

iv) the operation must result in the manufacture of a new product or represent an important stage of manufacture.

Furthermore, there were less onerous sanctions than withdrawing the price undertaking, such as the reclaiming of anti-dumping duty by the Member States' customs authorities or making it a condition that exports from Dubai of ropes made from Indian strand had stopped.

The applicant therefore invokes an error of law, lack of reasoning, misuse of powers and a violation of the principle of proportionality.

([1]) Commission Decision 1999/572/EC of 13 August 1999 accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of steel wire ropes and cables originating in the People's Republic of China, Hungary, India, the Republic of Korea, Mexico, Poland, South Africa and Ukraine (OJ 1999 L 217, p. 63).

([2]) Commission Decision 2006/38/EC of 22 December 2005 amending Commission Decision 1999/572/EC accepting undertakings offered in connection with the anti-dumping proceedings concerning imports of steel wire ropes and cables originating, inter alia , in India (JO 2006 L 22, p. 54).

([3]) Council Regulation (EC) No 121/2006 of 23 January 2006 amending Regulation (EC) No 1858/2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia , in India (JO 2006 L 22, p. 1).

Action brought on 25 April 2006 — British Nuclear Group Sellafield v Commission

(Case T-121/06)

(2006/C 154/48)

Language of the case: English

Parties

Applicant: British Nuclear Group Sellafield Limited (Sellafield, United Kingdom) (represented by: J. Percival, A. Renshaw, J. Isted and G. Bushell, Solicitors and R. Plender, Barrister)

Defendant: Commission of the European Communities

Form of order sought

— to annul the contested decision; or

— in the alternative, to annul the measures contained in Articles 2, 3 and 4 of the contested decision;

— to order the defendant to pay the costs of the proceedings; and

— to take any other actions that the Court considers to be appropriate.

Pleas in law

The applicant contests the Commission's Decision of 15 February 2006 on a procedure in application of Article 83 of the Euratom Treaty (BNG Sellafield Limited). By the contested Decision, the Commission issued a warning under Article 83(1)(a) EA. The Commission alleges that the applicant infringed certain provisions of the Euratom Treaty and Regulation 302/2005 ([1]), which relate to its particular reporting obligations and the provisions of access to certain facilities. The Commission accordingly requested that the applicant implement specified measures within the periods prescribed in the contested decision.

In support of its application, the applicant submits, first, that the Commission lacks the competence to adopt the contested decision and the measures imposed on the applicant. According to the applicant, the Commission does not have the legal authority to adopt the measures imposed, including the measures dealing with principles of quality assurance and standards for nuclear accountancy and control, which exceed the scope of existing safeguards legislation.

The applicant submits also that the defendant infringed the principle of subsidiarity since the imposed measures encroach on the competence of the relevant national authorities.

According to the applicant, the contested decision is furthermore based, in whole or in part, on safety concerns, rather than on safeguard concerns, and accordingly Article 83 EA would not be the appropriate legal basis for the adoption of the contested decision.

The applicant submits, second, that the Commission committed an infringement of an essential procedural requirement by failing to conduct a full and proper procedure under Article 83 EA. The applicant states that the Commission did not inform it of its objections, did not offer a hearing and has violated its right of defence.

Third, the applicant invokes that the Commission, in finding that the applicant had breached its safeguards obligations, infringed the Euratom Treaty and the rules of law relating to its application by committing a manifest error of assessment and infringed the principle of legal certainty.

Fourth, the applicant invokes a violation of the principle of proportionality and legitimate expectations.

Finally, the applicant submits that the Commission infringed the applicant's right of defence and the right to a fair hearing, by breaching its duty to inform the applicant of the essence of the measures imposed by the sanction in sufficient time to afford the applicant an opportunity to comment on them before the contested decision was adopted.

(1) Commission Regulation (Euratom) No 302/2005 of 8 February 2005 on the application of Euratom safeguards (OJ L 54, p. 1)

Action brought on 28 April 2006 — Helkon Media v Commission

(Case T-122/06)

(2006/C 154/49)

Language of the case: German

Parties

Applicant: Helkon Media AG (Munich, Germany) (represented by: U. Karpenstein, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— order the European Commission to pay the sum of EUR 120 000 to HELKON MEDIA AG i.L;

— order the Commission to pay the costs.

Pleas in law and main arguments

Helkon Media AG, in liquidation, represented by its insolvency administrator, relies on a claim for payment against the European Commission under an agreement to support a film, on the basis of an arbitration clause for the purposes of Article 238 EC, in the annex to that agreement.

According to the applicant, the claim for payment is not extinguished by the set-off alleged by the Commission. It bases its action on the assertion that this set-off has no legal basis. The applicant further contends that a set-off after the opening of insolvency proceedings is inadmissible in German law. Finally, it submits that the recognised conditions for a set-off have not been met.

Action brought on 28 April 2006 — Kapman v OHIM (representation of a saw blade in blue)

(Case T-127/06)

(2006/C 154/50)

Language of the case: English

Parties

Applicant: Kapman A.B. (Sandviken, Sweden) (represented by: R. Almaraz Palmero, lawyer)

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

Form of order sought

— Annulment of the Decision of the Second Board of Appeal at OHIM of 10 February 2006 in Case R 303/2004-2;

— order the Office to refund the appeal fee to the applicant;

— order the Office to pay the costs of the dispute, including those relating to the procedure before the Board of Appeal.

Pleas in law and main arguments

Community trade mark concerned: A figurative mark representing a saw blade in blue for goods in class 8 [saw blades (for hand-operated tools)] — application No 2 532 497

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as among others the combination of shape and colour causes an outstanding visual impression to the relevant public, i.e. professional handymen and not to the average consumer.