

### Pleas in law and main arguments

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

1. First plea in law, alleging that the Council violated Article 15(1) of Council Regulation (EC) No 597/2009 <sup>(2)</sup> insofar as it disregarded the fact that imports of raw materials consigned from the Kingdom of Saudi Arabia were not subject to import duties and, thus, erred in calculating the subsidy margin. The applicant submits that, in the present case, the Council failed:

— to correctly establish the amount of countervailable subsidy since it did not take into consideration the existence of a customs union between the Gulf Cooperation Council (GCC) members;

— to take into consideration the impact of such customs union on the amount of countervailable subsidies.

Accordingly, the applicant submits that the countervailing duty exceeds the amount of countervailable subsidy established in the investigation.

2. Second plea in law, alleging that the Council violated Article 30(5) of Council Regulation (EC) No 597/2009 insofar as it refused to take into account the representations timely made by the applicant on 5 August 2010.

3. Third plea in law, alleging that the Council violated Article 11(8) of Council Regulation (EC) No 597/2009 insofar as it failed to examine the accuracy of the information presented by the applicant on 5 August 2010.

4. Fourth plea in law, alleging that the Council violated the principle of sound administration insofar as it adopted the contested regulation without taking into consideration all the information that was available to it.

<sup>(1)</sup> OJ 2010 L 254, p. 10

<sup>(2)</sup> Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community, OJ 2009 L 188, p. 93

### Action brought on 6 December 2010 — Novatex v Council

(Case T-556/10)

(2011/C 30/97)

*Language of the case: English*

#### Parties

*Applicant:* Novatex Ltd, Karachi, Pakistan, (represented by: B. Servais, lawyer)

*Defendant:* Council of the European Union

### Form of order sought

— annul Council Implementing Regulation (EU) No 857/2010 of 27 September 2010 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates <sup>(1)</sup>;

— order the Council to bear the costs of these proceedings.

### Pleas in law and main arguments

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

First plea in law, alleging that the Council violated Article 3 of Council Regulation (EC) No 597/2009 <sup>(2)</sup> by erroneously concluding that the Final Tax Regime (FTR) is a scheme which forgoes government revenue and, consequently, constitutes a financial contribution and that the FTR invariably confers benefit to the applicant. The applicant submits that:

— the Final Tax Regime cannot be considered to constitute a financial contribution on the basis of Article 3(1)(a)(ii) of Council Regulation (EC) No 597/2009, interpreted in accordance with the relevant provision of the WTO Agreement on Subsidies and Countervailing Measures and the interpretation given thereto by the WTO case law.

— the contested regulation violates Article 3(2) of Council Regulation (EC) No 597/2009, interpreted in accordance with the relevant provision of the WTO Agreement on Subsidies and Countervailing Measures by concluding that the Final Tax Regime confers a benefit on the applicant.

Second plea in law, alleging that the Council violated:

— Articles 3(2) and 6(b) of the Council Regulation No 597/2009 interpreted in accordance with the relevant provision of the WTO Agreement on Subsidies and Countervailing Measures by using the applicable commercial rate prevailing during the investigation period, as found on the State Bank of Pakistan website, rather than the commercial rate prevailing at the time the loan was contracted by the applicant;

— Article 7(2) of the Council Regulation No 597/2009 interpreted in accordance with the relevant provision of the WTO Agreement on Subsidies and Countervailing Measures by applying an inappropriate denominator, that is, the export turnover, while the appropriate denominator was the turnover.

<sup>(1)</sup> OJ 2010 L 254, p. 10

<sup>(2)</sup> Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community, OJ 2009 L 188, p. 93

**Action brought on 3 December 2010 — H. Eich v OHIM — Arav (H. Eich)**

**(Case T-557/10)**

(2011/C 30/98)

*Language in which the application was lodged: Italian*

**Parties**

*Applicant:* H. Eich Srl (Signa, Italy) (represented by: D. Mainini, T. Rubin, A. Masetti Zannini de Concina, M. Bucarelli, G. Petrocchi, B. Passaretti, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Arav Holding Srl (Palma Campania, Italy)

**Form of order sought**

— Annul the decision of the First Board of Appeal of OHIM of 9 September 2010;

— Declare valid the mark H. EICH referred to in registration application No 6 256 242;

— Order OHIM to pay the costs of all proceedings, including before the two OHIM instances.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* H. Eich

*Community trade mark concerned:* Word mark 'H. Eich' (registration application No 6 256 242), for goods in Classes 18 and 25;

*Proprietor of the mark or sign cited in the opposition proceedings:* Arav Holding Srl

*Mark or sign cited in opposition:* Figurative mark containing the word element 'H-Silvian Heach' (Italian mark No 976 125, and mark No 880 562, pursuant to the Protocol to the Madrid Agreement, for Benelux, the Czech Republic, Germany, Greece, Spain, France, Hungary, Austria, Poland, Portugal, Romania, the United Kingdom), for goods in Classes 18 and 25.

*Decision of the Opposition Division:* Rejected the opposition.

*Decision of the Board of Appeal:* Annulled the contested decision and rejected the application for registration.

*Pleas in law:* Incorrect application and interpretation of Article 8(1)(b) of Regulation No 207/2009 on the Community trade mark (no likelihood of confusion).

**Order of the General Court of 16 November 2010 — Regione autonoma della Sardegna and Others v Commission**

**(Joined Cases T-394/08, T-408/08, T-436/08, T-453/08 and T-454/08) <sup>(1)</sup>**

(2011/C 30/99)

*Language of the case: Italian*

The President of the Fourth Chamber has ordered that the case be removed from the register.

<sup>(1)</sup> OJ C 285, 8.11.2008.

**Order of the General Court of 29 November 2010 — DVB Project v OHIM — Eurotel (DVB)**

**(Case T-578/08) <sup>(1)</sup>**

(2011/C 30/100)

*Language of the case: English*

The President of the Fifth Chamber has ordered that the case be removed from the register.

<sup>(1)</sup> OJ C 55, 7.3.2009.