2. If the answer to Question 1 is that there are circumstances in which the taxable person would not be entitled to do so (or would not be entitled to do so to a particular extent), what are the circumstances in which this would be so and in particular what is the relationship between the two transactions which would give rise to such circumstances?

3. Do the answers to Questions 1 and 2 differ according to whether or not the national treatment of one transaction is in conformity with the Sixth VAT Directive?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment OJ L 145, p. 1

Action brought on 20 December 2012 — European Commission v Italian Republic

(Case C-596/12)

(2013/C 71/13)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: J. Enegren and C. Cattabriga, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by excluding the category of managers from the scope of the redundancy process laid down in Article 4 of Law No 223/1991, in conjunction with Article 24 of that Law, the Italian Republic has failed to fulfil its obligations under Article 1(1) and (2) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies; (1)

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission submits that, by excluding the category of managers from the scope of the redundancy process (*procedura di mobilità*) laid down in Article 4 of Law No 223/1991, in conjunction with Article 24 of that Law, the Italian Republic has failed to fulfil its obligations under Article 1(1) and (2) of Directive 98/59/EC.

That directive regulates the procedure for informing and consulting with the workers' representatives which must be followed by an employer where he is contemplating collective redundancies, as well as the procedure for collective redundancies itself.

Pursuant to Article 1(1) and (2) of the directive, such procedures apply to dismissals effected by an employer for one or more reasons not related to the individual workers concerned, where the number of redundancies is above a certain threshold set by reference to the number of workers in the undertaking. In calculating the number of workers employed by the undertaking and also the number of redundancies effected, all workers are included, regardless of their qualifications or duties, the only exceptions being those with contracts of employment concluded for limited periods of time, public employees and the crews of seagoing vessels.

In implementing Directive 98/59/EC, the Italian legislature excluded from the scope of the information and consultation procedures established by it in the case of collective redundancies the category of managers, which, according to the Italian Civil Code, is included within the concept of a worker. Such an exclusion is not only contrary to the general scope of the directive, but is also wholly unjustified. The category of managers in Italian law is, indeed, very broad and even includes workers not entrusted with particular management powers in the context of the undertaking and defined as managers only in that they possesses a high level of professional qualifications.

(1) OJ 1998 L 225, p. 16.

Appeal brought on 20 December 2012 by Ningbo Yonghong Fasteners Co. Ltd against the judgment of the General Court (Seventh Chamber) delivered on 10 October 2012 in Case T-150/09: Ningbo Yonghong Fasteners Co. Ltd v Council of the European Union

(Case C-601/12 P)

(2013/C 71/14)

Language of the case: English

Parties

Appellant: Ningbo Yonghong Fasteners Co. Ltd (represented by: F. Graafsma, J. Cornelis, advocaten)

Other parties to the proceedings: Council of the European Union, European Commission, European Industrial Fasteners Institute AISBL (EIFI)

Form of order sought

The appellant claims that the Court should adopt a judgment that:

— sets aside the Judgment of the General Court of the European Union of 10 October 2012 in Case T-I50/09 Ningbo Yonghong Fasteners Co., Ltd. v Council by which the General Court dismissed the application for annulment of Council Regulation (EC) No 91/2009 ([1]) of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China;

— annuls Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, in so far as it concerns the Appellant; and

— orders the Council of the European Union to pay the Appellant's costs of this appeal as well as those of the proceedings before the General Court in Case T-150/09.

Pleas in law and main arguments

The Appellant submits that the General Court's findings with respect to Appellant's first plea before the General Court are vitiated by several errors of law as well as a distortion of the evidence. The Appellant therefore submits that the Contested Judgment should be set aside. In addition, the Appellant submits that the facts underlying the first plea are sufficiently established so that the Court of Justice can decide on that plea. The Appellant only challenges the General Court's findings with respect to the (original) first plea and this on the basis of three grounds of appeal.

First, by introducing an 'only plausible hypothesis' criterion as a result of which the three-month time-limit in the second paragraph of Article 2 (7) (c) of Council Regulation (EC) No 384/96 ([2]) of 22 December 1995 on protection against dumped imports from countries not members of the European Community (hereafter the 'basic regulation') allegedly does not apply, the Contested Judgment renders the three-month time limit meaningless. As a result, the Contested Judgment interpreted the second paragraph of Article 2 (7) (c) of the basic Regulation in a legally impermissible way since an interpreter is not free to adopt a reading that would result in rendering whole provisions or paragraphs to redundant or useless.

Second, in examining the legal consequences of a failure to comply with a procedural time-limit, the Contested Judgment applied the incorrect test, thereby imposing an unreasonable burden of proof on the Appellant. If the Contested Judgment had applied the correct test, as set out by this Court in previous cases, it would have found that the failure to comply with the procedural time-limit justified the annulment of the Contested Regulation.

Finally, in arriving at its findings, the General Court distorted the evidence and the facts before it.

([1]) OJ L 29, p. 1
([2]) OJ L 56, p. 1

Appeal brought on 31 December 2012 by Jean-François Giordano against the judgment of the General Court (Fifth Chamber) delivered on 7 November 2012 in Case T-114/11 Giordano v Commission

(Case C-611/12 P)

(2013/C 71/15)

Language of the case: French

Parties

Appellant: Jean-Francois Giordano (represented by: D. Rigeade and A. Scheuer, lawyers)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment of 7 November 2012 delivered by the General Court of the European Union in Case T-114/11.

And consequently:

— Hold that the adoption of Regulation (EC) No 530/2008 of 12 June 2008 ([1]) of the Commission of the European Communities caused Mr Jean-François Giordano harm;

— Order the Commission to pay Mr Jean-François Giordano damages in the sum of five hundred and forty-two thousand five hundred and ninety-four Euro (EUR 542 594), plus interest at the statutory rate and on a compound basis;

— Order the Commission to pay the whole costs.

Pleas in law and main arguments

The appellant relies on six pleas in law in support of his appeal.

First, he considers that the General Court erred by holding that the harm he alleged was not genuine and certain, whereas the