



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-659/13 C & J Clark International Ltd v The Commissioners for Her Majesty's Revenue and Customs and C-34/14 Puma SE v Hauptzollamt Nürnberg

The regulation imposing an anti-dumping duty on imports into the EU of certain leather footwear originating in China and Vietnam is partially invalid

The Council and the Commission did not comply with certain procedural rules when the regulation was adopted

On 5 October 2006, the Council of the EU adopted a regulation¹ imposing an anti-dumping duty on certain leather footwear imported from China and Vietnam into the EU. The rate of the anti-dumping duty was set at 16.5% for footwear manufactured by companies established in China (with the exception of the company Golden Step, whose anti-dumping duty was set at 9.7%) and at 10% for footwear manufactured by companies established in Vietnam.

In 2010 and 2012, C & J Clark International Ltd ('Clarks'), a UK manufacturer and retailer of footwear, requested from the Commissioners for Her Majesty's Revenue & Customs repayment of the anti-dumping duty that it had paid on account of importation of footwear into the EU over the period from 1 July 2007 until 31 August 2010. The sum concerned amounted to approximately €60 million. Clarks stated by way of justification for its claim that the regulation imposing the anti-dumping duty was invalid. After its claim was rejected, it brought an appeal before the First-tier Tribunal (Tax Chamber).

In 2011 and 2012, Puma, a German sports goods company, requested from the Principal Customs Office, Nuremberg (Germany) repayment of the anti-dumping duty in respect of importation of the same goods, again on the basis that the regulation was invalid. The sum concerned amounted to approximately €5.1 million. When its request was rejected, Puma brought an action before the Finanzgericht München (Finance Court, Munich).

Both national courts had doubts as to the regulation's validity and therefore decided to seek a ruling from the Court of Justice.

In today's judgment, **the Court holds that the regulation imposing an anti-dumping duty on imports of certain footwear originating in China and Vietnam is partially invalid.**

First of all, the Court points out that, where the number of traders concerned by an anti-dumping investigation is large, the Commission may decide to limit the investigation to a reasonable number of parties, by using statistically valid samples of exporting producers.

Next, it observes that EU law lays down a basic rule that the determination of a product's normal value, which constitutes one of the essential steps for proving the existence of dumping, must normally be based on the prices that independent customers must pay in the exporting countries in the ordinary course of trade.

Where the imports come, in particular, from China, Vietnam and non-market economy countries which are a member of the World Trade Organisation (WTO) at the date of the initiation of an anti-dumping investigation, normal value is determined in accordance with the basic rule if it is shown,

¹ Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1).

after analysis of properly substantiated claims by one or more producers established in those countries and subject to the investigation, that market economy conditions prevail for this producer or these producers. That rule enables producers subject to market economy conditions who have emerged in the countries concerned to obtain treatment corresponding to their individual situation, rather than to the overall situation of the country in which they are established.

Finally, the Court points out that the Council and the Commission are obliged to adjudicate upon any claim for market economy treatment submitted by a producer, including where sampling is used.

In this instance, the Court finds that **the Council and the Commission did not adjudicate upon claims for market economy treatment submitted by the Chinese and Vietnamese exporting producers not sampled and consequently declares the regulation invalid** in that regard.

The Court also points out that the Council and the Commission are, in principle, obliged to specify in a regulation imposing anti-dumping duties the amount of the duty imposed on each exporting producer concerned, unless such individual treatment is impracticable. For non-market economy countries, such a regulation nevertheless merely specifies the amount of the duty at the level of the supplying country concerned. The institutions must, however, calculate an individual anti-dumping duty for exporting producers established in a non-market economy country who demonstrate on the basis of properly substantiated claims that they meet the criteria justifying individual treatment.

In this context, the Court holds that the Council and the Commission are, in principle, bound to examine claims for individual treatment which are addressed to them and to adjudicate upon those claims, including where sampling is used.

In this instance, the Court finds that **the Council and the Commission did not adjudicate upon claims for individual treatment submitted by the Chinese and Vietnamese exporting producers not sampled and consequently declares the regulation invalid** in that regard too.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full texts [C-165/14](#) & [C-304/14](#) of the judgments are published on the CURIA website on the day of delivery.

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