

# Case T-35/01

**Shanghai Teraoka Electronic Co. Ltd**

**v**

**Council of the European Union**

(Dumping — Imposition of definitive anti-dumping duties — Electronic weighing scales originating in China — Undertaking with market economy status — Determination of injury — Causal link — Rights of the defence)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 28 October 2004 . . . . . II - 3671

## Summary of the Judgment

1. *Common commercial policy — Protection against dumping — Individual treatment of exporters of a country without a market economy — Conditions — Institutions' power of assessment — Judicial review — Limits*  
(Council Regulation No 384/96)
2. *Common commercial policy — Protection against dumping — Dumping margin — Determination of the normal value — Imports from countries without a market economy*

*as referred to in Article 2(7)(b) of Regulation No 384/96 — Application of the rules for countries with a market economy — Application reserved for producers satisfying the cumulative conditions laid down in Article 2(7)(c) of Regulation No 384/96 — Burden of proof on producers*

*(Council Regulations Nos 384/96, Art. 2(7) and 905/98)*

3. *Common commercial policy — Protection against dumping — Injury — Assessment of injury indicators through a segment-by-segment analysis of the market for the product in question — Conditions*  
*(Council Regulation No 384/96, Art. 3)*
  
4. *Community law — Interpretation — Methods — Interpretation having regard to international agreements concluded by the Community — Interpretation of Regulation No 384/96 having regard to the GATT Anti-dumping code of 1994*  
*(Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, 'Anti-dumping code of 1994'; Council Regulation No 384/96)*
  
5. *Common commercial policy — Protection against dumping — Injury — Expression 'dumped imports' — Account to be taken of all imports from a given country identified as one in respect of which dumping practices are known to occur — Limits*  
*(Council Regulation No 384/96, Art. 3)*
  
6. *Common commercial policy — Protection against dumping — Injury — Difference between preliminary and final figures adopted in order to determine the injury — Permissible*  
*(Council Regulation No 384/96)*
  
7. *Common commercial policy — Protection against dumping — Injury — Importation — Obligation to compare the dumping margin and undercutting margin of the imported products with dumping prices — None*  
*(Council Regulation No 384/96, Art. 3)*

8. *Common commercial policy — Protection against dumping — Meaning of ‘Community industry’ — Scope*  
(Council Regulation No 384/96, Art. 4(1))
9. *Common commercial policy — Protection against dumping — Injury — Period to be taken into consideration — Institutions’ power of assessment*  
(Council Regulation No 384/96)
10. *Community law — Principles — Rights of the defence — Respect in the context of administrative procedures — Anti dumping — Obligation of the institutions to ensure that the parties concerned are informed — Scope — Means of communication — Non-compliance with 10-day time-limit — Relevance — Conditions*  
(Council Regulation No 384/96, Art. 20)
11. *Common commercial policy — Protection against dumping — Conduct of the procedure — Duration of more than one year — Admissibility — Condition — Compliance with 15-month deadline*  
(Council Regulation No 384/96, Art. 6(9))

1. In the sphere of measures to protect trade, the Community institutions enjoy a wide discretion by reason of the complexity of the economic, political and legal situations which they have to examine.

in the country concerned which the Community institutions must assess in order to determine whether an exporter operates in market conditions without significant State interference and can, accordingly, be granted market economy status.

It follows that review by the Community judicature of assessments made by the institutions must be limited to establishing whether the relevant procedural rules have been complied with, whether the facts on which the contested choice is based have been accurately stated and whether there has been a manifest error of assessment of the facts or a misuse of power. The same applies to factual situations of a legal and political nature

(see paras 48, 49)

2. It is clear from Article 2(7) of the basic anti-dumping Regulation No 384/96 and from the preamble to Regulation No

905/98, which amended it, first, that the Community institutions are under an obligation in cases of imports from China to conduct their examination on a case-by-case basis, as that country cannot yet be regarded as a market economy country. The normal value of a product originating in China can therefore be determined in accordance with rules applicable to market economy countries only if it is shown that market economy conditions prevail for the producer or producers concerned.

so that the producer concerned must fulfil all of them in order to be granted market economy status.

(see paras 52-54)

Secondly, it is apparent from that provision that the burden of proof lies with the exporting producer wishing to avail himself of market economy status. Accordingly, there is no obligation on the Community institutions to prove that the exporting producer does not satisfy the criteria laid down for the recognition of such status. On the contrary, it is for the Community institutions to assess whether the evidence supplied by the exporting producer is sufficient to show that the criteria laid down in Article 2(7)(c) of the basic regulation are fulfilled and for the Community judicature to examine whether the institutions' assessment is vitiated by a manifest error.

3. Concerning the determination of injury which is carried out under Article 3 of the basic anti-dumping Regulation No 384/96, it is not apparent from Article 3 (8) of that regulation that an assessment of the product in question by segment may not be carried out and that the average calculation method must be used. The Community institutions may therefore make an assessment on a segment-by-segment basis of the market for the product in question in order to evaluate the various injury indicators, particularly if the results obtained using another method prove to be distorted for one reason or another, provided that account is properly taken of the relevant product as a whole.

It follows, finally, that the criteria laid down in Article 2(7)(c) are cumulative,

In that regard, as a result of a phenomenon familiar to statisticians, where a product comprises different categories, the calculation of the overall price trend (on the basis of the trend in volume and

sales value) is distorted if the prices and trends in sales volume differ appreciably from category to category. In such a case, the Commission may be permitted to calculate the price trend for each category of products.

engages in dumping practices. By contrast, imports by an exporting producer in respect of whom a zero or *de minimis* margin of dumping has been established may not be regarded as 'dumped' for the purposes of the injury assessment.

(see paras 127, 196)

4. Community legislation must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the Community, as is the case with the basic anti-dumping Regulation No 384/96, which was adopted in order to fulfil the international obligations arising from the 1994 Anti-dumping Code.

Article 3(4) of that regulation must be interpreted as permitting account to be taken of imports from a given country only in so far as they come from an exporting producer in respect of whom it has been established that he is engaging in dumping. Consequently, imports from a country in respect of which a margin of dumping greater than *de minimis* has been established may be taken into account in their entirety only where there is no exporting producer in that country in respect of whom a zero or *de minimis* margin of dumping has been established.

(see para. 138)

5. The expression 'dumped imports' contained in Article 3 of the basic anti-dumping Regulation No 384/96 covers the sum of all the dumping transactions. However, since it is impossible to examine all of the individual transactions, account must, for the purposes of analysing injury, be taken of all imports by any exporting producer in respect of whom it has been established that he

Therefore, in the light of the object and purpose of Article 3 of the basic regulation, the term 'dumped imports' does not cover imports by an exporting

producer who does not engage in dumping, even if that exporter is established in a country in respect of which a margin of dumping greater than *de minimis* has been identified.

(see paras 158-162)

6. As for the possible difference between preliminary figures and those finally adopted in order to characterise the injury resulting from dumping practices, an anti-dumping investigation is in reality an ongoing process during which many findings are constantly revised. It cannot therefore be ruled out that the definitive findings made by the Community institutions will differ from the findings made at any other stage of the investigation. Moreover, the preliminary figures may, by definition, be amended during the investigation. Consequently, an undertaking cannot argue that an inconsistency between the preliminary and the definitive figures concerning the injury illustrates in any way whatsoever a lack of objectivity and reliability of the figures in question. Finally, it is important to note that injury must be determined in relation to the time when any measure imposing protective measures was adopted.

(see para. 182)

7. In relation to determination of the injury caused to a Community industry, there is nothing in the basic anti-dumping Regulation No 384/96 that requires a comparison to be made between the dumping margins and the undercutting margins of dumped products in relation to similar Community products and the conclusion to be drawn from that comparison, where it shows that the dumping margin is lower than the undercutting margin, that the injury suffered by the Community industry is caused not by dumping but by other factors such as natural cost advantages enjoyed by the exporters.

(see para. 219)

8. According to Article 4(1) of the basic anti-dumping Regulation No 384/96, the term 'Community industry' refers to all Community producers of like products or to those of them whose collective output of the products constitutes a major proportion of the total Community production of those products. That term does not therefore cover only Community producers who participated in the investigation.

(see para. 257)

9. The Community institutions have wide discretion in determining what period is to be considered for the purpose of determining injury in anti-dumping proceedings.

ders the regulation imposing definitive anti-dumping duties unlawful only if, as a result of that omission, the undertakings concerned by the administrative procedure were not in a position to defend their interests effectively.

(see para. 277)

10. The principle of respect for the rights of the defence is a fundamental principle of Community law. In accordance with that principle, the requirements of which are reflected in Article 20 of the basic anti-dumping Regulation No 384/96, the undertakings affected by an investigation preceding the adoption of an anti-dumping regulation must be placed in such a position during the administrative procedure that they can effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the evidence presented by the Commission in support of its allegation concerning the existence of dumping and the injury suffered by the Community industry as a result.

Similarly, failure to set out certain factors in the disclosure document is not a breach of undertakings' rights of defence where it has been established that they became aware of that evidence on another occasion, at a time when it was still possible for them effectively to make known their point of view in that respect before the Commission adopted its proposal for the adoption of the contested regulation.

Concerning the final disclosure, required by Article 20(4) of the basic regulation, of the essential facts and considerations on the basis of which the Commission intends to recommend to the Council that definitive measures be adopted, incompleteness of such disclosure ren-

Finally, even if those undertakings must be given at least 10 days within which to lodge any representations with respect to the information which was not contained in the disclosure document sent to them, and that period has not been observed, that fact cannot, in itself, lead to annulment of the contested regulation. It is also necessary to establish whether the Community institutions' failure to grant the undertakings the period prescribed by Article 20(5) of the basic regulation within which to

submit any comments they might have on the additional information sent at their request has actually been capable of affecting their rights of defence in the procedure in question.

(see paras 287-290, 292, 330-331)

guideline period of one year and a compulsory period of 15 months. The fact that provision is made for these two periods means that, if the Community institutions have failed to conclude the investigation within the guideline period of one year, it is sufficient for observance of the procedural rules laid down in the basic regulation that they conclude it within the compulsory period of 15 months and there is no need to examine whether a duration of more than the guideline period but less than the compulsory period is reasonable in the light of the facts of the case.

11. Article 6(9) of the basic anti-dumping Regulation No 384/96 lays down a

(see para. 348)